

2016

State of Utah, Plaintiff/Appellee, v. Christopher Kim Leech, Defendant/Appellant : Brief of Appellee

Utah Court of Appeals

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Case No. 20160995-CA

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

v.

CHRISTOPHER KIM LEECH,
Defendant/Appellant.

Brief of Appellee

Appeal from convictions for one count of aggravated murder, two counts of aggravated kidnapping, two counts of aggravated robbery, and one count of obstructing justice, all first degree felonies, in the Third Judicial District, Salt Lake County, the Honorable Randall N. Skanchy presiding

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Oral Argument Requested

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INTRODUCTION

Defendant Christopher Leech organized and carried out the kidnapping, robbery, and murder of a man who was late returning a car after a drug deal. One of Leech's two accomplices testified against him at the joint preliminary hearing of Leech and two co-defendants. Three different defense attorneys cross-examined the accomplice at that hearing, with Leech's counsel asking the bulk of the questions. At Leech's trial, the accomplice refused to testify, and the trial court admitted his preliminary hearing testimony over Leech's objection.

Leech argues that admitting this testimony violated rule 804 as interpreted in *State v. Goins*. *Goins* held that in all but the rarest of cases,

defense counsel does not have the same motive to cross-examine at a preliminary hearing that they have at trial.

This is the rare case in which counsel's motive to cross-examine at the preliminary hearing was sufficiently similar to the motive at trial that this Court should hold that the testimony was admissible. But even if the testimony were inadmissible, its admission was harmless, given the other evidence of Leech's guilt.

STATEMENT OF THE ISSUES

1. Did the trial court correctly decide that an accomplice's extensively cross-examined preliminary hearing testimony was admissible at trial?

Standard of Review. The correct interpretation of an evidence rule is a question of law; the admission of evidence is reviewed for abuse of discretion.

State v. Lowther, 2017 UT 34, ¶17, 398 P.3d 1032.

2. Can Leech prevail under a cumulative-error theory when he alleges only a single error?

Standard of Review. None applies.

STATEMENT OF THE CASE

A. Summary of relevant facts.¹

Andrew Beck (Andy) and Cleat Knight sat on a snow-covered embankment—hands tied, heads fully hooded—held at gunpoint by Defendant Christopher Leech, Theron Moore (TJ), and Viliamu Seumanu (Juice).² R1877-80, 1883, 1891, 1903. After someone removed their hoods, Cleat looked at Andy and said, “Sorry, bro, I guess this is it.” R1896. For Cleat, it was—Leech immediately shot him in the back. *Id.* Thinking “[t]his is it” for him too, Andy “tensed up and stared off ahead,” just “waiting to get shot.” R1898. But after a few suspenseful minutes, someone cut his hands free. *Id.*

Leech then stood Andy up and handed him a gun with a single bullet in the chamber. R1900-01. As Leech held another gun to Andy’s head, he said, “There is your homeboy”; “Now you got a choice. You can either finish him or you’re next.” R1899, 2004. After some deliberation and one unsuccessful attempt, Andy complied, shooting his “best friend” Cleat. R1829, 1901-02.

¹ Consistent with appellate standards, the State recites the facts in the light most favorable to the jury’s verdict. *State v. Nielsen*, 2014 UT 10, ¶46, 326 P.3d 645.

² Seumanu’s appeal is also before this Court. *See State v. Seumanu*, Case No. 20150593-CA.

Andy and Cleat had been close for more than twenty years. R1829. Both they and those they associated with used and sold drugs. R1830. One day, Andy got a call from Tina Soules, a former girlfriend. R1821, 1833. Tina wanted Andy to pick up some methamphetamine for her, because he could get it cheaper. R1833. He agreed, and Tina brought him a rental car and cash for the job. *Id.*; *see also* SE13 (rental car).

Andy went to his supplier, but got only half of the requested amount. R1834-35. Tina told Andy to stay in a hotel that night and get the other half the next day. R1835. But the next day, the supplier would not answer the phone. R1838. Meanwhile, Tina was calling and saying that her buyer was waiting at her house and that Andy needed to “hurry up.” R1841. In the midst of all this, Andy picked up Cleat. R1837.

When Cleat learned of Andy’s predicament, he offered to help—he said he could get enough meth to fill the order, but it would be more expensive. R1841. Because Tina was in such a hurry, Andy gave Cleat the rental car and some money and “just told him to go get” the meth. R1841-42. Cleat left, but did not immediately return. After a couple of hours, Cleat stopped answering the phone, and Andy stopped answering Tina’s calls and texts. R1843.

Eventually, Andy called Tina for a ride, and she and her buyer went to pick him up and take him to Tina's house. R1844-46. On the way, Andy "told her what was going on" and why he had "let Cleat take the car and go pick up the other half of the dope." R1846. Once at the house, the three met up with TJ – Tina's boyfriend – who drove them around some more looking for Cleat and the rental car. R1847-48; SE 10-12 (TJ's truck). They were unsuccessful, and went back to Tina's house. R1848; SE1, 65-67. At this point, Tina was getting "a little stressed out" about the potential loss of her rental car, money, and drugs, and said she was "tired of people ripping her off." R1848-49.

Andy and Tina went into Tina's garage to smoke and keep trying to contact Cleat. R1849-51. After about half an hour, they "heard a truck pull up and heard the door shut." R1852. Tina said, "we need to figure this out because Chris [Leech] [is] here and he [is] going to freak out." *Id.*³

And freak out he did. Leech came into the garage, "pulled out a gun," pointed it at Andy, and asked "what the problem was." R1852-54. Andy said that he was "taking care of it" and that Cleat would get the meth. R1853. Leech said that "it didn't seem like [Andy] was taking care of shit," and that

³ Leech was dating Tina's sister, Teresa. R2109.

he'd "better" do so or "it was [Andy's] ass." *Id.* From that point on, Andy was a prisoner – they posted an armed guard ("Asian Tony") to keep him in the garage, and took away his cell phone. R1855-56, 1861, 2066; SE2-6, 60-64.

In the meantime, Tina and Chris Clyde continued to search for Cleat. They went to Cleat's house, where he lived with Tawnie Gallegos. R2034-37. Tina told Tawnie that they needed her help to find Cleat "because he did something really bad." R2037-39. Tawnie went with them to Tina's house. R1849, 2039; SE64-67.

At Tina's house they found Tina's mother, Susan; TJ (the "Indian guy"); Tina's sister, Teresa; Leech; Tina's buyer (the "white guy" from the Uintah basin); Asian Tony, and Andy. R1845, 1867; 2041-42, 2066, 2107-10; SE82 (Juice), 83 (Tina), 84 (TJ). At some point, Tina's sister Dawnie and her then-husband Juice showed up. R1862.

Throughout the ordeal, Leech was in charge – "the one who told everybody what to do." R2138; *see also* R2198-99. When Andy tried to leave the garage, Leech ordered him back inside and TJ shoved him back at gunpoint. R2045-46. Leech was "mad" and said that he could not "wait until he finds Cleat," that he would make Cleat and Andy "pay for what they did," and that "he was going to shoot Andy and Cleat" "[b]ecause what they took from Tina." R2047. Leech's compatriots agreed. *Id.*

But that's not what they told Cleat. After a few hours, Cleat called Leech's phone. R1865, 2125. Leech handed the phone to Juice, and had him tell Cleat that "if he brought the car right now, . . . he gave his word nothing would happen." R2125-26. They agreed to meet at an apartment belonging to Tina's uncle, Gregorio Chavez (Uncle Chris). R1865, 1870-72, 2051, 2178; SE68-71. Leech went to the garage and told Andy that they were "going somewhere else." R1867. Leech, TJ, and Juice escorted Andy to TJ's truck, and the group—minus Chris Clyde, Tawnie, Susan, and the buyer—went to Uncle Chris's. R1867, 1871-72, 2152-53, 2180.⁴ Once there, Leech, TJ, and Juice took Andy inside and put him on the couch to wait for Cleat. R1870-71.

Just before Cleat arrived, Leech told Andy to lay down on the floor. R1872-73. Leech emptied Andy's pockets and took away his shoes. R1873-74. Leech told TJ to get something to tie Andy and Cleat up with; TJ fetched some speaker wire from his truck and tied Andy's hands behind his back. R1874, 2131-32, 2190. At about that moment, Cleat arrived and handed over the drugs, saying that "It's all there." R1875. Leech replied, "It's too late for all

⁴ At one point in Andy's testimony, the transcript says that "Tawnie" showed up with Tina. But it is clear from Andy's other testimony, as well as Uncle Chris's and Dawnie's, that he must have said "Dawnie," which was mistranscribed as the near-homophone "Tawnie." See R1872, 2118, 2180. Tawnie had left Tina's house with Chris Clyde. R2053.

that,” put Cleat on the floor next to Andy. *Id.* Leech went through Cleat’s pockets and TJ tied up his hands. R1876-77, 2132, 2134-35. Cleat continued to plead: “[T]he car is there. The dope is there. Don’t got to do this.” R1876; *see also* R2187. Leech refused: “It’s too late for all that shit.” R1876. Tina asked Leech to spare Andy, who she considered “like [a] brother.”; Leech persisted: “It’s too late now, I’m going to show everybody . . . how this is fucking done.” R2189.

Both Cleat and Andy were wearing hooded sweatshirts. R1879; SE40, 41, 49, 85). Leech cut a hole in the hoods and tied the hoods to the front zippers in a way that effectively blindfolded them. R1877-80, 2133, 2136; SE 85. Leech then ordered Juice or TJ to get Andy and Cleat into TJ’s truck. R1883. TJ drove as Leech directed him up the canyon to Snowbasin resort. R1885; 2282-83. During the drive, Cleat begged Leech to let him and Andy go and promised that they “wouldn’t say anything.” R1886. Leech told him to “Shut the fuck up, it’s too late.” *Id.* Andy thought, “this was going to end badly . . . we were both going to be dead.” *Id.*

After what to Andy “seem[ed] like forever,” the truck came to a stop on a dirt road that he thought must be in “the middle of nowhere.” R1887-88; SE72-73. Leech took out Cleat and told Juice to take Andy out of the truck. R1888. They escorted Andy and Cleat—who were shoeless—over “dirt and

ice,” past a gate and down a hill. R1889-91. When they reached a small embankment, they sat Andy and Cleat next to each other and cut open their hoods. R1891. Cleat looked at Andy and said, “Sorry, bro, I guess this is it.” R1896. Leech then shot him in the back, and Cleat rolled down the embankment, saying, “I’m dead.” R1896-98.

Andy tensed up for what he thought would be his end. R1898. But the end did not come. Instead, someone cut his hands loose. R1898-99. Leech then grabbed him by the back of his hoodie, stood him up, and said, “There is your homeboy”; “Now you got a choice. You can either finish him or you’re next.” R1889, 2004. After some deliberation, Andy said, “All right.” R1900; *see also* R2004. Leech took the clip out of the gun and handed it to Andy while putting another gun to the back of Andy’s head and telling him not to “get any stupid ideas.” *Id.* Because the clip was out, there was “just one bullet” in the gun. R1901. Andy pointed the gun at Cleat and pulled the trigger; it jammed. *Id.* Andy said he “wasn’t playing games” and said it wouldn’t fire. *Id.* Leech took the gun back, reloaded it with a single bullet, and reset the scene. R1901-02. When Andy pulled the trigger this time, the shot went off. R1902.

Police found Cleat’s body about a month and a half later. R2283-84; SE23-27, 43-45, 72-73. To get to it, they parked on a dirt road, passed through

a gate, went down a hill, and walked down a small embankment. SE14-16, 19-20, 43. Cleat was shoeless, was wearing a hoodie with a hole in the hood, and had speaker wire tied to his wrists. R2233-36; SE38-39, 40-42, 49, 54, 85. He was shot from more than two feet away, and had injuries consistent with being in a seated position. R2240, 2257.

B. Summary of proceedings and disposition of the court.

Charges. The State charged Leech with aggravated murder, two counts of aggravated kidnapping, two counts of aggravated robbery, and one count of obstructing justice. R403-07.

TJ testifies at preliminary hearing. The magistrate held a two-day joint preliminary hearing against Tina, Juice, and Leech. R116-20, 826-1621. During the hearing, Leech's counsel cross-examined as if it would be his only opportunity to do so. *See* R938-39 ("Well, just so the . . . record's clear . . . , I mean, this is, you know, as so often happens in these cases, people tend not to show up and . . . this may be our only opportunity to cross-examine this witness." . . . "[W]e have to explore these kinds of things with all witnesses, but especially in a case like this.").

TJ struck a deal with the prosecution and testified as a State's witness at preliminary hearing. R565-724. After his direct testimony, counsel for the three defendants cross-examined him for almost an hour and a half, with

Leech's counsel doing the bulk of the questioning. *See* R119 (time stamps); R633-49, 722-23 (cross by Tina's counsel); R649-702 (cross by Leech's counsel); R702-18, 723-24 (cross by Juice's counsel). The court did not limit counsel's cross of TJ in any way, and counsel covered the terms of TJ's deal with the prosecution, the crime circumstances, inconsistencies with other witnesses' accounts, TJ's drug use that night, his involvement in drug sales, his role in the crimes, and his failure to go to police. R1323-1408.

TJ refuses to testify on the eve of trial. The week leading up to trial, TJ wanted to renegotiate his deal, but the prosecutor was not willing to meet his new demands. R1626-30. The prosecutor told the court that he intended to call TJ at trial—he could either testify under his agreement, or, if he refused, the prosecutor would grant him use immunity and ask the Court to order him to testify. R1631. If he persisted in a refusal despite a contempt order, the State would seek to admit his preliminary hearing testimony under rule 804. *Id.*

The next day, TJ informed the court and counsel that he was not going to testify. R1643-44. The Court suggested that the prosecutor could establish unavailability by calling TJ at trial and establishing his unwillingness to testify; the parties agreed. R1644. The prosecutor had previously informed the court that this should not take place in front of the jury. R1630.

The court admits TJ's preliminary hearing testimony after hearing his refusal outside the jury's presence. Between jury selection and opening statements, the prosecutor called TJ outside the jury's presence. R1758. TJ purported to invoke his Fifth Amendment right against self-incrimination, and the prosecutor explained to him that he had been granted use immunity. R1759. The Court told TJ that if he didn't testify under the immunity grant, he would be held in contempt; TJ persisted, despite the court's order to testify. R1760-61, 2348.

Defense counsel argued that TJ's preliminary hearing testimony was inadmissible because counsel's motive to cross-examine was different at trial than at preliminary hearing because he could not challenge TJ's credibility to the same extent in that hearing as he could at trial. R1763-64. In particular, counsel noted that TJ was not asked at the preliminary hearing about differences between his prior statements. R1764, 1767, 1769. When the court asked if the magistrate forbade any questions of TJ, counsel acknowledged that he "did not pose a question that was objected to and . . . sustained." R1766.

The court found TJ unavailable and admitted his preliminary hearing testimony. R1786-87. Defense counsel later asked that TJ's refusal to testify should take place in front of the jury, so the jurors could have an impression

of his credibility. R2341-42. The trial court denied this request, noting that this would be mere “theatrics.” R2342, 2349.

Despite a last-ditch attempt by TJ’s counsel to exclude the testimony as statements made during plea negotiations, R2385-93, a prosecutor took the stand and read TJ’s testimony into the record. R2393-96.

Defense counsel forgoes introducing further impeachment of TJ’s testimony, but gets a limiting instruction. Defense counsel later sought to introduce TJ’s alleged prior inconsistent statements from (1) his testimony at Juice’s trial and (2) a diagram that he had previously drawn—presumably, of the murder. R2350, 2483, 2489. Though the prosecutor objected, the trial court ruled that inconsistent statements would come in after a hearing at which the court would decide whether certain statements were inconsistent or not. R2499-2500. The court proposed having the narrating prosecutor re-take the stand to introduce the prior statements; defense counsel said he “would like that.” R2500. But after “much discussion” with Leech, defense counsel ultimately decided not to admit TJ’s prior inconsistent statements. R2563.

At the defense’s request, the trial court instructed the jury that “in this case the testimony of a witness from a prior hearing was presented by the State. Since the testimony of a person who is now unavailable was recited from a prior hearing, you were not able to see or hear the actual person that

provided that testimony.” R2569. The court continued, “You are further instructed that credibility of a witness may in part be determined by observing the manner in which the actual person testifies at trial, not merely by their testimony.” *Id.*⁵

In closing, defense counsel said that the jury “didn’t get a chance” to see TJ answering questions or to “watch his body language and how he responded,” and that the court told them that “that’s important” to consider. R2648.

Verdict and sentencing. The jury convicted Leech as charged, with nine aggravators for aggravated murder and two sentencing enhancements. R2696, 743-48. The court sentenced Leech to consecutive terms on the aggravated murder count and one aggravated kidnapping count, with concurrent terms on all the rest. R805. Leech timely appealed to the Utah Supreme Court, which transferred the case to this Court. R809-14, 822-25.

SUMMARY OF ARGUMENT

Though the preliminary hearing testimony of an unavailable witness at trial will often not be admissible, the Utah Supreme Court in *State v. Goins*

⁵ The court, however, refused a defense instruction stating that the jury was “entitled to give whatever weight deemed appropriate or draw any inference they feel [was] warranted” from TJ’s refusal to testify despite a court order. R2566-67.

left open the possibility that defense counsel in a rare case could have a sufficiently similar motive to cross-examine at a preliminary hearing that the testimony could be admissible at trial under rule 804 if the witness became unavailable. That was the case here – defense counsel said he had a motive to cross-examine as if it would be his only opportunity, he was not limited in what he could ask TJ, and he was cross-examined for nearly an hour and a half. Under these circumstances, TJ’s testimony was admissible under rule 804. But even if the trial court erred in admitting the testimony, the error was harmless, because TJ did not add all that much to the existing evidence.

ARGUMENT

I.

The unavailable witness’s preliminary hearing testimony was admissible at trial because defense counsel had similar motives to cross-examine and extensively questioned him.

Leech’s sole claim is that the trial court erred by admitting TJ’s preliminary hearing testimony at trial because his counsel did not have a prior opportunity or similar motive to cross-examine TJ at that hearing. Aplt.Br. 35-36; *see* Utah R. Evid. 804(b)(1); *State v. Goins*, 2017 UT 61, 423 P.3d 1236. Leech is mistaken. True, *State v. Goins* makes admitting preliminary hearing testimony at trial the exception rather than the rule. But this is an exceptional case, because counsel knew – under the law in effect at the time –

that it could be his one chance to cross-examine, and extensively cross-examined TJ. In any event, even if the testimony was wrongly admitted, any error was harmless because of the other overwhelming evidence of Leech's guilt.

A. The hearsay exception for former testimony ensures that a witness's unavailability does not foreclose admitting reliable evidence.

Since at least the late 17th century, it has been "a hallmark of Anglo-American evidence law that hearsay is ordinarily inadmissible." Christopher B. Mueller & Laird C. Kirkpatrick, *Federal Evidence*, vol. 4, § 8:2, 26 (2013) (Mueller & Kirkpatrick); *see also Crawford v. Washington*, 541 U.S. 36, 44-46 (2004) (discussing common law changes to hearsay and confrontation following treason trial of Sir Walter Raleigh). But it has been no less a hallmark of Anglo-American law to provide exceptions to general rules, and no evidence rule has more exceptions than the rule against hearsay.

The many hearsay exceptions are justified primarily on reliability. Though hearsay is excludable precisely "because it is considered generally less reliable than live testimony," the exceptions exist because the circumstances under which some statements are made impart sufficient reliability to entrust factfinders with considering them. Mueller & Kirkpatrick at vol. 4, § 8:3, 28, 33; *see also Battle ex rel. Battle v. Mem'l Hosp. at Gulfport*, 228

F.3d 544, 552 (5th Cir. 2000) (explaining former testimony admissibility requirements reflect the “narrow concerns of ensuring the reliability of evidence admitted at trial”) (cleaned up).

At issue here is the former-testimony exception. Witnesses become unavailable for many reasons—they fall ill, die, disappear, or simply stop cooperating. *See, e.g., State v. Ellis*, 2018 UT 2, ¶2, 417 P.3d 86 (discussing possibility of illness rendering witness unavailable); *Mattox v. United States*, 156 U.S. 237, 240 (1895) (explaining that two witness at prior trial died before new trial); *Goins*, 2017 UT 61, ¶¶10-14 (explaining that State could not locate homeless victim who disappeared before trial); *State v. Garrido*, 2013 UT App 245, ¶6, 314 P.3d 1014 (explaining that domestic violence victim became uncooperative and refused to testify).⁶ When a witness that has previously testified becomes unavailable—through no fault of either party—the factfinder should not be deprived of that testimony, provided it is sufficiently reliable. *Cf. Mueller & Kirkpatrick* at vol. 5, § 8:117, 77-78 (explaining that former testimony exception exists out of “necessity”).

⁶ *Mattox* was decided under the Sixth Amendment’s Confrontation Clause, not a federal rule of evidence; even so, its reasoning sheds light on the necessity and fairness underlying admission of former testimony.

Rule 804(b)(1), Utah Rules of Evidence lays out the requirements which, if met, render former testimony reliable enough to be admitted at a later trial: (1) “the declarant is unavailable as a witness”; (2) the testimony “was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one”; and (3) it is “offered against a party who had . . . an opportunity and similar motive to develop it by direct, cross-, or redirect examination.”⁷ Only the third is at issue here.

The Utah Supreme Court addressed this element in *Goins*. In a previous case, *State v. Brooks*, 638 P.2d 537 (Utah 1981), the court had held that defense counsel’s “motive and interest” under the former- testimony exception were the same at both preliminary hearing and trial: “establishing the innocence of his client.” *Id.* at 541. Under *Brooks*, so long as the preliminary hearing involved live testimony, that testimony was per se admissible at trial if the witness became unavailable. But based on later amendments to the Utah

⁷ At common law, the proponent of admitting former testimony “had to establish a *substantial identity* of issue between the two hearings.” R. Collin Mangrum & Hon. Dee Benson, *Mangrum & Benson on Utah Evidence*, vol. 1, 914 (2017-18 ed.) (emphasis added). But under “modern rules, the requirement has been liberalized to require only a *similarity* of interest.” *Id.* (emphasis added); see also *United States v. Salerno*, 505 U.S. 317, 326 (1992) (Blackmun, J., concurring) (“Because ‘similar motive’ does not mean ‘identical motive,’ the similar-motive inquiry, in my view, is inherently a *factual inquiry*, depending in part of the similarity of the underlying issues and on the context of the . . . questioning.”).

Constitution restricting preliminary hearings to the issue of probable cause, the *Goins* court held that “the blanket statement” of similar interest “no longer [rang] true,” and overruled *Brooks*. *Goins*, 2017 UT 61, ¶32.

Goins asked the court “to not only disavow” *Brooks*, “but to replace it with another blanket rule – one that provides that counsel *never* has the same motive to develop testimony at a preliminary hearing as at trial.” *Id.* at ¶35 (emphasis added). The Utah Supreme Court declined that invitation, adopting a case-by-case approach. It explained that *Goins*’s proposed bright-line rule would foreclose the possibility of “circumstances where the nature of the case, or the testimony of the unavailable witness, is such that defense counsel really did possess the same motive and was permitted a full opportunity for cross-examination at the preliminary hearing.” *Id.* at ¶36. The supreme court acknowledged that such cases “might prove rare,” but that it could “envision” them. *Id.*

In support of this approach, the supreme court cited two cases: *Rodriguez v. State*, 711 P.2d 410 (Wyo. 1985) and *State v. Ricks*, 840 P.2d 400 (Idaho Ct. App. 1992). *Goins*, 2017 UT 61, ¶37. In *Rodriguez*, a witness testified at a preliminary hearing and was “extensive[ly]” cross-examined by defense counsel. 711 P.2d at 412. A few days before trial, she died. *Id.* The admissibility of that testimony at trial turned on whether *Rodriguez*’s motive

to cross-examine was similar at both hearings. *Id.* at 413. The Wyoming court explained that the states approached the question in three ways: (1) that motive is always the same; (2) that motive is never the same; and (3) that motive is a case-by-case inquiry. *Id.* In adopting and applying the third approach, the Wyoming court noted that the motive in the *Rodriguez* case was the same because counsel's "extensive cross-examination" showed that he "was motivated to attack" the witness's identification of his client, and did so. *Id.* at 414.

In *Ricks*, the defendant was charged with possessing cocaine. 840 P.2d at 401. The arresting officer—the only witness to the crime—testified at a preliminary hearing, but was killed two days later. *Id.* at 401-02. In deciding the motive question, the Idaho court considered several factors: (1) the type of prior proceeding; (2) counsel's trial strategy, including the purposes of the cross-examination; (3) potential penalties or financial stakes in the prior proceeding; (4) the issues and parties; and (5) whether, under the circumstances, "a thorough cross-examination of declarant by the party would have been reasonably expected in the former proceeding." *Id.* at 407-08 (cleaned up).

The Idaho court explained that though "the standard of proof is obviously different" between preliminary hearing and trial, the factual

elements, relationships between the parties, and the proceeding were “exactly the same.” *Id.* at 408. Further, the defense motive on both occasions was to attack the foundation for the officer’s testimony, his competency, and his compliance (or lack thereof) with police procedure. *Id.* at 409. Even though defense counsel “did not extensively cross-examine the officer” at preliminary hearing, the court held that, on balance, the deceased officer’s testimony was admissible. *Id.*

Thus, relevant factors under the “similar motive” inquiry can include: the type of prior proceeding; trial counsel’s strategy; the issues, stakes, and parties in the prior litigation; and the extent and purposes of cross-examination.

B. The unavailable witness’s preliminary hearing testimony here was reliable because it met the former-testimony exception’s requirements.

Considering those factors here, TJ’s testimony was admissible. Defense counsel candidly told the trial court what his motive was—a full cross-examination of each witness. R938-39 (“Well, just so the . . . record’s clear, I mean, this is, you know, as so often happens in these cases, people tend not to show up and . . . this may be our only opportunity to cross-examine this witness. . . . [W]e have to explore these kinds of things with all witnesses, but

especially in a case like this.”). This was in keeping with the law at the time.⁸ Counsel also acknowledged that he cross-examined TJ without objection.⁹ R1766 (counsel acknowledging that he “did not pose a question that was objected to and . . . sustained” during TJ’s testimony).

And counsel not only had the opportunity to cross-examine, he took full advantage of it. *See State v. Nelson*, 725 P.2d 1353, 1357 (Utah 1986) (explaining, under Confrontation Clause, that even where a defendant “may have elected to forgo cross-examination” that “does not mean that the opportunity was not available.”). Counsel’s cross-examination of TJ lasted more than an hour, and was supplemented by an additional half hour of co-defense counsel’s cross. R119. TJ’s total cross-examination spans some eighty-five transcript pages. R633-49, 649-718, 722-24.

⁸ The preliminary hearing was held in July 2014, R826; the supreme court decided *Goins* in September 2016.

⁹ That’s not to say that the defense had entirely free rein to cross-examine at the hearing—at one point, counsel was not permitted to explore Tawnie’s lifetime drug use as much as he would have liked. *See* R937-38. But he was able to ask about Tawnie’s drug use that would have affected her ability to perceive and recall events. R938. And it is not clear that more remote drug use would be admissible to impeach her at any rate. *Cf. State v. Swain*, 921 A.2d 712, 722-23 (Conn. App. Ct. 2007) (holding that more-than-a-decade-old drug conviction excludable, despite defendant’s desire to show that witness’s “memory and ability to recall may be hampered by a lifetime of drug use”). But again, the court imposed no limitations on cross-examination of TJ, and the sheer volume of questions shows a similar motive under rule 804.

Given counsel's mindset, the law in effect at the time, the lack of limitations, and the sheer volume of questions, defense counsel possessed a similar motive and had a sufficient opportunity to cross-examine TJ at the preliminary hearing. This testimony was admissible at trial once he became unavailable. *See Rodriguez*, 711 P.2d at 414; *Ricks*, 840 P.2d at 408-09; *see also United States v. Poland*, 659 F.2d 884 (9th Cir. 1981) (holding admissible prior testimony from suppression hearing where counsel had a "strong motive" to attack prior identification); *United States v. Allen*, 409 F.2d 611, 613 (10th Cir. 1969) (holding preliminary hearing testimony of unavailable witness admissible where witnesses subject to "extensive cross-examination"); *United States v. Carneglia*, 256 F.R.D. 366, 374-75 (E.D.N.Y. 2009) (holding admissible prior preliminary hearing testimony of unavailable witness where prior counsel had "a substantial interest in challenging" that witness's version of events); *Bland v. State*, 4 P.3d 702, 722-23 (Okla. Crim. App. 2000) (holding preliminary hearing testimony of unavailable witness admissible, "[d]espite the difference in the burden of proof requirements").

Leech's arguments to the contrary are unpersuasive. He asserts that *Goins* held that "rule 804 precludes, as a matter of law, the admission of preliminary hearing testimony at trial." Aplt.Br. 37-38. But as explained, *Goins* did not adopt a per se rule; it adopted a case-by-case rule. Leech also

argues that defense counsel self-limited his cross-examination because of the nature of preliminary hearings. *Id.* at 41. But as shown, counsel was motivated to, and did in fact, extensively cross-examine TJ. TJ's preliminary hearing testimony was admissible under rule 804(b)(1).

