

1 Plaintiff: Ms. Murray

2 Witness:

3 Court:

4 Defense: Ms. Johnson

5

6 WARM UP

7

8 BY MS. MURRAY: Q. When the defendant walks over to  
9 where Brian Foster is, do you hear anything being said?

10 A. Yes.

11 Q. What do you hear?

12 A. Brian tells Michael, "I / give you props, you know, I think you  
13 are down."

14 Q. Okay. And when Brian Foster says that, do you see the  
15 handgun?

16 MS. JOHNSON: Objection, your Honor. / This is leading.

17 THE COURT: Overruled. You may answer.

18 THE WITNESS: No.

19 BY MS. MURRAY: Q. When Brian Foster says, "I give you  
20 props, I think you are down," does he say anything / else?

21 A. Yes.

22 Q. What does he say?

23 A. He tells Michael, "What are you carrying?"

24 Q. He asks Michael what he is holding?

25 A. Correct.

26

1 Q. When Brian Foster says / that, what do you see the defendant  
2 do?

3 A. Pull out the gun from under his waistband.

4 Q. When the defendant pulls out the handgun, what does / he do  
5 with it?

6 A. He displays it so Brian can see it.

7 Q. How does he display it?

8 A. With his right arm. He pulls out the / weapon.

9 Q. So he reaches into his waistband in the front area?

10 A. Correct.

11 MS. JOHNSON: Objection. Leading.

12 THE COURT: Sustained.

13 BY MS. MURRAY: Q. Where does he pull the handgun from?

14 THE WITNESS: From the front / waistband with his right  
15 hand.

16 Q. And when the defendant pulls out the handgun with his right  
17 hand from the front of his waistband, how does he display it?

18 A. He just holds it out with one hand. He raises it a little bit. He  
19 holds it up. /

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22 \*\*END OF WARMUP\*\*  
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1 BEGIN TEST

2  
3 EXAMINATION

4 BY MS. MURRAY: Q. Can you stand up and show the jury  
5 how it is the defendant displays the weapon to Brian Foster?

6 A. He just pulls it out and / displays it like that.

7 MS. MURRAY: For the record, the witness has made a pulling  
8 gesture from the front of his waistband with his right hand. Then / he sort  
9 of points it and turns it a little to the right just like turning his hand over.

10 THE COURT: Okay. The arm extended straight forward /  
11 level to the ground, and appears to move the weapon at a 45-degree angle  
12 to the right.

13 MS. MURRAY: About chest high.

14 THE COURT: The record may so reflect. /

15 BY MS. MURRAY: Q. Is that accurate, sir?

16 A. Yes.

17 Q. At the time that the defendant pulls the gun out that way and  
18 displays it, is Brian Foster -- where is / he standing?

19 A. Directly in front of Michael.

20 Q. Now, when the defendant pulls out the gun, does Brian Foster  
21 say anything?

22 A. No.

23 Q. After the defendant pulls / out the gun, does the defendant say  
24 anything?

25 A. No.

26 Q. How long does Michael Tran remain there showing the gun?

1 A. Less than a minute.

2 Q. And at / the end of that minute, does anybody say anything?

3 A. Yes.

4 Q. Who?

5 A. Michael.

6 Q. What does the defendant say?

7 A. At this point Kevin was approaching Michael.

8 Q. Okay. / Where was Kevin Cooper as you say he is approaching

9 the defendant?

10 A. He was to the left of Michael.

11 Q. Okay. And to the left -- if / you look at the diagram marked as

12 People's 1 for identification, do you see all those numbers on the diagram

13 near the car marked as / 20?

14 A. Yes.

15 Q. Can you see on that diagram about where the defendant was

16 standing as he was talking to Brian Foster?

17 A. I'd say between 14 / and 15.

18 Q. Okay. Now, as you see Kevin Cooper is approaching the

19 defendant, do you see any of the numbers on the diagram that are / close

20 to the spot where Kevin Cooper is as he is approaching?

21 A. Yes.

22 Q. Where?

23 A. Number 18.

24 Q. That is directly to the south of the car / marked as 20 on the

25 diagram?

26 A. Correct.

1 Q. As Kevin Cooper is in the area of the 18 on the diagram, what  
2 do you hear the / defendant say?

3 A. He tells Kevin to step back.

4 Q. When Michael says that, does he do anything?

5 A. He turns his body over so the gun is / moving towards that  
6 direction.

7 Q. In which direction is the gun moving?

8 A. Towards Mr. Cooper.

9 Q. And when the defendant demands that Mr. Cooper back away,  
10 what / do you see Kevin Cooper do, if anything?

11 A. He steps back.  
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1 BEGIN TYPING

2  
3 BY MS. MURRAY: Q. How many steps does he actually take?

