

1 So, I want you to get your pencil and paper, if you
2 take any notes. This is not going to be an exhibit. It's
3 just a matter of, this is stipulated between the -- these are
4 excerpts from medical records of Victoria Whitmarsh as
5 stipulated by the State and Brian O'Keefe.

6 "Records from October 2001, admission to Montevista
7 Hospital, show that Victoria Whitmarsh was admitted 'because
8 she had tried to cut her wrist in an attempt to hurt herself.'
9 When Victoria Whitmarsh was brought to Sunrise Hospital prior
10 to transfer to Montevista, documents indicate the patient
11 comes in by EMS with bilateral wrist cuts. Patient states,
12 had fight with husband, got depressed, tried to cut wrist with
13 a knife. Plaintiff (sic) states, 'Was trying to kill
14 myself.'"

15 Triage nurse assessment sheet, "She was diagnosed
16 with 'laceration of both wrists.' Psychiatric evaluation by
17 Dr. DeKay (phonetic) shows, 'The patient was brought in after
18 she tried to cut her wrist in an attempted suicide. This has
19 been the fourth suicide attempt, and I was just recently made
20 aware of this.'"

21 Those are the records from October 2001 admission to
22 Montevista Hospital. It goes on, the stipulation between the
23 State and the defense.

24 Records from September 2006, admission to Montevista
25 Hospital, show that Victoria Whitmarsh 'had self-inflicted

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1 wrist lacerations.' Admission certification by Dr. Slagel
2 (phonetic) reports, 'Ms. Whitmarsh has made at least three
3 suicide attempts. Recent attempt could have been lethal.'"

4 Emergency admission form. "Discharge summary by Dr.
5 Adakuli Ayashi (phonetic), M.D., states, 'She had to be
6 intubated after she overdosed with morphine, after an argument
7 with her estranged husband. She has been self-mutilating for
8 the past 15 years, and stated that she cuts herself when she
9 is angry. And the last time she cut her left wrist was with a
10 pair of scissors on September 22nd, 2006. She complained of
11 irritability, mood swings, difficulty sleeping at night
12 because of racing thoughts. Poor appetite, anxiety, low
13 energy, and difficulty sleeping, and difficulty concentrating.
14 She also reports episodic euphoria, anger outbursts, and
15 decreased need for sleep.' (Discharge summary, page 1)."

16 "Victoria Whitmarsh reported that on -- that the
17 October 2001 admission to Montevista Hospital occurred
18 'because she was angry, screaming, and she went berserk after
19 an argument with her husband, and overdosed on pills, and cut
20 her wrist.' Dr. Anakunla Aja, M.D., evaluated Whitmarsh, and
21 noted that 'She has a long history of poor anger management,
22 and very impulsive behavior.' (Discharge summary, page 4)."

23 "Montevista Hospital assessment and referral
24 screening, dated October 29th, 2006, indicates, chief
25 complaint in patient's own words, 'Why are you here today?'

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1 Answer, 'I have been depressed. I cut myself when I am
2 depressed. I also got angry with my husband. That is why I
3 took the pills.'"

4 "Under heading of precipitating events which
5 occurred in previous 72 hours, which prompted assessment.
6 Patient also admits to a history of self-mutilation. Most
7 recently, she stabbed herself on her hands, August 22nd, 2006,
8 'because I'm not happy with myself.' Patient admits, 'poor
9 impulse control,' as evidenced by 'cuts self when angry.'"

10 Again, I reiterate, you'll get an instruction. The
11 evidence which you are to consider in this case consists of
12 the testimony of the witnesses, the exhibits, and any facts
13 admitted or agreed to by counsel. So, these -- this excerpt,
14 as stipulated by the State and Brian O'Keefe, are admitted to
15 by counsel -- stipulated to by counsel. Okay?

16 All right. That completes the reading of the
17 stipulation. And Mr. Lalli?

18 MR. LALLI: Your Honor, at this point, the State of
19 Nevada rests.

20 THE COURT: Thank you, Mr. Lalli. That completes
21 the State's case in chief, ladies and gentlemen. I'm going to
22 ask Mr. O'Keefe. Mr. O'Keefe, what is your pleasure?

23 MR. O'KEEFE: Your Honor, with all due respect, if I
24 could approach the bench on this matter briefly --

25 THE COURT: Yeah.

1 MR. O'KEEFE: -- before I answer that question?

2 THE COURT: Yeah.

3 (Off-record bench conference)

4 THE COURT: All right. Mr. O'Keefe, what is your
5 pleasure? I know you have a motion, and you're going to
6 reserve that. But --

7 MR. O'KEEFE: Right. The defense rests.

8 THE COURT: So, you have no witness to present,
9 and --

10 MR. O'KEEFE: No witness.

11 THE COURT: -- you rest?

12 MR. O'KEEFE: I rest.

13 THE COURT: All right. That completes the testimony
14 in this case, ladies and gentlemen. And I want to thank you
15 very much. So, you can go a little early today. And I have a
16 lot of work to do, various issues and instructions. So,
17 rather than keep you here, I -- you know, I'm used to working
18 late, so I work, right?

19 So, that being said, I want to give you the
20 admonition. And then, tomorrow at 9:00 o'clock is good?

21 MR. LALLI: Yes, Your Honor.

22 THE COURT: 9:00 o'clock?

23 MR. O'KEEFE: Yes, Your Honor.

24 THE COURT: I think at 9:00, because I have a motion
25 calendar at 8:45, which will take me five minutes. And so, I

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1 think at 9:00 o'clock tomorrow, we'll read you the
2 instructions, and we'll hear some closing arguments, and the
3 case will be submitted to you tomorrow. All right?

4 Again, I want to thank you very much. I keep saying
5 this is an important case, both to the State of Nevada and to
6 the defense. So, appreciate your attentiveness, and we're
7 going to recess now.

8 During this recess, it is your duty not to converse
9 among yourselves, or with anyone else, on any subject
10 connected with the trial; read, watch, or listen to any report
11 or commentary on the trial, by any person connected with the
12 trial, by any medium of information, including, without
13 limitation, newspaper, television, radio. You are not to form
14 or express any opinion on any subject connected with the trial
15 until this is finally submitted to you.

16 Thank you. We're going to just take a five-minute
17 recess, and then come back, and we'll figure things out, all
18 right? Thank you very much. We'll see you tomorrow. Be out
19 there about five minutes to 9:00, and we should get in there
20 hopefully quick enough, all right?

21 (Court recessed at 2:31 p.m. until 2:42 p.m.)

22 (Outside the presence of the jury panel)

23 THE COURT: Are we on the record now?

24 THE COURT RECORDER: On the record.

25 THE COURT: All right. This is outside the presence

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1 of the jury. It's my understand that Mr. O'Keefe properly --
2 or did properly and timely object to the 9-11 tape's now being
3 admitted; should be admitted because the State opened the
4 door. But -- so, I just want you to make a quick record on
5 that. We're going to have to do it again because we had no
6 record.

7 MR. O'KEEFE: Okay. Your Honor, again, I just -- at
8 the end of the State's case in chief, before it closed, their
9 last witness's testimony was about my voluntary statement they
10 had taken. And at the end of that voluntary statement,
11 discussion and evidence was brought up about 9-11 calls being
12 made, and who, and all that.

13 But the defendant's position is, it kind of clearly,
14 I felt, opened the door, because a prior court ruling by you
15 was made that a foundation wasn't laid enough for me to bring
16 those 9-11 calls in, and I feel they're very imperative, Your
17 Honor.

18 THE COURT: Mr. Lalli, again?

19 MR. LALLI: Your Honor, it's the State's position
20 that the Court did not prohibit the defendant from admitting
21 any 9-11 tapes. It was just a matter of his inability to lay
22 the foundation for them. He hasn't been able to lay the
23 foundation for them. They're hearsay. And so, they're still
24 not admissible. It's not an opening the door issue.

25 THE COURT: The Court agrees with the State that I

1 don't think the State opened the door to anything, and the
2 proper foundation still was not laid. So, my prior rulings
3 stands on the 9-11 tape.

4 All right. And you have another motion?

5 MR. O'KEEFE: Yes, Your Honor. I had to try, Your
6 Honor. You understand.

7 THE COURT: Absolutely.

8 MR. O'KEEFE: Thank you, Your Honor. Okay. Per --

9 THE COURT: But that was just a little parachute,
10 you know.

11 MR. O'KEEFE: Little parachute?

12 THE COURT: We might have had some big ones in this,
13 but that was just a little one.

14 MR. O'KEEFE: I [inaudible] big ones, Your Honor.
15 Thank you, Your Honor.

16 THE COURT: [Inaudible] big one.

17 MR. O'KEEFE: The State of Nevada vs. Colmes
18 (phonetic), you'll know quite well, Your Honor, I'm sure.

19 THE COURT: So, this is under NRS 175.380 --

20 MR. O'KEEFE: 381, Your Honor. Subsection --

21 THE COURT: 381. Court may advise -- sub 1.

22 MR. O'KEEFE: Subsection 1. Yes, sir.

23 THE COURT: "Court may advise jury to acquit," which
24 is a directed verdict, as indicated, "when evidence on either
25 side closed, motion for judgment of acquittal after verdict of

1 guilty, or guilty by mentally, subsequent motion for a new
2 trial." And we're going onto subsection 1. "If at any time
3 after the evidence on either side is closed, the Court deems
4 the evidence insufficient to warrant a conviction, it may
5 advise the jury to acquit the defendant, but the jury is not
6 bound by such advise." All right.

7 MR. O'KEEFE: Okay. Your Honor, okay. Thank you,
8 Your Honor. Okay. The evidence utilized in this case, Your
9 Honor, was identical, and less than the evidence presented in
10 the first trial in this instant matter. The Nevada Supreme
11 Court has already ruled and seen all this evidence. And in
12 actuality, there was a little bit more that the State
13 presented.

14 My point is, they use less, but it was absolutely
15 the identical evidence used. On an alleged second degree
16 murder instruction, which we're here again today for, second
17 degree murder still, they use the same evidence.

18 Again, quickly, the point being made is, the
19 evidence has already been seen. They've ruled that the
20 instruction was wrong. But however, in the reversal order,
21 they said, even if the instruction was proper, it didn't
22 matter, because all the evidence presented didn't support that
23 theory of second degree murder, period.

24 THE COURT: I think fact here is the key issue.

25 MR. O'KEEFE: But that theory --

1 THE COURT: We don't have that theory there anymore.

2 MR. O'KEEFE: But that theory still constitutes for
3 equal second degree murder, Your Honor. Now, Mr. Lalli is
4 proceeding on simple implied malice murder, which is a lesser
5 included, basically. It's actually a lesser included of the
6 first degree murder, that the jury of -- like, being the
7 [inaudible] of the fact in the first trial acquitted me of
8 first degree intentional stabbing.

9 Actuality, this case now has proceeded on an
10 unintentional charge, based on an unlawful act. I'm still at
11 a loss of what act Mr. Lalli is going to base this homicide
12 on. Because hear me out, Your Honor, and I appreciate your
13 patience. Whether it would have been an alleged felony
14 battery or not, or a misdemeanor battery, battery is the
15 ultimate element of the homicide. All the elements are
16 subsumed in it.

17 My whole point is, when they acquitted me of that
18 theory then, Your Honor, that theory was saying the felony of
19 battery. They acquitted me of the battery act. They know --
20 the Supreme Court of Nevada knows exactly what they were
21 doing. It was an artificial battery, whatever. It was a
22 little trickery, I do believe; duplicity being used. It was a
23 way for the case to get reversed and come back, and the State
24 gets to do it again. It was a dry run.

25 But my whole point is, all this evidence was already

1 in the record of the appeal on the first trial. They've seen
2 it all. They're going to see this again, if I get convicted
3 of second degree murder, and they're going to say, what they
4 heck? A third --

5 THE COURT: They're not going to see the same
6 instruction that was --

7 MR. O'KEEFE: Well -- yes, sir, Your Honor. But I'm
8 just trying to get -- I'm trying to clarify that there has
9 been no newly (sic) evidence. It's all the same evidence.
10 Some of that evidence was wrongfully used. You know, I've
11 made my continuing objections. You have helped me and saved
12 me, and preserved those for appellate issue, if needed.
13 There's nothing new.

14 They have -- Your Honor, you've seen, without a
15 doubt, the evidence does not support the big M, murder. They
16 got to prove the intent, the knowledge, the act, the -- I had
17 to have the conscious knowledge, knowing that the unlawful act
18 they said I didn't do, that I hadn't -- I knew that this act
19 was without a doubt going to kill her. The unlawfulness of
20 the stabbing, the intent, and with conscious knowledge.

21 This case should not, Your Honor, be -- there should
22 be no more time wasted on this. This should not be turned
23 over to the jury to deliberate. I have to make my record.
24 I'm trying my best.

25 And it's -- like, again, I must reiterate one last

1 time, and I will sit down and shut up, Your Honor. It's the
2 same evidence, it's less evidence, it doesn't support murder.
3 They have proved nothing. You are a wise -- you worked on the
4 Supreme Court.

5 And again, I said -- you know, when they recharged
6 me with second degree murder, that theory, Your Honor, that
7 he's proceeding on now, simple malice murder with that
8 premeditation and deliberation, second degree murder, the
9 theory; that theory was already on the first trial. It was
10 theory 1, supposedly. Then to theory 2, that theory that
11 you're talking about they acquitted.

12 Okay. The Supreme Court knows if they said it
13 didn't support number 2, number 1 was already there. Any
14 remaining theory available or left for the second degree -- if
15 there's any remaining theory left available, the Supreme Court
16 of Nevada couldn't reverse it. They could have said, well, it
17 didn't support number 2; but okay, it supports number 1. You
18 well know; you've probably wrote opinions.

19 Well, the evidence was so overwhelming, it didn't
20 support this. You're right, we'll agree with that, we'll drop
21 the felony deal. But it supported the malice -- simple malice
22 murder -- simple murder. It supported that. They already had
23 the simple murder. I think my argument's quite clear, and
24 I'll --

25 THE COURT: Yeah.

1 MR. O'KEEFE: -- submit on that.

2 THE COURT: And it was made many times during this
3 trial, and I appreciate always having -- making a record. Mr.
4 Lalli?

5 MR. LALLI: Your Honor, I would just -- I have
6 responded to it many times. I oppose the motion.

7 THE COURT: Well, just a couple sentences. Just get
8 it in there.

9 MR. LALLI: Sure. The Nevada Supreme Court struck,
10 or did not find that there was evidence presented on a felony
11 second degree murder theory. The State is still free to
12 proceed on a second degree murder based upon an unlawful
13 killing with malice, aforethought. And that is the theory
14 upon which we proceeded. We have proven that guilt beyond a
15 reasonable doubt now, and are looking forward to arguing that
16 tomorrow.

17 THE COURT: All right. Anything else, Mr. O'Keefe?

18 MR. O'KEEFE: No. No, Your Honor.

19 THE COURT: Well, again, I appreciate you making
20 your record. But I don't feel compelled to rule that the
21 Court deems the evidence insufficient to warrant a conviction.
22 This can go either way. The jury has heard all the evidence.
23 And you know, you did your job with Mr. Maningo's help, you
24 know, in your cross-examination, got out the points you wanted
25 to, and you made your record.

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1 But I just feel compelled to leave this to the jury.
2 Hopefully this will be the last time, who knows. But we'll go
3 from there, all right? But your motion is denied, and
4 respectfully denied though, all right?

5 MR. O'KEEFE: Thank you, Your Honor, for hearing it.

6 THE COURT: All right. Now, you have -- I'm going
7 to just take a few minutes to look through these instructions.
8 You have your copy of the jury instructions, Mr. Lalli?

9 MR. LALLI: I've got the copy that I have. I don't
10 have any offered instructions by Mr. O'Keefe.

11 THE COURT: Well, [inaudible]. Do you have Mr.
12 Lalli's jury instructions?

13 MR. O'KEEFE: I just need a minute. I haven't had a
14 chance. When I came in today, they were -- this morning, they
15 were here.

16 THE COURT: Well, we're going to look at them
17 together, all right? Get your copy --

18 MR. O'KEEFE: That's great, Your Honor.

19 MR. O'KEEFE: Get your copy there. All right. I'm
20 not going to number them yet. I'm just going to look at them.
21 And you make a pencil if you object to any of them, or you --
22 all right? So, the first one --

23 MR. MANINGO: Your Honor, I'm sorry. Could I
24 trouble your clerk to make a copy of this for Mr. Lalli?

25 THE COURT: No.

1 MR. MANINGO: Thank you.

2 THE COURT: For Mr. Lalli?

3 MR. MANINGO: This is a copy of proposed -- I think
4 we have two. We just need one.

5 MR. O'KEEFE: From the second trial, the defendant's
6 proposed instructions.

7 MR. MANINGO: Just in case we use those by reference
8 for when Mr. O'Keefe goes through jury instructions he might
9 want to propose.

10 THE COURT: Can we --

11 MR. MANINGO: Yeah, we can proceed with this.

12 THE COURT: Oh, okay. All right.

13 MR. MANINGO: Absolutely.

14 THE COURT: "It is now my duty as Judge." That's
15 just a stock instruction. Are we all together now? Are you
16 with me?

17 MR. MANINGO: Yes, sir.

18 MR. LALLI: Yes.

19 THE COURT: "If in these instructions, any rule;"
20 that's just a stock instruction. The next one is, "An
21 information is but a formal method of accusing a person, not
22 of itself any evidence." Go through the charge. Okay, that's
23 [inaudible]. Then, the next one goes to what murder of the
24 second degree is, all right? "It's the unlawful killing of a
25 human being with malice aforethought, either expressed or

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1 implied." All right? And it defines malice aforethought, "An
2 intentional doing of a wrongful act." Okay. That's just a
3 standard one that I see all the time, but we'll talk about it.
4 Then it goes on to define expressed malice, or implied malice.
5 In the next instruction, "The prosecution is not required to
6 present direct evidence of the defendant's state of mind."
7 Then, I guess this is the lesser included; is that correct,
8 voluntary manslaughter?

9 MR. LALLI: Yes, Your Honor.

10 THE COURT: And do you want a lesser included?

11 MR. O'KEEFE: No, Your Honor.

12 THE COURT: You don't want a lesser included?

13 MR. O'KEEFE: No. It wasn't on the -- they denied
14 it at the -- no, Your Honor. Just second degree or nothing,
15 Your Honor.

16 MR. LALLI: No problem. Take it out.

17 THE COURT: All right, we'll take it out.

18 MR. O'KEEFE: Take out.

19 THE COURT: We'll take voluntary, the heat of
20 passion --

21 MR. O'KEEFE: Take it out.

22 THE COURT: "If you find the State has established;"
23 take it out. "You are instructed if you find the defendant
24 guilty of voluntary;" take it out.

25 MR. LALLI: Well, this is the deadly weapon. This

1 instruction, Your Honor, will have to be modified.

2 THE COURT: Okay. How would you modify it?

3 MR. LALLI: Well, we'll just have to take it, "If
4 you find the defendant guilty of murder;" where it says, "or
5 voluntary manslaughter," we'll have to take that out.

6 THE COURT: All right. So, you'll make note of
7 that? That will be --

8 MR. LALLI: Yes.

9 THE COURT: You'll give me a clean copy tomorrow,
10 all right?

11 MR. LALLI: We will.

12 MR. O'KEEFE: And Your Honor, you know, I have an
13 argument on the deadly weapon. I've been advised by standby
14 --

15 THE COURT: Well, we're going to --

16 MR. O'KEEFE: Yes, sir.

17 THE COURT: You can argue whatever you want.

18 MR. O'KEEFE: Thank you, Your Honor. I'm just --

19 THE COURT: So, you make notes to yourself; what do
20 you --

21 MR. O'KEEFE: All right.

22 THE COURT: -- want to argue on.

23 MR. O'KEEFE: Bless you, Your Honor.

24 THE COURT: So, the record reflect he doesn't want
25 the lesser included. And that's already ruled upon, I'm not

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1 going to give it. And you -- whatever you want to -- whatever
2 you want to make an argument on, make a note.

3 MR. O'KEEFE: Yes, sir.

4 THE COURT: All right. The next one is, "Deadly
5 weapon means any instrument, which if used" -- all right? So,
6 that's deadly weapon. The next bit of instructions are
7 self-defense. Is that correct, Mr. Lalli?

8 MR. LALLI: Yes.

9 THE COURT: Did you want to have a self-defense
10 instruction here, Mr. O'Keefe?

11 MR. O'KEEFE: One --

12 THE COURT: Yeah, sure.

13 MR. MANINGO: Your indulgence, Your Honor.

14 THE COURT: Sure. There's a whole bunch of
15 self-defense. I mean, there's 1, 2 -- the right of
16 self-defense, actual danger.

17 MR. LALLI: Those are the Runyan instructions, Your
18 Honor.

19 THE COURT: Yes. I mean, this is -- if somebody
20 wants self-defense, these are the proper -- six of them; is
21 that right?

22 MR. LALLI: Yes.

23 MR. O'KEEFE: Your Honor, I'm ready. I know, you're
24 very, very patient. I'm ready to give -- and I agree on the
25 thankful help of the standby counsel, Mr. Maningo. I will

1 claim, it wasn't -- this is for us, and for my record. I'm
2 not claiming I killed her intentionally in self-defense. It
3 was an accident. So, I don't think this is -- I don't want
4 this, because I'm not claiming I killed her in self-defense.
5 I'm -- you know, I'm begging the Court's indulgence for a
6 little understand.

7 THE COURT: You know, I don't -- Mr. Lalli, what's
8 your position on that?

9 MR. LALLI: Well, here's what I'm concerned about.
10 The defendant's opening statement is not evidence. What he
11 chooses to argue, he has to argue the evidence that's in the
12 record. The only statements that are in the record that he's
13 allowed to argue are statements that the State has offered.

14 And he -- there is some evidence on the video
15 pertaining to, she attacked me, she introduced the knife;
16 which if he -- if that was his theory, I think legally, he'd
17 be entitled to them. If he starts arguing self-defense, based
18 upon the evidence that's adduced, I think the jury needs to be
19 instructed as to what the law is there; what they need to find
20 before they can return a -- or analyze self-defense.

21 If he's saying he's not arguing self-defense, and
22 it's not his theory and he doesn't argue it, then, fine.
23 Don't -- if he doesn't want it, then don't give the
24 instructions. However, if he starts to argue self-defense, I
25 am going to want this jury instructed on the law of self-

1 defense.

2 THE COURT: Well, I mean --

3 MR. LALLI: Does the Court understand my position?

4 THE COURT: Well, I do, sure. But --

5 MR. LALLI: I think there's some evidence in the
6 record -- his statement -- I don't believe it's -- it is a
7 viable defense. But his statements to the police I think are
8 enough evidence that, if he had requested self-defense
9 instructions, he'd be entitled to those legally.

10 THE COURT: But he's indicating --

11 MR. LALLI: If it's not --

12 THE COURT: -- he's not going to argue self-defense.

13 MR. LALLI: That's fine.

14 THE COURT: Whatever -- if whatever he argues, it
15 was accidental, whatever it is, that's his business.

16 MR. LALLI: That's fine. If he doesn't, he -- you
17 know --

18 THE COURT: But you understand, you can't even utter
19 those words, "self-defense." I did it because she was coming
20 at me with a knife; what could I do? [Inaudible], what could I
21 do? I don't know, what could I do? She had a knife in her
22 hand, I don't know what to do.

23 And you got to be careful. It's a fine line there.
24 It's a fine line. It's up to you to -- I mean, but I'm
25 really going to be strict on that, that you can't argue

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1 self-defense, or even something like that; she had the knife
2 in he hand, ladies and gentlemen.

3 (Pause in the proceedings)

4 THE COURT: So, understanding that, what do you want
5 to do?

6 MR. O'KEEFE: Well, Your Honor --

7 THE COURT: If you're going to tell me, Judge, I'm
8 not even going to mention she stabbed herself, or it was an
9 accidental stabbing by herself, well, that's fine. We don't
10 need self-defense. But you can't have it both ways. I guess
11 if you slip up, then we're going to have to give these
12 instructions. I don't know.

13 MR. O'KEEFE: My closing might be very brief. I
14 mean, I don't feel the State proved their case, and folks,
15 look at it.

16 THE COURT: We're just talking about this issue now.

17 MR. O'KEEFE: I know. And I'm just -- I mean --

18 THE COURT: I mean, is anything going to be uttered
19 in your -- she had the knife, and she was coming after me, and
20 I just tried to protect her and get -- I don't know. I don't
21 know what you're going to say, but you can't really say that
22 unless I instruct the jury on self-defense. And you could
23 even -- Mr. O'Keefe?

24 MR. O'KEEFE: Yes, Your Honor.

25 THE COURT: Even if I give these, you could say, you

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1 know, Judge Bonaventure -- I'm not claiming self-defense,
2 ladies and gentlemen. You could even say that.

3 MR. O'KEEFE: That -- we'll leave it at --

4 THE COURT: You know, you could say that.

5 MR. O'KEEFE: We'll leave it in, Judge. Okay.

6 THE COURT: So, you want to leave it in then?

7 MR. O'KEEFE: I like that. Yes, Your Honor.

8 THE COURT: Yeah. You don't have to -- you can even
9 blame me. Say, Judge Bonaventure -- I'm not even claiming
10 self-defense, but it's there just in case. All right. So --

11 MR. LALLI: Well, I don't want him to be able to
12 blame you, Your Honor, and say --

13 THE COURT: Well, I don't [inaudible].

14 MR. LALLI: -- that you're the one who said he's --
15 you know, the jury's going to be instructed on it. I mean, I
16 want to be fair to Mr. O'Keefe, but you know, I still have a
17 job to do in representing the State.

18 THE COURT: All right. Well, don't blame me. Just
19 say -- you know, don't -- say -- you can always say, ladies
20 and gentlemen, this is not a self-defense case. My argument
21 is this, and my theory -- whatever you want to say. But do
22 you want it in now?

23 MR. O'KEEFE: We'll leave it in, Your Honor.

24 THE COURT: All right.

25 MR. O'KEEFE: I just -- [inaudible].

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1 THE COURT: All right. We'll leave these six in,
2 then. All right. Then, the next one is, "No act committed by
3 a person while in the state of voluntary intoxication to be
4 less criminal." It does not negate the element of malice
5 inherent in the crime of murder," which is the law, all right?
6 All right.

7 Then, you have that limiting instruction that I
8 gave, "Evidence of other crimes, wrongs, or acts is not
9 admissible;" which I've given, and we're going to give another
10 limiting instruction. All right?

11 Then we go back to the stock instructions. You
12 know, "To constitute the crime charged;" that's just a stock
13 instruction given. Now, do you want this other one, "It is a
14 constitutional right of a defendant in a criminal trial that
15 he may not be compelled to testify. Thus, the decision as to
16 whether he should testify is left solely to the defendant,"
17 you put, "on the advice of counsel."

18 MR. LALLI: Your Honor, that should probably be
19 eliminated.

20 MR. O'KEEFE: Yeah, I --

21 MR. LALLI: Just left to the defendant.

22 THE COURT: Yeah. All right.

23 MR. O'KEEFE: I don't think --

24 THE COURT: "You must not draw any inference --

25 MR. O'KEEFE: -- take it out.

1 THE COURT: -- of guilt from the fact that he does
2 not testify, nor should this fact be discussed by you until
3 your deliberation." It's up to you if you want this. If you
4 don't want it, you don't want it.

5 MR. O'KEEFE: On the constitutional right of a
6 defendant, Your Honor?

7 THE COURT: Right, that's --

8 MR. O'KEEFE: I'd like to take that out, Your Honor.

9 THE COURT: Sure. It's up to you. We'll take it
10 out.

11 MR. O'KEEFE: Yes, sir. Less is more. Less is
12 more.

13 THE COURT: You're probably right. The truth takes
14 few words.

15 (Pause in the proceedings)

16 THE COURT: All right. Then we go back to the
17 stocks, "Defendant is presumed innocent." "You are here to
18 determine the guilt or innocence of the defendant." "The
19 evidence which you are to consider;" that's what we talked
20 about.

21 And you could allude to this when you -- you heard
22 Judge Bonaventure, the stipulation, and he said to you the --
23 you have to consider this; and you could argue that, all
24 right? And you could even allude to it if you want. You have
25 a copy of it, right? I'm not going to --

1 MR. O'KEEFE: Yes, Your Honor.

2 THE COURT: -- prevent you from doing that. But
3 you're all right with it?

4 MR. O'KEEFE: Yes, Your Honor.

5 THE COURT: "The credibility or believability."
6 "Statements of the defendant not made in court" -- this is the
7 one where the jury has to determine if that statement was
8 voluntary or not. That okay? That should be okay.

9 MR. O'KEEFE: Yes, Your Honor.

10 THE COURT: And then, "A witness who has special
11 knowledge;" they were all the expert witnesses. The common
12 sense instruction, "You are to consider only the evidence."
13 "When arriving at your verdict;" "subject to penalties not to
14 be discussed."

15 "When you retire" -- now, I took one or two out.
16 "When you retire to consider your verdict, [inaudible] your
17 verdict must be unanimous." I think I'm striking that --
18 we're striking read-backs, because we have, what, video?

19 UNKNOWN MALE SPEAKER: Yeah, it should be
20 play-backs.

21 THE COURT: We have video?

22 UNKNOWN MALE SPEAKER: Right.

23 THE COURT: Or, it should be "play-backs." So, "If
24 during your deliberation you desire play-backs of testimony,"
25 all right?

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1 MR. LALLI: Do you give that one? I thought you
2 didn't give that one.

3 THE COURT: Well, I'm going to -- you wanted me to
4 give it? I don't care.

5 MR. LALLI: It doesn't -- it's up to you. It
6 doesn't --

7 THE COURT: I really don't. But you know, I don't
8 have a trial every week anymore, and I really don't --

9 MR. LALLI: Right. Well, I may as well give it.

10 THE COURT: All right. Give it. All right. And
11 the last one is, "Now, you will listen to argument." So,
12 there are the instructions.

13 MR. LALLI: We'll have to change --

14 THE COURT: I don't know if we're on the record, are
15 we?

16 MR. LALLI: -- the verdict form also.

17 MR. O'KEEFE: And the verdict form, Your Honor, the
18 last one.

19 MR. LALLI: We'll have to --

20 THE COURT: That's the instructions.

21 MR. LALLI: -- change the verdict.

22 THE COURT: Now, this is the verdict form I have in
23 my hand.

24 MR. LALLI: We'll have to eliminate the --

25 THE COURT: You have to eliminate that.

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1 MR. LALLI: -- manslaughter verdicts.

2 THE COURT: Right. Guilty of second degree with
3 use, without use, and then you got to scratch out guilty of
4 voluntary, and guilty of voluntary with or without a weapon,
5 all right?

6 MR. LALLI: Yes.

7 THE COURT: So, we're only going to have three
8 verdict -- three boxes, right?

9 MR. LALLI: Correct.

10 MR. O'KEEFE: That's what we had at the second
11 trial. Yes, sir.

12 THE COURT: Okay. So, that's what we're going to do
13 then. So, let me get my book, and --

14 MR. O'KEEFE: Now can I back up a moment, Your
15 Honor, on the -- since we completed this -- the State's -- I
16 don't want to -- I'm sorry, Your Honor.

17 THE COURT: No, what --

18 MR. O'KEEFE: I'm speaking out of turn. I don't
19 want to --

20 THE COURT: What do you want to back up? What do
21 you mean?

22 MR. O'KEEFE: I don't want to disrespect you, and I
23 don't want to speak out of turn. The weapon instruction in
24 this, can we back up now, since we --

25 THE COURT: No, no. I'm going to go to that right

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1 now.

2 MR. O'KEEFE: Yes, sir.

3 THE COURT: Yeah. This is what we do now. All
4 right.

5 MR. O'KEEFE: Yes, Judge.

6 THE COURT: All right. For the record now -- we're
7 on the record, outside the presence of the jury. This is the
8 time to settle instructions in open court, outside the
9 presence of the jury.

10 Now, but I think -- before that, I think we should
11 number these. And then, this way, you can allude to the
12 number that you don't like or anything, all right? Because
13 I'm going to give that. That's a typical instruction we give.
14 But I might not. I might delete it. All right. Let's --

15 MR. LALLI: Well --

16 THE COURT: Let's number these now.

17 MR. LALLI: We haven't -- I don't know if the
18 defendant is offering any instructions.

19 MR. O'KEEFE: Yeah.

20 THE COURT: Oh, okay. Do you have any instructions
21 to offer?

22 MR. O'KEEFE: Yes. That's what we were going to get
23 to. But I wanted to --

24 THE COURT: Let's get to it now.

25 MR. O'KEEFE: I love this Judge. I wanted the -- if

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1 I may approach the bench to --

2 THE COURT: Do you have a copy --

3 MR. MANINGO: Actually, I could give the whole --

4 THE COURT: -- for Mr. Lalli?

5 MR. MANINGO: Keep your copy all together, okay,

6 Brian?

7 MR. O'KEEFE: Okay, yeah.

8 MR. MANINGO: Keep your copy all together.

9 THE COURT: Do you have a copy for me?

10 MR. MANINGO: I do.

11 MR. O'KEEFE: Oh, great.

12 THE COURT: What is this? What in the world is

13 this?

14 MR. O'KEEFE: Basically, what it was, Your Honor --

15 MR. MANINGO: Your Honor, just for the record -- I

16 don't know if we're on or off. But Your Honor, this is --

17 these are the defendant's proposed jury instructions from the

18 second trial. Just using those as reference for right now.

19 MR. O'KEEFE: Yeah.

20 THE COURT: All right. What do you propose?

21 MR. O'KEEFE: Okay. On number 10, page 10, Your

22 Honor, with the foldie (phonetic) at the bottom, Judge Villani

23 had her supply a copy with an authority, and one without for

24 each instruction. So, it doesn't matter.

25 Page 10, on the abandoned and malignant heart,

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1 implied malice murder theory, I'm asking -- requesting that
2 that be appropriately put into the State's instructions for
3 that -- mens rea. It is an unintentional murder, based on an
4 unlawful act. It has to have conscious knowledge and
5 disregard. You know it better than me, Your Honor. I'll say
6 no more.

7 THE COURT: Mr. Lalli?

8 MR. LALLI: Your Honor, we object to it. The malice
9 aforethought instruction that we give has been approved
10 routinely and repeatedly by the Nevada Supreme Court.

11 MR. O'KEEFE: In rebuttal, Your Honor --

12 THE COURT: Yeah.

13 MR. O'KEEFE: This is the third trial, Your Honor.
14 They've had -- there are three types of men rea -- of malice
15 murder, the mens rea. They've had intentional -- intent to
16 kill. They have had now the felony murder, mens rea. And
17 now, this is the last one remaining.

18 In Nevada, we all know -- you know better than me;
19 abandoned and malignant heart is the equivalent to depraved
20 heart murder. That is sufficient for second degree implied
21 malice murder. It states it clearly in Coleman vs. State. In
22 2000, the Nevada Supreme Court stated this. It's on page 19.
23 I even remember it in the authority.

24 It quite clearly states, the abandoned and malignant
25 heart instruction must be pretty well given on an implied

1 malice murder charge. If it was the first trial, I mean, Mr.
2 Lalli could foresee it on simple malice aforethought. But
3 I've already been acquitted of intentional -- the intentional
4 stabbing, is my argument, being acquitted by the first degree
5 intentional stabbing.

6 And, okay, so then they return to second degree
7 murder. Okay, was it on theory 1, or theory 2? I guess we
8 don't know, since they got it with duplicity. Was it the
9 simple malice murder, second degree; or was it a felony
10 murder, second degree? Still, my argument in the Ninth
11 Circuit is, it didn't matter whether it was simple murder or
12 felony murder. Second degree murder is still second degree
13 murder for double jeopardy.

14 THE COURT: All right.

15 MR. O'KEEFE: Okay. So, they took out the felony
16 murder. Now, they're trying to just proceed back on the
17 malice aforethought murder. Expressed malice is gone. It's
18 in Byford vs. Nevada. Again, I'll use that authority; you
19 were the judge. Mr. Lalli happened to be the prosecutor.
20 They quite clearly state, expressed malice goes with first
21 degree murder. And you know it better than me. 994 P.2d,
22 page 700, Your Honor, 2000.

23 THE COURT: Well, we have an instruction in here,
24 "Malice may be implied when no considerable provocation
25 appears, or when all the circumstances of the killing show an

1 abandoned and malignant heart." That's one of the
2 instructions I'm going to give. That's a stock instruction.
3 I'm not going to deviate from this in this case.

4 So, I'm going to mark this as defense proposed A.
5 And I'm not going to give it, but it's going to be part of the
6 record, all right? So, when it goes on appeal --

7 THE CLERK: A court's?

8 THE COURT: Defense -- this is defense proposed A.
9 However you mark instructions that I'm not giving. How do you
10 do that?

11 THE CLERK: I mark them as court's exhibits.

12 THE COURT: Well, then do it. Court's Exhibit A.
13 Is that -- you want to do A?

14 THE CLERK: It will be 10.

15 THE COURT: But is that going to indicate that's a
16 defense proposed exhibit?

17 THE CLERK: Yes.

18 THE COURT: All right. That will be marked as
19 Court's exhibit, not given, all right? What else on this --

20 MR. O'KEEFE: Okay. There was a -- Court's
21 indulgence. And we are -- the non-flight instruction, Your
22 Honor. This --

23 THE COURT: The what?

24 MR. MANINGO: Page 27.

25 MR. O'KEEFE: Page 27 in your packet, Your Honor.

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1 THE COURT: Okay.

2 MR. O'KEEFE: There's ample evidence that qualifies
3 for me asking for this instruction at least. I mean, I did
4 not try to flee the scene. In fact, it's perfect, because I
5 was asking, and then, I know, with profanity and wrongfully, I
6 was demanding for them to come in. I didn't try to flee. I
7 mean, I'm asking for the instruction. I think I'm entitled,
8 Your Honor.

9 THE COURT: Mr. Lalli?

10 MR. LALLI: Your Honor, there is no jurisprudence in
11 the State of Nevada to give a non-flight instruction. In
12 fact, when flight instructions are given, the Supreme Court
13 has urged district courts to utilize caution to make sure that
14 they were appropriately given.

15 This California instruction would certainly be, you
16 know, problematic if given. There's no legal authority in
17 Nevada for this sort of instruction. I don't believe it's the
18 law in this state.

19 THE COURT: Well, in 38 years, I've never seen a
20 non-flight -- not that this thing couldn't come up new. I'm
21 not saying that. But I've -- even when the State wants a
22 flight instruction, I'm very reticent to give it, because --
23 so, but it's a good -- maybe they'll make new law. You know,
24 I don't know. It's a unique instruction. But I'm going to
25 mark it -- I put here defense proposed B, not given, and it

1 will be made a court exhibit. All right? Is that what you
2 want to do?

3 THE CLERK: I can do it too, is I can put a cover
4 sheet on it and file it as a document, or I can mark it as a
5 court's exhibit.

6 THE COURT: Mark it as a court exhibit. May as
7 well, right?

8 THE CLERK: Okay.

9 THE COURT: All right. What else?

10 MR. O'KEEFE: Your Honor, I don't know. On page
11 28 --

12 THE COURT: Page 28?

13 MR. O'KEEFE: Yeah. Does this already -- has this
14 been covered by the State's instruction? You would know by a
15 quick look.

16 THE COURT: No, it's not.

17 MR. O'KEEFE: Well, then I would request that this
18 be -- be entered.

19 THE COURT: Mr. Lalli? Page 28, or 29?

20 MR. O'KEEFE: Page 28, Your Honor. It's this --

21 THE COURT: Oh, I'm sorry. I was looking at 29.

22 MR. MANINGO: I'm looking for theirs.

23 THE COURT: Well, we have a voluntary -- we have an
24 intoxication instruction.

25 MR. O'KEEFE: Okay. And I was just trying to --

1 THE COURT: Well, it might not be the same one.

2 It's --

3 MR. O'KEEFE: Yes.

4 MR. LALLI: It's not.

5 THE COURT: I'm going to read it here. It says, "No
6 act committed by a person while in the state of voluntary
7 intoxication shall be deemed less criminal by reason of his
8 condition. Voluntary intoxication does not negate the element
9 of malice inherent in the crime of murder."

10 MR. LALLI: That is the law in Nevada.

11 THE COURT: Right.

12 MR. LALLI: Malice murder, second degree murder is a
13 general intent crime. The state of the law is that
14 intoxication can be used to negate the specific intent of a
15 crime. So, in the case of first degree murder, the standard
16 instruction that we give is that -- it's that language, and we
17 also add the line that says, "And in all cases, intoxication
18 will only reduce a first degree murder to a second degree
19 murder."

20 MR. O'KEEFE: Your Honor, with all --

21 MR. LALLI: What the defense is saying is that
22 intoxication is a defense to second degree murder. That's the
23 gist of what this instruction says that he's --

24 THE COURT: But it's not. That's not the law.

25 MR. LALLI: -- proffering, and that's not the state

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1 of the law.

2 THE COURT: All right. What else?

3 MR. O'KEEFE: Number 29, Your Honor, the one you
4 were on. That one.

5 THE COURT: Well, I'm going on 28 now. I'm not
6 going to --

7 MR. O'KEEFE: Oh, okay.

8 THE COURT: I'm going to mark that as proposed C.

9 MR. O'KEEFE: Okay.

10 THE COURT: And I'm not going to give it, all right?

11 MR. O'KEEFE: Okay, Your Honor.

12 THE COURT: We'll make it part of the record.

13 MR. O'KEEFE: All right. 29 is the last one, Your
14 Honor, that I would like to try at least to get one, Crane vs.
15 State (phonetic).

16 THE COURT: Mr. Lalli?

17 MR. LALLI: Your Honor, it's probably when you were
18 a young lawyer in these cases back in the 70's, you know, this
19 might have been the law. However, the Nevada Supreme Court
20 has repeatedly said that this is not an appropriate
21 instruction to give. This is the dubious alternative
22 reasonable doubt instruction. So, we would oppose it. We
23 give a reasonable doubt instruction.

24 THE COURT: I'm not going to quantify reasonable
25 doubt to the Supreme Court. I really don't like that. And I

1 think this instruction is -- if it ever applied, is no good
2 anymore. So, defense proposed D, not given, but we'll make it
3 part of the record. Anything else?

4 MR. O'KEEFE: No, Your Honor.

5 THE COURT: All right. All right. Let's mark
6 these, then you can argue the -- for whatever you want on the
7 deadly weapon.

8 Instruction number 1 is, "It is now my duty." 2,
9 "If in these instructions." 3, "An information is but a
10 formal method of accusing a crime." 4, "Murder of the second
11 degree is." 5, "Malice aforethought means." 6, "Expressed
12 malice is at the [inaudible] or intention."

13 7, "The prosecution is not required to present
14 direct evidence of the defendant's state of mind." 8, "You're
15 instructed that if you find the defendant guilty of murder" --

16 MR. LALLI: And we'll have to replace this, Your
17 Honor.

18 THE COURT: Yeah.

19 MR. LALLI: This is the one we'll have to replace.
20 We'll have that for the Court --

21 THE COURT: All right.

22 MR. LALLI: -- in the morning.

23 THE COURT: Okay. You just correct that and give it
24 to me, all right? All right. And 9, "Deadly weapon means."
25 That's 9. 10, "The killing of another person in

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1 self-defense." And we got the self -- 11, "The bare fear of
2 death."

3 MR. MANINGO: Your Honor, Court's indulgence.

4 (Pause in the proceedings)

5 MR. O'KEEFE: All right. All right. I'll go on so
6 we can speed this up, Your Honor, for your sake.

7 THE COURT: Yeah. No, that's all right. Okay. So,
8 I did -- we're on to self-defense. "The killing of another
9 person in self" -- and that's 10. And 11 is, "A bare fear of
10 death with great injury is not sufficient." That's 11. And
11 12 is, "An honest but unreasonable belief." That's 12. And
12 13, "The right of self-defense is not available to an original
13 aggressor."

14 14, "Actual danger is not necessarily to justify a
15 killing in self-defense." 15, "If evidence of self-defense is
16 present, the State must prove beyond a reasonable doubt the
17 defendant did not act in self-defense." 16 is the, "No act
18 committed by a person while in the state of voluntary
19 intoxication."

20 Then we go back to the stocks. 17, "Evidence of
21 other crimes." That's the limiting instruction. 18, "To
22 constitute the crime charged." 19, "Defendant is presumed
23 innocent of the contrary of proof." 20, "You are here to
24 determine the guilt or innocence."

25 21, "The evidence which you are to consider in this

1 case consists of the testimony, witnesses, exhibits, any facts
2 admitted or agreed to by counsel. That's 21. 22, "The
3 credibility or believability." 23, "Statements of the
4 defendant that are not made in court, but has been has been
5 admitted, it is the jury to determine that voluntariness
6 [inaudible]."

7 24, "A witness who has special knowledge." 25, "You
8 are only to consider the evidence." 26, "In arriving at your
9 verdict, don't discuss punishment." 27, "When you retire to
10 consider your verdict." 28, "If during your deliberation, you
11 should desire any point of law." And finally, 29, "The
12 evidence which you are to consider."

13 So, we have 29 instructions that the Court is
14 indicating will be given. And we have the proposed
15 defendant's instructions that are made part of the record.
16 So, just settle these instructions outside the presence of the
17 jury. This is time set for settlement of instructions.

18 Does the State object to any of the instructions
19 that the Court is indicating will be given, specifically,
20 these 1 through 29?

21 MR. LALLI: No, Your Honor.

22 THE COURT: Does the defendant, Mr. O'Keefe, object
23 to any of these instructions the Court has indicated will be
24 given, which is 1 through 29?

25 MR. O'KEEFE: I would like to highlight -- I have to

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1 do it for the record, Your Honor. Please forgive me. On
2 instruction number 8, on the deadly weapon.

3 THE COURT: Right.

4 MR. O'KEEFE: Okay. Can I give a little argument on
5 that?

6 THE COURT: Sure.

7 MR. O'KEEFE: NRS 193.165, the weapon --

8 MR. LALLI: I think he's -- I'm sorry, Your Honor.
9 I apologize, Mr. O'Keefe. I think he's arguing instruction
10 number 9, which is the actual deadly weapon.

11 MR. MANINGO: That's correct.

12 MR. O'KEEFE: Oh, yes. I'm -- because I had one
13 missing, Mr. Lalli. You're right. Number 8, and this was
14 missing. I don't --

15 MR. MANINGO: I have it.

16 THE COURT: 9 is, "A deadly weapon means any
17 instrument which is used in the ordinary manner contemplated
18 by it's design and construction, will or is likely to cause
19 substantial bodily harm or death, or any weapon, device,
20 instrument, material substance, which under the circumstances
21 in which it is used, attempted to be used, or threatened to be
22 used is readily capable of causing substantial bodily harm or
23 death."

24 Usually, it says a gun is a deadly weapon. I don't
25 know if you ever say that with a knife. I guess you don't.

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1 MR. LALLI: I knife is not --
2 THE COURT: All right.
3 MR. LALLI: -- a deadly weapon under --
4 THE COURT: So, but that's the --
5 MR. LALLI: -- specifically. But that is --
6 THE COURT: That's the specific thing --
7 MR. LALLI: That is the statute.
8 THE COURT: -- of what a deadly weapon is.
9 MR. LALLI: That is right. That is --
10 THE COURT: All right.
11 MR. LALLI: -- the statute, Your Honor.
12 THE COURT: Mr. O'Keefe?
13 MR. O'KEEFE: Okay. Your Honor, I'll be real quick.
14 You know, I know I've learned one thing, that the instructions
15 become the law of the case, and it's your change to argue and
16 object, and not object, and it's a very delicate part of the
17 case; correct, Your Honor? You know what I'm saying.
18 THE COURT: It really is.
19 MR. O'KEEFE: Okay.
20 THE COURT: A lot of people take it [inaudible].
21 But that's where --
22 MR. O'KEEFE: Okay.
23 THE COURT: -- a lot of reversals come about. And
24 quite frankly, that's where a lot of new laws come about. If
25 something's -- sometimes the Supreme Court will make new law,

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1 because that --

2 MR. O'KEEFE: Yes.

3 THE COURT: -- happens a lot.

4 MR. O'KEEFE: Okay. So, having said that, Your
5 Honor, with all due respect -- and I appreciate your patience,
6 sir. My reading of NRS 193.165, provision 4, quite clearly
7 states that if the weapon is a necessary element to commit the
8 alleged crime, provisions 1, 2, and 3 do not apply. In
9 addition, I know you don't like my -- I keep beating it down.
10 They've already said I did no unlawful act in the commission
11 of no crime.

12 THE COURT: Who said -- they?

13 MR. O'KEEFE: In the reversal order.

14 THE COURT: Oh, okay. Which I disagree with you,
15 but go ahead.

16 MR. O'KEEFE: Right. But I have to -- again, and
17 you understand. But also, the NRS 193.165 is quite -- it
18 seems it's ambiguous. It's quite clear. They just stated
19 yesterday in the testimony, the cause of the death was by the
20 knife. The knife in this case is being declared as the deadly
21 weapon. Okay.

22 There's no other crime that was committed. There's
23 no other -- it's -- it doesn't -- if you read subsection 4 of
24 the NRS that I cited, it does quite clearly state that. If
25 the weapon -- if there wasn't a knife, the death couldn't have

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1 happened. So, you know, it doesn't make sense to me, Your
2 Honor. That's just my argument. I'm sorry. I just have to
3 make it for the record.

4 THE COURT: Mr. Lalli?

5 MR. LALLI: Your Honor, what the defendant is
6 referring to are those crimes where possession of a weapon is
7 part of the crime itself, such as battery with the use of a
8 deadly weapon. That is not an element -- or the deadly weapon
9 is the element of the offense; it's not an enhancement.
10 Murder does not work like that. Murder is an enhanceable
11 offense, and therefore, his -- I know he doesn't understand
12 it, but his interpretation is an improper one.

13 THE COURT: All right. Well, the Court agrees with
14 you, State. So, over the defendant's strenuous objections, I
15 am going to give instruction number 9.

16 MR. O'KEEFE: Yes, Your Honor.

17 THE COURT: Now, does the State request the giving
18 of any instructions in addition to those the Court has
19 indicated will be given?

20 MR. LALLI: No, Your Honor.

21 THE COURT: Now, does the defense request the giving
22 of any instruction in addition to those the Court has
23 indicated will be given? And specifically, I have -- what,
24 defense proposed A, B, C, D? And we've already made records
25 on those.

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1 MR. O'KEEFE: Yes, Your Honor. Just the exhibits --

2 THE COURT: You made arguments --

3 MR. O'KEEFE: -- that have already been provided.

4 THE COURT: -- and they're going to be made part of
5 the record. All right.

6 MR. O'KEEFE: Other than that, I'm good, Your Honor.

7 THE COURT: You're good. All right. Does the -- do
8 counsel -- Mr. Lalli and defendant, Mr. O'Keefe, you'll
9 stipulate we settled these instructions in court, here in open
10 court, outside the presence of the jury, and they will be
11 given to the jury prior to the argument?

12 MR. LALLI: Yes, we would.

13 THE COURT: You -- we give these prior to the
14 argument, all right?

15 MR. O'KEEFE: Your Honor, I'm so -- I'm so -- I
16 apologize.

17 THE COURT: No. Do you stipulate that I could give
18 these instructions of law prior to the arguments, that they
19 need to --

20 MR. O'KEEFE: Absolutely, Your Honor.

21 THE COURT: Yeah. Good. Okay.

22 MR. O'KEEFE: I apologize.

23 THE COURT: And then, again, just specific for the
24 record, the defense does not want the instruction, "It is a
25 constitutional right of a defendant in a criminal case that he

1 may not -- that he may not be compelled to testify;" you don't
2 want that? You're not requesting that?

3 MR. O'KEEFE: No. That's correct, Your Honor.

4 THE COURT: All right, then it's your right. And
5 then of course, it's very important, because sometimes, a jury
6 will compromise, and say it's not -- it may not be second
7 degree, but it may be voluntary. Sometimes, they don't like
8 to -- you want all or nothing? You want either guilty or not
9 guilty. You don't want them to compromise. But it means a
10 lot in sentencing. I mean, what's the voluntary manslaughter?
11 What's the sentence on that?

12 MR. LALLI: It's a one to ten, plus a one to ten.

13 THE COURT: So, but you're saying to me on the
14 record here, Mr. O'Keefe, that you do not want any lesser
15 included, specifically voluntary manslaughter?

16 MR. O'KEEFE: That is correct, Your Honor.

17 THE COURT: All right.

18 MR. O'KEEFE: It's all or nothing, and I -- that's
19 all I need to say, Your Honor.

20 THE COURT: What about the other trials; did they
21 have voluntary manslaughter?

22 MR. O'KEEFE: They had --

23 THE COURT: I mean -- yeah, involuntary
24 manslaughter.

25 MR. O'KEEFE: The State at the first --

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1 THE COURT: No, voluntary manslaughter.

2 MR. O'KEEFE: The State at the first time, I call,
3 used a fishing net, Your Honor. They had nine verdicts to
4 choose from, and they returned a second degree with the deadly
5 weapon.

6 THE COURT: Okay.

7 MR. O'KEEFE: Then, at the second trial, it was just
8 solely what we gave today, Your Honor --

9 THE COURT: All right.

10 MR. O'KEEFE: -- the second degree.

11 THE COURT: Okay. So, you're going to give me a few
12 instructions that you're either going to change, take away?

13 MR. LALLI: Yes.

14 THE COURT: The voluntary, and a new --

15 MR. O'KEEFE: The verdict.

16 THE COURT: -- verdict form.

17 MR. LALLI: Right. Instruction number 8 needs to be
18 replaced, and the verdict form need to be replaced, Your
19 Honor.

20 THE COURT: That's all? Just 8 and the verdict
21 form?

22 MR. LALLI: That's my understanding.

23 THE COURT: Yeah. Me, too. I'm just looking -- I
24 wanted to make sure. All right. Well, what else do we have
25 to do here now? So, 9:00 o'clock.

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1 Let's get a little ground rules. I don't like to,
2 you know, interrupt people. I thought it would be fair -- but
3 we don't want to go on and on. How -- who's going to -- as
4 you know, the State has two arguments. Do you understand
5 that, Mr. O'Keefe?

6 MR. O'KEEFE: Yes, sir. First and last. Yes, Your
7 Honor.

8 THE COURT: First and last. Now, who's going to do
9 the first one? Have you made up your mind? Is it --

10 MR. LALLI: We've talked about it, Your Honor. That
11 will be Ms. Mercer.

12 THE COURT: All right. And then, you're going to do
13 the rebuttal?

14 MR. LALLI: Yes, sir.

15 THE COURT: And then, in between, you get to do --
16 how long is your arguments going to be, for --

17 MR. LALLI: Well, Your Honor, you know, it's --

18 THE COURT: I don't want to limit you. I'm just
19 saying, you know, I --

20 MS. MERCER: Probably 30, 35 minutes, tops.

21 MR. LALLI: We think that the first argument will be
22 about 30 to 35 minutes. And depending what Mr. O'Keefe --

23 THE COURT: [Inaudible].

24 MR. LALLI: -- says, you know, probably 30 minutes
25 in rebuttal.

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1 THE COURT: That's what I thought. All right. Now,
2 Mr. O'Keefe, you are going to have a right to argue. And I
3 hope we don't have a lot of objections. I'm not sure what
4 objections could be -- maybe a little groundwork on that.

5 MR. LALLI: Sure.

6 THE COURT: See, we don't want to -- I don't want to
7 interrupt your flow of everything. Is it -- so, maybe we
8 could have a few ground rules here now to, you know, try to
9 keep away from -- if you want. If you don't, then I'm going
10 to have to -- I'm going to have to listen to the objection,
11 and either sustain it, or overrule it.

12 MR. O'KEEFE: Okay. Could I finish before he goes
13 into the new subject of the -- as far as how long do I plan
14 on?

15 THE COURT: Well, I don't --

16 MR. O'KEEFE: I'll share. I'm going to be real
17 brief. Keep it -- I think less is more. Simple. So, I'll
18 share that. I'll let them know. So, I guess Mr. Lalli just
19 clearly stated that, depending on how long I go, what I go
20 into --

21 THE COURT: Yeah.

22 MR. O'KEEFE: -- which is going to depend on his,
23 I'm going to keep it short and sweet.

24 THE COURT: Okay. Good. All right, all right.
25 That's --

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1 MR. LALLI: Your Honor, I think the Court has been
2 extremely indulgent of Mr. O'Keefe during this trial.

3 THE COURT: I don't think overly indulgent, but I
4 try to --

5 MR. LALLI: No, but I think appropriately indulgent,
6 as is the State. I've tried not to object, even though, many
7 objections, I just have to. And I'm not sure that Mr. O'Keefe
8 understands that he is only allowed to argue evidence that is
9 in the record. His questions are not evidence, his opening
10 statement is not evidence.

11 And in his opening statement, he advanced this
12 theory about how he went into his house, his apartment, and
13 that Victoria Whitmarsh came out of the bathroom and attacked
14 him with a knife, none of which is in evidence. And he --
15 it's our position he cannot argue that. He cannot testify in
16 closing argument. He can only argue the facts that are in the
17 record. And so, if he does that, we will be objecting to it.

18 THE COURT: He can of course go into the bad
19 investigation, the --

20 MR. LALLI: Of course.

21 THE COURT: -- we went to the Paris. I don't know.

22 MR. LALLI: Of course.

23 THE COURT: And the vacuum cleaner, because --

24 MR. LALLI: Yes.

25 THE COURT: -- he has a receipt to that effect.

1 And --

2 MR. LALLI: Yes.

3 THE COURT: -- I don't know. Vons. I guess
4 [inaudible]. I'm not sure they did or not. I don't know -- I
5 don't know. [Inaudible]. But you just don't want him to go
6 into evidence that is not part of the record?

7 MR. LALLI: Correct. Anything that's on the
8 recording that he told to the police --

9 THE COURT: That's good.

10 MR. LALLI: -- that's all fair game. He can argue
11 that, reasonable inferences to be drawn from that. But he
12 can't argue evidence that he said in his opening statement,
13 because it's not -- it hasn't been produced during the course
14 of the trial.

15 THE COURT: Well, do you understand that, Mr.
16 O'Keefe? I mean, is it going to be a problem, or what? I
17 mean --

18 MR. O'KEEFE: Can I argue, Your Honor, it's the
19 third trial and I took a polygraph?

20 THE COURT: No.

21 (Pause in the proceedings)

22 MR. O'KEEFE: Okay. Your Honor, you're going to be
23 surprised. It's going to be short and sweet. And I'm just
24 going to --

25 THE COURT: Well, again, I'm not limiting you. I'm

1 just sort of --

2 MR. O'KEEFE: And I --

3 THE COURT: You know, it's good to go beforehand.

4 Because I don't -- what I don't want to do is have you just --
5 your thoughts interrupted, and you're going to look at me, and
6 you're going to -- you know. I want you to have a nice,
7 concise, clear argument, where you're going. As you say,
8 short and sweet, to the point. But that's up to you.

9 But try to keep away from -- you know the state of
10 the evidence. You could argue the state of the evidence, what
11 you said on the tape, or all the witnesses. You know, but
12 keep away from something that really is not part of this case,
13 because I have to I guess sustain an objection. You know,
14 that's not part of the record. All right?

15 MR. O'KEEFE: Duly advised, Your Honor. I
16 appreciate that. Just if I can state, since we are on the
17 record, I'm just trying to -- the State's whole theory and
18 motive is just ludicrous, ridiculous, and --

19 THE COURT: You can say that.

20 MR. O'KEEFE: -- that's all I was -- I was just
21 trying to clarify that, why would I do all the things I did?
22 You understand what I was doing.

23 THE COURT: You could say that, as long as it's part
24 of the record, which is --

25 MR. O'KEEFE: And just -- you know, it's going to be

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1 short and sweet.

2 THE COURT: All right.

3 (Pause in the proceedings)

4 THE COURT: I want to thank you so much. You know,
5 I think everybody -- the case is not over yet. But everybody
6 acted professional. And hopefully, the jury will get it
7 tomorrow, and they'll deliberate.

8 And I keep on saying, Mr. O'Keefe, it's probably a
9 win-win situation for you. You're under sentence anyway. If
10 they come back, you're going to be very, very disappointed
11 with a guilty. But I mean, you still have -- you still have a
12 lot of issues here. You have your federal court that can't
13 take away from the -- and that's all we can do now, all right?
14 All right. Thank you.

15 MR. O'KEEFE: And Your Honor, I want to thank you
16 very much.

17 THE COURT: It's not over yet. Something might
18 happen. So, don't thank me until the end of the case.

19 (Proceeding concluded at 3:32 p.m., until Friday,
20 June 15, 2012, at 9:17 a.m.)

21

22

23

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25

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INDEXWITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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STATE'S WITNESSES:

Ed Guenther	21	35		
Jeremiah Ballejos	38	57	66	67
Martin Wildemann	67	106	120/124	122/124

* * * * *

EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
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Exhibit 134	104
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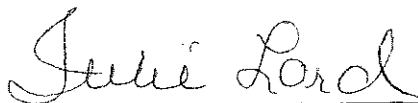
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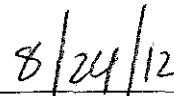
ACKNOWLEDGMENT

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Ann L. Johnson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,

Plaintiff,

vs.

BRIAN KERRY O'KEEFE,

Defendant.

CASE NO. C-250630

DEPT. NO. XVII

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE SENIOR JUDGE JOSEPH BONAVENTURE

**ROUGH DRAFT TRANSCRIPT OF
JURY TRIAL - DAY 5**

FRIDAY, JUNE 15, 2012

APPEARANCES:

FOR THE PLAINTIFF:

CHRISTOPHER LALLI, ESQ.
ELIZABETH A. MERCER, ESQ.
Chief Deputy District Attorneys

FOR THE DEFENDANT:

BRIAN KERRY O'KEEFE
Pro Per

LANCE MANINGO, ESQ.
Stand by counsel for defendant

COURT RECORDER:

MICHELLE RAMSEY
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

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1 LAS VEGAS, NEVADA, FRIDAY, JUNE 15, 2012, 9:17 A.M.

2 (In the presence of the jury panel)

3 THE COURT: All right. Parties, stipulate to the
4 presence of the jury?

5 MR. LALLI: Yes, Your Honor.

6 MR. O'KEEFE: Yes, Your Honor.

7 THE COURT: All right. Thank you. Ladies and
8 gentlemen, as you know, the State rested it's case yesterday;
9 defense rested. And I indicated to you, we worked on jury
10 instructions. Now, I'm about to instruct you of what the law
11 is on this particular case.

12 Now, I'd like to orally instruct you, but every word
13 on these instructions are pretty, you know, complicated, some,
14 and every instruction is significant. So, I think it's best
15 that I read these instructions to you. But be assured, you
16 will be given these instructions when you go into the jury
17 deliberation room, along with all the exhibits admitted in
18 evidence, and forms of verdict for your convenience.

19 So, I'll read the instructions. Then, we're going
20 to hear some closing arguments. Since the State has the
21 burden of proof, they have so-called, two bites of the apple.
22 The State will give an argument. Then, the defense will give
23 their closing argument. And then, the State is allowed to
24 give a rebuttal argument.

25 So, we're going to have three arguments, then the

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1 case will be submitted to you. All right? So, that's the
2 situation. And again, I want to thank you very much for your
3 indulgence. So, let me read these instructions.

4 (Jury Instructions read; not transcribed)

5 THE COURT: That completes the instructions, ladies
6 and gentlemen. Who's going to go on behalf of the State?

7 MR. MERCER: Me, Your Honor.

8 THE COURT: Mercer?

9 MS. MERCER: Yes.

10 STATE'S CLOSING ARGUMENT

11 MS. MERCER: Good morning, ladies and gentlemen. In
12 every criminal case, there are two things that the State is
13 required to prove: that the crimes alleged in the information
14 were committed, and that the crimes were committed by the
15 defendant.

16 This case is not a, whodunit. There is no disputing
17 it was Brian O'Keefe. This case is a, what is it? And before
18 I get into what it is, I want to talk about what it's not, and
19 why you know it's not.

20 This case is not an accident. It wasn't self
21 defense. For you to believe that this case was an accident,
22 you would have to believe that all of the following
23 circumstances occurred. During the struggle over the knife,
24 the knife somehow ends up, tip-up, on the bed. Victoria
25 Whitmarsh has her arm up for some reason, and she falls onto

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1 the tip of that knife.

2 But the knife doesn't bend, it doesn't twist, it
3 doesn't move. It somehow manages to penetrate right between
4 her ribs, hitting no bones. Most importantly, you would have
5 to believe that, for no apparent reason at all, that knife
6 went no further than four and-a-half inches deep into her body
7 when she fell on top of it.

8 We know that didn't happen, because you've heard the
9 testimony of Dr. Dutra in this case. He testified that, had
10 she fallen onto the knife, had this been the result of an
11 accident, there would have been secondary marks; there would
12 have been secondary injuries to the stabbing. He told you
13 that there would have been torsional injuries; evidence that
14 the knife twisted and moved. This is a clean stab wound.
15 Look at the evidence. There are no secondary marks.

16 But most importantly, we know that this isn't an
17 accident or self defense, because what this is is a malicious
18 killing of Victoria Whitmarsh by the defendant, Brian O'Keefe.
19 This is a second degree murder. Second degree murder is
20 defined of the unlawful killing of a human being with malice
21 aforethought. To convict the defendant, you have to believe
22 that, A, he killed Victoria Whitmarsh, and that when he did
23 that, he acted with malice aforethought. Two things.

24 We know that the defendant killed Victoria
25 Whitmarsh. We know that based upon the location of the DNA on

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1 the knife. We know that based upon the injuries to the
2 defendant's hands. We know that based upon his mumblings in
3 the vehicle to Officer Hutcherson, when he didn't realize that
4 anybody was listening. And then, of course, Victoria
5 ultimately died from that stab wound.

6 You heard testimony from Jennifer Bas, the DNA
7 analyst employed with the forensic lab. She testified that on
8 the handle of the knife when she swabbed, there was a mixture
9 of DNA. But the majority of that was the defendant, Brian
10 O'Keefe's. He was the major contributor. And his -- I
11 believe the statistics she gave was one in 650 billion.
12 That's the defendant's DNA on that handle, not Victoria
13 Whitmarsh's.

14 Then, the second area that she swabbed, JB4B. It's
15 right here, close to the handle, on the blade. It's a single
16 profile; all of the defendant's. That's consistent with the
17 wound on his hand, which I'll get to in a minute. But most
18 importantly, when she swabbed the tip of that knife, the only
19 DNA on the tip of that knife belonged to Victoria Whitmarsh.
20 The tip of that knife never made contact with Brian O'Keefe.
21 This wasn't self defense.*

22 And then, you've heard testimony from Detective
23 Marty Wildemann, the homicide detective. He said that, in
24 most stabbing cases when someone thrusts that knife into the
25 body of a human being, their hand will slip, and it will cut

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1 their hand.

2 Look at the location of the injuries on the
3 defendant's hand. Right where he would have been gripping the
4 handle of that knife. Right where, when he thrust that knife
5 into her body, the blade would have cut his hands. There are
6 no injuries to the palms of his hands, as if he were to grab
7 the knife. If you grab the knife from somebody's hand, the
8 blade is going to slice your palm. We don't have that here.

9 And then, you've heard from Officer Hutcherson. He
10 was sitting in the car with the defendant. For a while, he
11 was ranting and raving. He falls asleep. And then, when he
12 wakes up, he starts making spontaneous utterances, mumblings
13 to himself. "I swear to God, V, I didn't mean to hurt you.
14 Let's go do the ten years."

15 "I didn't mean to hurt you" implies that he's the
16 one that thrust that knife into her body. "Let's go do the
17 ten years." He knew he was going to prison. He knew he was
18 in trouble.

19 And then, of course, you heard from Dr. Dutra that
20 the stab wound is what resulted in her death. She bled to
21 death. It was four and-a-half inches deep. You have the
22 photo showing the trajectory of the injury. When you look at
23 the rob, you can tell that it's going from front to back -- or
24 back to front, at a downward angle. Again, inconsistent with
25 an accident. He also testified that it probably took between

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1 10 and 30 minutes for her to bleed out.

2 So, you've established that -- we established that
3 Brian O'Keefe killed Victoria Whitmarsh. The only thing left
4 is, did he do it with malice aforethought? The Judge gave you
5 the instructions on malice aforethought. It means the
6 intentional doing of a wrongful act, without legal cause or
7 excuse, or what the law considers adequate provocation. It
8 can arise from anger, hatred, revenge, particular ill will,
9 spite, or grudge towards the person killed.

10 It does not imply deliberation, or a lapse of
11 considerable time. And that's important. The State's not
12 alleging that when Brian O'Keefe woke up on November 5th of
13 2008, he intended to murder Victoria Whitmarsh. What we are
14 alleging is that at the time he thrust that knife into her
15 body -- at the time he stuck that knife four and-a-half inches
16 into her body, he had malice in his heart, and it was an
17 intentional act.

18 There are two types of malice. Expressed malice,
19 meaning the stabbing was done with the specific intent to
20 kill; and implied malice. An example would be a stabbing of
21 someone out of anger, or to teach them a lesson, or to get
22 revenge for something they had done to you. The law doesn't
23 make any distinction between the two. As long as you find
24 that there is either expressed or implied, and that there's an
25 intention killing, then the appropriate verdict is second

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1 degree murder in this case.

2 We know that at the time the -- on November 5th of
3 2008, the defendant acted out of revenge. We know that from
4 the testimony of Cheryl Morris. Cheryl Morris told you that
5 she had an approximately eight to nine-month relationship with
6 the defendant.

7 She told you that, throughout the course of that
8 relationship, he quite frequently got intoxicated, became
9 drunk. That every time he became intoxicated or drunk, his
10 thoughts would turn to Victoria Whitmarsh. He said that
11 whenever he began talking about her, he would talk about her
12 at first with sadness, lamenting the loss of the relationship.
13 Then he'd get a little bit more upset when he considered what
14 happened to him as a result of her calling the police in
15 November -- or April of 2004.

16 THE COURT: Again -- sorry to interrupt. I want to
17 remind you that evidence of other crimes, wrongs, or acts is
18 not admissible to prove the character of a person in order to
19 show that he acted in conformity therewith. It may, however,
20 be admissible as proof of motive, intent, or absence of
21 mistake or accident. I'm sorry to interrupt you. Proceed
22 now.

23 MS. MERCER: Thank you, Your Honor.

24 And then she said that, ultimately, he would end up
25 completely outraged, incensed at the damage that she had

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1 caused to his life when he was sent to prison on that felony
2 battery domestic violence charge.

3 She said that in those same conversations, he would
4 brag about his ability to kill with a knife, how the
5 government had trained him to kill people in Grenada. He
6 never talked about killing with knives, never talked about
7 manual strangulations, or any other methods of murder; just
8 with a knife. He even demonstrated how skilled he was at
9 killing people with a knife.

10 Cheryl's testimony is corroborated by the
11 information, the verdict form, and the judgment of conviction,
12 which have been admitted into evidence as State's Exhibits
13 133, 133A, and 133B. What's important to remember is that
14 that relationship with Cheryl Morris only ended two months
15 prior to this incident; two months prior to November 5th of
16 2008. And when you're deliberating, consider whether, in two
17 months, the defendant, Brian O'Keefe, was able to let go of
18 that hatred, let go of that anger with Victoria for sending
19 him to prison.

20 And if you for one second believe that he did,
21 listen to his interview. Listen to the interview that was
22 conducted with the homicide detectives and Brian O'Keefe. And
23 when you listen to that interview, listen closely, because
24 many of the most telling statements that he makes are mumbled
25 under his breath. I had to listen to the statement numerous

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1 times to pick up on them. So, listen closely. And if you
2 need to, listen to it multiple times.

3 But when he talks about the past with Victoria --
4 and he spends more time talking about his past with Victoria
5 and the damage that she did to his past, then he does asking
6 how she's doing, or expressing any concern, or sadness over
7 the loss of her life.

8 He tells the detectives, I had to change my skills
9 because of the situation we were in. He's talking about how
10 he had to change his jobs, how he became a laborer afterwards.
11 I went to prison. I lost everything. That's approximately 13
12 minutes into that taped interview. Then he goes into talking
13 about how his friends warned him about getting back with her,
14 and how they were dissatisfied over his choice to rekindle
15 that relationship. He refers to her as, "this bitch."

16 And then he goes into -- he tells the detectives,
17 look in my closet. Look at all the court documents I had to
18 file. I fought that case so hard. She wrongfully accused me;
19 things of that nature. That's approximately 14 minutes in.
20 And then, towards the end of the interview, the middle part of
21 the end, he tells the detectives, I've hurt a lot of ways,
22 because I've lost. I lost my job. And then he says, but it
23 doesn't matter anyways, because I'm going to lose it all
24 again. I'm going to have to fight this again.

25 Brian O'Keefe never forgave Victoria Whitmarsh for

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1 sending him to prison, for making him a felon, for forever
2 altering his life. And when he thrust that knife in her body,
3 those were the thoughts in his head. Those were the emotions
4 in his heart.

5 We also know that the defendant was angry that day.
6 They had been drinking. There's no disputing that. When you
7 see the interview, he's intoxicated. He's drunk. We know
8 from Cheryl Morris that when he gets drunk, he gets angry.
9 And we know that they were arguing, because in that statement
10 to the detectives, he says that Victoria was upset with him --
11 well, first says upset, and then says, no, that didn't make
12 her angry, because I actually won. But she says, why do you
13 spend so much money at Paris?

14 Then, at some point in the interview, when the
15 detective's trying to get him to stay on point, he starts
16 twisting his head back and forth, and making some mumblings to
17 himself. They're very faint. They're very quiet. Listen
18 closely.

19 These are statement that he attributes to Victoria
20 on that night. "I hate the fucking west side, you fucking
21 piece of shit. Yeah, well, we got to live in this fucking
22 place. Why can't we go to the east side? I want to go to my
23 husband's house. I'm going to take the car." How do you
24 think that Brian O'Keefe, the defendant in this case,
25 responded to those statement by Victoria Whitmarsh? He was

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1 angry.

2 Then, at another point in the interview, he admits
3 that there was yelling and screaming going on inside that
4 apartment. It's right after Detective Wildemann tells him,
5 Brian, what the hell are you doing? He says, "I'm really
6 trying to think about what happened. I'm really trying to
7 think about how things occurred."

8 He says something about -- he goes to the bathroom,
9 or he sees her in the bathroom. And then he says, "And then
10 there's yelling and screaming, and boom, boom, boom." But
11 again, these are statements that he's whispering so softly
12 that Detective Wildemann doesn't even hear them. So, listen
13 closely. That's approximately 26 minutes into the interview.

14 You also know that he was angry with Victoria
15 Whitmarsh because you heard the testimony of Jimmy Hathcox.
16 He said that he'd never seen a look like that on the
17 defendant's face before. He said it was a mean look. He said
18 that that look, coupled with the noises he heard coming from
19 the apartment next-door -- coming from the apartment of Brian
20 O'Keefe, the defendant in this case, and Victoria Whitmarsh,
21 he thought to himself, man, I hope he's not over there beating
22 the crap out of her.

23 You also know that he was angry based on Cookie's
24 testimony, Charles Toliver. He told you, man, that look
25 scared me. I ran as fast as I could out of that apartment

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1 when I saw the look on his face, and the blood everywhere, and
2 the knife in the middle of the bed.

3 We also know that he was angry because we know that
4 he knocked her around for at least an hour before he
5 ultimately stabbed her to death. Dr. Dutra testified that
6 there were multiple blunt force traumas in this case. And you
7 have all the exhibits back there, you'll see the photographs.
8 Specifically, she had very noticeable bruising to her abdomen.
9 Those are not consistent with being self-inflicted. Those are
10 considered with -- or those are consistent with the defendant
11 having knocked her around for an hour.

12 She also had injuries to her back. Again, not
13 consistent with having been self-inflicted. They're
14 consistent with an argument occurring in the hour leading up
15 to her death, a physical argument. She also had bruising to
16 her buttocks. Again, not consistent with having been
17 self-inflicted. These injuries were inflicted at the hands of
18 the defendant, leading up to her death.

19 She has a grab mark around her right wrist. Again,
20 not self-inflicted. And then, she has grab marks on her bicep
21 -- her left bicep. You can actually see what appears to be
22 the fingerprint -- the finger imprint in her arm. I mean,
23 look at those photographs. She had multiple bruises to her
24 legs, her ankle. In the hour leading up to her death, the
25 defendant acted with anger, with malice.

ROUGH DRAFT TRANSCRIPT

001186

1 The evidence at the scene was consistent with a
2 physical argument occurring in the hour leading up to her
3 death. The -- there were three blinds lying on the floor.
4 You can see them in some of the other photographs. Those were
5 the blinds that fell down from the patio door. If you look
6 closely at the photographs of the closet, you can see where
7 the doors have come off the tracks.

8 And you also heard the testimony of Joyce Toliver,
9 Charles Toliver, "Cookie," and Jimmy Hathcox, that all
10 corroborated this. They said that the noise -- Joyce tells
11 you the noise began around 9:00 p.m.. She said, I was just
12 about to watch Days of our Lives, I believe is what she said.
13 I said, well, do you have any idea how long it continued on?
14 And she said, yeah, my other soap opera had just come on, so
15 it had to have been at least an hour.

16 She said that it was so loud that she couldn't even
17 hear her TV, even after turning it up. The noise was so loud
18 that it woke Charles Toliver up from his sleep. And again,
19 Jimmy Hathcox. The noise was so loud; the look on his face
20 was so disturbing, he thought to himself, I hope he's not over
21 there beating the crap out of her. Well, he was.

22 As further evidence of his malice in this case, he
23 stabbed her. He didn't spit on her. He didn't shove her. He
24 stabbed her. He stabbed her with an eight-inch kitchen knife.
25 That implies malice alone. Then, after he stabs her, he

ROUGH DRAFT TRANSCRIPT

001187

1 watches her bleed out on the bed, moves her to the floor, and
2 for no apparent reason at all, removes her pants.

3 She bled out over the course of 10 to 30 minutes.

4 This man did nothing to stop -- nothing to help. Two cell
5 phones were laying on the kitchen counter, 30 to 40 feet from
6 the bedroom. He never once went to those cell phones and made
7 a 9-11 call. He never once plead for help from the neighbors.

8 Then, when help finally does come, or potential
9 help, all he says to Cookie is, come get her, come get her.
10 He doesn't say, go call 9-11, Cookie. He doesn't say, go get
11 me some medical help. He just says, come get her. Then, when
12 Cookie goes to get Todd to help with the situation, he tells
13 Todd, get the fuck out of here, and takes a swing at him.
14 That's now not only somebody that's not seeking help; it's
15 somebody that's preventing help. That's malice.

16 Then, when the police finally show up, the people
17 that probably actually could help, he's combative. Over the
18 course of five to six minutes, he ignores their commands to
19 come out of the bedroom. They explain to him at least two to
20 three different times, sir, we cannot get in there to help
21 Victoria Whitmarsh as long as you're in there, and we don't
22 know if you're armed. We need you to come out.

23 Todd Conn was the first one trying to explain this
24 to him. He wasn't confrontational with him; he was a crisis
25 intervention officer. He wouldn't even identify himself. He

ROUGH DRAFT TRANSCRIPT

001188

1 just kept screaming, you get the fuck in here, you get the
2 fuck in here. Then, he gives them the name of Veronica, not
3 Victoria. He gives them a false name.

4 Once they finally do get into the room, after three
5 to four minutes of challenging him to come out, he still
6 refuses to obey their commands. He would not let them get to
7 her to render aid. He laid on top of her. He had to be tased
8 two different times, just to get him out of the room. And
9 even after being tased, he's struggling with officers, to the
10 point where they drop him on his forehead in the living room.

11 And remember, Officer -- or Detective Ballejos told
12 you, medical won't go into that -- they won't go into the
13 scene until they know that it's static; until there's no
14 longer a danger to them. As long as all of this is going on,
15 they can't get to her to render aid. She's lying there,
16 bleeding to death, and this man is doing nothing to stop it,
17 and everything to prevent any sort of help.

18 Then, when they finally get him out on the porch,
19 Detective Ballejos now goes up to him and says, what's her
20 blood type? He won't give him that information. Makes
21 another attempt at getting a name. He gives Detective
22 Ballejos the same name he gave Officer [inaudible] -- or Conn,
23 I'm sorry; Veronica. The officers spend several minutes
24 trying to verify that name, realize that's not her true name.
25 So, even after he's out of the apartment, he's still impeding

ROUGH DRAFT TRANSCRIPT

001189

1 their abilities to get her help.

2 AS further evidence of the malice that he possessed
3 at the time of this incident, look at his reaction to the
4 detective when they finally told Brian -- or the defendant,
5 I'm sorry, that she passed. There's a long bout of fake
6 crying. No actual tears, no runny nose, no nothing. Then he
7 says, can I have some more coffee, please?

8 Throughout the course of that interview, he only
9 asked how she was two to three times. He never shed any
10 tears. He trashed her throughout the entire interview. All
11 he cared about was making sure they knew about her mental
12 health history, her medical conditions that implied she's
13 somehow unclean, his plight that he suffered after she sent
14 him to prison.

15 And then, he never tells the detective what
16 happened. If this was an accident, if this was self-defense,
17 why not come out and give the full story? He never does. And
18 the bits and pieces he does give are inconsistent. At some
19 point, the detective tells him, well, did she stab herself, or
20 was there a struggle over the knife? He never gives an
21 answer.

22 Ladies and gentlemen, the State submits to you that
23 the malice in this case is exhibited by the defendant's
24 conduct before, during, and after Victoria Whitmarsh suffered
25 that stab wound on November 5th of 2008.

ROUGH DRAFT TRANSCRIPT

001190

1 If you find that there was malice, that negates a
2 claim of self-defense. You have two instructions. I believe
3 it's instruction number 11 and instruction number 14 on self-
4 defense. They tell you that, to benefit from a claim of self-
5 defense, you have to have acted solely based on your fears;
6 not with malice. And malice is contradictory to an accident.

7 So, at this point, the State's submitted evidence of
8 second degree murder, an intentional killing with malice
9 aforethought. The only issue left is, was a deadly weapon
10 used? Obviously, there was a deadly weapon used. The knife
11 killed Victoria Whitmarsh. It's an eight-inch kitchen knife.

12 So, when you go back to the jury room and you begin
13 your deliberations, the State is going to ask that on that
14 verdict form, you mark the box "Guilty of murder of the second
15 degree, with use of a deadly weapon." Thank you.

16 THE COURT: Thank you very much. Let's just take a
17 ten-minute recess, and then you can get ready, Mr. O'Keefe.

18 And don't converse among yourselves, or anyone else,
19 on any subject connected with the trial; read, watch, or
20 listen to any report or commentary on the trial, by any person
21 connected with the trial, or any medium of information,
22 including, without limitation, newspapers, television, radio.
23 Don't form or express any opinion on the trial until the cause
24 is finally submitted to you.

25 We'll take ten minutes. Then we'll come back, and

ROUGH DRAFT TRANSCRIPT

001191

1 hear Mr. O'Keefe, and probably hear Mr. Lalli, all right?

2 Thank you.

3 THE MARSHAL: All rise for the jury.

4 (Outside the presence of the jury panel)

5 THE COURT: All right. We'll take ten minutes then,
6 and come back. All right? Thank you.

7 MR. LALLI: Thank you.

8 (Court recessed at 10:04 a.m. until 10:12 p.m.)

9 (Outside the presence of the jury panel)

10 THE MARSHAL: All rise for the jury.

11 (Within the presence of the jury panel)

12 THE MARSHAL: Ready, Judge. Department 17 back in
13 session. Please be seated. Come to order.

14 THE COURT: Parties, stipulate to the presence of
15 the jury?

16 MR. LALLI: Yes, Your Honor.

17 MR. O'KEEFE: Yes, Your Honor.

18 THE COURT: All right. Mr. O'Keefe, your argument.

19 MR. O'KEEFE: Thank you, Your Honor.

20 (Pause in the proceedings)

21 THE COURT: Oh, we're missing one.

22 MR. LALLI: [Inaudible] stipulating.

23 THE COURT: Yeah. Withdraw the stipulation.

24 MR. LALLI: Withdraw the stipulation.

25 THE COURT: Withdraw that.

ROUGH DRAFT TRANSCRIPT

001192

1 (Pause in the proceedings)

2 THE MARSHAL: As you were.

3 THE COURT: Now, do the parties stipulate to the
4 presence of the jury?

5 MR. LALLI: Now I stipulate, Your Honor.

6 MR. O'KEEFE: Yes, I do, Your Honor.

7 THE COURT: Thank you, Mr. O'Keefe. And proceed.

8 MR. O'KEEFE: Thank you, Your Honor.

9 DEFENSE'S CLOSING ARGUMENT

10 MR. O'KEEFE: Wow. I want to try to keep it simple,
11 folks, without breaking down, showing any emotion. I'm so
12 tired -- beyond tired. You can only imagine, I'm sure.

13 Also, I want to start out, if i may -- really
14 briefly, I want to thank Mr. Maningo for all his assistance
15 he's done. I had taken over the case for personal reasons,
16 folks. It was nothing of his doing.

17 In actuality, too, I understand exactly -- and I
18 appreciate the State's professionalism. And I understand they
19 have a job to do, and I hold nothing against them. My whole
20 battle has been, just present all the facts, and let the jury
21 decide. I understand if they feel a crime's been committed.
22 It's their duty to charge someone. But at the same time, it's
23 the right of a defendant to be heard.

24 This is hard. If at any time, I've offended any of
25 you, please forgive me, sincerely. Also, quickly, I want to

ROUGH DRAFT TRANSCRIPT

001193

1 thank the Judge. He's been very gracious, and helpful, and
2 understanding. So, with all that said, I'll be quick. And
3 just let me state some things, and let you decide and see,
4 folks.

5 November 5th of 2008 was definitely a tragedy,
6 folks. A tragedy did occur, you know. A historical event
7 happened that day, too. President Obama was elected. We all
8 know that. We watched it together, me and V. Stayed up until
9 about 1:30 November 5th, drinking wine. She just had her
10 birthday two days before. I asked her to go to bed. I wanted
11 her to take a break.

12 MR. LALLI: I'm sorry, Your Honor. I'm going to
13 have to interpose an objection. The defendant is arguing
14 facts that are not in the record.

15 THE COURT: Well, with that understanding, I'm sure
16 Mr. O'Keefe will keep it that way, but I'm going to let him
17 proceed a little on this.

18 MR. O'KEEFE: Thank you, Your Honor.

19 I explained to the detectives in the interview
20 clearly that day, Victoria did go over to Vons and get wine.
21 She got up late that day. I even showed -- you've seen, the
22 detective stipulated; I had a whole list of phone calls I had
23 made that day. One of the calls was a prospects of a job. I
24 even told the detective, you know, it was celebration. You
25 know.

ROUGH DRAFT TRANSCRIPT

001194

1 She was very depressed. She was very, very ill,
2 folks. And I accepted her the way she was, the hep C and
3 everything. A lot of people were leery of that.

4 You know, the State's basing their case, folks, as
5 the detective admitted yesterday, on a voluntary statement
6 that he took when I was in extreme intoxication. The
7 detective admitted that he's trained to try to get you to
8 admit things, which I never, ever admitted.

9 And he admitted at the end, you heard it yourselves
10 -- and look at the video the very end. He even says, I'm
11 going to write it the way I feel, because he couldn't get me
12 to say what he wanted me to say. And he even admitted that if
13 you just say what he wants you to say one time, that's the
14 story for sure.

15 I [inaudible] over, and I do believe that there was
16 a big break in between. And this tape's been edited to death.
17 There is things that you've never even seen. You know.
18 Even --

19 MR. LALLI: Your Honor, I object. The -- it is true
20 that the tape was edited. That was with the -- at the urging
21 of both parties, with the acquiescence of the Court. It is
22 improper for the defendant to suggest that the State edited
23 anything out of that statement.

24 THE COURT: Okay. That's what my understand is
25 also. So, the jury will understand that. Proceed, Mr.

ROUGH DRAFT TRANSCRIPT

001195

1 O'Keefe.

2 MR. O'KEEFE: Okay. I'll move on. Okay. I'll try
3 it a different way then, if the State's going to proceed that
4 way constantly.

5 Folks, we went out that day to Paris. I told them
6 over and over. The State wants to proceed on this case on
7 malice aforethought, an ill will, hatred murder. Malice is
8 ill will. They're trying to imply -- imply means they're
9 suggesting simply, ill will. Cheryl Morris testified
10 yesterday, folks, you heard her, that on Father's Day of 2008,
11 Victoria was searching me out everywhere.

12 Now, also, they kept bringing up on the video that I
13 said, "the bitch." Excuse me, folks, but that's what was
14 said. I said that my friends said I should stay away from the
15 bitch. Watch that part. I wasn't calling her a bitch. My
16 friends say, that crazy bitch, you should stay away from her.
17 They knew she was ill, mentally ill, extremely -- a host of
18 mental illnesses. Catch that part, folks. It wasn't me
19 personally calling her. I said in the video, "my friends." I
20 wanted to point that out, because I caught that this morning.

21 I didn't want to kill V. The State hasn't proven
22 that I stabbed V. Folks, who would want to get a knife and
23 stab someone if you know that they had hep C, and get it all
24 over you? The cops even testified, they were scared to death.
25 They found out possible HIV, hep C. Man, they really didn't

ROUGH DRAFT TRANSCRIPT

001196

1 want to really come in and help, I felt. I kept screaming,
2 come in; not, get out.

3 There's so many things, so I've got to go slow, and
4 a little bit at a time here, and get this right. Cheryl
5 Morris testified on Father's Day that I got a phone cal. It
6 was V searching me out. But I wanted to kill her?

7 In the video -- also brings me to another point.
8 Yeah, I did have to change the course of my life, folks. 40
9 years-old, and I finally get in trouble with someone that, you
10 now, I fall for. There was no -- hey, that's part of the
11 game, you know. I fell in love the way she was. Things
12 happen. We all make -- you know, I moved on. It didn't
13 matter to me. You know, and I became very successful. I was
14 making good money. I was happy.

15 And actually, I was happy she contacted me. Cheryl
16 wasn't happy with that. She felt she got kicked to the curb.
17 I was honest with her though. She even testified when I told
18 her, I couldn't live with myself. I thought it was wrong.
19 Took two or three hours, but I said, hey, you know what, I
20 don't feel -- I got to tell you the truth. That was Victoria.
21 Boy, she went ballistic. but anyway, that's neither here or
22 there.

23 My point being is, folks, they want to proceed on
24 the fact that I wanted to pay back and kill her. Folks, I'm
25 sorry. I'm an alcoholic. I'm not a killer.

ROUGH DRAFT TRANSCRIPT

001197

1 Let's talk about these wounds. Think about the
2 detective here, folks. There was so much evidence that he
3 could have collected, and he admitted to that yesterday. He's
4 trained. He admitted, folks, I'm trained to get you to spill
5 your beans. Boy, you know, I've always known, a drunk tells
6 the truth right off the bat. Not only that, a drunk's really
7 loud.

8 You can't forget also, the neighbors said, there was
9 no shouting, there was no yelling. They admitted straight out
10 that they heard a temper fit going on. We all know her
11 bipolar (sic). You heard the Judge read yesterday to you.
12 Her temper fits or anger fits, anger -- she was in there up to
13 no good. She was going to do something. I happened to walk
14 in on it.

15 You'll see the car. I told them to get the video
16 from Paris to see when we left. They could have seen it. Got
17 in the seat, laid it back. She was mad. She wanted to eat.
18 Pulled up to the apartment, slams the door. We're here,
19 whatever, goes up.

20 Now, you got to remember, they're taking this
21 statement from a man that's under stress and extremely drunk,
22 and I didn't know what was going on. I didn't want to throw
23 her under the bus at the same time, folks. Because i didn't
24 stab her, and I didn't know what the hell was going on. They
25 want to put it like that I tried to claim or say that she

ROUGH DRAFT TRANSCRIPT

001198

1 stabbed herself.

2 No. I told them over and over, I was trying to grab
3 the knife; I got cut multiple times. And I couldn't get it.
4 I was too drunk, too slow. After swinging my jacket, I let it
5 go, and I tried to grab her, and I pushed her back on the bed.
6 I'm right-handed, folks. She's right-handed. The sharpness
7 of the blade goes back. It's an impossibility. They don't
8 want to admit that when I pushed her back, and she fell down
9 on the bed, it went in. I didn't even know.

10 The detective clearly knew that they have a policy
11 that -- they should have, in a felony case, possible alleged
12 homicide, he had a duty. He could have -- he should have took
13 my blood. They said the medics tested my -- they tased me,
14 had me on the porch. They checked the tasing. They could
15 have took my blood, breath right there on the spot, and shared
16 it.

17 Not only at the alleged crime scene; when they took
18 me down to the station and they did all the other tests. Boy,
19 they wanted to swab me, fingerprint me, they wanted to
20 photograph me, fingers. They did all other tests, but they
21 didn't do the critical test. Even when they brought me to the
22 jail and booked me, they put me in the psycho ward -- mental
23 ward; detox. They didn't want to tell me that. They didn't
24 want to tell me that they actually knew. They wanted to lie
25 about it.

ROUGH DRAFT TRANSCRIPT

001199

1 They have a nurse on duty here 24 hours a day, 7
2 days a week at CCDC, and they're supposed to draw your blood.
3 Folks, common sense. If they would have took my blood draw
4 and seen, Victoria at the time of the death was a .24; three
5 times at the time of death when they did the autopsy. They
6 say alcohol evaporates so much per hour. They didn't do the
7 autopsy for a day and-a-half -- until a day and-a-half later.
8 She would have been .3 something, probably. And I was way
9 more than her. Way more.

10 My point being is, if they would have took -- and
11 got a definitive proof of my alcohol standing, it would have
12 proved a lot of things. Sloppiness, motor skills, why I
13 couldn't get the knife. These statements, I was saying
14 things. I was confused. But boy, as soon as they got it,
15 boy, they were holding to it; no, that's what you said.

16 And these calls on the 9-11. Again, I'll allege
17 right now, because a proper witness wasn't called, they've got
18 proof right now of a 9-11 call that they never let play.

19 MR. LALLI: I'm going to object, Your Honor.

20 THE COURT: Objection sustained.

21 MR. LALLI: That's not what the 9-11 call says.

22 THE COURT: Objection sustained. Go onto something
23 else.

24 MR. O'KEEFE: This whole case has been about
25 collection of evidence that they learn how to collect what

ROUGH DRAFT TRANSCRIPT

601200

1 they want, when they want it. They didn't go to Vons and get
2 the receipt to prove that the wine -- and they -- we had a
3 Vons card. They could have got that. I told them over -- go
4 to Vons, get the -- they would have seen the time of day.

5 Folks, they didn't go to Paris. I know from a
6 previous incident, and I'll get to that later, that they only
7 had the video -- it only lasts for four days, and they rewrite
8 over it. The casinos. All the footage they've got is secure
9 for four days.

10 I kept saying, get -- please -- take -- I mean, if
11 you notice, maybe I was being -- but I was under a lot of
12 stress. And I kept trying to say I was scared to death
13 because I went through a situation, and I know how the police
14 are. They don't want to hear the truth. You're here, you're
15 convicted, or take a deal. No deals. Because for me, death,
16 or I walk out.

17 He didn't get the Vons. He didn't take proper
18 photographs. He admitted, yeah, I could have took a little
19 more. Because, think about this, folks. It wasn't a
20 stabbing. It was a partial puncture. The blade was eight
21 inches. The handle was another four. 12 inches. I'm
22 right-handed. If I would have stabbed her, it would have been
23 on the other side of the body, and It would have been a
24 different angle of the sharpness.

25 Think about it. If I would have stabbed her -- and

ROUGH DRAFT TRANSCRIPT

001201

1 they even testified, it didn't hit any cartilage or bone,
2 folks. And if i had ill will, hatred, it would have gone all
3 the way in. I wouldn't need a knife.

4 They don't want to admit that the neighbor did,
5 regardless of what they say, 15 minutes later, seen me come up
6 the stairs. No blood on me, no weapon, no nothing. And I was
7 drunk and tired. I was up the night before. We watched -- I
8 was up until 4:00 in the morning watching the election, the
9 final results. 4:00 in the morning on November 5th. I laid
10 down on the couch for a couple hours. She came out. The day
11 started. Phone calls all day. I showed that.

12 She went to Vons while I was finishing. Talked to
13 the -- a job prospect. I told them that. I was happy. She
14 just had her birthday. She was down. She got news from her
15 sister she was denied on her SSI for the third time. And
16 yeah, finally, maybe she'd get approved. But you know, she
17 was hurting for money. She had no job. She had nothing. No
18 car.

19 She was concerned, what are you going to -- what am
20 I going to do next week? I hate this place. This is what it
21 was come down -- I hate this area. What are you going to do
22 being gone, you work 6, 7 days a week -- and I would have been
23 working at the Hard Rock, seven days a week, long-term.

24 Folks, you just don't stab somebody once if you've
25 got ill will, hatred. And it wasn't even a stab, it was a

ROUGH DRAFT TRANSCRIPT

001202

1 partial puncture. Wrong side of the body; the physical
2 evidence shows it. No prints on that knife. You heard
3 Detective Guenther, the specialist, 34 years. He said he
4 threw that knife under the kitchen sink, I think he said;
5 every test possible.

6 That knife was not wiped off. And it never moved.
7 I didn't care about the knife. If I stabbed her, don't you
8 think you would hide it? Don't you think you would run out of
9 the place? I stayed right there. Cookie's testimony changed
10 all the priors. He came in, and I was saying, come help me.
11 The light switch; my blood on it.

12 I'm not disputing. I'm not disputing one minute
13 that that's not my blood or her blood, and the facts that it
14 was me and her. I'm disputing that there's a difference here.
15 They have to prove that I stabbed her. I didn't stab her.
16 I'm -- it's the total wrong area. It's not even a full stab,
17 four and-a-quarter inches. It's ludicrous.

18 The cops even admit themselves this whole standoff,
19 9-11 deal. Hostage standoff, negotiations, they turned it
20 into; and we stacked on this, and the State wants [inaudible],
21 and you see this little circle, and they move here; come on.
22 Move along with it. Let's get to the facts. I'm in there
23 saying, come in and help me. I'm extremely drunk. They
24 announce it on the 9-11. They already knew I was.

25 They should have been taking my blood right away and

ROUGH DRAFT TRANSCRIPT

601203

1 showing nit. They didn't want to, because it would have
2 ruined the voluntary statement legally. If it would have came
3 back a .3 something, it would have been thrown out the door.
4 They're basing their whole case on the video.

5 MR. LALLI: I'm going to object, Your Honor. That's
6 an improper standard.

7 THE COURT: All right. Move onto something else.

8 MR. O'KEEFE: We know this for a fact, folks. I was
9 in the car. I can't dispute what they heard. I won't even
10 begin to try.

11 You will see -- watch that video. Watch it multiple
12 times you need, please. I tell them the middle of the video
13 somewhere -- I tell the cop, no, wait, 9-11 -- I meant I was
14 calling, I was screaming. Yeah, boom, boom, boom; I was
15 trying to explain the detail after Cookie ran in, and all --
16 everything was going on.

17 But the State wanted to allege that I'm saying
18 during the night, I got off the -- I don't even know what she
19 was saying. I don't even know what case she was talking
20 about. I walk in, and it happened that quick, folks. It
21 happened so fast, my head's still spinning. I knew she was a
22 cutter, and I knew she had a knife and she was in there.

23 When the police checked out my place, they found no
24 weapons, no guns, no drugs, no nothing that a normal criminal
25 would truly have. They found nothing like that. The only

ROUGH DRAFT TRANSCRIPT

001204

1 knives -- they had no combat -- and I had no military knives,
2 no nothing. The only knives that they found -- or knife they
3 found, was her knife. The same knife she used to use. Those
4 were her knives. Those weren't mine. 10:31:17*

5 She had no defensive wounds. They said that
6 normally, a person would be [inaudible]. It's [inaudible].
7 There is no scrapings under her nails; they told that.

8 State's only going on what they heard from the video
9 and the neighbors. But again, the neighbors keep saying over
10 and over, folks, there was no arguing, there was no fighting,
11 the door was wide open. The TV wasn't even on, the radio.
12 There was -- why would a [inaudible] -- a drunk is not quiet.
13 He can't think [inaudible] the knife right where it was, and
14 then try to hide it. I didn't wipe it. My prints are on it.

15 Now, imagine this. One puncture wound on the wrong
16 side of the body, but they want to say that I stabbed her, and
17 my hand slipped off. Okay. If there's one puncture wound,
18 how did I get two cuts? That is totally inconsistent.
19 Physical, there's no way (sic). I think you're smart enough
20 to see that.

21 Now, if I had stabbed her multiple times, it would
22 have -- maybe one here, and then one here. There was only one
23 puncture, and she had that knife in her hand. Right-handed,
24 too. And when she went down, her arms are so flexible --
25 mine, I can't even [inaudible]. But they don't want to talk

ROUGH DRAFT TRANSCRIPT

001205

1 about that. They didn't want to get proper to show. If they
2 would have shown the [inaudible] on my finger [inaudible]
3 thumb, it's a physical impossibility, and the detective was
4 smart enough to know that.

5 The blood, breath is so critical, because it truly
6 aids a lot in my defense. But at the same time, it was just
7 simply wrong to get drunk, folks. I'm an alcoholic; not a
8 killer.

9 [Inaudible] hepatitis C [inaudible]. Why
10 [inaudible] a knife if you wanted to kill someone? I mean, if
11 I wanted to kill her, it just doesn't make sense, why would I
12 wait until that day? It doesn't -- and again, you've got to
13 really remember, she located -- was looking for me. And I
14 accepted her the way she was. I loved her the way she was.
15 It didn't -- I put myself at risk.

16 I can't explain, as I said, what was going on in my
17 mind, folks. I'm not even going to try to say. I just urge
18 you to watch the video. Second degree malice murder, folks.
19 State has to prove beyond a reasonable doubt that I did the
20 act, that I got the knife. There's no prints. They said it's
21 not wiped.

22 And another [inaudible] on that knife is, don't you
23 think there would be more of my blood if I was holding it just
24 [inaudible] things? [Inaudible] so much testimony [inaudible]
25 little spot on the handle or whatever. If I'm holding that

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001206

1 knife, and had that [inaudible] my fingers were [inaudible]
2 from trying to grab the [inaudible]. It doesn't make sense at
3 all.

4 Now, again the temper tantrum, that's what she did
5 when she was [inaudible]. She admitted it. It was her
6 [inaudible], and I can understand it. You know, folks, an
7 intentional stabbing.

8 So, the State is claiming that I got a knife, and I
9 just walked in, and I just decided to stab her. And I told
10 you before, I think, on day one, to go home and lay on the bed
11 [inaudible], she's laying [inaudible] imagine this, folks.
12 And if [inaudible], there's no way, if she's laying on her
13 stomach, her right side's going to be there. If I stabbed
14 her, it would be on this side.

15 If the blade's going to go -- if she's laying on her
16 back, it's the same -- there's no way. It's a -- there's no
17 -- it doesn't even -- it's ludicrous. But second degree
18 malice murder is I had ill will, spite, knowledge.

19 I knew [inaudible] that there's elements to it. The
20 act, the unlawfulness, the knowledge, and the intent.
21 Conscious disregard for it. Knowing that if I stabbed her, I
22 knew for a fact if she was going to die, and I was conscious
23 and aware of that.

24 And I was .3, .4. That's another reason why they
25 didn't want to get it. There was no stabbing. I didn't even

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001207

1 have the knife, folks. Their whole story is based on -- it's
2 totally ridiculous, folks. It's a tragedy, that's for sure.
3 Their family has been through hell, and so has mine.

4 The State wants a V for victory for when they treat
5 it like a sporting event. V is for Victoria, folks. Thank
6 you.

7 THE COURT: Thank you, Mr. O'Keefe. Mr. Lalli, your
8 rebuttal argument, please.

9 MR. LALLI: Thank you.

10 STATE'S REBUTTAL CLOSING ARGUMENT

11 MR. LALLI: Everything we know about domestic
12 violence is that it is about power, and it's about controlling
13 people. And for years, Brian O'Keefe exercised that power
14 over Victoria Whitmarsh, and he controlled her. He controlled
15 her.

16 I want to address some of the things that the
17 defendant has said. He ended with discussing the elements of
18 second degree murder. He said that there are four of them.
19 Second degree murder is extremely a simple crime to
20 understand. This is not a first degree murder the State is
21 alleging. It's not a deliberate, where there's a deliberation
22 in mind. We're not [inaudible] prove premeditation, or
23 planning.

24 A second degree murder is a spur of the moment
25 killing. And there are two elements involved. Judge

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001208

1 Bonaventure told us all in instruction number 4. Murder of
2 the second degree is the unlawful killing of a human being; if
3 somebody kills someone else. Malice aforethought, either
4 expressed or implied.

5 Expressed malice is a fancy way of saying, you
6 intend to kill the person. I intend to kill you, and that's
7 why I stabbed you, and you died. That's expressed malice.
8 That's second degree murder.

9 Implied malice is even broader. There doesn't have
10 to be, or there isn't an intent to kill, necessarily. It
11 could just be, I want to stab you. I don't want to kill you,
12 I want to stab you, but the act is so reckless that I should
13 have known that death could result.

14 So, I just want to stab you because I'm mad at you,
15 because I'm angry with you, because it's been so many years
16 and I'm tired of hearing your mouth, and I'm tired of hearing
17 about your problems, and I'm tired of you complaining. And
18 maybe I don't want to kill you, but I want to stab you, and
19 that person dies. That is second degree murder.

20 And it is that type of murder that -- either
21 expressed malice, because I think there is evidence of an
22 intention to kill; or implied malice. It doesn't matter what
23 you find, it is still second degree murder in the State of
24 Nevada.

25 The defendant has talked a lot about intoxication

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001209

1 during this trial. He talked to you about it in jury
2 selection; is it important that the police collect all the
3 evidence that's possible? He talked about it during the
4 course of the trial, and he also talked to you about it in his
5 closing argument.

6 Now, if Metro was trying to cover up the fact that
7 Brian O'Keefe was intoxicated on the day that he killed
8 Victoria Whitmarsh, they sure did a bad job. If their intent
9 was to hide it from you, or to hide it from anybody who was
10 looking at this case, shame on them, because they didn't
11 accomplish the mission.

12 They've identified witnesses who came into this
13 courtroom and told you, I saw Brian O'Keefe on the day of the
14 murder, and he was intoxicated. He was very drunk. It's in
15 Metro's CAD printout; their event printout. I think the
16 number is 408, or "he was very 408." The defendant had said
17 that numerous times. If they are trying to hide the fact that
18 Brian O'Keefe was intoxicated on the day that this crime had
19 (sic), I guess they forgot to cross that part out of the CAD
20 report.

21 The police officers who responded to the scene, they
22 told you that he was intoxicated. Marty Wildemann, the
23 investigating detective, the homicide detective; he told you
24 the defendant was intoxicated. And if they were trying to
25 hide that fact, why did they videotape his interview with him,

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001210

1 where it is abundantly clear that he's intoxicated? And I
2 would suggest to you, it is perhaps the best evidence of his
3 intoxication.

4 We see how the intoxication affected him, how it
5 manifested himself. He was a sloppy, mean, manipulative drunk
6 on that video. That's what it shows. And if he is a chronic
7 alcoholic, he could very well have had a blood alcohol level
8 of .30; or if he was a guy who hardly drank at all, his blood
9 alcohol level could have been a .08, and he would have acted
10 the same way. The number itself makes no difference.

11 And the fact of the matter is that Metro doesn't do
12 it. Detective Wildemann has never done a blood draw. The
13 defendant was certainly able to communicate during the course
14 of the interview.

15 But there's another reason why the defendant's blood
16 alcohol level is of absolutely no import to this case. He
17 told you that it's absolutely critical to his defense. Well,
18 Judge Bonaventure has told you in the instructions that it's
19 not. And I would just read for you what Judge Bonaventure
20 tells all of us in instruction number 16. And it talks about
21 voluntary intoxication.

22 Voluntary intoxication just means, I decided to have
23 some drinks, or I decided to get high on my own. Somebody
24 didn't force me to drink some beer, you know, pour some
25 alcohol down my throat. So, it wasn't -- we're not talking

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001211

1 about a force situation, and that's not what occurred here.
2 The defendant has told you that he drinks. He's an alcoholic.
3 So, it's voluntary intoxication. That's what we're talking
4 about.

5 But what instruction number 16 says is that, "No act
6 committed while a person, while in the state of voluntary
7 intoxication, shall be deemed less criminal by reason of his
8 condition." We talked a little bit about it in voir dire.
9 You know, Ms. Mercer and myself asked some of you, do you
10 think being under the influence should be an excuse for a
11 crime?

12 And I don't think there's one person who said that
13 it should. All of you who we asked that question to said,
14 yeah, I don't think it should be a defense. I don't think it
15 should be an excuse. Well, guess what. The law in the State
16 of Nevada is that it's not an excuse. It doesn't matter. The
17 defendant's level of intoxication in this case is irrelevant.
18 Judge Bonaventure is telling you that in instruction number
19 16.

20 Just to clarify one point that the defendant did
21 say. Victoria's blood was approximately 2.4 (sic), and that's
22 my recollection of blood it was. Certainly, your recollection
23 will control. Her blood alcohol was .24 at the time of death.
24 Dr. Dutra, the pathologist who testified for you, said that
25 the body doesn't bruise after death. You can't bruise,

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001212

1 because the body's not working anymore, basically.

2 Well, the same thing applies to your blood alcohol
3 level. Upon your death, your body loses the ability to
4 metabolize alcohol. And the blood alcohol level that you have
5 at your death was your blood alcohol level when you died. So,
6 Victoria's blood alcohol was no higher than the 2.4 that it
7 was at her death.

8 When he stood before you and delivered his closing
9 argument, the defendant told you numerous times, I accepted
10 Victoria the way that she was. I accepted her. I didn't want
11 to throw her under the bus in any way. And perhaps that's why
12 he didn't tell Detective Wildemann on the day of the murder
13 what he's kind of suggesting happened now, that she fell on a
14 knife.

15 Really, he accepted her the way that she was.
16 That's really interesting. It is so very telling when you
17 watch his interview how the defendant interacted with the
18 woman in the room, Detective Kyger; how he referred to her as,
19 "young lady, young lady."

20 He wasn't slipping. He was doing that on purpose.
21 He was attempting to antagonize her, degrade her; whatever it
22 was. But it shows you how he feels about women. "Write this
23 down," commanding her, directing her. "Look into this."

24 So much so, that at one point, Detective Wildemann
25 has to say, hey, stop it; knock it off. And you're talking

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001213

1 about a strong woman. You're talking about a homicide -- a
2 female homicide detective. You think she's not tough, hanging
3 out with a squad of mostly male homicide detectives, and the
4 defendant is treating her that way, imagine how he treated
5 Victoria.

6 And think about it, because there's evidence of how
7 he perceived her in this case. In the law, there is this
8 concept called chattel. And chattel is something that you
9 own. It's some non-real property that you own. So,
10 everything I own is my chattel. That's how he treated
11 Victoria.

12 Do you remember what happened when the police
13 officer finally enter that room where Victoria is, and he is
14 lying next to her, or over her? He doesn't say, hey, help
15 her, she's bleeding out. Hey, you know, give her a hand.
16 What does he say? Don't look at her. Don't look at her.
17 This is mine. This is my lady. This is that power and
18 control that we see in domestic violence.

19 And twice during the interview with the police, the
20 defendant is confronted with this idea that Victoria could be
21 dead. One of those, he brings up himself, when he's
22 describing this hep C that she has.

23 And is it possible to switch over to the -- to the
24 computer? Oh, I'm sorry. Can we go to counsel table?

25 THE CLERK: All right.

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1 MR. LALLI: Thank you.

2 (Portion of taped interview of Brian O'Keefe played)

3 MR. LALLI: "She's sick, she's going to die." Hey,
4 today's Tuesday, and my car's in the shop, and everything
5 else. That's how he's talking about this woman he supposedly
6 loves, that's got this condition where she's going to die.
7 That's how he really feels about her?

8 Remember, if you will, his reaction to when
9 Detective Wildemann tells him that Victoria is in fact dead,
10 this woman that he loves, that he has accepted.

11 (Portion of taped interview of Brian O'Keefe played)

12 MR. LALLI: "Can I have some coffee?" Hey, this
13 woman you love so much, she just died. Can I have some
14 coffee, please? That's how you'd expect somebody who really
15 accepted Victoria -- that's how you expect them to react.

16 In his argument today, he said, well, I didn't
17 really want to tell the police what happened because I never
18 wanted to throw Victoria under the bus. Really?

19 Well, here's just a sampling of some of the things
20 that he said about Victoria in that interview. She's the one
21 who said she wanted to kill herself. I got out of prison, and
22 she called me. She went to Vons to get wine, and used my
23 cards. The Union was giving him cards to be able to use for
24 food, because he was out of work.

25 She tried to kill me. Two nights ago, she got real

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601215

1 mad. Victoria accused me of being jealous. She stabbed
2 herself, and she did a lot more than that. He was sure
3 throwing Victoria under the bus in that interview.

4 There were, during the course of this trial,
5 arguably two theories that were advanced by the defendant, and
6 they tend to be moving targets. During the course of the
7 interview, he says at least twice, Victoria attacked me. So,
8 back on the day of the crime, I guess one of the defenses was
9 self-defense. Judge Bonaventure instructs you on self-
10 defense. That's not the defendant's theory, so I would tell
11 you to just disregard all of that. This isn't a self-defense
12 case.

13 We heard an awful lot about suicide. But now, today
14 in his closing argument, the defendant seems to admit that
15 Victoria did not kill herself. He said that. Now, it's
16 simply, it was this accident, that somehow she fell on the
17 knife. But I want to talk briefly about suicide and accident.

18 But more importantly, I want to talk to you about
19 where this evidence comes from. Because any evidence of
20 suicide on that day, or accident, comes from one source; and
21 that source is the defendant. So, to accept those, to embrace
22 those, you have to believe that Mr. O'Keefe was truthful
23 during that interview.

24 And I would just remind you that nothing he has said
25 in this courtroom is evidence. Statements of counsel, or

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1 questions, or statements of people who represent themselves,
2 is not evidence. It is not evidence. That is his version of
3 what occurred on that day.

4 Well, first of all, what are his motivations? Who's
5 on trial here today? Well, Mr. O'Keefe's on trial. And
6 certainly, you have to understand his motivation in presenting
7 his defense to you in doing that. But it is so incredibly
8 telling, this story of this accidental death, how somehow she
9 fell down on a knife, is not what he told the police. Because
10 he is asked very pointed questions routinely and repeatedly
11 through that interview.

12 And what does he tell Detective Wildemann? I don't
13 know how she got stabbed. I don't know what happened in the
14 apartment. I don't know how I got the cut on my hand. I
15 don't know how she got covered with blood. And he's very
16 strategic in the information that he's willing to provide. He
17 wants to talk about the Paris. Well, what does Paris have to
18 do with that murder?

19 And he's angry, still to this day, at the police,
20 because they didn't go to Paris and get that video. The video
21 of what; him drinking at Paris? He's angry that they didn't
22 go to the Vons. Who cares about the Vons? It has absolutely
23 no relevance to this case.

24 This case is about what happened in that apartment.
25 They want to know -- he wants to know, you know, hey, I was

ROUGH DRAFT TRANSCRIPT

001217

1 calling the Union all day. Who cares? Who cares? Tell us
2 about what happened with that knife. That was something he
3 was unwilling to do on the night of this murder.

4 All of the evidence that you have seen repudiates
5 the ideas of accident and suicide. We admitted through a
6 stipulation Victoria's psychiatric records. Well, why did we
7 do that? Well, that's part of who Victoria was. That's who
8 Victoria was. She was a tortured person. She was a cutter.
9 When she would be depressed, she would cut herself.

10 If you know anything about depression, it's what
11 those who suffer from that illness do. It releases serotonin,
12 as it brings comfort to them. We know that Victoria was not
13 suffering from depression at that time. She was taking her
14 medications. She was taking her Effexor. And Dr. Dutra told
15 you that. He told you what Effexor is. Effexor is an
16 antidepressant. It was found in Victoria's blood at the time
17 of her death. She was stable at the time.

18 During his argument to you, the defendant said, you
19 know, on this particular day, Victoria was up to no good; and
20 he was -- kind of made that motion to you that maybe she was
21 slicing herself.

22 Fortunately, there are photographs of almost her
23 entire body. And I'd ask you to look at them. You see her
24 wrists. I'm showing you State's Exhibit number 88 and State's
25 Exhibit 93. She's not cutting herself. She's not cutting her

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001218

1 wrists. I don't know why he said that to you. There's no
2 evidence of that. She was not suicidal on this day.

3 The importance of Victoria's psychiatric history is
4 that it shows us how vulnerable she was. You heard from
5 Elynne Greene, who was the domestic violence expert who
6 testified in the early part of this trial. And she talked
7 about those victims of domestic violence; those people who are
8 caught in the cycle of violence. They are vulnerable people.
9 They are people with low self-esteem. They are people with
10 problems. She described for you Victoria Whitmarsh. She was
11 the perfect victim for this defendant.

12 Was this a suicide? No, and the defendant is even
13 telling you that today in his closing argument. What about
14 accident? Accident is interesting. If I met you for the
15 first time today, and we were friends, and we were having a
16 conversation, and you said, hey, Chris, what are you doing
17 next week? And I said, I'm trying a murder case, and it was a
18 stabbing case. And you said, really? What's the -- what's
19 the defense? And I said, the defense is that the victim fell
20 on the knife and died; you'd laugh at me. I mean, you'd
21 chuckle.

22 And that first instinctual reaction is really an
23 appropriate one, because it's ridiculous. It's ludicrous. It
24 makes absolutely no sense at all, but yet, that's the defense
25 that the defendant is bringing you today; she fell on the

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001219

1 knife.

2 Dr. Dutra, in response to some very thoughtful
3 questions from the jury -- it wasn't anything that I had asked
4 him, but some very thoughtful questions from the jury, he was
5 asked about that. What happens -- if this was an accidental
6 -- somebody fell on this knife, would we expect the type of
7 wound track that we had? And Dr. Dutra said, no, you
8 wouldn't.

9 And during the course of this autopsy -- I apologize
10 for the photo, but it is so telling as to the wound angle.
11 This is State's Exhibit number 130. No, you're not going to
12 have that type of an angle. And more importantly, you're not
13 going to have that clean, singular sort of wound track in
14 Victoria's body. It's going to be jagged, there's going to be
15 irregularities in it.

16 And Dr. Dutra's an interesting guy. He's been a
17 doctor since the 1970's. He was trained at USC. He has
18 expertise in forensic pathology. He's worked at hospitals.
19 Dr. Dutra's telling you, there's no way this is an accident.
20 And in fact, "By virtue of me saying this is a homicide, I
21 have ruled out that it was an accident." And not in response
22 to anything that the State asked him, because the defendant
23 wanted to talk about Dr. Benjamin, who was the doctor who
24 actually did the autopsy.

25 She agreed with that, because it was Dr. Benjamin's

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001220

1 opinion that this was a homicide; not an accidental death.
2 But think of the coincidences, that this woman just happened
3 to fall on this knife, the same day that the defendant was in
4 an argument with his girlfriend.

5 On that same day that they're fighting about -- who
6 knows what? Arguing about how much money he had spent at the
7 -- or gambled at the Paris, just happens to be coincidentally
8 on that same day she fell on a knife. And they were arguing
9 about his gambling at the Paris that night. He tells us that
10 in the interview.

11 (Portion of taped interview of Brian O'Keefe played)

12 MR. LALLI: "Why did you spend do much money at
13 Paris?" They were arguing on this day. Just so happens that
14 she fell on that knife the same day. Their relationship was
15 strained at this period of time. There's one bed in this
16 house, but there's also a bed made up out on the couch, where
17 he told you he was sleeping.

18 I'm showing you State's Exhibit number 5. They
19 weren't sleeping together. This wasn't a loving couple at
20 this time. He's out, sleeping on the couch. What a
21 coincidence, during this time in their relationship, she fell
22 on a knife.

23 Isn't it a coincidence that she fell on this knife
24 just minutes after Johnny Hathcox -- I'm sorry, Jimmy Hathcox,
25 sees the defendant with that look on his face, and then hears

ROUGH DRAFT TRANSCRIPT

001221

1 that disturbance, and thinks to himself, wow, I wonder if he's
2 beating the crap out of her. What a coincidence that she fell
3 on the knife at the same time.

4 What a coincidence that she fell on a knife the same
5 day she had all of that blunt force trauma on her body. The
6 injury on her head, which Dr. Dutra told you was fresh. The
7 grabbing wound on her arm, which Dr. Dutra told you was fresh.
8 The bruise on the upper part of her arm, which Dr. Dutra told
9 you was fresh. The bruises on her chest, which Dr. Dutra told
10 you were fresh. The bruise on the side of her body, which Dr.
11 Dutra told you was fresh.

12 The injuries to her back and buttocks, which Dr.
13 Dutra told you were fresh. The injury on the side of her leg,
14 which Dr. Dutra told you were fresh. Isn't it a coincidence
15 that the same day she was subjected to this unthinkable
16 beating that was heard in the apartment below, and was heard
17 by Mr. Hathcox next-door -- isn't it a coincidence that on
18 that same day, when no one was in that apartment except the
19 defendant, she happened to fall on a knife?

20 Who stabbed whom? And the defendant says, hey, my
21 fingerprints aren't on the knife. I didn't handle it. I
22 guess he forgot about the DNA evidence, that clearly has his
23 blood on the handle. There's no doubt about that. Take the
24 population of the earth, and multiply it by 100. There's only
25 one person in that group whose blood that could be, and it's

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001222

1 Brian O'Keefe. It's on the handle of the knife.

2 And Forensic Scientist Bas was very clever in how
3 she collected it. She collected a swab of blood from the
4 bottom of the knife, where those cuts on his finger were,
5 which is where we would expect blood to be. Who was the
6 person stabbed? It was Victoria Whitmarsh. The same degree
7 of certainty.

8 His statement to Officer Hutcherson tells us what he
9 did to Victoria. "I swear to God, V, I didn't mean to hurt
10 you." And think about how these statements were collected.
11 Officer Hutcherson sitting in his patrol car, writing things
12 down as he's hearing them.

13 To understand what happened in that apartment, all
14 you have to do is look at the defendant's consciousness of
15 guilt. You know, if this was a suicide, there's no problem
16 for him. He's not criminally on the hook. If this was an
17 accident, if it was truly an accident, he faces no criminal
18 liability.

19 The only problem for him is that this was a
20 malicious killing. And when you act in a manner consistent of
21 guilt, it is suggestive of guilt. If this was a suicide or an
22 accidental killing, wouldn't he have been happy to see the
23 police?

24 And Ms. Mercer did an excellent job of marshaling
25 that evidence for you. That's not how a person acts if he has

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001223

1 nothing to hide, if he did nothing wrong. That person doesn't
2 try to square-up with and fight with a neighbor, who could
3 come over and help. That's not what somebody who is not
4 guilty does. Feigning emotion in an interview. There's no
5 reason to feign emotion.

6 And then, there is one other thing that the
7 defendant says, "Let's go to the ten years," as he is sitting
8 in that car. After he has murdered Victoria Whitmarsh, he's
9 in the patrol car with Officer Hutcherson, "Let's go do the
10 ten years," an obvious reference to, he's going to prison. He
11 knows it. And I would submit that you know it, too.

12 Everything we know about domestic violence is that
13 it is about power and controlling people. Today, the
14 defendant has no power. That power is vested in you. And I
15 ask you to use that power for justice today. Justice requires
16 that he be convicted of second degree murder for killing
17 Victoria Whitmarsh. Thank you.

18 THE COURT: All right. Thank you very much, Mr.
19 Lalli. The clerk will swear the officer to take charge of the
20 jury.

21 MARSHAL SWORN

22 THE COURT: All right, ladies and gentlemen. The
23 case --

24 (Pause in the proceedings)

25 THE COURT: The case is now submitted to you, and

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1 our marshal will be the officer in charge of your
2 deliberation. Please retire with him, and he'll show you
3 where to go, and he'll take all the exhibits. The alternate
4 jurors, please remain in the courtroom.

5 (Jury retires to deliberate at 11:10 a.m.)

6 (Outside the presence of the jury panel)

7 THE COURT: All right. Mr. Mikuski, is it?

8 ALTERNATE JUROR NO. 1: Yes.

9 THE COURT: You're Alternate Juror number 1. And
10 Beverly, you're Alternate Juror number 2. Now, I can either
11 do one of two things. I could just have you hang around here
12 all day, and it's -- or what I could do, and which I think I'm
13 going to do, is I'm going to give you the admonition. And
14 then I'm going to allow you to go to the jury commissioner,
15 sign your vouchers, and go home, with the understanding though
16 that -- see, they're going to deliberate now.

17 Maybe something will happen -- not -- maybe they
18 won't reach a verdict by tonight, then I'm going to let them
19 go home for the weekend. I'm not going to sequester them.
20 I'm going to let them go home. And then, I'm going to have
21 them come back about 8:30, 9:00 o'clock on Monday, if that
22 happens.

23 Now, if something should happen during the weekend,
24 very important for you, Eric, to be available. You understand
25 that?

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001225

1 ALTERNATE JUROR NO. 1: Yes.

2 THE COURT: And there's no excuses. You understand?
3 And also, you too, Beverly. You're Alternate Juror number 1.
4 So, I might very well on Monday, if something happens, and it
5 might not, have the clerk call you and say, get over here
6 right away, and then we're going to begin deliberation anew.
7 You understand that?

8 ALTERNATE JUROR NO. 1: Yes.

9 THE COURT: So, you promise me you'll be available
10 between 8:30 and 10:00 in case I call you. You understand?

11 ALTERNATE JUROR NO. 1: Yes.

12 THE COURT: Please. And you, too, okay? So, I'm
13 going to give you the admonition. And once I give you the
14 admonition, you go to the clerk right here, give them numbers
15 where you could be reached on Monday. And then, you go to the
16 jury commissioner, sign your voucher, and go home. All right?

17 Now, don't converse among yourselves, or anyone
18 else, on any subject connected with the trial; read, watch, or
19 listen to any report of, or commentary on the trial, by any
20 person connected with the trial, or by any medium of
21 information, including, without limitation, newspapers,
22 television, radio. And you are not to form or express any
23 opinion on any subject connected with the trial until the
24 cause is finally submitted to you.

25 So, come over here.

ROUGH DRAFT TRANSCRIPT

001226

1 THE MARSHAL: They already got their numbers. I
2 already got their numbers.

3 THE COURT: Oh, you already got numbers? Good.

4 THE MARSHAL: Yes, sir.

5 THE COURT: You need to leave the badges I guess,
6 right?

7 THE MARSHAL: Right. Just leave them on your chair.

8 THE COURT: Leave them on the chair, and yeah.

9 ALTERNATE JUROR NO. 2: Could I give a second phone
10 number because --

11 THE COURT: Yes, please.

12 ALTERNATE JUROR NO. 2: -- my cell is not --

13 THE COURT: Absolutely. I want a third one, too.
14 All right. Thank you very much. Take your badge off. Now,
15 just go to the jury commissioner now.

16 ALTERNATE JUROR NO. 2: Thank you.

17 THE COURT: All right. So, they're going to be
18 deliberating now. I'm going to provide lunch to them about
19 11:30, quarter-to-12:00. So, you'll have numbers -- Mr.
20 Maningo, you'll have numbers where you could be reached?
21 And --

22 MR. MANINGO: Yes, sir.

23 MR. LALLI: We will.

24 THE COURT: -- [inaudible]. Anything else to come
25 before the Court before we take our recess?

ROUGH DRAFT TRANSCRIPT

001227

1 MR. LALLI: Not on behalf of the State.

2 MR. O'KEEFE: No, Your Honor.

3 THE COURT: All right. Thank you very much. We'll
4 be in recess.

5 (Court recessed at 11:14 a.m. until 1:57 p.m.)

6 (Outside the presence of the jury panel)

7 (Pause in the proceedings)

8 THE MARSHAL: All right, guys. Places, everyone.

9 (Pause in the proceedings)

10 THE MARSHAL: All rise for the jury.

11 (Within the presence of the jury panel)

12 THE MARSHAL: Department 17 is back in session.

13 Please be seated and come to order.

14 THE COURT: All right. Ladies and gentlemen, have
15 you selected a foreperson?

16 THE FOREPERSON: Yes.

17 THE COURT: Who's the foreperson? Please stand up.
18 Have you arrived at a verdict?

19 THE FOREPERSON: Yes, we have, Your Honor.

20 THE COURT: Please hand the verdict to the marshal.
21 Remain standing, if you will. I'm going to talk to you again.

22 (Pause in the proceedings)

23 THE COURT: Mr. Foreman, would you please read the
24 verdict aloud, starting from the very top?

25 THE FOREPERSON: "We the jury in the above entitled

ROUGH DRAFT TRANSCRIPT

001228

1 case find the defendant, Brian Kerry O'Keefe, as follows:
2 guilty of murder in the second degree with use of a deadly
3 weapon." Dated this 15th day of June, 2012.

4 THE COURT: Thank you very much. Hand that back to
5 the marshal. Ms. Clerk, would you read the verdict aloud, and
6 inquire of the jury if that is their verdict? You can sit
7 down, sir.

8 THE CLERK: District Court, Clark Count, Nevada.
9 The State of Nevada, plaintiff, versus Brian Kerry O'Keefe,
10 defendant. Case number C-250360, Department 17.

11 Verdict: "We the jury in the above entitled case
12 find the defendant, Brian Kerry O'Keefe, as follows: guilty of
13 murder of the second degree with use of a deadly weapon."
14 Dated this 15th day of June, and signed by the jury
15 foreperson.

16 Ladies and gentlemen of the jury, is this your
17 verdict, so say you one, so say you all?

18 THE JURY: Yes.

19 THE COURT: All right. Would any of the parties
20 like the jury polled?

21 MS. MERCER: No, Your Honor.

22 MR. O'KEEFE: No, Your Honor.

23 THE COURT: All right. In view of the fact that the
24 jury has found the defendant guilty as charged, we're going to
25 enter that upon the minutes. I guess we have to refer this

ROUGH DRAFT TRANSCRIPT

001229

1 back to the Department of Parole and Probation for a renewed
2 PSI I guess. I mean, that should be the -- and any motions
3 you want to file --

4 MR. O'KEEFE: Your Honor, if I may just request
5 speedy trial transcripts. If I could get those moving along.

6 THE COURT: Well, let's get the jury out of here
7 first.

8 MR. O'KEEFE: Yes, sir.

9 THE CLERK: Sentencing date?

10 THE COURT: Yeah, because the old PSI is not good
11 anymore. So, let's set a sentencing date in about, I don't
12 know, 60 days. Yeah.

13 THE CLERK: August 16th, 8:15.

14 THE COURT: You know, we have an old -- you know, a
15 little -- I'm not going to go into it all, but there's a
16 little history. Mr. O'Keefe was found guilty a while back,
17 and then he appealed it, and the Supreme Court reversed. And
18 then he was tried again. I think it was a hung jury, if I'm
19 not mistaken. But this is the third time, and thank you very
20 much.

21 As I indicated to you before, there's only two times
22 you can serve your country, in war and jury service. But for
23 you, we can't resolve cases. Mr. O'Keefe felt he was -- you
24 know. He felt he was not guilty, he had a right to trial, and
25 he was given it. But I want to thank you very much.

ROUGH DRAFT TRANSCRIPT

001230

1 You're excused from my jury admonition. If you
2 happen to want to talk to talk to somebody, be free to do so.
3 I want to thank very much Mr. Lalli, I don't think he's here,
4 and Ms. Mercer. And I want to thank Mr. Maningo. It's a
5 thankless job to be a standby lawyer. I can see him chomping
6 at the bit, wanting to advocate. But he did his job.

7 And Mr. O'Keefe had a right to represent himself.
8 And quite frankly, you know, for the record, he was a
9 gentleman. He treated everybody with respect, and I
10 appreciate that. So, you know, I want the record to reflect
11 that, that he treated himself professionally, and respect --
12 he treated everybody -- he treated the Court with respect, he
13 treated the DA, and he treated the jury with respect.

14 But that being said, he's convicted now. And as I
15 said, you're released from my admonition. Go to the marshal,
16 go back to the jury commissioner, sign your vouchers. And you
17 did a very good service here. Thank you so much. I mean, I
18 don't care what the verdict was. You did your service, and go
19 back there now. And as I said, you're released. If somebody
20 want to talk to you, fine. If not, don't worry about it.

21 THE MARSHAL: All rise for the jury.

22 (Jury excused at 2:05 p.m.)

23 (Outside the presence of the jury panel)

24 THE COURT: All right. Is there anything else to
25 come before the Court before we take our recess?

ROUGH DRAFT TRANSCRIPT

001231

1 MS. MERCER: No, Your Honor.

2 THE COURT: Mr. O'Keefe?

3 MR. O'KEEFE: No, Your Honor.

4 THE COURT: All right. Well, good -- I mean, I
5 don't know, good luck. I mean, [inaudible] a very serious
6 charge.

7 MR. O'KEEFE: Absolutely, Your Honor.

8 THE COURT: I don't know. One jury -- 12 people
9 found you guilty; is that correct?

10 MR. O'KEEFE: Yes, sir.

11 THE COURT: The third -- the second trial was an 11
12 to 1 hung? I don't even know. Was that --

13 MR. O'KEEFE: It was --

14 MS. MERCER: 11 to 1, or 10 to 2.

15 MR. O'KEEFE: It was 10 to 2, Your Honor.

16 THE COURT: It was 11 --

17 MS. MERCER: Depending on who you spoke to.

18 UNKNOWN MALE SPEAKER: 10 to 2.

19 THE COURT: Or 10 guilty -- and 2 -- or 1 or 2, they
20 didn't show beyond a reasonable doubt.

21 MS. MERCER: Correct.

22 THE COURT: Now, you've got 12 more. So, the
23 evidence is what the evidence is. But that's not going to
24 stop you, Mr. O'Keefe. I'm sure you're going to be litigating
25 this for about the next 20 years.

ROUGH DRAFT TRANSCRIPT

001232

1 MR. O'KEEFE: Yes, sir.

2 THE COURT: All right. Good luck.

3 MR. O'KEEFE: If I could, Your Honor -- with all due
4 respect, could I put that -- request an oral motion for the
5 trial transcript now to get it started? May I?

6 THE COURT: What's the --

7 MR. O'KEEFE: Would that be all right, Ms. Mercer?

8 MS. MERCER: He has to do it a court order.

9 THE COURT: Yeah. You know what, I'm going to
10 accommodate you. See if we get an expedited trial transcript,
11 because he does have a federal writ that he's got to resolve.
12 And so, I'll sign it, all right? Just who's going to --
13 [inaudible] you prepare the order, all right?

14 MR. MANINGO: I will, Your Honor.

15 THE COURT: And then get it to the chambers, and
16 I'll sign it, and we'll try to get an expedited trial
17 transcript.

18 MR. MANINGO: Absolutely.

19 THE COURT: Well --

20 MS. MERCER: Thank you.

21 MR. O'KEEFE: Your Honor, thank you.

22 MR. MANINGO: Thanks.

23 MR. O'KEEFE: It was an honor being with you.

24 THE COURT: Thank you.

25 (Court adjourned at 2:06 p.m.)

26

ROUGH DRAFT TRANSCRIPT

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ACKNOWLEDGMENT

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

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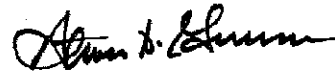
JULIE LORD, TRANSCRIBER

8/24/12

DATE

ROUGH DRAFT TRANSCRIPT

001235



CLERK OF THE COURT

1 JOC

2
3
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6
7 THE STATE OF NEVADA,

8 Plaintiff,

CASE NO. C250630

9 -vs-

DEPT. NO. XVII

10
11 BRIAN KERRY O'KEEFE
#1447732

12 Defendant.

13
14 JUDGMENT OF CONVICTION

15 (JURY TRIAL)

16
17 The Defendant previously entered a plea of not guilty to the crime of MURDER
18 OF THE SECOND DEGREE WITH USE OF A DEADLY WEAPON (Category A
19 Felony), in violation of NRS 200.010, 200.030, 193.165; and the matter having been
20 tried before a jury and the Defendant having been found guilty of the crime of MURDER
21 OF THE SECOND DEGREE WITH USE OF A DEADLY WEAPON (Category A
22 Felony), in violation of NRS 200.010, 200.030, 193.165; thereafter, on the 28th day of
23 August, 2012, the Defendant was present in court for sentencing pro se representing
24 himself with stand-by counsel, LANCE MANINGO, ESQ. also present, and good cause
25 appearing,
26

27 THE DEFENDANT IS HEREBY ADJUDGED guilty of said crime as set forth in
28 the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee to be

001236

1 waived if previously paid, and \$150.00 DNA Analysis Fee including testing to determine
2 genetic markers to be waived if previously paid, the Defendant is SENTENCED to the
3 Nevada Department of Corrections (NDC) as follows: TO A MAXIMUM of THREE
4 HUNDRED (300) MONTHS with a MINIMUM Parole Eligibility of ONE HUNDRED
5 TWENTY (120) MONTHS plus a CONSECUTIVE term of TWENTY (20) YEARS
6 MAXIMUM and EIGHT (8) YEARS MINIMUM for Use of a Deadly Weapon; with ONE
7 THOUSAND THREE HUNDRED NINETY-FOUR (1,394) DAYS Credit for Time Served.
8
9

10
11 DATED this 30 day of August, 2012

12
13 
14 MICHAEL VILLANI
15 DISTRICT JUDGE *gd*
16
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1
2 Murder of the Second Degree is murder which is:

- 3 1) An unlawful killing of a human being with malice aforethought, but without
4 deliberation and premeditation, or
5 2) Where an involuntary killing occurs in the commission of an unlawful act, the
6 natural consequences of which are dangerous to life, which act is intentionally
7 performed by a person who knows that his conduct endangers the life of
8 another, even though the person has not specifically formed an intention to kill.
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Attorney for Appellant
BRIAN O'KEEFE

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,)
)
Appellant,)
)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)
_____)

Case No.: 61631
District Court Case No.: C250630

APPELLANT'S APPENDIX

VOLUME 5

**APPEAL FROM JUDGMENT OF CONVICTION AND SENTENCE IN THE
EIGHTH JUDICIAL DISTRICT COURT**

LANCE A. MANINGO
Nevada Bar No. 006405
Bellon and Maningo, Ltd.
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Las Vegas, Nevada 89101

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Attorney for Appellant

Attorneys for Respondent

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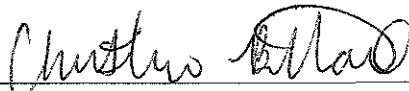
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CERTIFICATE OF MAILING

I, hereby certify that on the 29th day of October, 2012, I did serve a true and correct copy of the foregoing APPELLANT'S APPENDIX by depositing same in the United States mail, first-class postage fully prepaid, addressed as follows:

Clark County District Attorney
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717


An Employee of Bellon & Maningo

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Anna L. Shuman
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-250630
	.	
Plaintiff,	.	DEPT. NO. XVII
	.	
vs.	.	
	.	TRANSCRIPT OF
BRIAN KERRY O'KEEFE,	.	PROCEEDINGS
	.	
Defendant.	.	
.....	.	

BEFORE THE HONORABLE SENIOR JUDGE JOSEPH BONAVENTURE

ROUGH DRAFT TRANSCRIPT OF
JURY TRIAL - DAY 4

THURSDAY, JUNE 14, 2012

APPEARANCES:

FOR THE PLAINTIFF:	CHRISTOPHER LALLI, ESQ. ELIZABETH A. MERCER, ESQ. Chief Deputy District Attorneys
FOR THE DEFENDANT:	BRIAN KERRY O'KEEFE Pro Per
	LANCE MANINGO, ESQ. Stand by counsel for defendant

COURT RECORDER:

MICHELLE RAMSEY
District Court

TRANSCRIPTION BY:

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Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

000995

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 14, 2012, 9:55 A.M.

2 (Outside the presence of the jury panel)

3 (Pause in the proceedings)

4 THE MARSHAL: All rise and come to order.

5 Department 17 of the Eighth Judicial District is now in
6 session. The Honorable Judge Joseph Bonaventure is presiding.
7 You may be seated. Remain in order. Make sure your cell
8 phones are turned off.

9 THE COURT: All right. This is outside the presence
10 of the jury. What's the situation?

11 MR. O'KEEFE: Okay, Your Honor. First of all, we
12 have -- I'm trying to get the State to agree -- there was a
13 prior stipulation on the mental health issues and the suicides
14 of the deceased, Your Honor. There was a prior stipulation
15 that was made that I didn't agree with, that the jury was only
16 read a very redacted, redacted record of the deceased.

17 The jury also was not even advised at the close of
18 the State's case in chief. The judge just said, no, I'm going
19 to read this statement, and the jury wasn't even aware. But
20 first of all --

21 THE COURT: Wasn't aware of what?

22 MR. O'KEEFE: They weren't even aware of what the
23 judge was reading at the time. The judge stated that it was
24 agreed at the close of the State's case in chief, I was going
25 to read this. And the jury was kind of like, what's going on?

ROUGH DRAFT TRANSCRIPTS

000996

1 They wasn't even had (sic) pens, paper. Didn't know. The
2 judge started reading the redacted, redacted version of the
3 mental healths and suicides, and anger management, and all
4 that. And I just thought it was truly unfair.

5 My position now is, since I realize the risk I took,
6 I'm just trying to make a record that I feel it's imperative,
7 based on the facts of the case -- since Mr. Lalli got the
8 battery domestic violence, trying to give the inference that
9 an assault or battery was done, it aids in my case to show a
10 complete defense, a reason of why the knife -- the deceased
11 would have had the knife, and what was going on.

12 I'm asking -- I'm trying to get an agreement with
13 Mr. Lalli to enter, to have you read this to the jury, Your
14 Honor, like they did in the second trial.

15 THE COURT: That's the stipulation.

16 MR. O'KEEFE: Yeah, that's one of the -- yes, sir.
17 And then, not only that, I want to -- I have the right, Your
18 Honor, to enter is as an exhibit for the jury to take back.

19 Now, Mr. Lalli has got the battery domestic violence
20 judgment of conviction, wrongfully, I feel still -- I stand --
21 that's my position. He's got evidence. All through the voir
22 dire and through the trial, he's got them believing right now
23 that this happened in a battery domestic violence. That's
24 wrong. No one's paying attention to what could have happened.

25

ROUGH DRAFT TRANSCRIPTS

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1 In 2010, Your Honor, with all due respect, in Vega
2 vs. Nevada, the Supreme Court ruled on a case, and it dealt
3 pertaining with suicides. An alleged victim that had some
4 injuries, and she had prior suicides and all that. To make a
5 long story short, it was two months after my case was
6 reversed, or three months; around there, Your Honor, with all
7 respect.

8 And, they ruled that it was relevant evidence, under
9 I do believe NRS 48.025. It was very relevant. It pertained
10 to the case. You know. And also, it's my constitutional
11 right for a complete defense, due process. You know, that's
12 what we're here for, Your Honor, to let the jury hear both
13 sides, and let them decide for themselves.

14 So, again, I'm very adamant, Your Honor, that I
15 never made a prior stipulation. This stipulation was done by
16 -- when I had counsel. Also, this stipulation was done with
17 Mr. -- or Judge Villani, with all due respect. And I'm just
18 trying to [inaudible]. You know, I want to get an agreement,
19 and I'm making an argument that something should be presented
20 for the jury. I do believe I have that right.

21 THE COURT: And that's the stipulation that was
22 entered into last time. Can I have a copy of that?

23 THE CLERK: Here it is, Judge.

24 MR. MANINGO: May I approach, Judge? This is --

25 THE COURT: Well, do you have --

ROUGH DRAFT TRANSCRIPTS

000998

1 MR. MANINGO: Oh.

2 THE CLERK: This is the Court's exhibit.

3 THE COURT: Oh, this is the actual exhibit. All
4 right.

5 THE CLERK: That's the actual exhibit.

6 MR. LALLI: Is that 14?

7 THE CLERK: Yes.

8 MR. O'KEEFE: Now, is that the two-page, with all
9 due respect, Your Honor, or --

10 THE COURT: Yeah, it's the two --

11 MR. O'KEEFE: -- three-page?

12 MR. MANINGO: It's this one, Brian.

13 THE COURT: It's three pages.

14 MR. O'KEEFE: Okay, Your Honor. Thank you. There
15 was two of them. That's why I'm making sure.

16 THE COURT: Well, make sure. Here, show -- Mr.
17 Maningo, here, give this --

18 MR. MANINGO: May I, Your Honor?

19 THE COURT: That's the 14 that was going to be --

20 MR. O'KEEFE: Because --

21 THE COURT: Is that an exhibit?

22 MR. LALLI: It's a Court's exhibit, Your Honor.

23 THE COURT: Right.

24 THE CLERK: [Inaudible].

25 THE COURT: Right, right.

ROUGH DRAFT TRANSCRIPTS

000999

1 MR. O'KEEFE: And just explaining, Your Honor, there
2 has been a --

3 THE COURT: Make sure that's

4 MR. O'KEEFE: -- couple versions.

5 THE COURT: Make sure that's the same one you want.

6 Now, Mr. Lalli, I guess the only issue is he wants that --

7 MR. O'KEEFE: I'm asking for this one.

8 THE COURT: He wants --

9 MR. O'KEEFE: Okay.

10 THE COURT: He wants that admitted.

11 MR. O'KEEFE: This is the one that they utilized.

12 MR. LALLI: He wants more than that.

13 MR. MANINGO: Your Honor, may I approach with what
14 Mr. O'Keefe --

15 MR. O'KEEFE: Okay. That's what we -- we redacted
16 it again with this one, Your Honor.

17 THE COURT: I thought I asked you to go through
18 this. Now the jury's waiting all this time.

19 MR. LALLI: We can't agree. We tried to.

20 MR. O'KEEFE: And it's imperative.

21 MR. MANINGO: May I approach, Judge?

22 MR. O'KEEFE: They got the one that was --

23 MR. MANINGO: Court exhibit. This is what --

24 MR. O'KEEFE: -- with the exhibit.

25 MR. MANINGO: -- Brian wants.

ROUGH DRAFT TRANSCRIPTS

001000

1 THE COURT: And you won't stipulate to what Brian
2 O'Keefe wants on this one here?

3 MR. LALLI: No, I will not, Your Honor.

4 THE COURT: Now, I need to hear your argument.

5 MR. LALLI: Okay.

6 THE COURT: Now, while you stipulate -- but you
7 would stipulate to --

8 MR. LALLI: The Court reading Court's Exhibit number
9 14.

10 THE COURT: But not admitted in evidence?

11 MR. LALLI: Correct.

12 THE COURT: Okay. Give me the reasons why.

13 MR. LALLI: Let me just -- quickly, but --

14 THE COURT: I mean, I don't think you have to
15 stipulate to anything.

16 MR. LALLI: I don't. I don't have --

17 THE COURT: I mean, I think you're doing a favor.
18 He'd have to -- he'd have to present evidence to that effect,
19 and lay foundations. And I don't know how we could do that.
20 I mean --

21 MR. LALLI: I would agree. I agree with all of
22 that.

23 THE COURT: I mean, I think you're being -- I'm
24 looking at you. I think you're being more than generous
25 stipulating, because he'd have to prove it. I don't know how

ROUGH DRAFT TRANSCRIPTS

001001

1 we prove it. But that's --

2 MR. LALLI: Your Honor, just --

3 THE COURT: -- my initial reaction to it.

4 MR. LALLI: Just to give the Court some history, at
5 the last trial, the defendant's attorney wanted to admit many
6 voluminous records on the victim's state of mental health.
7 There had never been a Petrocelli hearing, as was required
8 under Mortenson. There was no real relevance to it.

9 However, I could see that under the Daniels
10 decision, the Supreme Court could say that some acts of
11 violence perhaps should come before the jury. So, to
12 accommodate the defense, Ms. Palm and myself agreed to the
13 stipulation, which is Court's Exhibit number 14.

14 Now, we agreed to that, with the assistance of Judge
15 Villani. He assisted us in coming to that final version.
16 What we did not agree to -- what we could not agree amongst
17 ourselves was whether the stipulation would go back to the
18 jury, or whether it would be read. We argued that.

19 Judge Villani's ruling was, I will read the
20 stipulation into the record. It's coming from the Court, it
21 has a stronger import than if the parties were to read it.
22 But I'm not going to admit the document.

23 So, here today, my position is to do just that, to
24 have Your Honor read Court's Exhibit number 14 to the jury.
25 And that's what I'm willing to agree to.

ROUGH DRAFT TRANSCRIPTS

001002

1 THE COURT: Anything else?

2 MR. O'KEEFE: Well, Your Honor --

3 THE COURT: I mean, he's not going to stipulate to
4 what you want. So, I can't get that in. Because if he won't
5 -- if the State won't stipulate to it, just because you say
6 it's the right thing to do, Judge, I can't be doing that,
7 because it has to -- foundation has to be laid, business
8 records. You know, you have --

9 MR. O'KEEFE: All right, Your Honor.

10 THE COURT: -- to do that. So, I'm going to mark
11 what you want as an exhibit, as a stipulation to be entered.
12 And you preserve that, and this is what you want. But I'm
13 going to mark that as Court's next exhibit, and I can't give
14 that. All right? I can't give that. So, that's -- but you
15 preserve your record on that.

16 MR. O'KEEFE: Okay.

17 THE COURT: And that's the reason why. Because if
18 the State --

19 MR. O'KEEFE: Yes, sir, Your Honor.

20 THE COURT: -- won't stipulate to it, you have to
21 prove it, and you have to -- you can't do it. So --

22 MR. O'KEEFE: Your Honor --

23 THE COURT: Now, as far as the one that Judge Villani
24 gave --

25 MR. O'KEEFE: Yes, sir, Your Honor.

ROUGH DRAFT TRANSCRIPTS

001003

1 THE COURT: -- this is a redacted. And --

2 MR. O'KEEFE: May I --

3 THE COURT: All right. So --

4 MR. O'KEEFE: May I request, Your Honor, at least
5 could that be, since that was -- could they at least take that
6 back to the jury room?

7 THE COURT: That's what I got to rule on now.

8 MR. O'KEEFE: Yes, sir, Your Honor.

9 THE COURT: Let me --

10 MR. O'KEEFE: Thank you, Your Honor.

11 THE COURT: Let me think about that. Let me review
12 it --

13 MR. O'KEEFE: God bless you, Your Honor. Yes, sir.

14 THE COURT: Let me think about it.

15 MR. O'KEEFE: Sure.

16 THE COURT: Since there's a stipulation, you want it
17 marked as defense next Exhibit A, if it's stipulated to. Mr.
18 Lalli doesn't want it as an exhibit, but he's willing to
19 stipulate. Let me think about it, all right?

20 MR. O'KEEFE: Yes, sir.

21 THE COURT: All right.

22 MR. O'KEEFE: Now, I have one other matter -- or two
23 quick matters. Okay. I need a stipulation or an agreement.
24 And this is absolutely imperative. This was done by the
25 police. There was two 9-11 calls on this incident, Your

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1 Honor. They were back to back. And testimony has been
2 brought out already about this, and it's in the 9-11 calls,
3 and all this. It's relevant.

4 At the last trial, the State -- at the second trial,
5 the State only played the second 9-11 call. Which it's -- I
6 need -- both 9-11 calls are back to back on my disk. And --

7 THE COURT: All right. Just a minute. Mr. Lalli,
8 could you accommodate that? Or --

9 MR. LALLI: Your Honor --

10 THE COURT: If there's one, why don't we have two?
11 I mean --

12 MR. LALLI: Well --

13 THE COURT: -- unless it's a prejudicial thing
14 that's --

15 MR. LALLI: There's a problem with playing both of
16 them, Your Honor.

17 THE COURT: All right, go ahead.

18 MR. LALLI: First of all, we have marked -- we
19 marked as State's proposed Exhibit number 129 a 9-11 call from
20 a witness by the name of Todd Armbruster. Mr. Armbruster
21 accompanied Mr. Toliver up to the defendant's room, and saw
22 him standing over Victoria Whitmarsh at some point.

23 We attempted to serve Mr. Armbruster, because he
24 offers testimony very favorable to us. We were not able to
25 locate him. Therefore, us simply playing his 9-11 call is

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1 going to be hearsay, and we cannot put it into a particular
2 hearsay exception. Mr. Armbruster --

3 THE COURT: But you're going to play that, you said?
4 Is that --

5 MR. LALLI: I'm sorry?

6 THE COURT: Well, that's an exhibit --

7 MR. LALLI: We did not play it. We can't lay the
8 foundation for it. So --

9 THE COURT: Well, if Mr. --

10 MR. LALLI: No, no, I understand that.

11 THE COURT: -- O'Keefe stipulates to that, then will
12 you stipulate to the second one? I guess that would solve the
13 problem.

14 MR. LALLI: No.

15 THE COURT: Oh.

16 MR. LALLI: And I'll explain to the Court why. The
17 other person who called 9-11 was a woman by the name of Robin
18 --

19 MR. O'KEEFE: Kolacz.

20 MR. LALLI: -- Kolacz, who was the apartment
21 manager. She makes some statements to the police about what
22 was occurring in the apartment, and she had never been there.
23 She had never seen what had happened. She's hearing third and
24 fourth-hand from hysterical neighbors what's going on in that
25 apartment.