C. Even if the preliminary hearing testimony were inadmissible, admitting it would have been harmless error.

Even if the trial court erred in admitting TJ's preliminary hearing testimony, any error would have been harmless. *See* Utah R. Crim. P. 30(a) ("Any error . . . which does not affect the substantial rights of a party shall be disregarded."). Evidentiary errors are harmless if in their absence, there is no reasonable likelihood of a different result. *See Ellis*, 2018 UT 2. This analysis is "counterfactual"; an appellate court considers a "hypothetical" universe "in which the trial went off without the error." *Id.* at ¶42. That analysis is not difficult here. Without TJ's testimony, the State presented nearly identical facts on the robberies and kidnappings through Andy, Tawnie, Dawnie, and Uncle Chris. Tawnie corroborated Leech's intent to kill Cleat, and the physical evidence corroborated Andy's account of the murder. The consistent narrative from all three was that Leech was upset on Tina's behalf, schemed to get Andy and Cleat together and teach them a lesson, and directed the robberies, kidnappings, and murder.

And further on the murder, even if Leech had not pulled the trigger, he still would have been liable as an accomplice. The jury was instructed on each count that he acted as a “party to the offense,” and given the definition of accomplice liability. R744-88, 772. So TJ’s account of the shooting itself – while it did corroborate Andy’s testimony – did not add all that much, given the overwhelming evidence of Leech’s intent to kill and directing the crimes. Further, given that the jury found that he acted in concert with two or more persons in covering up the crimes, R748, they must have believed that he acted in concert with TJ and Juice in committing the crimes, given the complete absence of any evidence supporting another narrative.

Finally, to show just how cumulative TJ’s testimony was, the State’s recitation of the facts at the beginning of this brief does not contain a single reference to TJ’s testimony. Under these circumstances, the absence of TJ’s testimony would not reasonably have affected the result at trial. *See, e.g., State v. Thomas*, 777 P.2d 445, 450 (Utah 1989) (holding erroneously admitted testimony harmless where “merely cumulative” of victim’s testimony).

Leech argues otherwise, but not convincingly. First, he says that he was unable to undermine TJ’s credibility. Apl’t.Br. 45. But that is simply untrue – the cross-examination at preliminary hearing included evidence of TJ’s deal with the prosecution, the circumstances of the murder, a re-tread of TJ’s

account of the night's events, his use of drugs, the effects of those drugs on his perceptions, his drug dealing, his disagreement with other testimony, his failure to leave when he could have, his participation in the robberies, kidnappings, and murder, and his failure to report what happened afterward. R1323-1408, 1413-14. And counsel declined at trial to further impeach TJ's account with other statements he had given. *See* R2350, 2483, 2489, 2499-2500, 2563. That he was *unwilling* to present further evidence does not mean that he was *unable* to do so.¹⁰

Leech next says that he suffered prejudice because the jury could not observe TJ's demeanor. Aplt.Br. 44-46. But the lack of demeanor evidence does not show prejudice; rather, it is the reason for classifying former testimony as hearsay and requiring the proponent to meet the reliability requirements of rule 804(b)(2). *See* Mueller & Kirkpatrick, vol. 5 at 78 ("It is

¹⁰ Leech alleges that counsel attempted to "mitigate some of the prejudice" by trying to call TJ in front of the jury, which he asserts counsel was entitled to do. Aplt.Br. 46-47. But he does not separately argue against this ruling, pressing it only as evidence of prejudice from the trial court's former-testimony ruling. *Id.* Alleged inability to mitigate prejudice does not show prejudice.

Even had counsel been able to call TJ in front of the jury, it would have made no difference to his credibility; it merely would have shown that he did not want to testify. And if the reasons behind his refusal were fair game, then the prosecutor could have shown that TJ was merely holding out for a better plea deal. R1626-30.

the very absence of demeanor evidence . . . that most sharply distinguishes former testimony from live testimony. Of course this difference justifies treating former testimony as hearsay, and admitting it only when the conditions of the exception are satisfied.”); *see also Allen*, 409 F.2d at 613 (explaining that demeanor evidence cannot be “controlling factor,” or former testimony would never be admissible in transcript form); *cf. Mattox*, 156 U.S. at 243 (explaining, under Confrontation Clause, that admitting former testimony “deprive[s]” defendants of demeanor evidence, but noting that public policy and necessity dictated “that the rights of the public shall not be wholly sacrificed in order that an incidental benefit may be preserved to the accused”).

Leech asserts that without TJ’s testimony, “the jury was left with the testimony of Andy,” Tawnie, Dawnie, and Uncle Chris, “all of [whom] conflicted on every key point in the evidence.” *Aplt.Br.* 46. To the contrary, aside from some minor details, their narratives combine to tell a consistent story—Tawnie confirmed that Leech was upset with Andy and Cleat; that Leech was the leader, giving orders to TJ and Juice; that Leech said he would shoot Andy and Cleat; and that Leech held Andy hostage in the garage at Tina’s house. R2045-56. Dawnie confirmed that once at Uncle Chris’s house, Leech, Juice, and TJ robbed Andy and Cleat at gunpoint, tied them up, and

took them away in TJ's truck. R2124-39. Uncle Chris corroborated that Leech was in charge, pulled a gun on Cleat and Andy, had TJ tie them up, emptied their pockets, tied their hoodies shut, and walked them out of his apartment. R2187-92, 2199.

And again, while it is true that TJ's testimony corroborated Andy's account of the murder itself, the physical evidence did that also—Cleat's hood and hands had been tied as Andy explained, Cleat had no shoes, he was shot from an intermediate range, and his wounds were consistent with being shot while in a seated position. R2233-36, 2240, 2257; SE38-39, 40-42, 49, 54, 85. And Tawnie corroborated Leech's intent to kill. *See* R2047 (stating that Leech "was going to shoot Andy and Cleat"). It is also true that many of the witnesses were inconsistent with their prior statements and with other witnesses on more minor points, and that they were all drug users and/or dealers. But TJ and his statements were more of the same—sometimes (apparently) inconsistent statements on minor points from a less-than-upstanding witness.

Leech next argues that the prejudice from TJ's testimony was "exacerbated" because it was read into the record by a prosecuting attorney, Tad May. *Aplt.Br.* 47-48; R2393-94. But the jury did not know that Mr. May

was a prosecutor; the court merely introduced him as “someone reading the part of” TJ. R2395. This did not add to the prejudice calculation in the least.

Leech further argues that TJ’s testimony was prejudicial because the prosecutor relied on it in his closing argument to corroborate several things: the robbery and obstruction charges; where the speaker wire came from and how it was used to tie up Andy and Cleat; that Leech was in charge; that Leech and his accomplices stopped for gas; and Leech’s shooting Cleat. Aplt.Br. 48-50. Three of these points—the robbery, the speaker wire/tying, and Leech’s being in charge—were cumulative of Tawnie’s, Dawnie’s, and Uncle Chris’s testimonies, which does not show prejudice. *See* R2045-56, R2124-39. Tawnie also corroborated that Leech intended to shoot both Andy and Cleat, making TJ’s corroboration less impactful. R2047. To the extent that the prosecutor used TJ’s testimony to corroborate the gas stop, this was mere narrative unconnected to the crimes. Finally, using TJ’s testimony to corroborate Andy on the obstruction charge added little to the overall evidentiary picture. The thrust of the obstruction testimony was to prove that Leech was still in charge after the murder, since four witnesses had agreed that he was in charge leading up to the murder. That he would retain his position afterward and direct the cover-up would come as no surprise.

Leech also asserts that he was prejudiced by the admission of TJ's testimony because he was not able to get a continuance to deal with TJ's last-minute refusal to testify. Aplt.Br. 50-53.¹¹ But Leech does not explain exactly what counsel would have done with more time. Counsel himself was not entirely clear. *See* R1772–73 (counsel saying that if he had known TJ was not going to testify, he might have done “a lot of things”). If the extra time was to find and use additional impeachment evidence, counsel was later clear that he had it and intended to use it, and the court was inclined to let him, but he declined to do so. *See* R2350, 2483, 2489, 2499-2500, 2563. It was Leech's choice not to use that evidence, and had nothing to do with the denial of the continuance. To the extent counsel would have sought interlocutory review on the admissibility ruling, Aplt.Br. 53, that would be moot, as he raises the same issue on direct appeal.

Finally, Leech claims prejudice because without TJ's testimony, the remaining evidence was inherently unreliable. Aplt.Br. 46, 53-54. This claim is inadequately briefed, as it neither cites to nor applies the controlling law

¹¹ To the extent this can be read as claiming independent harm from the continuance denial, this claim is inadequately briefed. Though Leech cites to a case with the right test for such claims, *see* Aplt.Br. 53 (citing *State v. Peraza*, 2018 UT App 68, 872 Utah Adv. Rep. 12), he does not analyze the facts of this case under that test. This cannot meet his burden of persuasion on appeal. *See Nielsen*, 2014 UT 10, ¶42.

on this subject: *State v. Robbins*, 2009 UT 23, 210 P.3d 288, and *State v. Prater*, 2017 UT 13, 392 P.3d 398. *See generally Nielsen*, 2014 UT 10, ¶42 (explaining standards for and consequences of inadequate briefing). And he addresses only Andy—he does not discuss Tawnie, Dawnie, Uncle Chris, or the physical evidence. The inherent-unreliability analysis does not apply where, as here, there is corroborating evidence. *See Prater*, 2017 UT 13, ¶38. Because Andy’s statements were corroborated by three other witnesses and the physical evidence, TJ’s statements did not make much difference—if any—in the result here.

II.

Leech has argued only a single error, so he cannot show cumulative error.

Leech finally argues that this Court should reverse for cumulative error, if nothing else. Aplt.Br. 54. But as shown, he has argued only a single error at trial—the admission of TJ’s testimony. All of his other arguments purportedly show prejudice from that ruling, not independent errors. Because courts cannot cumulate prejudice from a single error, this Court should affirm. *See State v. Martinez-Castellanos*, 2018 UT 46, ¶48, 872 Utah Adv. Rep. 51 (“[A] single . . . error cannot warrant reversal under the cumulative error doctrine.”).

CONCLUSION

Under the unique circumstances of this case, TJ's preliminary hearing testimony was admissible, and even if it were not, it was harmless given the overwhelming evidence of Leech's guilt. And because Leech has alleged only a single error, he cannot show cumulative error. This Court should affirm.

Respectfully submitted on November 30, 2018.

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CERTIFICATE OF COMPLIANCE

I certify that in compliance with rule 24(g), Utah Rules of Appellate Procedure, this brief contains 7, 173 words, excluding the table of contents, table of authorities, addenda, and certificate of counsel. I also certify that in compliance with rule 21(g), Utah Rules of Appellate Procedure, this brief, including the addenda:

☒ does not contain private, controlled, protected, safeguarded, sealed, juvenile court legal, juvenile court social, or any other information to which the right of public access is restricted by statute, rule, order, or case law (non-public information).

☐ contains non-public information and is marked accordingly, and that a public copy of the brief has been filed with all non-public information removed.

/s/ John J. Nielsen

JOHN J. NIELSEN

Assistant Solicitor General

CERTIFICATE OF SERVICE

I certify that on November 30, 2018, the Brief of Appellee was served upon appellant's counsel of record by ☐ mail ☒ email ☐ hand-delivery at:

Debra M. Nelson
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300
Salt Lake City, UT 84111

I further certify that an electronic copy of the brief in searchable portable document format (pdf):

☒ was filed with the Court and served on appellant by email, and the appropriate number of hard copies have been or will be mailed or hand-delivered upon the Court and counsel within 7 days.

☐ was filed with the Court on a CD or by email and served on appellant.

☐ will be filed with the Court on a CD or by email and served on appellant within 14 days.

/s/ Melanie Kendrick

Addenda

Addenda

Addendum A

West's Utah Code Annotated

State Court Rules

Utah Rules of Evidence (Refs & Annos)

Article VIII. Hearsay

Utah Rules of Evidence, Rule 804

RULE 804. EXCEPTIONS TO THE RULE AGAINST HEARSAY--WHEN THE DECLARANT IS UNAVAILABLE
AS A WITNESS

Currentness

(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:

- (1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;
- (2) refuses to testify about the subject matter despite a court order to do so;
- (3) testifies to not remembering the subject matter;
- (4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
- (5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure the declarant's attendance.

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

- (1) *Former Testimony.* Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had--or, in a civil case, whose predecessor in interest had--an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

(2) *Statement Under the Belief of Imminent Death.* In a civil or criminal case, a statement made by the declarant while believing the declarant's death to be imminent, if the judge finds it was made in good faith.

(3) *Statement Against Interest.* A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

(4) *Statement of Personal or Family History.* A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

Credits

[Amended effective October 1, 1992; November 1, 2004; December 1, 2011.]

Rules of Evid., Rule 804, UT R REV Rule 804
Current with amendments received through September 1, 2018

Addendum B

1 **THE BAILIFF:** We would rather not.

2 **THE COURT:** All right. Let's proceed with him cuffed
3 as he is now and if we run into logistical difficulties with
4 respect to Exhibits and other things we can address it at the
5 time.

6 So go ahead and administer the oath.

7 * * *

8 THERON MYORE,

9 Called by the State, having been duly
10 sworn, is examined and testifies as follows:

11 * * *

12 **THE COURT:** All right. Thank you. You could take a
13 seat, please, sir. And answer loudly and clearly into the
14 microphone in response to the lawyers questions.

15 **MS. ROSSI:** May I proceed?

16 **THE COURT:** You may.

17 **MS. ROSSI:** Yes, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. ROSSI:

20 Q. Sir, could you please state your full name and spell
21 both your first and last names for the record.

22 A. Theron John Myore. T-H-E-R-O-N. M-Y-O-R-E.

23 Q. And do you go by "TJ?"

24 A. Yes.

25 Q. It is okay if I call you --

1 A. Yes, that's fine.

2 Q. -- TJ while you're up there today? Okay.

3 You were currently, obviously, being held at the Salt
4 Lake County Jail, correct?

5 A. Yes.

6 Q. And are you being held regarding your involvement in
7 this case that we're in court in today?

8 A. Yes.

9 Q. Okay. TJ, you've met with members of the district
10 attorney's office before?

11 A. Yes.

12 Q. And you've been extended an offer regarding your
13 involvement in this case, correct?

14 A. Yes, but it's still up in the air.

15 Q. Okay. And is it your understanding that your duty in
16 this case is to testify truthfully in order to receive that
17 offer?

18 A. Yes.

19 Q. And that the offer that's been extended at this point
20 is that you would plead to two counts, manslaughter and
21 aggravated kidnapping?

22 A. I'm not sure.

23 Q. You don't know what it is right now?

24 A. I don't remember. It's been a while.

25 Q. Okay. But there have been discussions?

1 A. Yeah.

2 Q. Okay. I want to talk about November 23rd of 2013.
3 Do you remember that day?

4 A. Yes.

5 Q. Okay. And I want to start by talking to you about a
6 few people in particular and your knowledge of them and your
7 relationship with them and I want to start with Tina Soules.
8 Do you know who she is?

9 A. Yes.

10 Q. How do you know her?

11 A. She was my girlfriend at the time.

12 Q. In November 2013?

13 A. Yeah, off and on.

14 Q. Okay. Is she present in the courtroom today?

15 A. Yes.

16 ~~Q. Could you point her out and describe something she's~~
17 ~~wearing?~~

18 ~~A. Right there in the tan.~~

19 ~~MS. ROSSI: Okay. Your Honor, if the record would~~
20 ~~please reflect an in court identification of Ms. Soules?~~

21 ~~THE COURT: It will.~~

22 ~~MS. ROSSI: Thank you.~~

23 Q. (BY MS. ROSSI:) TJ, when did you start dating
24 Ms. Soules?

25 A. Probably a year before that.

1 Q. A year before November?

2 A. Yeah.

3 Q. All right. And you said you guys were on and off?

4 A. Yes.

5 Q. Had you ever lived together or anything like that?

6 A. Yes.

7 Q. Were you still seeing each other in November of 2013?

8 A. I'm not sure. Like I said, off and on when I would

9 go to visit.

10 Q. So you would go visit her around that time?

11 A. Yeah.

12 Q. All right. And what about Christopher Leech, did you

13 know him in November of 2013?

14 A. Yes.

15 Q. How did you --

16 A. Well, I met him a couple times.

17 Q. You had met him a couple times?

18 A. When I'd go over to visit, yeah.

19 Q. Okay. How did you know him? How did you meet him?

20 A. He was there and he was staying there with Tina's

21 sister.

22 Q. Staying where?

23 A. At the Mann Way duplex.

24 Q. Okay. And which one of Tina's sisters was he saying

25 with?

1 A. Oh, Teresa.

2 Q. Teresa?

3 A. Uh-huh.

4 Q. Okay. Is he present today, Christopher Leech?

5 A. Yes.

6 Q. ~~Could you please point him out with your head, I~~
7 ~~guess, and describe what he's wearing?~~

8 A. ~~He's wearing tan also.~~

9 Q. ~~Okay. Where is he setted at that big, long table?~~

10 A. ~~Between two guy in suits.~~

11 ~~MS. ROSSI: Okay. Your Honor, if the record could~~
12 ~~please reflect an in court identification of Christopher Leech.~~

13 ~~THE COURT: Any objection, Mr. Corum?~~

14 ~~MR. CORUM: No.~~

15 ~~THE COURT: The record will so reflect.~~

16 Q. (BY MS. ROSSI:) Do you remember when the first time
17 was that you met Mr. Leech?

18 A. I think it was there at the house. If I remember
19 right.

20 Q. When was it though?

21 A. I'm not sure.

22 Q. Was it before November 23rd?

23 A. Yes. Yes.

24 Q. Okay. Do you know Viliamu Seumanu, who is also known
25 as "Juice?"

1 A. Yes.

2 Q. How do you know Juice?

3 A. He is Tina's sister's boyfriend -- or husband.

4 Q. And how -- when did you first meet him? Do you know?

5 A. Probably maybe nine months to a year before that.

6 Q. And which sister is he married to?

7 A. Dawnie.

8 Q. Dawnie. Okay. Is he present in court today?

9 A. Yes.

10 ~~Q. Could you nod at him and describe something he's~~
11 ~~wearing?~~

12 ~~A. He's at the end wearing tan also.~~

13 ~~MS. ROSSI: Your Honor, if the record could please~~
14 ~~reflect an in court identification of Mr. Seumanu.~~

15 ~~MR. BAUTISTA: He looked over at him~~

16 ~~THE COURT: All right. It will.~~

17 Q. (BY MS. ROSSI:) Okay. Did you know a person named
18 Andy Beck in November of 2013?

19 A. I've heard of him but I didn't know him.

20 Q. You didn't know him?

21 A. No.

22 Q. Had you ever met him before?

23 A. I might have, I'm not sure.

24 Q. Okay. And what about a person named Cleat Knight,
25 did you know him in November of 2013?

1 A. No.

2 Q. Okay. Did you meet him on the date of November 20 --
3 or November 23rd.

4 A. I didn't even really meet him.

5 Q. Did you see him?

6 A. I saw him.

7 Q. Okay. So let's talk about what happened on
8 November 23rd of 2013. You said that at that time Tina was
9 living in a house on Mann Way?

10 A. Yes.

11 Q. And who was she living there with?

12 A. Her sister and her mother.

13 Q. Which sister?

14 A. And -- yeah, her -- Teresa, her mother, and Chris was
15 staying there.

16 Q. Okay. Were there any children residing in the house?

17 A. Teresa has a daughter.

18 Q. All right. And I'm going to approach with what's
19 already been labeled and admitted State Exhibit No. 1. Could
20 you take a look at that and let me know if you know what that's
21 a photo of.

22 A. That's the apartment.

23 Q. Which apartment?

24 A. On Mann Way.

25 Q. Okay. The residence where Tina was living?

1 A. Yes.

2 Q. Okay. Had you ever been to that house before
3 November 23rd of 2013?

4 A. Yes.

5 Q. How many times had you been there?

6 A. Quite a few. I'm not sure how many times but it was
7 a lot.

8 Q. Okay. Do you know what Tina was doing for income at
9 that time?

10 A. Selling drugs.

11 Q. How do you know that?

12 A. Because I was with her when she did sometimes.

13 Q. Okay. Did you actually drive her around sometimes --

14 A. Yes.

15 Q. -- so that she could do that?

16 Okay. Did you go to that residence on Mann Way on
17 that date, November 23rd, to visit Tina?

18 A. Yes.

19 Q. Tell us how that came about. How did you end up over
20 there?

21 A. I actually just went over to visit and then that's
22 when she was complaining about her car not being returned, a
23 rental car.

24 Q. And we're going to have to talk with names because
25 there is a whole bunch of people involved.

1 A. Okay.

2 Q. So when you say "she," who?

3 A. I mean Tina.

4 Q. Tina was complaining?

5 A. Yes.

6 Q. Okay. When -- do you remember what time you got

7 there that day, the first time you got to Mann Way that day?

8 A. I'm sure it was during the day. It was later on in

9 the day though.

10 Q. Was it daylight out or was it nighttime?

11 A. It was daylight.

12 Q. Okay. And it hadn't started to get dark yet?

13 A. It -- no.

14 Q. Okay. So what you did when you first got there?

15 A. Went in to see what was going on. Usually what I do

16 is go in and talk to her mother and I take my laptop and we

17 just sit and download music.

18 Q. Okay. And I don't want you to tell us what you

19 normally do, I want you to tell me what you remember from that

20 day.

21 A. Okay.

22 Q. If that's okay. So do you remember what you first

23 did when you got there?

24 A. Went in and talked to Tina and just, you know -- just

25 wondered what was going on, what we -- if we were going to do

1 anything.

2 Q. All right. And what did Tina say to you about her
3 rental car that you mentioned earlier?

4 A. That it was supposed to be back in the next day and
5 she was looking for it and somebody had it.

6 Q. Did she tell who you had it?

7 A. Not at first but then later she told me Andy -- Andy
8 had it.

9 Q. Andy Beck?

10 A. Yes.

11 Q. Okay. When did she tell you that?

12 A. I'm not sure when she told me that.

13 Q. Where were you when she told you that?

14 A. I was there in the kitchen. Probably in the kitchen.

15 Q. But you don't know for sure?

16 A. No, not -- I don't remember where I was exactly but I
17 was there at that apartment.

18 Q. Was there anybody else there when she said that to
19 you?

20 A. Her mother. And I'm not sure if Teresa was there, I
21 can't remember.

22 Q. Okay. Who all was there at that residence when you
23 first got there that day?

24 A. Her mother Teresa, Chris was there. But if there was
25 anyone else I didn't know. Those are the only people that I

1 saw.

2 Q. Did you see Juice or Dawnie there that day when you
3 first got there?

4 A. No, not when I first got there.

5 Q. Okay. So after you have this conversation -- well,
6 you have this conversation with Tina, right? Was that when you
7 first arrived at the house or had you been there a while? Do
8 you know?

9 A. I think I was -- I would have been there for a
10 little -- a little bit. Hadn't been there long.

11 Q. All right. Did you eventually leave the residence on
12 Mann Way to go somewhere else?

13 A. Yes.

14 Q. Why did you leave the residence?

15 A. I like to -- I drink a lot of coffee. So I usually
16 leave and go get coffee a lot.

17 Q. And did you go get your coffee?

18 A. Yes.

19 Q. Where was that?

20 A. I thought I went to the Maverick, but I went to
21 Rainbow on 40th and 40th, 40th West and 40th South because I
22 had bought some gloves there at that -- I remember.

23 Q. Okay. So how long had you been at Mann Way, do you
24 think, before you left to go get coffee?

25 A. Maybe 10, 15 minutes. I mean, it wasn't long.

1 Q. Where did you go after you got your coffee and left?
2 A. I went back.
3 Q. To Mann Way?
4 A. Yes.
5 Q. Who was there when you got back?
6 A. Just Susan, Teresa, and Tina were there when I got
7 back; Juice and Dawnie hadn't showed up.
8 Q. Was Chris Leech still there?
9 A. Yes.
10 Q. And did you have a conversation when you got back
11 with Tina about the rental car?
12 A. Yes.
13 Q. Did she ask for your help in any way?
14 A. Yes. She asked me to drive her around to see if they
15 could find it -- if she could find it.
16 Q. Did you agree to do that?
17 A. Yes.
18 Q. So you obviously had a vehicle there, correct?
19 A. Yes, I had my truck.
20 Q. What kind of truck?
21 A. A silver Dodge Mega-cab.
22 Q. All right. I'm going to approach with what's been
23 labeled as State's Exhibit No. 10. Take a look at that. Do
24 you know what that's a picture of?
25 A. That's a picture of my truck.

1 Q. Okay. And is that photo a clear and accurate
2 representation of your truck as it looked that day?

3 A. No.

4 Q. Why? What's different?

5 A. The shell wasn't on it and the tires are different.

6 Q. Tires are different?

7 A. Yes.

8 Q. Why are the tires different?

9 A. Those tires are smaller than the ones I had.

10 Q. Did you change them yourself?

11 A. No, I had -- got them changed at Big O.

12 Q. Okay. But you knew that they had been changed?

13 A. Yeah.

14 Q. Okay. So aside from those two things, is that
15 photograph a clear and accurate representation of your truck?

16 A. Yes.

17 Q. So do you know what time you left with Tina to go
18 drive her around?

19 A. No, I don't, but it -- at that time it was dark.

20 Q. It was dark out?

21 A. Yes.

22 Q. Okay. Did anybody else go with you besides you and
23 Tina?

24 A. Juice and Dawnie went with -- went with us.

25 Q. All right. So did Juice and Dawnie eventually arrive

1 at Mann Way?

2 A. Yeah. Yeah. They eventually arrived there.

3 Q. Okay. After you got back from getting your coffee,
4 how long do you think you were there before Juice and Dawnie
5 showed up?

6 A. I'm not sure. It'd have to have been maybe hour
7 half, hour.

8 Q. Okay. So the four of you got in the truck and went
9 to drive around?

10 A. Yes.

11 Q. What did Chris Leech do when you guys left Mann Way?

12 A. I don't know. He wasn't -- he's didn't go with us so
13 I don't know.

14 Q. Did he stay at the house to your knowledge?

15 A. Yes.

16 Q. Okay. So you were driving your truck?

17 A. Yes.

18 Q. Where -- where did you guys go?

19 A. I remember going, I think, somewhere up in Kearns and
20 then to a place on 40 -- 45th South and between Redwood and the
21 freeway.

22 Q. Why did you go to those places?

23 A. To see if the rental car was there parked there
24 somewhere.

25 Q. Who directed you to those places?

1 **A.** Tina.

2 **Q.** Tina did. So while you were in the car did you and
3 Tina have discussions about the rental car and who had it?

4 **A.** She was on the phone trying get ahold of Andy and
5 then I think she found out from Andy that a -- he had let Cleat
6 drive it.

7 **Q.** All right. Now, when -- well, just did she tell you
8 that while you were guys were in the truck?

9 **A.** Um, no. Not -- I found that out later, but that's
10 who we were looking for. Or mostly, we were driving around
11 looking for the car is actually what we were doing but I didn't
12 know who had it.

13 **Q.** Okay. TJ, do you remember talking to a member of the
14 West Valley City Police Department and myself and Mr. Meister
15 on June 3rd, you were interviewed of this year?

16 **A.** On June 3rd.

17 **Q.** Of 2014?

18 **A.** Yes.

19 **Q.** Okay. And do you remember telling us that you first
20 heard Cleat's name -- that Tina told you that Cleat had the car
21 while you guys were driving around?

22 **A.** Do I remember that?

23 **Q.** Do you remember saying that?

24 **A.** I don't remember that, no.

25 **Q.** Okay. So to your knowledge, as you sit here today,

1 what -- when is the first time you heard Cleat's name?

2 A. It was that night. It was that night when we were
3 driving around, but it wasn't early. I mean, that's -- I mean,
4 it was later on than while we were driving around. Because she
5 got ahold of Andy and Andy told her who had it.

6 Q. So -- because we're going to be talking about you
7 doing a lot of driving around.

8 A. Uh-huh.

9 Q. So when you say that you heard Cleat's name for the
10 first time while you were driving around, whose vehicle were
11 you in?

12 A. We were in mine.

13 Q. And who was in your vehicle?

14 A. Tina and Dawnie and Juice.

15 Q. Was it during the same trip? I mean, the same time
16 that you were --

17 A. Yeah. Yeah. It was just later, it wasn't --

18 Q. Okay.

19 A. I mean, when we first went to that apartment I didn't
20 know who we were -- or what we were looking for. We were
21 looking for the car but I didn't who we were looking for.

22 Q. Okay. So the first time you heard Cleat -- the name
23 of Cleat was while you were driving around with Tina, Dawnie,
24 and Juice looking for the rental car?