4 THE WITNESS: It would just be an estimate, but I'd say about  
5 two. I think that's correct.

6 Q. Okay. When Kevin / changes his location, where does he end  
7 up standing on the diagram marked as People's 1?

8 A. Between number 9 and number 10.

9 Q. After the defendant / instructs Kevin to back up and he  
10 complies, what happens next?

11 A. At this point Kevin sees the gun and he steps back.

12 MS. JOHNSON: Objection, your Honor. / Speculation.

13 THE COURT: Sustained.

14 MS. JOHNSON: Move to strike.

15 THE COURT: The last answer is stricken.

16 BY MS. MURRAY: Q. What happens after Kevin finally steps  
17 back?

18 A. He tells Michael to go over to the / park.

19 Q. Where is the park in relationship to where the defendant is  
20 standing on the diagram between 14 and 15?

21 A. South of that blue triangle / right there.

22 Q. Okay. South of Lakeside Boulevard?

23 A. Yes.

24 Q. Is it actually right --

25 A. Across the street.  
26

1 Q. When Kevin first makes that statement, does the defendant say  
2 / anything?

3 A. No.

4 Q. What does the defendant do?

5 A. He immediately puts his gun down.

6 Q. When you say he puts the handgun down, stand up and  
7 demonstrate / for the jury what the defendant does with the gun.

8 A. He had it up like that when he turned to Mr. Cooper and he put  
9 / it down to his right side.

10 MS. MURRAY: For the record, the witness has indicated that  
11 Michael Tran was holding the gun up with his right hand / pointing it at  
12 Mr. Cooper.

13 MS. JOHNSON: I am going to object. That misstates what the  
14 witness just demonstrated.

15 BY MS. MURRAY: Q. Sir, could you stand up again for the /  
16 record.

17 THE COURT: I think pointing in a direction is clear, it is just  
18 a question of where. I understand the objection.

19 BY MS. MURRAY: Q. Sir, when you saw the / defendant  
20 talking to Mr. Cooper, was the gun pointed in some direction?

21 A. Yes.

22 Q. And who was it pointed at, if anyone?

23 MS. JOHNSON: Object.

24 THE WITNESS: It was pointed / at Brian. When he turned to  
25 Kevin, who was walking up, he didn't really point at him. He only motioned  
26 towards him.

1 BY MS. MURRAY: Q. Okay. What direction / was it pointed  
2 in?

3 A. Approximately the west.

4 Q. Was there anybody there standing towards the west position?

5 A. Yes.

6 Q. Who?

7 A. Mr. Cooper.

8 Q. Okay. When the defendant turned / toward Kevin Cooper and  
9 the gun moved towards the west, how many hands was the defendant  
10 holding the gun in?

11 A. Only one.

12 Q. Which hand was / it?

13 A. His right hand.

14 Q. And what level was it?

15 A. Chest level.

16 Q. Okay. And was the defendant's arm -- what position was it in?

17 A. His arm wasn't / extended fully, only about halfway.

18 Q. Bent at the elbow?

19 A. That's correct, bent at the elbow.

20 Q. Okay. Right after the defendant and Kevin had this -- well, /  
21 after Kevin said something about going to the park, what do you observe  
22 the defendant to do?

23 MS. JOHNSON: Asked and answered, your Honor.

24 THE COURT: Overruled. You may / answer.

25 THE WITNESS: He turns back to Brian and lowers the gun to  
26 his side, puts it down.



1 BY MS. MURRAY: Q. As he proceeds to lower the handgun, it  
2 is / still in Michael Tran's right hand?

3 A. Absolutely.

4 Q. And where is the barrel of the gun pointed, if you know, as the  
5 defendant holds the gun / at his side?

6 A. To the ground.

7 Q. When the defendant's holding the gun towards the ground and  
8 keeps it at his right side, which direction has / he turned, do you recall?

9 A. Facing Brian.

10 Q. When Michael faces Brian, then is there any more conversation  
11 between the defendant and Brian Foster?

12 A. Actually, there / was silence for a bit, and then conversation.

13 Q. When the defendant turns back to Brian Foster, do you hear  
14 some yelling?

15 A. No.

16 Q. At any time / after the defendant gets out of his car, did you  
17 hear any raised voices?

18 A. Not at any time.

19 Q. When the defendant has the gun at / his side and turns back to  
20 Brian Foster, what's the defendant's demeanor like?

21 MS. JOHNSON: Objection, your Honor. Calls for speculation.  
22 No foundation.

23 THE COURT: Overruled. You may answer. /

24 THE WITNESS: Normal, not angry or anything.  
25  
26

1 BY MS. MURRAY: Q. Okay. Now, do you hear the defendant  
2 say something after there is a short pause and after he then turns / back  
3 to Brian Foster?