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1 It is not credible information that she imparts to
2 the police, and she's not a witness here. I don't have the
3 chance to cross-examine her about those statements. So, Mr.
4 Armbruster's statement was played in the first two trials. I
5 don't have a problem playing it in this trial if the defendant
6 wants it in. I don't have a problem with that.

7 THE COURT: But if he doesn't want it in, you're not
8 going to play it?

9 MR. LALLI: I can't.

10 THE COURT: Because --

11 MR. LALLI: I can't play it, because I can't lay the
12 foundation for it. I would certainly -- the manager is Ms.
13 Kolacz --

14 MR. O'KEEFE: She was the manager of --

15 MR. LALLI: She --

16 MR. O'KEEFE: -- the apartment complex.

17 MR. LALLI: She has never -- she has -- as far -- I
18 know she didn't testify in the last trial. I don't believe
19 she testified in the first trial. And her 9-11 call has never
20 been played in any proceeding, as far as I know. And I'm not
21 going to agree to just play some unreliable hearsay for the
22 jury.

23 THE COURT: All right.

24 MR. LALLI: So, that's my position.

25 MR. O'KEEFE: Yes, Your Honor. Okay. In the first

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1 trial, Robin, the apartment manager, she makes the first call.
2 They run down to her; it's imperative. She states -- you can
3 hear it quite clearly on the call --

4 THE COURT: What do you mean in the first trial?
5 That wasn't played in the first trial.

6 MR. O'KEEFE: No -- yes, it was, Your Honor.

7 THE COURT: Wait a minute. Let me get this
8 straight. Was that played in the first trial, the Robin --

9 MR. LALLI: I don't -- I don't know for certain.

10 MR. O'KEEFE: Yes, Honor (sic) --

11 MR. LALLI: I don't know for certain.

12 MR. O'KEEFE: -- it was.

13 MR. LALLI: I know the Todd Armbruster CD was. I
14 can tell you with certainty that that was, because it's marked
15 that way.

16 THE COURT: Okay.

17 MR. O'KEEFE: Your Honor, in the first trial, the
18 State was under Prosecutor Smith, and a different assistant --
19 second chair. They played both 9-11 calls. They are
20 imperative. Robin on the 9-11 call clearly states she's
21 always outside. She ran the place. She knew everybody. She
22 was outside.

23 They -- and hysterics run down. They said, oh my
24 God, there's a fight going on. And she says -- she's on the
25 9-11 call. And she says, nobody's fighting. What are you

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1 even talking about? There's nobody fighting. And they said,
2 yeah -- it was Cookie. There's somebody up there, they're on
3 the floor, they won't let us in, or whatever. And they hear
4 -- and the call gets ended. It's very brief.

5 Then, right after that -- they're very short 9-11's.
6 Right after that, then Todd makes a 9-11 call. And he says,
7 I'm up in this apartment, and man won't let us in. Where are
8 you at? Yeah, we just got a call on that. We got another
9 call right before that. We're being dispatched.

10 And just to sum it up real quick, what's being
11 stated here was Todd never tells the 9-11 call -- dispatch,
12 that Cookie was already in there, and I'm asking him for help,
13 but he runs out on me. Todd tells the 9-11 that he goes into
14 my apartment, and I'm trying to get him out of there. He
15 doesn't tell the 9-11 call that somebody had already been in
16 the apartment, and I was asking for help; help me, help me get
17 her out in the light, and he got scared and ran out.

18 Cookie runs out, runs down to Robin. She makes the
19 first 9-11 call. There's nobody fighting [inaudible] going
20 on. He hooks up with Todd. They run back up there together.
21 Todd supposedly comes in, I supposedly swing at him. He runs
22 out. He makes the second 9-11 call, and he tells them that
23 I'm being combative, I won't let anybody in.

24 And I'm like -- the police didn't -- wasn't aware of
25 was Cookie had already been there, and I asked Cookie to help

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1 me. I wasn't trying to get him out. They -- the police was
2 not aware that I was asking for help. I wasn't being
3 combative. Somebody had already been in there, and he ran
4 out. Then he got a second person, and they came back again.
5 Then, at that time, they said something happened. And -- but
6 both calls were played back to back. They're very short.

7 It's imperative, Your Honor, because she states that
8 I'm outside. Nobody is fighting. That's what I was trying to
9 say in my opening statement, evidence will show that the
10 manager knows everybody. It's only about three times the size
11 of this room. If somebody was fighting, they would have heard
12 it. She's always out there. She says, nobody's fighting.
13 There's no shouting, there's no smashing, there's nothing
14 going on.

15 They did play it in the first trial, both calls.
16 But then in the second trial, of course, the State being
17 smart, they realized that that evidence was very prejudicial
18 to their case.

19 So, they got rid of the call number 1, and they
20 played only call number 2. And yes, Todd did testify at the
21 second trial. But Robin didn't testify at either trial. But
22 the whole thing has already been played. It was record of the
23 -- a record of the first appeal. Both calls were played, Your
24 Honor. It was proper, it was right.

25 Then, in the second trial, they edited it. They

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1 only played the second call because it makes me look like a
2 bad guy, like I wouldn't let anybody in. And they don't hear
3 that there was no fighting going on. And I'm asking at least
4 that you allow it to be played. Listen to the call yourself.
5 It only takes a minute, during a break. It's imperative, Your
6 Honor. It tells the story. Again, this is --

7 THE COURT: All right. You're repeating yourself.
8 Anything else, Mr. Lalli?

9 MR. LALLI: Your Honor, his remedy was to subpoena
10 Robin, bring her to court, and have her testify. That's how
11 you get the evidence in.

12 THE COURT: Aren't 9-11 calls routinely played in
13 trial?

14 MR. LALLI: If you can lay the foundation for them.
15 If they're an excited utterance, if they qualify, if there is
16 a foundation with the 9-11 operator if the declarant isn't
17 present; sure. Sure, they're played.

18 THE COURT: But you say --

19 MR. LALLI: But you got to lay the foundation for
20 it.

21 THE COURT: -- he has no foundation for it?

22 MR. LALLI: He has no foundation. And more
23 importantly, it's important to cross-examine this witness
24 because she doesn't go there. She is repeating bits and
25 pieces of information from other people.

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1 THE COURT: All right.

2 MR. LALLI: It's extremely unreliable.

3 THE COURT: Would you -- would you stipulate to play
4 the Exhibit 129, the Todd Armbruster? I don't think I'm going
5 to allow you to play it, but I'm going to mark that disk as an
6 exhibit, next court in order -- next court exhibit in order.

7 MR. O'KEEFE: Well, if --

8 THE COURT: If you don't want to -- you don't
9 stipulate, don't stipulate. [Inaudible].

10 MR. O'KEEFE: Yes, Your Honor. I guess just to
11 preserve, I appreciate what you're doing. And I would -- my
12 position would be, if you can't play both of them, then none
13 of them need to be played, Your Honor.

14 THE COURT: All right. So, none will be -- give me
15 that disk, Mr. Maningo. We'll --

16 MR. O'KEEFE: And if he could --

17 THE COURT: We'll mark that. That's a court --

18 MR. O'KEEFE: Is that mine? Is that the right one?

19 THE COURT: -- next court exhibit in order.

20 MR. MANINGO: Right.

21 MR. O'KEEFE: Okay.

22 THE COURT: And that's going to be the both 9-11
23 calls. The Court has ruled that it's not going to be --

24 MR. MANINGO: Yes, sir.

25 THE COURT: -- neither one is going to be played,

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1 because they're unreliable hearsay. And there's no foundation
2 laid, absolutely no foundation. And so, neither 9-11 call
3 will be played, and that's the ruling of the Court. And Mr.
4 O'Keefe has more than preserved his record on that. All
5 right? So, we'll mark that --

6 MR. O'KEEFE: And --

7 THE COURT: -- next court in order.

8 MR. O'KEEFE: -- the last matter, Your Honor.
9 Court's indulgence, one second. And this will be it, Your
10 Honor. We'll move on.

11 (Pause in the proceedings)

12 MR. O'KEEFE: Okay, Your Honor. After speaking with
13 Mr. Maningo, I'll go ahead and just speed this up and move on,
14 and I'll address it later.

15 THE COURT: Thank you.

16 MR. O'KEEFE: Thank you, Your Honor.

17 THE COURT: You want to address Nella Humphries now?
18 Or -- you know what, we'll do it at the noon recess. I'll ask
19 her to stay. And that's the one where the sister of Juror
20 number 10, she says she has sleep apnea, and we got to make a
21 decision on that.

22 So, we'll bring in the jury now, and do what we can
23 until the noon hour.

24 THE MARSHAL: Officers and members of the court,
25 Department 17 jurors.

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1 (Within the presence of the jury panel)

2 THE MARSHAL: All right. You may be seated, ladies
3 and gentlemen. Let's make sure all cell phones are turned
4 off, please.

5 THE COURT: All right. Parties, stipulate to the
6 presence of the jury?

7 MR. LALLI: Yes, Your Honor.

8 THE COURT: Mr. -- you stipulate to the presence of
9 the jury?

10 MR. O'KEEFE: Yes, I do, Your Honor.

11 THE COURT: Thank you.

12 MR. O'KEEFE: Thank you.

13 THE COURT: Again, ladies and gentlemen, I'm sorry
14 that it was delayed, but we had some legal arguments that
15 you're not to be concerned with. And we were working, but
16 unfortunately, we were a little delayed. But I apologize for
17 that. It's nobody's fault.

18 And we're ready to proceed with the State's case in
19 chief now. The State will call it's next witness.

20 MS. MERCER: The State calls Ed Guenther, Your
21 Honor.

22 THE MARSHAL: What was his name?

23 MS. MERCER: Guenther.

24 THE MARSHAL: Mr. Guenther, if you will remain
25 standing. Please, sir, raise your right hand and face the

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1 clerk.

2 THE WITNESS: Yes.

3 ED GUENTHER, STATE'S WITNESS, SWORN

4 THE MARSHAL: Have a seat, sir.

5 THE WITNESS: Okay.

6 THE MARSHAL: Slide up to the microphone.

7 THE WITNESS: Yes.

8 THE MARSHAL: And if you would, please state and
9 spell your name for the record.

10 THE WITNESS: Yes, sir. Let me move this back just
11 a little bit. Good morning. My name is Ed Guenther. It's
12 spelled G-u-e-n-t-h-e-r.

13 MS. MERCER: May I proceed, Your Honor?

14 THE COURT: Yes.

15 DIRECT EXAMINATION

16 BY MS. MERCER:

17 Q Sir, where are you currently employed?

18 A I'm employed with the Las Vegas Metropolitan Police
19 Department. My assignment is in the criminalistics bureau,
20 and my -- and in the forensic laboratory. And my area of
21 expertise is latent fingerprints.

22 Q Okay. And how long have you been working in the
23 area of latent fingerprints?

24 A I've been in the area of latent fingerprints about
25 35 years now.

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1 Q How much of that time did you spend with Metro?

2 A The last 14 years have been with Metro.

3 Q And prior to that, where did you work?

4 A Prior to that, I was -- I worked for the Florida
5 Department of Law Enforcement in their laboratory system for
6 18 years. I worked for the State of Ohio crime laboratory
7 system for three years. And prior to that, I worked as a --
8 in a non-latent fingerprint aspect; in an inked fingerprint
9 aspect, for the Federal Bureau of Investigation.

10 Q Okay. And can you tell us a little bit about your
11 educational background?

12 A Okay. Well, my training -- I just kind of went
13 backwards then. But I began way back in 1975 with the Federal
14 Bureau of Investigation in Washington. There is where I
15 learned the basics of classifying, searching, and identifying
16 fingerprints.

17 And then, I entered -- in 1977, I did enter into a
18 latent fingerprints training program with the State of Ohio.
19 Completed that training program. Did my routine case work in
20 Ohio for the three years. 18 years more at Florida. And for
21 the last 14 years, here at Metro. So, that's my background
22 that way.

23 My formal education, accommodated with a
24 baccalaureate degree from the University of South Florida in
25 Tampa. I'm also a member of the International Association for

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1 Identification, and have been certified by the association to
2 conduct latent fingerprint examinations.

3 Q And do you have to go through continuing education
4 each year?

5 A Yes, as part of our -- as part of my -- retaining my
6 certification, I have to test every five years. And also, I
7 have to show continuing education credits during that
8 five-year period by attending meetings, and -- or teaching, or
9 writing a paper, or some sort of involvement in the community
10 in obtaining, or giving and receiving of training.

11 And then, of course, doing the testing. And then,
12 of course, our laboratory is an accredited laboratory. So, I
13 do a mandatory testing every year as part of our accreditation
14 process. All analysts are tested at least once a year.

15 MS. MERCER: Your Honor, at this time, I'd ask that
16 the witness be allowed to testify in the area -- or offer
17 opinions in the area of fingerprints examination and analysis.

18 THE COURT: O'Keefe, any objection?

19 MR. O'KEEFE: No, Your Honor.

20 THE COURT: He can so testify.

21 MS. MERCER: Thank you.

22 BY MS. MERCER:

23 Q Sir, can you tell the jury what a latent fingerprint
24 is, please?

25 A Okay. Well, a latent fingerprint is an accidental

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1 -- it's a mark left by the accidental torching of a surface by
2 the specialized skin on our hands and our feet. This skin has
3 pores along their summits. And through these pores, your body
4 is going to be excreting perspiration and chemical compounds.

5 So, when your hand or your foot come into contact
6 with the surface, you're going to leave the outline of that
7 friction ridge, that skin, and a deposit of the perspiration
8 and the chemical compounds.

9 Now, at times, these prints are visible. More
10 often, they are invisible. So, at that point, that's where we
11 use various processing methods in order to visualize and
12 preserve the latent fingerprints on surfaces.

13 Q Okay. Is it possible to touch an item and not leave
14 a fingerprint?

15 A Yes.

16 Q Can you explain how? What kinds of factors go into
17 whether or not a fingerprint is left behind?

18 A Um-hum. Well, there are several factors. The
19 primary one, in my opinion, is the pressure or the movement.
20 These friction ridges are pliable; they're three-dimensional.

21 So, when you touch a surface, if there's too much
22 force on it, then the ridges have a tendency to either --
23 then, the motion of that force. If your force is up or down,
24 left or right, or a turning motion, instead of getting a nice,
25 clean touch of that friction ridge detail, you're going to

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1 get, well, basically a smear or a smudge. So, pressure is
2 very important.

3 Environmental factors are important. Wind, rain,
4 sun, heat. The surface that is touched is important. The
5 substrate. Generally speaking, the smoother a surface is, the
6 more receptive it will be to the fingerprint deposits being
7 left on them.

8 The other is what the print is actually left in. Is
9 the print in -- is it what we call an oily, or a sebaceous
10 print? Is it a print that comes from actual sweat residue?
11 Is it in blood, or grease, or something like that? So, those
12 are the main factors.

13 And then, of course, time. Fingerprints do have a
14 life. At some point, they are not going to be able to be
15 developed for any kind of probative value.

16 Q Okay. And as a latent print examiner with Metro,
17 what are some of your job duties?

18 A Well, my main job duty is to analyze the friction
19 ridge detail that comes to us, either through our crime scene
20 unit, or through evidence that's submitted into the
21 laboratory. To analyze that evidence for latent fingerprints
22 of suitability, of comparison quality. And then, to make
23 comparisons with known's or exemplars of individuals, that are
24 presented to us in the course of an investigation.

25 Q Okay. And you used the term, comparison quality

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1 when you were referring to latent prints. What does that term
2 mean?

3 A Well, when we say something is suitable, or is of
4 comparison quality, not all latent prints are going to meet
5 the -- a threshold that we can actually make a comparison
6 with. Oftentimes, we're getting a fragment of a print. In
7 our line of work, in latent prints, we're going to get a
8 fragment of a print. Maybe it's a little tip. And we do an
9 analysis of that.

10 And our determination can be that, well, yes, there
11 is a touch here, and there is some friction ridge detail here,
12 but there just isn't enough to make an association with any
13 individual. So, in that case, we would say that the latent
14 print is not suitable for comparison, so we wouldn't be able
15 to compare it with any human being.

16 Now, there are times when we have print detail that
17 we may be able to make a -- some inference of. Maybe it's a
18 pattern type, or an area of skin, maybe a hand or a finger.
19 But even at that, we're not able to say more than that. So,
20 we have levels of suitability and conclusions that we can rise
21 to, depending on what we have in front of us.

22 Q Okay. You also used the term, known print. What is
23 a known print?

24 A Well, a known is an exemplar. And an exemplar is
25 basically a controlled recording of this friction ridge that I

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1 described to you earlier. The -- and the way they're obtained
2 is that the hand, or the foot, or the finger, in today's
3 world, will be rolled onto a platen, a -- which is going to
4 digitally capture that friction ridge.

5 And then, it's of course all stored in a database
6 now for our retrieval, if we would need it for comparison
7 purposes. So, those are exemplars. Those are -- the
8 important part of what we do, we need an exemplar to make a
9 comparison.

10 Q Okay. And going back to the comparison quality.
11 And approximately what percentage of cases do you recover
12 latent prints that are of comparison quality?

13 A Well, I think the last time we did an internal study
14 of some of our case work and our case flow, I believe we were
15 having a recovery -- I believe it was about in one out of
16 three cases, where we're actually getting latent prints of
17 comparison quality that we could actually look at and compare
18 to an individual.

19 Q Okay. Now, I want to direct your attention to early
20 2009. Were you asked to examine some evidence under Metro
21 event number 0811053918?

22 A Yes, ma'am.

23 Q And what specifically were you asked to look at?

24 A All right. Well, I received a package that had been
25 impounded by a Jocelyn Maldonado, who is a crime scene analyst

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1 with the Las Vegas Metropolitan Police Department. And inside
2 that package was a Wolfgang Puck black-handled carving knife.

3 And also, I received a package that was impounded by
4 CSA Chelsea Collins, who also works for Metro as a crime scene
5 analyst. And in that package, there were four photographs of
6 ridge detail that she had taken at the crime scene at 5001 El
7 Parque Avenue.

8 Q Okay. And when you received those packages, what
9 condition were they in?

10 A They would have been sealed.

11 Q And what does that mean?

12 A Well, anything that comes to the vault -- well,
13 especially the knife, would have been sealed. Nothing comes
14 into the laboratory without being sealed. It won't be
15 accepted by the main evidence vault. Or we have our own vault
16 in the laboratory, that's a satellite of the main vault. We
17 don't accept anything that isn't sealed properly, and signed,
18 and so forth. So --

19 Q So, basically, that signifies to you that the
20 evidence hasn't been tampered with?

21 A Correct.

22 Q Since it was impounded, correct?

23 A Correct.

24 Q And you indicated that you were asked to examine a
25 knife?

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1 A Yes.

2 MS. MERCER: Permission to publish, Your Honor.

3 THE COURT: Yes.

4 MS. MERCER: And for the record, I'm publishing
5 State's Exhibit 44.

6 THE WITNESS: Okay.

7 BY MS. MERCER:

8 Q Is this the knife that you were asked to examine in
9 this case?

10 A Yes.

11 Q And can you identify -- I'm sorry. Let me zoom-in a
12 little bit. Can you identify in this exhibit where -- first
13 off, when you examined the knife, did you find any latent
14 prints?

15 A There was an area of touch on the handle that was a
16 -- there was latent print material there, and it was in a
17 blood-like substance. But the examination of that area in the
18 end was negative. It was not suitable for any kind of
19 comparison. So, while there was a touch on the knife, it did
20 not reach the threshold where I could actually make a
21 comparison to anyone.

22 Q Okay. And can you identify the area of the handle
23 where you --

24 A Yes.

25 Q -- found that?

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1 A The area was on the left side of the knife. It was
2 on the handle. And I --

3 Q Just circle it for me.

4 A Yeah. It was right in that area.

5 Q Okay. And you indicated that, ultimately, it wasn't
6 of comparison quality?

7 A Correct. Yes.

8 Q Did you do anything to try to develop the print?

9 A Yes.

10 Q And can you tell the jury what you did?

11 A Well, this is on a knife, on a blood -- what could
12 be a blood-type print. We always do a visual examination,
13 first of all. And so, that was obviously done. There was no
14 other ridge detail noted on the knife at all, except for this
15 one area.

16 So, first, I preserved that area. Then, I proceeded
17 to process it with a series of chemicals that will either
18 enhance or develop blood prints. They will react with a blood
19 substance, the hemoglobins and amino acids, and so forth, and
20 the hemoglobins, primarily, to either develop or enhance the
21 blood surface. That technique was used on the knife, on the
22 handle of the knife, and need to step back one moment.

23 After the visuals, also conducted examinations with
24 our alternate light sources. We have several alternate light
25 sources that sometimes will reflect ridge detail, and make it

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1 actually visible. So, the visual test was negative. The
2 alternate light source tests were negative. This chemical
3 test was negative. This is all on the handle. So, all
4 negative.

5 On the blade, I used a separate technique. And of
6 course, this obviously would have involved the handle at this
7 point also. It was subjected to the fumes or super glue, or
8 cyanoacrylate. And what super glue is going to do, if there's
9 a print that you can't see, because we did the visual, the
10 super glue has a -- will adhere and lock onto the moisture
11 content that's in that touch I talked about, that
12 perspiration.

13 And what it will do is it will fix that ridge detail
14 onto that surface. And then, sometimes you can actually see
15 that print at that point. But more often than not, we are
16 going to then follow that up with a chemical dye stain. We're
17 going stain that super glue print, put it under the -- an
18 alternate light source to radiate it or enhance it, and
19 photograph it.

20 So, I did those techniques on the knife also. They
21 all came up negative. So, they're -- I threw the kitchen sink
22 at the knife, we'll say. And all the testing that I did did
23 not enhance, and or develop any additional latent prints on
24 the knife.

25 Q Okay. And the one partial print that you observed

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1 was not of comparison quality?

2 A Correct.

3 Q Were you able to reach any opinions as -- you
4 indicated that sometimes, even when a print isn't of
5 comparison quality, you can sometimes tell what part of a hand
6 or foot might have touched the object?

7 A Um-hum.

8 Q Were you able to make any conclusions with regards
9 to the knife in this case?

10 A Yes. Just because of the nature of the touch, you
11 could see that where the hand -- or where the friction ridge
12 had touched the knife, the ridges were rather long and linear,
13 long and stacked upon themselves.

14 But ordinarily, almost always, you're going to find
15 that type of ridge structure in the palm of the hand. And
16 ordinarily, it's going to be in this pad over here that we
17 call the hypothenar, or the outside of the hand.

18 So, in my opinion, the touch that was on that knife
19 was probably -- was more probably from a palm, as opposed to
20 being touched by a finger.

21 Q And again, you're referring to the handle -- the
22 area --

23 A Yes.

24 Q -- on the handle?

25 A Yes, ma'am.

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1 Q And then, you indicated that you were also asked to
2 examine -- I'm sorry, some photographs?

3 A Yes, I was.

4 Q And what were those photographs of?

5 A They were photographs of a bed sheet. And there was
6 a mark on the bed sheet that Chelsea Collins took four
7 photographs of. It was on the northeast corner of the bottom
8 flat sheet of the bed in the northwest bedroom.

9 MS. MERCER: Permission to publish, Your Honor?

10 THE COURT: Yes.

11 MS. MERCER: Okay. And for the record, I'm
12 publishing State's Exhibit 47.

13 BY MS. MERCER:

14 Q Does this appear to be the photograph that you were
15 asked to examine?

16 A Yes. Yes, it is.

17 Q And specifically, which area were you directed to?

18 A Well, I would have been directed to this area
19 obviously, right here where this scale is. And this obviously
20 was photograph B that she in her markings.

21 So, this was the area that I was asked to analyze to
22 determine whether it could be a friction ridge touch. Because
23 sometimes, when cloth is touched, you can't actually see a
24 print. If it's touched with a blood transfer, or some kind of
25 grease, or some other transfer, the ridge detail actually will

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1 show up on a surface like this. So, I did an examination of
2 -- a visual examination of the photographs that she made.

3 And my conclusion was that it just was not of
4 comparison quality. It probably is a palm touch, based on
5 some of these creases that we see right here. That is one
6 possibility. Or it also could be that the sheet was kind of
7 crumpled right there.

8 So, there really wasn't much I could really say
9 about that. So, in my opinion, it was just not of any kind of
10 comparison value at all.

11 Q Okay. So, again, you weren't able to reach any
12 conclusions?

13 A No.

14 Q And State's Exhibit 48. Is this just a closer up
15 photograph?

16 A Yes.

17 Q Of that area that you were referring to?

18 A Yes. And there are some -- you know, you can see
19 some linear marks through here, which -- and that -- kind of
20 have the appearance of that they fall in line with what could
21 be a palm touch.

22 I don't believe that they're the background of the
23 cloth. As you can see, the crosshatch going this way, going
24 back and forth. And these are going across that. So, what's
25 showing up there is not the background of the sheet itself.

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1 There was definitely a touch and a transfer onto that, but it
2 really is not of any kind of comparison quality.

3 MS. MERCER: Court's indulgence. Pass the witness,
4 Your Honor.

5 THE COURT: All right. Do you have any cross, Mr.

6 --

7 MR. O'KEEFE: Yes, Your Honor. Very brief, Your
8 Honor.

9 CROSS-EXAMINATION

10 BY MR. O'KEEFE:

11 Q Hello, Mr. Guenther.

12 A Hello.

13 Q How are you, sir?

14 A I'm doing fine. How are you today?

15 Q I'm surviving. Thank you, sir, for asking. I'm
16 going to be real quick, again, like I've been saying to
17 everyone. You know. This is about just what you have, let's
18 let them see it, you know. Really, that's the best policy.

19 I just want to be clear, you did of course testify
20 of course. You examined the knife thoroughly you said. You
21 threw it under the kitchen sink and all that, I heard you say,
22 correct?

23 A Yes.

24 Q Okay.

25 A We did all the processing techniques that were

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1 available to us.

2 Q Okay. And was there every clearly any fingerprints
3 of mine on the knife?

4 A No.

5 Q Was there any fingerprints at all?

6 A Just that one touch that was ridge detail on the
7 handle. But it wasn't -- I couldn't compare it with anyone.
8 It was -- so, I can't say who it belonged to.

9 Q And you know, I can see where the State's trying to
10 go here, but I'm not quite clear if they're assuming that I
11 had the knife or whatever. But you're saying there was one
12 little speck of blood of mine that was determined on the end
13 of the handle; if I'm not --

14 A No. No, I'm not a DNA analyst. I --

15 Q Okay.

16 A I don't testify to any --

17 Q I wanted to clarify that.

18 A -- kind of blood work like that.

19 Q So, through all your testing though, you did do
20 this. I do believe it was testified to previously that -- and
21 again, I want to make sure -- clear for these jurors, that --
22 was that knife wiped off in any way?

23 A I did not see any indication of any wipe marks at
24 all. The only wipe marks that were on there were up on the
25 blade area, where I believe in my presence, the DNA analyst

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1 and I had examined the knife, prior to her analysis. And I
2 left the knife in her custody at that time. So, she would
3 have made some little swabs on the blade. And I told her to
4 go ahead and do that, because I couldn't see any ridge detail
5 on the blade at all.

6 So, when -- the only wipe mark that would have been
7 there is in the super-gluing process, sometimes, those kind of
8 marks will show up. But as far as a wipe from like a -- like
9 you would expect, with a cloth or something, no, I did not see
10 any wipe marks on the knife at all.

11 Q And you would think -- I'm just saying your thinking
12 as an expert, and you're looking for fingerprints, you clearly
13 would make the absolute assumption that that knife was not
14 wiped off? Someone -- alleged crime -- committed it (sic);
15 that knife was not wiped off, right?

16 A In my opinion, I saw no evidence that -- I saw no
17 evidence that the knife had been wiped in any way.

18 Q And again, you are -- 35 years you worked for the
19 Las Vegas Metropolitan Police Force. And clearly, you know
20 your job better than I do, or anyone here. And you're saying
21 again, for the last time, absolutely, that knife was not wiped
22 off?

23 A I saw no indication that it was.

24 MR. O'KEEFE: No further questions. Thank you.

25 THE COURT: Anything else?

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1 MS. MERCER: No, Your Honor.

2 THE COURT: Thank you very much. You're excused.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Next witness, please?

5 MS. MERCER: I'm sorry?

6 THE COURT: Next witness?

7 MS. MERCER: Officer -- or Detective Jeremiah
8 Ballejos, Your Honor.

9 THE MARSHAL: Please remain standing, and raise your
10 right hand.

11 JEREMIAH BALLEJOS, STATE'S WITNESS, SWORN

12 THE MARSHAL: Officer, if you would have a seat,
13 sir, please. If you would, please state and spell your name
14 for the record.

15 THE WITNESS: Jeremiah Ballejos. J-e-r-e-m-i-a-h.
16 Last is, B-a-l-l-e-j-o-s.

17 MS. MERCER: May I proceed, Your Honor?

18 THE COURT: Yes.

19 DIRECT EXAMINATION

20 BY MS. MERCER:

21 Q Sir, where are you currently employed?

22 A The Las Vegas Metropolitan Police Department
23 robbery/homicide bureau.

24 Q And are you currently a detective with Metro?

25 A That's correct.

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1 Q Back in November of 2008, were you -- in what
2 capacity were you employed with Metro?

3 A I was assigned to the problem solving unit of Bolden
4 area command's patrol division.

5 Q Okay. And were you in fact working on November 5th
6 of 2008?

7 A Yes, I was.

8 Q On that night, were you working with any other
9 officers?

10 A Officer Sean Taylor and Sergeant Dan Newberry.

11 Q Were the three of you in the same vehicle that
12 night?

13 A Yes, we were.

14 Q And what specifically were you doing on November 5th
15 of 2008?

16 A We were finishing up some follow up investigation
17 when -- and heading back to the station, when a 9-11 call came
18 out.

19 Q Okay. And that night, were you all in uniform, or
20 were you in plain clothes?

21 A Plain clothes.

22 Q Do you wear anything that signifies that you're an
23 officer when you're in plain clothes?

24 A Yes. We would wear this, along with a badge.

25 Q Okay. And what is "this," for the record?

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1 A It's the Metro ID, identification card.

2 Q And your badge?

3 A Yes.

4 Q And where do you wear your badge when you're in
5 plain clothes?

6 A It would -- if we were responding to a call, it
7 would be displayed just like this, so it's center on the
8 chest.

9 Q So, it's around the neck?

10 A That's correct.

11 Q And you indicated that you were heading back to the
12 office when you -- when a call came out from dispatch that you
13 all responded to?

14 A That's -- yes, ma'am.

15 Q Do you recall what that call -- or what the details
16 of that call were?

17 A There was details of an open door. There was a body
18 being described that was in a bedroom somewhere in the
19 apartment, upstairs -- in an upstairs apartment; an open door,
20 and blood in the apartment.

21 Q And when you heard that call come out over the
22 radio, did you -- did the three of you decide to respond?

23 A Yes, we did.

24 Q And that -- you would have responded to 5001 El
25 Parque, correct?

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1 A Yes, that's correct.

2 Q When you arrived at that location, can you tell me
3 what you saw?

4 A There were patrol -- or patrol vehicles that had
5 already arrived, along with medical staff. And then, there
6 were neighbors that were standing outside their apartments,
7 directing us to I believe it was apartment 35.

8 Q Okay. You indicated that medical was already on
9 scene?

10 A That's correct.

11 Q Where were they?

12 A Waiting in the courtyard.

13 Q Okay. So, they were not up in the apartment?

14 A No, they weren't.

15 Q And why not?

16 A It's standard for them to wait for us to make a
17 scene, or a -- safe, if there's any indication of violence,
18 it's -- or an ongoing dispute. They'll wait until we come in
19 and make the scene safe, and then, so they can come in and
20 just focus on medical care.

21 Q Okay. So, when you arrived at this 5001 El Parque,
22 would you say that the scene was a dynamic scene?

23 A It was dynamic.

24 Q And what does the term dynamic mean for law
25 enforcement officers?

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1 A Whatever dispute that's occurring has not been
2 resolved, or brought under control.

3 Q Okay. So, medical will wait to enter a residence
4 until the scene is no long dynamic?

5 A That's correct.

6 Q Until it's static?

7 A Yes.

8 Q What -- how did you all proceed once you arrived at
9 the scene?

10 A Once I arrived upstairs, I came into contact with
11 Officer Todd Conn. And Officer Conn was communicating with a
12 male individual in a back bedroom.

13 Q Okay. Where was Officer Conn situated inside that
14 residence?

15 A Would have been the living room area.

16 Q Okay.

17 MS. MERCER: Permission to publish, Your Honor?

18 THE COURT: Yes.

19 MS. MERCER: And for the record, I'm publishing
20 State's Exhibit 2.

21 BY MS. MERCER:

22 Q Does this appear to be a picture of the outside of
23 the apartment that you responded to?

24 A It is, yes.

25 Q And do you see the actual apartment that you went

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1 into on that night in this photograph?

2 A Yes.

3 Q Could you place an X over the door for me? Okay.

4 So, did you and the other two officers that you were with that
5 night all three go in at the same time?

6 A Into the living room area, yes.

7 Q Okay. And now I'm publishing State's Exhibit number
8 1. Can you mark on this exhibit where you observed Officer
9 Conn when you entered the apartment?

10 A That would have been about this location here,
11 trying to look as deep into the bedroom as possible.

12 Q And which bedroom was he trying to look into?

13 A It would be the northwest bedroom here.

14 Q Could you place an X over it for me?

15 A Sure.

16 Q Okay. So, he was standing at the very end of the
17 wall?

18 A Yes, here.

19 Q You indicated that you heard him giving commands
20 into the room.

21 A That's --

22 Q Could you hear anybody in the room responding to his
23 commands?

24 A Yes.

25 Q Was it a male voice, or a female voice?

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1 A It was a male voice.

2 Q And what kinds of commands was Officer Conn giving
3 to that male?

4 A Well, Officer Conn is a CIT, or a crisis
5 intervention team officer. So, he was -- when I say commands,
6 he was -- more like they were instructions. He was trying to
7 get the male individual to come out of the -- or out of the
8 bedroom.

9 So, they were more conversational than -- it wasn't
10 like he was shouting, or -- he was trying to, you know, just
11 communicate to him, hey, we want medical to come in, and so we
12 need you to come out.

13 Q Okay. So, he was trying to diffuse the situation?

14 A Exactly.

15 Q He was being nonaggressive?

16 A Right.

17 Q And did you hear him actually explain to the person
18 in the room, I can't -- medical can't get in there to help you
19 until you come out?

20 A Yes, I did.

21 Q And how did the person that was in the room respond?

22 A "Fuck you; you come in here."

23 Q And was the person's voice -- how would you describe
24 the person's voice?

25 A It was confrontational; defiant.

ROUGH DRAFT TRANSCRIPTS

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1 Q Okay. And Officer, before I get much further -- and
2 this is State's Exhibit 4, for the record. Is -- can you see
3 the vantage point that Officer Conn had in this photograph?

4 A I guess from -- keep in mind, when we went into --
5 the only light coming in the whole apartment was from this
6 back bedroom. So, I'm guessing -- is this the southwest
7 bedroom here?

8 Q That's what I'm asking you. Is that the bedroom?

9 A I can't really tell. What it -- and I would guess,
10 just from looking at the apartment, he was standing here,
11 looking in the northwest direction, towards the northwest
12 bedroom.

13 Q Okay. How long did Officer Conn attempt to convince
14 this -- the individual in the back bedroom to come out?

15 A It was maybe three or four minutes.

16 Q And at -- did the person in the back bedroom ever
17 cooperate?

18 A No.

19 Q What happened next?

20 A You could see -- my sergeant also ended up going up
21 to the opposite side of that entry -- or that little area that
22 had the bedroom in here.

23 Q Can you place an X there for me?

24 A Yes. Sergeant Newberry kind of posted up on this
25 wall right here to take a -- what was called a quick peek.

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1 Just a -- you know, essentially, a quick peek around the
2 corner to see if they can -- what they can -- or what he could
3 see from that vantage point.

4 And even standing where Officer Conn was, looking
5 deep into the bedroom, the sheets were covered in blood.
6 Sergeant Newberry did inform us there was a knife on the bed,
7 and that you could see the feet of two individuals at the foot
8 of the bed, positioned with the head towards the northwest,
9 and feet towards the east side of the bedroom.

10 Q Okay. And so, did he indicate at that point that --

11 A Oh, excuse me. I guess --

12 Q -- it was time to go in?

13 A I did. Can I get -- yes. Because of, you know, it
14 was a substantial amount of blood, we knew that somebody was
15 injured inside there. And because it was -- we had a defiant
16 individual in there, and somebody was injured, we made a
17 decision to enter the bedroom.

18 Q Okay. And at this point, you all didn't know
19 whether the individual lying at the end of the bed was dead or
20 alive, correct?

21 A That's correct.

22 Q And you felt it was important to get her medical
23 treatment as quickly as possible?

24 A Yes.

25 Q What kind of a plan did you all formulate with

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1 regards to entering that room?

2 A We set up what's -- what we call -- is a stack. And
3 it's basically anywhere from a three to four-man element,
4 stacked up, going in with your lead man having a lethal
5 option; some type of a firearm in case the individual is
6 armed.

7 The second would have a nonlethal option, which
8 would be something like OC spray, or an electronic controlled
9 device, which -- commonly referred to as a taser. And an
10 arrest team, which would follow up behind that, basically
11 hands-free. Somebody -- a couple -- or officers to get that
12 person into custody.

13 Q Okay. And who all entered the bedroom that night?

14 A I know that Officer Conn was in front of me, with
15 his gun drawn. I was second in the element with the taser.

16 Q And that was the nonlethal --

17 A That's correct.

18 Q -- or the low lethal option?

19 A That's correct.

20 Q And --

21 A And Officer Sean Taylor was behind me.

22 Q Okay. So, you know for sure, those three people?

23 A Yes, I do.

24 Q And I should back up for a second. Were you all
25 concerned for your safety when you entered that room, based on

ROUGH DRAFT TRANSCRIPTS

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1 the behavior of the individual that was --

2 A Yes, we were.

3 Q -- shouting back?

4 A Yes.

5 Q And why was that?

6 A Just because of the standoff in the room, we didn't
7 know whether or not he was armed. We knew that -- we were
8 also getting some information that there was possibly exposure
9 -- or the risk of exposure to hepatitis C. So, we didn't --
10 we didn't want to go in there, and just really -- we wanted to
11 go in there and get the situation under control, and get
12 medical in there.

13 Q Okay. And in your experience with Metro, was this a
14 somewhat unusual circumstance?

15 A Yes, it was.

16 Q I mean, is it customary that when you're trying to
17 assist people, someone's not trying to stop you from assisting
18 them?

19 A For a medical need, yes, that was very unordinary.

20 Q Okay. So, I'm sorry; who was in front of you?

21 A Officer Conn.

22 Q And then, Taylor was behind you?

23 A That's correct.

24 Q And did you all enter the room?

25 A Yes, we did.

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1 Q How did you enter? Did you form a line?

2 A Yes.

3 Q And when you got into the room, how far into the
4 room did you proceed?

5 A We went -- I recall going here, where this -- the
6 number 4 kind of is marked. I'm just using that as a -- but
7 probably just towards the foot of the bed, so we were in close
8 proximity with Victoria and -- which we later found out was
9 Ms. Victoria Whitmarsh and Mr. O'Keefe.

10 Q Okay. And do you see Mr. O'Keefe in the courtroom
11 today?

12 A Yes, I do.

13 Q Could you please point to him, and identify an
14 article of clothing that he's wearing for me today?

15 A The gentleman with the blue shirt and tie.

16 MS. MERCER: Your Honor, may the record reflect that
17 he's identified the defendant?

18 THE COURT: Record will so reflect.

19 BY MS. MERCER:

20 Q Where was the defendant in relation to Victoria
21 Whitmarsh's body when you entered the room?

22 A Mr. O'Keefe was lying next to her --

23 Q Can you draw a line on the diagram --

24 A Sure.

25 Q -- for me, on the side that he was lying on?

ROUGH DRAFT TRANSCRIPTS

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1 A His head was up top, along with Victoria's, and feet
2 were at the bottom. I believe it was his right elbow and leg
3 were in contact with the carpet, left leg was kind of draped
4 over her body, and his other hand was free.

5 Q Okay. And what was he doing with that hand?

6 A Was trying to tug down a shirt over her, to cover
7 her torso.

8 Q When you entered the room and you saw the body of
9 Victoria Whitmarsh, was she clothed -- fully clothed?

10 A No, she wasn't. It was a t-shirt, was the only
11 article of clothing I recall.

12 Q Okay.

13 MS. MERCER: For the record, I'm publishing State's
14 Exhibit 21.

15 BY MS. MERCER:

16 Q Is this the view that you had when you entered the
17 bedroom that night?

18 A Yes, it is.

19 Q And with regards to State's Exhibit 23, is this how
20 you observed Victoria Whitmarsh when you entered the room that
21 night?

22 A Yes, it is.

23 Q When you entered the room, and you got to the end of
24 the bed, how did you all proceed at that point?

25 A Mr. O'Keefe was -- he had his left hand free. He

ROUGH DRAFT TRANSCRIPTS

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1 was kind of waving his hand, "don't look at her;" trying to
2 keep us at bay.

3 Q So, he was still trying to prevent you from getting
4 to her --

5 A Yes.

6 Q -- to render aid?

7 A Yes.

8 Q And were you all giving him commands?

9 A Yes.

10 Q What commands were you giving him?

11 A Officer Conn was telling him -- it's normal practice
12 that only one person's going to be directly speaking with the
13 individual. So, officer Conn was giving him instructions to
14 put his hands up, and get away from Ms. Whitmarsh.

15 Q And did he obey those commands?

16 A No, he did not.

17 Q How many times were those commands repeated?

18 A At least two or three.

19 Q At that point, what did you all do?

20 A I saw an opportunity where Mr. O'Keefe's torso was
21 exposed. That keeps -- for the taser to be used, it keeps --
22 it's an area that's away from the vital organs -- you know,
23 the soft tissue, where you might damage the eyes or the groin
24 area. And I deployed my taser.

25 Q Okay. And why did you deploy your taser?

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1 A Basically, the taser gives us a window of
2 opportunity by overriding the individuals' muscle control.
3 And it allows us a five-second opportunity, basically, to try
4 and take them into custody without, you know, fights or, you
5 know, punches, or anything like that.

6 Q When you deployed your taser, what happened?

7 A A good cycle -- or a good contact will require that
8 -- there are two probes that are fired from the cartridge;
9 that they both make good contact with that individual.
10 Otherwise, you're going to get partial control. And in this
11 case, Mr. O'Keefe -- there was not a complete contact. So, he
12 was still able to fight during that first five seconds.

13 Q Okay. So, only one of the probes made contact with
14 him?

15 A Yes. That's what we assumed.

16 Q That's what you assumed?

17 A Because it wasn't customary that, you know, an
18 individual would still be able to --

19 Q Struggle with you?

20 A -- control their muscle responses.

21 Q Okay. So, he was not incapacitated?

22 A No.

23 Q And what happened at that point?

24 A There was a second cycle of the taser. And Officer
25 Sean Taylor stepped in to grab control of his hands, put them

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1 behind his back, and place him in handcuffs.

2 Q Okay. So, you ultimately were able to handcuff him
3 after the second taser cycle?

4 A Yes.

5 Q And after you handcuffed him, what did you all do
6 with him?

7 A He was lifted, I believe it was by his -- either
8 shoulders and feet, and removed from the bedroom. And just
9 taking him -- you can -- the way the apartment was situated,
10 just moving him to this -- the doorway, or somewhere in the
11 living room, wasn't going to -- it wasn't giving clear access
12 to the paramedics. So, we just removed him from the entire
13 apartment, out onto the catwalk.

14 Q Okay. Did you at some point have you set him down
15 in the living room?

16 A You know, when -- I think one time, they ended up
17 losing grip of Mr. O'Keefe, and he did actually -- it wasn't
18 intentional, but he did fall to the carpet.

19 Q And was that because he was still struggling as you
20 all were trying to carry him out?

21 A Yeah.

22 Q Okay.

23 A You indicated that he was ultimately removed to the
24 outside patio, balcony area?

25 A That's correct.

ROUGH DRAFT TRANSCRIPTS

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1 Q Did you have any further contact with him once he
2 was moved outside?

3 A Yes, I did.

4 Q And what was the nature of that contact?

5 A At this point, we had no idea -- we didn't know
6 Victoria's name, her date of birth, any of her medical
7 history. So, it was to elicit some of that information so
8 paramedics knew who they were dealing with.

9 Q And what -- did you actually speak with him
10 personally?

11 A Yes.

12 Q And you indicated that one of the things you were
13 trying to figure out was her name?

14 A Yes.

15 Q Did he give you a name?

16 A I believe it was Veronica Whitmore or Whitmarsh.

17 Q Okay. So, it wasn't Victoria Whitmarsh?

18 A No, it was not.

19 Q And would he -- you indicated that one of the other
20 items you were trying to elicit from him was her blood type?

21 A Yes.

22 Q Were you able to get that information from him?

23 A No.

24 Q How did he respond to your questions?

25 A He was just kind of making utterances, not directly

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1 answering the questions. But he said something to the effect
2 of, "You guys are mad at me, aren't you?"

3 Q Did you become aware that at some point, he was
4 moved downstairs?

5 A Yes.

6 Q And did you have further contact with him once he
7 was downstairs?

8 A Yes.

9 Q And what was the nature of that contact?

10 A It was still at this point -- we had taken the
11 information that Mr. O'Keefe had given us. We ran it through
12 several databases, and could not establish that information as
13 an identity for a real person. So, at this point, we started
14 to believe that the information that we were given was --
15 whether it was intentional or unintentional, it was incorrect.

16 Q And you're referring to the information you were
17 given regarding the identity of the female?

18 A Yes.

19 Q And so, you went to confront him with that
20 information?

21 A Yes.

22 Q And how did he respond?

23 A Never really got -- I never got good information --
24 or he ended up giving me the real name, Veronica.

25 Q And what was --

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1 A Or Victoria, sorry.

2 Q What was his demeanor at this point?

3 A He smelled heavily of alcohol. Just kind of had a
4 gaze in his eyes. And if I recall, eventually just ended up
5 falling asleep.

6 Q Okay.

7 MS. MERCER: Court's indulgence.

8 BY MS. MERCER:

9 Q Did -- during the course of your interaction with
10 the defendant that night, did he seem pleased that the police
11 were present?

12 A No. He seemed annoyed that we were there.

13 Q How could you tell?

14 A Just in the way he wouldn't answer a question -- or
15 you know, provide information, rather. And he just kind of
16 had a -- all of his responses to us were short, choppy, in an
17 abusive -- you know, abusive manner; abusive responses.

18 Q How long do you think you had to observe the
19 defendant that night?

20 A Initially, probably about 30 to 45 minutes.

21 Q And during that 30 to 45 minutes, did he ever ask
22 you how Victoria was?

23 A No.

24 Q Did he ever express any concern for her?

25 A No.

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1 Q Did he ever try to convey any sadness to you?

2 A No.

3 MS. MERCER: Court's indulgence. Pass the witness,
4 Your Honor.

5 THE COURT: Thank you. Any cross, Mr. O'Keefe?

6 MR. O'KEEFE: Yes, Your Honor, briefly.

7 CROSS-EXAMINATION

8 BY MR. O'KEEFE:

9 Q Good morning, Detective Ballejos.

10 A Yes, sir. How are you?

11 Q Okay. I'm sorry?

12 A How are you?

13 Q Okay. Fine, sir. Listen. I've been straight-up
14 with all the witnesses, and the Court, and the jurors, you
15 know. There's going to be no tricks or anything. It's going
16 to be short, straight. Okay?

17 A Okay.

18 Q And it's just the best way. Okay. I do believe,
19 Detective -- okay, first of all -- and like I said, I'm just
20 going to ask some questions. And just, you know, yes or no,
21 and just -- we'll keep it real simple.

22 A Sure.

23 Q No tricks. Okay. Did you realize that I was
24 extremely intoxicated, sir?

25 A Yes.

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1 Q Okay. You did hear that the 9-11 call was put out
2 that -- from dispatch to everyone, right at the beginning,
3 that the defendant was extremely 408?

4 A I don't recall.

5 Q You don't recall? If I let you read this to refresh
6 your memory, would that be okay?

7 A Sure. That would be great.

8 MR. O'KEEFE: Mr. Maningo. And I'm just going to
9 put a little X. You can see -- and [inaudible] Mr. Lalli.
10 BY MR. O'KEEFE:

11 Q And just read it, not out loud.

12 MR. MANINGO: May I approach, Your Honor?

13 THE COURT: Yes.

14 THE WITNESS: And I didn't -- your instruction is to
15 just read it, but not out loud?

16 BY MR. O'KEEFE:

17 Q Yeah, just to refresh. You see that, where it was
18 made out that it was a --

19 A Okay.

20 Q What I just -- okay. So, now, having asked the
21 question, you do see that the call was put out that they
22 already was aware that I was extremely 408?

23 A Yes.

24 Q Thank you. And I'm just -- okay. Now, also, just
25 to simplify again -- I mean, I have the report right here. Do

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1 you remember like the time of the event, by any chance, and
2 the time that the call was made, you got there, and I was
3 apprehended, actually placed in handcuffs, and they called it
4 code 4? Do you remember that it was basically just like --

5 A It was sometime after 11:00.

6 Q Right. Would you agree, Officer -- or Detective,
7 excuse me, that it was like five and-a-half, six minutes? The
8 whole event, from the time commands were being issued, to when
9 I was placed in handcuffs, and they called code -- that it was
10 six minutes?

11 A Yeah, I would say it was close to that.

12 Q Okay. And I'm just clarifying. Okay. Now, having
13 admitting you realized that I was extremely intoxicated kind
14 of explains maybe a little bit like, maybe why I was
15 incoherent. Would you agree that maybe that might -- in your
16 opinion, you were observing that I was not really aware, you
17 know, of what was going on?

18 MS. MERCER: Objection, Your Honor, calls for
19 speculation.

20 MR. O'KEEFE: Okay. I'll move on, Your Honor.

21 THE COURT: Yeah, because that's a --

22 MR. O'KEEFE: Yes, Your Honor.

23 THE COURT: -- calls for speculation [inaudible].

24 MR. O'KEEFE: Yes, sir, Your Honor. I don't mean
25 any -- okay. I'm --

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1 THE COURT: No, I know. I know.

2 MR. O'KEEFE: -- very tired, and I apologize.

3 THE COURT: Thank you. Thank you, Mr. O'Keefe.

4 MR. O'KEEFE: Okay.

5 BY MR. O'KEEFE:

6 Q Let me back up a minute then. Okay. The Crisis
7 Intervention Team is called when somebody is disclaimed as
8 maybe being mentally ill, or under the influence; is that
9 correct? They assist in a call like that?

10 A They would, yes.

11 Q Okay. Did you guys know that Ms. Whitmarsh was
12 mentally ill? Did you already know that?

13 A No, I did not. And just to clarify, Crisis
14 Intervention Team officers, they do specialize in that, but
15 they answer everyday 9-11 calls, traffic stops. They do
16 basically the normal functions of a patrol officer. It just
17 happened in that case that Officer Conn responded to that
18 call, and was a CIT officer.

19 Q Okay. Okay. In prior testimony, would you remember
20 -- or would you agree that -- at least at first, Detective,
21 that I did respond several times with saying, "come in here,"
22 without any profanity at first?

23 A When I arrived, Officer Conn was already in
24 communication with you. When I arrived, the statements that I
25 heard are on record.

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1 Q Okay. At any time, did you ever hear me say, "get
2 out"?

3 A No.

4 Q Did you ever hear me say, "get the fuck out"?
5 Excuse my language.

6 A No.

7 Q Okay. So, at no time I was ever saying, get out of
8 here; but I was saying, rudely, wrongfully, under extreme
9 intoxication, "Get the F in here," is what you heard?

10 A Yes.

11 Q Okay. Now, you testified that the call was made,
12 and then you finally determined yourself that I smelled of,
13 and was pretty intoxicated?

14 A Yes.

15 Q Okay. And that you in fact tased me multiple times?

16 A Yes, I did.

17 Q Okay. Okay. After the tasing, would you disagree
18 -- I'm not going to sit here and rehash it, and go over it,
19 Detective. Work with me, I'll work with you. Keep it simple.
20 There was a lot of confusion, would you agree with that?
21 Positioning of bodies and people, and who went where and here,
22 and it was a tragic moment. A lot was happening, Detective;
23 would you agree? I mean, you were cued on your --

24 A Yes, it was a dynamic situation. Yes.

25 Q Okay. That's all -- and prior testimony was given

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1 that it was never conclusively made -- or stated if someone
2 did go over the bed, or didn't, and actually -- and I'm
3 keeping it very clean; if I was dropped in the bedroom, or
4 dropped in the hallway in the front, and dragged? There's
5 been just a couple -- you know, it was a dynamic situation.
6 There was just a couple versions given; would you agree to
7 that?

8 A It was a dynamic situation, yes.

9 Q Would you agree that there was prior testimony given
10 that at one time, I fell in the bedroom; and then one time, I
11 was dropped in the living room?

12 MS. MERCER: Objection, Your Honor. I'm not sure
13 that's a proper question.

14 THE COURT: Well, I don't think he knows about any
15 prior -- do you know anything about prior testimony?

16 THE WITNESS: I can only give my -- or to --

17 THE COURT: Yeah. All right.

18 MR. O'KEEFE: Okay, okay. I'll move on.

19 THE WITNESS: -- the correct --

20 MR. O'KEEFE: Okay.

21 THE WITNESS: -- accurateness of my testimony.

22 MR. O'KEEFE: Okay.

23 BY MR. O'KEEFE:

24 Q But -- okay. In the event though -- also, though,
25 can you explain what a use of force form is?

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1 A Yes. Any time we end up engaging a suspect, or an
2 individual, for that matter, that we have to use a level of
3 force that causes injury to that person, we'll document that.
4 It's on an internal form. It's used for educational purposes,
5 and in some cases where there's wrongdoing, internal affairs
6 might take a look at that.

7 But it shows basically the individual that we
8 encountered, the circumstances of the encounter, and the level
9 of force that was deemed necessary at the time to take the --
10 bring the situation under control.

11 Q Okay.

12 A That's pretty much it.

13 Q And did you fill out a use of force form on me?

14 A Yes, I did.

15 Q Okay. And was this information not necessarily
16 turned over right away, Detective?

17 A You know, like I said, it -- I'm not sure -- or, I
18 guess I'm not sure what your question is, "turned over."

19 Q Okay. And was this information requested, and not
20 turned over somehow, or is -- not turned over?

21 THE COURT: Turned over --

22 MR. LALLI: Can we approach, Your Honor?

23 MS. MERCER: Approach, Your Honor.

24 THE COURT: -- to who?

25 MR. O'KEEFE: By --

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1 MR. LALLI: Can we approach?

2 THE COURT: Yeah.

3 (Off-record bench conference)

4 BY MR. O'KEEFE:

5 Q Okay, Detective. Let's just simplify it again,
6 though. A report was filled out. In that report, you stated
7 that the -- I was under -- possibly mentally ill, or -- slash,
8 under the influence?

9 A Yes.

10 Q And then, in a later section on that -- I'll just
11 ask you, so you don't have to read it, if you remember it. If
12 I could show it to you, I will. You state later in a
13 narrative of it that, "Mr. O'Keefe appeared extremely
14 intoxicated, and continued to be erratic and emotional in his
15 behavior."

16 A Yes.

17 Q Okay. And I'm not trying any tricks, I'm just
18 [inaudible]. So -- okay. You do agree that I was extremely
19 intoxicated, stressed out, erratic; that it was a very
20 dynamic, very brief call? You agree with that; five
21 and-a-half minutes, six minutes?

22 A About five to six minutes, yeah.

23 Q Okay. That it was dynamic; do you agree?

24 A Yes.

25 Q That at no time I ever said, get out, or, get the F

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1 out. I was saying, get in -- "come in" at first -- or "get
2 the F in," I was saying -- conversely, correct?

3 A You never ordered us or asked us to leave.

4 Q Okay. I never tried to personally swing or hit any
5 of you. You observed -- you stated, as you had, that I was
6 just -- out of a protection mode, I seemed to be like covering
7 -- "don't look"? I was -- correct? That's what you stated.
8 I was trying to like -- "don't look;" cover her.

9 A Yeah, I --

10 Q Something.

11 A I recall you saying, "don't look," trying to pull
12 her shirt down, but also would not respond to our instructions
13 to get away from her, and put your hands up.

14 Q Right. You said you were aware at the time that --
15 you heard for safety matters that she possibly -- hep C, or
16 HIV. There was talk about that going --

17 A Yes, I do remember that.

18 Q -- for safety? That is a safety concern, of course.
19 Nobody would want to get -- contract that, correct? Of
20 course.

21 A That's correct.

22 Q And that's very wise to do, to put out -- okay. So,
23 you state that that's out there. Okay. You said I was placed
24 out eventually on the catwalk on top of the balcony, correct,
25 on the outside?

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1 A Yes.

2 Q Could you say, Detective, how long was I out there?

3 A Would have been a few minutes.

4 Q Only a few minutes on the catwalk?

5 A That's what I recall, yes.

6 Q That you recall. Okay.

7 MR. O'KEEFE: I have no further questions, Your
8 Honor.

9 THE COURT: Thank you, Mr. O'Keefe.

10 MR. O'KEEFE: Detective, thank you.

11 THE COURT: Anything else?

12 THE WITNESS: Good day to you, sir.

13 MS. MERCER: Just a couple --

14 MR. O'KEEFE: Thank you.

15 MS. MERCER: -- brief questions, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. MERCER:

18 Q Officer, is five to six minutes a long time when
19 someone's lying there, bleeding out?

20 A Yes, it is.

21 Q And how many times was it explained to the defendant
22 that he needed to exit that room before medical could get in
23 there?

24 A Upon my arrival, two to three times.

25 MS. MERCER: No further questions.

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1 MR. O'KEEFE: And just a quick recross.

2 RECROSS-EXAMINATION

3 BY MR. O'KEEFE:

4 Q But Detective, again, you will admit that it was a
5 very dynamic situation, and I was extremely intoxicated?

6 A Yes, sir. That's correct.

7 Q Thank you, Detective.

8 THE COURT: Thank you for testifying. You're
9 excused.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Next witness, please?

12 MR. LALLI: Your Honor, the State calls Marty
13 Wildemann.

14 THE MARSHAL: Detective, if you will remain
15 standing. Please, sir, raise your right hand and face the
16 clerk.

17 MARTIN WILDEMANN, STATE'S WITNESS, SWORN

18 THE MARSHAL: If you would have a seat, please.

19 THE WITNESS: Thank you.

20 THE MARSHAL: Slide up to the microphone. If you
21 would, please state and spell your name for the record.

22 THE WITNESS: Martin Wildemann. W-I-l-d-e-m-a-n-n.

23 DIRECT EXAMINATION

24 BY MR. LALLI:

25 Q How are you employed?

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1 A I'm a homicide detective with the Las Vegas
2 Metropolitan Police Department.

3 Q How long have you been investigating homicides with
4 Metro?

5 A Ten and-a-half years.

6 Q What did you do before that?

7 A I was a robbery detective, a gang unit detective,
8 and a patrolman.

9 Q All right. How long total have you been with Metro?

10 A 24 years.

11 Q How -- and I don't know if you can have this number
12 available. But how many violent crimes do you think you've
13 investigated in your years with Metro?

14 A Violent crimes; 6, 7, 800. I would --

15 Q All right.

16 A -- guess right in there.

17 Q How many homicides have you investigated?

18 A Over 300.

19 Q Were a number of those homicides stabbings?

20 A Yes.

21 Q All right. I want to direct your attention to
22 November 5th of 2008. Were you assigned to investigate a
23 homicide that occurred at 5001 El Parque?

24 A I was.

25 Q Is that here in Clark County, Nevada?

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1 A It is.

2 Q Can you -- did you ever respond out to that
3 location?

4 A I did.

5 Q Can you explain to the jury what was happening as
6 you responded to that location?

7 A Well, I got woken up out of sleep, requested out
8 there. We had -- a homicide had occurred. And I was one of
9 the up detectives awaiting a homicide. Myself and my partner,
10 Detective Bunn, responded to the location, along with other
11 homicide detectives to assist us, to begin an investigation as
12 to the death of a woman who was later identified to me as
13 Victoria Whitmarsh.

14 Q Detective, you indicated that you were an up
15 detective. Can you explain what that means for our jury?

16 A We work homicides on a rotation basis. So, you'll
17 have a partnership of two detectives, that are literally
18 awaiting the next homicide. After they catch a homicide, the
19 next team after them on a list awaits the next homicide after
20 that. So, we were the up team awaiting a homicide.

21 Q You and Detective Bunn?

22 A Yes.

23 Q When you get to a homicide location, are the
24 responsibilities routinely divided between various detectives?

25 A Yes.

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1 Q Can you please explain how that works?

2 A In this instance, Detective Bunn was responsible for
3 doing the scene investigation, which would be where the
4 homicide took place, and where the body is located. So, his
5 responsibilities were to go through, document the scene, and
6 make sure it was properly preserved, and evidence collected.

7 My responsibilities were interviews of witnesses,
8 finding potential witnesses, and in this case, interviewing
9 Mr. O'Keefe.

10 Q With respect to Detective Bunn going through the
11 crime scene, when homicide detectives arrive on scene and
12 begin to analyze the various crime scenes, do they work with
13 crime scene analysts?

14 A Yes.

15 Q We heard testimony from Jocelyn Maldonado about her
16 involvement at the scene. Would she have been working
17 directly with Detective Bunn?

18 A Absolutely.

19 Q And Detective Bunn directing the evidence to be
20 impounded, and also being part of a team of individuals who
21 scan a crime scene?

22 A That's correct.

23 Q All right. Now, you said that your responsibility
24 was witnesses, to locate witnesses, and to interview certain
25 witnesses?

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1 A Yes.

2 Q And as part of that responsibility, it also falls
3 upon you to attempt to interview the suspect; in this case,
4 Brian O'Keefe?

5 A Correct.

6 Q When you arrived at the El Parque residence, did you
7 make contact with Mr. O'Keefe?

8 A I did.

9 Q Can you explain where he was, and what was going on?

10 A When I arrived, we have a briefing with other
11 detectives that are not homicide, just general detectives that
12 arrive on the scene first, and the officers. We had a
13 briefing with them in which they update us, because, as I
14 mentioned before, I had come from my home.

15 They update us on the circumstances, during which I
16 learned that Mr. O'Keefe was in the back of a patrol car. So,
17 at that point, I brought him out of the patrol car, and we
18 took some photographs of him.

19 Q What was the purpose of taking photographs?

20 A I wanted to document his condition of how he was at
21 that time.

22 Q What was his demeanor during that period?

23 A He was not cooperative. Didn't want to listen to
24 our instructions for taking the photographs; turn this way,
25 turn that way. I won't say that he was verbally abusive, but

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1 he just was not cooperative.

2 Q All right. During that initial photographing,
3 examination of his body at the scene, did you notice any
4 injuries on his person?

5 A He had a -- he had a large scrape on his forehead.
6 He had a couple miscellaneous bruises. But he had a cut --
7 and I'll call this the meaty part of his index finger on his
8 right hand, that I saw at the scene.

9 Q With respect to the scrape on his forehead, did that
10 look to you to be a rug burn?

11 A Yes.

12 Q All right. Now, I wanted to talk to you about the
13 -- what you saw in his hands. I'm going to show you what
14 we've marked as State's Exhibit number 62. Is that the injury
15 that you saw?

16 A Yes.

17 Q Can you describe it for us?

18 A Well, it looks like an incision injury in that
19 general area of his hand. It's quite bloody at the time, but
20 there's a sharp force injury there.

21 Q And I'm going to show you what we've marked and
22 admitted as State's Exhibit number 64. Does that also show
23 some injury on the thumb?

24 A Yes.

25 Q Can you explain what that was?

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1 A This injury is right in this general location there.
2 And once again, it's a sharp force injury on his thumb.

3 Q Now, you've indicated that you've investigated
4 hundreds of violent crimes, and how many homicides?

5 A Over 300. Well over.

6 Q Over 300?

7 A Yes.

8 Q And about a quarter of those involved stabbings?

9 A I believe so, yes.

10 Q Based upon that experience, Detective, how common is
11 it for an individual who stabs another person to receive
12 injury themselves?

13 A It's actually very common. When people stab a human
14 body, often times, they'll meet more resistance than
15 anticipated. And you also have to factor in the circumstances
16 which led prior to the stabbing, is there's sweat or blood
17 involved on the suspect's hand. So, it's a very common
18 injury.

19 MR. O'KEEFE: Your Honor, may we approach the bench?

20 THE COURT: Yes.

21 (Off-record bench conference)

22 THE COURT: All right. So, you're going to elicit
23 now, what, Mr. Lalli?

24 MR. LALLI: I'm going to move onto another area.

25 THE COURT: You objected to something.

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1 MR. O'KEEFE: Yes. I objected, Your Honor, to his
2 testimony not being as an expert.

3 THE COURT: All right.

4 MR. LALLI: Your Honor, the foundation was laid that
5 Detective Wildemann has been with Metro, I think he said 23
6 years. He's been in homicide for ten years. He's
7 investigated over 300 homicides; a quarter of those involved
8 stabbings. And based upon that experience, what he has seen
9 with his own eyes, it is not uncommon for a person involved in
10 a stabbing homicide to suffer injuries to the hand.

11 THE COURT: All right. I think he has -- more than
12 a proper foundation has been laid. So, with that, your
13 objection is preserved and denied. Move on, all right?

14 MR. O'KEEFE: Thank you, Your Honor.

15 THE COURT: Yeah.

16 BY MR. LALLI:

17 Q Now, at some point, did you direct that Mr. O'Keefe
18 be transported from the crime scene to a place to be
19 interviewed?

20 A Yes.

21 Q Do you recall how that was done?

22 A I had patrol -- the car that he was in originally, I
23 had that patrolman transport him to the homicide offices,
24 which coincidentally was only a few blocks away, and taken up
25 to the third floor of that building, which is the homicide

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1 office. And then, we had several interview rooms there. I
2 had him placed in one of the interview rooms.

3 Q Now, when you interview people, just anyone, is
4 there a requirement that Metro has that the interview be
5 video-recorded?

6 A No.

7 Q Are there occasions when you will elect to
8 video-record an interview?

9 A Yes.

10 Q Can you give us some reasons why you might choose to
11 video-record an interview.

12 A Well, I like to preserve it as much as possible, and
13 video a lot of times in this day and age is your best aspect
14 of that. I also like to video it when I'm concerned regarding
15 a person's demeanor. A lot of times, you know, a picture's
16 worth a thousand words, and video speaks for itself.

17 Q With respect to Mr. O'Keefe, did you make the
18 decision to have his interview video-recorded?

19 A Yes, I did.

20 Q Can you give us some -- we're going to -- we'll
21 watch the video in a moment. But can you give us some sense
22 of the interview room; what does it look like, how is it set
23 up?

24 A It's probably about a six-foot by eight-foot room.
25 It's got a table in it. On the one end of the wall is a

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1 restraint. There's a bar that you can put a handcuff to, if a
2 restraint is needed. It's just a standard cinder block
3 drywall room. Nothing fancy to it.

4 Q All right. With respect to restraints, was Mr.
5 O'Keefe restrained during the interview?

6 A Yes, he was.

7 Q How was he restrained?

8 A His right wrist was in a handcuff, and that other
9 handcuff placed to the bar. The bar is to the right side of
10 the table, so he kind of has free reign of the table itself.
11 But as far as being able to get up and move, he would not be
12 able to.

13 Q Why was he restrained?

14 A He was combative, I had learned, when patrol
15 officers originally arrived. And the way his demeanor was
16 when I was trying to take photos of him, being
17 non-cooperative, it was just, in my opinion, the best way to
18 handle it.

19 Q All right. At some point, you begin to advise Mr.
20 O'Keefe of his rights pursuant to Miranda vs. Arizona?

21 A Correct.

22 Q Before that happened, which is where the recording
23 actually starts, can you give us a sense of what was happening
24 in the interview room; who was there, what was going on?

25 A Well, when we initially arrive there, it's myself

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1 and Detective Teresa Kyger was also on my squad at the time,
2 working with me. So, she assisted me in the interview itself.
3 We arrived at the room. I tried to see if Mr. O'Keefe needed
4 to use the bathroom. He stated that he did, but he wouldn't
5 right then. He was just -- I would say just argumentative at
6 that point. Just trying to accommodate him was difficult.

7 Q You say that a homicide detective by the name of
8 Teresa Kyger was with you?

9 A Yes.

10 Q Is she visible on the interview?

11 A Yes.

12 Q And just, in general terms, what does she look like?

13 A She's -- she's probably 5 foot, 10 inches tall.
14 She's a white female with long brown hair. And I believe
15 she's wearing a sweatshirt, a -- with a homicide logo on the
16 left side.

17 Q All right. During the time that you were with the
18 defendant on this particular evening, or now into the early
19 morning hours of I believe November 6th, did he appear to you
20 to be intoxicated?

21 A Yes.

22 Q What did you see, both at the crime scene, and in
23 the interview room, that led you to believe that he was
24 intoxicated?

25 A Well, I could smell alcohol. He had bloody eyes --

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1 or bloody eyeballs -- bloodshot eyeballs, excuse me. And he
2 was a bit slurred at times. But as far as his drunkenness
3 was, I did not believe him to be intoxicated to the point
4 where an interview wasn't available.

5 Q During the interview, do you actually make a record
6 during the course of that that you believe that he's
7 intoxicated?

8 A Yes.

9 Q Do you also give him the opportunity to talk -- or
10 to say anything he wants to say about his intoxication?

11 A Yes.

12 Q How does that go?

13 A Well, I mean, I just -- in the middle of it, I know
14 I was probably getting frustrated to a point, and I asked him
15 if he was drunk. I also -- during the interview, I believe a
16 made a statement regarding, he just, to me, appeared drunk.

17 Q All right. Did you collect any specimen from him,
18 either urine or blood, to further document his drunkenness?

19 A No.

20 Q Why not?

21 A I'm under no obligation to do so. His demeanor, the
22 way he was acting, and the way he was able to answer my
23 questions led me to believe that he was not intoxicated to the
24 point where I couldn't conduct an interview on him. He was
25 pointed about certain questions, answering them; and

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1 absolutely vague on other questions when he, to me, appeared
2 he wanted to be.

3 Q Were there other ways that his intoxication was in
4 fact documented? Through the video --

5 A Yeah.

6 Q -- interview?

7 A Well --

8 Q Through the actual interview --

9 A Once again, I --

10 Q -- that you conducted?

11 A -- asked him if he was intoxicated. He talks about
12 it very briefly, and a video of the entire encounter was done.

13 Q I want to ask you about some specific things that
14 occurred in the interview, and then we will -- then we'll
15 actually play it. You indicated that he was advised of his
16 rights pursuant to Miranda vs. Arizona?

17 A Yes.

18 Q And do we see that on video?

19 A Yes.

20 Q Does he indicate to you in that video that he
21 understood his rights?

22 A Eventually. It took a while.

23 Q All right. Why do you say, eventually?

24 A Because he's just very sarcastic to me regarding
25 that. And I even approach him, saying, listen, this doesn't

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1 -- you know, this could go smooth. It doesn't have to -- you
2 know, we don't -- we can talk to each other like human beings.
3 But he's very sarcastic to me.

4 Q All right. Were there any threats made to him prior
5 to beginning the interview to get him to talk to you, any
6 coercive tactics used; anything of that nature?

7 A None whatsoever.

8 Q All right.

9 A We talked a little bit about Detective Kyger.
10 During the interview, does the defendant interact with
11 Detective Kyger?

12 A Yes.

13 Q And in fact, let me ask you this. Do you see Mr.
14 O'Keefe in the courtroom?

15 A I do.

16 Q Can you please point to him, and tell us what he's
17 wearing today?

18 A He's wearing a black suit, seated to my left, with a
19 blue tie, blue shirt.

20 MR. LALLI: Your Honor, may the record reflect the
21 witness has identified the defendant?

22 THE COURT: Yes.

23 BY MR. LALLI:

24 Q Tell us how the defendant interacted with Detective
25 Kyger.

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1 A A lot of times, I believe he would deflect to her
2 when I was talking to him. Many times, he would treat her
3 much differently than he would treat me, and in fact would
4 order or ask, depending on the situation, her to do things for
5 him.

6 Q Would he refer to her as a -- using a pet name
7 during the course of the interview?

8 A He referred to her throughout as "young lady."

9 Q At some point, does the defendant refer to Victoria
10 Whitmarsh as V?

11 A Yes. As the interview progressed, I noticed that he
12 was calling her "V." And as a way to try to humanize myself
13 with him, I called her V once, and asked him if I could call
14 her V. And he asked that I wouldn't. He said he was the only
15 one allowed to call her V.

16 Q All right. Are you aware of a witness by the name
17 of Cheryl Morris?

18 A I am.

19 Q Who is Cheryl Morris?

20 A Cheryl Morris is the ex-girlfriend of Mr. O'Keefe at
21 the time of this incident. She had originally rented that
22 apartment where this took place, at 5001 El Parque, with him.
23 And I believe that she's a co-registrant on a vehicle that
24 they were driving.

25 Q During the course of the interview that you had with

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1 Mr. O'Keefe, did he refer to her as "the Old Girl"?

2 A Yes.

3 Q All right. So, references to "Old Girl" are
4 references to Cheryl Morris?

5 A Yes.

6 Q During the course of the interview, does the
7 discussion of calling 9-11 come up?

8 A Yes.

9 Q Can you tell us about that exchange?

10 A I asked Mr. O'Keefe if he called 9-11. He wouldn't
11 answer. We asked several times. Finally, I ask a little more
12 assertively, and he says that he did call 9-11.

13 Q So, he tells you during the course of the interview
14 that 9-11 was called by him?

15 A Yes.

16 Q During the course of the interview, did it appear
17 that Mr. O'Keefe was being strategic with the information that
18 he relayed to you?

19 A Yes, I believe that.

20 Q Can you explain why you believe that?

21 A At times during the interview, he would be extremely
22 detailed as to what he and the deceased were doing prior to
23 the incident, what they were doing earlier in the day, what
24 they had done even weeks before. But when we got towards the
25 actual stabbing itself and how it occurred, he would become

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1 very, very vague.

2 Q During the course of the interview, are there
3 discussions with respect to the possibility that Victoria
4 Whitmarsh could die?

5 A Yes.

6 Q Does he bring it up at one point during the
7 interview?

8 A Yes. He asked me --

9 Q Can you --

10 A He asked me during the interview how V was doing,
11 what her condition was.

12 Q All right. Does he indicate for you that she
13 suffered from physical ailments?

14 A Yes.

15 Q Hepatitis C?

16 A Yes.

17 Q And did he also in that same breath indicate that it
18 was likely that Victoria would soon die?

19 A Yes.

20 Q What was his demeanor during that?

21 A Matter of fact.

22 Q During the interview, do you eventually tell him
23 that Victoria has in fact died as a result of this incident?

24 A Yes, towards the latter part of the interview.

25 Q What was his response to that?

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1 A He asked Detective Kyger for a cup of coffee. She
2 retrieved his cup, left the room. He made some very loud
3 noises, and continued with that.

4 Q All right.

5 A And then, suddenly, switched back to just talking
6 with me.

7 Q All right.

8 MR. LALLI: Your Honor, I'd like to play the
9 interview now. It's about an hour. I'm not -- I know we're
10 15 minutes before lunch. I don't know what the Court wants to
11 do in terms of --

12 THE COURT: Approach the bench a minute. No, no.
13 You know what? I figured they didn't have a break, so we
14 might as well do our lunch. And then, I hope you don't mind
15 coming back, Officer.

16 THE WITNESS: No, sir. No, sir.

17 THE COURT: We'll come back around 1:00 o'clock, all
18 right?

19 MR. LALLI: All right.

20 THE COURT: So, we're going to take our noon recess,
21 then come back at 1:00 o'clock and begin.

22 So, don't -- during this recess, it is your duty
23 converse among yourselves, or anyone else, on any subject
24 connected with the trial; or read, watch, or listen to any
25 report or commentary on the trial, by any person connected

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1 with the trial, or by any medium of information, including,
2 without limitation, newspapers, television, radio. And you
3 are not to form or express any opinion on any subject
4 connected with the trial until the cause is finally submitted
5 to you.

6 So, you'll be back at that time, Officer?

7 THE WITNESS: Yes, sir.

8 THE COURT: Thank you.

9 THE WITNESS: You bet.

10 THE COURT: We'll be at ease until the jury leaves.
11 [inaudible], would you remain in the courtroom? Thank you.

12 (Outside the presence of the jury panel)

13 THE COURT: All right. This is outside the presence
14 of the other jurors.

15 Now, the reason I brought you in -- I appreciate it.
16 Thank you for, you know, this note that you sent. I'll read
17 it for the record.

18 Juror number 12, which is you, "I feel like I'm
19 falling asleep. I think I have sleep apnea. I have not been
20 to a doctor, but it does run in the family. I don't feel that
21 it's fair to everyone else if I keep doing this, and I most
22 certainly don't want to jeopardize the case." Nella
23 Humphries. You know, I appreciate that --

24 JUROR NO. 12: I apologize. You know --

25 THE COURT: You don't have to apologize. Thank you

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1 for your honesty.

2 JUROR NO. 12: Well, when you made the statement,
3 you know, there's two things to -- well, when everybody was
4 being dismissed --

5 THE COURT: Yeah. I say there's always two things.
6 You have --

7 JUROR NO. 12: And I thought, well --

8 THE COURT: -- on a field of battle in time of war,
9 and serving on a jury, that --

10 JUROR NO. 12: Right.

11 THE COURT: -- you could serve your country.

12 JUROR NO. 12: And I thought, you know, I'm going to
13 try it.

14 THE COURT: Well, what -- all right. I appreciate
15 it.

16 JUROR NO. 12: It's like --

17 THE COURT: But what -- I mean, are you -- I guess
18 the issue is, we have to have --

19 JUROR NO. 12: Sometimes --

20 THE COURT: -- jurors that pay attention, and know
21 all the witnesses.

22 JUROR NO. 12: Right. I'm --

23 THE COURT: Have you been not doing that job?

24 JUROR NO. 12: No, I'm listening, but sometimes I
25 tend to close my eyes.

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1 THE COURT: So how many times --

2 JUROR NO. 12: And but I --

3 THE COURT: -- have you done that?

4 JUROR NO. 12: But I know what's going on.

5 THE COURT: When you're awake?

6 JUROR NO. 12: Yes.

7 THE COURT: But not --

8 JUROR NO. 12: I mean, no --

9 THE COURT: -- when you're sleeping?

10 JUROR NO. 12: When I'm -- when I'm closing my eyes
11 and stuff. And you know, I've noticed like, a couple times,
12 she's kind of hit me, you know. But I -- I'm -- you know, I
13 can tell you exactly what's going on while I'm like kind of --
14 you know, like, looking like I'm asleep or whatever. I don't
15 know how to explain it, but --

16 THE COURT: Do you have any questions, Mr. Lalli? I
17 mean, [inaudible]

18 JUROR NO. 12: You know, I mean, it's --

19 THE COURT: -- make a record on this [inaudible] --

20 JUROR NO. 12: It's not that -- I mean, I can tell
21 you everything that's gone on --

22 THE COURT: All right.

23 JUROR NO. 12: -- the whole trial.

24 THE COURT: Well, start from the first witness.
25 What did the first witness testify?

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1 JUROR NO. 12: The very first one, on --
2 THE COURT: I'm just --
3 JUROR NO. 12: -- the first day?
4 THE COURT: I'm just teasing you.
5 JUROR NO. 12: Oh, I can -- I can --
6 THE COURT: No, I don't want to hear it. I'm just
7 teasing.
8 JUROR NO. 12: Okay.
9 THE COURT: I'm just teasing.
10 JUROR NO. 12: Okay.
11 THE COURT: Again, Lalli, I --
12 JUROR NO. 12: But --
13 THE COURT: Wait just a minute.
14 JUROR NO. 12: And I mean --
15 THE COURT: [Inaudible].
16 JUROR NO. 12: Today, I'm more alert.
17 THE COURT: Right, I can see that. You're writing
18 and everything. I've been keeping an eye on you.
19 JUROR NO. 12: But --
20 THE COURT: But I just really want to know -- and
21 again, if you need to be excused, you let me know, and I'll
22 consider it. And I'm not going to get mad, because I want a
23 fair trial, both to the State --
24 JUROR NO. 12: Exactly, so do I.
25 THE COURT: -- and the defendant. So, I think we're

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1 in day -- what, 4 now?

2 MR. LALLI: Yes.

3 THE COURT: And as you sit here, do you think this
4 note, and the fact that you have been falling asleep
5 sometimes, and you have -- is that going to affect your
6 deliberation in this case?

7 JUROR NO. 12: No, I don't feel. But I just didn't
8 want, you know, anybody to feel like I'm not paying attention,
9 or I'm not doing my job as a juror.

10 THE COURT: No.

11 JUROR NO. 12: That's what I --

12 THE COURT: Any questions on behalf of the State?

13 JUROR NO. 12: That's why I was -- thought I should
14 bring it up, you know. I don't -- I haven't gone to a doctor
15 for it. Well, you have to go to a specialist.

16 THE COURT: All right. So, we don't --

17 JUROR NO. 12: [Inaudible] so --

18 THE COURT: -- have time for all of that.

19 JUROR NO. 12: Now --

20 THE COURT: I got to go to lunch. I'm hungry.

21 JUROR NO. 12: Okay. Goodbye.

22 THE COURT: Just a minute. Does the State have any
23 questions --

24 MR. LALLI: No, sir.

25 THE COURT: -- you want to ask this -- Mr. O'Keefe,

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1 do you have any --

2 MR. O'KEEFE: No, Your Honor.

3 THE COURT: -- questions you want to ask this
4 witness (sic)?

5 MR. O'KEEFE: No, Your Honor.

6 THE COURT: Thank you very much.

7 JUROR NO. 12: Just if you --

8 THE COURT: Go to lunch. Go to lunch. Go to lunch.

9 JUROR NO. 12: If you hear me snore, throw
10 something. That's all I ask. Thank you.

11 (Pause in the proceedings)

12 THE COURT: All right. Does anybody want to say
13 anything? We're going to mark this as the next Court exhibit.
14 And what's the State's opinion -- I'm going to ask Mr.
15 O'Keefe's opinion. Do you want to get her excused? Do you
16 want me to think about it, you think about it, or what?

17 MR. LALLI: Your Honor, I'm going to defer to Mr.
18 O'Keefe.

19 THE COURT: All right.

20 MR. LALLI: Whatever Mr. O'Keefe wants to do is
21 acceptable with the State.

22 MR. O'KEEFE: I have no objection to anything, Your
23 Honor. Whatever the State decides. Defer to the State, defer
24 to you, whatever. I have no problem whether she stays or
25 goes. Whatever you feel is best, Your Honor. I'll leave it

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1 up to you.

2 THE COURT: Okay. All right. Okay, then I will --

3 MR. LALLI: I'll submit it to the Court's
4 discretion, Your Honor. He's not -- I just want the record
5 to be very clear, he is not requesting that the juror be
6 excused. So, I'll submit it to the Court's discretion.

7 THE COURT: Is that correct? You're not --

8 MR. O'KEEFE: That is correct, Your Honor. I have
9 [inaudible].

10 THE COURT: All right. We'll mark this Court
11 exhibit. I guess I won't excuse her now, because in -- I
12 really haven't observed her doze off, and I don't know if any
13 -- have you? Well, you know, I don't think the marshal has
14 brought that to my attention. She's very attentive now,
15 taking notes. So, we'll -- as of right now, I'm going to
16 allow her to stay on the jury.

17 Is there anything else to come before the Court?

18 MR. O'KEEFE: Yes, Your Honor. Could I -- I want to
19 make two for the record. Okay. First -- it's a good time, so
20 we don't have to stop the jury.

21 THE COURT: Well, I got to eat.

22 MR. O'KEEFE: Yeah, I understand that. It will be
23 real quick. But I want to make an objection on the record --

24 THE COURT: Listen to me. I'm not -- I'm just
25 teasing you. You can make any record you want. And I never

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1 stopped you from making a record, and I'm not going to stop
2 you now, all right?

3 MR. O'KEEFE: And I appreciate --

4 THE COURT: So, proceed.

5 MR. O'KEEFE: -- that, Judge. You've been very fair
6 to me, and I appreciate it, Your Honor. I mean that. And
7 I'll be brief.

8 First objection is just -- it's the perfect timing
9 for it. I just want to object. I really feel, per Miranda
10 vs. Arizona, that I'm being violated here. The State has
11 documented proof, they're on records and everything that I was
12 not just intoxicated, but that I was extremely intoxicated.

13 Also, throughout the interview, at the end page on
14 32 of the voluntary statement, the Detective Wildemann gets a
15 little bit mad at me, and he says, "You know what, you're
16 incoherent." His own words. Somebody doesn't get like you --
17 and he says the same words, "You're incoherent."

18 Thirdly, he takes a break at the beginning of the
19 interview, stops for over an hour. And then he comes back in,
20 and he's like, go to me, get up. Instantly, start answering
21 me, without refreshing my Miranda rights.

22 You know, at least consider this. At least at that
23 point in the voluntary statement where he did not refresh me,
24 anything from that point on, I don't feel it's valid. I don't
25 think any of it is. But at least, very clearly, he takes an

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1 hour break and a minute -- hour and 38 or whatever. He does
2 read me my Miranda, and he says, do you understand? And I'm
3 so intoxicated; yeah, yeah, I know, yeah. I had -- I mean, I
4 didn't really know what was going on.

5 He asks me a little bit. And then he takes -- he
6 stops, and he takes a break. And I'm sitting there waiting,
7 and I pass out. You'll see it, I pass out. He comes back in.
8 Wake up, Mr. O'Keefe, get up. And he instantly starts, answer
9 my question, [inaudible]. I didn't even know what was going
10 on. He did not refresh my Miranda rights over an hour, and
11 that's a clear violation, Your Honor.

12 THE COURT: Now, Mr. Lalli, I don't know, refresh my
13 memory. But tell me, was there a motion to suppress made on
14 this?

15 MR. LALLI: There was. The version of the video
16 that we're playing is heavily edited. In fact, Judge Villani
17 watched the entire interview, and he directed, over State
18 objection, that certain portions be deleted. So, we've kind
19 of been down this road before.

20 What I can tell the Court is, the defendant is very
21 cunning in this interview. And certainly, when you see it,
22 I'm sure you will draw that conclusion. He knew what was
23 going on. He had his wits about him. He was being strategic,
24 as Detective Wildemann indicated. There's no voluntariness
25 issue. And --

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1 THE COURT: But this was already ruled upon by Judge
2 Villani?

3 MR. LALLI: It was. And --

4 THE COURT: Motion to suppress denied, but he --

5 MR. LALLI: All right.

6 THE COURT: -- he -- and to be fair to the defense,
7 he redacted a lot of stuff?

8 MR. LALLI: He did.

9 THE COURT: All right. Well, that ruling stands.
10 And it is going to be a -- I'm sure there will be a jury
11 instruction, that statements of the defendant -- it's about
12 the warning, suspect in custody, of his Miranda rights, and
13 the State has the burden of proving the voluntariness of the
14 statement by a preponderance of the evidence.

15 And so, that's going to be up to the jury to
16 determine if it's voluntary also. That's going to be --
17 that's going to be an instruction given to the jury. So, you
18 could argue that wasn't -- you know. You have that -- State
19 has the burden to show it's voluntary. That could be part of
20 your argument. But your motion is denied. I'm going to allow
21 that tape to be played.

22 MR. O'KEEFE: Okay. And my last point of matter,
23 Your Honor, if I may, I don't mean to do this, but I got to --
24 I really believe that Mr. Lalli for the State has violated the
25 ABA Model Rules of Ethics, and his code of ethics. He clearly

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1 has allowed yesterday his witness to testify, knowing it was
2 my whole argument, clearly, that Victoria -- Ms. -- the
3 deceased, testified for me in the felony domestic violence
4 case; not against me.

5 Mr. Lalli has repeatedly reviewed the transcripts
6 that have been submitted, but it's never been argued or
7 brought up. I have read case law where it said, if the State
8 is clearly aware that they allow their witness to give --
9 perjure testimony, basically is what it comes down to, it's a
10 violation of the rules of his ethics. It's improper.

11 It was never properly addressed through my last
12 attorney. I kept saying, what is wrong with you guys? Her
13 testimony was not for me.

14 That's what I was trying to get into yesterday, if
15 you remember, with Ms. Morris. You know, did you ever -- were
16 you ever properly told her testimony was for me, or against
17 me? Ms. Morris just knew that she came to trial, and she
18 didn't know whether it was really for me or against me,
19 because we never discussed it. So, she just assumed, since
20 Ms. Whitmarsh was there at that time, it was against me.

21 But the Court records clearly reflect -- and it's
22 been put in, I submitted it, that in a motion to dismiss, I
23 brought up an argument that the testimony was for me, and I
24 provided the certified transcripts of that felony case. And
25 they just keep ignoring it. They don't address that -- he

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1 allowed his witnesses to testify. Everyone believes that Ms.
2 Whitmarsh testified against me, and it's the opposite.

3 THE COURT: Mr. Lalli?

4 MR. LALLI: Your Honor, what I can tell the Court is
5 Victoria Whitmarsh testified in that trial. She gave a
6 statement to the police officer; in a written statement,
7 indicating the battery that this defendant had committed
8 against her. Based upon that evidence, he was convicted of a
9 jury. That's what I can tell you.

10 I've not parsed through her testimony from that
11 trial line by line, but I can tell you, those facts I do know.

12 MR. O'KEEFE: And the --

13 THE COURT: It's just --

14 MR. O'KEEFE: The last rebuttal, Your Honor -- and I
15 promise, this will be it, but I need this other parachute,
16 like you stated. I need this.

17 Okay. Her written statement was given -- she was
18 under -- she was intoxicated herself. They did not know her
19 mental status. The [inaudible] of her testimony was done
20 later in a court of law. In a court of law. She got up there
21 and took it, and she -- it was for me; not against me.

22 THE COURT: Well, I don't know what for you and
23 against you is. It could have been -- you know. I don't
24 think I have that transcript in front of me, the whole
25 transcript of the proceeding. But you know, it's your opinion

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1 that the testimony was for you. But the fact is, you were
2 convicted by a jury, I believe; is that correct?

3 MR. LALLI: Yes.

4 THE COURT: That's the main fact. For you, a lot of
5 people go, oh, I love him, but he did push me around, and it
6 could be for or against. But the fact that -- the main
7 relevant fact is that you were convicted. You think that it
8 was for you, but sure -- the jury didn't think it was for you.
9 So, your record is preserved, and --

10 MR. O'KEEFE: Thank you, Your Honor.

11 THE COURT: -- I'm going to deny that. I don't
12 think Mr. Lalli was at all -- had any prosecutory misconduct.

13 MR. O'KEEFE: Thank you, Your Honor.

14 THE COURT: So, what do you have? You're going to
15 -- we're going to play that tape?

16 MR. LALLI: Yes, and have just a little more
17 examination after that. And then --

18 THE COURT: And then you're going to rest?

19 MR. LALLI: -- I think we'll be prepared to rest.

20 THE COURT: Make sure your exhibits --

21 MR. LALLI: Yes. I think we've done that, and
22 everything we need is in.

23 THE COURT: All right. And then what --

24 MR. LALLI: Thank you, Your Honor.

25 MR. O'KEEFE: And --

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1 THE COURT: You're going to have to do something
2 this afternoon, if you want to do --

3 MR. O'KEEFE: I'm just going to -- I'm going to just
4 be very brief on the recross.

5 THE COURT: Yeah.

6 MR. O'KEEFE: I've made my proper objection. Thank
7 you for preserving it. Let it show what it is. And --

8 THE COURT: I understand. But as far as your case
9 in chief, what are you going to do? I mean, you're not
10 calling any witnesses, you said. I mean, whatever you do, I
11 don't care, but I want you to be ready to do it this
12 afternoon. Because I want to have this case, and then we're
13 going to settle instructions. You got instructions?

14 MR. LALLI: Yes, we provided those --

15 THE COURT: Do you have a --

16 MR. LALLI: -- to the Court.

17 THE COURT: -- copy of those instructions? Mr.
18 Maningo, did you give it to him?

19 MR. MANINGO: Yes, this morning.

20 THE COURT: I want to settle instructions. And the
21 first thing tomorrow morning, I want to read the instructions,
22 and do closing argument. Do you understand?

23 MR. O'KEEFE: So, then if -- after Mr. Lalli does
24 his presentation and his direct, and I do my recross, I'm not
25 going to --

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1 THE COURT: I'm going to ask you.

2 MR. O'KEEFE: I'm not going to call any witnesses,
3 I'm not going to testify. I'll let it be known.

4 THE COURT: All right. Then I'll tell you that in
5 open court. And then I'll say, oh, okay, thank you very much,
6 the evidence is completed, I'll see you tomorrow morning. All
7 right?

8 MR. O'KEEFE: Beautiful. Give me a chance.

9 THE COURT: All right.

10 MR. O'KEEFE: And I'll have one argument at the end
11 of the State's closing. One motion --

12 THE COURT: I'm sure you will.

13 MR. O'KEEFE: -- oral. Thank you, Your Honor.

14 THE COURT: Mr. Lalli, so these are the
15 instructions. And I don't know if you have any proposed
16 instructions. If you do, you have to have them ready.

17 MR. MANINGO: We're going to go over that now, Your
18 Honor.

19 THE COURT: Okay. And I don't know. I didn't --
20 because -- and I'm still going to make a decision on this
21 stipulation. Usually, there's an instruction here where it
22 says, the evidence you ought to consider, and then, at times
23 parties stipulate to something, and you're going to accept
24 that stipulation as evidence. I don't see it in here, but I
25 could have missed it.

1 MR. LALLI: May I approach?

2 THE COURT: Yeah. Is it in here?

3 MR. LALLI: It should be. I mean, it's a stock
4 instruction that we give.

5 THE COURT: Yeah, that's what I mean. But I just
6 want to make sure it is in there. Now, my ruling -- and Mr.
7 O'Keefe?

8 MR. O'KEEFE: Yes, Your Honor.

9 THE COURT: Is it in there?

10 MR. LALLI: Well, it doesn't say --

11 THE COURT: It has to have stipulation. Because if
12 it -- I mean, I've never seen a case that didn't have, "At
13 times, parties stipulate to the existence of a fact."

14 MR. LALLI: What it says is, "The evidence which you
15 are to consider in this case consists of the testimony, of the
16 witnesses, the exhibits, and any facts admitted or agreed to
17 by counsel." If --

18 THE COURT: All right.

19 MR. LALLI: -- you want to change it to --

20 THE COURT: Well, no --

21 MR. LALLI: -- "stipulate," I'm happy to do it. But
22 this is the stock instruction --

23 THE COURT: All right. Okay.

24 MR. LALLI: -- that we give.

25 THE COURT: All right. I think that's the right

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1 one.

2 MR. LALLI: Thank you.

3 THE COURT: Now, Mr. O'Keefe, I'm going to make a
4 ruling on this. I'm either going to do one of two things.
5 This is the excerpts of the medical records of Victoria
6 Whitmarsh. Now, you and Mr. Lalli stipulated -- stipulated
7 these facts. And Mr. Lalli just wants me to read them to the
8 jury. You want me to, what?

9 MR. O'KEEFE: I would ask that you would read it --

10 THE COURT: I can't read -- I can't read -- if I
11 mark it as an exhibit, and then let the jury go back, now, I
12 can't read it, because that's giving one exhibit more weight
13 than any other.

14 So, I'm either going to say I'm going to read it,
15 and it's going to be a stipulation, they don't see this when
16 they deliberate; or I'm not going to read it. I'm just going
17 to mark it as defendant's exhibit next in order, and it's
18 going to go in [inaudible], but I'm not going to read it.

19 Now, you could -- if I do that, you could get -- I
20 want to -- ladies and gentlemen, I want to bring your
21 attention to a defense exhibit that Judge Bonaventure
22 admitted. But I'm not going to read it to the jury and make
23 an exhibit. I can't do both. I can't do both.

24 MR. O'KEEFE: Well, the only thing I would ask then,
25 Judge, coming from you, I think it would hold more merit. I

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1 mean, coming from you -- I would just ask that at the close of
2 the case in chief then --

3 THE COURT: Right.

4 MR. O'KEEFE: -- that you say, okay, Jurors, pay
5 attention, I'm going to read this --

6 THE COURT: I will.

7 MR. O'KEEFE: -- get your pens ready.

8 THE COURT: All right.

9 MR. O'KEEFE: Because last time, they were kind of
10 -- I feel they were ambushed, and they didn't even know what
11 was going on.

12 THE COURT: I will, believe me.

13 (Pause in the proceedings)

14 MR. O'KEEFE: Another parachute, Your Honor, like
15 you said.

16 THE COURT: But you understand, I can't -- you
17 understand? I can't admit it also. You've got to have one or
18 the other.

19 MR. O'KEEFE: I can't have both?

20 THE COURT: No.

21 MR. O'KEEFE: Okay.

22 THE COURT: I can't take an exhibit out, Exhibit 28,
23 then read it. I can't do that. It gives undue weight to that
24 exhibit.

25 MR. O'KEEFE: Okay. I thank you for that.

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1 THE COURT: What would you prefer?

2 MR. O'KEEFE: I'd just have you read it, Your Honor.

3 THE COURT: All right.

4 MR. O'KEEFE: I submit on that.

5 THE COURT: All right. Thank you.

6 MR. LALLI: Thank you, Your Honor.

7 MR. O'KEEFE: Thank you, Your Honor.

8 (Court recessed at 11:59 p.m. until 1:14 p.m.)

9 THE MARSHAL: Officers and members of the Court, 17
10 jurors.

11 (Within the presence of the jury panel)

12 THE MARSHAL: All right. You may be seated, ladies
13 and gentlemen. Let's make sure all cell phones are turned
14 off, please.

15 THE COURT: All right. Parties, stipulate to the
16 presence of the jury?

17 MR. LALLI: Yes, Your Honor.

18 MR. O'KEEFE: Yes, Your Honor.

19 THE COURT: All right, Mr. Lalli.

20 MR. LALLI: Thank you. May I approach the witness,
21 Your Honor?

22 BY MR. LALLI:

23 Q Detective Wildemann, I'm going to show you what
24 we've marked as State's proposed 134 for identification
25 purposes. Is this a DVD containing the interview that you

1 conducted with Mr. O'Keefe?

2 A Yes, it is.

3 MR. LALLI: Your Honor, move for the admission of
4 State's proposed 134.

5 THE COURT: All right. Other than your prior
6 objection, anything else, Mr. O'Keefe?

7 MR. O'KEEFE: No, that's all right, Your Honor.

8 THE COURT: All right. It is admitted.

9 (Exhibit 134 is admitted)

10 MR. LALLI: Your Honor, I actually had this
11 downloaded on a presentation program. So, with the Court's
12 permission, I'll just play it from my computer.

13 THE COURT: That's fine. It's the same thing; is
14 that --

15 MR. LALLI: Yes.

16 THE COURT: Yes.

17 MR. LALLI: Correct.

18 (Taped interview of Brian O'Keefe played)

19 BY MR. LALLI:

20 Q Now, Detective Wildemann, during the course of your
21 interview with the defendant, there were times that the
22 defendant apparently displayed some sort of emotion. You were
23 actually there, sitting across the table from him. Can you
24 explain for us what you actually saw?

25 A Well, he would make the loud noises, like you heard

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1 several times, and he'd grab a tissue and cover his face. I
2 never saw tears. I never really saw mucus flowing. He was
3 just, to me, acting.

4 Q Acting?

5 A Yes.

6 Q Toward the end of the interview, there was the part
7 where Detective Kyger tells the defendant that you had checked
8 -- that Metro had checked to determine whether or not he had
9 in fact made a 9-11 call. How were you all able to learn that
10 information?

11 A Well, I called back to the scene. I talked to
12 either my supervisor, or Detective Bunn. They had called the
13 Metro call center, and found out what numbers had called in.
14 And it was, I just believe Toliver. But I'm not sure. I
15 think it was the apartment manager that had called, and there
16 were no calls from his phone number, or the other phones
17 located in that apartment.

18 Q Brian O'Keefe never called the police regarding
19 Victoria Whitmarsh?

20 A No.

21 MR. LALLI: Your Honor, that concludes direct
22 examination.

23 THE COURT: All right, thank you.

24 Cross-examination, Mr. O'Keefe?

25 MR. O'KEEFE: Yes, Your Honor.

1 (Pause in the proceedings)

2 MR. O'KEEFE: First of all, may we approach the
3 bench, Your Honor --

4 THE COURT: Sure.

5 MR. O'KEEFE: -- on something?

6 THE COURT: Sure.

7 (Off-record bench conference)

8 CROSS-EXAMINATION

9 BY MR. O'KEEFE:

10 Q How are you, Detective Wildemann?

11 A Wildemann. I'm fine, thank you.

12 Q Wildemann. Okay.

13 A Yes.

14 Q Like I've told all the other witnesses and stuff,
15 I'm going to be very straight to the point; attempt no tricks
16 or anything like that, okay, Detective? I just want to be
17 forward with you, okay?

18 A Okay.

19 Q There was a tragic confusion -- okay. I want to
20 start with one thing first, while it's fresh in my mind, if
21 that's okay, Detective.

22 A Sure.

23 Q Okay. At the very end of the 9-11, the other
24 detective clearly states that there was no calls made or
25 whatever, and you said, you called, Mr. O'Keefe, yourself --

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1 there was no 9-11 call basically by you, right? Do you
2 remember if she said that at the end?

3 A She said that you did not make a 9-11 call.

4 Q Yes.

5 A Yes.

6 Q Okay. Earlier in the testimony -- and let me back
7 up real quick there. You admit that I was extremely
8 intoxicated?

9 A In my testimony?

10 Q Yeah, or do you feel I was extremely intoxicated?

11 A I felt that you were drunk, yes.

12 Q Okay. Do you know that the 9-11 dispatch states
13 that when they made this call, they already announced on the
14 radio that the defendant was extremely 408 six minutes before
15 they apprehended me?

16 A I saw that in the CAD, yes.

17 Q Okay. And so the jury knows still, the interview
18 started around 0130 hours?

19 A I believe so, yes.

20 Q Okay. And I was apprehended about 11:15?

21 A I believe so, yes.

22 Q A couple minutes?

23 A Yes.

24 Q So, it was still over two hours, and I was in that
25 kind of condition? Okay. Now, getting back. In the

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1 voluntary statement, would you remember that you asked me the
2 question --

3 MR. O'KEEFE: Your Honor, may I read it from here,
4 and just --

5 THE COURT: Absolutely, absolutely.

6 MR. O'KEEFE: Okay. You said --

7 MR. LALLI: May I ask what page he's referring to?

8 MR. O'KEEFE: It's 18, Mr. Lalli, on my voluntary
9 statement.

10 THE WITNESS: Of yours, Mr. O'Keefe?

11 BY MR. O'KEEFE:

12 Q Yes, yes.

13 A I'm going to open mine also.

14 Q Oh, you have it?

15 A Yes.

16 Q Fantastic.

17 A 22, I'm sorry? Page 22?

18 Q Page 18.

19 A 18.

20 Q And I left my glasses. So, I can see, but not real

21 --

22 A Okay.

23 Q Page 18.

24 A Okay.

25 Q And the second question -- or actually, we could

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1 start at the top. I'll read it, if you don't mind. There was
2 no response from the previous answer from the previous page.
3 Then it says, "Why didn't you call 9-11?" Answer, and I said,
4 "Check the phone." And TK, the other detective, right? She
5 says, "I will."

6 Then, the next question from you was, "Answer my
7 question. Don't order her around, answer my questions. Did
8 you call?" Little break. My answer was, "No." And then,
9 amazingly, it says, "Unintelligible." And I said, "I called,
10 I called," a big blank, both talking. And you said, "And
11 that's all you got to do is answer the question." Does it not
12 state that verbatim?

13 A It does on this, yes.

14 Q So, at that time, 45 minutes earlier, I did make it
15 clear that I didn't mean that I called 9-11. I was calling --
16 I made it clear that I didn't make call?

17 A Well, when we listen to -- this is just how the
18 statement is transcribed. But when you listen to the actual
19 statement itself, I mean, I clearly ask you, did you call
20 9-11? And you clearly state, yes.

21 Q Okay. But it does state what I just stated, what we
22 read?

23 A Yes. Yes.

24 Q It states that clearly? Okay. So, I did make some
25 type of admission, I'm extremely intoxicated, or intoxicated.

1 It shows, no doubt. And earlier, I do try to make amends, and
2 I did mean me. Would you agree that -- or, let me back up.
3 And I apologize. And I will try to be brief with this.
4 You've done your job for how many years, Detective?

5 A I've been a police officer for 24 years.

6 Q 24 years?

7 MR. O'KEEFE: Excuse me. Court's indulgence.

8 BY MR. O'KEEFE:

9 Q Okay. So, you have a lot of experience?

10 A Yes.

11 Q Okay. You testified -- they allowed you to
12 [inaudible] a little bit as an expert. It was testified to
13 yesterday by the photographer for the fingerprint -- for the
14 photos, that he wasn't necessarily instructed to, you know,
15 maybe get better views of my finger and my thumb. And that
16 wasn't done. He said that was stated by you that he was not
17 told; is that correct?

18 A I asked him to take pictures. He did. And those
19 are the pictures that we observed earlier.

20 Q Okay. But you just testified that you're pretty
21 experienced in knife situations, and you claimed -- you made
22 the claim right here in front of this jury that you feel
23 wounds would be -- that would be consistent from a knife
24 slipping -- hands slipping off the knife, correct?

25 A Correct.

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1 Q The totality of this case, don't you think it would
2 be imperative to maybe get a little bit better pictures of,
3 you know, comparison? Because the wound indications, it's a
4 practical -- physical impossibility.

5 I mean, basically, to clarify, do you feel maybe you
6 could have took a few extra pictures to maybe show as
7 evidence, to be shared by the State and the defense? Since
8 you felt in your mind already something had happened, do you
9 feel maybe you should have been obligated to take a few more
10 pictures?

11 A I think we got pictures both at the scene that shows
12 the wounds, and Mr. Ford came back in at the homicide offices,
13 showing those same two wounds.

14 Q Okay. And I'm just asking. I mean, no tricks. I'm
15 just trying to get an answer from you, and I appreciate it,
16 Detective. I clearly asked you finally that -- we had gone to
17 Paris, and I had told you that, honestly. "Please check,"
18 repeatedly, "check." Correct?

19 A Correct.

20 Q You could have got that video from Paris. I even
21 said I knew it from a previous -- they heard it, that you
22 know, video only lasts for four days, and they re-write over
23 it. And I even tried to say, hey, look, please get it now,
24 you know, verify my story. And I did clearly -- was honest,
25 and I told you, finally, check Paris, correct?

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1 A Correct.

2 Q Okay. I even told you I remembered, as we all seen
3 (sic), there was a shooting -- another victim at a store, a
4 tragedy happened. And we all know the stores have video
5 cameras, at the Walmart's, and all that. And I even told you,
6 please go to Vons and verify my story, did I not? That she
7 had gone there and purchased --

8 A Yes.

9 Q Okay. I'm just asking. That's all. I even told
10 you during the interrogation that --

11 MR. O'KEEFE: Court's indulgence.

12 MR. LALLI: Your Honor, can we approach, please?

13 THE COURT: Yes.

14 (Off-record bench conference)

15 MR. O'KEEFE: Okay.

16 BY MR. O'KEEFE:

17 Q I quite clearly told you that she was ill, and there
18 was some records that should be procured, correct?

19 A Correct.

20 Q Don't you think that would be important in a case
21 like this, to maybe check that out?

22 A That she had hepatitis C, and I believe you said
23 liver damage?

24 Q Okay. Did I not mentioned that she was a cutter,
25 and suicidal, and eight documented suicides, and many others

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1 undocumented, and she was a cutter, she did self-mutilations,
2 and had a host of mental illnesses?

3 A No.

4 Q You weren't aware?

5 A You said that -- I believe that you said -- I don't
6 even know if you used the word "suicide." I think maybe,
7 "stabbed herself." But you never told me she was a cutter.
8 You never said she had eight suicide attempts, and many others
9 undocumented.

10 Q Well, I'm not going to waste the Court's time and
11 [inaudible] the jury. But don't you remember in the
12 beginning, it's quite clear, I said, you should get the
13 records from Montevista Psychiatric Hospital? Montevista?

14 A Yes.

15 Q Are you aware what Montevista is?

16 A Yes.

17 Q How much more clear could that be? Did I not say
18 that she was --

19 MR. LALLI: Objection, argumentative.

20 THE COURT: Yeah. Just -- you got to ask him what
21 he thinks Montevista is, if you want.

22 MR. O'KEEFE: I think I've done enough argument.

23 Thank you, Judge. I'll move on. Okay.

24 BY MR. O'KEEFE:

25 Q You just stated earlier, Detective, that, quite

1 clearly, you're experienced, 24 years. This is a homicide
2 case. There was even a detective at Las Vegas Metropolitan
3 Police Department in a homicide case, says that you can -- you
4 don't have to, but you can.

5 Now, they put out on the air that I was extremely
6 intoxicated. There was -- you knew what's going on. They're
7 going to see the video over and over. I want them to watch it
8 multiple times and see -- see if I was so called faking it, as
9 you made an assumption. But you know, it was quite clear --
10 and all the other officers, they all say he was extremely
11 intoxicated.

12 Don't you think maybe that you should have maybe in
13 a case this serious had my blood and breath drawn? Don't -- I
14 mean, don't you think that was important to pull it, so in a
15 definitive number --

16 MR. LALLI: I'm going to object, Your Honor. It's
17 argumentative now.

18 MR. O'KEEFE: It's not.

19 THE COURT: Well, just ask him --

20 MR. O'KEEFE: Okay.

21 THE COURT: -- do you think it was important --

22 MR. O'KEEFE: Don't you think --

23 THE COURT: -- in the police investigation to have
24 your blood drawn.

25 BY MR. O'KEEFE:

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1 Q I mean, don't you think it was huge, important?

2 A No. I've never done it before. I haven't done it
3 since. My assessment of you while we were doing our interview
4 is that you were not intoxicated to the point of being not in
5 control of yourself. You manipulated your way through the
6 interrogation. And I felt that there was no reason at all to
7 have you tested.

8 Q Okay.

9 A And I'm under no obligation to do so.

10 Q Okay. And you noticed, I let you expand on that. I
11 didn't cut you off. I have nothing to hide.

12 A Okay.

13 Q However, later, wasn't there photographs taken of
14 me?

15 A Yes.

16 Q And isn't there several photos where they're holding
17 my head up? Yes, or no?

18 A When you're getting into the suit; is that what
19 we're talking about, sir?

20 Q Yes, sir. And when they had me against the wall,
21 there was photos where someone's holding my head up, and you
22 can see the arm, it's been -- in prior testimony, it's seen.

23 A Yes.

24 Q Do you remember that?

25 A Yes.

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1 Q Okay. Do you remember when you were having me put a
2 suit on, and I was falling over and they had to grab me; I
3 couldn't even put my leg in the pants?

4 A Yes.

5 Q Okay. I'm just asking to be honest. I'll be
6 honest, you be honest.

7 MR. LALLI: I'm going to object, Your Honor.

8 THE COURT: Yeah. Don't make comments like that.

9 MR. O'KEEFE: Okay.

10 THE COURT: Just ask -- answer the questions.
11 Listen and answer them, and move on.

12 BY MR. O'KEEFE:

13 Q I asked -- or I told you earlier, too, I made a ton
14 of phone calls that day. This whole pag of that day -- this
15 -- I mean, you verified that? You checked the phone. I kept
16 saying, check the phone, check the phone. This was all for
17 that day, like 30 calls. Each one is a call?

18 A Yes.

19 Q Okay. I mean, I'll save it for argument. Got what
20 I needed.

21 MR. O'KEEFE: Thank you, Your Honor. Okay.

22 BY MR. O'KEEFE:

23 Q Victoria's purse was taken from the bedroom, and
24 moved into the kitchen; is that correct, Detective? Do you
25 remember that? You've seen photos of that, where they laid my

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1 wallet out -- you know?

2 A Yeah. I believe that's true, yes.

3 Q Okay. They had take receipts out, and all that.

4 And do you remember there was a receipt -- and it was put in
5 the subpoena, "Receipt from O'Keefe's wallet." I'm sure --
6 because you did the closing on the case, so you would remember
7 that, correct?

8 A Yes.

9 Q And it shows clearly -- it does say -- if you need
10 to see it, it says, 5:46 p.m. on the same day at the A-1
11 Vacuum and Sewing shop. You wont dispute that, right? So --

12 A No.

13 Q Okay. And that was en route to Paris. Thank you.

14 MR. O'KEEFE: For argument, I'll save it, Your
15 Honor.

16 BY MR. O'KEEFE:

17 Q Is it policy in the subpoena that items of
18 importance, such as for possible motive and all that, money,
19 jewelry, and all that, ID; isn't that supposed to be
20 apprehended? I'm asking you. You're the detective.

21 MR. LALLI: I'm going to object, Your Honor. That
22 question was unintelligible.

23 THE COURT: Yeah, apprehended.

24 MR. LALLI: I don't know what he was asking.

25 THE COURT: I'm not sure what that means.

1 MR. O'KEEFE: Okay.

2 THE COURT: Maybe rephrase it.

3 BY MR. O'KEEFE:

4 Q Well, when you take a suspect into custody --

5 MR. O'KEEFE: Is that better, Your Honor? I
6 apologize.

7 BY MR. O'KEEFE:

8 Q And you make a tagging list, aren't you supposed to
9 take -- like you write down the items you take. And isn't a
10 wallet and ID of an alleged suspect supposed to be written
11 down and taken, too?

12 A It was photographed.

13 Q Okay. The wallet disappeared. When they brought me
14 in and charged me, the wallet -- ID, everything. The pictures
15 of my -- everything's gone. But they photographed it. What
16 happened to the wallet?

17 A I don't know, sir. I don't know. I'd have to look
18 through the reports and see if I could figure that one out.

19 Q I mean, again, clearly, you stated the picture --
20 the purse was taken from the bedroom. They opened it up, took
21 the wallets out, laid them out, took our photos. I understand
22 that process. They wrote everything down, but --

23 MR. LALLI: I'm going to object to the form of the
24 question.

25 THE COURT: Yes.

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1 MR. O'KEEFE: I'll move on, Your Honor.

2 THE COURT: Compound, and --

3 BY MR. O'KEEFE:

4 Q So, you got some of the records, but you never --
5 you never got the Montevista records, psychiatric hospital?
6 You never got those records; you never checked it out?

7 A No.

8 Q What records did you get?

9 A I believe we got your phone records.

10 Q Do you remember me telling you, you should check the
11 Montevista records; go to Montevista, please?

12 A Yes.

13 Q And still, you didn't get those records?

14 A No.

15 Q You didn't go to Vons?

16 A No.

17 Q You didn't go to Paris?

18 A No.

19 Q You didn't get proper -- as far as I'm concerned,
20 photos of injuries?

21 A I disagree with you.

22 Q Well, you didn't get extra photos.

23 A Okay.

24 Q Okay. You --

25 A I got a number of photos of your injuries.

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1 Q Did you -- and you didn't take a blood or breath
2 draw?

3 A No.

4 Q I'm going to ask you this opinion, because you said
5 24 years of experience. Do you feel that you're obligated
6 sometimes -- or do you think that there's just evidence that
7 should -- you should just gather all the evidence possible,
8 and throw it on the table, and you know, present it? And I
9 mean, you're the only -- you're the one that's in control of
10 doing all that, correct, Detective? I mean, it's your call
11 whether to do it or not, right?

12 A It's my call. Absolutely.

13 Q It's your call. So, one person can have quite an
14 impact on someone's case, correct? Just yes or no, please.

15 A Yes.

16 Q Just someone really could if they wanted to.

17 MR. O'KEEFE: No further questions, Your Honor.

18 THE COURT: All right, thank you. Any redirect --

19 MR. O'KEEFE: Thank you, Detective, sincerely.

20 THE COURT: -- Mr. Lalli?

21 THE WITNESS: Thank you.

22 MR. LALLI: Yes.

23 REDIRECT EXAMINATION

24 BY MR. LALLI:

25 Q Detective Wildemann, during the course of your

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1 interview with the defendant, did you try to steer him to talk
2 to you about the events that transpired immediately before
3 Victoria Whitmarsh was stabbed?

4 A Yes.

5 Q And what was the tactic employed by the defendant
6 when you did that?

7 A He would become silent. He would say, I don't know.
8 Or he would steer off to a total -- the two days before was
9 his favorite place to go, where he would talk about an event
10 that took place two days prior. But he would not talk about
11 the events just prior to the stabbing, or the stabbing itself.

12 Q He would repeatedly talk about the Paris?

13 A Correct.

14 Q Do you think that had any relevance to the immediate
15 events leading up to him stabbing Victoria Whitmarsh?

16 A No relevance whatsoever.

17 Q He talked to you about the Vons. Do you think that
18 was relevant in this investigation?

19 A No.

20 Q Whether he had had a vacuum cleaner purchased or
21 repaired, do you think that's relevant to why he murdered
22 Victoria Whitmarsh?

23 A No.

24 Q The phone calls he might have made to the Union that
25 day, do you think that had any relevance to why he might have

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1 stabbed Victoria Whitmarsh?

2 A None.

3 Q You gave him the opportunity to explain that,
4 correct?

5 A Correct.

6 Q And what did he do when you gave him the opportunity
7 to talk about what happened with Victoria Whitmarsh?

8 A Not explain it. He never did.

9 MR. O'KEEFE: Recross, Your Honor.

10 MR. LALLI: Thank you.

11 MR. O'KEEFE: Just a moment.

12 THE COURT: Do you have any recross?

13 MR. O'KEEFE: Yes, Your Honor, I do.

14 RECCROSS-EXAMINATION

15 BY MR. O'KEEFE:

16 Q Conversely, then, Detective, clearly, if I knew a
17 person's condition, that they were a cutter and all that --
18 and I'll back up again.

19 MR. O'KEEFE: And I'll make it real quick, Your
20 Honor.

21 BY MR. O'KEEFE:

22 Q An assault charge with a weapon is a serious charge,
23 Detective, right? It's your line of work.

24 MR. LALLI: I'm going to object. This is beyond the
25 scope.

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1 MR. O'KEEFE: He's a detective, Your Honor. He
2 knows.

3 THE COURT: Well, wait a minute. You did mention
4 what was relevant, what's not -- if you want to get into the
5 Montevista, you could.

6 MR. O'KEEFE: Okay.

7 THE COURT: Is that what you're trying to get at?

8 MR. O'KEEFE: All right.

9 THE COURT: That's within the scope, I believe.

10 BY MR. O'KEEFE:

11 Q If you're not quite sure of what somebody did, and
12 you didn't want to get them in trouble, but you knew their
13 history as a cutter, and you truly didn't know what happened,
14 and you didn't want to throw somebody under the bus, and
15 you're trying to really think -- I mean, don't you think
16 that's kind of relevant?

17 Don't you think there's relevancy in -- since the
18 State is trying to say I did something; I killed her, I had
19 motive, intent, payback, why would I that day make calls, and
20 get leads for a job? Why would a person get a vacuum fixed on
21 the way, take her out, and want to take a person out to
22 celebrate? Why would I want to do all those things?

23 MR. LALLI: Objection, this is argumentative.

24 MR. O'KEEFE: No further questions, Your Honor.

25 THE COURT: All right. That completes the

1 testimony.

2 MR. LALLI: Just very briefly.

3 THE COURT: All right.

4 MR. LALLI: Well, the defendant said that the
5 detective was trying to throw him under the bus.

6 FURTHER REDIRECT EXAMINATION

7 BY MR. LALLI:

8 Q Were you trying to throw this defendant under the
9 bus?

10 A No.

11 Q Why did you arrest him for murder?

12 A Because I believed I had enough probable cause, and
13 I was convinced that a murder had occurred, and he had
14 committed it.

15 Q Thank you.

16 MR. LALLI: Nothing further.

17 MR. O'KEEFE: Your Honor, last recross.

18 FURTHER RECROSS-EXAMINATION

19 BY MR. O'KEEFE:

20 Q And Detective, I didn't mean, me. I meant, I didn't
21 want to throw Victoria under the bus. I knew she was a
22 cutter, and I didn't want to make any false claims, because I
23 clearly, as the video shows and they see, I didn't know what
24 happened, and I didn't want to get her in any trouble. And I
25 repeatedly -- on the video, I kept saying I didn't know what

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1 happened. Did I not, Detective?

2 A Yes.

3 Q And I continued to stick to my story, and I never
4 gave you an answer. You were trying -- you were trained to
5 get someone to slip, and you would hold them to anything they
6 would say; would you not, Detective?

7 A I would conduct an interview, and try to get the
8 answers to the questions I was asking you.

9 Q Okay. So, in a way, it is kind of trickery,
10 Detective, isn't it?

11 A At times, I have to use those tactics.

12 Q And it's easy, especially on someone who is
13 extremely, extremely intoxicated, and PTSD from a traumatic
14 event, no sleep, tired. And you have all the skills, 24 years
15 you're trained. It's like a -- it's like a --

16 MR. LALLI: I'm going to object, Your Honor.

17 THE COURT: Yeah, this is argument. All right. I
18 think that's enough, right?

19 MR. O'KEEFE: Yes, Your Honor.

20 THE COURT: Thank you. You're excused. All right.
21 The next witness?

22 MR. LALLI: Your Honor, at this point, Mr. O'Keefe
23 and the State have entered into a stipulation regarding
24 certain facts. And we would request that that stipulation now
25 be read to the jury.

1 THE COURT: All right. And then -- and then you
2 rest; is that --

3 MR. LALLI: Yes.

4 THE COURT: I think I'll do that, all right, Mr.
5 O'Keefe?

6 MR. O'KEEFE: Yes, Your Honor.

7 THE COURT: You did enter into a stipulation?

8 MR. O'KEEFE: I did stipulate to that. And I would
9 just ask if you would clearly, as honorably as you are (sic),
10 to ask the jury to be prepared, and --

11 THE COURT: Sure, I will. Absolutely.

12 MR. O'KEEFE: Bless you, Your Honor.

13 THE COURT: Ladies and gentlemen, as Mr. Lalli
14 pointed out -- and I'm going to give you an instruction later
15 on, or tomorrow. The evidence which you are to consider in
16 this case consists of the testimony of the witnesses, the
17 exhibits that were admitted and you were shown, and any facts
18 admitted or agreed to by counsel and Mr. O'Keefe. So, that's
19 really what you have to consider.

20 The testimony, the exhibits, and any facts that they
21 admit to. They have admitted to certain facts. And I'm going
22 to read this admission or stipulation to you right now. I'd
23 like you to pay as much attention to this admission and
24 stipulation as you paid to the testimony of the witnesses and
25 the exhibits.

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1 A No.

2 Q Now, what is to the right of the injury?

3 A There are some very superficial -- there's a pattern
4 of a very superficial abrasion.

5 Q Are you familiar with the term -- or the phrase,
6 hesitation marks?

7 A Yes.

8 Q What are hesitation marks?

9 A Typically, in a wound of suicidal intent, a person
10 may make several superficial cuts or superficial stabs before
11 self-inflicting a fatal injury.

12 Q Are those hesitation marks?

13 A No.

14 Q Do you have an opinion as to the cause of these
15 injuries? If they are injuries. What is your opinion --

16 A Well, they're very --

17 Q -- as to what they are?

18 A They're very superficial injury. And because of
19 their location, I think they are associated or related to the
20 stab wound injury. It appears to me that the hand that was
21 holding the knife may have caused some abrasion, or the
22 clothing that was intervening between the hand that was
23 holding the knife may have caused some forcible abrasion of
24 the skin when -- at the depth of the thrust of the knife.

25 Q All right. What was the depth of the wound?

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1 A Four and-a-quarter inches.

2 Q Was any bone structures struck?

3 A No.

4 Q A bone of any sort?

5 A No.

6 Q I'm going to show you State's Exhibit 130. What is
7 this?

8 A That's a trajectory rod. That is something that we
9 forensic pathologists will position in the track of the wound
10 in order to demonstrate it's direction.

11 Q And is this trajectory rod inserted in the direction
12 of this injury?

13 A Yes.

14 Q You indicated, Doctor, that there was a toxicology
15 analysis done?

16 A Yes.

17 Q Can you explain to the jury what hepatitis C is?

18 A Hepatitis C is a viral illness of the liver that is
19 most usually transmitted by blood contamination, or by blood.
20 And it in many people causes a very slow and prolonged
21 inflammatory response in the liver, which is generally without
22 symptoms until many years later, when the person may, due to
23 the chronic inflammatory process, develop scarring of the
24 liver, which we call cirrhosis.

25 Q Did the toxicology samples taken reveal that

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1 Victoria Whitmarsh was positive for hepatitis C?

2 A Yes.

3 Q How does hepatitis C affect the body and bruising?

4 A Chronic liver disease -- most of your clotting
5 factors, with the exception of one or two, are made by the
6 liver. So, a person who is in liver failure will have
7 problems with their clotting factors, and may have difficulty
8 clotting.

9 On the other hand, there are -- most people who are
10 cirrhotic are not in liver failure. They have no jaundice,
11 and in general, don't have any real significant problem with
12 clotting their blood. The only way that we can really tell
13 whether the clotting factors are involved is by -- is by doing
14 some clotting factor studies, notably, a test called a
15 prothrombin time.

16 But in general, people who have cirrhosis due to
17 hepatitis C are -- even with their cirrhosis, are
18 asymptomatic. And it really doesn't affect the clotting time
19 significantly.

20 Q So, a person with hepatitis C, they're not just
21 going to bruise without blunt force trauma actually being
22 inflicted upon their body? I mean, they're not just going to
23 bruise on their own, correct?

24 A Only in advanced liver failure do you see that. In
25 this -- my findings in this case do not indicate that she was

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1 in advanced liver failure.

2 Q All right. How advanced was the deterioration of
3 her liver? Was it --

4 A She had reached a stage of cirrhosis, which is a
5 generalized scarring process of the liver.

6 Q Did that cirrhosis in any way -- was that in any way
7 a cause of her death?

8 A No.

9 Q All right. As part of the toxicology examination,
10 was alcohol --

11 A Yes.

12 Q -- tested for? And what were the results of that?

13 A It was .24 milligrams per deciliter, or I think we'd
14 call that .24 percent.

15 Q Are you familiar with a drug called Effexor?

16 A Yes.

17 Q What is Effexor?

18 A It's a serotonin reuptake inhibitor type of
19 antidepressant medicine.

20 Q So, somebody who suffers from depression may be
21 prescribed Effexor?

22 A Correct.

23 Q Did you observe -- or did the toxicology report
24 reveal evidence of Effexor in Victoria's blood?

25 A Effexor and it's primary metabolite were both

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1 present in the blood.

2 Q At what levels?

3 A The Effexor -- the generic is Venlafaxine, was at a
4 level of 990, I believe it was nanograms per milliliter. And
5 the primary metabolite -- I'd have to refer, but I believe it
6 was 870 nanograms per milliliter.

7 Q All right. Are those therapeutic levels?

8 A They're higher than the usual therapeutic levels.

9 Q Were they toxic levels?

10 A Well, as a forensic pathologist, one thing we have
11 to do is consider the source. And this was heart blood. And
12 due to something called post-mortem redistribution, this would
13 be about 30 percent higher than what it would be in peripheral
14 blood.

15 And we know this from multiple studies, that
16 redistribution is -- occurs with this drug. This was heart
17 blood that was tested. But even if -- accounting for
18 redistribution, it was still above the usual therapeutic
19 range.

20 Q Would it be enough Effexor in a person's blood to
21 contribute to their death in any way?

22 A Oh, no.

23 Q How far above the therapeutic range are you talking
24 about when you say it was above that?

25 A Slightly above the usual therapeutic range.

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1 Q All right. Now, based upon everything that you
2 reviewed, Dr. Dutra, do you have an opinion as to the cause of
3 death with respect to Victoria Whitmarsh?

4 A Yes.

5 Q What is that?

6 A She died of a stab wound to the chest.

7 Q We talked a lot about the bruising on her body.

8 A Yes.

9 Q Do you believe that the amount of bruising on her
10 body contributed to her death in any way?

11 A It contributed in the sense that it was additional
12 blood that was lost from the vascular system, and had been
13 sort of sequestered into the soft tissues, and was unavailable
14 to provide oxygenated blood in the circulation.

15 So, yes, there was some contribution from the soft
16 tissue injuries. But in my opinion, from the amount of
17 contusional injury that I saw, I don't think it was greatly
18 significant. Just a contributing factor.

19 Q But you would agree that it's a contributing factor?

20 A Yes.

21 Q All right. Can you explain for the jury how
22 Victoria Whitmarsh died? What was -- what happened to her
23 that caused her to die with respect to the injury that she
24 suffered?

25 A The mechanism of death in this case was that the

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1 knife wound -- the stab wound had penetrated the chest cavity.
2 And when that happens, the lung collapses. And so, she lost
3 function in one lung. The bleeding that was part of that stab
4 wound injury into her chest cavity was measured at 500
5 milliliters, or about half-a-quart of blood.

6 And the wound continued through the diaphragm, and
7 into the liver, and there was another lesser quantity of blood
8 in her abdomen. And from my review of the photographs of the
9 death scene, there was a significant amount of blood that had
10 been lost externally.

11 So, the mechanism of this death was basically
12 exsanguination, with the contributing factor of the collapse
13 of that right lung.

14 Q What about timing? How long would it take someone
15 to die as a result of exsanguination?

16 A It takes several minutes. It's not something that's
17 instantaneous.

18 Q When you say several, are we talking about 30
19 minutes, or are we talking about a minute or two?

20 A I --

21 Q Or somewhere --

22 A In this case --

23 Q -- in between?

24 A I would say somewhere in between. Somewhere in
25 between.

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1 Q What range would you opine in this case as to how
2 long it would take from the time of that stab wound, until
3 Victoria's death?

4 A I would estimate it would be maybe 10 minutes, maybe
5 30 minutes. Somewhere in that range.

6 Q All right. Now, there has been testimony in this
7 case of a neighbor who at one point heard a disturbance in the
8 area that Victoria was ultimately found, and that she heard
9 crying, which turned into moaning, which lasted for about ten
10 minutes.

11 Is that consistent with somebody who would die of
12 exsanguination, being able to moan, or to cry at some point
13 after they suffered a knife injury?

14 A Oh, yes.

15 Q Dr. Dutra, do you have an opinion as to the manner
16 of death in this case?

17 A Yes.

18 Q What is that?

19 A Homicide.

20 Q Why do you believe that this was a homicide?

21 A Based on the investigator's evaluation of the scene,
22 and based on the -- my examination of the autopsy findings,
23 the -- this wound -- I really can't see another mechanism --
24 or manner, other than homicide, especially considering the
25 thrust of this wound, it's location --

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1 Q And by thrust, are you talking about directionality?

2 A Yes. It's location, and it's direction.

3 Q Are you able to rule out that this was a suicide?

4 A By stating that the manner of death is homicide, I
5 am ruling out that this is a suicide.

6 Q Okay. And would the same apply as to accident?

7 A Yes.

8 Q And homicide is death at the hands of another?

9 A Correct.

10 Q Thank you.

11 MR. LALLI: Your Honor, that concludes direct
12 examination.

13 THE COURT: All right. Cross-examination?

14 MR. O'KEEFE: Yes, Your Honor.

15 (Pause in the proceedings)

16 CROSS-EXAMINATION

17 BY MR. O'KEEFE:

18 Q Hello. Dr. Dutra, right?

19 A Yes, sir.

20 Q Again, as I keep stating with all witnesses, you
21 know, I'm just trying to get to the facts. No tricks or
22 ploys, Doctor, with all sincerity, okay? Dr. Benjamin at the
23 time she did her autopsy had made the determination -- or
24 testimony -- I don't know if you read this in your examination
25 -- you did examine all her files, correct?

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1 A Yes.

2 Q Okay. She had stated at the time of the autopsy,
3 the reason why, or one of the leading factors was that the two
4 key detectives of the homicide were there, telling her, oh, we
5 were told a battery domestic violence was going on, this and
6 that, there was fighting going on, there was a situation. And
7 she says, you know, she ruled that in as part of her
8 determination. So, you're saying --

9 MR. LALLI: Your Honor, I'm going to object as to
10 what Dr. Benjamin said. It's hearsay.

11 MR. O'KEEFE: I'm stating -- Your Honor, again, if I
12 may rebut on that. He just stated clearly that he read all of
13 her files, everything that was put in. And for her to make a
14 determination for him to examine, the cops had to give her
15 that information, Your Honor, with all due respect.

16 THE COURT: That's correct. I mean, but are you
17 asking Dr. Dutra his opinion as to what Dr. Benjamin's opinion
18 was?

19 MR. O'KEEFE: I'll clarify it, if I could, then
20 I'll --

21 THE COURT: Yeah.

22 MR. O'KEEFE: Okay.

23 BY MR. O'KEEFE:

24 Q Basically, it does help a pathologist or coroner
25 doing an autopsy to know whether a DV was going on. It helps

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1 in a situation like this where it's borderline, if a battery
2 was going on or not, correct? In your opinion.

3 MR. LALLI: I object to the insinuation that this is
4 a borderline case, Your Honor.

5 THE COURT: All right, rephrase it.

6 MR. O'KEEFE: Okay.

7 THE COURT: And this -- again, this is your opinion.
8 Not anybody else's.

9 MR. O'KEEFE: Exactly.

10 THE COURT: Right.

11 BY MR. O'KEEFE:

12 Q In your opinion -- in your opinion, if you was (sic)
13 to do an autopsy, would it make a difference in a situation
14 like this if you knew conclusively a battery was going on or
15 not -- a true battery, or not?

16 A I'm always glad to get all of the information, every
17 part of -- as much as I can.

18 Q So, if possibly detectives gave you information that
19 was wrong based on what they were given, it could affect your
20 decision? Yes or no.

21 A That's reasonable.

22 Q I'm trying to be --

23 A Yes.

24 Q -- simple about it.

25 A Sure.

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1 Q Okay. Thank you. You've already agreed she had a
2 high level of intoxication, which would affect anybody that's
3 generally an alcoholic -- you're the doctor, you tell me.
4 They say they bruise very easily, correct, usually? A true
5 alcoholic, or someone on meds, and again, somebody with a
6 situation of hepatitis C and cirrhosis of the liver, they
7 bruise much, much, much easier?

8 A I did not say that.

9 Q No. I'm asking you in your opinion as a doctor.

10 A Oh.

11 Q Do you agree in your opinion that that's true?
12 Because that's knowledge you would need to be able to make
13 proper assessments.

14 A I would not dispute that some alcoholics have some
15 easy bruising. However, the fact that a person has cirrhosis
16 and alcohol onboard, in my opinion, is not an indication that
17 -- in general, I don't believe that in many cases, it causes
18 easy bruising.

19 Q Okay. And I asked your professional -- and I
20 appreciate that was your opinion. Did you know -- did you
21 have any information -- was there shared information that,
22 during your determination -- or did Dr. Benjamin have any
23 information when she made her determination that you viewed to
24 make your opinion -- did you know that she was a cutter,
25 suicide, and depression, and all that? And I mean, acts of

1 self-mutilation with knives? Did you know that?

2 A You're talking about the decedent, right?

3 Q Yes.

4 A That was not known by me, no.

5 Q Do you feel that would be important?

6 A I would certainly appreciate all the information I
7 can get on any case.

8 Q Wow. That's what I thought. Thank you on that.
9 Were you aware that Dr. Benjamin stated that the bruising
10 couldn't be caused -- or it couldn't be determined, any amount
11 of time that there was -- you know, some were darker, some
12 were lighter, and that it could have easily been caused by
13 bumping into things? Were you aware of that testimony? Did
14 you get to view her testimony?

15 A Yes.

16 Q Okay. So, you were aware that she stated quite
17 clearly, this could have been caused easily by being pulled,
18 picked up, dropped? She was aware that -- the statement that
19 was made that she was dropped on the floor, easily could have
20 caused the head (sic).

21 MR. LALLI: Your Honor, I'm going to object. Number
22 one, it's hearsay. Number two, it misstates Dr. Benjamin's
23 opinion.

24 THE COURT: Well, I mean, you've read Dr.
25 Benjamin's --

1 THE WITNESS: Yes.

2 THE COURT: So, if you could answer that, answer it.
3 Overruled.

4 THE WITNESS: I'd agree with her that a contusion is
5 simply that, is a contusion is evidence of blunt force trauma.

6 BY MR. O'KEEFE:

7 Q Okay. Was there any information provided to Dr.
8 Benjamin? Because, see, it's kind of hard here, you not being
9 the original coroner. That's kind of not -- okay. So, I
10 don't know what you viewed to make your decision of what she
11 viewed; do you see what I'm saying with that? I don't know
12 what she had.

13 Was there reports in there that, you know, the cops
14 stormed into the room, and there was confusion, I was on her,
15 beside her, fighting the cops, and there was a possibility
16 they stated they could not dispute for sure that nobody kicked
17 her? These were big men, four or six men that's been --
18 testimony's been switched back and forth. And there was a
19 struggle in an area that, wherever all these people standing,
20 and the fighting was going on, and struggling, and bouncing,
21 and kicking at the feet, and just -- you know.

22 There was some prior testimony that the police said,
23 you know, we can't say for sure. There was definitely -- I'm
24 not stating it was intentional. But it was a major critical
25 situation. And information like that, was that in there that

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1 you got to view to form this opinion, Doctor?

2 A The only testimony that I reviewed was Dr.
3 Benjamin's.

4 Q And you didn't remember seeing anything like that in
5 there? Any of --

6 A No.

7 Q Dr. Benjamin also gave an opinion that accidental
8 death couldn't be ruled out. Would you dispute that?

9 THE COURT: Just a minute. We limited this
10 testimony here to Dr. Dutra's opinion after reviewing all the
11 items. I don't think Mr. Lalli went into any opinion that Dr.
12 Benjamin had; is that correct, Mr. Lalli?

13 MR. LALLI: That's correct, Your Honor.

14 THE COURT: So, are you objecting to this? Or
15 what's --

16 MR. LALLI: I do object.

17 THE COURT: And what's --

18 MR. LALLI: It's hearsay.

19 THE COURT: Well, I guess if you go into that, I'm
20 going to allow Mr. Lalli to go into other areas. You might be
21 opening the door to some other opinions, but that's your
22 decision to make.

23 MR. O'KEEFE: And with all due respect, Your Honor,
24 that's what this trial is about.

25 THE COURT: Listen, and I'm just telling you, if you

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1 want to --

2 MR. O'KEEFE: Let it be heard.

3 THE COURT: -- go into that, I'm going to allow you.

4 But I might have to allow --

5 MR. O'KEEFE: And if he can do --

6 THE COURT: -- Mr. Lalli to go into Dr. Benjamin's
7 opinions also.

8 MR. O'KEEFE: That's --

9 THE COURT: To be fair to everybody.

10 MR. O'KEEFE: And I appreciate that, Your Honor.
11 And you see what I'm trying to -- let it be heard.

12 THE COURT: But I'm telling you what the pitfalls
13 are, here. If you want to go into it, I'm going to allow it.
14 I'm not going to prevent you. But I have to be fair to the
15 State, too. So, it's up to you. You do what you want. So --

16 MR. O'KEEFE: Thank you, Your Honor. And I
17 understand the State has the right to do whatever after
18 [inaudible].

19 THE COURT: Yes.

20 BY MR. O'KEEFE:

21 Q She made a ruling that an accidental wound --
22 accidental wound sustained during the struggle over a knife
23 could not be ruled out. Were you aware of that?

24 A I reviewed all of her testimony.

25 Q Did you see that testimony then, if you read it?

1 A I can't remember those exact words, but I'm sure
2 that I --

3 MR. O'KEEFE: May I approach -- have you approached?
4 Page 106, lines 15 and 19.

5 THE COURT: Are we stipulating this was her
6 testimony at a prior hearing?

7 MR. LALLI: Yes, Your Honor. That was --

8 THE COURT: All right.

9 MR. LALLI: -- her testimony.

10 THE COURT: Go show that to the --

11 MR. O'KEEFE: And this was the original coroner that
12 did --

13 MR. MANINGO: May I approach, Your Honor?

14 THE COURT: Yes.

15 MR. MANINGO: Thank you, sir.

16 THE COURT: Just read that to yourself, Doctor.

17 THE WITNESS: All right.

18 THE COURT: Take your time.

19 THE WITNESS: Okay.

20 THE COURT: All right. Now, ask the question again.

21 BY MR. O'KEEFE:

22 Q So, you agree now after reading that, Dr. Benjamin
23 did make that determination that, from looking at those
24 bruises, they were not caused from somebody grabbing an arm,
25 [inaudible] somebody hurt someone. And that she also ruled

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1 out -- I lost myself; that an accidental wound could not be
2 ruled out from a struggle over the knife. You read that,
3 Doctor?

4 A I read that.

5 Q Okay. Did you read -- do you remember that she also
6 stated that, by looking at the body, you can't completely rule
7 out whether this injury was sustained in an accidental
8 struggle over -- in or over -- is that correct, that she
9 stated that that was correct? It couldn't be ruled -- did you
10 remember reading that?

11 A Would you repeat the question, please?

12 Q You can't completely rule out whether this injury
13 was sustained in an accidental struggle? And she said, that's
14 correct. She was asked a question, and she said it's
15 absolutely correct, you cannot rule out accidental struggle.

16 MR. O'KEEFE: It would probably be better if we may
17 approach and let him read it --

18 THE COURT: Sure.

19 MR. O'KEEFE: -- and see it, because I'm very tired,
20 and I apologize.

21 BY MR. O'KEEFE:

22 Q And I put a little pencil mark, Doctor, to help you
23 key-in -- to help speed.

24 A Okay. Yes.

25 Q So, again, basically, I'm getting at, she stated

1 that you couldn't rule out accidental. Couldn't rule out
2 accidental.

3 A That's what she says.

4 Q That's what she says. Another doctor that did the
5 original autopsy, you know, she has her opinion, too. That
6 was her opinion. You just read it.

7 (Pause in the proceedings)

8 THE COURT: Did you answer that?

9 THE WITNESS: I'm not sure if I understand the
10 question.

11 THE COURT: All right. Ask the question again.

12 BY MR. O'KEEFE:

13 Q Dr. Benjamin again was clearly asked, from looking
14 at the body, you can't completely rule out that this injury was
15 sustained in an accidental struggle, was it? And she said,
16 that's correct, stating that you couldn't rule out the
17 accidental struggle.

18 A Couldn't completely rule out.

19 Q Completely rule out. You couldn't completely rule
20 it out, right. It's a possibility, is basically what she's
21 saying. She did say it.

22 MR. LALLI: Your Honor --

23 THE WITNESS: That's what she said, yes.

24 MR. LALLI: -- I object to any of the
25 characterization of her testimony. I mean --

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1 THE COURT: Yeah. We just want to know exactly what
2 the testimony was.

3 MR. O'KEEFE: Yeah.

4 THE COURT: I'm allowing that.

5 MR. O'KEEFE: Okay.

6 THE COURT: Okay, Doctor --

7 MR. O'KEEFE: Well, I've said it over and --

8 THE COURT: -- you want to answer the question now?

9 THE WITNESS: That's what she said.

10 THE COURT: All right. That's what she said.

11 MR. O'KEEFE: Okay. That's --

12 THE COURT: All right.

13 MR. O'KEEFE: -- what I thought I clearly asked.

14 BY MR. O'KEEFE:

15 Q And I apologize. I'm not trying any tricks, Doctor.
16 I mean it, I'm not.

17 MR. O'KEEFE: Court's indulgence, one second.

18 THE COURT: Sure.

19 (Pause in the proceedings)

20 BY MR. O'KEEFE:

21 Q Okay. She also made another determination besides
22 homicide, couldn't rule out accidental. She stated that,
23 considering the body in this case and the evidence, they were
24 asked -- her own words. They said, can you rule out
25 accidental wounds sustained during the struggle over the

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1 knife?

2 And she said, given those circumstances, I still
3 would not call it an actual accident. But I'd probably call
4 it the homicide, or undetermined. But still, now -- now,
5 we're getting the third option. I mean -- and I'll let you
6 read that.

7 THE COURT: Don't argue. Just, is that correct?
8 Did you remember that testimony?

9 THE WITNESS: I remember her testimony.

10 THE COURT: All right.

11 BY MR. O'KEEFE:

12 Q And do you remember -- okay, so then you've seen
13 that?

14 A Yeah.

15 MR. O'KEEFE: Page 106, if you need it, Mr. Lalli,
16 lines 16 to 20.

17 BY MR. O'KEEFE:

18 Q So, now, my point is, it's clearly -- you read it.
19 And I'm not trying any tricks here. I mean, we're going from,
20 okay, it could be a homicide; okay, you can't rule out
21 accidental; okay, undetermined, because I don't know all the
22 truth.

23 You know, there's so many -- the cops are saying
24 this, the neighbors were saying this, people were saying this.
25 And you don't -- you didn't know that she was suicidal. You

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000892

1 knew about her hep C and all that, though. You didn't know
2 about her mental state, major depression, borderline
3 personality traits; it goes on, and goes on, and goes on,
4 Doctor. She had a history -- it was like this.

5 My point is, can you rule out, from trying to pull a
6 body up and dropping her, and being kicked and stepped on,
7 possibly, could those bruises have appeared from that? These
8 are --

9 A Bodies don't bruise after death. So, all I can say
10 is that the blunt force injuries that I saw occurred within
11 the day preceding her death. And that could be from
12 immediately preceding it, to 24, even up to 48 hours earlier.
13 But they don't bruise after death. So, that's -- contusions
14 are what I saw. And I can date them by their color, which is
15 as good as we can get with forensic pathology.

16 Q Okay. And testimony has been given that, at the
17 time that the injury happened, she was still alive when she
18 was being pulled up, and she was being dropped. Testimony was
19 given her head -- they heard a loud thump.

20 MR. O'KEEFE: Testimony was given, Your Honor,
21 multiple times, they heard a couple big, all the sudden,
22 thumps.

23 BY MR. O'KEEFE:

24 Q Could the injury be consistent with that, someone
25 falling; bam, their head? Could it be consistent with it?

1 Could an injury from someone falling --

2 A The injury on the forehead --

3 Q Yes.

4 A -- could be consistent with a blow to the head, or a
5 fall where the head struck something. Yes.

6 Q Okay. But you didn't know about that testimony,
7 basically, as I -- so, I guess I see what you're saying. You
8 wasn't -- you didn't have that.

9 MR. LALLI: I object to --

10 MR. O'KEEFE: You didn't read that.

11 MR. LALLI: -- the defendant testifying now.

12 THE COURT: Yeah. Just ask questions, and you can
13 argue --

14 MR. O'KEEFE: Okay, Your Honor.

15 THE COURT: -- to the jury later.

16 MR. O'KEEFE: I appreciate it. I'm just trying
17 to --

18 BY MR. O'KEEFE:

19 Q Okay. You did say the depth of the wound was like
20 four and-a-quarter inches, Doctor. You read it in the report,
21 correct?

22 A Yes.

23 Q Okay. It hit no bone?

24 A Right.

25 Q It hit no cartilage?

ROUGH DRAFT TRANSCRIPT

000894

1 A Right.

2 Q Just skin?

3 A Yeah.

4 Q And the blade was eight inches?

5 A Right.

6 Q And it only went in four and-a-quarter inches?

7 A Right.

8 Q Okay.

9 MR. O'KEEFE: I can see what you're saying, Your
10 Honor. I'll save it -- that for argument.

11 THE COURT: Right. Thank you.

12 MR. O'KEEFE: Okay.

13 THE COURT: You just get the facts out, and --

14 BY MR. O'KEEFE:

15 Q Now, if somebody was right-handed, and had a blade
16 -- because the pictures showed -- and I don't want to bring it
17 up again, because they can have it, and they can look at it.
18 The sharp part of the blade was facing back?

19 A Right.

20 Q That rod -- projectory rod is exactly -- her arms
21 were half the size of mine, and she was very flexible.

22 A Right.

23 Q This is, from out to in, and the sharpness is facing
24 that way, Doctor, am I not -- if I had the butcher knife in my
25 hand, would the sharpness not be facing back, just like the

ROUGH DRAFT TRANSCRIPT

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1 wound?

2 A Backwards and upwards, yes.

3 MR. O'KEEFE: No further questions.

4 THE COURT: All right. Anything else, Mr. Lalli?

5 MR. LALLI: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. LALLI:

8 Q Dr. Dutra, when you are making a determination as to
9 the manner of death, can you constrain your analysis to just
10 the body, or must you also look to factors outside of the
11 body?

12 A We often have to look to factors outside the body.

13 Q So, let's talk about that. And let me give you a
14 hypothetical. Let's assume that you examine the body of a
15 decedent, and there is a single gunshot wound to the chest,
16 which caused death.

17 A Right.

18 Q All right? And you knew nothing else about it.

19 A Right.

20 Q That's all the body showed you. Now, an
21 investigator with the police department was able to create a
22 report that you were allowed to review. And you learn that,
23 next to the body, there was a suicide note, and in very close
24 proximity to that body, there was a gun. If you knew those
25 additional facts, what would the manner of death be?

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1 A At that point, I would certainly consider suicide,
2 although I would not base my manner of death entirely on that.

3 Q Sure. But those facts external to the body would
4 lead you to the conclusion of suicide?

5 A It would point me in that direction.

6 Q Point you in that direction. If in the
7 investigation, you learned that there was another individual
8 in the room with the decedent who had a motive to kill that
9 person, and there was evidence in fact that a witness saw that
10 person shoot the decedent, what would you call that?

11 A That would certainly point me in the direction of
12 homicide.

13 Q Those are determinations that you cannot make just
14 from looking at the body alone, correct?

15 A No. We are allowed to study everything, including
16 the police reports, the -- or as our usual practice, and the
17 standard of practice among forensic pathologists is to review
18 everything we can get. Police reports, investigator's
19 reports, do our own autopsy findings. And then, to a
20 reasonable degree of certainty, come to a conclusion, and make
21 a determination on the manner of death.

22 Q Okay. Now, I wasn't going to ask you about Dr.
23 Benjamin, but since the defendant did, I'm going to. You
24 indicate that she prepared a report --

25 A Yes.

ROUGH DRAFT TRANSCRIPT

000897

1 Q -- in this case? Did she reach an opinion as to the
2 cause of death of Victoria Whitmarsh in the report?

3 A Yes.

4 Q What was her opinion as to the cause of death?

5 A The cause of death was a stab wound of the chest.

6 Q Did she list in her report other significant
7 conditions?

8 A Yes, she did.

9 Q What were those --

10 A Well, she --

11 Q -- other significant conditions? And I'm on the
12 second page of her report.

13 A May I refer to it? She's listed, in her words,
14 "cutaneous blunt trauma."

15 Q What is that?

16 A That refers to the contusions of the skin.

17 Q The bruising all over Victoria's body?

18 A Yes.

19 Q She listed that as another significant condition?

20 A Yes.

21 Q And what was Dr. Benjamin's manner of death?

22 A Homicide.

23 Q So, she, like you, believed that this was a
24 homicide?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

000898

1 Q She didn't list that it was an accident?

2 A No.

3 Q She didn't list that it was a suicide?

4 A No.

5 Q Did she testify consistent with that?

6 A Yes.

7 Q All right. Now, Mr. O'Keefe asked you about some
8 testimony. And you reviewed Dr. Benjamin's testimony from
9 prior proceedings in this case?

10 A Yes.

11 MR. LALLI: Mr. O'Keefe, I am on page 106 of her
12 testimony from August 25th, 2010. May I approach the witness?

13 THE COURT: Yes.

14 BY MR. LALLI:

15 Q Dr. Dutra, I've got an electronic version of -- does
16 that appear to be a transcript?

17 A Yes.

18 Q Is this -- does it say 106 at the top there?

19 A Yes.

20 Q And is this some of the -- I don't know if you can
21 say you recognize this transcript as actually having been a
22 transcript that you reviewed.

23 A I reviewed everything. I don't remember this exact
24 page.

25 Q All right.

ROUGH DRAFT TRANSCRIPT

000899

1 A Okay.

2 Q This was a page that Mr. O'Keefe asked you about --
3 with respect to other opinions elicited by Dr. Benjamin. On
4 the page, there are questions and answers, correct?

5 A Yes.

6 Q And he asked you about Dr. Benjamin's testimony, "I
7 would have either -- it would have either been homicide, or
8 undetermined." Do you see that?

9 A Yes.

10 Q Just going up and looking at the question itself,
11 was she asked, "And considering just the body in this case,
12 and not the evidence from the homicide detectives, or anything
13 else;" does that preface the question?

14 A Yes.

15 Q "Considering just the body, can you rule out an
16 accident -- an accidental wound sustain during struggle over a
17 knife?" Is that the question asked?

18 A Yes.

19 Q And her answer is, "Given those circumstances, I
20 probably still would not have called that an accident." Is
21 that what her testimony was?

22 A That's what she says.

23 Q That's what the transcript says?

24 A Yes.

25 Q "I would have either -- it would have either been

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1 homicide, or undetermined."