25 A. Yes.

1 Q. Okay? How long were you guys out looking for the
2 rental car? Do you know?

3 A. Maybe an hour, hour and a half.

4 Q. Did you find it?

5 A. No.

6 Q. So what did you do at that point?

7 A. Went to the house on Mann Way.

8 Q. Okay. Who-all was at Mann Way when you got back?

9 A. Teresa, her mom, and Chris.

10 Q. And what did you do when you got there?

11 A. Went in -- that's when I grabbed my laptop and I
12 sat -- I usually sit at the table, just --

13 Q. Is that what you did that night?

14 A. Yeah.

15 Q. Okay. And what did you do at the table?

16 A. Just sit with her -- Tina's mother and downloaded
17 music, listen to music, just talk.

18 Q. Where was everyone else in the house?

19 A. Teresa was in the -- usually in the living room
20 watching TV.

21 Q. Where was she that night?

22 A. In the --

23 Q. If you remember.

24 A. I don't know where they were. If they were
25 upstairs -- or I don't know they were.

1 Q. Did you see Teresa at the house when you were there
2 that night --

3 A. Yes.

4 Q. -- when you got back?

5 Okay. Where was Chris Leech while you were sitting
6 at the table?

7 A. Either outside or upstairs.

8 Q. Outside where?

9 A. In the garage or out in the back, in the backyard, I
10 don't know.

11 Q. Okay. Did you see him at the house?

12 A. Yes.

13 Q. Did you see him go into the garage?

14 A. Yes.

15 Q. Did you see anybody else in the garage while you were
16 there?

17 A. Not until I went out. I didn't know anybody was out
18 there until I went out to have a cigarette.

19 Q. How long had you been back at the house before you
20 went out to have a cigarette?

21 A. I'm not sure.

22 Q. Okay. When you went out to have a cigarette, who did
23 you see in the garage?

24 A. Andy was sitting in the garage.

25 Q. Andy Beck?

1 **A.** Yes.

2 **Q.** Where was he sitting?

3 **A.** Between the door to the backyard and the door to go
4 inside the apartment.

5 **Q.** What was he doing?

6 **A.** Just sitting there.

7 **Q.** Did you see him arrive at the residence?

8 **A.** No.

9 **Q.** All right. When you first saw him what was condition
10 was he physically? Did he seem injured or hurt or anything?

11 **A.** I didn't pay attention to him. I mean, he was
12 sitting there. It was kind of odd that he had just showed up
13 out of the blue -- you know, just sitting out there. I didn't
14 know how long he was there.

15 **Q.** Okay. If he would have gone into the garage through
16 the residence, would you have seen him come in from where you
17 were?

18 **A.** Yes, I would have seen him.

19 **Q.** Is there an outside door to that garage as well?

20 **A.** Yes.

21 **Q.** That leads straight to the outside?

22 **A.** Yes.

23 **Q.** Okay. Aside from the actual raising up garage door,
24 there is a side door of some sort?

25 **A.** Yeah. And yeah, you can get to the backyard through

1 the side -- the side door also.

2 Q. Okay. Did you talk to Andy at all when you got into
3 the garage?

4 A. No.

5 Q. What you did you do out there?

6 A. I just had a cigarette and just went back in.

7 Q. All right. How long did it take you to smoke your
8 cigarette? Five minutes?

9 A. Seven. Ten.

10 Q. Seven. Okay. And you didn't talk to Andy at all
11 while you were there?

12 A. No.

13 Q. Did he say anything to you?

14 A. No.

15 Q. Was there anyone else in the garage?

16 A. There was another guy I didn't know who he was. I
17 had seen him a couple of time. He was an Asian guy.

18 Q. You don't know his name?

19 A. No.

20 Q. What did he look like aside from being Asian?

21 A. Short hair. Asian.

22 Q. Was he tall or short?

23 A. Short.

24 Q. Okay. Was he thin or heavy?

25 A. It's hard to tell when you got, like, a -- hoodies

1 on, you can't tell if he's --

2 Q. Did he have baggie clothes on?

3 A. Yeah.

4 Q. Okay. Where was he in the garage?

5 A. Sitting by Andy.

6 Q. Sitting by Andy. Was he in between Andy and the
7 outside door?

8 A. Yes.

9 Q. Okay. Did you talk to that guy at all?

10 A. No.

11 Q. Did he talk to you at all?

12 A. No.

13 Q. Okay. Did Andy ever come inside the residence while
14 you were at Mann Way that night?

15 A. He might have come in to go to the bathroom or --

16 Q. Do you remember --

17 A. -- he did come in to go to the bathroom and that was
18 it.

19 Q. Okay. Did you ever see anyone else go out to the
20 garage while Andy was in there?

21 A. Chris went out there. I can't -- I don't think
22 anybody else did.

23 Q. Chris Leech?

24 A. Yes.

25 Q. Okay. Did you see what happened when Chris went into

1 the garage?

2 A. No.

3 Q. Did they shut the door?

4 A. Yeah.

5 Q. Okay. You couldn't hear what was going on or
6 anything like that?

7 A. No.

8 Q. Did you ever see Tina go in when Andy was in the
9 garage?

10 A. I -- I don't think -- no, I don't think so.

11 Q. Okay. Where was Tina while Andy was sitting out in
12 the garage?

13 A. She was either in the upstairs or she had come down
14 and talked to us in the kitchen.

15 Q. Talked to who?

16 A. Me and her mother.

17 Q. What was her demeanor while Andy was sitting out in
18 the garage? What did she seem like mood wise?

19 A. Kind of stressed still 'cause we didn't -- hadn't
20 found the car.

21 Q. Okay. Did you hear her talking to Chris Leech at all
22 while Andy was in the garage?

23 A. No, they didn't really talk in -- while we were in
24 the kitchen when we were there.

25 Q. They didn't really talk while you were in kitchen?

1 A. Not -- not in front of us in the kitchen.

2 Q. Okay. Did you ever see them or hear them whispering
3 to each other at all?

4 A. Yes. Yes.

5 Q. Where -- when did that happen?

6 A. In that area -- in the living room I could hear them.

7 Q. You could hear them in the living room?

8 A. Uh-huh.

9 Q. Okay. Could you actually hear what they were saying?

10 A. No.

11 Q. And what was their -- how were they acting while they
12 were whispering to each other? What did their -- well, and we
13 will start with Tina. What did her mood seem like when she was
14 whispering to Chris?

15 A. Kind of stressed out. Chris was -- or acting
16 agitated.

17 Q. Could you see them from where you were?

18 A. No.

19 Q. Okay. While that whisper conversation was taking
20 place, you said they were in the living room?

21 A. Yeah.

22 Q. Were you still in the kitchen?

23 A. Yes.

24 Q. And are those two rooms divided by a wall or a --
25 what -- how is the --

1 **A.** Yeah, there is a -- yeah, there is a wall and there
2 is just kind of a walkway on one side.

3 **Q.** Okay. Did you hear them talking at all about being
4 upset with Andy Beck?

5 **A.** No.

6 **MS. ROSSI:** One second please, Your Honor.

7 **THE COURT:** Sure.

8 **Q. (BY MS. ROSSI:)** Okay. TJ, do you remember -- I'm
9 going to direct your attention again to that interview that you
10 did on June 3rd of this year, Page 56 for defense counsel.

11 Do you remember being asked by Mr. Meister --
12 Mr. Meister: What were they saying that made you believe that
13 they were mad at Andy or upset with him?

14 And your answer being: That he could -- he didn't
15 know where his friend was where the -- with the car.

16 And Mr. Meister is saying: Okay. Are they both
17 talking and both saying this? And you answering: Yeah.

18 And Mr. Meister saying: Are they both tense and
19 agitated? And you saying yes regarding Chris Leech and Tina
20 Soules.

21 Do you remember that conversation?

22 **A.** No, not now.

23 **Q.** Okay. And as you sit here today, you're testifying
24 that you don't remember Chris Leech and Tina Soules talking
25 about Andy Beck at Mann Way that night?

1 A. I don't remember them talking about him. I don't
2 know if they were -- if they -- when they were talking about
3 Andy or Cleat.

4 Q. Okay. Do you remember them talking about being mad
5 at anybody while you were at Mann Way that night?

6 A. Andy. So...

7 Q. When did that happen?

8 A. Well, while we were in the kitchen while they were in
9 the living room.

10 Q. And you remember hearing them talking about it?

11 A. I know that they were mad. I don't know exactly if
12 it was Andy or the other guy, Cleat.

13 Q. Okay. Was there anyone else involved in this tense
14 whisper conversation?

15 A. No.

16 Q. What about Dawnie and Juice?

17 A. No, I didn't see them really talking about it or
18 anything.

19 Q. Okay. I'm also -- I'm going to talk about this
20 June 3rd interview again, TJ. Page 59 for defense counsel.

21 Do you remember being asked -- regarding this
22 conversation being asked by me: And Dawnie and Juice were
23 there, right? And you saying: Yeah, they were there.

24 A. Yeah, they were.

25 Q. And then me asking: Were they involved in these

1 conversations? And you answering: Yeah.

2 Do you remember that conversation happening?

3 A. No.

4 Q. Okay. And as you sit here today, you're testifying
5 that Dawnie and Juice were not involved in these conversations
6 regarding -- or these tense whisper conversations?

7 A. I didn't see them.

8 Q. Okay. All right. How many times did you see
9 Chris Leech go in and out of the garage while Andy was in
10 there?

11 A. Maybe two or three time.

12 Q. All right. And what was his demeanor when he was
13 going in and out of the garage?

14 A. Agitated.

15 Q. Agitated. What about ^{Dawnie}~~Andy~~ and Juice, were they there
16 while all this was going on?

17 A. Yes.

18 Q. Did you ever see Chris Leech with a weapon at the
19 Mann Way house?

20 A. Yes.

21 Q. When did you first see him with a weapon and what was
22 it?

23 A. In the kitchen and it was a square black -- like I
24 said, I didn't -- I don't know the brand, the name brand.

25 Q. Square black what?

1 **A.** A square black -- black gun.

2 **Q.** A gun? A handgun?

3 **A.** Yes.

4 **Q.** Okay. Where was it when you first saw it? What he
5 was -- where was it on him?

6 **A.** In his pants or he was carrying -- I saw him carrying
7 it.

8 **Q.** In his hand?

9 **A.** Yes.

10 **Q.** Okay. Did you ever see him threaten anyone with
11 it -- at Mann Way?

12 **A.** No.

13 **Q.** And did you ever see him when he went into the garage
14 have the handgun out?

15 **A.** Yeah, I did.

16 **Q.** Okay. What -- so what did he do with it when he had
17 it out inside the house?

18 **A.** Just kind of flashing it.

19 **Q.** Was he saying anything to you guys?

20 **A.** Not directly to us, you know, just saying stuff like
21 he was mad.

22 **Q.** Like what?

23 **A.** I can't remember exactly what he said.

24 **Q.** Okay. But you -- it was your impression that he was
25 angry?

1 A. Oh, yeah.

2 Q. All right. Did Chris Leech ever ask you if you had a
3 gun while you were at Mann Way that night?

4 A. Yes. Yes.

5 Q. Did you have a gun that night?

6 A. Yes.

7 Q. Where was it?

8 A. It was in my truck.

9 Q. While you were inside the residence it was in your
10 truck?

11 A. Yes.

12 Q. What kind of gun was it?

13 A. A 40 Beretta PX4 Storm.

14 Q. Did you tell Chris that you had that gun?

15 A. Uh-huh.

16 Q. Did you ever bring it into the house that night?

17 A. Yes, I did.

18 Q. Why did you bring it into the house?

19 A. To show him that I had -- that I had my gun 'cause he
20 asked me if I had it.

21 Q. Did he ask you to go get it or did you just go get
22 it?

23 A. I just went and got it.

24 Q. Okay. Did you keep it in the house then or did you
25 take it back out?

1 **A.** I took it back out to my truck.

2 **Q.** How long did you have it in the house?

3 **A.** Maybe 15 minutes, 15, 20 minutes.

4 **Q.** What did you do with it when you had it in the house?

5 **A.** I just showed him -- showed him my gun. You know,

6 just pulled out the magazine and showed him.

7 **Q.** Was it loaded?

8 **A.** It had bullets in the magazine.

9 **Q.** But not in the --

10 **A.** Not in the chamber.

11 **Q.** Not in the chamber. Okay.

12 TJ, did you eventually leave the Mann Way residence

13 that evening?

14 **A.** Yes.

15 **Q.** How long were you there -- like once you guys all got

16 back and were talking about this session at the house, how long

17 do you think you were there before you left?

18 **A.** I don't know. I'm not sure.

19 **Q.** Okay.

20 **A.** It was a while.

21 **Q.** Why did you leave?

22 **A.** They had said that -- or Tina had said that Cleat was

23 going to meet them at her uncle's house.

24 **Q.** And so why were you leaving?

25 **A.** I was going to drive them over there.

1 Q. Did someone ask you to do that or did you volunteer?
2 A. Yes, Chris.
3 Q. Who asked you?
4 A. Chris asked me to drive them over.
5 Q. Okay. So you drove your truck?
6 A. Yes.
7 Q. Who went with you?
8 A. Chris, Andy, Juice. Chris, Andy, Juice.
9 Q. Did you-all exit the residence together or did you go
10 separately?
11 A. I went out to start my truck. I usually start it
12 before I go anywhere.
13 Q. Did you see everybody else come out?
14 A. No, I didn't pay attention.
15 Q. All right. But Chris, Andy and Juice ended up in
16 your truck?
17 A. Yes.
18 Q. Okay. So did you see Andy when you got into your
19 truck?
20 A. Yes.
21 Q. And what condition was he in when you got into your
22 truck?
23 A. I'm not sure. He had his hoodie on.
24 Q. He had a hoodie on?
25 A. Yeah.

1 Q. And was it -- was the hood down or up?
2 A. It was up over his head.
3 Q. Was it tied over his face or could you see his face?
4 A. I could see his face.
5 Q. Okay. Where did -- who got into what position in
6 your truck?
7 A. Chris got in the front. Juice -- I was driving and
8 Juice got behind me and then Andy was in the passenger
9 backseat.
10 Q. Okay. Did you see how Andy got into the truck? Did
11 he do it on his own or was he helped in or --
12 A. I didn't see how.
13 Q. Okay. Where did you go from there?
14 A. We went to her Uncle Chris's house, Tina's Uncle
15 Chris's house.
16 Q. Who had told you to go to Uncle Chris's house?
17 A. Tina.
18 Q. Did you know where Uncle Chris lived?
19 A. Yes.
20 Q. Had you been there before?
21 A. Yes.
22 Q. Do you know the address of that house?
23 A. Not -- not the exact address; I just know it in
24 general.
25 Q. What do you know generally about the address?

1 A. Right off the State between 1st South and 1st East.

2 I mean, 1st East and 33 -- past 33rd South. It's like 3340

3 South and 50th East. Something like that, just --

4 Q. Okay. Had you met Uncle Chris before?

5 A. Yes.

6 Q. Do you know his real name?

7 A. Just Chris.

8 Q. Okay. Do you know his last name?

9 A. Chavez.

10 Q. Okay. When you left the Mann Way house where was

11 Tina?

12 A. I don't know.

13 Q. Was she still at the Mann Way house?

14 A. Yeah.

15 Q. So you left her there?

16 A. Yeah.

17 Q. Did she tell you whether she was going to go to Uncle

18 Chris's house?

19 A. No, I didn't know if she was going to show up there.

20 Q. All right. How about Dawnie, was she still at Mann

21 Way when you left?

22 A. Yes.

23 Q. Did you know if she was going to go to Uncle Chris's

24 house?

25 A. No, I didn't know.

1 Q. Okay. How long did it take you to get to Uncle
2 Chris's house from the Mann Way address?

3 A. About 10 or 15 minutes.

4 Q. Did anyone have any conversation on the way over
5 there in your car?

6 A. No.

7 Q. When you got to Uncle Chris's where did you park your
8 truck?

9 A. I parked it on the road, right out -- just off the
10 road.

11 Q. In the front or the back?

12 A. In the front.

13 Q. In the front. And who-all was -- well, did all four
14 of you then go into Uncle Chris's house out of your truck?

15 A. Yes.

16 Q. And who-all was at Uncle Chris's house when you got
17 there?

18 A. Just him.

19 Q. Just him?

20 A. Yeah.

21 Q. Was he awake?

22 A. Yeah.

23 Q. And while you were there did Tina and Dawnie show up?

24 A. Yes.

25 Q. How long had you been there before they showed up?

1 A. Not very long. 10 minutes, 10, 15 minutes.

2 Q. What had you-all been doing during that 10 or 15
3 minutes?

4 A. I was just sitting on the couch.

5 Q. Where was everybody else?

6 A. Either having a cigarette or sitting in the living
7 room with me.

8 Q. Was Andy inside the residence with you?

9 A. Yes.

10 Q. Okay. Was Uncle Chris awake and inside the residence
11 with you?

12 A. Yes.

13 Q. Okay. What happened after Tina and Dawnie showed up
14 at the house?

15 A. They just came in and just waited for Cleat to show
16 up.

17 Q. Did Cleat show up?

18 A. Yeah.

19 Q. Were you made aware by anybody that he was actually
20 coming?

21 A. Yes.

22 Q. Who told you that?

23 A. I can't remember who it was, but they just told me to
24 wait outside.

25 Q. Who told you to wait outside?

1 A. Chris.

2 Q. Chris Leech told you to wait outside --

3 A. Yes.

4 Q. -- Uncle Chris's house?

5 A. Yes.

6 Q. In the front or the back?

7 A. In the back.

8 Q. And did you do that?

9 A. Yes.

10 Q. Okay. How long were you outside?

11 A. Not sure how long it was.

12 Q. Were you waiting outside for Cleat to show up or why

13 were you waiting outside?

14 A. We were waiting for Cleat to show up.

15 Q. Who is "we?"

16 A. Everybody: Chris, Juice.

17 Q. Were all of you outside?

18 A. I know I was; I don't know if they were.

19 Q. Okay. And you just mentioned that Juice was there.

20 So when did Juice show up?

21 A. He was with -- he drove over with us.

22 Q. Oh, I'm sorry. I was thinking that he came with Tina

23 and Dawnie. Did Tina and Dawnie bring anybody else with them?

24 A. The other Asian guy was there. I don't know how he

25 got there, if he went there with them.

1 Q. And that other Asian guy, is that the one you were
2 talking about being in the garage --
3 A. Yes.
4 Q. -- at the Mann Way house?
5 A. Yes.
6 Q. Okay. And so how long after you got to Uncle Chris's
7 do you think it was that Cleat showed up?
8 A. I'm not sure, 20, 25 minutes.
9 Q. Where were you when he showed up?
10 A. I was outside.
11 Q. Did you see him come?
12 A. No.
13 Q. So how did you know that he was there?
14 A. I was told he was there.
15 Q. By whom?
16 A. I can't remember who it was. Just told me that they
17 were -- he had -- or he had gotten there so we went in.
18 Q. You went back inside?
19 A. Yes.
20 Q. And who-all was inside when you got back?
21 A. Me, Andy, Juice, Dawnie, and Uncle Chris.
22 Q. Where was Chris Leech?
23 A. He was still outside. I don't know where they were.
24 Q. Where was Tina?
25 A. I can't remember if she was inside or out.

1 Q. Where was Cleat?

2 A. He wasn't inside. He was out somewhere. 'Cause they
3 -- 'Cause when I went in, they had brought -- he had -- they
4 had came -- they had come in, Chris and --

5 Q. So when you got inside was Cleat Knight in the house
6 yet?

7 A. No.

8 Q. So what happened when you got back inside?

9 A. I went in and sat down.

10 Q. Where?

11 A. On the couch.

12 Q. On the couch. And what happened as you were sitting
13 there.

14 A. They brought Cleat in.

15 Q. Who is "they?"

16 A. Chris. Chris brought Cleat in.

17 Q. Okay. When Chris -- and you say "Chris brought Cleat
18 in," what do you mean by that? What was Chris doing? And
19 we're talking about Chris Leech, correct, not Uncle Chris?

20 A. Yes.

21 Q. Okay. So Chris Leech brought Cleat in?

22 A. Yes.

23 Q. And what -- what was he doing to bring Cleat in?

24 A. Holding his -- like holding his arm bringing him in,
25 like escorting him.

1 Q. And what condition was Cleat in at that time?
2 Wait, and I will just ask you: What was he wearing?
3 A. A hoodie, Baggie pants. Like a dark blue hoodie or
4 black.
5 Q. Was his hoodie -- was his hood up or down?
6 A. It was up.
7 Q. It was up. And could you see his face?
8 A. Not really.
9 Q. Why not?
10 A. Just 'cause the hood was just pulled down -- pulled
11 down a little bit over his face.
12 Q. It was just pulled down low or was it, like, shut
13 tight?
14 A. It wasn't shut tight.
15 Q. Okay.
16 A. But it was just pulled down a little bit.
17 Q. Okay. And what happened when Chris Leech brought
18 it -- brought Cleat into the residence?
19 A. He had him lay down on the floor.
20 Q. Who are you talking about?
21 A. Chris, Chris had him lay down.
22 Q. Chris Leech?
23 A. Yes.
24 Q. Had who lay down on the floor?
25 A. Cleat and Andy.

1 Q. Cleat and Andy. And when you say he had them lay
2 down on the floor, what specifically did he do to get them
3 there?

4 A. Told them to kneel down and, you know -- just didn't
5 really push them down but just had them get down on the floor,
6 lay down.

7 Q. Did he have a gun at that point?

8 A. Yes.

9 Q. Chris Leech?

10 A. Yes.

11 Q. And what was he doing with the gun?

12 A. He had it in his -- either had it in his pants or he
13 had it in his hand.

14 Q. Did you see him with the gun in his hand --

15 A. Yes.

16 Q. -- while he was putting them on the ground?

17 A. Yes.

18 Q. Okay. Did you see him point it at them at any point
19 while he was putting them at the ground?

20 A. Yes.

21 Q. Who did he point it at?

22 A. Both of them, Cleat and Andy.

23 Q. Did Cleat and Andy get down on the ground?

24 A. Yes.

25 Q. And once Cleat and Andy were on the floor -- and I'm

1 sorry, where was this happening? In the living room?

2 A. Yes.

3 Q. What happened next?

4 A. He --

5 Q. Who is "he?"

6 A. Chris asked if I had any rope or anything.

7 Q. Chris Leech?

8 A. Yes.

9 Q. And what -- and did you respond?

10 A. I said I didn't have any rope, but I had, like, old

11 speaker wire in my truck. 'Cause I had a bag of just tools and

12 just all kinds of stuff.

13 Q. And what did he say when you told him that?

14 A. To get it.

15 Q. Do you know why Chris Leech wanted you to go get it?

16 Did he tell you why?

17 A. Not -- not -- not then.

18 Q. Okay. Did you go out to your truck and get the

19 speaker wire?

20 A. Yes.

21 Q. And what did you do with it?

22 A. I brought it back in and he asked me tie to them up.

23 Q. Who?

24 A. Chris.

25 Q. Leech?

1 A. Yes.

2 Q. All right. While Chris Leech has his gun out and is
3 putting Andy and Cleat on the floor, where is Tina?

4 A. In the kitchen.

5 Q. Where is Dawnie?

6 A. In the kitchen.

7 Q. Where is Juice?

8 A. He was standing up in the kitchen because the couch
9 was small, it's only two people.

10 Q. And where is Uncle Chris?

11 A. He's in his bedroom.

12 Q. He's in his bedroom?

13 A. Yeah.

14 Q. Okay. At what point did Uncle Chris go into his
15 bedroom? Do you know?

16 A. It was earlier 'cause he wasn't out there -- he
17 wasn't out there the whole time. He stayed in his bedroom but
18 he would come out once in a while.

19 Q. Did you ever see Uncle Chris out there while Cleat
20 was in the residence?

21 A. I don't think so. I don't think he was out there.

22 Q. Okay. Okay. When -- when you brought the speaker
23 wire in, did Chris Leech tell you to do anything with it?

24 A. He told me to tie them up.

25 Q. Did you do that?

1 **A.** I tried.

2 **Q.** How did you try?

3 **A.** I went to tie -- I can't remember if it was Andy --
4 which one it was. I tried to tie their hands -- or I tried to
5 wrap it around their hands but the speaker wire was old so it
6 would break or it -- it broke a couple of times. So I tried to
7 tie them up and I -- I must not did it right 'cause I didn't
8 know to cross the hands. And so Chris said that you need to
9 cross the hand -- cross their hands, tie them up.

10 **Q.** Chris Leech?

11 **A.** Yes.

12 **Q.** And what did he do at that point?

13 **A.** He took over tying them up. After I tied -- the
14 first one -- after I crossed his hand, tied him up, then he
15 took the wire and tied the other one up.

16 **Q.** So who did you tie up?

17 **A.** I don't remember who -- which one it was.

18 **Q.** But you tied up one of them and Chris Leech tied up
19 the other?

20 **A.** Yes.

21 **Q.** Oh, and just to back up a little bit, TJ. The way
22 that this apartment is set up, the way Uncle Chris's place is
23 set up, is there a wall or anything dividing the kitchen from
24 the living room?

25 **A.** It's -- there is, but it's not -- it's not very big.

1 It's small. So you can -- the table and chairs you can sit
2 there and see into the living room.

3 Q. So it's like a half wall?

4 A. Yeah.

5 Q. Like what you're sitting behind right now?

6 A. No, it's -- it came all the way across but not as far
7 as the Mann Way house.

8 Q. Okay. So could you see Tina and Dawnie and Juice in
9 the kitchen from where you were in the living room?

10 A. Yes.

11 Q. Okay. What were they doing while all this was going
12 on, while Cleat and Andy were being tied up?

13 A. Talking. I couldn't hear what they were talking
14 about.

15 Q. Talking to?

16 A. Each other.

17 Q. Each other?

18 A. Uh-huh.

19 Q. Okay. Were they watching what was going on?

20 A. Yes.

21 Q. While Andy and Cleat were tied up, did you see
22 anybody remove anything from their pockets or from their
23 persons?

24 A. Yes, Chris was cleaning their pockets out, taking
25 stuff out of the pockets, phones and change, whatever.

1 Q. And did he do that to both of them?

2 A. Yes.

3 Q. What did he do with those items?

4 A. I think he gave them -- I can't remember who he gave
5 them to, but they were put on the kitchen table.

6 Q. You can't remember who he gave them to?

7 A. Yeah.

8 Q. Did he give them to you?

9 A. No.

10 Q. Okay. While this was going on, did you have a weapon
11 on you?

12 A. No, it was still in my truck.

13 Q. Your gun was in your truck?

14 A. Uh-huh.

15 Q. And just -- did you only have the one gun that night?

16 A. Yes.

17 Q. All right. And that one was in your truck during
18 this time. What about Juice, did he have a weapon?

19 A. I didn't see one. I didn't see him with one.

20 Q. All right. Did you ever see Tina with a weapon?

21 A. No.

22 Q. While Andy and Cleat were being tied up and while
23 they were on the floor and Chris Leech is going through their
24 pockets, did you ever hear anyone telling them to stop?

25 A. No.

1 Q. Did your ever see Andy or Cleat with a weapon?
2 A. No.
3 Q. All right. What happened once Chris Leech was done
4 cleaning out Andy and Cleat's pockets?
5 A. What else was done? What do you --
6 Q. What happened next?
7 A. I went out to have a cigarette. I mean -- and I was
8 told just to wait outside.
9 Q. By whom?
10 A. Chris.
11 Q. Out front or out back?
12 A. Out back. Pulled my truck out back and wait -- wait
13 outside.
14 Q. Okay.
15 A. I didn't -- he didn't tell me to wait outside, he
16 just told me to pull my truck out back.
17 Q. Okay. Chris Leech told you to do that?
18 A. Yes.
19 Q. Did you take your truck and pull it around the back?
20 A. Yes.
21 Q. What happened when you were outside -- or how long
22 were you outside before they came out?
23 A. I'm not sure.
24 Q. What were you doing out there?
25 A. Just smoking cigarettes.

1 Q. Inside your truck?
2 A. Yes.
3 Q. Did anybody eventually come out of the back of the
4 apartment?
5 A. Yeah, Juice came out first.
6 Q. Juice came out first?
7 A. Yes.
8 Q. Did he have anybody with him?
9 A. He brought Cleat out.
10 Q. He brought Cleat out?
11 A. Yeah.
12 Q. And what did Cleat look like when he brought him out?
13 A. Same as he did but his -- his hoodie was tied tight.
14 Q. How so? Like what did it look like?
15 A. Tied around his -- it was tied around his face, the
16 hood was tied around his face, I can't show you how big.
17 Q. That's okay. It was pulled really tight around his
18 face?
19 A. Yeah.
20 Q. Could you see his face?
21 A. Not really.
22 Q. Okay.
23 A. Just like his mouth, you know --
24 Q. You couldn't see his eyes?
25 A. No.

1 Q. So how was he getting to your truck?
2 A. He was being, like, escorted. Someone was -- or
3 Juice was showing him the way to the truck.
4 Q. Okay. And did Juice actually bring him to your
5 truck?
6 A. Yes.
7 Q. And did he put him in the truck?
8 A. Yes.
9 Q. Did Juice also get in the truck?
10 A. Yes.
11 Q. Where were they both seated inside your truck once
12 they got in?
13 A. Juice was behind the driver, Cleat was next to him.
14 Q. Like the middle of the backseat?
15 A. Yeah.
16 Q. And what about Chris Leech, did he come out of the
17 apartment?
18 A. Yes.
19 Q. Did he have anybody with him?
20 A. He had Andy.
21 Q. And what did Andy look like when he came out?
22 A. Just the same. He was hoodie was tied tight also.
23 Q. You couldn't see his eyes?
24 A. No.
25 Q. Did he get into your truck?