4 A. No.

5 Q. Do you hear Brian Foster say something?

6 A. Yes.

7 Q. What do you hear Brian Foster saying?

8 A. He again said he thinks / he is down and gives him credit.  
9 Brian said to point the gun to his face and he would look down the barrel.

10 Q. After Brian / Foster makes that statement, what's the  
11 defendant's demeanor?

12 MS. JOHNSON: Objection, your Honor. This is leading and  
13 suggestive.

14 THE COURT: Overruled. You may answer.

15 THE WITNESS: Michael turns to me and / he had a grin  
16 across his face. He asked if I heard what Brian had just said.

17 BY MS. MURRAY: Q. Could you describe the grin to us?

18 A. Like / he couldn't believe Brian actually said that when he is  
19 having a gun in his hand.

20 Q. Now, you testified the defendant turned to you, where / are  
21 you seated at the time the defendant adjusts his position?

22 A. Driver's side.

23 Q. When the defendant turns in your direction what part of him  
24 turns? /

25 A. His upper body.

26 Q. Okay. Does the defendant turn his head also?

1 A. Yes, partially.

2 Q. Which direction does he turn, to the right or to the left? /

3 A. Looking over his shoulder.

4 Q. Turning and looking back over where you are seated in the car,  
5 over his shoulder?

6 A. Correct.

7 Q. When the defendant does that, / where is the handgun  
8 pointed?

9 MS. JOHNSON: Objection. Assumes facts not in evidence.

10 THE COURT: Overruled. You may answer.

11 THE WITNESS: At that moment when Brian made that  
12 statement, Michael had / raised the pistol back up.

13 BY MS. MURRAY: Q. Raised it up to where?

14 A. To Brian's face.

15 Q. So when the defendant turns and asks you if you had heard /  
16 Brian's statement, what's happening with the gun?

17 A. Pointed straight at Brian.

18 Q. When Michael asked you that question, did you respond?

19 A. I suppose you could say / that. Basically, I nodded my head,  
20 but didn't really say anything.

21 Q. After the defendant says that to you, do you see anybody else  
22 in the / area of the park where you are?

23 A. Prior to that I did.

24 Q. Okay. When was the first occasion you noticed somebody else  
25 in the area / of the park where you guys were?

26

1 A. When Michael had turned to Mr. Cooper and told Kevin to back  
2 away as he was moving his / gun over, he saw the compact car so that's  
3 when he concealed the gun behind his leg.

4 MS. JOHNSON: Wait. I am going to object, your Honor. /  
5 Speculation. He saw a car.

6 THE COURT: Sustained.

7 BY MS. MURRAY: Q. Going back now. As the defendant  
8 turns in the direction of Kevin, then where is this car that you / are talking  
9 about?

10 THE WITNESS: It's approaching us on Lakeside Boulevard  
11 going east.

12 Q. Traveling from west to east?

13 A. Correct.

14 Q. And as the defendant is facing towards Mr. / Cooper, which  
15 direction is he facing?

16 A. I believe west.

17 Q. The defendant is facing the same way as the car is coming; is  
18 that right?

19 A. Yes. /

20 Q. Now, can you describe this car?

21 A. The headlights were very bright. I couldn't see.

22 Q. As the car is traveling, how soon after you noticed the / car is it  
23 that the defendant releases the gun to his side?

24 A. Almost immediately.

25 Q. What do you observe the car doing?

26 A. It made a left / onto Bowling Green Street.

1 Q. So it never actually drove past your location?

2 A. No.

3 Q. Do you see any other people or anything in the area after /  
4 that?

5 A. Yes.

6 Q. When did that happen?

7 A. As soon as that car with its headlights on made a left onto  
8 Bowling Green Street, there was another / car located on Lakeside  
9 Boulevard.

10 Q. All right. And where was this other car parked on Lakeside  
11 Boulevard in relationship to where your car and Brian / Foster's car was  
12 sitting?

13 A. It was parked on Lakeside on the south side, basically pointing  
14 east.

15 Q. All right. And in relationship to Bowling Green Street, / was it  
16 east or west of the intersection of Bowling Green and Lakeside?

17 A. West.

18 Q. It would not be pictured on the exhibit or the diagram, / true?

19 A. No.

20 Q. In relationship to the events that you have just testified to,  
21 when is it that you saw this other car parked west of / Bowling Green on  
22 Lakeside?

23 A. As soon as the car with its headlights on approached us. As  
24 soon as it passed, I noticed that car.

25

26

1 Q. After / the defendant asked if you heard Brian's statement  
2 about the gun, does Michael still keep the gun pointed at Brian Foster's  
3 face?