2 A Correct.

3 Q Right? That answer presumes that Dr. Benjamin had
4 not looked at those circumstances outside the body?

5 A Yes.

6 Q Those other facts?

7 A Right.

8 Q Which, as a forensic pathologist, you must do?

9 A As our standard of practice.

10 Q And that was a question -- I don't know if you
11 realize it was a question by the defense attorney.

12 A Okay.

13 MR. LALLI: Nothing else, Your Honor.

14 THE COURT: All right. Anything else, then? Does
15 that complete the testimony?

16 MR. O'KEEFE: Yes. Recross just for a second, Your
17 Honor.

18 RECROSS-EXAMINATION

19 BY MR. O'KEEFE:

20 Q Again, Dr. Dutra, you stated again that Dr. Benjamin
21 stated she didn't have all the facts also. She said -- stated
22 it on this information. Just on this information, she made
23 that -- just on this. My whole thing is, do you feel -- and
24 you testified to this just a minute ago, that you stated you
25 feel all evidence that you can gather together to make a

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000901

1 proper determination is necessary, right?

2 A Yes.

3 Q That would then be the alleged suspect, and the
4 alleged victim, their suicidal histories, if they're mentally
5 ill, if they're intoxicated, under any drugs. You would want
6 proper photos of any defensive wounds, any offensive wounds;
7 you know what I'm trying to get at?

8 A Yes.

9 Q You want everything?

10 A [Inaudible].

11 Q You just don't want specific little -- to fit my
12 story. I mean, you want everything, Doctor, to make a proper
13 determination, right?

14 A Correct.

15 Q Okay. No one's disputing -- I'm not disputing the
16 knife caused the wound.

17 MR. LALLI: I'm going to object, Your Honor, to the
18 defendant testifying.

19 THE COURT: All right. Just ask questions. Just
20 ask another question.

21 BY MR. O'KEEFE:

22 Q The wound caused the death?

23 A Yes.

24 Q The case is about, was it an intentional, or an
25 accidental; that's what we're trying to get to.

1 A Yes.

2 Q So, you need all information. Again, the suspect's
3 condition, if he was extremely intoxicated, couldn't even
4 move, sloppy, you need everything, right?

5 MR. LALLI: I'm going to object. That assumes facts
6 not in evidence, Your Honor.

7 THE COURT: Yeah. Just -- I think you made your
8 point, you need all evidence. But that will be sustained.

9 THE WITNESS: Correct.

10 BY MR. O'KEEFE:

11 Q But all evidence is needed?

12 A Right.

13 Q You need really everything? You would have to start
14 again -- and I must say this. You would need -- if the
15 testimony from the neighbors, what they said, because there's
16 stuff that you haven't heard. There's a lot of testimony that
17 disputes whether -- that stated a battery wasn't going on,
18 there was no fighting. You never heard that. There's
19 testimony that you never heard, Doctor.

20 MR. O'KEEFE: This is imperative, Your Honor.

21 BY MR. O'KEEFE:

22 Q They said there was no shouting, no fighting, no --
23 we didn't hear anything. The 9-11 calls, you should have
24 heard that. That should have been supplied to you. The 9-11,
25 and we will hear it, says -- they called in, and they say

ROUGH DRAFT TRANSCRIPT

000903

1 right on it, and they can't hide it; nobody's fighting, what
2 are you talking about?

3 Now, they heard, we're a close-knit neighborhood.
4 We all know each other. We're so close together, and you
5 could hear someone fart, excuse me, across the balcony. Now,
6 if somebody was loud, like they're claiming I am, and
7 screaming, and I'm a killer and all this, I've got a motive
8 and intent, I want to get her; you need to know that?

9 MR. LALLI: Your Honor, I object to this rant --

10 THE COURT: Yeah, I got to stop you.

11 MR. LALLI: -- by the defendant.

12 THE COURT: I got to stop you. You're just going
13 on, and on, and on. There's no questions there. You asked
14 your question. That's argument to the jury. You --

15 MR. O'KEEFE: Okay.

16 THE COURT: -- [inaudible] jury, they didn't have
17 all of that.

18 MR. O'KEEFE: I apologize.

19 THE COURT: But I can't let you argue --

20 MR. O'KEEFE: All right.

21 BY MR. O'KEEFE:

22 Q You -- there's just -- you -- again, and I'm -- to
23 cap it up. Last time, Doctor. Please, this is important. To
24 make a really, really -- the best decision possible, I do
25 believe that you stated, Doctor, forgive me, that all the

1 evidence you could get concerning a situation is relative,
2 right? It's very good to have all the evidence you could have
3 to make a determination, right?

4 A Yeah.

5 Q Thank you so much, Doctor. And I -- I mean nothing
6 -- thank you.

7 THE COURT: Anything else, Mr. Lalli?

8 MR. LALLI: No, Your Honor.

9 THE COURT: Thank you very much, Doctor. You can --

10 THE MARSHAL: We have a question, Your Honor.

11 THE COURT: -- go about your business.

12 THE MARSHAL: We have a question.

13 THE COURT: Oh, no. [Inaudible].

14 (Off-record bench conference)

15 THE COURT: All right. There will be no objection
16 to Juror number 1's questions. So, I'm going to read them,
17 and you see if you can answer them.

18 "Is there any way she could have reached the wound
19 site herself? Could she have stabbed herself at this angle,
20 while having the knife in her hand, accidentally?" Could you
21 answer that?

22 THE WITNESS: I think that, mechanistically, it's
23 extremely difficult for several reasons. I don't know her
24 handedness, whether she was left or right-handed. But I think
25 that with her right hand, it would put the hand in such a

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000905

1 position that you couldn't generate enough force with your
2 triceps muscle to extend your elbow to push down. So, I don't
3 think it could be done with a right hand.

4 If the decedent had positioned the knife with the
5 left hand up, here again, just -- she'd have to use her
6 shoulder adductors, the muscles that pull the shoulder down,
7 and kind of maybe push -- in other words, it would be very --
8 I cannot say that it is physically impossible, but I could say
9 that it is biomechanically close to being impossible for a
10 person to stab themselves with this trajectory, in this
11 position.

12 I just -- I knowing what I know about the human
13 body, I don't see that it's an intentional stab. And I
14 suppose that -- since the question included accidental --

15 THE COURT: "Is there any way she could have reached
16 the wound site herself? Could she have stabbed herself at
17 this angle, while having the knife in her hand" --

18 THE WITNESS: I --

19 THE COURT: -- and then it's a quotation mark, or a
20 parenthesis, "Accidentally."

21 THE WITNESS: I suppose if someone positioned the
22 knife, and then pushed themselves against an object. But here
23 again, it's a simple in and out wound. And I think if
24 somebody is pushing against something to get the knife to go
25 in, they're going to see secondary cutting marks around the

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1 knife edge part of the wound. So, I'm not going to say it's
2 impossible, but I'm going to say -- I would say that it's
3 improbable.

4 THE COURT: And the next section, "Is the entrance
5 wound too smooth to be an accidental stabbing? Would it
6 likely be more jagged if accidental?"

7 THE WITNESS: I think that's what I just said. I
8 think that if it had been accidental, there would be more
9 torsional element to the -- which would cause some additional
10 cutting of the skin, where the -- on the sharp edge -- or
11 sharp end of that wound.

12 THE COURT: And the next, "How much force required
13 to make this wound? How about to go up to the handle?"

14 THE WITNESS: We do know that most of the force --
15 in a wound that doesn't go into bone, most of the force is
16 exerted to get through the skin. And different people have
17 different amounts of connective tissue in the skin, so that it
18 -- there are so many elements involved. There's the sharpness
19 and the pointedness of the blade. There's the thickness of
20 the person's skin.

21 But basically, once you get through the skin, the
22 soft tissues have very little resistance. You can cut right
23 through muscle, and the diaphragm is just a muscle. The
24 cirrhotic liver, because of the scar tissue, would have
25 provided some resistance.

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1 But basically, how much force is necessary; I would
2 hesitate that -- to put that in pounds, or some number. But
3 it would take -- it would take a significant amount of force,
4 but not a huge amount of force. I hope I'm not being too
5 vague.

6 But there are studies that have been done to see how
7 much force in actual pounds you need to get through the skin.
8 But as I said, it's very variable, and depends on the
9 thickness of the person's skin, and -- but -- and the short
10 answer is, once you get through the skin, there's very little
11 resistance to the passage of the blade.

12 THE COURT: And finally, "At what point in the
13 bleeding out process does bruising stop?"

14 THE WITNESS: Bruising basically stops when blood
15 circulation stops. So, what happens is, as long as you are
16 maintaining a pulse -- because what bruising is, is you have
17 damaged and broken some -- the capillaries in the skin, so
18 they leak the blood into the tissue.

19 And once the blood stops flowing, once the heart
20 stops beating is really when you stop bruising. So, as long
21 as your heart is beating -- once your heart stops beating,
22 that's basically when you stop showing evidence of bleeding
23 into the skin from a contusion.

24 THE COURT: All right. So, without objections from
25 either party, these questions were read. Any further

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1 question?

2 MR. LALLI: No, Your Honor.

3 THE COURT: Any further question?

4 MR. O'KEEFE: No, Your Honor.

5 THE COURT: All right.

6 THE MARSHAL: One more question, Your Honor.

7 MR. O'KEEFE: Do you want us to approach, Your
8 Honor?

9 THE COURT: No. Oh, I'm sorry. Yes, since there's
10 another question.

11 (Off-record bench conference)

12 THE COURT: All right. There being no objections to
13 this -- this is Juror number 8. I'm going to put Juror number
14 8 on the note, just for the record, and this will be part of
15 the record.

16 Where -- excuse me. "Was there any evidence of her
17 mouth being covered, or contusions around the mouth?"

18 MR. LALLI: Your Honor, if I could just put up
19 State's Exhibit number 81.

20 THE COURT: Why don't you do that.

21 THE WITNESS: Okay. I didn't -- I don't recall
22 anything in the report, or in my examination of the
23 photographs of the body, seeing anything that indicated that
24 the mouth had been covered, or --.

25 THE COURT: Okay. The next question, "Could you

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1 please state again how long you feel it took for this person
2 to die?"

3 THE WITNESS: Well, I can state with some certainty
4 that it's not an immediate death. It takes time for the blood
5 to flow out of the injured vessels. And it takes a little bit
6 of time for the lung to collapse; it depends on how quickly
7 the air is pulled into the chest wound.

8 But in general, I'd fall back on what I said
9 earlier, that I would estimate that it took about 10 to 30
10 minutes for her to -- after the stab wound, for her to
11 actually die, and her heart to stop beating.

12 THE COURT: All right. Any further questions?

13 MR. LALLI: No, Your Honor.

14 MR. O'KEEFE: Yes, Your Honor, if I could have one
15 question. And I don't even need to --

16 FURTHER RECROSS-EXAMINATION

17 BY MR. O'KEEFE:

18 Q Dr. Dutra, did you see the testimony -- and I'm sure
19 Mr. Lalli will -- is very aware of this, that Dr. Benjamin
20 stated with her hep C and her cirrhosis of the liver, she
21 would have bled out rather quickly? Do you remember seeing
22 that in forming your opinion?

23 A I don't remember her exact words as to that. As I
24 read through the testimony, I found myself to be a little less
25 in agreement with Dr. Benjamin as to the amount of -- or the

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1 injury to the coagulation system that goes along with
2 cirrhosis and hepatitis C.

3 I found that she had some -- but, in general, I
4 think that was a -- not a major disagreement, just one of
5 degree of opinion. And it's a very variable thing anyway.
6 Some people are different.

7 Q Thank you, Doctor.

8 THE COURT: Any others?

9 MR. LALLI: Just one follow up.

10 FURTHER REDIRECT EXAMINATION

11 BY MR. LALLI:

12 Q Dr. Dutra, you indicated for us that your background
13 -- or you have substantial experience in -- as a hospital
14 pathologist; is that correct?

15 A I -- yeah. Yes.

16 Q Do you believe that that background makes you better
17 suited to assess the cirrhotic nature of Victoria Whitmarsh's
18 body, than was Dr. Benjamin?

19 A I respect Dr. Benjamin. And I have found that in
20 cases where I've reviewed of hers, I've never been in any
21 substantial disagreement with her. But I'm boarded in
22 blood-banking and transfusion medicine. And part of
23 transfusion medicine is study of coagulation, and being able
24 to answer clinical questions regarding coagulopathies. So, I
25 do think that I have a little bit more experience in that one

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1 small area than she does.

2 Q All right. Thank you.

3 MR. LALLI: Nothing else.

4 THE COURT: All right.

5 MR. O'KEEFE: Well, I have a recross.

6 FURTHER RECROSS-EXAMINATION

7 BY MR. O'KEEFE:

8 Q Doctor, then you just stated quite clearly, your
9 specialty is more medicine and alcohol, you know, in medical
10 situations like this. If someone has prolonged -- for years
11 used excessive alcohol and medication, pills, prescription
12 pills, does that not thin the blood, and therefore, possibly
13 lead to early bleeding or quicker bleeding?

14 A You can't tell from looking at someone. Certainly,
15 the only real goal standard would be some blood tests that
16 would evaluate the coagulation system. And those -- I have
17 seen no record of those having been done on her. But from the
18 fact that she's not in liver failure, she's not jaundiced, and
19 is -- well, she does have cirrhosis, and the alcohol in her
20 system.

21 I -- my personal opinion is, I don't think that it
22 significantly affected her coagulation system, but I can't
23 deny that it could have had some effect.

24 Q Okay. And I appreciate that. That's what we're
25 here --

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1 THE COURT: Anything else?

2 MR. O'KEEFE: We're trying to get as much --

3 THE COURT: Anything else?

4 MR. LALLI: No, Your Honor.

5 THE COURT: Anything else? Anything else?

6 UNKNOWN JUROR: We're good over here.

7 THE COURT: All right.

8 Don't converse among yourselves, or anyone else, on
9 any subject connected with the trial; read, watch, or listen
10 to any report of, or commentary on the trial, by any person
11 connected with the trial, or by any medium of information,
12 including, without limitation, newspapers, television, radio.
13 Don't form or express any opinion on the trial until the cause
14 is finally submitted to you.

15 We'll see you in about an hour and 15 minutes. And
16 we're going to work until about 4:15, 4:30. Thank you,
17 Doctor.

18 (Outside the presence of the jury)

19 THE COURT: All right. Outside the presence of the
20 jury. Do you have some -- who are you going to call this
21 afternoon?

22 MR. LALLI: Who are we calling next, Your Honor?

23 THE COURT: Yeah, when we --

24 MR. LALLI: We're going to be --

25 THE COURT: -- get back from lunch.

ROUGH DRAFT TRANSCRIPT

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1 MR. LALLI: We will be calling Jocelyn Maldonado,
2 who is the crime scene analyst who will be somewhat lengthy.
3 We have Edward Guenther, the latent print examiner. And we
4 have Jennifer Bas, the DNA analyst. Quite frankly, I'm not
5 sure that we're going to get much further than that.

6 THE COURT: Well, that's fine. I don't want to get
7 any -- you know, I don't want people waiting around. I'm
8 going to work until about 4:15 to accommodate Mr. Maningo, so.

9 MR. MANINGO: Thank you, Your Honor.

10 MR. LALLI: I'm anticipating, you know, in that
11 time, maybe three witnesses.

12 THE COURT: Well, it's up to you. But if you have
13 -- I'm going to have to recess without finishing them up; you
14 understand that, right?

15 MR. LALLI: No, I understand that. Maybe we'll just
16 go with the crime scene analyst and the latent print examiner,
17 call everyone off. Just -- and we -- that may -- we may
18 conclude before --

19 THE COURT: That's fine, let's do that.

20 MR. LALLI: -- 4:15 or so, but I --

21 THE COURT: Let's do -- just to be on the safe
22 side.

23 MR. LALLI: Understood.

24 THE COURT: It's very important.

25 MR. LALLI: Very good.

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1 THE COURT: All right.

2 MR. LALLI: We can do that. Thank you, Your Honor.

3 THE COURT: So, I'll just -- I just want to make a
4 record on, we did have discussions at the bench. And Mr.
5 O'Keefe objected to Dr. Timothy Dutra's testimony, because he
6 didn't do the original autopsy, he had a right to confront
7 witnesses, and he wasn't there. And but -- so, I just wanted
8 to make a record of that. Do you want to say anything
9 regarding that?

10 MR. O'KEEFE: Yeah, Your Honor. I just feel -- just
11 to protect myself when I --

12 THE COURT: Um-hum.

13 MR. O'KEEFE: Thank you, Your Honor. I do feel it's
14 a violation -- of course, I have to state for protection, the
15 Sixth Amendment Right confrontational clause, my due process,
16 Fourteenth Amendment, for -- you know. I do believe as to
17 Crawford vs. Mendez, they stated that the true -- the United
18 States Supreme Court had a real problem, unless the original
19 coroner, or testing was done by the person that did it.

20 And I'm just trying to state that, you know, she did
21 the examination that was closer here. It's been years. You
22 know, I just wanted to make that objection.

23 THE COURT: Sure. Mr. --

24 MR. LALLI: Your Honor, I was very careful to only
25 elicit Dr. Dutra's opinions, which are proper. It's my

ROUGH DRAFT TRANSCRIPT

000915

1 position -- and you know, the appellate courts, if we ever get
2 to an appellate review in this case, they can make their own
3 determination.

4 But it's my position that in the defendant then
5 asking Dr. Dutra that -- for Dr. Benjamin's opinions, not only
6 did he open the door to me then going into those areas, but he
7 also waived any objection that he had to Dr. Dutra testifying,
8 because he did exactly what we're not allowed to do.

9 And I understand the Court allowed him to do it, and
10 that was a strategic decision that the Court allowed the
11 defendant to make. But it's my position, he did exactly what
12 we're not supposed to do. He violated the confrontation
13 clause, and he now cannot raise that claim on appeal. But
14 that's something that an appellate court --

15 THE COURT: Yeah.

16 MR. LALLI: -- will determine.

17 THE COURT: Well, again, we had a conference at the
18 bench. He objected. And we did talk about, you're just going
19 to go to the opinions of Dr. Dutra, we're not going to get to
20 any opinions of Dr. Benjamin; but the defendant insisted that
21 he wants to get opinions of Dr. Benjamin.

22 And I did warn him that if he did do that, which is
23 -- you know, he's opening the door to redirect examination
24 regarding Dr. Benjamin.

25 MR. O'KEEFE: And --

1 THE COURT: And he said he understood, and took the
2 risk. And so, everything's fine. I mean, I --

3 MR. O'KEEFE: And if I may, Your Honor.

4 THE COURT: The record is what it is.

5 MR. O'KEEFE: And if I may, Your Honor. Thank you;
6 you did. I would stipulate to that on the record. But that
7 was after I was denied. I objected properly and timely before
8 you overruled and allowed him to do that.

9 THE COURT: That's correct.

10 MR. O'KEEFE: I did make the objection beforehand.
11 And once -- and he knew beforehand that he should have got Dr.
12 Benjamin, since he wanted to prosecute me on that case. He's
13 very trained. He knows he should have got the original
14 coroner. The law states that clear. I only went into that
15 area for the record after I was denied on my objection.

16 THE COURT: Absolutely.

17 MR. O'KEEFE: God bless you, Your Honor.

18 THE COURT: Let the record reflect -- absolutely.
19 All right. We'll see you back.

20 MR. MANINGO: All right. We'll see you after lunch,
21 Brian.

22 MR. O'KEEFE: Okay, thank you.

23 MR. LALLI: Back at about 2:30, Your Honor?

24 THE COURT: Something like -- well, I said -- I said
25 an hour. But yeah, that's fine.

ROUGH DRAFT TRANSCRIPT

000917

1 (Court recessed at 1:14 p.m. until 2:29 p.m.)

2 (Within the presence of the jury panel)

3 (Pause in the proceedings)

4 THE MARSHAL: You may be seated, ladies and
5 gentlemen. Let's make sure our cell phones are turned off,
6 please.

7 (Pause in the proceedings)

8 THE MARSHAL: All right. Let's come to order,
9 please. Make sure all cell phones are turned off.

10 THE COURT: All right. Parties, stipulate to the
11 presence of the jury?

12 MR. LALLI: Yes, Your Honor.

13 MR. O'KEEFE: Yes, Your Honor.

14 THE COURT: All right. Call your next witness.

15 MR. LALLI: Your Honor, the State calls Jocelyn
16 Maldonado.

17 THE MARSHAL: Please remain standing, and raise your
18 right hand, and face the clerk.

19 JOCELYN MALDONADO, STATE'S WITNESS, SWORN

20 THE MARSHAL: If you would have a seat, and slide up
21 to the microphone. And state and spell your name for the
22 record.

23 THE WITNESS: Jocelyn, J-o-c-e-l-y-n. Maldonado,
24 M-a-l-d-o-n-a-d-o.

25 DIRECT EXAMINATION

ROUGH DRAFT TRANSCRIPT

000918

1 BY MR. LALLI:

2 Q Ms. Maldonado, how are you employed?

3 A I am a crime scene analyst with the Las Vegas
4 Metropolitan Police Department.

5 Q Were you working in that capacity back on November
6 6th of 2008?

7 A Yes.

8 Q Directing your attention to the very early morning
9 hours of that day, did you respond to an address of 5001 El
10 Parque Avenue, unit number C35?

11 A Yes.

12 Q What was your purpose in responding to that
13 location?

14 A It was for a death or homicide investigation.

15 Q Were you called to document and process the crime
16 scene?

17 A Yes, I was.

18 Q All right. I'm going to show you what we've marked
19 as State's Exhibit number 1. What is this?

20 A This is a crime scene diagram that I completed in
21 the CAD program, which is a computer program we use for doing
22 crime scene diagrams.

23 Q All right. You actually created this diagram?

24 A Yes, I did.

25 Q What I'd like to do is zoom-in on some things.

ROUGH DRAFT TRANSCRIPT

000919

1 There's a number 3 there; do you see that?

2 A Yes.

3 Q And if I were to scooch it over a little bit, now we
4 see other numbers. We see a number 6, a number 5, a number 4;
5 do you see that?

6 A Yes, I do.

7 Q What do those various numbers -- just in general,
8 not specifically in this case. But what do the various
9 numbers represent?

10 A Those represent items of evidence that were
11 recovered at the scene, or documented at the scene.

12 Q And then, if we take State's Exhibit number 1, and
13 we move down a little bit, we have a legend; is that correct?

14 A Yes.

15 Q How does the legend correspond to the various
16 numbers that we see?

17 A The number in the legend corresponds to the number
18 in the diagram, and provides a description of that particular
19 item of evidence.

20 Q So, one of the ways that you document a crime scene
21 is by creating a crime scene diagram?

22 A Yes.

23 Q And it puts in perspective where various items of
24 evidence are located within a scene?

25 A Yes, it does.

ROUGH DRAFT TRANSCRIPT

000920

1 Q When you go to a crime scene, do you normally -- and
2 let's use the case of a homicide investigation. Do you
3 usually go by yourself, or is it common for Metro to send
4 teams of crime scene analysts out?

5 A For a homicide, it's common for the department to
6 send a teams out.

7 Q And can you explain generally how that works? How
8 does the team go about processing a particular scene?

9 A Usually, at least two crime scene analysts will
10 respond to the scene, along with a crime scene analyst
11 supervisor. And the supervisor will usually decide what
12 duties and responsibilities each crime scene analyst is
13 responsible for, for that particular scene. So, we kind of
14 divide up the work amongst the crime scene analysts that are
15 there.

16 Q Was there a crime scene supervisor on this
17 particular scene?

18 A Yes.

19 Q Who was that?

20 A That was Gary Reed (phonetic).

21 Q Were you teamed up with other crime scene analysts
22 to process this scene?

23 A Yes, I was.

24 Q Who were you teamed up with?

25 A Chelsea Collins.

ROUGH DRAFT TRANSCRIPT

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1 Q Okay. And with respect to Ms. Collins, what were
2 her responsibilities at the scene?

3 A Her responsibilities were to take photographs of the
4 scene, and to generate a crime scene investigation report.

5 Q And your responsibilities?

6 A My responsibilities were to collect the evidence,
7 impound the evidence, construct a sketch of the scene, and
8 also, the computer-generated diagram.

9 Q And that diagram obviously is State's Exhibit number
10 1?

11 A Yes.

12 MR. LALLI: May I approach the witness, Your Honor?

13 THE COURT: Yeah.

14 BY MR. LALLI:

15 Q Ms. Maldonado, I'm going to show you a number of
16 photographs. And what I'd like you to do, because I think
17 there may be some gaps in here, I'd like you to look at these.
18 And as you're looking at them, as you're flipping through
19 them, just state for the record what exhibit number is on the
20 photo.

21 A Okay.

22 Q Do you see what I mean?

23 A For each individual photo?

24 Q Yes. Just as you're looking at those, have a peek
25 at them, and then just state for the record what exhibit

1 number it is.

2 A Exhibit number 10. Number 8.

3 Q And if you would, try not to show the jury until
4 they're admitted into evidence, if that's possible.

5 A Number 7. Number 11. Number 12. Number 13.

6 Number 14. Number 15. Number 16. Number 17. Number 18.

7 Number 19. Number 20. Number 21. Number 24. Number 25.

8 Number 26. Number 27. Number 28. Number 29. Number 30.

9 Number 31. Number 32. Number 33. Number 34.

10 Number 35. Number 36. Number 37. Number 38.

11 Number 39. Number 40. Number 41. Number 42. Number 43.

12 Number 44. Number 45. Number 46. Number 47. Number 48.

13 Number 49. Number 50. Number 51. Number 52. Number 53.

14 Number 54. Number 55. Number 56. Number 57. And number
15 132.

16 Q Are those fair and accurate depictions of the crime
17 scene that you observed?

18 A Yes.

19 MR. LALLI: Your Honor, I would move for the
20 admission of those exhibits.

21 THE COURT: I don't remember the exhibits. But --
22 do you remember the exhibits, Ms. Clerk, that they just read?

23 THE CLERK: Yes.

24 THE COURT: All right. Then, any objection?

25 MR. O'KEEFE: No objection, Your Honor.

ROUGH DRAFT TRANSCRIPT

000923

1 THE COURT: So, they will be admitted, all right?
2 (Exhibits 7; 11 through 21; 24 through 57, and 132 are
3 admitted)

4 THE COURT: Will you put that on my list, too, Ms.
5 Clerk, when you get a chance?

6 THE CLERK: Okay.

7 THE COURT: All right.

8 BY MR. LALLI:

9 Q Okay. Can you indicate on State's Exhibit number 1
10 where the kitchen area of this apartment is?

11 A Yes. Would you like me to circle it?

12 Q Yes, if you could. Now, I'd like to show you
13 State's Exhibit number 5. What are we seeing there?

14 A That is a photograph from the living room area,
15 looking into the kitchen.

16 Q Can you describe some of the items that we're
17 seeing? For instance, there's a couch. Is there anything
18 unique about the couch?

19 A Yes. It appeared that the couch was made up as a
20 bed. There were bedding items on top of the couch.

21 Q What are we seeing in State's Exhibit number 10?

22 A This is a photograph of the kitchen area.

23 Q This is State's Exhibit number 11.

24 A That's another photograph of the kitchen.

25 Q And then, if we continue to pan, we see Exhibit

ROUGH DRAFT TRANSCRIPT

000924

1 number 12?

2 A Another photograph of the kitchen, and part of the
3 living room.

4 Q Now, I'm going to show you State's Exhibit number
5 13, and then I will go to Exhibit number 14. What is that?

6 A That is a photograph of the knife block that was
7 located on top of the kitchen counter.

8 Q And does there appear to be a vacant slot?

9 A Yes, there does. There is.

10 Q All right. How many bathrooms are there in this
11 unit?

12 A There were two bathrooms.

13 Q One off the master -- off the master bedroom?

14 A Yes.

15 Q And can you just indicate on the diagram where the
16 other bathroom is?

17 A It was located in the hallway.

18 Q And if I show you State's Exhibit number 15, what is
19 that?

20 A That is a photograph of the bathroom located in the
21 hallway.

22 Q And is -- State's Exhibit number 16?

23 A A photograph of the counter top, or the sink basin
24 in the bathroom in the hallway.

25 Q How many bedrooms were in this unit?

ROUGH DRAFT TRANSCRIPT

000925

1 A There were two bedrooms in the unit.

2 Q In addition to the master bedroom, which we've
3 talked a lot about during the course of the trial, can you
4 indicate where the other bedroom is?

5 A There was the southwest bedroom.

6 Q What are we seeing in State's Exhibit number 17?

7 A That's a photograph from the doorway of the
8 southwest bedroom, looking into the bedroom.

9 Q Number 18?

10 A A photograph of inside the southwest bedroom.

11 Q And number 19?

12 A Another photograph of inside the southwest bedroom.

13 Q Now, I'm going to show you State's Exhibit number
14 21. A little difficult to see. Let me throw the lamp on.
15 Can you -- I'm not sure if you can see what that is.

16 A Yes, I can see that.

17 Q Okay, what is that?

18 A That's a photograph from the hallway, looking
19 through the doorway into the northwest master bedroom.

20 Q What are we seeing in State's Exhibit number 25?

21 A That is a photograph of the victim on the floor in
22 the northwest master bedroom.

23 Q What about State's Exhibit number 26?

24 A That is a photograph of the bed located in the
25 northwest master bedroom.

ROUGH DRAFT TRANSCRIPT

000926

1 Q And what specifically are we seeing in State's
2 Exhibit number 27?

3 A That's a closer view of the bed in the northwest
4 master bedroom, including some of the items that are located
5 on top of the bed.

6 Q What are those items?

7 A There were pillows with pillow cases, there was a
8 pillow without a pillow case, there was a loose pillow case,
9 there was a knife, and there was a sock on top of the bed.

10 Q With respect to the knife and the -- well, was the
11 knife impounded?

12 A Yes, it was.

13 Q What about the bedding? Did you impound the
14 bedding?

15 A The loose pillow case that's covering the knife was
16 impounded. The top sheet, which the knife is located on top
17 of, was impounded. And the sheet underneath the top sheet was
18 also impounded. And the sock was also impounded.

19 Q Ms. Maldonado, I'm going to show you what we've
20 marked as State's proposed 127 for identification purposes.
21 Do you recognize that?

22 A Yes, I do.

23 Q What is it?

24 A This is the package that I impounded the two sheets
25 from the bed in the northwest master bedroom.

ROUGH DRAFT TRANSCRIPT

000927

1 MR. LALLI: Your Honor, I'd move for the admission
2 of State's proposed 127.

3 THE COURT: Any objection?

4 MR. O'KEEFE: No, Your Honor.

5 THE COURT: It will be admitted.

6 (Exhibit 127 is admitted)

7 BY MR. LALLI:

8 Q What are we seeing in State's Exhibit number 29?

9 A That is a photograph of the light switch located on
10 the south wall in the northwest master bedroom.

11 Q And if we look at State's Exhibit number 26, does
12 that give us some perspective on the light switch?

13 A Yes, it does.

14 Q Can you just circle the light switch --

15 A Yes.

16 Q -- in this exhibit? And then, can you describe for
17 us, going back to State's Exhibit number 29, what the
18 substance is on top of the -- or to the top left of the light
19 switch?

20 A That's apparent blood.

21 Q Did you make any effort to preserve that, or to test
22 that?

23 A I did make an effort to preserve that, yes; when I
24 collected it.

25 Q Okay. Can you explain for us how you collect that?

ROUGH DRAFT TRANSCRIPT

600928

1 A I always wear gloves when handling or collecting
2 evidence, especially biological fluids. I used a sterile
3 cotton-tipped swab. I applied one drop of distilled water to
4 the tip of the swab. I then touch the stain to collect part
5 of the sample onto the swab.

6 I placed the wooden part of the swab through a
7 little plastic container, which has a cap on it and two holes
8 in it, so the wet part of the swab goes in the plastic cap so
9 it's preserved, and it can also air-dry because of the two
10 little holes.

11 That swab is then placed into a white biological
12 evidence envelope, where the pertinent information regarding
13 the case is filled out, the event number, the item number, my
14 initials, my personnel number.

15 And that small white envelope is then placed into a
16 manilla envelope with a label identifying, again, the event
17 number, the description, my personnel number. That's placed
18 on the outside of the manilla envelope, which is then sealed
19 with red evidence tape, which I initial and date.

20 Q I'm going to show you State's Exhibit number 31.
21 What are we seeing there?

22 A That's a photograph of the northwest master bedroom,
23 just a different angle.

24 Q And if you look to the right of the bed there, down
25 on the ground, does there appear to be an object?

ROUGH DRAFT TRANSCRIPT

000929

1 A Yes, there does.

2 Q Do you know what that is?

3 A That is a jacket.

4 Q I'm going to show you State's Exhibit number 30.

5 What is that?

6 A That's a photograph of a black jacket.

7 Q And there appears to be some white objects down near

8 the jacket. What is that?

9 A That is a shoe. And also, the other white items are

10 slats from the vertical blinds.

11 Q So, if we go back and look at State's Exhibit number

12 31, does it appear as though there are slats missing from the

13 blinds there?

14 A Yes, it does.

15 Q And those slats were on the ground around the jacket

16 that we're seeing there?

17 A Yes.

18 Q All right. I'm going to show you State's Exhibit

19 number 31. What's that?

20 A That is another photograph of the northwest master

21 bedroom.

22 Q Does it show closet doors in the background?

23 A Yes, it does.

24 Q And I'm going to show you State's Exhibit number 33.

25 Does that also show closet doors?

ROUGH DRAFT TRANSCRIPT

000930

1 A Yes, it does.

2 Q Can you describe anything unusual about those doors
3 for us?

4 A The center door and the right door appear to be
5 somewhat off the track at the top. The rollers were not
6 completely attached at the top.

7 Q In the crime scene report, it indicates that there
8 appeared to have been a disturbance in this bedroom. Was that
9 the observation that you had as well?

10 A Yes.

11 Q Based upon what?

12 A Based upon the doors, the closet doors being off the
13 track at the top. Based upon the fact that the vertical blind
14 slats were located on the floor instead of hanging from the
15 blinds. And also, some of the bedding appeared to be somewhat
16 disturbed.

17 Q Okay. I'm going to show you State's Exhibit number
18 34. What's that?

19 A That is a photograph from inside the northwest
20 master bedroom, looking into the master bathroom.

21 Q I'm going to show you State's Exhibit number 35.
22 What are we seeing there?

23 A That is a photograph of the floor area inside the
24 master bathroom.

25 Q And if I show you State's Exhibit number 36, what

ROUGH DRAFT TRANSCRIPT

000931

1 are we looking at there?

2 A That is a pair of black stretch pants with white
3 piping, with apparent blood on them, on the floor inside the
4 master bathroom.

5 Q Now, I don't know if you can tell from that
6 photograph. Does it appear as though they were folded over,
7 and put down next to the hamper there?

8 A Yes, it does.

9 Q With respect to those stretch pants, did you impound
10 those?

11 A Yes, I did.

12 Q Ms. Maldonado, I'm going to show you what we've
13 marked as State's proposed 126 for identification purposes.
14 Do you know what that is?

15 A Yes, I do.

16 Q What is it?

17 A That is a package containing one pair of black
18 stretch pants, size small, with white piping on the pant legs,
19 and apparent blood.

20 Q The pants that are depicted in the photograph on the
21 scene --

22 A Yes.

23 Q -- on the -- on the viewer?

24 A Yes.

25 MR. LALLI: Your Honor, move for the admission of

ROUGH DRAFT TRANSCRIPT

000932

1 State's proposed 126.

2 THE COURT: Any objection?

3 MR. O'KEEFE: No objection, Your Honor.

4 THE COURT: It will be admitted.

5 (Exhibit 126 is admitted)

6 BY MR. LALLI:

7 Q Now, Ms. Maldonado, what I want to do is I want to
8 show the jury the bag. And you talked about certain
9 information that's contained on the bag, how the bags are
10 sealed. And so, this is a little easier to work with, because
11 it's a littler smaller. I'm going to just pop this up there.
12 What are we -- what are we looking at?

13 MR. LALLI: And for the record, I'm showing the jury
14 State's Exhibit number 126.

15 THE WITNESS: The large white label is the label
16 that I complete. It's an evidence impound label. It contains
17 the date and the time that I arrived on the scene. It
18 includes an event number which is related to the scene.

19 BY MR. LALLI:

20 Q Where is the event number? Let me see if I can
21 zoom-in on it.

22 A Yes, that's the event number in the top right
23 corner.

24 Q What's the event number?

25 A 081105-3918.

ROUGH DRAFT TRANSCRIPT

000933

1 Q What is an event number insofar as it relates to a
2 case?

3 A It's a ten-digit number. The first two digits
4 represent the year. The second two digits represent the
5 month. The next two digits represent that particular day of
6 the month. There's then a hyphen or a dash. And the last
7 four digits represent that particular event for that
8 particular day.

9 Q Is the event number unique to each particular event
10 that Metro responds to?

11 A Yes, it is.

12 Q So, this event number is the unique Metro case
13 number for this case?

14 A Yes, it is.

15 Q And all the evidence impounded is stored under that
16 same case number?

17 A Yes.

18 Q All right. Now, there's some other information on
19 the bag; is that correct?

20 A Yes.

21 Q It indicates a homicide?

22 A Yes.

23 Q And an address?

24 A Yes.

25 Q That's the address from which these pants were

ROUGH DRAFT TRANSCRIPT

000934

1 impounded?

2 A Yes. Uh-huh.

3 Q And then, there are some other numbers there, that
4 J6920M. What's that?

5 A That is my personal identifier. My first initial,
6 my personnel number that was assigned to me by the police
7 department, and then my last initial.

8 Q And then if we move it over, is that just your
9 signature there?

10 A Yes, my signature and P number.

11 Q Now, we've got this item number. What does that
12 mean?

13 A That's an item number that I designated for that
14 particular item to impound it.

15 Q Does the item number on the evidence bag correspond
16 to the item number on your crime scene diagram?

17 A Yes.

18 Q And then, there's the description there; is that
19 correct?

20 A Yes, that's correct.

21 Q Now, you said that, typically, evidence bags are
22 sealed?

23 A Yes, they are.

24 Q I'm going to show you the back of this. What are we
25 looking at here?

ROUGH DRAFT TRANSCRIPT

000935

1 A The red tape is the evidence seal, which is placed
2 across the back of the bag. It then has my initials and P
3 number on it to designate that I did secure that seal on that
4 particular bag. And if the seal was torn, you would be able
5 to tell. There would be a tear either in the bag, or on the
6 seal. It's for chain of custody purposes.

7 Q All right. To make sure that the evidence is
8 preserved, and nobody tampers with it?

9 A Yes.

10 Q Now, if I show the jury the bottom part of the bag
11 here, there is some blue tape on it; is that correct?

12 A Yes.

13 Q What does that signify?

14 A That indicates that another department employee
15 entered that particular bag. It would usually be somebody
16 from the forensic lab. And they resealed the bag with the
17 blue tape when they were finished with the package.

18 Q And if I go back to the white label on the front,
19 there's an area here that's called chain of custody. Do you
20 see that?

21 A Yes.

22 Q What is that?

23 A That is record of chain of custody as to who else
24 entered that particular bag, their personnel number, and the
25 date.

ROUGH DRAFT TRANSCRIPT

000936

1 Q Do you recognize whose writing that is?

2 A Yes, I do.

3 Q Who's that?

4 A That is Jennifer Bas.

5 Q Who is she?

6 A She works in our forensic lab.

7 Q Is she a DNA analyst?

8 A Yes, she is.

9 Q In this particular bedroom area -- let's go back and
10 talk about the master bedroom. What are we seeing in State's
11 Exhibit number 39? I'll zoom-out here.

12 A That is a photograph of the inside of the medicine
13 cabinet that was in the master bathroom.

14 Q And are those pill bottles down there at the bottom?

15 A Yes, they are.

16 Q I'm going to show you State's Exhibit number 40.

17 What is that?

18 A Those are close-up views of the pill bottles that
19 were located in the medicine cabinet.

20 Q Why do you film pill bottles?

21 A They at one point in time could be pertinent to the
22 case. We also want to indicate the name on the prescription,
23 the type of medication, and any other information that might
24 be pertinent within the investigation.

25 Q Can you read the name on the medication?

ROUGH DRAFT TRANSCRIPT

G00937

1 A Yes, I can.

2 Q What is it?

3 A Victoria Whitmarsh.

4 Q All right. Now I want to go back to State's Exhibit
5 number 35. What are we looking at there? And I've zoomed-in
6 on the photograph a little bit.

7 A That is a photograph of the linoleum, or the vinyl
8 floor tiles inside the master bathroom, adjacent to the
9 doorway of the bedroom.

10 Q Did you see any evidence on the linoleum floor tile?

11 A Yes, I did.

12 Q What did you see?

13 A I saw some type of bloody impression, which appeared
14 to be a partial footwear pattern.

15 Q So, did you do anything to enhance what you saw on
16 the tile?

17 A Yes, I did.

18 Q Can you tell us what you did?

19 A A chemical called leucocrystal violet was applied to
20 that particular area on the floor tile. It turns a purple
21 color when it's applied to the surface, which helps you
22 visualize, and or photograph the impression in blood.

23 Q So, if I show you now State's Exhibit number 41,
24 what's that?

25 A That's a close-up view of the same tile, with the

ROUGH DRAFT TRANSCRIPT

000938

1 leucocystal violet chemical applied to it.

2 Q What are we seeing in State's Exhibit number 42?

3 A That's a photograph of the actual tile once it was
4 removed from the floor, before it was impounded as evidence.

5 Q Now, I want to go back to talk about the bed,
6 State's Exhibit number 27. And we see that there's the black
7 item that's close -- kind of closest to us in the photo. You
8 indicated that that is a sock?

9 A Yes.

10 Q Did you observe a second sock, or a partner sock?

11 A Yes, I did.

12 Q Where was that at?

13 A That was located under the comforter and on top of
14 the top sheet, between the comforter and the top sheet, at the
15 foot of the bed.

16 Q So, one sock on top; one sock underneath the covers?

17 A Yes.

18 Q All right. I'm going to show you State's Exhibit
19 number 24. What are we seeing there?

20 A That is a photograph of the decedent on the floor in
21 the northwest master bedroom, at the foot of the bed, or on
22 the north side of the bed.

23 Q Does there appear to be an item lying on her?

24 A Yes.

25 Q What is that?

1 A That was a black and white scarf that had tassels
2 and fringe on each end, and it was also stained with apparent
3 blood.

4 Q I'm going to show you State's Exhibit number 50.
5 What's that?

6 A That is a close-up view of that same scarf, which is
7 intertwined or attached to an elastic hair band on the
8 victim's right wrist.

9 Q What are we seeing in State's Exhibit number 51?

10 A That's another view of the same scarf and the
11 elastic hair band attached to the victim's right wrist. It's
12 a top view, or from the top of the hand.

13 Q So, was the scarf intertwined with the hair band
14 actually on the victim's wrist when you observed her?

15 A Yes, it was.

16 Q And what are we seeing in State's Exhibit number 52?

17 A That's a photograph of the scarf and the elastic
18 band as it was laid out, to document the bloodstained areas
19 and the condition of the scarf and elastic band.

20 Q What are we seeing in State's Exhibit 132?

21 A That's a close-up view of the elastic hair band,
22 with the fringe or the tassels intertwined and attached to it.

23 Q Did you impound that?

24 A Yes, I did.

25 Q Ms. Maldonado, I want to show you what we've marked

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1 as State's proposed Exhibit 124 for identification purposes.

2 Do you recognize that?

3 A Yes.

4 Q What is it?

5 A That is the package that contains one white and
6 black scarf with fringe and tassels on one end, wrapped around
7 a brown elastic hair band, with apparent blood.

8 MR. LALLI: Your Honor, move for the admission of
9 State's proposed 124.

10 THE COURT: Any objection?

11 MR. O'KEEFE: No, Your Honor.

12 THE COURT: It will be admitted.

13 (Exhibit 124 is admitted)

14 BY MR. LALLI:

15 Q Ms. Maldonado, I'm showing you State's Exhibit
16 number 6. Now we're out in the living room area. What is
17 this?

18 A That is a photograph of the living room floor, and
19 into the hallway area.

20 Q What do the cones represent, or what are they there
21 for?

22 A The cones were placed on the floor to designate a
23 wire -- or wires that were coming off of a cartridge from a
24 taser. It was just designating the directionality of it.

25 Q So you could see where that wire actually was?

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1 A Yes.

2 Q Is it difficult to see the wire on the carpet?

3 A Yes, it was.

4 Q And then, if we go to our legend, and we see number
5 1 as "taser cartridge with wires;" number 2, "taser probe;"
6 number 3 is "taser blast door."

7 A Yes.

8 Q What's a blast door?

9 A A blast door is a little piece of plastic that's
10 actually attached to the taser cartridge. And when the taser
11 is fired or deployed, the blast door comes off of the
12 cartridge. And we usually will find it, hopefully somewhere
13 at the scene.

14 Q And then, if we go down, we see "AFID tag," or
15 "A-F-I-D tag." What are those?

16 A AFID tags are anti-felon identification tags, that
17 also come out of the cartridge when the taser is deployed.
18 They're little, very, very small circular pieces of paper that
19 have a serial number on them, that are specific to that
20 cartridge that was fired from the taser. There's usually
21 about 20 or 30 of them that come out of the cartridge.

22 Q And do they let us know approximately where the
23 taser was when it was discharged?

24 A Yes.

25 Q And they are unique to a particular taser cartridge?

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1 A Yes, they are.

2 Q I don't know if you know the answer to this. But
3 once a taser cartridge is utilized, can you use it again, or
4 is it done?

5 A I don't believe you can, no.

6 Q All right. So, once the blast doors and the probes,
7 and the AFID tags, and everything comes shooting out of that
8 taser, you basically have to put a new cartridge on the taser
9 for it to work again?

10 A For the cartridge to work, yes.

11 Q All right. I'm going to show you State's Exhibit
12 number 55. What's that?

13 A That is a photograph of a red purse and two wallets.

14 Q Where was the purse located?

15 A I believe the purse was originally located inside
16 the northwest master bedroom.

17 Q And it was brought out to the kitchen?

18 A Yes, to be photographed.

19 Q And there are two wallets there that are opened?

20 A Yes.

21 Q State's Exhibit number 56. What's that?

22 A That is a Nevada driver's license bearing the name
23 Brian O'Keefe.

24 Q And State's Exhibit number 57?

25 A A Nevada driver's license bearing the name Victoria

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1 Whitmarsh.

2 Q The woman that's depicted in this photograph on this
3 Nevada driver's license, was that the same person -- the
4 decedent -- the victim in the bedroom?

5 A Yes, it was.

6 MR. LALLI: Can I have the Court's indulgence?

7 THE COURT: Yes.

8 BY MR. LALLI:

9 Q All right. I'm going to go back to State's Exhibit
10 number 27. We talked about the sock that's in the front of
11 that photograph. What is the black item beyond the sock?

12 A That is a knife.

13 Q Did you impound the knife?

14 A Yes, I did.

15 Q And the knife seems to be laying on some items, and
16 I think you alluded to it a little bit earlier. But what's
17 laying around, on top of, underneath the knife?

18 A The knife is located on the top sheet of the bed.
19 And there's a pillow case partially covering the knife,
20 specifically the blade area. And there's bloodstains
21 surrounding that area.

22 Q There's bloodstains around it?

23 A Yes.

24 Q What are we seeing in State's Exhibit number 45?

25 A That is a close-up view of the top sheet that the

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1 knife was located on top of. But more towards the end of the
2 bed, the foot of the bed; more specifically, the northeast
3 corner of the bed, those were some specific areas of interest
4 that were observed and documented.

5 Q I'm going to show you State's Exhibit number 46. Is
6 that a photograph of an area designated A?

7 A Yes, it is.

8 Q Why was that an area of interest?

9 A It appeared to be what we refer to as a contact
10 transfer impression pattern in blood. And it was notated
11 because it didn't appear to be just a regular bloodstain.
12 There's something going on.

13 Q Do you have any opinion to any reasonable degree of
14 certainty as to what that is?

15 A No, I do not.

16 Q What about State's Exhibit number 47, designated as
17 B? Why was that of interest?

18 A B was also of interest. There appeared to be
19 possibly some type of ridge detail, possibly from a
20 fingerprint.

21 Q What if I show you State's Exhibit number 48?

22 A That's a close-up view of that particular area
23 referred to as B.

24 Q What's -- you said that ridge detail relates to a
25 fingerprint. Can you just explain how, for our jury?

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1 A This type of fingerprint is what we refer to as a
2 patent print. That means that it's usually visible. It's not
3 from residue or perspiration from your fingertips. It would
4 be from a substance such as grease or blood.

5 For example, if you had grease or blood on your
6 fingertips and you touched another surface, it would be
7 possible to leave a greasy or bloody fingerprint on the
8 surface that you touched.

9 Q Okay. What are we seeing in State's Exhibit 49?

10 A That was an area of interest. There appeared to be
11 three linear lines that were extending down off the corner of
12 the bed.

13 Q Do you have any idea as to what that could be?

14 A No, I do not.

15 Q Was that pattern roughly the same size, the same
16 length as the knife that you impounded?

17 A I didn't measure that particular area, so I'm not
18 for sure.

19 Q All right. What are we seeing on the top of the
20 exhibit?

21 A That is a scale with my initials and P number, that
22 we place into the photograph to give approximate size or
23 dimension of that particular area.

24 Q All right. And the units of measure here, we've got
25 centimeters on one side, and inches on the other; is that

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1 correct?

2 A I believe so, yes.

3 Q So, if we zoom-in even more, does that appear to be
4 inches?

5 A Yes.

6 Q And if we go down, your ruler -- your scale is --
7 that's -- is that six inches-long?

8 A Yes.

9 Q And then, if we turn it over, we have metric in
10 centimeters on the other side?

11 A Yes.

12 Q Let's go back to the bed, and that particular item
13 there. You said that's where the knife was located, correct?

14 A Yes.

15 Q What are we seeing in State's Exhibit number 43?

16 A That is a close-up view of the knife that was
17 located on top of the bed in the northwest master bedroom,
18 including another scale, what we refer to as an L scale. It's
19 in the shape of the letter L. And again, that's to give
20 approximate size or dimension of the item.

21 Q There appears to be a substance near the tip of the
22 knife.

23 A Yes.

24 Q Do you have any idea what that was?

25 A Apparent blood.

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1 Q And what about on the handle? Do you -- I'm not
2 sure if you can see that from this image, but do you see a
3 reddish substance down near the handle also?

4 A Yes, I do.

5 Q Did that appear to be -- what?

6 A Apparent blood.

7 Q What are we seeing in State's Exhibit number 44?

8 A That's a photograph of the same knife, flipped over
9 on the other side to show the other side of the blade and the
10 handle.

11 Q All right. Did you impound that item?

12 A Yes, I did.

13 (Pause in the proceedings)

14 BY MR. LALLI:

15 Q I think there's -- do you have gloves behind you
16 there?

17 A Yes.

18 Q Can you throw some gloves on?

19 A Sure.

20 Q Now, Ms. Maldonado, I'm going to show you what we've
21 marked as State's proposed 128 for identification purposes.
22 Do you recognize that?

23 A Yes.

24 Q What is it?

25 A That is a box containing the knife that was depicted

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1 in the photograph.

2 Q Now, this box is open?

3 A Yes.

4 Q Do you know who opened it?

5 A Yes, I do.

6 Q Who?

7 A I did.

8 Q Was that at a prior proceeding?

9 A Yes, it was.

10 Q All right. If you could remove the item from
11 inside, and describe for us what you're removing.

12 A This is the knife that was depicted in the
13 photograph.

14 Q Oh. Before you show them.

15 MR. LALLI: Your Honor, move for the admission of
16 State's proposed 128.

17 THE COURT: Any objection?

18 MR. O'KEEFE: No objection, Your Honor.

19 THE COURT: All right. It will be admitted.

20 (Exhibit 128 is admitted)

21 MR. LALLI: All right. Now, Your Honor, what I
22 would like her to do is just pull the knife out, just walk
23 down, just --

24 THE COURT: That's fine, it's admitted.

25 MR. LALLI: -- show the jury, and then put it all

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1 back in there, if that's okay.

2 THE COURT: All right. That's fine.

3 BY MR. LALLI:

4 Q Can you remove it? And if you could just --.

5 (Pause in the proceedings)

6 MR. LALLI: Your Honor, that concludes direct
7 examination.

8 THE COURT: All right. Cross-examination, Mr.
9 O'Keefe?

10 THE CLERK: Mr. Lalli --

11 MR. O'KEEFE: Yes, Your Honor.

12 THE CLERK: Mr. Lalli, 128A is the knife.

13 MR. LALLI: Okay. I would move for the admission of
14 128A -- or 128 and contents.

15 THE COURT: Any objection?

16 MR. O'KEEFE: No, Your Honor. Absolutely not.

17 THE COURT: It will be admitted.

18 (Exhibit 128 and contents are admitted)

19 THE WITNESS: Your Honor?

20 THE COURT: Yes.

21 THE WITNESS: May I remove my gloves, please?

22 THE COURT: Please.

23 THE WITNESS: Thank you.

24 THE COURT: And make sure when you go to jury
25 deliberation, if you do look at anything, make sure you have

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1 your gloves on, whoever looks at it, all right? And we'll
2 give you gloves -- provide them. Is that right, Mr. Bailiff
3 -- Mr. Marshall?

4 THE MARSHAL: Sir?

5 THE COURT: The jury will have access to gloves,
6 right?

7 THE MARSHAL: That's correct.

8 THE COURT: All right. Proceed.

9 MR. O'KEEFE: Court's indulgence. One second,
10 folks, please.

11 (Pause in the proceedings)

12 MR. O'KEEFE: Okay.

13 CROSS-EXAMINATION

14 BY MR. O'KEEFE:

15 Q Hi, Joyce.

16 (Pause in the proceedings)

17 BY MR. O'KEEFE:

18 Q Ms. Maldonado?

19 A Yes.

20 Q Okay. I'll be real brief, okay?

21 A Okay.

22 Q No tricks, no ploys. Just want to clarify a couple
23 things, you know, for everybody. Okay. You come out, and you
24 photograph a crime scene. And you did that, correct?

25 A No, I did not. I did not do the photographs.

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1 Q Okay. You're just -- okay. Your exact purpose then
2 again, is?

3 A I recovered and collected the evidence, and
4 completed a sketch and a diagram in the computer program --

5 Q Okay.

6 A -- of the crime scene.

7 Q Were you there when any of the photographs were
8 taken?

9 A Yes, I was.

10 Q Okay. Is it correct -- what I was trying to get at
11 is, should all property be photographed, Ms. Maldonado, before
12 it's tampered, or moved, or -- you want to get a photograph of
13 it as it is, correct?

14 A I don't understand what you mean by, all property.

15 Q Okay. Any property, any scene (sic), anything that
16 might relate, like the purse, a table, the taser probes. You
17 want to photograph that stuff or whatever before it's removed,
18 and you tag it and all that, or whatever you do, correct?

19 A Right. There's a series of photographs that are
20 taken, yes.

21 Q Okay. So, like --

22 MR. O'KEEFE: Mr. Maningo?

23 MR. MANINGO: Yes, sir.

24 MR. O'KEEFE: Because I don't want to --

25 BY MR. O'KEEFE:

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1 Q There was a receipt, if I could bring it up -- have
2 it brought up to you.

3 MR. O'KEEFE: I don't want to enter it as an exhibit
4 or anything, Your Honor. I want her to look at it first.

5 MR. MANINGO: May I approach, Your Honor?

6 THE COURT: Yes. Show it to [inaudible].

7 MR. O'KEEFE: Okay.

8 BY MR. O'KEEFE:

9 Q Will you read the receipt at the top of it to
10 yourself? I mean, I'm not asking you, ma'am, to verify where
11 it's from. You see the date and the time?

12 A Okay, because I don't recognize this document at
13 all.

14 Q Okay.

15 A I never saw this document.

16 Q That was a discovery document by the -- if --

17 MR. O'KEEFE: Can Mr. Maningo show that to her?

18 BY MR. O'KEEFE:

19 Q At the --

20 MR. MANINGO: [Inaudible]

21 BY MR. O'KEEFE:

22 Q The subpoena?

23 A Okay. I'm not familiar with these documents.

24 Q Okay.

25 A This is out of the course of my duties and

1 responsibilities.

2 Q Okay. My question is though, the items were listed,
3 just like the property that we admitted. And Mr. Lalli just
4 got you to state that the purse was removed from the room, you
5 thought, the northwest bedroom, and brought out onto the
6 counter. And then, the wallets were taken out, and laid out
7 and displayed.

8 And that receipt was taken out of my wallet. If you
9 look on it -- if you'll read, it says, "Receipt from O'Keefe's
10 wallet." Do you see about down in the middle, it says,
11 "Receipt from O'Keefe's wallet"?

12 A Okay.

13 Q Okay. Should -- and it's listed on the subpoena. I
14 know that's not your part, ma'am. But I'm just saying, the
15 wallet appears to be -- the purse was removed from the bedroom
16 to the kitchen counter, and we all have seen that. I don't
17 even have any need to show that.

18 It was on the kitchen counter, everybody's seen
19 that. Wallets were displayed. Evidence was taken out, but it
20 wasn't photographed, at least that I know of. Is that -- is
21 that standard procedure?

22 A I can't verify that. I don't know specifically what
23 evidence you're referring to, and I wasn't the one responsible
24 for the photographs.

25 Q Okay. But photographs should have been taken of it,

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1 if it would have been under you; should have been photographed
2 -- pulled out, photographed, and then tagged or whatever is
3 standard, I mean, usually is the procedure, correct?

4 A Items of evidence are usually photographed.

5 Q Yes. Are they? I'm asking you. You're the --
6 you're there when the pictures are taken?

7 A Yes, most are.

8 Q Okay. Nothing else on that.

9 MR. O'KEEFE: I'll deal with that in closing, Your
10 Honor.

11 THE COURT: Yeah.

12 BY MR. O'KEEFE:

13 Q In Exhibit 45 and 46 of the bed, where you thought
14 it was a print impression -- let me get it out real quick,
15 just to make sure. Because I thought prior testimony was
16 given to that fact, that -- and [inaudible].

17 MR. MANINGO: Which one do you want?

18 MR. O'KEEFE: I'll put one on -- I mean, one at a
19 time.

20 BY MR. O'KEEFE:

21 Q Yeah. Exhibit 45, State's Exhibit 45, that they
22 entered as -- did B relate -- did they get the idea that that
23 might have been a footprint?

24 A B, no.

25 Q No? Nothing -- A, B -- okay. State's Exhibit, I

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1 think it was 46. Yes, 46. Did they think that possibly might
2 have been a footprint?

3 A I don't know what you mean by "they."

4 Q Well, the investigation team, whoever. They took it
5 for a reason. They identified it. You know, I'm -- I'm
6 just --

7 A It is some type of --

8 MR. LALLI: Your Honor, I'm going to --

9 BY MR. O'KEEFE:

10 Q They photographed it for a reason, is all --

11 A Yes.

12 Q -- I'm trying to get at.

13 A Yes.

14 MR. LALLI: Your Honor, I'm going to --

15 BY MR. O'KEEFE:

16 Q Do you agree with that? Okay.

17 MR. LALLI: I'm sorry. I'm going to object to what
18 anybody else thought. There will be a homicide detective who
19 testifies in the case. She -- this witness already testified
20 she doesn't know what it is.

21 THE COURT: All right. Yeah, we just want -- she
22 just has to testify as of her own knowledge.

23 MR. O'KEEFE: Okay.

24 THE COURT: It's difficult to testify on whatever
25 somebody else knows or did. All right? So, try to limit it

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1 to that.

2 MR. O'KEEFE: Yes, sir. All right. I'm moving on,
3 Judge.

4 BY MR. O'KEEFE:

5 Q In State's Exhibit 28. And I want to go to the
6 light switch up here.

7 MR. O'KEEFE: Can we zoom-in on that a little bit,
8 put the light on?

9 BY MR. O'KEEFE:

10 Q Where you wanted to see about the blood.

11 MR. O'KEEFE: And that's good enough. They know --
12 okay.

13 BY MR. O'KEEFE:

14 Q Do you know when that was photographed? Did anybody
15 flip the switch on and test it, do you --

16 A I honestly don't know that.

17 Q Okay. I'm just asking. That's all.

18 MR. O'KEEFE: I'm moving on, Judge.

19 BY MR. O'KEEFE:

20 Q And State's Exhibit 31. I just want to show here
21 that the lamp right there --

22 MR. O'KEEFE: That's good enough. I'm just showing
23 that the lamp her -- or if you can focus in on that here. But
24 you said no one -- a little further in on that, if you would.
25 A little further in. I mean, back. Back a little bit.

1 BY MR. O'KEEFE:

2 Q Okay. Basically, I'm just saying, this here -- can
3 you clearly see that, Ms. -- that's a radio and a lamp. And
4 you would agree with that, in this photo?

5 A Yes.

6 Q Okay. Because if you flip the switch on, the radio
7 -- okay.

8 MR. O'KEEFE: That will be later for argument, Your
9 Honor. I just want to make sure she was around when the
10 pictures were taken of it. Okay. And that's it on that.

11 BY MR. O'KEEFE:

12 Q They took the tile though -- they photographed it,
13 and they removed that tile because it had a footprint on it?

14 A Okay.

15 Q Am I correct? I'm asking.

16 A Yes. Uh-huh. That's correct.

17 Q Okay. And let's be honest -- honest here. They
18 assumed it was my footprint. Was that identified, matched, or
19 whatever?

20 A I don't have any indication of that. I just
21 document the evidence, recover it. And if any further
22 analysis needs to be done, that would be at the direction of a
23 detective.

24 Q Okay.

25 MR. O'KEEFE: Actually, Mr. Lalli presented

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1 everything else. [Inaudible] later for argument. No further
2 questions, Your Honor.

3 THE COURT: Thank you.. That completes the --

4 MR. O'KEEFE: Thank you, Ms. Maldonado.

5 THE COURT: -- testimony now, Mr. Lalli?

6 MR. LALLI: Yes, Your Honor.

7 THE COURT: Thank you very much.

8 THE WITNESS: You're welcome.

9 THE COURT: You can go about your business.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Next witness, please.

12 MR. LALLI: Your Honor, the State calls Jennifer
13 Bas.

14 THE MARSHAL: Ma'am, if you will remain standing.
15 Please raise your right hand and face the clerk.

16 JENNIFER BAS, STATE'S WITNESS, SWORN

17 THE MARSHAL: Have a seat, please.

18 THE WITNESS: Thank you.

19 THE MARSHAL: Please state and spell your name for
20 the record.

21 THE WITNESS: My name is Jennifer Bas. First name,
22 J-e-n-n-i-f-e-r. Last name, B-a-s.

23 DIRECT EXAMINATION

24 BY MR. LALLI:

25 Q Can you tell us how you're employed?

1 A Yes. I work for the Las Vegas Metropolitan Police
2 Department in the biology DNA detail, where I specialize in
3 DNA testing.

4 Q How long have you been so employed with Metro?

5 A I've been with Metro for over five years now.

6 Q Can you explain your formal education?

7 A Yes. I have a bachelor's degree in genetics and
8 cell biology from the University of Minnesota. And I also
9 have a master's in forensic molecular biology from George
10 Washington University in D.C.

11 Q Do you have any professional experience in the area
12 of DNA analysis?

13 A I do. Prior to --

14 Q Can you explain that?

15 A Sure. Prior to working for Metro for the last five
16 years, I also worked for the Armed Forces DNA Identification
17 Laboratory in Rockville, Maryland. At that place, my primary
18 responsibilities were to identify soldiers that had lost their
19 lives in Iraq or Afghanistan. I also responded to mass
20 disasters, such as Hurricane Katrina, and helped with DNA
21 collections from the bodies there.

22 Moving forward to the Las Vegas Metropolitan Police
23 Department, I use the exact same DNA technologies that I did
24 there, and I apply it to criminal case work, and help solving
25 crimes.

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1 Q Have you ever testified as an expert in courts of
2 this state, or any other state, as an expert in the area of
3 DNA analysis?

4 A I have. In the State of Nevada, I've testified
5 approximately 21 times, and I believe 17 of those have been in
6 district court.

7 MR. LALLI: Your Honor, I'd ask that Ms. Bas be
8 allowed to render her opinions in the area of DNA analysis.

9 THE COURT: Yeah, she can so testify.

10 BY MR. LALLI:

11 Q Can you explain for us what is DNA, and how is it
12 used in criminal investigations?

13 A Sure. DNA is a tiny molecule found in the nucleus
14 of a cell; at least that's the areas that I'm looking at. But
15 what I really like to think of it is like the blueprint for
16 the human body. There's proteins and things in that DNA
17 molecule that makes each of us unique, and that's why
18 everybody that you're sitting next to right now is different
19 than you are.

20 Without the -- with the exception of identical
21 twins, no two people on this planet have the same DNA profile.
22 And that's very useful in forensic investigations, because
23 when we develop our DNA profiles, it helps us determine, could
24 somebody be included in a sample, or excluded. But it also
25 allows us to say, yes, it was definitely that person, and make

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1 those identifications, just like I had done with my previous
2 employment identifying soldiers. So, it's just really useful
3 to help make those identifications with the DNA samples.

4 Q Can you just briefly explain how it is that you once
5 you get a biological sample sent to your laboratory, how do
6 you go about making a DNA comparison?

7 A Sure. First of all, typically, there's two types of
8 samples that are sent to the laboratory. One of them is
9 called a crime scene evidence, or we call them questioned
10 samples. And those are going to be the samples that I process
11 in the lab, and I'll talk to you about that here in a little
12 bit.

13 The second set of samples we get in are called
14 reference samples, or buccal swab cheek samples. And those
15 are used, because those are collected from a specific
16 individual. And we use the profile developed from the
17 reference sample, and we compare that to the DNA profiles that
18 we get from the question or unknown samples.

19 In the laboratory, I do a lot of DNA steps. There's
20 some steps that I have to take in order to generate that
21 profile. I typically start with receiving a request for DNA
22 evidence, and I call the evidence in to the laboratory. I'll
23 then take a look at the evidence piece by piece, and I'll take
24 notes on it, photographs. I might have to screen it, or do
25 some testing to find out if there's blood or semen.

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1 When I say screening, really, I mean I'm looking at
2 it. I'm looking at what the detective or somebody requested.
3 I might be taking cuttings or swabbings of evidence. If I'm
4 doing serology testing, I might be trying to identify blood or
5 semen. And then, I take those samples that I've screened up
6 front, and I take them through the laboratory process.

7 At the end of that process, I will have generated
8 DNA profiles from the questioned samples that I just
9 described, as well as the known samples, the buccal swab
10 samples that I also described, and I compare those two.

11 I then interpret the DNA results, and I make those
12 decisions of whether or not somebody could be included or
13 excluded in the DNA profiles that I obtained from the
14 questioned samples. I generate statistics to help, like give
15 weight to that match, if there is a match. And I also -- I
16 write my reports, and I also review other analyst's case
17 files.

18 Q Sometimes when you make a DNA comparison, or when
19 you're handling evidence, do you need to coordinate with other
20 disciplines? So, example, sometimes do you need to coordinate
21 with trace, or sometimes do you need to coordinate with latent
22 prints --

23 A Yes.

24 Q -- when handling an item of evidence?

25 A Yes. It's very, very common that one piece of

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1 evidence will be requested from multiple sections within the
2 laboratory. And our laboratory actually has an internal way
3 of processing that.

4 Typically, all of the evidence goes to DNA first,
5 and we take our sample collections. And then, it will move
6 onto latent prints, so that they can do their latent print
7 comparison. DNA -- it comes to me first, because I handle
8 that with -- you know, with gloves, and a mask, and I am
9 completely sterile, and I keep that in the environment that it
10 needs to be to get those DNA profiles.

11 Next, it's going to go to latent prints, because
12 they want to actually collect the prints from the evidence.
13 And then finally, it might go to firearms, let's say. And you
14 know, they don't wear gloves or masks, and they need to handle
15 that evidence. So, there's usually a really good routine of
16 how we do that, and it's very common.

17 Q All right. Now, were you asked to analyze evidence
18 related to a homicide that occurred on 5001 El Parque Avenue,
19 under event number 081105-3918?

20 A Yes, I did. Or yes, I was.

21 Q Okay. And if I understand in my over-simplistic
22 mind what you do, you take a known sample --

23 A Um-hum.

24 Q -- and you compare it to an unknown sample at --
25 that you might find at a crime scene?

ROUGH DRAFT TRANSCRIPT

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1 A Typically, I process all the questioned samples
2 first, and I get those DNA results. I always separate my
3 questioned samples from my known samples. But when I've
4 developed both of those profiles from the questioned and the
5 known, it's at that point, when I'm finished, that I make
6 those comparisons.

7 Q But that's the whole idea? The goal is to compare a
8 known DNA profile with a questioned one to say, hey, these two
9 match up, this is person X's DNA?

10 A That's correct. A DNA profile really is just a
11 series of numbers or peak patterns, and it doesn't tell me
12 anything without being able to compare it to somebody. When I
13 look at a DNA profile, the only thing that I can tell without
14 any reference standard whatsoever is if it's a male
15 contributor, or a female contributor, or components of both.
16 But I need that reference sample to say, yes, this person is
17 included, or they are excluded.

18 Q All right. Let's talk about the known DNA
19 samples --

20 A Okay.

21 Q -- or the reference standards that you used in this
22 case. Did you -- or were you provided with a known DNA
23 profile from an individual by the name of Brian O'Keefe?

24 A I was -- I got a buccal swab sample, which I
25 generated the profile from.

ROUGH DRAFT TRANSCRIPT

000965

1 Q Very good.

2 A One from Brian O'Keefe, and another from Victoria
3 Whitmarsh.

4 Q Do you know who -- well, we've had testimony from
5 former crime scene analyst Ford that he obtained a buccal swab
6 from Brian O'Keefe. Is that the buccal swab that you
7 analyzed?

8 A Yes, I believe so. His P number is 4244. Yes.

9 Q I believe so.

10 A Yeah.

11 Q And did you also obtain a buccal swab from an
12 evidence collection kit at autopsy of Victoria Whitmarsh?

13 A Yes, I did.

14 Q And from those two buccal swabs, you were able to
15 prepare or create a known DNA profile?

16 A Yes. I generate the DNA profile from those samples,
17 and I use those to compare to the questioned samples that I
18 also analyzed.

19 Q Okay. Now, there has been testimony in this case
20 regarding what appeared to be blood. And for the benefit of
21 the jury, I'm showing them State's Exhibit number 29. There
22 appeared to be a reddish bloody substance near a light switch
23 that crime scene analyst Maldonado testified to swabbing and
24 impounding. Did you analyze a blood sample of apparent blood
25 from a light switch?

ROUGH DRAFT TRANSCRIPT

000966

1 A Yes, I did.

2 Q Okay. What if anything did you find when you
3 analyzed that blood sample?

4 A Okay. Well, I determined a few things. First,
5 whenever I see a red-brown stain, or a reddish stain, that
6 indicates to me that it might be blood. Earlier, I had
7 mentioned that some of my job duties is to identify blood or
8 semen.

9 And so, the first thing I did is a test on there.
10 It's a presumptive test called phenolphthalein, and it helps
11 me determine, is that presumptively blood. Other things could
12 react positively for blood. But if this one reacts
13 positively, it's saying, yes, it probably is blood. And then,
14 from there, I took a cutting of that swab that I received, and
15 I generated a DNA profile.

16 Q Was it blood?

17 A It was positive for blood, yes.

18 Q Okay. And with respect to the profile -- I don't
19 know if it helps, but I think this is your JB2?

20 A Yes. And I'm sorry, I should have finished that
21 thought process. The second thing I did was I made a -- I
22 generated the DNA profile from it. And in this particular
23 case, it was a full male profile.

24 I'm going to talk about a couple different types of
25 profiles that I obtained today. One is called a single-source

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1 sample. It means it's only from one person. The source of it
2 is one person. Later, I'll talk about mixture profiles, and
3 that means that more than one person's DNA is there.

4 So, this was a full, single-source male profile. It
5 was a complete profile, and it was consistent with Brian
6 O'Keefe.

7 Q You told us earlier that you insert probabilities to
8 your analysis. Can you explain how that works?

9 A Yes. Whenever we have a match or an inclusion, or
10 if somebody's profile is consistent with a reference standard,
11 if the questioned sample is consistent, I need to lend weight
12 to that.

13 And so, in this particular case, I do a statistic
14 called a random match probability. And what it's saying is,
15 what is the chance that any person in the planet would
16 randomly match the DNA profile that I obtained from this blood
17 swab? This particular statistic was incredibly high.

18 At our laboratory, what we do is we take the Earth's
19 population, which at the time of this report, was about 6.5
20 billion people. We then multiply that by 100. We figure, 100
21 Earths, or the population of 100 Earths. If this profile is
22 rarer than what I would see on the population of 100 Earths,
23 we'd call it just greater than that, and we say, "Identity is
24 assumed."

25 So, this statistic was rarer than one in 100 Earths,

ROUGH DRAFT TRANSCRIPT

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1 you know, 650 billion. It was rarer than 1 in 650 billion,
2 and this DNA profile belongs to Brian O'Keefe. The source of
3 that -- the source of that blood.

4 Q So, you can say it's his blood?

5 A I would say that it's his blood.

6 Q Now I'm going to show the jury State's Exhibit
7 number 36.

8 A Okay.

9 Q Did you analyze as your JB5 a pair of black pants?

10 A I did.

11 Q When you analyze evidence, because you talked about
12 how that -- you not only look at swabs, but you actually
13 handle specific items of evidence. Do you prepare any
14 diagrams that assist you in coming to court and testifying
15 about where it is that you obtained certain stains that you
16 tested, things of that nature?

17 A I do. One of the first things that I do when I get
18 a piece of evidence is I take it out of the package. And I
19 actually photograph it, and I take notes on it. And this
20 helps me to just document what I'm doing, where I'm taking
21 samples from. But also, I believe that this report was
22 initially issued in 2009. And so, it helps me when I do come
23 back to testify later to remind me of what it is that I had
24 done at that time.

25 MR. LALLI: Your Honor, may I approach the witness?

1 THE COURT: Yes.

2 BY MR. LALLI:

3 Q Ms. Bas, I'm going to show you what we've marked as
4 State's proposed 123 for identification purposes. Do you
5 recognize that?

6 A I do.

7 Q What is it?

8 A This is like a little slide that I made of the
9 pictures that I had taken when I was examining the pants.

10 Q All right.

11 MR. LALLI: Your Honor, move for the admission of
12 State's proposed 123.

13 THE COURT: Any objection?

14 MR. O'KEEFE: No, Your Honor.

15 THE COURT: It will be admitted.

16 (Exhibit 123 is admitted)

17 THE COURT: It will be admitted.

18 BY MR. LALLI:

19 Q So, can you -- I'm going to go to the left.

20 A Okay.

21 Q Can you explain to the jury what we're seeing here?

22 A Yes. Okay. So, this is the pair of pants, entirely
23 laid out.

24 First, I want to direct you to just right here.

25 There's where I've documented the event number that I have it

ROUGH DRAFT TRANSCRIPT

000970

1 under. The JB5 stands for my initials, which is Jennifer Bas,
2 and 5 is the fifth item of evidence that I examined. And it's
3 also the date that I examined it on; so, January 6th of 2009.
4 And then, this is just an overall picture of the pants laying
5 out, with the front side facing up.

6 Q We'll move over here to the left. Let me
7 zoom-out --

8 A Do you mind just --

9 Q -- just a little bit.

10 A Thank you. Okay. So, now, what I had done is that
11 long pair of pants that was laying out flat, when I was doing
12 my screening and serology testing, I kind of noticed possible
13 bloodstains on a couple different areas. One was at the very
14 top of the pant, which is like here in this whole front panel.
15 In the second -- there was a lot.

16 But then, I also honed in on another area in the
17 lower left ankle. And so, what I did is I took that pant leg,
18 and I folded it up on top of the top of the pant, just so that
19 I could show both areas in the same photograph.

20 Q Okay. What is JB5A?

21 A JB5A is a sample that I took from the front of the
22 pants, like the stomach area of the pants.

23 Q Did you analyze that?

24 A I did. That sample was positive for blood. And I
25 got a full female profile; again, a complete single-source

ROUGH DRAFT TRANSCRIPT

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1 female profile, and that was consistent with Victoria
2 Whitmarsh.

3 Q Did you assign a probability number to that?

4 A I did not. And in this particular case, the reason
5 that I didn't is because we make those statistics when we
6 determine that that match is probative, or of value.

7 In this particular instance, these were Victoria
8 Whitmarsh's pants. This was her blood on her pants. And so,
9 we didn't -- in my opinion, that's not probative, or -- and
10 so, we don't do a statistic with it. Had I done a statistic,
11 it would have been identity, because it was a full female
12 profile.

13 Q All right. And what is your JB5B?

14 A JB5B is this sample here that I took from the lower
15 left pant leg. Again, this was positive for blood. And in
16 this time, I obtained a mixture profile, meaning more than one
17 person's DNA was there at that stain that I took.

18 Q All right. What can you tell us about the genetic
19 information you gleaned from the mixture profile?

20 A This was consistent with a mixture of two
21 individuals, one of which was male. Victoria Whitmarsh and
22 Brian O'Keefe were both included in that mixture.

23 Q And what was the probability that you assigned to
24 them being included?

25 A The included one? May I refer to my note at the

ROUGH DRAFT TRANSCRIPT

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1 back of the file?

2 Q Yes. Yes.

3 A Okay. I actually did two statistics for this one.
4 So, the one where --

5 Q Well, why don't you explain both of the statistics?

6 A Sure. So, with a mixture statistic, what I'm saying
7 is, what is the probability that somebody could be included in
8 this mixture? There's second statistic as, what is the
9 probability that somebody would be excluded from this mixture?

10 So, the first statistic that I generated was that
11 more than 99.99 percent of the people in the general
12 population could be excluded from this mixture. The inverse
13 of that is -- you might want to know, how many could be
14 included, then? And is it okay if I refer to my notes --

15 Q Yes.

16 A -- for that?

17 Q Yes.

18 A Thank you. Conservatively, approximately one in 21
19 million, 890 people -- 890,000 individuals could be included.
20 So, that means one person for every 21,890,000 would be
21 expected to be in this mixture.

22 Q And are you aware that the population of Clark
23 County is roughly 2 million?

24 A Yes, I am.

25 Q In that neighborhood?

ROUGH DRAFT TRANSCRIPT

000973

1 A Yes.

2 Q So, this is --

3 A It's --

4 Q -- almost ten times that.

5 A Ten times rarer, or -- yeah. Or -- yes.

6 Q Correct. So, in Clark County, the chances are that

7 there would be one individual, if that --

8 A I mean, statistically, out of the whole world's

9 population, one out of every 21,890 could be included. That's

10 a very, in my opinion, significant statistic.

11 Q And Victoria Whitmarsh is included?

12 A That is correct.

13 Q And Brian O'Keefe is included?

14 A That is correct.

15 Q All right. Now, there has been testimony about a

16 cut on the defendant's hand, or cuts on his fingers.

17 A Okay.

18 Q And State's Exhibit number 62. There's been

19 testimony about swabs being obtained by crime scene analyst

20 Daniel Ford. Did you analyze as your JB3A blood swabs from

21 the right index finger of Brian O'Keefe?

22 A I did.

23 Q And what, if anything, did you find when you

24 analyzed that?

25 A Sure. Again, this swab was red in color, so I

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1 presumptively tested it for blood, and it was positive for
2 blood. I obtained a single-source, full male profile, that
3 was consistent with Brian O'Keefe. In this particular
4 instance, I also did not do a statistic. Because again, this
5 was his finger, his blood on his finger. That's not
6 probative, necessarily, in terms of getting a statistic.

7 Q All right. Did you analyze an evidence collection
8 kit that was impounded by crime scene analyst Robbie Dahn at
9 autopsy?

10 A I did.

11 Q And I think you've already told us that buccal swabs
12 were included in that collection kit?

13 A That's correct.

14 Q And those buccal swabs were the source or the
15 standard for Victoria Whitmarsh's DNA profile?

16 A That is correct.

17 Q Are there other things contained in the evidence
18 collection kit, other than simply buccal swabs?

19 A In this particular evidence collection kit, I
20 obtained vaginal swabs, cervical swabs, rectal swabs, oral
21 swabs, a pubic hair brushing, right hand fingernail clippings,
22 and left hand fingernail clippings.

23 Q All right. Let's talk about the vaginal swabs.
24 What, if any, analysis did you do on those?

25 A So, on this one -- I mentioned a little earlier that

ROUGH DRAFT TRANSCRIPT

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1 I do serology testing. In vaginal swabs, what I might be
2 interested in finding is if there's semen present. And so, I
3 do both a presumptive and a confirmatory test to determine if
4 semen is there.

5 The presumptive test is called acid phosphatase.
6 And I take a small cutting from that swab, and I put it in a
7 tube. And if the chemicals react and semen is indicated
8 there, or presumptively there, it will turn a bright purple
9 color. And that was negative.

10 The second one -- the second thing I did now is I
11 want to -- I'm sorry, that was positive. And this is actually
12 common for those types of samples to be presumptively
13 positive.

14 And so, I need to confirm, is it semen, or not
15 semen? I took a cutting from those vaginal swabs, and I put
16 them through a second chemical test, which is called
17 prostate-specific antigen, or p30. And this test is important
18 because, typically, males have a high concentration of
19 prostate-specific antigen in their semen secretions. This was
20 negative.

21 I also took a -- I also wanted to determine if sperm
22 were present. It's -- you know, some men produce sperm;
23 others might be vasectomized, or not have any. But this one
24 was sperm negative. So, after it was confirmed that it was
25 semen negative and sperm negative, I stopped testing on this

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000976

1 sample.

2 Q Okay. What about cervical swabs?

3 A This one, also -- exactly like I just described,
4 also semen negative, sperm negative.

5 Q Rectal swabs?

6 A Also semen negative, and also sperm negative.

7 Q What about oral swabs?

8 A Those ones, I did the presumptive chemical test for
9 semen, and they were presumptive negatively -- they were
10 presumptively negative, and I stopped testing there. I did
11 not confirm that they were negative.

12 Q All right. On your JB1F, they were right hand nail
13 clippings. Were you able to perform any DNA analysis on
14 Victoria Whitmarsh's nail clippings?

15 A I did. When obtained the -- there's five clippings
16 of fingernails. And they had a red-brown appearance to them,
17 so I tested them for blood, and they were positive for blood.
18 The profile that I generated was a full single-source female
19 profile, consistent with Victoria Whitmarsh.

20 Q Okay. What about fingernail clippings from the left
21 hand, your JB1G?

22 A Again, these clipped fingernails were positive for
23 blood, and that blood belonged to Victoria Whitmarsh.

24 Q I'm going to show you a photograph of State's
25 Exhibit number 44.

ROUGH DRAFT TRANSCRIPT

000977

1 A Okay.

2 Q Have you seen that item before?

3 A Yes, I have.

4 Q Were you asked to perform DNA analysis on that
5 knife?

6 A Yes. This was a Wolfgang Puck knife that I examined
7 under JB4. JB for my initials; it was the fourth item that I
8 examined. And I actually took -- we'll talk about this here,
9 but I tested four different areas on this knife.

10 Q All right.

11 MR. LALLI: May I approach the witness, Your Honor?

12 THE COURT: Yes.

13 BY MR. LALLI:

14 Q Okay. As you did with the pants, did you also
15 create slides of the knife?

16 A I did.

17 Q And are those represented here in State's proposed
18 Exhibits 121 and 122?

19 A That is correct.

20 Q Would they assist you in explaining your results to
21 the jury?

22 A Yes, they would.

23 MR. LALLI: Your Honor, move for the admission of
24 State's proposed 121 and 122.

25 THE COURT: Any objection?

ROUGH DRAFT TRANSCRIPT

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1 MR. O'KEEFE: No objection, Your Honor.

2 THE COURT: They will be admitted.

3 (Exhibits 121 and 122 are admitted)

4 BY MR. LALLI:

5 Q All right. I'm going to show you State's --
6 actually, let's do this. State's Exhibit number 122. And
7 again, I'm going to go to the left here.

8 A Okay.

9 Q Can you explain to us what we're seeing there?

10 A This is the evidence as I received it after I opened
11 up the box. The knife was wrapped in like a brown paper
12 bundle, and it was zip-tied inside of a cardboard box. It was
13 labeled with item number 8. It has Jocelyn Maldonado's P
14 number there and initials, as well as the event number that I
15 worked it under.

16 Q And then as we go over to the side here, just
17 backing up, there appears to be two photos, one on top of the
18 other. Let's go to the top one first.

19 A This is after I removed the knife from that brown
20 paper bundle. And this is one side of the knife. I was just
21 taking an overall photograph of what the knife looked like
22 when I received it.

23 Q And then, as we go down to the lower panel of this
24 exhibit, what is that?

25 A This is the other side of that same knife.

ROUGH DRAFT TRANSCRIPT

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1 Q Now, how many different areas were you able to
2 sample from the knife?

3 A I personally tested four areas of the knife. Now,
4 if we look -- can you show just like -- maybe like an overall
5 example of maybe this top one, for instance?

6 On this knife, there was numerous areas that were
7 red-brown staining, you know, which might indicate to me that
8 there was blood present in numerous areas. Now, as the DNA
9 examiner, I don't want to test every single piece of blood on
10 that knife for two reasons.

11 One, I really just want a representative sample of
12 what is across the knife. But also, two, it's really
13 important that we preserve some of the evidence, in case it
14 does need to be tested at a later date. So, I chose to test
15 four areas. I did not test everything.

16 Q All right. Let's go to --

17 A That's great.

18 Q What are we seeing there?

19 A Okay. So, this is a close-up view of one side of
20 JB4, that knife. And I've circled in on three different areas
21 that I actually tested for blood. I designated them as JB4A,
22 4B, 4C, and then there's a fourth one, 4D, which we'll talk
23 about in a second. 4A right here was in an area that I called
24 the middle of the blade. I noticed some red-brown stain
25 there. I took a swab of it. That was -- do you want me to

ROUGH DRAFT TRANSCRIPT

000980

1 get into the results on each one --

2 Q Sure.

3 A -- individually?

4 Q Tell us what you found --

5 A Sure.

6 Q -- with respect to your JBA, or the middle part of
7 the knife.

8 A JB4A. So, for JB4A, which is this one right here,
9 this was positive for blood. And this was consistent with a
10 mixture of two individuals, with at least one being male. The
11 major DNA contributor was Brian O'Keefe.

12 Now, when I say major DNA contributor, what that
13 means is, yes, there's a mixture. But it's -- in mixtures,
14 it's possible for somebody to have left more DNA than another
15 person. So, the person whose DNA was there more, or the major
16 portion of the DNA belonged to Brian O'Keefe.

17 Q Were you able to generate a level of statistical
18 certainty with that?

19 A Yes.

20 Q What was that?

21 A Now, because this is a mixture, I can kind of go two
22 different ways on the stats. I've talked to you about the
23 single-source version, where I -- you know, it's the random
24 match probability, or the mixture statistic; what is the
25 probability that somebody could be included?

ROUGH DRAFT TRANSCRIPT

000981

1 When I have a major contributor, I'm able to isolate
2 that as if it is single-source, because it's the major
3 component, and I apply a statistic to it that way. So, the
4 frequency of the major profile was rarer than one in 650
5 billion, and identity is assumed.

6 Q So, you can say that that was Brian O'Keefe's blood
7 in the middle section?

8 A The major contributor to the bloodstain that I took
9 was consistent with Brian O'Keefe. That was -- he was the
10 major contributor.

11 Q Okay. Let's talk about the minor contributor.

12 A So, now, the minor component, I couldn't isolate
13 this, because it's less DNA. And so, I applied a mixture
14 statistic to the mixture as a whole. What is the chance that
15 somebody could be included or excluded from this mixture? And
16 greater than 99.99 percent of individuals in the population
17 could be excluded from the mixture.

18 Q Could you exclude Victoria Whitmarsh?

19 A I could not. She could not be excluded as a minor
20 contributor to that mixture.

21 Q So, in this particular area of the knife, you found
22 a mixture of blood, the minor component or DNA contributor --
23 the major, rather. The major contributor is Brian O'Keefe?

24 A That's correct.

25 Q You can say that? And you cannot exclude Victoria

ROUGH DRAFT TRANSCRIPT

000982

1 Whitmarsh as the minor contributor?

2 A That is also correct.

3 Q Okay. Let's move to your JB4B. Where is that
4 located?

5 A This is the one that's located right here. You can
6 probably see a little bit of a red-brown stain still left, and
7 you can kind of see where I hollowed-out the part that I took.
8 This profile -- this sample, JB4B, was also positive for
9 blood.

10 In this one -- the profile that I obtained from this
11 sample, it was a single-source full male profile, consistent
12 with Brian O'Keefe. The statistic there again was rarer than
13 one in 650 billion. So, identity is assumed that the blood on
14 that particular location of the knife belonged to Brian
15 O'Keefe.

16 Q Okay. Let's move onto JB4C. Where is that?

17 A 4C is this one right here. And it's actually
18 depicting the underside of the knife handle. So, like if
19 you're -- it was the bottom part of the knife handle. This
20 one was a mixture of two individuals, with at least one being
21 male. It was also blood positive.

22 The major contributor to this mixture was Brian
23 O'Keefe. And again, it was rarer than one in 650 billion, so
24 identity is assumed that the major contributor there is Brian
25 O'Keefe.

ROUGH DRAFT TRANSCRIPT

000983

1 Q So, there's no question in your mind that it was
2 Brian O'Keefe's blood on the bottom of the handle of the
3 knife?

4 A That's correct.

5 Q All right. And you said this was a mixture profile?

6 A That's correct. Now, whenever we have a mixture
7 profile, we could interpret that mixture, or we might not be
8 able to for various different reasons. In this particular
9 instance, he's the major contributor. And the minor component
10 was actually so limited that I couldn't make any comparisons
11 about it at all, so I didn't do anything with the minor
12 component.

13 Q So, you have no information that you can give us in
14 that regard?

15 A That is correct. I could --

16 Q In terms of identity?

17 A I could not make any conclusions about the minor,
18 because there just wasn't enough information there for me to
19 be able to make a comparison to it.

20 Q What's touch DNA?

21 A Touch DNA is -- it's -- DNA is found in all sorts of
22 areas of your body. It could be in blood, semen, hair. But
23 it's also found in skin cells. And so, there's -- you know,
24 the cells that are sloughed off of your skin -- maybe I pick
25 up this pen, and I've touched this pen, or I'm holding it, I

ROUGH DRAFT TRANSCRIPT

000984

1 would consider this touch DNA. It's basically just skin cells
2 that were left on an item.

3 It's also [inaudible] think of like low contact.
4 For instance, maybe, your shirt. You know, your skin cells
5 might rub off on the inside of your shirt. And if I tested
6 that for DNA, that would be, again, touch DNA. So, something
7 like that.

8 Q Are you able to get -- or to identify full DNA
9 profiles where there has been a suspected touch DNA left on an
10 item?

11 A With touch DNA, it is completely variable. I could
12 have had very little contact with this knife -- or I'm sorry,
13 this pen, and left virtually no DNA, or not enough DNA for my
14 system to be able to be able to detect it. Or, I could have
15 had a lot of contact with this pen, and I could get a full --
16 my full profile from this item.

17 With touch DNA, it is variable. I could either
18 expect to get absolutely nothing, or I could get a great
19 result. And it really has to depend on how much contact maybe
20 came in with the item, how long a person had contact with it.
21 Maybe they sweated on it; or if it's been out in the heat, and
22 the DNA is, you know, going bad. It just -- it's just
23 completely variable. So, I expect nothing, or I could expect
24 everything.

25 Q So, in finding nothing --

ROUGH DRAFT TRANSCRIPT

000985

1 A That's not uncommon.

2 Q Let's assume you're not able to get any profile at
3 all.

4 A Um-hum.

5 Q Would your result be that you're not able to render
6 any conclusions with respect to the DNA?

7 A That's correct. I might not get a DNA profile at
8 all. I might get something so limited that I couldn't make a
9 conclusion about it. Or I could get something so great that
10 it could be single-source, you know, female profile.

11 Q Okay. Going back to the handle of the knife, with
12 respect to the minor profile, you just can't tell us anything
13 about that?

14 A Exactly, there just isn't enough there. And that's
15 -- a lot of that probably has to do with the fact that there
16 is blood there. There's so many cells in blood that, when I
17 go through and do my DNA testing, the types of kits and the
18 testing that I do, it amplifies -- or it gives profiles from
19 what's there the most.

20 You know, that's why I say, you know, someone's a
21 major contributor, because their DNA was there the most. So,
22 that's going to give me the results, over maybe just a few
23 skin cells that might be there, underneath all that blood and
24 all those blood cells.

25 Q Now, as we flip the knife over, and we go over to

ROUGH DRAFT TRANSCRIPT

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1 the other side of your diagram, is that your JB4D?

2 A This is, and I designated this as the tip of the
3 knife. I just wanted to see what was on the very tip. This
4 sample was, again, positive for blood. And on the tip of the
5 knife, I obtained a full single-source female profile that was
6 consistent with Victoria Whitmarsh. And the DNA profile was
7 rarer than one in 650 billion, so identity is assumed that the
8 source of the blood on the tip of the knife is Victoria
9 Whitmarsh.

10 Q So, to summarize your findings, when we look at the
11 knife, blood on the handle was identified to Mr. O'Keefe?

12 A That's -- yes, right in this area. Yes. Correct.

13 Q And blood -- I'm sorry.

14 A Or, do you want to do the other one with the
15 circles? Or -- okay. This is fine.

16 Q Sure. So, blood on the handle is identified to Mr.
17 O'Keefe?

18 A That is correct.

19 Q And blood on the very tip of the blade is identified
20 to Victoria Whitmarsh?

21 A That is correct.

22 Q All right.

23 MR. LALLI: Your Honor, that concludes direct
24 examination.

25 THE COURT: All right. Anything -- any cross-exam?

ROUGH DRAFT TRANSCRIPT

000987

1 MR. O'KEEFE: No, Your Honor, I have no questions.
2 THE COURT: All right. Thank you.
3 THE WITNESS: Okay.
4 THE COURT: Thank you for testifying.
5 THE WITNESS: Thank you.
6 THE COURT: You're excused.
7 THE WITNESS: Thank you.
8 THE COURT: I think. I think.
9 THE WITNESS: Do they have any questions?
10 THE COURT: That's why I said, I think.
11 THE WITNESS: Do you have any questions?
12 THE COURT: Going once. [Inaudible] questions?
13 THE WITNESS: I like to answer questions.
14 THE COURT: No questions.
15 THE WITNESS: Okay.
16 THE MARSHAL: Get out of here.
17 THE WITNESS: Thank you.
18 THE COURT: Thank you very much. We appreciate it.
19 THE WITNESS: Thank you very much.
20 THE COURT: All right. I think that concludes the
21 witnesses for today, ladies and gentlemen. We're going to
22 take an early recess, maybe beat the traffic, whatever it is.
23 And we'll see you back at 9:30.
24 During this recess, you're to -- it is your duty not
25 to converse among yourselves, or anyone else, on any subject

ROUGH DRAFT TRANSCRIPT

000988

1 connected with the trial; read, watch, or listen to any report
2 or commentary on the trial, by any person connected with the
3 trial, or by any medium of information, including, without
4 limitation, newspapers, television, radio. You are not to
5 form or express any opinion on any subject connected with the
6 trial until the cause is finally submitted to you.

7 We'll be at ease until the jury leaves. Mr. Lalli,
8 just come here a minute.

9 (Off-record bench conference)

10 (Outside the presence of the jury)

11 THE COURT: All right. This is outside the presence
12 of the jury. We can go on the record now. There was a note
13 from Juror number -- what was it?

14 MR. LALLI: 12.

15 MR. O'KEEFE: Juror number 10 --

16 THE COURT: 12. She indicated, "I feel like I'm
17 falling asleep. I think I have sleep apnea. I've not been to
18 the doctor, but it does run in the family. I don't feel it is
19 fair for everyone else if I keep doing this, and I certainly
20 don't want to jeopardize the case." Nella Humphries, Juror
21 number 12. That's the sister of Juror number 10, I believe.

22 MR. LALLI: Yes.

23 THE COURT: So, in any event, I just got this note.
24 And we'll talk about it tomorrow. Maybe I'll talk to her
25 tomorrow, and we'll get her alone and we'll talk to her, see

ROUGH DRAFT TRANSCRIPT

000989

1 if she's -- you know, what the situation is. And then we'll
2 make a decision whether to put an alternate juror in. Is that
3 all right, Mr. Lalli?

4 MR. LALLI: Sounds good, Your Honor. Thank you.

5 THE COURT: Mr. O'Keefe?

6 MR. O'KEEFE: Yes, that's okay. And Your Honor, if
7 I could, tomorrow morning, Your Honor, we have a slight
8 evidentiary issue that we need -- we'll handle, if that's
9 okay, pertaining to --

10 THE COURT: Well, what is it?

11 MR. O'KEEFE: -- the suicides in the medical records
12 that were stipulated to partially come in; partially not. Me
13 and Mr. Lalli was (sic) talking about it partially today. We
14 kept pushing it off, pushing it off. So --

15 THE COURT: Why don't you talk about it and let me
16 know tomorrow, all right?

17 MR. LALLI: Sure.

18 THE COURT: And how many witnesses you got left?

19 MR. LALLI: We have I believe three.

20 THE COURT: All right. So, you should be done by
21 what time?

22 MR. LALLI: I would say -- you know, I would
23 guestimate early afternoon.

24 THE COURT: Oh, so it's not -- you're not going to
25 be able to argue tomorrow afternoon?

ROUGH DRAFT TRANSCRIPT

000990

1 MR. LALLI: I don't -- I don't think so. We haven't
2 settled jury instructions.

3 THE COURT: All right.

4 MR. LALLI: We're going to --

5 THE COURT: Do you have any proposed jury
6 instructions, Mr. O'Keefe?

7 MR. O'KEEFE: Excuse me, I --

8 THE COURT: Do you have any proposed -- did you look
9 at the State's proposed jury --

10 MR. O'KEEFE: No, I have not had a copy. I have
11 not --

12 THE COURT: Did you give Mr. --

13 MR. MANINGO: They've been -- Mr. Lalli emailed it
14 to me, Your Honor.

15 THE COURT: Oh, I see. You'll --

16 MR. MANINGO: And I'll go over it with Mr. O'Keefe.

17 THE COURT: You'll give a copy to Mr. O'Keefe?

18 MR. MANINGO: I will.

19 THE COURT: I don't know if you have any yourself
20 proposed jury instructions. If you do, please get them ready
21 so we don't have to delay the case, all right?

22 MR. O'KEEFE: Okay, Your Honor.

23 THE COURT: In any event, we'll see everybody -- try
24 to, you know, resolve this issue, if you can. If not, I'll
25 take a little time, you know --

ROUGH DRAFT TRANSCRIPT

000991

1 MR. LALLI: Very good. What time would the Court
2 want witnesses tomorrow?

3 THE COURT: Well, I think 9:30. I hope.

4 MR. LALLI: Okay.

5 THE COURT: I mean, I still got a calendar, but I'm
6 pretty quick, you know. So, I'll --

7 MR. LALLI: Quickest in the courthouse.

8 THE COURT: -- try. We've got an evidentiary -- but
9 I -- I just -- everybody here at 9:30, all right?

10 MR. LALLI: Very good.

11 THE COURT: All right. Thanks.

12 MR. LALLI: We'll be ready to go. Thank you, Your
13 Honor.

14 MR. O'KEEFE: Thank you, Your Honor.

15 (Court recessed at 4:07 p.m., until Thursday,

16 June 14, 2012, at 9:30 a.m.)
17
18
19
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25

ROUGH DRAFT TRANSCRIPT

000992

INDEXWITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>STATE'S WITNESSES:</u>				
Daniel Ford	2	17	19	20
Christopher Hutcherson	27	45		
Robbie Dahn	57			
Timothy Dutra	69	108	124, 130, 139	129, 138, 140
Jocelyn Maldonado	146	179		
Jennifer Bas	187			

* * *

EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
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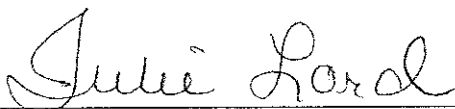
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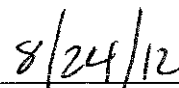
ACKNOWLEDGMENT

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

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DATE

ROUGH DRAFT TRANSCRIPT

000994

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BRIAN O'KEEFE

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,)
)
Appellant,)
)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)
_____)

Case No.: 61631
District Court Case No.: C250630

APPELLANT'S APPENDIX

VOLUME 4

**APPEAL FROM JUDGMENT OF CONVICTION AND SENTENCE IN THE
EIGHTH JUDICIAL DISTRICT COURT**

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Attorneys for Respondent

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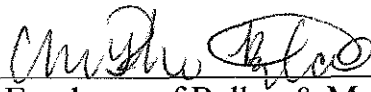
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CERTIFICATE OF MAILING

I, hereby certify that on the 29th day of October, 2012, I did serve a true and correct copy of the foregoing APPELLANT'S APPENDIX by depositing same in the United States mail, first-class postage fully prepaid, addressed as follows:

Clark County District Attorney
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717


An Employee of Bellon & Maningo

1 Q -- after that?

2 A When I entered the room, I rolled into the bathroom,
3 cleared the bathroom, came back out. And over where the
4 suspect was, the taser was already being operated. I
5 maintained the suspect's feet, and kept him in position while
6 they tried to get his hands in the handcuffs.

7 Q Was there any struggling going on?

8 A There was a brief struggle over trying to get his
9 right arm out to get him in the handcuffs. It looked like he
10 was trying to fight through the ECD, and through the officers.
11 So, a second cycle of the ECD was delivered. A cycle was
12 about five seconds. So, one five-second cycle; pull the
13 trigger of the ECD, and a second one -- a second five-second
14 cycle.

15 Q So, when you say cycle, it basically means shocking
16 the individual?

17 A Yes.

18 Q Okay. So, he's shocked the first time, he begins to
19 struggle after that, he's shocked a second time?

20 A Yes.

21 Q And then what happens?

22 A He's quite -- he's eventually taken into handcuffs
23 during the second cycle. Once that is done, Officer Taylor,
24 Officer Ballejos, and Officer Conn pick him up, and carry him
25 out of the room into the living room.

ROUGH DRAFT TRANSCRIPT

000746

1 Q Okay. Now, on this diagram, there's like a dotted
2 line that leads through the living room. Do you have any idea
3 what that is?

4 A This one here, sir?

5 Q Yes, sir.

6 A Yes.

7 Q What is that?

8 A That is the taser wires, or the ECD wires. When the
9 taser is deployed, it fires a set of probes that have a bar
10 code on the end. They are attached to the taser itself via
11 little thin copper wires, that are approximately 21 feet-long.
12 And that is the taser wire with cartridge being thread along
13 right there.

14 Q All right. So, the individual who is removed from
15 the back bedroom, do you see him in the courtroom?

16 A Yes, I do.

17 Q Can you please point to him, and identify what he's
18 wearing?

19 A He's this gentleman right here. He's wearing kind
20 of a light green shirt, brown suit, and yellow tie.

21 MR. LALLI: Your Honor, may the record reflect the
22 witness has identified --

23 THE COURT: Yes.

24 MR. LALLI: -- the defendant?

25 THE COURT: Yes.

ROUGH DRAFT TRANSCRIPT

000747

1 BY MR. LALLI:

2 Q Sergeant, you can return to the witness stand. What
3 did you do after the defendant was removed from the room?

4 A I have training as an EMT. I immediately dropped
5 down to try to administer some aid to the victim. I checked
6 for a pulse on the carotid artery on the right side of her
7 neck. I then used a flashlight to check for pupil dilation,
8 and also looked for respirations on the female victim.

9 Q Can you describe what you saw of the female victim
10 as you were in the room with her? What did she look like?

11 A She didn't appear to be alive. She appeared to be
12 deceased.

13 MR. LALLI: May I approach the witness?

14 THE COURT: Yes.

15 THE WITNESS: She had blood on her. Like I had
16 mentioned before, she had something tied around her arm, and
17 just a tank top on.

18 BY MR. LALLI:

19 Q Sergeant, I'm going to show you what we've marked as
20 State's proposed Exhibit number 23. Do you recognize what's
21 depicted in that photograph?

22 A That is the female victim.

23 Q Is that a fair and accurate depiction of what she
24 looked like when you saw her?

25 A Yes, sir.

1 MR. LALLI: Your Honor, move for the admission of
2 State's proposed 23.

3 THE COURT: Any objection, Mr. O'Keefe?

4 MR. O'KEEFE: No, Your Honor.

5 THE COURT: 23 will be admitted.

6 (Exhibit 23 is admitted)

7 BY MR. LALLI:

8 Q So, Sergeant, when you walked -- or went up to her,
9 can you show us where it is that you placed your hand on her?

10 A I placed it on the right side of her neck, where her
11 carotid pulse would be.

12 Q What did you feel?

13 A I felt no pulse.

14 Q Do you have any training -- any medical training?

15 A Yes. I've been trained as an EMT intermediate, and
16 I've worked as an EMT intermediate for several years at that
17 point.

18 Q Did any other medical personnel come into the room
19 to attempt to render aid, or evaluation of this female?

20 A Due to my observations, not being able to find a
21 pulse, no breathing, and fixed and dilated pupils, I asked for
22 one paramedic to come in to start a medical evaluation, and
23 one paramedic did enter the room.

24 Q Did you see what the medical -- the paramedic did?

25 A Yes. He checked for a carotid pulse on the exact

ROUGH DRAFT TRANSCRIPT

000749

1 same side and spot that I did on the right side of the neck.

2 Q Now, at some point, did you pick something up in the
3 living room or in the bedroom area, and move it to a table?

4 A I picked it up on the floor, between like the
5 hallway and the living room area, and moved it to a table in
6 the living room. It was a taser probe.

7 Q All right. There we go. Okay. If we look at
8 State's Exhibit number 1 here, does it appear to be a round
9 table near the door? There's a number 2 on that.

10 A Yes.

11 Q Is that approximately where you put the taser probe?

12 A Yes, it is.

13 MR. LALLI: May I approach the witness?

14 THE COURT: Yes.

15 BY MR. LALLI:

16 Q I'm going to show you what we've marked as State's
17 proposed 9 for identification purposes. Is that a fair and
18 accurate depiction of the table, on which is the laser probe
19 that you placed there?

20 A It is a taser probe, not a laser probe.

21 Q I'm sorry.

22 A But yes, it is.

23 Q Taser probe. Thank you. Metro's not using lasers
24 for this sort of thing?

25 A No.

1 MR. LALLI: Your Honor, move for the admission of
2 State's proposed 9.

3 THE COURT: Did you show that to Mr. O'Keefe?

4 MR. LALLI: I did.

5 THE COURT: All right. Any objection?

6 MR. O'KEEFE: No, Your Honor.

7 THE COURT: All right. It will be admitted.

8 (Exhibit 9 is admitted)

9 BY MR. LALLI:

10 Q So, is that the taser probe that you placed on the
11 table by the door?

12 A Yes, it is.

13 Q And where -- going back to State's Exhibit number 1,
14 what room was that found in?

15 A I believe it was found somewhere near where number 1
16 is depicted, in the hallway to the living room area.

17 Q So, number 1 is the beginning of the taser wire --

18 A Yes.

19 Q -- the probe wire? All right. Now, do you have
20 further contact with the defendant?

21 A I return back outside to speak with him. It is our
22 job as the supervisors to investigate all use of force, such
23 as when we use a taser, an ECD; any other tools. I wanted to
24 speak with him, and make sure that medical was rendered to him
25 for the taser usage.

ROUGH DRAFT TRANSCRIPT

000751

1 Q Why would you request medical for taser usage?

2 A Number one, it's department policy that whenever an
3 ECD, or a taser is used on someone, that they must have
4 medical called to check them out physically to make sure
5 they're okay. Second, he had blood on him. We wanted to make
6 sure he didn't have any injuries from whatever incident he had
7 been involved in.

8 Q Did you notice any marks on the defendant's head?
9 On his forehead?

10 A He did. He had a small injury to his forehead. It
11 appeared to me to be some type of a -- like an abrasion, from
12 like a carpet burn, or being drug on a surface.

13 Q Was the defendant ever drug anywhere that you
14 observed?

15 A I do not know.

16 Q Okay. Where was the defendant when you encountered
17 him with respect to getting medical aid for him?

18 A When I encountered him for medical aid, he was
19 outside of the apartment. There's a little walkway there; it
20 is a second-story apartment. And he was seated on that
21 walkway, next to the stairs.

22 Q Were you present when paramedics came to evaluate
23 him?

24 A Yes, I was.

25 Q Describe what you observed when that happened.

ROUGH DRAFT TRANSCRIPT

000752

1 A Well, they were talking with him. I don't recall
2 large amounts of the conversation. I do remember him being
3 belligerent and uncooperative.

4 Q What did he say to them?

5 A One of the things I do remember was he said,
6 essentially, "Fuck you."

7 Q To the paramedics who were trying to help him?

8 A Yes.

9 Q Thank you.

10 MR. LALLI: Nothing else, Your Honor.

11 THE COURT: All right. Cross-examination, Mr.
12 O'Keefe?

13 MR. O'KEEFE: Yeah. Brief, Your Honor.

14 THE COURT: Thank you.

15 CROSS-EXAMINATION

16 BY MR. O'KEEFE:

17 Q That's Sergeant Newberry, right?

18 A That is correct, sir.

19 Q How are you, sir?

20 A Fine, sir.

21 Q I'm going to be real brief, Sergeant Newberry.

22 Let's get this -- I just want to state, at any time, did you
23 feel I was under the influence, Sergeant?

24 A When I spoke with you, you appeared to be
25 intoxicated.

ROUGH DRAFT TRANSCRIPT

000753

1 Q Okay.

2 A I believe I described it in my use of force report,
3 "He was extremely intoxicated."

4 Q Okay. Yes, you did. And do you know that at the
5 time of the call -- the 9-11 call was made, immediately two
6 minutes after the call was made, they announced, communication
7 center, to everyone that the defendant was extremely 408.
8 What does that mean, Sergeant?

9 A It means -- a 408 person is somebody that's an
10 intoxicated person.

11 Q So --

12 A So, it would mean that you're extremely 408.

13 Q Meaning, extremely intoxicated. So, you had a
14 pretty good idea at the beginning; yes or no?

15 A From --

16 Q Yes or no, Sergeant?

17 A From my time and experience as a police officer --

18 THE COURT: You know, sometimes you can't answer --
19 could you answer that yes or no? I don't know. He wanted a
20 yes or no answer on that.

21 MR. O'KEEFE: I just asked --

22 BY MR. O'KEEFE:

23 Q So, extremely 408 means extremely intoxicated? Yes
24 or no.

25 A I --

1 THE COURT: Could you -- if you can't answer --

2 THE WITNESS: I can't answer that one yes or no.

3 THE COURT: All right.

4 BY MR. O'KEEFE:

5 Q Okay. That's fair. Okay. Go ahead, then.

6 A I was going to say, from my experience and tenure as
7 a police officer, usually the first story, which is the
8 dispatch story, is not always entirely accurate. So, I try to
9 give everybody the benefit of the doubt.

10 Q Okay. Did they take my blood or breath?

11 A I do not know.

12 Q Okay. You said commands were moving fast and all
13 that. But knowing that I'm extremely intoxicated -- you know
14 that I have the call center here, too. From the time it
15 started, until the time I was placed in handcuffs, it was
16 minutes?

17 A Yes, sir.

18 Q Just minutes? Okay. I know it seemed like a
19 lifetime, Sergeant. And you know, I do agree with you there.
20 I does. But it was just mere minutes. At any time, did I
21 ever say, get out, or get the F out? Excuse me, Officer.

22 A I do not recall, sir.

23 Q But clearly, I did say at times, get in here, come
24 in here; and then at times, I started saying, get the F in
25 here? Absolutely, I was saying, get the F in here, correct?

ROUGH DRAFT TRANSCRIPT

000755

1 A I -- if I were to say that those were the words,
2 that would be pure speculation on my part. I don't recall --
3 like I said, I don't recall much of the conversation that was
4 said between Officer Conn and you. I just remember that it
5 did not seem like it was fruitful, like it was going to
6 progress to any type of surrender.

7 Q Okay. Someone, you know, without a guilty mind, in
8 your experience through the years, would act that way, would
9 say, get in here? They don't understand if they're --

10 MR. LALLI: I'm going to object, Your Honor. Calls
11 for speculation.

12 THE COURT: Yeah. That's a vague --

13 MR. O'KEEFE: Okay, Your Honor.

14 THE COURT: -- question.

15 MR. O'KEEFE: I'll move on, Your Honor. Yes, sir.

16 THE COURT: All right. Thank you --

17 MR. O'KEEFE: To help out.

18 THE COURT: -- very much.

19 MR. O'KEEFE: It's late. Everyone's tired, I
20 understand. Okay.

21 THE COURT: Yeah. Thank you, Mr. O'Keefe. No, if
22 it was a legitimate question, I'd allow you to ask it. But I
23 think --

24 MR. O'KEEFE: Yes, sir, Your Honor.

25 THE COURT: That's an argumentative thing for the

1 jury. You say, you know, ladies and gentlemen of the jury,
2 let me argue this to you, and then --

3 MR. O'KEEFE: Okay.

4 THE COURT: -- you could argue that in front of the
5 jury.

6 BY MR. O'KEEFE:

7 Q I understand you guys -- you know, safety for the
8 community and all that. And it was stated repeatedly through
9 many prior testimonies that of course, you felt that the
10 defendant may be baiting you, correct, Sergeant? The overall,
11 defendant could be baiting us; you said yourself, setting up
12 -- could have had a trap set?

13 A That is always a possibility. We have to be
14 concerned about that.

15 Q Okay. Now, yes or no answer, if you can.

16 THE COURT: Yeah. If you can't answer yes or no,
17 say --

18 MR. O'KEEFE: We'll just --

19 THE COURT: -- I can't answer that yes or no.

20 MR. O'KEEFE: We'll save it. Right.

21 BY MR. O'KEEFE:

22 Q Yes or no, if you can.

23 A Okay.

24 Q Ultimately though, at the conclusion of the whole
25 event, I wasn't baiting you though? It ended up --

ROUGH DRAFT TRANSCRIPT

000757

1 A I don't --

2 Q -- I wasn't baiting you?

3 A I don't know. I can't answer that with a yes or no.
4 Sorry.

5 Q Okay. That's fair enough, Sergeant. Okay. You --
6 I'm ex-military, and I understand how you guys do your stack
7 in, it's crisis intervention team, and you go in, and we're
8 all taught, you know, you got to be careful when you enter a
9 scene, and there's maybe somebody with a weapon, trying to
10 bait you.

11 When you guys decide it's code, the call's made to
12 go ahead and enter in, and you go in, would you agree,
13 Sergeant, that you all don't stay right behind each other?
14 You kind of fan out a little bit, correct? I mean, you go in,
15 and -- you know. Would you agree with that, Sergeant?

16 A No, I would not.

17 Q So then, you're saying that you guys entered the
18 room all right behind each other?

19 A Yes, I would.

20 Q Okay. Where did all five of you go? There was only
21 -- I'm curious. You said you --

22 A There was not five, there was four of us.

23 Q Four?

24 A There was Officer Conn, Officer Jeremiah Ballejos,
25 Officer Sean Taylor, and myself.

ROUGH DRAFT TRANSCRIPT

000758

1 Q Would you disagree with there's prior testimony
2 there was time that there was four guys stated, there was five
3 officers, and even up to six one time?

4 A I wasn't here for prior testimony, so I could not.

5 Q Okay. Fair enough. Is there any policy that you're
6 aware of, being a sergeant and you've got a lot of experience
7 in it, that they possibly -- after -- since the medical team
8 was there to check out my tasing situation, did anybody
9 attempt to take my blood draw or breath, that you're aware of?

10 A No.

11 Q Okay. This use of force form, is this always filled
12 out, Officer, by the police when any type of use of force by a
13 weapon is used; pulled, drawn, shot, discharged?

14 A Use of force reports are completed when there is an
15 injury or suspected injury, or over a certain level of force.
16 With a taser, it's an automatic completion of the report.

17 Q And that's a policy -- Sergeant, it's no trick about
18 it. And I'll speed it up here. I mean, it's -- there's no
19 trick. And it's filled out any time a taser is utilized, or a
20 gun is discharged, or any time, correct?

21 A Yes, sir.

22 Q Okay. And without having to go through, and enter
23 an exhibit and all that, to speed things up, let me just ask
24 you straight off if you remember. It was quite clearly filled
25 out that the officer's assessment of the citizen was he was

ROUGH DRAFT TRANSCRIPT

000759

1 mentally ill, or slash -- or, slash, under the influence; is
2 that correct? Do you remember that, or do you need to see it?

3 A Is that under my portion, or under Officer Ballejos'
4 portion?

5 Q Well, you -- it's all five pages, and you approved
6 it at the end. So, surely you would have read that?

7 A Yes.

8 Q Okay. So, you agree with that, it does say -- it
9 says it right here. I mean, if you need me to have it
10 approached --

11 A I would have to look at it to agree, but.

12 MR. O'KEEFE: Mr. Maningo, will you approach the
13 witness and --

14 MR. MANINGO: Sure.

15 MR. O'KEEFE: -- let him refresh his memory? And
16 also, here, let him read it, please. And number one.

17 MR. MANINGO: May I, Your Honor?

18 MR. O'KEEFE: Court's indulgence.

19 THE COURT: Please. Thank you very much.

20 MR. O'KEEFE: Oh, I'm sorry. Did the State see it?
21 They need to --

22 MR. LALLI: I have it. Thank you.

23 MR. O'KEEFE: Okay. Sorry, Mr. Lalli.

24 BY MR. O'KEEFE:

25 Q Would you just read the highlighted on 1; and then

1 on the fourth or fifth page, the highlight? Let me know when
2 you're done, Sergeant, please. Okay. So, now after -- you've
3 read it, correct, Sergeant?

4 A Yes, sir.

5 Q Okay. So, it does say on page 1 that clearly, the
6 assessment's made that mentally ill, and -- slash under the
7 influence?

8 A Yes, that does.

9 Q Okay. And then, on the fourth page, after you
10 reviewed your lower ranking officer and you approved it, it
11 says that O'Keefe appeared extremely intoxicated, and
12 continued to be erratic and emotional in his behavior;
13 correct, Officer?

14 A Yes, it does.

15 Q Okay. Thank you. Again, just to clarify real
16 quick, you seen no weapons in my hand or anything, correct,
17 Sergeant?

18 A I never saw a weapon in your hand, no.

19 Q And I wasn't on top of the victim; I was beside her?

20 A From the vantage point that I saw, you were laying
21 on her left side. It could have been on that portion of her
22 left body; it could have been on the floor.

23 Q And you could clearly see in from your standing
24 point, all the way into the dark bedroom, over and beyond the
25 bed and see?

ROUGH DRAFT TRANSCRIPT

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1 A It was not a dark bedroom. There was light.

2 Q If we have photographs showing that the light was
3 off -- you must remember, when these photographs were taken,
4 your team came in and brought lights in, and turned it on.
5 But if I were to have a picture shown that clearly shows at
6 the time that they took the photographs, the picture (sic) was
7 off. And then, they went in and turned whatever they could,
8 and they took more pictures.

9 Are you saying that you're disputing that the -- it
10 was -- there was no light on?

11 A When we entered the bedroom, the bathroom light that
12 is attached to that bedroom was on, providing light into that
13 room.

14 Q Key, providing light into that room. But there was
15 no light fixture -- there was no light on in the bedroom.
16 Clearly, that's all I'm stating. Is that correct? The light
17 was coming from --

18 A I remember light coming into that room from the
19 bathroom.

20 Q From the bathroom. Thank you, sir. And that's fair
21 enough.

22 MR. O'KEEFE: You know, Your Honor, no further
23 questions.

24 THE COURT: Thank you so much, Mr. O'Keefe.

25 MR. O'KEEFE: Thank you.

ROUGH DRAFT TRANSCRIPT

000762

1 THE COURT: Let's -- are we going to recess, or you
2 got one or two questions?

3 MR. LALLI: I have no other questions, Your Honor.

4 THE COURT: Thank you so much for testifying and
5 waiting this long. We appreciate it.

6 All right. It's a good time to take our evening
7 recess. I think we have accomplished a lot, ladies and
8 gentlemen. I commend Mr. Lalli, and I commend Mr. O'Keefe for
9 moving this along.

10 And we're going to resume our testimony tomorrow
11 morning at 9:30, so everybody be outside at 9:30. I have a
12 motion calendar, and it's a civil calendar. So, these civil
13 lawyers are pretty wordy. So -- but I'm going to try to get
14 through with it before 9:00 o'clock -- 9:30, excuse me. But
15 if I'm a little late, I'm a little late.

16 Don't converse among yourselves, or anyone else, on
17 any subject connected with the trial; read, watch, or listen
18 to any report of, or commentary on the trial, by any person
19 connected with the trial, or by any medium of information,
20 including, without limitation, newspapers, television, radio.
21 And you are not to form or express any opinion on the trial
22 until the cause is finally submitted to you.

23 So, with that admonishment, we'll see everybody back
24 at 9:30. Mr. Roche, did you write this thing for me? Did
25 somebody write --

ROUGH DRAFT TRANSCRIPT

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1 THE MARSHAL: That's number 7, Your Honor.

2 THE COURT: Oh. Who's 7?

3 THE MARSHAL: 7 or 8.

4 UNKNOWN MALE SPEAKER: The question?

5 THE COURT: No. It's a -- who -- this, "I have a
6 neighbor."

7 UNKNOWN MALE SPEAKER: That's me.

8 THE COURT: Yeah. Would you wait in the courtroom,
9 please?

10 UNKNOWN MALE SPEAKER: Sure.

11 THE COURT: And the rest of you, we'll be at ease
12 until the jury leaves.

13 (Outside the presence of the jury panel)

14 THE COURT: All right. You know, we appreciate -- I
15 just have to -- everything that comes, I have to make a record
16 on. You wrote some sort of a note. And I put in Juror number
17 8, because you're Juror number 8.

18 JUROR NO. 8: Yeah.

19 THE COURT: "I have a neighbor down the street named
20 Daniel. I don't remember his last name, but works either as a
21 CSI person, or the coroner. I do not socialize with him. He
22 is a neighbor, acquaintance. I do not know if this is one of
23 your witnesses."

24 So, I don't think -- that was the only Daniel, I
25 think. He had -- that was Daniel, wasn't his name?

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1 MR. LALLI: It was, Your Honor.

2 THE COURT: Is there any Daniel that works with the
3 CSI or coroner that you expect to call?

4 MR. LALLI: Yes. There is a retired crime scene
5 analyst by the name of Dan Ford. I know that analyst Ford is
6 now retired from Metro, and it's my belief that he lives
7 somewhere in Henderson.

8 JUROR NO. 8: I don't think that's the same
9 individual.

10 THE COURT: And he's an older gentleman? How old is
11 he about?

12 MR. LALLI: He's really old. He's probably -- I
13 don't know, 50-something.

14 THE COURT: So, my age?

15 (Pause in the proceedings)

16 MR. LALLI: He's -- I would say he's middle-aged.

17 THE COURT: Middle-aged? And what does he look
18 like?

19 MR. LALLI: He's a tall gentleman. He has kind of
20 brownish-reddish hair, kind of curly.

21 THE COURT: All right. Probably not the person,
22 right?

23 JUROR NO. 8: I don't think that's the same
24 individual.

25 THE COURT: All right. Well, if -- but I feel --

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1 thank you very much for bringing it to my attention. Always
2 good to be cautious. So, we'll just make this part of the
3 record that probably, the neighbor you mentioned is not going
4 to be called. But if something happens --

5 JUROR NO. 8: No.

6 THE COURT: -- you'll let me --

7 JUROR NO. 8: This person's younger.

8 THE COURT: -- write another note, all right?

9 JUROR NO. 8: This person's younger than me, very
10 heavysset.

11 THE COURT: Okay.

12 JUROR NO. 8: Yeah.

13 THE COURT: So, I'm sure it's not.

14 JUROR NO. 8: Different person.

15 THE COURT: Thank you so much. Have a nice evening.

16 All right. This is outside the presence of the
17 jury. So, what are we looking at? We're going to have a full
18 day tomorrow, because I've resolved the settlement conference.
19 So, we'll have a full day tomorrow, from 9:30 to 5:00. And
20 you'll have the witnesses here, right, Mr. --

21 MR. LALLI: We will, Your Honor. There are some
22 scheduling issues that we have in every trial, and we'll work
23 around those. We might have to call a few witnesses out of
24 order. I can tell the Court that we have one witness who
25 suffered a death in his family, and is out of town for that.

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1 But he will be back on Thursday, so we'll have at least one
2 witness on Thursday. We may be able to get through the
3 majority of the other witnesses tomorrow.

4 THE COURT: Okay. Perhaps -- so, Thursday -- now,
5 Mr. O'Keefe, you mentioned you have some witness under
6 subpoena; is that correct?

7 MR. O'KEEFE: I'm going to call nobody, Your Honor.

8 THE COURT: Okay. It's up to you, all right?

9 MR. O'KEEFE: I want to just -- let's just move this
10 show along.

11 THE COURT: Yeah, I -- you know, it's up to you. I
12 mean, again, I accommodate anything you need. Let me give you
13 the admonishment while I'm thinking about it, so I don't
14 forget. You know, I have to give you the -- you've heard this
15 before. It's the waiver of right against self-incrimination.

16 Before a defendant takes or refuses to take the
17 stand, the following statutes have to be read to the defendant
18 outside the presence of the jury, and I have to advise him to
19 confer with maybe your standby counsel, with [inaudible]
20 having the defendant voluntarily make a knowing and
21 understanding waiver of the right against self-incrimination
22 by testifying if you so desire. But you may refuse to waive
23 your constitutional right, and not take the stand.

24 Now, NRS 175.171, "No special instructions to be
25 given relating exclusively to the defendant's testimony. In

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1 the trial of all indictments, complaints, and other
2 proceedings against persons charged with the commission of
3 crimes or offenses, the person so charged shall at his own
4 request, but not otherwise, be deemed a competent witness, the
5 credit to be given his testimony being left solely to the jury
6 under the instructions of the Court. But no special
7 instructions shall be given relating exclusively to the
8 testimony of the defendant."

9 NRS 175.181, "Instruction not to be given relative
10 to failure of the defendant to testify." One, "No instruction
11 shall be given relative to the failure of the person charged
12 with the commission of crime or offense to testify, except,
13 upon the request of the person so charged, the Court shall
14 instruct the jury that in accordance with a right guaranteed
15 by the Constitution, no person can be compelled in a criminal
16 action to be a witness against himself, and nothing herein
17 contained shall be construed as compelling any such person to
18 testify."

19 So, basically -- you know this probably. Under the
20 Constitution of the United States, under the Constitution of
21 the State of Nevada, you cannot be compelled to testify in
22 this case. You understand that?

23 MR. O'KEEFE: Yes, Your Honor.

24 THE COURT: And you may though, at your own request,
25 give up this right, and take the witness stand and testify.

1 If you do, you will be subject to cross-examination by the
2 district attorney, and anything you may say, be it on direct
3 or cross, will be subject to fair comment when the district
4 attorney speaks to the jury in their final argument. Do you
5 understand that?

6 MR. O'KEEFE: Yes, Your Honor.

7 THE COURT: And if choose not to testify, the Court
8 will not permit the district attorney to make any comments to
9 the jury because you have not testified. Do you understand
10 that?

11 MR. O'KEEFE: Yes, Your Honor.

12 THE COURT: If you elect not to testify, the Court
13 will instruct the jury, but only if you request --
14 specifically request, as follows: "The law does not compel a
15 defendant in a criminal case to take the stand and testify,
16 and no presumption may be raised, and no inference of any kind
17 may be drawn from the failure of the defendant to testify."
18 Do you understand that?

19 MR. O'KEEFE: Yes, Your Honor.

20 THE COURT: If you have felony convictions, of
21 course they'll be brought out, and you have not sought to
22 preclude them. They'll be brought out. But that's already
23 brought out, so that's not really a matter here.

24 So, that being said, at least you know your rights.
25 And you don't have to tell me now whether you're going to

1 testify or not. That's up to you. And we'll reserve that at
2 the appropriate time, all right?

3 Is there anything else to come before the Court
4 before we take our evening recess?

5 MR. LALLI: Not on behalf of the State, Your Honor.

6 THE COURT: Mr. O'Keefe, anything else?

7 MR. O'KEEFE: No, Your Honor.

8 THE COURT: All right.

9 MR. O'KEEFE: Thank you.

10 THE COURT: Thank you so much. I appreciate
11 everybody being professional, and we'll see everybody tomorrow
12 at 9:30.

13 MR. MANINGO: Thank you, sir.

14 (Proceeding concluded at 5:04 p.m., until Wednesday,
15 June 13, 2012, at 9:53 a.m.)
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WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>STATE'S WITNESSES:</u>				
Roger Price	96			
Elynnne Greene	108			
Cheryl Morris	121	139		
Joyce Toliver	164	177		
Charles Toliver	180	193		
Jimmy Hathcox	198	205		
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* * *

EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
<u>STATE'S EXHIBITS:</u>	
Exhibit 1	136
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ACKNOWLEDGMENT

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

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JULIE LORD, TRANSCRIBER

8/24/12

DATE

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000772

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John B. Schuman
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-250630
	.	
Plaintiff,	.	DEPT. NO. XVII
	.	
vs.	.	
	.	
BRIAN KERRY O'KEEFE,	.	TRANSCRIPT OF
	.	PROCEEDINGS
	.	
Defendant.	.	
.....	.	

BEFORE THE HONORABLE SENIOR JUDGE JOSEPH BONAVENTURE

**ROUGH DRAFT TRANSCRIPT OF
JURY TRIAL - DAY 3**

WEDNESDAY, JUNE 13, 2012

APPEARANCES:

FOR THE PLAINTIFF:	CHRISTOPHER LALLI, ESQ. ELIZABETH A. MERCER, ESQ. <i>Chief Deputy District Attorneys</i>
FOR THE DEFENDANT:	BRIAN KERRY O'KEEFE <i>Pro Per</i> LANCE MANINGO, ESQ. <i>Stand by counsel for defendant</i>

COURT RECORDER:

MICHELLE RAMSEY
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

000773

1 LAS VEGAS, NEVADA, WEDNESDAY, JUNE 13, 2012, 9:53 A.M.

2 (In the presence of the jury)

3 THE MARSHAL: Sir, if you will remain standing.
4 Please, sir, raise your right hand.

5 DANIEL FORD, STATE'S WITNESS, SWORN

6 THE MARSHAL: You may be seated. And if you would,
7 please state and spell your name for the record.

8 THE WITNESS: Daniel Ford. D-a-n-i-e-l, F-o-r-d.

9 MS. MERCER: May I proceed, Your Honor?

10 DIRECT EXAMINATION

11 BY MS. MERCER:

12 Q Sir, are you currently employed?

13 A No, ma'am, I'm not. I'm retired as of January 1st.

14 Q January 1st of 2012?

15 A This year. Yes, ma'am.

16 Q And where did you retire from?

17 A Las Vegas Metropolitan Police Department,
18 criminalistics bureau.

19 Q Were you a crime scene analyst with Metro?

20 A Yes, ma'am. 20 years, 3 months, and 22 days.

21 Q Okay. I want to direct your attention to November
22 of 2008; specifically, November 5th, early morning of the 6th.
23 Were you assigned to an incident involving an individual by
24 the name of Brian O'Keefe?

25 A Yes, ma'am, I was.

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1 Q And what specifically were your duties with respect
2 to that investigation?

3 A My supervisor called me and asked me to respond to
4 the homicide bureau to meet with the homicide detectives, take
5 photographs of the suspect, and collect the suspect's
6 clothing.

7 Q Okay. And actually, before I proceed, can you
8 explain for the jurors some of the duties of a crime scene
9 analyst?

10 A To respond to crime scenes when requested by patrol
11 officers or detectives. Document that scene through the use
12 of photographs, notes, diagrams. Search for items of
13 evidence. Identify those items of evidence, if possible.
14 Collect those items of evidence for examination at a later
15 date.

16 Process the scene for latent fingerprints. Collect
17 those latent fingerprints, and submit those to the latent
18 print section. Come back to the lab, do -- complete our
19 reports, and submit any evidence that we collected at the
20 scenes.

21 Q Okay. And you indicated that your supervisor
22 requested that you respond to the homicide office?

23 A Yes, ma'am. That's correct.

24 Q Where is that located?

25 A At that time, it was West Oakey Boulevard, just east

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1 of Decatur.

2 Q Do you recall about what time you were asked to
3 respond to that location?

4 A I was around -- I was in -- close to the area. I
5 was -- it was about 3:40, 3:44 that he called me, and I got
6 there within three minutes.

7 Q Are we talking A.M.?

8 A Yeah, 3:47 in the morning. Yes, ma'am.

9 Q Okay. When you arrived on scene, who did you make
10 contact with?

11 A Homicide Detective -- if I could look at my report.

12 Q Would that refresh your memory?

13 A Yes, ma'am, it would.

14 THE COURT: Please.

15 THE WITNESS: Okay. Marty Wildemann.

16 BY MS. MERCER:

17 Q You made contact with Marty Wildemann?

18 A Yes, ma'am.

19 Q And when you made contact with him, what was the
20 purpose of your contact?

21 A To photograph the suspect, collect any evidence from
22 the suspect, collect his clothing. Photograph the suspect,
23 show his condition at the time of the arrest. And then,
24 complete my reports, and go back to the office.

25 Q Okay. And that was what -- or Detective Wildemann

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1 requested that you do?

2 A Yes, ma'am.

3 Q Did you in fact photograph Brian O'Keefe on that
4 night?

5 A Yes, ma'am, I did in one of the --

6 Q Or early morning?

7 A -- in one of the interview rooms.

8 Q Okay. And do you see Brian O'Keefe in the
9 courtroom?

10 A Yes, ma'am. He's sitting at the defense table
11 there, on the left hand -- my left.

12 Q Could you point to him, and describe an article of
13 clothing that he's wearing?

14 A Wearing a blue tie, with a light shirt, and a dark
15 coat.

16 MS. MERCER: Your Honor, may the record reflect that
17 he's identified the defendant?

18 THE COURT: The record will so reflect.

19 BY MS. MERCER:

20 Q And I believe you indicated that he was in an
21 interview room; is that correct?

22 A Yes, ma'am. That's correct.

23 Q Is that where you went to actually photograph him?

24 A Yes, ma'am, it was.

25 MS. MERCER: And Your Honor, may I approach the

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1 witness at this time?

2 THE COURT: Yes.

3 BY MS. MERCER:

4 Q Okay. I'm handing you what have been marked for
5 identification purposes as State's proposed Exhibits 60
6 through 64. Could you please look at those and tell me
7 whether you recognize them?

8 A Yes, ma'am, I do recognize them. They're
9 photographs of the defendant that were taken early that
10 morning of the 6th.

11 Q Okay. And you in fact took these photographs?

12 A Yes, ma'am, I did.

13 MS. MERCER: Your Honor, I would move for the
14 admission of State's Exhibit 60 through 64 at this time.

15 THE COURT: Any objection, Mr. O'Keefe?

16 MR. O'KEEFE: No, Your Honor.

17 THE COURT: Thank you. 60 through 64 will be
18 admitted.

19 (Exhibits 60 through 64 are admitted)

20 MS. MERCER: Permission to publish, Your Honor?

21 THE COURT: Yes.

22 BY MS. MERCER:

23 Q With respect to State's Exhibit 60, is this just an
24 overall photograph of the defendant on that night -- or that
25 early morning?

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1 A Yes, ma'am, from the waist-up.

2 Q And that's how he appeared when you responded to the
3 homicide division?

4 A Yes, ma'am, it is.

5 Q With regards to State's Exhibit 61, what is depicted
6 in this photograph?

7 A It's a close-up photograph of bruising, an abrasion
8 to the forehead, with a scale, with my initials and P number,
9 D4244F.

10 Q 4244 is your P number?

11 A Yes, ma'am. It was my --

12 Q And what is a P number?

13 A A P number is a number assigned to an employee of
14 Metro when they're hired. It remains the same with them until
15 they retire.

16 Q And is that basically your way of documenting that
17 you took this photograph?

18 A Yes, ma'am.

19 Q With regards to State's Exhibit 62, what is depicted
20 in this photograph?

21 A It's a close-up photograph of the right index
22 finger, the inside -- the palmar side of the index finger.
23 There was a laceration on the index finger, and dried blood.

24 Q And that's what you were attempting to document with
25 this photograph?

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1 A Yes, ma'am.

2 Q With regards to State's Exhibit 63, what is this a
3 photograph of?

4 A Just the photograph of the right hand of the
5 defendant, showing -- asking him to extend the right index
6 finger to show what the outside of the hand looked like.

7 Q Okay. And there appears to be blood on his thumb as
8 well?

9 A Yes, ma'am, there was.

10 Q And State's exhibit -- here let me move this.
11 State's Exhibit 64, what is this a photograph of?

12 A Just a close-up of the right hand with the index
13 finger extended.

14 Q And let me zoom-in for a second. Does there appear
15 to be an injury to his thumb as well?

16 A Yes, ma'am. There was a slight laceration.

17 Q After you took the photographs of the defendant, how
18 did you proceed?

19 A We had the -- I asked the uniformed officers that
20 were at the interview room at the time to assist the defendant
21 removing his clothing. We placed them in paper bags that I
22 use for evidence collection, and then took those back to the
23 lab with me.

24 Q Okay. Do you do anything to ensure that the
25 evidence isn't tampered with?

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1 A The -- each piece of clothing went in a separate
2 bag. The bags are sealed. Once they get back to the lab,
3 evidence tape is placed on them. My initials and P number,
4 and date is placed on those seals, and they remain that way
5 until they're opened by the forensic lab personnel.

6 Q Okay. And that's to preserve the chain of custody?

7 A Yes, ma'am. Correct.

8 Q So, you didn't take any photographs of the clothing
9 at the homicide unit, correct?

10 A No, ma'am, I did not. That was done at the
11 criminalistics bureau.

12 Q Okay. While you were at the homicide unit, did you
13 do anything else, as far as the investigation?

14 A I took a buccal swab kit from the defendant, which
15 is for DNA purposes, and swabbed the right index finger for
16 the bloodstain on the right index finger.

17 Q Okay. Can you explain for the jury what a buccal
18 swab kit is?

19 A Buccal swab kit is like a -- contains two swabs, or
20 two small toothbrush-like objects. You swab the inside of the
21 cheek with one, place it into a box. Swab the inside of the
22 other cheek, place it into a box. You write the person's
23 name, date of birth on the tube, so that that's available for
24 the forensic personnel to be logged. And that's used for the
25 DNA bases.

ROUGH DRAFT TRANSCRIPT

000781

1 Q Okay. And so, it's used as a standard for --

2 A Yes, ma'am.

3 Q -- DNA analysis? How do you go about impounding a
4 buccal swab?

5 A You -- once the box is sealed, you place it into an
6 envelope, place all the pertinent information on the outside
7 of the envelope. Place an evidence seal on that envelope, and
8 drop it into the evidence vault.

9 Q Okay. And when you impound evidence in a case, is
10 it listed as a certain package number and item number?

11 A Yes, ma'am, it is.

12 Q Do you recall what the package number and item
13 number were assigned to the buccal swab in this case?

14 A No, ma'am, I don't. If I could look at my report.

15 Q Would that refresh your memory?

16 A Yes, ma'am, it would. The buccal swab was item 7,
17 and package 4.

18 Q Okay. And you followed all the standard procedures
19 as far as impounding that buccal swab in this case?

20 A Yes, ma'am, I did.

21 Q To ensure that it wasn't tampered with?

22 A Yes, ma'am. That's correct.

23 Q Now, you indicated that you also took a swab of his
24 right index finger, where the blood was?

25 A Yes, ma'am. That's correct.

ROUGH DRAFT TRANSCRIPT

000782

1 Q And how did you go about doing that?

2 A We wet the cotton tipped swab with distilled water,
3 two or three drops of water, and then swabbed the area that we
4 want to collect blood with. Placed that into an envelope,
5 seal it; again, in an envelope with the label on the outside
6 of the envelope, and place it in the evidence hold.

7 Q Okay. Do you recall what item number and package
8 number were assigned to the swab of the right index finger?

9 A The blood was placed as item 5 in package 4, along
10 with the buccal swab kit.

11 Q Okay. After you collected the swabs in this case,
12 did you then take the clothing to the evidence lab -- or the
13 forensic lab? I'm sorry.

14 A Yes, ma'am, I did.

15 Q And what did you do with the clothing once you were
16 there?

17 A Laid out brown butcher paper on the floor of the
18 blood room. Took photographs of each of the items that were
19 going to be impounded; the shoes, the socks, the jeans, and
20 the shirt.

21 Q And is that something you typically do in each case?

22 A Yes, ma'am, we do.

23 MS. MERCER: Your Honor, may I approach the witness?

24 THE COURT: Yes.

25 MR. O'KEEFE: Your Honor, may I request to approach?

ROUGH DRAFT TRANSCRIPT

000783

1 THE COURT: Yes.

2 (Off-record bench conference)

3 MS. MERCER: May I proceed, Your Honor?

4 THE COURT: Yes.

5 BY MS. MERCER:

6 Q Sir, handing you what's been marked as State's
7 proposed Exhibits 65 through 76. Could you please look at
8 those and tell me whether you recognize them?

9 A Yes, ma'am, I do. They're photographs of the
10 clothing that the defendant was wearing the night of the
11 arrest.

12 Q These are --

13 A Early morning.

14 Q Are these the photographs that you took in the lab?

15 A Yes, ma'am, they are.

16 MS. MERCER: Your Honor, move for the admission of
17 65 through 76.

18 THE COURT: Mr. O'Keefe, again, I appreciate you
19 wanting to speed this up. Thank you. But they want to
20 present this, and --

21 MR. O'KEEFE: No objection, Your Honor.

22 THE COURT: You don't have any objection?

23 MR. O'KEEFE: No, Your Honor.

24 THE COURT: Thank you very --

25 MR. O'KEEFE: Absolutely not.

ROUGH DRAFT TRANSCRIPT

000784

1 THE COURT: All right. Thank you. Well, we'll
2 admit 65 through 76.

3 (Exhibits 65 through 76 are admitted)

4 MS. MERCER: Permission to publish, Your Honor?

5 THE COURT: Yes.

6 BY MS. MERCER:

7 Q With regards to Exhibit 65, what is this a
8 photograph of?

9 A It's a photograph of the t-shirt that the defendant
10 was wearing the morning of the arrest.

11 Q Okay. And State's Exhibit 66, what is this a
12 photograph of?

13 A Photograph of the jeans that the defendant was
14 wearing, showing the apparent reddish stains on both legs.

15 Q Okay. And the reddish stains; did you do anything
16 to confirm whether or not that was blood?

17 A Yes, ma'am. I took a clean swab, wet it with two or
18 three drops of distilled water, rubbed it over the area of the
19 stain. Then, tested it with phenolphthalein, which is a field
20 test for the presence of blood. If it's blood, it turns a
21 pink color immediately. This swab did turn a pink color,
22 showing that it was -- there was a presence of blood on the
23 clothing.

24 Q Okay. And State's Exhibit 67; is this just a
25 closer-up photograph of that apparent blood?

ROUGH DRAFT TRANSCRIPT

000785

1 A Yes, ma'am, it is.

2 Q On his jeans?

3 A Yes, ma'am. That's correct.

4 Q Specifically, like the middle part of his jeans?

5 A Yes, ma'am. Just below the in-seam area.

6 Q And State's Exhibit 68. Is this a photograph of the
7 lower portion of his pants?

8 A Yes, ma'am, that is.

9 Q And again, it depicts the areas of apparent blood?

10 A Yes, ma'am, it does.

11 Q With regards to State's Exhibit 69, what is this a
12 photograph of?

13 A It's a view of the back of the jeans, showing
14 apparent blood on the back right leg, and a little on the
15 inside of the back left leg.

16 Q Could you circle the areas of apparent blood on here
17 for the jury, please? Thank you. And with regards to State's
18 Exhibit 70, what is this a photograph of?

19 A It's a pair of the athletic shoes that the defendant
20 was wearing on the morning of the arrest.

21 Q And is there anything -- I'm sorry. Is there
22 anything significant about those shoes?

23 A The reddish stains on the right shoe, the inside of
24 the left shoe were tested for the presence of blood, and they
25 all tested positive.

ROUGH DRAFT TRANSCRIPT

000786

1 Q And could you circle those areas for me, please?

2 And you tested both areas?

3 A Yes, ma'am, I did.

4 Q And they were both positive for apparent blood?

5 A Yes, ma'am, they were.

6 Q With regards to Exhibit 71, what is this a
7 photograph of?

8 A It's a photograph of the soles of the shoes, showing
9 the condition and areas of apparent blood on the soles of the
10 shoe.

11 Q Did you test those areas as well?

12 A Yes, ma'am, I did.

13 Q And could you identify those areas for me with a
14 circle? And were those tests also positive?

15 A Yes, ma'am, they were.

16 Q And State's Exhibit 72; what is this a photograph
17 of?

18 A It's a view of the reddish stain on the outside of
19 the shoe.

20 Q Okay. And could you circle it for me, please? Did
21 you test that stain?

22 A Yes, ma'am, I did.

23 Q And what were the results?

24 A Those were positive as well.

25 Q State's Exhibit 73, what is this a photograph of?

ROUGH DRAFT TRANSCRIPT

000787

1 A The outside of the shoe, showing the reddish stain
2 again.

3 Q And could you circle it for the jury, please? Did
4 you also test that stain?

5 A Yes, ma'am, I did.

6 Q And what was the result?

7 A It was positive for blood.

8 Q Okay. And with regards to State's Exhibit 75, what
9 is this a photograph of?

10 A This is a view of the socks that the defendant was
11 wearing.

12 Q Is there anything significant about the socks?

13 A There was one small area on one sock that was
14 reddish in color, and it tested positive for the presence of
15 blood.

16 Q And once you were done photographing the clothing,
17 what did you do with it?

18 A Kept -- I put it back into the bags, sealed the
19 bags. Placed the evidence seal on the bags with my initials,
20 and P number, and the date, and put them in the evidence hold
21 room.

22 MS. MERCER: Court's indulgence, Your Honor. Pass
23 the witness, Your Honor.

24 THE COURT: Thank you. Any cross-examination, Mr.
25 O'Keefe?

ROUGH DRAFT TRANSCRIPT

000788

1 MR. O'KEEFE: Yes, ma'am.

2 THE COURT: Thank you.

3 MR. O'KEEFE: Very brief.

4 CROSS-EXAMINATION

5 BY MR. O'KEEFE:

6 Q Hello, Mr. Ford.

7 A Good morning, sir.

8 Q How are you?

9 A Not too bad.

10 Q Okay. I'm going to be real quick, straight to the
11 point. A tragedy happened, without a doubt. I'm not
12 disputing the blood and all that. Prior testing all has
13 declared that, without a doubt.10:11:10

14 I just want to get to the point of the matter
15 though, here. There was a couple photos shown of the fingers.
16 And you did take that photograph, right?

17 A Yes, sir. I did.

18 Q Okay. Were you told to properly like, take a
19 picture of the thumb; you know what I mean?

20 A No, sir. They just wanted a photograph of the hand,
21 and basically, at the time, the laceration on the right index
22 finger.

23 Q They didn't specify then to clearly -- for the
24 record, not to really get the thumb? You were told about the
25 finger, don't worry about the thumb, correct? Yes or no.

ROUGH DRAFT TRANSCRIPT

000789

1 A No. It just said that there was a laceration on the
2 index -- on the inside of the right index finger. They didn't
3 say anything about the thumb, or to disregard it.

4 Q Okay. But don't you feel that would be very
5 important to clearly take each finger, something as important
6 as that? And like, you know, maybe get a little better photo,
7 and then --

8 A To show the laceration? Yes, sir.

9 Q That's very important; wouldn't you think, Mr. Ford?

10 A Depending on how the laceration occurred; yes, sir.

11 Q Very important. Was it apparent to you that I was
12 extremely intoxicated?

13 A Yes, sir. You had problems standing that morning.
14 They had to help you stand, and turn you.

15 Q [Inaudible]. Did you take any photos of the bed,
16 Mr. Ford?

17 A No, sir. I was not at the crime scene. I was only
18 at the homicide bureau with --

19 Q Okay.

20 A -- you that morning.

21 Q Were you told when they tested me -- was there like
22 a caution that was possible hep. C, HIV, all that? Was there
23 word put out?

24 A No, sir.

25 Q Okay. Will you clearly tell this jury again -- I

ROUGH DRAFT TRANSCRIPT

000790

1 wasn't very stable, was I?

2 A No, sir, you were not. The officers had to hold you
3 up to keep you from falling over while I took the photographs.

4 Q So, that's kind of -- do you think -- I'm just
5 asking your opinion. That's pretty solid proof that I wasn't
6 so agile and athletic, and motor skills were perfect; just
7 common sense, correct?

8 A Not while I was there. No, sir.

9 MR. O'KEEFE: I have no further questions.

10 THE COURT: Thank you, Mr. O'Keefe.

11 MR. O'KEEFE: Thank you, Mr. Ford.

12 THE COURT: Any redirect?

13 THE WITNESS: Thank you, sir.

14 MS. MERCER: Just briefly.

15 REDIRECT EXAMINATION

16 BY MS. MERCER:

17 Q Sir, were you aware at what time the initial call
18 came out to 9-11 in regards to this incident?

19 A No, ma'am, I was not.

20 Q Okay. And when you responded, again, it was what
21 time in the morning?

22 A I arrived at the homicide bureau at 3:47 in the
23 morning.

24 Q And approximately how long were you on scene?

25 A Maybe an hour.

ROUGH DRAFT TRANSCRIPT

000791

1 Q Okay. So, you --

2 A And that's just a guess. I don't have my notes from
3 that scene that night.

4 Q You left approximately 4:45, 5:00 A.M.?

5 A Yes, ma'am.

6 Q Is it possible that Mr. O'Keefe was tired?

7 A Possibly also. Yes, ma'am.

8 MS. MERCER: No further questions.

9 THE COURT: That completes the testimony then?

10 MR. O'KEEFE: I'll recross, Your Honor --

11 THE COURT: Sure, sure.

12 MR. O'KEEFE: -- real briefly.

13 THE COURT: Sure.

14 RECCROSS-EXAMINATION

15 BY MR. O'KEEFE:

16 Q Mr. Ford, one last thing. I tend to forget. I'm
17 very tired and stressed. Did you take any photos of the car
18 again?

19 A No, sir, I was not at the scene at all. Just at the
20 homicide bureau.

21 Q Okay.

22 MR. O'KEEFE: I would like to show a couple photos,
23 I think the State has stipulated, of the car, Mr. Lalli?

24 MR. LALLI: May I have the Court's indulgence, Your
25 Honor?

ROUGH DRAFT TRANSCRIPT

000792

1 THE COURT: Yeah.

2 (Pause in the proceedings)

3 MR. O'KEEFE: Court's indulgence.

4 THE COURT: Sure, sure.

5 MR. O'KEEFE: One thing, and I'll make it real fast.

6 THE COURT: No problem. Take your time.

7 (Pause in the proceedings)

8 THE CLERK: Those aren't marked.

9 THE COURT: Are these -- okay.

10 (Pause in the proceedings)

11 THE MARSHAL: Court's indulgence, Your Honor.

12 THE COURT: Sure.

13 MR. LALLI: Your Honor --

14 THE COURT: Go ahead, Mr. Lalli.

15 MR. LALLI: Mr. O'Keefe -- Mr. O'Keefe is going to
16 have some photographs marked as --

17 THE COURT: Okay.

18 MR. LALLI: -- potential defense exhibits. We will
19 stipulate to their admissibility.

20 THE COURT: Okay. They're not marked. So, we're
21 going to mark these photos as defense Exhibit A through, what?

22 MR. LALLI: A, B, C, D, and E.

23 THE COURT: All right. Let's -- defense Exhibits A
24 through E, these will be admitted as defense exhibits.

25 (Exhibits A through E are admitted)

ROUGH DRAFT TRANSCRIPT

000793

1 THE COURT: And as soon as they're marked, Mr.
2 Maningo, are you going to show them to the witness?

3 MS. MERCER: I am, Your Honor. Thank you.

4 THE COURT: All right.

5 MR. LALLI: We don't oppose to them just being, Your
6 Honor, placed right up here on the door, if Mr. O'Keefe wants
7 to show them to Mr. Ford first, or he can just put them up on
8 the equipment here. Either way. We don't --

9 THE COURT: You're very accommodating. Thank you,
10 Mr. Lalli.

11 MR. O'KEEFE: Again, thank you, Mr. Lalli.

12 THE COURT: But knowing though that this witness
13 never went to the crime scene, so I don't know how he could
14 testify, but we'll just see how it plays out. So, you look at
15 them. Mr. Maningo, you want to put it on the screen? Is
16 that --

17 MR. MANINGO: Yes, sir.

18 THE COURT: -- what you want to do? And for the
19 record, indicate what exhibit you're putting on the screen.

20 MR. O'KEEFE: Yeah. For the record, these were the
21 State's exhibits. Now, I'm transferring [inaudible]. The
22 situation was, we had to remark them as defense exhibits.

23 BY MR. O'KEEFE:

24 Q And I just wanted to clearly see, this was the
25 vehicle here, when we pulled back. I just wanted to get -- I

ROUGH DRAFT TRANSCRIPT

000794

1 was under the understanding with -- Mr. Ford, can you see the
2 screen?