1 **A.** Yes.

2 **Q.** How was he able to get into your truck?

3 **A.** Chris helped him into the truck, into the back.

4 **Q.** Okay.

5 **A.** In the back -- back passenger seat.

6 **Q.** All right. And where did Chris get into the truck
7 then?

8 **A.** He was in the passenger seat and I drove.

9 **Q.** Next to you?

10 **A.** Yes.

11 **Q.** Okay. What happened when you guys were all loaded
12 into the truck?

13 **A.** He said to drive.

14 **Q.** Who?

15 **A.** Chris.

16 **Q.** Leech?

17 **A.** Yes.

18 **Q.** And where did he say to drive to?

19 **A.** He didn't really say. I just started driving towards
20 like 1st East and was going to get on the road to head toward
21 33rd South. I wasn't sure where we were going but he said --
22 he said just make a right on 33rd.

23 **Q.** Okay. And did you do that?

24 **A.** Yes.

25 **Q.** Did he tell you where to go from there?

1 A. We drove straight for a little while before 7th East
2 and before we hit 7th he said to make a left.

3 Q. Okay. And what did he tell you to do from there?

4 A. Just drive and then get on the right so that we could
5 get onto the freeway heading towards Park City.

6 Q. Okay. Did you do that?

7 A. Yes.

8 Q. Did you drive up through Parley's Canyon?

9 A. Yes.

10 Q. Towards Park City?

11 A. Yes.

12 Q. And during that drive was there any other
13 conversation by anybody in the car aside from Chris telling you
14 where to go?

15 A. I didn't hear. Other than me asking where we were
16 going.

17 Q. Okay. Did you ask Chris where you were going?

18 A. Yeah, I did ask him. I thought we were going to get
19 off at like Emigration or something -- or Emigration turnoff.

20 Q. What did he tell you when you asked where you were
21 going?

22 A. No, just to go straight.

23 Q. Okay. Past Emigration?

24 A. Yes.

25 Q. All right. And just for the record, now when we talk

1 about -- did you see Uncle Chris again that night at all?

2 A. No.

3 Q. Okay. So we when talk about "Chris" from now on,
4 we're talking about Chris Leech?

5 A. Yes.

6 Q. All right.

7 A. Sorry.

8 Q. No, that's okay.

9 So did you stop at Kimball Junction?

10 A. Yes.

11 Q. Why did you stop up there?

12 A. To get fuel.

13 Q. Okay. All right. Who -- did somebody tell you to
14 stop there or --

15 A. I -- I saw that we needed fuel 'cause I didn't know
16 where we were going. You know, I wouldn't want to be stuck
17 anywhere.

18 Q. And did Chris tell to you stop at Kimball Junction or
19 did you just stop there?

20 A. I can't remember if he told me or if I stopped -- he
21 told me to stop there, get fuel there.

22 Q. Okay. What happened when you pulled into the gas
23 station?

24 A. We pulled in and noticed that there was three police
25 officers there.

1 Q. And was that that Chevron right there on the exit?

2 A. Yes.

3 Q. Did anybody say anything about there being three
4 police officers there?

5 A. Yeah, I did. I just kind of, like, uh, oh, shit
6 there is -- you know, just -- and so I just drove in.

7 Q. Did Chris say anything at that point?

8 A. No.

9 Q. Okay. How did you pay for your fuel?

10 A. I paid cash.

11 Q. Did you do that on your own or did someone tell you
12 to do that?

13 A. Chris said to pay cash.

14 Q. Okay. Did you fuel up your truck?

15 A. Yes.

16 Q. Where did you guys go from there?

17 A. Got back out on the freeway and started heading
18 towards Heber.

19 Q. Who told you to do that?

20 A. Chris.

21 Q. Where you did you go from there?

22 A. Started heading towards Heber and I wasn't sure if we
23 were going to Heber or where we were going so I asked him
24 which -- if we were to get off the exit there or go straight.

25 Q. And what did he say?

1 A. Go straight.

2 Q. Chris said that?

3 A. Yes.

4 Q. Did -- and who was giving you the directions as to
5 where you ended up? Because you eventually ended up near Snow
6 Basin, correct?

7 A. Yes.

8 Q. Who was giving you the directions the entire time?

9 A. Chris.

10 Q. Okay. So tell us what he told you to do as you were
11 driving.

12 A. He just said keep driving and he didn't say anything
13 until we got to our exits, to exit there.

14 Q. Which exit was that? Do you know?

15 A. The junction by echo -- Echo Reservoir.

16 Q. Okay. And did he tell you where to go from there?

17 A. Yes.

18 Q. Where did you go?

19 A. Jumped off there and headed towards Morgan.

20 Q. Okay. Are you familiar with that area at all?

21 A. I used to drive through there when I lived in Ogden.

22 Q. Okay. Did -- did you know -- did Chris tell you
23 where you were going, what your designation was?

24 A. No.

25 Q. All right. Did you eventually end up at Snow Basin?

1 A. Yes.

2 Q. And what happened when you got there?

3 A. We got all the way to the resort and I said, "We're
4 out of road." And so he said, "Turn around and go back down."

5 Q. Chris said that?

6 A. Yes.

7 Q. And did he direct you where to go?

8 A. Yes.

9 Q. Where did you go?

10 A. We start driving down and then there was a gate, a
11 metal gate, on the side on the left of the road as we were
12 heading down and he said, "Pull in there."

13 Q. Did you pull over?

14 A. Yes.

15 Q. And did you stop your truck?

16 A. Yes.

17 Q. During that time, from the time you got gas to the
18 time you got to that designation, was there any conversation in
19 the truck between anybody but you and Chris about directions?

20 A. I didn't hear.

21 Q. You didn't hear anybody else talking?

22 A. No.

23 Q. So what happens once you pulled your truck over?

24 A. We got out. Or -- I got out -- and well, everybody
25 got out, went to the front of the truck and Chris asked for my

1 gun and I gave him my gun.

2 Q. Where had your gun been?

3 A. My gun had been in the -- in my seat or in between
4 the console and the seat. I had to put it there when I was
5 waiting at the -- Uncle Chris's house 'cause I wasn't sure what
6 was going on.

7 Q. While you were waiting out back?

8 A. Yes.

9 Q. When you got out your truck at this gate -- at this
10 gated area, did Chris Leech have a gun on him?

11 A. Yes.

12 Q. Did you see it on him?

13 A. Yes.

14 Q. Where was it?

15 A. In his pants.

16 Q. In his pants?

17 A. Yeah.

18 Q. In the waistband?

19 A. Yes.

20 Q. Okay. And you said that you gave him your gun?

21 A. Yes.

22 Q. What did he do with your gun?

23 A. He carried it in his hand.

24 Q. And what about Juice, did he have a weapon on him at
25 that time?

1 A. No, I didn't see one.

2 Q. Did he get out of the truck?

3 A. Yes.

4 Q. Okay. Did Andy and Cleat get out of the truck?

5 A. Yes.

6 Q. And what happened after everybody was out and you're

7 giving Chris your gun?

8 A. Started walking down the hill, went under the gate --

9 under the gate and started walking down a small hill.

10 Q. All five of you?

11 A. Yes.

12 Q. How were Andy and Cleat able to walk in any specific

13 direction?

14 A. Chris was escorting -- like escorting them down.

15 Q. Were their hoodies still tied over their faces?

16 A. Yes.

17 Q. Did he physically make contact with them or was he

18 just telling them where to go? Do you know?

19 A. He was holding -- holding their arm, holding one of

20 their arms. I couldn't tell who it was.

21 Q. Okay. Was somebody else holding the other one's arm?

22 A. No.

23 Q. Okay. Chris was walking with the two of them?

24 A. Yes.

25 Q. All right. So as you guys are walking -- well, what

1 was -- it's nighttime, correct?

2 A. Yes.

3 Q. Did you have -- were you able to see at all?

4 A. The moon was out, just by the moonlight.

5 Q. Okay. So you could see what was going on?

6 A. Yeah. Somewhat. Yeah.

7 Q. Could you tell who was who in your group?

8 A. I could -- I could tell -- yeah. Chris and Juice, I
9 could tell who they were, but I couldn't really tell who the --
10 who -- between Andy and Cleat.

11 Q. Okay. As you were walking, who -- what order were
12 you in? Who was leading the way and who was in the back?

13 A. Chris was leading the way with Andy and Cleat, I was
14 behind them and then Juice was behind me.

15 Q. Okay. How far behind Chris and Andy and Cleat were
16 you?

17 A. About as far as me to you, about that far.

18 Q. And I'm not very good with distances.

19 A. Neither am I.

20 Q. ~~So I don't know if anybody --~~

21 ~~MR. BAUTISTA: 14 feet.~~

22 ~~MR. MEISTER: 15 feet.~~

23 Q. (BY MS. ROSSI:) 15 feet?

24 A. Yeah.

25 Q. If the record could reflect that --

1 A. Yeah, 15 to 20 feet.

2 Q. Thank you.

3 A. At the most it was that.

4 Q. Okay. And then how far behind you was Juice?

5 A. Maybe 5 feet.

6 Q. Okay. So he was right behind you?

7 A. Yeah.

8 Q. Were you walking on a path or just through --

9 A. It was like an old road, like an old Jeep road so --
10 in one of the tire tracks, I guess.

11 Q. Like in a rut?

12 A. Yeah, kind of.

13 Q. Okay.

14 A. But there was snow so it was kind of covered a little
15 bit.

16 Q. Was it covered in snow?

17 A. Here and there, there was mud, but it was melting.
18 Must have melted that day so there was mud, mud and snow.

19 Q. Okay. So mud and snow.

20 Could you hear Chris Leech saying anything to Andy
21 and as you-all were walking?

22 A. No. No.

23 Q. Okay. So where did Chris Leech and Andy and Cleat
24 walk to? Where did they stop?

25 A. If wasn't too far down the -- I can remember there

1 was a tree, a small tree that was on the side of the -- side of
2 the trail.

3 Q. About how long do you think you guys were all walking
4 before they stopped time wise?

5 A. Not even -- not even five minutes.

6 Q. Okay.

7 A. Wasn't that far.

8 Q. And when they stopped were you still behind them?

9 A. Yes.

10 Q. The same distance or --

11 A. It was a little bit closer.

12 Q. A little bit closer?

13 A. Yeah.

14 Q. And where was Juice when they stopped?

15 A. He was behind me still.

16 Q. Still --

17 A. Yeah.

18 Q. -- close behind you or how far?

19 A. Maybe a couple feet, three feet. He wasn't as far
20 away as he was before -- as he was before.

21 Q. Had you two been having any conversation, you and
22 Juice?

23 A. No, not that I remember.

24 Q. Did anybody talk on the walk down to that location?

25 A. No.

1 Q. Okay. To your knowledge, when you-all stopped there,
2 who had weapons on them, firearms?

3 A. The only ones that I knew -- the only person I knew
4 that had any weapons was Chris.

5 Q. And he had the two?

6 A. Yes.

7 Q. Okay. What happened when you-all stopped there?
8 What did you see happen?

9 A. Chris had them kneel down on their knees.

10 Q. Who?

11 A. Andy and Cleat.

12 Q. Okay. And did they do that?

13 A. Yes.

14 Q. What happened next?

15 A. Chris shot Cleat and --

16 Q. Did you see Chris Leech shoot Cleat Knight?

17 A. Yes.

18 Q. Which weapon did he use? Do you know?

19 A. I don't know which weapon, which gun it was.

20 Q. And you were you said less than 15 feet from him when
21 this happened?

22 A. Yes.

23 Q. Where -- as far as your angle went, were you looking
24 at Chris Leech's back, his side? What were you looking at?

25 A. His side.

1 Q. Which side?

2 A. Right side.

3 Q. Right side. And as far as Cleat Knight goes, were
4 you looking at his back or his side?

5 A. His -- kind of his side and his back, kind of faced
6 away.

7 Q. Right or left?

8 A. His right.

9 Q. Right side. Okay. What specifically and I know you
10 can't move your arms, but if you could explain to us
11 specifically what you saw Chris Leech do.

12 A. Pull the gun up and shoot it.

13 Q. Did he extend his arm?

14 A. Yes.

15 Q. And he shot Cleat Knight?

16 A. Yes.

17 Q. How many times?

18 A. Once.

19 Q. Do you know where he was hit?

20 A. Either in the back of the head or the back.

21 Q. Was Chris -- was Chris Leech standing behind Cleat
22 when he shot him?

23 A. Yes.

24 Q. How far was he from Cleat, do you know, when he shot
25 him?

1 A. A couple feet.

2 Q. A couple feet. What happened to Cleat after he was
3 shot?

4 A. He fell and rolled down the hill.

5 Q. How -- do you know how long that hill was? How far
6 he rolled?

7 A. Maybe 10 feet.

8 Q. 10 feet?

9 A. Yeah. A slope.

10 Q. When Cleat rolled down that hill, could you still see
11 him? Could you still see where he was from where were you?

12 A. I could see just the dark -- like his -- I could see
13 where he was, but, you know, I couldn't tell if he was laying
14 on his back or his --

15 Q. So you could just see that his body was there
16 somewhere?

17 A. Yes.

18 Q. Okay. What happened after he rolled down that hill?

19 A. He didn't -- Chris said something to Andy and then
20 Andy got up and went down to down by Cleat.

21 Q. Could you hear what Chris said to Andy?

22 A. No.

23 Q. Did you hear any noise coming from Cleat after that
24 first shot?

25 A. I thought I heard him moan.

1 Q. Moaning. Okay. What happened after Andy got up?
2 A. Chris said something to Andy and then he went down by
3 down to where Cleat was.
4 Q. Who is "he?" Andy?
5 A. Oh, Andy.
6 Q. What did Chris Leech do?
7 A. Chris -- Chris went down -- went down to Andy and
8 gave him the gun.
9 Q. Okay. Did you see which gun he gave him?
10 A. No.
11 Q. Okay. Could you see at that point Cleat Knight,
12 Chris Leech, and Andy Beck from you where you were?
13 A. Yes.
14 Q. And what happened next?
15 A. Andy shot Cleat while he was laying there.
16 Q. How many times?
17 A. Once.
18 Q. What did Andy do with the gun after he shot Cleat?
19 A. He gave it back to Chris.
20 Q. Did you see where on Cleat's body Andy shot him?
21 A. No.
22 Q. Okay. After Andy shot Cleat what happened?
23 A. They came back up and started to walk back to the
24 truck. We all started to walk back.
25 Q. Andy and Chris?

1 **A.** Yes.

2 **Q.** And you-all start to walk back. Who was leading the
3 way?

4 **A.** Chris and Andy had past me and Juice so they were
5 leading the way.

6 **Q.** I'm going to ask you a question that I should have
7 asked you before. Andy's hoodie apparently got untied at some
8 point?

9 **A.** Yes.

10 **Q.** Do you know who did that?

11 **A.** I think he did. I'm not sure when he got it untied.
12 I don't --

13 **Q.** Do you think Andy did it or Chris? When you say
14 "he," I'm just trying to clarify who he is.

15 **A.** I don't know who did it.

16 **Q.** Okay.

17 **A.** I mean, I know he -- he had to have had his hands
18 untied before he did it. I think Andy --

19 **Q.** I'm talking about his hoodie.

20 **A.** I think Andy did it.

21 **Q.** Okay. You didn't see who untied Andy's hoodie?

22 **A.** No.

23 **Q.** But it was untied when he was walking back up?

24 **A.** Yes.

25 **Q.** Were his hands unbound?

1 A. Yes.

2 Q. And do you know who did that or when that happened?

3 A. I don't know when -- I don't know. I didn't see
4 when -- if anybody did it.

5 Q. Okay. So Andy and Chris then led the way back to the
6 truck?

7 A. Yes.

8 Q. Did Andy have a gun in his hand when -- as you were
9 walking back to the truck?

10 A. No.

11 Q. To your knowledge who had the two guns?

12 A. Chris had given me my gun back and I put it -- or
13 when we got to the truck I put it back in my truck.

14 Q. Okay. What happened with that gun? Where did it go
15 afterward?

16 A. I don't know. I gave it to Chris and I don't know
17 what happened to it.

18 Q. Why did you give it to Chris?

19 A. He was going to get rid of it.

20 Q. Did he tell you that?

21 A. Yes.

22 Q. When did he tell you that?

23 A. When we got back to the apartment.

24 Q. Okay. Where -- and at the apartment at Mann Way?

25 A. Yes.

1 Q. Okay. Did you ever see Andy with a gun after Cleat
2 was shot at any point?

3 A. No.

4 Q. Okay. And you don't know what happened to your gun?

5 A. No.

6 Q. Do you know what happened to the other gun?

7 A. No.

8 Q. Okay. Did the four of you then get back in the truck
9 and leave?

10 A. Yes.

11 Q. And where did you go?

12 A. We went back down the same way, down the -- down the
13 hill and started towards South Ogden.

14 Q. Did you end up back in Salt Lake?

15 A. Yes.

16 Q. Did you do that at any anybody's direction or did you
17 just drive back to Salt Lake?

18 A. It was just -- I just drove that way. I mean, I
19 figured we were going back to -- just back to the apartment so
20 that was the quickest.

21 Q. And you did go back to the apartment on Mann Way?

22 A. Yes.

23 Q. No stops at any time?

24 A. No.

25 Q. Did you guys have any ^{conversation}~~consideration~~ in the truck on

1 the way back?

2 A. Not really, no.

3 Q. All right. Do you know what time it was when you
4 back to Salt Lake or back to Mann Way I should say?

5 A. No, I don't remember but I remember the sun was
6 starting to come up so I don't know if it was either 5:00 or
7 6:00.

8 Q. Who was at the house when you got there on Mann Way?

9 A. Tina, Dawnie, Teresa and Susan.

10 Q. Okay. Where was Tina when you got back?

11 A. Upstairs laying down.

12 Q. Where did you go?

13 A. I went in -- actually, her mother was there still
14 sitting at the table. I went in and talked to her mom.

15 Q. Did you talk to Tina that night or that morning when
16 you got back?

17 A. Yes.

18 Q. Did you actually go and lay down in bed with her?

19 A. Yes.

20 Q. And did you have any conversation with her about what
21 had happened up at Snow Basin?

22 A. No.

23 Q. None at all?

24 A. No.

25 Q. Did she ask you?

1 **A.** Not that I remember, no.

2 **Q.** Okay. While you were back at Mann Way that morning,
3 did Chris Leech tell you to do anything in particular?

4 **A.** Detail my truck.

5 **Q.** Did you do that at any point?

6 **A.** No.

7 **Q.** You didn't. What did he tell you to do with your
8 clothes?

9 **A.** To get rid of them, get rid of -- but I --

10 **Q.** By doing what? Did he tell you to give them to
11 anybody?

12 **A.** Oh, yeah. Yeah. I didn't get rid of my clothes but
13 just my boots.

14 **Q.** Okay. Who did you give them to?

15 **A.** To Juice.

16 **Q.** To Juice. Did you shower there?

17 **A.** No.

18 **Q.** Did you change your clothes?

19 **A.** No.

20 **Q.** Did Chris tell anybody else to do anything once you
21 guys got back to Mann Way?

22 **A.** Not sure who told Andy to change his clothes.

23 **Q.** Did he change his clothes?

24 **A.** Yes.

25 **Q.** Did he shower?

1 A. Yes.

2 Q. And what happened to his clothes? ~ Do you know?

3 A. I gave them to Juice.

4 Q. Do you know what Juice did with your boots and Andy's
5 clothes?

6 A. No.

7 Q. Where did you --

8 MS. ROSSI: Actually, one second, please.

9 Q. (BY MS. ROSSI:) All right. TJ, I just have a couple
10 more questions for you and we're going to back up a little bit
11 because I missed a few things.

12 Did at any point you and Tina and Andy go driving
13 around looking for the rental car?

14 A. No.

15 Q. No. Okay. When -- well, did you ever see the rental
16 car back at the house? Did that rental car ever come back?

17 A. No, I didn't see it.

18 Q. You never saw it?

19 A. I didn't even know what it looked like.

20 Q. Okay. When you got to Uncle Chris's place the night
21 that Cleat was killed, when you got to Uncle Chris's apartment,
22 did Uncle Chris ever tell you where to park your truck?

23 A. No.

24 Q. No. And then finally, are you aware of what Juice
25 was told to do with the clothes, your boots, and Andy's

1 clothes?

2 A. Burn them.

3 Q. Who told him to do that?

4 A. I don't know. Chris.

5 Q. And how do you know he was told that?

6 A. Because we were giving him the clothes. I mean, my
7 boots.

8 Q. Did you hear Chris tell Juice to burn the clothes?

9 A. Yeah.

10 MS. ROSSI: Okay. I don't have anything further.

11 Thank you.

12 ~~THE COURT: All right. Cross-examination, Mr. Brass.~~

13 CROSS-EXAMINATION

14 BY MR. BRASS:

15 Q. Good morning. I want to go back to the beginning of
16 your testimony here today. You talked about your agreement
17 with the State. I think the words were -- you used was somehow
18 "up in the air."

19 Do you remember that?

20 A. Yeah.

21 Q. What part of is it "up in the air?"

22 A. I don't know exactly what it -- what the -- what it
23 is, what the deal is.

24 Q. And you don't -- is that because you don't understand
25 or because no one has told you what the deal is?

1 A. I don't -- I don't remember what it is.

2 Q. Okay. So you don't remember what it is. Do you know

3 what you're charged with now?

4 A. Murder and aggravated kidnapping, two aggravated

5 kidnappings.

6 Q. Right. And you certainly are aware that those are

7 extremely serious crimes, right?

8 A. Yes.

9 Q. And you're certainly aware that the State is offering

10 you a plea agreement to a lesser offense at least as far as the

11 murdered is concerned, right?

12 A. Yes.

13 Q. You're certainly hoping, sir, to limit your liability

14 or your exposure of punishment in this case?

15 A. Yeah, I guess.

16 Q. Did you understand what I said to you just now?

17 A. I'm sure how you -- I'm not sure what you said.

18 Q. Okay. If you don't understand what I'm saying any

19 time while we're talking this morning, you just tell me, okay?

20 A. Okay.

21 Q. All right. You don't want to get convicted of

22 murder, right?

23 A. No.

24 Q. You don't want to see yourself going away to prison

25 for a long period of time, right?

1 A. No.

2 Q. And so you've decided that the best thing for you to
3 do is to cooperate with the State, right?

4 A. Yes.

5 Q. Because you believe that they can help you, right?

6 A. Yes.

7 Q. And you believe that they can help you avoid some of
8 the punishment that you might get for a murder, right?

9 A. Yes.

10 Q. And limit some of the time that you might do in
11 prison, right?

12 A. Yes.

13 Q. In fact, you're hoping while you might not understand
14 what the deal is -- listen carefully to what I'm saying to you
15 -- you're hoping that the punishment in this case may be goes
16 down as far as probation, don't you? You hope that?

17 A. Who wouldn't? I mean, yeah.

18 Q. Yeah. Who wouldn't, right? And you're hoping for
19 that, too, right?

20 A. Yes.

21 Q. Yes? And so you've decided you're going to cooperate
22 with the State, right?

23 A. I was going to come in and tell the truth anyway.

24 Q. Okay. And who decides that?

25 A. Me.

1 Q. You decide if you're telling the truth?

2 A. No, that I was going to come in and tell the truth.

3 Q. I understand. In an effort, as you said, to limit

4 your exposure to some of these crimes, right?

5 A. You know, at first when I came in I didn't get -- I

6 didn't get a deal. I didn't ask for a deal when I came in.

7 Q. You're asking for one now?

8 A. Yes.

9 Q. Okay. So you're going to tell the truth, right?

10 A. Yes.

11 Q. All right. I want to talk to you about what the

12 truth is, okay, the things that you've talked about here this

13 morning. One of the things that you said, sir -- and you have

14 a clear recollection of this, don't you, was that the two

15 gentlemen, Chris, Cleat -- I'm sorry.

16 Cleat and Andy were kneeling before Cleat was shot,

17 right?

18 A. Yeah.

19 Q. They were on their knees with their legs behind them,

20 right?

21 A. Yes.

22 Q. You can picture this in your mind right now, right?

23 Yes?

24 A. Yes.

25 Q. That's the way it happened, right?

1 A. Yes.

2 Q. Okay. Then I want to talk about driving around and
3 looking for people or looking for a particular rental car.
4 It's your testimony that the only person that you ever drove
5 around looking for a rental car with was Tina, right?

6 A. No, I said Juice and Dawnie were with us.

7 Q. Okay. Juice and Dawnie were with you as well?

8 A. Yes.

9 Q. But never Andy?

10 A. No.

11 Q. Okay. You're certain about that, right?

12 A. Yes.

13 Q. Okay. When you went out looking for them, for the
14 rental car, with the people that you've mentioned, Mr. Leech
15 was in the home, the Mann Way home, right?

16 A. Yes.

17 Q. He was there, you saw him, right?

18 A. (Witness nods head.)

19 Q. Yes?

20 A. Yes.

21 Q. Okay. And when you came back from however long that
22 took -- and how long was it that you were out looking?

23 A. I'm not sure how long it was.

24 Q. 15 minutes? 20 minutes?

25 A. Hour, hour and a half.

1 Q. Hour, hour and a half. Okay.
2 And when you come back you see Mr. Leech again,
3 right?
4 A. Yes.
5 Q. Okay. You go in the house and there he is, right?
6 A. Yes.
7 Q. And at some point in time you go out in the garage
8 and there is Andy, right?
9 A. Yes.
10 Q. Okay. You got high with Andy, right?
11 A. I got what?
12 Q. You got high with Andy?
13 A. Yes. Yes, I did.
14 Q. Okay. What happened was you come back, you go out in
15 the garage and you see Andy and there is some other guy there
16 that you don't know, right?
17 A. Yes.
18 Q. That you characterize as an Asian guy?
19 A. Yeah.
20 Q. And you wouldn't -- the two of them get high on
21 Methamphetamines, right?
22 A. Yes.
23 Q. You smoked it, right?
24 A. Uh-huh.
25 Q. Okay. Tina didn't go in the garage with you, did

1 you -- did she?

2 A. No.

3 Q. Okay. You never saw Tina in the garage at all, did
4 you?

5 A. No, I didn't.

6 Q. Okay. So you get high and then you go back inside
7 and you sit down at the table, right?

8 A. Yes.

9 Q. Did you ever see a young kind of slender, small-ish
10 20-year old girl with long black hair there that night?

11 A. I don't remember.

12 Q. Do you remember when you came out of the holding cell
13 the other day and you looked at somebody that was sitting
14 there?

15 A. Yes.

16 Q. Had you ever seen her before?

17 A. I -- I recall it might have been her that I saw in my
18 truck.

19 Q. Oh, in your truck?

20 A. Yes.

21 Q. She was in your truck at some point I take it?

22 A. Yes.

23 Q. Okay. When?

24 A. I took Tina to a place on 21rd South and about 9th
25 East somewhere over there. And I guess the girl knew Tina and

1 she jumped in the truck and she was talking about Cleat, if
2 that's his girlfriend.

3 Q. Just like that. You're not sure that that's the same
4 person you're talking about?

5 A. She had dark hair like that. I didn't look at her,
6 she was in the back.

7 Q. All right. That night was there a taller -- taller
8 than you are, slender-ish white guy there as well in the house?

9 A. A tall -- I don't remember.

10 Q. Okay. Were you wearing a bandanna over your face
11 that night?

12 A. No.

13 Q. Never?

14 A. Never.

15 Q. That never happened?

16 A. No.

17 Q. There was no point in time during the evening that
18 we're talking about where you concealed partially your face
19 with a bandanna?

20 A. No.

21 Q. And you would occasionally lift it up maybe to take a
22 smoke, that never happened, right?

23 A. No.

24 Q. Okay. In fact, you're smiling right now, the record
25 might not reflect that, but that amused you, didn't it? You

1 thought that was funny, right?

2 A. Don't know why I would wear a bandanna at all.

3 Q. Because it never happened, right?

4 A. No.

5 Q. I mean, you weren't some 1800s bank robber, right?

6 A. No.

7 Q. Okay. And this other guy, you don't even remember
8 there being a white guy there, right?

9 Did you see anybody else in the kitchen that was
10 wearing a bandanna that night?

11 A. No.

12 Q. Okay. So let me make sure I have the sequence right.
13 You go out in the garage, you get high with Andy, Andy doesn't
14 seem distressed at all, does he?