4 MS. JOHNSON: Objection, your Honor. / Leading and  
5 suggestive.

6 THE COURT: No. Overruled. You may answer.

7 THE WITNESS: Yes.

8 MS. MURRAY: Thank you. Nothing further.

9 THE COURT: Counsel, you may now examine.

10 MS. JOHNSON: Thank you.

11 EXAMINATION

12 BY MS. JOHNSON: Q. You said that after the / defendant had  
13 that discussion about the statement, he is still pointing the gun at Brian  
14 Foster's face?

15 A. Yes.

16 Q. Did you ever see him lower the / gun after that?

17 A. No.

18 Q. After my client turns back to Brian Foster, what happens next?

19 A. He fires the gun.

20 Q. Prior to firing the gun, do / you see Brian Foster do anything?

21 A. No.

22 Q. When the defendant fires the pistol, do you actually see him do  
23 it?

24 A. Yes.

25 Q. And what happens after / you observe the defendant fire the  
26 gun?

1 A. I see him fire the gun into Brian, and immediately turns  
2 towards Mr. Cooper.

3 Q. How many shots did / you hear from the gun?

4 A. I remember Michael firing twice.

5 Q. What do you see happening after the gun is discharged twice?

6 A. I see Brian fall / onto his back.

7 Q. Approximately how long before Brian starts to fall in  
8 relationship to the firing of the gun?

9 A. Immediately after the first shot.

10 Q. Did / you see anything on Brian Foster's person after the first  
11 shot is fired?

12 A. No.

13 Q. Where is Brian Foster, or how is he positioned after the / first  
14 shot?

15 You indicated he is falling. Can you say where he is at the time  
16 of the second shot?

17 A. I don't remember. It happened / so fast.

18 Q. Now, after you hear those two gunshots, do you see where  
19 Kevin is standing?

20 A. Yes.

21 Q. And on the diagram marked as People's 1, / where is Kevin  
22 standing at the time of the -- let's start with the time of the first gunshot.  
23 Where is Kevin positioned?

24 A. He is still / standing between number 9 and number 10.

25 Q. So he hasn't changed locations after Michael told him to back  
26 away?

1 MS. MURRAY: Objection, your Honor. Vague.

2 THE COURT: Overruled. You / may answer.

3 THE WITNESS: After Michael told him to get back, Kevin  
4 stepped about two paces back and remained there.

5 BY MS. JOHNSON: Q. Okay. Subsequent to the second shot,  
6 did / you notice where Kevin is standing then?

7 A. Yes, after the first shot I did see where Kevin was.

8 Q. Okay. What do you see Kevin doing / then, if anything?

9 A. I see exactly him dropping his drink cup, turning around and  
10 starting to run.

11 Q. You have described Kevin dropping his drink cup. / Where  
12 exactly does he drop it on the diagram exhibit, if you recall?

13 A. Right where he was standing.

14 Q. So somewhere between number 9 and number / 10?

15 A. Yes.

16 Q. Now, you testified that you saw Kevin turn around and run. So,  
17 which direction does Kevin run in?

18 A. West, to the front of / Brian's car.

19 Q. As Kevin is running, do you see what the defendant is doing?

20 A. Yes.

21 Q. What?

22 A. He turns around facing Kevin and chases him down. /

23 Q. Now, when the defendant is chasing him, about how fast is  
24 Michael moving?

25 A. Maybe starting to sprint, but really taking only two steps.

26 Q. Starting to / sprint?



1 A. Yes.

2 Q. But, only takes two steps and then what happens?

3 A. Michael begins to discharge the firearm.

4 Q. How many shots do you hear?

5 A. A whole / series of gunshots. I don't remember exactly how  
6 many. Prior to getting there I knew how many bullets were in the gun, but  
7 I didn't / count how many times he pulled the trigger.

8 Q. How did you know how many bullets were in the gun?

9 A. Because I am extremely familiar with / that gun.

10 Q. Had you handled that gun previously before going to Bowling  
11 Green Park?

12 A. Yes.

13 Q. When was the last time you handled that firearm, that / Smith  
14 & Wesson .40 caliber gun prior to the homicide?

15 A. Maybe a day, maybe a week. I don't remember. We have so  
16 many pistols lying / around.

17 Q. When you handled the firearm, how did you know how many  
18 bullets were loaded in the gun?

19 A. We always had that pistol fully loaded. /

20 MS. JOHNSON: Your Honor, that's not responsive to my  
21 question.

22 MS. MURRAY: Well, I think he has answered it.

23 MS. JOHNSON: I would move to strike it, please.

24 THE COURT: All right. Sustained. /

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26 -o0o-