3 A Yes, sir.

4 Q Okay. At any time, were you there at the scene, or
5 anything like that?

6 A No, sir. Went from --

7 Q [Inaudible].

8 Q -- probably the intersection of Decatur and Oakley,
9 at the time, to the homicide bureau, which was just down the
10 street. Finished my job there at the homicide bureau, and
11 went back to the criminalistics bureau on the south side of
12 the city.

13 Q Okay. So, what I'm trying to get at here is I just
14 wanted to show in the back of the car here -- I'm not familiar
15 with this piece of equipment here, and you can't clearly see
16 here.

17 MR. O'KEEFE: Mr. Maningo, if you --

18 MR. MANINGO: [Inaudible].

19 MR. O'KEEFE: Yeah. Well, zoom-in on the handle
20 there. Well, the photographs -- it will be part of the
21 jurors' exhibits. You'll be able to see. What I just want to
22 bring at this time -- because I want to speed this up for
23 everyone. And the vacuum cleaner that they'll [inaudible]
24 exhibit too, also. This shows the vacuum cleaner that I was
25 talking about in the back, folks. You'll see the handle quite

ROUGH DRAFT TRANSCRIPT

000795

1 clearly. That's all that this exhibit is.

2 BY MR. O'KEEFE:

3 Q But you said you didn't see this?

4 A No, sir, I did not.

5 Q Okay.

6 MR. O'KEEFE: Does the Court oppose he admits what
7 the State gives a partial stipulation (sic), that these five
8 photos -- says he did some of the photos down at the crime
9 scene, that these could be admitted? Is that --

10 THE COURT: They are admitted. They're admitted.

11 MR. LALLI: I've already agreed --

12 THE COURT: The jurors are going to see them.

13 MR. LALLI: -- to them being admitted.

14 THE COURT: They're admitted.

15 MR. O'KEEFE: Okay.

16 THE COURT: So --

17 MR. O'KEEFE: That -- okay. All right.

18 THE COURT: He just -- this is the wrong witness.
19 He doesn't know anything about it. He wasn't at the crime
20 scene. He can't, I guess, tell it's a vacuum or not.

21 MR. O'KEEFE: Right. And --

22 THE COURT: But they're admitted. They're going to
23 be --

24 MR. O'KEEFE: And it's for the jury to see, right?

25 THE COURT: Exactly.

ROUGH DRAFT TRANSCRIPT

000796

1 MR. O'KEEFE: And that's the whole --

2 THE COURT: And you can argue that to the jury.

3 MR. O'KEEFE: That's the whole purpose. Thank you,
4 Your Honor.

5 THE COURT: Thank you.

6 MR. O'KEEFE: And I'm really trying to speed this up
7 for everybody's sake.

8 THE COURT: You don't -- Mr. -- we want everybody to
9 do what they have to do, all right?

10 (Pause in the proceedings)

11 MR. O'KEEFE: And again, that's the one we just
12 pulled in. And again, I'm just trying to accommodate
13 everybody, and I appreciate it. These will be with you when
14 you go back. This is [inaudible] we pulled in and we parked.
15 BY MR. O'KEEFE:

16 Q And you already said you didn't see it, Mr. Ford.
17 I'm just utilizing you while you're here.

18 A Okay.

19 MR. O'KEEFE: And here is a critical one you'll see.
20 And you can see the seat's back. It's laying completely back.
21 When you get into the room and look at it, you can see the
22 hat. You'll see some glasses of wine. And this photo here is
23 taking them out. You can see the passenger's seat. And you
24 can see this here. You can kind of get an idea, the driver's
25 seat was pulled up for the size of the -- I mean, in the rear.

ROUGH DRAFT TRANSCRIPT

000797

1 And basically, that's all I wanted to do while Mr. Ford was
2 here, Your Honor, was just --

3 THE COURT: Thank you.

4 MR. O'KEEFE: -- get them in, speed --

5 THE COURT: They're in, they're in.

6 MR. O'KEEFE: -- things up. And I appreciate it.

7 THE COURT: So, we can excuse him now. Thank you
8 very much.

9 MR. O'KEEFE: Mr. Ford, thank you very much.

10 THE COURT: Go about your business --

11 THE WITNESS: Thank you, sir.

12 THE COURT: -- of retirement.

13 THE WITNESS: Good seeing you again, sir.

14 THE COURT: I'm retired too, but I'm still working.

15 THE WITNESS: I know. What are you doing here then?

16 THE COURT: The senior judge.

17 THE WITNESS: Congratulations, sir.

18 THE COURT: Thank you. You, too.

19 All right. The State will call it's next witness,
20 please.

21 MS. MERCER: State calls Officer Christopher
22 Hutcherson.

23 THE MARSHAL: Please, sir, remain standing. Raise
24 your right hand, and face the clerk.

25 CHRISTOPHER HUTCHERSON, STATE'S WITNESS, SWORN

ROUGH DRAFT TRANSCRIPT

000798

1 THE MARSHAL: If you'd have a seat, sir. Please
2 slide up to the microphone. If you would, please state and
3 spell your name for the record.

4 THE WITNESS: Officer Christopher Hutcherson.
5 C-h-r-i-s-t-o-p-h-e-r, H-u-t-c-h-e-r-s-o-n.

6 MS. MERCER: May I proceed, Your Honor?

7 THE COURT: Yes.

8 DIRECT EXAMINATION

9 BY MS. MERCER:

10 Q Sir, where are you currently employed?

11 A Las Vegas Metropolitan Police Department.

12 Q In what capacity?

13 A Police officer.

14 Q Patrol officer?

15 A Yes, ma'am.

16 Q How long have you been employed with Metro?

17 A Four and-a-half years.

18 Q Back in November of 2008, what was your position
19 with Metro?

20 A Patrol officer.

21 Q Were you completing what's referred to as field
22 training at the time?

23 A Yes, ma'am.

24 Q What is field training?

25 A Field training is, after the academy, new officers

ROUGH DRAFT TRANSCRIPT

000799

1 go through an 11-week, 12-week training with another patrol
2 officer, to make sure they're up to par for the job.

3 Q Okay. And is the other patrol officer kind of a
4 supervisor during that period of time?

5 A Yes, ma'am.

6 Q On November 5th of 2008, how far into your field
7 training would you have been?

8 A I was in what we call, solo beat. I was at the end
9 of my training.

10 Q Solo beat, what does that mean?

11 A I was allowed to ride by myself. I was proven to be
12 up to par for the job, so.

13 Q Okay. So, on November 5th of 2008, were you in fact
14 riding solo?

15 A Yes, ma'am.

16 Q And towards 11:00 P.M. that evening, were you
17 dispatched to an incident at 5001 El Parque?

18 A Yes, ma'am.

19 Q What information did you have at the time you were
20 dispatched?

21 A It came out to us as an unknown trouble call. A
22 neighbor walked past an apartment, and saw a woman bleeding
23 from the door.

24 Q Okay. When calls come in to dispatch, are they
25 assigned different priority codes?

ROUGH DRAFT TRANSCRIPT

000800

1 A Yes.

2 Q And what do those priority codes signify to you all?

3 A Whether -- pretty much dispatched our response time.

4 Whether we go lights and sirens, whether a call needs to be
5 handled immediately, or whether that call can be handled at a
6 later time.

7 Q Okay. So, it kind of indicates how serious the call
8 is?

9 A Yes.

10 Q And this call would have come out as what level
11 priority?

12 A Zero.

13 Q And is zero the most important?

14 A Yes.

15 Q When you responded to the scene, what did you
16 observe?

17 A When I responded to the scene, there were already
18 several officers arrived. I went to the front of the
19 apartment in question. I was instructed to go to the rear of
20 that apartment to make sure nobody fled from the balcony of
21 that unit.

22 Q Okay.

23 MS. MERCER: Your Honor, permission to publish?

24 THE COURT: Yes.

25 BY MS. MERCER:

ROUGH DRAFT TRANSCRIPT

000801

1 Q I'm showing you what's been admitted as State's
2 Exhibit 2. Is this the apartment that you're referring to?

3 A Yes.

4 Q And where were you asked to stand post?

5 A To the rear of the apartment. I guess to the back
6 of these units, there's a balcony, a balcony for the second
7 story.

8 Q Okay. And why were you asked to stand there?

9 A To make sure no one fled out of the balcony, tried
10 to flee the scene.

11 Q Were you aware that officers were trying to gain
12 custody of a suspect?

13 A Yes.

14 Q How long were you standing behind the apartment?

15 A Approximately 10, 15 minutes.

16 Q And at some point, were you made aware that they had
17 a suspect in custody?

18 A Yes, ma'am.

19 Q Did you have contact with that suspect?

20 A I did.

21 Q Can you tell me how that came about?

22 A After they got the subject in custody, I ran around
23 the front. I was instructed to put up crime scene tape. That
24 took maybe about 15, 20 minutes. At that time, I was
25 instructed to take control of the suspect that was in custody.

ROUGH DRAFT TRANSCRIPT

000802

1 Q Okay. Do you see that suspect in the courtroom
2 today?

3 A I do.

4 Q Could you please point to him, and identify an item
5 of clothing that he's wearing?

6 A Gentleman. He has on like a dark colored suit.

7 MR. O'KEEFE: I'll stipulate to my identity Your
8 Honor. This is no --

9 THE COURT: It's just easier for them to do this --

10 MR. O'KEEFE: Yes, sir.

11 THE COURT: -- all right? But go ahead. Proceed
12 again.

13 BY MS. MERCER:

14 Q Can you point to him and describe an article of
15 clothing that he's wearing? I'm sorry you got interrupted.

16 A Yes, ma'am. Gentleman sitting there.

17 THE COURT: All right. Record reflect the
18 identification of the defendant. Proceed.

19 MS. MERCER: Thank you.

20 BY MS. MERCER:

21 Q Going back to the crime scene tape, where did you
22 put up crime scene tape?

23 A In the front -- in the front of the unit. Pretty
24 much, there's a -- there's an entrance here to where you can
25 come into the courtyard. An entrance on the other side, we

ROUGH DRAFT TRANSCRIPT

000803

1 pretty much --

2 THE COURT: Is that fixed now? You can touch it?

3 So --

4 MS. MERCER: Yes.

5 THE COURT: Oh, it is fixed. All right.

6 MS. MERCER: Yes.

7 THE COURT: I just wanted to know.

8 MS. MERCER: Thank you, Your Honor.

9 BY MS. MERCER:

10 Q Go ahead.

11 A I'm sorry. You want me to describe it on the --

12 Q If you can.

13 A Oh, okay. There's an entrance here, and an entrance
14 over here. And we pretty much put crime scene tape --

15 Q You can actually touch it on the screen. If you
16 touch it, it will highlight it for the jury.

17 A Oh. I'm sorry.

18 (Pause in the proceedings)

19 THE WITNESS: There's an entrance here off to the
20 right, and an entrance here off to the right. And there are
21 some more apartments facing the front. So, we cordoned off
22 those entrances and the apartment area, so no one could come
23 out of the apartment into the crime scene.

24 BY MS. MERCER:

25 Q Okay. What is the purpose of doing that?

ROUGH DRAFT TRANSCRIPT

000804

1 A To preserve evidence.

2 Q Okay. Now, when you were asked to take custody of
3 the defendant, did you actually have to go upstairs to get
4 him?

5 A I did.

6 Q And where was he upstairs?

7 A He was upstairs, here, by the stairs.

8 Q At the very top of the stairwell??

9 A Yes, ma'am.

10 Q And what was his demeanor when you made contact with
11 him?

12 A He was very belligerent, yelling obscenities.
13 Pretty much, what did he do wrong, and why do we have him in
14 handcuffs.

15 Q So, he was in fact in handcuffs already?

16 A Yes.

17 Q And when you -- did you take him down the stairs?

18 A I did.

19 Q What did you do with him once you were down the
20 stairs?

21 A We came out this area, walked around here. And my
22 patrol car was on this side, the exit on this side, and I took
23 him to my patrol car.

24 Q Okay. Did you actually put him in the patrol car?

25 A I did.

ROUGH DRAFT TRANSCRIPT

000805

1 Q Prior to placing him in your patrol car, what did
2 you do?

3 A I conducted what we call search incident to arrest.

4 Q What --

5 A Just wanted to make sure he had no weapons, or other
6 contraband on him for safety reasons.

7 Q Okay. And do you always do that before you place a
8 suspect in your patrol car?

9 A Yes, ma'am.

10 Q What was his demeanor during that search incident?

11 A Still belligerent, yelling obscenities and
12 profanities.

13 Q Did you have to have another officer assist you, or
14 was it just you at this time?

15 A It was just me at this time.

16 Q And eventually, did you put him in the back of your
17 patrol car?

18 A Yes, ma'am.

19 Q Once you placed him in the back of your patrol car,
20 what did you do?

21 A I walked around to the front of my patrol car, got
22 in the driver's seat.

23 Q When you were placing him -- when you put him in the
24 back of the patrol car, was he cooperative?

25 A No, ma'am.

ROUGH DRAFT TRANSCRIPT

000806

1 Q How was he behaving?

2 A Just very belligerent. He didn't want to sit down.
3 He just kept yelling profanities. I placed him between the
4 door and the seat itself, and I nudged him in.

5 Q So, you actually had to physically nudge him to get
6 him into the car?

7 A Yes, ma'am.

8 Q And how long did it take you to get him into the
9 back of your patrol car?

10 A A few minutes.

11 Q Okay. Once you got into the patrol car with him,
12 what happened?

13 A He was yelling, being belligerent, loud. So, I
14 decided to turn on the radio, turned on some music. Thought
15 that might calm him down. He made it very strongly -- he
16 didn't want to hear that music. So, I turned the radio down.

17 Q Okay. So, it didn't calm him down, I take it?

18 A No.

19 Q What did you do at that point?

20 A After a couple minutes, I decided to get out of my
21 patrol car.

22 Q Why?

23 A I didn't want to hear the profane language and him
24 being loud anymore. So, I just stood outside of my patrol car
25 and observed him from there.

ROUGH DRAFT TRANSCRIPT

000807

1 Q How close to your patrol car were you standing?

2 A I walked -- actually walked back around to the rear
3 passenger's side, where he was sitting. And I just stood off
4 a few feet. And --

5 Q When you were observing him, were you still able to
6 hear him yelling obscenities, and --

7 A Yes.

8 Q -- being belligerent?

9 A Yes.

10 Q How long did that proceed?

11 A Maybe 5, 8 minutes.

12 Q What made him stop?

13 A Like he fell asleep.

14 Q He fell asleep?

15 A Yeah.

16 Q How long did he sleep?

17 A I would say about -- between 5 to 8 minutes. Wasn't
18 very long.

19 Q Did anything specific wake him up?

20 A No.

21 Q When he woke up, how was he behaving at that point?

22 A He was just mumbling and talking to himself. He
23 wasn't really loud anymore.

24 Q Were you still outside the car at this point?

25 A No, ma'am. I had sat back in my patrol vehicle once

ROUGH DRAFT TRANSCRIPT

000808

1 he went to sleep.

2 Q And when he started mumbling, what kinds of things
3 was he mumbling?

4 A He just started mumbling things, you know, "I love
5 you, V." He said that a few times. And then, he made some
6 statements that I wrote down.

7 Q What made you write the statements down?

8 A Just because his -- his mumbling when he first woke
9 up, he was saying things that -- we're trained to write down
10 any utterances suspects might make. So, I took out my
11 notebook and wrote down, just in case he said anything that
12 was pertinent.

13 Q To the case?

14 A Yes.

15 Q And is that just a little notebook that you carry in
16 your pocket?

17 A Yes, ma'am.

18 Q Do you recall exactly what those statements were, as
19 you sit here today?

20 A I can't recall them verbatim.

21 Q If I showed you a copy of the page of your notes,
22 would that refresh your memory?

23 A Yes, ma'am.

24 MS. MERCER: Your Honor, may I approach the witness?

25 THE COURT: This is not an exhibit; it's just --

ROUGH DRAFT TRANSCRIPT

000809

1 MS. MERCER: No.

2 THE COURT: -- to refresh his memory?

3 MS. MERCER: Correct.

4 THE COURT: All right. Go ahead.

5 BY MS. MERCER:

6 Q If you could just look at that and read it to
7 yourself, and hand it back to me when you're done reading,
8 please.

9 A Okay.

10 Q Is your memory refreshed?

11 A Yes, ma'am.

12 Q And what were the statements that he made?

13 A "I swear to God, V, I didn't mean to hurt you. What
14 did I do wrong? Let's go do the ten years. That's why I love
15 you, V, because you're so crazy."

16 Q How long did the mumbling go on?

17 A Maybe a couple minutes. Wasn't long. He started
18 being loud and belligerent again, wanted to know why he was in
19 the back of my patrol car.

20 Q Okay. And during the time that he was mumbling, you
21 weren't asking him any questions or anything, correct?

22 A No, ma'am.

23 Q They were just spontaneous statements?

24 A Yes, ma'am.

25 Q How long were you sitting in the patrol car with him

ROUGH DRAFT TRANSCRIPT

000810

1 at that point?

2 A I would say about another eight minutes or so.

3 Q And then, what happened next?

4 A I got out of my patrol vehicle. Detectives wanted
5 to take photographs of the subject. And I took him out of my
6 patrol car, and handed him over to the detectives.

7 Q And how was he behaving during that process?

8 A Still loud, belligerent.

9 Q Were you actually present when the detectives took
10 the photographs of him?

11 A I was.

12 Q Or when they had the CSA's take them?

13 A Yes, ma'am.

14 MS. MERCER: Your Honor, may I approach the witness?

15 THE COURT: Yes.

16 BY MS. MERCER:

17 Q I'm showing you what's been marked as State's
18 proposed Exhibit 58 for identification purposes. Could you
19 take a look at that, and tell me whether you recognize it?

20 A Yes.

21 Q Do you recognize it?

22 A I do.

23 Q And is this one of the photographs that they took
24 that night?

25 A Yes, ma'am.

ROUGH DRAFT TRANSCRIPT

000811

1 Q And you were present during it?

2 A Yes, ma'am.

3 MS. MERCER: Move for the admission of State's
4 proposed 58, Your Honor.

5 THE COURT: Any objection, Mr. O'Keefe?

6 MR. O'KEEFE: No, Your Honor.

7 THE COURT: Thank you. 58 will be admitted.

8 (Exhibit 58 is admitted)

9 BY MS. MERCER:

10 Q And was the photograph just taken in the parking
11 lot?

12 A Yes, ma'am.

13 Q Okay. When he was being photographed, how was he
14 behaving?

15 A Loud, belligerent. I really didn't see him do
16 anything that was uncooperative. He was just really being
17 loud and using profane language.

18 Q Okay. How long did you spend with him that evening
19 at the apartment complex?

20 A I'd say, entirety, maybe 45 minutes --

21 Q And --

22 A -- or so.

23 Q During that 45 minutes, did his demeanor change?

24 A No.

25 Q He was just belligerent the entire time?

ROUGH DRAFT TRANSCRIPT

000812

1 A Yes.

2 Q After the photographs were taken, what were you
3 asked to do with him?

4 A I was asked to put him back in my patrol car; to
5 wait for the instructions to go down to the detective bureau.

6 Q Did you put him back in the back of your patrol car?

7 A I did.

8 Q And the second time that you had to put him in your
9 patrol car, was it just you, or did you have to enlist the
10 assistance of another officer?

11 A Another officer.

12 Q So, it took two of you to get him into the patrol
13 car this time?

14 A Yes, ma'am.

15 Q And is that because he was being uncooperative and
16 belligerent?

17 A Yes, ma'am.

18 Q Did you at some point obtain further instructions
19 with regards to what to do with the defendant?

20 A I did.

21 Q And what were you asked to do?

22 A To transport him down to the detective bureau for an
23 interview.

24 Q Did you in fact transport him there?

25 A I did.

ROUGH DRAFT TRANSCRIPT

000813

1 Q And do you recall about what time that would have
2 been?

3 A Not exact time, I don't. Maybe 50 minutes after the
4 initial -- the initial call.

5 Q So, about 11:50 P.M.?

6 A Yeah.

7 Q Somewhere around there? And when you transported
8 him to the detective bureau, what was his demeanor?

9 A Very loud, using profane language, wanted to know
10 why he was going to -- going to jail. And I told him he
11 wasn't going to jail at this time, just calm down. And he
12 wanted to know why he was in handcuffs, and just being very
13 loud and belligerent.

14 Q Was that the entire way to the bureau?

15 A Yes.

16 Q And how long was that car ride?

17 A Maybe six minutes.

18 Q Once you arrived at the bureau, were you responsible
19 for escorting him inside?

20 A Yes, ma'am.

21 Q And when you took him inside, how was he behaving?

22 A Same way. Wild, belligerent.

23 Q Did it take some prodding to get him to walk inside?

24 A Yes.

25 Q Did you remain there the entire --

ROUGH DRAFT TRANSCRIPT

000814

1 A I did.

2 Q -- early morning --

3 A Yes, ma'am.

4 Q -- while he was with the detectives?

5 A Yes, ma'am.

6 Q Where were you?

7 A I stood outside in the hallway while the detectives
8 interviewed him.

9 Q Okay. So, you weren't present during the interview?

10 A No.

11 Q After they were done interviewing him, what did you
12 do?

13 A I was instructed to transport him to Clark County
14 Detention Center.

15 Q Do you recall about what time that would have been?

16 A That would have been early morning. I'm saying
17 maybe 4:30, 5:00 o'clock in the morning.

18 Q And did you in fact transport him to the Clark
19 County Detention Center?

20 A I did.

21 Q What was his demeanor at that time?

22 A When I first put him in the car, he was okay. Then,
23 when we got down to the jail, he realized he was actually
24 going to jail, he started up being profane again.

25 Q Okay. Do you remember anything specific he said?

ROUGH DRAFT TRANSCRIPT

000815

1 A Nothing. Nothing specific. Just, you know, pretty
2 much the entire contact, "Why the fuck am I going to jail,"
3 things like that.

4 Q Okay. And this would have been approximately five
5 to six hours after your initial contact with him?

6 A Yes.

7 Q And his behavior never changed?

8 A No.

9 MS. MERCER: Court's indulgence.

10 BY MS. MERCER:

11 Q Officer, during the time that you spent with the
12 defendant that evening, did he ever appear to you to be
13 intoxicated?

14 A Yes.

15 Q And when he was being photographed, was he so
16 intoxicated that he couldn't stand up on his own?

17 A Yes.

18 Q Okay.

19 MS. MERCER: Pass the witness, Your Honor.

20 THE COURT: All right. Cross-examination, Mr.
21 O'Keefe?

22 MR. O'KEEFE: Yes, Your Honor. I'll try to be
23 brief.

24 CROSS-EXAMINATION

25 BY MR. O'KEEFE:

ROUGH DRAFT TRANSCRIPT

000816

1 Q Mr. Hutcherson --

2 A Sir.

3 Q -- I believe it is. How are you, sir?

4 A All right.

5 Q Okay. I want to keep it simple, straightforward.

6 Let's just let it fall where it lays, okay, Officer? Okay.

7 Are you aware -- okay. Would you stipulate or agree -- I have
8 the 9-11 call here that this tragedy was called in at 23:02.

9 A Okay.

10 Q Okay. State won't disagree with it. Okay. Did you
11 -- were you aware at any time that they called in that -- four
12 minutes later, that they already knew I was extremely 408?

13 Did you hear that on your radio?

14 A No, I don't recall that.

15 Q Okay. At any time, did you realize that I was
16 extremely intoxicated when you did come in hand with me -- or
17 contact with me?

18 A Yeah, when I came in contact with you.

19 Q It was apparent to you, correct?

20 A Yes.

21 Q I appreciate your honesty. Okay. Now, you were in
22 the back, you stated, Officer, and you moved around to the
23 front after it was cleared. You did the tape. Then you were
24 instructed, if I remember through prior testimony, that you
25 were to take control of me, and move me to the squad car,

ROUGH DRAFT TRANSCRIPT

000817

1 correct?

2 A That's correct.

3 Q Okay. And you clearly stated -- I have it here, if
4 you -- you know. After I ask the question, if you need to be
5 refreshed, we'll go through it. But you might remember.

6 A Okay.

7 Q Who knows. Some people do. Trying to, you know, be
8 very -- no tricks, no ploys. Straightforward, what it shows.
9 Okay. You stated you moved me down to the squad car. That I
10 -- it quoted that I was apprehended, in custody at 11:13.
11 Would you agree with that?

12 A Yeah.

13 Q That's what it states. 11:13. You testified that,
14 within 30 to 35 minutes after being in your squad car --
15 exactly 30, 35 minutes, that I started to make these comments.
16 Would that be about right, what you stated?

17 A 30, 35 minutes?

18 Q That's what it shows. If you --

19 A Okay.

20 Q You know what -- okay, well, [inaudible]. That's
21 fine. Okay. But what I want to get to mainly here is, you
22 said exactly about 15 minutes after the code 4 was called --
23 the scene was all secure; that's what a code 4 is, correct?

24 A Yeah.

25 Q Okay. The code 4 was called, that you moved me to

ROUGH DRAFT TRANSCRIPT

000818

1 your vehicle?

2 A I'm sorry, sir?

3 Q Okay. "About 15 minutes after we were given a code
4 4, I moved the victim -- or the suspect to my squad car."

5 A After code 4 was given, I was instructed to put up
6 crime scene tape.

7 Q Okay. Would you like to refresh your memory here?
8 I'll have it brought to you, and let you read it.

9 A Sure.

10 Q Okay.

11 (Pause in the proceedings)

12 BY MR. O'KEEFE:

13 Q And I just put little X's for -- so you can see
14 where to go to, just to speed things up. On each page, if you
15 would read --

16 A Okay.

17 Q -- that little block off, sir. You know, I want to
18 be straightforward here, so you can clearly see what was --
19 yes. Thank you.

20 A Now, I'm sorry, sir. What exactly am I looking at?

21 Q Okay. It's saying, after the code 4 was called --
22 see that down here? I was apprehended about 15 minutes after
23 the code 4 was called.

24 A Do you have it marked here? I can't --

25 Q Page 180 -- I think it's 183 at the bottom. See

ROUGH DRAFT TRANSCRIPT

000819

1 where the --

2 A 83? Okay.

3 Q -- first X is looking at? Read that little page

4 there. It will fill you in and give you the great synopsis.

5 A Okay.

6 Q Okay. So, without saying anything, it clearly

7 states, the code 4 was called at 11:13?

8 A Um-hum.

9 Q 11:13 is after 11:00, correct?

10 A Okay.

11 Q Okay. 30 to 35 minutes after I started making these

12 statements in your car? What it says.

13 A Okay.

14 Q At 11:13 approximately, you stated also in that

15 section that 15 minutes after the code 4, which was at 11:13,

16 so it would have been 11:28 --

17 A Um-hum.

18 Q -- you moved me to the car.

19 A Okay.

20 Q Are you with me?

21 A Yeah.

22 Q The code 4, clear, was called at 11:13. 15 minutes

23 later, you took me to the car.

24 A Are you trying to get to where the point I took

25 custody of you? Or --

ROUGH DRAFT TRANSCRIPT

000820

1 Q Right. Right. --

2 A Okay.

3 Q You said after the code --

4 A I mean, that's --

5 Q It's right there, Officer. You just read it. I'm
6 not trying to --

7 A I did. I mean, after code 4 was given, it takes
8 about 15, 20 minutes for me to put up the crime scene tape.
9 And that's when I took --

10 Q Okay.

11 A -- custody of you.

12 Q If there was much testimony given that I was up on
13 the balcony for an hour, hour and-a-half, would you dispute
14 that?

15 A I would say, yeah, I would.

16 Q Okay. So, you would dispute that I was up on the
17 balcony for at least an hour -- if you're stating --

18 A Before I got you?

19 Q Prior testimony was given I was on the balcony for
20 an hour -- some say an hour, hour and 15 minutes before I was
21 even removed from the balcony, and taken to the car. Your
22 testimony there states that code 4 was called at 11:13.

23 A Okay.

24 Q Approximately 15 minutes after the code 4, you took
25 me to the squad car.

ROUGH DRAFT TRANSCRIPT

000821

1 A Okay.

2 Q That's what it states.

3 A Yeah. That's what I said. That's what I just said
4 here today.

5 Q On the next page. No further questions on that
6 topic. Did you read -- now, you're stating that when I was in
7 the car, I was completely talking to myself. You admitted
8 that, right?

9 A Um-hum.

10 Q And you know, it was a tragic situation, okay? You
11 stated that I said the words, "I love you, V. I didn't mean
12 to hurt you." Okay. But I was talking to myself, you stated,
13 correct?

14 A That's correct.

15 Q So, you weren't at the scene then, correct, Officer?
16 Of course.

17 A No, I was not at the scene.

18 Q Okay. So, I'm mentally talking to myself. Did you
19 know that I had dropped her a couple times?

20 A No.

21 Q Does that make sense to you?

22 A No.

23 Q Okay. [Inaudible]. And you state quite clearly
24 there, I'm talking to myself. I'm in shock. And I say, "V, I
25 didn't mean to hurt you. What did I do? That's why I love

ROUGH DRAFT TRANSCRIPT

000822

1 you, you're so crazy." Did you know she was truly crazy?

2 A No.

3 Q Now does it make more sense, Officer? Possibly?
4 Possibly?

5 A I mean, are you asking me if it --

6 Q Yes. Possibly? Does it make -- it's -- maybe make
7 some sense?

8 A Sir, I'm getting bits and pieces of what you're
9 talking about.

10 Q Sir --

11 A I mean, I only can testify to what I actually -- the
12 facts that I know. I mean --

13 Q And I'm not trying to trick you.

14 THE COURT: But what you're trying to do is
15 you're --

16 MR. O'KEEFE: The facts that you said you --

17 THE COURT: -- [inaudible] argue. Not to the --
18 you're being very gentle, but you're trying to argue your
19 case. What you do is elicit facts. He presented facts. The
20 officer who made the report, that's facts. Then when the
21 appropriate time (sic), then you argue to the jury. That's
22 your argument to the jury.

23 MR. O'KEEFE: Right, Your Honor. Right --

24 THE COURT: Does that make sense, ladies and
25 gentlemen? And that's the --

ROUGH DRAFT TRANSCRIPT

600823

1 MR. O'KEEFE: Okay.

2 THE COURT: -- person you argue to.

3 MR. O'KEEFE: Well, I'm -- yes, sir, Your Honor.

4 THE COURT: But that's all.

5 MR. O'KEEFE: I'm trying to get into --

6 THE COURT: I just --

7 MR. O'KEEFE: Okay.

8 THE COURT: Proceed.

9 MR. O'KEEFE: And the reason why, Your Honor -- and
10 it will get a little bit clearer now.

11 THE COURT: Okay.

12 BY MR. O'KEEFE:

13 Q You just testified that you're trained to take
14 statements possibly that could lead to a scene. You said
15 that, didn't you? You know, we're --

16 A Yeah.

17 Q -- trained to take comments that maybe could lead --
18 okay. That's why I'm trying to get you to expand on it a
19 little bit, so I can use it in my argument. You know, you
20 said you took statements. Okay, you admitted that. I was
21 talking to myself. I'm confused, correct? I'm talking to --

22 MS. MERCER: Objection, Your Honor.

23 MR. O'KEEFE: -- myself?

24 MS. MERCER: Calls for speculation.

25 THE COURT: I don't know if he said, confused. He

ROUGH DRAFT TRANSCRIPT

000824

1 said you were mumbling to yourself.

2 MR. O'KEEFE: And I'm talking to myself.

3 THE COURT: All right.

4 BY MR. O'KEEFE:

5 Q To myself. Correct, Officer?

6 A That's correct, sir.

7 Q Okay. You testified that I am extremely, extremely
8 loud, correct?

9 A I did.

10 Q In your professional opinion, wouldn't you think
11 that if a call's made for battery, domestic violence, alleged,
12 don't you think it would be hard for somebody extremely drunk
13 not to even talk, or scream, or yell? I'm just asking in your
14 opinion.

15 A What do you mean?

16 Q Well, if I'm so loud, and screaming and belligerent,
17 constantly, "What did I do," don't you think I would have been
18 that way before you guys were called and came?

19 MS. MERCER: Objection, Your Honor, calls for
20 speculation.

21 THE COURT: Yeah, that calls for --

22 MR. O'KEEFE: All right.

23 THE COURT: -- speculation. Sustained.

24 BY MR. O'KEEFE:

25 Q Again, you do agree that I was extremely

ROUGH DRAFT TRANSCRIPT

000825

1 intoxicated?

2 A Yes, sir.

3 Q You do agree the call time of the code 4, that it
4 was clear at 11:13; they had me apprehended?

5 A I don't know the approximate time, but I would say
6 that's about correct.

7 Q Okay. You do agree that I -- without a doubt, you
8 could smell, and you could see I was drunk?

9 A Yes.

10 Q And you do agree that, in my mind and my thinking, I
11 was like, why are you taking me; what did I do? You testified
12 to that, right? Like, why are you taking me? Why are you
13 putting me -- why are you arresting me? Did you not testify
14 to that?

15 A I didn't testify to that. I'll testify that you
16 were being very profane, loud.

17 Q You didn't state any words or anything like, why am
18 I being arrested, why am I being taken to jail? Did you not
19 say that? Do we need to get a playback?

20 A On your way to jail, you did.

21 Q And at any time when you said you were trying to
22 stick me in the car, I was saying, like, no -- what's going --
23 why am I being taken, what are you doing? You didn't say
24 that?

25 A It wasn't quite --

ROUGH DRAFT TRANSCRIPT

000826

1 Q They heard it.

2 A -- frank to that nature. I mean, I'm trying to save
3 the ears of the jury from what you were saying. But it was
4 very profane, very loud, belligerent.

5 Q So, then you also stated you didn't know anything
6 about her mental illness?

7 A I did not.

8 Q You didn't know that they said she only had five
9 years to live?

10 A I didn't know that.

11 Q And you didn't know -- you wasn't there (sic). You
12 didn't know that I dropped her multiple times?

13 A I did not know that.

14 MR. O'KEEFE: No further questions.

15 THE COURT: Thank you, Mr. O'Keefe. Any redirect?

16 MS. MERCER: No, Your Honor.

17 THE COURT: Thank you so much, Officer, for
18 testifying. You're excused now. All right?

19 THE WITNESS: Thank you, sir.

20 THE COURT: State will call it's next witness. Or
21 maybe -- do you want to take a ten-minute recess? How about
22 that?

23 Don't converse among yourselves, or anyone else, on
24 any subject connected with the trial; read, watch, or listen
25 to any report or commentary on the trial, by any person

ROUGH DRAFT TRANSCRIPT

000827

1 connected with the trial, or by any medium of information,
2 including, without limitation, newspapers, television, radio.
3 And you are not to form or express any opinion on any subject
4 connected with the trial until the cause is finally submitted
5 to you.

6 We'll take a ten-minute recess.

7 (Court recessed at 10:49 a.m. until 11:03 p.m.)

8 (Within the presence of the jury panel)

9 THE COURT: We're going to proceed now in the
10 State's case in chief. We have a few witnesses that we need
11 to get before the lunch break. So, if we go until 12:15,
12 12:30, don't be -- we're still going to get our hour and 15
13 minutes lunch. Might be a little delay, but we want to keep
14 things moving along.

15 And then, we'll do our lunch after we get through
16 these couple of witnesses. We'll come back. And we're going
17 to work until about 4:15, 4:30 today, and then recess about
18 that time today. All right? That being said, State will call
19 it's next witness.

20 MR. LALLI: Your Honor, the State calls Robbie Dahn.

21 THE MARSHAL: If you would raise your right hand,
22 please.

23 ROBBIE DAHN, STATE'S WITNESS, SWORN

24 THE MARSHAL: Have a seat, please. Watch your step
25 there. If you would, please slide up to the microphone. And

ROUGH DRAFT TRANSCRIPT

000828

1 state your name, and spell it for the record.

2 THE WITNESS: My name is Robbie Dahn. First name's
3 spelled, R-o-b-b-i-e. Last name, D-a-h-n.

4 DIRECT EXAMINATION

5 BY MR. LALLI:

6 Q Can you tell us how you're employed?

7 A Yes, sir. I'm a senior crime scene analyst with the
8 Las Vegas Metropolitan Police Department.

9 Q I'm going to move this a little closer, so you don't
10 have to --

11 A Okay.

12 Q Is that a little more comfortable for you?

13 A Yes. Thank you.

14 Q Okay. You're a senior crime scene analyst?

15 A Yes, sir.

16 Q How long have you been employed with Metro?

17 A Next month will be 14 years. 13 months -- I mean,
18 13 years, 11 months.

19 Q Something that you crime scene analysts do, you're
20 very precise in the amount of time with Metro. Do you -- you
21 respond to crime scenes?

22 A Yes, sir.

23 Q Do you also respond to autopsies?

24 A Yes, I do.

25 Q What is your purpose in responding to an autopsy?

ROUGH DRAFT TRANSCRIPT

000829

1 A We come in the morning to briefing. We do a
2 rotation. I work on day shift, and day shift crime scene
3 analysts respond there. Our job there is to go to the
4 coroner's office. And prior to the cutting part of an
5 autopsy, we collect evidence and do photographs.

6 Q Did you respond to an autopsy on November 7th, 2008?

7 A Yes, sir.

8 Q Who was the decedent?

9 A A woman named Victoria Whitmarsh.

10 Q Who was the doctor who was performing the autopsy?

11 A After their meeting, the doctor that was assigned
12 was Dr. Jacqueline Benjamin.

13 Q Is Dr. Benjamin still with the coroner's office?

14 A No, she's not.

15 Q Do you know where she is? Do you know whether she's
16 moved out of the state?

17 A I don't have that knowledge.

18 Q Okay. So, when a crime scene analyst responds to an
19 autopsy, are you there to photograph the autopsy?

20 A Yes.

21 Q Are you there also to collect evidence from the
22 autopsy?

23 A Yes.

24 Q When the coroner's office opens an investigation and
25 begins to go through the autopsy process, do they assign a

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1 particular case number to a case?

2 A Yes, they do.

3 Q Do you know what the case number -- the coroner case
4 number was in this particular incident?

5 A Yes, I do. The case numbers also begin with the
6 year. So, it was 08-8747, I believe.

7 Q All right. You said that one of the things you do
8 is photograph the autopsy, correct?

9 A Yes.

10 Q While you're photographing the autopsy, does the
11 coroner's office also photograph the autopsy?

12 A Yes, they do. We work together. I'm assigned a
13 coroner tech when I get there. We're inside a special events
14 room on the -- right off the side of the room, where all the
15 open medical examinations taking place. And I worked in
16 tandem with the coroner tech that day.

17 Q All right.

18 MR. LALLI: May I approach the witness, Your Honor?

19 THE COURT: Yes.

20 BY MR. LALLI:

21 Q Ms. Dahn, I'm going to show you what we've marked as
22 State's proposed 77, 78, and 79, and 80. Do you recognize
23 those photographs?

24 A Yes, I do.

25 Q Are those fair and accurate depictions of the

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1 clothing that Victoria Whitmarsh was wearing at the time of
2 autopsy?

3 A Yes.

4 MR. LALLI: Your Honor, move for the admission of
5 those exhibits.

6 THE COURT: Any objection, Mr. O'Keefe?

7 MR. O'KEEFE: No objection, Your Honor.

8 THE COURT: 77, 78, 79, and 80 will be admitted.

9 (Exhibits 77, 78, 79, and 80 are admitted)

10 BY MR. LALLI:

11 Q Those are photos that you actually took?

12 A I -- as I'm looking at the pictures, I'm seeing my
13 arrows, and also a scale with my initials and P number. And
14 I'm pretty sure these may be the ones I took, but they could
15 be Suzanne Mealy (phonetic), the coroner tech, too. I'm not
16 sure.

17 Q All right. Now I'm going to show you what we've
18 marked as State's proposed 81 through 130. And I'd ask you to
19 look at those.

20 A As I'm going through the pictures, I'm seeing a gray
21 square identifying card, which I know that the coroner
22 technicians use. So, I'm thinking that these are probably the
23 ones that were taken in tandem with my photographs by Suzanne
24 Mealy, the girl who I was working with.

25 Q Now, with respect to State's proposed Exhibits 81

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1 through 130, are those fair and accurate depictions of
2 Victoria Whitmarsh during the course of the autopsy?

3 A Yes.

4 MR. LALLI: Your Honor, I'd move for the admission
5 of State's proposed 81 through 130.

6 THE COURT: Any objection, Mr. O'Keefe?

7 MR. O'KEEFE: No, Your Honor.

8 THE COURT: All right. They'll be admitted.

9 (Exhibits 81 through 130 are admitted)

10 BY MR. LALLI:

11 Q Now, you indicated that during the course of an
12 autopsy, the body of the decedent is actually cut?

13 A Yes. They do a -- I think most people think of an
14 autopsy as the internal examination. But there is like an
15 external examination as well.

16 Q But in terms of cutting, is the body of the decedent
17 opened up?

18 A Yes, it is, at the secondary stage of the autopsy
19 procedure.

20 Q And is that photographed?

21 A I believe that the coroner's office does photograph
22 that, but we do not.

23 Q All right. They're particularly gory; not
24 appropriate for a jury. Would you agree?

25 A I agree.

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1 Q Okay. As part of the autopsy, is the head -- skin
2 around the head kind of cut, and pulled back and removed, so
3 that the brain and the scalp are revealed to the pathologist?

4 A Yes, sir.

5 Q And the coroner's office routinely photographs those
6 as well?

7 A Yes.

8 Q Do you recall whether that was done in this case?

9 A I believe it was.

10 Q So, there are more photos that the coroner's office
11 has that a pathologist could review, that wouldn't necessarily
12 be appropriate for a jury to see; is that --

13 A Yes.

14 Q -- a fair statement?

15 A Yes, there would be.

16 Q Okay. And it's your recollection that that was done
17 in this case as well?

18 A Yes.

19 Q All right. Let's go through some of the items that
20 you impounded in this case. Did you recover what I'll refer
21 to as a DNA collection kit, or an evidence collection kit?

22 A Yes, I did.

23 Q What is that?

24 A That's a kit where there's swabs inside for
25 different areas of the body. And we collect a swab sample for

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1 DNA in those areas of the body.

2 Q As part of the evidence collection kit, did you
3 collect buccal swabs?

4 A Yes, I did.

5 Q Are those collected from the mouth of the decedent?

6 A Yes.

7 Q And that is a way that we can obtain a sample of a
8 person's DNA?

9 A Yes.

10 Q As part of the process, do you collect vaginal
11 swabs?

12 A Yes.

13 Q Do you collect cervical swabs?

14 A Yes.

15 Q Rectal swabs?

16 A Yes.

17 Q Oral swabs?

18 A Yes.

19 Q What's the difference between an oral swab and a
20 buccal swab?

21 A The buccal swab's taken from the area of the cheek
22 with -- trying to get epithelial cells for DNA identification.
23 And we swab like the tongue and the back of the throat, but
24 primarily focusing more on the tongue area for the oral swab.

25 Q Do you try to attempt to recover pubic hairs during

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1 the autopsy?

2 A Yes.

3 Q Do you take clippings from the right and the left
4 hands?

5 A Yes.

6 Q And all of that is done and placed in this DNA
7 collection kit?

8 A Yes.

9 Q And then, sent off to Metro's forensic lab if
10 requested to be analyzed by DNA analysts?

11 A Yes.

12 Q So, you did that in this case?

13 A Yes, I did.

14 Q As part of the autopsy process, do you also collect
15 any clothing that the decedent is wearing?

16 A That's correct.

17 Q How was Victoria Whitmarsh dressed when you observed
18 her at autopsy?

19 A Once opening the bag and, you know, opening up the
20 sheet that was surrounding her, she was bare from the waist
21 down. And her upper body had a black under-type shirt, or I
22 call them ribbed t-shirts, short-sleeve. And then, a black
23 jacket with some red striping in it, and I believe the jacket
24 had a hood.

25 Q All right. I'm going to show you what has now been

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1 admitted as State's Exhibit number 77. I'm going to move to
2 the item on the left. What is that?

3 A That's the undershirt that I was referring to, the
4 black ribbed undershirt or t-shirt.

5 Q And then if I move over to the right side of the
6 photo, what is that?

7 A And that's the jacket that was on the -- you know,
8 covering on the outer portion of her body.

9 Q So, Victoria had the t-shirt or the ribbed garment
10 underneath, and then the jacket on top of it?

11 A Yes, sir.

12 Q There are some arrows that you indicated that you
13 recognized. What are the arrows?

14 A I had the arrows marking like a -- it was a material
15 defect in both pieces of clothing, where there was an open
16 area in the material.

17 Q When you say defect, what are you talking about?

18 A There was like a hole in the t-shirt, a cut through
19 the material. And so, I was highlighting it in my -- to just
20 show location with the arrow.

21 Q With respect to the jacket -- or actually, I believe
22 it's the jacket. Let me show you State's Exhibit number 79.
23 That's very difficult to see. Let me see if I can -- okay.
24 Can you see that?

25 A Yes, I can.

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1 Q What are we looking at there?

2 A That's the material defect that I was referring to.

3 Q So, we see a long, kind of linear tear or cut in the
4 material?

5 A Yes.

6 Q All right. Said there was also a -- well, let me
7 show you State's Exhibit number 80. What is that?

8 A That's the ribbed shirt. And I would like to add
9 that I believe the picture that you showed me previously, as
10 well as this one, is a back view of those two items. They're
11 actually flipped over, and showing from the back view.

12 Q All right. So, we're seeing the back here, the back
13 of --

14 A Yes.

15 Q -- the shirt? And the same, or a similar defect was
16 on the ribbed shirt, as well as the jacket?

17 A Yes.

18 Q Okay.

19 MR. LALLI: Your Honor, that concludes direct
20 examination.

21 THE COURT: All right. Any cross-examination, Mr.
22 O'Keefe?

23 MR. O'KEEFE: I have no questions, Your Honor.

24 THE COURT: Thank you. You're excused.

25 THE WITNESS: Thank you, sir.

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1 THE COURT: Next witness, please?

2 MR. LALLI: The next witness is Dr. Timothy Dutra.

3 MR. O'KEEFE: Your Honor, can we approach the bench,
4 please?

5 THE COURT: Yes.

6 MR. LALLI: Oh, I'm sorry. I've got one other item.
7 I didn't see it down here. I apologize.

8 THE COURT: Well, so you want to --

9 MR. LALLI: May I reopen?

10 THE COURT: Yes. He's got another item, Mr.
11 O'Keefe. Any objection?

12 MR. LALLI: Just going to move this into evidence.

13 MR. O'KEEFE: I have no objection.

14 THE COURT: All right. He's going to reopen.

15 BY MR. LALLI:

16 Q Ms. Dahn, I'm going to show you -- we talked about
17 the clothing. And I'm going to show you what we marked as
18 State's proposed 125. Do you recognize this?

19 A Yes, I do.

20 Q What is it?

21 A It is my evidence impound bag for the clothing we
22 were just talking about.

23 Q So, the clothing that you observed on Victoria
24 Whitmarsh, you impounded it and collected it?

25 A Yes, I did.

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1 Q And it's in this evidence bag?

2 A Yes.

3 Q All right.

4 MR. LALLI: Your Honor, move for the admission of
5 State's proposed 125.

6 THE COURT: I thought -- I thought it was admitted,
7 81 through -- unless I'm wrong. Is it already admitted?

8 THE CLERK: [Inaudible].

9 MR. LALLI: Oh.

10 (Pause in the proceedings)

11 MR. LALLI: Oh. One of these photos is marked out
12 of order. So --

13 THE CLERK: The photos should have ended at --

14 MR. LALLI: 120.

15 THE CLERK: -- 123. And then it should have been
16 130. Because --

17 MR. LALLI: That's correct.

18 THE CLERK: -- evidence bags are in between.

19 MR. LALLI: Right. Okay. So, I would move for the
20 admission of 125. I don't think it's been admitted.

21 THE CLERK: No.

22 THE COURT: All right. Any objection, Mr. O'Keefe?

23 MR. O'KEEFE: No, Your Honor.

24 THE COURT: All right. It will be admitted.

25 (Exhibit 125 is admitted)

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1 MR. LALLI: Thank you. That concludes my
2 examination. I apologize.

3 THE COURT: All right. Thank you.

4 THE WITNESS: Thank you, sir.

5 THE COURT: Now, you want to approach the bench?

6 MR. O'KEEFE: Yes, Your Honor. If we may, please.

7 (Off-record bench conference)

8 THE COURT: All right. Call your next witness.

9 MR. LALLI: Your Honor, the State calls Dr. Timothy
10 Dutra.

11 THE COURT: And again, just for the record, there's
12 an objection here that Mr. O'Keefe mentioned, and it was
13 timely made. And we'll put it on the record at a later time.
14 All right?

15 MR. O'KEEFE: Yes, Your Honor. Thank you.

16 THE MARSHAL: If you will remain standing. Please,
17 sir, raise your right hand and face the clerk.

18 TIMOTHY DUTRA, STATE'S WITNESS, SWORN

19 THE MARSHAL: If you could, slide up to the
20 microphone. If you would, sir, please state and spell your
21 name for the record.

22 THE WITNESS: Timothy, T-i-m-o-t-h-y. Franklin,
23 F-r-a-n-k-l-i-n. Dutra, D-u-t-r-a.

24 DIRECT EXAMINATION

25 BY MR. LALLI:

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1 Q Sir, can you tell us how you're employed?

2 A I'm a medical examiner for the Clark County office
3 of the coroner and medical examiner.

4 Q How long have you done that?

5 A A little over two years now.

6 Q Do you hold any professional licenses in the State
7 of Nevada?

8 A I am a licensed physician in the State of Nevada.

9 Q A medical doctor?

10 A Yes, a medical doctor.

11 Q How long have you been a medical doctor?

12 A Well, since 1974.

13 Q 1974?

14 A Yes.

15 Q Okay. Can you --

16 A Excuse me. I'll have to shut that off. That
17 shouldn't have occurred.

18 Q I'm sure the Judge would appreciate it.

19 (Pause in the proceedings)

20 THE WITNESS: I apologize. Yes.

21 THE COURT: All right. Proceed.

22 BY MR. LALLI:

23 Q Can you explain for the jury your formal education?
24 Where did you go to --

25 A I went to --

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1 Q -- undergraduate, where did you go to medical
2 school?

3 A -- University of Southern California Medical School.
4 I also have a PH.D. from UCLA in anatomy and cell biology.
5 I'm board-certified in anatomic and clinical pathology. I'm
6 also board-certified in blood banking and transfusion
7 medicine, and also board-certified in forensic pathology.

8 Q Can you explain for the jury your past employment
9 history? Tell us where you've been able to practice medicine
10 in the past.

11 A I practiced as a pathologist -- as a hospital
12 pathologist in Los Angeles for one of the Los Angeles County
13 hospitals. And subsequently, after that, got my blood
14 banking. I did research for several years. I went back, and
15 did a fellowship at the University of -- at Saint Louis
16 University in forensic pathology in 2008, and took my board
17 exam in 2009.

18 Q What is hospital pathology?

19 A That's where you work in a hospital laboratory, and
20 you receive the surgical specimens, and make microscopic
21 diagnoses on them. You also run the clinical laboratory, the
22 blood bank, the chemistry section, the microbiology.

23 Q So, in other words, with respect to hospital
24 pathology, if I go to UCLA Medical Center and I have a tumor
25 that is removed, that tumor is then sent to a hospital

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1 pathologist who examines that tumor to see what kinds of cells
2 are in it, as an example?

3 A Exactly. We'll give you a definitive diagnosis on
4 your tumor.

5 Q All right. And you did that for a period of time?

6 A Yes.

7 Q You indicate that you studied, or had a fellowship
8 in forensic pathology at --

9 A Saint Louis University.

10 Q -- Saint Louis University?

11 A Yes.

12 Q How long is that program?

13 A That's -- it's an ACGME, accredited program. It's a
14 one-year program.

15 Q And what do you do in that?

16 A You do forensic autopsies under the supervision and
17 direction of board-certified forensic pathologists for one
18 year. They are ultimately responsible for the cases, but
19 during that period of time, the trade-off is that you get
20 training in forensic pathology.

21 Q Have you ever testified as an expert in the area of
22 forensic pathology?

23 A Yes.

24 Q Where?

25 A Both in Saint Louis, and here in Las Vegas.

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1 Q Approximately how many times?

2 A I would think before a grand jury, about 10 times.
3 And before a court, maybe 10 or 15 times.

4 MR. LALLI: Your Honor, at this point, I would ask
5 that Dr. Dutra be allowed to offer his opinions in the area of
6 forensic pathology.

7 THE COURT: Well, he can so testify.

8 BY MR. LALLI:

9 Q Can you explain to our jury what forensic pathology
10 is?

11 A Forensic pathology is a sub-specialty of pathology,
12 where we are, by law -- statutory law, we make the -- we sign
13 the death certificates, giving a cause of death and a manner
14 of death in cases which are unexpected or suspicious. And all
15 cases where death is not natural fall under the jurisdiction
16 in the State of Nevada of the coroner, and I work for the
17 coroner of Clark County.

18 Q During the course of your investigation, are you
19 tasked with determining a cause of death, as well as a manner
20 of death?

21 A Yes.

22 Q What do we mean by a cause of death?

23 A A cause of death is really the diagnosis of death.
24 Not necessarily the manner -- pardon me, the mechanism of
25 death, but it is the ultimate cause of the death.

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1 Q Can you give me an example of a cause of death?

2 A Well, it could be something like lung cancer, or it
3 could be a gunshot wound to the head.

4 Q All right. What do we mean by manner of death?

5 A Manner of death, we have five options. We have
6 homicide, suicide, natural, accidental, and undetermined. And
7 on every death certificate, that has to be decided, and
8 written on the death certificate.

9 Q Let's talk about those manners of death. You said
10 that one manner of death is homicide, correct?

11 A Yes.

12 Q What does homicide mean?

13 A Homicide is when there is an interaction of two
14 people, and one of them dies.

15 Q At the hands of the other person?

16 A There's an interaction, and yes, at the hands of the
17 other person.

18 Q Okay. What would be an example of a homicide?

19 A It could be a gunshot wound to the chest. It could
20 be --

21 Q By another person?

22 A By another person. It could be a strangulation by
23 another person.

24 Q All right. What is -- you said that one of the
25 manners of death was accident?

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1 A Yes.

2 Q What is that?

3 A An accident is where there may be -- may or may not
4 be an interaction between two people, but the death is
5 accidental. I think it kind of --

6 Q What's an example of that?

7 A -- speaks for itself. A traffic accident might be
8 -- a traffic collision might be considered an accident, if
9 there's no intent and it's truly accidental. If someone falls
10 off of a cliff, that would be accidental.

11 Q Okay. If somebody is mishandling a gun, they're by
12 themselves, and the gun drops and discharges, and --

13 A That would be --

14 Q An accident?

15 A -- accidental, yes.

16 Q All right. What is suicide?

17 A Suicide is where a person purposefully kills
18 themselves. And so, it's a self-inflicted injury that results
19 in death.

20 Q All right. You said that another manner of death
21 was natural?

22 A Yes.

23 Q An example of a natural death?

24 A It could be atherosclerotic cardiovascular disease,
25 or leukemia, or any disease process or condition that would

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1 result in the death of the person.

2 Q And the fifth manner you indicated was undetermined.
3 What does that mean?

4 A Undetermined is that we cannot determine a manner of
5 death. That could be the skeletal remains, where there's no
6 -- not enough evidence. Or it may be a case where there is
7 not enough known about the circumstances to decide whether a
8 wound was at the hands of another, or at a -- or
9 self-inflicted, in which case, the manner would be
10 undetermined because I could not determine whether it was -- I
11 should use suicide, or I should use homicide.

12 Q Okay. I want to talk to you a little bit about the
13 autopsy process. I take it, as a forensic pathologist with
14 the coroner's office, you do autopsies?

15 A That's my job.

16 Q Okay. About how many autopsies would you conduct in
17 an average week?

18 A It's variable, but I would say 10. 10, maybe 15.

19 Q 10 to 15 autopsies a week?

20 A Yes.

21 Q So, are you familiar with the process that the Clark
22 County Coroner's Office uses in conducting autopsies? And I'm
23 talking about photographs being taken, preparation of reports,
24 specimens obtained during the course of the autopsy. You're
25 familiar with those procedures?

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1 A Yes.

2 Q During the course of the autopsy, is the body of the
3 deceased photographed?

4 A Yes.

5 Q By employees of the coroner's office?

6 A Yes, on intake.

7 Q All right. Are reports prepared?

8 A Yes.

9 Q How are the reports prepared? At -- does a doctor
10 conduct the autopsy, and then go to an office, and sit down
11 and start writing them out? Is dictation used at the time?
12 Give us some sense of that.

13 A A typical case will have three reports associated
14 with it. One is a report by the coroner's investigator, who
15 is a person trained in evaluation of the death scene. They
16 will be called out by the police, or by the paramedics, and
17 talk to witnesses, take photographs. And then, write an
18 investigative report, which I will use when I am coming to my
19 determinations as to the cause and manner of death.

20 Then, there's also a toxicology report, which comes
21 from our toxicology lab, based on the specimens that we send
22 to them.

23 And then, thirdly, I have an autopsy report. I --
24 during an autopsy, I will perform the case. And then, my
25 usual practice is, immediately after the case, and before I

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1 start another case, I will write -- or dictate my autopsy
2 findings of the external examination and the internal
3 examination, and my preliminary findings.

4 Q So, the report -- or at least the dictation that a
5 forensic pathologist makes, is made at or near the time of the
6 autopsy?

7 A Yes.

8 Q And the dictation made by that person with knowledge
9 of the autopsy is then transcribed into a report?

10 A Yes.

11 Q And is it the regularly conducted activity of the
12 coroner's office to do autopsies?

13 A Yes.

14 Q All right. And you mentioned the other two
15 autopsies as well -- the other two reports. You talked about
16 the investigative report, and the --

17 A Toxicology.

18 Q -- toxicology report. Are those routinely reviewed
19 by forensic pathologists?

20 A Yes, as part of our summation. When I get my
21 original dictation back, and I have the other reports in hand,
22 I will review my first report, and along with the case photos
23 and the investigator's report, and any medical records that
24 have been asked -- or additional information; police reports,
25 toxicology report. And then, I will dictate my final

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1 diagnoses, and a -- sort of an epilogue of the case; a brief
2 description of what my determination is.

3 Q With respect to the photographs, are the photographs
4 stored?

5 A Yes.

6 Q So, one pathologist would have the ability to go
7 back and review photos taken in a different autopsy?

8 A Oh, yes.

9 Q What about investigators? What about the coroner's
10 investigators? Does the coroner investigator take photos of
11 the scene, usually?

12 A Yes.

13 Q And are those available for you to go back and look
14 at?

15 A Yes.

16 Q Now, I want to direct your attention to November 7th
17 of 2008. Were you employed with the Clark County Coroner's
18 Office then?

19 A No.

20 Q Are you familiar with a forensic pathologist by the
21 name of Jacqueline Benjamin?

22 A Yes.

23 Q Who is Dr. Benjamin?

24 A Dr. Benjamin is a board-certified forensic
25 pathologist, who at that time was working as a medical

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1 examiner for the Clark County Office of the Coroner.

2 Q Does she still work there?

3 A No.

4 Q Where does she work?

5 A She has gone forward in her career and done a
6 fellowship in neuropathology, and now practices as a
7 neuropathologist in Southern California.

8 Q So, she's out of state?

9 A Yes.

10 Q Is it the normal practice of the Clark County
11 Coroner's Office in cases where a pathologist has either
12 passed away, has died, or is no longer living in the state, to
13 assign a different pathologist to review the case file, and
14 then come to court to testify in front of juries?

15 A Yes, that is our normal practice.

16 Q Have you done that before?

17 A Yes.

18 Q Have you in fact actually testified previously on
19 cases which were originally performed by Dr. Benjamin?

20 A I believe on one occasion, certainly, but possibly
21 on two.

22 Q All right. So, with respect to November 7th of
23 2008, did you review the materials associated with an autopsy
24 that was performed on Victoria Whitmarsh in case number
25 08-8747?

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1 A Yes.

2 Q Did you review Dr. Benjamin's autopsy report?

3 A Yes.

4 Q Did you review the investigative report?

5 A Yes.

6 Q Did you review the toxicology report?

7 A Yes.

8 Q Did you also review photographs from the autopsy?

9 A Yes.

10 Q Did you review photographs from the crime scene?

11 A Yes.

12 Q Did you also review prior testimony from Dr.

13 Benjamin?

14 A Yes.

15 Q All right. Based upon all of those materials, do
16 you have a basis to render your own opinions with respect to
17 cause of death and manner of death of Victoria Whitmarsh?

18 A Yes.

19 Q All right.

20 THE COURT: Just for the record now, you're going to
21 elicit testimony as to Dr. Dutra's own opinion --

22 MR. LALLI: Yes.

23 THE COURT: -- after reviewing these documents?

24 MR. LALLI: Correct.

25 THE COURT: But you're not going to elicit any

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1 opinion that Dr. Benjamin might have had; is that correct?

2 MR. LALLI: That is correct, Your Honor.

3 THE COURT: Because Dr. Benjamin's not here. She's
4 unavailable to be here. So, you're just going to limit your
5 examination to Dr. Dutra's own opinion after reviewing the
6 documents.

7 MR. LALLI: Correct. And we're going to actually
8 show him some photographs, and ask him of his opinions about
9 certain --

10 THE COURT: All right.

11 MR. LALLI: -- photographs.

12 THE COURT: So, you'll limit it to that?

13 MR. LALLI: Yes, sir.

14 THE COURT: All right. Thank you.

15 MR. LALLI: All right.

16 BY MR. LALLI:

17 Q So, was this autopsy in fact conducted in November
18 7th, 2008?

19 A Yes.

20 Q All right. Just going to show you one overall
21 photo, State's Exhibit number 85. Can you see that, Dr.
22 Dutra?

23 A Yes.

24 Q Do you recognize the decedent in this photograph?

25 A Yes.

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1 Q Is this the person who was depicted in the
2 photographs that you reviewed in your office, and purported to
3 be Victoria Whitmarsh?

4 A Yes.

5 Q All right. Now, I want to zoom-in to something
6 here. Let's give it a moment to focus. What is that?

7 A That is the case file number.

8 Q And is -- how -- why is it in the photograph?

9 A It's to identify the case that's being photographed.

10 Q So you know that when you're looking at particular
11 photographs, they are associated with the same case that
12 you're investigating or looking at?

13 A Yes.

14 Q And does there appear to be a little
15 greenish-bluish dot in the upper left hand corner of that?

16 A Yes.

17 Q Do you know what the significance of the dot is?

18 A I do not.

19 Q All right. Have you ever heard that the dot is the
20 position that the decedent's head is in? So, in this
21 particular photo, the dot is in the upper position, so that
22 points to the direction of the decedent's head?

23 A Okay.

24 Q But that wasn't something you were aware of?

25 A I wasn't aware of that.

ROUGH DRAFT TRANSCRIPT

000855

1 Q All right. Now, with respect to Victoria Whitmarsh,
2 did she suffer from various areas of blunt force trauma?

3 A Yes.

4 Q What is blunt force trauma?

5 A Blunt force trauma is trauma to the outside of the
6 body, the skin, by an object that is not sharp. Just a --
7 just exactly what it says.

8 Q How is it that you're able to see blunt force trauma
9 in a person?

10 A The blunt force trauma breaks small blood vessels in
11 the skin. And we forensic pathologists call that a contusion,
12 and lay people would refer to that as a bruise.

13 Q So, you were -- did you observe evidence of bruising
14 on Victoria Whitmarsh's body?

15 A Yes.

16 Q Are forensic pathologists able to date bruises?

17 A In a general sense, yes.

18 Q Can you explain, to what extent you can, how that
19 works?

20 A Yes. There is a progression in the color change of
21 a bruise over time. This has been studied scientifically.
22 And the peer-reviewed results of such studies are that this is
23 a consistent color change, although the timing of it can be
24 variable, due -- based on where the injury is, the depth of
25 the -- where the bleeding occurred, the pigmentation of the

ROUGH DRAFT TRANSCRIPT

000856

1 skin.

2 But in general, a bruise that is immediate will be
3 pink, or purple-pink, or purple-blue, if the bleeding is a
4 little bit deeper in the skin. And then, over time, over
5 several days, it will develop some greenish coloration. The
6 coloration change begins peripherally, and progresses
7 centrally.

8 And finally, after several more days, a week or so,
9 the bruise is starting to take on a yellow, or yellow-brown
10 color.

11 Q Does a person bruise after they're dead?

12 A No.

13 Q So, any bruises that you observe on a decedent
14 occurred while they were still alive?

15 A Yes.

16 Q All right. I'm going to show you what we've marked
17 as -- and admitted as State's Exhibit number 86. And let me
18 just tell you, Doctor, you're looking at this photograph
19 through a monitor. If you, on any of these, need to actually
20 look at the actual photo, just tell me, and I'll bring the
21 actual photo up for you. Okay?

22 A Yes.

23 Q Is that all right? And I'm going to show you 87,
24 which is a close-up of that. What are we looking at there?

25 A We're looking at a contusion of the forehead.

ROUGH DRAFT TRANSCRIPT

000857

1 Q And there appears to be an elevated area around
2 that. Do you know what that is?

3 A That's some hematoma, or additional bleeding
4 underneath the skin, which has not permeated more
5 superficially and caused color change in the skin.

6 Q Would you say that -- would it be your opinion that
7 this contusion, this bruise was a result of blunt force
8 trauma?

9 A Yes.

10 Q So, can you give us some -- I'm not asking you, what
11 caused that particular bruise, but can you give us some
12 examples of how a bruise like that would be caused?

13 A It could be caused by a person falling and striking
14 themselves. It could be caused by a -- something falling on
15 the person. It could be caused by a blow to that area.

16 Q A punch?

17 A A punch.

18 Q Or a kick?

19 A Yes.

20 Q Striking either with a hand, or with an object?

21 A Yes.

22 Q All right. Do you have an opinion as to the age, or
23 the timing of that particular injury?

24 A I would like to look at the original picture, if
25 that would be --

ROUGH DRAFT TRANSCRIPT

000858

1 MR. LALLI: Your Honor, I may have to approach
2 several times. May I just have the ability to do that --

3 THE COURT: Yes.

4 MR. LALLI: Thank you.

5 THE WITNESS: Based on the color of this contusion,
6 I would say that it appears to be a fresh contusion.

7 BY MR. LALLI:

8 Q What's your definition of fresh?

9 A Within 24 hours or so.

10 Q Within 24 hours of death?

11 A Yes.

12 Q Now, when you say within 24 hours, forensic
13 pathologists can't give a specific time that an injury
14 occurred, or bruise, correct?

15 A If we examine it microscopically and look for
16 inflammatory response, we can get a little bit closer to the
17 time. But in general, that is correct. And even with my
18 cryoscopy, there is still some variability.

19 Q All right. So, you say fresh, within 24 hours. So,
20 this particular bruise on Victoria's forehead could have been
21 caused as late as 24 hours before her death, and as early as
22 right at the time of her death?

23 A Or shortly before her death.

24 Q Shortly before. Minutes before?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

000859

1 Q Okay. And that's really the best that forensic
2 pathologists can do in terms of dating injuries?

3 A That's the best we can do.

4 Q Now, I'm going to show you a series of photographs.
5 And again, if you need to see them up-close, I'll certainly
6 give those to you. State's Exhibit number 88, 89, and 90.
7 What are we looking at there?

8 A We're also looking at contusions.

9 Q On what part of Victoria's body?

10 A The upper extremities.

11 Q Is that her left arm?

12 A It appears to be her left arm, yes. Yes, it is.

13 Q All right. Let me show you State's Exhibit number
14 89. Do those appear all to be the same contusions around the
15 same arm?

16 A Yes. It might also be a patterned, combined
17 contusion.

18 Q All right. Can you explain what a patterned,
19 combined contusion is?

20 A A patterned contusion is simply that, where we can
21 suggest that there appears to be a pattern to the contusion.
22 And in a case like this, the pattern is suggestive of possible
23 finger marks, or a grasping as a mechanism for the cause of
24 this contusion.

25 Q This particular pattern is consistent with a

ROUGH DRAFT TRANSCRIPT

000860

1 grabbing?

2 A It could be.

3 Q All right.

4 A It could be.

5 Q Now --

6 A It could be multiple, separate blows, too.

7 Q Sure. Do you have an opinion as to the age of this
8 bruising? Or would you like to see the photographs?

9 A I think in this case, I'm fine. And I think they
10 appear to be, again, fresh.

11 Q Going to show you State's Exhibit number 91. What
12 are we seeing there?

13 A We're looking at another contusion. It is of the
14 shoulder area, from --

15 Q Can you circle what you're looking at? Just take
16 your finger and touch the screen, and circle it, if you can.

17 A Well, I see actually two contusions. I see one
18 here, and I see one here.

19 Q So, you've drawn a circle in the center of this
20 exhibit, as well as to the upper right hand corner of the
21 exhibit --

22 A Correct.

23 Q -- correct?

24 A Correct.

25 Q Let's talk about what's in the center first.

ROUGH DRAFT TRANSCRIPT

000861

1 Explain for us what we're looking at.

2 A I'm looking at a relatively small sized contusion,
3 which is overlying what appears to be the back of the right
4 shoulder region. If I have additional --

5 Q All right.

6 A I think that's what it is. It could be the front of
7 the left shoulder. I'm not sure. I don't have --

8 Q Let me show you the --

9 A -- enough perspective.

10 Q -- actual photograph so you can see the whole thing.

11 A Oh, okay. It was the front of the left shoulder
12 region. Yes.

13 Q Now, with respect to the bruising that we're seeing
14 in the center of that shoulder, is that indicative of blunt
15 force trauma?

16 A Again, yes.

17 Q Do you have an opinion as to the age of that injury?

18 A By the color, again, it appears to be a fresh
19 contusion.

20 Q Now, let's talk about the other contusion that is
21 down on the upper part of the arm. What is that?

22 A That is also a contusion, and by the color, appears
23 to be fresh.

24 Q I want to show you up-close, because these are more
25 difficult to see, 92 and 93. Do you see evidence of injury in

ROUGH DRAFT TRANSCRIPT

000862

1 those photographs?

2 A I see -- I see a stab wound on the side of the chest
3 in the upper part. I see contusions on the front of the
4 abdomen. I --

5 Q Okay. I'm talking about in the -- in the arm area.

6 A There's some faint coloration in the arm area that
7 possibly could be a faint contusion.

8 Q All right. What about on -- and you were just
9 looking at State's Exhibit number 92, correct?

10 A Yes.

11 Q What about in 93?

12 A On that, I see a contusion on the -- what do you
13 call it, the -- it would be the front side when we put the
14 person in the anatomic position of the right forearm.

15 Q All right. Let me show this to the jury. This is
16 State's Exhibit number 93. That is also a bruise --

17 A Yes.

18 Q -- or a contusion? Do you have an opinion as to the
19 age of that?

20 A By the color, I would -- I think it appears to be
21 fresh.

22 Q I'm going to show you State's Exhibit number 97.
23 What are we looking at there?

24 A We're looking at an abrasion on the -- what we would
25 call the back side, or what some people might refer to as the

ROUGH DRAFT TRANSCRIPT

000863

1 top if the knuckle of the middle finger of the left hand.

2 Q What's an abrasion?

3 A An abrasion is a shearing injury of the skin, where
4 the surface of the skin is injured, and there's some tissue
5 damage, some bleeding, and disruption of the superficial
6 covering of the skin.

7 Q Do you have an opinion as to the age of this injury?
8 And I'll zoom into it for you. And again, if you need to see
9 the photograph, I'll bring it.

10 A I think this is an abrasion that has -- an abrasion
11 that is a day or two-old, or possibly -- more or less,
12 possibly a little bit older. And then, there's been some
13 re-injury where the blood clot and -- on the surface has been
14 scraped away, revealing the injured tissue underneath.

15 Q So, you would not characterize this -- or at least
16 the original injury as fresh?

17 A No.

18 Q I'm going to show you State's Exhibit number 99.
19 What are we looking at here?

20 A Here, we're looking at a pair of contusions on the
21 right upper aspect of the abdomen.

22 Q Again, blunt force trauma?

23 A Yes.

24 Q And do you have an opinion as to the age of those
25 injuries?

ROUGH DRAFT TRANSCRIPT

000864

1 A Again, by the color, I believe that these are fresh.

2 Q I'm going to show you up-close State's Exhibit 100,
3 because these are more faint. Do you see evidence of trauma
4 -- blunt force trauma in that photograph?

5 A Yes.

6 Q All right. Let me put it up for the jury to see.
7 Showing you State's Exhibit number 100, what are we looking at
8 there?

9 A We're looking at the left side of the chest.

10 Q And do you see evidence of injury?

11 A I see two contusions.

12 Q Do you have an opinion as to the age of those
13 contusions?

14 A Again, by their color, they appear to be fresh
15 contusions.

16 Q All right. I'm going to show you State's Exhibit
17 number 103. What are we looking at there?

18 A We're looking at the body from the posterior aspect.
19 And --

20 Q Do you see evidence of injury?

21 A I see two faint contusions on the upper aspects of
22 the buttocks by -- on both sides, one on each side. And then,
23 a much larger contusion on the lower aspect of the right
24 buttock.

25 Q If I show you State's Exhibit number 108, is that a

ROUGH DRAFT TRANSCRIPT

000865

1 blow-up of that area?

2 A Yes.

3 Q Okay. The large area of contusion, can you circle
4 that for us? And then, you indicated that there were two
5 smaller areas of contusion. Let's talk about the smaller
6 areas first. Do you have an opinion as to the age of those
7 injuries?

8 A Again, in these -- for these injuries, by their
9 color, they appear to be fresh contusions.

10 Q What about the large bruise on the buttocks?

11 A That also appears to be a fresh contusion.

12 Q And by fresh, again, could be --

13 A Within --

14 Q -- up to the moment of death, ten minutes before, or
15 as far back as 24 hours?

16 A Yes. And as I said, excuse me, it's variable. It
17 could be even two days. But --

18 Q All right.

19 A -- color changes start within -- in about one to two
20 days.

21 Q I'm going to show you State's Exhibit number 105.
22 What are we looking at here?

23 A In this case, we're looking at a contusion on the
24 lateral side of the left thigh.

25 Q And is State's Exhibit 111 just a blow-up of that?

ROUGH DRAFT TRANSCRIPT

000866

1 A Yes. And in the blow-up, I see there's a smaller
2 contusion further down the thigh as well.

3 Q Do you -- in your opinion, is that evidence of blunt
4 force trauma?

5 A That is blunt -- that is evidence of blunt force
6 trauma.

7 Q Do you have an opinion as to the age of that injury?

8 A By the color of those injuries, I think that they
9 are fresh contusions.

10 Q I'm going to show you up-close State's Exhibit
11 number 114. What is that?

12 A Those are the front of the lower legs of the body.

13 Q Do you see evidence of injury?

14 A I see abrasions on the right leg, and I see several
15 contusions on the front of the left lower leg.

16 Q All right. Going to show you Exhibit 114 on the
17 screen now. You indicated -- let's talk about the left leg
18 first. Is that the leg that's on the bottom?

19 A Yes.

20 Q You indicate that there's evidence of contusion?

21 A Yes.

22 Q Can you circle that for us? Do you have an opinion
23 as to the age of that injury? And I can bring the photograph
24 back to you, if that would help, Doctor.

25 A I -- in looking at these, I believe that they are

ROUGH DRAFT TRANSCRIPT

000867

1 fresh contusions.

2 Q Now, the other leg, the right leg -- I'm going to
3 show you State's Exhibit number 115. Is that a close-up?

4 A Yes.

5 Q Now, those are not contusions?

6 A Well, there's a mixture of contusions and abrasions.

7 Q Would an abrasion be a scrape?

8 A Yeah. Yes.

9 Q Do you have an opinion as to the age of those
10 injuries?

11 A They all appear to be fresh injuries.

12 Q What are we looking at in State's Exhibit number
13 116?

14 A We're looking at -- we're looking at contusions of
15 the lateral aspect of the right ankle, possibly also
16 ecchymosis or bruising in that area. If there had been an
17 ankle sprain as well, there could be some bleeding below the
18 ankle. In other words, above the ankle, that -- this -- may I
19 circle?

20 Q You can circle it.

21 A Okay. This is a contusion. Down here, this could
22 be contusion. It could also be some bleeding due to some
23 sprain injury of the ankle on that side.

24 Q With respect to the -- let's talk about the bruise
25 above the ankle. Do you have an opinion as to the age of that

ROUGH DRAFT TRANSCRIPT

000868

1 injury?

2 A It also appears to be a fresh injury.

3 Q And what about the ecchymosis on the ankle and below
4 the ankle; is there any way to date that?

5 A By viewing the picture, it appears to be a fresh
6 injury.

7 Q I'm going to show you up-close State's Exhibit
8 number 120. Do you see evidence of blunt force trauma there?

9 A Yes.

10 Q Let me throw it up for the jury to see. Showing you
11 State's Exhibit 120, what are we looking at there?

12 A We're looking at the inside, or medial aspect of the
13 left ankle. And slightly above the bone, behind it, there's a
14 contusion, which appears to be fresh.

15 Q Did you observe evidence of sharp force injury in
16 reviewing this case?

17 A Yes.

18 Q I'm going to show you State's Exhibit number 101.
19 And then, I'm going to show you State's Exhibit number 102.
20 What are we looking at in State's Exhibit number 102?

21 A We're looking at a stab wound of the chest.

22 Q Can you stand up, Doctor, and just kind of indicate
23 for our jury where that stab wound is on your own body?

24 A It's -- it would be about here on my body.

25 Q And you're indicating right underneath your right

ROUGH DRAFT TRANSCRIPT

000869

1 armpit?

2 A Yes.

3 Q All right. You can sit down. I'm going to zoom-in
4 on State's Exhibit number 102. Describe that injury for us,
5 please.

6 A It's a stab wound of the chest. There is -- the
7 margins of the wound are straight. The --

8 Q What are the margins?

9 A The sides of the wound.

10 Q All right.

11 A There is -- there is -- one end is blunted, and that
12 would be the end of the wound that is towards the front, and
13 downwards. And --

14 Q Can you just circle the blunted part? And what do
15 you mean by blunted? Not sharp?

16 A Not sharp, yes.

17 Q Okay. And then, on the -- please continue.

18 A And then, the other end of the wound is sharp. And
19 that is the end of the wound that is towards the back, and
20 upwards.

21 Q Do you have an opinion as to what caused this
22 injury?

23 A It's a stab wound of the chest.

24 Q And can you tell from the -- looking at the injury,
25 which way -- when you're saying stab wound, I presume you're

ROUGH DRAFT TRANSCRIPT

000870

1 talking about a knife?

2 A A knife blade, yes.

3 Q Can you tell which end of the wound was caused by
4 the sharp end, or the front of the knife?

5 A Yes.

6 Q The cutting portion of the knife, versus the back
7 end of the knife?

8 A The spine of the knife, the blunt side would be
9 towards the front and downwards, this blunted end of the
10 wound. And then, the sharp aspect of the blade is this area
11 here.

12 Q I want to ask you about some things around the knife
13 wound. And I'll zoom-in. And if that's good enough, let me
14 know. If it's not, I'll bring the photo up to you.

15 A Okay.

16 Q [Inaudible]. So, now, as we're looking at this
17 photograph, to the left of the knife wound, there appears to
18 be a dark, round object. Do you --

19 A Right.

20 Q -- see that? Do you have any opinion as to what
21 that is?

22 A I think that's just a benign cutaneous lesion,
23 possibly a mole or something like that. But it's a natural
24 finding on the skin.

25 Q It doesn't represent any sort of injury?

ROUGH DRAFT TRANSCRIPT

000871

1 alcohol he would drink.

2 A Everyday after work, he would have a few of those
3 large cans. And then he'd stop off -- or he'd go to the
4 store, and get another six-pack or so.

5 Q Would he drink to the point where physically, you
6 could tell he's intoxicated?

7 A Yes.

8 Q Things like slurred speech, maybe wasn't walking
9 steady?

10 A Yes.

11 Q Maybe the manner in which he spoke; things of that
12 nature?

13 A Yes.

14 Q During the period that he lived with Dorothy, would
15 he talk to you about Victoria Whitmarsh?

16 A Yes.

17 Q What would he say?

18 A He would talk about how angry he was. And --

19 Q About what?

20 A The fact that Victoria put him in prison.

21 Q How did she put him in prison?

22 A There was a previous altercation, or a case that she
23 had testified that he hurt her.

24 Q All right. And so, based upon -- this is what the
25 defendant is telling you?

ROUGH DRAFT TRANSCRIPT

000622

1 A Yes.

2 Q Based upon Victoria testifying against him in a case
3 and sending him to prison, he harbored some anger against her?

4 A Yes.

5 Q Would he ever talk about how he felt about her?

6 A Yes.

7 Q What would he say?

8 A He said that he wanted to kill the bitch because he
9 took away three years of his life.

10 Q So, he had gone to prison for three years?

11 A Yes.

12 Q And he said that, because of that, he wanted to kill
13 the bitch?

14 A Yes.

15 Q Would he -- would he -- when you would have these
16 sorts of conversations with him, was this a single
17 conversation? Was it multiple conversations?

18 A They were multiple conversations.

19 Q And what -- when he would tell you this, would he
20 become animated? Would he become loud? Can you describe his
21 demeanor; his affect when he would talk about Victoria?

22 A When he talked about Victoria, he first started out
23 as being sad. Then he would start to become upset. And then
24 from there, he would just start drinking more, and he would,
25 at one point in time, become outraged.

ROUGH DRAFT TRANSCRIPT

000623

1 Q During these conversations that you had with him,
2 would he ever talk about his military background?

3 A Yes. He stated that he was in Grenada, and that the
4 government had taught him how to kill people.

5 Q Would he ever act out situations, or do
6 demonstrations for you?

7 A Yes, he did.

8 Q Can you describe that for us?

9 A At one point in time, Mr. O'Keefe would demonstrate
10 to me how he would take a knife and thrust it up through the
11 sternum, and pull up. And then, he would say, that's how you
12 would kill a person.

13 A I'm talking about the middle part of the chest area.

14 Q And for the record, your just pointing to yourself,
15 right in the middle of your chest; is that true?

16 A Yes.

17 Q Okay. When he talked about killing people, would he
18 ever talk about using a gun?

19 A No, sir.

20 Q Would he ever talk about strangulation?

21 A No, sir.

22 Q It was always in terms of a knife?

23 A Yes.

24 Q When he would talk about Victoria, would he describe
25 for you the things that he liked about her when they were

1 together?

2 A He did mention that he liked Victoria because she
3 was submissive.

4 Q Do you remember testifying in a prior hearing that
5 he portrayed her as kind of a meek person as well?

6 A Yes.

7 Q Did he ever tell you that he was afraid of her?

8 A No.

9 Q Did he ever tell you that he was concerned about
10 her?

11 A No.

12 Q Did he ever tell you that she had threatened his
13 life in any way?

14 A No.

15 Q During the time that you had a relationship with
16 Brian, did he exhibit any controlling behavior with you, with
17 respect to going to sleep at night?

18 A Brian would always want me to go to sleep,
19 regardless of whether or not I was tired.

20 Q With him, or alone, or how would that work?

21 A With him. When he went to sleep, I would have to go
22 to sleep with him.

23 Q And would he ever describe to you his relationship
24 with Victoria in that regard?

25 A He said that Victoria would go to sleep with him.

ROUGH DRAFT TRANSCRIPT

000625

1 And then, after a while, I guess when he fell asleep, she
2 would slip away.

3 Q Toward the end of your relationship with the
4 defendant, did you believe the relationship was deteriorating?

5 A I'm sorry?

6 Q Toward the end of your relationship, did it become
7 rocky between you and the defendant?

8 A Yes.

9 Q Can you describe that for us?

10 A I was beginning to be concerned, because the fact
11 that Brian displayed inconsistency with coming home. And
12 there was an incident where he had left for about a week, I
13 believe, and then returned, and asked me whether or not we
14 could continue the relationship, but I told him I wasn't
15 certain. And at that point, I had spoken with Dorothy Robe,
16 and I --

17 Q Okay. Well, don't --

18 A -- confided in her.

19 Q Okay. Don't tell us what Dorothy might have said.
20 Did you learn where Brian had been during that week's time?

21 A Yes. He was with Victoria. I believe that he said
22 he stayed in a condominium with her.

23 Q All right. If you're trying to have a relationship
24 with him, and he is with an old girlfriend, I would assume
25 that that upset you? Was it troubling to you?

ROUGH DRAFT TRANSCRIPT

000626

1 A It was a little upsetting at first, yes.

2 Q Okay. Was it your desire to remain in the
3 relationship with Brian?

4 A No.

5 Q At some point, do you move out of -- well, do you
6 start looking for another apartment somewhere?

7 A Brian suggested to look for an apartment, yes.

8 Q Okay. So, what do you do?

9 A We go and look for an apartment. We find one.
10 He --

11 Q So, you're doing this with Brian?

12 A Yes.

13 Q In spite of the fact that he's having this -- what
14 appears to be the beginning of a relationship with Victoria?

15 A Yes.

16 Q Okay. Why is that? Why would you do that?

17 A Because we were living with my friend, and I did not
18 want him to stay in the resident, and me leave. I didn't want
19 to put her in a position where she may not feel comfortable
20 with him there.

21 Q Couldn't she just kick him out?

22 A Yes, she could. But she's 70-something years-old.

23 Q All right. So, you wanted to establish a residence
24 for yourself and Brian somewhere else?

25 A Only until I was able to get out, yes.

ROUGH DRAFT TRANSCRIPT

G00627

1 Q Okay. So, where do you establish that residence?
2 Do you? Do you find an apartment? What happens?

3 A We find an apartment, and it's located on 5100 --
4 no, I'm sorry. It was 5001 El Parque Avenue, and it was a
5 two-bedroom apartment.

6 Q Where is that, roughly, just generally
7 geographically in Las Vegas?

8 A Near -- let's see. I think it's just off of Decatur
9 and Oakey.

10 Q All right. So, what happens as you find this new
11 apartment?

12 A We move all of our items in there, but I didn't want
13 to sign the lease, because I knew I wasn't going to be there.
14 But I had to sign it anyway. And shortly after we move in, I
15 was only there for four days, and I had already told him that
16 I wanted to break it off and that I was going to find myself a
17 place.

18 Q During the period of time that you're living at the
19 El Parque apartment, did -- was the defendant staying with you
20 the entire time?

21 A He stayed there off and on. As I said, we were only
22 there for four days. And I believe it was a Wednesday or a
23 Thursday that he went to work, and never came back home.

24 Q Did he call you sometime after that?

25 A Yes. I'm not sure how many days after. But he did

ROUGH DRAFT TRANSCRIPT

000628

1 say that -- he called, and said that he was going to -- he
2 wanted to come home, and that he wanted to bring Victoria
3 home.

4 Q He wanted to bring Victoria back to --

5 A The apartment.

6 Q -- the apartment that you shared with the defendant,
7 at least for that short period of time?

8 A Yes.

9 Q And what was your response to him?

10 A I told him that I didn't think it was a good idea,
11 and since they had been out all this time, I'm sure they had a
12 place to go. Or he could come back home, and she could be
13 dropped off at wherever it was that she was staying.

14 Q So, you didn't want Victoria coming over there?

15 A No.

16 Q What do you do after the call is terminated?

17 A I call a friend, and I ask this person to come and
18 pick me up, and I left right away.

19 Q Was that the last time that you lived with the
20 defendant?

21 A Yes.

22 Q And that was in September of 2008?

23 A Yes.

24 MR. LALLI: Your Honor, may I approach the witness?

25 THE COURT: Yes.

1 BY MR. LALLI:

2 Q Ms. Morris, I'm going to show you what we've marked
3 as State's proposed 2 for identification. Do you recognize
4 that?

5 A Yes, I do.

6 Q What is it?

7 A It's the apartment where we lived at.

8 Q Is that a fair and accurate depiction of the rooms
9 of the apartment complex?

10 A Yes.

11 MR. LALLI: Your Honor, I'd move for the admission
12 of State's proposed 2.

13 THE COURT: Any objections, Mr. O'Keefe?

14 MR. O'KEEFE: No, Your Honor.

15 THE COURT: 2 will be admitted in evidence.

16 (Exhibit 2 is admitted)

17 BY MR. LALLI:

18 Q I'm going to show you what we've marked as State's
19 proposed 1 for identification purposes. Do you know what that
20 is?

21 A It looks like it's a layout of the apartment.

22 Q All right. Does that -- the apartment that you
23 shared with Brian O'Keefe for that very short period of time?

24 A Yes.

25 Q Does that appear to be a fair and accurate depiction

1 of the layout of the apartment?

2 A Yes.

3 MR. LALLI: Your Honor, move for the admission of
4 State's proposed 1.

5 THE COURT: Any objection, Mr. O'Keefe?

6 MR. O'KEEFE: No, Your Honor.

7 THE COURT: 1 will be admitted.

8 (Exhibit 1 is admitted)

9 BY MR. LALLI:

10 Q Now, Ms. Morris, I'd like to put State's Exhibit 2
11 up here for the jury. Do you see the unit in which you and
12 Brian O'Keefe stayed?

13 A Yes.

14 Q Can you just take your finger, and circle it on the
15 monitor?

16 A This one.

17 Q Can you -- are you -- is it -- I'm not sure if
18 it's --

19 A I don't think it's working.

20 Q -- drawing a mark.

21 A No.

22 UNKNOWN MALE SPEAKER: We can see it over here.

23 THE MARSHAL: If she touch it, it will mark.

24 MR. LALLI: Oh, you can't see the -- you can't see
25 the --

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1 THE WITNESS: No, we [inaudible] see her movements
2 on the screen.

3 MR. LALLI: Well, it's not showing up.

4 THE MARSHAL: Touch -- touch the screen.

5 THE WITNESS: There's nothing.

6 MR. LALLI: Okay. Let's do it another way. We'll
7 get it working at some point.

8 BY MR. LALLI:

9 Q Do you see an open door in State's Exhibit number 2?

10 A Yes.

11 Q What is the open door?

12 A That's the door to my apartment.

13 Q All right. So, it looks like -- I'll zoom-in here
14 really close. As we zoom-in, we can see what looks like a
15 number 36 on the door to the left of that.

16 A Yes.

17 Q Is that correct? And then, just to the right of it,
18 we see -- it looks like it's blocked out there, but we can
19 kind of make out a 35?

20 A Yes.

21 Q Now, did you become aware that Brian O'Keefe was
22 arrested in connection with the murder of Victoria Whitmarsh
23 on November 6th, 2008?

24 A Yes.

25 Q I want to back up, and talk about just about a week

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1 before then. Did you receive a phone call from the defendant?

2 A Yes.

3 Q Where were you when you received the phone call?

4 A I was shopping in a Walmart.

5 Q And can you tell us what the defendant had to say to
6 you?

7 A Mr. O'Keefe had asked me to come over, and --
8 because he wanted to see me.

9 Q Just to see you, or was he interested in more than
10 that?

11 A Well, throughout the conversation, I kept asking
12 him, where was Victoria, and you know, why isn't Victoria with
13 you; why don't you talk to Victoria? And he said, well,
14 Victoria wouldn't mind you coming over and spending time.

15 Q Did you believe that it wasn't just a platonic
16 relationship that he wanted to see you, that he was interested
17 in rekindling the relationship with you?

18 A I'm not sure.

19 Q But it wasn't just a -- he didn't want you just to
20 pay a visit? Give us some sense of what he was --

21 A No.

22 Q -- asking you to come over for.

23 A He has had in the past in our --

24 Q Well, just in that -- just in that phone call.

25 What --

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1 A In that phone call, he had suggested having a
2 threesome.

3 Q With you and Victoria?

4 A Yes.

5 Q All right.

6 MR. LALLI: Your Honor, that concludes direct
7 examination.

8 THE COURT: All right. Cross-examination, Mr.
9 O'Keefe?

10 MR. O'KEEFE: Yes, Your Honor. Just a couple of
11 questions.

12 THE COURT: Sure.

13 CROSS-EXAMINATION

14 BY MR. O'KEEFE:

15 Q Cheryl -- boy, I don't know where to start with all
16 that.

17 MR. LALLI: Your Honor, I'm going to object as to
18 the defendant's comments --

19 THE COURT: Yeah. It's not proper --

20 MR. LALLI: -- about the evidence. It's improper.

21 THE COURT: -- to comment like that. If you're --

22 MR. O'KEEFE: Yeah, Your Honor.

23 THE COURT: -- representing yourself, you just have
24 to ask questions, and elicit answers. And then, you could --
25 at your closing argument, you could --

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1 MR. O'KEEFE: Okay.

2 THE COURT: -- you could argue.

3 MR. O'KEEFE: Yes, sir, Your Honor.

4 THE COURT: But we can't have you asking questions
5 and arguing at the same time. They have to be proper
6 questions, and you take notes. And then, you could certainly
7 argue to the jury what you want at the conclusion of this
8 case.

9 MR. O'KEEFE: Okay.

10 BY MR. O'KEEFE:

11 Q Let's back up to Father's Day, 2008. Okay. You
12 testified that I received a phone call and went to the house,
13 correct?

14 A Yes.

15 Q And that I came back and told you my daughter called
16 me; it was Father's Day, correct?

17 A Yes.

18 Q Okay. And you testified that, shortly thereafter,
19 whatever, I told you that I got to be honest with you, it was
20 Victoria?

21 A Yes.

22 Q I was honest with you though, however? Yes or no.

23 A Yes.

24 Q Okay. And yes or no. Did I say I didn't think it
25 was right to lie to you?

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1 A Yes.

2 Q Thank you. Now, when we met in Arizona Charlie's,
3 and we exchanged phone numbers, if I remember correctly, we
4 met at a coffee shop, correct? Yes or no.

5 A Yes.

6 Q And the purpose of that, if I may ask -- answer yes
7 or no; was I shared with you that I was on parole?

8 A No.

9 Q That I had gone to prison?

10 A No.

11 Q That's no?

12 A No.

13 Q Do you remember me telling you that I wanted to come
14 forward and let you know that, you know, I had gone to prison
15 on a domestic violence?

16 A Not when we met at Arizona Charlie's.

17 Q Okay. Let me rephrase the question. I didn't mean
18 at Arizona Charlie's. I said, we exchanged phone numbers, and
19 we called later in the beginning. And one time, we called --
20 I called you, and we had coffee --

21 A Yes.

22 Q -- at some place? That's what I meant.

23 A Yes.

24 Q Okay. And the sole purpose of that was, it was hard
25 for me at my age, in my 40's, and to -- you know, I wanted to

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1 come clean; yes or no?

2 A Yes.

3 MR. LALLI: I'm going to object. It calls for
4 speculation as to what the defendant's motivation was at the
5 time.

6 THE COURT: I'll overrule the objection. I'll give
7 some leeway here. But --

8 MR. O'KEEFE: Thank you, Your Honor.

9 THE COURT: -- it's cross-examination. And I give
10 some leeway, but --

11 MR. O'KEEFE: Right.

12 THE COURT: Overruled.

13 BY MR. O'KEEFE:

14 Q But when we did meet for that cup of coffee, I was
15 straightforward, for the last time, that -- what had happened
16 in the past; yes or no?

17 A Yes.

18 Q Okay. I was being honest with you; yes or no?

19 A Yes.

20 Q Okay. Now, did I ever mention to you that Victoria
21 testified against me in the battery domestic violence case?

22 A Yes.

23 Q Okay. Did I state whether she was cruel, and
24 exaggerated her stories when she testified against me? Yes or
25 no.

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1 A I'm sorry, I don't understand that part.

2 Q Did I say she testified against me? Yes or no.

3 A Yes.

4 Q If I have proof right here that I can prove that
5 clearly as an untruth, and that Victoria testified for me,
6 would you believe me? Yes or no.

7 MR. LALLI: I'm going to object to the form of the
8 question, Your Honor.

9 THE COURT: Well, maybe rephrase it. I'm not really
10 too sure where you're going with it.

11 MR. O'KEEFE: Okay.

12 THE COURT: But you know, you could rephrase it and
13 see where it is, all right?

14 BY MR. O'KEEFE:

15 Q Did you get confused -- did you just assume -- yes
16 or no -- this is yes or no questions. Okay, so you're clear
17 there. Did you just assume that --

18 THE COURT: And I mean, if you can't answer yes or
19 no, just say I can't answer yes or no, all right?

20 THE WITNESS: Thank you.

21 THE COURT: All right.

22 MR. O'KEEFE: Thank you, Your Honor.

23 BY MR. O'KEEFE:

24 Q Since she did come to the trial, and I said, you
25 know, she testified, it was never clearly stated whether she

1 -- let's be totally honest; whether she testified for or
2 against me? That was never talked about, correct? Yes or no.

3 A I can't answer that question.

4 Q May I ask why you can't answer that question? You
5 don't remember, or --

6 A No, because it's vague.

7 Q Okay. Did I ever tell you distinctly that Victoria
8 testified against me at that trial?

9 A Yes.

10 Q Don't you think that would be unusual or stupid,
11 when she testified for me, and I have the transcripts, court
12 documents? Doesn't make sense to me. I mean, wouldn't it be
13 foolish of me to say one thing, and it's the other?

14 MR. LALLI: I'm going to object, Your Honor. This
15 is argumentative.

16 THE COURT: Sustained.

17 MR. O'KEEFE: I'll move on, Your Honor.

18 THE COURT: Thank you, Mr. O'Keefe.

19 BY MR. O'KEEFE:

20 Q Did I ever brag or boast that I killed people? Yes
21 or no.

22 A Yes.

23 Q Did we buy a car together, Cheryl? Yes or no.

24 A I cosigned for you, yes.

25 Q We did it together?

1 A Yes.

2 Q And when this tragedy happened, who did that fall
3 on?

4 A Me.

5 Q So, I'm sure you were a little angry at that?

6 A No.

7 Q Did we have a bank account together?

8 A Yes.

9 Q And we went in, and basically, you took yourself
10 off, one time or another?

11 A Yes, I did.

12 Q And did you ever tell the neighbors after this
13 tragedy that you were a little bit surprised at this whole
14 event, that I had never done any violent act toward you at
15 all, to -- particular (sic), Robin Kolacz, the manager?

16 A Not that I can recall.

17 MR. LALLI: Your Honor, can we approach?

18 THE COURT: Yes.

19 MR. LALLI: I apologize.

20 (Off-record bench conference)

21 MR. LALLI: Your Honor, based upon our discussion at
22 the bench, I would move that the last question and answer be
23 stricken, and the jury be admonished to disregard it,
24 pertaining to whether this witness told someone else that the
25 defendant was ever violent with her.

1 THE COURT: Yes. That question will be stricken,
2 and you're to disregard it. All right? Proceed then, Mr.
3 O'Keefe. Thank you.

4 MR. O'KEEFE: Okay. Thank you, Your Honor. Okay.
5 I'll be this much quicker. Just close this out.

6 BY MR. O'KEEFE:

7 Q Just -- after this tragedy happened, Ms. Morris, did
8 you go to the -- back to the apartment the following day, or
9 two days later? Yes or no.

10 A No.

11 Q After this tragedy happened, you were not at the
12 apartment the next day?

13 A I'm sorry, what tragedy? The tragedy between you
14 and Victoria?

15 Q Yes, ma'am. Did you have a discussion with Jimmy
16 Hathcox and them? I mean, everybody was there. I'm just
17 asking yes or no.

18 A Not that I can recall.

19 Q Would you dispute about 6, 7 different people stated
20 that you were there? Everybody was there, it was such a
21 tragedy. People were there, and a lot of discussion, notes --
22 investigators came and took notes from people. And you're
23 saying that you don't remember? Is that what you're saying,
24 you don't remember?

25 A What I don't remember is going back there a few days

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1 after your tragedy had happened.

2 Q Okay. Did you go -- do you remember going back the
3 next day then?

4 A No, I do not.

5 MR. O'KEEFE: I have no more questions for this
6 witness, Your Honor.

7 THE COURT: Thank you very much, Mr. O'Keefe.
8 Anything else, Mr. Lalli?

9 MR. LALLI: May I have the Court's indulgence? Your
10 Honor, I have no redirect.

11 THE COURT: Thank you so much for testifying.
12 You're excused.

13 THE WITNESS: Thank you.

14 THE COURT: Ladies and gentlemen, we're going to
15 take a recess.

16 It is your duty not to converse among yourselves, or
17 anyone else on any subject connected with the trial; read,
18 watch, or listen to any report or commentary on the trial, by
19 any person connected with the trial, or by any medium of
20 information, including, without limitation, newspapers,
21 television, radio. And you are not to form or express any
22 opinion on any subject connected with the trial until the
23 cause is finally submitted to you.

24 We'll take about 15 minutes. I got a little
25 something to do here. And we'll be at ease until the jury

1 leaves.

2 (Outside the presence of the jury panel)

3 THE COURT: All right. This is outside the presence
4 of the jury. I just want to make a record on the reason why
5 we had the jury disregard the question. Mr. Lalli, the
6 question was posed to -- was her name Cheryl?

7 MR. LALLI: Yes, Cheryl Morris, Your Honor. The
8 defendant had asked a question regarding whether Cheryl had
9 ever told another witness that the defendant had never been
10 violent toward her. The fact of the matter is, Cheryl
11 described for me during the course of pretrials several times
12 when the defendant had been violent with her.

13 One of those incidents was in his trailer. She had
14 just finished coming home to visit him. He had been drinking.
15 He grabbed her by the neck, and pinned her against the wall.
16 She -- he ultimately let her go.

17 There was another incident in a car where he had
18 been drinking vodka. He was obnoxious, pounding the
19 dashboard, pulling at the steering wheel. And then, he had --
20 he had made threatening gestures toward her. I don't know
21 that he had actually ever struck her. But he had made
22 threatening gestures toward her.

23 So, there is this history of violence between the
24 two of them. I believe that he opened the door to that, and I
25 asked the Court to allow me to go into it. And I'm not

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1 quibbling with the Court's ruling. The Court thought that
2 that would not be appropriate. And I then asked the Court to
3 ask the jury to disregard the question and answer, which the
4 Court did instruct the jury to do.

5 THE COURT: Well, the reason I bring it up, I wanted
6 to, you know, make a record on why we did that. And Mr.
7 O'Keefe, you've got to be careful now. I -- you know. I'm
8 going to give you a lot of leeway. I mean, you know, I want
9 you to get a fair trial. I mean, but I have to be fair to the
10 State, too. I mean, I -- it's not a one-way street. It's
11 like a tightrope here.

12 But I think my job is to give you a fair trial, give
13 the State a fair trial. So, you got to be careful now. Even
14 if you disagree with that you were violent towards her, I
15 could have very easily said, if I -- you opened the door, Mr.
16 -- now the jury's going to hear that. And I don't want to do
17 that. I want to try, most of the way, this case on the merits
18 of this case, and not go to other things.

19 Now, Judge Villani ruled that the other -- the --
20 your felony could be admitted, and gave the limiting
21 instruction. Or I would caution you, be careful if -- I don't
22 want you to keep opening the door. That wouldn't be fair to
23 the State. But --

24 MR. O'KEEFE: All right.

25 THE COURT: I don't know if you want to say anything

1 regarding that. But my ruling stands on that. I'm going to
2 sort of let that go now, and the State's not going to be
3 allowed to ask Cheryl if you were violent towards her. That's
4 all -- [inaudible] on the record on that, all right?

5 The defendant has timely objected, and he has a
6 continuing objection. I want to always put that on the record
7 during the recess, outside the presence of the jury. He's --
8 as far as this Court is concerned, every objection that he's
9 made so far is timely, and preserved for the record. And I
10 don't want any of the record to reflect that, well, he didn't
11 object in time. No, I'm ruling that it's timely and proper.

12 And one of the objections was that he wanted
13 redacted from Exhibit number 133, I think the information B, I
14 believe it is?

15 MR. LALLI: I believe so, yes. It's 133B, Your
16 Honor.

17 THE COURT: The mention -- because it's battery
18 domestic violence, third offense. And then, of course, in any
19 thousands I've seen, you have to list the -- now, Judge
20 Villani ruled that he didn't want a lot of misdemeanors coming
21 in. But he found, of course, the felony could come in. And
22 he said that the admission of facts and circumstances of other
23 cases cannot be admitted.

24 Now, this is not a fact or circumstances. Facts and
25 -- it's what the information is. I guess that's what your

1 objection -- you asked me to redact that.

2 MR. O'KEEFE: Yes, Your Honor.

3 THE COURT: And Mr. Lalli objected to that. You
4 want to make a record on that?

5 MR. O'KEEFE: Well, yes, Your Honor. You know,
6 again -- you know, and I appreciate your patience, and I
7 appreciate what you're doing. And I understand about being
8 fair to the State. Yes, Your Honor. I'll be more careful.
9 I'll promise you that.

10 THE COURT: Thank you. That's all I ask you.

11 MR. O'KEEFE: Okay.

12 THE COURT: That's all I ask.

13 MR. O'KEEFE: I guess I'll handle that. If the
14 State calls their other witness, I have -- I can bring in --
15 and prove that she's not -- she's being very untruthful.
16 I'll --

17 THE COURT: Who?

18 MR. O'KEEFE: Ms. Morris, with that. So, I'll --

19 THE COURT: But as far as the -- violent towards
20 her, if you bring something like that, it's going to open the
21 door again. So, he's subject to recalling Cheryl --

22 MR. O'KEEFE: And I realize what you said. I'll
23 cautiously --

24 THE COURT: He's subject to recalling Cheryl, and
25 saying, no, no, he was violent. So, it's up to you. You run

1 your own case. But --

2 MR. O'KEEFE: Right, Your Honor.

3 THE COURT: -- I like to caution you. Maybe -- and
4 run it through Mr. Maningo, if you want. That's up --

5 MR. O'KEEFE: Right.

6 THE COURT: -- to you. He's your standby lawyer.
7 But just don't open the door to that violence. It's going to
8 hurt you a lot in front of the jury.

9 MR. O'KEEFE: Well, it's pretty clear what it says
10 right -- but yes, Your Honor. Thank you for that. Okay.
11 Now, as far as the --

12 THE COURT: If you want to bring it up, and you want
13 him to -- that's fine. I'm not saying you can't do it, just
14 be careful.

15 MR. O'KEEFE: Yes, sir, Your Honor. And I
16 appreciate that. Now, as far as the ruling that Judge Villani
17 gave -- and I told you I was searched when I went back for
18 something, I happen to have a copy. The front page is
19 missing. But it can be --

20 THE COURT: Now, was this relating to the expert
21 witness? Or --

22 MR. O'KEEFE: Yes, Your Honor, exactly.

23 THE COURT: Well, we're on -- we're not on that yet.

24 MR. O'KEEFE: Oh. I thought you --

25 THE COURT: We're on the mention of the -- you

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1 wanted to redact that in Exhibit number 33, and I denied that.

2 MR. O'KEEFE: Yes. I'm sorry, Your Honor. I'm
3 sorry.

4 THE COURT: Let's get one at a time, all right?

5 MR. O'KEEFE: Yes, sir, Your Honor. Right.

6 THE COURT: Then we'll go to that other one. I have
7 my notes.

8 MR. O'KEEFE: Okay. Thank you. The misdemeanors
9 clearly -- you know, misdemeanors -- it's very dangerous to
10 use misdemeanors in a court of law. And Villani clearly --
11 even though his order was very vague, and he did only refer to
12 the felony, and he did clearly -- you verified that he said,
13 you know, the misdemeanors got to stay out. I mean, they
14 already showed the cover, which that -- I had no problem with
15 that.

16 But I feel that the second page showing the other
17 events should be -- you know, it's not necessary. It was
18 specified it was kind of vague. And again, my standing
19 objection is, they shouldn't be using any of this evidence,
20 Your Honor.

21 THE COURT: You have that objection. It's
22 preserved. Now, Mr. -- you want to just -- the State's
23 argument regarding that?

24 MR. LALLI: Your Honor, the order that Judge Villani
25 signed indicates the facts and circumstances of that case are

1 admissible. And so --

2 THE COURT: Of the felony case?

3 MR. LALLI: Yes.

4 THE COURT: Right.

5 MR. LALLI: And we limited it to that. We did not
6 go into -- although in our Petrocelli motion, our motion for
7 bad acts, we sought to go to prove all of those individual
8 events up. Judge Villani said no, but he did allow us to go
9 into the facts and circumstances of this case, the one that we
10 went in. We did not factually elicit that information, but it
11 was a domestic violence third offense.

12 THE COURT: All right. Well, my ruling stands on
13 that, but a record is preserved on that. Now, as far as --
14 the State called an expert witness. What was her name again,
15 Mr. Lalli?

16 MR. LALLI: Elynne Greene.

17 THE COURT: Ms. Greene. And she just gave general
18 information. She was -- I mean, I think Ms. Mercer qualified
19 her as an expert, although we don't say anymore she's a -- we
20 qualify her as an expert, and we -- you know, we don't do that
21 anymore. But she had the experience to be qualified as an
22 expert witness. And she just testified in general about
23 syndromes, or whatever it is. Now, what's your -- your
24 objection to that was what, Mr. O'Keefe? And again, you've
25 preserved the record on that very timely. You approached the

1 bench.

2 MR. O'KEEFE: Okay.

3 THE COURT: I think you said Judge Villani
4 specifically ordered the State not to call an expert witness
5 on domestic violence=. That was your --

6 MR. O'KEEFE: On domestic violence syndrome, but
7 it's all related, Your Honor.

8 THE COURT: Well, you said you had an order that he
9 specifically precluded the State from doing that.

10 MR. MANINGO: And Your Honor, Mr. O'Keefe did have
11 that, and now just with shuffling papers -- if we could just
12 have a moment.

13 THE COURT: Okay.

14 MR. MANINGO: It was right on top, Your Honor.

15 (Pause in the proceedings)

16 THE COURT: May the record reflect that they called
17 the witness, and Mr. O'Keefe approached the bench, and he said
18 that -- he said what he said, that Judge Villani precluded
19 that. But he doesn't have the order, and he could maybe look
20 for it tonight. And I had no other choice but to say, well,
21 I'm going to allow it, because I don't have an order. And Mr.
22 Lalli indicated, there is no such order. So, I allowed the
23 testimony, subject perhaps to a motion to strike if I get
24 further information.

25 MR. LALLI: Right.

1 THE COURT: So, that's the status of the record.

2 MR. LALLI: I'm not aware of any such order. But I
3 can inform the Court that on two occasions leading up to this
4 trial, we filed an expert notice indicating that we were going
5 to be calling an expert; specifically, Ms. Greene.

6 In previous trials, we had taken the position -- for
7 instance, with the bad act motion. We took the position that
8 we would be limited to prior rulings of the judge, and only
9 admit the judgment of conviction with respect to Mr. O'Keefe's
10 prior. In this trial, we've taken different tax. We filed an
11 extensive Petrocelli motion, a bad act motion. We also twice
12 noticed an expert.

13 THE COURT: So, you properly, timely notified --

14 MR. LALLI: Yes.

15 THE COURT: -- an expert.

16 MR. LALLI: Correct. There was never --

17 THE COURT: Noticed an expert.

18 MR. LALLI: -- an objection to that. There was
19 never a motion to strike the notice of experts. There was
20 never a motion in limine by the defendant to tell the Court,
21 hey, they're noticing an expert this time, and I think it
22 violates some prior ruling of the Court; there was none of
23 that.

24 And so -- and I can tell you, I'm not aware of any
25 order -- specific order by Judge Villani not allowing us to

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1 call an expert, such as the one that we called.

2 THE COURT: Mr. O'Keefe?

3 MR. O'KEEFE: Okay, Your Honor. I did find it right
4 here on page 6 of this.

5 THE COURT: Of what?

6 MR. O'KEEFE: Of motion in limine to strike the bad
7 acts -- the expert for battery domestic violence syndrome, and
8 the cycle of battery domestic violence. It clearly says on
9 line 25, page 6 --

10 THE COURT: Is that an order from Judge Villani?

11 MR. O'KEEFE: This is a motion that we argued. And
12 Ms. Palm, the attorney at that time, she listed relevant facts
13 and rulings during the motion in limine. And by the way, the
14 motion in limine was the second Petrocelli hearing on the same
15 bad acts that they re-litigated, claiming them to be new
16 evidence, and they (sic) wasn't even new evidence. It was the
17 same acts. They just --

18 THE COURT: Well, let's stick to the point. Do you
19 have a motion signed by Judge Villani --

20 MR. O'KEEFE: Yes. Trial --

21 THE COURT: And what's the date, and show -- read
22 it, and show it to Mr. Lalli.

23 MR. O'KEEFE: Yes. Yes, sir, Your Honor. Right
24 here, Mr. Lalli. I've got it marked here. Can you see that?

25 MR. LALLI: Yes, sir.

1 MR. MANINGO: Let's just look at these two lines
2 right here, Chris.

3 MR. LALLI: Is this [inaudible]?

4 MR. O'KEEFE: That's Ms. Palm's motion that she
5 listed, and that -- it was ruled on. That's her motion in
6 limine to the other bad acts.

7 THE COURT: Motions in limine --

8 MR. MANINGO: But it cites to the trial transcripts.

9 THE COURT: -- are not orders.

10 MR. O'KEEFE: It cites to the transcripts of the --

11 MR. LALLI: Right.

12 MR. O'KEEFE: -- ruling made, Your Honor.

13 MR. LALLI: Can I just maybe enlighten the Court on
14 this? What this motion says is, during the retrial voir dire,
15 the Court also stated that the Court could not discuss
16 battered women's syndrome. That's during the voir dire
17 process.

18 THE COURT: The voir dire?

19 MR. LALLI: Yes, of the last trial. We had not
20 noticed an expert witness prior to that trial, like we did at
21 this trial. Judge Villani never ruled that we could not call
22 an expert. But -- and I think the Court actually brought up
23 the fact that -- that fact during this voir dire, when the
24 Court had asked us to approach. That certainly is not an
25 order from the Court saying we could not call an expert in

ROUGH DRAFT TRANSCRIPT

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1 this case.

2 MR. O'KEEFE: Your Honor, may I rebuttal that (sic)?
3 It clearly states during the retrial voir dire -- sure, it
4 does. But it said, the Court, Judge Villani also ruled that
5 the State, Mr. Lalli, could not discuss battery (sic) women's
6 syndrome at all. 8/23/2010, trial transcripts, page 13 to 16.

7 THE COURT: In the voir dire. Because he didn't
8 notice an expert at that time, but now, he noticed an expert.
9 I -- that's what Mr. Lalli is saying. It's a different
10 situation now. And if you would have -- what you had to do is
11 he noticed the expert, and you would have said, I'm going to
12 make a motion in limine to preclude him from calling that
13 expert, because whatever reason. You know. And --

14 MR. O'KEEFE: Okay. And then, again --

15 THE COURT: But that's really not an order.

16 MR. O'KEEFE: -- what I brought up to you yesterday,
17 Your Honor, with all due respect, it is important. When the
18 State filed their motion for their second bad acts, and they
19 attached their new witnesses, and they noticed this, that they
20 may call a witness for expert in the battery domestic violence
21 syndrome, they noticed and scheduled that second retrial
22 hearing -- or motion for two days after calendar call.

23 THE COURT: We can argue, and argue, and argue if
24 it's three trials. But your motion to strike -- to not allow
25 the expert is denied. I don't see any direct order from Judge

1 Villani saying that it's ordered by Judge Villani that the
2 State cannot call in this particular case -- in this
3 particular retrial, cannot call it. So, but you know, you got
4 this -- it's appealable; what they call parachutes.

5 MR. O'KEEFE: Yes, sir.

6 THE COURT: You got like parachutes going up there.
7 And as I said, it's a win-win situation. If -- you know. If
8 you lose this case, you got these parachutes. You can
9 litigate this case for 30 years, you know?

10 So, that being said, I think we're done. Let's take
11 a couple of minutes and come back, and call your next witness.

12 MR. O'KEEFE: Your Honor, could I get one second,
13 please? It's --

14 (Pause in the proceedings)

15 MR. O'KEEFE: Your Honor, just again, we have
16 litigated all these acts so many times with Judge Villani.
17 Please, forgive me. And he's changed -- there's been so many
18 rulings, so many hearings, changes. And now, he's not here,
19 Your Honor.

20 THE COURT: Well, no, no. Let me make a
21 clarification on that. I don't know anything about -- I'm a
22 senior judge.

23 MR. O'KEEFE: Yes, sir.

24 THE COURT: I work for the Supreme Court of Nevada.
25 They're in charge of the senior judge program. I was

1 appointed by the Supreme Court of Nevada to take Department --
2 what is it, 17?

3 THE CLERK: 17.

4 THE MARSHAL: You got it.

5 THE COURT: For two weeks. And that was a long time
6 ago. I heard Judge Villani scheduled a well-deserved vacation
7 with his family like a year ago. He's one of the few judges
8 that doesn't -- that doesn't, you know, two weeks from now,
9 say, we're taking off; we want a senior judge to cover.

10 He replanned his vacation like a long time ago, and
11 it was noted in the senior judge record that we're to be in
12 this department. And you know, things happen. I don't know.
13 He didn't know this was scheduled at the time, perhaps.
14 Again, this is all hearsay. All I know is he scheduled this
15 like a year ago.

16 I'm here by way of the Supreme Court. And every
17 judge deserves a vacation. And if it wasn't your trial, he's
18 got a big trial next week involving the Mandalay Bay; that's
19 millions and millions of dollars of money. Not to say it's
20 more important than your life. I mean, but it's -- he has to
21 be gone for that, too.

22 So, it's -- you know, it's one of those things. He
23 didn't plan it this way. There was no intention to dodge
24 this. In fact, Judge Villani is a judge that is the hardest
25 -- one of the hardest working judges in this courtroom. He

1 goes trial, after trial. He keeps lawyers to their guns. He
2 doesn't like to continue cases.

3 That's all I can say about that. But you've made
4 the record that he's not here. We have to live with it.
5 That's all I have to say.

6 MR. O'KEEFE: And at calendar call though, Your
7 Honor, that --

8 THE COURT: Well, he scheduled his vacation, you
9 know --

10 MR. O'KEEFE: And he clearly left all attorneys and
11 everybody under the impression that -- I let -- his words
12 verbatim was that, I've scheduled two weeks for this trial.
13 We're going to go to trial Monday. And he led everyone to
14 believe.

15 And we showed the order from the Ninth Circuit, and
16 we just asked, you know, can we just put this off? I'm not
17 going anywhere. This is the third trial. I'm not -- I'll --
18 you know, we'll have -- since the Ninth Circuit's ruled
19 there's a double jeopardy issue, let's let it properly -- no,
20 no, no, I'm going to hear your trial. Mr. Maningo was there.
21 The AFPD was there. Mr. Lalli was there. Everyone thought --
22 everyone was under the assumption.

23 Then I get -- Friday morning, all the sudden, guess
24 what? You're going to be blessed, you got Senior Judge
25 Bonaventure, but Judge Villani went on vacation. And we've

ROUGH DRAFT TRANSCRIPT

000657

1 been arguing for three and-a-half years.

2 THE COURT: The whole system -- they say, justice
3 delayed is justice denied. They don't want to continue these
4 cases. They want to keep everything preserved.

5 And I hope that I feel capable of being an attorney,
6 a private practitioner, a law clerk, a bailiff, a DA
7 investigator, a public defender, a chief public defender for
8 six years, a justice of the peace for ten years, a district
9 judge for about 20 years, a senior judge for three. I think I
10 feel capable of protecting your rights in this case.

11 So -- but again, your record is preserved. You
12 don't like the fact that Judge Villani didn't continue this
13 case and he went on vacation. It's a matter of record. It is
14 what it is. Another parachute. Thank you.

15 MR. O'KEEFE: Thank you, Your Honor.

16 (Court recessed at 2:50 p.m. until 3:01 p.m.)

17 THE MARSHAL: Officers and members of the court,
18 Department 17 jurors.

19 (Within the presence of the jury panel)

20 THE COURT: All right. Parties, stipulate to the
21 presence of the jury?

22 MR. LALLI: Yes, Your Honor.

23 MR. O'KEEFE: Yes, Your Honor.

24 THE COURT: All right. Thank you, ladies --
25 sometimes, we have some evidentiary matters that are not to

1 concern you, and you may as well just take a longer break.
2 But I'm sorry there was a little delay, but we're ready to go
3 again, all right? The State will call it's next witness,
4 please.

5 MS. MERCER: State calls Joyce Toliver.

6 THE MARSHAL: Ms. Toliver, if you will remain
7 standing. Please, ma'am, raise your right hand and face the
8 clerk.

9 JOYCE TOLIVER, STATE'S WITNESS, SWORN

10 THE MARSHAL: If you would have a seat, please.
11 Slide up to the microphone.

12 (Pause in the proceedings)

13 THE MARSHAL: If you would, ma'am, please state and
14 spell your name for the record.

15 THE WITNESS: Joyce, J-o-y-c-e. Benita,
16 B-e-n-i-t-a. Harris, H-a-r-r-i-s.

17 MS. MERCER: May I proceed, Your Honor?

18 THE COURT: Please.

19 DIRECT EXAMINATION

20 BY MS. MERCER:

21 Q Ma'am, are you married to a Charles Toliver?

22 A Yes, I am.

23 Q And does he have a nickname?

24 A Cookie.

25 Q Cookie?

ROUGH DRAFT TRANSCRIPT

000659

1 A Um-hum.

2 Q Is that what his friends call him?

3 A Yes, it is.

4 Q Okay. Where are you currently residing?

5 A 1013 North Jones Boulevard, Las Vegas, Nevada,

6 89108.

7 Q And back in November of 2008, where were you

8 residing?

9 A 5001 El Parque.

10 Q Do you recall which apartment number it would have

11 been?

12 A 29.

13 Q Okay. Is that --

14 A 14 years.

15 Q I'm sorry, you were there for 14 years?

16 A Yeah.

17 Q Is that here in Clark County, Nevada?

18 A Yes, it is.

19 Q And I take it you lived with your husband?

20 A Yes, I do.

21 Q Were you familiar -- I'm sorry. Is apartment 29 on

22 the bottom floor, or the top floor?

23 A Bottom.

24 Q Okay.

25 MS. MERCER: And Your Honor, may I approach the

ROUGH DRAFT TRANSCRIPT

000660

1 witness?

2 THE COURT: Yes.

3 BY MS. MERCER:

4 Q Ma'am, do you recognize what's already been admitted
5 as State's Exhibit number 2?

6 A Yes.

7 Q And how do you recognize it?

8 A Like I said, we were there 14 years. We lived
9 there.

10 Q Okay. Is this a photograph of the apartment complex
11 that you resided at back in November of 2008?

12 A Yes, it is.

13 Q And it fairly and accurately depicts that apartment
14 complex?

15 A What did you say?

16 Q Does it fairly and accurately depict the apartment
17 complex as you remember it?

18 A Yes, it is.

19 MS. MERCER: Permission to publish, Your Honor?

20 THE COURT: Yes.

21 BY MS. MERCER:

22 Q Okay. And when I was handing you the photograph,
23 you pointed to a specific apartment that was the apartment you
24 resided in. Can you place an X on it for me? Or is it still
25 not working?

ROUGH DRAFT TRANSCRIPT

000661

1 A Did the X show up?

2 Q Hold on one second.

3 A Okay.

4 Q Okay. Is it behind the stairwell?

5 A Yes, it is.

6 Q And is it the door that appears to have a white
7 screen over it, or is it the other door?

8 A It's the door with the white screen.

9 Q Okay. And that was your apartment?

10 A Yes, it is.

11 Q Were you --

12 A Yes, it was.

13 Q -- familiar with the people that resided in the
14 apartment directly above you?

15 A I've seen them, yes.

16 Q And when I say resided there, I mean in November of
17 2008.

18 A Yeah.

19 Q And do you see one of the occupants of that
20 apartment in the courtroom today?

21 A Yes, I do.

22 Q Could you please point to him and describe an
23 article of clothing that he's wearing today?

24 A The gentleman right here with the brown, yellow tie,
25 green shirt.

ROUGH DRAFT TRANSCRIPT

000662

1 MS. MERCER: Your Honor, may the record reflect that
2 she's identified the defendant?

3 THE COURT: Record will so reflect.

4 BY MS. MERCER:

5 Q Ma'am, back in November of 2008, how long had the
6 defendant resided above you?

7 A Not very long. Probably maybe about 2, 3, 4 months.

8 Q And on November 5th of 2008, do you recall whether
9 anyone else was residing in the apartment with him?

10 A Yeah, the young lady.

11 Q What did that young lady look like?

12 A Oh, gosh. She was small, frail, about maybe
13 5-foot, --

14 Q Okay.

15 A -- if she was that tall.

16 Q She was frail; is that how you would describe her?

17 A Yeah, she was small. Small frame.

18 Q Petite?

19 A Yeah. That's a good word, petite.

20 Q What about her hair color? Do you recall what color
21 her hair was?

22 A I think it was like -- it wasn't blond, blond. But
23 probably lighter than yours.

24 Q Okay. When he first moved into the apartment, was
25 the same woman residing with him?

ROUGH DRAFT TRANSCRIPT

000663

1 A No.

2 Q It was a different woman?

3 A Yes.

4 Q And the layout of the apartment that was directly
5 above you, is that the same --

6 MS. MERCER: Or actually, Your Honor, may I approach
7 the witness?

8 THE COURT: Yes.

9 BY MS. MERCER:

10 Q I'm showing you what's already been admitted as
11 State's Exhibit number 1. Do you recognize the layout of that
12 apartment?

13 A Our apartment.

14 Q That's how your apartment was laid out?

15 A That's our apartment, yes.

16 Q And that would be the apartment at 5001 El Parque?

17 A Yes.

18 MS. MERCER: Permission to publish, Your Honor?

19 THE COURT: Yes.

20 BY MS. MERCER:

21 Q Okay. So, this is how your apartment was laid out?

22 A Yes.

23 Q Now, I want to direct your attention specifically to
24 November 5th of 2008. At about 9:00 o'clock that evening,
25 what would you have been doing?

ROUGH DRAFT TRANSCRIPT

000664

1 A I turned the TV on to watch One Life to Live. I got
2 off from work, and getting ready to watch One Life to Live. I
3 couldn't watch them in the day, so I did them at night, the
4 soap operas.

5 Q Okay. And I'm sorry, where did you tend to watch
6 your soap operas?

7 A In the bedroom.

8 Q Was your husband in the bedroom with you?

9 A Yes, he was.

10 Q What was he doing?

11 A Asleep.

12 Q And while you were trying to watch your soap operas,
13 at about 9:00 p.m. that night, did something unusual happen?

14 A A lot of ruckus, noise. A lot of noise, which we
15 didn't have. So, it was like a shock. It was like, what's
16 going on? Just a lot of ruckus. A lot of noise, and bumping
17 and stuff.

18 Q And where was the noise coming from?

19 A Upstairs. The ceiling.

20 Q I'm sorry?

21 A From my ceiling, my bedroom ceiling.

22 Q Okay. So, directly above your bedroom?

23 A Correct.

24 Q So, it would have been the bedroom in the apartment
25 above you?

ROUGH DRAFT TRANSCRIPT

000665

1 A Correct.

2 Q When you say it was a lot of noise, can you describe
3 the noise that you were hearing from that night?

4 A Just that.

5 Q Okay. So, a lot of bumping and thumping type of
6 noises?

7 A Yes.

8 Q When you initially heard that noise, what did you
9 do?

10 A Turned the TV up.

11 Q You turned the TV up; tried to ignore it?

12 A Trying to watch my stories.

13 Q When you turned your television up, were you still
14 able to hear the noise?

15 A Yes. Didn't work.

16 Q It didn't work?

17 A No.

18 Q Did it appear that the noise was getting louder, or
19 staying about the same?

20 A It was getting a little louder.

21 Q Were you hearing any screams, or talking, or
22 anything like that?

23 A Crying.

24 Q You heard some crying?

25 A Yeah.

ROUGH DRAFT TRANSCRIPT

000666

1 Q Could you tell whether it was from a male or a
2 female?

3 A It was from a woman.

4 Q It was from a woman?

5 A Yeah.

6 Q How long did that noise go on for?

7 A For a while.

8 Q What do you consider a while?

9 A I'll say -- it went on for probably about an hour or
10 so.

11 Q Were you able to gauge the amount of time that it
12 went on by the soap opera that you were watching?

13 A Right. That's why I said about an hour or two.

14 Q Okay. What was your habit back then with regards to
15 watching your soap operas?

16 A Sit there and watch them.

17 Q Was there one that came on at 9:00, and one that
18 came on at 10:00?

19 A One -- yeah. One Life to Live came on at 9:00, and
20 General Hospital came on at 10:00. And I watch them back to
21 back.

22 Q Okay. So, was the noise still going on?

23 A The noise was still going on during General
24 Hospital. So, I say, it had stopped, quieted down about maybe
25 10:00 something, or a little after 10:00. Something like

ROUGH DRAFT TRANSCRIPT

000667

1 that.

2 Q Okay. At some point, did the noise awake your
3 husband?

4 A Yes, it did.

5 Q And how far into the noise going on did that occur?

6 A For -- I said practically the whole -- from 9:00
7 until at least 9:30, 9:45. Because he was like, damn, they
8 going to come through the ceiling on us. So, he was awoken by
9 the noise also.

10 Q And when he woke up because of the noise, what did
11 the two of you do to try to stop it?

12 A He got a broom, and heisted up into the ceiling, to
13 hit up there to make them stop.

14 Q Banged on the ceiling with a broom?

15 A Yeah.

16 Q And who did that?

17 A My husband, Cookie.

18 Q Okay. Did the noise stop at that point?

19 A It stopped for a second, or two, or three.

20 Q And then, did it resume?

21 A Yes, it did.

22 Q Was it still the same volume?

23 A At first, it was like a low -- it had died down.
24 But then, it intensely got back kind of loud again.

25 Q And what happened at that point?

ROUGH DRAFT TRANSCRIPT

000668

1 A My husband was mad. We both had to be at work the
2 next morning at 5:00. He went up the steps in my house shoes.

3 Q So, he put your house shoes on?

4 A And went up -- flew up the steps, yeah.

5 Q And how long do you think he was out of the
6 apartment at that point?

7 A Maybe 10, 15 minutes, if it was 15.

8 Q When he left the apartment, were you still hearing
9 any noise from upstairs?

10 A It had died down. It had died down.

11 Q What kind of noise were you hearing at that time --
12 at the time that he ran out of the apartment?

13 A Moaning, a loud moan.

14 Q Was it from a woman, or a man?

15 A It was from the same person who was up there crying.

16 Q Okay. And can you describe the moaning for me a
17 little bit more?

18 A It was like [inaudible]. Then it was like,
19 [inaudible], nothing.

20 Q And how long did that go on?

21 A From the time my husband started going up the steps.
22 And she had stopped -- where it was a stop when he just
23 started coming down. Because you could see it's not a sturdy
24 -- the stairwell wasn't sturdy. You could just hear going up
25 and down, if anybody managed to step on the steps.

ROUGH DRAFT TRANSCRIPT

000669

1 Q Okay. So, you could hear your husband going up and
2 down the stairs?

3 A Yeah.

4 Q Even from your bedroom?

5 A Yeah.

6 Q The moaning that you heard, was that coming from the
7 room directly above you?

8 A Yes, it was.

9 Q So, from the bedroom in number 35?

10 A Yes.

11 Q When your husband came back, can you describe for me
12 his demeanor?

13 A Wow. I wasn't looking at him when he came down, I
14 just heard his mouth. And he was just like, baby --

15 Q Well, don't tell me what he --

16 A Okay.

17 Q Don't tell me what he said. Just tell me what his
18 demeanor was..

19 A Wow. He was -- his eyes was big, and he was
20 [inaudible]. It was like something surprised him.

21 Q He was shocked?

22 A He was shocked. Right. Real shocked.

23 Q Did he actually come into the apartment, or did you
24 meet him at the door?

25 A He came in.

ROUGH DRAFT TRANSCRIPT

000670

1 Q And did he indicate to you that he'd seen something
2 that concerned him?

3 A Yes, he did.

4 Q Did he then leave the apartment a second time?

5 A Yeah. Yes, he did.

6 Q And what -- did you stay inside the apartment at
7 that point?

8 A Yes, I did. I'm not the nosey type.

9 Q You're not the nosey type?

10 A No.

11 Q What's the next thing that happened?

12 A The police. I stood in my doorway of my screen, and
13 watched what was going on.

14 Q How soon after your husband came back to the
15 apartment a second time -- or left the apartment a second
16 time, did the police arrive at your apartment complex?

17 A Oh, pretty quickly. I'd say about maybe 15, 20
18 minutes.

19 Q Most?

20 A Yeah.

21 Q Okay.

22 MS. MERCER: Court's indulgence, Your Honor. Pass
23 the witness, Your Honor.

24 THE COURT: All right. Any cross-examination, Mr.
25 O'Keefe?

ROUGH DRAFT TRANSCRIPT

000671

1 MR. O'KEEFE: Yes, Your Honor. Very briefly, sir.

2 CROSS-EXAMINATION

3 BY MR. O'KEEFE:

4 Q Hello, Ms. Toliver.

5 A Hello.

6 Q Tragic night that night, it was. I'll be very
7 brief, very simple. Okay. When you were hearing the thumping
8 and pounding, did you hear any talking, or voices, or
9 screaming, or yelling?

10 A I didn't hear no screaming or no yelling, just the
11 crying.

12 Q And you say that Jim -- or Cookie went up, of
13 course, because you know, he was tired, and it was getting
14 loud, and he went up. And he ran out, and he came back down
15 to your apartment right underneath us, first?

16 A Correct.

17 Q And then he left again?

18 A Yes. Just out in the corridor where everybody else
19 was?

20 Q Okay. When he left, did he go to the office where
21 Robin and Todd was, at the apartment managers? Do you know?

22 A No. I didn't see him go that far. I know they was
23 all out there, standing out in the corridor.

24 Q Okay. When the cops did arrive -- and let's face
25 it; they apprehended me, took me out?

ROUGH DRAFT TRANSCRIPT

000672

1 A Yeah.

2 Q Did you state in prior testimony that you could hear
3 me quite clearly?

4 A No.

5 Q Anytime?

6 A I didn't hear you at no time.

7 Q You didn't hear me -- any talking with the cops,
8 being loud, belligerent, or anything like that?

9 A No. But they had a problem with you.

10 Q Did you talk to Jimmy the next day, or a week after,
11 anytime? Have you talked to Jimmy after the incident?

12 A I probably have. They were neighbors. All of us
13 was neighbors.

14 Q Right. But see, they don't know that, Ms. Toliver.

15 A Oh. We were neighbors. We were --

16 Q So, I mean, of course, it was --

17 A Like I said, 14 years.

18 Q -- a tragedy; you would talk? Did you ever have a
19 conversation with Jimmy, my next-door neighbor?

20 A I probably have.

21 Q You have?

22 A Yeah.

23 Q Do you ever -- I'm sure you guys -- a lot of talk
24 was going on?

25 A Yeah.

ROUGH DRAFT TRANSCRIPT

000673

1 Q It was a tragedy, correct?

2 A Yeah.

3 Q Okay. And saying that then, what I'm getting at is
4 -- and just tell me if you did, you know, what you know. Did
5 Jimmy ever share with you that, yeah, he seen me coming up
6 approximately 15 minutes -- around 15 minutes before the
7 event?

8 MS. MERCER: Objection, Your Honor.

9 THE WITNESS: No.

10 MS. MERCER: Calls for hearsay.

11 THE COURT: Wait just a minute. She said no, but
12 there's an objection?

13 MS. MERCER: Hearsay.

14 THE COURT: Yeah, it is hearsay what Jimmy said,
15 because it's not a court declaration used to prove the truth
16 of the matter asserted. But she doesn't know, so you have to
17 move on from that.

18 MR. O'KEEFE: Okay.

19 BY MR. O'KEEFE:

20 Q So, just to clarify again. At no time -- you never
21 heard any breaking glasses, yelling, screaming, or anything
22 like that? Just --

23 A No breaking glasses. No --

24 Q No, you know, fighting; nobody running around, or
25 anything --

ROUGH DRAFT TRANSCRIPT

000674

1 A No.

2 Q -- like that at all?

3 A No.

4 MR. O'KEEFE: No further questions, Your Honor.

5 THE COURT: All right. Anything else Ms. Mercer?

6 MS. MERCER: No, Your Honor.

7 THE COURT: Thank you for testifying. You're
8 excused. Next witness?

9 MS. MERCER: Your Honor, may I go check the hall and
10 make sure he came back from moving his vehicle real quick?
11 Your Honor, the State's next witness is Charles Toliver.

12 THE COURT: All right.

13 THE MARSHAL: Mr. Toliver, remain standing. Please,
14 sir, raise your right hand and face the clerk.

15 CHARLES TOLIVER, STATE'S WITNESS, SWORN

16 THE MARSHAL: If you would have a seat, sir. Slide
17 up to the microphone. And if you would, please state and
18 spell your name for the record.

19 THE WITNESS: My name is Charles Edward Toliver.
20 T-o-l-i-v-e-r.

21 MS. MERCER: May I proceed, Your Honor?

22 DIRECT EXAMINATION

23 BY MS. MERCER:

24 Q Sir, was that your wife that just left the
25 courtroom?

ROUGH DRAFT TRANSCRIPT

000673

1 A Yes, ma'am.

2 Q Okay. And you all lived -- back in November of
3 2008, you lived at 5001 El Parque?

4 A Yes, ma'am.

5 Q How long did you live there?

6 A About 13 years.

7 Q And in November of 2008, were you familiar with the
8 people that resided directly above you?

9 A Yes, ma'am.

10 Q Do you see one of those people in the courtroom
11 today?

12 A Yes, ma'am.

13 Q Could you please point to that individual, and
14 describe an article of clothing that he's wearing?

15 A The gray suit.

16 Q Well -- okay.

17 A Or whatever color it is.

18 Q I'm sorry?

19 A I think it's the gray suit.

20 Q Okay. Can you tell me what color tie he's wearing?

21 A Yellow.

22 THE COURT: All right. The record reflect the
23 identification of the defendant, Mr. O'Keefe.

24 MS. MERCER: Thank you, Your Honor.

25 BY MS. MERCER:

1 Q On November 5th of 2008 at -- around 9:30, 10:00
2 o'clock in the evening, what were you doing?

3 A Asleep.

4 Q Were you awoken from your sleep that night?

5 A Yes, ma'am.

6 Q And were you woken up by an unusual noise?

7 A Noise. Yes, ma'am.

8 Q Can you describe for me what that noise was?

9 A It was like a --

10 Q What is sounded like?

11 A It was like a banging on the ceiling.

12 Q And was it coming directly --

13 A Above my bedroom.

14 Q Okay. And that would have been the bedroom in the
15 apartment above you?

16 A Yes, ma'am.

17 Q When you heard the noise, what did you do?

18 A I asked my wife, how long has this been going on?
19 She said, for a while. So, I got up, went to the kitchen, and
20 took my broom handle and hit the ceiling to make them stop.

21 Q Did it stop?

22 A For a minute.

23 Q And then what happened?

24 A Heard it again. So, I got up, and went upstairs.

25 Q When you went upstairs, was the door -- did you go

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1 upstairs to the apartment where the noise was coming from?

2 A Yes, ma'am.

3 Q Was the door open or closed?

4 A It was open.

5 Q And when you saw the door was open, did you shout
6 from outside the door, or what did you do?

7 A I hollered inside, and asked them could they please
8 keep the noise down, and you all woke me up.

9 Q And what was the response that you received?

10 A Cookie, Cookie, come in here. Come in the bedroom.
11 So, I went in there. And he said, she won't wake up.

12 Q Whose voice was it?

13 A His.

14 Q The defendant's?

15 A Yes.

16 Q So, he told you, come in here, come in here?

17 A Yes.

18 Q And when you went into the apartment, where did you
19 go to the --

20 A I went --

21 Q -- inside?

22 A I went through the living room, and I stopped at the
23 bedroom door. And when I seen the blood on the bed, I asked
24 him, what happened? He said, she just won't wake up. I said,
25 man, let me get the hell out of here. Excuse my language.

1 THE COURT: It's all right.

2 BY MS. MERCER:

3 Q When you -- you saw blood on the bed. Did you see
4 anything else?

5 A A handle. Looked like a knife.

6 Q Were you able to see anyone other than the defendant
7 inside the bedroom?

8 A Her legs.

9 Q Okay.

10 MS. MERCER: Your Honor, may I approach the witness?

11 THE COURT: Yeah.

12 BY MS. MERCER:

13 Q Sir, I'm handing you what's been marked for
14 identification purposes as State's proposed Exhibit 22. Can
15 you look at that, and tell me whether you recognize what's
16 depicted in that photograph?

17 A Yes. That's what I seen. That's what I just told
18 you I seen. Her legs, and the --

19 Q Okay. So, you do recognize the photograph?

20 A Yeah.

21 Q And this is what you just described seeing when you
22 walked into Mr. O'Keefe's bedroom?

23 A Yes, ma'am.

24 Q And is this a fair and accurate picture of how it
25 appeared to you on November 5th of 2008?

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1 A Yes, ma'am.

2 MS. MERCER: Your Honor, move for the admission of
3 State's proposed Exhibit 22.

4 THE COURT: Any objection?

5 MR. O'KEEFE: No, Your Honor.

6 THE COURT: 22 will be admitted.

7 (Exhibit 22 is admitted)

8 MS. MERCER: May I publish, Your Honor?

9 THE COURT: Yes.

10 BY MS. MERCER:

11 Q Mr. Toliver, can you describe fro me -- and the
12 screen's not working right now, so you won't be able to mark
13 for me. But can you describe for me the location of the
14 handle that you observed when you entered the bedroom?

15 A Right there.

16 Q Okay. Is it close to the pillow?

17 A Yes.

18 Q And when you saw that --

19 A Well, see, because I -- since I --

20 Q Sure.

21 A I just caught a glance of it. When I seen that,

22 I --

23 Q You bolted out?

24 A -- disappeared.

25 Q What did you do when you left?

1 A I ran downstairs and hollered for some help. You
2 know, I just got to hollering. Yeah, I was scared.

3 Q Were you just hollering outside? Were you hollering
4 --

5 A Outside, telling somebody to call the police,
6 something that happened up here.

7 Q Okay.

8 A So, people started coming out of their apartments.

9 Q So, nobody was outside when you were screaming for
10 help?

11 A No.

12 Q You were just being loud enough that it --

13 A Being loud --

14 Q -- drew people outside?

15 A I hollered loud enough to where they came out.

16 Q And who came out?

17 A Well, Todd, I went and got him. Todd.

18 Q Do you know Todd's last name?

19 A No. I don't know his last name. But anyway, he
20 came out, and I told him what was going on, so we both went
21 back up there. And I was showing him what was going on, and
22 he told him to get out of his house.

23 Q Okay.

24 A So, we both left back out.

25 Q Let me back up a little bit.

ROUGH DRAFT TRANSCRIPT

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1 A Go ahead.

2 Q Okay. So, you get Todd?

3 A Uh-huh.

4 Q Who is Todd?

5 A He's --

6 Q He's the maintenance man?

7 A He was like the maintenance man there at the

8 apartments.

9 Q Okay. And you tell -- what do you tell him?

10 A Man, something happened up here. You know. So, we

11 kind of like went back up there, and looked.

12 Q You take him back upstairs to number 35?

13 A Yeah.

14 Q And when you go back up the second time, is the door

15 still open?

16 A Yeah.

17 Q Do you guys just walk in? Do you say something?

18 A Yeah.

19 Q What happened?

20 A I just walked in, and -- because it was still open.

21 See, I left out of there so quick, I don't even think he knew

22 I was gone.

23 Q Okay. So, when you go back in, do you go all the

24 way to the bedroom?

25 A No. Yeah, we went to the bedroom door, and stopped

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1 right there. We didn't have to go no further.

2 Q You went up to the bedroom door, but didn't go
3 inside the bedroom?

4 A I didn't go in the bedroom.

5 Q How far did Todd go into the apartment?

6 A He was standing next to me. He didn't go in.

7 Q Okay. And did the defendant see you all standing
8 there?

9 A Yeah.

10 Q Did you guys say anything to the defendant?

11 A He told Todd to get the hell out of his house.
12 Excuse me again, Your Honor.

13 Q When you say "he," are you referring to the
14 defendant?

15 A Yes.

16 Q He told Todd to get the hell out?

17 A Get the hell out of my house.

18 Q Do you recall the defendant becoming physically
19 aggressive with Todd?

20 A No, not really.

21 MS. MERCER: Court's indulgence.

22 BY MS. MERCER:

23 Q When you went back up there with Todd, where was the
24 defendant?

25 A He was sitting on the floor. He was on the floor.

ROUGH DRAFT TRANSCRIPT

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1 Q Where on the floor was he?
2 A Holding her in his -- you know, holding her, on the
3 floor.
4 Q Okay. Was she still at the foot of the bed?
5 A Yeah.
6 Q And was he sitting next to her? Was he sitting --
7 A Yeah.
8 Q -- behind her?
9 A He was next to her.
10 Q And what was he doing?
11 A He was rocking her like -- you know, he was holding
12 her, like, she won't wake up, she won't wake up.
13 Q That's what he was saying to you?
14 A Yeah.
15 Q Do you recall -- do you recall him saying, "Wake up,
16 wake up, don't do me like this?"
17 A Yeah. That's -- yeah. Those are the exact words.
18 Q Those were his exact words?
19 A Yes.
20 Q Did Todd say anything to the defendant?
21 A After he seen what was going on, we was kind of like
22 fitting to go to get the police. You know, we was going to
23 get some help.
24 Q Did the defendant ever ask you to go call the
25 police?

ROUGH DRAFT TRANSCRIPT

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1 A No.

2 Q Did he ever ask you to get her some help?

3 A No.

4 Q Did -- what was the look on the defendant's face
5 when you walked in there?

6 A Man, scary look.

7 Q Scared you?

8 A A scary look, yeah.

9 Q Did he ever say anything about her being dead or
10 alive while you were up there?

11 A No.

12 Q Do you recall giving a taped statement to the police
13 on the night of this incident?

14 A No, I don't remember. They just asked me a few
15 questions.

16 Q You spoke with the police that night, correct?

17 A Yeah. They asked me a few questions. I told them
18 what I just told you. I went up there, and came back down,
19 and [inaudible].

20 Q Do you recall telling the police that you heard him
21 say, she's dead?

22 A No, I didn't -- I didn't --

23 Q If I showed you a copy of your statement, would that
24 refresh your memory perhaps?

25 A Yeah.

ROUGH DRAFT TRANSCRIPT

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1 MS. MERCER: Your Honor, may I approach? And Brian,
2 it's page 6.

3 BY MS. MERCER:

4 Q Just read it to yourself, and then tell me when
5 you're done.

6 THE COURT: Make a foundation; is that his
7 handwriting, is that his statement. Is that his statement,
8 or?

9 MS. MERCER: It's a taped statement.

10 THE COURT: Taped, oh.

11 THE WITNESS: You're talking about right here?

12 BY MS. MERCER:

13 Q Yes. Just read it to yourself. Don't read it out
14 loud, please. Does that refresh your memory?

15 A No. It's been like four years. I can't remember
16 back that far, not like that.

17 Q Okay. Do you recall telling the police that, when
18 you and Todd went into the apartment, the defendant drew back
19 on Todd?

20 A No. He didn't -- he told them to get the hell out
21 of his house. That's all I remember him telling him.

22 Q Okay.

23 MS. MERCER: Your Honor, may I approach the witness
24 again?

25 BY MS. MERCER:

1 Q Or, would it refresh your memory if I showed you a
2 copy of your taped statement?

3 A Yeah.

4 Q It's page 17.

5 THE COURT: There's another taped statement, or the
6 same one?

7 MS. MERCER: It's the same taped statement.

8 BY MS. MERCER:

9 Q This is the statement that you provided to the
10 police that night?

11 A Um-hum.

12 Q And for the record, I'm showing you page 17 of that
13 statement.

14 MS. MERCER: Mr. O'Keefe.

15 BY MS. MERCER:

16 Q If you could just read from the very top, and read
17 it to yourself, please.

18 A Yes.

19 Q Does that refresh your memory?

20 A Yes, yes.

21 Q And again, your memory would have been fresher back
22 then, correct?

23 A Yes.

24 Q It's been four years?

25 A But it's been four years. Yeah.

ROUGH DRAFT TRANSCRIPT

000687

1 Q And you told the police that the defendant drew back
2 on Todd?

3 A Yes.

4 Q As if he was going to hit him?

5 A Yes.

6 Q When you were in the apartment for a minute, I know
7 it was only a brief time, did he ever indicate any fear of
8 Victoria to you?

9 A Not to me.

10 Q Did he ever try to tell you that she stabbed
11 herself?

12 A No.

13 Q And again, he never asked you to go get assistance
14 for her?

15 Q No.

16 A Never said, call the doctor, or call the ambulance,
17 call 9-11?

18 A I was the one that said, I'm fitting to get out of
19 here and go call the police.

20 MS. MERCER: Pass the witness, Your Honor.

21 THE COURT: Thank you. Cross-examination, Mr.
22 O'Keefe?

23 MR. O'KEEFE: Yes, Your Honor. Court's indulgence.

24 CROSS-EXAMINATION

25 BY MR. O'KEEFE:

1 Q Hello, Mr. Toliver.

2 A How are you doing?

3 Q Okay. This night -- may I call you Cookie?

4 A Yeah.

5 Q You go by Cookie?

6 A Yeah, yeah.

7 Q On this night -- I want to keep this real simple,
8 okay? When you heard the noise and you came up, and you said
9 you called in -- I'm going to ask that you reread a statement
10 -- a recorded statement that you gave to the police to refresh
11 your memory, if that's okay. I'll have Mr. Maningo approach
12 you.

13 THE COURT: That's good. Thank you. Thank you.

14 MR. O'KEEFE: Page 7, if the State doesn't mind.

15 BY MR. O'KEEFE:

16 Q And don't read it out loud, Cookie. Just --

17 A I got you.

18 Q Take a moment.

19 A You want me to read this whole thing?

20 Q About halfway down.

21 A All right.

22 Q Halfway -- that's page 7.

23 THE COURT: What is the question? I mean, in order
24 to refresh his memory --

25 MR. O'KEEFE: I wanted to just --

ROUGH DRAFT TRANSCRIPT

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1 THE COURT: -- he needs something to refresh his
2 memory. Just ask him the question.

3 MR. O'KEEFE: Okay, Your Honor.

4 THE COURT: And if he doesn't remember, then we can
5 refresh his memory.

6 MR. O'KEEFE: Right, okay.

7 THE WITNESS: Yeah, [inaudible] do that.

8 BY MR. O'KEEFE:

9 Q When you called, they came down, and you said you
10 came in. And I called you. I said, Cookie, come in here and
11 get her. Do you remember making that -- I said, come in
12 here --

13 A Yeah.

14 Q -- help me get her?

15 A She won't wake up.

16 Q Okay. So, you do remember that I was saying, come
17 in here, get her?

18 A Yeah.

19 Q Come help me, come get her?

20 A Yeah.

21 Q Okay. Your apartment, you would agree, Cookie --
22 you were there longer than me, of course, is exactly like my
23 room?

24 A Yes.

25 Q And there's no light, right?

1 A Right.

2 Q No light fixture?

3 A Well, yeah. In mine, I had one put up in my
4 bedroom, because you didn't have one. I had a hanging lamp.

5 Q But I have no light in mine?

6 A No.

7 Q Would you agree with that, the light was off? The
8 only light was coming from the --

9 A Living room.

10 Q -- the bathroom, living room, whatever.

11 A Bathroom, whatever.

12 Q There was no light, basically? Okay. At any time
13 though, when I said, come help me, and you seen -- I don't
14 know, there was a lot going on. You ran out and left me. I
15 mean, you ran out, understandably.

16 A Yeah.

17 Q But you ran out, right?

18 A Yes, sir. Yeah.

19 Q Do you remember what I was doing or saying?

20 A No.

21 Q Do you remember prior testimony that you said I was
22 picking her up and trying to hold her, and I was saying --

23 A No. You had her in your -- you had her laying in
24 your lap, saying, wake up, wake up, she won't wake up. Then I
25 asked you -- I said, what have you done? What happened? You

ROUGH DRAFT TRANSCRIPT

000691

1 just said, she won't wake up, and I left out. I left out of
2 there.

3 MR. O'KEEFE: No further questions, Your Honor.

4 THE COURT: All right. Anything else?

5 MS. MERCER: No, Your Honor.

6 THE COURT: Thank you very much for testifying.

7 THE MARSHAL: Your Honor -- Your Honor, we have --

8 THE COURT: Go about your --

9 THE MARSHAL: I think we have a question from the
10 jury.

11 THE COURT: Oh, I'm sorry.

12 MR. MANINGO: Your Honor, may I approach just for
13 the statement?

14 THE COURT: Pardon?

15 MR. MANINGO: May I approach just [inaudible] --

16 THE COURT: Oh, absolutely. Thank you, Mr. Maningo,
17 for helping. Just a minute, Mr. Toliver.

18 (Off-record bench conference)

19 THE COURT: One of the jurors wants to know,
20 "Cookie" --

21 THE WITNESS: Yeah.

22 THE COURT: Must be getting pretty familiar with
23 you. "Cookie" --

24 THE WITNESS: Yeah, I'm very known here.

25 THE COURT: -- "when entering the defendant's room,

1 could you tell if he was intoxicated, drunk?"

2 THE WITNESS: No.

3 THE COURT: No.

4 THE WITNESS: I didn't pay no attention on that, no.

5 THE COURT: Okay. All right. Does that elicit
6 anything else? We'll make this part of the record with no
7 objection. All right. Thank you very much.