15 A. He's just sitting there. I mean --

16 Q. Normal right? He's normally Andy?

17 A. I don't know. I don't know Andy.

18 Q. Okay. You don't know him, fair enough.

19 You don't know this guy, nonetheless, you get high
20 with him, right?

21 A. Yes.

22 Q. You go back in the kitchen and you sit down at the
23 table, right?

24 A. Yes.

25 Q. And mom is there and her name is what?

1 A. Susan.

2 Q. Okay. And Susan, I take it, from your testimony is a
3 person that you like?

4 A. Oh, yeah.

5 Q. You feel -- you're fond of her, right?

6 A. Yes.

7 Q. Somebody you've known for a while, right?

8 A. Yeah.

9 Q. I mean, somebody you have sort of a social
10 relationship with, right?

11 A. Yes.

12 Q. Through her daughter, correct?

13 A. Yes.

14 Q. All right. And you're downloading music, right?

15 A. Yes.

16 Q. And you're playing music, right?

17 A. Yes.

18 Q. And you've just finished smoking meth, right?

19 A. Yes.

20 Q. Which make you feel how?

21 A. It -- it doesn't do much to me actually.

22 Q. So you can smoke meth and it doesn't do much to you?

23 A. I would have to do a lot. I mean, just doing --
24 smoking once doesn't really -- I could go to sleep. I mean, I
25 could -- doesn't do a whole lot to me.

1 Q. Is that because you're accustomed to using meth?
2 A. No, I've never done it before last year.
3 Q. Okay. Was that the first time you had ever done
4 meth?
5 A. That night, no.
6 Q. Was it the first time that day that you had done
7 meth?
8 A. No.
9 Q. You did it earlier in the day as well?
10 A. Just a little bit.
11 Q. Okay. When?
12 A. Before I went to Tina's.
13 Q. So right before. Then when you got to Tina's you did
14 it again, right? You're saying that you've used it twice now,
15 it's not effecting you though, right?
16 A. Yes.
17 Q. It doesn't make you anxious or feel agitated in any
18 way?
19 A. It doesn't if you do a lot -- or if I do a lot.
20 Q. If you do a lot. Okay.
21 Did you do any other drugs that day?
22 A. No.
23 Q. Just those two times or was there more than that?
24 A. That was it.
25 Q. Okay. So you've smoked meth, however much meth you

1 smoke. You go in and you sit down at the table and you're
2 talking to Susan, right? Yes?

3 A. Yes.

4 Q. And Susan is a person who interests you, right?

5 A. Yeah.

6 Q. Maybe -- she's a person that you have this
7 relationship with, right? You're focused on her, right?

8 A. Yeah.

9 Q. Okay. You're not, like, looking around and not
10 trying to talk to her. I mean, you're there to talk to her at
11 the table, right?

12 A. Yes.

13 Q. And you're downloading music, right?

14 A. Yes.

15 Q. And you're playing music, too, right?

16 A. Yes.

17 Q. And it's during this time that Leech and Tina are
18 having a conversation in a completely different room, right?

19 A. Yeah.

20 Q. That's the one that the prosecutor there
21 characterized as "tense and agitated," right? Remember that?

22 A. Yes.

23 Q. I want to talk to you about that. You can't see
24 them, right?

25 A. No.

1 Q. Were you're sittid -- or seated, you can't see that
2 at all, right?

3 A. No.

4 Q. You can't see their faces?

5 A. No.

6 Q. Yes? So you can't tell us anything about how they
7 looked, right?

8 A. No.

9 Q. Okay. You've consumed a controlled substance, you're
10 listening to music and you're talking to Susan, that's where
11 your focus is, right?

12 ~~MS. ROSSI: Objection. Asked and answered.~~

13 ~~THE COURT: Overruled.~~

14 Q. (BY MR. BRASS:) That's where your focus is, right?

15 A. Yeah.

16 Q. You're not paying attention to what's going on in
17 that other room at all, are you, sir?

18 A. No. But when they come into the living room or the
19 kitchen.

20 Q. Okay. I'm talking about this conversation that was
21 characterized as "tense and agitated" in the other room, right?
22 Okay. Give me a word that was used in that conversation by
23 either one of them. One word. Any word.

24 A. I can't.

25 Q. Yeah. Couldn't hear them, right?

1 A. No.

2 Q. Okay. When they come back into the kitchen there is
3 no more conversation, is there?

4 A. No.

5 Q. Yeah. Whatever happened in the other room, you have
6 no idea what was going on in there, do you?

7 A. No.

8 Q. So when someone says it was a tense and agitated
9 conversation, you, sir, have no basis for that opinion
10 whatsoever, do you?

11 A. Not at that time.

12 Q. Right. But when they come back in the kitchen no one
13 says anything, right?

14 A. No. You can tell they are agitated.

15 Q. Just by looking at them?

16 A. Because -- well, the way they're walking around or
17 Chris is walking around, just in a hurry.

18 Q. You have no idea what took place in the other room?

19 A. No.

20 Q. Nor what was said, right?

21 A. No.

22 Q. Okay. So when someone wants you to characterize that
23 conversation in the other room as tense and agitated, you have
24 no basis for that?

25 A. Okay. No.

1 Q. Okay. That's their words and not yours, right?
2 A. Who is "their?"
3 Q. The prosecutor's words, right?
4 A. Yes.
5 Q. Okay. And you want to tell the truth, right?
6 A. Yes.
7 Q. I mean, that's part of the deal, so tell the truth.
8 When you return from this search that you did -- I
9 want to be clear on this, I'm going to ask you again, I have
10 asked you this already. But Mr. Leech was there, right?
11 A. From what search?
12 Q. Searching for the rental car.
13 A. Oh, yes.
14 Q. Okay. Tina was with you, right?
15 A. Yes.
16 Q. Tina comes into the house at the same time, right?
17 A. No.
18 Q. She doesn't come into the house at the same time?
19 A. They went in before because --
20 Q. Okay. Fair -- fair enough. Tina goes in first. How
21 much afterwards do you come in?
22 A. I park the truck and then just a minute or two.
23 Q. So a minute or two. You're just behind them long
24 enough -- you drop them off, you park the truck, inside you go,
25 right?

1 A. Yes.

2 Q. So you don't see Mr. Leech pull up in a truck, do
3 you?

4 A. I don't -- I don't recall them going up.

5 Q. You recall -- what you do recall is you go inside and
6 there he is, right?

7 A. Yes.

8 Q. Okay. During the time that you were in the Mann Way
9 house before you went over to Uncle Chris's, you did not hear
10 Tina give directions to anyone about anything they were
11 supposed to do, right?

12 A. No.

13 Q. Never gave you any directions to do anything that
14 night, right?

15 A. No, except to look for Andy -- or not a -- the rental
16 car.

17 Q. Right. But that was a request earlier, right? She
18 said, "Hey, will you help me look for this car," right?

19 A. Yes.

20 Q. Now you're back in the house. Okay. We've done
21 that, search is over, we're in the house. She never tells you
22 to do anything that night, right?

23 A. I can't remember if it was her or Chris that said to
24 go to Uncle Chris's house.

25 Q. You don't remember who it was now that told you that,

1 right?

2 A. It was Tina. It was Tina.

3 Q. You sure about that?

4 A. Because I don't know -- I don't think Chris knew
5 where Uncle Chris's house was or even knew Uncle Chris.

6 Q. Okay. When you get to Uncle Chris's house and Tina
7 is there, you with me? She arrives at some point in time with
8 her sister, right?

9 A. Yes.

10 Q. And you see them off someplace talking to one
11 another, you can't hear what they're saying, right?

12 A. No.

13 Q. Okay. Does you she give you any directions while
14 you're there at Uncle Chris's?

15 A. No.

16 ~~MR. BRASS: Okay. That's all I have. Thanks.~~

17 ~~THE COURT: Thank you.~~

18 ~~Mr. Corum~~

19 ~~MR. CORUM: Thank you, Judge.~~

20 ~~CROSS-EXAMINATION~~

21 ~~BY MR. CORUM:~~

22 Q. Do you -- excuse me. TJ, do you know a Chris Clyde?

23 A. Chris Clyde?

24 Q. Or Chris Klein.

25 A. I don't think so. I don't --

1 Q. Were you ever shown photos of various people by the
2 police or the FBI?

3 A. Yeah, I recall them showing me some pictures.

4 Q. Do you recall in relation to what? Were they asking
5 you to identify somebody? Was it a --

6 A. It was the -- an Asian.

7 Q. Okay. So --

8 A. The Asian guy that I didn't know who -- who he was.

9 Q. Okay. So they had you look at some photos?

10 A. Yeah.

11 Q. Like how many photos?

12 A. It was -- they were in a book so I --

13 Q. Okay. And were you able to identify anybody?

14 A. I wasn't sure who -- I don't think I did. I wasn't
15 sure -- I didn't recognize anybody in there.

16 Q. Where there -- had you ever seen the other Asian guy
17 before?

18 A. Maybe twice.

19 Q. Okay. But you have no idea what his name was, what
20 his street name was?

21 A. No. I -- Smiley or Happy Face or something. I don't
22 -- Happy or -- I don't remember.

23 Q. Okay.

24 A. I don't.

25 Q. You weren't talking to him, you weren't getting to

1 know him?

2 A. I went out to have a cigarette once and that was it
3 and he was outside smoking a cigarette. I didn't talk to him.

4 Q. But at some point you actually smoked meth with him,
5 don't you?

6 A. Yes.

7 Q. How does that happen? Just let -- and we will go
8 back and forth a little bit. But you go into the garage,
9 right, and Andy is there sitting down?

10 A. Yes.

11 Q. Right? And the other Asian guy is also sitting down
12 or is he standing up?

13 A. He was sitting down.

14 Q. Okay. How does it come to be that you start smoking
15 meth?

16 A. At that moment?

17 Q. Yeah.

18 A. They were -- had a pipe out there and they were
19 smoking it.

20 Q. Who?

21 A. Andy and the Asian guy.

22 Q. Okay. So they are passing a pipe back and forth
23 between them?

24 A. Yeah.

25 Q. Okay. Who do you see pass the pipe to who?

1 **A.** Pass it to who?

2 **Q.** Yeah. I mean, is it -- does Andy pass it to the
3 Asian guy? Does the Asian guy pass it to Andy? How does that
4 work? Or are they going back and forth?

5 **A.** Just back and forth.

6 **Q.** How long are they smoking meth together?

7 **A.** I have no idea.

8 **Q.** Okay. But at some point somebody offers you some?

9 **A.** Yeah.

10 **Q.** Do you say hey, let me smoke some of that or do they
11 offer it up to you?

12 **A.** They offered it.

13 **Q.** Okay. Who offered it to you?

14 **A.** Andy.

15 **Q.** Okay.

16 **A.** Andy just put it out towards me and I --

17 **Q.** And you took it?

18 **A.** Yeah.

19 **Q.** And then so how long are you smoking meth in the
20 garage with them?

21 **A.** Just a couple of hits and that was it.

22 **Q.** Okay. And then you go where?

23 **A.** Back in.

24 **Q.** Okay. So when you're at the Mann Way house before
25 you leave to go to Uncle Chris's house, you're essentially -- I

1 believe what your testimony is, is you're either in the garage
2 or you're seated at the kitchen table the whole time?

3 A. Unless I went to the bathroom.

4 Q. Okay. Where is the bathroom?

5 A. There is two bathrooms. There is one upstairs and
6 there is one downstairs.

7 Q. Okay. Would you have gone upstairs to use the
8 bathroom?

9 A. I would have gone upstairs.

10 Q. Okay. Did you use the bathroom?

11 A. Yeah.

12 Q. Okay. How many times did you use the bathroom?

13 A. I don't remember.

14 Q. Do you recall about how long you would have been gone
15 from going to use the bathroom?

16 A. A couple minutes.

17 Q. Okay. So maybe a couple of minutes in the entire
18 time you're at Mann Way, you're not sitted -- seated at the
19 table or in the garage?

20 A. Yeah.

21 Q. Okay. And are you -- and it's my understanding from
22 where you're sitting at the kitchen table you could see the
23 people coming and going from the garage?

24 A. I'd had my back to them.

25 Q. Okay. Would you notice people coming in and out of

1 the garage or is that something that could have happened and
2 you wouldn't have been aware of it?

3 A. I would notice.

4 Q. Okay. Do you recall some people from Vernal being
5 there?

6 A. I recall a guy from -- seeing a guy from the Uinta
7 Basin.

8 Q. Okay. Do you recognize that guy?

9 A. I don't know who he -- I've never met him before.

10 Q. Okay. How did you know he was from the Uinta Basin?

11 A. He talked about a lady that was from there, I guess.

12 Q. With you?

13 A. I just overheard him.

14 Q. What -- can you describe this guy? Is he white?
15 Hispanic?

16 A. Just white. Cowboy, I guess. I don't know. I --

17 Q. Okay. Is there a girl there, too, with him?

18 A. I don't remember if there was.

19 Q. Okay. So how many people would you estimate are in
20 the -- excuse me, at the Mann Way house when you're there?

21 A. Six or seven.

22 Q. Okay.

23 A. About eight or nine 'cause --

24 Q. Okay.

25 A. Yeah.

1 Q. Okay. And how long are you there at the Mann Way
2 house?

3 A. I don't remember how long I was there.

4 Q. Okay. Now when ~~Mr. Brass~~ was asking you questions
5 about smoking meth, I mean, is what you're saying that you
6 were -- you were essentially sober after smoking meth twice?
7 It really didn't have an effect on you or was it effecting you?

8 A. It wasn't really effecting me. After that I didn't
9 smoke anymore because I figured I'd be driving.

10 Q. Okay. And had you been drinking or anything?

11 A. No.

12 Q. Okay. So aside from the smoking the meth twice,
13 there was no other substances? No drinking?

14 A. No.

15 Q. No other drugs?

16 A. No.

17 Q. Okay. And while you were at the Mann Way house, what
18 do you think is going on?

19 A. I didn't know anything was going on until Chris
20 started showing his gun.

21 Q. Okay. And then what do you think is going on?

22 A. Well, they were trying to get Tina's rental back.

23 Q. Okay. Well, you knew that before though?

24 A. Yeah. But I figured, you know, they were -- Andy was
25 the one that supposedly had it so they were mad at Andy.

1 Q. Okay. So when you're at Mann Way and you know
2 they've been -- y'all have been looking for the car, the rental
3 car, right, already?

4 A. Yes.

5 Q. And then you see Chris Leech with a gun, right?

6 A. Uh-huh.

7 Q. And you described him as being agitated, right?

8 A. Yes.

9 Q. What do you think is happening at that point?

10 A. That they can't find the rental car.

11 Q. Okay. What about when he asks you if you have your
12 gun, what do you think is happening then?

13 A. At the Mann Way --

14 Q. Yeah.

15 A. -- when I get it? That he wanted to see my gun.

16 Q. Did you have any concerns about that?

17 A. I did but I went and got it anyway.

18 Q. Okay. And then you go outside together, right?

19 A. Yes.

20 Q. And you get in your truck?

21 A. Yes.

22 Q. Was there anything blocking your truck?

23 A. No.

24 Q. Anybody parked behind you?

25 A. There might have been.

1 Q. Okay. What was parked behind you?
2 A. I don't think anything was behind me.
3 Q. Okay. So you could have left at that point?
4 A. Yes, I could have.
5 Q. Right? I mean, you're in this situation, you already
6 see Mr. Leech with a gun inside the house, right?
7 A. Yes.
8 Q. And you know they're looking for somebody?
9 A. Yes.
10 Q. And he tells you to go get your gun?
11 A. Yes.
12 Q. Okay. So what are you thinking is going on at this
13 point?
14 A. I wasn't sure.
15 Q. Okay. But nevertheless, you go into your truck,
16 bring your gun, right?
17 A. Yeah.
18 Q. Back into the house, right?
19 A. Yes.
20 Q. Show it to Mr. Leech?
21 A. Yes.
22 Q. Do you give it to him?
23 A. Yeah.
24 Q. Okay. So you hand your gun over to Mr. Leech?
25 A. I take the -- yeah, I take -- usually take the

1 magazine out.

2 Q. Okay. So you had enough concern with giving your gun
3 to Mr. Leech that you take the that magazine out?

4 A. Well, I usually take the magazine out.

5 Q. Okay. Did you take the magazine out?

6 A. Yes.

7 Q. Okay. That's just your normal practice whenever you
8 hand --

9 A. Yeah, and the safety is usually on.

10 Q. Okay.

11 A. There is never a bullet in the chamber.

12 Q. Okay. And then he gives the gun back to you?

13 A. Yes.

14 Q. And then you go back out to your truck. Does he say
15 anything to you about the gun?

16 A. Just says "Nice, nice gun."

17 Q. Okay. And then you go back out to your truck, right?

18 A. Yes.

19 Q. And put the gun back in?

20 A. Yes.

21 Q. And then you come back in the house?

22 A. Yes.

23 Q. And at this point you're thinking what?

24 A. That I'm glad my truck is -- my gun is in my truck.

25 Q. Okay.

1 A. I'm not -- you know, I'm not carrying it around.
2 Q. Why?
3 A. Why what?
4 Q. Why aren't you carrying it around?
5 A. What do you mean?
6 Q. Why aren't you carrying your gun around?
7 A. 'Cause I don't need to.
8 Q. Okay. Because you didn't have any concerns about
9 your safety at that point?
10 A. I -- I didn't start carrying it in my truck until
11 maybe a month earlier than that.
12 Q. I'm talking about that night.
13 A. But -- but I carried it 'cause I was concerned of my
14 safety.
15 Q. Okay. You started carrying it a month before because
16 you were worried about your safety?
17 A. Yes.
18 Q. What about that night when you go and put your gun
19 back in your truck, are you concerned for your safety at that
20 point?
21 A. No.
22 Q. Okay.
23 A. I was worried, but not concerned for my safety.
24 Q. Worried about --
25 A. Because there is gun play.

1 Q. What's that?

2 A. There is gun shown. Guns were shown.

3 Q. Okay.

4 A. That wasn't mine is what worried me.

5 Q. Okay. But nevertheless, you went and put your gun

6 away?

7 A. Yes.

8 Q. Okay. And then you came back in the house?

9 A. Yes.

10 Q. In the house for some period of time and then y'all

11 leave to go to Uncle Chris's house?

12 A. Yes.

13 Q. Right. You had described -- I think one of the first

14 questions you were asked by the prosecutor is how was Tina

15 getting her income and you said she was selling drugs.

16 A. How she was getting her what?

17 Q. Income.

18 A. Oh, yes.

19 Q. Do you remember that question?

20 A. Yes.

21 Q. And you said she was selling drugs?

22 A. Yes.

23 Q. Okay. How do you know that?

24 A. Because I drove her around.

25 Q. Okay. So you helped her in that enterprise?

1 **A.** I -- yes.

2 **Q.** Okay. You helped her deliver drugs to people?

3 **A.** No, I just pick -- she would pick up.

4 **Q.** Pick up what?

5 **A.** Pick up drugs from people.

6 **Q.** Okay. So you wouldn't deliver drugs to people, you

7 would get drugs from people?

8 **A.** Yes.

9 **Q.** Okay. And collect money from people?

10 **A.** I didn't collect any money. I don't -- all I did was

11 drive -- drive her around.

12 **Q.** Did you know what was going on --

13 **A.** Oh, yeah.

14 **Q.** -- or is this one of those situations --

15 **A.** Yes, I did.

16 **Q.** -- you just had no idea?

17 Okay. Did you ever act as muscle for Tina in the

18 drug trade?

19 **A.** No.

20 **Q.** Did Juice?

21 **A.** I don't know.

22 **Q.** Okay. You were Tina's boyfriend throughout this

23 period of time, right?

24 **A.** Yeah, you can say that.

25 **Q.** You have described yourself as Tina's boyfriend?

1 A. Yes.

2 Q. During this period of time, correct?

3 A. Yes.

4 Q. And other people considered you Tina's boyfriend

5 during this period of time, correct?

6 A. Yeah, I guess.

7 Q. Okay. How often were you seeing Tina?

8 A. How often?

9 Q. Yeah.

10 A. Maybe a couple times a week.

11 Q. Okay. Were you ever aware of Chris Leech helping her

12 in the drug trade?

13 A. No.

14 Q. Okay. Were you ever aware of Juice helping her sell

15 drugs?

16 A. No.

17 Q. Okay. Just you?

18 A. Yeah, I guess. I guess.

19 Q. Well, do you know of anybody else that was helping

20 her?

21 A. What do you mean "helping her?"

22 Q. Driving her around, collecting debts.

23 A. Andy.

24 Q. Okay.

25 A. I don't know if there was anybody else. I don't

1 know.

2 Q. Okay. Do you know an Alex Vasquez from Vernal?

3 A. Who?

4 Q. Alex Vasquez.

5 A. Alex. I don't think so.

6 Q. Okay. Did you go to Tina's house that day just for a
7 social visit or was there some purpose to you going to Tina's
8 house? Had she called you and told you to come over?

9 A. I just went over to see her. I mean, a just social.

10 Q. Okay. Do you recall where -- what does Chris Leech
11 drive?

12 A. He didn't drive.

13 Q. Okay. He didn't?

14 A. Didn't have a vehicle.

15 Q. Okay. You never saw him driving a blue truck?

16 A. I knew that he would drive Teresa's black truck, but
17 I didn't --

18 Q. Okay.

19 A. I don't remember a black truck -- or a blue truck.

20 Q. What kind of truck does Teresa have? Excuse me.

21 A. She had sold her truck but it was black F150.

22 Q. Was it a diesel?

23 A. No.

24 Q. Was it, like, jacked up or anything? Was it --

25 A. Yeah.

1 Q. -- tricked out?

2 A. Yeah, it was lifted and had rims.

3 Q. Okay. Did you see Teresa's truck there that day?

4 A. I don't remember if I saw it because I can't remember
5 when she sold it. I just know one I showed up -- showing and
6 it was sold and -- I think she had a rental car.

7 Q. And again, at Mann Way, do you not see Andy Beck come
8 in the garage?

9 A. No.

10 Q. Okay. And you have no idea when he came into the
11 garage?

12 A. No, I have no idea when he arrived there.

13 Q. Okay. And I believe you've already answered the
14 woman who you saw in court yesterday, don't know who she is?

15 A. No.

16 Q. She may have been somebody you picked up somewhere on
17 9th East or 21st --

18 A. I didn't pick her up. She was there -- she went
19 to -- I'm guessing she was there to buy meth -- or not meth,
20 bath salt from somebody.

21 Q. Where is "there?"

22 A. Like 21st South and it was a place.

23 Q. Okay. So you're saying that you -- the only previous
24 interaction you had with her you think was at --

25 A. I think it was her. I mean, I remember she had dark

1 hair, kind of looked like her, but I didn't look at her. She
2 got in my -- in the back seat of my truck.

3 Q. For what purpose?

4 A. To talk to me or to talk to Tina.

5 Q. Okay. About bath salts?

6 A. No.

7 Q. About what?

8 A. About Cleat.

9 Q. Okay. So your recollection is that you drove
10 somewhere in the area of 9th East and 21st South during this
11 whole thing looking for Cleat?

12 A. No. No. This was -- this was after, maybe -- after
13 that -- after that happened. It was maybe a week or two after
14 that.

15 Q. Okay. So a week or two after you see somebody you
16 think is Ms. Gallegos get in your truck and talk to Tina about
17 Cleat?

18 A. Yeah, she was wondering where Cleat was.

19 Q. Okay. What was said?

20 A. She was saying something about him not calling her,
21 wondering why he hadn't called and why -- and she thought
22 something -- maybe something happened to him. And then she
23 said something about questioning why Andy was wearing Cleat --
24 a pair of Cleat's shoes.

25 Q. Okay. So you -- had you seen --

1 A. And I thought that was his -- Cleat's girlfriend
2 because she talked about having a baby with him.

3 Q. Okay.

4 A. So I -- that's -- I just assumed that.

5 Q. Okay. Was that before you start talking to the
6 police?

7 A. Yes.

8 Q. Okay. You never saw anybody wearing a bandanna at
9 the Mann Way house?

10 A. No.

11 Q. You never saw anybody with a gun other than
12 Chris Leech?

13 A. No.

14 Q. And yourself?

15 A. No.

16 Q. Never saw Juice with a gun?

17 A. No, I didn't.

18 Q. Did you -- how long did you have your gun in the
19 house would you say?

20 A. Five, minutes, 5, 10 minutes.

21 Q. Did you do anything with it other than show it to
22 Chris?

23 A. No, I showed him it had a laser and --

24 Q. Okay. So then somebody tells you that you're all --
25 you're all driving to Uncle Chris's house, right?

1 A. Yeah.

2 Q. And your recollection is that might have been Tina?

3 A. Yeah, I'm thinking it was Tina.

4 Q. Okay. And so you and Chris and Juice get in your
5 truck, right?

6 A. And Andy.

7 Q. And Andy. And how does Andy get in the truck?

8 A. I'm not sure.

9 Q. Okay.

10 A. Because I was in the truck already, I wasn't paying
11 attention.

12 Q. Okay. So when you were driving to Uncle Chris's
13 house what do you think is going on here?

14 A. That they're going to go meet Cleat over at --

15 Q. Okay.

16 A. Over there to get the rental car back.

17 Q. And then what is going to happen? I mean, what do
18 you think is going to happen?

19 A. I don't know what's going to happen.

20 Q. Okay. That he's going to get, like, a stern talking
21 to or do you think someone is going to get killed?

22 A. I didn't think anyone was going to get killed. I
23 thought maybe they'd get it back. At the most I thought
24 someone may be get their butt kicked, you know.

25 Q. Okay. So at that point your concern was or the thing

1 you thought was going to happen was maybe somebody was going to
2 get beat up?

3 A. Yeah.

4 Q. Okay. Even with what you described as gun play or
5 people having guns?

6 A. Yeah.

7 Q. People being agitated?

8 A. Yeah.

9 Q. Is this something you've experienced before?

10 A. Yes.

11 Q. Okay.

12 A. I grew up on the reservation.

13 Q. Okay.

14 A. It was different than here.

15 Q. So this kind of thing wasn't really concerning --
16 overly concerning to you?

17 A. It was a little bit. I mean, it will -- it's enough
18 to worry you, but you don't expect it to go as far as it did.

19 Q. Okay. So you've had previous experience of it
20 getting like this far but not going further?

21 A. Yes.

22 Q. Okay. And so get to -- you get to Uncle Chris's
23 house and at some point Cleat shows up, correct?

24 A. Yes.

25 Q. Do you see him come in?

1 A. Yeah.

2 Q. Are you outside when he comes in or are you inside?

3 A. I'm inside.

4 Q. But you spent some time outside when this was going
5 on?

6 A. Okay. I probably spent most of the time outside.

7 Q. Okay. Outside in the backyard?

8 A. Yeah.

9 Q. Is there a gate back there?

10 A. No.

11 Q. Is there a fence?

12 A. There is a -- the apartment is not facing the road,
13 it's kind of facing east and the main road is north. So you
14 kind of walk past the other apartments to get to his, which is
15 in the -- toward the back. So you go through a gate in the
16 front up by the road. It's kind of a weird...

17 Q. I'm sorry, this is my confusion. This isn't a
18 backyard or anything, you're just outside of the apartment,
19 right?

20 A. Yes.

21 Q. Okay. You're not on, like, a balcony or anything --

22 A. No.

23 Q. -- or a backyard, you were physically outside of the
24 apartment?

25 A. Yes.

1 Q. And the door is closed?
2 A. Yes.
3 Q. To the apartment?
4 A. Yes.
5 Q. So nobody inside can see where you are or what you're
6 doing?
7 A. No.
8 Q. Okay. And you just sit there smoking cigarettes?
9 A. Yeah.
10 Q. How long would you say you were outside?
11 A. I don't know, I would go in and out. I mean, I
12 didn't stay outside the whole time.
13 Q. Why were you staying outside?
14 A. I said I didn't stay outside the whole time.
15 Q. Okay. Why were you outside? Just to smoke?
16 A. Yeah.
17 Q. Okay. And then when do you see Cleat?
18 A. By the time Cleat got there I was inside.
19 Q. Okay. And he just walks in by himself?
20 A. No.
21 Q. Who is with him?
22 A. Chris.
23 Q. And is Chris holding him?
24 A. Yes.
25 Q. And then your testimony, I believe, is Chris tells

1 him to get down on the ground?

2 A. Yeah.

3 Q. Okay. And where is Andy?

4 A. He's right -- he is there.

5 Q. There where?

6 A. At first he was sitting on the couch and then he

7 got -- Chris told him to get up when they were -- when he came

8 in with Cleat.

9 Q. Okay. So he tells them both to get down at the same

10 time?

11 A. Yes.

12 Q. And then -- and then what happens?

13 A. That's when he asks me to see if I had a -- he asked

14 me if I had rope.

15 Q. Okay. Did you know what he wanted the rope for?

16 A. Yeah, I did.

17 Q. Okay. Is this one of those things like you've gotten

18 in the past up to this point but hadn't really gone past this?

19 A. As far as -- no, I've never tied anybody up.

20 Q. Okay. But you carry speaker wire in your truck?

21 A. Yes.

22 Q. Why do you speaker wire in your truck?

23 A. I had a bag of tools like wire strippers and stuff

24 for like -- 'cause I did a -- I had helped my dad do a wire --

25 a stereo installation on his truck.

1 Q. Okay.

2 A. I had a bag of just tools and stuff.

3 Q. So he asks you for some rope or something, you know
4 it's to tie people up, right?

5 A. Yes. Yes.

6 Q. And you offer -- you don't have rope, but you offer
7 up, hey, I've got some speaker wire?

8 A. Yeah.

9 Q. That should work, right?

10 A. Yeah. Yeah, it did. It did.

11 Q. Okay. And then you go outside, right?

12 A. Yes.

13 Q. How far away is your truck parked from the apartment?

14 A. Maybe here to the trees outside. I'm not sure how
15 far that is.

16 Q. Okay. I'm not even going to guess.

17 A. Or farther than that it -- because it was out on the
18 main road and so I had to walk past all of the apartments to go
19 out there. Yeah.

20 Q. Okay. So it's a little bit of a walk for you to get
21 your car -- or truck?

22 A. Yes.

23 Q. You're out there, you're rummaging through your stuff
24 and you get the speaker wire, right?

25 A. Yes.

1 Q. About how long do you think you're outside getting
2 it?

3 A. It wasn't long because I had the bag sitting -- on
4 the back on the floor in the backseat -- or in the back.

5 Q. And then you go back in?

6 A. Uh-huh. Yes.

7 Q. And at this point there was still nothing preventing
8 you from just leaving, is there?

9 A. No, there wasn't.

10 Q. Okay. You could have left at any time during this
11 whole thing?

12 A. I believe me, I'm thinking about it now.

13 Q. And the answer to that is: You did not leave?

14 A. I did not.

15 Q. And you had every opportunity to leave, right?

16 A. I did.

17 Q. Even to the point where you're getting wire to tie
18 people up inside a house with people with guns, right?

19 A. Yes.

20 Q. And you still go back in that house?

21 A. I did.

22 Q. Okay. And you knew they were going to get tied up,
23 right?

24 A. Yes, I did.

25 Q. But your testimony is you thought maybe someone was

1 going to get beat up?

2 A. That was before that.

3 Q. Okay. Oh, before the wire?

4 A. Yes.

5 Q. So what do you think is going to happen when you

6 bring out the wire, start tying people up?

7 A. I don't know.

8 Q. Okay. You're still --

9 A. Oh, yeah, I was worried. But I didn't --

10 Q. You still went back in?

11 A. I didn't think it was -- I didn't think everyone

12 would get killed.

13 Q. Okay. You still went back in?

14 A. I did.

15 Q. Okay. And not only you go back in, but you actually

16 tie up one of them, right?

17 A. I tried to.

18 Q. Okay. What do you mean "you tried to?"

19 A. The speaker wire kept breaking.

20 Q. Okay.

21 A. And I apparently didn't know how to do it right.

22 Q. Okay. I believe your testimony was that you actually

23 did tie one of them up and --

24 A. Yeah, I did.

25 Q. -- Chris tied the other one up?

1 A. Yes.

2 Q. So through whatever amount of breaking speaker wire
3 or fumbling around, you actually did manage to tie somebody up?

4 A. Yes, I did.

5 Q. But you don't know who that was?

6 A. I don't remember who it was.

7 Q. Okay. Why don't you remember who it was?

8 A. Because I didn't look at them in the face, they had
9 the hoodies around their face.

10 Q. Okay. Aside from -- I mean, were they wearing
11 identical hoodies? Did they look very similar?

12 A. They looked familiar.

13 Q. Okay. But you knew Andy Beck, right?

14 A. Not really.

15 Q. Okay. You knew he had tattoos all over his hands?

16 A. Yeah, I'd seen that.

17 Q. Does Cleat -- did Cleat have tattoos all over his
18 hands, too?

19 A. No.

20 Q. Okay. Do you recall the person whose hands you were
21 tying up, were they tattooed or were they not tattooed?

22 A. I -- I don't know. I can't remember that.

23 Q. Okay. So you tie him up and then Chris ties up
24 some -- the other person.

25 A. Yes.

1 Q. Right? And then what happens?
2 A. That's when I was told to bring my truck around the
3 back.
4 Q. So you're -- again, you were -- you left?
5 A. Yes.
6 Q. And you got your truck?
7 A. Yes.
8 Q. Right? And your gun is in your truck, right?
9 A. Yes.
10 Q. Okay. And then you do whatever, you drive around the
11 back?
12 A. Yes.
13 Q. Okay. And then you wait for people?
14 A. Yeah.
15 Q. How long are you waiting for?
16 A. Like I said, I don't know, 20 minutes, somewhere in
17 there.
18 Q. So you're there out waiting for them for 20 minutes?
19 A. Yeah, I sat there for a while.
20 Q. Okay. Could have left at any point at that time?
21 A. Yes.
22 Q. Okay. And you got your gun with you, too, don't you?
23 A. Yes.
24 Q. Okay. But it's between the seat or under the seat?
25 A. At that time it was in between the seat --

1 Q. Okay. Had you moved the gun or was it in the same
2 place where you put it in Mann Way?

3 A. I had moved it.

4 Q. Okay. Why did you move it?

5 A. Because I was getting worried.

6 Q. Okay. But you still stayed, right?

7 A. Yeah, I did.

8 Q. Okay. You sat out there and smoked cigarettes you
9 think for about 20 minutes?

10 A. Yeah.

11 Q. And then you see Juice bring Cleat out I think you
12 said?

13 A. Yes.

14 Q. How do you know it's Cleat?

15 A. I didn't know it was Cleat until after they had
16 gotten in.

17 Q. Okay. What alerted ultimately to it being Cleat?

18 A. When I ultimately knew it was Cleat?

19 Q. Yeah. Yeah.

20 A. I didn't know it was him until he had -- Chris had
21 brought Andy out.

22 Q. Okay. So you recognized Andy?

23 A. Yeah.

24 Q. Okay. So Juice brings out Cleat and they get in the
25 car -- the truck, right?

1 A. Yes.

2 Q. And your recollection is they're both in the back?

3 A. Yes.

4 Q. And then how long after that does Chris bring out
5 Andy?

6 A. It wasn't very long, maybe --

7 Q. And then Andy gets put in the backseat?

8 A. Yes.

9 Q. Next to Cleat or next to Juice?

10 A. Next to Cleat.

11 Q. Okay. And then Chris gets in the front passenger
12 seat?

13 A. Yes.

14 Q. And then off you go?

15 A. Yes.

16 Q. And then how long do you think it takes you from that
17 point to get up to Kimball Junction?

18 A. I don't know.

19 Q. Okay. I think you testified you drove around a
20 little bit, you made a couple of turns.

21 A. I didn't drive around. We went straight to the
22 freeway.

23 Q. Okay.

24 A. I just didn't know that's where we were going.

25 Q. So you went -- essentially you went straight to the

1 freeway, got on to the freeway and then go to Kimball Junction?

2 A. Yes.

3 Q. Right? And do you know what time of day it is?

4 A. It's dark by then. I don't know what time. I can't
5 remember.

6 Q. Okay. If there is a gas receipt for about 3:00 in
7 the morning, does that sound about right?

8 A. I don't know what time it was, but there should be --
9 yeah, there should be. Yeah. Yeah.

10 Q. Okay. Was there anything going on about cell phones
11 at this time?

12 A. No. Chris had said to turn the cellphones off.

13 Q. Okay. So you did?

14 A. Yes.

15 Q. And just turned yours off, right?

16 A. Yeah.

17 Q. Did you take the battery out of it or anything --

18 A. No.

19 Q. -- or the sim card?

20 A. No.

21 Q. Okay. You just turned it off, put it your pocket?

22 A. Yeah.

23 Q. And then you get to Kimball Junction and what do you
24 see?

25 A. Three Summit County officers.

1 Q. Okay. Are they all in separate police cars?
2 A. Yes.
3 Q. Okay. So there is three cop cars right there, right?
4 A. Yes.
5 Q. Each with an officer in it?
6 A. I think there was only one that had an officer in it.
7 Q. Okay. And there is two other officers, what are they
8 doing? Talking or are they --
9 A. I think they were -- they were inside.
10 Q. Okay. So they're inside. Where are those cars
11 parked? Just like right in front of this gas station?
12 A. One was parked on the side. One was at the pump and
13 the other one didn't get there until after I started --
14 after -- after I had parked to get gas -- or fuel.
15 Q. Okay. And you say something, right? When you see
16 that, you say something, don't you?
17 A. I don't remember.
18 Q. Okay. I believe you testified you said something
19 like: Oh, shit it's -- the cops are here.
20 A. No, I said that before I even pulled in.
21 Q. Okay. So you definitely said something that there is
22 cops in this gas station we're pulling into?
23 A. Oh, yeah.
24 Q. Okay. And you used the word "police" or "cops" or
25 something?

1 A. Yes.

2 Q. Okay. Are the windows tinted in this truck?

3 A. The back windows are tinted darker than the front.

4 The front are just legal, I think.

5 Q. Okay. So let me ask you this: So you pull in, how

6 far away do you park from this cop car that's at the pump?

7 A. Behind it.

8 Q. Okay. So you park right behind this cop car?

9 A. It was further up. It was -- there is a lot of pumps

10 there, so he was at the farthest one in front of me and I

11 pulled in behind him and backed --

12 Q. Okay. How far away from this cop car would you say

13 you were?

14 A. Maybe here -- from here to the desk.

15 Q. Okay. So here to counsel table?

16 A. Yes. Yeah.

17 Q. Okay. And are your front windows tinted?

18 A. No.

19 Q. Okay. So you got two guys in the backseat of your

20 truck, right?

21 A. No, there is three guys.

22 Q. That are tied up?

23 A. There is three guys.

24 Q. Okay. Two of them are tied up, right?

25 A. Yes.

1 Q. With their hoodies tied up over their faces?
2 A. Yes.
3 Q. And it's your testimony you pull right up and behind
4 this cop car?
5 A. Yeah.
6 Q. And your front windows are clear?
7 A. Yes.
8 Q. Okay. Any concern that the police might actually see
9 this?
10 A. From me?
11 Q. Yeah.
12 A. Well, I -- I was concerned. I mean, they pulled us
13 over and then they pull us over. If they stop me, they stop
14 me. You know, I mean --
15 Q. Okay. So you get out of the truck, right?
16 A. Yes.
17 Q. And start filling it up?
18 A. I had to go in and prepay.
19 Q. Okay. You go in and prepay. How much do you give
20 the guy or girl, whoever, the cashier?
21 A. I can't remember if it was a hundred but I think I
22 put like 50 in. I only had, like, a half a tank.
23 Q. Okay. And -- there were two cops inside there?
24 A. Yeah.
25 Q. Do you see them?

1 A. Yes.

2 Q. How far away are you from the truck when you -- like

3 inside? I mean, how far away is the truck from the inside of

4 the --

5 A. Maybe from here to the doors, the exit doors there.

6 Q. Okay. Could you see the truck from where you were at

7 the cashier stand?

8 A. Yeah.

9 Q. Okay. What was -- and everybody else was just still

10 in the truck to you -- as far as you know?

11 A. I don't know what they did, they were in the truck.

12 Q. Okay. You couldn't see them doing anything or --

13 A. I didn't even look at look at them in the truck.

14 Q. Okay. And you actually see the police officers in

15 there?

16 A. In the store, yeah.

17 Q. Yeah. Yeah.

18 A. Yeah.

19 Q. Okay. And then you go back out and pump gas?

20 A. Yes.

21 Q. And then how long does that take? I mean, how many

22 gallons do you get?

23 A. Let's see, half a tank. I don't know. Maybe ten

24 minutes.

25 Q. Okay.

1 A. Because I paid with cash I had to go back in and get
2 my change.

3 Q. Okay. I mean, this truck holds like a lot of gas,
4 right.

5 A. Thirty -- 30-gallons, 32.

6 Q. So however long it is to pump 30 gallons of gas --

7 A. Well, 15.

8 Q. Fifteen gallons of gas is how long you were out
9 there, right?

10 A. Yes.

11 Q. And then you go back in the store to get your change?

12 A. Yes.

13 Q. And to buy cigarettes or something, right?

14 A. I don't remember if I bought cigarettes.

15 Q. Okay. And are the cops still in the store when you
16 go back in or have they left by that point?

17 A. They're still in there.

18 Q. And you know where these cops are, right? I mean,
19 you're keeping an eye out for them, aren't you?

20 A. Not really.

21 Q. Not really?

22 A. No.

23 Q. Not concerned where the police -- these three police
24 officers might be with two tied up dudes in your truck?

25 A. No.

1 Q. Okay. So you get to Snow Basin and you testified
2 that Chris is leading both Andy Beck and Cleat Knight down this
3 road, right?

4 A. Yeah.

5 Q. And he is holding both of them?

6 A. No, just one of them.

7 Q. Okay. So which one is he holding?

8 A. I'm not sure.

9 Q. Okay. He's holding one of them walking him down and
10 the other one is walking behind him? Ahead of him? To the
11 side of him? Where is the other person walking?

12 A. Kind of behind the other -- he's holding one but
13 leading him and then the other one is behind him.

14 Q. Okay. The other one is just --

15 A. Not behind Chris, but behind the other one. And I'm
16 not sure which one is in front.

17 Q. Okay. But the other one isn't being lead by anybody?

18 A. No.

19 Q. He's just walking?

20 A. No. No.

21 Q. Does at some point one of them kind of trip --

22 A. I don't --

23 Q. -- and have to be helped up?

24 A. I don't remember.

25 Q. Okay. But you testified -- and where are Chris's

1 guns at this point? He's got two of them now, right?

2 A. He's got one in his hand and one I -- in his -- in
3 the -- in his pants.

4 Q. Waistband?

5 A. In his -- yeah, his waistband.

6 Q. Which one is yours?

7 A. Which one is mine?

8 Q. Yeah.

9 A. Oh, you mean whether --

10 Q. The one he's holding or the one in his waistband?

11 A. I don't know.

12 Q. You didn't pay any attention to what he did with the
13 gun that you handed him?

14 A. No.

15 Q. Okay. What did you think was going to happen when
16 you handed him that gun?

17 A. I was getting worried.

18 Q. So at this time you were getting worried?

19 A. I was getting real worried then.

20 Q. So this is where we kind of crossed into stuff you've
21 kind of done in the past to --

22 A. Well, I've had -- I've had a gun pulled on me to my
23 face.

24 Q. Okay. But at this point you're starting to get
25 worried?

1 A. Yeah.

2 Q. Okay.

3 A. It's --

4 Q. Yes?

5 A. Yes.

6 Q. But you still hand him the gun, don't you?

7 A. I got really worried after he -- I handed him the

8 gun.

9 Q. Okay. So after you hand him the gun that's when you

10 really started getting worried?

11 A. Yeah.

12 Q. Did you say anything?

13 A. No, I started -- I was trying to put a little space

14 between him and me.

15 Q. Okay. But you're still following him?

16 A. Yeah, slowly.

17 Q. Okay. Slowly. Is the distance between you guys

18 getting greater or is it staying about the same?

19 A. It's getting greater.

20 Q. Okay. But you stay?

21 A. Juice -- yeah, Juice is behind me and I started

22 getting worried about him.

23 Q. Okay. Why are you worried about Juice?

24 A. Because I wasn't sure whether he was going to keep me

25 there or -- I didn't know what was going to happen then.

1 Q. Had he said anything to you this whole night?
2 A. No.
3 Q. Had you seen him with a gun?
4 A. No.
5 Q. Okay. But at this point you feel like you can't
6 leave?
7 A. No, I don't -- if I was -- if I would have left I
8 would have been more afraid of getting shot.
9 Q. After having left?
10 A. If I tried to leave.
11 Q. Okay. So you're -- you say you're about 15 to
12 20 feet behind when Chris kneels Andy and Cleat down, right?
13 A. Yeah.
14 Q. And I think Chris was a couple feet away behind
15 Cleat?
16 A. Yeah, right -- he was right behind him, both of them.
17 Q. Okay. So was he standing, like, more off of Cleat's
18 left shoulder or right shoulder would you say?
19 A. I'm not sure which -- which -- I mean, I just know he
20 was behind him. I didn't -- don't know how --
21 Q. Okay. How was he holding the gun?
22 A. With his hand. I can't show you, I mean --
23 Q. That was -- that was a correct answer to a very bad
24 question. Is he holding it like normal, like it's vertical or
25 is he holding it where it's like you see in the movies? I

1 mean, how was he --

2 A. Kind of like in the movies. It was -- it wasn't a --
3 it wasn't a two-handed, you know, like a standard how you shoot
4 a pistol. I wish I could show you.

5 Q. Can you? ~~If your hands were uncuffed could you show~~
6 ~~me?~~

7 A. I could show you how, yeah.

8 ~~MR. CORUM: I would ask that his hands be uncuffed.~~
9 ~~If that's possible?~~

10 ~~THE COURT: Officer, can you come and uncuff him very~~
11 ~~briefly and stand next to him while he demonstrates this~~
12 ~~gesture.~~

13 Q. (BY MR. CORUM:) Take your time, I -- I know you've
14 been behind your back for a long time.

15 A. It was more of a -- like this.

16 Q. Okay. So you're like --

17 A. Like -- like that.

18 Q. You're demonstrating that he's kind of holding --

19 A. Yeah. Kind of holding it out, holding it out. You
20 know, it's not like this. But it's kind of like a weird --

21 Q. Okay. I'm satisfied.

22 MR. MEISTER: And so for the record, the witness had
23 his right arm extended out with his --

24 THE WITNESS: Wrist.

25 MR. MEISTER: -- the upper part of his hand facing

1 towards the ceiling or towards the sky.

2 **THE COURT:** The fist --

3 **MR. MEISTER:** Or his fist, the upper part of --

4 **THE COURT:** Fist palm down.

5 **MR. MEISTER:** Palm down.

6 **THE COURT:** And then when he demonstrated not like
7 this he turned his hand 90 degrees so that the heel of his --
8 or the -- you know, the edge of his hand was toward the ground
9 and his thumb was toward the --

10 **MR. MEISTER:** With his thumb side up towards the
11 ceiling.

12 **THE COURT:** Towards the ceiling.

13 **MR. CORUM:** Thank you both because I couldn't even
14 figure out how to begin describing that.

15 ~~**THE COURT:** Thank you -- Is everyone satisfied that~~
16 ~~that's a correct description of what he did?~~

17 **MR. BAUTISTA:** Yes, Your Honor.

18 **THE COURT:** Okay.

19 **Q. (BY MR. CORUM:)** And what -- if it's your gun that
20 he's holding, which direction does the shell eject from?

21 **A.** The right.

22 **Q.** Okay. So it would eject out to the right towards
23 you? Or up in the air?

24 **A.** Ugh, trying to think. It's toward the side more to
25 the side, I think, on that kind of a gun.

1 Q. Which side?

2 A. The right side.

3 Q. Okay. The right side.

4 What about Chris's gun, the glock, do you know which

5 side that ejects from?

6 A. I have no idea.

7 Q. Okay. Are you familiar with guns?

8 A. Somewhat.

9 Q. Do most guns eject the same side?

10 A. Yeah, I think so.

11 Q. Okay.

12 A. I think it's the rifle you can -- no, you can't.

13 Q. So you see Cleat got shot in the back, right?

14 A. Somewhere in the back, I don't know exactly where.

15 Q. Okay. And Chris is behind him, you said just a

16 couple of feet?

17 A. Yes.

18 Q. How far away is the gun way from his back?

19 A. I don't know. Maybe. But I guess -- I don't know.

20 Q. So let me rephrase that.

21 A. I can't --

22 Q. So is Chris a couple of feet away from Cleat when he

23 shoots him or is the gun a couple of feet away?

24 A. He's a couple of feet. He's right behind.

25 Q. So he's a couple feet away and then he's sticking his

1 hand out with the gun?

2 A. Not straight, he's kind of awkward.

3 Q. Okay. The gun is closer to Cleat --

4 A. Yes.

5 Q. -- then Chris is?

6 He shoots him in the back somewhere?

7 A. Yeah.

8 Q. And then Cleat rolls down this hill you said?

9 A. Yes.

10 Q. Now, is this -- how far is this hill?

11 A. Maybe as tall as this -- because what it is, it's a

12 road that was, like, graded so the -- it's got a steep angle,

13 kind a steep angle down to where the dirt is rolled off.

14 Q. Okay.

15 A. So it -- and that he rolls down. It's about as tall

16 as -- maybe about as tall as this down.

17 Q. Okay. You're indicating the witness stand?

18 A. Yeah. Yeah. This stand to the floor.

19 Q. So this like -- would -- it's the embankment to the

20 road?

21 A. Yes. Yes.

22 Q. Okay. It's not like a big hill?

23 A. No.

24 Q. So when he rolls down this you can still see him,

25 can't you?

1 A. Yeah, the shadow.

2 Q. From the road --

3 A. You can see the -- his -- the -- I mean, not his
4 shadow. But you can see him, like the -- what's it called?

5 ~~MR. BAUMISTA: Silhouette.~~

6 ~~A Not his silhouette, but it -- I guess it would be his~~
7 ~~silhouette or something.~~

8 ~~Q You just heard one of the lawyers say that?~~

9 ~~A Yeah, it's a pretty good word.~~

10 ~~MR. MEISTER: On the defense side.~~

11 ~~MR. CORUM: Please stop.~~

12 ~~THE COURT: Watch yourself over there~~

13 ~~MR. BAUMISTA: It's instinctive.~~

14 Q. (BY THE COURT:) It's the lighting conditions though,
15 there is nothing in your way that prevents you from seeing it?

16 A. No, well, there is snow so you could -- you know, you
17 could...

18 Q. Okay. So at that point you see Andy -- well, what do
19 you see? After he goes down the embankment what do you see?

20 A. Chris saying something to Andy and then Andy going
21 down.

22 Q. Is Andy already standing up when he says something to
23 him or is he --

24 A. Yeah.

25 Q. -- still kneeling down?

1 **A.** Yeah.

2 **Q.** So he's already -- he's already gotten up?

3 **A.** Yeah.

4 **Q.** Andy does. And Chris says something to him, right?

5 **A.** Uh-huh.

6 **Q.** Is that a yes?

7 **A.** Yes.

8 **Q.** Okay. But you don't know what it is?

9 **A.** No.

10 **Q.** Do you see Chris hand Andy anything?

11 **A.** Not -- not at the top of the hill. It's down the

12 bottom of the hill.

13 **Q.** Okay. So they go down this embankment a few feet?

14 **A.** Yeah.

15 **Q.** Right? Does Chris help Andy down the embankment or

16 did he just follow him?

17 **A.** He follows him down.

18 **Q.** Okay. And then what do you see?

19 **A.** He hands a gun to Andy and Andy shoots him, shoots

20 Cleat.

21 **Q.** Okay. When you're picturing this in your mind is

22 that all you see? Are there any other things going on?

23 **A.** I don't remember anything else, you know. I just

24 remember that.

25 **Q.** What you remember is Chris giving Andy a gun, right?

1 **A.** Yes.

2 **Q.** And then Andy -- is there a pause or does he just
3 shoot him immediately?

4 **A.** Yeah, there was a pause. He didn't shoot him
5 immediately.

6 **Q.** Okay. What happens during the pause?

7 **A.** There wasn't any talking. I don't know. I don't
8 know why he paused.

9 **Q.** And again, you're like 15 feet away from this, right?

10 **A.** Yeah. Yeah.

11 **Q.** What do you see -- do you see Chris Leech do anything
12 at that point?

13 **A.** No. He just -- he was standing down there with Andy,
14 that was it.

15 **Q.** Okay. About 15 feet away from you, right?

16 **A.** Yeah.

17 **Q.** And you can see him clearly, can't you?

18 **A.** Yeah. I can see the area.

19 **Q.** And you don't see him do anything other than give
20 Andy back this gun?

21 **A.** I don't remember.

22 **Q.** Okay. And then Andy shoots him after some period of
23 time and then off you guys go?

24 **A.** Yes.

25 **Q.** Okay. When -- when is the first time that you

1 actually tell somebody about this?

2 A. It wasn't that night, I didn't even want to talk
3 about it at all.

4 Q. Because, like, Tina was asking you what happened,
5 right?

6 A. Not really.

7 Q. No. Okay. So you don't tell anybody that night?

8 A. The only person I recall, remember asking what
9 happened was her mother, Susan.

10 Q. Okay. And what do you tell Susan?

11 A. I didn't tell her.

12 Q. Okay. What does she ask you? Did she ask you what
13 happened to Cleat?

14 A. Yeah, she asked -- she didn't -- she didn't know -- I
15 don't think she knew that -- that we even had Cleat.

16 Q. Because she was still at the Mann Way house?

17 A. Yes.

18 Q. When is the first time you actually tell somebody
19 about this?

20 A. I don't know. Might have been a week later.

21 Q. And who do you tell?

22 A. I told Tina.

23 Q. Okay. So about a week later you tell Tina.

24 A. Yeah, I probably -- because I had left -- when I left
25 Mann Way when -- after everything was done, I probably didn't

1 see her for another week or I didn't try to -- I didn't
2 actually talk to her for another week.

3 Q. So up to a week later Tina is still --

4 A. Four or five days.

5 Q. Up to a week later Tina still did not know what had
6 happened?

7 A. I don't know --

8 Q. Okay.

9 A. -- if she did or not.

10 Q. But you told her at that point?

11 A. Yeah.

12 Q. Okay. Did you ever end up telling your ex-wife or
13 your wife?

14 A. No.

15 Q. Okay. How is it -- how is it that you come to be
16 interviewed by the police?

17 A. They called me.

18 Q. Okay. They called you --

19 A. Oh, no. No. No. They didn't call me. My sister
20 called me and said that I was on KSL and I was a person of
21 interest.

22 Q. In some unrelated --

23 A. Yeah.

24 Q. -- home invasion robbery?

25 A. Yeah.

1 Q. And your name was slashed all over the news --
2 A. Yes.
3 Q. -- about the police looking for you for a home
4 invasion robbery?
5 A. Yeah. So my sister called me and I called -- and
6 told me to go on there and look to -- she told me to look on
7 there. She told to call that they were looking for me.
8 Q. Okay. And then you called -- contacted the
9 detectives from there?
10 A. Yes. Yes.
11 Q. Or did they hunt you down?
12 A. Yeah, they -- I contacted them.
13 Q. Okay. And then you meet with them and you think
14 you're going to be talking about this hone invasion robbery?
15 A. Yes.
16 Q. But that doesn't last very long, does it?
17 A. No. Oh, I knew that -- I knew that eventually I
18 would -- you know, they'd call me in or they would pick me up.
19 Q. For?
20 A. For what happened the --
21 Q. In the home invasion or --
22 A. No --
23 Q. -- the murder?
24 A. For the murder.
25 Q. Okay. So you get into the police station and within

1 a couple minutes they're asking you about the murder?

2 A. Yes.

3 Q. All right. They spent very little time asking you
4 about this home invasion robbery?

5 A. Yes.

6 Q. Okay. And how many times do you think you've been
7 interviewed by the police since then and today?

8 A. By those detectives?

9 Q. Those detectives, other officers, district attorneys,
10 I mean, how many times have you been in telling this story?

11 A. Four or five times, I guess.

12 Q. Okay. Repeatedly, right, you've been brought into
13 the police station or the district attorney's office or
14 wherever it is and made to tell this story?

15 A. Yes.

16 Q. And in each -- fair to say in each time they tell
17 you, "You need tell us the truth now"?

18 A. Yes.

19 Q. Right?

20 A. Yes.

21 Q. And they tell you this repeatedly throughout your
22 interviews, do they not?

23 A. Yes.

24 Q. You need to start being honest with us?

25 A. Yes.

1 Q. Okay. But as far as you're concerned, you've told
2 the truth from day one?

3 A. As much as I can remember, yes.

4 Q. Okay. You didn't intentionally leave anything out?

5 A. No.

6 Q. You weren't trying to paint yourself in as -- in as
7 best as light as possible?

8 A. I knew that I -- I didn't do things that I should
9 have and I -- I would -- I knew I would do jail time and I was
10 prepared to do whatever I had to for what I didn't do, you
11 know, for what I didn't say or what I -- you know, for not
12 running away like you said or leaving.

13 You know, I figured I would do that, but I didn't
14 want to -- I didn't want to spend the rest of my life in jail
15 for -- or prison for a murder that I didn't do. You know, I
16 made my mistake of not doing what I should have did and I'm
17 going to do my time, I guess.

18 Q. Well, let's talk about that just briefly. Mr. Brass
19 asked you some questions about you hope to get probation. Has
20 anything been said to you about getting probation?

21 A. No.

22 Q. Okay. Do you expect to do prison time on this?

23 A. I've figured I would.

24 Q. Okay. Did you intend for Cleat to get shot that
25 night?

1 A. No.

2 Q. Okay.

3 A. I didn't -- I didn't even know him. I didn't -- I
4 never met -- never even heard his name before that night.

5 Q. Okay. So you're prepared to plead guilty to killing
6 him just to avoid harsher consequences?

7 A. I don't want to go to prison. Who does, you know?

8 Q. Okay. And you're prepared to do whatever it takes to
9 avoid going to prison.

10 A. If I have to go to prison then I will go to prison, I
11 will.

12 Q. But you're doing whatever it takes to limit that
13 prison time?

14 A. I'm just telling the truth so...

15 ~~MR. CORUM. Okay. All right. Just a moment.~~

16 ~~THE COURT: Sure.~~

17 Q. (BY MR. CORUM:) Oh, I apologize, TJ. I asked you
18 before who Alex Vasquez and it's actually Valdez. Do you know
19 an Alex Valdez?