8 THE WITNESS: Thank you.

9 THE COURT: Next witness, please?

10 MR. LALLI: Your Honor, the State calls Jimmy
11 Hathcox.

12 THE MARSHAL: Mr. Hathcox, if you will remain
13 standing. Please, sir, raise your right hand and face the
14 clerk.

15 JIMMY HATHCOX, STATE'S WITNESS, SWORN

16 THE MARSHAL: Please have a seat, sir. Slide up to
17 the microphone. If you would, please state and spell your
18 name for the record.

19 THE WITNESS: Jimmy Hathcox. J-i-m-m-y,
20 H-a-t-h-c-o-x.

21 DIRECT EXAMINATION

22 BY MR. LALLI:

23 Q Mr. Hathcox, I want to direct your attention back to
24 November of 2008. Were you living in an apartment complex at
25 501 (sic) El Parque?

ROUGH DRAFT TRANSCRIPT

000693

1 A Yes.

2 Q Did you live in an upstairs unit, or a downstairs
3 unit?

4 A Upstairs.

5 Q I'm going to show you State's Exhibit number 2. Do
6 you see the apartment complex that you lived in back then?

7 A Yes.

8 Q And do you see your specific unit --

9 A Yes.

10 Q -- that you lived in?

11 A Yes.

12 Q What unit number was it?

13 A 35, I think. 36. 36.

14 Q All right. So, are we zooming-in to 36 now?

15 A Yes, the one on the left.

16 Q And there appears to be something right in front of
17 your door there. What is that?

18 A A rail. A metal rail.

19 Q All right. Now, did you work in the complex?

20 A Yes.

21 Q What did you do there?

22 A Maintenance.

23 Q So, what sort of things would you work on?

24 A Getting apartments ready to re-rent, toilets,

25 [inaudible].

ROUGH DRAFT TRANSCRIPT

000694

1 Q Anything basically --

2 A Anything that went wrong, yeah.

3 Q -- that needed to be done? With respect to your
4 unit number 36, were you aware of, or did you know the
5 individual who lived next to you in the open-door room there?

6 A Yes.

7 Q Who was that?

8 A Brian O'Keefe.

9 Q Okay. I'd like you to look around the courtroom;
10 tell me if you see Brian O'Keefe in the courtroom.

11 A Yes.

12 Q Can you please point to him, and identify something
13 he's wearing today?

14 A A suit.

15 Q Is he wearing a tie?

16 A Yellow tie.

17 Q All right.

18 MR. LALLI: Your Honor, may the record reflect the
19 witness has identified the defendant?

20 THE COURT: Yes.

21 BY MR. LALLI:

22 Q Would you at times see the defendant outside his
23 apartment?

24 A Yes.

25 Q What would you see him do?

ROUGH DRAFT TRANSCRIPT

000695

1 A Sometimes, he was just hanging out. Sometimes, he's
2 sitting out there drinking, you know.

3 Q All right. Was -- him outside drinking, was that
4 something fairly frequent, or you know, maybe once in a blue
5 moon you'd see him? Can you give us --

6 A I'd see him out there a couple times a week, maybe a
7 few more.

8 Q All right. Now, I want to direct your attention
9 specifically to November 5th, 2008. Were you living in that
10 same unit, number 36?

11 A Yes.

12 Q Had you -- were you recovering from some surgery at
13 that time?

14 A Yes, sir. I just had surgery on my foot like three
15 days prior.

16 Q What kind of surgery did you have?

17 A A major surgery where they cut a big -- cut down the
18 length of my foot, and up my leg, a big flap. I had like
19 100-and-something staples in it. And it was a pretty major
20 surgery.

21 Q All right. And at this period of time, were you
22 taking medication that assisted you in dealing with the pain?

23 A Yes.

24 Q What kind of medication were you taking?

25 A I believe it was Lortab.

ROUGH DRAFT TRANSCRIPT

000696

1 Q Did you hear something going on outside of your room
2 in the evening hours? Did you hear something outside, outside
3 the confined of your apartment?

4 A I heard a bang on the rail that night.

5 Q All right. Let's talk about the Percocet. Or did
6 you say Percocet --

7 A Lortab.

8 Q -- or Lortab? I'm sorry, Lortab. Were you so under
9 the influence of Lortab that you couldn't tell what was going
10 on around you?

11 A No.

12 Q All right. So, you could hear some sort of a
13 banging?

14 A Right.

15 Q What -- was it one bang? Was it multiple bangs?
16 Give us some sense of what it was.

17 A Just one bang.

18 Q Where did it sound like the noise was coming from?

19 A It sounded like it was right there on that rail,
20 right outside the door.

21 Q Could you tell, was it in front of your apartment?
22 Was it in front of --

23 A Well, they're so close together, they could --
24 probably right there in front of his, I'm thinking.

25 Q Right there in front of the apartment with the open

ROUGH DRAFT TRANSCRIPT

000697

1 door?

2 A Yeah, right there in the middle of the two, or
3 somewhere in that area.

4 Q All right. What did you do when you heard that
5 noise?

6 A I opened the door, and looked out.

7 Q What did you see?

8 A Saw Brian going into his apartment. He was like --
9 opened my door; he was going in.

10 Q And did you see his face?

11 A Yeah. He had a different look on his face, you
12 know.

13 Q Describe it for us.

14 A It was kind of a -- kind of a mean look on his face,
15 or a different look, you know, that I didn't normally see on
16 his face. And I was like, whoa. So.

17 Q So, then what happened?

18 A I closed the door.

19 Q Okay.

20 A Went back in my apartment.

21 Q And did you hear anything else?

22 A I heard a little bit of noise going on over there, a
23 little -- you know.

24 Q Over where?

25 A Through the wall.

1 Q Over in Brian's apartment?

2 A Yeah.

3 Q What did you hear?

4 A Heard some thumping, noises. Heard some, you know,
5 talking. I couldn't really tell if it was a man or a woman,
6 but just noises going on over there.

7 Q Were you concerned, or did you -- based upon seeing
8 the defendant's face in that manner in which you did, and then
9 hearing the banging next-door, did some -- did a concern hit
10 you?

11 A At one point, I thought to myself, I wonder if he's
12 over there beating her up or something, you know.

13 Q Beating who up?

14 A His girlfriend.

15 Q You had a concern about that based upon seeing his
16 face, and hearing the noises next-door?

17 A Yes.

18 Q How long did the noise continue?

19 A 45 minutes, maybe.

20 Q I'm sorry?

21 A 45 minutes, maybe.

22 Q About 45 minutes? Did you -- what happened after
23 that?

24 A I didn't hear any -- well, I heard Cookie from down
25 below come up. And he knocked on the door or something, and

ROUGH DRAFT TRANSCRIPT

000639

1 started yelling, he stabbed her, he killed her, you know, or
2 something. And I went out and looked, and Cookie and another
3 guy there, Todd, was up there. And I looked in, and I didn't
4 -- I didn't -- I went back in my apartment.

5 Q Did the police eventually arrive?

6 A They arrived real quick after that. Five minutes or
7 something, you know.

8 Q You eventually give the police a statement?

9 A Yes.

10 Q You basically tell the police what you have told us
11 today?

12 A Right.

13 Q All right. Thank you so much.

14 MR. LALLI: Your Honor, that concludes direct
15 examination.

16 THE COURT: Okay. Any cross-examination, Mr.
17 O'Keefe?

18 MR. O'KEEFE: Yes, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. O'KEEFE:

21 Q Hello, Jimmy.

22 A What's up, man?

23 Q That night, Jimmy, you testified priorly (phonetic)
24 that you seen me approximately straight out, about 15 minutes
25 before it all happened. Do you remember that?

1 A Yeah.

2 Q So, it was 15 minutes before the first time?

3 A It was 30 minutes, something like that, before I
4 heard Cookie and them come up, and the commotion going on.

5 Q Would you agree though, Jimmy, that repeatedly, you
6 had testified that it was 15 minutes?

7 A I don't remember saying 15 minutes. I think it was
8 a little longer than that.

9 Q Okay. Well, we'll find that for you in just -- for
10 a moment, so you could refresh your memory [inaudible].

11 MR. O'KEEFE: Court's indulgence. Okay.

12 BY MR. O'KEEFE:

13 Q So, now you're stating that you're not sure what you
14 thought -- a moment ago, you said 15 minutes, but then you
15 said you wasn't sure, maybe 30. So, I mean --

16 MR. LALLI: Your Honor, I object. That
17 mischaracterizes his testimony. That's not what he said.

18 THE COURT: He didn't say 15. He said about 30, I
19 thought. And you said, didn't you testify prior it was 15
20 minutes.

21 MR. O'KEEFE: Okay.

22 THE COURT: But whatever it is, I mean, rephrase the
23 question. I don't think he said that.

24 BY MR. O'KEEFE:

25 Q There was testimony given that you stated

1 approximately 15 minutes before Cookie started yelling, you
2 seen Mr. O'Keefe outside the door? Do you --

3 A I said, when I opened the door --

4 Q And you see me out there.

5 A -- and you was going in your apartment, we made eye
6 contact. You went in. I closed my door. That was it.

7 Q Okay. Did you hear me on the balcony porch when I
8 came back out?

9 A All I remember hearing was when I heard that bang, I
10 opened the door. Right when I did, I saw you. You looked at
11 me, I looked at you. I closed my door, you went in your
12 apartment, and that was it.

13 Q You heard like a bang on the rail?

14 A Bang on the rail. That's why I opened the door.

15 Q Okay. Was it real loud, or just --

16 A Yeah, it was loud enough. Yeah.

17 Q Okay. Because I mean, you're right there beside me,
18 as the picture --

19 A That's right. When you opened your door, which was
20 right beside mine --

21 Q Okay.

22 A -- I looked at mine -- I opened my door. You looked
23 at me; I looked at you. And I closed my door, and I guess you
24 went into the apartment.

25 Q Do you remember giving testimony that you seen me

1 clearly; I had nothing in my hands, I had -- there was no
2 blood on me, I had no weapons?

3 A I didn't see any of that, no.

4 Q Okay. Real important, Cookie. You're right there
5 next-door to me. You testified before, but would you
6 re-testify; did you hear any yelling, any shouting, screaming,
7 or anything?

8 A That night?

9 Q Yeah. Did you hear any -- you --

10 A I heard noises. I don't -- I couldn't tell you --

11 Q Banging, thumping?

12 A I heard some thumping noises, yeah. Little banging
13 noises.

14 Q But at any time, you heard no shouting, no fighting,
15 no throwing -- none of that?

16 A No, I don't really -- I --

17 Q [Inaudible].

18 A I heard noises. I heard noises over there. But I
19 --

20 Q Okay. But no shouting, yelling, fighting? And
21 you're right there.

22 A I don't believe I ever said that, no.

23 Q Do you remember testifying the walls were paper
24 thin?

25 A Yeah. I didn't say that, no.

ROUGH DRAFT TRANSCRIPT

000703

1 Q And my door was wide open?

2 A I don't know. The only time I came out was after
3 Cookie had came up there, and went in your apartment, and said
4 what he said. And that's the only time I came out of my
5 apartment and seen your door open. Otherwise, I don't know.

6 Q Okay. But clearly, again, for the last time though,
7 do you think -- or did you -- if there was any fighting -- a
8 big fight going on, you would have heard it?

9 A I remember just hearing a ruckus over there, and
10 thinking to myself, man, I wonder what's going on; I wonder if
11 he's beating her up or something.

12 Q You think if somebody --

13 A I just remember thinking that, because that night
14 when I saw you, you had a very strange look on your face, one
15 that I had never seen.

16 Q Oh, is that so?

17 A And that concerned me.

18 Q Okay. Did you know I was extremely intoxicated?
19 Testimony was given by the police.

20 A I thought you were, yeah.

21 Q Okay. Did the police set me on the porch outside my
22 door, after they brought me out? Do you remember seeing I was
23 out there for a while?

24 A Yeah.

25 Q I was out there for quite a long time, wasn't I?

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1 A I believe so.

2 Q Handcuffed, sitting down?

3 A I believe so.

4 Q At times, I was getting pretty loud, wasn't I, with
5 the police?

6 A Yes.

7 Q And I'm -- when I'm loud, I'm loud, right? I mean,
8 it's kind of hard if someone's really drunk, and loud, and
9 belligerent, to be quiet; wouldn't you say so? It's just not
10 common.

11 A Yeah, you were pretty loud out there.

12 Q I was really loud, is what testimony was given. So,
13 if I was that way, and then something was going on, don't you
14 think you would have heard? Wouldn't you have heard, you
15 think -- do you think?

16 A Oh, you mean over there --

17 Q Yeah. Did you know -- okay.

18 A I don't know what was going on over there. I don't
19 know.

20 Q Did you know that I was in the car, passed out?

21 A No.

22 Q Okay. No one told you any of that testimony, that I
23 was passed out in the seat?

24 A No.

25 Q Okay.

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1 A This is the first time I've heard it.

2 Q Okay. And would you testify now, I normally always
3 left my window open; you know that -- or my door, correct,
4 Jimmy, from what you've noticed or observed? Or did you ever
5 notice or observe?

6 A I really can't remember, man.

7 Q Okay. But I would always go out and smoke on the
8 porch. You'd see me out there and all that; I smoked outside?
9 Okay. Would you always see a lot of plants and flowers out
10 there now and then outside the door? I'd set it out in the
11 sun?

12 A I believe you had a couple plants out there. I
13 really can't remember.

14 MR. O'KEEFE: No further testimony, Your Honor.

15 THE COURT: All right. Anything else?

16 MR. LALLI: No, Your Honor.

17 THE COURT: Thank you for testifying. You can go
18 about your business now, all right?

19 THE WITNESS: Thank you, sir.

20 THE COURT: Next witness?

21 MR. LALLI: Your Honor, the State calls Todd Conn.

22 THE MARSHAL: Officer Conn, if you will remain
23 standing. Please, sir, raise your right hand and face the
24 clerk.

25 TODD CONN, STATE'S WITNESS, SWORN

1 THE MARSHAL: If you would, sir, please have a seat,
2 and slide up to the microphone. Please state and spell your
3 name for the record.

4 THE WITNESS: My name is Todd, T-o-d-d. Conn,
5 C-o-n-n.

6 DIRECT EXAMINATION

7 BY MR. LALLI:

8 Q Sir, how are you employed?

9 A I'm employed with the Las Vegas Metropolitan Police
10 Department.

11 Q What do you do for Metro?

12 A Currently, I'm assigned to the traffic bureau with
13 accident investigation.

14 Q In the -- do you drive a motorcycle?

15 A Currently, yes.

16 Q All right. Back in November of 2008, what was your
17 assignment?

18 A I was assigned to Bolden area command as a patrol
19 officer.

20 Q Where is the Bolden area command?

21 A It's located --

22 Q Not the actual streets, but just the area of Las
23 Vegas.

24 A That would be Lake Meade and Martin Luther King.

25 Q And you said that you were assigned to the patrol

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1 division?

2 A Yes, sir.

3 Q Can you explain for our jury what the patrol
4 division is?

5 A Patrol divisions are set up by area command. And an
6 area command is a specific area in which officers are assigned
7 to conduct patrol activities, and it's where we're also
8 dispatched to receive calls for service. Bolden area command
9 incorporates 15 as our east border. Jones is our west border.
10 Would it be -- Carrie (phonetic) as our north, and Desert Inn
11 as our south border.

12 Q When you are a member of the patrol division at
13 Metro, are those the types of police officers who drive the
14 police cars, wear the police uniforms, and respond to 9-11
15 calls?

16 A Yes, sir.

17 Q You're a first responder?

18 A Yes, sir.

19 Q Are you familiar with the CIT program?

20 A Yes, sir. It's crisis intervention team.

21 Q Can you explain to our jury what that is? Tell us a
22 little bit about that program.

23 A Crisis intervention team was developed to deal with
24 subjects who may be suffering in mental crisis, or sometimes
25 mental illness. But others, sometimes drug-induced states in

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1 which you need somebody that has specialized training to deal
2 with individuals of both drug-induced, and mental disorders,
3 if you may.

4 Q Back in November of 2008, were you a CIT officer?

5 A Yes, sir. I was.

6 Q Can you explain for the jury what sort of training
7 -- what sort of particular specialized training you have for
8 that?

9 A I went through a 40-hour class. During that class,
10 we actually were assigned to go to the Southern Nevada Mental
11 Health Institute, where we would speak with people who were
12 bipolar, schizophrenic, to get an idea of some of their
13 concerns when dealing with police officers, how they'd like to
14 be treated. It also gives us the ability to recognize
15 symptoms that subjects may be suffering from.

16 We also do multiple roleplaying assignments, in
17 which our job is to specifically react to the scenario that
18 they give us, and to try to de-escalate a situation, and bring
19 it down so that both officers, and the person that we're in
20 contact with are safe.

21 Q All right. Now, I want to direct your attention
22 specifically to November 5th of 2008. Did you respond to 5001
23 El Parque, unit number 35?

24 A Yes, sir, I did.

25 Q What caused you to go to that location?

1 A At the time, I was actually getting gas. I heard a
2 broadcast over our radio stating that there was an unknown
3 trouble call, and that there is a door -- an apartment that
4 had the door open. They could see large amounts of blood, and
5 there was possibly a female down inside.

6 Q Did you hear anything with respect to a weapon?

7 A I did not at the time, no.

8 Q All right. So, the information that you had is
9 blood at the scene, and possibly a woman down?

10 A Yes, sir.

11 Q What do you do upon receiving that information?

12 A I immediately sent a text message via our computer
13 in our vehicle to dispatch, advising her that I would be en
14 route code to the location.

15 Q What does being "en route code" mean?

16 A Code means that we would be activating our lights
17 and sirens, so that we can get there in a little expedited
18 manner, where we're going to actually break some traffic
19 rules, go through red lights, et cetera, in order to get to a
20 scene faster so that we can provide our services to possibly
21 save a life.

22 Q All right. Can you tell us what you did after you
23 sent that transmission?

24 A I immediately went to the location at 5001 El
25 Parque. I parked on the -- it's actually the southeast

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1 parking lot. When I pulled in, I noticed there was two other
2 patrol vehicles that already arrived before me. I immediately
3 ran to the west through the complex, and went upstairs to the
4 second floor, where I saw the apartment had it's door open.

5 Q Okay. I'm going to show you what we've marked as
6 State's Exhibit number 2 for identification purposes. You
7 don't know what that is, I take it?

8 A That's the stairway.

9 Q Okay. Let me zoom-out a little bit. What are we
10 looking at there?

11 A We are actually looking at the stairway that I ran
12 up to go to the apartment, and immediately then made a right.
13 It's the door that's open in the picture.

14 Q Can you describe what that apartment looks like on
15 the inside?

16 A Immediately as you go into the doorway, there's a
17 living room area. Off to my far right would have been a small
18 kitchen area. Directly ahead of me, there was actually an
19 open doorway, with one door that you could see facing me, and
20 it was flat to me, and that was a bathroom. Off to the right,
21 there was an open door. And then, off to the left -- and it's
22 kind of like a -- just like a little T; was another bedroom.

23 Q All right.

24 MR. LALLI: Your Honor, may I approach the witness?

25 THE COURT: Yes.

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1 BY MR. LALLI:

2 Q Show you some photographs. We've marked them as
3 State's proposed 3, 4, 5, and 6. Officer, can you take a
4 moment and have a look at those?

5 A Yes, sir.

6 Q Do you recognize what's depicted in those
7 photographs?

8 A Yes, sir, I do.

9 Q Do those photographs fairly and accurately depict
10 the inside of unit 35 to which you responded?

11 A Yes, sir, they do.

12 MR. LALLI: Your Honor, I'd move for the admission
13 of State's proposed 3 through 6.

14 THE COURT: Any objection, Mr. O'Keefe?

15 MR. O'KEEFE: No, Your Honor.

16 THE COURT: 3 through 6 will be admitted.

17 (Exhibits 3 through 6 are admitted)

18 BY MR. LALLI:

19 Q Officer, I'm going to show you State's Exhibit
20 number 3. What is this?

21 A That is a view looking through the doorway, in which
22 you see the living room area. And then, that is the beginning
23 of that T-shaped hallway that houses both bedrooms and the
24 bathroom.

25 Q Is State's Exhibit number 4 another view of the

1 front room of that apartment?

2 A Yes, sir. It's just inside the doorway, slightly
3 looking off to the right.

4 Q And if we zoom-in closely here to the doorway, what
5 are we looking at?

6 A You're actually looking at the bedroom in which this
7 tragic accident took place.

8 Q I want to show you State's Exhibit number 1. The
9 doorway that was depicted in the previous exhibit, are we
10 seeing that in a crime scene diagram, and is the doorway --
11 I'll zoom-in here. Is it very close to that number 7?

12 A Yes, sir.

13 Q That's the doorway that we were looking in back in
14 State's Exhibit number 4?

15 A Yes, sir.

16 Q All right. Does this appear to be a layout of the
17 apartment?

18 A Yes, sir, it is.

19 Q So, you said that the door was opened?

20 A Yes.

21 Q What do you do upon seeing the open door?

22 A I immediately look inside. When I do, I can see
23 that I have two other officers that are already in the kitchen
24 area, Officer Santarossa is there, along with Officer
25 Fonbuena. Both of them are in the kitchen with their guns

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1 drawn, and they are facing the southwest bedroom on this
2 diagram. They are looking through that hallway, and they are
3 looking directly at that southwest bedroom.

4 MR. LALLI: Your Honor, because this equipment isn't
5 working properly today, is it okay if I have the officer step
6 down --

7 THE COURT: Yes.

8 MR. LALLI: -- and maybe indicate on this diagram?

9 THE COURT: Yeah. Just keep your voice up, all
10 right?

11 THE WITNESS: Yes, sir.

12 BY MR. LALLI:

13 Q So, if you could come down here. And just make sure
14 you keep your voice up so you can be picked up on the
15 recordings here. Try not to block anybody's view. Why don't
16 you explain for us where you were, and where the other
17 officers were.

18 A I immediately come in the front door here. And when
19 I'm looking, I can see that Officer Fonbuena and Santarossa
20 are both here, with their firearms drawn.

21 Q And you're indicating the kitchen area for the
22 record, correct?

23 A Correct. And they are looking directly into this
24 opening of the hallway, towards the door of the southwest
25 bedroom. I then immediately realize that we have an open door

1 here, that isn't being covered by them.

2 Q What do you mean, covered?

3 A Well, their firearms and their eyes are only able to
4 see this portion of this doorway. They can see some of this
5 door, but they can see nothing of this. So, I immediately run
6 over to this wall, at which time I draw my firearm, so that I
7 can cover this portion that they can't see.

8 Q And this portion is the bedroom that has the figure
9 of the individual on the ground on State's Exhibit number 1,
10 correct?

11 A Yes, sir.

12 Q All right. What do you do when you go to that
13 location?

14 A Upon standing here, I can hear -- I can hear
15 yelling. It's not very distinct. It's kind of mumbled;
16 muffled. It's not very coherent at the time. I tell Officer
17 Fonbuena that I'll do the talking, that I have a lot of blood;
18 that I can see in my doorway that there's somebody in there.
19 Being that I was the CIT officer, I let him know that I'm
20 going to give the verbal commands.

21 Q Why is it important -- and I think you can probably
22 return to your seat now, Officer. Thank you. Why is it
23 important for you to instruct the other officers that you're
24 going to be the one who's giving the verbal commands?

25 A Sometimes, if we have too many people giving verbal

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1 commands, we can cause individuals to become confused. You
2 can have contradicting orders given, and it basically isn't
3 good for communication purposes.

4 Q So, just to make sure that Metro or law enforcement
5 is speaking in one voice, if you will, you assume that
6 responsibility?

7 A Yes, sir.

8 Q Tell us what you do at that point.

9 A At that time, I call into the room that, whoever's
10 in there, I need you to come out with your hands up. I don't
11 get any response. I have to say it a few times.

12 Q You said that you had heard some sort of noise
13 coming from the room?

14 A Correct.

15 Q Can you describe that noise for us?

16 A It's basically mumbled talking, is what I'm hearing
17 at first. Sometimes, it's agitated, loud. And then other
18 times, it's not necessarily directed, and it's not coherent.
19 These weren't full sentences that I was hearing. Just
20 individual words, along with mumbling, then yelling. That's
21 what I'm hearing. So, I just know that I have a male voice
22 that I can hear coming from that room.

23 Q Do you hear any female voice coming out of that
24 room?

25 A No, sir, I do not.

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1 Q All right. So, tell us what happened.

2 A So, I give my verbal commands, tell the individual
3 that I can hear to come out with his hands up. I get no
4 response. I have to repeat it multiple times.

5 Q Do you eventually get a response?

6 A I do. And --

7 Q What response do you get?

8 A The first response I get is that she stabbed
9 herself.

10 Q She stabbed herself?

11 A Yes.

12 Q Okay.

13 A So, it's at this time that I tell him, okay, I need
14 you to come out with your hands up. We can give her help, but
15 I need you to come out of the room. The voice becomes highly
16 agitated, and says, "Just get the fuck in here, get the fuck
17 in here."

18 Due to the amount of blood that I see, and the
19 overall demeanor of the voice that I'm hearing, I'm feeling
20 that the subject inside the room wants to bait us into coming
21 into the room.

22 Q Why? Why did you get that impression?

23 A It's agitated. It's not like they were looking out
24 for the welfare of the individual; that wasn't what I was
25 getting. Help, she needs -- please, come help her. I wasn't

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1 getting anything like that. It was, "get the fuck in here."

2 It was highly --

3 Q Almost him giving you an order?

4 A Correct. Yeah. This wasn't pleading for me to come
5 in and save somebody. This was -- I was thinking that there
6 is somebody hiding behind the corner with a shotgun, getting
7 ready to kill me as soon as I come around that corner.

8 Q So, I was going to ask you, well, why don't you just
9 go in? I mean, are you concerned for your own safety?

10 A Yeah, I'm concerned for everybody.

11 Q All right. So, what happens?

12 A I continue my verbal commands. I tell him, listen,
13 we want to help her. You need to come out, you need to put
14 your hands up. But we can't go in there, and we can't give
15 her the assistance that she needs until you come out.

16 Q Is there any question in your mind you spelled that
17 out clearly for the defendant?

18 A Absolutely.

19 Q All right.

20 A Then, next thing you know, he goes, "She's dead."
21 And I said, well, listen, we still need you to come out of the
22 room. You have to come out of the room with your hands up.
23 And it's -- again, it's -- he goes back to mumbled talking,
24 agitated, yelling.

25 Never -- I ask him for his name multiple times; I

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1 never get his name. I ask him what her name is. At one point
2 in time, he states Veronica is the name that I gave during my
3 reports. It's what I remember hearing.

4 Q Veronica?

5 A Correct.

6 Q Okay.

7 A So, I keep up the verbal commands, keep them up.
8 I'm trying to get him to come out of there. He says, she's
9 dead. Then, he switches and says, "She's alive." About that
10 time, Sergeant Newberry, along with his officers, comes into
11 the room.

12 Q Who's Sergeant Newberry?

13 A Sergeant Newberry at the time was the problem
14 solving unit sergeant. They were a plain-clothed unit that
15 does basic investigations for patrol bureaus.

16 Q All right.

17 A And --

18 Q So, it's a separate squad of police officers?

19 A Correct. And they tend to work plain-clothed
20 operations. They do actual investigations into burglaries,
21 robberies, drug buys; that sort of thing.

22 Q So, Sergeant Newberry shows up. Do you know why?

23 A He was there just to give us a hand. And none of us
24 have -- we've put what we call a code red on the channel,
25 which means nobody's allowed to talk until everybody is safe

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1 and accounted for. So, nobody's allowed to get on the radio,
2 so he knows it's still an active scene when he shows up.

3 His officers, because they are plain clothes,
4 they're wearing tactical vests that say "Police" across them.
5 But they don't necessarily carry the amount of tools that we
6 carry as patrol officers. They don't have a big belt like we
7 do.

8 Q When you say tools, you're talking about things like
9 guns, pepper spray, batons; things of that nature?

10 A Yes, sir.

11 Q All right.

12 A So, it was at this time that I realized that one of
13 his officers probably should be on taser, that we need a less
14 than lethal option. And so, I hand my taser off to Officer
15 Ballejos, who works for Sergeant Newberry.

16 Q What's a taser? I mean, we've all probably -- most
17 of us have heard about it on television. Can you just explain
18 to the jury what a taser is, how it works?

19 A A taser is an electronic control device. It's
20 capable of firing two probes at -- 21 feet is the maximum
21 distance, at which time, both of those probes, when they
22 strike an individual, it delivers an electronic current.

23 That electronic current actually interrupts the
24 electrical currents that your brain makes to control body
25 function. That's why people tend to go rigid; they fall over.

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1 And that allows officers to be able to place them into
2 custody, because the subject can no longer resist you.

3 Q So, if you shoot somebody with a taser, these two
4 prongs fire into the individual being shot?

5 A Correct.

6 Q They're given one heck of a jolt of electricity,
7 that basically puts them on the ground?

8 A Yes, sir.

9 Q Doesn't kill them?

10 A No, sir.

11 Q All right. And so, when you talk about less than
12 lethal options, that's as opposed to going in with a gun,
13 where somebody might end up getting shot and killed?

14 A Correct.

15 Q All right. So, you thought that it was important
16 that somebody utilized a taser, as opposed to just everybody
17 going in with guns?

18 A Correct.

19 Q Okay. So, what happened?

20 A Me and Sergeant Newberry started talking. He states
21 that he's going to do what we call a quick peek, which means
22 he's going to try to be as tactical as he can, look into the
23 room, and get us more observation. The only thing that I can
24 see from my angle is basically a bloody bed, and a little bit
25 of a wall. That's all that my view allows me. So, I don't

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1 know what's hiding behind that wall.

2 Q All right.

3 A So, Sergeant Newberry tells me, listen, I'm going to
4 peek my head in. If anybody tries to kill me, drag me out,
5 save me, whatever you got to do.

6 Q All right.

7 A So, he peeks, he looks in. He comes back. He goes,
8 listen, I can see the subject. He's laying on top of the
9 female. The knife is on the bed. Let's go. We all had
10 formed up basically an arrest team. Everybody stacked up
11 behind me, and put their hand on my shoulder. When I start to
12 move that way, everybody knows that we're moving as a cohesive
13 unit.

14 We immediately go into the room, at which time I'm
15 giving verbal commands to Mr. O'Keefe. He is actually laying
16 on the ground next to the deceased. He has his right hand
17 kind of cradling her head. His left hand is over the top
18 portion of her torso. She is naked from the waist down.
19 There is a lot of blood.

20 Q Can I ask you this? You said Mr. O'Keefe -- and you
21 referred -- you kind of looked over to my right. Do you see
22 the individual who you saw in the bedroom here in the
23 courtroom?

24 A Yes, sir. He's --

25 Q Can you please point to him, and tell us what he's

1 wearing today?

2 A He's wearing a yellow tie, kind of a green shirt,
3 brown sports coat. Has his hair back in a ponytail.

4 MR. LALLI: Your Honor, may the record reflect the
5 witness has identified the defendant?

6 THE COURT: Yes.

7 BY MR. LALLI:

8 Q So, the defendant is on the ground. He has this
9 woman where?

10 A He is laying on his right side. His head is
11 parallel to hers. They're laying parallel together. His
12 right hand is up underneath the back of her head. His left
13 hand is over the top portion of her torso.

14 Q And --

15 A We give him verbal commands, get up, get up.

16 Q You said that she was partially dressed?

17 A Yes, sir. There's -- I can remember just a bloody
18 t-shirt. And then, I clearly remember that the lower
19 extremities of her were completely nude.

20 Q Completely naked?

21 A Yes.

22 Q Does the defendant say anything to you when officers
23 come into the room?

24 A As soon as we're giving the verbal commands, he
25 ignores all the verbal commands we're giving him. He becomes

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1 agitated, and he starts waving his left hand that's over her
2 torso, screaming, don't look at her, don't look at her.

3 Q Don't look at her?

4 A Yes, sir.

5 Q Is this -- can you describe the speed with which you
6 and other officers are coming into that room? Do you do it
7 kind of slowly and methodically; or is it like, hey, let's get
8 in there as quickly as we can? Or --

9 A It's --

10 Q -- give us a sense of that.

11 A It's very fast. We're not running. This is very
12 controlled. We have to still clear the room, but this is by
13 no means a slow walk. This is, I walk in at -- basically, if
14 you've ever seen a speed walker, that's about the pace I'm
15 going. I'm moving as fast as I can go, without it being a
16 jog. Still a walk so that my firearm is steady. And I need
17 to clear the portions of the room that I see immediately as I
18 come in.

19 Q How many officers go into that back bedroom?

20 A I believe there's four total.

21 Q And you're dressed either as a police officer, or
22 those problem solving officers have --

23 A Tac. vests.

24 Q Tac. vests on?

25 A Yes, sir.

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1 Q And the defendant is concerned with you looking at
2 his naked girlfriend?

3 A Yes, sir.

4 Q What happens next?

5 A At this time, we continue the verbal commands.
6 We've ensured the room's clear. We give him the verbal
7 commands; he refuses to get off of her. He is becoming highly
8 agitated.

9 Q When you say highly agitated, what's he doing?

10 A He's yelling at us, and not --

11 Q Saying what?

12 A That's when he -- it's just continuing with the,
13 don't look at her, don't look at her.

14 Q All right.

15 A There was nothing beyond that. Officer Ballejos
16 then fires his taser, striking Mr. O'Keefe. It incapacitates
17 him, at which time, I go to grab hands-on. I realize that Mr.
18 O'Keefe has a lot of blood on him, and I'm concerned about
19 contamination. I can't remember where we got the initial
20 information, but there was some sort of possibility for a
21 communicable disease when we were entering.

22 Q All right.

23 A So, I immediately go to get gloves out of a back
24 pouch that I keep on my belt, and I also hand them over to
25 Sean -- I'm trying to think of Sean's last name. I --

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1 Q Another -- Sean is another police officer?

2 A Yes, sir.

3 Q All right.

4 A I believe it's Officer Thomas. Sean Thomas

5 (phonetic) --

6 Q Okay.

7 A -- if I'm not mistaken. I go to give him a pair of
8 gloves so that we can get the handcuffs on Mr. O'Keefe.

9 Q What's Mr. O'Keefe doing as you're trying to put him
10 in the handcuffs?

11 A Unfortunately, a taser operates on a five-second
12 cycle. At the end of that five-second cycle, the electricity
13 is no longer being provided to the subject. So, Mr. O'Keefe
14 has the ability to regain a little bit of control after those
15 five seconds. His muscles go back to working just like they
16 did before.

17 So, that fives seconds elapses during the time where
18 I'm trying to get gloves on, and so is Sean. So, Mr. O'Keefe
19 begins to struggle, at which time, we bring his hands
20 together. We get our gloves on; we get the handcuffs on him.
21 I put one arm underneath Mr. O'Keefe's armpit. Sean does the
22 same, and we immediately escort him out into the living room.

23 Q All right. And there was a woman in that room.
24 Were you at all involved in rendering her any assistance?

25 A Once we got Mr. O'Keefe into the living room, we

1 immediately asked for the fire department -- medical personnel
2 that we had on scene, had already arrived. We tried to clear
3 our as many people as we could immediately from -- my first
4 observations, she did not appear to be alive at the time. We
5 still require medical personnel to make that call. So, I
6 immediately brought them in, at which time, they announced to
7 us that she was deceased.

8 Q Okay. What happens to the defendant once he's in
9 the living room?

10 A I know that he was escorted out of there, but not by
11 me.

12 Q Someone else did that?

13 A Yes, sir. Because once he goes into the living
14 room, my goal was to -- basically, I was already convinced
15 that we had somebody that was deceased in there, and now it
16 was time to preserve evidence. I wanted to get everybody out
17 there that I could, so that we wouldn't contaminate our scene.

18 Get one medical personnel staff to come in there,
19 check if she needed assistance; at which time, he said that
20 she was not, and that she was deceased. And so, now, it was
21 time to get everybody out so that we wouldn't contaminate it.

22 Q When you went into the back bedroom to remove Mr.
23 O'Keefe, did you ever step on the woman's body?

24 A I do not believe I ever stepped on her, no.

25 Q Okay. Did you step on her head, or on her face?

ROUGH DRAFT TRANSCRIPT

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1 A No, sir.

2 Q Is that something you would have remembered?

3 A Absolutely.

4 MR. LALLI: Thank you, Your Honor. That concludes
5 direct examination.

6 THE COURT: All right. Cross-examination, Mr.
7 O'Keefe?

8 MR. O'KEEFE: Yes, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. O'KEEFE:

11 Q It's Mr. -- Officer Conn?

12 A Conn. Yes, sir.

13 Q Officer Conn, I want to be real brief. Okay, sir?
14 When you did enter the apartment, and you were calling to me,
15 did I at any time tell you to get out; get the F out?

16 A No, sir, you did not.

17 Q Thank you, sir. Did you guys realize that I was
18 extremely intoxicated?

19 A No, sir.

20 Q Okay. What is a 408, Officer, please?

21 A If you're referring to our codes that we use --

22 Q Yes, sir.

23 A -- that would be a drunk, sir.

24 Q Okay. What if the 9-11 call immediately at the
25 beginning of the call -- if I could -- I'll produce it if I

ROUGH DRAFT TRANSCRIPT

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1 have to. But if I say that it says exactly --

2 MR. O'KEEFE: Mr. Maningo.

3 BY MR. O'KEEFE:

4 Q The 9-11 LVPD Communication Center states that, "At
5 23:06, this person advised, subject who lives in apartment is
6 Brian. Extremely 408." Not even three and-a-half minutes
7 after the call was made. Would you agree with that?

8 A If that's in the details of the call, that's what
9 they received. Yes, sir.

10 Q Okay. Now, so, didn't you say a code red, when
11 that's called, you guys clearly are listening, correct, sir?

12 A Sir, there would be no other traffic provided by
13 dispatchers over the air --

14 Q Yes, sir.

15 A -- because we call the code red. So, there's no
16 further communications over that radio.

17 Q Yes, sir. So, my point being is, when that
18 extremely -- defendant was extremely 408, you guys all heard
19 it, without a doubt? That's what the --

20 A No, sir. I did not.

21 Q Okay. How long did this event -- stand-off, as you
22 call it, or whatever, take, Your Honor -- I mean, Officer,
23 please?

24 A Unfortunately, time seems like it takes a very long
25 time when you're there. In reality, it was mere minutes.

ROUGH DRAFT TRANSCRIPT

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1 Q Thank you.

2 A Four to five minutes.

3 Q Thank you, Officer. I understand your position.

4 When a call is made, you're concerned for everyone. That's

5 the goal of a police officer. But you guys keep beating down

6 in prior testimonies that, we felt that the defendant -- and I

7 understand that, was baiting us, setting you up. I understand

8 that. You're in a lot of situations sometimes. But

9 ultimately, was I baiting you? Yes or no.

10 A At the time --

11 Q Yes or no, Officer.

12 A -- I didn't know.

13 MR. O'KEEFE: Please, Your Honor.

14 THE COURT: If you can't answer yes or no, you can
15 say, I can't answer yes or no. So --

16 THE WITNESS: I can't --

17 THE COURT: I mean, I can't force the --

18 THE WITNESS: I can't state what your mind set was
19 at that time. I'm sorry, I can't answer that.

20 BY MR. O'KEEFE:

21 Q Okay. But there has been plenty of prior testimony,
22 you all felt that the defendant possibly, or could have been
23 baiting us. You stated that, correct, Officer?

24 A Yes, sir.

25 Q Okay. Now, ultimately though, at the conclusion of

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1 everything when you apprehended me, ultimately though, was I
2 baiting you? It's simple; yes or no?

3 A When you came in, you were not waiting for us, no.

4 MR. O'KEEFE: Let me re-ask one more time, Your
5 Honor.

6 BY MR. O'KEEFE:

7 Q Ultimately at the conclusion, after you apprehended
8 me and put me in handcuffs, you guys made a determination, the
9 guy wasn't baiting me; he didn't have a gun, he wasn't trying
10 to kill me or anything. So, answer the question yes or no.
11 Ultimately, was I baiting you?

12 A I can't honestly answer that, sir. I'm sorry.

13 Q So, during this time, you're stating that you had no
14 clue I was intoxicated?

15 A I had no idea at all.

16 Q If there was prior testimony many times given that
17 you stormed a room, up to five officers in the same area, and
18 you stormed in fast -- there was prior -- if there was prior
19 testimony given that someone went over the bed, would you
20 disagree with that?

21 MR. LALLI: I object, Your Honor. That assumes
22 facts not in evidence.

23 THE COURT: Well, you can ask him, did you see
24 someone go over the bed? Ask him.

25 THE WITNESS: I did not see anyone going over the

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1 bed. I was focused directly on you, and I was not looking
2 over my shoulder at what --

3 BY MR. O'KEEFE:

4 Q Okay.

5 A -- my officers were doing.

6 Q Would you agree that it was maybe very small spot,
7 from the end of the bed, to the closet, to the wall? It --

8 A Yes, it's a relatively small space.

9 Q Relatively understates it, I do believe, Officer.
10 But however, with the alleged victim on the ground with me
11 beside her, and with four or five officers all around, you
12 could say without a doubt, nobody kicked us, stepped on us,
13 with all that going on? Being re -- tased, and trying to
14 handcuff, and all that? You can say absolutely --

15 A I did not step on you, or her. That I can say.

16 Q You did not?

17 A That's all I can attest to, sir, is what I did.

18 Q And at any time, she was never bumped, even though
19 there's been prior testimony given that it possibly --
20 absolutely could have happened.

21 A I don't know if she was or not.

22 MR. LALLI: Your Honor, I object to references to
23 prior testimony. The question is, did this officer see it.
24 That misstates any evidence in the record. That evidence is
25 not in the record. And I think as the Court correctly pointed

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1 out before, he should just ask this officer what he saw, or
2 what he didn't see.

3 THE COURT: Prior testimony -- if they're like --
4 you're alluding to two or three other witnesses, he doesn't
5 know what prior testimony -- he's testifying as to what he
6 knows. So, you just have to limit it to him.

7 MR. O'KEEFE: Okay.

8 THE COURT: You know, he doesn't know what other
9 officers or other witnesses testified to, even if it's prior
10 testimony.

11 MR. O'KEEFE: Yes, sir, Your Honor. And I'm --

12 THE COURT: If it's his prior testimony, then you
13 could show him his prior testimony, and impeach him on it.
14 But --

15 MR. O'KEEFE: I'm going to just make it easy and
16 pass -- go -- move on for Your Honor, for everybody.

17 BY MR. O'KEEFE:

18 Q Officer, could you step up to the diagram a minute,
19 please?

20 A Sure.

21 Q Thank you, sir. Can you point to the jurors where
22 you were standing as a team when it was stated that you were
23 stacked along the wall?

24 A I would be the first position here. And then, the
25 rest of the officers --

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1 Q So --

2 A -- were directly behind me.

3 Q -- how many officers were there? Is it true there
4 was four, or there was five, sir, standing --

5 A I believe that there was four, that actually
6 entered. We had Sergeant Newberry here. This is -- he's
7 standing on this corner when he tells me that he's going to
8 peek into the room. And then, I believe that I have Officer
9 Thomas and Officer Ballejos directly on my back as we're
10 getting ready to make our arrest.

11 Q And you're all against the wall, getting ready to do
12 your stack if the code's clear to go?

13 A Not actually against the wall. We would be at an
14 angle. This table here would prevent us from being up
15 directly against the wall.

16 Q Okay. Do you realize that we have a -- there's a
17 photograph here where there's a table all the way to the end
18 of the wall? That diagram's misprinted. See where the line
19 goes along the wall, where you put your red light?

20 A Right here?

21 Q There's no section there. That's -- see where the
22 table's at? Can you point it along the wall, the first table?

23 A Correct.

24 Q Move that table all the way to the end of the wall,
25 would you; with your red light, will you move it back? That's

ROUGH DRAFT TRANSCRIPT

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1 where the table's actually at in the photograph.

2 A Correct.

3 Q So, how could five officers be along the wall there?

4 A Well, that's what I'm saying. There's three.

5 There's one here. There's me, directly on the corner. And we

6 are not on the wall. They are stacked against me at an angle.

7 Our eyesight is just trying to continue this view into the

8 room.

9 Q Okay, Officer. You can take your seat. Thank you,
10 sir. But you clearly said that -- you didn't see any weapon
11 in my hands?

12 A No, I did not.

13 Q And I was laying beside her, is what I was gathering
14 from your testimony that was given. She was on her back, and
15 I was on my side, cradling her head, and --

16 A Correct.

17 Q Okay. I wasn't on top of her?

18 A No, sir.

19 Q Okay.

20 MR. O'KEEFE: No more questions, Your Honor.

21 THE COURT: Thank you, Mr. O'Keefe. Anything else,
22 Mr. --

23 MR. LALLI: Just very briefly.

24 REDIRECT EXAMINATION

25 BY MR. LALLI:

1 Q With respect to the baiting that you had testified
2 to on direct examination, you said that you clearly gave the
3 defendant directions to come out, and he didn't even respond
4 at first?

5 A Correct.

6 Q And then, he told you to come in there?

7 A "Get the fuck in there," is exactly what he said.

8 Q And it was an order?

9 A Yes, sir.

10 Q He told you at one point that Victoria was alive, or
11 the woman was alive, correct?

12 A Correct.

13 Q And at another time, he told you she was dead?

14 A Correct.

15 Q Seemed to you he might have been playing games with
16 you?

17 A It was not consistent, no.

18 Q Thank you.

19 MR. LALLI: Nothing else.

20 THE COURT: All right. That completes the testimony
21 then?

22 MR. O'KEEFE: Yes, sir. No further questions.

23 THE COURT: Thank you, sir.

24 THE WITNESS: Thank you.

25 THE COURT: Who else do you have, Mr. Lalli?

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1 MR. LALLI: Your Honor, Dan Newberry.

2 THE MARSHAL: Officer Newberry, if you will remain
3 standing. Please, sir, raise your right hand and face the
4 clerk.

5 DAN NEWBERRY, STATE'S WITNESS, SWORN

6 THE MARSHAL: Please have a seat, sir. And if you
7 would, please state and spell your name for the record.

8 THE WITNESS: My name is Dan Newberry. D-a-n,
9 N-e-w-b-e-r-r-y.

10 DIRECT EXAMINATION

11 BY MR. LALLI:

12 Q Sir, how are you employed?

13 A I'm employed with the Las Vegas Metropolitan Police
14 Department as a sergeant in the K-9 section.

15 Q What is K-9?

16 A K-9 as in dog partners.

17 Q All right.

18 A I would go out and use dogs to search for suspects.

19 Q How long have you been a K-9 sergeant?

20 A I'm just two months shy of two years.

21 Q How long have you been with Metro in total?

22 A June 29th, it will be 17 years.

23 Q And I want to direct your attention back to November
24 5th of 2008. What was your assignment back then?

25 A On that night, I was designated as a sergeant with a

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1 problem solving unit, also referred to as a PSU unit.

2 Q PSU standing for problem solving unit?

3 A Yes, sir.

4 Q And we've had some testimony already as to what a
5 problem solving unit does. But on that particular night, at
6 approximately 11:00 o'clock in the evening, were you working?

7 A Yes, we were. We were operating as a plain-clothes,
8 unmarked car, robbery suppression in the robbery corridors.

9 Q And as a sergeant, do you have supervisory
10 responsibilities?

11 A Yes, I do.

12 Q What are those?

13 A At that time, they were to supervise a group of
14 police officers that were designated as problem solving
15 officers; essentially detectives that work out of an area
16 command. And we would focus on street-level robberies,
17 narcotics transactions; little problem areas that would occur
18 within area commands.

19 Q You -- as -- are those -- is that cluster, or group
20 of officers referred to as a squad?

21 A Yes, sir, it is.

22 Q And then, you are the sergeant, or the supervisor of
23 that squad of officers?

24 A Yes, sir.

25 Q You said that you were doing robbery suppression.

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1 What is that?

2 A We would -- we would look at crime trends, crime
3 statistics, look for where robberies or crimes are occurring.
4 We would try to flood that area with officers, both plain cars
5 and uniformed officers that would work in the areas. And from
6 there, hopefully be present to witness, and then stop
7 robberies, or to be near locations that did get robbed, to be
8 like a quick reaction force in order to get people in custody.

9 Q All right. And depending on what Metro's priorities
10 are in any given month, you might do robbery suppression; you
11 might do some other sort of project as a problem solving unit;
12 is that true?

13 A That is correct.

14 Q Okay. So, on this particular evening, you and your
15 squad are in the process of robbery suppression. Does a call
16 come over the radio that you feel the need to respond to?

17 A Yes, there is.

18 Q Can you tell us about that?

19 A There was a call that came out. It was initially
20 started as a domestic dispute. It was over off of El Parque.
21 Described a female that was bleeding heavily, with a male in
22 her room.

23 Q So, what happens upon getting that call?

24 A We respond to the area. We knew it was right along
25 the Decatur robbery corridor that we had just been working.

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1 We knew it was domestic related, but there could have been a
2 possibility of it being other crime related.

3 Q And how serious of a call is this in the types of
4 crimes that you -- or calls that you get during the course of
5 a day?

6 A Domestic disturbances are routine, but they can be
7 very serious. Especially when you hear a term of, with a
8 female down and bleeding heavily, you know it's not exactly a
9 good call to go to.

10 Q You had referred to "we" a number of times in your
11 testimony. What other officers were you working with?

12 A That evening, we were working as a team. I had two
13 officers with me in one car. That was Officer Sean Taylor and
14 Officer Jeremiah Ballejos.

15 Q So, what do you do upon receiving this call?

16 A We respond right to the apartment, and attempt to
17 help.

18 Q Do you actually make way to unit number 35?

19 A Yes, we do.

20 Q Up on the diagram there in front of you for the jury
21 to see is State's Exhibit number 1. Does that appear to be a
22 diagram of unit 35?

23 A Yes, it is.

24 Q All right. The monitor is not working. So, is
25 there a laser pointer there in front of you? If you could

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1 just --

2 MR. LALLI: Is it okay if he comes down, and just
3 kind of describes what he did in the apartment, Your Honor?

4 THE COURT: Yes, please.

5 MR. LALLI: Okay.

6 THE COURT: Is that the laser?

7 MR. LALLI: Yes.

8 THE COURT: No, over here [inaudible].

9 THE WITNESS: Oh, just come over here?

10 BY MR. LALLI:

11 Q Yes. So, if you could just come down, and just
12 describe for the jury -- be cognizant not to turn your back on
13 folks on this end. Just -- this end over here.

14 A This end over there? Okay.

15 Q I mean -- yeah. If you could just explain for us,
16 Sergeant, what you did when you arrived in that apartment.

17 A When we entered the apartment, Officer Todd Conn,
18 who was a uniformed officer that night, was positioned here,
19 trying to negotiate or converse with the male suspect, Mr.
20 O'Keefe, in the room. There were several uniformed officers
21 in the kitchen and the living room area right here. I came
22 in, and stood next to Officer Conn, spoke with him for a few
23 minutes, where -- and listened to the conversation that was
24 going on.

25 Q What did you hear?

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1 A I don't recall much of the conversation that was
2 said. But it was fruitless. There was no -- it wasn't
3 proceeding. There was going to be no end to it any time soon
4 to where we could render aid to the female.

5 Q Did you have concern -- any officer safety concerns
6 with respect to how the conversation was progressing?

7 A I had concerns that Mr. O'Keefe could be essentially
8 establishing, or had established an ambush for officers that
9 entered the room. We wanted Mr. O'Keefe to come out to us,
10 and bring him out of his environment to us, where we could
11 take him into custody. He kept refusing, and would not come
12 out.

13 Q All right. So, what happened?

14 A I moved from next to Officer Conn up to this wall.
15 At that wall, I did what they call a quick peek, which is
16 essentially a quick head movement, head and shoulders, where
17 you peek around the wall, and get an observation, and come
18 back. When I looked into the room, I could see our female
19 victim, and I could see Mr. O'Keefe laying on her left side.

20 Q So, you're indicating -- on our diagram, you're
21 indicating to the -- to an area above where the figurine would
22 be in the diagram there?

23 A Yes, sir.

24 Q Okay.

25 A I could see him. There was light in the room. When

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1 I panned back, I could see large amounts of blood. There was
2 blood on both our victim, on Mr. O'Keefe, and there was a
3 large amount of blood on the bed, and some on the floor. I
4 also saw what I thought was the handle of a knife on the bed.

5 Q Does that pose any particular concern for you, the
6 knife?

7 A It does. Large amount of blood and a knife lets me
8 know that there could be some serious injuries, so we need to
9 get medical rapidly to her. And waiting a long time in order
10 to negotiate a surrender by Mr. O'Keefe would not be
11 productive for our female victim.

12 Q So, do you formulate a plan?

13 A From the wall, I formulate what we call an arrest
14 team, an entry team. I turned back around to Officer Conn,
15 and I asked him to be lethal cover as we enter the room.

16 Q What's lethal cover?

17 A Lethal cover would be deadly force, if deadly force
18 is needed due to some type of weapon, or our lives become in
19 jeopardy, or we need to defend somebody else's.

20 Q Is that a gun?

21 A It would be a gun, yes.

22 Q All right.

23 A Mr. Conn was armed with his sidearm, his pistol. I
24 turned to my officer, Jeremiah Ballejos, asked him to be less
25 than lethal cover, which would be a designated weapon; a

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1 baton, taser. In this case, it was an ECD or a taser, to be
2 used as a less lethal device in case we needed to use it to
3 arrest the suspect. And then, I asked Officer Sean Taylor to
4 roll in with me as the arrest team.

5 Q All right. So, what happens?

6 A We roll right into the room, straight down the
7 hallway. There are orders and commands that are given. Mr.
8 O'Keefe does not obey. The taser is deployed onto Mr.
9 O'Keefe.

10 Q Do you recall what those orders and commands were?

11 A I do not. It would be speculation on my part. I
12 just know --

13 Q Okay.

14 A -- what I would yell.

15 Q What would you typically yell in that scenario?

16 A In that case --

17 Q What sort of instructions would be given to an
18 individual that you wanted to remove and secure?

19 A I would want him to slide away from her, put his
20 hands where we could see them, put his hands out to his sides
21 where we could easily take and handcuff him; maybe cross his
22 feet and pull him up to his butt, kind of like a felony
23 handcuffing position.

24 Q Were commands given?

25 A Commands were given. I remember that.

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1 Q You just don't remember specifically what those
2 commands were?

3 A I do not.

4 Q Did the individual in the room, the male individual,
5 did he obey any of those commands?

6 A No, he did not.

7 Q What happened when you and officers entered the
8 room? Did he say anything?

9 A I do not recall.

10 Q All right. Do you recall whether he was concerned
11 about -- well, let me ask you this. What was the condition
12 about -- of the individual that's depicted in the diagram as
13 lying on the floor?

14 A The female victim was nude or naked from the waist
15 down. She did have on a black tank-top, and it looked like
16 she had something tied around one of her arms.

17 Q Did the individual say anything referenced to her
18 partially clothed condition?

19 A I remember seeing his hands move rapidly. And the
20 only thing that I do remember being said was along the lines
21 of, do not look at her. But his hands were moving around her
22 chest, waist, up to her face, as we rolled into the room.

23 Q All right. What happened when you entered the
24 room --

25 A For me, I --

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IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,)
)
Appellant,)
)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)
_____)

Case No.: 61631
District Court Case No.: C250630

APPELLANT'S APPENDIX

VOLUME 3

**APPEAL FROM JUDGMENT OF CONVICTION AND SENTENCE IN THE
EIGHTH JUDICIAL DISTRICT COURT**

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CERTIFICATE OF MAILING

I, hereby certify that on the 29th day of October, 2012, I did serve a true and correct copy of the foregoing APPELLANT'S APPENDIX by depositing same in the United States mail, first-class postage fully prepaid, addressed as follows:

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An Employee of Bellon & Maningo

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Ann L. Johnson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,

Plaintiff,

vs.

BRIAN KERRY O'KEEFE,

Defendant.

CASE NO. C-250630

DEPT. NO. XVII

TRANSCRIPT OF
PROCEEDINGS

BEFORE THE HONORABLE SENIOR JUDGE JOSEPH BONAVENTURE

ROUGH DRAFT TRANSCRIPT OF
JURY TRIAL - DAY 2

TUESDAY, JUNE 12, 2012

APPEARANCES:

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COURT RECORDER:

MICHELLE RAMSEY
District Court

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Proceedings recorded by audio-visual recording, transcript
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1 LAS VEGAS, NEVADA, TUESDAY, JUNE 12, 2012, 9:52 A.M.

2 (Outside the presence of the prospective jury panel)

3 THE MARSHAL: All rise and come to order.

4 Department 17 of the Eighth Judicial District is now in
5 session. The Honorable Judge Joseph Bonaventure presiding.
6 You may be seated. Remain in order. Make sure your cell
7 phones are turned off, please.

8 THE COURT: All right. This is outside the presence
9 of the jury. Did somebody want to put something on the
10 record?

11 MR. O'KEEFE: Yes, Your Honor. With all due
12 respect, I just wanted to ensure here real quickly that my
13 standing is -- I'm going to ask for a standing objection where
14 we left off yesterday, so I don't have to interrupt this
15 honorable Court, to try to save time. And I'm going to --
16 you're going to be very happy. We're going to move this case
17 along. We're going to get this show on the road.

18 But just to protect myself, preserve myself, again,
19 for the reason, I just want to clearly state for the record
20 that I feel that Mr. Lalli is trumping all over my presumption
21 of innocence. The due process; you're entitled to innocence
22 beyond a reasonable doubt, until proven guilty. He is
23 negatively giving an inference to the jury that a battery
24 domestic violence has been committed.

25 And the law of the case of the first appeal has

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1 clearly been established, and I'm just establishing it for the
2 record, Your Honor. You know, again, I want to reiterate that
3 -- Byford vs. State, the case that Mr. Lalli prosecuted, and I
4 thought I heard you say you were on --

5 THE COURT: Yeah, that was my case.

6 MR. O'KEEFE: Yes, sir. So, you know; you're very
7 well aware, and I'll be real brief.

8 The law of the case of the first appeal can only be
9 set by the Supreme Court of Nevada. They adjudicated this
10 issue, Your Honor, with all due respect. Your ruling, no
11 offense -- Judge Villani's prior ruling on the battery
12 domestic violence, that they're trying to refer to the jury
13 that happened, they've ruled it didn't happen. The evidence
14 didn't support it beyond a reasonable doubt.

15 Not only that, this is the same standard of proof.
16 It's the same level of charge.

17 THE COURT: Well, what didn't happen?

18 MR. O'KEEFE: They ruled that no unlawful act was
19 committed, Your Honor.

20 THE COURT: No, I think they said --

21 MR. O'KEEFE: Even if the charging --

22 THE COURT: They said --

23 MR. O'KEEFE: The charging document did not charge,
24 and the evidence presented that Mr. O'Keefe committed any
25 unlawful act, and the evidence presented at trial did not

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1 support this theory of second degree murder, verbatim.

2 THE COURT: "This theory" means the felony. The
3 felony. This is this theory. That's what I thought it said.

4 MR. O'KEEFE: No. And in the fast-track response
5 that I put in the judicial --

6 THE COURT: Well, I don't care what you put in. I'm
7 looking at the Supreme Court order and reversal. "The
8 charging document did not allege this alternative theory,"
9 which, the instruction regarding the felony. Is that right,
10 Mr. Lalli?

11 MR. LALLI: Yes, Your Honor.

12 THE COURT: And it doesn't say -- it does not allege
13 any -- it just says, no evidence supported this theory. And
14 then, the Supreme Court said here, the district court abuses
15 discretion when instructed the jury that second degree murder
16 includes involuntary killing that occurs in the commission of
17 an unlawful act, because the State's charging document did not
18 allege that O'Keefe killed the victim while he was committing
19 an unlawful act. And the evidence presented at trial did not
20 support this theory of second degree murder."

21 MR. O'KEEFE: And --

22 THE COURT: That's all it says, this theory about
23 the unlawful act, and that's why they reversed it. Am I
24 correct, or not correct?

25 MR. LALLI: You are correct, Your Honor.

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1 THE COURT: So, it's not -- it doesn't say the
2 evidence didn't support any theory. It just says, "this
3 theory." And that's why the -- pursuant to the instruction,
4 they said, we're going to give you a second chance.

5 MR. O'KEEFE: And Your Honor, again, very quickly,
6 just for preservation of the record again. If you go to
7 instruction 2, it says, "this theory," then, quickly, Your
8 Honor. "This theory." This theory, if you look at
9 instruction 18, number 2, has intent, act, unlawful,
10 knowledge. It's all the elements involved.

11 And in the opening statement, and during the trial,
12 and in closing argument, the State stated it was a battery
13 act. The law states -- and the charging document doesn't have
14 to allege any act.

15 They -- what I'm trying to say, Your Honor, just for
16 the record preservation also, trying to make sure you're
17 advised, even the State of Nevada that did the fast-track
18 response on the pill, said, we don't know what you're talking
19 about. We're not even talking about no felony (sic). We're
20 saying that we have the right to show implied malice, and
21 that's how it would be proved, by an unlawful act.

22 Unlawful was the first requirement you've got to
23 find before you even find if anybody was killed. You have to
24 find first that it was unlawful; second, that a killing
25 happened; and then, it happened with malice, aforethought; and

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1 then, how.

2 Number two, when it says, "that theory," Your Honor,
3 that theory it's -- it's equivalent to theory -- they're equal
4 in culpability. It doesn't matter whether it's this theory,
5 or that theory. It would equate to second degree murder in
6 the State of Nevada.

7 THE COURT: So, what -- to clarify in summary, your
8 objecting --

9 MR. O'KEEFE: Okay.

10 THE COURT: -- to Mr. Lalli doing what?

11 MR. O'KEEFE: Okay. He keeps giving inferences to
12 the jury that this homicide was committed during a battery. A
13 battery -- the battery act of intentional stabbing. The jury
14 at the first trial, when Mr. Lalli wasn't here -- it wasn't
15 his problem. He wasn't around. It was Mr. Smith at that
16 time.

17 He in opening statement stated, the act was an
18 intentional stabbing. You either did, or you didn't. The
19 jury of the [inaudible] at that time acquitted me of
20 intentional stabbing with intent. They said, he didn't do it.
21 We don't feel that you proved beyond a reasonable doubt, at
22 least, Your Honor. This is just for preservation of the
23 record.

24 I want you to -- they returned a second degree based
25 on implied malice; murder. In Nevada, that is by an unlawful

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1 act. Okay. The Supreme Court is wise. They realize what the
2 fast-track statement was saying, and what the fast-track
3 response was saying.

4 And they looked at both arguments, and they looked
5 at the record on appeal. And they said, okay. We understand
6 what you're saying here; we understand what you're saying
7 here. But our job is, after reviewing the record presented at
8 trial -- and it says explicitly in the reversal order, the
9 evidence presented at trial did not support that theory.

10 So, you have to go to theory [inaudible] and look at
11 it. Then, you have to look at the facts and circumstances
12 based on this individual case. This was nothing but a battery
13 alleged murder. It was a single alleged battery act of the
14 stabbing. She died, God bless her soul. They turned it into
15 a murder. It's not a battery, on top of a battery, on top of
16 a battery.

17 THE COURT: All right. Well, that's you're
18 repeating -- but you have a continuing --

19 MR. O'KEEFE: So --

20 THE COURT: -- objection for that. And Mr. Lalli,
21 do you want to respond to this? I can't go on and on.

22 MR. LALLI: I understand, Your Honor. The only
23 thing I want to point out, too, and another thing that Mr.
24 O'Keefe has not quite right, the jury never acquitted him of
25 an intentional killing. They acquitted him of a wilful,

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1 deliberate, and premeditated killing, which obviously is first
2 degree murder. Second degree murder, implied malice or
3 expressed malice. Expressed malice specifically includes an
4 intentional killing, which is one of the theories that's
5 alleged in the open murder. But other than that, we've
6 already made our record on that.

7 THE COURT: All right. So, I think the record is
8 clear. Mr. O'Keefe has a continuing objection. But I'm going
9 to allow Mr. Lalli to go into that, because I think that's the
10 state of the law right now. All right?

11 MR. O'KEEFE: And for the record, thank you, Your
12 Honor, for allowing me --

13 THE COURT: Thank you.

14 MR. O'KEEFE: -- to make that preservation.

15 THE COURT: No problem. I'll allow you to --

16 MR. O'KEEFE: Thank you, Your Honor.

17 THE COURT: -- make a record any time. You want to
18 bring the jury in?

19 THE MARSHAL: Officers and members of the court,
20 Department 17 potential jurors.

21 (Within the presence of the prospective jury panel)

22 THE COURT: Everybody can sit down. All right.
23 This is the continuation of trial C-250630, State of Nevada
24 vs. Brian O'Keefe. Good morning, everybody, and thank you
25 very much for your indulgence here.

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1 We're still in the process of selecting a jury. And
2 once we get the jury selected, we're going to -- we're going
3 to have to select the 12. And then, we're going to select two
4 alternate jurors, in case we have some problems down the road.
5 And then, the rest of you will be excused once we do that.
6 And then, we'll begin opening statements and testimony.

7 Again, thank you very much. I appreciate it. So, I
8 think what we have to do now is the clerk will call another
9 prospective juror to fill seat number 5.

10 THE CLERK: That will be Deborah Leonard.

11 THE COURT: All right. Deborah, is she here?

12 THE MARSHAL: She's here.

13 PROSPECTIVE JUROR NO. 044: I'm coming.

14 THE COURT: All right. How long have you been in
15 this area?

16 PROSPECTIVE JUROR NO. 044: Five and-a-half years.

17 THE COURT: And where did you come from?

18 PROSPECTIVE JUROR NO. 044: Ohio.

19 THE COURT: And what did you do as far as work is
20 concerned in Ohio?

21 PROSPECTIVE JUROR NO. 044: Mostly homemaker, and I
22 had a screen printing business.

23 THE COURT: What do you do here?

24 PROSPECTIVE JUROR NO. 044: Homemaker.

25 THE COURT: Okay. Are you married then?

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1 PROSPECTIVE JUROR NO. 044: Yes.

2 THE COURT: What does your husband do?

3 PROSPECTIVE JUROR NO. 044: He's a sheet metal
4 worker.

5 THE COURT: Children?

6 PROSPECTIVE JUROR NO. 044: Three.

7 THE COURT: Too young to work?

8 PROSPECTIVE JUROR NO. 044: No.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 044: They work.

11 THE COURT: What do they do?

12 PROSPECTIVE JUROR NO. 044: One is -- she just
13 graduated from Le Cordon Bleu. So, she's going to try to be a
14 chef.

15 THE COURT: Great.

16 PROSPECTIVE JUROR NO. 044: And another just
17 graduated from cosmetology school. And my son is working, and
18 he's going to go back to graphic art school.

19 THE COURT: Have you ever been in the military?

20 PROSPECTIVE JUROR NO. 044: No.

21 THE COURT: Are you acquainted with anybody in law
22 enforcement?

23 PROSPECTIVE JUROR NO. 044: My father. My step-dad.

24 THE COURT: What does your father do?

25 PROSPECTIVE JUROR NO. 044: He was -- he's a retired

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1 deputy sheriff.

2 THE COURT: Where?

3 PROSPECTIVE JUROR NO. 044: In Ohio.

4 THE COURT: All right. And again, that follow up
5 question. The fact that somebody -- you know somebody, your
6 relative; you're not to give greater weight to police
7 officers' testimony, simply because they're a police officer.
8 You give it the weight you deem appropriate. Do you
9 understand that?

10 PROSPECTIVE JUROR NO. 044: Yes.

11 THE COURT: And have you or anyone closely
12 associated with you ever been the victim of a crime?

13 PROSPECTIVE JUROR NO. 044: We had -- in our
14 business, we had fraud. Just --

15 THE COURT: Yeah.

16 PROSPECTIVE JUROR NO. 044: -- a bad check. Someone
17 tried to steal from us.

18 THE COURT: Was it here in Las Vegas, or Ohio?

19 PROSPECTIVE JUROR NO. 044: In Ohio.

20 THE COURT: Did they ever prosecute the person?

21 PROSPECTIVE JUROR NO. 044: Well, the bank actually
22 found the person --

23 THE COURT: All right.

24 PROSPECTIVE JUROR NO. 044: -- and settled it
25 before.

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1 THE COURT: All right. That's not going to affect
2 your deliberation?

3 PROSPECTIVE JUROR NO. 044: No.

4 THE COURT: And have you or anyone closely
5 associated with you ever been arrested for a crime?

6 PROSPECTIVE JUROR NO. 044: My son.

7 THE COURT: How old was he when he was arrested?

8 PROSPECTIVE JUROR NO. 044: He was 18, for stealing.

9 THE COURT: Here in town?

10 PROSPECTIVE JUROR NO. 044: Yes.

11 THE COURT: And what were the results of that?

12 PROSPECTIVE JUROR NO. 044: It was a misdemeanor
13 charge. It was just a --

14 THE COURT: Was it an adult -- it was an adult? I
15 guess 18 --

16 PROSPECTIVE JUROR NO. 044: Well, he -- you know, he
17 might have been 17.

18 THE COURT: Well, did he go to juvenile court, or
19 the regular court? Do you remember at all?

20 PROSPECTIVE JUROR NO. 044: I was in Ohio. My
21 husband was here with him.

22 THE COURT: All right. All right. Well, again, it
23 was resolved, and you think he was treated fairly?

24 PROSPECTIVE JUROR NO. 044: Yes.

25 THE COURT: So, that's not going to affect your

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1 deliberation?

2 PROSPECTIVE JUROR NO. 044: No.

3 THE COURT: And if you're picked as a juror, you can
4 follow my instructions of law?

5 PROSPECTIVE JUROR NO. 044: Yes.

6 THE COURT: And could you be fair in this case?

7 PROSPECTIVE JUROR NO. 044: Yes, sir.

8 THE COURT: All right. Thank you, ma'am. State,
9 questions; pass for cause?

10 MS. MERCER: Thank you, Your Honor. Ma'am, have you
11 ever witnessed an incident of domestic violence?

12 PROSPECTIVE JUROR NO. 044: I have not seen. My
13 sister is a victim.

14 MS. MERCER: Your sister is a victim of domestic
15 violence?

16 PROSPECTIVE JUROR NO. 044: She also was an abuser.

17 MS. MERCER: I'm sorry, she's also what?

18 PROSPECTIVE JUROR NO. 044: She also did some
19 abusing.

20 MS. MERCER: Okay.

21 PROSPECTIVE JUROR NO. 044: It was --

22 MS. MERCER: And was she a victim at the hands of
23 the same person?

24 PROSPECTIVE JUROR NO. 044: Yes.

25 MS. MERCER: Is it an ongoing relationship?

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1 PROSPECTIVE JUROR NO. 044: No. It's over.

2 MS. MERCER: How long did the relationship last?

3 PROSPECTIVE JUROR NO. 044: About two and-a-half to
4 three years.

5 MS. MERCER: And was it abusive during the entire
6 course of the relationship?

7 PROSPECTIVE JUROR NO. 044: No. Mostly like the
8 middle of the relationship, and near the end.

9 MS. MERCER: Did you -- how closely -- were you
10 living here at the time, or were you living in Ohio?

11 PROSPECTIVE JUROR NO. 044: I was in Ohio. So, this
12 was probably ten years ago.

13 MS. MERCER: Okay. And were you closely involved in
14 it -- with your sister's life at the time?

15 PROSPECTIVE JUROR NO. 044: She would confide in me.

16 MS. MERCER: Based on what you knew, was he the one
17 that typically initiated the violence, or was it her?

18 PROSPECTIVE JUROR NO. 044: She would say things to
19 set him off.

20 MS. MERCER: Do you think that that's a legitimate
21 excuse for becoming violent?

22 PROSPECTIVE JUROR NO. 044: No.

23 MS. MERCER: When did she finally leave the
24 relationship?

25 PROSPECTIVE JUROR NO. 044: Well --

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1 MS. MERCER: In other words, what did it take to
2 finally make her leave?

3 PROSPECTIVE JUROR NO. 044: I think she just got --
4 they just both decided it was time to leave.

5 MS. MERCER: Do you know whether she went through
6 any counseling as she going through that domestic violence?

7 PROSPECTIVE JUROR NO. 044: No, she did not.

8 MS. MERCER: Is there anything about that experience
9 that would make you biased against either side in this case?

10 PROSPECTIVE JUROR NO. 044: No.

11 MS. MERCER: What -- who violent was the abuse?

12 PROSPECTIVE JUROR NO. 044: Mostly, it was a lot of
13 verbal, some pushing. He choked her once.

14 MS. MERCER: Okay. Did you ever observe any
15 injuries on her, anything like that?

16 PROSPECTIVE JUROR NO. 044: No. She would only tell
17 me.

18 MS. MERCER: Pass for cause, Your Honor.

19 THE COURT: All right. Questions; pass for cause,
20 Mr. O'Keefe?

21 MR. O'KEEFE: Yes, Your Honor. Just real brief,
22 Your Honor. [Inaudible]. [inaudible]. Do you think that
23 somebody drunk could be easily confused?

24 PROSPECTIVE JUROR NO. 044: I'm sorry, somebody
25 what?

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1 MR. O'KEEFE: Somebody drunk could be easily
2 confused?

3 PROSPECTIVE JUROR NO. 044: Yes.

4 MR. O'KEEFE: Okay. So then, by that answer, I
5 understand that if somebody was extremely drunk, that would
6 greaten it?

7 PROSPECTIVE JUROR NO. 044: Well, usually when
8 they're extremely drunk, they really seem to not know what
9 they're doing at times.

10 MR. O'KEEFE: So, then --

11 PROSPECTIVE JUROR NO. 044: Or remember.

12 MR. O'KEEFE: -- that would be relevant, then, to
13 know if someone was truly proven -- the state -- the level of
14 intoxication they may possibly be under. Do you feel that's
15 correct?

16 PROSPECTIVE JUROR NO. 044: Yes.

17 MR. O'KEEFE: Okay. Thank you. Do you feel
18 detectives learn to possibly manipulate people when they do an
19 interrogation?

20 PROSPECTIVE JUROR NO. 044: No. I think people
21 might be intimidated.

22 MR. O'KEEFE: Okay. Could you explain on that a
23 little bit more, expand?

24 PROSPECTIVE JUROR NO. 044: Like, this is a little
25 intimidating to me, so.

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1 MR. O'KEEFE: Okay.

2 PROSPECTIVE JUROR NO. 044: It's just, you know,
3 some people might say things that maybe they think later on,
4 well, that's not really what I meant to say, or something.

5 MR. O'KEEFE: So, human error. Sometimes, someone
6 extremely drunk may say something right off the bat, but not,
7 wait a minute, you didn't get that right; no, that's what you
8 said, too late. You know what I mean?

9 PROSPECTIVE JUROR NO. 044: Yes.

10 MR. O'KEEFE: Especially under the condition of
11 extremely drunk. Okay, great. Do you think though -- I
12 understand detectives have a job to do, especially in a
13 homicide situation. Let's be honest about that. But do you
14 think that maybe they become a little more skilled and
15 trained, and may intentionally sometimes try to trip people
16 up? Do you just think it's possible?

17 PROSPECTIVE JUROR NO. 044: You mean, like ask them
18 a trick question?

19 MR. O'KEEFE: Yeah, try to set -- you know, hey,
20 part of a -- you know, hey, part of a -- you know.

21 PROSPECTIVE JUROR NO. 044: Try and get different
22 answers from them at different times?

23 MR. O'KEEFE: Yeah, exactly.

24 PROSPECTIVE JUROR NO. 044: That's possible. I
25 don't think they're trying to do it intentionally, just to

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1 maybe see --

2 MR. O'KEEFE: But could they possibly -- some maybe
3 -- some often, you know, [inaudible].

4 PROSPECTIVE JUROR NO. 044: I suppose, yes.

5 MR. O'KEEFE: And that's -- I appreciate your
6 honesty on that. It's just a possibility.

7 During an interrogation by detectives, if they admit
8 by their own paperwork or words that someone is extremely,
9 extremely, possibly mentally distressed, extremely
10 intoxicated, no sleep; they pass out during an interrogation,
11 and then they come in and they wake this individual up; start
12 answering me right now, [inaudible], do you think that's
13 appropriate?

14 Or do you think that maybe they should be re-advised
15 of what's going on? Or do you think that the police are bound
16 by any certain conduct that they should -- hey, you're here,
17 you know, let me read you your Miranda Rights again; do you
18 understand what's going on? Or do you think it's fair that
19 they can just instantly in a matter of seconds, say, answer me
20 now, tell me. Do you think that's inappropriate for the
21 police to do?

22 PROSPECTIVE JUROR NO. 044: I guess it would depend
23 on the situation.

24 MR. O'KEEFE: Okay. That's a fair enough answer.
25 Thank you for that. Do you feel -- last question, that

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1 detectives may learn through experience in years that, man, I
2 know this guy -- hypothetical situation. He's extremely
3 intoxicated, he's out of his mind. And I know, man, the law.
4 Man, if I take a test, and it shows he's .3, .4; whatever.
5 Man, I know this whole questioning is worthless. So, if I
6 don't do this test, we don't know affirmatively forever --
7 that's destroyed. We never know what his true level of
8 intoxication was.

9 My point being -- the question is now -- I'll
10 clarify. Do you think maybe if they know, and if it's policy,
11 that they should take that type of evidence and let it been
12 seen for both sides? Yes or no? Simple answer. Should they
13 take that evidence?

14 MR. LALLI: Your Honor, I don't think the --

15 PROSPECTIVE JUROR NO. 044: Yes.

16 MR. LALLI: -- juror can answer that yes or no.

17 THE COURT: Well --

18 MR. LALLI: Many compound components to it.

19 MR. O'KEEFE: Yes, okay.

20 THE COURT: Yeah, it is a compound.

21 PROSPECTIVE JUROR NO. 044: Yeah, that is a big,
22 long question.

23 MR. O'KEEFE: Okay. What I'm trying to say is --
24 it's simple. If the police know -- ma'am, simple. If the
25 police know you're extremely intoxicated, you know, don't you

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1 think you'd want to say, well, let's take a blood -- breath
2 test, and let's see. As they say, is he under any drugs or
3 drinking? We already admit that he's so drunk, let's find out
4 how drunk he is, and let it be seen. Let's share that
5 information. Let's be fair about it. If you're in handcuffs,
6 do you think they should do that? They have a duty.

7 PROSPECTIVE JUROR NO. 044: It's fair to do that,
8 yes.

9 MR. O'KEEFE: Thank you very much. No further
10 questions, Your Honor. I'll pass for cause.

11 THE COURT: All right. Now, the State can exercise
12 it's fourth and final peremptory challenge.

13 MR. LALLI: Your Honor, the State would waive it's
14 fourth peremptory challenge.

15 THE COURT: Thank you, Mr. Lalli. The -- Mr.
16 O'Keefe, you can exercise your fourth, and this is the final
17 peremptory challenge. Of course, we're going to have two
18 alternate jurors. You'll have one preempt on that.

19 MR. O'KEEFE: Okay, Your Honor. Just 30 seconds,
20 sir, please.

21 THE COURT: Well, take your time. I'm not rushing
22 you.

23 (Pause in the proceedings)

24 MR. O'KEEFE: Yes, Your Honor. Thank you for your
25 patience. Juror number 13 in seat 11, I'd like to thank and

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1 excuse Mr. David Patton, I do believe.

2 THE COURT: All right. Mr. Patton, please report
3 back to the jury commissioner. Clerk, call another
4 prospective juror.

5 THE CLERK: Joseph McCrink.

6 PROSPECTIVE JUROR NO. 045: Here.

7 THE COURT: All right. Mr. McCrink, how long have
8 you been in the Las Vegas area?

9 PROSPECTIVE JUROR NO. 045: Almost two years.

10 THE COURT: And where did you come from?

11 PROSPECTIVE JUROR NO. 045: San Diego. We were
12 there for five years.

13 THE COURT: And --

14 PROSPECTIVE JUROR NO. 045: Originally, New Jersey.

15 THE COURT: Did you work in San Diego?

16 PROSPECTIVE JUROR NO. 045: I did. I have a
17 home-based promotional items business.

18 THE COURT: And then, you moved here two years ago?

19 PROSPECTIVE JUROR NO. 045: Correct, almost two
20 years ago.

21 THE COURT: And what do you do? Do you still work,
22 or not?

23 PROSPECTIVE JUROR NO. 045: I do. I have the same
24 business.

25 THE COURT: And what is it exactly, the business?

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1 PROSPECTIVE JUROR NO. 045: It's promotional items.
2 It's imprinted calendars, imprinted --

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 045: -- pens, that sort of
5 stuff.

6 THE COURT: All right. Are you married?

7 PROSPECTIVE JUROR NO. 045: I am.

8 THE COURT: Does your wife work, or she works with
9 you?

10 PROSPECTIVE JUROR NO. 045: Yes. She works
11 separate. And she works -- she's a director of treasury for
12 one of the major casinos here.

13 THE COURT: Do you have children?

14 PROSPECTIVE JUROR NO. 045: We don't.

15 THE COURT: Have you ever been in the military?

16 PROSPECTIVE JUROR NO. 045: I haven't.

17 THE COURT: Are you acquainted with anybody in law
18 enforcement?

19 PROSPECTIVE JUROR NO. 045: No, no.

20 THE COURT: Have you or anyone closely associated
21 with you ever been the victim of a crime?

22 PROSPECTIVE JUROR NO. 045: Many, many years ago, my
23 sister -- it's probably close to 30 years ago. She was
24 waiting tables down in the Virgin Islands, and a couple of
25 guys were holding up the case register, and she was stabbed.

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1 And it was a small knife, so fortunately, she wasn't hurt.
2 But that was the end of it. I don't know -- I don't think
3 they ever caught the guys, but --

4 THE COURT: That was about 30 years ago?

5 PROSPECTIVE JUROR NO. 045: That was probably about
6 30 years --

7 THE COURT: And your sister's all right now?
8 She's --

9 PROSPECTIVE JUROR NO. 045: She was even fine --

10 THE COURT: Because it's very traumatic, I'm sure.
11 All right.

12 PROSPECTIVE JUROR NO. 045: Right.

13 THE COURT: Well, that's not going to affect your
14 deliberation in this case, is it?

15 PROSPECTIVE JUROR NO. 045: Not at all.

16 THE COURT: Have you or anyone closely associated
17 with you ever been arrested for a crime?

18 PROSPECTIVE JUROR NO. 045: No.

19 THE COURT: Have you ever served on a jury before?

20 PROSPECTIVE JUROR NO. 045: No.

21 THE COURT: Are you going to be able to listen to my
22 instructions of law, and follow my instructions of law?

23 PROSPECTIVE JUROR NO. 045: Yes.

24 THE COURT: And you could be fair and impartial in
25 this case as to both sides?

ROUGH DRAFT TRANSCRIPT

000518

1 PROSPECTIVE JUROR NO. 045: I believe so. I have
2 one -- one slight reservation, and that would just be -- and I
3 will certainly follow your directions, and I know the
4 defendant has a cloak of innocence on him. But I feel as
5 though it makes it a little hazier when he's defending
6 himself, as opposed to having a professional counsel do it for
7 him, because I know he's very emotionally tied to it.

8 And even picking the jury, he has displayed some
9 emotion, which I understand. But it can make it a little
10 hazier I think, just in deciphering the facts.

11 THE COURT: All right. Well, I mean, Mr. Lalli
12 mentioned about, it's a constitutional right. But Mr. Lalli,
13 proceed.

14 MR. LALLI: Thank you, Your Honor. Good morning,
15 Mr. McCrink.

16 PROSPECTIVE JUROR NO. 045: Good morning.

17 MR. LALLI: How are you?

18 PROSPECTIVE JUROR NO. 045: Good. Thank you.

19 MR. LALLI: I guess when we see jury trials on
20 television or in the news, there's usually lawyers on both
21 sides of the courtroom. And your -- seems like you're more
22 comfortable in that sort of a situation?

23 PROSPECTIVE JUROR NO. 045: I believe I would be.
24 Yes.

25 MR. LALLI: Okay. Maybe if you were charged with a

ROUGH DRAFT TRANSCRIPT

000519

1 crime, you would want a lawyer to represent you, as opposed to
2 representing yourself?

3 PROSPECTIVE JUROR NO. 045: I would definitely have
4 done that, yes --

5 MR. LALLI: All right.

6 PROSPECTIVE JUROR NO. 045: -- for myself.

7 MR. LALLI: As Judge Bonaventure indicated, and I
8 mentioned a time or two yesterday, one of the rights that the
9 constitution allows is, if we want to represent our self, we
10 can do that. And the defendant, for whatever reason, has
11 exercised that right. Will you hold that against him in any
12 way?

13 PROSPECTIVE JUROR NO. 045: No, no. I won't hold it
14 against him. I -- I think -- the best way to explain it is, I
15 just think, you know, I know he wants the facts displayed, and
16 you want the facts displayed. And I think if they were done
17 in a non-emotional way, it would be a little bit, you know,
18 clearer. But, you know, it's just a little extra work to
19 decipher through it. That's the best way I can explain it.

20 MR. LALLI: Sure. And do you think you can do that?
21 Do you think you have the ability to decipher -- you mentioned
22 emotion. And --

23 PROSPECTIVE JUROR NO. 045: Um-hum.

24 MR. LALLI: -- maybe emotion's sincere; maybe it's
25 not sincere. People have all kinds of motivations in acting

ROUGH DRAFT TRANSCRIPT

000520

1 how they do in front of others. Do you think you've got the
2 ability to weed through the evidence, and kind of sort out the
3 nonsense?

4 PROSPECTIVE JUROR NO. 045: Um-hum. I believe so.
5 I guess it's to be seen, but I believe so.

6 MR. LALLI: Okay. So, having said all that, do you
7 think you can still be a fair juror in this case, knowing that
8 the defendant's representing himself?

9 PROSPECTIVE JUROR NO. 045: I believe so.

10 MR. LALLI: Okay.

11 PROSPECTIVE JUROR NO. 045: I believe so.

12 MR. LALLI: You'll do the best that you can?

13 PROSPECTIVE JUROR NO. 045: I'll do the best I can.

14 MR. LALLI: All right.

15 PROSPECTIVE JUROR NO. 045: Yes.

16 MR. LALLI: Fair enough. I wanted to ask you about
17 your job. And I understand that you -- either you work for a
18 company that makes promotional items, or is it your company?

19 PROSPECTIVE JUROR NO. 045: Oh, it's my company,
20 actually.

21 MR. LALLI: All right.

22 PROSPECTIVE JUROR NO. 045: And you know, they don't
23 -- I don't make the promotional items. I'm more like a vendor
24 for many different manufacturers throughout the country.

25 MR. LALLI: Understood.

ROUGH DRAFT TRANSCRIPT

000521

1 PROSPECTIVE JUROR NO. 045: And the -- kind of a
2 middle man. And so, it gave me a lot of flexibility, for
3 instance, when we were in San Diego, since I work out of the
4 home. And my wife's job was winding down there. You know,
5 nice way of saying she was being laid off. She at the same
6 time got a nice offer out here. And being the way the economy
7 was back a few years ago, I said, well, it might be a good
8 idea if we take it. And I'm glad we did.

9 MR. LALLI: All right. Do you -- you work out of
10 the home. Do you supervise employees? Do you have employees?

11 PROSPECTIVE JUROR NO. 045: No, just myself.

12 MR. LALLI: Have you ever had employees?

13 PROSPECTIVE JUROR NO. 045: Maybe once or twice, but
14 it was -- they were kind of like an independent contractor. I
15 wasn't -- and they were just making a commission.

16 MR. LALLI: Do you -- do you engage of the process
17 of sales? So, do you go visit clients, or is your work done
18 online? How is it that you interact with customers?

19 PROSPECTIVE JUROR NO. 045: A little of each. Over
20 the years, it's progressively gotten less personal because of
21 the internet, and people are just busier. So, it's -- you
22 know, occasionally if I have to go see somebody, I'll do it,
23 but it's very rare. Years ago, I would do a lot more of that.

24 MR. LALLI: Can you explain for us your educational
25 background?

ROUGH DRAFT TRANSCRIPT

000522

1 PROSPECTIVE JUROR NO. 045: I have a bachelor's
2 degree in business.

3 MR. LALLI: Was that back in New Jersey somewhere?

4 PROSPECTIVE JUROR NO. 045: That's correct. It was
5 Mont Claire State College (phonetic).

6 MR. LALLI: How long have you been employed for
7 yourself? How long have you been doing that?

8 PROSPECTIVE JUROR NO. 045: Probably since college.
9 My father was a fire captain, and he did this business on the
10 side, and he passed away when I was 17. And I kind of just
11 fell into it that way.

12 MR. LALLI: All right. And your wife is -- she does
13 accounting work, I take it?

14 PROSPECTIVE JUROR NO. 045: Well, treasury is
15 similar to accounting. It's in --

16 MR. LALLI: What's the difference?

17 PROSPECTIVE JUROR NO. 045: -- finance. It's a
18 little different. They kind of take the money from the
19 casino, and invest it in different --

20 MR. LALLI: Okay.

21 PROSPECTIVE JUROR NO. 045: -- ways. And so, a
22 little more interesting than accounting, but it's a finance
23 department.

24 MR. LALLI: Okay. All right. What did you -- what
25 went through your mind when you learned that this was a murder

ROUGH DRAFT TRANSCRIPT

000523

1 case?

2 PROSPECTIVE JUROR NO. 045: Serious. That -- you
3 know, serious about -- you know, I -- it's -- it's something
4 you take a lot more serious than, say something -- a robbery
5 or something, obviously. And that's the first word I can
6 think of, I felt this was serious.

7 MR. LALLI: You heard Bonaventure -- or Judge
8 Bonaventure yesterday say that it's the State's burden to
9 prove the defendant's guilt beyond a reasonable doubt. If we
10 don't do that, he's legally, ethically, morally entitled to a
11 verdict of not guilty. If we fail to prove his guilt beyond a
12 reasonable doubt, could you return a verdict of not guilty?

13 PROSPECTIVE JUROR NO. 045: Absolutely.

14 MR. LALLI: And conversely, if we were to prove to
15 you beyond a reasonable doubt that he was guilty of murder,
16 would you convict him?

17 PROSPECTIVE JUROR NO. 045: Yes, I would.

18 MR. LALLI: Do you understand that the burden of
19 proof beyond a reasonable doubt -- and Judge Bonaventure will
20 instruct you if you're selected on the jury as to what that
21 is.

22 PROSPECTIVE JUROR NO. 045: Um-hum.

23 MR. LALLI: But that burden, beyond a reasonable
24 doubt, is the same burden in every criminal trial. Regardless
25 if it's a murder or robbery, a burglary, a fraud case, the

ROUGH DRAFT TRANSCRIPT

000524

1 quantum of proof is the same. Do you understand that?

2 PROSPECTIVE JUROR NO. 045: I do now. I've never
3 been on a jury. I didn't know if there was -- the definition
4 would be a little slightly different --

5 MR. LALLI: Okay.

6 PROSPECTIVE JUROR NO. 045: -- for a murder case.
7 But I was waiting for the Judge, if I --

8 MR. LALLI: All right.

9 PROSPECTIVE JUROR NO. 045: -- got that far, to tell
10 me.

11 MR. LALLI: So, just because it's a murder case
12 doesn't mean the burden of proof is any higher; it's the same?

13 PROSPECTIVE JUROR NO. 045: I comprehend, yes.

14 MR. LALLI: Okay. Now, do you -- do you have any
15 personal experience with domestic violence?

16 PROSPECTIVE JUROR NO. 045: None.

17 MR. LALLI: Do you believe that domestic violence is
18 an important issue in our community?

19 PROSPECTIVE JUROR NO. 045: Yes.

20 MR. LALLI: Why?

21 PROSPECTIVE JUROR NO. 045: Well, I -- I don't like
22 anybody to be abused in any way. So, I think it's very
23 important, yes.

24 MR. LALLI: Do you -- some people believe -- and
25 again, I apologize for repeating this kind of from yesterday.

ROUGH DRAFT TRANSCRIPT

000525

1 Some people have the opinion that what happens between a man
2 and a woman, or domestic partners, whatever it is, in the
3 home, is a private matter, and ought to stay there. The
4 government shouldn't involve itself in that. Do you believe
5 that, or do you think there are times when the government
6 needs to get involved with what happens in the home?

7 PROSPECTIVE JUROR NO. 045: The latter. I think
8 they definitely should get involved. I think sometimes people
9 are emotionally beaten down, where, you know, they don't even
10 know how to defend themselves anymore. So, I would be all for
11 them getting involved.

12 MR. LALLI: Do you have any experience in dealing
13 with people who are mentally ill, or do you have any
14 experience in knowing people who are mentally ill?

15 PROSPECTIVE JUROR NO. 045: Well, my mother, who
16 died last November, had Alzheimer's disease. And you know,
17 obviously, she was fine before she had the disease. So, but
18 it's certainly a mental illness, and a very serious one that
19 she died from.

20 MR. LALLI: Sure. Sure.

21 PROSPECTIVE JUROR NO. 045: Besides that, my wife,
22 maybe many, many years ago had a little bout of depression,
23 and got over it. And you know, I think it was just a down
24 point in her life.

25 MR. LALLI: Understood.

ROUGH DRAFT TRANSCRIPT

000526

1 PROSPECTIVE JUROR NO. 045: You know, but I think
2 that would be about it.

3 MR. LALLI: Did she seek professional help for that?

4 PROSPECTIVE JUROR NO. 045: I think just a regular
5 doctor, and she might have just temporarily taken an
6 antidepressant. And you know, I think it was just a low
7 point, and she got off them. And it was -- that was quite a
8 few years ago, too.

9 MR. LALLI: All right. She was able to see a
10 doctor, get some medication, and that medication helped kind
11 of bring her back to where she should be?

12 PROSPECTIVE JUROR NO. 045: I think it did help,
13 yes.

14 MR. LALLI: All right.

15 PROSPECTIVE JUROR NO. 045: Yes.

16 MR. LALLI: During that period of time when she was
17 suffering from depression, would you classify her as maybe
18 being vulnerable in some respects?

19 PROSPECTIVE JUROR NO. 045: Yes.

20 MR. LALLI: How so?

21 PROSPECTIVE JUROR NO. 045: Just -- I would say more
22 sensitive. And just -- at that time, I would also say just
23 harder for her to cope with things in general, because she was
24 feeling low.

25 MR. LALLI: All right. Do you think you can be fair

ROUGH DRAFT TRANSCRIPT

000527

1 to Mr. O'Keefe and to the State?

2 PROSPECTIVE JUROR NO. 045: I'll do my best. I
3 believe I can, yes.

4 MR. LALLI: Great. Thank you. Your Honor, we'll
5 pass for cause.

6 THE COURT: Mr. O'Keefe, questions; pass for cause?

7 MR. O'KEEFE: I like him. No questions, Your Honor.

8 THE COURT: Pass for cause?

9 MR. O'KEEFE: Pass for cause.

10 THE COURT: All right. All right. Let's call two
11 potential alternate jurors. And the first juror that's
12 called, go on the top seat, right next to Mr. Derfelt, right?
13 Yeah. And then, the second one, sit at the bottom there. All
14 right. Alternate Juror number 1?

15 THE CLERK: Manhas Madan.

16 THE COURT: And Alternate Juror number 2 on the
17 bottom? And they're going to stay, alternate 1 and 2, in that
18 respect, all right?

19 THE CLERK: Justin Johnson.

20 THE COURT: All right. Mr. Madan, how long have you
21 been in this area?

22 PROSPECTIVE JUROR NO. 047: One and-a-half years.

23 THE COURT: And where did you come from?

24 PROSPECTIVE JUROR NO. 047: India.

25 THE COURT: Okay. Did you come right from India a

ROUGH DRAFT TRANSCRIPT

000528

1 year and-a-half ago, or did you live in another state?

2 PROSPECTIVE JUROR NO. 047: I come from India. I
3 don't -- what did you say?

4 THE COURT: Who? I'm sorry.

5 UNKNOWN MALE SPEAKER: He doesn't speak very --
6 English very well.

7 THE COURT: Okay. You should have heard my father.
8 Right from Sicily. Well, any objection -- perhaps if he's --
9 you know, in another --

10 MR. LALLI: No, Your Honor.

11 THE COURT: -- area, he's --

12 MR. LALLI: No objection.

13 THE COURT: Any objection, Mr. O'Keefe, if we excuse
14 him?

15 MR. O'KEEFE: No, Your Honor.

16 THE COURT: All right. Then why don't you go back
17 to the jury commissioner, and tell them I excused you. And
18 this is still Alternate Juror number 1. We'll call another
19 prospective Alternate Juror number 1.

20 THE CLERK: Alexis Byrd.

21 THE COURT: All right. Ms. Byrd, how long have you
22 been in this area?

23 PROSPECTIVE JUROR NO. 052: For about like five or
24 six years.

25 THE COURT: What do you do for a living?

ROUGH DRAFT TRANSCRIPT

000529

1 PROSPECTIVE JUROR NO. 052: I play basketball at a
2 university.

3 THE COURT: You go to a university?

4 PROSPECTIVE JUROR NO. 052: Yeah.

5 THE COURT: And you're a student at the university?

6 PROSPECTIVE JUROR NO. 052: Yeah. And with that, I
7 start summer school like next week, but I'm supposed to be
8 going out of town this week.

9 THE COURT: Well, I'm very --

10 PROSPECTIVE JUROR NO. 052: So, I'm just letting you
11 know up front.

12 THE COURT: I'm very soft-hearted for students,
13 because I like education and everything. So, any objection if
14 we excuse her?

15 MR. LALLI: No, Your Honor.

16 THE COURT: Mr. --

17 MR. O'KEEFE: No, Your Honor.

18 THE COURT: All right. Go tell the jury
19 commissioner I excused you.

20 PROSPECTIVE JUROR NO. 052: Okay.

21 THE COURT: We'll call another potential Alternate
22 Juror number 1.

23 THE CLERK: Eric Mikuski.

24 THE COURT: Eric, how long you been in this area?

25 PROSPECTIVE JUROR NO. 053: About 13 years.

ROUGH DRAFT TRANSCRIPT

000530

1 THE COURT: What do you do for a living?

2 PROSPECTIVE JUROR NO. 053: I am a student at the
3 University of Wisconsin, Medicine.

4 THE COURT: So, you're on summer break?

5 PROSPECTIVE JUROR NO. 053: Yes.

6 THE COURT: So, you could -- you're all right. And
7 you just -- your parents live here, or?

8 PROSPECTIVE JUROR NO. 053: Yes.

9 THE COURT: And what do they do for a living?

10 PROSPECTIVE JUROR NO. 053: My mother's a secretary
11 at Nellis Air Force Base. And -- well, my father lives in
12 Tennessee.

13 THE COURT: Okay. All right. Are you married at
14 all?

15 PROSPECTIVE JUROR NO. 053: No.

16 THE COURT: Children?

17 PROSPECTIVE JUROR NO. 053: No.

18 THE COURT: Never been in the military?

19 PROSPECTIVE JUROR NO. 053: No.

20 THE COURT: And are you acquainted with anybody in
21 law enforcement?

22 PROSPECTIVE JUROR NO. 053: No.

23 THE COURT: And have you ever -- you or anyone
24 closely associated ever been a victim of a crime?

25 PROSPECTIVE JUROR NO. 053: My house was broken into

ROUGH DRAFT TRANSCRIPT

000531

1 a couple of years ago, but --

2 THE COURT: Here in town, or in --

3 PROSPECTIVE JUROR NO. 053: In Las Vegas.

4 THE COURT: Did they catch the individual?

5 PROSPECTIVE JUROR NO. 053: No.

6 THE COURT: All right. That's not going to affect
7 your deliberation here, right?

8 PROSPECTIVE JUROR NO. 053: No.

9 THE COURT: Okay. What about, you or anyone closely
10 associated been arrested for a crime?

11 PROSPECTIVE JUROR NO. 053: No.

12 THE COURT: You ever served on a jury before?

13 PROSPECTIVE JUROR NO. 053: No.

14 THE COURT: Do you think you can be fair in this
15 case?

16 PROSPECTIVE JUROR NO. 053: Yes.

17 THE COURT: All right. Thank you.

18 MS. MERCER: Thank you, Your Honor. What are you
19 studying in school?

20 PROSPECTIVE JUROR NO. 053: I'm studying journalism,
21 with an emphasis in public relations.

22 MS. MERCER: And what year are you?

23 PROSPECTIVE JUROR NO. 053: I just finished my
24 freshman year.

25 MS. MERCER: So, you'll be a sophomore next year?

ROUGH DRAFT TRANSCRIPT

000532

1 PROSPECTIVE JUROR NO. 053: Yes.

2 MS. MERCER: And you said your father lives in
3 Tennessee. What does he do for a living?

4 PROSPECTIVE JUROR NO. 053: He works as security on
5 merchant ships fighting, you know, pirates.

6 MS. MERCER: Okay. So, he doesn't -- he's out at
7 sea most of the time?

8 PROSPECTIVE JUROR NO. 053: He's out at sea -- right
9 now, he's in the States. But yes, he works out in sea.

10 MS. MERCER: Okay. Have you ever witnessed an
11 incident of domestic violence?

12 PROSPECTIVE JUROR NO. 053: No.

13 MS. MERCER: Do you know anybody close to you that's
14 been a victim of domestic violence?

15 PROSPECTIVE JUROR NO. 053: No.

16 MS. MERCER: Do you have any strong feelings about
17 it, one way or another?

18 PROSPECTIVE JUROR NO. 053: Not particularly.

19 MS. MERCER: Is there anything that would prevent
20 you from being fair and impartial to both sides in this case?

21 PROSPECTIVE JUROR NO. 053: No.

22 MS. MERCER: Pass for cause, Your Honor.

23 THE COURT: Mr. O'Keefe, questions; pass for cause?

24 MR. O'KEEFE: No questions, Your Honor. Pass for
25 cause.

ROUGH DRAFT TRANSCRIPT

000533

1 THE COURT: Pass for -- and is it Justin?

2 PROSPECTIVE JUROR NO. 048: Yes, sir.

3 THE COURT: How long have you been in this area?

4 PROSPECTIVE JUROR NO. 048: 16 years.

5 THE COURT: What do you do for a living?

6 PROSPECTIVE JUROR NO. 048: I'm an assistant dairy
7 manager at Smith's.

8 THE COURT: All right. Are you married?

9 PROSPECTIVE JUROR NO. 048: No.

10 THE COURT: Children? Why does everybody --

11 PROSPECTIVE JUROR NO. 048: Oh, no.

12 THE COURT: -- say no?

13 PROSPECTIVE JUROR NO. 048: Because I'm young. Why
14 else?

15 THE COURT: That's fine. I mean, I -- you should
16 sew your wild oats, I guess. You don't have any children?
17 Never been in the military?

18 PROSPECTIVE JUROR NO. 048: No, sir.

19 THE COURT: And have you or -- are you acquainted
20 with anybody in law enforcement?

21 PROSPECTIVE JUROR NO. 048: No, sir.

22 THE COURT: And have you or anyone closely
23 associated with you ever been a victim of a crime?

24 PROSPECTIVE JUROR NO. 048: No, sir. I've gotten
25 speeding tickets though.

ROUGH DRAFT TRANSCRIPT

000534

1 THE COURT: Well, so, were you ever arrested for
2 that? Or you just got a ticket, and you --

3 PROSPECTIVE JUROR NO. 048: No, just got a ticket.

4 THE COURT: And that's not going to affect --

5 PROSPECTIVE JUROR NO. 048: Almost got arrested,
6 but.

7 THE COURT: That's not going to affect your
8 deliberation?

9 PROSPECTIVE JUROR NO. 048: No.

10 THE COURT: You think you were treated fairly by the
11 police because you got a ticket, right?

12 PROSPECTIVE JUROR NO. 048: I'm sorry?

13 THE COURT: Do you think you were treated fairly by
14 the police?

15 PROSPECTIVE JUROR NO. 048: Yeah, I was going way
16 too fast.

17 THE COURT: Have you ever served on a jury before?

18 PROSPECTIVE JUROR NO. 048: No, sir.

19 THE COURT: Could you be fair in this case?

20 PROSPECTIVE JUROR NO. 048: Try my best.

21 THE COURT: All right. Mr. Lalli?

22 MR. LALLI: Thank you. Mr. Johnson, do you
23 supervise other employees as an assistant dairy manager?

24 PROSPECTIVE JUROR NO. 048: No. I'm sorry. I
25 forgot. When I said my occupation, I'm also a full-time

ROUGH DRAFT TRANSCRIPT

000535

1 student. Sorry, I forgot to add that in. No, I do not.

2 MR. LALLI: Where do you attend school?

3 PROSPECTIVE JUROR NO. 048: Nevada State College.

4 MR. LALLI: Are you enrolled in the summer term?

5 PROSPECTIVE JUROR NO. 048: No. Currently I'm on
6 summer vacation.

7 MR. LALLI: Okay. And I take it being on this jury
8 for the rest of the week, maybe into the Monday of next week,
9 wouldn't interfere with any of your school work?

10 PROSPECTIVE JUROR NO. 048: Well, right now, I'm
11 preparing for the summer term. Also during the summer, I
12 really work hard to raise funds for my college sessions in
13 spring and fall. And you know, so this is right now -- as far
14 as sitting on this trial yesterday and today, it's hurting me
15 financially for school, along with my single mother, who I
16 live with; along with my 69 year-old grandmother, so.

17 THE COURT: All right. Any objection we let him go
18 do his school work, Mr. O'Keefe? Do you have any objection?

19 MR. O'KEEFE: No, Your Honor. No objection.

20 THE COURT: Mr. Lalli?

21 MR. LALLI: I don't object, Your Honor.

22 THE COURT: All right. Report back to the jury
23 commissioner.

24 PROSPECTIVE JUROR NO. 048: Thank you, sir.

25 THE COURT: The clerk will call another prospective

ROUGH DRAFT TRANSCRIPT

000536

1 Alternate Juror number 2.

2 THE CLERK: Krista Frandsen.

3 THE COURT: All right. How long have you been in
4 this area?

5 PROSPECTIVE JUROR NO. 055: About three years.

6 THE COURT: Where did you come from?

7 PROSPECTIVE JUROR NO. 055: Kentucky, for about 15
8 years there.

9 THE COURT: Did you go to school there? Did you
10 work?

11 PROSPECTIVE JUROR NO. 055: Yeah. I'm a full-time
12 student here in Nevada, and I work as a CNA at a hospital.

13 THE COURT: You're off from school right now?

14 PROSPECTIVE JUROR NO. 055: Yeah, just working
15 overtime at work to help pay for my next year's -- next
16 semester's tuition.

17 THE COURT: You must have heard what he had to say,
18 huh?

19 PROSPECTIVE JUROR NO. 055: It's not a pretty --
20 it's basically a pretty penny.

21 THE COURT: What?

22 PROSPECTIVE JUROR NO. 055: It's a pretty penny
23 trying to pay for nursing school, with the tuition and the
24 books.

25 THE COURT: So, you want to be excused because of --

ROUGH DRAFT TRANSCRIPT

000537

1 you need that money for school?

2 PROSPECTIVE JUROR NO. 055: Well, yeah. I'm
3 scheduled to work the rest of this week, so I kind of --

4 THE COURT: All right. Any objection?

5 MR. LALLI: No, Your Honor.

6 THE COURT: Any objection?

7 MR. O'KEEFE: No, Your Honor.

8 THE COURT: All right. Report back to the jury
9 commissioner. Clerk, call another prospective juror number 2.

10 THE CLERK: Gilbert Pacheco -- Pacheco.

11 PROSPECTIVE JUROR NO. 057: Pacheco.

12 THE COURT: Do you go to college or high school, or
13 anything?

14 PROSPECTIVE JUROR NO. 057: What's that?

15 THE COURT: Do you go to college or high school?

16 PROSPECTIVE JUROR NO. 057: No, sir.

17 THE COURT: How long have you been in this area?
18 What do you got these micro things on for?

19 PROSPECTIVE JUROR NO. 057: I'm kind of hard at
20 hearing.

21 THE COURT: Could you hear what's being said? I
22 mean, do you --

23 PROSPECTIVE JUROR NO. 057: Well, these helped a
24 little bit. But they start to hurt my ears after having them
25 on so long.

ROUGH DRAFT TRANSCRIPT

000538

1 THE COURT: I think we need somebody to hear. Any
2 objection we excuse him?

3 MR. LALLI: I'm sorry? No. Yes.

4 PROSPECTIVE JUROR NO. 057: What's that?

5 MR. LALLI: No objection, Your Honor.

6 THE COURT: Mr. O'Keefe -- he's a little hard at
7 hearing, Mr. O'Keefe. Any objection we excuse him?

8 MR. O'KEEFE: No, Your Honor.

9 THE COURT: All right. Report back to the jury
10 commissioner.

11 PROSPECTIVE JUROR NO. 057: Thank you.

12 THE COURT: Okay. Another prospective juror number
13 2 -- or alternate number 2?

14 THE CLERK: Patricia Stewart.

15 THE COURT: What are those things on your ears?

16 PROSPECTIVE JUROR NO. 058: Because I have a cold,
17 and my ears are clogged.

18 THE COURT: What?

19 PROSPECTIVE JUROR NO. 058: I have a cold, and my
20 ears --

21 THE COURT: All right. Any objection we excuse her
22 to get rid of her cold?

23 MR. LALLI: No, Your Honor.

24 MR. O'KEEFE: No, Your Honor.

25 THE COURT: All right. Go ahead. That's it. My

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1 indulgence is gone now. That's the end of it. Next alternate
2 juror number 2?

3 THE CLERK: Beverly Billich.

4 THE COURT: Ma'am, how long have you been in this
5 area, please?

6 PROSPECTIVE JUROR NO. 062: Since '74.

7 THE COURT: And what did you do for a living?

8 PROSPECTIVE JUROR NO. 062: I'm retired.

9 THE COURT: What did you do when you worked?

10 PROSPECTIVE JUROR NO. 062: I worked for JC Penney.

11 THE COURT: Okay. All right. My wife calls it JC
12 Penney.

13 PROSPECTIVE JUROR NO. 062: Yeah, well --

14 THE COURT: It's the french way.

15 PROSPECTIVE JUROR NO. 062: Yes. It's changed a
16 lot, too.

17 THE COURT: Are you married, ma'am?

18 PROSPECTIVE JUROR NO. 062: Yes.

19 THE COURT: Is your husband retired?

20 PROSPECTIVE JUROR NO. 062: No. He owns his own
21 business.

22 THE COURT: What type of business?

23 PROSPECTIVE JUROR NO. 062: It's a truck accessory
24 business.

25 THE COURT: All right. Do you have any children?

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1 PROSPECTIVE JUROR NO. 062: No.

2 THE COURT: Have you ever been in the military?

3 PROSPECTIVE JUROR NO. 062: No.

4 THE COURT: Are you acquainted with anybody in law
5 enforcement?

6 PROSPECTIVE JUROR NO. 062: Yes.

7 THE COURT: Who's that?

8 PROSPECTIVE JUROR NO. 062: I have a niece and her
9 husband, who are state [inaudible].

10 THE COURT: Here in town?

11 PROSPECTIVE JUROR NO. 062: Yes.

12 THE COURT: The fact that you have some relatives in
13 law enforcement, that's not going to affect your deliberation,
14 is it?

15 PROSPECTIVE JUROR NO. 062: No.

16 THE COURT: And you understand you're not to give
17 greater weight or lesser weight to a police officer's
18 testimony, simply because they're a police officer. You give
19 it the weight you deem necessary, you understand?

20 PROSPECTIVE JUROR NO. 062: Yes.

21 THE COURT: Have you ever been in the military? I
22 think I --

23 PROSPECTIVE JUROR NO. 062: No.

24 THE COURT: Have you or anyone closely associated
25 with you ever been the victim of a crime?

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1 PROSPECTIVE JUROR NO. 062: No.
2 THE COURT: Or arrested for a crime?
3 PROSPECTIVE JUROR NO. 062: No.
4 THE COURT: You ever serve on a jury?
5 PROSPECTIVE JUROR NO. 062: Yes.
6 THE COURT: How many times?
7 PROSPECTIVE JUROR NO. 062: Once.
8 THE COURT: How long ago?
9 PROSPECTIVE JUROR NO. 062: At least ten years ago.
10 THE COURT: Here in town?
11 PROSPECTIVE JUROR NO. 062: Yes.
12 THE COURT: Was it a criminal, or civil case?
13 PROSPECTIVE JUROR NO. 062: Civil.
14 THE COURT: You were picked as a juror?
15 PROSPECTIVE JUROR NO. 062: Yes.
16 THE COURT: Did you deliberate the case?
17 PROSPECTIVE JUROR NO. 062: Yes.
18 THE COURT: Were you picked -- sometimes, you don't
19 deliberate it. It goes away without deliberation.
20 PROSPECTIVE JUROR NO. 062: No, we had to
21 deliberate.
22 THE COURT: And were you picked as foreperson?
23 PROSPECTIVE JUROR NO. 062: No.
24 THE COURT: Without telling me what the verdict was,
25 did you reach a verdict?

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1 PROSPECTIVE JUROR NO. 062: Yes.

2 THE COURT: And could you be fair in this case?

3 PROSPECTIVE JUROR NO. 062: Yes.

4 THE COURT: All right. Thank you.

5 PROSPECTIVE JUROR NO. 062: You're welcome.

6 THE COURT: Questions, pass for cause?

7 MR. LALLI: We're fighting over who gets to take
8 you, Ms. Billich. How are you this morning?

9 PROSPECTIVE JUROR NO. 062: I'm good.

10 MR. LALLI: As an alternate, you're in the
11 unfortunate position of maybe not actually deliberating with
12 the rest of the jury if that happens. And the temptation is
13 maybe to say, well, I don't have to pay as -- I'm not saying
14 you would do this. But some people would say, hey, I don't
15 have to pay as close of attention because I'm not really in
16 the game here. Do you understand what I'm saying?

17 PROSPECTIVE JUROR NO. 062: Yes.

18 MR. LALLI: Is that a concern that we should have
19 with you?

20 PROSPECTIVE JUROR NO. 062: No.

21 MR. LALLI: All right. Do you have any experience
22 with domestic violence?

23 PROSPECTIVE JUROR NO. 062: None.

24 MR. LALLI: All right. Have you ever encountered
25 anyone who's suffered from mental illness?

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1 PROSPECTIVE JUROR NO. 062: No.

2 MR. LALLI: If we convince you beyond a reasonable
3 doubt that the defendant is guilty, would you convict him?

4 PROSPECTIVE JUROR NO. 062: Yes.

5 MR. LALLI: Thank you. Your Honor, I'll pass for
6 cause.

7 THE COURT: All right.

8 MR. O'KEEFE: No questions, Your Honor. I'd pass
9 for cause.

10 THE COURT: All right. Any preempt on either one of
11 these alternate jurors?

12 MR. LALLI: No, Your Honor. We'll waive it.

13 THE COURT: You'll waive it? Any preempt?

14 MR. O'KEEFE: I'll waive mine.

15 THE COURT: Thank you, Mr. O'Keefe. Well, that
16 constitutes the jury now. All right? Before I excuse the
17 jury, everything's all right? Okay. All right. Behind the
18 railing, thank you so much. Please report back to the jury
19 commissioner.

20 I'm going to ask the clerk to swear in the jury. Do
21 you swear in the alternates separate, or not? All at the same
22 time?

23 THE CLERK: All at the same time.

24 THE COURT: Please remain -- stand up, raise your
25 right hand, and be sworn by the clerk.

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1 JURY SWORN

2 THE COURT: All right. You can sit down. I'll say
3 a few words, as -- I like to say a few words. You know, just
4 basically, ladies and gentlemen, you are admonished that no
5 juror may declare to a fellow juror any fact relating to this
6 case as of his own knowledge.

7 And if any juror discovers during the trial, or
8 after the jury has retired, that he or any other juror has
9 personal knowledge of any fact in controversy in this case,
10 please disclose the situation to me in the abstains of the
11 other jurors.

12 This admonition means that if you learn during the
13 course of this trial that you are acquainted with the facts of
14 this case, or the witnesses, and you have not previously told
15 me this relationship, you must disclose this fact to me. And
16 you communicate to the Court by way of a marshal.

17 A few words about your conduct as jurors. First,
18 don't talk to each other about this case, or about anyone who
19 has anything to do with it, until the end of the case, when
20 you go to the jury room to decide on your verdict.

21 Second, do not talk to anyone else about this case,
22 or about anyone who has anything to do with it, until the
23 trial has ended, and you've been discharged as jurors. Anyone
24 else includes members of your family and your friends. You
25 may tell them that you are a juror, but don't tell them

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1 anything about the case until after you have been discharged
2 by me.

3 Third, do not let anyone talk to you about this
4 case, or about anyone who has anything to do with it. If
5 someone should try to talk to you, report it immediately to me
6 by way of our marshal.

7 Fourth, during the course of the trial, any parties,
8 attorneys, or whatever, or court personnel, other than our
9 marshal, are really not permitted to converse with members of
10 the jury. These individuals are not being antisocial, but
11 they are bound by ethics and the law not to talk to you,
12 because it might contaminate the jury.

13 So, if any of the parties don't say hello to you, or
14 good morning, don't take that as an affront. They're just
15 trying to be professional people, and they don't want to be
16 accused of currying favor.

17 Fifth, do not read any news stories or articles, or
18 listen to any radio reports, or anything on the internet about
19 this case, or about anyone who has anything to do with it.

20 Sixth, please do not do any research, such as
21 consulting dictionaries, computers, internet, or other
22 reference material. And do not make any investigation about
23 this case on your own. You can individually take notes, but
24 don't let that distract you from what you hear on the witness
25 stand.

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1 Seventh, if you need to communicate with me, simply
2 give a signed note to our bailiff, and he'll give it to me.

3 Next, this new one -- this new rule, jurors are
4 allowed to ask questions. The procedure requires that you
5 write your juror number and question on a sheet of paper, give
6 it to the marshal while the witness is still in the courtroom
7 on the witness stand. If it's a proper question under the
8 court rules, I'll ask it. If not, I'll keep it, and explain
9 after the trial the purpose of the rule that precluded me from
10 asking it.

11 And basically, the last thing I want to say is, keep
12 an open mind about what the verdict should be until after you
13 have gone to the jury room to decide this case, and you and
14 your fellow jurors have discussed the evidence. So, I'd
15 really like you to keep an open mind until then.

16 I'm going to ask the clerk to read aloud the
17 information and the plea that was made thereto by the
18 defendant.

19 (Information read by clerk)

20 THE COURT: Thank you, Ms. Clerk. That's the
21 reading of the information, the charging document that I
22 indicated is not evidence. It's just a means of getting the
23 defendant here to court.

24 So, what we're going to do now is take a brief
25 recess. And then, we're going to come back and hear opening

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1 statements. And then probably take a lunch break, and then
2 hear witnesses after the lunch break. So, I want to thank you
3 very much. As I said, it's a very important case, both to the
4 State, and to Mr. O'Keefe. So, you want to keep an open mind.

5 And I'm going to -- before every recess, I have to
6 admonish you. And I'm going to say it a lot of times fast,
7 but it's very important that -- during this recess, it is your
8 duty not to converse among yourselves, or with anyone else, on
9 any subject connected with the trial, or read, watch, or
10 listen to any report of, or commentary on the trial, by any
11 person connected with the trial, or by any medium of
12 information, including, without limitation, newspapers,
13 television, radio. You are not to form or express any opinion
14 on any subject connected with the trial until the cause is
15 finally submitted to you.

16 You want to go out there, you can talk about how the
17 Kings won the Stanley Cup, or the [inaudible] --

18 MR. LALLI: Heat.

19 THE COURT: The heat, right? Or whatever. I mean,
20 but don't talk about this case. And don't tell anybody you've
21 formed or expressed any opinion. You resolve that in the jury
22 deliberation room. All right. Thank you very much. And
23 we're going to take a 15 minute recess, and then be back at
24 about 11:00 o'clock. We'll be at ease until the jury leaves.

25 (Outside the presence of the jury panel)

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1 THE COURT: All right. This is outside the presence
2 of the jury. All right. So, you're going to -- who's going
3 to give the opening statement of the --

4 MR. LALLI: I will, Your Honor?

5 THE COURT: All right. And do you need any -- are
6 you going to set up, or do you need anything?

7 MR. LALLI: Yes.

8 THE COURT: You got your --

9 MR. LALLI: I do need a moment to set up. So, I
10 thank the Court for giving us the opportunity to do that.

11 THE COURT: All right. And then, are you going to
12 give an opening statement right after, or not?

13 MR. O'KEEFE: Yes, I will, Your Honor. I will after
14 the State, yes.

15 THE COURT: Okay. All right. Is there anything
16 else to come before the Court then before we take a recess?

17 MR. LALLI: Yes. I wanted to make a request of the
18 Court, Your Honor. Mr. O'Keefe has had the ability to walk
19 around the court freely, walk into the well, and he has acted
20 like a perfect gentleman throughout the proceedings thus far.

21 When the State begins to call witnesses, however, I
22 think the dynamic of the trial changes somewhat, and he is
23 actually being faced by his accusers. We will be calling a
24 witness by the name of Cheryl Morris, for example, who was
25 once the defendant's girlfriend, and she is afraid of him. We

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1 will be calling neighbors who lived in the area. They are
2 afraid of the defendant.

3 When the defendant was convicted, while he was in
4 the Nevada Department of Corrections, he sent letters to them
5 that they deemed to be of a threatening manner. I've not
6 actually had the opportunity to see those letters, but a
7 series of witnesses have told me that that is in fact the
8 case.

9 And so, my concern is that if Mr. O'Keefe would need
10 to refresh a witness with a prior transcript, or show a
11 witness up at the witness stand a photograph, that will have a
12 chilling affect on that witness's ability to testify, and it
13 will negatively impact the State.

14 And so, what we are requesting is that if Mr.
15 O'Keefe wants to stand at counsel table, he be allowed to do
16 so. If he wants to use the podium as is my practice, that he
17 be allowed to do so. If he needs to actually approach a
18 witness, it would be our request that either Mr. Maningo do
19 that, or his investigator, Ms. Brown.

20 MS. CAMPBELL: Campbell.

21 MR. LALLI: Campbell. That's our request, Your
22 Honor.

23 THE COURT: Mr. O'Keefe -- where is the podium that
24 you're talking about?

25 MR. LALLI: It's right there --

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1 THE COURT: Oh, right here.

2 MR. LALLI: -- in the center of the courtroom.

3 THE COURT: I'm sorry. Right in front of me. So,
4 you're basically going to stand near the podium most of the
5 time, or at counsel table?

6 MR. LALLI: Yes, that's correct.

7 THE COURT: And Mr. O'Keefe, could -- do you like to
8 use the podium, Mr. O'Keefe, or question at the table? You
9 can do either one, I don't care.

10 MR. O'KEEFE: Your Honor, I intend to act like a
11 perfect gentleman.

12 THE COURT: I know. I mean, I --

13 MR. O'KEEFE: And I will have no problem with that.
14 But this allegation of letters threatening, that don't cut it,
15 Your Honor. There was no threatening letters -- threatening
16 letters, plural, for the record, Your Honor.

17 THE COURT: Right.

18 MR. O'KEEFE: Okay?

19 THE COURT: The record will show that Mr. Lalli said
20 he didn't see them, but apparently some witnesses said. But
21 that's neither here, nor there. That's not part of what the
22 jury hears. But I think it would be good. I mean, I want you
23 to -- if Mr. Lalli's going to stay here at the table, or Ms.
24 Mercer, or go to the podium, you could stay at the table or go
25 to the podium. And --

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1 MR. O'KEEFE: I'll go no further than that podium,
2 Your Honor. That's --

3 THE COURT: great. That's great.

4 MR. O'KEEFE: I have no problem with that.

5 THE COURT: And if you have something you want to
6 show the witness, which will be here -- Mr. Maningo, do you
7 want to do this, or do you want the marshal to do this?

8 MR. MANINGO: I'm happy to help Mr. O'Keefe however
9 he wants me to.

10 THE COURT: All right. So, in other words, you will
11 just go -- say, you know, go right there and show it, then
12 take it back, and -- okay.

13 MR. O'KEEFE: Okay.

14 THE COURT: Everything's good on that. All right.

15 MR. O'KEEFE: Just now --

16 THE COURT: Well, we'll --

17 MR. O'KEEFE: -- I have this one last matter.

18 THE COURT: Sure.

19 MR. O'KEEFE: Just -- because you're going to love
20 me today, Your Honor. I'm going to be a gentleman, and we're
21 going to move this thing right along. So, after having saying
22 that, just for protection of myself, preservation of the
23 record, okay, I just want to declare that I feel now that the
24 panel has been sworn in that I do believe that this is still
25 again a true double-jeopardy violation, and violation of the

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1 laws and treaties of the United States of America, double
2 jeopardy, and due process and collateral estoppel is implied,
3 too, okay? I just want to state that, that I feel this is --

4 THE COURT: Yeah.

5 MR. O'KEEFE: -- absolutely wrong.

6 THE COURT: And I want to state that you certainly
7 have a continuing objection for that. And this is about the
8 fourth, and you can do it four more times. I don't care. But
9 the record is preserved.

10 You're objecting for this trial. You think it
11 should be dismissed, double jeopardy, whatever other reasons.
12 And that's part of the record. The minutes will reflect that.
13 The court records will reflect all of that, that you've made
14 more than ample objections. You'll have continuing
15 objections. And but that's about all I can say. But --

16 MR. O'KEEFE: Right.

17 THE COURT: -- you've probably got a win-win
18 situation here. Because no matter what happens, you can maybe
19 convince the jury -- you don't have the burden of proof. But
20 maybe the jury won't be convinced, and maybe you'll be
21 acquitted. Or, if they do, you still have your rights to
22 appeal in federal court. So, it might be a win-win situation,
23 all right?

24 MR. O'KEEFE: Okay. And Your Honor -- and then,
25 just one last --

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1 THE COURT: Yeah.

2 MR. O'KEEFE: -- matter, I promise. And just,
3 again, you know law better than me, but it's just to protect
4 myself, preservation.

5 Again, at proper times, not in front of the jury --
6 I'm not going to -- I may object to some of the evidence based
7 on the law of the case again. It's not a lesser standard of
8 proof. It's inadequate. He's rehashing for the record
9 preservation the same evidence of the first and second trial.
10 It should have never even come in the second.

11 With all due respect, I don't care how Judge Villani
12 ruled. His opinion was just his opinion. He's just a general
13 court of limited jurisdiction. His decisions are for
14 appellate review always. We know that. You know that better
15 than anybody, okay?

16 So, again, for protection, if any evidence is
17 presented that crosses that line of battery domestic violence,
18 I'm going to object. And then, properly in between breaks, if
19 that's more adequate for you, I'll make something for the
20 record.

21 THE COURT: Good. All right.

22 MR. O'KEEFE: And after saying that -- because,
23 again, clearly, one last time, I promise you, all this
24 evidence -- the majority of this evidence, he's rehashing to
25 save evidence. And the Ninth Circuit strictly forbids

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1 rehashing the same evidence --

2 THE COURT: All right.

3 MR. O'KEEFE: -- from the first trial.

4 THE COURT: I for the record disagree with you, and
5 I'm going to allow Mr. Lalli and Ms. Mercer to bring that
6 evidence in. But it's absolutely clear that it's over your
7 objections, and you have a continuing objection.

8 MR. O'KEEFE: Thank you.

9 THE COURT: All right.

10 MR. O'KEEFE: And again, one last thing though, Your
11 Honor, what I'm trying to get at is it's necessarily sometimes
12 not so much the evidence. It's the conduct that they're
13 trying to change, trying to disprove the conduct that's
14 already acquitted of, the battery domestic violence act.

15 THE COURT: All right.

16 MR. O'KEEFE: They can bring all the evidence
17 sometimes necessarily in. But it's actually the conduct,
18 versus Grady and Dixon (phonetic). That's what they're trying
19 to re-change. And that's already been said.

20 THE COURT: You have an objection, but I disagree
21 with you, so I'm going to allow them to do that. All right?

22 MR. O'KEEFE: Thank you, Your Honor, for your time.

23 THE COURT: All right.

24 MR. O'KEEFE: Thank you.

25 THE COURT: We're going to be back in about 10

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1 minutes, and start the opening.

2 MR. LALLI: Thank you.

3 (Court recessed at 10:56 a.m. until 11:08 a.m.)

4 (Within the presence of the jury panel)

5 THE MARSHAL: Officers and members of the court,
6 Department 17 jurors. All right. You may be seated, ladies
7 and gentlemen. Let's make sure all cell phones are turned
8 off, please.

9 THE COURT: All right. Counsel, stipulate to the
10 presence of the jury?

11 MR. LALLI: Yes, Your Honor.

12 THE COURT: Mr. O'Keefe, do you stipulate to the
13 presence of the jury?

14 MR. O'KEEFE: Yes, I do, Your Honor.

15 THE COURT: All right. We're going to proceed with
16 opening statements now. Mr. Lalli, opening statement on
17 behalf of the State of Nevada?

18 MR. LALLI: Yes, Your Honor. Thank you.

19 STATE'S OPENING STATEMENT

20 MR. LALLI: May it please the Court. Good morning,
21 ladies and gentlemen. Brian O'Keefe was found guilty by a
22 jury of the felony offense of battery constituting domestic
23 violence. That occurred in 2006.

24 The victim in that case was Victoria Whitmarsh, the
25 same woman he murdered on November 5th of 2008. The evidence

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1 will show that Victoria was stabbed just under her arm. The
2 mechanism of death was something called exsanguination, which
3 means that she bled out over a period of time. Upon being --

4 THE COURT: Ladies and gentlemen, before we
5 continue, evidence of other crimes, wrongs, or acts is not
6 admissible to prove the character of a person in order to show
7 that he acted in conformity therewith. It may however be
8 admissible as proof of motive, intent, or absence of mistake
9 or accident.

10 That's an instruction I'm going to give a couple of
11 times, but I just want you to keep that in mind. I'm sorry to
12 interrupt you, Mr. Lalli.

13 MR. LALLI: Thank you, Your Honor.

14 It really came as no surprise that the defendant had
15 murdered Victoria. He never got over the fact that she was
16 responsible for sending him to prison when she testified
17 against him. In fact, he told other people that he wanted to
18 "kill the bitch."

19 After the defendant went to prison, his relationship
20 for -- with Victoria had come to an end, and he struck up a
21 relationship with another woman by the name of Cheryl Morris,
22 and you will hear from Cheryl Morris during the course of this
23 trial. What you will notice is that Cheryl has a strikingly
24 eerie and similar look to her, the same one that Victoria has.
25 Both are very small Asian women.

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1 Cheryl and the defendant spent a great deal of time
2 together. And it was in the context of their relationship
3 that the defendant would make statements to her. He would
4 brag, for instance, about being in the military, and tell her
5 how he was trained to kill. And in all of these
6 circumstances, he would always talk about killing, and doing
7 so with a knife.

8 During the time that his relationship with Cheryl
9 was ongoing, he again rekindled his relationship with Victoria
10 Whitmarsh. At first, this was done secretly; and then, it was
11 more out in the open. And at one point, he was even so bold
12 about this relationship that he told Cheryl Morris that he was
13 going to bring Victoria back into the apartment where the two
14 were staying. And Cheryl of course would have nothing to do
15 with this.

16 And so, eventually, Cheryl moved out, and Victoria
17 moved in. And both Victoria and the defendant lived together
18 in an apartment complex at 5001 El Parque here in Clark
19 County, Nevada.

20 In many ways, Victoria led a very tortured life.
21 She suffered from depression. At times, as many people do who
22 suffer from this disease, she would cut herself. The
23 serotonin that would be released would bring her emotional
24 comfort. She took medication for her mental illness. In
25 fact, at the time of her death, a drug called Effexor was in

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1 her blood, and it was a drug that she took for her depression.

2 Victoria suffered from the disease of hepatitis.

3 She had hepatitis C. She was also alienated from her husband
4 and her daughter. The evidence will show that Victoria was
5 vulnerable, and even pathetic. She weighed just 108 pounds,
6 was just 5 feet, 5 inches tall. Just the sort of woman that
7 the defendant could control.

8 The apartment at 5001 El Parque is where the murder
9 occurred. And you will learn that many of the residents who
10 lived in this complex were very close. They knew each other,
11 they were friends, they communicated with one another. The
12 defendant's apartment was number 35. It was upstairs.

13 The Tolivers lived just below them. And you will
14 hear from Joyce and Charles Toliver. Back on November 5th of
15 2008, in the evening hours, they were both in their bedroom.
16 And you will learn that their bedroom is directly below the
17 bedroom that was above it. And they hear a disturbance, a
18 banging. And the banging -- the disturbance goes on for the
19 better part of 30 minutes, 40 minutes. By some accounts,
20 maybe even as long as an hour.

21 Charles Toliver, who was known by his friends as
22 Cookie, he has to work early in the morning, he's annoyed that
23 there's so much noise coming from upstairs. And at one point,
24 he gets up, and walks up the staircase to see what's happening
25 up in the upstairs bedroom. As he's doing that, Joyce

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1 Toliver, who is downstairs, hears a woman upstairs. At first,
2 she hears crying, and then moaning, and ultimately, silence.

3 Charles Toliver walks up the stairs, and enters the
4 back bedroom. And this is what he sees. He sees Victoria
5 laying on the ground. He can only see her legs. There is
6 blood all over the room. He sees the defendant over her. And
7 he says, what have you done? What did you do to her? Mr.
8 Toliver -- Toliver is very frightened. He turns around, and
9 he runs out.

10 He goes to get a friend, another individual who
11 lives in the complex, a man by the name of Todd Ambrooster.
12 And both Todd and Charles return to the defendant's apartment,
13 and they see Victoria's body again. The defendant is over
14 her, talking to her, telling her to, come on, come on, baby;
15 words to that effect.

16 At one point, the defendant, who was obviously
17 intoxicated at the time, stands up. And while this woman is
18 literally dying in his arms, wants to fight with Todd
19 Ambrooster. He kind of squares up with him as though he
20 wants to fight with him. The evidence will show that he never
21 asked anyone for help. He never called the police. He never
22 called the paramedics. He never asked for an ambulance. He
23 never did anything, except watch this woman die at his feet.

24 Fortunately, the police are called. And members of
25 law enforcement respond to the apartment complex. And they're

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1 not sure what they're dealing with at first. The calls are in
2 the order of, there's a woman down, she's bleeding, there's a
3 man with a knife. And so, they're certainly not just going to
4 traipse into a bedroom, and risk being attacked themselves.

5 You will learn that they take a position out in the
6 living room area. And they attempt to ask the defendant to
7 come out of the room so that they can go in and render
8 assistance to Victoria, and he refuses. The defendant refuses
9 to come out.

10 The Las Vegas Metropolitan Police Department has a
11 program in place called the CIT program; the crisis
12 intervention team. They are specially trained officers who go
13 out to situations like this. And their job is to de-escalate;
14 to bring the crisis down.

15 A CIT officer responds, and strikes up a
16 conversation with the defendant, who was still in the back
17 bedroom, trying to get him out, explaining to the defendant
18 that he needs to come out before the officers go in. And it
19 becomes apparent to Metro that they are engaged in a
20 cat-and-mouse game, where at one point, the defendant is
21 saying, she's dead; and another point, he's saying, she's
22 alive, come in and help her.

23 It's clear that they do not know what it is that
24 they're dealing with. And they make the decision to enter the
25 back bedroom, to try to get the defendant out, and so that

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000561

1 they can render Victoria aid. And they do it in a very
2 tactical manner. They go into the back bedroom. And just as
3 he did with Mr. Armbrooster, the defendant engaged law
4 enforcement in a scuffle. He begins to fight with those
5 officers.

6 At one point, they deploy a taser in an effort to
7 bring him under control. They eventually are successful in
8 doing that, and are able to remove him from the room.

9 You will learn that there was a police sergeant by
10 the name of Dan Newberry, who was present. And Sergeant
11 Newberry has training in the medical field as a paramedic. He
12 immediately went over to Victoria's body, who was on the
13 ground, lying naked from the waist-down. He feels for a
14 pulse. There is none. They quickly bring in medical, who
15 tries to revive her, but they are unsuccessful in doing that.
16 And unfortunately, Victoria Whitmarsh died.

17 The defendant is placed in the back seat of a police
18 car. He is going to be transported over to the homicide
19 office for an interview with the homicide detectives. While
20 he is in the back of that police car, he begins to make
21 statements. Not in response to any specific questions that he
22 was asked, but he just begins to talk.

23 And there was an officer who was responsible for
24 keeping an eye on him, by the name of Christopher Hutcherson,
25 and you will hear from that police officer. He was very young

ROUGH DRAFT TRANSCRIPT

000562

1 at the time, but very wisely wrote everything down that the
2 defendant said. These are some of the things that he wrote
3 down. "I swear to God, V, I didn't mean to hurt you." And
4 "V" is how the defendant would refer to Victoria. He would
5 call her, V. "I swear to God, V, I didn't mean to hurt you.
6 What did I do wrong? Let's go do the ten years;" an obvious
7 reference to prison.

8 While he is in that patrol car, members of law
9 enforcement begin to respond to the scene. As I indicated
10 before, homicide detectives show up. Crime scene analysts
11 show up. They begin to process the scene. They photograph
12 the scene. They take photographs of Mr. O'Keefe, who's being
13 very belligerent with them at the time; so much so that one of
14 the homicide detectives actually has to take his head and hold
15 it up to the police camera so that he can be photographed.

16 They notice that he has a cut on his hand, on two
17 fingers. And you will hear from Detective Marty Wildemann,
18 who is an extremely experienced homicide detective who has
19 investigated many stabbing murders and crimes involving
20 knives. And he will tell you that it is not at all uncommon
21 for someone who was utilizing a knife in a violent way to
22 actually suffer cuts on their hands and on their fingers while
23 doing so. But you will see photographs of those cuts on his
24 finger.

25 The knife that officers recovered from the scene was

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000563

1 analyzed by forensic professionals. You will hear from Ed
2 Guenther, who is a latent print examiner. He is an expert in
3 fingerprints. And you will learn of the various techniques
4 that he employed to try to find fingerprints on the knife.
5 And unfortunately, he was not able to do so. He was not able
6 find any prints that were of sufficient detail to make a
7 comparison.

8 You can see from the knife, there was blood on it.
9 And the knife was submitted for DNA testing. You will hear
10 from Analyst Jen Bas, who was a DNA scientist with the Las
11 Vegas Metropolitan Police Department laboratory. She analyzed
12 the knife, and she found just what we would all expect. There
13 was blood on the handle of the knife. And that blood, without
14 any question, was identified to the defendant.

15 There was blood just to the left of the handle, or
16 to the -- above the handle. Again, that was the defendant's
17 blood. There was also blood on the tip of the knife. And
18 without any question at all, that blood was identified to
19 Victoria Whitmarsh. You will learn that beyond any doubt,
20 this was the murder weapon that killed her.

21 The following day, an autopsy was conducted on
22 Victoria's body, and it was determined that she died as a
23 result of the stab wound to the side of her body. As part of
24 an autopsy, the blood of the decedent is collected and
25 analyzed. In addition to the Effexor that she had on board,

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1 you will learn that she had a great deal of alcohol in her
2 blood. Her blood alcohol level was .24, well over the legal
3 limit.

4 You will also learn that, in addition to the stab
5 wound, Victoria Whitmarsh had a great deal of blunt force
6 trauma on her body, which is just a fancy way of saying she
7 had been struck, or her body had been thrown against a hard
8 object, which landed many places on her body. There was a
9 great deal of bruising on her body.

10 And you will learn that although she suffered from
11 hepatitis C, and hepatitis C has the affect of making a bruise
12 appear more profound, each and every bruise that she had on
13 her body represented a different area of blunt force trauma.
14 And you will learn that many of those bruises were what
15 forensic experts call acute, or recent; meaning at or near the
16 time of her death.

17 But you will learn that she had blunt force trauma
18 on her head; on the top of her head, and on the back of her
19 head. She had blunt force trauma on her chest, on her back,
20 on her buttocks, on her left arm, on her right arm, on her
21 left leg, on her right leg. She had so much trauma on her
22 body that the amount of bruising actually was a contributing
23 factor in her death.

24 An anonymous domestic violence survivor once said
25 that, if you can't be thankful for what you have, be thankful

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000565

1 for what you have escaped. Well, unfortunately for Victoria
2 Whitmarsh, she was not able to escape what ultimately came to
3 her as a result of her relationship with the defendant.

4 At the conclusion of this trial, we will ask you to
5 return a verdict of guilty to murder of the second degree with
6 use of a deadly weapon. Thank you.

7 THE COURT: Thank you, Mr. Lalli. That completes
8 the State's opening. Mr. O'Keefe, do you want to give an
9 opening statement now?

10 MR. O'KEEFE: Yes, Your Honor.

11 THE COURT: Thank you, sir.

12 DEFENSE'S OPENING STATEMENT

13 MR. O'KEEFE: Without a doubt, on November 5th of
14 2008, a tragedy happened, folks. The State's presenting the
15 story, their side, with what evidence that they have. But
16 without a doubt, the evidence is going to show that on
17 November 5th of 2008, prospects of a new job came about. I
18 made a lot of phone calls. Talked to an old superintendent.
19 Possible, going back to work the following week at the Hard
20 Rock.

21 It was just my fiance's birthday two days ago,
22 before that. She was under a lot of stress, depression, just
23 turned down a job. Unemployment left only one week. No
24 money. Medically ill. Host of problems, mental. She was a
25 good person though. I loved her for the way she was.

ROUGH DRAFT TRANSCRIPT

000566

1 MR. LALLI: Your Honor, I'm sorry. I'm going to
2 interpose an objection. This is an opening statement. The
3 defendant is now allowed to testify to the jury now, or
4 express his feelings now.

5 THE COURT: You can just say, the evidence will
6 show.

7 MR. O'KEEFE: Yeah. You're right, Your Honor.
8 Okay.

9 THE COURT: Thank you.

10 MR. O'KEEFE: There's a lot of accusations, and a
11 lot of inconsistencies being made throughout this, folks. The
12 evidence is going to show that we went out to Paris Hotel. We
13 celebrated. Extremely, extremely -- drank a lot of alcohol.
14 The evidence is going to show that, without a doubt, we ended
15 up leaving ultimately. I made V drive. She was upset with
16 that. She wanted to go to dinner.

17 We were parked at valet at Vons. Told the
18 detectives over and over, check it out. Here's where we was,
19 here's what we did, here's the time frame.

20 The evidence is going to show, as a matter of fact,
21 before we left the apartment, I said, you know, with the new
22 job, fantastic. I said, you know, maybe I might be going back
23 next week, Hard Rock, 12, 14 hours a day. Let's get this
24 vacuum cleaned, and get it fixed. I broke the belt
25 [inaudible]. The evidence will show that. It was dropped off

ROUGH DRAFT TRANSCRIPT

000567

1 at the vacuum cleaner store en route to Paris Hotel, to go out
2 for the night to celebrate her birthday and the job.

3 They didn't want to talk about that. They wanted to
4 kind of like, hide that. But the evidence will show, because
5 they made that part of their discovery. So, you have the
6 right to show (sic), because they're trying to state that I
7 supposedly wanted to kill this woman. Pay back. Well, why
8 would I want to fix the vacuum cleaner? Why would I spend all
9 day on the phone?

10 MR. LALLI: I'm going to object, Your Honor. I'm
11 sorry, this is argument now.

12 MR. O'KEEFE: I'm saying --

13 MR. LALLI: It's not an opening statement (sic).

14 THE COURT: All right.

15 MR. O'KEEFE: I'm saying the evidence will show --

16 THE COURT: The evidence will show. All right.

17 That's --

18 MR. O'KEEFE: The evidence will show this --

19 THE COURT: Be a little careful, but --

20 MR. O'KEEFE: Yes, Your Honor.

21 THE COURT: You have a right to -- at the end, to
22 make your summary, and argue all you want. But just as an
23 opening statement, the evidence will show this.

24 MR. O'KEEFE: Mr. Lalli greatly out-stepped his
25 line, Your Honor, during his opening. So, I'm just --

ROUGH DRAFT TRANSCRIPT

000568

1 THE COURT: Well, I --

2 MR. O'KEEFE: Yes, sir, Your Honor, with all due
3 respect.

4 THE COURT: All right.

5 MR. O'KEEFE: Folks, we went out and celebrated.
6 Let's just get right to the facts. Got extremely drunk, won a
7 bunch of money. V's like, baby, let's stop, let's get out of
8 here. Cash out, let's go. I want to go eat. I want to go
9 eat now. And I'm like, baby, let me catch up with you.

10 I had just completed a sobriety program, the
11 evidence will show. They know this. And because of the new
12 job, and she was down -- it was her birthday November 2nd.
13 This happened -- tragedy happened November 5th. I was looking
14 for an excuse. I admitted it. I told them. I was looking
15 for an excuse to drink. I'm a recovering alcoholic.

16 With the new job prospect, you know, okay, maybe
17 start next week. Let's go out and have some fun. Your
18 birthday; celebrate. Don't worry about anything. And again,
19 she just got the night. She only had one week left of
20 unemployment. She had no money. She was medically ill.

21 She had to claim a claim in to SSI that got denied
22 for the third time. Her sister called, and said she had to
23 re-appeal it again. Years, years, years. It takes years with
24 the government.

25 She finally convinced me -- I made a last-minute

ROUGH DRAFT TRANSCRIPT

000569

1 bet. She didn't want me to do that. She cashed out all the
2 money, had it all. We got up, and we got one more drink.
3 Drank 20 to 30 double shots of Absolut. I'm not proud of it.
4 I'm an alcoholic, and I had just completed a program. And
5 I'll tell you what, it hit me. I've been drinking for years,
6 but after that little break in time, I was extremely
7 intoxicated.

8 And I had extremely -- folks, the evidence will
9 show, that's what they're hiding. And they have destroyed
10 that evidence for life. We'll never know -- nobody will ever
11 know. That was wrong.

12 However, let's eat dinner. Come on, baby, take me
13 to dinner. No, baby, let me get one more drink. Let me bet
14 one more bet. Come on, we're doing good, look at all these
15 chips. Hundreds and hundreds of dollars. And I started with
16 just 60. I was happy. Everything was rolling good. Things
17 were turning around.

18 Let's go eat right now. No, let me make one more
19 bet. She got angry. She was in anger management classes.
20 Bipolar. Boy, like that, she could go from one end to the
21 other. The evidence will show that.

22 Finally, okay, baby, let's just leave. Let's go.
23 Got plenty of money. Whatever you want to do. You know what,
24 but you want to leave, whatever. I'm pretty intoxicated, the
25 evidence will clearly show. Let's just go, stop wherever you

ROUGH DRAFT TRANSCRIPT

000570

1 want. You're driving now. Oh, boy. That made her mad. Got
2 the car from valet, but the seat back. Go wherever you want,
3 get whatever you want, do whatever you want.

4 Well, we pull up to the apartment, the evidence will
5 show, parked the car. Seat's back; I'm passed out. Hat falls
6 off from the seat. The evidence will show it, hat's laying
7 right there in the front seat. She gets up. Statement,
8 [inaudible] we're here. Slams -- goes up to the apartment.

9 Folks, an hour later -- I don't even know exactly
10 what time. I don't want to say -- don't hold me to that. I
11 don't even know. I didn't have a watch on. I didn't have
12 keys. She had everything in her purse. She carried
13 everything for me. Women normally do that. She had my
14 wallet, cigarettes. She had the keys to the apartment. She
15 goes upstairs.

16 I drank my butt off, and it hit me hard all the
17 sudden. I mean, I was spinning. I had just completed a
18 sobriety program, voluntarily.

19 Well, the neighbors testified that they hear 20
20 minutes, 40 minutes -- they've changed their testimony. Said
21 many times, an hour, two hours, they heard the biggest
22 commotion going on upstairs right above them. Right above
23 them. And the neighbors next-door, the testimony will show,
24 through all this banging and commotion -- and I always left my
25 window open on the second floor, as Mr. Lalli showed you.

ROUGH DRAFT TRANSCRIPT

000571

1 They never heard one male voice. They never heard
2 any talking. There was not even a TV on, the evidence will
3 show. There was not even a radio on. It was at night in this
4 apartment complex. And folks, I'll tell you what, at night
5 time, sound travels. Let's be honest. I'm telling you, I
6 know. You can hear the neighbor across the street talking. I
7 mean, across the side -- across the pool, on the inside of the
8 complex, especially at night.

9 You can hear everybody talking, or everyone's
10 business. Yet, the evidence will show, they heard not one
11 male voice -- they did not hear me. They did not even hear
12 Victoria talking. All they heard was thumping, thumping,
13 pounding, [inaudible], doors slamming, boom. Folks, I can't
14 dispute what they heard. I was in the car. The evidence will
15 show, they admit to this.

16 My next-door neighbor shows me -- testified in prior
17 hearings that approximately 15 minutes, my next-door neighbor
18 saw me coming up the stairs. Bang. Hears me hit the rail.
19 The evidence will show this. Well, you know what? I realized
20 getting upstairs, I'm drunk, I'm feeling good, I got money.
21 Hey, I'm home. I don't even realize -- I didn't even know
22 she's angry. I didn't even know. Didn't care. I was drunk.
23 We're home. Hey, we're here. Let's go up to the place.

24 But I do remember getting up there, I was asked -- I
25 was like, man, oh my God, I forgot the vacuum in the back of

ROUGH DRAFT TRANSCRIPT

000572

1 the car, and I locked the door. Electronic -- a new little
2 car. The evidence will show this. The receipt shows that I
3 fixed it on the way to Paris. Went in, put a new belt on it.
4 I broke the belt cleaning up her room, vacuuming up some
5 screws. They fixed it. Charged me right there, receipt. Put
6 it in the back of the car, shut the hatch, locked it. Got in
7 the car; we went to Paris Hotel. They won't talk about that.

8 But I had this theory I wanted to kill her. Boy,
9 why go fix the vacuum? Doesn't make sense. Why take her out?
10 Why spend all day on the phone making calls, looking for a
11 job? In 2008, it was hurting.

12 The evidence will show -- hopefully Mr. Lalli
13 brought them. He had them on his witness list. Let's see how
14 honest they are. The evidence will show the next-door
15 neighbor will say he saw me -- again, folks, this is critical.

16 Not even 15 minutes before, the downstairs neighbor
17 ran upstairs, was screaming, and went running out of my place
18 after he seen me. And the evidence will show, he will testify
19 he seen me picking her up, saying, V, quote, verbatim, "Don't
20 do me like this. Baby, baby, don't do me like this. Get up."

21 Now, see, what they don't know -- I knew she was a
22 cutter. I walked in on her when she was in the bathroom. She
23 was up to no good; mad at the world, slamming drawers. She
24 changed her clothes. She had different clothes on. She had
25 taken her makeup off, apparently. She did the female things

ROUGH DRAFT TRANSCRIPT

000573

1 she needed to do. They can't dispute this.

2 But when I walk up, and when the neighbor sees me,
3 he says he pops out, and he seen me hit the rail. And he seen
4 me there, and he said I had a look on my face, I was all -- I
5 was wasted, folks. I had no sleep for about 30 hours. We
6 stayed up all night watching the Obama election. I went to
7 bed about 4:00 in the morning. I told them this.

8 That's why the couch -- you'll see -- the evidence
9 will show that it was made up -- there was a blanket on the
10 couch. We sat out -- she got all drunk. She drank wine all
11 night. I was still sober at the time. I just finished the
12 program that week. I was still sober, and we watched the --
13 Obama get elected, win it. Yeah, yeah, yeah.

14 She went to bed about 1:30 in the morning. I stayed
15 up until about 4:00 watching it. She got intoxicated. I
16 said, baby, go to bed. This -- she went in, and went to bed.
17 I stayed on the couch and I watched the rest of the election.
18 I fell asleep.

19 I get up early in the morning. Construction was
20 what I was doing. Start making calls. She comes out in the
21 morning, the evidence will show. They can't dispute this,
22 that, you know, she verified the election was won and all
23 this. That's when I made the calls, got the job, said don't
24 worry about anything. She found out again her sister called,
25 or that she was denied again on SSI, because she was in debt

ROUGH DRAFT TRANSCRIPT

000574

1 to her sister.

2 And she used her sister's address for the government
3 to send a check to. Her sister was lending her money. She
4 got the two to three-year backup for the SSI for having the
5 hepatitis C and her illnesses, all that for unemployment. She
6 was supposed to get a backup check, and all this. That was
7 between them. I didn't care.

8 But she was depressed. She got a phone call that
9 day when I was making my calls, after November 5th, when Obama
10 had already won. And that's when I said again, let's go out.
11 Celebrate, forget about it. Let's take the vacuum and go,
12 okay? I know I kind of jump, folks, but you've got to bear
13 with me.

14 So, again, like I said, when we did go out and we
15 come back, when my neighbor's seen me 15 minutes before the
16 calls and screams went on, oh my God, somebody help me. I go
17 to my apartment door. Makes common sense. The door is open,
18 it's unlocked. But the door's shut.

19 So, again, let me re-verify, the evidence will show,
20 I get up, I go upstairs. V's already upstairs. They're
21 hearing all this thumping and pounding. I can't dispute it.
22 How do you dispute? I don't know what they heard. I don't
23 know what she was doing. Simple as that. I walk up. The
24 neighbor testifies he sees me not even 15 minutes again before
25 the fatal scream for help.

ROUGH DRAFT TRANSCRIPT

000575

1 He looks at me, shuts his door, goes inside. Okay,
2 [inaudible]. We admit, nothing was exchanged. We looked,
3 that's it. I go to my door and open it, and it's unlocked. I
4 walk in, I shut the door. I had to pee bad. I'm telling you,
5 I was going pee in the parking lot. I had just been drinking.
6 I was sweating. I was hot. Had my big old union jacket on.
7 I was proud of it. I just got it, because I was helping the
8 union get elected -- the presidency of the United States. You
9 know that. Local Laborers 872 (phonetic).

10 Well, when I go in -- the door's unlocked, folks,
11 when I walk up, which simply just proves she was already up
12 there. She had the keys. She had everything. Everything was
13 in the purse. Wallets, everything. When I walk in, I shut
14 the door. I go straight to the bathroom, the spare bathroom I
15 use. I took a pee. Simple as that. It's the truth.

16 After I got done, stuck my head -- looked in the
17 bedroom, the evidence is going to show, and I seen that the
18 light was on. She was in the bathroom, doing whatever. I
19 didn't care. I walked directly to the kitchen, got a
20 cigarette, went out on the porch.

21 At this time -- this is critical, folks. And this
22 didn't even take two minutes. Walk in. I went in to pee.
23 After I got done, left the seat up. Men do that. I stuck my
24 head in the -- the light was on in the bathroom in the master
25 bedroom. The door was cracked, but you could see the light.

ROUGH DRAFT TRANSCRIPT

000576

1 There's no night light. The evidence is going to show this.
2 There's no light -- there's no fixture above. You've got to
3 have a lamp in the room somewhere. I just see that she's in
4 there, hear she's doing something. No words were ever
5 exchanged between us. Not one word.

6 I go in the kitchen to get a cigarette, and I go out
7 on the porch. When I go out on the porch, I open the door all
8 the way up, like I always do, because I didn't smoke in the
9 apartment because of her health. I at least respected -- I
10 smoked out on the porch. The evidence is going to show --
11 there's a picture, two little chairs set out there. Everybody
12 -- all the neighbors say I always sat out there and drank in
13 the past, and smoked my cigarettes. Nobody disputes that.

14 So, when I walk out and I open up the door
15 completely wide open, and I go out there and I smoke my
16 cigarette, folks, you got to remember, I'm extremely
17 intoxicated. The evidence will show that. I forgot I had my
18 jacket on. Smoked a cigarette, finished it.

19 I had a little steel container there that I put them
20 in, threw it in. I got an oxygen tube, [inaudible]. I filled
21 it with sand and set it in the corner in the second apartment.
22 I threw [inaudible] -- to keep it clean, you know, at least.
23 Finished my cigarettes. Man, I got to get this jacket off.
24 What am I doing? Man, no wonder why I'm so -- my God.

25 Now, from the time of me waking up and going

ROUGH DRAFT TRANSCRIPT

000577

1 upstairs -- folks, you know, I'm going on, and on, and on, but
2 I hope you can relate what I'm saying. It only took a matter
3 of minutes. I woke up. I finally had to pee. I go upstairs.
4 My neighbor sees me. You know, finished a cigarette.
5 Remember, I had partial cigarettes. [Inaudible] save them. I
6 mean, they're expensive now.

7 But [inaudible] me, threw it away. Go into the
8 apartment. I go right to the spare bedroom. Pee. I come
9 out, I look, and see that she's in the bathroom. I walk in --
10 my cigarette drawer, the evidence will show this -- show you
11 where it's at. I go out on the balcony. Finish a cigarette,
12 smoke another cigarette, wondering what I'm going to do now.
13 I wanted to drink some more, even though I was drunk. You
14 know, when I start, I don't want to stop.

15 But all of the sudden, I started getting hot. It
16 makes sense, folks, the evidence -- it makes total sense.
17 You'll see this jacket. I'm like, man, I got to take this
18 jacket off, man. I take this jacket off.

19 I walk into my bedroom, the evidence will show.
20 Once I go into the bedroom, walk around the bed, she hears me.
21 I don't even know this. But all the sudden, light comes in.
22 And she flies out of the bathroom, and she's got a knife. An
23 accident happened, folks. I was trapped, and I kept trying to
24 grab the knife. They want to say I stabbed her. I can't sit
25 here and tell you how many times I deflected, or what I did.

ROUGH DRAFT TRANSCRIPT

000578

1 But the evidence will show my hand got cut up trying to take
2 it.

3 Now, of course, in a drunken statement, I said,
4 yeah, I grabbed the knife from her, and I took it, is what
5 they keep trying to beat down. I grabbed the knife, but I
6 never took it from her. She yanked it back out of my hand. I
7 never had the knife.

8 What they don't want to admit is -- folks, have you
9 watched me? I'm right-handed. Key. Hello. The evidence
10 will show, I'm right-handed right now. The wound's on the
11 opposite side. And it's been determined as possibly
12 accidental also, possibly suicidal. Not necessarily a stab,
13 possibly a puncture. The evidence will show that.

14 But when she flies out at me, I already had my
15 jacket in my hand. When the door opens up, there's mirrors.
16 You'll see. The evidence will show this. I see her. The
17 light -- it was like E.T. The light comes in, and I see her.
18 I'm swinging my jacket.

19 I swing my jacket at her. I let it go. It hits the
20 blinds, the little louvers from the glass sliding window.
21 Some of them fall off. This big jacket's landed right there.
22 They can't dispute it. You can't make that up. You can't
23 make it up, being -- make this up. The physical evidence is
24 right there.

25 So, after I swing the jacket, I'm trying to grab it.

ROUGH DRAFT TRANSCRIPT

000579

1 I finally get a hold of her, folks, and I push her back on the
2 bed. And when I pushed her back, it went in the side. She's
3 right-handed. There was no light on in the room. I was so
4 drunk. She was so drunk. She was on determined medically --
5 they don't want to admit it, O.D. level of medication, her
6 SSR's. Her liver could not process them.

7 You know, I said some things. When you're extremely
8 drunk and they're trying to interrogate -- no, this -- tell us
9 this, you know, they try to hold you to everything. But yet,
10 they've made statements, and they don't want to be held to
11 them. And they're police, and they're trained, and they're
12 not drunk, but their statements are everywhere.

13 When I pushed her back, there was no intent. It was
14 natural self-defense. My motor skills were so slow. Common
15 sense, folks. They don't want to admit the sharpness of the
16 blade is facing back toward her back. They don't want to
17 admit that they have already determined the wound is from
18 front to back, so it makes sense that I had a hold of her,
19 front to back. So, we were facing each other. And they were
20 admitting that it was from out to in, from the front to back.

21 Now, I don't care. Common sense, folks. The
22 evidence shows that. So, you go home tonight, and you try to
23 figure out a way -- when the evidence will show the diagram,
24 there's no way if she's laying on the bed that I could stab
25 her in any way that would have that angle. It's impossible.

ROUGH DRAFT TRANSCRIPT

000580

1 It's a physical impossibility. I'm right-handed. If I
2 stabbed her first of all -- and they have already determined
3 it was from front -- we were facing each other. It's on the
4 wrong side of the body.

5 She's right-handed. She had it in her hand. I had
6 my hand on her. If I would have stabbed her, it would have
7 been on the other side. They don't want to talk about that.
8 They call it a stabbing. There's only one wound. It is
9 consistent with a puncture, and it's only four and-a-quarter
10 inches, they determined, yet the knife was eight inches.

11 And if I wanted to stab her out of vengeance, as the
12 State claims, that knife would have gone all the way in,
13 because they've already determined it didn't hit any bone,
14 cartilage. And without a doubt, it would have gone all the
15 way in if it was intentional. The evidence won't dispute
16 that. It can't. The physical evidence disputes that it's an
17 intentional stabbing, but they don't want to admit it.

18 All I know, in my dumb drunkenness, and in a dark
19 room, that the evidence will show there was no light, except
20 coming from the bathroom, I freaked out. You want to talk
21 about PTSD. I noticed something started to get wet. I didn't
22 know. And I don't even still remember when I realized it was
23 blood. And she kind of stopped moving, and she dropped the
24 knife. It fell out of her hand. And they -- the knife was
25 never hid. It never left the spot where it fell from, her

ROUGH DRAFT TRANSCRIPT

000581

1 hand.

2 And the evidence will show that the knife, by their
3 own expert for the State, police department, that the knife
4 was not wiped off, and there was no fingerprints. But yet, I
5 stabbed her. I didn't need to stab her, if I wanted to hurt
6 her. I freak out, folks, without a doubt. I used bad
7 judgment. But this is a big difference here, folks. Here, I
8 mean, they're claiming murder. Man.

9 I start picking her up, folks. I don't know how
10 many times I grabbed her. And this is all within a ten-minute
11 period from once I used the bathroom, and I went out, and I
12 went back in to hang up my jacket. The neighbor already said,
13 he seen me 15 minutes before.

14 But I'm saying, the whole situation didn't even take
15 60 seconds. It happened so fast, I don't even -- but I know I
16 kept trying to pick her up, folks. I was trying to grab her
17 from the bed, and I dropped her on the floor several times.
18 And that's when I was saying, I didn't mean to hurt you. I
19 dropped her one time. She hit her head so hard. She slipped
20 -- she kept slipping.

21 And I feel like not a man, because I was drunk, and
22 she -- I kept dropping her. That's what Cookie said he heard.
23 I'm sure the testimony will show, and the evidence already has
24 shown, he says all the sudden, he heard a big thud -- bang.
25 Cookie runs up. The door's still wide open, folks. Because I

ROUGH DRAFT TRANSCRIPT

000582

1 -- when I went back out to smoke the cigarette, I left it wide
2 open. I had nothing to hide. Who would do that if you're
3 going to hurt somebody? The window's always open.

4 Cookie comes up because he hears this big thud. He
5 says he's mad, he's angry, he's got to go to work. I would
6 be, too. But they all testify that there was no arguing, no
7 fighting, no shouting, no nothing. But I'm loud, believe me.
8 You think I'm loud now? Imagine me drunk if I'm mad. But
9 they can't dispute they never heard no dispute. There was no
10 battery domestic violence going on.

11 Cookie says he comes in. He hears me say, help.
12 Boy, that's a far cry from, I want to hurt her. I'm saying,
13 help me. Cookie runs in and sees me. He gets scared, and he
14 runs out, and he leaves me. And he runs out, and he starts
15 screaming, oh, man, [inaudible]. I don't know this has
16 happened. But now, the testimony will show that's what was
17 stated. I don't care. Let it be shown.

18 There are so many discrepancies to where they're
19 changing, now, oh, yeah, maybe it was only an hour. Maybe it
20 was only 20 minutes. Yeah, now, I was watching this show; I
21 was watching that. There's going to be great discrepancies
22 into when they called the police. You're going to hear
23 evidence of the 9-11 call, where when Cookie runs out, he says
24 he goes into his place, and he makes a phone call. I ask him
25 for help, and he takes off.

ROUGH DRAFT TRANSCRIPT

000583

1 I didn't have time to go find the telephone. I
2 don't even know where the cell phone's at. I don't even know
3 where it's at. But yet, they expect me to just drop -- stop
4 what I'm doing; sorry, baby, let me make a call. I need some
5 help.

6 MR. LALLI: I'm sorry, Your Honor, I'm going to
7 object again. This is now turning to argument, Your Honor, as
8 opposed to an opening statement.

9 THE COURT: Yeah. The fact that -- you know. It's
10 a fine line here. You know, you've been at this a long time,
11 and you're repeating yourself. But move on and try to
12 conclude this, all right?

13 MR. O'KEEFE: Yes, Your Honor.

14 This is my life, folks. And a tragedy has truly
15 happened. The evidence is going to show, there are so many
16 discrepancies. He runs out, he asks for help. He says he
17 goes to Todd, he goes here, he goes to the apartment manager.
18 He does this, he does that.

19 They make a call to the police. You'll hear -- the
20 evidence will show, Robin, the manager of the apartment
21 complex. They say, call 9-11. Someone's up there stabbed.
22 Someone won't let someone in. They won't let anybody in. He
23 won't let anybody in to help. You'll hear it.

24 She says, nobody's fighting. She's the apartment
25 manager. She knows the place; she's been there for years.

ROUGH DRAFT TRANSCRIPT

000584

1 She's -- nobody's fighting, I would know. I'm -- you know,
2 it's not that far. Nobody's fighting here. Who are you
3 talking about? Nobody is fighting. You'll hear it on the 9-
4 11 call. Nobody's fight -- there's no fighting.

5 He said, yeah, there's somebody up there in the
6 thing, and he won't let anybody in. So, then, Todd, the
7 second 9-11 call, you hear this guy said, yeah, he's -- the
8 neighbor says that there's a beating going on, he hears all
9 kinds of fighting. See, those were the inconsistencies that
10 gets relayed to the police, so the police come -- now, they
11 want to come to hard charging.

12 Todd doesn't say on the 9-11 call, or tell anyone
13 that I already asked Cookie, who first came in and I said,
14 help me, I was asking for help. But he makes a 9-11 call, and
15 says I won't let anybody in and help. You're telling two
16 stories. They don't tell the cops that I was asking Cookie to
17 help me. Help me get her in the living room in the light.

18 There's no disputing, folks, the cops come. They
19 come in force. A lot of stories. A lot of different stories.
20 Their stories are so twisted, they don't even know anymore.
21 Their excuse now, I'm sure you'll probably hear the evidence,
22 I can't remember, will probably be the story.

23 They say that they could see me in on the bed,
24 talking to her or petting her. The evidence is going to show
25 where I quite clearly was saying, please come in here and help

ROUGH DRAFT TRANSCRIPT

000585

1 me. And I even resolved to a lot of profanity, and don't hold
2 that against me.

3 But I wanted to kill her? And I'm saying, get the
4 fuck in here and help me. Oh, we feel he was baiting us.
5 Ultimately, though, was I? Was I baiting anyone? They
6 clearly said they didn't see any weapons in my hand. They
7 didn't see nothing. I was beside her, and I was talking to
8 her, V.

9 They had me on the porch for an hour, hour
10 and-a-half. Inconsistency. I'll prove that the evidence will
11 show that there was another lie by the police. It's an
12 untruth. Let's clean it up, an untruth. He says, all the
13 sudden, miraculously, in this prior proceeding, that he
14 presents evidence that I made these statements in the car.
15 Boy, that's unbelievable.

16 I never made any statements to police, or comments,
17 or anything. And he doesn't know my girl's sick. And I
18 always used to tell her, quit telling me. Their own evidence
19 will show that they know that she was scheduled years ago to
20 have five years to live, if she was lucky, with her continued
21 conduct of over-excessive drinking and medication. She abused
22 it. Anger management problems, bipolar; you name the
23 problems. But didn't mean she was a bad person though. I
24 will say that.

25 The evidence will show quite clearly that the cops

ROUGH DRAFT TRANSCRIPT

000586

1 ultimately came in. When they came in, they came in 5, 6
2 deep. And there was no room for them to stand. When they
3 came in, they came flying over that bed, a couple of them did.
4 And they landed on her, landed on me. Kicks.

5 They can say whatever they want, but now, they don't
6 want to. Well, I'm not sure. He was here, and all this.
7 Yet, they tased me, and they admit that they were fighting me,
8 trying to get my arm. And I'm trying to protect her, don't
9 look at her.

10 And this clothes thing. They tried to create some
11 perverted thing, or whatever. I don't know where they're
12 going with that. But the whole bottom line is, folks, when
13 the blood was coming down her, and I was trying to get her on
14 the floor, I was trying to figure out how to stop the
15 bleeding.

16 I didn't know. I was so confused. It was dark. I
17 was freaking out. Blood was everywhere, and it kept coming
18 down. And her pants, and I pull them off, I'm running, I'm
19 trying help. I'm thinking Cookie's coming. I don't know
20 what's going on. I messed up. But I didn't kill her.

21 Cops tase me repeatedly. This extremely experienced
22 homicide detective, the evidence will show that he says his
23 opinion on these hand wounds. But yet, the evidence is going
24 to show, he didn't take pictures of my thumb. Evidence
25 destroyed again. Only my finger. He doesn't want to admit

ROUGH DRAFT TRANSCRIPT

000587

1 that I'm right-handed.

2 The evidence is going to show he's made statements
3 over and over that, yeah, my experience, from my opinion as a
4 [inaudible], I know what I'm doing. It's commonly that a --
5 when your hand's all bloody -- so, wait a minute. The
6 evidence is going to show, is I didn't even have the knife.
7 There ain't no fingerprints. It's in the wrong hand, wrong
8 location.

9 And there wasn't any blood for the knife to slip out
10 of my hand to cut myself. And the cuts -- the location -- I
11 claimed, the evidence is going to show, it was an intentional
12 act. That's up for you to decide. They know the cuts. They
13 know my extreme intoxication. The evidence is going to show
14 they didn't want to collect that evidence.

15 They didn't want to go to Paris Hotel to collect
16 that we were there, yet I repeatedly asked them over and over.
17 They didn't want to go to Vons, where she went earlier in the
18 day and got wine. They didn't want to do anything. They just
19 wanted to get the case over with. You killed her, because
20 your neighbor said so. Wow. Great job.

21 There's a lot of reasons, folks, why I'm trying to
22 do this. Please don't hold it against me. There's a lot of
23 things I left out. The evidence is going to show, there's
24 going to be time for this. Folks, the evidence is quite
25 clearly going to show there was no murder. There was no

ROUGH DRAFT TRANSCRIPT

000588

1 intentional stabbing. There was no stab at all. There was no
2 intent. Thank you for your time.

3 THE COURT: Thank you very much, Mr. O'Keefe. That
4 completes the opening statements on behalf of the State and
5 the defense. What we're going to do is take our noon recess.
6 And then, we're going to come back at 1:15, and we're going to
7 hear -- start the State's case in chief. All right? So,
8 thank you very much.

9 And please, during this recess, it your duty not to
10 converse among yourselves, or with anyone else, on any subject
11 connected with the trial, or read, watch, or listen to any
12 report or commentary on the trial by any person connected with
13 the trial, or by any medium of information, including, without
14 limitation, newspapers, television, or radio. And you are not
15 to form or express any opinion on any subject connected with
16 the trial until the cause is finally submitted to you.

17 So, we'll be back about 1:15. Just wait outside,
18 and our marshal will bring you in all at one time. All right?
19 [Inaudible].

20 (Court recessed at 12:02 p.m. until 1:21 p.m.)

21 (Within the presence of the jury panel)

22 (Pause in the proceedings)

23 THE MARSHAL: All right. Please remain seated.
24 Let's come to order, please. Make sure all cell phones are
25 turned off. We're back in session.

ROUGH DRAFT TRANSCRIPT

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1 THE COURT: All right. Parties, stipulate to the
2 presence of the jury?

3 MR. LALLI: Yes, Your Honor.

4 MR. O'KEEFE: Yes, Your Honor.

5 THE COURT: All right. We of course picked a jury.
6 We had opening statements. And now, we're going to proceed on
7 the plaintiff's case -- excuse me, the State's case in chief.
8 So, the State will call it's first witness, please.

9 MR. O'KEEFE: Your Honor, with all due respect,
10 could we approach the bench before we call this witness, and
11 clarify a matter quickly? Thank you.

12 (Off-record bench conference)

13 THE COURT: All right. Who's your first witness?

14 MS. MERCER: Lieutenant Price, Your Honor.

15 THE COURT: Lieutenant Price?

16 MS. MERCER: Yes.

17 THE MARSHAL: And Lieutenant Price, if you will
18 remain standing. Please, sir, raise your right hand and face
19 the clerk.

20 ROGER PRICE, STATE'S WITNESS, SWORN

21 THE MARSHAL: If you would have a seat, sir. Slide
22 up to the microphone. And if you would, for the record,
23 please state and spell your name.

24 THE WITNESS: Thank you. My name is Roger Price.
25 That's R-o-g-e-r, P-r-i-c-e.

ROUGH DRAFT TRANSCRIPT

000590

1 THE COURT: All right. Before we proceed, ladies
2 and gentlemen, I again limit -- or give you a limiting
3 instruction. You're about to hear evidence of other crimes,
4 wrongs, or acts. And they're not admissible to prove the
5 character of a person in order to show that he acted in
6 conformity therewith. It may, however, be admissible as proof
7 of motive, intent, or absence of mistake or accident.

8 With that instruction, proceed now.

9 MS. MERCER: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. MERCER:

12 Q Sir, where are you currently employed?

13 A I'm the graveyard lieutenant at the Enterprise area
14 command with LVMPD.

15 Q Is that Las Vegas Metropolitan Police Department?

16 A Yes, ma'am.

17 Q And how long have you been employed with Metro?

18 A 15 years.

19 Q Back in April of 2004, what was your position with
20 Metro?

21 A I was a swing shift police officer at the downtown
22 area command, assigned to downtown 32.

23 Q Okay. So, you were on patrol?

24 A Yes, ma'am.

25 Q And on April 2nd, 2004 at about 9:00 p.m., were you

ROUGH DRAFT TRANSCRIPT

000591

1 dispatched to an incident that took place at 1825 Lewis?

2 A Yes, ma'am.

3 Q When you arrived at that -- well, did you arrive at
4 that location?

5 A Yes, ma'am.

6 Q And what information did you have in regards to why
7 you were being dispatched there?

8 A We were dispatched to a domestic disturbance, where
9 the female half, Victoria Whitmarsh, had alleged that her
10 boyfriend, Brian O'Keefe, had battered her.

11 Q Okay. And when you arrived at 1825 Lewis, did you
12 in fact make contact with Victoria Whitmarsh and Brian
13 O'Keefe?

14 A Yes, ma'am, we did.

15 Q Do you see Brian O'Keefe in the courtroom today?

16 A Yes, ma'am.

17 Q Could you please point to him, and identify an
18 article of clothing that he's wearing?

19 A Right over there. A yellow tie.

20 MS. MERCER: Your Honor, may the record reflect that
21 he's identified the defendant?

22 THE COURT: The record will so reflect.

23 BY MS. MERCER:

24 Q When you respond to a domestic violence incident,
25 how do you typically proceed with your investigation?

1 A We separate both parties involved. We interview
2 both parties to get basically their side of the story. You
3 get what each of them say. Then, you evaluate the evidence at
4 the scene, and see if the evidence corroborates one story or
5 the other, or if the two stories corroborate each other.

6 Q Okay. And when you say evidence at the scene, can
7 you give me some examples of what you look for?

8 A If there's an allegation that there was some
9 physical damage in the residence, you look for that. You look
10 for bruising, reddening, scratches, cuts; any marks that would
11 confirm the battery had occurred.

12 Q Okay. Now, you indicated that at 9:00 p.m., when
13 you were dispatched to that address, Victoria Whitmarsh had
14 alleged that she was battered by the defendant, Brian O'Keefe?

15 A That's correct, ma'am.

16 Q Were you -- did you speak with both parties?

17 A Yes, ma'am.

18 Q And does the law require that you make an arrest in
19 certain situations when you respond to a domestic violence
20 call?

21 A If there is probable cause that a battery had
22 occurred within the last 24 hours, and a domestic relationship
23 can be established, then the law requires an arrest be made.

24 Q And do you know why that is?

25 A Basically, for the protection of the victims of the

1 domestic battery. And a lot of times, we get a case where we
2 go, and there was a battery that occurred, and the victim does
3 not want to press charges at that point. And it's basically
4 to protect the victim from some of their own decisions,
5 basically is the best way to put it.

6 Q Okay. And is it to prevent something more serious
7 from happening?

8 A Yes, ma'am.

9 Q Were you able to confirm that a battery did in fact
10 occur at the -- when you first responded to that address?

11 A Not on that call. There wasn't enough physical
12 evidence to support the allegation of battery.

13 Q When you made contact with Victoria Whitmarsh
14 initially, did she have any visible injuries?

15 A No, ma'am, she did not.

16 Q How did you proceed at that point?

17 A At that point, we spoke to both halves. And based
18 upon the totality of the circumstances, we thought it would be
19 best that the two separate for the night, and basically allow
20 cooler heads to prevail. So, we suggested that one of them
21 leave the apartment.

22 Q Okay. And do you recall which party you recommended
23 leave the apartment?

24 A Initially, we just asked -- we recommended that one
25 of them leave. Mr. O'Keefe stated that he had either friends

1 or family in the area of Charleston and Hinson. And he stated
2 he would go there; however, he had no way to get to that
3 location.

4 Q Okay. And when he advised you that he had no means
5 of getting to the address off of Hinson and Charleston, what
6 did you do at that point?

7 A I offered to take him, and I eventually took him to
8 that location.

9 Q And is that something that you typically do when you
10 respond to a domestic violence call?

11 A No, ma'am. I'm pretty sure it's the only time I've
12 ever done it in my career.

13 Q In your 15 years with Metro, that's the one and only
14 time you've ever done that?

15 A Yes, ma'am.

16 Q Why did you do that?

17 A Basically, when we evaluate the call, we evaluate
18 prior history --

19 THE COURT: Well, maybe -- I mean, do you --
20 approach the bench a minute.

21 (Off-record bench conference)

22 THE COURT: All right. Proceed.

23 BY MS. MERCER:

24 Q Do you remember my question?

25 A You asked why I suggested he leaves, correct?

ROUGH DRAFT TRANSCRIPT

000595

1 Q Why you went out of your way --

2 A Why I went out of my way? Basically, we evaluate
3 it, prior history. We believed that a battery had occurred.
4 The problem is, while we believe that it had occurred, we
5 couldn't prove that it had occurred to the point of having
6 probable cause to make the arrest. And based upon prior
7 history, what was going on at that time, we feared that if we
8 left the two in the same apartment, that Ms. Whitmarsh would
9 be -- would actually be the victim of a battery.

10 Q Okay.

11 A So, we thought it was best to get him out of there,
12 and that way, hopefully prevent a future crime.

13 Q And did you in fact get him out of there?

14 A Yes, ma'am. I contact my sergeant, got permission
15 to leave my area. I drove him, and dropped him off at the
16 south side of Charleston at the intersection of Charleston and
17 Hinson.

18 Q Okay. And when you dropped him off at Charleston
19 and Hinson, how far from the 1825 Lewis address would that
20 have been?

21 A I'd like to say it's about three and-a-half, four
22 miles. It's on the other side of I15, and what would now be
23 considered Bolden area command.

24 Q Okay. And shortly after dropping him off, were you
25 then dispatched again to the address at 1825 Lewis Avenue?

ROUGH DRAFT TRANSCRIPT

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1 A Somewhere around an hour and 15 minutes, to an hour
2 and-a-half after I dropped him off, we were dispatched back to
3 that location.

4 Q And again, was it in reference to a Victoria
5 Whitmarsh and the defendant?

6 A Yes, ma'am.

7 Q When you responded the second time, did you make
8 contact with Victoria?

9 A Yes, ma'am, I did.

10 Q What was her demeanor when you made contact with
11 her?

12 A Victoria was crying and upset. She had some
13 injuries on her at this point, and stated that she was again
14 the victim of a battery.

15 Q At the hands of the defendant?

16 A Yes, ma'am.

17 Q Okay. And I'm sorry, I might have missed this part.
18 Did you indicate whether you observed any injuries on her
19 person?

20 A Yes, ma'am. When we entered the apartment, there as
21 a chair laying in the middle of the room. She stated that
22 she'd used that chair to block the door, to prevent the
23 defendant from coming back inside of the residence.

24 Q Well, without telling me what she said, did you
25 observe any injuries on her physically?

1 A Oh. Yes, ma'am. We observed some scratches, some
2 reddening, and some puffiness around her eye, and she also had
3 broken glasses.

4 Q Okay. What did you do at that point?

5 A At that point, we began to take a report for the
6 domestic battery that had occurred. And --

7 Q Did you make any attempts to contact the defendant?

8 A I didn't attempt to contact the defendant. The
9 defendant contacted Ms. Whitmarsh on her cell phone, and I
10 spoke to him on her cell phone.

11 Q Okay. So, while you were still on scene, the
12 defendant starts calling Victoria Whitmarsh's cell phone?

13 A Yes, ma'am.

14 Q And at some point, you get on the phone with him?

15 A Yes, ma'am.

16 Q Did he request to speak to you, or did you request
17 to speak to him?

18 A I probably requested to speak to him, but I can't
19 tell you for sure.

20 Q And the voice that you spoke to on the phone, was it
21 the same voice that you heard in person when you had spoken to
22 him earlier?

23 A Yes, ma'am, just about an hour and-a-half earlier.

24 Q And what did you say to him once you got on the
25 phone with him?

1 A When I began to speak to him, you could hear
2 basically music in the background. He stated that he had
3 returned to the area. He stated that he was in a bar
4 somewhere close.

5 And I asked him first if he would come back to the
6 apartment and speak to us about the incident, so he can give
7 his side of the story. He refused to do that. So, then I
8 offered to come to his location to speak to him, so again we
9 can get his side of the story and see what happened, and he
10 refused to tell us where he was.

11 Q Okay. So, ultimately, you were not able to make
12 personal contact with him that evening?

13 A No, ma'am, we only took the report.

14 Q And when you take a report, but you're unable to
15 make arrest, what happens with it at that point?

16 A The reports are -- either one to things can happen.
17 If he's contacted within the next 24 hours, then the arrest
18 can be made. If that case doesn't happen, then the case goes
19 forward to the domestic violence detectives. The detectives
20 can submit on the case, and they can submit for a warrant, or
21 a summons, or some other way to get him into court to have the
22 charges heard.

23 Q Okay. And you are aware that after you submitted
24 your report, the defendant ended up being charged with, and
25 convicted of battery constituting domestic violence, a felony,

ROUGH DRAFT TRANSCRIPT

000599

1 correct?

2 A Yes, ma'am. I testified in that case also.

3 Q And that would have been case number C-207835?

4 A That I couldn't tell you for certain. I'm sorry.

5 Q If I showed you a copy of the information, would
6 that refresh your memory?

7 A That would.

8 MS. MERCER: Your Honor, may I approach the witness?

9 THE COURT: Yes. Is there an exhibit here?

10 MS. MERCER: Yes, Your Honor. Exhibit.

11 BY MS. MERCER:

12 Q And for the record, I'm handing you what have been
13 marked as State's proposed Exhibits 133, 133A, and 133B.

14 A Okay.

15 Q If you could take a look at those.

16 A Okay.

17 Q And that's case number C-207835, correct?

18 A Yes, ma'am.

19 MS. MERCER: And Your Honor, at this point, I would
20 move for the admission of these certified documents.

21 THE COURT: Any objection, Mr. O'Keefe, other than
22 your previous objection?

23 MR. O'KEEFE: Yes, Your Honor. May we approach the
24 bench a second?

25 (Off-record bench conference)

ROUGH DRAFT TRANSCRIPT

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1 THE COURT: All right. 133, 133A, and 133B will be
2 admitted over objection by the defendant.

3 (Exhibits 133, 133A and 133B are admitted)

4 MS. MERCER: Thank you, Your Honor. Court's
5 indulgence. Oh. Okay.

6 BY MS. MERCER:

7 Q Lieutenant, you indicated that you testified in that
8 matter?

9 A Yes, ma'am.

10 Q So, you were aware that it went to a jury trial?

11 A Yes, ma'am.

12 MS. MERCER: And Your Honor, for the record -- or
13 permission to publish, Your Honor?

14 THE COURT: Yes.

15 MS. MERCER: And publishing State's Exhibit 133A.

16 BY MS. MERCER:

17 Q This is a copy of the verdict form from that case,
18 correct?

19 A I can't see that. I'm sorry. Oh, it's over here.
20 Yes, it is.

21 Q Okay. Sorry.

22 A Sorry about that.

23 Q And this is a copy of the charging document, the
24 information in that case, correct?

25 A Yes, ma'am.

ROUGH DRAFT TRANSCRIPT

000601

1 Q And a copy of the judgment of conviction from that
2 case as well?

3 A Yes, ma'am.

4 MS. MERCER: Pass the witness, Your Honor.

5 THE COURT: All right. Do you have any
6 cross-examination of this witness, Mr. O'Keefe?

7 MR. O'KEEFE: I have no cross for this witness, Your
8 Honor.

9 THE COURT: Thank you very much, sir. You're
10 excused. Officer, thank you --

11 THE WITNESS: Thank you, sir.

12 THE COURT: -- very much for testifying. The State
13 will call it's next witness.

14 MS. MERCER: The State calls Elynne Warnicko
15 (phonetic) Greene.

16 THE MARSHAL: Greene?

17 MS. MERCER: Greene.

18 THE COURT: And again, after their testimony, you
19 have just heard evidence of other crimes, wrongs, or acts, and
20 it's not admissible to prove the character of a person in
21 order to show that he acted in conformity therewith. It may,
22 however, be admissible as proof of motive, intent, or absence
23 of mistake or accident.

24 THE MARSHAL: Ms. Green, if you will remain
25 standing. Please raise your right hand, and face the clerk.

1 ELYNNE GREENE, STATE'S WITNESS, SWORN

2 THE MARSHAL: If you would have a seat and slide up
3 to the microphone, please. Ma'am, if you would, please state
4 and spell your name for the record.

5 THE WITNESS: My name is Elynne Greene.
6 E-l-y-n-n-e. Greene, G-r-e-e-n-e.

7 MS. MERCER: May I proceed, Your Honor?

8 THE COURT: Yes.

9 DIRECT EXAMINATION

10 BY MS. MERCER:

11 Q Ma'am, where are you currently employed?

12 A The Las Vegas Metropolitan Police Department.

13 Q In what capacity are you employed with them?

14 A I'm supervisor of victim's services.

15 Q And as supervisor of victim's services, what kinds
16 of activities are you involved in?

17 A I provide direct service to victims of all crime
18 categories, as well as supervise a staff of four full-time,
19 and two part-time, and volunteers that provide direct service
20 to victims of crime.

21 Q Okay. And is a lot of your work dedicated to
22 working with victims of domestic violence?

23 A Yes. That's about 90 percent of my work load.

24 Q What kind of educational background do you have that
25 enables you to deal with victims of domestic violence, and

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1 other victims?

2 A I have a bachelor's in psychology, and a master's in
3 counseling. And I worked as a therapist for probably about 15
4 years, and during that time, had trained as a volunteer in
5 domestic violence services, working on a crisis hotline. And
6 since then, have run a shelter, and worked in various
7 positions before coming to the Las Vegas Metropolitan Police
8 Department.

9 Q Okay. You indicated that you became a volunteer
10 while you were still working as a therapist?

11 A Yes.

12 Q And you worked a crisis hotline?

13 A Yes, I did.

14 Q What kind of work -- what did you do when you were
15 working on the hotlines?

16 A Working the hotlines was providing resources and
17 telephone crisis intervention to those that were calling a
18 24-hour hotline through a domestic violence shelter program.

19 Q Okay. And after you quit working as a therapist,
20 what was your next employment?

21 A My next employment was in Southern California,
22 working with victims of domestic violence and sexual assault
23 and sexual abuse. I was the director of a crisis response
24 team. They actually physically went out with law enforcement
25 officers, as did I. And then, I also ran a shelter for

1 domestic violence.

2 Q And when you responded as part of the crisis
3 response team, what were your activities directed at?

4 A The activities were specifically to assess the
5 situation, to assess the needs of the victim at that immediate
6 time in terms of safety. And to provide resources, either for
7 that exact period of time, or for the future. And also, to
8 let them know about how the criminal justice system would
9 operate, since we were responding with law enforcement.

10 Q Okay. When you speak about providing them
11 resources, what kind of resources are we talking about?

12 A Resources, basically safety planning, helping them
13 to identify lethality risks. And also, shelter, support
14 groups, protection order information. Whatever it is that
15 they might need in order to be safe. Advising them about
16 advocacy services for their legal needs. We do not provide
17 legal services.

18 Q Okay. With respect to lethality assessment, what
19 are you talking about when you use that term?

20 A There's actually a standardized form. It's a
21 13-question form. And then, there's also an additional
22 three-question form that's used nationally. And at the Las
23 Vegas Metropolitan Police Department, we currently use the
24 13-question form.

25 The top three questions, through more than 20 years

1 of research, have been determined that they will essentially
2 identify those victims at the greatest risk for lethality, or
3 increasing significant violence. The additional 11 questions
4 at the bottom of the questionnaire, when put together, also
5 increase risks for lethality. And when we use that, we can
6 help victims to identify the risk factors.

7 Q Okay. When you talk about increased risk for
8 lethality, you mean at the hands of an abuser, correct?

9 A Yes. Correct.

10 Q Okay. And then, when you were running the shelter,
11 how long did you do that?

12 A I was at the shelter for approximately six years
13 while I was with the agency.

14 Q Okay. And what did you do after that?

15 A After that, I was in -- let me see. I went from
16 California to Indiana. And while I was in Indiana, I was
17 working as a therapist. I did some training. I had a private
18 practice there. I was also working with the Crisis
19 Intervention Center, and I also worked with offenders for a
20 brief period of time.

21 Q Okay. And when you were working as a therapist,
22 what kinds of patients were you seeing?

23 A I was mostly seeing victims of domestic violence, as
24 well as children that were exposed to violence. Part of my
25 practice was devoted to adolescents.

1 Q Okay. And when you were working as a therapist in
2 Indiana, how long did you do that?

3 A I was in Indiana for -- I'm sorry, Indiana came
4 before California. I apologize. I was in Cincinnati after
5 California --

6 Q Okay.

7 A -- doing similar work. In Indiana, I was there for
8 approximately two years. And in Cincinnati, for just under
9 two years.

10 Q Okay. And then, at what point did you come out to
11 Las Vegas?

12 A I came out to Las Vegas 20 years ago, and joined the
13 Las Vegas Metropolitan Police Department.

14 Q So, you've been working in the victim services
15 department for 20 years?

16 A Yes, I have.

17 Q At this point in your career, how many victims of
18 domestic violence would you say that you've worked with?

19 A I average approximately 100 a month. We do a month
20 report sheet. So, approximately 100 per month.

21 Q And in your work with victims of domestic violence,
22 have you testified in court as an expert on domestic violence
23 previously?

24 A Yes, I have.

25 Q Approximately how many times?

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1 A In Clark County, Nevada, approximately 18 to 20
2 times.

3 Q Okay. And have you testified elsewhere?

4 A Yes. In Southern California in San Diego County,
5 approximately ten times.

6 Q Okay. With regards to your work with domestic
7 violence, are you familiar with the term, cycle of abuse?

8 A Yes, I am.

9 Q What does that term mean?

10 A The cycle of abuse was actually developed back in
11 the late 1970's. And what that basically does is describe the
12 relationship between the victim and the abuser. And in
13 describing that relationship between the victim and the
14 abuser, it starts off with a tension building phase. It can
15 either be something that's very overt, or it can be something
16 that is less obvious. And it could be emotional. It could be
17 an escalating of the physical violence.

18 And during that time, victims will often describe
19 feeling as if they're walking on eggshells. And in many
20 cases, it finally escalates to a point where the tension
21 building becomes the explosive, which is the next part of the
22 phase. And that's where there's the violence.

23 And then, the last part is often described as the
24 honeymoon phase. And the reason for that is because that's
25 the time the abuser might express guilt or shame, become

1 apologetic. And many people describe that as being one of the
2 best times in the relationship. And it's often the time when
3 there's forgiveness, and a sense of, we're going to make this
4 work.

5 During that tension building phase, however, it's
6 not uncommon for victims to --

7 MR. O'KEEFE: Your Honor, I object to this. Can we
8 approach the bench?

9 (Off-record bench conference)

10 THE COURT: All right. Mr. O'Keefe, has an
11 objection, and a continuing objection on this. But I'm going
12 to hold that in abeyance, subject to any motion to strike, or
13 something. Go ahead. Proceed.

14 MS. MERCER: Thank you, Your Honor.

15 BY MS. MERCER:

16 Q I'm sorry. You were trying to explain what -- how
17 victims will behave during the tension building phase.

18 A Right. During the tension building phase, victims
19 can either -- as I said earlier -- used that term, walking on
20 eggshells. They do everything they can to avoid that
21 explosion.

22 Or the other thing is, they often -- knowing what's
23 coming, if there has been a repeated pattern, which there
24 often is in that cyclical type of relationship, they will do
25 something to just get it over with. So, those are the two

1 things that often lead into that acute explosion. And that's
2 part of a safety mechanism for victims, because it becomes
3 more predictable during that tension building phase.

4 Q Okay. So, am I understanding you to say that often
5 times, they will provoke their abuser to go ahead and abuse
6 them, and get it over with?

7 A Right. To get it over with, yes.

8 Q And what kinds of provocation have you seen or heard
9 about in your work with victims of domestic violence? Like,
10 what kinds of things will they do to provoke them?

11 A It can be as simple as -- we've seen everything from
12 not cooking the proper dinner, to more graphic things that --
13 or more distasteful things in relationships, such as going out
14 with friends after they have already been told not to, not
15 returning phone calls, not responding to pages, or text
16 messages. So, it could be a variety of things. It could be
17 anything from something very subtle, again, to something
18 that's much more obvious.

19 Q Have you seen them lash out physically?

20 A I have on occasion, yes. And -- yes, I have.

21 Q And when a victim of domestic violence becomes
22 physical with their abuser, is their intent the same?

23 A No. Their intent is often defensive. Many times,
24 what we see is victims lashing out -- well, first of all, it's
25 a tension building for them, too, while they're "walking on

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1 eggshells." And I use that term, because it really kind of
2 describes the mental state. But I think that for the victims
3 that lash out, it's often either the built up frustration, or
4 the fear; and sometimes, it is defensive.

5 Q And with regards to the abuse at the hands of the
6 abuser, what is their intent?

7 A The abuser, it's generally about power and control.

8 Q Can you explain that a little bit --

9 A Yes.

10 Q -- for me?

11 A One person in a relationship can have more power.
12 And that power -- again, looking at the spectrum, it can be
13 subtle. It can be the emotional connection that someone has,
14 or it can be more overt. It can be the more obvious things,
15 where that power and control is, you will do what I say, or
16 else.

17 Q Okay. So, when an abuser uses physical violence,
18 it's aimed at controlling -- dominating the other party?

19 A Generally, yes.

20 Q What other types of behavior do abusers often use to
21 control their victims?

22 A Coercive. They will often use verbal intimidation.
23 They will use threats. And something that can seem very, very
24 innocent, such as, you know, if you don't do this, nobody's
25 ever going to want you, may not seem as strong to a lot of

1 people. But to victims of domestic violence who already are
2 impacted by self-esteem issues, possibly depression, that can
3 be very, very powerful.

4 Q Okay. And has it been your experience that
5 relationships start out violent at the very beginning?

6 A No. Very, very, very few people -- in fact, I don't
7 think I've ever in my entire career worked with someone that
8 thought, gee, I'm going to fall in love with this person, and
9 I just hope they beat me and make my life miserable.

10 Q How do these relationships typically start out?

11 A They typically start out very similar to the
12 honeymoon phase that I described earlier, where there is an
13 incredible amount of attention. And in retrospect, victims
14 will often look back and think, you know, I was very flattered
15 by the fact that he was texting me every 20 minutes saying, I
16 love you, I care about you, where are you. I was -- I thought
17 it was just great.

18 Now, they start to recognize it as being controlling
19 and manipulative later down the road when the abuse enters
20 into it. So, it's a very, very -- often starts off in a very
21 positive, very attentive note.

22 Q And leading up to the physical abuse, would you say
23 that there's a great deal of mental abuse that precedes that
24 usually?

25 A There can be. And sometimes, not -- there is no

1 course that you can say that the cycle is a day-long, or that
2 the escalation to violence is six months. It can be -- it can
3 be a day, it could be an hour, it could be a year in between
4 physical abuse.

5 Q Okay. And is there typically some sort of process
6 of tearing the victim down mentally that --

7 A Yes.

8 Q -- goes with the physical abuse?

9 A Yes. It -- and the term that's often used is
10 grooming. And we hear that a lot of times where offenders
11 sort of prepare their victim by convincing them, you're fat,
12 you're stupid, you're ugly, you're worthless, nobody's going
13 to want you; you have this disability or this challenge, so
14 who's going to want you but me? And it really does kind of
15 start to ring true. They start to understand and get it that
16 they are unlovable, and that they are lucky to have this
17 person.

18 Q In your experience with working with victims of
19 domestic violence, have you often seen that victims will be
20 the ones -- if there is a separation period, victims will be
21 the ones to reach out and try to reestablish a relationship
22 with their abuser?

23 A Yes, that is not uncommon.

24 Q And why is that?

25 A The reason is -- again, going back to something I

1 said earlier, people start relationships very hopeful, very
2 positive. They don't start hoping to be abused. So, during
3 that time, thinking that if one thing changes -- I've lost 20
4 pounds, or now he might understand why I need to have this
5 job; or if one thing changes, we're going to be okay. So,
6 they often reach back out with that hope.

7 Q And what kinds of things make a victim stay in an
8 abusive relationship.

9 A There's multiple factors. There's not one factor
10 that you can pinpoint. It can be emotional. It can be that
11 connection, that I just described, to the victim. It can be
12 financial. It can be a dependence, because that person meets
13 a certain need, whether they're driving them around.

14 It could be a security issue. Quite often, victims
15 feel more comfortable and feel safer knowing where their
16 abuser is, and being in that relationship as opposed to not
17 knowing. And that's where we start to see stalking behavior.
18 So, the number of reasons -- and love -- really truly loving
19 that person, despite the fact that that person has been
20 dangerous for them, is the number one reason.

21 Q Is there also sometimes embarrassment that goes
22 along with being a victim of domestic violence?

23 A There's embarrassment, especially when you're
24 looking at religious and cultural values. You're looking at
25 how people perceive you. Fear of being judged; why did you

1 stay in that relationship, or maybe it was your fault. And
2 that's something that victims are often convinced of.

3 Q Okay. With respect to power and control dynamics,
4 what you were talking about earlier, what typically happens
5 when an abuser feels like they're losing control?

6 A They will often escalate. They will become more
7 manipulative in order to retain control, and that's when we
8 start seeing the increase in violence. And those are some of
9 the things that we look at in the lethality assessment.

10 Q Thank you.

11 MS. MERCER: Court's indulgence, Your Honor.

12 THE COURT: All right. Thank you. Any
13 cross-examination, Mr. O'Keefe?

14 MR. O'KEEFE: I have no cross for this witness.

15 THE COURT: Thank you, Mr. O'Keefe. All right.
16 You're excused. Thank you very much.

17 MR. LALLI: Your Honor, the State calls Cheryl
18 Morris.

19 THE MARSHAL: Ms. Morris, if you will remain
20 standing. Please raise your right hand and face the clerk.

21 CHERYL MORRIS, STATE'S WITNESS, SWORN

22 THE MARSHAL: Just have a seat. Slide up to the
23 microphone. And if you would, please state and spell your
24 name for the record.

25 THE WITNESS: My name is Cheryl Morris. That's

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1 C-h-e-r-y-l. Last name is Morris, M-o-r-r-I-s.

2 DIRECT EXAMINATION

3 BY MR. LALLI:

4 Q Ms. Morris, do you know an individual by the name of
5 Brian O'Keefe?

6 A Yes, I do.

7 Q How do you know Mr. O'Keefe?

8 A I dated him.

9 Q When?

10 A Between January of '08 to September of '08.

11 Q All right. Can you explain for us how you met him?

12 A I originally met him at Arizona Charlie's, where I
13 was in a little café, eating. And he and his friend showed
14 up.

15 Q So, it was just a matter of circumstance that the
16 two of you happened to meet up?

17 A Yes.

18 Q Did the two of you develop a relationship?

19 A Yes.

20 Q Can you explain for the jury how that occurred; the
21 nature of your relationship?

22 A Prior to actually meeting Brian, I was leaving to go
23 on a trip, and I was gone approximately 3, 4 weeks. I came
24 back, and we actually started seeing one another in January,
25 but we did a lot of conversing on the phone.

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1 Q So, you would exchange phone calls?

2 A Yes.

3 Q And at some point, did the relationship turn to more
4 than just phone calls?

5 A Yes.

6 Q Can you explain that to the jury?

7 A I would spend some nights or weekends with him at
8 his dwelling.

9 Q Where were you staying at this time?

10 A I was staying with a friend of mine. Her name is
11 Dorothy Robe.

12 Q R-o-b-e?

13 A Yes, sir.

14 Q And who is Dorothy Robe?

15 A She's a very good friend of mine. I used to live
16 next-door to her. And she befriended myself and my daughter.

17 Q And so, you and your daughter began to live with
18 Dorothy?

19 A Yes.

20 Q And you indicated for us that the defendant, Mr.
21 O'Keefe, lived somewhere else?

22 A Yes, he did. He lived in a trailer that was on a
23 friend's property.

24 Q Who is the friend?

25 A Troy. I can't remember what his last name is.

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1 Q You don't remember Troy's last name?

2 A No.

3 Q Let me ask you this. Do you see Brian O'Keefe in
4 the courtroom?

5 A Yes, I do.

6 Q Can you please point to him, and tell us what he's
7 wearing today?

8 A He's wearing a brownish-colored suit with what looks
9 like a green shirt, and a yellow speckled tie.

10 MR. LALLI: Your Honor, may the record reflect the
11 witness has identified the defendant?

12 THE COURT: Record will so reflect.

13 BY MR. LALLI:

14 Q So, you're living with Dorothy Robe, and the
15 defendant is living in a trailer, basically?

16 A Yes.

17 Q And if I understand the relationship, there are
18 times when you spend the night with him?

19 A Yes.

20 Q Do you have a romantic relationship with the
21 defendant?

22 A We did, yes.

23 Q All right. Now, I want to direct your attention to
24 Father's Day of 2008, so, June of 2008. Did you learn that
25 Victoria Whitmarsh had called the defendant?

1 A I did after he had spoken to be about it. Yes.

2 Q All right. Do you know who Victoria Whitmarsh is?

3 A Yes.

4 Q Who is Victoria Whitmarsh?

5 A Victoria Whitmarsh was his former lover. They met
6 each other back in 2001, I believe.

7 Q Okay. So, it was your understanding that the
8 defendant had a relationship with Victoria?

9 A Yes.

10 Q How is it that you learned that Victoria had called
11 him?

12 A He returned from the -- returned to the trailer.
13 And he originally was telling me that he had a phone call from
14 his daughter. And after some time, he turned around and said
15 that it wasn't actually his daughter; it was Victoria.

16 Q The -- so, where were you when -- were you aware
17 that this phone call had occurred at the time the phone call
18 occurred?

19 A Yes. I knew that the phone call had occurred,
20 because he was in the trailer. His best friend came out and
21 said, you have a phone call.

22 Q So, you and the defendant are in the trailer
23 together?

24 A Yes.

25 Q And a friend comes and says, hey, Brian, you have a

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1 phone call?

2 A Yes.

3 Q And he leaves the trailer?

4 A Yes.

5 Q And he returns at some point?

6 A Yes.

7 Q And what did he tell you with respect to the phone
8 call initially?

9 A He said that it was his daughter that was calling to
10 wish him a Happy Father's Day.

11 Q All right. And then, later on, he told you who in
12 fact called?

13 A He told me then it was Victoria Whitmarsh, and that
14 she was calling to clear her conscience.

15 Q All right. Don't tell me anything that Victoria
16 might have said to the defendant. But the defendant had told
17 you that it was Victoria that had called?

18 A Yes.

19 Q With respect to the relationship that you had with
20 him, was that the first you had heard of Victoria actually
21 presenting herself into your relationship with the defendant?
22 Do you understand that question? It's not a great -- not a
23 great one.

24 A No.

25 Q Is this the first time you became aware that

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1 Victoria was still in the picture, if you will?

2 A Yes.

3 Q All right. Now, at some point, do you and Brian
4 live together -- or under the same roof, I should say?

5 A We resided at my friend's house together.

6 Q Dorothy's house?

7 A Dorothy's house, yes.

8 Q How -- explain for the jury how that came about.

9 A There was a scene shortly after the phone call from
10 Victoria, where his best friend got upset and --

11 Q Okay. Well, something happened between the
12 defendant and his friend?

13 A Yes.

14 Q And after that, the defendant moved in with Dorothy?

15 A Yes.

16 Q And you were also there with your daughter?

17 A Yes.

18 Q Now, during this period of time, I take it you spent
19 more time with him than you previously had when the two of you
20 lived apart?

21 A Yes.

22 Q All right. Would you -- at times when he lived with
23 you and Dorothy, would the defendant consume alcohol?

24 A Yes.

25 Q Would you -- give us some sense of the amount of

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1 PROSPECTIVE JUROR NO. 030: Over the weekend.

2 THE COURT: Okay. And that was ten years ago?

3 PROSPECTIVE JUROR NO. 030: Yes.

4 THE COURT: All right. That's not going to affect
5 your deliberation if you're picked --

6 PROSPECTIVE JUROR NO. 030: No.

7 THE COURT: -- as a juror here? You don't hold any
8 animosity towards the police, do you?

9 PROSPECTIVE JUROR NO. 030: No.

10 THE COURT: Have you ever served on a jury before?

11 PROSPECTIVE JUROR NO. 030: No.

12 THE COURT: Do you think you could be fair and
13 impartial in this case if you're picked as a juror?

14 PROSPECTIVE JUROR NO. 030: Yes.

15 THE COURT: Thank you very much, ma'am. State,
16 questions --

17 MS. MERCER: Thank you.

18 THE COURT: -- pass for cause?

19 MS. MERCER: Before I get too far into my
20 questioning, is there anything that we should know about now
21 that would cause you to be unable to serve as a juror in this
22 case?

23 PROSPECTIVE JUROR NO. 030: Well, I understand the
24 previous juror's issues about being the judge, but I don't
25 hold that.

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1 MS. MERCER: Okay.

2 PROSPECTIVE JUROR NO. 030: Okay.

3 MS. MERCER: So, you can sit in judgment of another
4 person?

5 PROSPECTIVE JUROR NO. 030: Yes.

6 MS. MERCER: Okay. And you indicated that you're a
7 school teacher. What grade do you teach?

8 PROSPECTIVE JUROR NO. 030: Fourth.

9 MS. MERCER: Fourth grade?

10 PROSPECTIVE JUROR NO. 030: Yes.

11 MS. MERCER: Have you ever had any incidents where
12 your students have reported domestic violence at the home?

13 PROSPECTIVE JUROR NO. 030: Yes.

14 MS. MERCER: How many times has that occurred?

15 PROSPECTIVE JUROR NO. 030: Once.

16 MS. MERCER: And was it serious enough that you
17 called law enforcement? How did you deal with the situation?
18 Let me put it that way.

19 PROSPECTIVE JUROR NO. 030: I went to my principal,
20 talked to her about it, and we have to call Child Protective
21 Services.

22 MS. MERCER: Okay.

23 PROSPECTIVE JUROR NO. 030: It was more of a sexual
24 abuse.

25 MS. MERCER: Okay. So, not really -- was it against

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1 the child?

2 PROSPECTIVE JUROR NO. 030: Yes.

3 MS. MERCER: Okay. Have you ever witnessed a
4 domestic battery incident?

5 PROSPECTIVE JUROR NO. 030: Yes.

6 MS. MERCER: Where?

7 PROSPECTIVE JUROR NO. 030: My father.

8 MR. O'KEEFE: Your Honor, may we approach the bench?
9 It's urgent, Your Honor. One last time.

10 THE COURT: Well, you have a continuing objection.
11 I could say that for the record.

12 MR. O'KEEFE: Thank you, Your Honor. I just want --

13 THE COURT: Yeah.

14 MR. O'KEEFE: -- to ensure that.

15 THE COURT: Absolutely. You have a --

16 MR. O'KEEFE: Forgive me, Your Honor. I just want
17 to ensure.

18 THE COURT: No, no, no. That's why -- you have a
19 continuing objection to what we discussed outside the presence
20 of the jury, as continuing, and we'll make a record down --
21 you know, after a while. All right?

22 MR. O'KEEFE: Thank you, Your Honor.

23 THE COURT: But the record will show that Mr.
24 O'Keefe has a continuing objection regarding that issue, all
25 right? Proceed.

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1 MS. MERCER: Thank you, Your Honor.

2 MR. O'KEEFE: Thank you, Your Honor.

3 MS. MERCER: I'm sorry. The incident you witnessed,
4 who was it between?

5 PROSPECTIVE JUROR NO. 030: My parents.

6 MS. MERCER: Your parents?

7 PROSPECTIVE JUROR NO. 030: Yes.

8 MS. MERCER: Was it an ongoing issue in your
9 household?

10 PROSPECTIVE JUROR NO. 030: Whenever my father was
11 upset.

12 MS. MERCER: Whenever he was upset?

13 PROSPECTIVE JUROR NO. 030: Yes.

14 MS. MERCER: What kinds of things would set him off?

15 PROSPECTIVE JUROR NO. 030: Work, mostly. He was
16 self-employed. And if things didn't go well, he would come
17 home, and dump his day on my mom. And if she didn't react the
18 way he wanted, he would take it out on her physically.

19 MS. MERCER: Did your parents -- are they still
20 married now?

21 PROSPECTIVE JUROR NO. 030: My dad's deceased. And
22 yeah, they were until he died. Yes.

23 MS. MERCER: Until he died?

24 PROSPECTIVE JUROR NO. 030: Yeah.

25 MS. MERCER: Do you know why your mother stayed in

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1 the relationship?

2 PROSPECTIVE JUROR NO. 030: Because she had promised
3 God in her wedding vows, and she was going to be true to them.

4 MS. MERCER: Okay. So, for religious reasons?

5 PROSPECTIVE JUROR NO. 030: Religious reasons, yes.

6 MS. MERCER: Was it physical abuse or emotional
7 abuse?

8 PROSPECTIVE JUROR NO. 030: Both.

9 MS. MERCER: Both? And was there anything about
10 your growing up in that environment that would cause you to be
11 unfair to either side in this case?

12 PROSPECTIVE JUROR NO. 030: I don't think so. It
13 was a long time ago, and I believe that I can be unbiased and
14 fair.

15 MS. MERCER: Okay. So, you understand that Mr.
16 O'Keefe is not your father?

17 PROSPECTIVE JUROR NO. 030: Oh, definitely.

18 THE COURT: And he's --

19 PROSPECTIVE JUROR NO. 030: Yes.

20 MS. MERCER: It's a completely different --

21 PROSPECTIVE JUROR NO. 030: Yes.

22 MS. MERCER: -- set of circumstances?

23 PROSPECTIVE JUROR NO. 030: Yes.

24 MS. MERCER: And you'll hold off on judgment until
25 you've heard all the evidence in the case?

ROUGH DRAFT TRANSCRIPT

000380

1 PROSPECTIVE JUROR NO. 030: Yes.

2 MS. MERCER: Pass for cause, Your Honor.

3 THE COURT: All right. Mr. O'Keefe, questions; pass
4 for cause?

5 MR. O'KEEFE: Yes, Your Honor. Thank you. Just a
6 few, Your Honor. I promise. Hello, ma'am. I'm just going to
7 have a couple questions for you. Do you have any attorneys in
8 your family, or know any in town?

9 PROSPECTIVE JUROR NO. 030: Not in my family, but
10 I've had former parents of students --

11 MR. O'KEEFE: Okay.

12 PROSPECTIVE JUROR NO. 030: -- that were attorneys.

13 MR. O'KEEFE: Okay. Tried to kind of phrase this in
14 my mind as I was sitting there. Do you think that -- again,
15 in searching someone that would see it like I see it, think
16 like I think, would you feel yourself that someone who was
17 extremely intoxicated, and was in a alleged situation, would
18 be very loud if they said there was a lot of yelling, and
19 shouting, and screaming, and -- you know, strike that. Hold
20 that -- let me get this right.

21 Do you feel it would be almost impossible for an
22 argument or fight to go -- about a -- voices, talking,
23 shouting, when a window is wide open? There will be evidence
24 that people, right through a wall, heard nothing, except some
25 pounding; an anger fit, possibly.

ROUGH DRAFT TRANSCRIPT

000381

1 MR. LALLI: Your Honor, I'm sorry. I'd just
2 interpose an objection. It's an inappropriate hypothetical;
3 deals with evidence directly from the case.

4 THE COURT: Yeah, I think it should be more general.
5 You can't get into the facts of the case, because we have no
6 evidence yet, Mr. O'Keefe.

7 MR. O'KEEFE: Yes. I --

8 THE COURT: But maybe just in general, a general
9 question. [Inaudible]. Maybe -- but you're getting to many
10 -- too much fact already in it.

11 MR. O'KEEFE: I apologize, Your Honor.

12 THE COURT: But no, there's no apology necessary.
13 It's just, I have to sustain the objection. All right?

14 MR. O'KEEFE: Yes, sir. Do you think that because
15 someone has died, that it has to be a crime? Or that there
16 could possibly be circumstances that could make it other
17 [inaudible]?

18 PROSPECTIVE JUROR NO. 030: The cause of death and
19 the circumstances would determine if it's a crime or not.

20 MR. O'KEEFE: Exactly the point. [Inaudible] --

21 PROSPECTIVE JUROR NO. 030: In my opinion.

22 MR. O'KEEFE: Let me rephrase it. I apologize.
23 Just because there's a dead person doesn't make it a crime, in
24 your eyes?

25 PROSPECTIVE JUROR NO. 030: I can't answer that,

1 because I would have to know what the circumstances were.

2 MR. O'KEEFE: And the facts?

3 PROSPECTIVE JUROR NO. 030: And the facts.

4 MR. O'KEEFE: Real facts, all evidence possible to
5 lead to that determination, correct?

6 PROSPECTIVE JUROR NO. 030: That would be the best
7 course of action, yes.

8 MR. O'KEEFE: And who is the best -- or person
9 responsible on an alleged crime or call, to do that? Would
10 you agree it would be the police that are investigating an
11 alleged crime, to preserve and save -- collect all evidence
12 possible, so a determination -- that you just stated you would
13 need the facts and the evidence to make a proper
14 determination; would you agree with that?

15 PROSPECTIVE JUROR NO. 030: Yes.

16 MR. O'KEEFE: Do you have anybody in the family that
17 works in the Union, ma'am?

18 PROSPECTIVE JUROR NO. 030: No.

19 MR. O'KEEFE: How do you feel about people that
20 admit that they have a problem with drinking, and are enrolled
21 in NA or AA? Would you be biased against anyone that admits
22 to -- they have a problem?

23 PROSPECTIVE JUROR NO. 030: No.

24 MR. O'KEEFE: To you, there will be some pictures
25 that I have -- has to be seen. And I have to view them, and

1 look at them. Believe me, I don't want to either. And
2 they're not terrible, terrible. But would you be biased
3 against me because I have to do my job, and look, and present
4 some pictures, and put them up, and explain what I can
5 explain?

6 PROSPECTIVE JUROR NO. 030: I would not be biased
7 against you. But I do need to let the Court know that I am
8 extremely squeamish, and can pass out looking at blood and
9 that kind of stuff.

10 MR. O'KEEFE: Okay. So, right there with that
11 comment -- which that's going to be the Judge's job later.
12 You're admitting yourself, blood and all that would be a
13 tragic situation? You would kind of freak out, wouldn't you?

14 PROSPECTIVE JUROR NO. 030: Not freak out; become to
15 the point where I could pass out. I've been accused of being
16 too sympathetic by a first-aid teacher way back in my junior
17 college days.

18 MR. O'KEEFE: So, again, clearly -- I just want to
19 make sure. I have to present some photos. I have to do what
20 I have to do. I don't want to look at them, and I don't want
21 to mislead you that they're grotesque, and all that. But for
22 all jurors possible, and for you, would you be biased,
23 because, you know, I'm able to put them up? And I have to
24 move along. I have to present what I have, so, you know, a
25 determination can be made in this case.

1 PROSPECTIVE JUROR NO. 030: I wouldn't be biased.
2 I'm not --

3 MR. O'KEEFE: Do you understand --

4 PROSPECTIVE JUROR NO. 030: -- particularly sure I
5 could tolerate it --

6 MR. O'KEEFE: But you would not --

7 PROSPECTIVE JUROR NO. 030: -- physically.

8 MR. O'KEEFE: You would not hold it against me? You
9 understand I'm doing what I have to do?

10 PROSPECTIVE JUROR NO. 030: No. I understand.

11 MR. O'KEEFE: Do you feel in yourself also that
12 mental health issues -- again, just to clarify; do you feel
13 that they're relevant?

14 PROSPECTIVE JUROR NO. 030: Yes.

15 MR. O'KEEFE: Do you think someone who's in anger
16 management classes currently, that that's relevant?

17 PROSPECTIVE JUROR NO. 030: It's relevant that
18 they're trying to get help. They recognize there's a problem,
19 or they've been forced to recognize there's a problem.

20 MR. O'KEEFE: If someone was predetermined to have a
21 shortened expectancy of life because of any medical
22 conditions, do you think that should be considered in a case
23 such as this?

24 PROSPECTIVE JUROR NO. 030: It would depend on what
25 the medical condition was.

ROUGH DRAFT TRANSCRIPT

000385

1 MR. O'KEEFE: Let's say exactly what it -- chronic
2 cirrhosis of the liver. Hepatitis C. A host of mental
3 problems.

4 PROSPECTIVE JUROR NO. 030: Could you rephrase the
5 question, please?

6 MR. O'KEEFE: Again, with the charge, I'm being
7 charged with murder. I guess you could just simply say, why
8 would I murder someone if someone was going to die?

9 MR. LALLI: I'm sorry, Your Honor. I have to
10 interpose an objection. It's an inappropriate argument --

11 THE COURT: I agree, Mr. --

12 MR. LALLI: -- or inappropriate question. It's an
13 argument. It's prohibited by the district court rules.

14 THE COURT: Yeah. This has nothing to do with the
15 qualifications of the juror. That's -- I don't know if it's
16 [inaudible] defense, or whatever it is. I have no idea. But
17 I'm going to sustain the objection. Move on to another
18 question.

19 MR. O'KEEFE: Do you have a computer?

20 PROSPECTIVE JUROR NO. 030: Yes.

21 MR. O'KEEFE: Do you use it a lot, ma'am?

22 PROSPECTIVE JUROR NO. 030: Every day.

23 MR. O'KEEFE: No further questions, Your Honor.
24 I'll pass for cause.

25 THE COURT: Thank you.

1 MR. O'KEEFE: Thank you.

2 THE COURT: Marc Humphries, is it? How long have

3 you been in this area, sir?

4 PROSPECTIVE JUROR NO. 012: Approximately 20 years.

5 THE COURT: And what do you do for a living?

6 PROSPECTIVE JUROR NO. 012: I'm the Clark County

7 Juvenile Detention manager.

8 THE COURT: Okay. Are you a peace officer? I'm

9 not --

10 PROSPECTIVE JUROR NO. 012: Correct.

11 THE COURT: How long you been doing that?

12 PROSPECTIVE JUROR NO. 012: Approximately 15 years.

13 THE COURT: So, you work in a juvenile division,

14 though?

15 PROSPECTIVE JUROR NO. 012: Correct.

16 THE COURT: What's the name of the --

17 PROSPECTIVE JUROR NO. 012: Juvenile Detention.

18 THE COURT: Juvenile -- on Bonanza there?

19 PROSPECTIVE JUROR NO. 012: Yes, sir.

20 THE COURT: All right. And what are your duties?

21 PROSPECTIVE JUROR NO. 012: Pardon me?

22 THE COURT: What are your duties?

23 PROSPECTIVE JUROR NO. 012: Oh. I oversee the

24 operations; fiscal, safety and security. I have approximately

25 188 staff underneath my direction.

ROUGH DRAFT TRANSCRIPT

000387

1 THE COURT: The fact that you have that job and your
2 position, is that going to affect your deliberation here?

3 PROSPECTIVE JUROR NO. 012: No. I like to think I'm
4 an objective individual.

5 THE COURT: Okay. Are you married?

6 PROSPECTIVE JUROR NO. 012: Yes.

7 THE COURT: Does your wife work?

8 PROSPECTIVE JUROR NO. 012: No, she's retired.

9 THE COURT: What did she do when she worked?

10 PROSPECTIVE JUROR NO. 012: Juvenile probation
11 officer.

12 THE COURT: Children?

13 PROSPECTIVE JUROR NO. 012: Two.

14 THE COURT: What do they do?

15 PROSPECTIVE JUROR NO. 012: One unemployed, just
16 going to school. And the other one works at Gold's Gym.

17 THE COURT: Have you ever been in the military?

18 PROSPECTIVE JUROR NO. 012: No.

19 THE COURT: Are you acquainted -- of course you're
20 acquainted with people in law enforcement, because you are in
21 law enforcement; is that right?

22 PROSPECTIVE JUROR NO. 012: I'm sorry?

23 THE COURT: Of course you're acquainted with people
24 in law enforcement, because you're in law enforcement?

25 PROSPECTIVE JUROR NO. 012: Yes, Your Honor.

ROUGH DRAFT TRANSCRIPT

000388

1 THE COURT: The fact that you have friends,
2 coworkers, is that going to affect your deliberation -- that
3 are law enforcement?

4 PROSPECTIVE JUROR NO. 012: Again, I'd like to think
5 I'm an objective individual.

6 THE COURT: And you understand the law, that you're
7 not to give greater weight or lesser weight to a police
8 officer's testimony; you give it whatever weight you deem
9 appropriate in a particular circumstance?

10 PROSPECTIVE JUROR NO. 012: Yes.

11 THE COURT: You understand that? Have you ever been
12 the victim of a crime?

13 PROSPECTIVE JUROR NO. 012: Yeah.

14 THE COURT: What was that?

15 PROSPECTIVE JUROR NO. 012: Yeah. It was vandalism
16 of a car years ago. Nothing that would have any --

17 THE COURT: Nothing -- affect on your --

18 PROSPECTIVE JUROR NO. 012: -- relevance or bearing.
19 No.

20 THE COURT: Have you ever -- you or anyone closely
21 associated with you ever been arrested for a crime?

22 PROSPECTIVE JUROR NO. 012: No.

23 THE COURT: You ever served on a jury.

24 PROSPECTIVE JUROR NO. 012: No, I have not.

25 THE COURT: Do you think you could be fair in this

ROUGH DRAFT TRANSCRIPT

000389

1 case?

2 PROSPECTIVE JUROR NO. 012: Yes.

3 THE COURT: All right. Questions; pass for cause?

4 MR. LALLI: Thank you, Your Honor. Mr. Humphries, I
5 would like to ask if there is anything that His Honor hasn't
6 specifically asked you that you think is important for us to
7 know about your ability to be a fair juror in this case?

8 PROSPECTIVE JUROR NO. 012: No. Just simply --
9 well, I -- prior to my law enforcement background, I did work
10 -- I'm a licensed drug and alcohol counselor for the State of
11 Nevada. So, I worked at West Care for a number of years.
12 That's how I broke into the field.

13 And so, I did drug and alcohol treatment, and
14 handled some cases that -- within the scope of drug and
15 alcohol -- drugs and alcohol, that there was domestic violence
16 that occurred. And so, sometimes, I would oversee or manage
17 those cases. And I mean, that's kind of like a --

18 MR. LALLI: Do you think based upon -- I'm sorry. I
19 didn't mean to interrupt you.

20 PROSPECTIVE JUROR NO. 012: I'm sorry.

21 MR. LALLI: No, no, no. But based upon that
22 background, do you think you are not qualified to be a juror I
23 this case?

24 PROSPECTIVE JUROR NO. 012: No, no.

25 MR. LALLI: You can still -- and the hallmark here

ROUGH DRAFT TRANSCRIPT

000390

1 is really whether you can be fair to both the State and the
2 defense. Sounds like you can probably do that?

3 PROSPECTIVE JUROR NO. 012: Yes.

4 MR. LALLI: Okay. As -- in your capacity as
5 director, whatever your specific title is over at juvenile
6 detention, do you have a lot of contacts with members of law
7 enforcement, or are you more of an administrator? Obviously,
8 your staff is law enforcement. But outside law enforcement
9 agencies, such as Las Vegas Metro, North Las Vegas, that sort
10 of thing?

11 PROSPECTIVE JUROR NO. 012: Yeah. From time to
12 time, more administrative type meetings with captains, or
13 sometimes the undersheriff. And --

14 MR. LALLI: Understood.

15 PROSPECTIVE JUROR NO. 012: And even prior to
16 detention manager, I was chief of youth parole. So, I would
17 be involved in meetings with the sheriff.

18 MR. LALLI: I take it you don't -- you don't hang
19 out in booking, and chat with the officers who are arresting
20 juveniles?

21 PROSPECTIVE JUROR NO. 012: Well, I do like to think
22 that I'm a hands-on manager. But yeah -- but, no, I --

23 MR. LALLI: I -- understanding that. But --

24 PROSPECTIVE JUROR NO. 012: I mean, typically, yeah,
25 that's a function. I mean, I am on campus and walking my

1 hallways. But overall, there are other functions, and duties,
2 and meetings that we participate in that are more -- you know,
3 that -- where we out-source to. You know, again, Community
4 Resources, and Las Vegas Metropolitan Police, North Las Vegas;
5 we certainly meet with them regularly.

6 MR. LALLI: Ms. Mercer read out a list of witnesses.
7 Several of those are Las Vegas Metropolitan Police officers.
8 Did you recognize any of those names?

9 PROSPECTIVE JUROR NO. 012: No.

10 MR. LALLI: Mr. O'Keefe indicated a number of
11 witnesses. I believe one of those is a counselor. Did you
12 recognize any of those names at all?

13 PROSPECTIVE JUROR NO. 012: No.

14 MR. LALLI: You started to tell us your background
15 in terms of how you got to your current position. What's your
16 educational background?

17 PROSPECTIVE JUROR NO. 012: I have a bachelor's in
18 sociology. And West Care was fortunate enough in the early
19 90's to provide me with employment, and that's where I started
20 out. And then, of course, had moved along, and worked a stint
21 with Child Protective Services.

22 MR. LALLI: Are you post-certified?

23 PROSPECTIVE JUROR NO. 012: Yes.

24 MR. LALLI: Do you need that technically for your
25 position, or did you acquire that in your journey to your

1 current position?

2 PROSPECTIVE JUROR NO. 012: I acquired it in my
3 journey, and I just maintain it. I'm a cat 2 -- category 2.

4 MR. LALLI: Your Honor, I don't have any additional
5 questions. We would pass for cause.

6 THE COURT: All right. Mr. O'Keefe, questions; pass
7 for cause?

8 MR. O'KEEFE: Just a couple questions, Your Honor.
9 It's Mr. Humphries, right?

10 PROSPECTIVE JUROR NO. 012: Yes, sir.

11 MR. O'KEEFE: I'm sorry, Mr. Humphries. I'm very
12 tired, and my hearing is not the greatest, and my eyesight.
13 Did I hear you -- were you an ex-veteran?

14 PROSPECTIVE JUROR NO. 012: No.

15 MR. O'KEEFE: Okay. And you said you're a police
16 officer; you work in a school? I'm sorry.

17 PROSPECTIVE JUROR NO. 012: I'm in -- I'm a peace
18 officer, yes.

19 MR. O'KEEFE: A peace officer.

20 PROSPECTIVE JUROR NO. 012: Yeah. I manage the
21 juvenile detention facility.

22 MR. O'KEEFE: Juvenile detention?

23 PROSPECTIVE JUROR NO. 012: So.

24 MR. O'KEEFE: Is anybody in your family an attorney?

25 PROSPECTIVE JUROR NO. 012: No, no, no.

ROUGH DRAFT TRANSCRIPT

000393

1 MR. O'KEEFE: Do you have any friends that are
2 attorneys in Las Vegas?

3 PROSPECTIVE JUROR NO. 012: Yes, yes.

4 MR. O'KEEFE: And that's who? Or --

5 PROSPECTIVE JUROR NO. 012: Chris Rassmussen. I
6 mean, that's probably the -- someone I would consider to be a
7 friend, yes.

8 MR. O'KEEFE: Okay.

9 PROSPECTIVE JUROR NO. 012: And various colleagues
10 in the field.

11 MR. O'KEEFE: [Inaudible]. Okay. You would
12 probably be in a good position then to -- this would probably
13 be a good question for you, Mr. Humphries. Because being a
14 peace officer, correct, do you believe that all evidence
15 possibly is -- obvious evidence, that you should absolutely,
16 obviously collect?

17 Do you think that should be done? Do you think it's
18 part of the duty, or a job to the community, being a peace
19 officer, if an alleged crime has supposedly happened?

20 PROSPECTIVE JUROR NO. 012: Sure. If an alleged
21 crime has happened, it's vital to secure that scene -- that
22 crime scene.

23 MR. O'KEEFE: And the evidence should be turned
24 over, and properly presented, and any pretrial hearings or
25 whatever --

ROUGH DRAFT TRANSCRIPT

000394

1 PROSPECTIVE JUROR NO. 012: There's --

2 MR. O'KEEFE: -- made available for you to decide?

3 PROSPECTIVE JUROR NO. 012: There is a chain of
4 evidence that occurs, and --

5 MR. O'KEEFE: And if it's agreed or approved by the
6 Honor (sic), and it's relevant evidence, it should be heard by
7 the jury, right?

8 PROSPECTIVE JUROR NO. 012: Correct.

9 MR. O'KEEFE: Okay. Thank you. No further
10 questions.

11 THE COURT: Pass for cause? Do you pass for cause?

12 MR. O'KEEFE: Yes, Your Honor.

13 THE COURT: Thank you.

14 MR. O'KEEFE: I'm sorry, Your Honor.

15 THE COURT: No, that's fine. That's fine.

16 MR. O'KEEFE: I apologize.

17 THE COURT: David Patton?

18 PROSPECTIVE JUROR NO. 013: Yes, sir.

19 THE COURT: How long you been in this area, sir?

20 PROSPECTIVE JUROR NO. 013: 12 and-a-half years.

21 THE COURT: What do you do for a living?

22 PROSPECTIVE JUROR NO. 013: I'm sorry?

23 THE COURT: What do you do for a living?

24 PROSPECTIVE JUROR NO. 013: I'm retired.

25 THE COURT: What did you do when you worked?

ROUGH DRAFT TRANSCRIPT

000395

1 PROSPECTIVE JUROR NO. 013: I worked for Xerox
2 Corporation for 27 and-a-half years.

3 THE COURT: Get that a little farther from your
4 mouth. It's making a noise. That's good.

5 PROSPECTIVE JUROR NO. 013: Okay.

6 THE COURT: Maybe try that. All right?

7 PROSPECTIVE JUROR NO. 013: Retired from Xerox --

8 THE COURT: All right, and you're retired now. Are
9 you married?

10 PROSPECTIVE JUROR NO. 013: Yes, sir.

11 THE COURT: Does your wife work, or is she retired?

12 PROSPECTIVE JUROR NO. 013: She's retired also.

13 THE COURT: What did she do?

14 PROSPECTIVE JUROR NO. 013: State of California
15 unemployment department.

16 THE COURT: All right. Children?

17 PROSPECTIVE JUROR NO. 013: She has two; I have two.

18 THE COURT: What do they do for a living? Just give
19 me the general --

20 PROSPECTIVE JUROR NO. 013: Her one son, which is
21 the twin to this one, he works in the canopy industry for
22 construction, scaffolding. Her other son is a bank vice
23 president of some company I don't remember. My son is an IT
24 specialist in the State of California. And my daughter is a
25 fifth grade teacher in [inaudible].

ROUGH DRAFT TRANSCRIPT

000396

1 THE COURT: All right, good. Good family. Have you
2 ever been in the military?

3 PROSPECTIVE JUROR NO. 013: Four and-a-half years in
4 the US Navy.

5 THE COURT: What did you do in the US Navy?

6 PROSPECTIVE JUROR NO. 013: Electronics technician.

7 THE COURT: Nothing to do with military police, ro
8 court marshaling or anything?

9 PROSPECTIVE JUROR NO. 013: No.

10 THE COURT: Have you or anyone closely associated
11 with you ever been the victim of a crime?

12 PROSPECTIVE JUROR NO. 013: My wife's youngest son's
13 Avalanche was ripped off in the district when they were
14 visiting.

15 THE COURT: Did they ever catch the individual?

16 PROSPECTIVE JUROR NO. 013: No. They got the car
17 back, but they didn't catch the individual.

18 THE COURT: But that's not going to affect your
19 deliberation, is it?

20 PROSPECTIVE JUROR NO. 013: No.

21 THE COURT: Have you or anyone closely associated
22 with you ever been arrested for a crime?

23 PROSPECTIVE JUROR NO. 013: No.

24 THE COURT: Have you ever served on a jury before?

25 PROSPECTIVE JUROR NO. 013: Yes, sir.

ROUGH DRAFT TRANSCRIPT

000397

1 THE COURT: How many times?
2 PROSPECTIVE JUROR NO. 013: Four.
3 THE COURT: Where?
4 PROSPECTIVE JUROR NO. 013: California.
5 THE COURT: All right. I'm just going to go real
6 quick. The first one, criminal or civil?
7 PROSPECTIVE JUROR NO. 013: Criminal.
8 THE COURT: You were picked --
9 PROSPECTIVE JUROR NO. 013: All of them.
10 THE COURT: All criminal. You were picked as a
11 juror?
12 PROSPECTIVE JUROR NO. 013: Yes, sir.
13 THE COURT: You deliberated the case?
14 PROSPECTIVE JUROR NO. 013: Yes, sir.
15 THE COURT: Were you picked as foreman in any one?
16 PROSPECTIVE JUROR NO. 013: No.
17 THE COURT: And without telling me what the verdicts
18 were, did the jury reach a verdict in each of those four --
19 PROSPECTIVE JUROR NO. 013: Three of the four.
20 THE COURT: All right.
21 PROSPECTIVE JUROR NO. 013: During deliberations --
22 THE COURT: Well --
23 PROSPECTIVE JUROR NO. 013: -- on the fourth, they
24 settled.
25 THE COURT: All right. All right, sir. You think

ROUGH DRAFT TRANSCRIPT

000398

1 you could be fair in this case?

2 PROSPECTIVE JUROR NO. 013: Yes, sir.

3 THE COURT: All right. Thank you. State,
4 questions; pass for cause?

5 MS. MERCER: Court's indulgence. Is there anything
6 that we should know about you that would keep you from being
7 fair and impartial on this case?

8 PROSPECTIVE JUROR NO. 013: No.

9 MS. MERCER: Have you ever witnessed an incident of
10 domestic violence?

11 PROSPECTIVE JUROR NO. 013: No, I have not.

12 MS. MERCER: DO you know anybody that's ever been
13 the victim of domestic violence?

14 PROSPECTIVE JUROR NO. 013: Yes, my aunt.

15 MS. MERCER: Your aunt? Was it some -- was it over
16 the course of a long period of time, or just a one time --

17 PROSPECTIVE JUROR NO. 013: No. Well, it was over a
18 period of time. However, I was on my way over seas, so she
19 was beat to death by one of her boyfriends.

20 MS. MERCER: Oh, so she was actually murdered?

21 PROSPECTIVE JUROR NO. 013: Yeah.

22 MS. MERCER: I take it that was a long time ago,
23 though?

24 PROSPECTIVE JUROR NO. 013: Quite a few year ago.
25 Late 60's.

1 MS. MERCER: And there's nothing about that
2 experience that's going to keep you from being fair and
3 impartial here?

4 PROSPECTIVE JUROR NO. 013: No.

5 MS. MERCER: Pass for cause, Your Honor.

6 THE COURT: All right. Mr. O'Keefe, questions; pass
7 for cause?

8 MR. O'KEEFE: No questions for this witness.

9 THE COURT: Pass for cause?

10 MR. O'KEEFE: Pass for cause.

11 THE COURT: All right. Brian Leming, is it?

12 PROSPECTIVE JUROR NO. 014: Yes, sir.

13 THE COURT: How long you been in this area?

14 PROSPECTIVE JUROR NO. 014: 48 years.

15 THE COURT: And what do you do for a living, sir?

16 PROSPECTIVE JUROR NO. 014: Sign installer.

17 THE COURT: A what?

18 PROSPECTIVE JUROR NO. 014: Sign installer.

19 THE COURT: All right. Are you married?

20 PROSPECTIVE JUROR NO. 014: Yes.

21 THE COURT: What does your wife do, if she works?

22 PROSPECTIVE JUROR NO. 014: Unemployed.

23 THE COURT: Children?

24 PROSPECTIVE JUROR NO. 014: No children.

25 THE COURT: All right. Have you ever been in the

ROUGH DRAFT TRANSCRIPT

000400

1 military?

2 PROSPECTIVE JUROR NO. 014: Two weeks.

3 THE COURT: Two weeks?

4 PROSPECTIVE JUROR NO. 014: I got arthritis.

5 THE COURT: Okay. So, it was a medical --

6 PROSPECTIVE JUROR NO. 014: Medical discharge.

7 THE COURT: All right. Have -- are you acquainted
8 with anybody in law enforcement?

9 PROSPECTIVE JUROR NO. 014: Numerous.

10 THE COURT: And why is that?

11 PROSPECTIVE JUROR NO. 014: Just -- they're buddies,
12 friends.

13 THE COURT: Neighbors, friends?

14 PROSPECTIVE JUROR NO. 014: I have a nephew that's a
15 Las Vegas Metropolitan Police Department, the sheriff of Ely
16 County -- or Ely. Numerous Las Vegas Metropolitan Police
17 Department --

18 THE COURT: All right. Again, the follow up
19 question. The fact that you know -- or relatives -- police --
20 in law enforcement, you understand you're not to give greater
21 weight or lesser weight to a police officer's testimony simply
22 because they're a police officer. You give it the weight you
23 deem appropriate; you understand that?

24 PROSPECTIVE JUROR NO. 014: I understand.

25 THE COURT: Have you or anyone closely associated

ROUGH DRAFT TRANSCRIPT

000401

1 with you ever been the victim of a crime?

2 PROSPECTIVE JUROR NO. 014: Yes.

3 THE COURT: Who was that?

4 PROSPECTIVE JUROR NO. 014: It was -- Alexander
5 Chacon. He --

6 THE COURT: What?

7 PROSPECTIVE JUROR NO. 014: Alexander Chacon. He
8 murdered a guy. He was dismissed. It was self-defense.

9 THE COURT: I'm still not getting you. I don't know
10 Alexander Chacon. I mean, I --

11 PROSPECTIVE JUROR NO. 014: Well, it was a buddy of
12 mine. A coworker.

13 THE COURT: Oh, okay. So, there was a coworker of
14 yours that was charged with a crime?

15 PROSPECTIVE JUROR NO. 014: Yes.

16 THE COURT: What was the crime?

17 PROSPECTIVE JUROR NO. 014: Murder.

18 THE COURT: Was that here in Las Vegas?

19 PROSPECTIVE JUROR NO. 014: Yes.

20 THE COURT: And how long ago?

21 PROSPECTIVE JUROR NO. 014: Three years.

22 THE COURT: And he was -- he went to trial?

23 PROSPECTIVE JUROR NO. 014: He went to trial, and it
24 was dismissed for --

25 THE COURT: For whatever reason --

ROUGH DRAFT TRANSCRIPT

000402

1 PROSPECTIVE JUROR NO. 014: Yeah.

2 THE COURT: -- he didn't get convicted or whatever?

3 PROSPECTIVE JUROR NO. 014: He didn't get convicted.

4 THE COURT: All right. And that's not going to
5 affect your deliberation here, is it?

6 PROSPECTIVE JUROR NO. 014: No.

7 THE COURT: Okay. You ever serve on a jury before?

8 PROSPECTIVE JUROR NO. 014: No, sir.

9 THE COURT: Could you be fair in this case?

10 PROSPECTIVE JUROR NO. 014: I don't know. I've been
11 arrested for domestic violence.

12 THE COURT: Okay. Okay. I guess I forgot to say,
13 you or anyone closely associated been arrested for anything?

14 PROSPECTIVE JUROR NO. 014: Me and my wife.

15 THE COURT: All right. How long ago was that?

16 PROSPECTIVE JUROR NO. 014: '91.

17 THE COURT: That was a long time ago. So, you --
18 there was some sort of a dispute, and the police showed up; is
19 that correct?

20 PROSPECTIVE JUROR NO. 014: Yes, sir.

21 THE COURT: And the police arrested both of you?

22 PROSPECTIVE JUROR NO. 014: Yes, sir.

23 THE COURT: And you both went to --

24 PROSPECTIVE JUROR NO. 014: Henderson.

25 THE COURT: -- Clark County Detention Center?

ROUGH DRAFT TRANSCRIPT

000403

1 PROSPECTIVE JUROR NO. 014: Henderson.

2 THE COURT: Henderson? Did you stay overnight?

3 PROSPECTIVE JUROR NO. 014: Yes.

4 THE COURT: And what were the results of that?

5 PROSPECTIVE JUROR NO. 014: Just paid a fine. Lost
6 my gun rights.

7 THE COURT: Okay. And what about your wife?

8 PROSPECTIVE JUROR NO. 014: Same thing.

9 THE COURT: Okay. Well, is that going to affect
10 your deliberation in this particular case?

11 PROSPECTIVE JUROR NO. 014: No.

12 THE COURT: Okay. You could be fair and impartial,
13 both to the State and to the defense?

14 PROSPECTIVE JUROR NO. 014: It's the hardship of --
15 if it goes to -- or five days is going to kill me work-wise.

16 THE COURT: Mr. Lalli, are you next?

17 MR. LALLI: Yes, Your Honor. Thank you. As an
18 installer, do you work for YESCO, or?

19 PROSPECTIVE JUROR NO. 014: Federal. Federal Heath.

20 MR. LALLI: Oh, okay.

21 PROSPECTIVE JUROR NO. 014: YESCO is competition.

22 MR. LALLI: Yes Co is the competition?

23 PROSPECTIVE JUROR NO. 014: Yes, they are.

24 MR. LALLI: I meant nothing by it. With respect to
25 your job, Judge Bonaventure, as most of the judges in the

ROUGH DRAFT TRANSCRIPT

000404

1 courthouse, feel very strongly about a person's responsibility
2 to be a juror. What sort of an impact will being out of work
3 for the week have on you?

4 PROSPECTIVE JUROR NO. 014: Financial problems. I'm
5 already in financial trouble.

6 MR. LALLI: Is it something that is going to
7 preoccupy your ability to kind of pay attention to what
8 happens in court? Not that you're not going to be able to --

9 PROSPECTIVE JUROR NO. 014: Yes, it will. It will.

10 MR. LALLI: But is it going to be such a distraction
11 that you're going to be concerned about what's going on at
12 home, as opposed to what's going on here?

13 PROSPECTIVE JUROR NO. 014: Yes.

14 MR. LALLI: You -- with respect to your domestic
15 violence issue that occurred in '91, when Judge Bonaventure
16 asked you if that would affect your ability to be fair here,
17 you kind of said, uh, nom, and I heard kind of a stutter up
18 front. Can you -- what was --

19 PROSPECTIVE JUROR NO. 014: Well, neither one of us
20 pressed charges on each other. The State did.

21 MR. LALLI: Do you have a problem --

22 PROSPECTIVE JUROR NO. 014: We never went to -- we
23 never went to trial. But I was presumed guilty because I paid
24 a fine, and that doesn't sit right with me.

25 MR. LALLI: Leaves a bad taste in your mouth?

ROUGH DRAFT TRANSCRIPT

000405

1 PROSPECTIVE JUROR NO. 014: It leaves a real bad
2 taste in my mouth.

3 MR. LALLI: Do you think the State should not be
4 allowed to prosecute people under those circumstances?

5 PROSPECTIVE JUROR NO. 014: Yes.

6 MR. LALLI: Knowing that -- I mean, is that another
7 reason you could point to why you don't think that this might
8 not be the correct trial for you?

9 PROSPECTIVE JUROR NO. 014: It could possibly, yes.

10 MR. LALLI: Your Honor, I'm going to challenge for
11 cause.

12 THE COURT: Mr. O'Keefe, what is your -- any
13 objection?

14 MR. O'KEEFE: No objection, Your Honor.

15 THE COURT: All right. All right. Report back to
16 the jury commissioner. The clerk will call another
17 prospective juror.

18 THE CLERK: Kurt Darby.

19 THE COURT: Kurt Darby, please. How long have you
20 been in this area, Mr. Darby?

21 PROSPECTIVE JUROR NO. 032: About 16 years.

22 THE COURT: What do you do for a living?

23 PROSPECTIVE JUROR NO. 032: I'm a hod carrier.

24 THE COURT: A what?

25 PROSPECTIVE JUROR NO. 032: Hod carrier. Masonry.

ROUGH DRAFT TRANSCRIPT

000406

1 THE COURT: Oh, masonry. All right. I thought you
2 said hog, but it's hod.

3 PROSPECTIVE JUROR NO. 032: Right.

4 THE COURT: Hod?

5 PROSPECTIVE JUROR NO. 032: Hod. H --

6 THE COURT: H-o-d?

7 PROSPECTIVE JUROR NO. 032: H-o-d.

8 THE COURT: All right. Are you married?

9 PROSPECTIVE JUROR NO. 032: Yes, I am.

10 THE COURT: What does your wife do, if she works?

11 PROSPECTIVE JUROR NO. 032: She is -- works for a
12 catering company, Soirees.

13 THE COURT: Okay. Do you have any children?

14 PROSPECTIVE JUROR NO. 032: Yes, two.

15 THE COURT: Do any of them work?

16 PROSPECTIVE JUROR NO. 032: One works at a
17 restaurant, and the other one is an at-home mom.

18 THE COURT: Okay. Have you ever been in the
19 military?

20 PROSPECTIVE JUROR NO. 032: No, I haven't.

21 THE COURT: Are you acquainted with anybody in law
22 enforcement?

23 PROSPECTIVE JUROR NO. 032: No, I'm not. Have you
24 or anyone closely associated with you ever been the victim of
25 a crime?

ROUGH DRAFT TRANSCRIPT

000407

1 PROSPECTIVE JUROR NO. 032: Yes, I have been.

2 THE COURT: What was that?

3 PROSPECTIVE JUROR NO. 032: It was forgery here in
4 Las Vegas.

5 THE COURT: You were the victim of forgery?

6 PROSPECTIVE JUROR NO. 032: No, no, no. I was
7 convicted of it.

8 THE COURT: Okay. That's different, being a victim,
9 rather than being the defendant.

10 PROSPECTIVE JUROR NO. 032: Yeah. Well, actually, I
11 was -- I was kind of a victim of it, because I --

12 THE COURT: You were victim of circumstances?

13 PROSPECTIVE JUROR NO. 032: Well, I didn't -- I
14 didn't forge anything --

15 THE COURT: All right. Well, just tell me, when was
16 that? How long ago?

17 PROSPECTIVE JUROR NO. 032: It was about 7, 8 years
18 ago?

19 THE COURT: And it was here in Las Vegas?

20 PROSPECTIVE JUROR NO. 032: Yes, it was.

21 THE COURT: And you were arrested for that?

22 PROSPECTIVE JUROR NO. 032: I was arrested for it.

23 THE COURT: Did you go to court?

24 PROSPECTIVE JUROR NO. 032: I went to court.

25 THE COURT: What were the results of that court?

ROUGH DRAFT TRANSCRIPT

000408

1 PROSPECTIVE JUROR NO. 032: They put me on probation
2 for three years, and --

3 THE COURT: How many?

4 PROSPECTIVE JUROR NO. 032: Probation for three
5 years.

6 THE COURT: Was it a felon (sic)?

7 PROSPECTIVE JUROR NO. 032: Yes, it was a felony.

8 THE MARSHAL: You guys got to quit talking. She's
9 recording.

10 THE COURT: All right. Well, I mean, the fact that
11 you're a convicted felon, I don't even know if you can serve.
12 I'm not sure.

13 MR. LALLI: I don't think he can, Your Honor.

14 THE COURT: I don't know. Mr. O'Keefe, the fact
15 that he's a convicted felon, it's my understanding he can't
16 serve. Any reason why we shouldn't excuse him?

17 MR. LALLI: Not that I can pick up, Your Honor.

18 MR. O'KEEFE: No, Your Honor.

19 THE COURT: All right. Go report back to the jury
20 commissioner. Clerk, call another prospective juror.

21 THE CLERK: Robert Santos.

22 THE COURT: And how long have you been in this area,
23 sir?

24 PROSPECTIVE JUROR NO. 033: 12 years.

25 THE COURT: What do you do for a living?

ROUGH DRAFT TRANSCRIPT

000409

1 PROSPECTIVE JUROR NO. 033: IT.
2 THE COURT: IT? What is that? Just --
3 PROSPECTIVE JUROR NO. 033: Computer work.
4 THE COURT: Computer work?
5 PROSPECTIVE JUROR NO. 033: Yeah.
6 THE COURT: That's how much I know about computers,
7 right? Are you married?
8 PROSPECTIVE JUROR NO. 033: Yes.
9 THE COURT: What does your wife do?
10 PROSPECTIVE JUROR NO. 033: She doesn't work.
11 THE COURT: Okay. Children?
12 PROSPECTIVE JUROR NO. 033: She lost her job.
13 THE COURT: Okay. You got any children?
14 PROSPECTIVE JUROR NO. 033: Two.
15 THE COURT: Too young to work?
16 PROSPECTIVE JUROR NO. 033: One's young, and one is
17 22.
18 THE COURT: Does the 22 year-old work?
19 PROSPECTIVE JUROR NO. 033: No, he's still in
20 school.
21 THE COURT: Okay. Have you ever been in the
22 military?
23 PROSPECTIVE JUROR NO. 033: No.
24 THE COURT: Are you acquainted with anybody in law
25 enforcement?

ROUGH DRAFT TRANSCRIPT

000410

1 PROSPECTIVE JUROR NO. 033: No.

2 THE COURT: Have you or anyone closely associated
3 with you ever been the victim of a crime?

4 PROSPECTIVE JUROR NO. 033: No, just the vandalism
5 of vehicles. That's about it.

6 THE COURT: Did they catch the individual?

7 PROSPECTIVE JUROR NO. 033: No.

8 THE COURT: That's not going to affect your
9 deliberation?

10 PROSPECTIVE JUROR NO. 033: No, not at all.

11 THE COURT: What about you or anyone closely
12 associated ever been arrested for a crime?

13 PROSPECTIVE JUROR NO. 033: No.

14 THE COURT: You ever served on a jury?

15 PROSPECTIVE JUROR NO. 033: Yes.

16 THE COURT: How many times?

17 PROSPECTIVE JUROR NO. 033: Once. I think it was
18 last year.

19 THE COURT: Was it a criminal or civil case?

20 PROSPECTIVE JUROR NO. 033: Criminal.

21 THE COURT: And you were picked as a juror?

22 PROSPECTIVE JUROR NO. 033: Yes.

23 THE COURT: You deliberated the case?

24 PROSPECTIVE JUROR NO. 033: Yes.

25 THE COURT: Were you picked as foreman?

ROUGH DRAFT TRANSCRIPT

000411

1 PROSPECTIVE JUROR NO. 033: No.

2 THE COURT: Without telling me what the verdict was,
3 did you reach a verdict?

4 PROSPECTIVE JUROR NO. 033: Yes.

5 THE COURT: All right. Could you be fair in this
6 case if you're --

7 PROSPECTIVE JUROR NO. 033: Yes.

8 THE COURT: -- selected as a juror?

9 PROSPECTIVE JUROR NO. 033: Uh-huh.

10 THE COURT: Yes?

11 PROSPECTIVE JUROR NO. 033: Yes.

12 THE COURT: All right. Questions; pass for cause?

13 MS. MERCER: Thank you, Your Honor. Where do you
14 work as an IT person?

15 PROSPECTIVE JUROR NO. 033: As an IT person?

16 MS. MERCER: Yeah.

17 PROSPECTIVE JUROR NO. 033: For Alternative Offices
18 here in Vegas.

19 MS. MERCER: Oh, okay. So, you service several
20 companies?

21 PROSPECTIVE JUROR NO. 033: Yes.

22 MS. MERCER: Okay. And you said that your wife lost
23 her job?

24 PROSPECTIVE JUROR NO. 033: Yeah, about a year
25 and-a-half ago.

ROUGH DRAFT TRANSCRIPT

000412

1 MS. MERCER: What did she do before she lost her
2 job?

3 PROSPECTIVE JUROR NO. 033: She was in accounting,
4 doing accounting work.

5 MS. MERCER: Accounting work?

6 PROSPECTIVE JUROR NO. 033: Yeah.

7 MS. MERCER: At what kind of business?

8 PROSPECTIVE JUROR NO. 033: Medical -- anywhere,
9 really. She had like three of them in a row.

10 MS. MERCER: Okay.

11 PROSPECTIVE JUROR NO. 033: The last one was at a
12 HOA.

13 MS. MERCER: Okay. And what is your 22 year-old
14 child studying in school?

15 PROSPECTIVE JUROR NO. 033: He's leaning to be a
16 graphic artist.

17 MS. MERCER: And you indicated that you don't know
18 anyone that's been the victim of a crime?

19 PROSPECTIVE JUROR NO. 033: Well, I got a bunch of
20 cousins that were involved in crimes, and ended up getting
21 deported.

22 MS. MERCER: Okay. So, they were convicted of
23 crimes?

24 PROSPECTIVE JUROR NO. 033: Yes. Good old three
25 strikes.

ROUGH DRAFT TRANSCRIPT

000413

1 MS. MERCER: Is there anything about those
2 experience that would cause you to be --
3 PROSPECTIVE JUROR NO. 033: Not at all.
4 MS. MERCER: -- biased in this case?
5 PROSPECTIVE JUROR NO. 033: Not at all, no.
6 MS. MERCER: Do you think they were treated fairly?
7 PROSPECTIVE JUROR NO. 033: Yeah.
8 MS. MERCER: Have you ever been acquainted with
9 anyone that's been a victim of domestic violence?
10 PROSPECTIVE JUROR NO. 033: No.
11 MS. MERCER: Have you ever witnessed an incident of
12 domestic violence?
13 PROSPECTIVE JUROR NO. 033: Not at all.
14 MS. MERCER: If you did --
15 PROSPECTIVE JUROR NO. 033: Oh, yes. Wait, I take
16 that back. My cousin.
17 MS. MERCER: Your cousin?
18 PROSPECTIVE JUROR NO. 033: Yes.
19 MS. MERCER: Male or female?
20 PROSPECTIVE JUROR NO. 033: He's male.
21 MS. MERCER: Okay. So, his girlfriend --
22 PROSPECTIVE JUROR NO. 033: Yes.
23 MS. MERCER: -- attacked him?
24 PROSPECTIVE JUROR NO. 033: Yeah. Actually, he
25 attacked her.

ROUGH DRAFT TRANSCRIPT

000414

1 MS. MERCER: Oh, he attacked her?

2 PROSPECTIVE JUROR NO. 033: Yes.

3 MS. MERCER: And what did you do?

4 PROSPECTIVE JUROR NO. 033: It just happened so
5 fast. I had to pull them apart, basically.

6 MS. MERCER: Were the police called out?

7 PROSPECTIVE JUROR NO. 033: No, they weren't.

8 MS. MERCER: Where did that occur?

9 PROSPECTIVE JUROR NO. 033: The incident actually
10 cooled off after a while. After that, never happened.

11 MS. MERCER: That you're aware of?

12 PROSPECTIVE JUROR NO. 033: Yeah.

13 MS. MERCER: Was that here in Las Vegas?

14 PROSPECTIVE JUROR NO. 033: It was a long time ago
15 in San Bruno, California, actually.

16 MS. MERCER: Okay.

17 PROSPECTIVE JUROR NO. 033: Yeah.

18 MS. MERCER: Why were the police not called?

19 PROSPECTIVE JUROR NO. 033: The situation cooled
20 down, basically. And never heard of any other incidents after
21 that.

22 MS. MERCER: You felt like it was under control.

23 PROSPECTIVE JUROR NO. 033: I think it was an
24 isolated incident. And it was both of them, actually.

25 MS. MERCER: Had they been drinking, or?

ROUGH DRAFT TRANSCRIPT

000415

1 PROSPECTIVE JUROR NO. 033: Yeah.

2 MS. MERCER: Alcohol was involved?

3 PROSPECTIVE JUROR NO. 033: Yes.

4 MS. MERCER: Do you think that alcohol abuse or
5 substance abuse can excuse acts of domestic violence?

6 PROSPECTIVE JUROR NO. 033: That's hard to say.

7 MS. MERCER: Well, let me rephrase it this way. Do
8 you think that just because someone's under the influence of
9 alcohol or some sort of controlled substance, they shouldn't
10 be held accountable for their actions when they abuse someone?

11 PROSPECTIVE JUROR NO. 033: That's a hard question,
12 really. I'm having a tough time answering that. Only because
13 of the experience in the past as a kid.

14 MS. MERCER: And what experience would that be?

15 PROSPECTIVE JUROR NO. 033: You know, we all went
16 through that. Well, I can't say that to everybody. But as
17 far as drinking, drugs -- I mean, there's people that I feel
18 do that stuff; it doesn't affect them at all. Do you see what
19 I'm getting at here? Or am I confusing you?

20 MS. MERCER: You confused me.

21 PROSPECTIVE JUROR NO. 033: I think it does play a
22 big part in it, too.

23 MS. MERCER: Okay.

24 PROSPECTIVE JUROR NO. 033: That's my opinion.

25 MS. MERCER: Do you think they should face criminal

ROUGH DRAFT TRANSCRIPT

000416

1 charges?

2 PROSPECTIVE JUROR NO. 033: In my opinion, I think
3 it depends.

4 MS. MERCER: It depends?

5 PROSPECTIVE JUROR NO. 033: Yeah.

6 MS. MERCER: On what?

7 PROSPECTIVE JUROR NO. 033: The situation and the
8 evidence.

9 MS. MERCER: Okay. The incident with your cousin,
10 was that the only incident that you've --

11 PROSPECTIVE JUROR NO. 033: Yeah.

12 MS. MERCER: -- ever witnessed?

13 PROSPECTIVE JUROR NO. 033: That was the only one I
14 ever witnessed. Again, that wasn't even -- I think it was
15 just a heated thing, just that one time.

16 MS. MERCER: Okay.

17 PROSPECTIVE JUROR NO. 033: Because after that, it
18 never happened again.

19 MS. MERCER: And how long ago was that?

20 PROSPECTIVE JUROR NO. 033: They stayed together for
21 the next three years with no other incidents, and ended up
22 breaking up after that.

23 MS. MERCER: The next three years; is that what you
24 said?

25 PROSPECTIVE JUROR NO. 033: Um-hum.

ROUGH DRAFT TRANSCRIPT

000417

1 MS. MERCER: Okay. No further questions, Your
2 Honor.

3 THE COURT: Pass for cause?

4 MS. MERCER: Yes.

5 THE COURT: All right. Questions; pass for cause?

6 MR. O'KEEFE: Yes, Your Honor, just a couple. Thank
7 you.

8 PROSPECTIVE JUROR NO. 033: Your Honor, can I say
9 something?

10 THE COURT: Sure.

11 PROSPECTIVE JUROR NO. 033: Before we continue this,
12 I have no problem being in the jury. But just like the other
13 guy, I am financially strapped. That's my only problem with
14 this.

15 THE COURT: Well, you know, ask him questions about
16 it. I don't like excusing people because of financial --

17 PROSPECTIVE JUROR NO. 033: Yeah.

18 THE COURT: We'd never get a jury; you understand
19 that? We would never get a jury.

20 PROSPECTIVE JUROR NO. 033: Totally understand.

21 THE COURT: And we've got tons of jury trials going
22 on every week. Maybe 30 jury trials.

23 PROSPECTIVE JUROR NO. 033: Um-hum.

24 THE COURT: If we do that, we never get a jury. But
25 if you want to ask him any questions --

ROUGH DRAFT TRANSCRIPT

000418

1 MS. MERCER: Is there something unique about what's
2 going on in your life right now that causes a severe burden
3 financially?

4 PROSPECTIVE JUROR NO. 033: Well, the severe burden
5 is basically the financial, because I'm the only one working,
6 and the company doesn't pay. They already told me they don't
7 pay for us being at jury duty. And not only that, mom's died
8 a couple weeks ago, so that's still fresh in my mind. But --

9 MS. MERCER: I'm sorry, your mother passed a couple
10 weeks ago?

11 PROSPECTIVE JUROR NO. 033: Yes. A couple weeks
12 ago.

13 MS. MERCER: So, is that you feel that if you're
14 selected for jury duty, you might not pay attention to the
15 evidence that's presented?

16 PROSPECTIVE JUROR NO. 033: Maybe a month -- in two
17 months from now, I'll be fine. But at this point in time -- I
18 guess I could sit with it. I mean, the only thing that really
19 bugs me right now, Your Honor, is the financial burden.
20 That's it, really. I can handle the --

21 THE COURT: What did your mother die of? Of natural
22 causes?

23 PROSPECTIVE JUROR NO. 033: Heart attack.
24 Respiratory problems.

25 THE COURT: Well, you know, I'm getting tired.

ROUGH DRAFT TRANSCRIPT

000419

1 They're beating me up here. I want to get through with this.
2 We still -- how many preempts, four? Well, approach the bench
3 a minute.

4 (Off-record bench conference)

5 THE COURT: Mr. Santos, report back to the jury
6 commissioner. Clerk, call another prospective juror.

7 THE CLERK: Aaron Koyasu.

8 THE COURT: Oh, yeah. There's no objections to
9 that; is there, State?

10 MR. LALLI: No, Your Honor.

11 MS. MERCER: No, Your Honor.

12 THE COURT: Mr. O'Keefe?

13 MR. O'KEEFE: No objection, Your Honor.

14 THE COURT: All right. How long you been in this
15 area, sir?

16 PROSPECTIVE JUROR NO. 034: 14 years.

17 THE COURT: And what do you do for a living?

18 PROSPECTIVE JUROR NO. 034: Entertainment
19 professional.

20 THE COURT: All right. Are you married?

21 PROSPECTIVE JUROR NO. 034: Negative.

22 THE COURT: Children?

23 PROSPECTIVE JUROR NO. 034: Negative.

24 THE COURT: Have you ever been in the military?

25 PROSPECTIVE JUROR NO. 034: No.

ROUGH DRAFT TRANSCRIPT

000420

1 THE COURT: Are you acquainted with anybody in law
2 enforcement?

3 PROSPECTIVE JUROR NO. 034: A couple friends, but
4 just --

5 THE COURT: Again, you understand you're not to give
6 greater weight --

7 PROSPECTIVE JUROR NO. 034: Understood.

8 THE COURT: -- or lesser weight to a police
9 officer's testimony simply because they're a police officer.
10 You give it the weight you deem necessary.

11 PROSPECTIVE JUROR NO. 034: Yes.

12 THE COURT: Have you or anyone closely associated
13 with you ever been the victim of a crime?

14 PROSPECTIVE JUROR NO. 034: No. Nothing serious.

15 THE COURT: Or arrested for a crime?

16 PROSPECTIVE JUROR NO. 034: Contempt of court.

17 THE COURT: What?

18 PROSPECTIVE JUROR NO. 034: Contempt of court.

19 THE COURT: You, yourself?

20 PROSPECTIVE JUROR NO. 034: Speeding. Yeah, just
21 speeding tickets.

22 THE COURT: Oh, you didn't show up for a speeding
23 ticket?

24 PROSPECTIVE JUROR NO. 034: Yeah.

25 THE COURT: And then got contempt of court, and had

ROUGH DRAFT TRANSCRIPT

000421

1 to appear, and --

2 PROSPECTIVE JUROR NO. 034: Yeah.

3 THE COURT: -- it was -- that's not going to affect
4 your deliberation, is it?

5 PROSPECTIVE JUROR NO. 034: No.

6 THE COURT: You don't harbor any animosity towards
7 the police or the Court, do you?

8 PROSPECTIVE JUROR NO. 034: I'm a fan of you.

9 THE COURT: Thank you. Have you ever served on a
10 jury before?

11 PROSPECTIVE JUROR NO. 034: No.

12 THE COURT: Could you be fair in this case?

13 PROSPECTIVE JUROR NO. 034: I'll try to be.

14 THE COURT: All right. State?

15 MR. LALLI: Mr. Koyasu, you're -- you said you were
16 an entertainment specialist?

17 PROSPECTIVE JUROR NO. 034: Specialist;
18 professional.

19 MR. LALLI: What do you do? What's a day in your
20 life?

21 PROSPECTIVE JUROR NO. 034: Like audio-video
22 consulting technician.

23 MR. LALLI: For whom?

24 PROSPECTIVE JUROR NO. 034: My 10-99 income is with
25 Wynn as a deejay.

ROUGH DRAFT TRANSCRIPT

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1 MR. LALLI: Wynn?
2 PROSPECTIVE JUROR NO. 034: Yeah.
3 MR. LALLI: Wynn Resort?
4 PROSPECTIVE JUROR NO. 034: Wynn Resorts.
5 MR. LALLI: As a deejay?
6 PROSPECTIVE JUROR NO. 034: Yeah. My W-9 stuff is
7 Hard Rock Hotel.
8 MR. LALLI: So, do you work in the clubs? Or --
9 PROSPECTIVE JUROR NO. 034: Yeah. Well, I work as a
10 nightclub technician for the Hard Rock.
11 MR. LALLI: I don't want to repeat myself a lot.
12 Any reason that you think you cannot be fair to both sides, or
13 to be a juror in this case?
14 PROSPECTIVE JUROR NO. 034: I'm sure I'll be fair.
15 It's listening to what has gone on before me. It's -- you
16 start to form certain opinions.
17 MR. LALLI: All right. Have you ever heard of the
18 presumption of innocence?
19 PROSPECTIVE JUROR NO. 034: Yeah.
20 MR. LALLI: As a practical matter, what it means is,
21 as Mr. O'Keefe sits over there, you've got to presume that
22 he's innocent.
23 PROSPECTIVE JUROR NO. 034: Yes.
24 MR. LALLI: Can you do that?
25 PROSPECTIVE JUROR NO. 034: I'll try.

ROUGH DRAFT TRANSCRIPT

000423

1 MR. LALLI: The presumption, it not only applies to
2 this theory, but also applies to the trial as well. You must
3 presume that he's innocent through the trial, up until the
4 point when you as a juror begin your deliberations. And then,
5 you start at that point presuming that he's innocent, and then
6 you start to talk about the evidence with other jurors. Can
7 you do that?

8 PROSPECTIVE JUROR NO. 034: I'll be as objective as
9 possible.

10 MR. LALLI: The reason for that is because, you
11 know, you might hear the State's case. And at the end of the
12 State's case, if you think, wow, the guy's guilty; if
13 defendants have absolutely no right to present evidence, but
14 they may present evidence and you're -- wow, that really
15 changes it. And so, the law says, just keep an open mind
16 until the very end. So, do you think you can do that?

17 PROSPECTIVE JUROR NO. 034: I think so.

18 MR. LALLI: Okay. Do you have any strong opinions
19 or beliefs about domestic violence in our community?

20 PROSPECTIVE JUROR NO. 034: It's a problem.

21 MR. LALLI: Why?

22 PROSPECTIVE JUROR NO. 034: Because everybody's
23 going to argue about something. Especially now, because
24 money's tight, people drink more to escape their problems, and
25 they don't want to deal with the reality. They take it out on

ROUGH DRAFT TRANSCRIPT

000424

1 each other. That's fairly easy to do. I see it all the time.

2 MR. LALLI: Where?

3 PROSPECTIVE JUROR NO. 034: Just at work, you know.

4 People gamble. They gamble away their rent money, or whatnot.

5 And of the sudden, it's like, why did you do that? And then,

6 it just escalates from there. Or they'll drink and gamble.

7 That's the worst.

8 MR. LALLI: Some people believe that domestic

9 violence is a private matter. It's a matter between a husband

10 and a wife, and it happens at the home, and it ought to be

11 addressed at the home. What do you think about that?

12 PROSPECTIVE JUROR NO. 034: If it's -- it could be

13 like a heated discussion, and it will be fine. But I think

14 once it kind of like gets heard past the walls, and it starts

15 being a community disruption, then yeah, something definitely

16 has to be done about it.

17 MR. LALLI: What if it's a push?

18 PROSPECTIVE JUROR NO. 034: Well, then, if it's

19 become physical, then I think obviously, it's overstepped the

20 bounds.

21 MR. LALLI: So --

22 PROSPECTIVE JUROR NO. 034: I mean, it's against the

23 law to physically push somebody.

24 MR. LALLI: So, you don't have a -- if I understand

25 what you're saying, you don't have a problem with the idea

ROUGH DRAFT TRANSCRIPT

000425

1 that, sometimes, law enforcement, the courts, prosecutors, get
2 involved in situations involving domestic violence, even
3 though it occurs within the home?

4 PROSPECTIVE JUROR NO. 034: Well, if it comes to
5 that point, then someone has to do their job.

6 MR. LALLI: All right.

7 PROSPECTIVE JUROR NO. 034: And that's when the
8 legal system gets involved.

9 MR. LALLI: And are you okay with that?

10 PROSPECTIVE JUROR NO. 034: It's the way we live our
11 lives. I mean, that's the law.

12 MR. LALLI: That's how a society ought to operate;
13 is that what I'm hearing from you?

14 PROSPECTIVE JUROR NO. 034: Yeah. I mean, we as
15 citizens have to operate within certain boundaries of --

16 MR. LALLI: Okay.

17 PROSPECTIVE JUROR NO. 034: -- of law. Yeah.

18 MR. LALLI: What about mental illness? Have you had
19 any personal or direct experience with people who suffer from
20 mental illness?

21 PROSPECTIVE JUROR NO. 034: Yeah, myself.
22 Depression.

23 MR. LALLI: Do you -- have you ever seen a mental
24 health professional for that?

25 PROSPECTIVE JUROR NO. 034: I went to a psychiatrist

ROUGH DRAFT TRANSCRIPT

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1 a couple times.

2 MR. LALLI: And were you able to get the sickness
3 under control?

4 PROSPECTIVE JUROR NO. 034: It's more about just
5 being able to talk to somebody I think, through a difficult
6 time.

7 MR. LALLI: Have you -- and again, I apologize for
8 asking, and kind of digging into your personal life. Have you
9 ever -- has medication ever helped you deal with your
10 depression?

11 PROSPECTIVE JUROR NO. 034: I tried, but it didn't
12 really make much of a difference. It's more about having
13 contact with a sympathetic, you know, listener. And then --

14 MR. LALLI: That helped you out?

15 PROSPECTIVE JUROR NO. 034: Yeah.

16 MR. LALLI: Okay.

17 PROSPECTIVE JUROR NO. 034: I mean, everybody has
18 different ways of coping with their problems, obviously.

19 MR. LALLI: Do you believe that there's a stigma
20 attached to people who suffer from depression?

21 PROSPECTIVE JUROR NO. 034: Of course.

22 MR. LALLI: Do you think that those who have a
23 mental illness, like any other illness, I mean, they tend to
24 be more vulnerable at times? Especially when they're --

25 PROSPECTIVE JUROR NO. 034: Yeah.

ROUGH DRAFT TRANSCRIPT

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1 MR. LALLI: -- in a depressive episode if they're
2 bipolar, somebody who's suffering from the effects of bipolar?

3 PROSPECTIVE JUROR NO. 034: Of course, because
4 they're not going to be able to tell right from wrong.

5 MR. LALLI: You are going -- you may hear evidence
6 in this case related to mental illness. Do you think that
7 that will affect your ability to be fair and impartial in the
8 case? If you learned, for example, that the victim in the
9 case suffered from mental illness, is that going to make you
10 unfair, or to treat Mr. O'Keefe unfairly in any way?

11 PROSPECTIVE JUROR NO. 034: I guess for me, it would
12 be why -- why did that person not have somebody help them, or
13 why id that person cannot help themselves (sic).

14 MR. LALLI: Okay. So, mental illness in and of
15 itself, not going to affect you in this case, if I understand
16 correctly?

17 PROSPECTIVE JUROR NO. 034: I believe not.

18 MR. LALLI: Okay. Do you believe in holding people
19 accountable for their actions?

20 PROSPECTIVE JUROR NO. 034: Of course.

21 MR. LALLI: If we prove to you beyond a reasonable
22 doubt that Mr. O'Keefe is guilty of murder of the second
23 degree, will you convict him?

24 PROSPECTIVE JUROR NO. 034: Beyond a reasonable --
25 yeah.

ROUGH DRAFT TRANSCRIPT

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1 MR. LALLI: Yes, you will?

2 PROSPECTIVE JUROR NO. 034: Yes, I would.

3 MR. LALLI: All right. Thank you, sir. Your Honor,
4 we'll pass for cause.

5 THE COURT: All right. Mr. O'Keefe?

6 MR. O'KEEFE: Yes, Your Honor. Just a few
7 questions, if I may. It's Mr. Koyasu?

8 PROSPECTIVE JUROR NO. 034: Koyasu.

9 MR. O'KEEFE: Yes, sir. May I call you Aaron?

10 PROSPECTIVE JUROR NO. 034: Sure.

11 MR. O'KEEFE: Okay. Easier. I'm very -- a couple
12 things that maybe -- when Mr. Lalli was talking to you, sir,
13 you said that you suffer from depression still, or --

14 PROSPECTIVE JUROR NO. 034: No, not still.

15 MR. O'KEEFE: Okay. And you were on medication, or
16 you -- when you --

17 PROSPECTIVE JUROR NO. 034: Yeah. I was just -- I
18 forgot what it was. It was like 2003. No, 2001.

19 MR. O'KEEFE: And you felt the medication basically
20 -- for you --

21 PROSPECTIVE JUROR NO. 034: In my case, it didn't --
22 I didn't feel any different.

23 MR. O'KEEFE: Do you feel though, in the opposite --
24 or conversely -- in the reverse, that some people definitely
25 need it?

ROUGH DRAFT TRANSCRIPT

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1 PROSPECTIVE JUROR NO. 034: It may work.

2 Personally, I have no experience in it working for me.

3 MR. O'KEEFE: Do you know anybody that is on any
4 medication?

5 PROSPECTIVE JUROR NO. 034: No.

6 MR. O'KEEFE: Have you ever got drunk, extremely?

7 PROSPECTIVE JUROR NO. 034: Several -- yeah, several
8 times.

9 MR. O'KEEFE: Would you agree that it affects your
10 motor skills?

11 PROSPECTIVE JUROR NO. 034: Of course.

12 MR. O'KEEFE: Would you be fast, and have the same
13 amount of agility and speed, and --

14 PROSPECTIVE JUROR NO. 034: No.

15 MR. O'KEEFE: That's a no, you wouldn't?

16 PROSPECTIVE JUROR NO. 034: If you're drunk, yeah.
17 If you're impaired, no, of course you're not going to be --

18 MR. O'KEEFE: And extremely?

19 PROSPECTIVE JUROR NO. 034: Well, if you're
20 extremely, you probably would be like passed out on the floor.

21 MR. O'KEEFE: And you would agree your motor skills
22 would not be what they normally would be?

23 PROSPECTIVE JUROR NO. 034: Of course not.

24 MR. O'KEEFE: Do you know anybody that's ever
25 suffered PTSD?

ROUGH DRAFT TRANSCRIPT

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1 PROSPECTIVE JUROR NO. 034: No, I have not.

2 MR. O'KEEFE: Would you agree that any traumatic
3 event could constitute PTSD?

4 PROSPECTIVE JUROR NO. 034: I have no experience
5 with it. I have -- I don't know anybody, so I cannot say that
6 it will. I mean, I can only form my opinion from what I read
7 in the news, from what happens to our veterans.

8 MR. O'KEEFE: Would you agree then with me that it
9 wouldn't have to be a wartime situation?

10 PROSPECTIVE JUROR NO. 034: I can't agree with you
11 on that, because I don't know enough about it.

12 MR. O'KEEFE: Okay. I want to just make sure I
13 completely understand you, just so I'm getting people that
14 think like me, and understand my thinking pattern. Any
15 traumatic event -- super traumatic, could be construed -- or
16 constitute PTSD. That's what I'm saying. Do you agree with
17 that? Do you agree with that?

18 PROSPECTIVE JUROR NO. 034: I can't agree with it
19 because I have no opinion of it.

20 MR. O'KEEFE: You stated earlier -- you were very
21 forthright, that you've already sort of formed some certain
22 opinions, I think I heard you say.

23 PROSPECTIVE JUROR NO. 034: Yes.

24 MR. O'KEEFE: Can I -- can you be totally honest
25 with me; is that negative opinions, or neutral, or positive?

ROUGH DRAFT TRANSCRIPT

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1 PROSPECTIVE JUROR NO. 034: I'd say maybe negative.
2 I'm sorry, negative.

3 MR. O'KEEFE: Okay. And I'm asking you. I'm asking
4 to be totally forthright with me. And you're doing that
5 without any evidence, just from what you've heard?

6 PROSPECTIVE JUROR NO. 034: Just from what I've
7 heard. Just from what the -- how the questions are formed.

8 MR. O'KEEFE: May I beg the Court's indulgence one
9 second?

10 (Pause in the proceedings)

11 MR. O'KEEFE: Yes, Your Honor. If I may, can I
12 challenge for cause, Your Honor?

13 THE COURT: Mr. Lalli?

14 MR. LALLI: Sir, we talked just a little bit about
15 the peremptory -- or the presumption of innocence?

16 PROSPECTIVE JUROR NO. 034: Yes.

17 MR. LALLI: And Mr. O'Keefe just asked you about
18 negative feelings, or feelings that you may have, --

19 PROSPECTIVE JUROR NO. 034: Yes.

20 MR. LALLI: -- opinions you may have formed in this
21 trial, negative to him. Do you think you are of the state of
22 mind that you could follow Judge Bonaventure's instruction to
23 provide Mr. O'Keefe with a presumption of innocence.

24 PROSPECTIVE JUROR NO. 034: I could try. It's just
25 -- what I've been through this whole day, it's -- it hasn't

ROUGH DRAFT TRANSCRIPT

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1 been a pleasant experience.

2 MR. LALLI: Well, in what sense?

3 PROSPECTIVE JUROR NO. 034: In the sense where it's
4 -- it seems like the questioning is a little baited, to try
5 and -- I mean, I can understand how the -- how the process
6 works, what -- how you guys are trying to get jurors to be --
7 I won't say biased. But I feel that some of the questioning
8 is like kind of a waste of time, and it could be maybe less
9 prying, but you still could get the same result.

10 MR. LALLI: Okay. Let me ask you this. If you were
11 to vote right now, Mr. O'Keefe, guilty or not guilty, how
12 would you vote?

13 PROSPECTIVE JUROR NO. 034: I might be biased to be
14 negative about it.

15 MR. LALLI: Well, the question is -- you haven't
16 heard any evidence.

17 PROSPECTIVE JUROR NO. 034: No.

18 MR. LALLI: So, as you sit here right now, if you
19 had to vote --

20 PROSPECTIVE JUROR NO. 034: No. But based on the
21 questioning that the two sides are asking jurors -- potential
22 jurors, I have already formed this about what's going to be
23 presented.

24 MR. LALLI: What have you formed?

25 PROSPECTIVE JUROR NO. 034: That -- I don't know if

ROUGH DRAFT TRANSCRIPT

000433

1 I want to go on record about what I want to --

2 MR. LALLI: Well, that's why we're here, to
3 determine whether you can be fair to both sides. And if
4 you've already formed an opinion about one side or the other
5 -- and it's -- people do that. It's okay. The important
6 thing is, we have to know, and Judge Bonaventure has to know.

7 PROSPECTIVE JUROR NO. 034: Of course. But if I say
8 that, then these people are going to get the same seat of --

9 MR. LALLI: Oh, they -- you're concerned about maybe
10 affecting the other jurors?

11 PROSPECTIVE JUROR NO. 034: Yeah.

12 MR. LALLI: If you -- so, for instance, if you
13 think, I think the guy's guilty, other people might -- or if
14 you might say, hey, the State --

15 PROSPECTIVE JUROR NO. 034: Well, if you're asking
16 me why I think it would be that --

17 MR. LALLI: Well, no, no, no. I don't want to know
18 why. But do you -- I mean, if -- are you leaning -- if you
19 had to vote right now, are you saying Mr. O'Keefe's probably
20 guilty?

21 PROSPECTIVE JUROR NO. 034: I would feel that he is,
22 yes.

23 MR. LALLI: And so, you don't think you could be
24 fair and --

25 PROSPECTIVE JUROR NO. 034: I would try. I mean, it

ROUGH DRAFT TRANSCRIPT

000434

1 sounds like it's going to be an interesting case.

2 MR. LALLI: Your Honor, I'm just going to submit it
3 at this point. I'm not sure what else to ask.

4 THE COURT: I don't either, Mr. Lalli. We're really
5 not here to entertain you, sir. You understand that?

6 PROSPECTIVE JUROR NO. 034: No, I understand what
7 you're saying.

8 THE COURT: We're not here to entertain you. This
9 is a very serious matter, and it's not something to be taken
10 lightly. I'm going to grant the cause. You'll be assigned
11 another jury trial. Go back to the jury commissioner.

12 PROSPECTIVE JUROR NO. 034: Okay. I'm sorry.

13 THE COURT: Clerk, call another prospective juror?

14 THE CLERK: Jill Murphy.

15 THE COURT: How long you been in this area, ma'am?

16 PROSPECTIVE JUROR NO. 035: Since 1992.

17 THE COURT: And what do you do for a living?

18 PROSPECTIVE JUROR NO. 035: I'm a second grade
19 school teacher.

20 THE COURT: Are you married?

21 PROSPECTIVE JUROR NO. 035: No.

22 THE COURT: Children?

23 PROSPECTIVE JUROR NO. 035: Four of them.

24 THE COURT: Any old enough to work? Probably not,
25 huh?

ROUGH DRAFT TRANSCRIPT

000435

1 PROSPECTIVE JUROR NO. 035: No.

2 THE COURT: All right. Have you ever been in the
3 military?

4 PROSPECTIVE JUROR NO. 035: No.

5 THE COURT: Are you acquainted with anybody in law
6 enforcement?

7 PROSPECTIVE JUROR NO. 035: Yes.

8 THE COURT: Who's that?

9 PROSPECTIVE JUROR NO. 035: An ex-boyfriend.

10 THE COURT: And in the follow up question, you
11 understand you're not to give greater weight or lesser weight
12 to a police officer's testimony simply because they're a
13 police officer. You give it the weight you deem necessary;
14 you understand that?

15 PROSPECTIVE JUROR NO. 035: I understand.

16 THE COURT: Have you or anyone closely associated
17 with you ever been the victim of a crime?

18 PROSPECTIVE JUROR NO. 035: Yes, sir.

19 THE COURT: What was that?

20 PROSPECTIVE JUROR NO. 035: Several. Arson,
21 robbery, domestic violence.

22 THE COURT: What came first?

23 PROSPECTIVE JUROR NO. 035: Domestic violence, and
24 then the arson, and then the robbery.

25 THE COURT: But this all was related?

ROUGH DRAFT TRANSCRIPT

000436

1 PROSPECTIVE JUROR NO. 035: No, sir.
2 THE COURT: All separate incidences?
3 PROSPECTIVE JUROR NO. 035: Yes.
4 THE COURT: How long ago was the domestic violence?
5 PROSPECTIVE JUROR NO. 035: '07.
6 THE COURT: And who was the perpetrator?
7 PROSPECTIVE JUROR NO. 035: My boyfriend.
8 THE COURT: The police officer?
9 PROSPECTIVE JUROR NO. 035: No.
10 THE COURT: Another boyfriend?
11 PROSPECTIVE JUROR NO. 035: Different guy.
12 THE COURT: What were the results of that?
13 PROSPECTIVE JUROR NO. 035: He was taken to jail.
14 THE COURT: All right. And was he convicted?
15 PROSPECTIVE JUROR NO. 035: Yes.
16 THE COURT: All right. Is that going to affect your
17 deliberation here?
18 PROSPECTIVE JUROR NO. 035: No, sir.
19 THE COURT: The arson. Who -- what was the -- who
20 was the perpetrator on that?
21 PROSPECTIVE JUROR NO. 035: A boyfriend.
22 THE COURT: Another -- not the --
23 PROSPECTIVE JUROR NO. 035: Different one, too.
24 THE COURT: -- police officer, not the batterer, but
25 another one?

ROUGH DRAFT TRANSCRIPT

000437

1 PROSPECTIVE JUROR NO. 035: Yes.
2 THE COURT: He tried to burn what?
3 PROSPECTIVE JUROR NO. 035: My home.
4 THE COURT: Your house?
5 PROSPECTIVE JUROR NO. 035: Yes.
6 THE COURT: He was brought to court?
7 PROSPECTIVE JUROR NO. 035: Yes.
8 THE COURT: Was he convicted?
9 PROSPECTIVE JUROR NO. 035: Yes, sir.
10 THE COURT: Is that going to affect your
11 deliberation here?
12 PROSPECTIVE JUROR NO. 035: No, sir.
13 THE COURT: The third one was what?
14 PROSPECTIVE JUROR NO. 035: My car was stolen out of
15 my garage; a robbery.
16 THE COURT: Don't tell me it was another boyfriend.
17 PROSPECTIVE JUROR NO. 035: No. It was a girl, but
18 I didn't know her.
19 THE COURT: Did they catch the individual?
20 PROSPECTIVE JUROR NO. 035: Yes, they did.
21 THE COURT: All right. Well, those three
22 incidences, is that going to affect your deliberation and
23 serving here, and being fair and impartial both to the State
24 and to the defendant?
25 PROSPECTIVE JUROR NO. 035: No, sir.

ROUGH DRAFT TRANSCRIPT

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1 THE COURT: All right. You could set that aside,
2 judge this case solely by what you hear on the witness stand?

3 PROSPECTIVE JUROR NO. 035: Absolutely.

4 THE COURT: Thank you. Has anyone closely -- other
5 than the boyfriend, ever been arrested before?

6 PROSPECTIVE JUROR NO. 035: Yes, I have.

7 THE COURT: You've been arrested?

8 PROSPECTIVE JUROR NO. 035: Yes, sir.

9 THE COURT: What for?

10 PROSPECTIVE JUROR NO. 035: Domestic violence.

11 THE COURT: And who was the victim in that?

12 PROSPECTIVE JUROR NO. 035: My boyfriend that was
13 arrested for domestic violence --

14 THE COURT: Okay.

15 PROSPECTIVE JUROR NO. 035: -- on a different
16 occasion.

17 THE COURT: It was a different occasion?

18 PROSPECTIVE JUROR NO. 035: Yes.

19 THE COURT: So, was this before or after --

20 PROSPECTIVE JUROR NO. 035: This was before.

21 THE COURT: So, you were arrested for domestic
22 violence, and what were the results of that?

23 PROSPECTIVE JUROR NO. 035: The charges were dropped
24 by the district attorney.

25 THE COURT: Okay. Is that going to affect your

ROUGH DRAFT TRANSCRIPT

000439

1 deliberation in this case?

2 PROSPECTIVE JUROR NO. 035: No, sir.

3 THE COURT: All right. I'm sorry to go through all
4 of this. But you know, it's important. As we said, it's a
5 very serious matter here. So, you're all right to sit here?
6 You could set aside what happened to you, your boyfriend, and
7 judge this case solely by what you hear on the witness stand?

8 PROSPECTIVE JUROR NO. 035: yes.

9 THE COURT: Have you ever served on a jury before?

10 PROSPECTIVE JUROR NO. 035: No.

11 THE COURT: Thank you very much.

12 PROSPECTIVE JUROR NO. 035: You're welcome.

13 THE COURT: State, questions; pass for cause?

14 MS. MERCER: How long were you in that relationship
15 with the boyfriend that was convicted of domestic violence?

16 PROSPECTIVE JUROR NO. 035: On and off for about
17 three years.

18 MS. MERCER: And was it just one episode, or --

19 PROSPECTIVE JUROR NO. 035: It was just the one
20 episode.

21 MS. MERCER: Do you know whether he was prosecuted
22 in the county, or the city?

23 PROSPECTIVE JUROR NO. 035: He was prosecuted in
24 Henderson.

25 MS. MERCER: Okay. So, City of Henderson?

ROUGH DRAFT TRANSCRIPT

000440

1 PROSPECTIVE JUROR NO. 035: Yes.

2 MS. MERCER: And do you feel that he was treated
3 fairly?

4 PROSPECTIVE JUROR NO. 035: Yes.

5 MS. MERCER: Were you cooperative in the prosecution
6 of that case?

7 PROSPECTIVE JUROR NO. 035: No.

8 MS. MERCER: You were not? Why?

9 PROSPECTIVE JUROR NO. 035: I just felt bad for him.

10 MS. MERCER: So, did you not go to court? Did you
11 avoid service of the subpoena? What happened?

12 PROSPECTIVE JUROR NO. 035: No, I went to court.
13 And -- but I had asked the district attorney out there if they
14 wouldn't press charges.

15 MS. MERCER: Okay. So --

16 PROSPECTIVE JUROR NO. 035: And they explained that
17 they have to. And so, that was that. It was --

18 MS. MERCER: Do you feel that that's the way it
19 should be?

20 PROSPECTIVE JUROR NO. 035: Yes, I do.

21 MS. MERCER: Because sometimes, victims don't know
22 what's best for them?

23 PROSPECTIVE JUROR NO. 035: Right.

24 MS. MERCER: You indicated that you were also
25 arrested for domestic violence?

ROUGH DRAFT TRANSCRIPT

000441

1 PROSPECTIVE JUROR NO. 035: Yes.
2 MS. MERCER: Against that same boyfriend?
3 PROSPECTIVE JUROR NO. 035: Different guy.
4 MS. MERCER: Different guy?
5 PROSPECTIVE JUROR NO. 035: Yes.
6 MS. MERCER: And how long ago was that?
7 PROSPECTIVE JUROR NO. 035: That was in '05.
8 MS. MERCER: 2005? And you said the charges were
9 not approved?
10 PROSPECTIVE JUROR NO. 035: They were dropped.
11 MS. MERCER: Was the case ever actually filed; do
12 you know?
13 PROSPECTIVE JUROR NO. 035: No.
14 MS. MERCER: And was that here in the county, or was
15 that in the city as well?
16 PROSPECTIVE JUROR NO. 035: I guess City of Las
17 Vegas.
18 MS. MERCER: Okay. And I take it you were satisfied
19 with that?
20 PROSPECTIVE JUROR NO. 035: Absolutely.
21 MS. MERCER: Who reported that incident to the
22 police?
23 PROSPECTIVE JUROR NO. 035: I was the caller.
24 MS. MERCER: Okay. So, not an outside party?
25 PROSPECTIVE JUROR NO. 035: No.

ROUGH DRAFT TRANSCRIPT

000442

1 MS. MERCER: Now, I got confused. Was it the same
2 boyfriend that tried to burn your house down that was charged
3 with a DV?

4 PROSPECTIVE JUROR NO. 035: Yes. Well, okay, no.
5 He was charged in arson. The domestic violence where I was
6 taken to jail was him. The guy that was DV who I called was a
7 different guy.

8 MS. MERCER: You really confused me. Okay.

9 PROSPECTIVE JUROR NO. 035: Sorry.

10 MS. MERCER: But it wasn't the same guy that was
11 charged with battery?

12 PROSPECTIVE JUROR NO. 035: No.

13 MS. MERCER: Okay. And how long ago was the arson
14 incident?

15 PROSPECTIVE JUROR NO. 035: That was in '05.

16 MS. MERCER: And you said that he was charged?

17 PROSPECTIVE JUROR NO. 035: Yes.

18 MS. MERCER: Did you have to testify?

19 PROSPECTIVE JUROR NO. 035: No.

20 MS. MERCER: Do you know whether he was convicted?

21 PROSPECTIVE JUROR NO. 035: I think he just copped a
22 deal or something.

23 MS. MERCER: Okay. And do you know what happened at
24 sentencing? Did he -- in other words, did he get jail time;
25 did he get probation?

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1 PROSPECTIVE JUROR NO. 035: He got I think three
2 years of probation, or something of that sort.

3 MS. MERCER: And were you satisfied with that
4 result?

5 PROSPECTIVE JUROR NO. 035: No.

6 MS. MERCER: No?

7 PROSPECTIVE JUROR NO. 035: No.

8 MS. MERCER: Do you think you would hold it against
9 us?

10 PROSPECTIVE JUROR NO. 035: No.

11 MS. MERCER: No? Okay. And then, you indicated
12 that your car was stolen?

13 PROSPECTIVE JUROR NO. 035: Yes.

14 MS. MERCER: And when did that occur?

15 PROSPECTIVE JUROR NO. 035: That was in '07 or '08.

16 MS. MERCER: And did you know the individual that
17 stole your car?

18 PROSPECTIVE JUROR NO. 035: No.

19 MS. MERCER: No? Was she caught?

20 PROSPECTIVE JUROR NO. 035: Yes.

21 MS. MERCER: Was she prosecuted?

22 PROSPECTIVE JUROR NO. 035: I don't know.

23 MS. MERCER: You never heard anything more about it?

24 PROSPECTIVE JUROR NO. 035: Hum-um. I got my car
25 back, and that was it.

ROUGH DRAFT TRANSCRIPT

000444

1 MS. MERCER: Okay. Is there anything that we
2 haven't asked you about that would keep you from being fair
3 and impartial in this case?

4 PROSPECTIVE JUROR NO. 035: I have a father, and a
5 brother, and a cousin, and a friend who is an attorney. I
6 don't know if that will make -- it doesn't make me partial
7 though.

8 MS. MERCER: What kind of attorneys are they?

9 PROSPECTIVE JUROR NO. 035: Personal injury.

10 MS. MERCER: And do they practice here locally, or
11 out of state?

12 PROSPECTIVE JUROR NO. 035: Here in town.

13 MS. MERCER: Do you discuss their work with them
14 quite a bit, or no?

15 PROSPECTIVE JUROR NO. 035: No. I mean, on occasion
16 we do, but --

17 MS. MERCER: It's not something you're really
18 involved in --

19 PROSPECTIVE JUROR NO. 035: No.

20 MS. MERCER: -- or care about?

21 PROSPECTIVE JUROR NO. 035: Well, I care about it.
22 I'm going to take my LSAT's in October.

23 MS. MERCER: Okay. No further questions, Your
24 Honor.

25 THE COURT: Pass for cause?

ROUGH DRAFT TRANSCRIPT

000445

1 MR. O'KEEFE: Yes, Your Honor.

2 THE COURT: Pass for cause, State?

3 MS. MERCER: Yes.

4 THE COURT: All right. Mr. O'Keefe, questions; pass
5 for cause?

6 MR. O'KEEFE: Yes, Your Honor, just a few. I'll be
7 real brief. Ms. Murphy?

8 PROSPECTIVE JUROR NO. 035: Yes.

9 MR. O'KEEFE: That was in Henderson, you said, when
10 the DA dropped the charges?

11 PROSPECTIVE JUROR NO. 035: The district attorney
12 here in the City of Las Vegas dropped the charges on me.

13 MR. O'KEEFE: They dropped the charges on you?

14 PROSPECTIVE JUROR NO. 035: Yes.

15 MR. O'KEEFE: Okay. No further questions
16 [inaudible].

17 THE COURT: Pass for cause? Pass for cause?

18 MR. O'KEEFE: Pass for cause, Your Honor.

19 THE COURT: That concludes the initial selection of
20 the 12. We have in the law, ladies and gentlemen, what we
21 call peremptory challenges. Each side has a certain number of
22 peremptory challenges. They can either exercise their
23 peremptory challenge, or waive their peremptory challenge. A
24 waiver of one peremptory challenge is not a waiver of all of
25 them. So, you could -- with that understanding, we'll start

ROUGH DRAFT TRANSCRIPT

000446

1 with that.

2 The State can exercise it's first peremptory
3 challenge, if it sees fit.

4 MR. LALLI: Your Honor, the State would thank and
5 excuse Juror number 2, seated in seat number 2, Ms. Collins.

6 THE COURT: All right. Ms. Collins, report back to
7 the jury commissioner. Clerk, call another prospective juror.

8 THE CLERK: Michael Ferraro.

9 THE COURT: Yeah. Take that same seat over there,
10 sir. How long have you been in this area?

11 PROSPECTIVE JUROR NO. 036: I've lived here since I
12 was 2.

13 THE COURT: All right. What do you do for a living?

14 PROSPECTIVE JUROR NO. 036: Software developer.

15 THE COURT: Okay. Are you married?

16 PROSPECTIVE JUROR NO. 036: Single.

17 THE COURT: Children?

18 PROSPECTIVE JUROR NO. 036: No.

19 THE COURT: Have you ever been in the military?

20 PROSPECTIVE JUROR NO. 036: No.

21 THE COURT: Are you acquainted with anybody in law
22 enforcement?

23 PROSPECTIVE JUROR NO. 036: I'm not, no.

24 THE COURT: Have you, or anyone closely associated
25 with you ever been a victim of a crime?

ROUGH DRAFT TRANSCRIPT

000447

1 PROSPECTIVE JUROR NO. 036: Yes.

2 THE COURT: What was that?

3 PROSPECTIVE JUROR NO. 036: I've been a victim of
4 domestic violence. My girlfriend -- my ex-girlfriend hit me,
5 basically.

6 THE COURT: How long ago was that?

7 PROSPECTIVE JUROR NO. 036: 2007.

8 THE COURT: And what were the results of that?

9 PROSPECTIVE JUROR NO. 036: The police came,
10 arrested her, and brought her to court, and arrested her. And
11 I never pressed charges, so I don't know what happened after
12 that.

13 THE COURT: You don't know if she was convicted or
14 not?

15 PROSPECTIVE JUROR NO. 036: I don't know. I mean, I
16 had --

17 THE COURT: You just never found out?

18 PROSPECTIVE JUROR NO. 036: I'm sorry?

19 THE COURT: You never found out what the results
20 were?

21 PROSPECTIVE JUROR NO. 036: No. I was -- I never
22 pressed charges. The police came, they arrested her, and they
23 brought her in. And myself and my roommate at the time came
24 into the court to see if we needed to be witnesses, but we
25 didn't have to, so we were excused. And --

ROUGH DRAFT TRANSCRIPT

000448

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 036: -- that was that, so.

3 THE COURT: All right. Is that going to affect your
4 deliberation here?

5 PROSPECTIVE JUROR NO. 036: No. I am kind of
6 sensitive about domestic violence, but it shouldn't affect my
7 deliberation here.

8 THE COURT: All right. Good. Thank you. Have you
9 or anyone closely associated with you, other than your
10 ex-girlfriend, been arrested for a crime?

11 PROSPECTIVE JUROR NO. 036: No.

12 THE COURT: You ever serve on a jury?

13 PROSPECTIVE JUROR NO. 036: No.

14 THE COURT: You could listen to my instructions, and
15 follow my instructions?

16 PROSPECTIVE JUROR NO. 036: Yes, sir.

17 THE COURT: So, you think you could be fair and
18 impartial in this case?

19 PROSPECTIVE JUROR NO. 036: Yes.

20 THE COURT: All right. State?

21 MR. LALLI: Thank you. Mr. Ferraro, is there any --
22 is there any issue we haven't talked about with respect to why
23 you might not be able to be a juror in this case? So, your
24 ability to judge people -- I know you talked a little bit
25 about domestic violence, and I have a few --

ROUGH DRAFT TRANSCRIPT

000449

1 PROSPECTIVE JUROR NO. 036: Right.

2 MR. LALLI: -- follow up questions on that.

3 PROSPECTIVE JUROR NO. 036: Sure. I'm just -- I'm
4 kind of sensitive about the domestic violence thing. I don't
5 believe that people need to respond physically when it comes
6 to like arguments, and stuff like that.

7 MR. LALLI: You're against it?

8 PROSPECTIVE JUROR NO. 036: Yeah.

9 MR. LALLI: I mean, you're against --

10 PROSPECTIVE JUROR NO. 036: I'm against it.

11 THE COURT: -- violence?

12 PROSPECTIVE JUROR NO. 036: Yeah.

13 MR. LALLI: You think you're probably --

14 PROSPECTIVE JUROR NO. 036: Since -- yeah, it
15 happened to me, so I'm pretty much -- I'm against it. I don't
16 think there's a reason -- nothing that you can do verbally
17 that justifies physical response --

18 MR. LALLI: All right.

19 PROSPECTIVE JUROR NO. 036: -- in my opinion.

20 MR. LALLI: Do you -- understanding that you have
21 that opinion, you have a personal experience with it, I think
22 probably a lot of people share your opinion about that. Can
23 you be fair to Mr. O'Keefe?

24 PROSPECTIVE JUROR NO. 036: It depends on what's
25 been done, I guess; depending on the evidence.

ROUGH DRAFT TRANSCRIPT

000450

1 MR. LALLI: Sure. You're going to hear evidence.

2 PROSPECTIVE JUROR NO. 036: Sure.

3 MR. LALLI: But I'm saying, can you -- can you be
4 fair to him? The evidence might say, Mr. O'Keefe, you're
5 guilty. And then --

6 PROSPECTIVE JUROR NO. 036: Sure. I understand.

7 MR. LALLI: -- you know, your obligation is to
8 convict him. But absent what the evidence might be --

9 PROSPECTIVE JUROR NO. 036: Right.

10 MR. LALLI: -- can you -- as you sit here right now,
11 can you be fair to Mr. O'Keefe?

12 PROSPECTIVE JUROR NO. 036: I think it's hard for me
13 to be fair, because I'm sensitive, like I said, to domestic
14 violence. And I just have a strong belief that, you know, you
15 -- there's no right to be physical when you're arguing. End
16 of story.

17 MR. LALLI: Everybody -- I think a lot of us agree
18 with you -- most of us agree with you.

19 PROSPECTIVE JUROR NO. 036: Right. So --

20 MR. LALLI: However, the -- I'm sorry.

21 PROSPECTIVE JUROR NO. 036: No, no. Sorry. Go
22 ahead.

23 MR. LALLI: The reason we're here is because the
24 State has made an allegation.

25 PROSPECTIVE JUROR NO. 036: Right.

ROUGH DRAFT TRANSCRIPT

000451

1 MR. LALLI: Mr. O'Keefe says, I didn't do it. And
2 so, now, it's a jury's responsibility to determine whether the
3 State can prove Mr. O'Keefe's guilt beyond a reasonable doubt.
4 Obviously, if you choose to convict Mr. O'Keefe, yeah, nobody
5 likes somebody who's committed a murder. But as of right now,
6 he's presumed innocent.

7 PROSPECTIVE JUROR NO. 036: Okay.

8 MR. LALLI: Do you follow me on that?

9 PROSPECTIVE JUROR NO. 036: Sure.

10 MR. LALLI: Can you -- is your own experience with
11 domestic violence such that you can't presume Mr. O'Keefe
12 innocent? Do you understand?

13 PROSPECTIVE JUROR NO. 036: Yeah. Well, yeah. I
14 mean, the thing is, we're here to try to find out if he's
15 guilty or innocent.

16 MR. LALLI: Correct.

17 PROSPECTIVE JUROR NO. 036: So, if he didn't do it,
18 then I don't have a problem with it. I'm -- you know, I'm
19 okay with that. And if he did do it, then obviously, I would
20 have a problem with that. So, I guess, you know, I'm
21 impartial either way. So, like, I would be fair.

22 MR. LALLI: All right.

23 PROSPECTIVE JUROR NO. 036: Yeah.

24 MR. LALLI: So, as you sit here now, you can say,
25 hey, State, prove the case, I --

ROUGH DRAFT TRANSCRIPT

000452

1 PROSPECTIVE JUROR NO. 036: Sure.

2 MR. LALLI: -- want to see the evidence?

3 PROSPECTIVE JUROR NO. 036: Absolutely.

4 MR. LALLI: And if we don't bring the evidence, you
5 understand it's your responsibility -- it's your legal, moral,
6 ethical responsibility to find him not guilty if we don't
7 prove it?

8 PROSPECTIVE JUROR NO. 036: Absolutely.

9 MR. LALLI: Okay. And are you of the mind set to do
10 that?

11 PROSPECTIVE JUROR NO. 036: Yes.

12 MR. LALLI: Okay. You do IT work?

13 PROSPECTIVE JUROR NO. 036: I'm a software
14 developer.

15 MR. LALLI: Okay. For whom?

16 PROSPECTIVE JUROR NO. 036: American West Homes.

17 MR. LALLI: Are they -- did they just file Chapter
18 11?

19 PROSPECTIVE JUROR NO. 036: Yeah, they did,
20 actually. They're -- it's a different company. It's
21 development management, or something like that.

22 MR. LALLI: All right.

23 PROSPECTIVE JUROR NO. 036: It's just for -- the
24 stability of the company is completely fine. It was just for
25 other reasons.

ROUGH DRAFT TRANSCRIPT

000453

1 MR. LALLI: Understood. Understood.

2 PROSPECTIVE JUROR NO. 036: So, what sort of -- what
3 sort of educational background do you have that allows you to
4 be a software developer?

5 PROSPECTIVE JUROR NO. 036: Basically just my
6 experience. I don't have -- I graduated from high school, and
7 that was pretty much it. No college degree, or anything like
8 that. I've been programming for about 15 years. My father
9 started a business, in which I just caught on with the
10 computers pretty quickly. And I just had a strong passion for
11 it, so I got books, and just practiced, and made it my --

12 MR. LALLI: Kind of like Steve Jobs? Kind of
13 self-made --

14 PROSPECTIVE JUROR NO. 036: Sure.

15 MR. LALLI: -- kind of guy?

16 PROSPECTIVE JUROR NO. 036: Sure, sure.

17 MR. LALLI: And one day, you're going to be as
18 successful as Steve Jobs was?

19 PROSPECTIVE JUROR NO. 036: I hope so.

20 MR. LALLI: Do you have any experience or history of
21 dealing with individuals who suffer from mental illness?

22 PROSPECTIVE JUROR NO. 036: I have no experience,
23 nor do I know anyone that has experienced that.

24 MR. LALLI: Sir, if we prove to you beyond a
25 reasonable doubt that Mr. O'Keefe is guilty of murder of the

ROUGH DRAFT TRANSCRIPT

000454

1 second degree, will you convict him?