20 A. No.

21 Q. Okay. Have you ever been introduced to -- you don't
22 recall being introduced to him as somebody related to Tina
23 buying drugs or selling drugs to --

24 A. Okay. Alex Valdez. I can't recall an Alex Valdez.

25 Q. Okay. And just to clarify, when you said you had

1 driven Tina around or had helped her in selling drugs, --

2 A. Wait. Wait. Whoa. Whoa. Whoa. Alex -- I remember
3 an Alex.

4 Q. Ahh.

5 A. I don't remember the Valdez. I just remember a guy
6 named Alex but I only met him a couple of times.

7 Q. Okay. Was this in Vernal?

8 A. No.

9 Q. Okay. You were helping Tina sells drug in Vernal,
10 too, right?

11 A. Yeah. Driving around, yeah.

12 Q. So Salt Lake and in Vernal?

13 A. Yeah.

14 Q. Over the, like, the last year or so.

15 A. Yeah.

16 ~~MR. CORUM: Nothing else.~~

17 ~~THE COURT: All right Thank you.~~

18 ~~Mr. Bautista.~~

19 ~~CROSS EXAMINATION~~

20 ~~BY MR. BAUTISTA.~~

21 Q. When you left from the Mann Way to go to Uncle
22 Chris's apartment, did Andy go with you freely?

23 A. I don't think so. I don't...

24 Q. Why don't you think so? He wasn't tied up, correct?

25 A. No.

1 Q. No one was escorting him to your car that you saw,
2 correct?

3 A. I don't -- I didn't -- yeah, I didn't see.

4 Q. So why are you saying you don't believe he went with
5 you freely?

6 A. Because they hadn't gotten the rental car back and I
7 could tell Chris was still agitated. So I figured that that's
8 the reason why we were going over there to get it, you know.

9 Q. Okay. At the Mann Way house, the only person you
10 recall seeing that appeared to be agitated in an aggressive
11 manner was Chris, right?

12 A. Tina was a little bit -- you know, she was mad
13 because she didn't get her car, her rental back, but yeah.

14 Q. She looked visually upset?

15 A. Yeah, a little.

16 Q. Okay. Can you tell difference between when someone
17 is upset and when someone is agitated and aggressive where they
18 might actually hit someone?

19 A. Yes.

20 Q. Did Tina look upset like she was going to attack
21 someone or hit someone?

22 A. No.

23 Q. Okay. She just looked upset, but not like she was
24 going --

25 A. Yeah.

1 Q. -- to attack someone --
2 A. Well, I knew she was upset, too, you know.
3 Q. Okay. How about Chris, did he look different?
4 A. Chris?
5 Q. Yes.
6 A. Yes.
7 Q. Okay. Did he look like he might hurt someone he was
8 that mad?
9 A. It's possible.
10 Q. Okay. And that caused you a little bit of concern?
11 A. A little, but not a lot.
12 Q. Okay. You bigger than Chris?
13 A. Not sure. I think so.
14 Q. You're 5'10"?
15 A. Yeah.
16 Q. Two -- 225?
17 A. No, I'm 190.
18 Q. Sorry. You're bigger than me, that's all I know.
19 Okay. But if need be, in a fist fight you can defend
20 yourself and take care of yourself?
21 A. Yeah.
22 Q. Okay. Now, you go to Uncle Chris's house. That time
23 you said that Juice was with you in the car, he wasn't saying
24 anything, correct?
25 A. No.

1 Q. Okay. Did he look concerned about Chris's behavior
2 as well?

3 A. No.

4 Q. Okay. Just seemed normal?

5 A. Just Juice -- yeah.

6 Q. Okay. Didn't seem agitated though?

7 A. No.

8 Q. Okay. When you said Juice you smiled. Is he
9 pleasant?

10 A. He's pretty layed back. Like, he doesn't talk much
11 so...

12 Q. Has a pleasant disposition?

13 A. Yeah.

14 Q. You guys go to Uncle Chris's house and at that time
15 Andy goes inside the apartment. He wasn't escorted, correct?

16 A. I don't remember but I don't -- I don't remember if
17 he was escorted in but he --

18 Q. You can kind of figure Andy doesn't want to be there,
19 but at the same point nobody is forcing him to go there; is
20 that fair to say?

21 A. You can tell he doesn't want to be there. I'm not
22 sure whether anybody had said anything to him where he had to
23 be there. I'm sure he did, you know, I'm -- at least until he
24 got the rental back.

25 Q. Okay. Understand. How long were you guys there

1 before -- and let me clarify. Andy wasn't tied up until Cleat
2 got there, correct?

3 A. I'm not sure if he was tied up in the garage or not
4 the whole time. I'm not sure.

5 Q. At Uncle Chris's house?

6 A. No, at the Mann Way. I was -- he didn't seem tied up
7 before then.

8 Q. I was asking about --

9 A. Yeah. But like in the garage, I wasn't sure whether
10 he was the whole time in Mann Way but --

11 Q. Did you see him tied up at Mann Way in the garage?

12 A. No, I didn't.

13 Q. Okay. You just know that by reading the discovery in
14 this case?

15 A. I haven't read the discovery.

16 Q. Have you had the discovery read to you?

17 A. No.

18 Q. How did you know that he was claiming to have been
19 tied up in the garage?

20 A. I don't. Just the way you're asking if he had been
21 tied up before, I was just saying I didn't know if he -- if he
22 was.

23 Q. I actually was talking about at Uncle Chris's house.

24 A. Yeah.

25 Q. He wasn't tied up until you attempted to tie him up

1 or --

2 A. I didn't see him --

3 Q. -- until you attempted to tie up Cleat, you're not
4 sure which --

5 A. I didn't see him tied up before.

6 Q. Okay. So my question originally that he didn't get
7 tied up until Cleat got there, that would be correct?

8 A. I don't know. I didn't see. I didn't see if he was
9 tied up before then. I don't know.

10 Q. Okay. But when you assisted in tying up one of the
11 two individuals --

12 A. He was not tied up.

13 Q. He was not tied up, okay.

14 How long were you guys at Uncle Chris's before Cleat
15 arrived?

16 A. I'm not sure. Maybe 20 minutes, 20, 30 minutes.

17 Q. Okay. And you testified earlier that when the women
18 showed up at Uncle Chris's, the younger Asian, the unknown
19 male, was with him, correct?

20 A. He was there. I don't -- I mean, he was there, but I
21 don't know how he got there.

22 Q. Okay. Don't know how he --

23 A. Don't know how long he -- how long he had been there
24 because when I got there I was inside. So I don't know if he
25 was outside.

1 Q. Don't know how he left either?

2 A. No, I don't.

3 Q. Okay. When the two individuals on the floor in the

4 living room were tied up, was the young Asian man there?

5 A. Yes.

6 Q. And at this point tying them up, you were thinking

7 this was just to intimidate them to not take someone's car in

8 the future?

9 A. Yeah. Yeah.

10 Q. You clearly were hoping maybe they will get hit

11 physically, like beat up, but not severely hurt, correct?

12 A. I wasn't hoping. I mean, I was...

13 Q. That would be the worse --

14 A. That's -- that's what I thought was going to happen.

15 Q. Okay. And possibly just intimidate them, scare them,

16 tie them up --

17 A. Yeah, I thought --

18 Q. -- flash a gun in their face, nothing more?

19 A. Yeah. I thought they were just going to scare them.

20 Q. When you say "they," this was all being done by Chris

21 and only Chris, correct?

22 A. Yeah.

23 Q. Okay. You didn't want to participate in this, but at

24 the same time, you didn't feel like you could do anything to

25 stop it, correct?

1 A. Yeah, I mean, I had nothing against them. I mean,
2 they were going to bring the rental car back. I thought, you
3 know, that was it.

4 Q. If you spoke up and tried to stop, end the situation,
5 were you concerned that your safety might be put at risk?

6 A. Not until -- not until later. Not until later.

7 Q. Okay. And later is when you mean you were at the --
8 off of Snow Basin -- and we're talking about that road that is
9 dedicated to go to the resort?

10 A. Yeah.

11 Q. Because you had the highway that goes to Huntsville
12 and then you turn off to go to Snow Basin and you take a left
13 and goes up -- and then a down hill, that's road we're talking
14 about, correct?

15 A. Yeah.

16 Q. And eventually it reaches a roundabout that you --
17 that's where you said there was no more road?

18 A. Yeah.

19 Q. Okay. You turn back and start heading back towards
20 the main highway?

21 A. Yeah.

22 Q. Pulled off before you got there?

23 A. Yeah, not far down from the top.

24 Q. Was the gate on the left as you were driving back to
25 the main highway or was it on the right?

1 **A.** It was on the left.

2 **Q.** Okay. And it appeared to be some kind of a trail
3 system?

4 **A.** It was, like, a metal four - 3 or 4-inch gate that
5 swung. And it was like -- it's like an old 4-by-4 road or some
6 kind of push off or something where they push the snow off
7 so -- I don't know.

8 **Q.** And at that point you were still thinking this was
9 all about intimidation?

10 **A.** Yeah. Yeah.

11 **Q.** And that's why you were going along with it at that
12 point because you thought it was just about intimidation?

13 **A.** I was just driving. I was just driving.

14 **Q.** And at the gas station in Park City, you weren't
15 concerned that much about the cops because you figured nothing
16 really bad was going to take place?

17 **A.** I didn't think -- I didn't think a murder going to
18 take place. I was hoping we'd get pulled over. I really -- I
19 was but...

20 **Q.** Unfortunately, didn't draw any attention to the -- to
21 yourself from the police officers?

22 **A.** No.

23 **Q.** Didn't kind of like give them a wink and eye them
24 over and nod your head, "hey, look at me"?

25 **A.** No.

1 Q. Okay. Parked at the trailhead, you guys get out of
2 the car. Did anyone tell anyone to get out of the car or tell
3 anyone to offer assistance to help the two guys that can't see
4 out of the car or did -- everyone knew to get out because the
5 car stopped?

6 A. I don't remember if anybody said to get out. But we
7 just -- when we stopped everyone just kind of got out.

8 Q. Okay. You said that it's your recollection Juice was
9 in the backseat?

10 A. Yes.

11 Q. Positive about that or --

12 A. Oh, yeah, I'm positive.

13 Q. Hundred percent?

14 A. I just drove the whole time. He was behind me the
15 whole time.

16 Q. No ifs ands or buts, Chris was in the front passenger
17 seat?

18 A. Yes, Chris is in the front.

19 Q. And at that point the only person that you saw with
20 the gun was Chris?

21 A. Yes.

22 Q. Okay. And you had one but you didn't have it on your
23 person?

24 A. Yes.

25 Q. Okay. We've talking about your pistol but I don't

1 think anyone has asked: What kind of firearm was it?

2 A. A Beretta.

3 Q. Okay. A semiautomatic pistol?

4 A. Yes.

5 Q. What model?

6 A. A PX4 Storm, a 40 caliber.

7 Q. A 4-inch barrel?

8 A. Yeah, it's a small -- I think it's a compact or
9 subcompact.

10 Q. Okay. Do you know, were you able to determine what
11 make was the firearm that Chris had?

12 A. No, I don't know what make it was. All I know is it
13 was square and it looked like a glock.

14 Q. Okay.

15 A. But I'm sure it wasn't a glock because it wasn't --
16 it didn't seem to be plastic. Metal.

17 Q. Are you familiar with the Kerr firearms?

18 A. A what?

19 Q. Kerr. K-E-R-R.

20 A. No, never. No.

21 Q. Okay. It was a semiautomatic pistol that Chris had
22 that much you were a 100 percent clear of?

23 A. I don't -- I didn't know if it was a semi. Yeah, it
24 was a semi.

25 Q. Wasn't a revolver?

1 A. No.

2 Q. Okay. And you know the difference?

3 A. Yes.

4 Q. Okay. At the point you get out of the car and
5 Chris -- does he ask you for your pistol or does he tell you
6 "Give me your pistol"?

7 And do you know what I mean by the difference?

8 A. He just said, "Give me your gun."

9 Q. In an assertive manner?

10 A. Just "Give me your gun." He didn't ask.

11 Q. He told you to give him the gun but --

12 A. Yeah.

13 Q. But was the tone of his voice kind of asking like you
14 just said right there, "Give me your gun." Hey -- or "Give me
15 your gun" versus "Give me your gun."

16 Do you hear the difference one being assertive?

17 A. Yeah. Yeah. It wasn't real assertive and it
18 wasn't -- it was just -- it wasn't an everyday, but it was a
19 little assertive if I can say.

20 Q. Okay. That's why you had some concern, but you
21 didn't have too much concern because he didn't seem to be
22 aggressive towards you?

23 A. Yeah. Yeah.

24 Q. Okay. Once you gave him the gun though, you started
25 becoming aware that something can happen in a moment's notice

1 and you, yourself, could be the center of attention in a
2 negative way?

3 A. Yes.

4 Q. And that's why you stayed back you said about 15 feet
5 when you were walking?

6 A. Yeah. Yeah.

7 Q. And again, at that point you're concerned because
8 you're now unarmed?

9 A. Yes.

10 Q. And you now know that the only person who has
11 firearms is Chris and he's running the show?

12 A. Yes. I wasn't sure about Juice.

13 Q. Okay.

14 A. I didn't see him with a gun, but I wasn't sure -- I
15 mean --

16 Q. During this time Juice was maintaining his normal --

17 A. Yeah.

18 Q. -- pleasant attitude and didn't --

19 A. Just quiet and --

20 Q. Okay.

21 A. -- you know, didn't say much.

22 Q. Okay. And he kind of maintained even a little bit
23 more distance between himself and Chris while you guys were
24 walking as well?

25 A. I was between Chris and him. So yeah, he was behind

1 me.

2 Q. Okay. Possible that he was trying to keep distance
3 away from Chris, just like you were?

4 A. I'm not sure. I wasn't sure if he was behind me to
5 keep me from leaving or, you know, or if the same reason.

6 Q. Okay. But you never heard any discussion of any
7 plans going on between Chris and Juice that night?

8 A. I didn't hear any.

9 Q. Okay. You're just being cautious because it's better
10 to be paranoid than to get yourself in a situation where you --
11 haphazardly; is that fair to say?

12 A. Yes.

13 Q. And again, up until the time when the actual firearm
14 discharged that bullet you kept thinking it was just going to
15 be about intimidation?

16 A. Yeah. When -- when he -- when he shot Cleat it
17 was -- it was quick. I mean --

18 Q. Unexpected?

19 A. Unexpected.

20 Q. Okay. How much time after the first shot did Cleat
21 roll down the embankment from when Andy got up, walked down the
22 embankment with Chris behind him, until you heard the second
23 gunshot?

24 A. I'm not sure. I'm not sure because I know Chris
25 was -- had said something to Andy and then he went down -- I

1 had turned around because --

2 Q. Thought about getting out of there?

3 A. When Juice -- or not Juice, but when Andy had got
4 down there and Chris had gone down there, I turned around to
5 say to Juice I think -- I think he's moaning. And then I
6 turned around and then Chris gave him a -- Chris gave a -- Andy
7 the gun.

8 Q. After the first gunshot and they went down the
9 embankment were you thinking of booking out of there?

10 A. Oh, yeah. Yeah, I turned around to look but -- I
11 didn't -- I was kind of frozen.

12 Q. Concerned because you didn't have a gun?

13 A. Yeah.

14 Q. And if you tried to run you could get shot in the
15 back?

16 A. Yes.

17 Q. And that's -- that was going through your mind?

18 A. Yeah.

19 Q. Okay. Were you thinking be cool and you will get out
20 of this alive or something like that?

21 A. Yeah. Um, yeah.

22 Q. Okay. After Andy shot Cleat, did you hear an
23 interaction between Andy and Chris?

24 A. I don't remember.

25 Q. Okay. Were you surprise that Andy shot his friend?

1 A. Yeah, I was very surprised.

2 Q. Made you start wondering what the heck is going on?

3 A. Yeah. Yeah.

4 Q. Twist of events, why one guy one minute is tied up
5 and the next minute he's shooting his friend?

6 A. Yes.

7 Q. But you didn't want to say anything because you were
8 concerned primarily to make sure you, yourself, weren't the
9 next victim?

10 A. I don't know -- I don't who was going to be the next
11 victim.

12 Q. Concern that you could be the next one?

13 A. Yeah.

14 Q. And again, idea was: Go along with it, be cool, and
15 hopefully you get to go home?

16 A. Yeah. The thing is, I'm not part of no gang. I'm
17 not -- I don't do that. I mean, I don't -- these guys, I don't
18 know if they -- how long they've known each other, but I know I
19 didn't -- I mean, I've know Juice longer than the others so...

20 Q. You were at the wrong place at the wrong time
21 associating with the wrong people that night, never had --
22 that's right?

23 A. Yeah.

24 Q. Never had any plan to kidnap anyone?

25 A. No.

1 Q. There was no plan that you knew of in advance to see
2 someone die that night?

3 A. No.

4 Q. For that matter even get hurt?

5 A. No.

6 MR. BAUTISTA: Nothing further. Thank you.

7 ~~THE COURT: Thank you.~~

8 ~~Further direct?~~

9 ~~MS. ROSSI: Just very briefly, your Honor. Thank~~

10 ~~you.~~

11 REDIRECT EXAMINATION

12 BY MS. ROSSI:

13 Q. TJ, when -- you've been asked questions today by a
14 couple of defense attorneys regarding that girl that was
15 sitting on stand when you came in yesterday.

16 A. Uh-huh.

17 Q. And you said that you're not sure if that's the same
18 person that you have met before?

19 A. Yeah. Yeah.

20 Q. Yeah what?

21 A. Yeah, I'm not sure because I just remember the dark
22 hair and light skin. I mean, I didn't really look at her right
23 in the face so I don't...

24 Q. But regardless, you didn't meet that person the day
25 that this all happened?

1 A. No.

2 Q. November 23rd of --

3 A. No, I don't --

4 Q. - 2013?

5 A. I don't recall her at all.

6 Q. Okay. When you guys got up to the gas station in
7 Kimball Junction before you went up to Snow Basin and you saw
8 those police officers, and you mentioned, oh, shit the cops or
9 something like that, did Chris Leech say anything to you about
10 how you should behave there?

11 A. Just act cool. And I was thinking it's too late to,
12 you know, turn around and leave, you know, you just got to go
13 in and do...

14 Q. So did you try to act cool while you were there?

15 A. Yeah.

16 Q. Okay. You testified -- and I forget who was asking
17 you the questions at this point, maybe Mr. Corum -- but that
18 you -- the first person that you told about Cleat's murder was
19 Tina; is that right?

20 A. Yeah. Yeah. I think it was Tina.

21 Q. And that --

22 A. Because I didn't talk at all to anybody.

23 Q. And that it was a week later when you saw her?

24 A. It could have been a week, but it had been the next
25 time that I saw her. I'm not sure if it was, like, five days

1 or four days or six.

2 Q. TJ, didn't you see her shortly after this happened at
3 a hotel?

4 A. I don't know how long after that was.

5 Q. Where did you stay the first night after Cleat was
6 killed?

7 A. The very -- the night after that night.

8 Q. The night after. After you guys got back down to
9 Salt Lake and the day --

10 A. I had gone home that day. I had gone home because my
11 mom had a -- she couldn't walk, she had surgery. So I had to
12 take her dogs out and bring her food. So I -- I don't remember
13 if I went back that day or that night.

14 Q. Okay. And you don't know when the next time was that
15 you talked to Tina?

16 A. I can't remember when it was.

17 Q. Okay. But it was a week, you think, around week?

18 A. I think. Because I would usually leave and then I
19 wouldn't see her for four or five days or a week or whatever.

20 Q. Okay. And finally TJ, you -- you testified that no
21 one has spoken to you regarding the offer that was made from
22 the district attorney's office, that no one has spoken to you
23 regarding probation?

24 A. I just don't remember exactly what was --

25 Q. Is it fair to say that probation has never been part

1 of the discussion?

2 A. I don't know. That's what I hope for. But I was
3 never told I would get probation.

4 Q. Have you been told that you're going to prison on
5 this case?

6 A. That I might go to prison. That I might get six --
7 six years, something like that.

8 Q. Okay. And do you recall in the interview that
9 happened in April of this year where we discussed the -- where
10 the plea offer was discussed with you and it was minimum of
11 eight years?

12 ~~MR. CORUM: Objection. Asked and answered.~~

13 ~~THE COURT: Overruled. He can answer the question.~~

14 Q. (BY MS. ROSSI:) And it was a minimum of eight years
15 in prison?

16 A. I thought it was a minimum of six.

17 Q. Okay.

18 A. But I wasn't sure. Yeah, I knew it was six or --
19 because -- it's either six or eight. I knew it was somewhere
20 around there.

21 MS. ROSSI: Okay. Nothing further. Thank you.

22 ~~THE COURT: All right. Thanks.~~

23 ~~Further cross?~~

24 RE CROSS EXAMINATION

25 BY MR. BRASS:

1 Q. Did you stay or visit an Embassy Suites in West
2 Valley the very next night after this homicide occurred?
3 A. I don't recall if it was the next night. I don't --
4 Q. Did you just say that the next night you went home to
5 your mother?
6 A. No, I went to my mother during the day.
7 Q. And where does your mother live?
8 A. Tooele.
9 Q. You said you grew up on the reservation, is that the
10 Ute Reservation?
11 A. Yes.
12 Q. So you grew up somewhere between Duchesne and
13 Roosevelt in that area, Myton, Fort Duchesne.
14 A. Yes.
15 Q. And so you know the basin pretty well?
16 A. I grew up there when I was younger but I lived in
17 Salt Lake and I lived in Carson City also. So I didn't stay
18 there the whole time.
19 Q. How old were you when you moved away from the basin?
20 ~~MS. ROSSI: Your Honor, I'm going to object to~~
21 ~~relevance and it being outside the scope of my redirect.~~
22 ~~THE COURT: What's the relevancy of this?~~
23 ~~MR. BRASS: Just want to know his -- he says he's~~
24 ~~been distributing drugs in response to some questions with my~~
25 ~~client out in the basin. I want to know what he knows about~~

1 ~~the basin. But that's my last question, when did he move away?~~

2 ~~How old was he?~~

3 ~~THE COURT: All right. He can answer that question.~~

4 A. Junior high.

5 MR. BRASS: Okay. Thanks.

6 ~~THE COURT: Thanks, very much, Mr. Brass.~~

7 ~~Further direct from Mr. Leech? Mr. Bautista?~~

8 RE CROSS EXAMINATION

9 BY MR. BAUTISTA:

10 Q. I'm sorry. TJ, your testimony that you are
11 testifying today in anticipation of a plea bargain that you
12 don't know the actual details of?

13 A. It was six or eight years was my -- was what it was.

14 Q. Okay. That's what you were told that if you go to
15 prison you'll probably get paroled in six to eight years?

16 A. It was somewhere along that -- along that line.

17 Q. And was that told to you by the district attorney's
18 office?

19 A. By my lawyer.

20 Q. Please don't tell me anymore about what your lawyer
21 said, just want to talk to you about what the district
22 attorneys told you. As far as aggravated kidnapping, have you
23 been told what the sentence for that is?

24 A. Have I been -- no, I don't know what it is.

25 Q. So you're not aware that it carries a lifetime

1 possibility of prison?

2 A. No, I didn't know that.

3 Q. Okay. And you are aware that it's the board of
4 pardons that determines when you get paroled?

5 A. It's the -- is that probation and parole? I -- I
6 wasn't sure. I mean, I didn't know if I was going to get the
7 murder or what. I mean, I know I've had it the whole time so I
8 wasn't sure.

9 Q. If you were to go to prison and get a sentence of --
10 and eligible for parole first time in 22 to 27 years, that
11 would make you upset, wouldn't it?

12 A. It would make anybody upset.

13 Q. Okay. You'd feel like it wasn't part of your deal in
14 exchange for your testimony?

15 A. Either way I would have did my testimony.

16 MR. BAUTISTA: Thank you.

17 ~~THE COURT: All right. Thank you, very much.~~

18 ~~Any further direct?~~

19 ~~MS. ROSSI: No, thank you.~~

20 ~~THE COURT: All right. You're finished with your~~
21 ~~testimony. Thank you, Mr. Myore. You can step down from the~~
22 ~~stand.~~

23 ~~And counsel if you'd join Mr. Myore at the podium, he~~
24 ~~does have a case on the calendar today, the preliminary~~
25 ~~hearing. We're not having his preliminary hearing but we~~

Addendum C

STATE OF UTAH,
Plaintiff,
VS.
CHRISTOPHER KIM LEECH,
Defendant.

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I N D E X

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E X H I B I T S

Defense Exhibit 1184
Defense Exhibit 3218
Defense Exhibit 4219

1 September 7, 2016

2 * * *

3 THE COURT: State versus Chris Leech, it's
4 Case No. 151902195. We're here without the jury. How best to
5 proceed to get the issue and the argument today? Do we need to
6 call Mr. Myore and have him make his oath or take his -- make
7 his position known to the Court?

8 MR. MEISTER: I believe so, Your Honor.

9 THE COURT: All right. Let's do that.

10 Mr. Myore, why don't you come up and stand in front
11 of the clerk. We're going to administer an oath and we will
12 put you on the stand. So just right here would be fine.
13 That's good. To the extent you can raise your right hand,
14 please do so.

15 (Witness sworn.)

16 THE COURT: All right. Here you go.

17 MS. ROSSI: May I proceed, Your Honor?

18 THE COURT: Yes.

19 MS. ROSSI: Thank you.

20 * * *

21 THERON MYORE,

22 Called by the State, having been duly
23 sworn, is examined and testifies as follows:

24 * * *

25 * * * *

DIRECT EXAMINATION

BY MS. ROSSI:

Q. Can you please state your full name for the record and spell both your first and last names.

A. Theron John Myore.

Q. How do you spell your first name?

A. T-H-E-R-O-N.

Q. And how do you spell your last name?

A. M-Y-O-R-E.

Q. And, Mr. Myore, do you know why you're here today?

A. Yes.

Q. Why are you here?

A. To testify in a trial.

Q. Against Christopher Leech?

A. Yes.

Q. Okay. Were you subpoenaed by the State to testify in this trial?

A. Yes.

Q. All right. Are you willing to do so today?

A. No.

Q. I'm going to start asking some questions about the -- about the incident that we're going to talk about. And if you are going to assert your 5th Amendment right, you need to put that on the record. Okay?

A. Okay. I -- on the advice of my attorney, I do invoke

1 my 5th Amendment right to --

2 Q. Okay. So are you going to refuse to answer any
3 questions about the incident occurring November 22/23, 2013?

4 A. Yes.

5 Q. Okay. Mr. Myore, are you aware that you have been
6 given a document that entitles you, and grants you use immunity
7 for this trial? Meaning that anything that you say in the
8 trial against Mr. Leech cannot be used against you in your own
9 trial?

10 A. Yes.

11 Q. And if the Court tells you that based on that
12 document you have to testify, if the Court compels you to
13 testify, will you still be refusing to answer any questions?

14 A. Yes.

15 MS. ROSSI: One second please, Your Honor.

16 THE COURT: Mr. Myore, let me just indicate that you
17 may be found to be in contempt if, based upon the proffer
18 that's just been made and/or the testimony that's just been
19 elicited, you've been received -- you have received a
20 conditional use immunity in this case, and you therefore
21 continue to refuse to testify by exercising your 5th Amendment
22 rights, which the Court finds you don't presently have given
23 the fact that you have conditional use immunity, which would
24 mean you would be found to be held -- you would be found to be
25 in contempt of court.

1 You understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: And based upon that understanding you
4 continue to exercise your right not to testify?

5 THE WITNESS: Yes.

6 THE COURT: All right.

7 MR. CORUM: I would ask the Court to, in fact, order
8 him to testify.

9 THE COURT: All right. Mr. Myore, I order you to
10 testify in this case given the fact that you received
11 conditional use immunity.

12 THE WITNESS: No. I won't testify.

13 THE COURT: All right. All right.

14 Anything else we need to do with Mr. Myore --

15 MR. CORUM: Not this morning.

16 THE COURT: -- as far as cross-examination?

17 MR. CORUM: That's fine, Your Honor.

18 THE COURT: All right.

19 All right, Mr. Myore.

20 MR. MEISTER: Judge, we'd just ask the Court to make
21 a finding at this time as far as his availability or
22 unavailability.

23 THE COURT: Oh, we will do that, but I would like to
24 hear some argument.

25 Mr. Myore, you may step down.

1 So, argument?

2 MR. CORUM: I presume we're going to into the
3 assumption the State will, in fact, move to admit the
4 preliminary hearing testimony.

5 MR. MEISTER: That is correct.

6 MR. CORUM: Okay. Under Rule 804, the exception to
7 the hearsay rule, when the declarant is unavailable as a
8 witness, it is either because they have asserted privilege that
9 applies. The Court has already found that does not happen or
10 refused to -- refuses to testify about the subject matter
11 despite a court order to do so, and that appears to be where we
12 are.

13 Now is not the end of that determination, but I'm
14 going to move on because it kind of -- they kind of blend in
15 together. The exceptions are clearly former testimony that was
16 given at a hearing and offered against a party that had an
17 opportunity and similar motive to develop it by direct cross or
18 reexamination, and that is really the crux of this.

19 Under the case law, State versus Pham, 2016 Utah
20 Appellate Court 105, which is, I think, one of the most recent
21 cases kind of going into this, examining unavailability and
22 what happens next. It is the proposition that under Crawford
23 there is not a blanket rule that just because unavailability is
24 met that that comes in. Okay? The right to confrontation and
25 the right to due process requires some other things.