2 PROSPECTIVE JUROR NO. 036: Yes.

3 MR. LALLI: All right. Thank you. Your Honor,
4 we'll pass for cause.

5 THE COURT: All right. Mr. O'Keefe, questions; pass
6 for cause?

7 MR. O'KEEFE: I have no questions, Your Honor.

8 THE COURT: Pardon?

9 MR. O'KEEFE: I have no questions.

10 THE COURT: Thank you.

11 MR. O'KEEFE: Pass for cause.

12 THE COURT: Pass for cause. Thank you, Mr. O'Keefe.
13 The defense can exercise it's first peremptory challenge, if
14 it sees fit.

15 MR. O'KEEFE: Yes, Your Honor. I'd like to thank
16 and excuse Juror number 3, Megan Stutz.

17 THE COURT: Thank you, Mr. O'Keefe. Ms. Stutz,
18 please report back to the clerk -- excuse me, the jury
19 commissioner. The clerk will call another prospective juror.

20 THE CLERK: James Simeon.

21 THE COURT: James Simeon?

22 PROSPECTIVE JUROR NO. 037: Yes.

23 THE COURT: Mr. Simeon, have that seat there, okay?
24 How long you been in this area?

25 PROSPECTIVE JUROR NO. 037: 15 years, sir.

ROUGH DRAFT TRANSCRIPT

000455

1 THE COURT: What do you do for a living?

2 PROSPECTIVE JUROR NO. 037: Blackjack dealer.

3 THE COURT: Blackjack dealer. Where?

4 PROSPECTIVE JUROR NO. 037: At the Treasure Island.

5 THE COURT: Okay. Are you married?

6 PROSPECTIVE JUROR NO. 037: Yes.

7 THE COURT: What does your wife do?

8 PROSPECTIVE JUROR NO. 037: She's a secretary for
9 Nevada Title.

10 THE COURT: Do you have any children?

11 PROSPECTIVE JUROR NO. 037: Two. Too young to work.

12 THE COURT: Any old enough to work?

13 PROSPECTIVE JUROR NO. 037: No, sir.

14 THE COURT: Okay. Have you ever been in the
15 military?

16 PROSPECTIVE JUROR NO. 037: Yes.

17 THE COURT: What branch, what year, what did you do?

18 PROSPECTIVE JUROR NO. 037: Air Force. I was a
19 maintenance mechanic in transportation.

20 THE COURT: All right. Nothing with military police
21 or court marshaling?

22 PROSPECTIVE JUROR NO. 037: No.

23 THE COURT: Have -- are you acquainted with anybody
24 in law enforcement?

25 PROSPECTIVE JUROR NO. 037: Yes. My uncle is a

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000456

1 police officer in Texas.

2 THE COURT: In Texas? Again, that's not going to
3 affect your deliberation, is it?

4 PROSPECTIVE JUROR NO. 037: No.

5 THE COURT: And you understand you're not to give
6 greater weight, or lesser weight to a police officer's
7 testimony simply because they're a police officer. You give
8 it the weight you deem appropriate; do you understand that?

9 PROSPECTIVE JUROR NO. 037: Yes.

10 THE COURT: All right. Have you or anyone close to
11 you ever been a victim of a crime?

12 PROSPECTIVE JUROR NO. 037: No.

13 THE COURT: Arrested for a crime?

14 PROSPECTIVE JUROR NO. 037: No.

15 THE COURT: You ever served on a jury?

16 PROSPECTIVE JUROR NO. 037: No.

17 THE COURT: Could you be fair and impartial in this
18 case?

19 PROSPECTIVE JUROR NO. 037: Yes.

20 THE COURT: All right. State, questions; pass for
21 cause?

22 MS. MERCER: I'm sorry, sir. I missed -- how long
23 were you in the military?

24 PROSPECTIVE JUROR NO. 037: Only four years.

25 MS. MERCER: Four years? Do you have any experience

ROUGH DRAFT TRANSCRIPT

000457

1 with domestic violence?

2 PROSPECTIVE JUROR NO. 037: No.

3 MS. MERCER: Never witnessed it; don't have any --

4 PROSPECTIVE JUROR NO. 037: Never witnessed.

5 MS. MERCER: -- friends that have been victims?

6 PROSPECTIVE JUROR NO. 037: No.

7 MS. MERCER: Okay. Do you have any strong feelings
8 about it one way or another that would impact your ability to
9 be fair and impartial in this case?

10 PROSPECTIVE JUROR NO. 037: No, not at all.

11 MS. MERCER: Okay. And the uncle that's a police
12 officer in Texas, are you -- is that an uncle you're extremely
13 close to, or?

14 PROSPECTIVE JUROR NO. 037: Yes.

15 MS. MERCER: Okay. But that wouldn't keep you from
16 being fair and impartial here?

17 PROSPECTIVE JUROR NO. 037: No.

18 MS. MERCER: Pass for cause, Your Honor.

19 THE COURT: All right. Mr. O'Keefe, questions; pass
20 for cause?

21 MR. O'KEEFE: I'll pass for cause.

22 THE COURT: Thank you, Mr. O'Keefe. The State can
23 exercise it's next peremptory challenge, if it sees fit.

24 MR. LALLI: Can I get the Court's indulgence?

25 THE COURT: Sure.

ROUGH DRAFT TRANSCRIPT

000458

1 (Pause in the proceedings)

2 MR. LALLI: Your Honor, the State would thank and
3 excuse Juror number 6 in seat number 6, Mr. Andrade.

4 THE COURT: All right. Mr. Andrade, please report
5 back to the jury commissioner. The clerk will call another
6 prospective juror.

7 THE CLERK: Dawson Derfelt.

8 THE COURT: All right. Take that seat over there,
9 sir. No, over there. How long you been in this area, sir?

10 PROSPECTIVE JUROR NO. 039: 18 years, sir.

11 THE COURT: Are you working?

12 PROSPECTIVE JUROR NO. 039: I'm retired.

13 THE COURT: What did you do when you worked?

14 PROSPECTIVE JUROR NO. 039: Very little. No. I
15 worked for the telephone company in California.

16 THE COURT: Okay. Long time?

17 PROSPECTIVE JUROR NO. 039: 45 years.

18 THE COURT: And you retired, you came -- and you've
19 been here how long?

20 PROSPECTIVE JUROR NO. 039: 18.

21 THE COURT: Okay. Are you married?

22 PROSPECTIVE JUROR NO. 039: Yes.

23 THE COURT: Is your wife retired, too?

24 PROSPECTIVE JUROR NO. 039: Yes.

25 THE COURT: What did she do when she worked?

ROUGH DRAFT TRANSCRIPT

000459

1 PROSPECTIVE JUROR NO. 039: Nothing.

2 THE COURT: She was a house --

3 PROSPECTIVE JUROR NO. 039: She was a housewife --

4 THE COURT: All right.

5 PROSPECTIVE JUROR NO. 039: -- for 25 years. Or
6 actually, for 54 years.

7 THE COURT: Wow. Great. Children?

8 PROSPECTIVE JUROR NO. 039: Three.

9 THE COURT: What do they do for a living?

10 PROSPECTIVE JUROR NO. 039: The oldest one is a
11 controller in Connecticut for a company. They -- the middle
12 one is in Montana. She is -- works for the military. And the
13 youngest one is a chemical physicist.

14 THE COURT: Okay. Hard for you to say, huh,
15 physicist?

16 PROSPECTIVE JUROR NO. 039: Yeah, absolutely. Hard
17 for her to say.

18 THE COURT: Have you ever been in the military?

19 PROSPECTIVE JUROR NO. 039: Yes.

20 THE COURT: What branch, what year, and what did you
21 do?

22 PROSPECTIVE JUROR NO. 039: California, National
23 Guard, and in 1958 and '59.

24 THE COURT: Okay. What did you do there?

25 PROSPECTIVE JUROR NO. 039: I was a quick typist.

ROUGH DRAFT TRANSCRIPT

000460

1 THE COURT: All right. Nothing to do with military
2 police or court marshaling?

3 PROSPECTIVE JUROR NO. 039: Oh, no.

4 THE COURT: No. Are you acquainted with anybody in
5 law enforcement?

6 PROSPECTIVE JUROR NO. 039: No, I'm not.

7 THE COURT: Have you or anyone closely associated
8 with you ever been a victim of a crime?

9 PROSPECTIVE JUROR NO. 039: No.

10 THE COURT: Have you or anyone closely associated
11 with you ever been arrested for a crime?

12 PROSPECTIVE JUROR NO. 039: No.

13 THE COURT: Have you ever served on a jury before?

14 PROSPECTIVE JUROR NO. 039: Yes.

15 THE COURT: How many times?

16 PROSPECTIVE JUROR NO. 039: Once.

17 THE COURT: Where? In --

18 PROSPECTIVE JUROR NO. 039: In California.

19 THE COURT: Was it a criminal, or civil case?

20 PROSPECTIVE JUROR NO. 039: A criminal case.

21 THE COURT: And you were picked as a juror?

22 PROSPECTIVE JUROR NO. 039: Yes.

23 THE COURT: Were you foreman?

24 PROSPECTIVE JUROR NO. 039: Yes.

25 THE COURT: Without telling us what the verdict was,

ROUGH DRAFT TRANSCRIPT

000461

1 did you reach a verdict?

2 PROSPECTIVE JUROR NO. 039: Yes.

3 THE COURT: Could you be fair in this case? You
4 heard a lot of questions from -- well, whenever we started;
5 10:00 o'clock, on. Could you be fair in this case?

6 PROSPECTIVE JUROR NO. 039: Yes, I think so.

7 THE COURT: Judge the case solely by what you hear
8 on the witness stand, the facts, apply my law, go and
9 deliberate; you could do that?

10 PROSPECTIVE JUROR NO. 039: Yes, sir.

11 THE COURT: All right. State?

12 MR. LALLI: Thank you, Your Honor. Mr. Derfelt,
13 what specifically did you do for the telephone company?

14 PROSPECTIVE JUROR NO. 039: I was a -- when I
15 retired, I was a district manager in California.

16 MR. LALLI: So, how many folks did you supervise?

17 PROSPECTIVE JUROR NO. 039: Probably 55 or 60, and
18 installers, repairmen, clerical, cashiers.

19 MR. LALLI: And what type of -- how did you come up
20 in the company? Were you technician? Were you --

21 PROSPECTIVE JUROR NO. 039: No.

22 MR. LALLI: -- [inaudible] accounting, or --

23 PROSPECTIVE JUROR NO. 039: Job of accounting. It
24 was internal auditor, and then went into operations as
25 second-level management, and then, up from there.

ROUGH DRAFT TRANSCRIPT

000462

1 MR. LALLI: Can you tell me about your educational
2 background?

3 PROSPECTIVE JUROR NO. 039: I'm a college graduate.

4 MR. LALLI: And a degree in accounting?

5 PROSPECTIVE JUROR NO. 039: No, it was in business
6 administration.

7 MR. LALLI: And was that in Southern California?

8 PROSPECTIVE JUROR NO. 039: Yes, USC.

9 MR. LALLI: All right. I don't know why I thought
10 you -- you just had that Southern California look to you.

11 PROSPECTIVE JUROR NO. 039: Absolutely. No, that's
12 an Arizonian look. No, I'm sorry, Nevada look. Where am I?

13 MR. LALLI: Did you -- you spent most of your life
14 in California?

15 PROSPECTIVE JUROR NO. 039: Pretty much so.

16 MR. LALLI: Why did you come to Nevada?

17 PROSPECTIVE JUROR NO. 039: You don't really want me
18 to tell you how the California tax laws, do you (sic)?

19 MR. LALLI: All right. No, I've heard enough. The
20 case in which you were a foreperson -- again, without telling
21 us what the jury's verdict was, do you remember the charge in
22 that criminal case?

23 PROSPECTIVE JUROR NO. 039: I think it was a drug
24 charge.

25 MR. LALLI: Was that prosecuted in Los Angeles

ROUGH DRAFT TRANSCRIPT

000463

1 County?

2 PROSPECTIVE JUROR NO. 039: No, in San Bernardino
3 County.

4 MR. LALLI: San Bernardino County. Is there
5 anything about the nature of this charge, the fact that it's a
6 murder case, that causes you any concern about being a juror
7 here?

8 PROSPECTIVE JUROR NO. 039: No, sir.

9 MR. LALLI: You understand that, if there is a
10 guilty verdict, it would be Judge Bonaventure who would impose
11 sentence?

12 PROSPECTIVE JUROR NO. 039: Yes, sir.

13 MR. LALLI: So, you wouldn't be concerned with
14 penalty. It's not a death penalty case, for example.

15 PROSPECTIVE JUROR NO. 039: No.

16 MR. LALLI: Anything about that that would cause you
17 any concern?

18 PROSPECTIVE JUROR NO. 039: Absolutely not.

19 MR. LALLI: Okay. Do you have strong feelings about
20 domestic violence?

21 PROSPECTIVE JUROR NO. 039: No.

22 MR. LALLI: Do you believe that it is a community
23 concern, or that the community needs to be involved in
24 addressing domestic violence?

25 PROSPECTIVE JUROR NO. 039: Only when it becomes

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1 violent. Arguments in the home, the government should stay
2 out of it.

3 MR. LALLI: At what point do you draw the line?

4 PROSPECTIVE JUROR NO. 039: Physical.

5 MR. LALLI: A push?

6 PROSPECTIVE JUROR NO. 039: Push.

7 MR. LALLI: Have we now crossed the line?

8 PROSPECTIVE JUROR NO. 039: Bruise.

9 MR. LALLI: I'm sorry?

10 PROSPECTIVE JUROR NO. 039: Bruise, push, stitches,
11 you know.

12 MR. LALLI: At that point, you think that it's okay
13 that government's involved; the government should be involved?
14 Where do you come down on that?

15 PROSPECTIVE JUROR NO. 039: They should be involved
16 if it gets violent.

17 MR. LALLI: What are some of the things that you
18 think police officers ought to be concerned about looking at
19 when they respond to a domestic violence call when they have a
20 he said, she said situation? How do they figure out what
21 happened?

22 PROSPECTIVE JUROR NO. 039: I guess they'd have to
23 look at the physical evidence.

24 MR. LALLI: All right. Such as?

25 PROSPECTIVE JUROR NO. 039: Bruises, surroundings,

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1 broken dishes, broken heads; you know, whatever.

2 MR. LALLI: Okay. Do you have any experience with
3 people who suffer from mental illness?

4 PROSPECTIVE JUROR NO. 039: No, sir.

5 MR. LALLI: All right. I take it from all of your
6 answers, you can be fair and impartial to both the State and
7 to Mr. O'Keefe?

8 PROSPECTIVE JUROR NO. 039: I think so. Yes, sir.

9 MR. LALLI: Okay. If we prove to you beyond a
10 reasonable doubt that he's guilty, will you convict him?

11 PROSPECTIVE JUROR NO. 039: Yes, sir.

12 MR. LALLI: All right. Thank you.

13 THE COURT: Pass for cause?

14 MR. LALLI: Yes, Your Honor.

15 THE COURT: All right. Mr. O'Keefe, questions; pass
16 for cause.

17 MR. O'KEEFE: Yes. Pass for cause. Just a couple
18 questions, Your Honor. Just --

19 THE COURT: Yeah, that's fine.

20 MR. O'KEEFE: -- a couple.

21 THE COURT: Absolutely.

22 MR. O'KEEFE: Good morning, sir. Or good
23 afternoon --

24 PROSPECTIVE JUROR NO. 039: Hi.

25 MR. O'KEEFE: -- good evening. It's been such a

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1 long day. Did you say you served in the military?
2 PROSPECTIVE JUROR NO. 039: Yes.
3 MR. O'KEEFE: What branch, sir?
4 PROSPECTIVE JUROR NO. 039: It was the Army.
5 MR. O'KEEFE: The Army?
6 PROSPECTIVE JUROR NO. 039: California National
7 Guard.
8 MR. O'KEEFE: Okay. Okay, great. Just a couple
9 questions. I promise I'll make it quick and short. Do you
10 believe a woman can just as easily attack and be an aggressor
11 nowadays, if evidence supports it?
12 PROSPECTIVE JUROR NO. 039: Repeat that question.
13 MR. O'KEEFE: Okay. Do you believe a woman --
14 PROSPECTIVE JUROR NO. 039: A woman.
15 MR. O'KEEFE: -- a woman, female, can just as easily
16 be an aggressor and attacker as a man?
17 PROSPECTIVE JUROR NO. 039: Absolutely.
18 MR. O'KEEFE: Do you believe you have a right to try
19 to ward yourself off -- defend yourself?
20 PROSPECTIVE JUROR NO. 039: Absolutely.
21 MR. O'KEEFE: I don't mean to bring this out on the
22 record or anything. But being wise, and an older gentleman,
23 mature; being in the military, I'm sure you've got drunk quite
24 a few times in those days, and you've become extremely drunk?
25 Forgive me for, you know, asking it like that. But have you

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1 at times become extremely drunk, gone out and partied? And
2 same thing I asked the previous juror. Have you been
3 extremely drunk before, got intoxicated?

4 PROSPECTIVE JUROR NO. 039: Extremely is kind of a
5 relative term. Yes, I have been intoxicated.

6 MR. O'KEEFE: Okay.

7 PROSPECTIVE JUROR NO. 039: I have been inebriated.

8 MR. O'KEEFE: Okay.

9 PROSPECTIVE JUROR NO. 039: But whether extreme or
10 not, that's in the eyes of the beholder, I suppose.

11 MR. O'KEEFE: Okay. And very well stated, sir. So,
12 then, you believe test results also can show and determine --
13 perfect; that someone was maybe just a little bit drunk, a
14 lot, or extremely, like test results?

15 PROSPECTIVE JUROR NO. 039: Yes, I think so.

16 MR. O'KEEFE: So then, test results would be
17 pertinent, --

18 PROSPECTIVE JUROR NO. 039: Pertinent, yeah.

19 THE COURT: -- necessary, relevant as evidence,
20 correct?

21 PROSPECTIVE JUROR NO. 039: It would be pertinent,
22 yeah.

23 MR. O'KEEFE: No further questions, Your Honor.
24 Pass for --

25 THE COURT: Pass for cause?

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1 MR. O'KEEFE: -- cause. Pass for cause.

2 THE COURT: All right. Thank you, Mr. O'Keefe. The
3 defense could exercise it's second peremptory challenge, if it
4 sees fit.

5 MR. O'KEEFE: Yes, Your Honor. I'd like to thank
6 and excuse Juror number 30, Leslie Riell.

7 PROSPECTIVE JUROR NO. 030: What?

8 THE COURT: All right. That's number 9, right? Is
9 that correct? You're excused.

10 THE CLERK: The badge number's --

11 THE COURT: Please report back to JS. Juror number
12 9, Leslie Riell, you're excused, ma'am. Thank you. Clerk,
13 call another prospective juror.

14 THE CLERK: Jason Ansuini.

15 THE COURT: How long you been in this area, sir?

16 PROSPECTIVE JUROR NO. 040: Just about six years.

17 THE COURT: And what do you do for a living?

18 PROSPECTIVE JUROR NO. 040: Director of financial
19 planning at Mandalay Bay.

20 THE COURT: All right. Are you married, sir?

21 PROSPECTIVE JUROR NO. 040: No.

22 THE COURT: Children?

23 PROSPECTIVE JUROR NO. 040: No.

24 THE COURT: Have you ever been in the military?

25 PROSPECTIVE JUROR NO. 040: No.

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1 THE COURT: Are you acquainted with anybody in law
2 enforcement?

3 PROSPECTIVE JUROR NO. 040: No.

4 THE COURT: Have you ever -- you or anyone closely
5 associated with you ever been the victim of a crime?

6 PROSPECTIVE JUROR NO. 040: No.

7 THE COURT: Arrested for a crime?

8 PROSPECTIVE JUROR NO. 040: No.

9 THE COURT: You ever served on a jury?

10 PROSPECTIVE JUROR NO. 040: Yes.

11 THE COURT: How many times, once?

12 PROSPECTIVE JUROR NO. 040: Once.

13 THE COURT: Where? Here?

14 PROSPECTIVE JUROR NO. 040: Here.

15 THE COURT: Was it a criminal matter, or a civil
16 matter?

17 PROSPECTIVE JUROR NO. 040: Criminal.

18 THE COURT: Do you remember the charge?

19 PROSPECTIVE JUROR NO. 040: There were six felony
20 counts of sexual assault on a minor under the age of 12, and
21 57 counts of possession of child pornography.

22 THE COURT: Okay. And you were picked as a juror?

23 PROSPECTIVE JUROR NO. 040: Yes.

24 THE COURT: Were you picked as foreman?

25 PROSPECTIVE JUROR NO. 040: Yes.

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1 THE COURT: Without telling me what the verdict was,
2 did your jury reach a verdict?

3 PROSPECTIVE JUROR NO. 040: We reached a verdict on
4 all but two counts.

5 THE COURT: Okay. All right, all right. All right.
6 And you pretty well remember the judge giving you instructions
7 of law at the conclusion of the case?

8 PROSPECTIVE JUROR NO. 040: Yes.

9 THE COURT: And you could follow my instructions in
10 this particular case?

11 PROSPECTIVE JUROR NO. 040: Yes.

12 THE COURT: Could you be a fair and impartial juror
13 in this case?

14 PROSPECTIVE JUROR NO. 040: Yes.

15 THE COURT: Thank you. State, questions; pass for
16 cause?

17 MS. MERCER: When was your prior service?

18 PROSPECTIVE JUROR NO. 040: It was in February of
19 2009.

20 MS. MERCER: Okay. And do you remember who the
21 prosecutor was, by any chance?

22 PROSPECTIVE JUROR NO. 040: The prosecutors were
23 Vicki Monroe, and Tom -- the last name escapes me.

24 MS. MERCER: Moreo?

25 PROSPECTIVE JUROR NO. 040: Yes.

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1 MS. MERCER: Thank you. Have you ever had anybody
2 close to you that was a victim of domestic violence?

3 PROSPECTIVE JUROR NO. 040: Not that I'm aware of.

4 MS. MERCER: Have you ever witnessed an incident of
5 domestic violence?

6 PROSPECTIVE JUROR NO. 040: No.

7 MS. MERCER: Do you have any strong feelings about
8 domestic violence that would impact your ability to be fair
9 and impartial in this case?

10 PROSPECTIVE JUROR NO. 040: No.

11 MS. MERCER: Is there anything that we haven't asked
12 you already that you think would affect your ability to be
13 fair and impartial in this case?

14 PROSPECTIVE JUROR NO. 040: I don't believe so.

15 MS. MERCER: Do you believe that domestic violence
16 is an issue that should be dealt with within the home, or are
17 you okay with State involvement?

18 PROSPECTIVE JUROR NO. 040: I'm fine with State
19 involvement.

20 MS. MERCER: Do you think that it's ever okay to use
21 violence to solve a verbal dispute?

22 PROSPECTIVE JUROR NO. 040: No.

23 MS. MERCER: Pass for cause, Your Honor.

24 THE COURT: Thank you. Mr. O'Keefe, questions; pass
25 for cause?

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1 MR. O'KEEFE: Pass for cause, Your Honor.

2 THE COURT: Thank you, Mr. O'Keefe. The State can
3 exercise it's third peremptory challenge, if it sees fit.

4 MR. LALLI: Your Honor, the State would thank and
5 excuse Juror number 35 in seat 12, Ms. Murphy.

6 THE COURT: All right. Please report back to the
7 jury commissioner. Clerk, call another prospective juror.

8 THE CLERK: Nella Humphries.

9 THE COURT: Take that seat there, ma'am. How long
10 you been in Las Vegas?

11 PROSPECTIVE JUROR NO. 041: 24 years.

12 THE COURT: Are you related to Marc Humphries then?

13 PROSPECTIVE JUROR NO. 041: Yes.

14 THE COURT: You are related to him. What is your
15 relationship?

16 PROSPECTIVE JUROR NO. 041: Brother and sister.

17 THE COURT: What?

18 PROSPECTIVE JUROR NO. 041: Brother and sister.

19 THE COURT: Oh.

20 PROSPECTIVE JUROR NO. 041: How it happened, we
21 don't know, that we both ended up --

22 THE COURT: Interesting.

23 PROSPECTIVE JUROR NO. 041: -- the second day.

24 THE COURT: I'm not sure I ever had -- in 38 years
25 being on the bench, I'm not sure I ever had a brother and

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1 sister, or a mother and son.

2 PROSPECTIVE JUROR NO. 041: It's a first.

3 THE COURT: I'm not sure -- we got a problem with
4 that? I mean, I -- you know, they're related. You don't live
5 in the same household, do you?

6 PROSPECTIVE JUROR NO. 012: No.

7 PROSPECTIVE JUROR NO. 041: No.

8 THE COURT: You want me to keep going?

9 MR. LALLI: Can we approach?

10 THE COURT: Sure.

11 (Off-record bench conference)

12 THE COURT: It's -- you know, I don't want to tell
13 my age. It's unfortunate. I've always picked a jury, you
14 know, hopefully the first day, unless it's another case that
15 took two days. And I didn't leave the bench until I picked a
16 jury, if I was close. But I can't do that today.

17 We're close to picking a jury, but we still have
18 more to do. So, I have to stop the court at 5:00 o'clock
19 sharp. You know, everybody has financial problems. The
20 county has financial -- they don't want any overtime. So --
21 not for me, but for the staff and everything.

22 So, I'm going to have to stop at 5:00 o'clock, and
23 then everybody come back tomorrow morning, which I'll tell you
24 in a minute. But it's unfortunate you're going to have to
25 come back. I mean, you guys are going to have to come back

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1 anyway, but the other prospective jurors have to come back
2 also. I just wanted to remind you that I have to do it. So,
3 we only have a few minutes.

4 Now, you're Nellie Humphries?

5 PROSPECTIVE JUROR NO. 041: Nella.

6 THE COURT: Nella, Nella, Nella.

7 PROSPECTIVE JUROR NO. 041: Yes.

8 THE COURT: Who's older? All right. All right.

9 PROSPECTIVE JUROR NO. 041: I beat him up.

10 THE COURT: How long you been in this area, ma'am?
11 How long you been in Las Vegas?

12 PROSPECTIVE JUROR NO. 041: 24 years.

13 THE COURT: What do you do for a living?

14 PROSPECTIVE JUROR NO. 041: I work at Golden Gate in
15 the cage.

16 THE COURT: I see. Are you married?

17 PROSPECTIVE JUROR NO. 041: No.

18 THE COURT: Children?

19 PROSPECTIVE JUROR NO. 041: Yes.

20 THE COURT: What do they do for a living, your
21 children?

22 PROSPECTIVE JUROR NO. 041: You want my honest
23 opinion? Nothing. It's my job; the mom. No, I only have one
24 child at home still. She's 16.

25 THE COURT: She's what?

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1 PROSPECTIVE JUROR NO. 041: She's 16.

2 THE COURT: Oh, okay. So, you don't -- have
3 children that don't go to work. All right.

4 PROSPECTIVE JUROR NO. 041: Yeah, they're grown.

5 THE COURT: Have you ever been in the military?

6 PROSPECTIVE JUROR NO. 041: No.

7 THE COURT: Are you acquainted with anybody -- of
8 course, law enforcement, your brother. Anybody else?

9 PROSPECTIVE JUROR NO. 041: I have a brother in-law
10 that's in LVPD.

11 THE COURT: Okay. All right.

12 PROSPECTIVE JUROR NO. 041: That's it.

13 THE COURT: Again, the follow up questions. You're
14 not to give greater weight or lesser weight to a police
15 officer's testimony simply because they're a police officer.
16 You understand that?

17 PROSPECTIVE JUROR NO. 041: Yes.

18 THE COURT: Will you follow that?

19 PROSPECTIVE JUROR NO. 041: Yes.

20 THE COURT: Have you or anyone closely associated
21 with you ever been a victim of a crime?

22 PROSPECTIVE JUROR NO. 041: No.

23 THE COURT: Or arrested for a crime?

24 PROSPECTIVE JUROR NO. 041: No.

25 THE COURT: Have you ever served on a jury before?

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1 PROSPECTIVE JUROR NO. 041: No.

2 THE COURT: Could you be fair in this case?

3 PROSPECTIVE JUROR NO. 041: Yes.

4 THE COURT: All right. Now, I'm sure the district
5 attorney, they're going to ask you about the sibling
6 relationship. And you just answer them. But Ms. -- oh, Mr.
7 Lalli?

8 MR. LALLI: Yes, thank you. Ms. Humphries, you
9 indicated that you have a friend in Metro?

10 PROSPECTIVE JUROR NO. 041: A brother in-law.

11 MR. LALLI: Oh, I'm sorry. Brother in-law.

12 PROSPECTIVE JUROR NO. 041: Brother in-law. Yeah.

13 MR. LALLI: What does he do for Metro?

14 PROSPECTIVE JUROR NO. 041: He's a bike cop.

15 MR. LALLI: Okay. He's in -- a motor -- motor cop?

16 PROSPECTIVE JUROR NO. 041: Yeah.

17 MR. LALLI: They don't like to be called bike cops.
18 I mean, it's --

19 PROSPECTIVE JUROR NO. 041: Sorry.

20 MR. LALLI: Do you -- how close are you to your
21 brother in-law?

22 PROSPECTIVE JUROR NO. 041: Not real close. I mean,
23 it's my sister's husband's -- brother in-law. So, but I mean,
24 we -- when we get together --

25 MR. LALLI: See them a few times a year?

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1 PROSPECTIVE JUROR NO. 041: Yeah.

2 MR. LALLI: Do you talk to him about his work?

3 PROSPECTIVE JUROR NO. 041: No.

4 THE COURT: And the rest of you, please, you're
5 excused. Come back tomorrow. Wait outside about -- about
6 9:30, all right? Just be outside at 9:30. Thank you very
7 much. You're excused.

8 UNKNOWN MALE SPEAKER: Same courtroom?

9 THE COURT: Same -- yeah, right outside here. Just
10 wait right outside here at 9:00 o'clock tomorrow morning?

11 UNKNOWN FEMALE SPEAKER: 9:00?

12 MR. O'KEEFE: 9:30.

13 THE COURT: Excuse me, 9:30 tomorrow morning. Go
14 ahead. Keep your voice up, Mr. Lalli. We'll continue.

15 MR. LALLI: Okay. I'll come a little closer so you
16 can hear me.

17 PROSPECTIVE JUROR NO. 041: Okay.

18 MR. LALLI: Let me talk about this guy over here,
19 Mr. Humphries. The concern with people who know each other on
20 juries is that, if you both stay on it, you won't equally
21 deliberate with the rest of the jurors, that an alliance would
22 be formed between you.

23 And I don't mean that in a bad way, but you may
24 listen to your brother more than you listen to anybody else,
25 or you may share your brother's concerns more than you share

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1 anyone else's concerns. Can you give us some sense of that
2 dynamic?

3 PROSPECTIVE JUROR NO. 041: Yes. Growing up --

4 MR. LALLI: I know you used to beat him up.

5 PROSPECTIVE JUROR NO. 041: Yeah. That was only
6 when he was little. I'll tell you some stories later. But we
7 always were taught by our parents to each make our own
8 decision about situations. Whatever his situation is, and his
9 decision; that's his. Don't influence me, you know, and it's
10 vice versa. And that's the way it has always been in our
11 family.

12 MR. LALLI: Okay.

13 PROSPECTIVE JUROR NO. 041: Now, I'm the oldest in
14 the family. If I say, you know, the sky is green, they don't
15 follow along with what I say.

16 MR. LALLI: All right.

17 PROSPECTIVE JUROR NO. 041: That's --

18 MR. LALLI: If -- you know, there have been
19 occasions where deliberations have become heated, and maybe
20 there's another juror who's going to be rude to your brother,
21 say something offensive to your brother. Are you going to
22 internalize that, or are you going to, any more so than any
23 other person --

24 PROSPECTIVE JUROR NO. 041: No.

25 MR. LALLI: -- have a problem with how that --

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1 PROSPECTIVE JUROR NO. 041: No.

2 MR. LALLI: -- [inaudible]?

3 PROSPECTIVE JUROR NO. 041: No. If it was -- if it
4 was him, and somebody said something, I'd, you know, say,
5 well, why are you saying that? No different from my brother.

6 MR. LALLI: Okay. And Your Honor, may I ask Mr.
7 Humphries kind of the same --

8 THE COURT: Yes.

9 MR. LALLI: -- issue, just as long as we're here?

10 THE COURT: And Mr. O'Keefe can have the same
11 privilege, of course.

12 MR. LALLI: Just on this one limited issue.

13 THE COURT: Sure, absolutely.

14 MR. LALLI: Mr. Humphries, is that the same with
15 respect to your sister? Do you see an alliance forming, or do
16 you still see yourselves as two, co-equal members of this
17 jury, who would participate in deliberations? Or --

18 PROSPECTIVE JUROR NO. 012: I mean, I see us
19 thinking independently. I don't -- I'm not really jazzed
20 about it, to be very honest with you. So --

21 MR. LALLI: Why?

22 PROSPECTIVE JUROR NO. 012: I just -- you know, I
23 kind of feel like, to a certain degree, it's kind of -- you
24 know, there's a lot of things I've seen through the day, and I
25 don't want to go into the scenario with the other gentleman

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1 that was in the seat over there.

2 But overall, it's just one of those things that I
3 just kind of look at and go, it's a little bit
4 uncharacteristic, as even Judge Bonaventure reoriented. It's
5 the first time in 35 -- or 37 years. And so -- you know. I
6 mean, granted, I'm going to think independently, and I'm going
7 to do what I need to do in regards to making an objective --

8 PROSPECTIVE JUROR NO. 041: Make a decision.

9 PROSPECTIVE JUROR NO. 012: -- you know, decision,
10 so.

11 MR. LALLI: Do you feel comfortable disagreeing with
12 your sister?

13 PROSPECTIVE JUROR NO. 012: Most certainly. Yeah,
14 yeah, yeah, yeah.

15 MR. LALLI: Would you -- in spite of your feeling
16 uncomfortable about it, would you take a position against your
17 sister?

18 PROSPECTIVE JUROR NO. 012: Most certainly.

19 MR. LALLI: Okay. So, it adds a layer of
20 complexity.

21 PROSPECTIVE JUROR NO. 012: Yes.

22 MR. LALLI: But do you think --

23 PROSPECTIVE JUROR NO. 012: Yeah.

24 MR. LALLI: -- based upon everything you've heard,
25 everything that you believe that's expected of you as a juror,

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1 is it something you can do, nonetheless?

2 PROSPECTIVE JUROR NO. 012: Yeah, yeah. Given the
3 fact of being a professional, and I'm going to certainly, you
4 know, go into the scenario, and look at the case, and be
5 impartial and objective, and make a decision, so.

6 MR. LALLI: You're a member of law enforcement.

7 PROSPECTIVE JUROR NO. 012: Uh-huh.

8 MR. LALLI: And if you have this opinion, he's
9 guilty, Brian O'Keefe is guilty as charged, and your sister
10 says, no, he's not, he's not, are you going to stand firm on
11 your position that he's guilty, or are you going to listen to
12 sister?

13 PROSPECTIVE JUROR NO. 012: No, I'm going to stand
14 firm on my decision.

15 MR. LALLI: Okay. All right. Your Honor, I don't
16 have anymore questioning on this issue. However, I do have
17 some other questions --

18 THE COURT: Yeah, go ahead.

19 MR. LALLI: -- for Ms. Humphries. Shall I continue?

20 THE COURT: Yeah, you may as well.

21 MR. LALLI: Okay.

22 THE COURT: Just as long as you hurry it up a
23 little, I appreciate it.

24 MR. LALLI: All right. Do you have any feelings
25 about -- strong feelings about domestic violence?

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1 PROSPECTIVE JUROR NO. 041: I think there needs to
2 be maybe a better system set up for it, not to only help
3 women, but to help men also; not just one-sided towards women,
4 or one-sided towards men. I think that would help it a lot.

5 MR. LALLI: Do you think the system is one-sided?

6 PROSPECTIVE JUROR NO. 041: Not one-sided. What I'm
7 saying is, you know, like it's -- in today's society, it's
8 always the men that is the aggressor. But it's not always the
9 man. It can be the woman, too. And I think a lot of people
10 don't see that all the time.

11 MR. LALLI: Okay. So, you think that the -- that
12 the belief of the public is that it's always the man, the
13 aggressor; when in truth, the woman can --

14 PROSPECTIVE JUROR NO. 041: It could be the woman,
15 too. Yes.

16 MR. LALLI: -- the woman could be the aggressor?

17 PROSPECTIVE JUROR NO. 041: Yes. Um-hum.

18 MR. LALLI: All right. Assuming the system got
19 that part right, okay, do you see any other problems with the
20 system in how it addresses with domestic violence?

21 PROSPECTIVE JUROR NO. 041: I think some of the
22 sentencing for it should be a little stricter.

23 MR. LALLI: In what sense?

24 PROSPECTIVE JUROR NO. 041: You know, not let them
25 just get off the first time with like, say anger management,

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1 or --

2 MR. LALLI: What do you think should happen?

3 PROSPECTIVE JUROR NO. 041: I think there should be

4 -- I'm not --

5 MR. LALLI: Do you think people ought to do time in
6 custody for a first time offense of domestic violence?

7 PROSPECTIVE JUROR NO. 041: I think it might --
8 maybe it might -- well, no, not really. But there should be a
9 -- like -- I don't know how to put it. More of an education
10 on, why is it being done; you know, why is the domestic
11 violence going on so much? Because that's basically all you
12 hear anymore.

13 MR. LALLI: So, you think it goes on a lot in
14 society, and we as a society need --

15 PROSPECTIVE JUROR NO. 041: Kind of --

16 MR. LALLI: -- to do more?

17 PROSPECTIVE JUROR NO. 041: Yes. And I think it's
18 kind of pushed under the rug a little bit, you know.

19 MR. LALLI: Okay. So, I've asked a number of people
20 if they think domestic violence is a private issue between a
21 man and a woman. You would disagree with that?

22 PROSPECTIVE JUROR NO. 041: To a certain degree,
23 yes.

24 MR. LALLI: Okay. Do you -- well, let me change
25 gears just a little bit. Do you -- well, have you ever known

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1 anyone directly who has been involved in a domestic violence
2 situation?

3 PROSPECTIVE JUROR NO. 041: Not directly. Just
4 stuff I've heard on, you know, newspapers, TV --

5 MR. LALLI: All right.

6 PROSPECTIVE JUROR NO. 041: -- courtrooms. You
7 know.

8 MR. LALLI: You've never seen it?

9 PROSPECTIVE JUROR NO. 041: Not really.

10 MR. LALLI: Okay.

11 PROSPECTIVE JUROR NO. 041: No. I mean, I've seen
12 people argue and stuff like that, but nothing --

13 MR. LALLI: Physical?

14 PROSPECTIVE JUROR NO. 041: -- to the point of being
15 physical with anybody.

16 MR. LALLI: What about individuals who suffer from
17 mental illness? Do you have any firsthand experience dealing
18 with that?

19 PROSPECTIVE JUROR NO. 041: Not really.

20 MR. LALLI: Know anyone with depression, or know
21 anyone who has seen a mental health professional?

22 PROSPECTIVE JUROR NO. 041: No, not really.

23 MR. LALLI: All right.

24 PROSPECTIVE JUROR NO. 041: No. Hum-um.

25 MR. LALLI: Do you believe in holding people

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1 accountable for their actions?

2 PROSPECTIVE JUROR NO. 041: Yes, I do. If you are
3 doing something wrong, you should be held accountable for it.

4 MR. LALLI: If we prove to you that Brian O'Keefe is
5 guilty of murder of the second degree, would you convict him?

6 PROSPECTIVE JUROR NO. 041: Yes, if it's proven.

7 MR. LALLI: Thank you. Your Honor, we'll pass for
8 cause.

9 THE COURT: All right. Mr. O'Keefe?

10 MR. O'KEEFE: Yeah, just a couple quick questions.
11 Pass for cause, Your Honor. If I may, Your Honor -- I know
12 this is an unusual situation. It's directed to Ms. Nella
13 Humphries first, and then -- is it Mr. Marc --

14 PROSPECTIVE JUROR NO. 012: Sure.

15 MR. O'KEEFE: If that's okay.

16 THE COURT: Yeah.

17 MR. O'KEEFE: Okay. I just want to clarify and make
18 sure -- to both of you. If the State doesn't prove their case
19 without a doubt, I want to make sure I understand --

20 MR. LALLI: I'm going to object. That's an improper
21 standard, Your Honor.

22 THE COURT: Yeah. Without a doubt is not the
23 standard. It's the State has the burden of proving the
24 defendant guilty beyond a reasonable doubt, all right?

25 MR. O'KEEFE: And I apologize. Thank you. I'm

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1 extremely tired. What I meant to say, if you determine, after
2 hearing the case, that I'm not guilty, am I understanding that
3 you're going to rule me opposite, just because -- or do you
4 see what I'm trying to say? Or if you rule -- if you feel
5 it's not guilty, are you going to go the opposite -- I just
6 want to make clearly sure that --

7 PROSPECTIVE JUROR NO. 041: No, I make my own
8 decision. He doesn't influence me. You know, I decide from
9 the evidence what I am going to vote as.

10 MR. O'KEEFE: Okay. And again, also, you, without a
11 doubt, can just individually make your own decisions? Just
12 for the last time, I'm just making absolute sure. I think
13 we're good. I --

14 THE COURT: Pass for cause, then?

15 MR. O'KEEFE: Pass for cause.

16 THE COURT: All right. Thank you, Mr. O'Keefe. The
17 defense can exercise it's third peremptory challenge, if it
18 sees fit.

19 MR. O'KEEFE: Yes, Your Honor. I'm going to thank
20 and excuse Juror number -- is it seat -- or seat -- I can't
21 read it. I can't -- seat 5, Linda Bellew -- Bellew.

22 THE COURT: All right. Please --

23 MR. O'KEEFE: Juror number 21.

24 THE COURT: Yeah. I don't know if the jury
25 commissioner is open or not. But if not -- report to them.

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1 If not, go home. All right? Thank you very much though.

2 PROSPECTIVE JUROR NO. 021: Do I have to come back
3 tomorrow [inaudible]?

4 THE COURT: No, you're done. --

5 PROSPECTIVE JUROR NO. 021: Okay.

6 THE COURT: You might have to fill a voucher -- I'm
7 not sure. You know, but --

8 PROSPECTIVE JUROR NO. 021: Yeah, I didn't get it
9 stamped. Thank you.

10 THE COURT: All right. So, we'll begin tomorrow,
11 Ms. Clerk, in filling in Juror number 5, right?

12 MR. LALLI: Yes.

13 THE COURT: And we have --

14 THE CLERK: It's going to be -- do you want to know
15 the name?

16 THE COURT: No, no.

17 THE CLERK: Okay.

18 THE COURT: We'll do that tomorrow.

19 THE CLERK: Okay.

20 THE COURT: And thank you very much, ladies and
21 gentlemen. I know it was a long day. I usually don't give
22 the admonition. But you're here, and probably most of you are
23 going to stay. It depends. But I usually give the admonition
24 after we get the entire jury.

25 But I'm just going to say to you, please, don't

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1 converse among yourselves, or anyone else on any subject
2 connected with the trial, or read, watch, or listen to any
3 report or commentary on the trial, by any person connected
4 with the trial, or by any medium of information, including,
5 without limitation, newspapers, television, radio. And you
6 are not to form or express any opinion on any subject
7 connected with the trial until the cause is finally submitted
8 to you.

9 So, thanks a lot. Just be out there at 9:30
10 tomorrow. I've got a motion calendar. I might be a little
11 late. I'm going to try to hurry it up, but it will be about
12 that time. And just don't come in individually. Just wait
13 outside, and the marshal will take everybody in at one time.

14 (Jury recessed at 5:11 p.m.)

15 (Pause in the proceedings)

16 (Outside the presence of the prospective jury panel)

17 THE COURT: All right. So, we'll come back -- now,
18 it's my understanding we discussed, Mr. Lalli and Mr. O'Keefe,
19 the number of peremptory challenges that you get here. I
20 mean, originally, if he was charged with first degree murder,
21 he got eight peremptory challenges; is that correct? Both of
22 you got eight peremptory challenges?

23 MR. LALLI: Correct, Your Honor.

24 THE COURT: So, apparently, he was -- after the
25 trial, Judge Villani sentenced Mr. O'Keefe to a maximum of 25

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1 years, with a minimum parole eligibility of 10; plus a
2 consecutive of 240 months, with a minimum parole eligibility
3 of 96 months, consecutive on the weapon. So, is it -- I mean,
4 I know you're both going to stipulate that it's four -- is
5 that correct? But I think it is by statute.

6 MR. O'KEEFE: Yes, Your Honor. I think you are --
7 four, and then one --

8 THE COURT: Yeah, and one -- we'll call two -- two
9 alternate jurors; you have one preempt.

10 MR. O'KEEFE: Each.

11 THE COURT: No, not each. Just as to both.

12 MR. O'KEEFE: Oh, okay.

13 MR. MANINGO: This way, yeah.

14 THE COURT: Yeah.

15 MR. MANINGO: The State has one, and you have one.

16 MR. LALLI: I think the Court is correct, and we
17 would so stipulate, Your Honor.

18 THE COURT: Okay. Well, that's fine. I just wanted
19 to clarify. Anything else to come before the Court right now?
20 It's late, so we can't really -- we'll see everybody back at
21 9:30 tomorrow. Hopefully I'll be ready to go, but it's a long
22 calendar. But I'll do the best I can. Then, we'll finish
23 picking the jury, we'll have opening statements, and whatever
24 you want to do, Mr. Lalli.

25 MR. LALLI: Very good, Your Honor. We haven't had

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1 the chance to look at the evidence. I presume it's all -- I
2 don't know if it's been remarked yet, or not. I'm not sure
3 where we are with that. But we'll be using evidence when we
4 call the first witness --

5 THE CLERK: I was going to --

6 MR. LALLI: -- tomorrow.

7 THE CLERK: -- remark it -- what do you want the
8 ones from the --

9 MR. LALLI: Hearing?

10 THE CLERK: -- the hearing? Do you want those just
11 marked at the end? Because you wanted all the same numbers.

12 MR. LALLI: We will -- so that you don't have to
13 mark it unnecessarily, we will select --

14 THE CLERK: Okay.

15 MR. LALLI: -- which exhibits from that we'll use.

16 THE CLERK: Okay.

17 MR. LALLI: There will be just a portion of that
18 used; not all of it.

19 THE CLERK: Okay. That's why I didn't mark, because
20 I was -- I wasn't sure.

21 THE COURT: All right. See you tomorrow. Thank
22 you.

23 MR. LALLI: Thank you, Your Honor.

24 MR. MANINGO: Thank you, sir.

25 (Proceeding concluded at 5:06 p.m., until Tuesday,
26 June 12, 2012, at 9:52 a.m.)

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ACKNOWLEDGMENT

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

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Julie Lord

JULIE LORD, TRANSCRIBER

8/24/12

DATE

ROUGH DRAFT TRANSCRIPT

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REGISTER OF ACTIONS

CASE No. 08C250630

The State of Nevada vs Brian K O'Keefe

Case Type: **Felony/Gross
Misdemeanor**
Date Filed: **12/19/2008**
Location: **Department 17**
Conversion Case Number: **C250630**
Defendant's Scope ID #: **1447732**
Lower Court Case Number: **08F23348**
Supreme Court No.: **61631**

PARTY INFORMATION

Defendant O'Keefe, Brian K

Lead Attorneys
Pro Se

Plaintiff State of Nevada

Steven B Wolfson
702-671-2700(W)

CHARGE INFORMATION

Charges: O'Keefe, Brian K	Statute	Level	Date
1. MURDER.	200.010	Felony	01/01/1900
1. DEGREES OF MURDER	200.030	Felony	01/01/1900
1. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900

EVENTS & ORDERS OF THE COURT

06/11/2012 **Jury Trial (9:30 AM) (Judicial Officer Bonaventure, Joseph T.)**
06/11/2012, 06/12/2012, 06/13/2012, 06/14/2012, 06/15/2012

Minutes

06/11/2012 1:00 PM

06/11/2012 9:30 AM

- Christopher Lalli, Chf Dep DA, and Liz Mercer, Dep DA, present on behalf of the State; Deft. O'Keefe present pro se with stand-by counsel, Lance Maningo. 10:00 a.m. Trial commenced. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Argument by Mr. Lalli regarding Judge Villani's ruling on the State's Bad Acts Motion. Deft. requested the Court take Judicial Notice of certain documents, which were marked for identification as Court's Exhibit No. 2 and ADMITTED. Argument by Deft. with regard to the Bad Acts; he orally moved the Court for a dismissal for the reasons stated on the record. COURT ORDERED, Motion DENIED. Deft. then requested that all objections be Federalized; colloquy. COURT FURTHER ORDERED, request DENIED. 10:27 a.m. the PROSPECTIVE JURORS PRESENT: Court and Deft. begin Voir Dire examination of the prospective Jurors. Court received a note from Prospective Juror 079, he is ill. COURT ORDERED, this Prospective Juror is RELEASED; the note was marked for identification as Court's Exhibit No. 1 and ADMITTED. 5:14 a.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 06/12/12 9:30 AM

06/12/2012 9:30 AM

- Christopher Lalli, Chf Dep DA, and Liz Mercer, Dep DA, present on behalf of the State; Deft. O'Keefe present pro se with stand-by counsel, Lance Maningo. 10:02 a.m. Jury Trial resumed. PROSPECTIVE JURORS PRESENT: Court and Deft. continued Voir Dire examination of the Prospective Jurors. Jury and two (2) alternates selected and sworn. Clerk read the Second Amended Information to the Jury and stated the Deft.'s plea thereto. OUTSIDE

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THE PRESENCE OF THE JURY: Deft. stated for the record that he believes that proceeding to trial at this time constitutes a true double jeopardy violation and is also in violation of the laws and treaties of the United States of America on double jeopardy, due process, and collateral estoppel is implied. Court noted for the record Deft.'s continuing objection with regard to the above. Deft. further objected to the battery domestic violence evidence and testimony. Court again noted for the record Deft.'s continuing objection with regard to this issue as well. JURY PRESENT: Opening Statements by Mr. Lalli and Deft. Exclusionary Rule INVOKED. Testimony and exhibits presented (see worksheets). OUTSIDE THE PRESENCE OF THE JURY: Court canvassed Deft. with regard to his right not to testify. 5:00 a.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 06/13/12 9:30 AM

06/13/2012 9:30 AM

- Christopher Lalli, Chf Dep DA, and Liz Mercer, Dep DA, present on behalf of the State; Deft. O'Keefe present pro se with stand-by counsel, Lance Maningo. 9:50 a.m. Jury Trial resumed. Testimony and exhibits presented (see worksheets). 4:03 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 06/14/12 9:30 AM

06/14/2012 9:30 AM

- Christopher Lalli, Chf Dep DA, and Liz Mercer, Dep DA, present on behalf of the State; Deft. O'Keefe present pro se with stand-by counsel, Lance Maningo. 10:04 a.m. Jury Trial resumed. OUTSIDE THE PRESENCE OF THE JURY: The State is requesting that a Stipulation pertaining to the excerpts from the medical records of the victim, that was read to the Jury at the previous trial and remarked for identification as Court's Exhibit No. 9, be read to this Jury. Deft. has his own version of the Stipulation that he would like read to the Jury and also requested that it be marked as a Defense Exhibit so the Jury can take it back to the Jury room with them; it is marked for identification as Court's Exhibit No. 6. The parties cannot agree on which one should be read; Mr. Lalli objects to it being admitted as a Defense Exhibit. Arguments by Mr. Lalli and Deft. COURT ORDERED decision DEFERRED. Deft. would like to play a 911 call, he presented the disc to the Court and it was marked for identification as Court's Exhibit No. 7. Mr. Lalli advised he has a 911 call from a witness they could not locate, State's Exhibit No. 129. will not be played because he cannot lay the proper foundation. It was played at the first trial so he will play it if there is a Stipulation; however, with regard to Court's Exhibit No. 7, the person who made the call was not called as a witness so it is hearsay and, therefore, cannot be played. Arguments by Mr. Lalli and Deft. COURT ORDERED, neither of the above-mentioned 911 calls will be played for the Jury as there is no foundation. 10:21 a.m. the JURY is PRESENT. Testimony and exhibits presented (see worksheets). OUTSIDE THE PRESENCE OF THE JURY: The Court received a note from Juror No. 12. The note was marked for identification as Court's Exhibit No. 8. Juror No. 12 was questioned outside the presence of the Jury. COURT ORDERED, this Juror shall remain. Further discussion about the Stipulation; Court advised he could either read it to the Jury or it can be admitted as a Defense Exhibit but it cannot do both. Deft. agreed to have it read to the Jury at the appropriate time. JURY PRESENT: Testimony and exhibits presented (see worksheets). Stipulation read to the Jury. 2:30 p.m. Jury dismissed for the day. OUTSIDE THE PRESENCE OF THE JURY: Deft. orally moved for a directed verdict. Arguments by Mr. Lalli and Deft. COURT ORDERED, motion DENIED. Jury Instructions and Verdict form settled on the record. 3:36 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 06/15/12 9:00 AM

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06/15/2012 9:00 AM

- Christopher Lalli, Chf Dep DA, and Liz Mercer, Dep DA, present on behalf of the State; Deft. O'Keefe present pro se with stand-by counsel, Lance Maningo. 9:15 a.m. Jury Trial resumed. JURY PRESENT: Court instructed the Jury. Closing arguments by Ms. Mercer and Deft.; rebuttal by Mr. Lalli. At the hour of 11:09 a.m., the Jury retired to deliberate. Court thanked and excused the alternates. At the hour of 1:58 p.m., the Jury RETURNED. Ms. Mercer, Deft, and Mr. Maningo are present. The verdict is as follows: GUILTY of MURDER of the SECOND DEGREE with USE OF A DEADLY WEAPON (F). Court thanked and excused the Jury. COURT ORDERED, matter set for sentencing. 2:05 p.m. Court ADJOURNED. CUSTODY 08/16/12 8:15 AM SENTENCING

[Return to Register of Actions](#)

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BRIAN O'KEEFE

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,)
)
Appellant,)
)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)

Case No.: 61631
District Court Case No.: C250630

APPELLANT'S APPENDIX

VOLUME 2

**APPEAL FROM JUDGMENT OF CONVICTION AND SENTENCE IN THE
EIGHTH JUDICIAL DISTRICT COURT**

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Attorney for Appellant

Attorneys for Respondent

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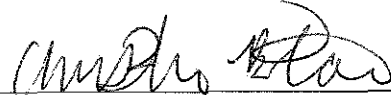
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CERTIFICATE OF MAILING

I, hereby certify that on the 29th day of October, 2012, I did serve a true and correct copy of the foregoing APPELLANT'S APPENDIX by depositing same in the United States mail, first-class postage fully prepaid, addressed as follows:

Clark County District Attorney
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717


An Employee of Bellon & Maningo

1 firsthand experience with domestic violence?

2 PROSPECTIVE JUROR NO. 017: I've had like -- as a
3 matter of fact, my sister in-law. You know. So --

4 MR. LALLI: Can you tell us about --

5 PROSPECTIVE JUROR NO. 017: She was the aggressor.

6 MR. LALLI: All right.

7 PROSPECTIVE JUROR NO. 017: In my opinion. In
8 everyone's opinion, even the court's. But it was never where
9 anyone went to trial, but police were called in.

10 MR. LALLI: Do you -- you think everybody believed
11 that she was the aggressor, even the court?

12 PROSPECTIVE JUROR NO. 017: Yeah. Yes.

13 MR. LALLI: So, can you give us some sense of the
14 extent to which the authorities were involved with your sister
15 in-law?

16 PROSPECTIVE JUROR NO. 017: She was put into a
17 program for a while, you know, because it had to do with --
18 she was a drug user also. So, that was the decision of the
19 court, rehabilitation, which brought on the domestic part.

20 MR. LALLI: How close were you to her?

21 PROSPECTIVE JUROR NO. 017: I loved her because she
22 loved my brother. But they have been divorced at least 10 to
23 12 years.

24 MR. LALLI: All right. So, it's been quite a while
25 since you've had to deal with --

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1 PROSPECTIVE JUROR NO. 017: Correct.

2 MR. LALLI: -- an issue like that?

3 PROSPECTIVE JUROR NO. 017: Correct.

4 MR. LALLI: Were you living at the -- in the same

5 city that --

6 PROSPECTIVE JUROR NO. 017: Yes.

7 MR. LALLI: -- your brother was at the time?

8 PROSPECTIVE JUROR NO. 017: Yes. We were living all

9 in the same city.

10 MR. LALLI: Was that Connecticut?

11 PROSPECTIVE JUROR NO. 017: That was Michigan.

12 MR. LALLI: Oh, back in Michigan?

13 PROSPECTIVE JUROR NO. 017: Correct.

14 MR. LALLI: Do you think that a community ought to

15 be involved in domestic violence issues?

16 PROSPECTIVE JUROR NO. 017: Community and family.

17 Yes, I do.

18 MR. LALLI: What do you think the responsibility of

19 the community is? What do you think their responsibility

20 ought to be?

21 PROSPECTIVE JUROR NO. 017: I mean, if you're aware

22 of it, I think that you should try to give them -- or whoever

23 needs the support, to either get out of the situation, or you

24 know -- or see what they can do for the aggressor. Because

25 it's a two-way street. Both of them will need help, the one

ROUGH DRAFT TRANSCRIPT

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1 who's initiating it, and the one's that's taking it. So --

2 MR. LALLI: I heard you say something about how your
3 sister in-law, or your former sister in-law had either a drug
4 or an alcohol problem which contributed --

5 PROSPECTIVE JUROR NO. 017: Drug.

6 MR. LALLI: -- to the problem?

7 PROSPECTIVE JUROR NO. 017: Yes.

8 MR. LALLI: To what extent do you think drugs or
9 alcohol ought to mitigate a person's responsibility? Do you
10 understand what I mean by that?

11 PROSPECTIVE JUROR NO. 017: You mean, if it's okay
12 as to --

13 MR. LALLI: Yeah, or we ought to --

14 PROSPECTIVE JUROR NO. 017: -- what they're doing?

15 MR. LALLI: -- we ought to say, well, you know, they
16 don't really deserve to be punished, or they're really not at
17 fault because they were high at the time that these things
18 happened. What do you think about that?

19 PROSPECTIVE JUROR NO. 017: No, I think they'll have
20 responsibility for their actions.

21 MR. LALLI: Do you --

22 PROSPECTIVE JUROR NO. 017: Because it hurts -- not
23 just -- like I will say, my brother. It hurt our whole
24 family, and their children. So, it drew us all in there,
25 trying to, like, better the situation. You know, get her

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1 rehabilitated, as they said.

2 MR. LALLI: Was she able to get rehabilitated? Was
3 she able to get the problem addressed?

4 PROSPECTIVE JUROR NO. 017: As far as I know, it's
5 still a struggle. I guess it's a daily struggle for her,
6 yeah.

7 MR. LALLI: Did she ever -- was she ever
8 incarcerated for her actions?

9 PROSPECTIVE JUROR NO. 017: I think she was like
10 given, like you say, probation type situations, but I've never
11 heard of her being incarcerated. Yeah.

12 MR. LALLI: Do you know anyone who suffers the
13 effects of mental illness?

14 PROSPECTIVE JUROR NO. 017: Personally, no.

15 MR. LALLI: And mental illness comes in all forms.
16 I mean, there's depression. Somebody talked about I think
17 bipolar.

18 PROSPECTIVE JUROR NO. 017: Right.

19 MR. LALLI: And you don't have any --

20 PROSPECTIVE JUROR NO. 017: Personally --

21 MR. LALLI: -- experience with that?

22 PROSPECTIVE JUROR NO. 017: No. I do not.

23 MR. LALLI: Do you -- what went through your mind
24 when you learned that this was a murder case?

25 PROSPECTIVE JUROR NO. 017: I just said, you know,

1 somebody's hurting. You know, other people that are left here
2 are hurting, because a murder does something to everybody. I
3 don't care what anyone says. When you hear about it, you feel
4 like, you know, well, somebody lost someone. A sister, a
5 mother, a brother, or whatever. So.

6 MR. LALLI: Do you think that you can be a fair and
7 impartial juror in a murder case?

8 PROSPECTIVE JUROR NO. 017: I think I can, yes.

9 MR. LALLI: Do you believe in holding people
10 accountable for their actions?

11 PROSPECTIVE JUROR NO. 017: Yes, I do.

12 MR. LALLI: If we convince you beyond a reasonable
13 doubt that Mr. O'Keefe is guilty of second degree murder,
14 would you convict him?

15 PROSPECTIVE JUROR NO. 017: Yes.

16 MR. LALLI: All right. Thank you. Your Honor,
17 we'll pass for cause.

18 THE COURT: All right. Thank you. Mr. O'Keefe,
19 questions; pass for cause?

20 MR. O'KEEFE: Yes, Your Honor. First, can we
21 approach the bench?

22 THE COURT: Yes.

23 (Off-record bench conference)

24 MR. O'KEEFE: And yes, I had a few questions also.

25 THE COURT: Thank you.

1 MR. O'KEEFE: If I could continue on now.

2 THE COURT: Sure, absolutely.

3 MR. O'KEEFE: Thank you. It's Denyce, right?

4 PROSPECTIVE JUROR NO. 017: Yes, it is.

5 MR. O'KEEFE: Okay, Denyce. Hi. Bear with me,
6 Denyce, and everybody. Please understand, I'm under extreme
7 stress and very tired, and I'm not polished like Mr. Lalli is.
8 You know, my first time. And hopefully, I'll never have to go
9 through anything like this again. So, again, forgive me
10 jurors. You know, you wouldn't want to be in my shoes.

11 Do you have anybody that works for -- in a law firm,
12 ma'am?

13 PROSPECTIVE JUROR NO. 017: Law firm?

14 MR. O'KEEFE: Yeah. Do you have a family member,
15 anybody in a law firm?

16 PROSPECTIVE JUROR NO. 017: No.

17 MR. O'KEEFE: And did I hear -- nobody in your
18 family works -- or is related to a police officer, are they?

19 PROSPECTIVE JUROR NO. 017: Not related. Was
20 growing up, my father --

21 MR. O'KEEFE: Your father was a police officer?
22 Okay.

23 PROSPECTIVE JUROR NO. 017: No, he had a friend --

24 MR. O'KEEFE: Oh, he had a friend, ma'am.

25 PROSPECTIVE JUROR NO. 017: -- that was a police

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1 officer.

2 MR. O'KEEFE: Okay.

3 PROSPECTIVE JUROR NO. 017: Family -- I considered a
4 family member, but he was a friend of my father's.

5 MR. O'KEEFE: This is think is a very key question.
6 Do you think it's imperative to know if somebody is diagnosed
7 with a mental illness -- multiple mental illnesses? Do you
8 think that that could add to a case, the facts?

9 PROSPECTIVE JUROR NO. 017: All the facts, and they
10 have mental problems, yes.

11 MR. O'KEEFE: Okay.

12 PROSPECTIVE JUROR NO. 017: Yes.

13 MR. O'KEEFE: Need to be careful, here. I don't
14 want to -- have you been in Vegas long?

15 PROSPECTIVE JUROR NO. 017: Nine years November.

16 MR. O'KEEFE: Nine years. Okay. Do you have a
17 computer?

18 PROSPECTIVE JUROR NO. 017: No.

19 MR. O'KEEFE: No?

20 PROSPECTIVE JUROR NO. 017: I have every other
21 device, but not computer.

22 MR. O'KEEFE: Okay.

23 PROSPECTIVE JUROR NO. 017: But I do use the one at
24 the library.

25 MR. O'KEEFE: You do use the one at the library?

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1 Okay, so you're familiar with it. Actually, you know, at this
2 time, I have no further questions. I'll pass, Your Honor.

3 THE COURT: Thank you very much, Mr. O'Keefe. You
4 know, it's a good time now to -- we didn't take a break. It's
5 a good time to take our lunch break now, all right, ladies and
6 gentlemen? But when you come back, make sure you take the
7 same seats. See where you're seated, and make sure you take
8 the same seats.

9 And we'll see everybody about -- you know, between --
10 - about a quarter after 1:00. All right? We'll see -- and
11 just wait outside. Don't come in. Just wait outside, and our
12 marshal will bring you in all at once. About ten after 1:00,
13 quarter after 1:00. All right?

14 THE MARSHAL: Hold on just a second, guys. Hold on
15 just a second.

16 (Pause in the proceedings)

17 THE COURT: Thank you very much. We'll be at ease
18 until the jury leaves.

19 (Outside the presence of the prospective jury panel)

20 THE COURT: All right. This is outside the presence
21 of the jury. I just want to make a record on a few things.
22 The -- one of the jurors was sick, Juror number 07-0079,
23 Dudley -- or Dante Dudley. And he wrote a letter saying he's
24 throwing up, and he needs to be excused. And I did circulate
25 this note to the State and Mr. O'Keefe. And it's my

1 understanding both of you agreed to excuse; is that correct?

2 MR. LALLI: Yes, Your Honor.

3 MR. O'KEEFE: That is correct, Your Honor.

4 THE COURT: You had no objections to me excusing
5 him. So, we'll make that part of the record. And there's a
6 few things that Mr. -- or there's one thing that Mr. O'Keefe
7 objected to. And the record will reflect that the defendant
8 properly and timely made an objection. So, for the record, he
9 timely did it, but I indicated, let's excuse the jury and make
10 a record on it now.

11 But I did deny his objection at the bench regarding
12 something -- Mr. Lalli using the term "battery domestic
13 violence." I'm not quite sure what it was. But I listened to
14 it, but I felt compelled to deny it. But I am going to allow
15 Mr. O'Keefe to make a record on it, all right?

16 MR. O'KEEFE: Yes, Your Honor. I just -- first of
17 all, again, I apologize, and I really appreciate your patience
18 with me. But I must be adamant in preserving my right in the
19 fact that the law of the case of the first appeal has been set
20 by the Nevada Supreme Court. And they have clearly indicated,
21 and they've read the record, Your Honor, that they were trying
22 to -- they referred in opening statement and closing statement
23 -- argument, excuse me, of the first trial, that the act was
24 in the course of a battery domestic violence.

25 They were quite clear also, because Phillip Smith,

1 the prosecutor at that time, litigated at a Petrocelli hearing
2 the history of the domestic violences. The whole issue was
3 the battery domestic violence being brought in. They
4 questioned the jurors about -- basically, they were just
5 referring that it was definitely in the act of a battery
6 domestic violence.

7 Now, Your Honor, with all due respect -- and I'll be
8 brief. My argument again to protect myself is that, as it
9 stands right now, Your Honor, I'm being prosecuted in the
10 sense as -- like George Zimmerman of Florida. He's being
11 prosecuted for the first time, first trial, on the depraved
12 heard, murder theory -- malice theory, which Nevada recognizes
13 as the abandoned and malignant heart theory, which you well
14 know better than me.

15 Again, my point being, is, I've been acquitted of
16 any intentional -- with intent, stabbing. Again, on appeal,
17 not only did the Nevada Supreme Court rule and make law of the
18 case, they ruled that I did no unlawful act. Yes, the jury
19 instruction was wrong.

20 But I also -- after reviewing the record on appeal
21 -- presented on appeal, they decided the issue, too, in my
22 favor, that I absolutely did no unlawful act. Battery. They
23 knew what they were saying. The elements were described.
24 It's merged in for the single alleged act; they acquitted me
25 of it.

1 I understand what Mr. Lalli has to do here, and Ms.
2 Mercer. They are leading the jurors into believing -- it's
3 too close to the theory of the case. They're trying again to
4 technically get away orally suggesting that, again, this
5 homicide -- alleged, that I've been acquitted of, I must say
6 for the record, in my opinion -- that this whole event
7 happened in the act of a battery DV.

8 Now, Honor (sic), real quick, and I'll be done.
9 There was only one alleged act. They called it a battery act.
10 But because she allegedly died from the battery act, it became
11 murder. That's -- it's not a battery, on top of a battery, in
12 top of a battery. I mean, how many batteries do I got to get
13 clear of before I get to the act that I've been acquitted of?

14 You will clearly understand what I'm saying. The
15 felony, alleged, murder instruction was the only instruction
16 that they could give to base their theory on conserving the
17 facts of my case. There was no underlining charge. There was
18 no nothing. They prosecuted me simply on a battery act. It's
19 either I did it, or I didn't.

20 Again, to sum up, my whole point is, he's arguing
21 and leading the jury into the thought pattern that a battery
22 act was committed, and I've been acquitted of it. And the law
23 of the case has been established quite clearly. Not only
24 that, he's trying to argue it, and give the idea, and bring
25 evidence in, is what he wants to do.

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1 But a ruling still hasn't been made, because Judge
2 Villani left this courtroom, and put it all in your hands.
3 Let Judge senior Bonaventure deal with it. And he hasn't
4 properly alleged the amended information on a battery act.
5 There's no theory plausible possible. There's no lawful act,
6 Your Honor, that would constitute second degree murder.

7 THE COURT: All right. Well, you have -- again, you
8 had that on federal appeal, but I wanted you to make a record.
9 Mr. Lalli?

10 MR. LALLI: Your Honor, it's the same record I made
11 earlier. We're proceeding under --

12 THE COURT: Well, make it again, just very briefly.

13 MR. LALLI: Sure. We are proceeding under a theory
14 of malice murder, either expressed or implied malice. What
15 Mr. O'Keefe I think it's struggling with understanding is that
16 the Nevada Supreme Court said there was no evidence of felony
17 second degree murder; an NRS 200.070 type murder. That's not
18 what we're alleging here. That's not our theory of the case.

19 THE COURT: And it was in the first trial?

20 MR. LALLI: Well, I don't know. It was not a theory
21 that was alleged in the charging document. And so, the
22 Supreme Court reversed on that. And I'm happy to --

23 THE COURT: No --

24 MR. LALLI: Well, I'm happy to present the Court
25 with the actual order of reversal.

1 THE COURT: Yeah. Just bring that to me and my
2 attention. Just, you know, put it on my desk, and I'll look
3 over it.

4 MR. LALLI: I will do that after lunch. But what
5 they -- the problem was, the theory of 070, the Supreme Court
6 never said this was not a malice murder. They never said that
7 the State could not proceed on a theory of second degree
8 murder, as --

9 THE COURT: Well, again, it is what it is --

10 MR. LALLI: -- we're alleging now.

11 THE COURT: -- what the Supreme Court said. There
12 was a ruling made. Mr. O'Keefe has that on appeal in the
13 federal -- and perhaps, it will be determined to be right in
14 the federal court. But I -- I allow you to make your record,
15 and it seems to me that there was no evidence -- they didn't
16 want the felony -- they didn't want the felony indication; is
17 that correct? The Supreme Court -- that's what the Supreme
18 Court said? No evidence of any felony second degree.

19 MR. LALLI: Correct, Your Honor.

20 THE COURT: And you're not going to present that
21 here now.

22 MR. LALLI: That's correct.

23 THE COURT: You're just going on malice, expressed
24 or implied.

25 MR. LALLI: Correct.

1 THE COURT: So, we know what we're doing, and
2 there's a record made on it, and we'll go from there. So, I'm
3 going to deny your objection. And so, we'll see everybody --

4 MR. O'KEEFE: Well, Judge, could I --

5 THE COURT: Sure, go ahead.

6 MR. O'KEEFE: Please forgive me. And it's small, to
7 protect myself. And I'll be real brief. That is not correct.
8 If I may present to the Judge now -- to the Court -- I gave
9 Mr. Lalli a copy of it. This has everything in it that you
10 need. It's per NRS 47.150, subsection 2, which is by the
11 Nevada -- you knew better than me; mandates that if I offer
12 the documents, I'm requesting that you, and it says that you
13 supposedly have to -- forgive me. I'm trying to protect
14 myself.

15 I made a little index. There's 18 exhibits. And I
16 put exactly what they are, and the date. And then, I provided
17 them exhibits, Your Honor, with a cover sheet, nice and clean,
18 what it is, exhibit number, and then the document. It has the
19 initial complaint and information, the first information filed
20 electronically, the amended information that you're going to
21 see -- you're going to be amazed.

22 The amended information that's got the reversal
23 order. You're going to see jury instruction number 18 form
24 the first trial, that the Nevada Supreme Court did the law of
25 the case on. I even got trial transcripts in there of the

1 opening statement and the closing statement, I do believe.

2 I've got the Ninth Circuit reversal order in here.

3 He's proceeding on the same charge. Murder is
4 murder. You have to determine first that it was an unlawful
5 -- unlawful; key. Not -- any reasonable self-defense negates
6 malice. Unlawful killing with malice aforethought, either
7 expressed or implied.

8 Expressed is for first degree intentional stabbing.
9 The jury, being of the tier of the fact, acquitted me of the
10 first trial, of intentional -- there's even a section, the
11 motion to settle the record, where Judge Villani himself --
12 you'll find it quite interesting, and the State prosecutor
13 says, you're absolutely right. He has been acquitted of any
14 intent -- criminal intent; a judicial admission by Judge
15 Villani.

16 Now, when the jury returned second degree murder,
17 the subdivision 2 was an instruction on implied malice murder.
18 It doesn't say anything about felony murder; nothing like
19 that. They were just saying, this is how you prove implied
20 malice murder for second degree murder. They give the
21 definition, then, this is how you would prove it, how you
22 would prove the single concept of malice aforethought,
23 implied. You will see it. You'll be amazed.

24 There's nothing in here in the charging document
25 that says anything about a felony. And again, they haven't

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1 even alleged any unlawful act, because he can't. He's barred.
2 He's --

3 THE COURT: All right.

4 MR. O'KEEFE: -- time-barred.

5 THE COURT: That's the same argument.

6 MR. O'KEEFE: If I can present this as --

7 THE COURT: Made it -- yeah, give it to the clerk,
8 and we'll make that part of the record.

9 MR. O'KEEFE: I guess --

10 THE COURT: And we'll go from there, all right?

11 MR. O'KEEFE: O'Keefe -- or 3A for -- 3 being for
12 third trial, Exhibit A; if that's acceptable, Your Honor?

13 THE COURT: Is that all right, Mr. Lalli?

14 MR. LALLI: Yes.

15 THE COURT: We'll mark it as --

16 MR. LALLI: Sure.

17 THE CLERK: Actually --

18 THE COURT: We don't want -- it's not going to go to
19 the jury. So, it's going to be a --

20 MR. O'KEEFE: No, not for the jury. But for the --

21 MR. LALLI: A court exhibit.

22 THE COURT: -- court exhibit.

23 MR. O'KEEFE: For the record of the trial, right.

24 THE COURT: Court Exhibit 2. Let's make it that.

25 MR. O'KEEFE: Court Exhibit 2?

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1 THE COURT: What's 1? I'm just curious.

2 THE CLERK: It's the note that you gave me.

3 THE COURT: Oh. The note is -- the excusal. That
4 will be Court Exhibit 1, the note. And this will be Court
5 Exhibit 2.

6 MR. O'KEEFE: And I -- this last time, Your Honor,
7 and I'll get off of it. I promise you, sir. I appreciate
8 your patience. And gosh, you're great. Could you take a look
9 at what I'm saying that I have passed to you? And you'll
10 quite clearly see.

11 THE COURT: I'll look at it. But I don't want to --

12 MR. O'KEEFE: Thank you, Your Honor. That's all I
13 ask.

14 THE COURT: We'll address it one more time at the
15 appropriate time.

16 MR. O'KEEFE: Thank you so much.

17 THE COURT: But we'll go from there. But --

18 MR. O'KEEFE: Thank you, Your Honor. That's all I
19 ask.

20 MR. LALLI: Your Honor, I emailed a copy of that
21 opinion from the Nevada Supreme Court --

22 THE COURT: All right. Good.

23 MR. LALLI: -- to Judge Villani's secretary.

24 THE COURT: I'll get it.

25 MR. LALLI: So -- and I asked her to print that.

1 THE COURT: All right. So, we'll finish --
2 hopefully, we'll finish the jury in a few hours, and then
3 we'll -- if we have time, we'll have brief opening statements.
4 If not, we'll do it tomorrow. But --

5 MR. LALLI: Very good, Your Honor.

6 THE COURT: -- no witnesses. I think it's -- we'll
7 hear witnesses tomorrow, all right?

8 MR. LALLI: All right. Thank you. Does the Court
9 -- what time would the Court like to start tomorrow?

10 THE COURT: Well, you know, we have the 8:15 --
11 hopefully I'll be quick, and it will be -- I think 9:30 is
12 fine.

13 MR. LALLI: All right.

14 THE COURT: 9:30.

15 MR. LALLI: Very good.

16 THE COURT: Be careful. You said something on your
17 question to the jury, please bear with me, this is the first
18 time I'm doing this. I'm not sure -- you better be careful of
19 what you say on that, because you don't want to open the door
20 to that you've been in court before. I mean, I just -- just a
21 thought.

22 MR. O'KEEFE: Thank you, Your Honor. Thank you.

23 THE COURT: Okay. Thank you.

24 MR. O'KEEFE: Okay.

25 MR. LALLI: Thank you, Your Honor.

1 MR. MANINGO: Thank you, sir.

2 THE MARSHAL: All right. We're in recess.

3 (Court recessed at 12:05 p.m. until 1:26 p.m.)

4 (Within the presence of the prospective jury panel)

5 THE COURT: All right. Let's proceed with the
6 selection of the jury. I think we were on Kerri Macqueen; is
7 that correct?

8 PROSPECTIVE JUROR NO. 005: Yes.

9 THE COURT: How long you been in this area?

10 PROSPECTIVE JUROR NO. 005: 16 years.

11 THE COURT: What do you do for a living?

12 PROSPECTIVE JUROR NO. 005: I'm a waitress.

13 THE COURT: Where?

14 PROSPECTIVE JUROR NO. 005: At Suncoast.

15 THE COURT: All right. Are you married?

16 PROSPECTIVE JUROR NO. 005: No, single.

17 THE COURT: Children?

18 PROSPECTIVE JUROR NO. 005: One.

19 THE COURT: Old enough to work?

20 PROSPECTIVE JUROR NO. 005: Yeah.

21 THE COURT: What do they do?

22 PROSPECTIVE JUROR NO. 005: Just graduated college.

23 THE COURT: Don't have a job yet?

24 PROSPECTIVE JUROR NO. 005: He just got one with SKG
25 Marketing.

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1 THE COURT: Okay. Have -- are you -- have you ever
2 been in the military?

3 PROSPECTIVE JUROR NO. 005: No.

4 THE COURT: Are you acquainted with anybody in law
5 enforcement?

6 PROSPECTIVE JUROR NO. 005: Not in Nevada, no.

7 THE COURT: In some other state?

8 PROSPECTIVE JUROR NO. 005: Yeah. My aunt and uncle
9 are New York City cops.

10 THE COURT: Still are, or retired?

11 PROSPECTIVE JUROR NO. 005: One retired, one active.

12 THE COURT: All right. That same follow up
13 question. It's all right to be acquainted with, or a relative
14 of a police officer; it's fine. But you just understand, the
15 law is, you're not to give greater weight or lesser weight to
16 a police officer's testimony simply because they're a police
17 officer. You give it the weight you deem appropriate; do you
18 understand that?

19 PROSPECTIVE JUROR NO. 005: Yes.

20 THE COURT: And you'll follow that?

21 PROSPECTIVE JUROR NO. 005: Yes.

22 THE COURT: Have you or anyone closely associated
23 with you ever been a victim of a crime?

24 PROSPECTIVE JUROR NO. 005: Yes.

25 THE COURT: What was that?

1 PROSPECTIVE JUROR NO. 005: Well, I've had items
2 stolen from my yard, and I've been mugged here in Nevada, in
3 Las Vegas.

4 THE COURT: Mugged, meaning like somebody --

5 PROSPECTIVE JUROR NO. 005: Like --

6 THE COURT: -- took your purse or something?

7 PROSPECTIVE JUROR NO. 005: Yeah, like knocked over
8 the head, pushed over, robbed.

9 THE COURT: That's pretty serious. Did they ever
10 catch the individuals? Did you report it?

11 PROSPECTIVE JUROR NO. 005: I think they did, but I
12 don't think -- no. I think they recovered my purse, but the
13 guy got away.

14 THE COURT: I'm sorry to hear that. But that's not
15 going to affect your deliberation here, is it?

16 PROSPECTIVE JUROR NO. 005: No.

17 THE COURT: You don't hold that against the police
18 for not finding --

19 PROSPECTIVE JUROR NO. 005: No.

20 THE COURT: -- the individuals, right? You don't
21 hold it against the defendant?

22 PROSPECTIVE JUROR NO. 005: No.

23 THE COURT: Have you or anyone closely associated
24 with you ever been arrested for a crime?

25 PROSPECTIVE JUROR NO. 005: No.

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1 THE COURT: You ever serve on a jury before?

2 PROSPECTIVE JUROR NO. 005: No.

3 THE COURT: You could be fair in this case?

4 PROSPECTIVE JUROR NO. 005: I could try, yes.

5 THE COURT: All right. Well, I mean, you could be
6 fair, right?

7 PROSPECTIVE JUROR NO. 005: I will try.

8 THE COURT: Well, I don't like "try." It's a little
9 hesitant. Why are you hesitant?

10 PROSPECTIVE JUROR NO. 005: Well, I --

11 THE COURT: Why can't you say, sure, Judge, I could
12 be fair and impartial?

13 PROSPECTIVE JUROR NO. 005: Well, because my sister
14 has a mental disorder, and she's an alcoholic.

15 THE COURT: Your sister?

16 PROSPECTIVE JUROR NO. 005: My sister, yeah.

17 THE COURT: She's an alcoholic?

18 PROSPECTIVE JUROR NO. 005: She's an alcoholic, and
19 she's also bipolar.

20 THE COURT: Okay. And these are questions that were
21 brought up prior?

22 PROSPECTIVE JUROR NO. 005: Yes.

23 THE COURT: And you think that would affect your
24 deliberation in this case?

25 PROSPECTIVE JUROR NO. 005: At this point, I want to

1 say no. But I -- I'm not sure.

2 THE COURT: All right. Mr. Lalli, you want to -- or
3 Mr. --

4 MS. MERCER: Ma'am, what is it about your sister's
5 mental health history and --

6 PROSPECTIVE JUROR NO. 005: Well, because she's been
7 institutionalized a few times, she's been arrested a few
8 times. And I know -- I'm away from her now, because she still
9 lives in New York, but her and her boyfriend have a lot of
10 domestic disputes. Even though I'm not there, you know, I
11 hear a lot.

12 MS. MERCER: Okay. So, she's been arrested before?

13 PROSPECTIVE JUROR NO. 005: Yeah.

14 MS. MERCER: What types of crimes has she been
15 arrested for?

16 PROSPECTIVE JUROR NO. 005: Domestic violence.

17 MS. MERCER: That's it?

18 PROSPECTIVE JUROR NO. 005: And she has other -- a
19 lot of -- she probably has a long list.

20 MS. MERCER: How long has she been in a relationship
21 with the man --

22 PROSPECTIVE JUROR NO. 005: With him, about 20
23 years.

24 MS. MERCER: And does he also have a history of --

25 PROSPECTIVE JUROR NO. 005: He's alcoholic, but he's

1 not bipolar, no.

2 MS. MERCER: Does he have domestic violence arrests
3 as well?

4 PROSPECTIVE JUROR NO. 005: No.

5 MS. MERCER: Just your sister? So, is it safe to
6 say that you believe your sister is the aggressor in that
7 relationship?

8 PROSPECTIVE JUROR NO. 005: Yes.

9 MS. MERCER: Is there anything about your experience
10 with domestic violence that would prevent you from being fair
11 and impartial in this case?

12 PROSPECTIVE JUROR NO. 005: I would say no. But
13 yet, in the back of my mind, it's there, because I always
14 defend my sister no matter what.

15 MS. MERCER: Can you explain that to me?

16 PROSPECTIVE JUROR NO. 005: Even though she is the
17 aggressor, you know, I know she has mental problems. And if
18 she doesn't take her medication, and if she drinks while
19 taking her medication, she just gets wacko. And I try to
20 understand that. You know, she needs to take her meds, and --

21 MS. MERCER: And when she lashes out at her
22 boyfriend, how does her boyfriend respond, if you know?

23 PROSPECTIVE JUROR NO. 005: Well, he tries to
24 restrain her, but he doesn't get physical with her. And --

25 MS. MERCER: He doesn't lash out back?

1 PROSPECTIVE JUROR NO. 005: No.

2 MS. MERCER: Does she have a history of going on and
3 off of her medication?

4 PROSPECTIVE JUROR NO. 005: Yes.

5 MS. MERCER: And when she's off her medication, does
6 that tend to be when she's --

7 PROSPECTIVE JUROR NO. 005: Oh, yeah.

8 MS. MERCER: -- the most aggressive?

9 PROSPECTIVE JUROR NO. 005: Yes. Most definitely.

10 MS. MERCER: Does she have any other history of
11 mental illnesses? Just bipolar disorder?

12 PROSPECTIVE JUROR NO. 005: I'm not sure what the
13 actual diagnosis is. I don't know if she has depression on
14 top of it, or --

15 MS. MERCER: Okay.

16 PROSPECTIVE JUROR NO. 005: -- I'm not sure.

17 MS. MERCER: Do you know whether she's ever been
18 convicted of a domestic violence offense?

19 PROSPECTIVE JUROR NO. 005: That I couldn't answer.
20 I don't know.

21 MS. MERCER: Have you ever followed closely any of
22 her domestic violence cases?

23 PROSPECTIVE JUROR NO. 005: Not closely, no.
24 Because like I said, I'm out here 16, 17 years. So, I haven't
25 really been close. But my son spends a lot of time staying

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1 with her in New York, so I hear mostly secondhand.

2 MS. MERCER: Okay. Do you know how the criminal
3 justice system has dealt with her domestic violence incidents?

4 THE COURT: Well, you know --

5 PROSPECTIVE JUROR NO. 005: No.

6 THE COURT: Just a minute.

7 PROSPECTIVE JUROR NO. 005: No.

8 THE COURT: You know, the time constraint. I mean,
9 I just want to be sure she could be -- and I mean, you can go
10 on and on in different questions.

11 PROSPECTIVE JUROR NO. 005: Yeah, yeah.

12 THE COURT: If she's going to be excused, she's
13 going to be excused. Because -- so, I'd like to really just
14 delve into, it's going to be in the back of my mind, but could
15 she set that aside and be fair in this -- I don't want to go
16 on and on unless she --

17 PROSPECTIVE JUROR NO. 005: Yeah, I --

18 THE COURT: -- unless she says that.

19 PROSPECTIVE JUROR NO. 005: It's hard for me to
20 answer that directly yes or no.

21 MS. MERCER: So, you can't guarantee us that you
22 will be fair and impartial in this case?

23 PROSPECTIVE JUROR NO. 005: I could try. I mean, I
24 can't say yes or no. I'm just like in the middle.

25 MS. MERCER: Well, do you think you would be more

1 sympathetic to one side?' Is that your issue?

2 PROSPECTIVE JUROR NO. 005: Probably.

3 MS. MERCER: Which side?

4 PROSPECTIVE JUROR NO. 005: The mental disorder
5 side.

6 MS. MERCER: Court's indulgence, Your Honor. Your
7 Honor, at this time, I would challenge her for cause.

8 THE COURT: Mr. O'Keefe, it's the type of case where
9 she's really going to have that in her mind, and she might not
10 be impartial if she's with the -- do you object to the
11 challenge for cause, or not?

12 MR. O'KEEFE: No, Your Honor.

13 THE COURT: All right. Thank you, Mr. O'Keefe. I
14 think it's better. It's a little too close maybe, I don't
15 know. So, we appreciate your honesty. So, you report back to
16 the jury -- because they've got a lot of trials going.
17 They'll get you --

18 PROSPECTIVE JUROR NO. 005: Okay.

19 THE COURT: -- in another -- maybe a car accident --

20 PROSPECTIVE JUROR NO. 005: [Inaudible].

21 THE COURT: -- a medical malpractice, or something
22 case, where you don't have any --

23 PROSPECTIVE JUROR NO. 005: Not in my heart.

24 THE COURT: Huh?

25 PROSPECTIVE JUROR NO. 005: Not in my heart.

1 THE COURT: Yeah. Thank you. But another jury
2 trial, you'll be a great juror. Thank you very much. Report
3 back to the jury commissioner for reassignment. The clerk
4 will call another prospective --

5 PROSPECTIVE JUROR NO. 005: Thank you.

6 THE COURT: -- juror, please.

7 THE CLERK: John Taggart.

8 MR. O'KEEFE: Thank you. Thank you for your time.

9 THE COURT: All right. How long have you been in
10 town, sir?

11 PROSPECTIVE JUROR NO. 019: 17 years.

12 THE COURT: And what do you do for a living?

13 PROSPECTIVE JUROR NO. 019: I'm embarrassed to say
14 that I tune guitars --

15 THE COURT: You tune guitars?

16 PROSPECTIVE JUROR NO. 019: -- for the rich and
17 famous.

18 THE COURT: Huh? Well, that's not -- I don't know
19 why you're embarrassed. That's great. Do you tune Santana's
20 guitar?

21 PROSPECTIVE JUROR NO. 019: Right now, I'm working
22 with Stevie Nicks.

23 THE COURT: Wow, that's pretty good. That's good.
24 I'm impressed. I'm not -- I'm impressed. Are you married?

25 PROSPECTIVE JUROR NO. 019: Yes, sir.

1 THE COURT: What does your wife do? Tune pianos, or
2 what? What does she do?

3 PROSPECTIVE JUROR NO. 019: She's a -- well, she
4 used to be a singer, but she's a school teacher now.

5 THE COURT: What grade?

6 PROSPECTIVE JUROR NO. 019: In grammar school, K
7 through 5.

8 THE COURT: Do you have any kids?

9 PROSPECTIVE JUROR NO. 019: I have a ten year-old.

10 THE COURT: All right. You ever been in the
11 military?

12 PROSPECTIVE JUROR NO. 019: No, sir.

13 THE COURT: Are you acquainted with anybody in law
14 enforcement?

15 PROSPECTIVE JUROR NO. 019: Yes, sir.

16 THE COURT: Who's that?

17 PROSPECTIVE JUROR NO. 019: My nephew. He's a -- I
18 don't know exactly what his title is, but I know he works with
19 a federal judge. He used to be a San Diego Police officer.

20 THE COURT: He works for a federal judge now?

21 PROSPECTIVE JUROR NO. 019: Yeah. Soon to be
22 retired.

23 THE COURT: Maybe he's a marshal or something?

24 PROSPECTIVE JUROR NO. 019: I don't believe he's a
25 marshal, no.

1 THE COURT: Okay. Well, in any event, do you
2 understand you're not to give greater weight or lesser weight
3 to a police officer's testimony simply because they're a
4 police officer; you understand that?

5 PROSPECTIVE JUROR NO. 019: Yes, sir.

6 THE COURT: And the fact that your nephew works for
7 a federal judge -- who's the federal judge, by the way?

8 PROSPECTIVE JUROR NO. 019: I do not know.

9 THE COURT: It's here in Las Vegas?

10 PROSPECTIVE JUROR NO. 019: It's in San Diego.

11 THE COURT: Oh, okay. And that's not going to
12 affect your deliberation?

13 PROSPECTIVE JUROR NO. 019: No.

14 THE COURT: Have you ever been in the military?

15 PROSPECTIVE JUROR NO. 019: No, sir.

16 THE COURT: Have you or anyone closely associated
17 with you ever been the victim of a crime?

18 PROSPECTIVE JUROR NO. 019: Unfortunately, yes.

19 THE COURT: What's that?

20 PROSPECTIVE JUROR NO. 019: In 1982, my landlady's
21 son was stabbed on our front lawn, and died.

22 THE COURT: All right. So -- but you weren't the
23 victim of that?

24 PROSPECTIVE JUROR NO. 019: No, sir.

25 THE COURT: And you weren't arrested for that?

1 PROSPECTIVE JUROR NO. 019: No, sir.

2 THE COURT: It's just something that you -- did you
3 observe that, or you just seen it afterwards when they were
4 investigating?

5 PROSPECTIVE JUROR NO. 019: It was -- I arrived
6 after the fact.

7 THE COURT: Okay. All right. Well, then, again,
8 you weren't the victim of that. But it was a -- very tragic
9 thing, your landlord's son; is that correct?

10 PROSPECTIVE JUROR NO. 019: Yes.

11 THE COURT: Ex-landlord? That's not going to affect
12 your deliberation in this case, is it?

13 PROSPECTIVE JUROR NO. 019: No, sir.

14 THE COURT: And you or anyone closely associated
15 with you ever been arrested for a crime?

16 PROSPECTIVE JUROR NO. 019: No, sir.

17 THE COURT: Have you ever served on a jury before?

18 PROSPECTIVE JUROR NO. 019: No, sir.

19 THE COURT: Have you ever served on a jury in the
20 past?

21 PROSPECTIVE JUROR NO. 019: No.

22 THE COURT: You're going to be able to follow my
23 instructions of law?

24 PROSPECTIVE JUROR NO. 019: Yes, sir.

25 THE COURT: Could you promise me you'll be fair and

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1 impartial in this case?

2 PROSPECTIVE JUROR NO. 019: Yes.

3 THE COURT: Thank you. Questions; pass for --

4 PROSPECTIVE JUROR NO. 019: Your Honor?

5 THE COURT: Yes.

6 PROSPECTIVE JUROR NO. 019: I only have one little
7 problem. I'm leaving town Saturday.

8 THE COURT: Where are you going?

9 PROSPECTIVE JUROR NO. 019: On the road.

10 THE COURT: On the road again with Willie?

11 PROSPECTIVE JUROR NO. 019: With Stevie. Bad
12 timing.

13 THE COURT: I mean, do you have like prepaid -- you
14 get on a bus or something; is that what you do?

15 PROSPECTIVE JUROR NO. 019: Yes, I have my --

16 THE COURT: I don't know what you rock people do.
17 You get on a bus?

18 PROSPECTIVE JUROR NO. 019: Yes, sir.

19 THE COURT: And you go tour all the --

20 PROSPECTIVE JUROR NO. 019: We're -- well, I'm
21 leaving to rehearse at Sony Studios. And then, we're flying
22 to New York to jump on a bus. But --

23 THE COURT: You know, I'm very particular about jury
24 service. I always say, there's only two times you can serve
25 your country. One in time of war in the field of battle, and

1 the other is jury service. But for juries, we can't do
2 anything. You understand that?

3 PROSPECTIVE JUROR NO. 019: Yes, sir.

4 THE COURT: So, I'm very particular about that. And
5 sometime, in this particular case, a juror is ill equipped, or
6 you know, because of their experience, they can't serve. So,
7 I assign -- we assign them to another court.

8 But, same token. I understand some excuses,
9 disability, you can't sit here, or maybe a pre -- a trip like
10 that that's, you know, going to cost a lot of money, you're
11 scheduled to go, and -- so, I don't want to -- you know. I
12 think we might be finished by Thursday, Friday. But it might
13 not. I can't promise that at this -- I can promise when we
14 get closer to it, I could give you a better schedule.

15 But listen, I don't want to prevent you from doing
16 that, because you do have to go to New York, you probably have
17 prepaid trips. Any objection we excuse him at this time?
18 We'll get him next time real good, all right, Mr. Lalli?

19 MR. LALLI: Right. We have no objection, Your
20 Honor.

21 THE COURT: Mr. O'Keefe, is there any objections to
22 that?

23 MR. O'KEEFE: Yes and no. But ultimately, no, Your
24 Honor.

25 THE COURT: So, you have no objections to me

1 excusing him?

2 MR. O'KEEFE: No, Your Honor. I understand.

3 THE COURT: All right. Thank you, Mr. --

4 MR. O'KEEFE: Thank you, Your Honor.

5 THE COURT: All right. Go take care of your
6 business, and we'll get you next time.

7 PROSPECTIVE JUROR NO. 019: Thank you, sir.

8 THE COURT: Just go back to the jury commissioner,
9 tell them I excused you because of this prepaid trip you've
10 got.

11 PROSPECTIVE JUROR NO. 019: Sir, I did want to let
12 you know that I did bring my flight itinerary, just to -- if
13 there was any questions.

14 THE COURT: You know, you got a nice honest face. I
15 trust you, all right?

16 (Pause in the proceedings)

17 THE COURT: Thank you, sir. Clerk, call another
18 prospective juror.

19 THE CLERK: Linda Bellew.

20 THE COURT: Linda?

21 MR. O'KEEFE: Thank you for your time.

22 PROSPECTIVE JUROR NO. 021: Thank you.

23 MR. LALLI: Your Honor, can we approach? I'm sorry.

24 THE COURT: Yes.

25 MR. LALLI: Just very quickly.

1 (Off-record bench conference)

2 THE COURT: All right. What do we got, Linda Bellew

3 -- Bellew, is it?

4 PROSPECTIVE JUROR NO. 021: Bellew.

5 THE COURT: Like Cat Ballou?

6 PROSPECTIVE JUROR NO. 021: No, not -- no.

7 THE COURT: No? How long have you been in Las

8 Vegas?

9 PROSPECTIVE JUROR NO. 021: 21 years.

10 THE COURT: What do you do for a living?

11 PROSPECTIVE JUROR NO. 021: I'm a school aid for the

12 Clark County School District.

13 THE COURT: All right. Are you married?

14 PROSPECTIVE JUROR NO. 021: No.

15 THE COURT: Children?

16 PROSPECTIVE JUROR NO. 021: Yes.

17 THE COURT: Any old enough to work?

18 PROSPECTIVE JUROR NO. 021: Excuse me?

19 THE COURT: Are any of your children old enough to

20 work?

21 PROSPECTIVE JUROR NO. 021: Yes.

22 THE COURT: What do they do?

23 PROSPECTIVE JUROR NO. 021: Well, he's not currently

24 working. He moved back to Phoenix with his dad.

25 THE COURT: What type of work was he in? I just --

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1 PROSPECTIVE JUROR NO. 021: What type would he like
2 to do?

3 THE COURT: No. Has he ever had a job before?

4 PROSPECTIVE JUROR NO. 021: No.

5 THE COURT: Oh, okay. All right. All right. Have
6 you ever been in the military.

7 PROSPECTIVE JUROR NO. 021: No.

8 THE COURT: Are you acquainted with anybody in law
9 enforcement?

10 PROSPECTIVE JUROR NO. 021: No.

11 THE COURT: Have you or anyone closely associated
12 with you ever been a victim of a crime?

13 PROSPECTIVE JUROR NO. 021: Yes.

14 THE COURT: What was that?

15 PROSPECTIVE JUROR NO. 021: Fraud.

16 THE COURT: Fraud? Somebody --

17 PROSPECTIVE JUROR NO. 021: Me.

18 THE COURT: Somebody defrauded you or something?

19 PROSPECTIVE JUROR NO. 021: Yes.

20 THE COURT: Was it like a check, or --

21 PROSPECTIVE JUROR NO. 021: No.

22 THE COURT: -- to provide --

23 PROSPECTIVE JUROR NO. 021: They took my trust fund.

24 THE COURT: Who was it; somebody you knew?

25 PROSPECTIVE JUROR NO. 021: Yes.

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1 THE COURT: Was it a relative, a friend, or?

2 PROSPECTIVE JUROR NO. 021: No.

3 THE COURT: Okay. Did they -- what were the results
4 of that? Was he arrested?

5 PROSPECTIVE JUROR NO. 021: It's ongoing.

6 THE COURT: Okay. Was that here in Nevada here?

7 PROSPECTIVE JUROR NO. 021: Yes, it is.

8 THE COURT: And he was -- is there a charge filed
9 against him?

10 PROSPECTIVE JUROR NO. 021: Yes.

11 THE COURT: Okay. All right. That's not going to
12 affect your deliberation here, is it?

13 PROSPECTIVE JUROR NO. 021: No.

14 THE COURT: Have you or anyone closely associated
15 with you, other than what you said, ever been arrested for a
16 crime?

17 PROSPECTIVE JUROR NO. 021: No.

18 THE COURT: Have you ever served on a jury before?

19 PROSPECTIVE JUROR NO. 021: No.

20 THE COURT: Could you be fair in this case?

21 PROSPECTIVE JUROR NO. 021: Yes.

22 THE COURT: Thank you very much.

23 PROSPECTIVE JUROR NO. 021: You're welcome.

24 THE COURT: State, please, questions; pass for
25 cause?

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1 MR. LALLI: Thank you, Your Honor. Ms. Bellew, when
2 your son was here in Las Vegas, did he live with you?

3 PROSPECTIVE JUROR NO. 021: Yes.

4 MR. LALLI: How old is he?

5 PROSPECTIVE JUROR NO. 021: 19.

6 MR. LALLI: Did he finish high school?

7 PROSPECTIVE JUROR NO. 021: Yes.

8 MR. LALLI: Has he attended any college at all?

9 PROSPECTIVE JUROR NO. 021: No.

10 MR. LALLI: All right. What kind of -- is he -- is
11 he looking for work, or does he have any interest? Is he
12 planning on going to school?

13 PROSPECTIVE JUROR NO. 021: At this time, I don't
14 know.

15 MR. LALLI: Okay. Now, your -- I take it it's an
16 ex-husband who lives in Phoenix?

17 PROSPECTIVE JUROR NO. 021: Yes.

18 MR. LALLI: What does he do?

19 PROSPECTIVE JUROR NO. 021: He's a project manager
20 for a construction firm.

21 MR. LALLI: Were you married to him at one point?

22 PROSPECTIVE JUROR NO. 021: Yes.

23 MR. LALLI: Were there -- and again, I apologize for
24 prying. But were there domestic violence issues in your
25 relationship?

1 PROSPECTIVE JUROR NO. 021: No.

2 MR. LALLI: Do you know anyone who has suffered the
3 effects of domestic violence?

4 PROSPECTIVE JUROR NO. 021: No.

5 MR. LALLI: What do you think about domestic
6 violence as a societal problem? Do you think it's something
7 that's private between a man and a woman, or two co-habitants;
8 or do you believe that the community has an interest -- an
9 obligation to intervene?

10 PROSPECTIVE JUROR NO. 021: I think the community
11 should have a say in --

12 MR. LALLI: Why do you think that?

13 PROSPECTIVE JUROR NO. 021: Because sometimes, the
14 women, you know, or the man, won't ask for help. You know,
15 it's -- they think it should be personal. But I -- if you see
16 domestic violence, I believe you should say something.

17 MR. LALLI: All right. Have you ever been in a
18 situation where you've had to say something; where you've had
19 to sound the alarm that there's a problem?

20 PROSPECTIVE JUROR NO. 021: No.

21 MR. LALLI: Do you think that would be difficult to
22 do?

23 PROSPECTIVE JUROR NO. 021: Yes and no.

24 MR. LALLI: Okay. Can you explain that?

25 PROSPECTIVE JUROR NO. 021: If it was a stranger,

1 maybe. If it was a friend, I would be more apt to say, you
2 need to get help.

3 MR. LALLI: Okay. I don't know if you've ever seen
4 the show -- is it called, What Would You Do, or something like
5 that, where they create these scenarios, and you -- if you
6 were in that situation, what do you think you would do? If
7 you were walking down the street and you saw domestic
8 violence, do you think you would have the courage to either
9 stop it, or say something, or call the police?

10 PROSPECTIVE JUROR NO. 021: I would probably call
11 the police.

12 MR. LALLI: Okay. Do you think that substance
13 abuse, be it alcohol or drugs, often is part of the domestic
14 violence equation?

15 PROSPECTIVE JUROR NO. 021: Could be.

16 MR. LALLI: Do you think that a person ought to be
17 -- a person's conduct ought to be excused because they might
18 have been under the influence at the time that a crime was
19 committed?

20 PROSPECTIVE JUROR NO. 021: No.

21 MR. LALLI: How do you think that a society ought to
22 deal with that? Say I commit a crime and I'm under the
23 influence. Do you think that's just too bad for me? Do you
24 think that, you know, maybe I'm deserved something by the
25 criminal justice system?

1 PROSPECTIVE JUROR NO. 021: No.

2 MR. LALLI: That's just too bad for me? And for the
3 record, you're nodding your head in agreement. Okay. What
4 about mental illness? Do you know anybody who suffers from
5 mental illness?

6 PROSPECTIVE JUROR NO. 021: Yes.

7 MR. LALLI: Without naming the person, what's your
8 relationship with them?

9 PROSPECTIVE JUROR NO. 021: Family member.

10 MR. LALLI: Okay. Doe this person -- has this
11 person ever -- what sort of illness does this person suffer
12 from?

13 PROSPECTIVE JUROR NO. 021: Depression.

14 MR. LALLI: Has the person ever been seen by a
15 mental health professional?

16 PROSPECTIVE JUROR NO. 021: No, just a regular
17 doctor.

18 MR. LALLI: Just a doctor? Were there prescriptions
19 given?

20 PROSPECTIVE JUROR NO. 021: Yes.

21 MR. LALLI: And did the prescriptions seem to do the
22 trick?

23 PROSPECTIVE JUROR NO. 021: Yes.

24 MR. LALLI: Can you tell us how the depression
25 manifested itself? What signs did you see? Were you able to

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1 recognize a mental illness in them?

2 PROSPECTIVE JUROR NO. 021: No, I wasn't living with
3 the person at the time.

4 MR. LALLI: Okay. Do you know what any of the
5 symptoms were?

6 PROSPECTIVE JUROR NO. 021: Well, it was caused by a
7 death in the family.

8 MR. LALLI: But was it -- mental illness manifests
9 itself in different ways. Sometimes, people get suicidal.
10 Sometimes, they just, you know, close up, roll up into a ball,
11 and aren't heard from again. Sometimes, they engage in
12 cutting; different activities. Do you know, in the situation
13 --

14 PROSPECTIVE JUROR NO. 021: I just basically think
15 it was -- she just wanted to hide out.

16 MR. LALLI: All right. Do you -- you know, for
17 years and years in this country, we've looked at people who
18 suffer from mental illness as -- the problem kind of lies with
19 them; that they're social outcasts, that there's some sort of
20 negative stigma attached to that.

21 What are your thoughts on that? Do you see mental
22 illness more as a true illness, and because of that, the
23 person perhaps may be more vulnerable? Or do you see somebody
24 who suffers mental illness as just kind of a burden, almost,
25 on society?

1 PROSPECTIVE JUROR NO. 021: It goes both ways.

2 MR. LALLI: Can you explain that? How do you see it
3 both ways? In what ways are they a burden, for example?

4 PROSPECTIVE JUROR NO. 021: I just think medically,
5 you know, the society now, it won't recognize it. And I feel
6 that society needs to be more aware of mental illness.

7 MR. LALLI: Do you think you're more sensitive to it
8 because of the experience that you've had?

9 PROSPECTIVE JUROR NO. 021: Yes.

10 MR. LALLI: In what ways do you think that a person
11 such as your family members, in what ways do you think that
12 they're more vulnerable to different scenarios?

13 PROSPECTIVE JUROR NO. 021: They just don't
14 participate in their daily life the way they should.

15 MR. LALLI: Okay. So, they're more likely maybe to
16 not tend to their financial obligations, for example?

17 PROSPECTIVE JUROR NO. 021: Correct.

18 MR. LALLI: Or, you know, maybe they're easier to
19 take advantage of, for example?

20 PROSPECTIVE JUROR NO. 021: True.

21 MR. LALLI: All right. You are a teaching -- oh,
22 no. You're an aid in a grade school? Is that yes?

23 PROSPECTIVE JUROR NO. 021: Yes.

24 MR. LALLI: How long have you done that?

25 PROSPECTIVE JUROR NO. 021: Seven years.

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1 MR. LALLI: And what level of kids do you work with?

2 PROSPECTIVE JUROR NO. 021: K through 5.

3 MR. LALLI: All of them? So, do you go from
4 classroom to classroom?

5 PROSPECTIVE JUROR NO. 021: No. I'm just general --
6 if they need me to fix something or do copies, I do it for the
7 whole school.

8 MR. LALLI: All right. Okay. And what school do
9 you work for?

10 PROSPECTIVE JUROR NO. 021: Lewis Elementary.

11 MR. LALLI: All right. So, you -- first day of
12 summer vacation, and lucky you, you've got this jury duty?

13 PROSPECTIVE JUROR NO. 021: Yes. Yes.

14 MR. LALLI: Timing is everything, right?

15 PROSPECTIVE JUROR NO. 021: True.

16 MR. LALLI: Do you think you can be a fair juror?

17 PROSPECTIVE JUROR NO. 021: Yes.

18 MR. LALLI: Do you believe that people should be
19 held accountable for their actions?

20 PROSPECTIVE JUROR NO. 021: Yes.

21 MR. LALLI: If we prove to you that Mr. O'Keefe is
22 guilty of second degree murder, will you convict him?

23 PROSPECTIVE JUROR NO. 021: Yes.

24 MR. LALLI: All right. Thank you, ma'am. Your
25 Honor, we'll pass --

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1 PROSPECTIVE JUROR NO. 021: You're welcome.

2 MR. LALLI: -- for cause.

3 THE COURT: All right. Thank you. Mr. O'Keefe,
4 questions; pass for cause?

5 MR. O'KEEFE: Yes, Your Honor. Thank you. Ma'am,
6 you touched on something that Mr. Lalli brought up through his
7 questioning, that -- about society should kind of get
8 involved, and you said, make a call possibly, if a situation
9 is in progress.

10 However, do you think that sometimes -- now,
11 understand, I'm trying to find some people who think like me.
12 Trying -- that's the purpose of this whole voir dire. That
13 neighbors may call sometimes and create situations, statements
14 -- and miss facts? And because you stated -- he opened up the
15 questioning on this, that society should get involved, and
16 they should make a phone call to the police.

17 But what happens when they're basing it on facts
18 that were circumstantial? I didn't know, they were just -- do
19 you feel that you can see the difference, and that, at the
20 same time, conversely to what he stated, that if the evidence
21 doesn't prove it, can you hold fast and not let your jury of
22 peers sway you to go their way?

23 Basically what I'm getting -- just cutting straight
24 to the point. If you felt the evidence didn't support beyond
25 a reasonable doubt, could you hold to that?

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1 PROSPECTIVE JUROR NO. 021: Yes.
2 MR. O'KEEFE: Without a doubt?
3 PROSPECTIVE JUROR NO. 021: Yes.
4 MR. O'KEEFE: And are you possibly biased to me by
5 any ways because I'm trying to do my own show, and because --
6 PROSPECTIVE JUROR NO. 021: Maybe.
7 MR. O'KEEFE: Okay. And I appreciate that. I
8 noticed something. Okay. No further questions.
9 THE COURT: Pass for cause?
10 MR. O'KEEFE: Yes, pass for cause.
11 THE COURT: Thank you.
12 MR. O'KEEFE: Thank you.
13 THE COURT: All right. Jorge Andrade, is it?
14 PROSPECTIVE JUROR NO. 006: Yeah, that's me.
15 THE COURT: How long you been in Las Vegas?
16 PROSPECTIVE JUROR NO. 006: 16 years.
17 THE COURT: What do you do for a living?
18 PROSPECTIVE JUROR NO. 006: Kitchen worker.
19 THE COURT: Are you married?
20 PROSPECTIVE JUROR NO. 006: No.
21 THE COURT: Children?
22 PROSPECTIVE JUROR NO. 006: No.
23 THE COURT: Have you ever been in the military?
24 PROSPECTIVE JUROR NO. 006: No.
25 THE COURT: Are you acquainted with anybody in law

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1 enforcement?

2 PROSPECTIVE JUROR NO. 006: No.

3 THE COURT: Have you or anyone closely associated
4 with you ever been a victim of a crime?

5 PROSPECTIVE JUROR NO. 006: No.

6 THE COURT: Arrested for a crime?

7 PROSPECTIVE JUROR NO. 006: No.

8 THE COURT: Have you ever served on a jury?

9 PROSPECTIVE JUROR NO. 006: No.

10 THE COURT: Do you think you could be fair in this
11 case?

12 PROSPECTIVE JUROR NO. 006: Yes.

13 THE COURT: Thank you. Questions; pass for cause,
14 State?

15 MS. MERCER: You indicated you're a kitchen worker?
16 Is that what you --

17 PROSPECTIVE JUROR NO. 006: I'm sorry?

18 MS. MERCER: Did you say that you're a kitchen
19 worker?

20 PROSPECTIVE JUROR NO. 006: Yes.

21 MS. MERCER: Where?

22 PROSPECTIVE JUROR NO. 006: Sam's Town.

23 MS. MERCER: Sam's Town? Have you ever -- how long
24 have you worked at Sam's Town?

25 PROSPECTIVE JUROR NO. 006: Six years.

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1 MS. MERCER: Have you ever witnessed an incident of
2 domestic violence?

3 PROSPECTIVE JUROR NO. 006: No.

4 MS. MERCER: If you did witness an incident, would
5 you report it to the police?

6 PROSPECTIVE JUROR NO. 006: Yes.

7 MS. MERCER: Do you have any strong feelings about
8 domestic violence that would interfere with your ability to
9 sit in this case?

10 PROSPECTIVE JUROR NO. 006: No.

11 MS. MERCER: Have you had anybody close to you
12 that's been a victim of domestic violence; a sister, mother?

13 PROSPECTIVE JUROR NO. 006: No.

14 MS. MERCER: Do you ever think that it's okay to use
15 physical violence to solve a verbal dispute?

16 PROSPECTIVE JUROR NO. 006: No.

17 MS. MERCER: Do you think that there could be a
18 circumstance where a person might say something that would
19 warrant some sort of physical conduct on the part of the other
20 person? In other words, do you think that there's certain
21 things that could be said, that are so offensive that a person
22 would be justified in using physical force?

23 PROSPECTIVE JUROR NO. 006: No.

24 MS. MERCER: Do you think that domestic violence is
25 an issue that should be dealt with within the home?

ROUGH DRAFT TRANSCRIPT

000298

1 PROSPECTIVE JUROR NO. 006: Could you repeat the
2 question? I'm sorry.

3 MS. MERCER: Sure. Do you think that domestic
4 violence is a personal issue that should be dealt with in the
5 family?

6 PROSPECTIVE JUROR NO. 006: No.

7 MS. MERCER: So, you're okay with criminal
8 prosecution of domestic violence cases, even when a victim
9 doesn't want to cooperate, for example?

10 PROSPECTIVE JUROR NO. 006: If you don't mind, could
11 you repeat the question?

12 MS. MERCER: Sure.

13 PROSPECTIVE JUROR NO. 006: I just have trouble --

14 MS. MERCER: Say there's a domestic violence
15 incident, and the victim later -- she reports it to the
16 police; later decides she doesn't want to prosecute. Are you
17 okay with the fact that the criminal justice system would
18 still proceed on that case, regardless of her wishes?

19 PROSPECTIVE JUROR NO. 006: No.

20 MS. MERCER: Why?

21 PROSPECTIVE JUROR NO. 006: I don't know. It's -- I
22 just have trouble understanding.

23 MS. MERCER: You're not understanding my question?

24 PROSPECTIVE JUROR NO. 006: No.

25 MS. MERCER: Say a victim calls the police.

ROUGH DRAFT TRANSCRIPT

000299

1 PROSPECTIVE JUROR NO. 006: Okay.

2 MS. MERCER: They come out.

3 PROSPECTIVE JUROR NO. 006: Right.

4 MS. MERCER: She tells them, my boyfriend just
5 battered me, and he's arrested. Then, he's later charged.
6 Sometime in the future, there's a court date. She doesn't
7 want to prosecute any longer, because they're back together.

8 PROSPECTIVE JUROR NO. 006: Um-hum.

9 MS. MERCER: Are you okay with the State still
10 proceeding in that case, even though she doesn't want to?

11 PROSPECTIVE JUROR NO. 006: Yeah.

12 MS. MERCER: Okay. And why is that?

13 PROSPECTIVE JUROR NO. 006: I don't know. Sorry.

14 MS. MERCER: Do you feel a batterer should be held
15 accountable?

16 PROSPECTIVE JUROR NO. 006: A what? I'm sorry.

17 MS. MERCER: Do you feel that the person that was
18 abusive should be held accountable criminally?

19 PROSPECTIVE JUROR NO. 006: Yeah, I guess. I don't
20 know. I just -- I don't know.

21 MS. MERCER: Is there anything that we -- that the
22 Judge hasn't asked you, or that I haven't asked you, that
23 might affect your ability to be fair and impartial in this
24 case?

25 PROSPECTIVE JUROR NO. 006: No.

ROUGH DRAFT TRANSCRIPT

000300

1 MS. MERCER: No prior experiences with the criminal
2 justice system or anything?

3 PROSPECTIVE JUROR NO. 006: No.

4 MS. MERCER: Pass for cause, Your Honor.

5 THE COURT: All right. Mr. O'KEefe, questions; pass
6 for cause?

7 MR. O'KEEFE: No questions for this juror, Your
8 Honor.

9 THE COURT: Pass for cause?

10 MR. O'KEEFE: Yes, sir.

11 THE COURT: Thank you. All right. We have Thomas

12 --

13 PROSPECTIVE JUROR NO. 007: Roche.

14 THE COURT: Roche?

15 PROSPECTIVE JUROR NO. 007: Yeah.

16 THE COURT: How long you been in this area, sir?

17 PROSPECTIVE JUROR NO. 007: 32 years.

18 THE COURT: What do you do for a living?

19 PROSPECTIVE JUROR NO. 007: I'm a electronics
20 technician.

21 THE COURT: So, you're still working as an
22 electronics technician?

23 PROSPECTIVE JUROR NO. 007: Yes. Yes, I am.

24 THE COURT: All right. Are you married?

25 PROSPECTIVE JUROR NO. 007: Yes, I am.

ROUGH DRAFT TRANSCRIPT

000301

1 THE COURT: Does your wife work?

2 PROSPECTIVE JUROR NO. 007: She retired.

3 THE COURT: What did she do when she --

4 PROSPECTIVE JUROR NO. 007: She was elementary
5 school librarian.

6 THE COURT: Oh, okay. Do you have any children?

7 PROSPECTIVE JUROR NO. 007: No.

8 THE COURT: Have you ever been in the military?

9 PROSPECTIVE JUROR NO. 007: No.

10 THE COURT: Are you acquainted with anybody in law
11 enforcement?

12 PROSPECTIVE JUROR NO. 007: No.

13 THE COURT: Have you or anyone closely associated
14 with you ever been the victim of a crime?

15 PROSPECTIVE JUROR NO. 007: Yes, I was. My vehicle
16 was broken into back in 2009.

17 THE COURT: Did they ever catch the individual?

18 PROSPECTIVE JUROR NO. 007: Yes, they did. I just
19 got the merchandise back last week, what was left of it.

20 THE COURT: Wow, 2009.

21 PROSPECTIVE JUROR NO. 007: Yeah. I got my AAA --
22 AAA card back.

23 THE COURT: Did you ever have to appear in court or
24 anything?

25 PROSPECTIVE JUROR NO. 007: No. No, they just

ROUGH DRAFT TRANSCRIPT

000302

1 called me down, and told me they had the -- they had something
2 with my identification on it --

3 THE COURT: All right.

4 PROSPECTIVE JUROR NO. 007: -- and that's the way it
5 was.

6 THE COURT: From 2009 until now. But anyway, that's
7 not going to affect your deliberation, is it?

8 PROSPECTIVE JUROR NO. 007: No. No.

9 THE COURT: All right. Anything else regarding
10 victim?

11 PROSPECTIVE JUROR NO. 007: No.

12 THE COURT: Have you or anyone closely associated
13 with you ever been arrested for a crime?

14 PROSPECTIVE JUROR NO. 007: No.

15 THE COURT: You ever serve on a jury before?

16 PROSPECTIVE JUROR NO. 007: No.

17 THE COURT: Would you be able to follow my
18 instructions of law?

19 PROSPECTIVE JUROR NO. 007: Yes.

20 THE COURT: Even though you might disagree with what
21 the law ought to be, even though you might think the law ought
22 to be something else, you're going to follow my instructions?

23 PROSPECTIVE JUROR NO. 007: Yes.

24 THE COURT: And you're going to be fair and
25 impartial, both to the State of Nevada and to the defendant?

ROUGH DRAFT TRANSCRIPT

000303

1 PROSPECTIVE JUROR NO. 007: Yes.

2 THE COURT: And you understand, as I indicated, some
3 principles of law that the -- that, under our system, certain
4 principles of law apply in every criminal trial. And charging
5 document -- if you're picked as a juror, you'll be read the
6 information, and it's called a charging document. It was
7 filed in this case, and it's a mere accusation and not
8 evidence. You understand that?

9 PROSPECTIVE JUROR NO. 007: Yes.

10 THE COURT: And you understand, the defendant sits
11 here cloaked with a presumption of innocence?

12 PROSPECTIVE JUROR NO. 007: Yes.

13 THE COURT: And he doesn't have any burden to prove
14 anything. You understand that?

15 PROSPECTIVE JUROR NO. 007: Yes.

16 THE COURT: It's really incumbent upon the State to
17 prove that the defendant is guilty beyond a reasonable doubt.
18 You understand?

19 PROSPECTIVE JUROR NO. 007: Yes.

20 THE COURT: And you believe in these basic precepts
21 of American justice?

22 PROSPECTIVE JUROR NO. 007: Yes, sir.

23 THE COURT: It's every 50 state. And you could be
24 fair in this case?

25 PROSPECTIVE JUROR NO. 007: Yes.

ROUGH DRAFT TRANSCRIPT

000304

1 THE COURT: All right. Thank you very much, sir.
2 State -- Mr. Lalli, questions; pass for cause?

3 MR. LALLI: Thank you, Your Honor. Is it Mr. Roche?

4 PROSPECTIVE JUROR NO. 007: Roche, yes.

5 MR. LALLI: Okay. What -- can you give us a little
6 more information about what you do as an electronics
7 technician?

8 PROSPECTIVE JUROR NO. 007: I work mostly on office
9 equipment for a company called JT3.

10 MR. LALLI: JT3?

11 PROSPECTIVE JUROR NO. 007: Yes. Work on copiers,
12 scanners. I was with Xerox for 33 years, and retired, and
13 then got hired immediately by JT3.

14 MR. LALLI: They hired you when? I'm sorry.

15 PROSPECTIVE JUROR NO. 007: In 2006.

16 MR. LALLI: You're still doing that?

17 PROSPECTIVE JUROR NO. 007: Yes.

18 MR. LALLI: Where did you live prior to coming to
19 Las Vegas?

20 PROSPECTIVE JUROR NO. 007: New Jersey.

21 MR. LALLI: When you worked for Xerox, I take it --
22 is that when they put you through school, or they taught you
23 how to service [inaudible]?

24 PROSPECTIVE JUROR NO. 007: Right. I went to a
25 couple of years of electronic school before I got hired, and

ROUGH DRAFT TRANSCRIPT

000305

1 then they hired me.

2 MR. LALLI: Was that something you did -- do you
3 need a -- did you need a college degree for that, a high
4 school degree? Or what sort of --

5 PROSPECTIVE JUROR NO. 007: It was an associate
6 degree.

7 MR. LALLI: Is that something you did back in New
8 Jersey?

9 PROSPECTIVE JUROR NO. 007: Yes.

10 MR. LALLI: And what specifically was your degree
11 in?

12 PROSPECTIVE JUROR NO. 007: Computer technology.

13 MR. LALLI: Why did you move to Las Vegas?

14 PROSPECTIVE JUROR NO. 007: My wife wanted to go
15 someplace where the weather was better.

16 MR. LALLI: Okay. We get a lot of people -- or we
17 used to get a lot of people for that. Why did it take so long
18 for you to get your property back in your stolen vehicle case?

19 PROSPECTIVE JUROR NO. 007: Well, I don't know. She
20 said -- the person I spoke to said they caught the people back
21 in 2010. And I didn't really get an explanation as to why it
22 took this long to get it back. I knew it was a big -- I guess
23 a big ring that was working Las Vegas. So, they had a small
24 warehouse full of stuff, so.

25 MR. LALLI: Was the case just pending, and maybe it

1 was evidence; they might have needed it for court, and so
2 until that resolved, you couldn't get your property?

3 PROSPECTIVE JUROR NO. 007: That could have been.
4 Yeah. I don't have all the details.

5 MR. LALLI: All right. Do you have any personal
6 interaction with members of law enforcement, other than the
7 return of your property?

8 PROSPECTIVE JUROR NO. 007: I have --

9 MR. LALLI: So, did you talk to cops --

10 PROSPECTIVE JUROR NO. 007: Oh, no.

11 MR. LALLI: -- who might have filled out a police
12 report, or --

13 PROSPECTIVE JUROR NO. 007: I filled out a police
14 report. And then, I think I got two phone calls over the last
15 few years, just asking me if I'd be available, if I could come
16 to court if I had to. I told them I wasn't really a witness.
17 I didn't see it get broken into. But they did ask that. And
18 then, the next call was just telling me that the material --
19 that my identification was found, so.

20 MR. LALLI: All right. And those calls, was the
21 case being handled by the district attorney's office, to your
22 knowledge?

23 PROSPECTIVE JUROR NO. 007: I'm not --

24 MR. LALLI: Did you get called by an investigator
25 with --

ROUGH DRAFT TRANSCRIPT

000307

1 PROSPECTIVE JUROR NO. 007: You know, I don't -- I
2 can't remember. Because it was a couple years ago, I can't
3 remember who called.

4 MR. LALLI: Okay. What went through your mind when
5 you learned that you could potentially be a juror on a murder
6 case?

7 PROSPECTIVE JUROR NO. 007: Just that it was more
8 serious than I thought it would be. You know.

9 MR. LALLI: Do you think you can be fair to the
10 State and to the defense?

11 PROSPECTIVE JUROR NO. 007: Yes.

12 MR. LALLI: What do you think about Mr. O'Keefe
13 representing himself?

14 PROSPECTIVE JUROR NO. 007: I was surprised.

15 MR. LALLI: Oh.

16 PROSPECTIVE JUROR NO. 007: No.

17 MR. LALLI: Please continue.

18 PROSPECTIVE JUROR NO. 007: I was just going to say,
19 I was surprised. But when he explained it, it was acceptable
20 to me. It's just not what I expected.

21 MR. LALLI: Do you understand we all have the
22 constitutional right to represent our self, if that's the --

23 PROSPECTIVE JUROR NO. 007: Yes.

24 MR. LALLI: -- decision we make? Do you see that
25 affecting your duties as a juror in any way?

1 PROSPECTIVE JUROR NO. 007: No.

2 MR. LALLI: You don't feel sorry for him because he
3 doesn't have a lawyer?

4 PROSPECTIVE JUROR NO. 007: No.

5 MR. LALLI: What about domestic violence? Do you
6 have any thoughts, any profound thoughts, or maybe not so
7 profound, about domestic violence?

8 PROSPECTIVE JUROR NO. 007: No. I've been a victim
9 of it. So --

10 MR. LALLI: Can you tell us a little bit about it?

11 PROSPECTIVE JUROR NO. 007: Yeah. My wife had a
12 problem with alcohol. She's been sober now for like 12 years.
13 But going back to the mid to late 90's, it was pretty severe.

14 MR. LALLI: Did -- were the police ever called to
15 intervene?

16 PROSPECTIVE JUROR NO. 007: Yes. Her parents, my
17 in-laws, called the police to come out to the house.

18 MR. LALLI: And that was here in Las Vegas.

19 PROSPECTIVE JUROR NO. 007: Yes.

20 MR. LALLI: Did -- was this on more than one
21 occasion that the police responded?

22 PROSPECTIVE JUROR NO. 007: No, just once.

23 MR. LALLI: How did the police become aware? You
24 said -- you mentioned something about family. Did somebody in
25 your family call the police?

ROUGH DRAFT TRANSCRIPT

000309

1 PROSPECTIVE JUROR NO. 007: My mother in-law.

2 MR. LALLI: So, your wife's mother?

3 PROSPECTIVE JUROR NO. 007: Yes, called the police.

4 MR. LALLI: How did she become aware that there was
5 a problem?

6 PROSPECTIVE JUROR NO. 007: I called her because my
7 wife was out of control, and basically smashing things, and
8 screaming. So, I called her. She came over and made an
9 assessment of the situation, and said, we need to get the
10 police. So, you know, we did.

11 MR. LALLI: There are -- well, there are laws and
12 policies in place that require the police to make an arrest if
13 they believe that a crime has occurred. Was your wife
14 arrested?

15 PROSPECTIVE JUROR NO. 007: This is going back a few
16 years, like I said. They took her to jail overnight, and she
17 was released the next day on bail.

18 MR. LALLI: What -- and well, what came of it? Did
19 she -- I take it she came to court; there was a court process
20 involved?

21 PROSPECTIVE JUROR NO. 007: Yeah, I'm trying to
22 remember. Yeah, she did have to go to court.

23 MR. LALLI: Was that in -- and I don't know if
24 you're going to know this. Was it justice court -- Las Vegas
25 Justice Court? Was it --

ROUGH DRAFT TRANSCRIPT

000310

1 PROSPECTIVE JUROR NO. 007: Yeah.

2 MR. LALLI: -- municipal court, or do you know? Did
3 you ever go to court with her?

4 PROSPECTIVE JUROR NO. 007: No, I didn't. No. I
5 let her take care of that, so.

6 MR. LALLI: What ultimately happened with that case?

7 PROSPECTIVE JUROR NO. 007: It actually turned out
8 to be a good thing. She wound up getting treatment as a
9 result of that. And like I said, she's been sober now for 12
10 years -- a little over 12 years.

11 MR. LALLI: Was that arrest -- was that the event
12 that kind of got through to her, and made her realize, wow, I
13 need to make a change in my life?

14 PROSPECTIVE JUROR NO. 007: Yes, it was.

15 MR. LALLI: I don't think it's any -- should not be
16 a surprise to you. You're going to hear about domestic
17 violence in this case. How do you believe you're suited to be
18 a juror on a trial like this?

19 PROSPECTIVE JUROR NO. 007: I don't know. I do
20 think I can be impartial, but I do have firsthand experience
21 in it. So, I'm not biased either way, but I can see both
22 sides of any issue I think on that.

23 MR. LALLI: All right. So, you think perhaps your
24 experience -- you might even be a better juror then, than
25 somebody who doesn't have experience?

ROUGH DRAFT TRANSCRIPT

000311

1 PROSPECTIVE JUROR NO. 007: I would say so, although
2 I wish I wasn't.

3 MR. LALLI: No, I understand. And I know how
4 difficult it is to talk about things that are painful to us,
5 and I appreciate you doing that. So, the system worked with
6 respect to you and your wife?

7 PROSPECTIVE JUROR NO. 007: Yes.

8 MR. LALLI: Do you think she was treated fairly?

9 PROSPECTIVE JUROR NO. 007: Yes. Yeah, very fairly.

10 MR. LALLI: Do you think the police when they
11 responded -- do you think they were -- they acted appropriate
12 with her?

13 PROSPECTIVE JUROR NO. 007: They were very
14 professional. I was amazed at how well they handled the
15 situation.

16 MR. LALLI: Do you know anyone who suffers from
17 mental illness?

18 PROSPECTIVE JUROR NO. 007: No.

19 MR. LALLI: Do you think -- or you described how
20 your wife had a drinking problem at the time that these events
21 occurred. How do you think that ought to be factored into how
22 the system treats her -- or treated her? I mean, do you think
23 that ought to mitigate her criminal responsibility? I mean --

24 PROSPECTIVE JUROR NO. 007: No. No. I believe
25 you're responsible --

ROUGH DRAFT TRANSCRIPT

000312

1 MR. LALLI: Do you think she just needs help for
2 that, or?

3 PROSPECTIVE JUROR NO. 007: No. I believe you're
4 responsible for your actions. You know. That was a reason
5 for what happened, but not an excuse. I mean, she was
6 responsible, so.

7 MR. LALLI: Understood. And I like how you put
8 that, and I understand where you're coming from. If we
9 convince you beyond a reasonable doubt that Mr. O'Keefe is
10 guilty of murder of the second degree, will you convict him?

11 PROSPECTIVE JUROR NO. 007: Yes.

12 MR. LALLI: Thank you, sir. Your Honor, we'll pass
13 for cause.

14 THE COURT: All right. Mr. O'Keefe, questions; pass
15 for cause?

16 MR. O'KEEFE: Yes, Your Honor. It's Mr. Thomas
17 Roche?

18 PROSPECTIVE JUROR NO. 007: Yes.

19 MR. O'KEEFE: Thomas, on this event that you had,
20 sir, back years ago when your wife [inaudible], sir?

21 PROSPECTIVE JUROR NO. 007: Yes.

22 MR. O'KEEFE: You said that was the last time.
23 There was no other instances, correct?

24 PROSPECTIVE JUROR NO. 007: No. That was it.

25 MR. O'KEEFE: Do you feel the police took accurate

ROUGH DRAFT TRANSCRIPT

000313

1 notes, and evidence, and made correct statements in that case?

2 PROSPECTIVE JUROR NO. 007: You know, at the time,
3 it's so emotional, I couldn't really analyze everything the
4 police did. I know they handled my wife as well as could be
5 expected. I was impressed with what they did there. But as
6 far as professionally what they did on the scene and
7 everything, I can't really say.

8 MR. O'KEEFE: Okay. But however, you do agree that
9 the police absolutely on a call should take any evidence,
10 clearly, that's obvious to them?

11 PROSPECTIVE JUROR NO. 007: Yes.

12 MR. O'KEEFE: You agree?

13 PROSPECTIVE JUROR NO. 007: Yes, I do.

14 MR. O'KEEFE: And do you think it should absolutely,
15 if I trial were to proceed, such as this, it should be
16 presented?

17 PROSPECTIVE JUROR NO. 007: Yeah.

18 MR. O'KEEFE: Not possibly hidden, swept under a
19 carpet?

20 PROSPECTIVE JUROR NO. 007: No, it should all be
21 presented.

22 MR. O'KEEFE: And -- okay. Do you think the police
23 are capable of lying?

24 PROSPECTIVE JUROR NO. 007: It depends on the
25 individual. I guess anybody's capable of lying, so.

ROUGH DRAFT TRANSCRIPT

000314

1 MR. O'KEEFE: Good point. Okay. But I'm speaking
2 about police. Do you think most police, very few police,
3 some?

4 PROSPECTIVE JUROR NO. 007: I would say very few,
5 myself.

6 MR. O'KEEFE: But you are capable of seeing that,
7 when a situation is presented, clearly, that a lie has
8 probably been told, more than likely?

9 PROSPECTIVE JUROR NO. 007: Yes..

10 MR. O'KEEFE: You're smart enough in your own mind
11 to make your own assessment, as all of you will, of what's
12 presented fairly?

13 PROSPECTIVE JUROR NO. 007: Right. Yes.

14 MR. O'KEEFE: Okay. When Mr. Lalli asked you for
15 the State if you would be biased against me for running my own
16 trial, you said you could understand the way I explained it.
17 Could you explain yourself more on that?

18 PROSPECTIVE JUROR NO. 007: Well, I think mainly
19 because it was brought to the forefront that you are
20 representing yourself, as opposed to just representing
21 yourself without bringing that up as a possible issue. I just
22 felt more comfortable with that once it was explained that
23 that's what you were doing.

24 MR. O'KEEFE: And you think it's better off
25 sometimes in a serious, serious allegation such as this, that

ROUGH DRAFT TRANSCRIPT

000315

1 sometimes, you got no choice. You're better off because you
2 know the facts, and you know the story, and no one's better
3 than you to tell that story?

4 PROSPECTIVE JUROR NO. 007: Yeah, I can see that as
5 a reason to represent yourself.

6 MR. O'KEEFE: Hypothetical situation. I'm glad to
7 hear that your wife is in AA, apparently?

8 PROSPECTIVE JUROR NO. 007: Yes.

9 MR. O'KEEFE: Good for her. [Inaudible].
10 Hypothetically, again, let's say if the police would have came
11 back out to your place if there had been another alleged
12 battery domestic violence, sir, do you think the police would
13 all the sudden kind of be biased, you know? They see -- you
14 know, hey, she did it once, she's guilty again, automatically?

15 PROSPECTIVE JUROR NO. 007: I guess that would
16 depend. I wouldn't think that would happen, and it would
17 depend on whether the same police officers came out. I
18 couldn't read their mind. I couldn't be sure of what they
19 would be thinking, but --

20 MR. O'KEEFE: Well, would you agree with me that
21 it's very quite possible, nowadays, a lot of assumptions are
22 made on just -- you know, they just decide things on their
23 own? A routine's done on a daily basis. It gets old, and
24 they just, you know, kind of like, forget their true title as
25 peace officer --

ROUGH DRAFT TRANSCRIPT

000316

1 PROSPECTIVE JUROR NO. 007: No.

2 MR. O'KEEFE: -- [inaudible] protect you. Still,
3 it's possible?

4 PROSPECTIVE JUROR NO. 007: It's possible.

5 MR. O'KEEFE: Okay. Have you ever served in the
6 military? I'm sorry.

7 PROSPECTIVE JUROR NO. 007: Okay.

8 MR. O'KEEFE: No? You haven't. And in a case such
9 as this, the allegation, as you know, it's very, very serious;
10 a tragedy for many people. Many families have been affected.

11 Do you feel someone's mental health issue, medical
12 issue, is relevant in a case? Cutting issues, depression
13 issues; do you think that's relevant in a case being
14 investigated to be presented to be heard?

15 PROSPECTIVE JUROR NO. 007: Well, it would be part
16 of the evidence, so I would imagine it would be if it's
17 relevant to know, but.

18 MR. O'KEEFE: Do you feel if it's a little bit
19 relevant? A lot relevant?

20 PROSPECTIVE JUROR NO. 007: No.

21 MR. O'KEEFE: I'm not getting a clear --

22 PROSPECTIVE JUROR NO. 007: No, I believe it's
23 relevant.

24 MR. O'KEEFE: No further questions. Pass for cause,
25 Your Honor.

ROUGH DRAFT TRANSCRIPT

000317

1 THE COURT: All right. Thank you. Pamela Hulbert?
2 PROSPECTIVE JUROR NO. 008: Hulbert.
3 THE COURT: How long you been in Las Vegas?
4 PROSPECTIVE JUROR NO. 008: 19 years.
5 THE COURT: What do you do for a living?
6 PROSPECTIVE JUROR NO. 008: I'm a healthcare
7 recruiter.
8 THE COURT: Are you married?
9 PROSPECTIVE JUROR NO. 008: Yes.
10 THE COURT: What does your husband do?
11 PROSPECTIVE JUROR NO. 008: He's an architect.
12 THE COURT: Children?
13 PROSPECTIVE JUROR NO. 008: Two.
14 THE COURT: Any old enough to work?
15 PROSPECTIVE JUROR NO. 008: Yes.
16 THE COURT: What do they do?
17 PROSPECTIVE JUROR NO. 008: My eldest son just
18 graduated UNR. He's an IT tech guy. And the other one is
19 kind of figuring it out. Wants to go into film, and is taking
20 classes, and just moved back home.
21 THE COURT: Okay. All right. Have you ever been in
22 the military?
23 PROSPECTIVE JUROR NO. 008: No.
24 THE COURT: Are you acquainted with anybody in law
25 enforcement?

ROUGH DRAFT TRANSCRIPT

000318

1 PROSPECTIVE JUROR NO. 008: No.

2 THE COURT: Have you or anyone closely associated
3 with you ever been the victim of a crime?

4 PROSPECTIVE JUROR NO. 008: Yes.

5 THE COURT: What's that?

6 PROSPECTIVE JUROR NO. 008: I was mugged in San
7 Diego. That's my hometown.

8 THE COURT: Somebody took your purse or something?

9 PROSPECTIVE JUROR NO. 008: It was late at night.
10 Tried to drag me out of a car, and stole my purse.

11 THE COURT: I'm sorry. Did they catch the
12 individual?

13 PROSPECTIVE JUROR NO. 008: Not that I'm aware of.

14 THE COURT: So, you never heard anything more about
15 it?

16 PROSPECTIVE JUROR NO. 008: Never heard anything.

17 THE COURT: You reported it to the police, but you
18 never heard anything more?

19 PROSPECTIVE JUROR NO. 008: Never heard anything.

20 THE COURT: I'm sorry to hear that, but that's not
21 going to affect your deliberation here?

22 PROSPECTIVE JUROR NO. 008: No.

23 THE COURT: You don't hold that against the police
24 for not catching anybody?

25 PROSPECTIVE JUROR NO. 008: No.

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1 THE COURT: Or hold that against the defendant?

2 PROSPECTIVE JUROR NO. 008: No.

3 THE COURT: Have you or anyone closely associated
4 with you ever been arrested for a crime?

5 PROSPECTIVE JUROR NO. 008: No.

6 THE COURT: Have you ever served on a jury before?

7 PROSPECTIVE JUROR NO. 008: Yes.

8 THE COURT: How many times?

9 PROSPECTIVE JUROR NO. 008: Once in Superior Court
10 in San Diego.

11 THE COURT: Okay. And it was a jury trial?

12 PROSPECTIVE JUROR NO. 008: Yes.

13 THE COURT: Were you picked as a juror?

14 PROSPECTIVE JUROR NO. 008: Yes.

15 THE COURT: Were you picked as foreperson?

16 PROSPECTIVE JUROR NO. 008: I beg your pardon?

17 THE COURT: Were you picked as foreperson? Foreman?
18 You know, the foreman of the jury. Everybody --

19 PROSPECTIVE JUROR NO. 008: No.

20 THE COURT: Every jury has to have a foreman or
21 foreperson.

22 PROSPECTIVE JUROR NO. 008: No. I was one of the --

23 THE COURT: You've got to be politically correct
24 now. Foreperson.

25 PROSPECTIVE JUROR NO. 008: I was just one of the

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1 jurors.

2 THE COURT: Okay. All right. And did you
3 deliberate the case?

4 PROSPECTIVE JUROR NO. 008: Yes.

5 THE COURT: Without telling me what the verdict was,
6 did you reach a verdict? Without telling me what the verdict
7 was.

8 PROSPECTIVE JUROR NO. 008: Yes.

9 THE COURT: You reached a verdict? Was it a
10 criminal or civil case?

11 PROSPECTIVE JUROR NO. 008: I'm trying to remember.
12 It was --

13 THE COURT: Somebody was charged with a crime, or
14 somebody wanted money; do you know?

15 PROSPECTIVE JUROR NO. 008: Charged with a crime.

16 THE COURT: All right. Do you remember the charge?

17 PROSPECTIVE JUROR NO. 008: I do not.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 008: It was many, many years
20 ago.

21 THE COURT: Yeah, absolutely. All right. That's
22 good. That's -- so, you know a little about it. The judge
23 will instruct you. You'll follow my instructions?

24 PROSPECTIVE JUROR NO. 008: Yes, sir.

25 THE COURT: And you'll -- again, different burden of

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1 proof in a criminal case. It's beyond a reasonable doubt. IN
2 a civil case, it's a preponderance of the evidence. But I'll
3 instruct you that, you understand? And you could be fair in
4 this case?

5 PROSPECTIVE JUROR NO. 008: Yes.

6 THE COURT: Thank you. State, questions; pass for
7 cause?

8 MS. MERCER: Thank you, Your Honor. Good afternoon.

9 PROSPECTIVE JUROR NO. 008: Hello.

10 MS. MERCER: Have you ever witnessed an incident of
11 domestic violence?

12 PROSPECTIVE JUROR NO. 008: Yes.

13 MS. MERCER: And when was that?

14 PROSPECTIVE JUROR NO. 008: It was in 1976 in
15 another country.

16 MS. MERCER: In another country? When you witnessed
17 the incident, what did you do, if anything?

18 PROSPECTIVE JUROR NO. 008: There wasn't anything I
19 could do. In that particular environment in that country,
20 women don't have the right to fight back.

21 MS. MERCER: Okay. What country would that have
22 been?

23 PROSPECTIVE JUROR NO. 008: It was in Morocco.

24 MS. MERCER: Okay. And what exactly did you
25 witness, if you don't mind my asking?

1 PROSPECTIVE JUROR NO. 008: There were two
2 incidences, actually. One was, a man threw his motorcycle
3 helmet at like -- as hard as he possibly could at a woman.
4 And the other one was out in the street, and there were people
5 all gathered around. And I was shocked.

6 MS. MERCER: The incident in the street, what was
7 it? What was he doing to her?

8 PROSPECTIVE JUROR NO. 008: Beating her up.

9 MS. MERCER: With his fists?

10 PROSPECTIVE JUROR NO. 008: Yeah.

11 MS. MERCER: And nobody intervened?

12 PROSPECTIVE JUROR NO. 008: No.

13 MS. MERCER: If you were to witness an incident
14 here, would you contact the police?

15 PROSPECTIVE JUROR NO. 008: Absolutely.

16 MS. MERCER: And why?

17 PROSPECTIVE JUROR NO. 008: Because we have
18 protection. And I think that -- I think everybody deserves
19 that.

20 MS. MERCER: Do you have any strong feelings about
21 domestic violence that would interfere with your ability to
22 sit in this case?

23 PROSPECTIVE JUROR NO. 008: I don't think so.

24 MS. MERCER: Can you -- if a victim stays in a
25 relationship after having been physically abused, do you see

1 her as being at fault if it should happen again in the future?

2 In other words, do you lay any blame on her?

3 PROSPECTIVE JUROR NO. 008: I don't know if I lay
4 blame so much. I mean, I think that she has a choice, and I
5 don't know that the victim always sees that they have a
6 choice.

7 MS. MERCER: With regards to that, what -- can you
8 elaborate on that for me?

9 PROSPECTIVE JUROR NO. 008: There was a neighborhood
10 family, that the wife was in a psychologically abusive
11 relationship, and came --

12 MS. MERCER: A neighbor of yours?

13 PROSPECTIVE JUROR NO. 008: -- and came to me.

14 MS. MERCER: Okay. And when was this?

15 PROSPECTIVE JUROR NO. 008: Gosh. It was many, many
16 years ago.

17 MS. MERCER: Was it in San Diego?

18 PROSPECTIVE JUROR NO. 008: I'm saying ten years --
19 no, it was here in Las Vegas.

20 MS. MERCER: Las Vegas? And when she came to you, I
21 think she confided in you as to what was occurring?

22 PROSPECTIVE JUROR NO. 008: Yeah.

23 MS. MERCER: And had the couple been together for a
24 long time?

25 PROSPECTIVE JUROR NO. 008: Yes.

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1 MS. MERCER: Was it an ongoing problem?
2 PROSPECTIVE JUROR NO. 008: Yes.
3 MS. MERCER: Okay. So, you can understand why a
4 victim would stay in a relationship that is abusive, whether
5 verbally or physically?
6 PROSPECTIVE JUROR NO. 008: Yes.
7 MS. MERCER: And what would some of those reasons
8 be?
9 PROSPECTIVE JUROR NO. 008: Children.
10 MS. MERCER: In her case, it was the children?
11 PROSPECTIVE JUROR NO. 008: Yes.
12 MS. MERCER: That's why she didn't leave him?
13 PROSPECTIVE JUROR NO. 008: Yes. And lack of any
14 financial means to support herself.
15 MS. MERCER: So, she was economically dependant on
16 him as well?
17 PROSPECTIVE JUROR NO. 008: Yes.
18 MS. MERCER: Do you know whether she ever did leave
19 him?
20 PROSPECTIVE JUROR NO. 008: She did leave.
21 MS. MERCER: And when was that?
22 PROSPECTIVE JUROR NO. 008: What year?
23 MS. MERCER: Well, how far into the relationship?
24 PROSPECTIVE JUROR NO. 008: Oh, gosh. They had five
25 kids.

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1 MS. MERCER: Oh, wow. So, a long time?

2 PROSPECTIVE JUROR NO. 008: The littlest was in
3 diapers, and the oldest was about 12.

4 MS. MERCER: Okay. Were you still neighbors at the
5 time?

6 PROSPECTIVE JUROR NO. 008: Yes.

7 MS. MERCER: And I take it she told you about it?

8 PROSPECTIVE JUROR NO. 008: Not in great, great
9 detail, but enough to where I got a picture of -- and I -- the
10 children had shared with me. I mean, I -- they didn't share
11 with me details, so much as you can kind of witness the fear
12 of what they're involved with.

13 MS. MERCER: Okay. But there's nothing about that
14 experience that would make you be biased in this case?

15 PROSPECTIVE JUROR NO. 008: I don't think so.

16 MS. MERCER: Is there anything that the Judge hasn't
17 asked you, or that I haven't asked you that you think might
18 affect your ability to be fair and impartial in this case,
19 that we should know about?

20 PROSPECTIVE JUROR NO. 008: No.

21 MS. MERCER: No? Thank you. Pass for cause, Your
22 Honor.

23 THE COURT: All right. Mr. O'Keefe, questions; pass
24 for cause?

25 MR. O'KEEFE: Yes, a few questions, Your Honor,

1 briefly. And it's Ms. Hulbert?

2 PROSPECTIVE JUROR NO. 008: Hulbert.

3 MR. O'KEEFE: Hulbert, ma'am. Hulbert. I
4 apologize. Pamela. I just want to make -- I heard about your
5 friend you said had a -- I'm very tired, I apologize. She had
6 a domestic violence -- that was a DV situation? Was she the
7 aggressor?

8 PROSPECTIVE JUROR NO. 008: No.

9 MR. O'KEEFE: And was it the only one -- that was
10 the only event?

11 PROSPECTIVE JUROR NO. 008: That --

12 MR. O'KEEFE: Was that the only situation, the only
13 call made? Or is there -- the one instance, is what I'm
14 saying?

15 PROSPECTIVE JUROR NO. 008: No, I think it was
16 ongoing.

17 MR. O'KEEFE: It was ongoing. Okay, I wanted to be
18 clear on that. Do you have a computer?

19 PROSPECTIVE JUROR NO. 008: I do.

20 MR. O'KEEFE: Do you use it a lot?

21 PROSPECTIVE JUROR NO. 008: Well, I use computers
22 all day long. So, when I get home, I'm kind of tired, and
23 don't feel like it so much. But I do use them.

24 MR. O'KEEFE: Do you have anybody in your family, or
25 close to you that's an attorney, or works for a law firm, or

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1 anything like that?

2 PROSPECTIVE JUROR NO. 008: My cousins are married
3 to divorce attorneys. One's married to a divorce attorney in
4 LA.

5 MR. O'KEEFE: Okay. That's not weird though.
6 That's -- [inaudible]. I apologize. Bear with me just one
7 second --

8 PROSPECTIVE JUROR NO. 008: Sure.

9 MR. O'KEEFE: -- please. And you didn't have
10 anybody that served in the military?

11 PROSPECTIVE JUROR NO. 008: No.

12 MR. O'KEEFE: And of course, you do feel extremely
13 that collecting all evidence by police should be done, without
14 a doubt, and you know, let it be presented, and let the jury
15 decide, or the judge, or whoever it may be, too? Not to be
16 like, well, I'll just present this, and I'll kind of forget to
17 get this, or say I didn't know, or -- you do extremely feel
18 it's important to collect all evidence for the purpose of
19 determining if a crime truly happened, correct?

20 PROSPECTIVE JUROR NO. 008: Correct.

21 MR. O'KEEFE: You also would extremely feel that
22 someone's mental, medical condition would be kind of
23 imperative of possibly leading to what happened?

24 PROSPECTIVE JUROR NO. 008: I think it's relevant.

25 MR. O'KEEFE: Do you think very relevant, a little

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1 bit?

2 PROSPECTIVE JUROR NO. 008: I think -- I think it's
3 -- if it's evidence, it's as important as any other evidence.

4 MR. O'KEEFE: Right. And I guess -- I apologize.
5 And what I'm trying to get at is, of course -- to me -- or I
6 guess I'm looking for jurors for the purpose that think like
7 me. I think it's extremely, extremely needed to know
8 information. It's the whole -- you know, let the facts -- let
9 it be as it is. You know, present the evidence.

10 And I think -- and I'm just making sure that maybe I
11 understand correctly. You feel that -- you do feel it's kind
12 of important to know? It should be shown?

13 PROSPECTIVE JUROR NO. 008: Yes.

14 MR. O'KEEFE: What's to hide, right? Let it all be
15 out. Do you feel police can lie?

16 PROSPECTIVE JUROR NO. 008: I certainly think some
17 people are capable of lying.

18 MR. O'KEEFE: Including police, or?

19 PROSPECTIVE JUROR NO. 008: Including police.

20 THE COURT: Go ahead and keep your voice up, ma'am,
21 all right? Speak into --

22 PROSPECTIVE JUROR NO. 008: I'm sorry.

23 THE COURT: -- that microphone.

24 PROSPECTIVE JUROR NO. 008: Including police.

25 MR. O'KEEFE: Okay. I'm trying to be careful on how

1 I phrase this. Do you think the community, since the State
2 has brought it up and asked on this long, has a duty to be a
3 little more careful when they make a call, and should be a
4 little more sure of what they're saying?

5 Or do you think they should just turn -- excuse me,
6 Your Honor. I hope I don't step any lines here; automatically
7 turn circumstantial evidence into supposedly direct evidence,
8 like they seen something? Am I losing you?

9 PROSPECTIVE JUROR NO. 008: Are you saying that when
10 someone calls in something, and the way that they describe it
11 should be taken as evidence?

12 MR. O'KEEFE: Should they be more careful in what
13 they allege on the so-called call? Since it was brought up
14 that the community gets involved, they make calls to police,
15 so on, so on. Okay. Do you think -- would you just make a
16 call, and just allege things that you never even seen and
17 didn't know? That's pretty serious.

18 PROSPECTIVE JUROR NO. 008: I think --

19 MR. O'KEEFE: Do you agree?

20 PROSPECTIVE JUROR NO. 008: I think people should be
21 careful. I don't know that everyone is careful.

22 MR. O'KEEFE: Very well said. Very well said.
23 Exactly what I was looking for. Very well. I'll pass for
24 cause.

25 THE COURT: Thank you. Mark -- is it Hagl or Hagl;

1 What is it?

2 PROSPECTIVE JUROR NO. 011: Hagl.

3 THE COURT: What is it?

4 PROSPECTIVE JUROR NO. 011: Hagl. You can say

5 anything.