1 Specifically, and this is encompassed in the rule as
2 well. And what they say, again, these cases, is that they
3 stand for the proposition. It is possible that the
4 cross-examination opportunity at a preliminary hearing to
5 satisfy the right to confrontation. Is not a blanket rule that
6 it automatically does. And, quite frankly, the case law deals
7 a lot with unavailability. You know, and I think that's what
8 the Court was talking about yesterday. Yes, he appears to
9 check the boxes for unavailability, but there is not a lot of
10 case law dealing next. Okay? Most of the arguments are: He
11 was available, he wasn't available, those kinds of things.

12 The case law talks about, you know, there is a case
13 involving, you know, things that are not necessarily dispute --
14 like medical examiner testimony. Or a recent case, I think it
15 may have been in front of Your Honor where the defense attorney
16 choose not to cross-examine the witness at preliminary hearing
17 because the testimony was favorable. Okay? Here, we don't
18 have any of those things.

19 You look at motive. What's the motive at preliminary
20 hearing? Utah case law is very, very clear that credibility is
21 not an issue at preliminary. Okay? Outside of the very narrow
22 exceptions stated in the State versus Virgin line of cases,
23 credibility is not an issue. And I have been doing prelims in
24 this district for 13 years and I cannot count how many times I
25 have been told "Credibility is not an issue. Move on, counsel.

1 That's for a trier of fact. Credibility not an issue at
2 prelim." And quite frankly, it's not. That's a correct
3 statement of the law.

4 But I think it's little disingenuous to not recognize
5 that when we're talking about the differences between a prelim
6 and a trial. You know, it is the practice in this jurisdiction
7 to limit cross-examination at preliminary hearing. We don't do
8 full credibility cross-examinations. No. 1, because legally it
9 doesn't matter. And No. 2, we would be here for days, you
10 know, with -- with just about every prelim.

11 In fact, and I'm sure we will get into this a little
12 bit, Mr. Myore was not asked about any of his prior statements
13 at preliminary hearing. He wasn't -- you know -- you know, his
14 story on that day was certainly explored, but he was not
15 cross-examined as to his credibility and then he made a
16 different statement this time, made a different statement that
17 time. And that wasn't done because, again, it's not relevant
18 at the prelim. That would have been done at trial. It
19 absolutely would have been done at trial.

20 THE COURT: You have a line of cases, of course, most
21 recent of which is the Burgoyne's case that suggests exactly
22 the opposite of your argument today. So I would like you to
23 address that in the context of --

24 MR. CORUM: Well, I -- I understand that. And it --
25 I believe it's dicta that says, you know, you're on notice

1 to -- whenever you cross-examine somebody, you need to do a
2 full cross-examination. I think that's -- that's a nice thing
3 for the appellate court to say. Okay. Here in the trenches of
4 the trial court, that's impossible. It is. It's just an
5 impractical impossibility.

6 THE COURT: That maybe the case --

7 MR. CORUM: Yeah.

8 THE COURT: -- but it is the law in the State of
9 Utah, at present, regardless of whether or not it's practical
10 or not.

11 MR. CORUM: I take that language as dicta, quite
12 frankly. Okay. And, you know, the Court is well aware, the
13 State is well -- the State is very effective in limiting
14 cross-examination at a preliminary hearing because they're
15 right. It's not -- credibility is not the issue.

16 THE COURT: You had the opportunity to cross-examine
17 at the preliminary hearing and you did so, correct?

18 MR. CORUM: We did.

19 THE COURT: And the co-defendants had the opportunity
20 to cross-examine at the preliminary hearing and they did so as
21 well?

22 MR. CORUM: Yes.

23 THE COURT: How much time did you spend in your
24 cross-examination?

25 MR. CORUM: Twenty minutes.

1 THE COURT: Fifty pages-worth is about --

2 MR. CORUM: Half hour. I -- you know, it's been so
3 long, I don't remember.

4 THE COURT: Somewhere in the neighborhood of 50 pages
5 --

6 MR. CORUM: Yeah, I -- what I.

7 THE COURT: -- I don't know what that translates out
8 to be.

9 MR. CORUM: Yeah. What I know is I did not ask him
10 any questions about the many, many inconsistencies he has told.

11 THE COURT: You would acknowledge; however, you had
12 the opportunity to do so?

13 MR. CORUM: I had the physical opportunity. I don't
14 know that I had the legal opportunity.

15 THE COURT: All right. Were you, by the magistrate
16 associated with the prelim, precluded from making questions
17 posed to witness?

18 MR. CORUM: I did not pose a question that was
19 objected to and -- and sustained. But, again, I mean, part of
20 my proposition is, that's all built in. You know, it's built
21 in through years of practice, and just the way things work
22 here. You know, and I think -- I think it is a little
23 disingenuous to say, "Okay, well, you were there, you were
24 present you had the opportunity" and that's the same as a
25 trial. It's not. And I don't think the appellate court

1 recognize that. And, quite frankly, it hasn't really been
2 raised fully.

3 But let's look at opportunity some more, you know --
4 what -- what is the opportunity. You know, at the time of the
5 prelim -- and according to the docket, the State was at -- up
6 to sup-discovery No. 9, okay. We're now at 22. Okay. When
7 you dig a little deeper, some of those including really, really
8 big one, which was sup discovery No. 9, which included all of
9 the revised transcripts, new interviews involving this witness,
10 that was filed -- efiled with the court Friday, June 27th. The
11 preliminary hearing started the first of July, which was a
12 Tuesday that was not logged in to LDA's system and available to
13 me until after the start of the prelim. And I did not in fact
14 see it. I mean, this was a huge volume of stuff including all
15 of the revised transcripts of all of the previous statements
16 and including a new interview between Mr. Myore, the district
17 attorney's office, the detectives, a huge amount of discovery
18 we did not have available.

19 THE COURT: Was there any effort or request made to
20 the Court to reopen the preliminary to address those issues
21 that you received post preliminary hearing?

22 MR. CORUM: No. No. It got bound over and we were
23 on our way. And that's another thing, nobody was on notice
24 that this was even a possibility, right? Mr. Myore was in
25 custody. He had apparently agreed to something. This wasn't

1 the kind of case where anybody had any inkling that he would be
2 unavailable, quite frankly.

3 THE COURT: Except the whole purpose and part is to
4 ensure the testimony of some individuals should they be
5 unavailable, including natural causes, for example. So
6 although we never supposedly occur, it very well could.

7 MR. CORUM: No -- no -- I think it's fair to say
8 that -- that this particular line of events was not in
9 anybody's mind. And, again, the huge volume of materials that
10 we did not have at the time of the cross-examination. We've
11 spent the last two years understanding, investigating, looking
12 through these materials, and quite frankly, have a deeper
13 understanding of the case, a deeper understanding of the
14 materials, none of which was available back in July of 2014,
15 you know, over two years ago.

16 Again, going back to the Crawford line of cases,
17 Crawford, Marilyn v. Craig, you know, the right to
18 confrontation encompasses several things. It encompasses
19 actual confrontation. It encompasses the implied and explicit
20 right of cross-examination, the witness taking an oath. But
21 very, very importantly, observation by the trier of fact of
22 demeanor. That is included in Crawford's right to
23 confrontation.

24 And Utah has recognized that. And in the case of
25 State v. Mosman, this is 794 P.2d 474, pre-Crawford analyzing

1 804 and whether something should come in. They look at several
2 things, and one of which is whether a declarant's presence at
3 trial would add any probative value to the evidence by allowing
4 the trier of fact to observe the demeanor of the witness,
5 "any." Not "a lot," not "a little," any."

6 THE COURT: Which would always be the case every time
7 under any circumstance associated with availability, that would
8 exist if the witness were on the stand.

9 MR. CORUM: I don't agree. I don't agree. I think
10 credibility -- there is a spectrum, a continuum, okay? When
11 you're dealing with medical examiner testimony or some other
12 things that are somewhat ancillary to a case, credibility can
13 be a very small or nonexistent issue. Credibility in this case
14 is the only issue, credibility of this witness and credibility
15 of the other witnesses. This a person that and I -- I think
16 everybody would agree, every time he opens his mouth something
17 different comes out, every time.

18 We have -- you know, this is my TJ binder of all of
19 the statements he has made, double sided, each and every page.
20 And, literally, not a page goes by where there is not something
21 different than the previous time, or contradicts a later
22 statement, or whatever. Credibility is the only issue. This
23 is -- it's massive. This is an aggravated murder trial where
24 there is almost zero physical evidence.

25 The credibility of this witness and the credibility

1 of other witnesses is the only issue. This is the whole case.
2 And I can't cross-examine or impeach or prove that a little
3 stack of papers is lying. You know, I can get into things,
4 "Well, you know, he made a statement here, he made a statement
5 there."

6 It's completely ineffective. It is completely
7 ineffective. And allowing the State to use that not only to
8 get that evidence in, but allowing that to bolster other
9 witnesses when we're trying to, you know, attack all of their
10 credibility, is -- is unfair and a violation of the right to
11 confrontation, a right to a fair trial, due process and
12 fairness.

13 This is especially problematic with a transcript
14 that's two years old. Again, Mr. Myore has made statements
15 since that are contradictory. We have trial testimony that's
16 contradictory. We got, just a week and a half ago, more stuff
17 about TJ from another interview they had done over the summer.

18 I think it's best kind of summed up by looking at
19 another witness that was similarly situated, Dawnie Seumanu,
20 right? We have the same thing. We have lots of interviews.
21 We had her prelim transcript, we had a trial transcript. The
22 State believed it was so important to secure her live
23 testimony, recent testimony that they asked the court for a
24 material warrant describing it as "essential and necessary to
25 this case." And the court signed a material witness warrant

1 and jailed somebody who had voluntarily come to court on
2 several occasions for weeks until we could secure their
3 testimony because it was essential. You know what? They were
4 right. They were absolutely right because the first thing out
5 of her mouth is: I perjured myself all these other times and
6 then told an inconsistent story.

7 It is -- it is -- and we had no -- you know, we
8 had -- if anybody had been on notice, of this, anybody, us, the
9 State, we would have handled it much, much differently. You
10 know, the fact that it's coming up last minute shouldn't change
11 the kind of calculus and the remedies available.

12 THE COURT: Well, then -- you know, honestly, I
13 understand your arguments associated with the last-minute
14 notice associated with this witness and somebody can't
15 anticipate that, but you've given me a litany of things all of
16 which have occurred over a course of time, at any time this
17 Court could have received from you a motion to continue, or a
18 motion to reopen the prelim, a motion to do something
19 associated with the new discovery, but nothing has been done
20 and now we're having this argument today.

21 So I -- I'm not certain that it's -- it's persuasive
22 to the Court that whatever you discovered since, and that you
23 have a volume of new information is something that should
24 somehow make the argument bolstered today that this witness,
25 because of their unavailability, should result in this trial

1 not going forward. It's a non-sequitur.

2 MR. CORUM: Well, I've got some more if the Court
3 will indulge me.

4 THE COURT: Well, okay.

5 MR. CORUM: Okay. And -- again, I think, you know,
6 had we known about this last Monday, we would have, you know.
7 At the final pretrial last Monday, I wouldn't have said we're
8 ready to go had we known about this. If it had been three
9 weeks before that, we would have taken these steps.

10 THE COURT: So what you're saying then is this bundle
11 of information that you received post-preliminary hearing,
12 wouldn't -- it wasn't necessary to reopen the discussion with
13 Mr. Myore?

14 MR. CORUM: I don't understand the Court's question.

15 THE COURT: Well, what you've said is: Last Monday
16 you were ready to go and you've told me that you've had a year
17 and a half of additional statements, additional information,
18 and additional evidence that's important and critical to your
19 case, but you were ready to go last Monday.

20 MR. CORUM: With the anticipation that Mr. Myore was
21 going to take the stand again for the third time. You know,
22 again, in fairness, I -- you know, there may be a number of
23 remedies we would have sought had we known this prior to the
24 pretrial. I would have no inclination to reopen the prelim
25 without any kind of thought that he wouldn't be available to

1 testify. You know what I'm saying? I mean, sure, yeah if a
2 year ago I had some kind of inkling that he would refuse, maybe
3 we would have done that. Maybe we would have done a lot of
4 things, but we are where we are.

5 And I understand, you know, we've picked a jury, and
6 everybody wants this thing to go. The only thing that matters
7 from our perspective is that Mr. Leech get a fair trial. And I
8 do not believe it is possible for him to get a trial with a
9 transcript of Mr. Myore's testimony. It is -- it is
10 ineffectual to cross-examine a piece of paper, and allowing
11 that to come in -- and, again, not only to have that testimony,
12 but allow it to bolster the other witnesses who all have
13 massive credibility issues, is just patently unfair.

14 Going back a little bit to just the kind of, you
15 know, the predicate question of unavailability. One of the
16 things that the courts look at is: Has, you know, the
17 proponent of the evidence made a good faith effort to secure
18 testimony? Okay. And I would like to highlight a few things
19 from the preliminary hearing because what we have been told is
20 that Mr. Myore is refusing to testify because he doesn't like
21 his deal or wants a better deal. Okay. And this was something
22 that was discussed at the preliminary hearing.

23 This is page 6 of the preliminary hearing transcript.
24 About halfway down, and I believe the questioner is Ms. Rossi,
25 and what she says is: "You have been extended an offer

1 regarding your involvement in this case, correct?"

2 His response: "Yes, but it's still up in the air."

3 "Okay. And is your understanding your duty in this
4 case is to testify truthfully in order to receive that offer?"

5 "Yes."

6 "And that offer that's been extended at this point is
7 that you plead to two counts, manslaughter and aggravated
8 kidnapping."

9 "I'm not sure."

10 "You don't know what it is right now?"

11 "I don't remember. It's been a while."

12 "Okay. But there has been a discussion?"

13 "Yeah."

14 And then they move on. Mr. Brass on
15 cross-examination, this on page 73, starts right off the bat,
16 "You've talked about your agreement with the State." I think
17 the words you used were somehow 'up in the air.' Do you
18 remember that?"

19 "Yeah."

20 "What part of it is 'up in the air'?"

21 "I don't know exactly. What it -- what the -- what
22 is the deal is."

23 A little bit further down. And they do discuss a
24 murder and aggravated kidnapping, or that he's what's charged
25 with.

1 "You're certainly hoping, sir, to limit your
2 liability of your -- or your exposure of punishment in this
3 case?"

4 "Yeah, I guess."

5 Little further down, "All right. You don't want to
6 get convicted of murder, right?"

7 "No."

8 "You don't want to see yourself going away to prison
9 for a long period of time, right?"

10 "No."

11 "And so you have decided the best thing for you to do
12 is cooperate with the State, right?"

13 "Yes."

14 "Because you believe that they could help you,
15 right?"

16 "Yes."

17 "And you believe they can help you avoid some of the
18 punishment that you might get for a murder, right?"

19 "Yes."

20 "And limit some of the time that you might do in
21 prison, right? In fact, you're hoping that you -- while you
22 might not understand what the deal is, listen carefully to what
23 I'm saying to you, you're hoping that the punishment in this
24 case maybe goes as far as down as probation, don't you? You
25 hope that?

1 "Who wouldn't? I mean, yeah."

2 "Yeah. Who wouldn't, right? And you're hoping for
3 that too, right?"

4 "Yes. Yes."

5 "And so you have decided you're going to cooperate
6 with the State, right?"

7 Later on, on redirect, Ms. Rossi asks him: "Okay.
8 And, TJ, finally, you testified that no one has spoken to you
9 regarding the offer that was made from the district attorney's
10 office, that no one has spoken to you regarding probation."

11 "I just don't remember exactly what was" --

12 "Is it fair to say that probation has never been part
13 of the discussion?"

14 "I don't know. That's what I hope for but I was
15 never told I would get probation."

16 "Have you been told that you're going to prison on
17 this case?"

18 "That I might go to prison. I think that I might get
19 six years or something like that."

20 Again, this is a mandatory prison. This is not --
21 probation is not possible. In fact, the presumption is life
22 without parole. The Court would have to make specific findings
23 to get it down to 15, 10 or 6. Clearly, Mr. Myore had no idea
24 what he was talking about. His attorney was sitting in the
25 jury box doing nothing while this was going on. Okay? And

1 nobody has cleared this up with him.

2 So, you know, the State did what they needed to do to
3 get him to prelim. You know, they did -- I don't think anybody
4 has any doubt that if Mr. Myore had been told by his attorney,
5 or the State, "mandatory prison," that he would have walked up
6 off that witness stand. So the State allowed this
7 misunderstanding to go forward to secure his testimony and just
8 shelved it. You know, now Mr. Myore has got new counsel that
9 has apparently told him, "This is a mandatory prison case and
10 six years is a fantasy, a fantasy. This is the kind of case
11 that, regardless of the bottom, you're going to be doing
12 decades in prison." And now he is reluctant to testify. The
13 State did what they needed to do to get him at the prelim, they
14 could do the same now.

15 I would ask the Court to issue a material witness
16 warrant. I would ask the Court to continue this matter.
17 Mr. Myore's position is untenable. It is untenable. He is
18 convicted himself 20 times over for life without parole
19 offenses, at least two of them, at least two them under even
20 the most defense-oriented perspective. He is implicated
21 himself in two kidnappings, one of which was resulted in death.

22 This is apparently a recent thing with him. I have
23 no doubt that he will change his mind at some point. And --
24 and unless and until he does, and gets up on that witness
25 stand, if the Court is going to allow the transcript, I do not

1 believe that Mr. Leech can get a fair trial.

2 THE COURT: Thank you. Let's hear from the State.

3 MR. MEISTER: I'm going to go in a little bit of the
4 reverse order, Your Honor. It's the State's position,
5 defense's -- defense's last argument is dis-ingenious as far as
6 what the deal was and did not continue to read as far as his
7 own examination as far as what his deal was.

8 "And, okay, do you recall that interview happened in
9 April the year where we discussed the plea offer that was
10 discussed with you? It was a minimum of eight years."

11 "Objection. Asked and answered," by Mr. Corum.

12 "Overruled. He can answer the question."

13 "And it was a minimum of eight years in prison."

14 "Well, I thought it was a minimum of six. Okay. But
15 I wasn't sure.

16 "You knew it was six or -- because it was either six
17 or eight."

18 "I knew it was somewhere around there," he says.

19 And later, when Mr. Batista was cross-examining, his
20 comment was: "You thought it was part of your deal in exchange
21 for the testimony."

22 "Either way, I would have did my testimony."

23 And he talks -- Mr. Corum talks about all of the
24 transcripts that he has read and it is abundantly clear it has
25 been gone over several times, including trial transcripts, what

1 his deal was and always has been.

2 And the notion that we haven't done whatever we
3 could -- we have done everything that we possibly can in this
4 case, including issuing him a use immunity where everything he
5 says in this hearing puts him in further harm than he is
6 already in. The use immunity, whatever he has done in the past
7 is fair game, but anything that he has said from today in this
8 hearing that -- wouldn't be used against him and he still
9 refuses to testify despite this court notifying them that he
10 could be held in contempt.

11 Counsel talks about the material witness warrant for
12 Dawnie Soules, completely something different. Dawnie Soules
13 never said that she perjured herself. She said she was high.
14 She said that when she testified, at least at the trial and on
15 some of these other cases, but she never said that she perjured
16 herself. And basically we never had her saying that she
17 refused to testify. It was just that despite several attempts
18 trying to get Ms. Soules to come to court and answer her
19 subpoenas and instead avoiding process. And so that was the
20 material witness warrant.

21 Counsel talked about these statements. That affects
22 the State, too. But, nonetheless, there is no remedy as far as
23 other than using the transcript. Counsel wants to have a
24 material witness warrant for Mr. Myore. The Court has heard
25 what he said: "I'm not testifying, despite a court order to do

1 that." That doesn't change. It doesn't change if we continue
2 it, if we try to interlock it, anything that happens. That
3 doesn't change and there is no evidence that he will change.

4 Basically, he has said for the last couple weeks,
5 that we're all aware of, that he didn't want to testify. He
6 didn't like the deal. He wasn't going to testify. And he even
7 today, despite use immunity, he's not going to testify. That
8 doesn't change with time. It doesn't change the landscape as
9 far as where -- where it is that we're at and this hope that,
10 you know, down the road somewhere that the light will turn on
11 and he will say, "Well, you know that wasn't such a bad deal,
12 regardless, and I'm willing to testify. We can't count on
13 that."

14 Counsel talked about the Pham case. Interesting
15 enough, that Pham case was upheld, and the Court is absolutely
16 correct, 50 pages of cross-examination by this defendant,
17 almost doubled what anybody else did. No motions to continue.
18 No motions to squash.

19 And, basically, when we look at the case law, both
20 that Counsel quoted and the Court quoted, we go back 35 years
21 to State versus Brooks and that same case law is good case law
22 and it's still being cited. "Similar procedural protections
23 are available in preliminary hearing" -- I'm quoting State
24 versus Brooks -- "And the same rights are at stake is
25 significant."

1 Basically, the same arguments that Counsel made 35
2 years ago, it's the same ones that they're making today, that
3 the very nature of a preliminary hearing is different in motive
4 and interest. Basically, what the Court said in footnote six
5 and page 541 in State versus Brooks, our Supreme Court said the
6 contrary is true. "Defense counsel's motive and interest are
7 the same in either setting. He acts in both situations in the
8 interest of and motivated by establishing the innocence of his
9 client. Therefore cross-examination takes place at preliminary
10 hearing and at trial, the same motive and interest.

11 Ohio versus Roberts, the United States Supreme Court
12 case that they rely on, the same case, that's still good case
13 law. State versus Chapman, our Supreme Court came out two
14 years later still quoting State versus Brooks and says the same
15 thing.

16 Counsel had the opportunity at cross-examination.
17 Counsel had the opportunity within this period of time to try
18 to do something, to go interview this witness, to see if this
19 person was going to testify the same as the State did. It
20 caught us by surprise, but it's the same thing that that's why
21 we have preliminary hearings is to preserve testimony, as the
22 Court said, in case somebody passes, in case somebody refuses,
23 and that's the nature of this.

24 We're both caught at some disadvantage as far as
25 positive things that Mr. Myore said. Defense counsel is at

1 the -- is in the same position as the State is as far as having
2 that particular hearing. Yes, there are statements that are --
3 that have come afterwards and there are statements that came
4 before, but the notion that there were several statements that
5 the defendant made before, they had the opportunity to
6 cross-examine him on those several statements at the
7 preliminary hearing. It's the State's position that they did
8 and the case law is clear, they only had to have the
9 opportunity to cross-examination. They had the opportunity,
10 they took the opportunity, and the court is -- our courts are
11 aware that they don't necessarily ask all of the questions but
12 that does not mean that this preliminary hearing testimony is
13 inadmissible.

14 MR. CORUM: Just real brief, Judge.

15 THE COURT: You get the final word.

16 MR. CORUM: You know --

17 THE COURT: Let me ask one thing, Mr. Corum.

18 MR. CORUM: Yeah. Sure.

19 THE COURT: You can address it for me. And that is:

20 Well, what is the remedy today? Because the argument I'm
21 hearing from the State is there is no remedy and there never
22 will be a remedy as long as he continues to exercise his right
23 not to testify or choose, in contempt of court, not to testify.

24 So what would the remedy ultimately be that you're
25 proposing to the Court --

1 MR. CORUM: Okay.

2 THE COURT: -- that doesn't end up at the same place,
3 unless, of course, at some point he changes his mind.

4 MR. CORUM: Well, I'm -- readily admit that I cannot
5 predict the future. Okay. But what I know is that we have
6 somebody who has agreed to testify for the last 2 1/2 years.
7 Since June of 2014, Mr. Myore has been a ready and willing
8 witness for the State. It is only, apparently, since Tuesday
9 last that he has had some heartburn about that. Okay.

10 We have also been told by his attorney that he does
11 not want a trial. Okay? So his position is untenable. I have
12 every reason to believe that there was a substantial likelihood
13 that it will change. You know, that whatever momentary thing
14 that is going through his mind that has led him to this -- this
15 decision will, in fact, change because his position is
16 completely, legally, practically in every way untenable. He
17 cannot go to trial and have any thought of getting anything
18 other than life without parole. And, in fact, he does want a
19 trial.

20 So again, it's -- it's completely untenable. And at
21 some point I have every reason to believe whether that's next
22 week, whether that's in a month, but in the not too distance
23 future, he's going to change his mind again.

24 THE COURT: But subject to his changing of his mind,
25 there is no remedy that you can propose to the Court?

1 MR. CORUM: Exclude the transcript.

2 THE COURT: Okay.

3 MR. CORUM: Real quick --

4 THE COURT: Exclude the transcript for which you've
5 had the opportunity, and exercise to cross-examine this
6 witness.

7 MR. CORUM: Sure. Well, let me -- let me just real
8 quickly just reiterate a couple of things. Again, I think the
9 State's argument and the proposition that we had an
10 opportunity -- a full opportunity to cross-examine Mr. Myore is
11 very disingenuous.

12 THE COURT: Well, it's -- but it's the law of the
13 State of Utah.

14 MR. CORUM: Well, I'm not sure about that. You know,
15 that -- or that we had some remedy to try to reopen the prelim.
16 You know, because we had received these materials. I mean,
17 that's a complete non-starter. Why do you want to reopen the
18 prelim? Well, we've got all of these other things that we want
19 to cross-examine him about that go to his credibility.

20 Counsel, credibility is not even an issue at the
21 prelim, motion denied. I wouldn't even in good faith make that
22 motion. I wouldn't. I don't think that's a complete
23 nonstarter because of the way the case law is, because of the
24 practice in this jurisdiction, because of the, quite frankly,
25 very successful arguments by the district attorney and numerous

1 prelims that the preliminary hearing is a determination of
2 probable cause, and it is a determination for probable cause
3 only, you know. And, again, I understand that didn't
4 necessarily happen in this case. You know, I wasn't, you know,
5 actually prevented from asking a particular question, but I did
6 not ask those questions because of the practice in this
7 jurisdiction and because of objections by the State that have
8 been upheld countless times over the years by Third District
9 bench.

10 And as a practical matter, we cannot do full
11 cross-examinations at prelims, we can't. We would be here for
12 hours. We're already under enormous pressure with these
13 calendars where we have 20, 25 prelims set on a particular day
14 that we're -- you know, you -- Counsel, you are absolutely --
15 malpractice, ineffective assistance because you're not asking
16 all of these questions that you could have asked. That can't
17 be. That can just not be. And we did not have all these
18 materials.

19 So again, I do take issue with the notion that we did
20 have an actual opportunity to cross-examine him, both from a
21 practical matter, from that we did not have all of the
22 materials. But as another practical matter, that we're just
23 not allowed to under the case law, and that's correct.

24 You know, the other thing is -- a transcript -- look,
25 he testifies. I don't know if the State will agree with this,

1 he is a wildly incredible witness. Okay? That doesn't come
2 through on the transcript. You can see his answers and oh,
3 well, maybe we point this out, we point that out, but it's
4 seeing his demeanor. It's seeing how he, you know, fumbles
5 about for an answer or, you know, smiles inappropriately or
6 nervously switches or shifts about. That's the crux of
7 cross-examination and that's the crux of testimony.

8 Okay. I mean, we have the situation on almost a
9 weekly basis where somebody is at the podium and the Court will
10 ask them is -- "You know, Mr. Smith have you used recently?"
11 And maybe on the transcript it says "No." But in court it's
12 ah, looking around, looking at the attorney, five second, 10
13 second pause. No. You know, that's the crux of live
14 testimony. And it's important in any case, but it's -- it's so
15 vital in this case where this is all about witness credibility,
16 not just that witness, but the other witnesses.

17 That's all I have.

18 THE COURT: Okay. All right. Well, I appreciate the
19 arguments, and there are certainly some highlights associated
20 with the practical experience of lawyers, and courts at the
21 trial level are associated with what the state of the law is in
22 the State of Utah. But I have ultimately determined that this
23 witness is unavailable. He has refused to testify despite the
24 use immunity that he has been granted and despite the Court's
25 order for him to testify. And the Court finds that he's now

1 unavailable and that his primary testimony can be admitted
2 under Rule 804.

3 So we've got about 15 minutes. We'll be back in 15
4 and we'll bring the jury in. We'll read the instructions and
5 we'll get through opening statements.

6 MR. NITECKI: Your Honor, before you leave the bench,
7 there is an additional instruction that the defense is
8 proposing to include with the concluding instruction. If I can
9 approach?

10 THE COURT: Sure.

11 MR. NITECKI: I have footnote at one. And I gave a
12 copy to the State. I'm not asking the Court to necessarily
13 rule on it at this point, but simply submitting it for the
14 Court's consideration.

15 THE COURT: Okay. We're in recess.

16 MR. CORUM: Just -- go ahead. We can address it
17 later. At some point we're going to have to get down into
18 what's actually being admitted as far as his prior testimony,
19 but I think we have several days to work that out.

20 (Break taken.)

21 THE COURT: We will go back on the record in the
22 matter of State of Utah versus Christopher Leech, Case
23 141900235.

24 Are we ready for the jury?

25 MR. NITECKI: Your Honor, one -- just one matter.