6 THE COURT: All right. All right, sir. How long

7 have you been in Las Vegas?

8 PROSPECTIVE JUROR NO. 011: 15 years. Oh. 15

9 years.

10 THE COURT: All right. What do you do for a living?

11 PROSPECTIVE JUROR NO. 011: Just pump fuel for a cab

12 company.

13 THE COURT: All right. Are you married?

14 PROSPECTIVE JUROR NO. 011: No.

15 THE COURT: Children?

16 PROSPECTIVE JUROR NO. 011: No.

17 THE COURT: You ever been in the military?

18 PROSPECTIVE JUROR NO. 011: Never.

19 THE COURT: Are you acquainted with anybody in law

20 enforcement?

21 PROSPECTIVE JUROR NO. 011: No, I don't have any

22 friends in town here. Just -- it's only me here.

23 THE COURT: Just you?

24 PROSPECTIVE JUROR NO. 011: Yeah.

25 THE COURT: How long have you been here?

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1 PROSPECTIVE JUROR NO. 011: I moved here to get away
2 from San Diego, because people in San Diego messed with me a
3 lot, so I got out of there.

4 THE COURT: How long have you been here?

5 PROSPECTIVE JUROR NO. 011: People beat my truck up,
6 and a lot of bad stuff. So, yeah. Yeah. A lot of vandalism;
7 my first truck.

8 THE COURT: Have you ever been a victim of a crime?

9 PROSPECTIVE JUROR NO. 011: Oh, yes. I've been --
10 well, in San Diego, I had my jaw dislocated by some big guy
11 that snuck up behind me, and bam, you know, hit me;
12 *dislocated my jaw. And here in town, I was knifed by some
13 guys in my laundry room, and some guy knifed me.

14 THE COURT: All right. Did they ever catch the
15 individuals?

16 PROSPECTIVE JUROR NO. 011: I don't know. I have no
17 idea.

18 THE COURT: But you reported it to the police?

19 PROSPECTIVE JUROR NO. 011: Yes, some police were
20 there. The ambulance came and got me and all that.

21 THE COURT: Yeah. That's a shame. I'm sorry to
22 hear that. But is that going to affect your deliberation in
23 this case?

24 PROSPECTIVE JUROR NO. 011: I don't know, it might.
25 I just -- I don't know. I really would have -- I have -- I

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1 have kind of a hate towards people right now.

2 THE COURT: Hate of --

3 PROSPECTIVE JUROR NO. 011: That's just the way I
4 am. A well-earned hate. Yeah. After my dad died, my mom and
5 my brother treated me like shit, and they've done a lot of
6 mean things to me. So, I have a lot of pinned-up hate in me.
7 And I moved away from there to be away from them.

8 THE COURT: Yeah, I know what you mean. Life's
9 tough.

10 PROSPECTIVE JUROR NO. 011: Yeah.

11 THE COURT: Any objection we -- perhaps maybe he
12 gets --

13 MR. LALLI: No, Your Honor.

14 THE COURT: He's been in a lot of experiences, and
15 he's new to the town, and he hates people. And maybe in
16 another jury --

17 MR. LALLI: Understood. Yes.

18 THE COURT: -- or maybe in no jury.

19 MR. LALLI: No objection on behalf of the State.

20 THE COURT: Any objection? Do you have any
21 objection?

22 MR. O'KEEFE: No objection, Your Honor.

23 THE COURT: All right, sir. Well, you know, I hope
24 you get your life straightened out, and I'm sorry all of that
25 --

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1 PROSPECTIVE JUROR NO. 011: No.

2 THE COURT: -- happened to you. Thanks for being
3 honest --

4 PROSPECTIVE JUROR NO. 011: No, I'm trying to move
5 out of the state. I'm trying to move up north in another
6 couple of years to get away from all of it. I am sick of it.

7 THE COURT: Good. Go with that guy, Stevie Nicks,
8 or something. Maybe he [inaudible] --

9 PROSPECTIVE JUROR NO. 011: Yeah, I'd like that.

10 THE COURT: That would be good, right?

11 PROSPECTIVE JUROR NO. 011: I love [inaudible].

12 THE COURT: Yeah, that's --

13 PROSPECTIVE JUROR NO. 011: Yeah, they're a great
14 band.

15 (Pause in the proceedings)

16 THE COURT: Well, I'm sorry you have that attitude.
17 And I hope that you get -- it changes a little. Because you
18 seem like a nice guy, and I --

19 PROSPECTIVE JUROR NO. 011: Yeah.

20 THE COURT: -- people that hate -- I hope it works
21 out for you.

22 PROSPECTIVE JUROR NO. 011: Yeah.

23 THE COURT: But thank you. You're excused. Tell
24 the jury commissioner --

25 PROSPECTIVE JUROR NO. 011: Okay, thank you.

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1 THE COURT: -- I excused you, all right?

2 PROSPECTIVE JUROR NO. 011: Okay, thank you. I'm
3 going to miss you, Your Honor.

4 THE COURT: Thank you so much, Mark.

5 PROSPECTIVE JUROR NO. 011: Okay.

6 THE COURT: All right. Clerk, call another
7 prospective juror.

8 THE CLERK: Polly Thom-Frazier.

9 THE COURT: Got a hyphenated name, huh?

10 PROSPECTIVE JUROR NO. 025: Yeah. Nevada Power
11 Company hyphenates my name. I don't know why they do that,
12 but.

13 THE COURT: Okay. How long you been in this area?

14 PROSPECTIVE JUROR NO. 025: 12 years.

15 THE COURT: Do you hate anybody, or what?

16 PROSPECTIVE JUROR NO. 025: I'm sorry.

17 THE COURT: Are you married?

18 PROSPECTIVE JUROR NO. 025: I am.

19 THE COURT: And what do you do for a living?

20 PROSPECTIVE JUROR NO. 025: I don't hate anybody,
21 no.

22 THE COURT: What do you do for a living?

23 PROSPECTIVE JUROR NO. 025: I'm a hairdresser.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR NO. 025: Um-hum.

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1 THE COURT: [Inaudible].

2 PROSPECTIVE JUROR NO. 025: Do you need a card?

3 THE COURT: I need something, yeah.

4 PROSPECTIVE JUROR NO. 025: Sure.

5 THE COURT: I need something.

6 PROSPECTIVE JUROR NO. 025: I'll leave it for you,
7 sure.

8 THE COURT: I go to this -- I don't know, Great
9 Clips or Super Cuts.

10 PROSPECTIVE JUROR NO. 025: Oh, no.

11 THE COURT: They're terrible. I've got to go an
12 expensive \$10 haircut I got to get next time. It was only 3
13 bucks.

14 PROSPECTIVE JUROR NO. 025: I charge more than that,
15 so.

16 THE COURT: So, you're a hairdresser.

17 PROSPECTIVE JUROR NO. 025: Yes.

18 THE COURT: You're married.

19 PROSPECTIVE JUROR NO. 025: Yes.

20 THE COURT: What does your husband do?

21 PROSPECTIVE JUROR NO. 025: My husband is currently
22 unemployed.

23 THE COURT: Okay. What does he do when he works
24 then?

25 PROSPECTIVE JUROR NO. 025: He was a financial

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1 advisor for a credit card company, and his job got --
2 THE COURT: Yeah.
3 PROSPECTIVE JUROR NO. 025: -- outsourced.
4 THE COURT: Right.
5 PROSPECTIVE JUROR NO. 025: Yeah.
6 THE COURT: Do you have any children?
7 PROSPECTIVE JUROR NO. 025: We do.
8 THE COURT: Too young to work, right?
9 PROSPECTIVE JUROR NO. 025: 17 months.
10 THE COURT: That's really too young.
11 PROSPECTIVE JUROR NO. 025: So, I'm the --
12 THE COURT: Have you ever been in the --
13 PROSPECTIVE JUROR NO. 025: -- sole provider right
14 now. I'm sorry?
15 THE COURT: What?
16 PROSPECTIVE JUROR NO. 025: I said, I'm the sole
17 provider right now. Yeah.
18 THE COURT: Oh, sure. I miss my dog, too. But I'm
19 here. I got to be here.
20 PROSPECTIVE JUROR NO. 025: I know. I'm here, too.
21 So, you got to do what you got to do.
22 THE COURT: Have you ever been in the military?
23 PROSPECTIVE JUROR NO. 025: I have not.
24 THE COURT: Are you acquainted with anybody in law
25 enforcement?

ROUGH DRAFT TRANSCRIPT

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1 PROSPECTIVE JUROR NO. 025: I have an uncle in
2 Wisconsin that's a police officer.

3 THE COURT: Again, there's a follow up question.
4 You're not to give greater weight or lesser weight to a police
5 officer's testimony simply because they're a police officer.
6 You give it the weight you deem necessary. You understand
7 that?

8 PROSPECTIVE JUROR NO. 025: I do understand, yes.

9 THE COURT: And have you or anyone closely
10 associated with you ever been a victim of a crime?

11 PROSPECTIVE JUROR NO. 025: I've had my car stolen.

12 THE COURT: Yeah. Here in town?

13 PROSPECTIVE JUROR NO. 025: Yes.

14 THE COURT: Did they ever catch the individual?

15 PROSPECTIVE JUROR NO. 025: No.

16 THE COURT: All right. That's not going to affect
17 your deliberation?

18 PROSPECTIVE JUROR NO. 025: No.

19 THE COURT: You don't hold any animosity towards the
20 police?

21 PROSPECTIVE JUROR NO. 025: No.

22 THE COURT: And you don't certainly hold that
23 against the defendant?

24 PROSPECTIVE JUROR NO. 025: No.

25 THE COURT: Have you or anyone closely associated

1 ever been arrested for a crime?

2 PROSPECTIVE JUROR NO. 025: My father.

3 THE COURT: What was he arrested for?

4 PROSPECTIVE JUROR NO. 025: A DUI.

5 THE COURT: How long ago was that?

6 PROSPECTIVE JUROR NO. 025: Just recently. He's had
7 six. He was in jail for a while.

8 THE COURT: In town here?

9 PROSPECTIVE JUROR NO. 025: No, back in Wisconsin.

10 THE COURT: All right. Was it a misdemeanor DUI?
11 Do you know the results of it? Was anybody hurt in --

12 PROSPECTIVE JUROR NO. 025: He -- no, thank God,
13 nobody's been hurt. But he is now two years sober.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR NO. 025: So, I'm thankful for
16 that.

17 THE COURT: What were the results of that? Did he
18 just go to court, and get some --

19 PROSPECTIVE JUROR NO. 025: He went to court, went
20 to jail --

21 THE COURT: Yeah.

22 PROSPECTIVE JUROR NO. 025: -- for about a year
23 and-a-half.

24 THE COURT: Oh.

25 PROSPECTIVE JUROR NO. 025: And that's what I think

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1 finally woke him up, so.

2 THE COURT: All right. Do you think he was treated
3 fairly?

4 PROSPECTIVE JUROR NO. 025: I do. Um-hum.

5 THE COURT: All right. So, there's no animosity
6 towards the police, a district attorney, a prosecutor?

7 PROSPECTIVE JUROR NO. 025: No.

8 THE COURT: Have you ever served on a jury?

9 PROSPECTIVE JUROR NO. 025: I've never served on a
10 jury?

11 THE COURT: Could you be fair in this case?

12 PROSPECTIVE JUROR NO. 025: I think so.

13 THE COURT: All right. Thank you. Questions; pass
14 for cause, Mr. Lalli?

15 MR. LALLI: Thank you, Your Honor. So, I take it,
16 based upon your Nevada Power comment, there's -- do you prefer
17 Thom, or Frazier?

18 PROSPECTIVE JUROR NO. 025: Frazier.

19 MR. LALLI: Okay.

20 PROSPECTIVE JUROR NO. 025: Yeah.

21 MR. LALLI: Ms. Frazier, how long have you been a
22 beautician?

23 PROSPECTIVE JUROR NO. 025: 20 years.

24 MR. LALLI: I'm sorry?

25 PROSPECTIVE JUROR NO. 025: 20 years.

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1 MR. LALLI: 20 years.

2 PROSPECTIVE JUROR NO. 025: Um-hum.

3 MR. LALLI: Do you kind of do a role as beautician
4 and counselor at times?

5 PROSPECTIVE JUROR NO. 025: Yes, sir.

6 MR. LALLI: A lot of people say things in the chair?

7 PROSPECTIVE JUROR NO. 025: A lot. Uh-huh.

8 MR. LALLI: Do you have clients who talk about
9 things such as domestic violence?

10 PROSPECTIVE JUROR NO. 025: Yes. Um-hum.

11 MR. LALLI: Can you give us some sense of your
12 experience with that, either maybe it's just what your clients
13 -- I'd also like to know if you have any personal experience
14 with it, outside of just [inaudible]?

15 PROSPECTIVE JUROR NO. 025: I don't have any
16 personal experience, really, with domestic violence, other
17 than through my clients. I have had a few come through my
18 chair that have been in abusive relationships where they're
19 being mentally or physically abusive. And they tell me about
20 things, you know, that happen to them. And I never, I guess,
21 feel like it's -- unless I feel like they're in real danger,
22 or if they come to me, and I feel like they're in danger,
23 would I call somebody. But I have never felt that way.

24 MR. LALLI: And --

25 PROSPECTIVE JUROR NO. 025: But I have --

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1 MR. LALLI: I'm sorry.

2 PROSPECTIVE JUROR NO. 025: -- heard some stories.

3 MR. LALLI: Do you do hair only, or do you also do
4 makeup?

5 PROSPECTIVE JUROR NO. 025: Hair only. Um-hum.

6 MR. LALLI: What are your thoughts on domestic
7 violence in our community, or any community, for that matter?

8 PROSPECTIVE JUROR NO. 025: I --

9 MR. LALLI: What do you think? I mean, it's a
10 serious problem, or it's isolated, or our community is
11 addressing it well? Do you have any feelings on that?

12 PROSPECTIVE JUROR NO. 025: I guess I feel like it's
13 probably isolated. I don't really feel like -- you know. If
14 I'd measure it from my clients, I don't feel like I have a lot
15 of clients that go through stuff like that. I think that
16 everybody at some point in their life probably gets in a big
17 fight with somebody, or something like that. But you know, I
18 don't think it's serious problem, around me, anyway.

19 MR. LALLI: Understood.

20 PROSPECTIVE JUROR NO. 025: Yeah.

21 MR. LALLI: Do you think -- some people think that
22 what happens in a home ought to stay in a home. Something --
23 animosity or fighting between a husband and a wife, or
24 roommates, you know, that occurs in the home, it ought to stay
25 in the home. Do you believe that, or do you think there are

1 times when the police need to get involved, or prosecutors
2 have to get involved?

3 PROSPECTIVE JUROR NO. 025: I do believe there's
4 times police need to get involved. I mean, there are some
5 people that just aren't equipped to protect themselves. So, I
6 do believe that, yes.

7 MR. LALLI: Do you also believe there are times when
8 they shouldn't get involved?

9 PROSPECTIVE JUROR NO. 025: I guess maybe it would
10 depend on the severity of it.

11 MR. LALLI: All right. So, and I'm not trying to
12 put words in your mouth, and I certainly don't want to
13 cross-examine you. So, don't take it that way. But do you
14 think for example that, well, if it's only a push, it's okay?
15 Or --

16 PROSPECTIVE JUROR NO. 025: I don't think it's okay
17 --

18 MR. LALLI: All right.

19 PROSPECTIVE JUROR NO. 025: -- at all. But if it's
20 only like a push, I think something -- if -- hopefully the
21 person could handle that themselves, and leave the situation.
22 I mean, but if they feel like they can't leave the situation,
23 or if some -- if you -- if I personally knew that a client of
24 mine isn't able to leave a really bad situation, I would
25 probably call the police and ask them to help her --

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1 MR. LALLI: You would want that person --

2 PROSPECTIVE JUROR NO. 025: -- or him.

3 MR. LALLI: -- to get help?

4 PROSPECTIVE JUROR NO. 025: Yes, absolutely. Yeah.
5 Nobody should be in a situation like that.

6 MR. LALLI: Have you ever seen clients who maybe
7 have a black eye, or maybe bruising on the body --

8 PROSPECTIVE JUROR NO. 025: No.

9 MR. LALLI: -- from domestic violence?

10 PROSPECTIVE JUROR NO. 025: I have not seen that.

11 MR. LALLI: A lot of times, domestic violence cases
12 are he said/she said kind of situations. How do you think, if
13 the police are called out -- maybe the neighbors call the
14 police, they come out. How do you think the police ought to
15 decide who's telling the truth here? Did it happen; didn't it
16 happen? What would you want to do if you were a police
17 officer?

18 PROSPECTIVE JUROR NO. 025: That's probably why I'm
19 not a police officer. You know, I guess I would just -- if I
20 were, I'd try to assess the situation as best as I could to my
21 training, and decide. I mean, I've even heard on the news
22 that they are trained to know if you're texting and driving.
23 So, I'm sure they're trained to realize who's telling the
24 truth, and who's not --

25 MR. LALLI: Would you be --

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1 PROSPECTIVE JUROR NO. 025: -- in situations like
2 that. I'm sorry.

3 MR. LALLI: Would you be influenced by physical
4 evidence; maybe bruising on a person's body, on one person or
5 the other?

6 PROSPECTIVE JUROR NO. 025: Yeah, that would freak
7 me out.

8 MR. LALLI: Evidence of fresh injury would be
9 important to you?

10 PROSPECTIVE JUROR NO. 025: Yes.

11 MR. LALLI: What if you knew that a person had a
12 history of domestic violence; is that important?

13 PROSPECTIVE JUROR NO. 025: Yes, I think so. I
14 don't know if it's relevant. I have a cousin, who was --
15 three years ago, she was stabbed in her apartment when she was
16 in college. And it's -- the case has not been solved to this
17 day. I don't know if that's --

18 MR. LALLI: You had a cousin who was stabbed?

19 PROSPECTIVE JUROR NO. 025: Yes. She was killed.

20 MR. LALLI: Oh, she was murdered?

21 PROSPECTIVE JUROR NO. 025: Yes. She was 21
22 years-old.

23 MR. O'KEEFE: Objection, Your Honor.

24 THE COURT: What's the objection?

25 MR. O'KEEFE: I honestly feel he's trying to beat

1 down again the negative inference, Your Honor, that there was
2 an allegation of a battery domestic violence going on. It's
3 just getting too much --

4 THE COURT: Well --

5 MR. O'KEEFE: Forgive me, Your Honor, for stepping

6 --

7 THE COURT: That's fine.

8 MR. O'KEEFE: But this is -- he's given an
9 assumption to the jury. He's --

10 THE COURT: All right. I -- we've already ruled on
11 that. I'm going to deny, but we'll make a record on it at a
12 later time. All right?

13 MR. O'KEEFE: It's getting way too close. Thank
14 you, Your Honor.

15 THE COURT: Go ahead. Proceed.

16 MR. LALLI: With respect to your cousin who was
17 stabbed, was that here in Las Vegas?

18 PROSPECTIVE JUROR NO. 025: No.

19 MR. LALLI: Where was it?

20 PROSPECTIVE JUROR NO. 025: It was Madison,
21 Wisconsin.

22 MR. LALLI: You've made several references to
23 Wisconsin. Is that where your --

24 PROSPECTIVE JUROR NO. 025: That's where I'm from.

25 MR. LALLI: -- family is at?

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1 PROSPECTIVE JUROR NO. 025: Yes, yes.
2 MR. LALLI: Are they all from Madison?
3 PROSPECTIVE JUROR NO. 025: No. We're from
4 Marshfield.
5 MR. LALLI: Where?
6 PROSPECTIVE JUROR NO. 025: It's central Wisconsin.
7 Marshfield.
8 MR. LALLI: Oh, Marshfield.
9 PROSPECTIVE JUROR NO. 025: She went to college in
10 Madison. Um-hum.
11 MR. LALLI: Okay. And was she murdered as a college
12 student?
13 PROSPECTIVE JUROR NO. 025: Yes.
14 MR. LALLI: On the -- so it's University of
15 Wisconsin student?
16 PROSPECTIVE JUROR NO. 025: Yes.
17 MR. LALLI: And did you say -- did I hear you say it
18 was about three years ago?
19 PROSPECTIVE JUROR NO. 025: About three years ago,
20 yes. Yeah, it was all over the news.
21 MR. LALLI: How -- were you very close to your
22 cousin?
23 PROSPECTIVE JUROR NO. 025: I babysat her for --
24 when I lived there. So, yes. And -- yeah, yeah.
25 MR. LALLI: Did --

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1 PROSPECTIVE JUROR NO. 025: We were in touch. I
2 wouldn't say she was like a sister, but we were definitely in
3 touch.

4 MR. LALLI: Understood. Understood. Did you go
5 back -- was there some sort of a funeral service or something?

6 PROSPECTIVE JUROR NO. 025: Yeah, I wasn't able to
7 go back for the funeral. But there was a -- there's been a
8 couple of like walks for her, and -- to raise money to try to
9 find the person who did this.

10 MR. LALLI: And was it a total sort of a stranger
11 situation, as opposed to someone who knew her? Or they just
12 --

13 PROSPECTIVE JUROR NO. 025: They have no idea.

14 MR. LALLI: Absolutely no lead at all?

15 PROSPECTIVE JUROR NO. 025: Absolutely no idea.

16 MR. LALLI: Now, I asked a lot of people, you know,
17 what went through your mind when you learned that you could
18 potentially be a juror on a murder case. So, let me ask you
19 that.

20 PROSPECTIVE JUROR NO. 025: She went through my
21 mind.

22 MR. LALLI: I'm sorry?

23 PROSPECTIVE JUROR NO. 025: She went through my mind
24 immediately.

25 MR. LALLI: And --

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1 PROSPECTIVE JUROR NO. 025: And it was -- it scared
2 me a little --

3 MR. LALLI: Okay.

4 PROSPECTIVE JUROR NO. 025: -- to be honest. Yeah.

5 MR. LALLI: And what you need to convey to us as
6 best you can is your ability to be fair. This is a murder
7 charge. There is a woman who was killed. We are alleging
8 that Mr. O'Keefe is responsible for that. Do you think --
9 knowing that your cousin was murdered, do you think you can be
10 fair to Mr. O'Keefe?

11 PROSPECTIVE JUROR NO. 025: I guess I can't really
12 say yes all the way, because I obviously don't know all the
13 evidence and things. But I think that that will be on my
14 mind.

15 MR. LALLI: And let me give you an example of how it
16 could manifest itself. Ms. Mercer and I, we're the
17 prosecutors. It's our responsibility to prove his guilt
18 beyond a reasonable doubt. That's the evidentiary burden.
19 And Judge Bonaventure's going to tell you what beyond a
20 reasonable doubt means.

21 Let's assume that we present the evidence to you.
22 And at the conclusion of that, you think, you know, he's
23 probably guilty. I think I've got some -- a little bit of
24 reasonable doubt. But this is a murder charge. I know that
25 this woman probably had family members who loved her. I loved

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1 my cousin. You know, that crime wasn't solved, but by God,
2 this one is going to be solved.

3 Do you think that there is a realistic concern that
4 maybe you won't hold us to our legal burden? Do you
5 understand what I'm saying?

6 PROSPECTIVE JUROR NO. 025: Yeah, I do. I think I
7 would hold you to that.

8 MR. LALLI: Okay.

9 PROSPECTIVE JUROR NO. 025: I do. Yeah.

10 MR. LALLI: So, obviously, it's not easy for anyone
11 to participate in a murder case. There are always things,
12 better things that we would rather be doing. But in spite of
13 the experience that you've told us about, and I appreciate
14 that, do you think you can be fair to us; to Mr. O'Keefe?

15 PROSPECTIVE JUROR NO. 025: No. After what you
16 said, I kind of think that I could be fair. I think maybe
17 because of my experience, I would want the right person to be
18 in jail, not the wrong person. So, you know --

19 MR. LALLI: You think that maybe your -- the concern
20 is against the prosecution? Like, well, maybe it's -- they've
21 convinced me beyond a reasonable doubt, but I want it to a
22 certainty?

23 PROSPECTIVE JUROR NO. 025: No.

24 MR. LALLI: Do you see what I'm saying?

25 PROSPECTIVE JUROR NO. 025: Just beyond a -- if

1 there's a -- if it's beyond a reasonable doubt, I --

2 MR. LALLI: Okay. Well, then, explain to me why --
3 because you said you might have some concern about your
4 ability to be fair in this case.

5 PROSPECTIVE JUROR NO. 025: Yeah. It's a little
6 scary. I think -- to me, I think if I see things that I
7 wasn't ready for, or anything --

8 MR. LALLI: Such as?

9 PROSPECTIVE JUROR NO. 025: Pictures, or anything
10 like that, I think it might -- I'm afraid it might drum up
11 some emotions for me, and I'm not sure I'm ready for all of
12 that.

13 MR. LALLI: If you're a juror, you're going to see
14 pictures.

15 PROSPECTIVE JUROR NO. 025: Okay.

16 MR. LALLI: Pictures that are unpleasant. Pictures
17 that, you know, I'd rather not show you. But --

18 PROSPECTIVE JUROR NO. 025: Of course.

19 MR. LALLI: -- that's the fact of the matter, is
20 you're going to see some of those.

21 PROSPECTIVE JUROR NO. 025: Okay.

22 MR. LALLI: Are you -- and you're the only one who
23 can tell us this.

24 PROSPECTIVE JUROR NO. 025: Um-hum.

25 MR. LALLI: You're the only one who knows what's

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1 going on up here. Is this just not the right case for you?
2 Are you saying, you know what, I understand it's my civic duty
3 to be a juror, and I want to fulfill my obligations, but give
4 me a robbery case, or give me a possession of stolen vehicle
5 case, or a fraud case? Are you telling us that that is the
6 better case for you because of your personal experience?

7 PROSPECTIVE JUROR NO. 025: That might be a
8 possibility.

9 MR. LALLI: Maybe -- well --

10 PROSPECTIVE JUROR NO. 025: Yeah. Yes.

11 MR. LALLI: -- don't hold back.

12 PROSPECTIVE JUROR NO. 025: Mostly yes.

13 MR. LALLI: Tell us --

14 PROSPECTIVE JUROR NO. 025: I'll say yes. Yes.

15 Because I think I -- yeah. That might be better suited for
16 me, maybe.

17 MR. LALLI: Okay. All right. Your Honor, at this
18 point, based upon the answers we received, I'm going to
19 challenge for cause. Although there are some other areas I'd
20 want to go into, but I'm not going to do that, just because I
21 think --

22 THE COURT: You've had enough time. I mean, you
23 went through a lot of questions --

24 MR. LALLI: I did.

25 THE COURT: -- Mr. Lalli. We could have [inaudible]

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1 this quicker. But Mr. O'Keefe, there's a challenge for cause.

2 MR. O'KEEFE: Based on that, Your Honor, I'll go
3 ahead and pass. And just --

4 THE COURT: Well, what do you mean? You have no
5 objection for --

6 MR. O'KEEFE: I have no objection. I -- right.
7 Correct, Your Honor. I have no objections, and I'll --

8 THE COURT: All right. Well, I'm really not sure.
9 Because you wish-wash; you're here and there. I don't know
10 what you --

11 PROSPECTIVE JUROR NO. 025: I'm sorry.

12 THE COURT: I wish you would have said it 20 minutes
13 ago.

14 PROSPECTIVE JUROR NO. 025: Sorry.

15 THE COURT: Report back to the jury commissioner.
16 Thank you. Clerk, call another prospective juror.

17 THE CLERK: Marisol Sanchez.

18 THE COURT: Ms. Sanchez, how long you been in Las
19 Vegas?

20 PROSPECTIVE JUROR NO. 028: Three years.

21 THE COURT: Where did you come from?

22 PROSPECTIVE JUROR NO. 028: Arizona.

23 THE COURT: And what did you do in Arizona?

24 PROSPECTIVE JUROR NO. 028: I was a student. High
25 school.

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1 THE COURT: Okay. And what do you do for a living?
2 PROSPECTIVE JUROR NO. 028: Currently, I'm doing an
3 externship for my school.
4 THE COURT: All right. Why type of externship?
5 PROSPECTIVE JUROR NO. 028: Medical assistant.
6 THE COURT: Okay. Good. Are you married?
7 PROSPECTIVE JUROR NO. 028: Yes.
8 THE COURT: What does your husband do?
9 PROSPECTIVE JUROR NO. 028: He is a cook at Red
10 Lobster?
11 THE COURT: Children?
12 PROSPECTIVE JUROR NO. 028: Yes.
13 THE COURT: Too young to work?
14 PROSPECTIVE JUROR NO. 028: A two year-old.
15 THE COURT: Have you ever been in the military?
16 PROSPECTIVE JUROR NO. 028: No.
17 THE COURT: Are you acquainted with anybody in law
18 enforcement?
19 PROSPECTIVE JUROR NO. 028: No.
20 THE COURT: Have you or anyone closely associated
21 with you ever been the victim of a crime?
22 PROSPECTIVE JUROR NO. 028: Yes.
23 THE COURT: What was that?
24 PROSPECTIVE JUROR NO. 028: My father got shot.
25 THE COURT: Where?

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1 PROSPECTIVE JUROR NO. 028: In California.

2 THE COURT: Who shot him?

3 PROSPECTIVE JUROR NO. 028: Some gangster.

4 THE COURT: Okay. So, it was like a gang related
5 type thing, or?

6 PROSPECTIVE JUROR NO. 028: Well, my father wasn't
7 related to --

8 THE COURT: No, I didn't -- but some gang --

9 PROSPECTIVE JUROR NO. 028: -- gangs or anything,
10 but --

11 THE COURT: You think some gang member?

12 PROSPECTIVE JUROR NO. 028: Yeah. We don't know
13 why.

14 THE COURT: Did they catch the individual?

15 PROSPECTIVE JUROR NO. 028: I believe they did, but
16 my mother didn't really pinpoint at him. So, I don't know
17 what happened to him.

18 THE COURT: How long ago was that?

19 PROSPECTIVE JUROR NO. 028: Like 10, 11 years ago.

20 THE COURT: Oh, so you were a kid then?

21 PROSPECTIVE JUROR NO. 028: Yeah.

22 THE COURT: All right.

23 PROSPECTIVE JUROR NO. 028: That's not going to
24 affect your deliberation here, is it?

25 PROSPECTIVE JUROR NO. 028: No.

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1 THE COURT: Have you or anyone closely associated
2 with you ever been arrested for a crime?

3 PROSPECTIVE JUROR NO. 028: I don't think so.

4 THE COURT: You ever serve on a jury before?

5 PROSPECTIVE JUROR NO. 028: No.

6 THE COURT: Could you be fair in this case?

7 PROSPECTIVE JUROR NO. 028: Yes.

8 THE COURT: No problem?

9 PROSPECTIVE JUROR NO. 028: No.

10 THE COURT: All right. State, questions; pass for
11 cause?

12 MS. MERCER: Thank you, Your Honor. Have you ever
13 witnessed any incidents of domestic violence?

14 PROSPECTIVE JUROR NO. 028: Yes.

15 MS. MERCER: Against whom?

16 PROSPECTIVE JUROR NO. 028: It was kind of mutual.
17 They were both being violent to each other.

18 MS. MERCER: Were they strangers, or were they your
19 friends?

20 PROSPECTIVE JUROR NO. 028: It was my sister.

21 MS. MERCER: Your sister?

22 PROSPECTIVE JUROR NO. 028: Um-hum.

23 MS. MERCER: Your sister and her boyfriend, or your
24 sister and her husband?

25 PROSPECTIVE JUROR NO. 028: Her husband.

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1 MS. MERCER: Okay. And when you say mutual, they
2 were both being physically abusive?

3 PROSPECTIVE JUROR NO. 028: Yes.

4 MS. MERCER: Was that a one time incident, or have
5 you seen it --

6 PROSPECTIVE JUROR NO. 028: It was -- with them, it
7 was multiple times. I've never seen it on anybody else. It
8 was just them.

9 MS. MERCER: Are they still together?

10 PROSPECTIVE JUROR NO. 028: No.

11 MS. MERCER: Who typically initiated the physical
12 abuse?

13 PROSPECTIVE JUROR NO. 028: Well, I'm not really
14 sure. I was kind of young. But they usually said it was my
15 ex in-law -- my ex-brother-in-law.

16 MS. MERCER: Your ex-brother-in-law?

17 PROSPECTIVE JUROR NO. 028: And she just wouldn't
18 take it, and lash out, too.

19 MS. MERCER: Do you know how long they were
20 together?

21 PROSPECTIVE JUROR NO. 028: They were together like
22 6, 7 years.

23 MS. MERCER: Did they have children together?

24 PROSPECTIVE JUROR NO. 028: Yes, they do.

25 MS. MERCER: Is that why she stayed for so long?

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1 PROSPECTIVE JUROR NO. 028: I think she just wanted
2 to work it out, because they had just recently gotten married
3 through church.

4 MS. MERCER: Okay. So, her religion kept her in the
5 relationship?

6 PROSPECTIVE JUROR NO. 028: It was more like the
7 family. We all brought it into church, type of thing.

8 MS. MERCER: And she thought things would get
9 better?

10 PROSPECTIVE JUROR NO. 028: Yeah, because we would
11 always talk about it, trying to help them out, trying to see
12 if there was a way to make it stop, or what would happen.

13 MS. MERCER: Okay. Was there anything about that
14 experience that would cause you to be biased against either
15 side in this case?

16 PROSPECTIVE JUROR NO. 028: I'm not sure if it
17 caused me to be biased or not. I mean, it is a personal
18 experience, and I don't know what the situation is.

19 MS. MERCER: Okay. Well, what causes you to
20 hesitate?

21 PROSPECTIVE JUROR NO. 028: Well, the fact that it
22 happened to my sister, and that it was both of them hurting
23 each other. And they did have kids, and I was involved, even
24 though I was young. So, that's what really causes me to
25 hesitate.

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1 MS. MERCER: Okay. Well, you understand this is a
2 completely separate case?

3 PROSPECTIVE JUROR NO. 028: Um-hum.

4 MS. MERCER: And do you understand that -- well,
5 could you hold off on reaching any judgment until you've heard
6 all the evidence in this case?

7 PROSPECTIVE JUROR NO. 028: Yes.

8 MS. MERCER: And you can be fair and impartial to
9 the defendant?

10 PROSPECTIVE JUROR NO. 028: Yes.

11 MS. MERCER: You won't say, oh, he's guilty, because
12 my brother in-law was guilty, right?

13 PROSPECTIVE JUROR NO. 028: No.

14 MS. MERCER: Okay. And you're doing an externship
15 for --

16 PROSPECTIVE JUROR NO. 028: For a medical assistant.

17 MS. MERCER: -- to become a medical assistant?

18 PROSPECTIVE JUROR NO. 028: Yes.

19 MS. MERCER: And you said you're three years into
20 your schooling?

21 PROSPECTIVE JUROR NO. 028: It's a nine-month
22 course.

23 MS. MERCER: Okay.

24 PROSPECTIVE JUROR NO. 028: So, I need to complete
25 it in order to get a job, and that's why I'm doing my

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1 externship hours.

2 MS. MERCER: And where are you doing the externship?

3 PROSPECTIVE JUROR NO. 028: I'm doing them over at
4 Shadow Lane and Alta in the medical office. It's internal
5 medicine.

6 MS. MERCER: Internal medicine?

7 PROSPECTIVE JUROR NO. 028: Um-hum.

8 MS. MERCER: And how long have you been doing the
9 externship?

10 PROSPECTIVE JUROR NO. 028: For two weeks. It's
11 only like a five-week thing.

12 MS. MERCER: Other than your sister and brother, do
13 you have any other experience -- or ex-brother-in-law; do you
14 have any experiences with domestic violence?

15 PROSPECTIVE JUROR NO. 028: Not that I can remember.

16 MS. MERCER: Okay. You've never heard neighbors
17 getting rowdy, or anything like that?

18 PROSPECTIVE JUROR NO. 028: One time, I heard some
19 lady crying down the street, but I couldn't see anything. So,
20 I didn't know if it was just, you know, really far, or what
21 was going on. But it was really late at night, so.

22 MS. MERCER: Were you able to tell where the noise
23 was coming from?

24 PROSPECTIVE JUROR NO. 028: Yeah. I could tell it
25 was coming down from a certain street. And I went outside to

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1 see if I could see something, but I couldn't see anything.

2 MS. MERCER: Okay. And did you -- I take it you
3 didn't contact te police then?

4 PROSPECTIVE JUROR NO. 028: No.

5 MS. MERCER: And that's because you didn't know what
6 was going on?

7 PROSPECTIVE JUROR NO. 028: Yeah. I couldn't really
8 see. They were just having like some kind of party. Because
9 I could just hear kind of screaming, like a lady screaming.
10 But I didn't know if it was like a party, or if somebody was
11 arguing, or what was going on.

12 MS. MERCER: If you had a situation where you had
13 some neighbors that were -- that were being rowdy, being loud
14 with one another, but you couldn't really tell what was going
15 on, would you contact the police?

16 PROSPECTIVE JUROR NO. 028: It depends on how loud
17 they would be.

18 MS. MERCER: Well, would you be concerned that one
19 of them might be being hurt?

20 PROSPECTIVE JUROR NO. 028: Yes.

21 MS. MERCER: Would you wait until you knew for
22 certain that someone had been hurt to contact the police?

23 PROSPECTIVE JUROR NO. 028: No. If I could tell
24 that somebody was getting hurt, I would probably call the
25 police immediately.

ROUGH DRAFT TRANSCRIPT

000361

1 MS. MERCER: Okay. And why?

2 PROSPECTIVE JUROR NO. 028: Because maybe that
3 person can't get to a phone. The other person that's hurting
4 them can't -- won't let them get to the phone, and they might
5 need help. They could even die from it. And I mean, I
6 couldn't live knowing that I didn't help somebody.

7 MS. MERCER: Okay. And I think that's it. Are
8 there any other questions that we haven't asked you that -- or
9 any other things that we haven't asked you about that you
10 think might come into play with your ability to be fair and
11 impartial in this case?

12 PROSPECTIVE JUROR NO. 028: The only thing I could
13 think of would be just like the religion thing, and
14 [inaudible].

15 MS. MERCER: When you say religion, is that because
16 you think that, because of your religious beliefs, you might
17 hesitate in your ability to judge another person?

18 PROSPECTIVE JUROR NO. 028: Yes. Simply because I
19 grew up being taught that you can't really judge someone, even
20 when you have evidence, because only God judges the person.
21 So, that's like the only thing that has me hesitating.

22 MS. MERCER: So, if you believed that the State had
23 met it's burden in proving the allegation in this case beyond
24 a reasonable doubt, you might not be able to return a verdict
25 of guilt?

ROUGH DRAFT TRANSCRIPT

000362

1 PROSPECTIVE JUROR NO. 028: I don't think I really
2 could.

3 MS. MERCER: Because of your religious beliefs?

4 PROSPECTIVE JUROR NO. 028: Yes.

5 MS. MERCER: Your Honor, at this time, I would
6 challenge for cause.

7 THE COURT: Mr. O'Keefe?

8 MR. O'KEEFE: No objection, Your Honor.

9 THE COURT: Wish we would have had that the first or
10 second question. But we're just running out of time here.
11 You should have said that in the beginning. So, they'll give
12 you another trial. Go report back to the jury commissioner.
13 I need a ten-minute recess, all right? Ten minutes.

14 (Court recessed at 2:52 p.m. until 3:07 p.m.)

15 (Within the presence of the prospective jury panel)

16 (Pause in the proceedings)

17 THE MARSHAL: Please remain seated and come to
18 order. We're back in session.

19 THE COURT: All right. The clerk will call another
20 prospective juror.

21 THE CLERK: Francisco Aragon.

22 THE COURT: Mr. Aragon, how long have you been in
23 this area?

24 PROSPECTIVE JUROR NO. 029: 40 years.

25 THE COURT: Okay. What do you do for a living?

ROUGH DRAFT TRANSCRIPT

000363

1 PROSPECTIVE JUROR NO. 029: Right now, currently
2 unemployed. I was working at a convenience store. And also,
3 mostly -- most of my career has been with the culinary --

4 THE COURT: Okay.

5 PROSPECTIVE JUROR NO. 029: -- food district.

6 THE COURT: Are you married?

7 PROSPECTIVE JUROR NO. 029: Single.

8 THE COURT: Children?

9 PROSPECTIVE JUROR NO. 029: No.

10 THE COURT: Have you ever been in the military?

11 PROSPECTIVE JUROR NO. 029: No.

12 THE COURT: Are you acquainted with anybody in law
13 enforcement?

14 PROSPECTIVE JUROR NO. 029: No.

15 THE COURT: Have your or anyone closely associated
16 with you ever been the victim of a crime?

17 PROSPECTIVE JUROR NO. 029: Yes. Back in '98, I was
18 assaulted. Just this past December, held at gunpoint at the
19 store where I was working.

20 THE COURT: Yeah. I can imagine, these convenience
21 stores. Did they catch the individual?

22 PROSPECTIVE JUROR NO. 029: Yes. The first two,
23 did. The second one, on February 2nd, they didn't find him.
24 They stole money and alcohol, whatever. Aside from that
25 point, right now, I have a DUI case with Kephart, which I'm

ROUGH DRAFT TRANSCRIPT

000364

1 paying restitution.

2 THE COURT: Um-hum.

3 PROSPECTIVE JUROR NO. 029: Also, I have another
4 case with domestic violence through Melissa Kephart
5 (phonetic). So, through the State of Nevada, you know, I
6 still have that -- I'm going through anger management classes.
7 Almost done with that. And I think it would be a good thing
8 not to waste the Court's time, and so I can go ahead and
9 continue with what I have to do with -- and you know.

10 THE COURT: You're not wasting my time. I mean, the
11 matter is, if you're qualified to be a juror in this
12 particular case. If you're not, then you're going to be
13 assigned another case.

14 PROSPECTIVE JUROR NO. 029: Well, that's --

15 THE COURT: It's not that because you have to do
16 things -- that's not going to cut. Do you understand?

17 PROSPECTIVE JUROR NO. 029: Um-hum. Okay.

18 THE COURT: It just depends upon whether or not you
19 are qualified to be a juror in this particular case.

20 PROSPECTIVE JUROR NO. 029: True.

21 THE COURT: That's all we need to be -- concern
22 ourselves.

23 PROSPECTIVE JUROR NO. 029: Yes, sir.

24 THE COURT: The fact that you need to pay
25 restitution, or you have this, is neither here, nor there to

ROUGH DRAFT TRANSCRIPT

000365

1 me, okay?

2 PROSPECTIVE JUROR NO. 029: Yes, sir.

3 THE COURT: But I appreciate your trying to save
4 time. But the main question is, you've been the victim of
5 crimes when you're at convenience stores; is that correct?

6 PROSPECTIVE JUROR NO. 029: Yes.

7 THE COURT: And is that going to affect your
8 deliberation in this particular case?

9 PROSPECTIVE JUROR NO. 029: Probably not. But there
10 was also another time back in 2010. I was attacked by four
11 guys, thrown in the middle of the street, almost to get run
12 over by a truck. So, you know, that's -- you know.

13 THE COURT: What does that have to do with this
14 case?

15 PROSPECTIVE JUROR NO. 029: Nothing at all.

16 THE COURT: Nothing.

17 PROSPECTIVE JUROR NO. 029: Nothing at all with this
18 case. No.

19 THE COURT: But I am concerned with -- that you were
20 arrested -- or you were arrested; is that correct, for DUI?

21 PROSPECTIVE JUROR NO. 029: For DUI, yes.

22 THE COURT: And you have a pending case?

23 PROSPECTIVE JUROR NO. 029: Um-hum.

24 THE COURT: And then, you were arrested for domestic
25 violence?

ROUGH DRAFT TRANSCRIPT

000366

1 PROSPECTIVE JUROR NO. 029: Yes. But I was the --
2 the State of Nevada went to my work about four days later,
3 gave me the papers, because it wasn't my roommate against me.
4 It was the State of Nevada against me, and in the statement
5 were false allegations.

6 THE COURT: Well, you think you could be fair in
7 this particular case --

8 PROSPECTIVE JUROR NO. 029: If I'm qualified --

9 THE COURT: -- given the fact that you've had that
10 experience?

11 PROSPECTIVE JUROR NO. 029: If I'm qualified to be a
12 juror for this case, yes.

13 THE COURT: Pardon?

14 PROSPECTIVE JUROR NO. 029: If I'm qualified to be a
15 juror for this case, yes.

16 THE COURT: You ever serve on a jury before?

17 PROSPECTIVE JUROR NO. 029: No, sir.

18 THE COURT: All right. State?

19 MR. LALLI: Thank you. Mr. Aragon, I appreciate you
20 bringing those things to our attention. I'm sure it's
21 difficult to talk about at times. But let me start with the
22 domestic violence issue first, if we could, okay? And you
23 know, I apologize for asking you these questions, but kind of
24 what you hit on; we're trying to find people that are
25 qualified to sit in this case. That's the only reason I'm

ROUGH DRAFT TRANSCRIPT

000367

1 asking you, okay? Were you actually arrested for domestic
2 violence?

3 PROSPECTIVE JUROR NO. 029: No.

4 MR. LALLI: Then, why is it that you're going to
5 anger management related to that?

6 PROSPECTIVE JUROR NO. 029: Because I was nervous.
7 I didn't know what -- you know. Because when they showed up
8 with the papers at my work, saying that I'm being, you know,
9 convicted of domestic violence, when my ex-girlfriend --
10 because we were separated at the time; she invited me, after I
11 got out of work, to come spend some time with her.

12 She got upset. She hit the second story living room
13 window. And when she hit it, she cut herself. I grabbed my
14 backpack, and ran out. I didn't stay there. I didn't see if
15 she was all right, which is my fault. But I had just gotten
16 out of work, and she was a little bit inebriated. And I
17 didn't want to make it look like, you know, I did it, or
18 nothing like that, because I had just gotten out of work.

19 MR. LALLI: Understood.

20 PROSPECTIVE JUROR NO. 029: And the statements that
21 I threw her out of the second story window, which is not true,
22 or else it would be in the hospital records, and she would
23 have been really hurt, lacerations. And she said that her two
24 children were at the apartment at the time, which was not
25 true.

ROUGH DRAFT TRANSCRIPT

000368

1 MR. LALLI: So, when you say they came to your work
2 with papers, was that a summons into court? Did you actually
3 come to court?

4 PROSPECTIVE JUROR NO. 029: Yeah.

5 MR. LALLI: And you said Judge -- was that Judge
6 William Kephart?

7 PROSPECTIVE JUROR NO. 029: No, the Kephart was for
8 the DUI. Saragosa -- Melissa Saragosa was for the domestic
9 violence.

10 MR. LALLI: All right. So, you actually came to the
11 -- Judge Saragosa runs the domestic violence court.

12 PROSPECTIVE JUROR NO. 029: Yes.

13 MR. LALLI: So, you came in. Did you enter a plea
14 of guilty? Or did you enter into some --

15 PROSPECTIVE JUROR NO. 029: No contendre.

16 MR. LALLI: I'm sorry?

17 PROSPECTIVE JUROR NO. 029: No contendre.

18 MR. LALLI: You plead no contest to domestic
19 battery?

20 PROSPECTIVE JUROR NO. 029: Right.

21 MR. LALLI: And as a result --

22 PROSPECTIVE JUROR NO. 029: Because I didn't do
23 anything.

24 MR. LALLI: Understood. You plead guilty -- or you
25 plead nolo. Why, if you were not guilty? It's easier?

ROUGH DRAFT TRANSCRIPT

000369

1 PROSPECTIVE JUROR NO. 029: Because I didn't have
2 the proper counsel, and it was my first time, and I was just
3 scared. I didn't know what to do. So, instead of saying
4 guilty when I wasn't, just no contest.

5 MR. LALLI: Understood. And so, she found you
6 guilty based upon your plea, and ordered that you go to
7 counseling, and do some things like that?

8 PROSPECTIVE JUROR NO. 029: Um-hum. And then she
9 lowered it down to domestic battery.

10 MR. LALLI: All right. What were you charged with
11 before if it wasn't domestic battery to begin with?

12 PROSPECTIVE JUROR NO. 029: Domestic violence.

13 MR. LALLI: All right. Okay. Now, did that whole
14 thing leave a bad taste in your mouth?

15 PROSPECTIVE JUROR NO. 029: Yes.

16 MR. LALLI: And this -- although the charge here in
17 second degree murder, you're going to hear that this occurred
18 in the context of a -- it's a domestic situation. Do you
19 think that -- it's boyfriend, girlfriend situation. Do you
20 think that, based upon your own experience, which you've told
21 us you have a bad taste in your mouth over it, and I
22 understand -- I can understand why. Do you think maybe this
23 is the case for you to be in?

24 PROSPECTIVE JUROR NO. 029: Oh, well probably not.
25 But the thing is, like I said, I just got out of work. So, I

1 was sober. She wasn't. So, I don't know the case of what was
2 going on with their situation. But when somebody does get
3 inebriated and has a problem in their mind; take it out on
4 somebody else, exaggerates. I don't know. So, you know.

5 MR. LALLI: Well, let me --

6 PROSPECTIVE JUROR NO. 029: There's a lot of factors
7 in it.

8 MR. LALLI: Understood. Let me focus on the
9 "probably not," when I asked you if you thought that this was
10 not a good case for you. Are you going to be thinking about
11 what happened in your situation, as opposed to focusing on the
12 evidence here? I mean, are you going to be thinking, wow --

13 PROSPECTIVE JUROR NO. 029: Yes.

14 MR. LALLI: -- I was kind of railroaded by the
15 system? That's what it sounds like.

16 PROSPECTIVE JUROR NO. 029: Yes.

17 MR. LALLI: And you're going to come off as -- and
18 I'm not trying to put words in your mouth, but I want to see
19 if I can understand where you're coming from. I don't think I
20 was treated fairly by the State, by the police, by the judge,
21 by the system. I don't think the system treated me fairly,
22 and so I'm not going to be fair to the State. Not because I
23 don't want to; just because I've got this bias about me, based
24 upon my own experience. Do you see what I'm saying?

25 PROSPECTIVE JUROR NO. 029: Yes, sir.

ROUGH DRAFT TRANSCRIPT

000371

1 MR. LALLI: Is that you?
2 PROSPECTIVE JUROR NO. 029: Yes.
3 MR. LALLI: Okay. So, you don't think you can be
4 fair, and maybe a different type of case is better for you?
5 PROSPECTIVE JUROR NO. 029: Yes.
6 MR. LALLI: All right. Your Honor, I'd challenge
7 for cause.
8 THE COURT: Mr. O'Keefe, any objection?
9 MR. O'KEEFE: No, Your Honor.
10 THE COURT: Okay. Thank you, Mr. O'Keefe. All
11 right, sir. As I said, they'll reassign you to another case.
12 Thank you so much. Please report back to the jury
13 commissioner now, all right?
14 PROSPECTIVE JUROR NO. 029: Yes, sir.
15 THE COURT: Clerk, call another prospective juror in
16 seat number 9.
17 THE CLERK: Leslie Riell.
18 THE COURT: Touch that seat, ma'am. Ma'am, will you
19 touch that seat? Is it hot? We got a hot seat here. I don't
20 understand this. You all right?
21 PROSPECTIVE JUROR NO. 030: I'm fine.
22 THE COURT: Everything's good?
23 PROSPECTIVE JUROR NO. 030: Yeah.
24 THE COURT: All right. You got a good attitude?
25 PROSPECTIVE JUROR NO. 030: Good.

ROUGH DRAFT TRANSCRIPT

000372

1 THE COURT: And you've been in Las Vegas in this
2 area how long?

3 PROSPECTIVE JUROR NO. 030: 28 years.

4 THE COURT: What do you do for a living?

5 PROSPECTIVE JUROR NO. 030: I'm a Christian school
6 teacher.

7 THE COURT: A Christian school teacher?

8 PROSPECTIVE JUROR NO. 030: Yes.

9 THE COURT: As opposed to a heathen school teacher?

10 PROSPECTIVE JUROR NO. 030: Yes. No. No. I work
11 at Calgary Christian Elementary School.

12 THE COURT: Oh, okay. So, you work for a -- you're
13 a Christian school teacher?

14 PROSPECTIVE JUROR NO. 030: Yes.

15 THE COURT: All right. Are you married?

16 PROSPECTIVE JUROR NO. 030: Yes.

17 THE COURT: What does your husband do?

18 PROSPECTIVE JUROR NO. 030: He works at the Nevada
19 Test Site.

20 THE COURT: And if you tell me what he did, you'll
21 have to kill me, right?

22 PROSPECTIVE JUROR NO. 030: Exactly.

23 THE COURT: All right.

24 PROSPECTIVE JUROR NO. 030: Yes.

25 THE COURT: Do you have any children?

ROUGH DRAFT TRANSCRIPT

000373

1 PROSPECTIVE JUROR NO. 030: Two.

2 THE COURT: What do they do for a living?

3 PROSPECTIVE JUROR NO. 030: My son -- they're twins,
4 and they're going to college. My son has a job at UNLV's gym,
5 and my daughter's working in the computer lab at her school.
6 She is currently home from Missouri right now.

7 THE COURT: All right. Have you ever been in the
8 military?

9 PROSPECTIVE JUROR NO. 030: No.

10 THE COURT: Are you acquainted with anybody in law
11 enforcement?

12 PROSPECTIVE JUROR NO. 030: I have some friends.

13 THE COURT: Here in town?

14 PROSPECTIVE JUROR NO. 030: Yes.

15 THE COURT: Who are they, and --

16 PROSPECTIVE JUROR NO. 030: Tony Lorenzo (phonetic),
17 and different student parents.

18 THE COURT: And they're -- so, student parents?

19 Again, the follow up question, you understand you're not to
20 give greater weight or lesser weight to a police officer's
21 testimony. You give it the weight you deem appropriate. Do
22 you understand that?

23 PROSPECTIVE JUROR NO. 030: I understand.

24 THE COURT: Have you or anyone closely associated
25 with you ever been the victim of a crime?

ROUGH DRAFT TRANSCRIPT

000374

1 PROSPECTIVE JUROR NO. 030: No.

2 THE COURT: Have you or anyone closely associated
3 ever been arrested for a crime?

4 PROSPECTIVE JUROR NO. 030: My father was.

5 THE COURT: How long ago was that?

6 PROSPECTIVE JUROR NO. 030: About ten years ago.

7 THE COURT: Here in town?

8 PROSPECTIVE JUROR NO. 030: In California.

9 THE COURT: What was he arrested for?

10 PROSPECTIVE JUROR NO. 030: He decided he didn't
11 want to take a seatbelt ticket, and took the police on a wild
12 goose chase to his home. He lived out in the --

13 THE COURT: All right. So --

14 PROSPECTIVE JUROR NO. 030: -- country.

15 THE COURT: It was something to do with a police
16 chase, that type --

17 PROSPECTIVE JUROR NO. 030: Well, he got on his
18 tractor, and came back at the officers. And not very smart,
19 but --

20 THE COURT: Did he injure anybody?

21 PROSPECTIVE JUROR NO. 030: No, he didn't, but they
22 shot him and arrested him.

23 THE COURT: Did he recover from the shooting?

24 PROSPECTIVE JUROR NO. 030: Yes.

25 THE COURT: Did he do any jail time or anything?

ROUGH DRAFT TRANSCRIPT

000375

This Motion is made and based upon the papers and pleadings on file herein, the attached Memorandum of Points and Authorities, the attached Affidavit of LANCE A. MANINGO, ESQ., and such oral argument as the Court may entertain at the time of the hearing in this matter.

DATED this 30th day of May, 2012.

BELLON & MANINGO, LTD.

By: 

LANCE A. MANINGO, ESQ.
Nevada Bar No.: 006405
AMANDA S. GREGORY, ESQ.
Nevada Bar No.: 11107
732 S. Sixth Street, Ste. 102
Las Vegas, Nevada 89101
Attorney for Defendant
BRIAN O'KEEFE

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff; and

TO: DAVID ROGER, ESQ., Chief Deputy District Attorney

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Continue Trial on for hearing before the above-entitled Court on the 19 day of June, 2012, at the hour of 8:15 A.m, in the District Court, Department XVII, or as soon thereafter as counsel may be heard.

DATED this 30th day of May, 2012.

BELLON & MANINGO, LTD.

By: 

LANCE A. MANINGO, ESQ.
Nevada Bar No.: 006405
AMANDA S. GREGORY, ESQ.
Nevada Bar No.: 11107
732 S. Sixth Street, Ste. 102
Las Vegas, Nevada 89101
Attorney for Defendant
BRIAN O'KEEFE

AFFIDAVIT OF LANCE A. MANINGO

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

LANCE A. MANINGO, ESQ., being first duly sworn according to law, deposes and states as follows:

1. That your affiant is an attorney duly licensed to practice law in the State of Nevada and am a partner of BELLON & MANINGO, LTD. Your affiant makes this affidavit based upon his own personal knowledge except as to those matters stated upon information and belief and as to those matters your affiant believes them to be true.

2. That your affiant is the standby counsel assigned to the matter of the State of Nevada v. Brian, Case No.: C250630.

3. That the Defendant is seeking relief in Federal Court.

4. That the Defendant currently has an open case in the United States Court of Appeals for the Ninth Circuit, Case No.: 12-15271.

5. That your affiant has consulted with the Defendant and his Federal Public Defender on the instant matter.

6. That it is in the best interests of the Defendant to have this trial continued until the conclusion of his federal case.

7. The request to continue the trial is not brought for the purpose of harassment or to cause undue delay.

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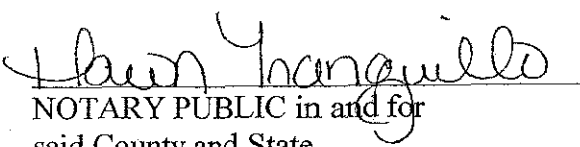
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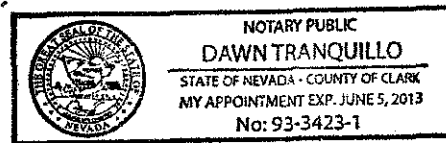
8. That your affiant has discussed this continuance with the Defendant and Defendant is agreeable to said continuance.

FURTHER AFFIANT SAYETH NAUGHT.


LANCE A. MANINGO, ESQ.

SUBSCRIBED AND SWORN to before me
this 31st day of May, 2012.


NOTARY PUBLIC in and for
said County and State.



MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This Motion to Continue Trial is necessary as the Defendant is involved in federal habeas appellate proceedings in United States Court of Appeals for the Ninth Circuit. Given the circumstances outlined herein, the trial date should be continued.

II.

STATEMENT OF THE CASE

Defendant BRIAN O'KEEFE was charged with one (1) count of Murder, one (1) count of Degrees of Murder, and one (1) count of Use of a Deadly Weapon or Tear Gas in Commission of a Crime.

////

////

1 On or about March 16, 2009 Mr. O'Keefe's first jury trial on the above charges began. It
2 was heard over the next 3 days until he was given a verdict of Guilty to the charge of Second
3 Degree Murder With Use of a Deadly Weapon.

4 Mr. O'Keefe appealed his conviction but the case was remanded back to the Clark County
5 District Court and set for trial on August 23, 2010. After 9 consecutive days of trial, the jury was
6 declared deadlocked and a new trial date was set to be ordered.

7
8 Mr. O'Keefe's case was once again set for trial on January 24, 2011. After a number of
9 Motions and Hearings set by both the State and defense counsel, this trial was reset to June 6, 2011.
10 Before the new trial date, Mr. O'Keefe was appointed new counsel.

11 Mr. Maningo was confirmed as counsel of record on June 2, 2011 and due to the change of
12 defense counsel, trial was yet again reset to the current date of June 11, 2012. Presently, Mr.
13 Maningo is stand-by counsel.

14
15 Mr. O'Keefe has filed an appeal in the United States Court of Appeals for the Ninth Circuit.

16 It is necessary for this trial to be continued pending conclusion of Mr. O'Keefe's current
17 federal case. It is believed that Mr. O'Keefe's federal public defender is requesting a stay of this
18 State level trial in the federal courts.

19
20 **III.**

21 **ARGUMENT**

22
23 The Court has discretion in matters of trial scheduling. Judicial efficiency and fundamental
24 fairness to Mr. O'Keefe warrant a continuance of this trial.

25 ////

26 ////

27 ////

28 ////

IV.

CONCLUSION

Based upon the foregoing, Defendant requests that the trial date be vacated and a new trial be set.

DATED this 30th day of May, 2012.

BELLON & MANINGO, LTD.

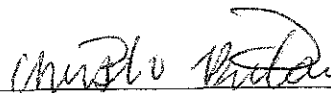
By: 

LANCE A. MANINGO, ESQ.
Nevada Bar No.: 006405
AMANDA S. GREGORY, ESQ.
Nevada Bar No.: 11107
732 S. Sixth Street, Ste. 102
Las Vegas, Nevada 89101
Attorney for Defendant
BRIAN O'KEEFE

CERTIFICATE OF MAILING

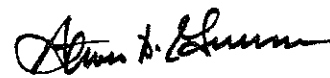
I, do hereby certify that on the 31st day of May, 2012, I did deposit a true and correct copy of the foregoing MOTION TO CONTINUE TRIAL in the United States mail, first-class postage fully prepaid, addressed as follows:

Clark County District Attorneys Office
200 Lewis Avenue
Las Vegas, Nevada 89101



An Employee of Bellon & Maningo, Ltd.

000130



CLERK OF THE COURT

1 RTRAN

2

3

4

5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

8

THE STATE OF NEVADA,

9

Plaintiff,

10

vs.

11

BRIAN KERRY O'KEEFE,

12

Defendant.

13

14

BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

15

TUESDAY, JUNE 5, 2012

16

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING RE:

17

CALENDAR CALL

18

19

APPEARANCES:

20

For the State:

CHRISTOPHER LALLI, ESQ.,
Chief District Attorney

21

22

For the Defendant:

LANCE A. MANINGO, ESQ.,
(Stand-by counsel)

23

24

For the Defendant:

RYAN NORWOOD, ESQ.,
Federal Public Defender

25

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

1 LAS VEGAS, NEVADA; TUESDAY, JUNE 5, 2012

2 [Proceeding commenced at 9:26 a.m.]

3
4 THE COURT: All right. Let's do O'Keefe. This is time set
5 for calendar call. Mr. O'Keefe is present in custody as Mr.
6 Maningo as stand-by counsel. Mr. Lalli for the State.

7 This is time set for calendar. State ready?

8 MR. LALLI: Yes, Your Honor.

9 THE COURT: Defense ready? Mr. O'Keefe?

10 THE DEFENDANT: I'm sorry, Your Honor. I didn't hear you.

11 THE COURT: Are you ready to go to trial?

12 THE DEFENDANT: I have a comment I want to put out there, Your
13 Honor. Of course, you know, I've always been forthright and honest
14 with you, sir. I am claiming a valid violation of my Federal
15 Constitutional Rights Fifth Amendment double jeopardy violation in
16 the Federal Courts, Your Honor.

17 You're aware that right now we are requesting an
18 emergency stay. Basically I'll be concise more, Your Honor. If
19 this was the first trial, I would understand that you would
20 probably want to proceed, but being the third trial, Your Honor,
21 I'm not going any where. I have no problem if you agree, if Mr.
22 Lalli stipulates to postpone this and let the action be heard in
23 the 9th Circuit.

24 Your Honor, with all due respect I understand that you've
25 warned me and told me to be prepared. I'm not going to lie. I'm

1 not really totally prepared, but that's not your problem, Your
2 Honor. If you deem that we are to proceed with trial Monday, then
3 we have to proceed; that's the way it is and we'll let the 9th
4 Circuit deal with it later.

5 However, again, I must stress that the -- you know,
6 again, Your Honor, I'm not going any where. This has had -- I got
7 a motion this morning from my Federal Public Defender and I'm
8 amazed at all the thousands of hours that have been spent in this
9 already. And again, Your Honor, like I said the 9th Circuit feels
10 there is something really there; that there's a valid substantial
11 claim has been made.

12 Again, Your Honor, I know I'm sounding like a parrot.
13 I'm not going any where. For judicial economy and administration
14 just good judgment reasoning, I would think the right thing to do
15 if the State's stipulates to this, sir, to just postpone this 'til
16 March, status check and -- and let's see what happens. If the 9th
17 Circuit deems that no -- there's no issue, then lets proceed, Your
18 Honor, and let the chips, you know, lay where they fall.

19 MR. MANINGO: And, Your Honor, we -- Mr. --

20 THE COURT: Hang on. I want to make sure Mr. O'Keefe --

21 MR. MANINGO: I'm sorry.

22 THE COURT: -- is completed.

23 THE DEFENDANT: Again, I do want to state to you at no time
24 have I ever meant any disrespect to you and --

25 THE COURT: I haven't interpreted. Just go on with your

1 argument.

2 THE DEFENDANT: But, you know, I do feel that again the
3 economy is in extreme dire emergency state right now and, you know,
4 I'm not trying any tricks. I'm not trying any ploys. Again, the
5 decision ultimately is yours. You did tell me be ready and, you
6 know, that's not your fault, Your Honor. That's a different
7 argument.

8 The argument is if I'm ready to go; no, I'm not really
9 ready to go, Your Honor. I'm asking that you postpone this to
10 possibly March. I think would be an adequate time. Again, I'm not
11 going any where. I've said what I had to say, Your Honor. The
12 decision ultimately be yours.

13 I do want to point out that Mr. Maningo is here as stand-
14 by and my AFPD, Ryan Norwood, is here. If you have any questions
15 that you would like to direct for him, I don't know. That's up to
16 you. I've said what I had to say, Your Honor.

17 THE COURT: Okay, sir, we had the Faretta canvassing December
18 16th, 2011 and your trial is set for June 11. So you've had six
19 months or more than six months since you decided to represent
20 yourself. Why haven't you prepared yourself for trial?

21 THE DEFENDANT: Well, I have been preparing somewhat, Your
22 Honor, but again with all due respect, sir, I put it this way, Your
23 Honor, I put my heart thousands of hours into my Federal habeas
24 petition. To be concise on the matter, Judge Gloria Navarro agreed
25 that there was an issue, but she felt that the procedural error had

1 been done.

2 Now, the 9th Circuit had wrote against her and said no it
3 didn't need to be done. Basically what I'm getting at, Your Honor,
4 I put it this way, if the 9th Circuit agrees with me and feels that
5 there really is an issue which I believe there is a valid Federal
6 Constitutional violation going on here, I will be violated again by
7 the laws and trees of the United States Constitution.

8 Apparently the 9th Circuit is what I'm getting at, sir, I
9 feel if they agree with me, you know, I was going to fight more for
10 the petition. I kind of put all my eggs in the basket, my hopes.
11 And again, Your Honor, I'm not worried any more. If you say we're
12 not going to stop, I'll be there Monday, you know. It'll be what
13 it'll be. You know, I'm just being forthright and honest with you
14 in telling you. Maybe it was a mistake. Maybe it wasn't.

15 Again, I'm not going any where. The decision ultimately
16 is yours. You're in an impasse. I understand exactly. You know,
17 you hear case after case. I would never want your job. It's a big
18 decision for you. Again, the State may not want it. They may want
19 to proceed. I mean, I don't know how the State actually feels
20 about it. Again, I just got this mail this morning. I had been
21 getting delayed mail. Mr. Norwood mailed this on the 1st. He
22 should --

23 THE COURT: The mail you're referring to is that pleadings to
24 --

25 THE DEFENDANT: This is my --

1 THE COURT: Hang on. Hang on. Hang on.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are you referring to pleadings regarding your
4 action in Federal Court?

5 THE DEFENDANT: Yes, which ties directly to --

6 THE COURT: Hang on.

7 THE DEFENDANT: -- this case.

8 THE COURT: I understand. I understand your legal argument.

9 THE DEFENDANT: I got this --

10 THE COURT: Okay, but the pleading -- the items you have been
11 having trouble receiving, you were here a couple of days ago or
12 last week or so.

13 THE DEFENDANT: Last week, Your Honor.

14 THE COURT: Okay. They're relating to pleadings of Federal
15 Court; is that correct, yes or no?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. Thank you. Anything -- anything else,
18 Mr. O'Keefe?

19 THE DEFENDANT: Just for the record, after the holiday weekend
20 and after coming to the last Tuesday of last week, I met for the
21 first time my Federal Public Defender and I got my mail
22 [indecipherable] a couple of days ago. So, you know, I'm just
23 placing that on the record, Your Honor.

24 Again, you know, the decision is yours. You know, I'm
25 just stating that I'm not going any where, Your Honor. I'm not

1 trying to get out of anything. You know, the decision is yours.

2 THE COURT: Okay. The items that you have been receiving from
3 your Federal PD, I'm not going to ask for the specifics, I'm not
4 going to ask what he has told you, all right; is it correct that
5 they all relate to your Federal action?

6 THE DEFENDANT: Pertaining to this case, Your Honor.

7 THE COURT: I understand that, but they're relating to the
8 Federal proceedings in front of Judge Navarro and in front of the
9 9th Circuit; is that correct?

10 THE DEFENDANT: Yes. The mail I received this morning.

11 THE COURT: All right. Okay. Well, during these last few
12 months that you've talked about this Federal proceeding, you have
13 mentioned sometimes you're not getting your mail or mails delayed
14 or perhaps mails been lost. I just want to make sure those
15 mailings are relating to your Federal actions; is that correct?

16 THE DEFENDANT: Yes, Your Honor. I did have a couple of items
17 I --

18 THE COURT: That's all I needed, yes or no; it's very simple.
19 Were they related to your Federal actions?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Thank you. All right. Mr. Maningo, as stand-by
22 counsel do you have anything to add?

23 MR. MANINGO: No. Just that the timing of this motion, Your
24 Honor, happened because of what was going on in the 9th Circuit.
25 Mr. Norwood agreed to come to enlighten the Court and all of us

1 what's happening in the 9th Circuit and what Mr. O'Keefe's Federal
2 matters. Nothing really to add. If Mr. O'Keefe's ready, I'm
3 ready.

4 THE COURT: All right. Mr. Lalli?

5 MR. LALLI: Your Honor, the Court will recall that I had this
6 placed on calendar the beginning of last week to inform Mr. O'Keefe
7 and the Court that I had two trials set on the same day. And I
8 informed the Court that if all parties were saying this was going
9 and there was no request by any party that it would be continued,
10 then I would be ready to go and I would seek to have my other trial
11 wherein a Defendant is charged with murder and wanted to go to
12 trial next week; that Defendant is Michael Mills in Case Number C-
13 11-272028. I put it on calendar specifically to get guidance from
14 the Court in arranging that schedule.

15 Having received assurances from the Court that we would
16 be proceeding as scheduled and giving Mr. O'Keefe the opportunity
17 to ask for a continuance at that time which he did not do, I then
18 informed Judge Miley that this case would be going, that the Court
19 had previously indicated that it was a priority and would not be
20 continued absent intervention from the 9th Circuit. Based upon
21 those representations, the Mills' case was reset, so that trial was
22 vacated.

23 We are in the midst meeting with witnesses. Doing those
24 things we need to do to be prepared for trial next week. Subpoenas
25 were issued well over a month ago. Those have been served by my

1 investigator. There have been many, many hours spent in preparing
2 for this case.

3 Now I am aware that Mr. O'Keefe through Federal counsel
4 has filed a motion in the 9th Circuit to have this matter stayed.
5 And what I can inform the Court is that Mr. O'Keefe had previously
6 in pro per person requested a stay of these proceedings, this trial
7 here, from the 9th Circuit which the 9th Circuit denied.

8 So, the motion that now the Defendant has filed in front
9 of the 9th Circuit is a motion to reconsider that previous denial.
10 There are a number of factors the 9th Circuit looks at. One of
11 which is the likelihood of success on the merits. And the Court
12 knows the procedural posture of this case better than anyone. You
13 have a Defendant who was tried. His conviction was reversed by the
14 Nevada Supreme Court; that is not a double jeopardy bar to a
15 retrial. Not under any scenario. Not at all. Not under State law
16 or Federal law.

17 Then you have a situation where there's a retrial and
18 depending on who you talk too it is an 11 to 1 vote for guilt or 10
19 to 2 vote for guilt. Either way, the overwhelming majority of
20 those jurors would have voted to convict Mr. O'Keefe.

21 Based upon the jury's inability to reach a verdict, the
22 Court declared a mistrial and now we're set for trial today. The
23 Court is well aware that does not pose a double jeopardy bar to a
24 further prosecution. Those are the issues that are pending. Those
25 are the legal issues in front of the 9th Circuit.

1 So, I can't imagine under any scenario where that would
2 be a successful cause of action in the 9th Circuit. So, perhaps the
3 most important factor that the 9th Circuit will consider to
4 determine whether or not these proceedings are stayed is likelihood
5 of success on the merits. If you stop at that factor alone, I
6 think the analysis is over and there would be an unwillingness for
7 the 9th Circuit to issue a stay here.

8 We are opposing the motion in the 9th Circuit. Our
9 response is due I believe today and I believe it will be filed
10 today through our appellate division. I understand the 9th Circuit
11 will issue a decision on that Friday, but we are opposed to it
12 because I made this issue my calendar -- I made that issue aware to
13 everybody, made it known to everybody last week and, you know, now
14 I'm just -- our office doesn't have the resources to -- to prepare
15 for trial and just have it go away willy-nilly because the
16 Defendant's not willing to say he needs a continuance when given
17 the opportunity.

18 THE COURT: Thank you. Mr. Norwood, you're not appearing in
19 this case are you?

20 MR. NORWOOD: I'm not representing Mr. O'Keefe in State Court,
21 but I came today because I know the ongoing Federal proceedings and
22 the matter of some concern.

23 THE COURT: Well, they denied the motion for stay on May 9th of
24 this year; is that correct?

25 MR. NORWOOD: Correct. He --

1 THE COURT: And then you have a motion pending for
2 reconsideration:

3 MR. NORWOOD: The motion for reconsideration. The motion that
4 Mr. -- Mr. O'Keefe has represented himself pro se throughout most
5 of the Federal proceedings. My office only became involved very
6 recently. I've only had my hearings in this case for about a week.

7 The 9th Circuit -- he filed this double jeopardy petition
8 which was initially denied in the District Court, he appealed it.
9 The 9th Circuit does it automatic -- automatically grant you the
10 right to appeal habeas corpus denial. Only have to determine that
11 you're entitled to something called a certificate of appealability
12 which means that they have to first determine that there is some
13 merit to the underlying issue and also some merit to the underlying
14 procedural dismissal -- dismissal of the issue.

15 So, the 9th Circuit is already made that determination.
16 They've determined that there's an issue presented in Mr. O'Keefe's
17 double jeopardy petition that is of some merit that's debatable
18 amongst jurors of reason.

19 I filed a motion for reconsideration of the stay because,
20 you know, Mr. O'Keefe, you know, his request was a 2-page
21 handwritten motion that didn't have any case law authority. I'm
22 not in a position to regent to what the 9th Circuit is going to do,
23 but for the reasons I set forth in the motion I think that the case
24 law is -- is in favor of a stay in these circumstances where
25 there's already a determination that there's an issue of some merit

1 here. And when there are dangers including a danger of the 9th
2 Circuit losing it's jurisdiction if the case goes forward in this
3 Court.

4 So I'm not going to offer any predictions as to what the
5 9th Circuit's going to do. They set up an expedited briefing
6 schedule. The State's going to respond today. I'll respond
7 tomorrow. They'll probably make a decision by the end of the week,
8 but it seems that one of the concerns here is about, you know,
9 having to prepare for a trial that's not going to happen and I
10 think that if we go ahead with the trial here even assuming our
11 innuendo there everyone is otherwise ready, there is a real danger
12 the 9th Circuit is going to come in and grant the stay which means
13 that the preparations are going to go to not.

14 Even if the stay is not granted, the 9th Circuit is still
15 going to ultimately pass upon the issues raised in his petition, so
16 that there's a danger then that if a third trial happens that
17 that's going to go.

18 So I'm -- I'm going to be seeking the stay no matter what
19 happens in this Court, but I think the Court should be aware of
20 it's background in determining whether or not to grant a
21 continuance.

22 The last thing I would note is that I know Mr. O'Keefe is
23 -- is, you know, is saying that he's willing to go ahead to have
24 the trial if the Court makes that determination and I'm sure he is,
25 but his preference which he has expressed to me which I've

1 represented to the 9th Circuit is that he would like a stay or a
2 continuance to be granted in this Court in the first instance;
3 that's what he's asking for.

4 THE COURT: All right. I would note that the first trial in
5 this matter was March '09. The second trial is August 23rd, 2010
6 and I believe we had a subsequent trial setting which had to be --
7 I believe -- which had to be vacated because Ms. Palm withdrew.
8 And then on December 16th, 2011 Defendant had stated he wished to
9 represent himself. He had a Faretta hearing and so at that point I
10 appointed Mr. Maningo as stand-by counsel for Mr. O'Keefe.

11 This matter has been pending long before March '09. He's
12 known that this trial's been set at least since December 16th, 2011
13 and so any oral request to continue the trial is -- is denied.
14 Long ago said this was going forward. I'm setting aside two weeks
15 on my calendar and if the 9th Circuit issues a stay on Friday, then
16 so be it and then the matter stayed. If they don't issue a stay,
17 then we'll proceed to trial on Monday morning.

18 And so we're going to go Monday at -- at 9:30. And if
19 either party has any jury instructions, please provide those Monday
20 at 9:30 to the Court. Any special instructions please provide
21 those case citations, all right.

22 MR. LALLI: Your Honor, shall I provide those to Mr. Maningo
23 or would you like me to have an investigator serve Mr. O'Keefe at
24 the jail with those instructions or shall I wait until Monday when
25 Court to give --

1 THE COURT: Mr. Maningo -- I would just give them in open
2 Court 'cause we're always having an issue in not getting them.

3 MR. LALLI: Very well.

4 THE COURT: This way it'll be given in open Court. If you
5 have them early, Mr. Maningo, would you be so kind as to forward
6 them onto Mr. O'Keefe?

7 MR. MANINGO: I will do that. And, Your Honor, my voice is
8 limited as stand-by counsel, but you've mentioned that barring an
9 oral motion to continue the trial --

10 THE COURT: I was sort of interpreting today as an oral motion
11 to continue the trial.

12 MR. MANINGO: And we did file a written motion.

13 THE COURT: Which is set for Thursday of next week isn't it?

14 MR. MANINGO: Correct. That was -- that was my issue. I mean
15 is there a point in us coming? I would --

16 THE COURT: No.

17 MR. MANINGO: -- I would just echo the fact that, and Mr.
18 Norwood hit on it, that Mr. O'Keefe did say that he was not ready,
19 Your Honor, and that he was devoting his time and energies towards
20 his Federal relief rather than this trial; that coupled with what's
21 going on in the 9th Circuit.

22 I would just add to the record as stand-by counsel I
23 think warrants a continuance. I full -- I can further argue that
24 on Thursday.

25 THE COURT: I'm going to vacate that date. I did review the

1 motion. I don't think we need to have it Thursday, but the bottom
2 line is the basis for your motion is that he has this Federal
3 action pending. There was nothing else in the motion beyond that
4 and so, we never know what they're going to do. We don't know if
5 they're going to rule in a timely fashion or not and we need to get
6 this trial going. I told everyone back in December this matter's
7 going forward. Mr. O'Keefe insisted in representing himself.

8 And also, Mr. O'Keefe, you recall during the Faretta
9 canvass I advised you that you would be held to the same standard
10 as an attorney and as an attorney Mr. Maningo would know as well as
11 Mr. Norwood would know that just because you filed motions with the
12 9th Circuit it doesn't tell you to stop preparing for trial. And
13 any attorney would know that you continue moving forward for trial.

14 You've had three -- two trials, three or four trial
15 settings, you've had since December. So I don't find any good
16 cause to continue this trial. And so the hearing for Thursday is
17 off calendar 'cause I did read it, Mr. Maningo, and it's basically
18 because you have a pending matter in the 9th Circuit.

19 MR. MANINGO: Yes, sir.

20 THE COURT: Okay. If they come down on Friday and it's
21 stayed, so be it, okay.

22 MR. LALLI: Thank you, Your Honor.

23 THE COURT: See everybody on Monday.

24 MR. LALLI: Thank you.

25 THE COURT: 9:30; right, Carol?


1 THE CLERK: Yes.

2 [Proceeding concluded at 9:46 a.m.]

3 * * * * *

4
5 ATTEST: I hereby certify that I have truly and correctly
6 transcribed the audio/video proceedings in the above-entitled case
to the best of my ability.

7 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
8 Procedure, I acknowledge that this is a rough draft transcript,
expeditiously prepared, not proofread, corrected or certified to be
9 an accurate transcript.

10 
11 Michelle Ramsey
12 Court Recorder/Transcriber
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REGISTER OF ACTIONS

CASE No. 08C250630

The State of Nevada vs Brian K O'Keefe

Case Type: **Felony/Gross Misdemeanor**

Date Filed: 12/19/2008

Location: Department 17

Conversion Case Number: **C250630**

Defendant's Scope ID #: 1447732

Lower Court Case Number: 08F23348

Supreme Court No.: 61631

PARTY INFORMATION

Defendant O'Keefe, Brian K

**Lead Attorneys
Pro Se**

Plaintiff State of Nevada

Steven B Wolfson
702-671-2700(W)

CHARGE INFORMATION

Charges: O'Keefe, Brian K

Statute

Level

Date _____

1. MURDER.

200.010

Felony

01/01/1900

1. DEGREES OF MURDER

200.030

Felony

01/01/1900

1. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.

193.165

Felony

01/01/1900

EVENTS & ORDERS OF THE COURT

06/05/2012	All Pending Motions (8:15 AM) (Judicial Officer Villani, Michael) <i>Calendar Call . . . Deft.'s Motion to Continue Trial</i>
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Minutes

06/05/2012 8:15 AM

CALENDAR CALL ... DEFT.'S MOTION TO CONTINUE
TRIAL Christopher Lalli, Chf Def. DA, present on behalf of the
State and Deft. O'Keefe present pro se. Also present: Lance
Maningo, Esq., Deft.'s stand-by counsel and Ryan Norwood,
Asst Fed PD. Upon Court's inquiry as to whether or not the
parties were ready for trial, Mr. Lalli advised the State is ready.
However, Deft. stated that he is claiming a Federal violation of
his Constitutional Rights and has an open case in the Ninth
Circuit Court of Appeals and would like the instant case
STAYED until the conclusion of his Federal case. Further, Deft.
is not totally prepared for trial at this time because he devoted
much of his time to his Federal case; therefore, Deft. orally
moved for a continuance of the trial. Colloquy regarding same.
Statement by Mr. Maningo; he advised he has nothing to add
only that Mr. Norwood is present today to inform the Court
about what is going on in Deft.'s Federal case. Mr. Lalli advised
that he had this matter placed on calendar last week to inform
Deft. and the Court that he had two trials set for the same day
and that if Deft. was ready to proceed to trial in the instant
case, Mr. Lalli would have his other trial continued. Deft. stated
that he was ready and the Court advised that absent a STAY
from the Ninth Circuit, this matter would be proceeding to trial.
The State has been meeting with witnesses and subpoenas
have been served. Therefore, the State is opposed to a
continuance at this time for the reasons stated on the record.
Statements by Mr. Norwood and colloquy about the case
before the Ninth Circuit. COURT ORDERED, Deft.'s oral motion
to continue the trial is DENIED. If the Ninth Circuit issues a stay
on or before Friday, June 8, 2012, this case will be stayed. If
not, the matter will proceed to trial on Monday, June 11, 2012,
at 9:30 a.m. With regard to the Motion to Continue Trial filed by
Mr. Maningo, which was set for June 19, 2012, the Court
advised it reviewed said Motion. There being no good cause to
continue the trial, COURT ORDERED, Motion ADVANCED and
DENIED. CUSTODY

[Return to Register of Actions](#)

000147

(COPY)

FILED

SEP 4 10 57 AM '12

Ann L. Lanning
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA,
Plaintiff,

vs.

BRIAN KERRY O'KEEFE,
Defendant.

CASE NO. C-250630

DEPT. NO. XVII

TRANSCRIPT OF
PROCEEDINGS

BEFORE THE HONORABLE SENIOR JUDGE JOSEPH BONAVENTURE

ROUGH DRAFT TRANSCRIPT OF
JURY TRIAL - DAY 1

MONDAY, JUNE 11, 2012

APPEARANCES:

FOR THE PLAINTIFF:

CHRISTOPHER LALLI, ESQ.
ELIZABETH A. MERCER, ESQ.
Chief Deputy District Attorneys

FOR THE DEFENDANT:

BRIAN KERRY O'KEEFE
Pro Per

LANCE MANINGO, ESQ.
Stand by counsel for defendant

COURT RECORDER:

MICHELLE RAMSEY
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

000148

1 LAS VEGAS, NEVADA, MONDAY, JUNE 11, 2012, 9:44 A.M.

2 (Outside the presence of the prospective jury panel)

3 THE COURT: All right. This is the time set for
4 trial in case number C-2503 -- excuse me, 250630, State vs.
5 Brian Kerry O'Keefe. Who's here for the record, please?

6 MR. LALLI: Your Honor, Christopher Lalli and Liz
7 Mercer on behalf of the State.

8 THE COURT: Okay.

9 MR. MANINGO: And Your Honor, Lance Maningo, standby
10 counsel for Mr. O'Keefe. And Mr. O'Keefe is entering the
11 courtroom now.

12 THE COURT: All right.

13 (Pause in the proceedings)

14 THE COURT: All right. This is -- as I said, this
15 is outside the presence of the jury. This is time set for
16 this trial. Is the State ready to proceed?

17 MR. LALLI: We are, Your Honor.

18 THE COURT: Defense, ready to proceed? Mr. O'Keefe?

19 MR. O'KEEFE: Yes, Your Honor.

20 THE COURT: All right.

21 MR. O'KEEFE: I'm sorry, Your Honor.

22 THE COURT: All right. No problem. Does the State
23 want to put anything on the record outside the presence --
24 then I'm going to ask Mr. O'Keefe if you want to put anything
25 on the record, because I always like everything to be

ROUGH DRAFT TRANSCRIPT

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1 preserved. I mean, whether rulings are for or against you, I
2 think it's incumbent upon me to -- for you to make a record,
3 whatever you want to make a record on, all right?

4 Does the State want to say anything?

5 MR. LALLI: Well, Your Honor, with -- just a couple
6 of things. With respect to exhibits, we're using the same
7 exhibits that were used in the previous trial. I've asked
8 your clerk to bring those exhibits to the courtroom, and it's
9 my understanding they are here. They're back in a secure
10 area. So, just in terms of that issue.

11 THE COURT: You understand that, Mr. O'Keefe?
12 They're going to use the same exhibits.

13 MR. O'KEEFE: Yes, Your Honor.

14 THE COURT: Whether they're admitted or not, that's
15 up to me.

16 MR. O'KEEFE: Yes, Your Honor.

17 THE COURT: Okay.

18 MR. LALLI: Your Honor, with respect to -- as the
19 Court well knows, this would be the third trial on this matter
20 for Mr. O'Keefe. During the first two trials, there have been
21 numerous rulings, evidentiary rulings --

22 THE COURT: Let me stop you there. By the way, this
23 is -- Mr. O'Keefe, of course you know this more than anybody
24 else. I'm just -- we should not have any mention to the jury
25 that this is a retrial, or another trial. You understand

ROUGH DRAFT TRANSCRIPT

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1 that? I mean, [inaudible]. I don't think the State will
2 mention it.

3 MR. LALLI: No, Your Honor. We'll refer to prior
4 testimony as --

5 THE COURT: Prior testimony.

6 MR. LALLI: -- prior hearings, prior proceedings;
7 things of that nature. We will not refer to a prior trial.
8 We've also admonished our witnesses not to refer to a prior
9 trial.

10 THE COURT: Do you want to say anything regarding
11 that, Mr. O'Keefe?

12 MR. O'KEEFE: I'll wait until you give me the chance
13 to speak, Your Honor. I'll let --

14 THE COURT: Well, I'm going to take issue at-a-time.

15 MR. O'KEEFE: Okay.

16 THE COURT: So, this issue right now --

17 MR. O'KEEFE: I agree with that, Your Honor.

18 THE COURT: What?

19 MR. O'KEEFE: If the trial proceeds, Your Honor,
20 absolutely, I agree with that. Yes, sir, Your Honor.

21 THE COURT: Okay. That's all I wanted to know.

22 MR. O'KEEFE: Thank you, Your Honor.

23 THE COURT: You have a right to, you know, request
24 another continuance, and I'll hear the argument on that.

25 MR. O'KEEFE: Yes, sir. Thank you, Your Honor.

ROUGH DRAFT TRANSCRIPT

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1 THE COURT: But I'm just going to get the ground
2 rules. All right. What else?

3 MR. LALLI: Your Honor, Judge Villani had granted
4 a --

5 THE COURT: By the way, now, Mr. Maningo, you're
6 here as a standby counsel; is that correct?

7 MR. MANINGO: That's correct, sir.

8 THE COURT: And I -- there's nothing -- I'm just
9 going to introduce -- when the jury comes in, I'm going to
10 say, Mr. Christopher Lalli, Ms. Liz Mercer on behalf of the
11 State, Mr. O'Keefe representing himself, and standby counsel,
12 Mr. Maningo. Is there any problem with that, State?

13 MR. LALLI: Not on behalf of the State.

14 THE COURT: Do you have any problem with that, Mr.
15 O'Keefe?

16 MR. O'KEEFE: No, Your Honor. Thank you.

17 THE COURT: All right. Next? I'm sorry, I keep on
18 interrupting you. But I just wanted to --

19 MR. LALLI: No, no. That's all right, Your Honor.
20 Judge Villani had granted in part a bad act motion that the
21 State proffered. And one of those incidents was a conviction
22 that Mr. O'Keefe suffered for domestic violence, third
23 offense.

24 In previous trials, the State was content with just
25 informing the jury that there had been a previous trial, Mr.

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1 O'Keefe was convicted, and that that is a felony conviction
2 involving Victoria Whitmarsh. Prior to this trial, we brought
3 a bad act motion, and we wanted to prove up as many events as
4 the court would allow us to do. The court allowed us to prove
5 up that one event, the prior domestic violence. And the
6 court, Judge Villani, had prepared a written order addressing
7 that.

8 What was unclear is to what extent we are allowed to
9 prove up the facts of that case. In his order, he says, all
10 of the facts and circumstances of that case and conviction.
11 It's my understanding, or my belief that the order allowed us
12 to indicate that Mr. O'Keefe was tried on a charge of battery
13 constituting domestic violence, third offense, and that the
14 information, in addition to the judgment of conviction, which
15 was previously admitted, would be allowed.

16 The officer, now Lieutenant Price, who will be a
17 fact witness that we call in proving up that charge, will
18 testify that he was aware of Mr. O'Keefe's record, which is
19 one of the reasons, or the primary reason that he actually
20 removed Mr. O'Keefe from the -- from the scene, after being
21 called there, and determining that there wasn't enough
22 evidence to make an arrest.

23 What this officer did was he actually put Mr.
24 O'Keefe in the car, and drove him somewhere else. It was the
25 only time the officer had ever done that, but he did that

ROUGH DRAFT TRANSCRIPT

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1 because of Mr. O'Keefe's -- knowing his record.

2 And so, I understand that Judge Villani said we
3 can't go into the facts of the prior offenses, which we don't
4 intend to do. But we think that it is important for the jury
5 to understand he was tried and convicted of a battery
6 constituting domestic violence, third offense.

7 It's my belief, although Judge Villani never
8 addressed it, that we would be allowed to do that, and I just
9 want to confirm that with the Court before we march into that
10 area.

11 THE COURT: Okay. Mr. O'Keefe?

12 MR. O'KEEFE: Okay, Your Honor. Thank you, Your
13 Honor, by the way. I want to say briefly, with all sincerity,
14 it's a pleasure to meet you. I've heard about you, sir. And
15 I'm not brown-nosing or anything. It's a shame that I have to
16 meet you under these circumstances. I know about you, your
17 history and everything. It's a pleasure to meet you, Your
18 Honor.

19 And I also want to state for the record, I will be
20 very brief and quick. I will treat you with upmost respect,
21 Your Honor, and also the State. I will not speak out of turn.
22 I will patiently wait my turn. I only ask that since I have
23 been properly [inaudible] canvassed, I do get the right to
24 argue my case for appellate purposes, if needed.

25 You know how important -- better than anybody, Your

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1 Honor, how important that is. Because they will come back and
2 say, well, you took on your own case, you should have argued
3 or objected that. So, please, you know, per Haines vs.
4 Kerner, give me a little liberal construction, and any motions
5 or any argument, Your Honor.

6 Okay. Now, as far as this here. We have a big
7 problem, Your Honor. This is so tantamount -- this is so
8 huge, okay? Please bear with me. And I have brought the
9 documents per NRS 47.150. I have created an exhibit under
10 subdivision 2 that says I'm asking -- mandating that you take
11 judicial notice of the facts of this case, and these
12 standings.

13 Judge Villani, shame on him. Almost four years of
14 litigation, Your Honor. Two trials. I've been in this
15 courtroom 168 times. He denied my right to delay this trial
16 on calendar call, and personally said in front of Mr. Maningo,
17 Mr. Lalli, the assistant federal public defender, the attorney
18 general, everybody, that oh no, we are going to trial on
19 Monday.

20 I reserved -- he said on the record, I reserved two
21 weeks for you, because you wanted to go. Then, on Thursday
22 night, Friday morning, I'm told that he goes on vacation.
23 They just ran a big ad in the paper about Judge Vega. I'm
24 going to pursue that if I have to, that's down the road.

25 But what I'm getting at is, Your Honor, first of

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1 all, the State of Nevada in 2008 wrongfully charged me with
2 malice murder by -- based on a battery act of the intentional
3 stabbing. I was forced to take the stand in that trial
4 because Judge Villani's ruling would not let in any evidence.
5 The scales of justice we like this.

6 He didn't allow in any suicides; so much evidence --
7 the Nevada Supreme Court has already reviewed it, and they
8 seen what happened. I had to take the stand and tell my story
9 a little bit, Your Honor. And I'm moving along fast. I'm
10 going to move real quick. Okay.

11 Luckily, after taking the stand and telling my
12 story, God help me, and the jury picked in the middle. They
13 had nine selections to choose from. It was an open murder
14 charging amended information. But they were -- charged me
15 with first degree malice murder, based on the battery act of
16 unlawfully stabbing. They returned a second degree murder
17 with a deadly weapon.

18 The Nevada Supreme Court reversed the case based on
19 an erroneous jury instruction on second degree murder, based
20 -- being prejudicial. Now, the only reason why that jury
21 instruction was prejudicial, Your Honor, is because the
22 evidence didn't support it.

23 And not only that, they said they didn't allege the
24 crime in the amended charging document. They couldn't list
25 the charge of battery in murder. For the single alleged act,

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1 it was described by the elements in the body of the
2 information.

3 Also, once they charge malice aforethought and
4 premeditated, they didn't have to list battery; they couldn't.
5 It's duplicity. They got away with a crime, and they know it.
6 The trickery by the deceit of the jury instruction 18.

7 Jury instruction 18, which I brought a copy, didn't
8 have a chance. Because you being appointed a new judge, I had
9 to pull something together; spend my whole weekend to get this
10 for the judicial notice that I want you to look at. And I
11 want to make it as an exhibit for the record for appeal, if
12 needed, also, by the way.

13 Getting back to the point, the fact of the matter
14 is, they said that the evidence didn't support that Mr.
15 O'Keefe did any unlawful act. And the evidence presented at
16 trial did not support that theory of second degree malice
17 murder -- implied malice murder. The evidence didn't support
18 it. They're stuck with that language, Your Honor. They're
19 held to it.

20 The addressed an issue, presented issue, too, which
21 they reversed it on direct appeal. And it was adversely
22 against the State, and they ruled on it in my favor.
23 Constitutional collateral estoppel applies. They said I did
24 no unlawful act, no battery.

25 I come back from prison. I didn't know. I'm going

ROUGH DRAFT TRANSCRIPT

000157

1 to be honest. Like a fool, let's go to trial. Paid thousands
2 of dollars for a paid attorney. They assume, well, he's an
3 idiot, evidently. He doesn't know it's acquittal. Like a --
4 I was so angry and mad at the whole system.

5 Anyway, we go to a second trial. Mr. Lalli
6 recharges me with the same offenses, same crime, after an
7 acquittal; only second degree murder. The remaining theory
8 was the same theory already on the original instruction for
9 second degree murder.

10 My whole point is, the jury acquitted me, Your
11 Honor, of intentional stabbing first degree murder, with
12 intent. You either did it, Your Honor, or you didn't. Right
13 now, we are proceeding on an unintentional murder, based on
14 what? There was no unlawful act Mr. Lalli can charge me with,
15 Your Honor. Hear me. Those who have ears hear me, the Bible
16 says.

17 THE COURT: You have this in the federal system,
18 right? You have this issue in the federal system; is that
19 correct?

20 MR. O'KEEFE: Right now, it's in the Ninth Circuit.
21 I'm building up to that, Your Honor, and I'll speed it up.
22 Give me five minutes. You need to hear this.

23 He recharges the same offense, regardless that the
24 acquittal wasn't officially entered; US vs. Green (phonetic)
25 says it doesn't have to be. It's always good. Double

ROUGH DRAFT TRANSCRIPT

000158

1 jeopardy applies. Even if the language used in the reversal
2 order was egregious or wrong, the Nevada Supreme Court is held
3 to it.

4 The law of the first appeal is the law of the case
5 of all subsequent appeals. Any issue decided is no longer
6 open to consideration. It's over. Honor stare decisis. I'm
7 claiming res judicata form of jeopardy on the same offense.

8 However they proceed on the second trial -- Mr.
9 Lalli presents the same evidence, rehashes the same evidence,
10 after the reversal order said I did not battery act. He's
11 precluded from any battery -- anything with the word
12 "battery." In actuality, he's precluded from all the evidence
13 from both trials, Your Honor. He should not have been able to
14 use in the second trial the evidence from the first trial. He
15 did it anyway.

16 He's got to do what he's got to do. He's got no
17 evidence. It's the same standard of proof. It's not a lesser
18 standard of charge. If it was manslaughter or something like
19 that, he could use some of the evidence. But he's barred.
20 He's barred because it's the same standard of proof, Your
21 Honor. Constitutional collateral estoppel applies. The issue
22 was decided in my favor.

23 The Supreme Court has mandated the law of the case.
24 The trial court decisions, Your Honor, by Judge Villani, don't
25 hold water. Mr. Lalli should know that better than anybody.

ROUGH DRAFT TRANSCRIPT

000159

1 In 2000, he was the DA on Byford vs. Nevada, 994 P.2d, page
2 700. Head note 25 --

3 THE COURT: I think I was the judge on that, too,
4 wasn't I?

5 MR. LALLI: I think you were, Your Honor.

6 THE COURT: Byford?

7 MR. O'KEEFE: Head note 25, trial court decisions
8 are not -- do not constitute the law of the case. Only the
9 Nevada Supreme Court can constitute the law of the case on
10 direct appeal. I was acquitted by the jury of first degree
11 intentional stabbing, criminal intent.

12 Then, Nevada Supreme Court on top of it, they
13 acquitted me of any unlawful act. Unlawful means criminal.
14 You face punishment. They had acquitted me of the -- also,
15 the actus reus. There's no actus reus; there's no criminal
16 intent. There is no evidence -- there's no charge, Your
17 Honor, for murder. There's no evidence.

18 The law -- now, the jury even hung on the wrong
19 evidence used, Your Honor. At the end of the second trial,
20 hashing out jury instructions, I have certified court
21 documents where Mr. Lalli makes a judicial admission. And
22 he's not going to deny it. They were going to let you try to
23 give the involuntary manslaughter instruction at the end of
24 the second trial, and he objected to it highly, and created a
25 whole couple-page debate.

ROUGH DRAFT TRANSCRIPT

000160

1 And I got streamlined just two pages of it for you
2 to review. He admits the Nevada Supreme Court well is aware
3 of how involuntary manslaughter would become second degree
4 murder, by the unlawful act for implied malice murder. He
5 admits in the record that the Nevada Supreme Court is well
6 aware of this, how it works -- how second degree murder works
7 with involuntary manslaughter, how it would become second
8 degree murder.

9 However, the Nevada Supreme Court ruled the evidence
10 didn't support it. Absolutely right. The second trial proved
11 it again. The jury couldn't convict again. They wrongfully
12 used it. He admits in the judicial admission -- because he's
13 bound by it, because jeopardy still applies. If you want to
14 go that way, he's forbidden from presenting any more evidence.
15 He used evidence he can't use.

16 He admitted at the end of the trial that the Nevada
17 Supreme Court admitted that the evidence didn't support it,
18 and that I did any unlawful act. And at the end of it -- I
19 couldn't believe it. I about fell down in my cell. He said,
20 and thus, as far as we've seen it, again, the evidence still
21 doesn't support it.

22 Well, what the heck are we doing? He's stuck. He's
23 time-barred, Your Honor. I'm not a fool. I'm not a fool.

24 THE COURT: So, this is a motion to, what, dismiss?
25 Or what --

ROUGH DRAFT TRANSCRIPT

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1 MR. O'KEEFE: Yes. I'm going to lead to a motion to
2 dismiss.

3 THE COURT: All right. You've got five minutes, if
4 you're going to.

5 MR. O'KEEFE: Okay. He can't proceed. He has no
6 evidence. It should not have even been sent to -- submitted
7 to the jury. That's another reason why Judge Villani knows, I
8 submitted a motion in March for a motion to dismiss,
9 collateral estoppel.

10 He can't even proceed on the theory of intentional
11 stabbing. I've been acquitted of it. By first degree by the
12 jury of the tier and facts, they acquitted me of first degree
13 intentional stabbing. They returned -- they thought maybe a
14 battery happened. But the Nevada Supreme Court said, no way.
15 Doesn't support it. After review of the record, even though
16 we're looking at your error, it doesn't support it.

17 So, when I came back for the second trial, that's
18 the trial I was claiming that it's forbidden for the same
19 offense. Second trial proceeded. A mistrial. He keeps
20 trying to switch it to, oh, everybody knows after a mistrial,
21 you can proceed with another trial. But he's not telling them
22 it's a third trial. He makes a judicial admission.

23 Okay. Quickly moving on. I have to take over the
24 case because, you know, I can say things, with no disrespect,
25 that normally, attorneys won't bring up. I can just attack

ROUGH DRAFT TRANSCRIPT

000162

1 the case with a lot of passion. Anyway, I would leave Mr.
2 Maningo no offense. I wanted to take over the case, because I
3 do nothing but pushups, and I just -- I had to do something.
4 I'm so passionate about I didn't do this, and I've been
5 acquitted.

6 So, I file pretrial 2241, claiming a true double
7 jeopardy violation. And I can do that, by the law, because
8 I've had two trials. I'm a pretrial detainee. I'm under no
9 state court judgment. To make a long story short, Judge
10 Navarro -- I even put the order in there. She agrees,
11 absolutely, somewhat, there's a doubt jeopardy problem.
12 There's something here.

13 And on ground 2 that I filed -- I filed three
14 grounds; double jeopardy, collateral estoppel, ineffective
15 counsel. They admitted -- she even puts in there, absolutely
16 appears to be -- exact words; collateral estoppel issues. But
17 because I was trying to claim a third -- ineffective counsel,
18 she says, no, [inaudible] -- it kind of scared me.

19 She sent me an order back. She says, I'll give you
20 30 days to do a show cause response. I did a show cause
21 response. She responded to that. She denied the petition.
22 When I did the show cause response in the amended petition, I
23 dropped ground 2, collateral estoppel, and ground 3, and I
24 proceeded going on the double jeopardy. She denied it.

25 I appealed it to the Ninth Circuit. The Ninth

ROUGH DRAFT TRANSCRIPT

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1 Circuit said, what the heck is going on? They named it. I
2 got it right here, the order. We're going to name it. We
3 know what you did, Judge Navarro. You denied it on procedural
4 grounds, without addressing the true double jeopardy
5 violation, so we're going to handle it for you.

6 After review of the petition, we're concluding that
7 it states at least -- at least one federal constitutional
8 claim, debatable to name judges of reason. Namely, a double
9 jeopardy violation. They can go from claim, to violation.
10 Therefore, we grant Mr. O'Keefe COA on these issues. They
11 went on the procedural [inaudible], because they have already
12 admitted there's a double jeopardy violation.

13 To save face of a colleague, they're going to make
14 her address -- the easy way out, the procedural [inaudible]
15 2241, does he have to? They even said -- the State case law
16 that I cited under White vs. Lambert, 2004, Judge Paez on the
17 Ninth Circuit, stated that, if you are a pretrial detainee and
18 if you file 2241, as long as the threshold -- as long as
19 you're -- at the time of filing, you're not under State court
20 judgment, and we have a true double jeopardy violation.

21 I sent amended in formations, the judgment of
22 conviction, the reversal order, second amended information. I
23 sent this and that. They were blown away, I heard. They
24 couldn't believe it. They reverse it. They send it back,
25 full briefing, and appointed me counsel. Sir, we're going to

ROUGH DRAFT TRANSCRIPT

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1 help you out. Full briefing schedule, Your Honor, in less
2 than two months. Full briefing.

3 And then, I find -- Judge Navarro sends me an order
4 two weeks ago; she recuses herself. Now, Villani recuses
5 himself. And then, I found out she's married to a top DA in
6 the State, in the criminal division. Mr. Rutledge is her
7 husband. Yeah, that's really fair. That's really fair.

8 THE COURT: All right. Mr. -- I gave you -- I
9 understand there's a motion to, I guess dismiss.

10 MR. O'KEEFE: I'm asking a motion to dismiss.

11 THE COURT: All right. Now, get all of those
12 documents you have together --

13 MR. O'KEEFE: I asked him to make a copy so I could
14 present --

15 THE COURT: Well, yeah. When you get them -- Ms.
16 Clerk, when he gets these documents, mark them as a court
17 exhibit.

18 MR. O'KEEFE: May I --

19 THE COURT: Motion -- Mr. O'Keefe's motion to
20 dismiss prior to getting a jury, all right?

21 MR. O'KEEFE: 3A -- O'Keefe Exhibit 3A -- may I,
22 Your Honor? For -- 3 being for third trial, Exhibit A,
23 defendant's.

24 THE COURT: All right. Just get it together, and
25 we'll mark them.

ROUGH DRAFT TRANSCRIPT

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1 MR. O'KEEFE: I got it together. It just means to
2 be copied. It's good.

3 THE COURT: All right. Well, go ahead. Mr. -- you
4 want to help him out, Mr. Maningo?

5 MR. MANINGO: I -- he -- Mr. O'Keefe brought them in
6 this morning. We met last night. He told me about them.

7 THE COURT: All right. Well --

8 MR. MANINGO: And so --

9 MR. O'KEEFE: I [inaudible] all weekend.

10 MR. MANINGO: -- we're in the process of --

11 THE COURT: I just want to have them marked.

12 MR. MANINGO: Absolutely, Your Honor. We're in the
13 process of getting those copied now.

14 THE COURT: Oh, you're getting them copied. All
15 right.

16 MR. MANINGO: Yes.

17 MR. O'KEEFE: Okay.

18 MS. MERCER: It's already gone --

19 THE COURT: Well, you want to respond Mr. Lalli?

20 MR. MANINGO: -- out the door.

21 THE COURT: -- Mr. Lalli?

22 MR. LALLI: Yes, Your Honor. During the course of
23 the first trial, the defendant was charged with open murder,
24 which, as the Court knows, includes the charge of first degree
25 murder and second degree murder. The Court gave an

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1 instruction on second degree felony murder, which is a
2 different theory of second degree murder. The jury also
3 returned a verdict of second degree murder.

4 When that case was appealed to the Nevada Supreme
5 Court, the Nevada Supreme Court said that there was no
6 evidence of felony second degree murder in the record. And
7 because they could not ascertain which theory of second degree
8 murder the jury relied upon, they reversed the conviction.

9 Mr. O'Keefe believes mistakenly that the Nevada
10 Supreme Court in their order of reversal said that the State
11 was precluded from proceeding on any theory of second degree
12 murder, which is simply not the case. We still have available
13 to us a theory of second degree malice murder, and that is the
14 theory upon which we are proceeding.

15 Mr. O'Keefe brought the same motion that he's making
16 to Your Honor before Judge Villani. That motion was denied.
17 There's nothing that precludes us from proceeding on a second
18 degree malice murder theory, which is what we're proceeding
19 on.

20 THE COURT: And what about this federal -- he still
21 has that availability, no --

22 MR. LALLI: That's available --

23 THE COURT: -- matter if we go forward or not today.

24 MR. LALLI: That is available to him. The defendant
25 filed in front of Judge Navarro a petition, raising the same

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1 issues. He believes -- Judge Navarro believed it had merit.
2 She was so impressed by the petition that she didn't even
3 order the government to respond. She summarily denied it.

4 The Supreme -- the Ninth Circuit thereafter found an
5 issue of an appealability. So, they allowed the defendant to
6 appeal. However, they apparently are not all that impressed
7 by it either, because they are aware that this trial is
8 proceeding, and they elected twice not to stay it. So what it
9 does --

10 THE COURT: So, the federal -- federal did not stay
11 this proceeding. They could have. They could have stayed it,
12 if they were impressed, as you say.

13 MR. LALLI: That's correct. But he still does have
14 the ability to fully litigate that issue in the Ninth Circuit.
15 He was appointed a federal defender to do that, to represent
16 him in the Ninth Circuit. So, that is an issue that's running
17 it's course.

18 THE COURT: So, irregardless of what the jury's
19 decision -- if we go to trial; guilty, not guilty, he still
20 has a -- if it's guilty, he still has the right to get that
21 reversed on the federal, if they want to do it?

22 MR. LALLI: Yes, sir.

23 THE COURT: So, we're not hurting his rights in any
24 way regarding that.

25 MR. LALLI: Correct.

ROUGH DRAFT TRANSCRIPT

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1 THE COURT: And Judge Villani did deny this motion
2 twice?

3 MR. LALLI: He did.

4 THE COURT: All right.

5 MR. LALLI: He denied this particular motion once.

6 THE COURT: Once. All right.

7 MR. O'KEEFE: Your Honor, if I may have one quick,
8 small rebuttal to that.

9 THE COURT: Yeah.

10 MR. O'KEEFE: Okay. Firstly, I'm going to request
11 -- and I don't claim to be some mastermind attorney, or
12 nothing like that. I'm fighting for my life. I'm trying my
13 best. I'm not trying to say -- out-know you in the law, or
14 Mr. Lalli, or anything like that. So, please understand that.
15 I'm just really trying to fight.

16 I'm going to ask that all objections during the
17 court, if it proceeds, be federalized by Your Honor. What
18 harm would it be, since I'm in the Ninth Circuit already, and
19 it's going to be -- everything's being addressed.

20 THE COURT: I don't know. Just -- do you have any
21 objection to that?

22 MR. LALLI: I do, Your Honor. That's contrary to
23 established State law. In death penalty litigation,
24 defendants always file a motion to federalize all objections,
25 and the Court's routinely deny them.

ROUGH DRAFT TRANSCRIPT

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1 THE COURT: Okay.

2 MR. LALLI: If there is an objection that the
3 defendant has, he's required to make it. Blanket objections
4 are not allowed in our State jurisprudence, and then the Court
5 is required to rule on that.

6 THE COURT: Okay. Go ahead.

7 MR. O'KEEFE: Well, as the time -- you know, it
8 would cause me to have to hold up, cite some state law; this
9 and that, and this and this. You know. I just don't see
10 what's the harm. It's a simple procedure. I mean, why not
11 just grant that? And I'll let you decide on that.

12 But I want to move on to the other issue, Your
13 Honor, and let you have -- okay. In his argument, he said
14 that it was the felony murder theory. Your Honor, who are we
15 kidding here? It doesn't matter whether it was felony murder,
16 malice murder, whatever. Murder is murder. The means, that
17 has -- that doesn't matter. It's still -- murder is murder,
18 for double jeopardy purposes. Okay?

19 The issue on the felony murder instruction. Again,
20 the State themselves in the fast track response, which Mr.
21 Lalli doesn't want to recognize -- Steven Owens; when he
22 answered that issue that the Supreme Court decided in my
23 favor, he said, what are you guys talking about? And it's in
24 the copies that I'm having copied. I gave a copy of the fast
25 track response.

ROUGH DRAFT TRANSCRIPT

000170

1 Issue 2. He says, that's nothing more than implied
2 malice murder. We have a right to show how second degree
3 murder can be found, by malice implied. And then, they even
4 state that -- instruction 13 states, you must remember the
5 rule. Murder was by malice aforethought, either expressed or
6 implied. First degree was expressed malice murder. Second
7 degree was by implied.

8 Again, my whole point is, the State admits in the
9 fast track response, we don't know what you guys are talking
10 about; that instruction was nothing but implied malice murder.
11 Okay. How ironic again, nowadays, Your Honor, he's on the
12 fast track to answer the federal public defender. He's got to
13 do the appeal again for the State of Nevada. And he's already
14 addressed it.

15 How ironic; it's come full-circle. Over three years
16 ago, he did the fast track response. Now, he's got to answer
17 that issue again, and he's already made a judicial admission.
18 It's just going to be something to see.

19 Also, what I'm getting at is jury instruction 18,
20 which -- that's why I wanted a copy, I wanted to show you. If
21 you could just look at it. Theory 1 that Mr. Lalli is trying
22 to proceed on is malice murder. Second degree murder is
23 murder is malice aforethought, without premeditation and
24 deliberation. That's just the statutory definition of malice
25 murder.

ROUGH DRAFT TRANSCRIPT

000171

1 Okay. Then, on the first trial theory number 2 was,
2 an involuntary killing that happens in the commission of an
3 unlawful act; blah, blah, blah, blah. The Nevada Supreme
4 Court said, the evidence didn't support in theory number 2
5 what you were addressing. Your Honor, please hear this. You
6 are a senior judge.

7 The law says -- Kmart vs. Washington. Any remaining
8 theory left on that charge, if the evidence would have
9 supported it, the appellate court was bound to say, well,
10 okay, it didn't support number 2, but we're going to say it
11 supports the statutory definition of second degree murder.

12 He's proceeding right now the same as the second
13 trial. He has not noticed me with an unlawful act. I don't
14 even know how to do my jury instructions. He's -- I'm
15 acquitted of --

16 THE COURT: You're repeating yourself now, Mr.
17 O'Keefe.

18 MR. O'KEEFE: Okay.

19 THE COURT: You've made your record. I can't be
20 here all day with this.

21 MR. O'KEEFE: Right.

22 THE COURT: I mean, I try --

23 MR. O'KEEFE: Well, I have to make this, Your Honor.

24 THE COURT: Well, you did. But you're repeating --

25 MR. O'KEEFE: Okay.

ROUGH DRAFT TRANSCRIPT

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1 THE COURT: -- and repeating the same thing. I
2 don't see a -- if I federal (sic), you still have a right to
3 give your reasoning for either -- is there going to be a
4 problem with the State to do that?

5 MR. O'KEEFE: Gees, work with me.

6 THE COURT: Mr. Lalli?

7 MR. LALLI: Your Honor, we -- it is, in effect, a
8 blanket objection.

9 THE COURT: All right.

10 MR. LALLI: If he has an objection to --

11 THE COURT: All right.

12 MR. LALLI: -- something, he's got to make it.

13 THE COURT: The federalization is denied, and we
14 have to make a record on that. You know, we can go on all day
15 on this. I heard what you had to say. I'm going to allow you
16 to make your exhibits part of the record. I guess we'll style
17 it a motion to dismiss because it's double jeopardy.

18 This was ruled on before by Judge Villani. It's in
19 the federal system. You have your remedy, no matter what
20 happens here. Nobody can take away your federal remedy, your
21 fast track remedy. But I'm going to -- in all due respect,
22 have to deny it here.

23 MR. O'KEEFE: Okay, Your Honor.

24 THE COURT: Now, the question here was this battery,
25 which Judge Villani already ruled on. You want to say

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1 anything regarding that, the prior --

2 MR. O'KEEFE: Yes, Your Honor.

3 THE COURT: Well, do it.

4 MR. O'KEEFE: Thank you. I was going to -- okay, I
5 was waiting for you patiently to --

6 THE COURT: I made the ruling.

7 MR. O'KEEFE: Okay. As far as the battery, Your
8 Honor -- God bless her soul; she's not here. She's dead. I
9 have the right to confront her about it, because she was very
10 mentally ill. The testimony given -- nobody knew at the time
11 when she made it, it wasn't -- it was basically -- she was
12 mentally ill. Again, I'm --

13 THE COURT: I don't think that addresses that issue.
14 Again, the issue is --

15 MR. O'KEEFE: You said the battery.

16 THE COURT: -- the prior --

17 MR. O'KEEFE: Battery domestic violence.

18 THE COURT: Judge Villani ruled on that you're
19 allowed to bring into the jury the prior felony conviction for
20 battery domestic violence, third offense.

21 MR. LALLI: That's correct, as well as the facts --

22 THE COURT: As well as the facts.

23 MR. LALLI: -- supporting that conviction.

24 THE COURT: So, Judge Villani already ruled on it.
25 He has a record on it. If Judge Villani is wrong, he's wrong.

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1 It will be appealed, and it will be reversed. But I don't
2 want to revisit Judge Villani's decision on that, but do you
3 want to say anything regarding just that one narrow issue,
4 that they're not allowed to bring in to the front of the jury
5 this --

6 MR. O'KEEFE: Okay. Believe me, I'm under the gun
7 in this, and I understand I chose this, Your Honor. Okay.
8 Dealing with that particular felony battery domestic violence,
9 C-207835, the State of Nevada, on February 10th, 2009, held a
10 Petrocelli hearing, and they listed all of my battery domestic
11 violences, and the one felony battery domestic violence.

12 They litigated the death out of it, and it was
13 finally resolved day one of trial, March 16th, 2009. Judge
14 Villani, since it was -- they were proceeding on first degree
15 intentional murder -- and Mr. Lalli is well aware of this. He
16 wasn't the prosecutor at that time. It was Mr. Smith, who is
17 now over at the federal court.

18 Judge Villani says, I'm going to allow that federal
19 battery domestic violence in for the purpose of motive and
20 intent.

21 THE COURT: Um-hum.

22 MR. O'KEEFE: And I took the stand.

23 THE COURT: I don't know if he said --

24 MR. O'KEEFE: But somehow, they brought it in.

25 THE COURT: He didn't say if you took the stand. He

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1 didn't say that. But I mean, he mentioned --

2 MR. O'KEEFE: They allowed --

3 THE COURT: -- that also about --

4 MR. O'KEEFE: I wasn't -- Your Honor --

5 THE COURT: -- also for self-defense.

6 MR. O'KEEFE: Yes, Your Honor. And I don't mean --
7 I wasn't finished. They end up bringing it in their case in
8 chief. Okay.

9 Now, my point is, that issue was decided on, I did
10 no battery. I did no battery act. Ashe vs. Swenson. They
11 cannot [inaudible] anything to do with battery, Your Honor.
12 The Nevada Supreme Court is going to say, what did you guys
13 do? Mr. O'Keefe repeatedly brought this up --

14 THE COURT: All right, well --

15 MR. O'KEEFE: But we should stop it now. But
16 anyway, then, the second trial proceeds. He brings all the
17 stuff in; gets away with it. I'm telling him -- what are you
18 doing? But he got away with it. Well, we went to a -- they
19 scheduled a third trial, because of the mistrial. Of course,
20 a nugatory proceeding. It's like it never happened.

21 Ms. Mercer, schedule was late. Two days after
22 calendar call, another Petrocelli hearing on the exact same
23 acts, which again are in the motion I'm asking to get copied.
24 They re-litigated two days late. After the original calendar
25 call had been set for six months, seven months, they scheduled

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1 a hearing on Petrocelli to try to scare me. Who are we
2 kidding? Stop it. That's -- it's the truth.

3 They're going to bring all this stuff -- all this
4 stuff [inaudible]. It's the same evidence they already
5 re-litigated. Issue of preclusion, claim for preclusion.
6 Five Star vs. Nevada (phonetic). Oh my God, they have done
7 everything wrong. They were trying to scare me. And I
8 brought up per EDCR rule 3.28, any motion has to be scheduled
9 at least by calendar call. Come on, Your Honor. That's --
10 they --

11 THE COURT: Judge Villani ruled on it, though. I
12 don't know what to tell you. I'm not going to reverse Judge
13 Villani right now. He ruled on it. You made that same
14 argument, I guess, and he made a ruling.

15 MR. O'KEEFE: And --

16 THE COURT: So, that's the law of the case, as far
17 as I'm concerned.

18 MR. O'KEEFE: The trial court decisions do not
19 constitute the law of the case, is what I'm trying to say.

20 THE COURT: Well, you object to that, but I'm going
21 to allow you to do that. All right, Mr. -- because that's
22 what Judge --

23 MR. O'KEEFE: I'm going to object heavily, Your
24 Honor.

25 THE COURT: That's what Judge -- well, you did. You

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1 made it part of the record. You objected. And you could --

2 MR. O'KEEFE: And I'm being forthright --

3 THE COURT: So, I don't know what to tell you.

4 MR. O'KEEFE: -- with you, Your Honor. With all due
5 respect, he tries to bring in any evidence with battery -- I'm
6 going to object during the trial.

7 THE COURT: I don't care if you object.

8 MR. O'KEEFE: I'm going to object until I'm blue in
9 the face to everything. It's the same standard of proof.
10 It's the same level.

11 THE COURT: Thank you very much. You can't --

12 MR. O'KEEFE: Thank you, Your Honor.

13 THE COURT: -- object until you're blue in the face.

14 MR. O'KEEFE: Thank you, Your Honor.

15 THE COURT: You make an objection, Mr. Lalli
16 responds, and I make a ruling. There's no objection until
17 you're blue in the face, because then that's a disruption of
18 the courtroom. And I can't allow in my court a disruption of
19 the courtroom. I can't allow that. I can't allow you to run
20 this trial.

21 I could give you a fair trial, give the State a fair
22 trial, allow you to object, make a record. But I can't allow
23 you to go blue in the face, because that would be a farce
24 then, and I won't allow that. So, anything else, Mr. Lalli?

25 MR. LALLI: Not on behalf of the State, Your Honor.

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1 THE COURT: All right. So, we're all set to bring
2 in the jury now; is that correct, Mr. Lalli?

3 THE MARSHAL: Mr. Lalli.

4 THE COURT: We're all set to bring in the jury?

5 MR. LALLI: Yes, Your Honor. Yes.

6 THE COURT: And you will give me that limiting
7 instruction when you --

8 MR. LALLI: Your Honor, I can email it to -- I have
9 it here. I can email it to --

10 THE COURT: Yeah. All right, [inaudible].

11 MR. LALLI: And should I copy Mr. Maningo on that?

12 THE COURT: Yeah, please.

13 MR. LALLI: It's the same instruction that --

14 THE COURT: Fine. All right. So, we're going to
15 bring in the jury now; is that correct? All right. We'll
16 bring in the jury. Put -- you know, 1 through 7.

17 THE MARSHAL: 1 through 12. Judge, on the second
18 page of your juror sheet, at the very bottom, 0060, I believe
19 it is, Carmen Romero, she's the only one that's not present.

20 THE COURT: Okay.

21 THE MARSHAL: Everybody else is present.

22 THE COURT: All right.

23 THE MARSHAL: All right.

24 THE COURT: Thank you.

25 THE MARSHAL: All right. Here we go.

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1 (Pause in the proceedings)

2 THE MARSHAL: Officers and members of the court,
3 Department 17 potential jurors.

4 (Within the presence of the prospective jury panel)

5 (Pause in the proceedings)

6 THE MARSHAL: Okay. Did you guys stay in sequence?
7 Something didn't go right. Somebody got out of sequence.
8 Carol, give me the first 12.

9 THE CLERK: Mr. Swift.

10 PROSPECTIVE JUROR NO. 001: Here.

11 THE CLERK: Collins, Stutz, Guzman-Mollinedo,
12 MacQueen, Andrade, Roche, Hulbert, Hagl, Humphries, Patton.

13 THE MARSHAL: Patton. What's the last name; Patton?

14 PROSPECTIVE JUROR NO. 013: Patton.

15 THE CLERK: P-a-t-t-o-n.

16 THE MARSHAL: Patton.

17 (Pause in the proceedings)

18 THE CLERK: We need 12.

19 THE MARSHAL: 8, 10, 11 --

20 THE CLERK: We need --

21 THE MARSHAL: -- and [inaudible].

22 THE CLERK: We need 12.

23 THE MARSHAL: And what's your last name?

24 PROSPECTIVE JUROR NO. 014: Leming.

25 THE MARSHAL: Is Leming the next person?

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1 THE CLERK: Yes.

2 THE MARSHAL: All right.

3 (Pause in the proceedings)

4 THE MARSHAL: All right. You may be seated, ladies
5 and gentlemen. Carol, can you do a roll call?

6 (Roll of jury called by clerk)

7 (Pause in the proceedings)

8 THE MARSHAL: Okay. Is there anybody that had --
9 needs hearing assist? Huh?

10 UNKNOWN MALE SPEAKER: I believe I do.

11 THE MARSHAL: Yeah. Need hearing -- hearing assist.
12 Was there somebody else over here? Okay. When they approach
13 the bench -- when you see the attorneys go up to the bench,
14 then I need you to pull them off, okay?

15 UNKNOWN MALE SPEAKER: Pull them off?

16 THE MARSHAL: Yeah, take them off your ears.

17 (Pause in the proceedings)

18 THE MARSHAL: Okay. I think we're ready. Are you
19 ready? Defense, you ready?

20 MR. O'KEEFE: Yes, Marshal.

21 THE MARSHAL: State?

22 MR. LALLI: Yes.

23 (Pause in the proceedings)

24 THE MARSHAL: All rise and come to order.
25 Department 17 of the Eighth Judicial District is now in

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1 session. The Honorable Judge Joseph Bonaventure is presiding.
2 You may be seated. Remain in order. Please make sure your
3 cell phones are all off.

4 THE COURT: All right. This is the time set for
5 trial in case number C-250630, State of Nevada vs. Brian Kerry
6 O'Keefe. Introduce yourselves, State, for the record, to the
7 jury.

8 MS. MERCER: Your Honor, do you want me to --

9 THE COURT: Just introduce yourself.

10 MS. MERCER: -- do the whole introduction? Okay.

11 I'm Deputy District Attorney Liz Mercer, and I'm
12 prosecuting the case with Chief Deputy District Attorney
13 Christopher Lalli.

14 THE COURT: Thank you. And also, we have the
15 defendant, Mr. Brian Kerry O'Keefe. And he's here, and he's
16 representing himself. We do have a standby attorney, and
17 introduce yourself, sir.

18 MR. MANINGO: My name is Lance Maningo, and I'm
19 serving as standby counsel for Mr. O'Keefe.

20 THE COURT: Thank you, Mr. Maningo.

21 MR. MANINGO: Thank you, sir.

22 THE COURT: So, State's ready to proceed.
23 Defendant, we're ready to proceed?

24 MR. O'KEEFE: Yes, Your Honor.

25 THE COURT: The clerk will call the roll of the jury

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1 panel members. When your name is called, please state "here"
2 or "present" so we know you're here.

3 (Pause in the proceedings)

4 THE COURT: All right. Apparently, the clerk has
5 already called the roll. Do we need to do it again, Mr.
6 Lalli?

7 MR. LALLI: No, Your Honor. I'll accept the
8 bailiff's --

9 THE COURT: Okay. Do we need to do it again, Mr.
10 O'Keefe? She already called the roll of the jury.

11 MR. O'KEEFE: No, Your Honor. That's okay. We can
12 move along, sir.

13 THE COURT: All right. Thank you very much.

14 MR. O'KEEFE: Yes, sir, Your Honor.

15 THE COURT: I appreciate it. I'm going to ask the
16 clerk to swear -- we have the prospective jurors behind the
17 railing, and we have the prospective jurors -- excuse me. In
18 the jury box, and behind the railing. Everybody, please stand
19 up, raise your right hand, and be sworn.

20 PROSPECTIVE JURY PANEL SWORN

21 THE COURT: Thank you very much. You can be seated.
22 I'm going to ask the -- I'm going to ask the district attorney
23 to briefly state the nature of this case, and indicate the
24 possible witnesses that you might call in this case. They
25 might not call everybody, but they're going to indicate some

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1 possible witnesses. So, I'd like the jury to be cognizant of
2 the witnesses, because I'm going to ask if any of the jurors
3 know these witnesses. Ms. Mercer?

4 MS. MERCER: Thank you, Your Honor.

5 Ladies and gentlemen, the specific allegation in
6 this case is that on November 5th of 2008 at 5001 El Parque
7 Avenue, apartment 35, the defendant committed the crime of
8 second degree murder with use of a deadly weapon, when he
9 stabbed Victoria Whitmarsh with a knife.

10 The witnesses that the State intends to call at this
11 point to prove that allegation include Cheryl Morris, Joyce
12 Toliver, Charles Toliver, also known as "Cookie;" Jimmy
13 Hathcox.

14 Officer Christopher Hutcherson of the Las Vegas
15 Metropolitan Police Department, Detective Todd Conn of the Las
16 Vegas Metropolitan Police Department, Sergeant Dan Newberry of
17 the Las Vegas Metropolitan Police Department, Detective
18 Jeremiah Ballejos with the Las Vegas Metropolitan Police
19 Department.

20 Crime Scene Analyst Jocelyn Maldonado with the Las
21 Vegas Metropolitan Police Department, Crime Scene Analyst
22 Daniel Ford with the Las Vegas Metropolitan Police Department,
23 Crime Scene Analyst Robbie Dahn with the Las Vegas
24 Metropolitan Police Department.

25 Dr. Timothy Dutra, a medical examination with the

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1 Clark County Coroner's Officer. Edward Guenther, a latent
2 print examiner with Metro's forensic lab. Jennifer Bas, a DNA
3 analyst with the forensic lab. Detective Marty Wildemann, a
4 homicide detective with Las Vegas Metropolitan Police
5 Department. Elynne Wornicov (phonetic) Greene; she's a
6 victim's advocate at Metro. And Lieutenant Roger Price..

7 Additional witnesses that may be called include
8 Detective Sean Taylor with Las Vegas Metropolitan Police
9 Department, Detective Christopher Bunn, another homicide
10 detective; and Crime Scene Analyst Chelsea Collins.

11 THE COURT: Thank you, Ms. Mercer. Now, Mr.
12 O'Keefe, you want to stand up, introduce yourself, and say hi
13 to the --

14 MR. O'KEEFE: Yes.

15 THE COURT: -- prospective jurors, and indicate --
16 you know, this is not an opening statement. Just a --

17 MR. O'KEEFE: Yes, Your Honor.

18 THE COURT: So, if you want to introduce yourself,
19 that's fine.

20 MR. O'KEEFE: Thank you. Hi, folks. My name is
21 Brian O'Keefe. A tragedy happened on November 5th. You're
22 here to be selected to hear the case. It's going to be a
23 brief case, folks. The only witnesses I may call would be a
24 Dorothy Robe (phonetic), a Robert Pizzano (phonetic), a Lou
25 Desalvio (phonetic), and Tracy Burger (phonetic). If anybody

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1 knows those people, please let us know. Other than that, I
2 thank you.

3 THE COURT: Thank you, Mr. O'Keefe. I appreciate
4 it. I'm going to read this to you before, because you know --
5 I usually don't do this. But -- and I'll probably state this
6 again when we get the initial 12 people, or the final 12.

7 Understand that an information or an indictment is
8 simply a charge, and that it is not in any sense evidence of
9 allegations it contains. The defendant has plead not guilty
10 -- there's an information? I guess there's an information,
11 right?

12 THE CLERK: Second amended information.

13 THE COURT: Yeah. All right. So, the information -
14 - the State therefore has the burden of proving each of the
15 essential elements of the information beyond a reasonable
16 doubt. As the defendant sits there right now, he's not
17 guilty. The purpose of this trial is to determine whether the
18 State will meet that burden.

19 It is your primary responsibility as jurors to find
20 and determine the facts. Under our system of criminal
21 procedure, you are the sole judge of the facts. You are to
22 determine the facts from the evidence you hear, and other
23 evidence, including exhibits introduced in court. It is up to
24 you to determine the inferences which you feel may be properly
25 drawn from the evidence.

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1 Parties may sometimes present objections to some of
2 the testimony or other evidence. It is the duty of each party
3 to object to evidence which he or she believes may not
4 properly be offered, and you should not be prejudiced in any
5 way against anybody -- any of the parties who make objections
6 on behalf of themselves.

7 At times, I may sustain objections, or direct that
8 you disregard certain testimony or exhibits. You must not
9 consider any evidence to which an objection has been
10 sustained, or which I have instructed you to disregard.

11 In considering the weight and value of the testimony
12 of any witness, you may take into consideration the
13 appearance, attitude, and behavior of the witness, the
14 interest of the witness in the outcome of the case, if any,
15 the relationship of the witnesses to the defendant or the
16 State, the inclination of the witness to speak truthfully or
17 not, and the probability or improbability of the witness's
18 statements, and all of the facts and circumstances in
19 evidence.

20 Thus, you may give the testimony of any witness such
21 weight and value as you believe the testimony of the witness
22 is entitled to receive. It is for you to decide how much
23 weight to give to any evidence.

24 After the jury selection, we'll have an opening
25 statement by the State; perhaps by the defense. State's

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1 evidence; possibly defense evidence. Jury instructions, and
2 closing arguments.

3 Until this case is submitted to you, you must not
4 discuss it with anyone, even with your fellow jurors. After
5 it is submitted to you, you must discuss it only in the jury
6 room with your fellow jurors. It is important that you keep
7 an open mind, and not decide any issue in this case until the
8 entire case has been submitted to you under instruction from
9 me.

10 If you can't hear a witness, raise your hand. And
11 that goes for voir dire. Please keep your voice up, because
12 everything that's said is made part of the record. And that's
13 about what I want to say here.

14 Now, I'm going to ask a few questions to the entire
15 panel. Are any of you acquainted with the defendant in this
16 case, Mr. O'Keefe? Negative. Or Mr. Maningo, standby
17 counsel? Negative. Or Mr. Christopher Lalli or Ms. Mercer
18 from the district attorney's office? All negative.

19 Any of the -- acquainted with any of the witnesses
20 that Ms. Mercer mentioned she might call? Negative. Any of
21 you acquainted -- again, the defense doesn't have any burden
22 of proof in this case. They don't have to call any witnesses.
23 Mr. O'Keefe doesn't have to take the stand, but I'll get into
24 that with instructions. But he did mention a few witnesses.
25 Any of you acquainted with the witnesses that Mr. O'Keefe

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1 mentioned? All negative. Somebody --

2 THE MARSHAL: We got one hand.

3 THE COURT: One hand. Please stand up. State your
4 name and your jury ID number.

5 PROSPECTIVE JUROR NO. 055: Krista Frandsen, 0055.

6 THE COURT: And who do you think you know?

7 PROSPECTIVE JUROR NO. 055: Lou Desalvio (phonetic).

8 THE COURT: How do you know --

9 PROSPECTIVE JUROR NO. 055: My fiancé knows him.

10 THE COURT: What?

11 PROSPECTIVE JUROR NO. 055: My fiancé knows him.

12 THE COURT: All right. If you're brought up here,
13 I'm sure they'll discuss that with you. Thank you. Anybody
14 else? No? All right.

15 Again, it's hard to determine how long a jury trial
16 is going to last. But probably it will be -- I mean, we have
17 -- I'll give you a schedule when we do pick the final jury.
18 But probably Thursday, Friday, maybe goes into Monday; I don't
19 know. But that's about the length of the case, hopefully. We
20 can't give an entire case until we go into it a little
21 further.

22 Again, I'm Judge Joe Bonaventure. I'm here to
23 preside over this case. And what we're going to do now is
24 we're going to try to pick a completely fair and impartial
25 jury, both to the State and to the defense. And we do that by

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1 asking some questions. I'll ask most of the questions. The
2 State and Mr. O'Keefe have a right to follow up with
3 questions. But all -- and we're not trying to pry into your
4 personal affairs. We're just trying to get a completely fair
5 and impartial jury. So, just bear in mind that.

6 I'm just going to -- I guess I'll start with -- is
7 it Quinn Swift? Quinn is your first name?

8 PROSPECTIVE JUROR NO. 001: Correct.

9 THE COURT: All right. How long you been in this
10 area, sir?

11 PROSPECTIVE JUROR NO. 001: Six years.

12 THE COURT: And what do you do for a living?

13 PROSPECTIVE JUROR NO. 001: I work for Allegient
14 Air.

15 THE COURT: For what?

16 PROSPECTIVE JUROR NO. 001: Allegient Air.

17 THE COURT: Okay. I don't quite understand
18 Allegient Air. What does that mean?

19 PROSPECTIVE JUROR NO. 001: Airline out of Las
20 Vegas, Nevada.

21 THE COURT: Okay, you work for an airlines.

22 PROSPECTIVE JUROR NO. 001: I work for an airline.

23 THE COURT: And what do you do for the airline?

24 PROSPECTIVE JUROR NO. 001: I'm a pilot.

25 THE COURT: All right. Are you married?

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1 PROSPECTIVE JUROR NO. 001: I'm married.
2 THE COURT: Does your wife work?
3 PROSPECTIVE JUROR NO. 001: She does.
4 THE COURT: What does she do?
5 PROSPECTIVE JUROR NO. 001: She works at the Cosmo.
6 The Cosmopolitan.
7 THE COURT: The hotel?
8 PROSPECTIVE JUROR NO. 001: Yeah.
9 THE COURT: What does she do there?
10 PROSPECTIVE JUROR NO. 001: Reservations.
11 THE COURT: Okay. Try to keep that up to your
12 mouth.
13 PROSPECTIVE JUROR NO. 001: Sorry.
14 THE COURT: All right. Do you have any children?
15 PROSPECTIVE JUROR NO. 001: No.
16 THE COURT: All right. Are you acquainted with
17 anybody in law enforcement?
18 PROSPECTIVE JUROR NO. 001: No, I'm not.
19 THE COURT: Have you ever been in the military?
20 PROSPECTIVE JUROR NO. 001: Yes.
21 THE COURT: What branch, what year, and what did you
22 do?
23 PROSPECTIVE JUROR NO. 001: I was in the National
24 Guard. I was a prop and rotor mechanic from 1990 to '94.
25 THE COURT: All right. Nothing to do with military

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1 police or anything?

2 PROSPECTIVE JUROR NO. 001: Negative.

3 THE COURT: All right. Okay. Have you or anyone
4 closely associated with you ever been the victim of a crime?

5 PROSPECTIVE JUROR NO. 001: I guess so. I've been
6 pick-pocketed --

7 THE COURT: Yeah.

8 PROSPECTIVE JUROR NO. 001: -- in another country,
9 yeah. So.

10 THE COURT: All right. In another country?

11 PROSPECTIVE JUROR NO. 001: Yeah.

12 THE COURT: Okay. Did they catch the individual?

13 PROSPECTIVE JUROR NO. 001: No.

14 THE COURT: All right. You reported it, but nothing
15 happened; is that right?

16 PROSPECTIVE JUROR NO. 001: Correct.

17 THE COURT: All right. That's not going to affect
18 your deliberation --

19 PROSPECTIVE JUROR NO. 001: No.

20 THE COURT: -- in this case?

21 PROSPECTIVE JUROR NO. 001: No.

22 THE COURT: Have you or anyone closely associated
23 with you ever been arrested for a crime?

24 PROSPECTIVE JUROR NO. 001: No.

25 THE COURT: Have you ever served on a jury before?

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1 PROSPECTIVE JUROR NO. 001: I have not.

2 THE COURT: If --

3 PROSPECTIVE JUROR NO. 001: I do have a quick
4 question, by the way.

5 THE COURT: Yeah.

6 PROSPECTIVE JUROR NO. 001: Due to a recent short
7 sale approval, I'm not going to be a Nevada resident next
8 week. So, that sort of happened last-minute, and I wanted to
9 ask that before we ask a whole bunch of other questions. If
10 that disqualifies me or not, I don't know.

11 THE COURT: No, that doesn't disqualify you, sir.
12 As of right now, you are --

13 PROSPECTIVE JUROR NO. 001: Correct.

14 THE COURT: That's fine. So, as far as -- you know,
15 I don't like going into jury, you know, instructions. I'll
16 instruct you as what the law is on this particular case at the
17 right time if you're picked as a juror; you understand that?

18 PROSPECTIVE JUROR NO. 001: Yeah.

19 THE COURT: But you understand that if you're picked
20 as a juror, the clerk will read to you the information in this
21 case against Mr. O'Keefe. And you understand, that's just a
22 mere charging document, and not evidence; you understand that?

23 PROSPECTIVE JUROR NO. 001: Correct.

24 THE COURT: And in fact, you'll hear that, to which,
25 Mr. O'Keefe plead not guilty. So, it's just a charging

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1 document and not evidence.

2 PROSPECTIVE JUROR NO. 001: Understood.

3 THE COURT: Really, the rule is in 50 states that
4 it's incumbent upon the State of Nevada to prove the defendant
5 guilty beyond a reasonable doubt. You understand that?

6 PROSPECTIVE JUROR NO. 001: Yes.

7 THE COURT: You know, Mr. O'Keefe sits here cloaked
8 with the presumption of innocence. He's innocent. And in
9 fact, he has no burden. He doesn't have to call witnesses, he
10 doesn't have to take the stand. That's the law in 50 states,
11 all of the United States. And you'll abide by that law?

12 PROSPECTIVE JUROR NO. 001: Yes.

13 THE COURT: And so, if you're picked as a juror,
14 you'll follow my instructions of court; is that correct?

15 PROSPECTIVE JUROR NO. 001: Correct.

16 THE COURT: Instructions of law.

17 PROSPECTIVE JUROR NO. 001: Correct.

18 THE COURT: You could be fair in this case?

19 PROSPECTIVE JUROR NO. 001: I guess so, yes. I
20 don't have any reason not to be, yes.

21 THE COURT: All right. Well, that's all we care
22 about. Mr. Lalli, questions, pass for cause?

23 MR. LALLI: Just a few questions, Your Honor. Thank
24 you. Good morning, Mr. Swift. You -- can you explain for us
25 the extent of your education?

ROUGH DRAFT TRANSCRIPT

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1 PROSPECTIVE JUROR NO. 001: A bachelor's degree in
2 aviation technology, and flight training for becoming a pilot.

3 MR. LALLI: I'm sorry, the last part?

4 PROSPECTIVE JUROR NO. 001: And flight training for
5 becoming a pilot.

6 MR. LALLI: Where did you -- where did you learn to
7 fly?

8 PROSPECTIVE JUROR NO. 001: Metropolitan State
9 College of Denver.

10 MR. LALLI: And Allegient Air is a passenger
11 carrier, correct?

12 PROSPECTIVE JUROR NO. 001: Correct.

13 MR. LALLI: And so, do you -- you pilot planes with
14 passengers on board?

15 PROSPECTIVE JUROR NO. 001: Correct. Yes.

16 MR. LALLI: How long have you done that?

17 PROSPECTIVE JUROR NO. 001: I've been working for
18 Allegient for six years, and before that, it was another
19 carrier out in Hawaii. So, probably been doing it since about
20 2001.

21 MR. LALLI: During the course of your studies, did
22 you study psychology, sociology, any of those sciences?

23 PROSPECTIVE JUROR NO. 001: Only a little bit. Not
24 much.

25 MR. LALLI: Just a little bit, just the required

ROUGH DRAFT TRANSCRIPT

000195

1 courses; things of --

2 PROSPECTIVE JUROR NO. 001: The requisites.

3 MR. LALLI: -- that nature?

4 PROSPECTIVE JUROR NO. 001: Yeah.

5 MR. LALLI: Okay. You heard that Mr. O'Keefe is
6 charged with murder. When you learned that, what went through
7 your mind?

8 PROSPECTIVE JUROR NO. 001: The first thing that
9 went through my mind is I thought that might take an extra
10 long time for the jury.

11 MR. LALLI: I don't know if you've ever heard of
12 Judge Bonaventure.

13 PROSPECTIVE JUROR NO. 001: I have not.

14 MR. LALLI: The truth takes few words. That's one
15 of his mottos. He likes to keep things moving, so you're
16 fortunate in that regard.

17 PROSPECTIVE JUROR NO. 001: Well, that's good.

18 MR. LALLI: Is there a lot going on in your life
19 that might distract from your ability to be a juror?

20 PROSPECTIVE JUROR NO. 001: Well, I have to make
21 sure I have a move taken care of, and maintaining two
22 residence, and everything else. A lot going on in these next
23 couple of weeks. So, yes.

24 MR. LALLI: When -- tell us about the move. When
25 are you required to move?

ROUGH DRAFT TRANSCRIPT

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1 PROSPECTIVE JUROR NO. 001: It's so recent, I don't
2 have a firm closing date. It should be on the 25th. It's
3 tentative. And I have to be moved out by -- starting next
4 Tuesday, I need to start the move.

5 MR. LALLI: Okay. Judge Bonaventure indicated that
6 this trial would last a week, maybe a little bit into next
7 week. It seems like that's going to --

8 PROSPECTIVE JUROR NO. 001: It is a problem, but
9 yeah.

10 MR. LALLI: Well, it seems like it won't overlap
11 with the time that you have to move.

12 PROSPECTIVE JUROR NO. 001: May or may not. I don't
13 know. But there's preparations before the actual moving day.
14 I have to get back to Arizona to pick up my truck and my
15 trailer to get my stuff moved. I have two residences, and the
16 one here is the one that's getting sold, so.

17 MR. LALLI: So, you live in Nevada, and you also
18 have a --

19 PROSPECTIVE JUROR NO. 001: I work in Phoenix, and
20 I've been maintaining my residence in Las Vegas. But I've
21 been working in Phoenix for the last year and-a-half.

22 MR. LALLI: Okay. If I -- and this is for
23 everybody's benefit as well. Although there's no court
24 reporter here --

25 PROSPECTIVE JUROR NO. 001: Right.

ROUGH DRAFT TRANSCRIPT

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1 MR. LALLI: -- everything that you and I said to
2 each other is being recorded.

3 PROSPECTIVE JUROR NO. 001: Correct.

4 MR. LALLI: And ultimately, a transcript is going to
5 be made.

6 PROSPECTIVE JUROR NO. 001: Yes.

7 MR. LALLI: So, for everybody's benefit, if you
8 would wait until I finish my question before you answer, just
9 so we're not both talking over each other. It's unlike any
10 other scenario that you've been involved in, but it will make
11 a clear record, okay?

12 PROSPECTIVE JUROR NO. 001: Okay.

13 MR. LALLI: Do you have any difficulty with the
14 nature of the charge, the fact that it's a murder case?

15 PROSPECTIVE JUROR NO. 001: No. It just seems to
16 make it more important.

17 MR. LALLI: All right. And do you understand that
18 the State has the burden of proof in this case, just like
19 Judge Bonaventure indicated?

20 PROSPECTIVE JUROR NO. 001: Yes.

21 MR. LALLI: It's our responsibility to prove Mr.
22 O'Keefe's guilty beyond a reasonable doubt. Will you hold us
23 to that standard?

24 PROSPECTIVE JUROR NO. 001: Yes.

25 MR. LALLI: Because it's our burden of proof, if we

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1 fail in that, you are required to return a verdict of not
2 guilty. Can you do that?

3 PROSPECTIVE JUROR NO. 001: I believe so.

4 MR. LALLI: Okay. If we don't do what we're
5 supposed to do, are you going to have any problem returning a
6 verdict of not guilty?

7 PROSPECTIVE JUROR NO. 001: I don't believe -- no.

8 MR. LALLI: Do you understand that just because it's
9 a murder case, the State's burden of proof isn't any higher
10 than any other criminal case?

11 So, in other words, proof beyond a reasonable doubt
12 is our burden. And I'm sure you've heard that, and Judge
13 Bonaventure will instruct you as to what that means. But it's
14 the same burden, regardless of whether it's a murder case, or
15 a stolen vehicle case, or a speeding case. Do you understand
16 what I'm saying?

17 PROSPECTIVE JUROR NO. 001: Yeah, I understand that.

18 MR. LALLI: Will you hold us to that burden?

19 PROSPECTIVE JUROR NO. 001: Yes. It -- yes.

20 MR. LALLI: During the course of this trial, you are
21 going to hear evidence of spousal abuse. Have you ever heard
22 of the term domestic violence?

23 PROSPECTIVE JUROR NO. 001: Yes.

24 MR. LALLI: What does that mean to you?

25 PROSPECTIVE JUROR NO. 001: Potentially, where one

ROUGH DRAFT TRANSCRIPT

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1 of the spouses is abusing the other.

2 MR. LALLI: And it might be that the woman is
3 abusing the man, or the man is abusing the woman; would you
4 agree with that?

5 PROSPECTIVE JUROR NO. 001: Either one I guess is
6 possible.

7 MR. LALLI: All right. Some people have the idea
8 that domestic violence is a private issue between a man and a
9 woman. What do you think about that?

10 PROSPECTIVE JUROR NO. 001: Beating somebody up is
11 beating somebody up. So, it's not necessarily a private issue
12 anymore.

13 MR. LALLI: So, do you think that the government,
14 the State, law enforcement, has some responsibility to
15 intervene when that happens?

16 PROSPECTIVE JUROR NO. 001: Yes.

17 MR. LALLI: Do you believe that?

18 PROSPECTIVE JUROR NO. 001: As long as they don't
19 abuse their authority, yes.

20 MR. LALLI: Understood. That's always -- that's
21 always the case. Do you think that they do abuse their
22 authority?

23 PROSPECTIVE JUROR NO. 001: I can't say that I
24 haven't -- I believe they probably do sometimes, but I don't
25 have any examples.

ROUGH DRAFT TRANSCRIPT

000200

1 MR. LALLI: Okay. And that kind of segways into
2 another area that I wanted to talk to you about. During the
3 course of this case, you're going to hear from police
4 officers, members of the Las Vegas Metropolitan Police
5 Department.

6 Is there anything about the testimony of a police
7 officer that would cause you some concern; either you're going
8 to give them more weight, or maybe you're going to give them
9 less weight because they're a police officer?

10 PROSPECTIVE JUROR NO. 001: That's hard to tell. It
11 could go either way. Because I mean, I've had -- I guess as a
12 kid, I had more interactions with police officers than as an
13 adult. So, but I have -- back when I was much younger, some
14 traffic violations. I've read police reports. Sometimes
15 they're accurate, and sometimes, they are completely wrong.
16 So --

17 MR. LALLI: All right.

18 PROSPECTIVE JUROR NO. 001: They're people, too.

19 MR. LALLI: Okay. So, you're going to be given an
20 instruction on how you evaluate witnesses. I mean -- and you
21 kind of took the words out of my mouth in some sense. There
22 are some good police officers, and there are some bad police
23 officers. Would you have any problem evaluating the
24 credibility of a police officer?

25 PROSPECTIVE JUROR NO. 001: I guess not. It's a

ROUGH DRAFT TRANSCRIPT

000201

1 judgment call, so.

2 MR. LALLI: Right.

3 PROSPECTIVE JUROR NO. 001: Yeah.

4 MR. LALLI: Right. You're not going to give him any
5 more -- their testimony any more weight because they're a
6 police officer? Or would you automatically give them less
7 credibility just because they're a police officer?

8 PROSPECTIVE JUROR NO. 001: I think --

9 MR. LALLI: Where are you at?

10 PROSPECTIVE JUROR NO. 001: -- I'd treat them just
11 like any other human being. So, they would be no more or less
12 just because they have credentials, in my opinion.

13 MR. LALLI: Okay.

14 PROSPECTIVE JUROR NO. 001: They have some extra
15 training.

16 MR. LALLI: I wanted to talk to you a little more
17 about this idea of domestic violence.

18 MR. O'KEEFE: Objection, Your Honor. May I approach
19 the bench, please?

20 THE COURT: Sure. You going to put the conference
21 thing on? Somebody does that?

22 THE COURT RECORDER: Yeah.

23 THE COURT: All right.

24 (Off-record bench conference)

25 THE COURT: All right. Proceed, Mr. Lalli.

ROUGH DRAFT TRANSCRIPT

000202

1 MR. LALLI: Thank you. We were talking about
2 domestic violence. And I mean, Mr. Swift, you already
3 indicated you believe that law enforcement -- the government
4 has a right to get involved in that.

5 Do you think the community has responsibility in
6 that? Friends, neighbors? Do you think it's incumbent upon
7 friends and neighbors to maybe -- if they know the situation,
8 to intervene?

9 PROSPECTIVE JUROR NO. 001: Yes.

10 MR. LALLI: Why?

11 PROSPECTIVE JUROR NO. 001: Because people that
12 can't defend themselves need to be able -- need to have
13 someone else step in for them sometimes.

14 MR. LALLI: Do you think you can be fair to both the
15 State and the defense in this case?

16 PROSPECTIVE JUROR NO. 001: I believe so.

17 MR. LALLI: All right.

18 PROSPECTIVE JUROR NO. 001: Without knowing the
19 facts, it's --

20 MR. LALLI: Understood. And I'm not really talking
21 about facts. I mean, you're going to hear the facts, and then
22 ultimately, you would make a decision as to guilt or
23 innocence. But you don't come into this courtroom with any
24 life experience or life history that's going to make you
25 unfair to one side or the other? Do you think you're a fair

ROUGH DRAFT TRANSCRIPT

000203

1 person?

2 PROSPECTIVE JUROR NO. 001: Yes.

3 MR. LALLI: All right. Mr. O'Keefe is representing
4 himself. He has a constitutional right to do that. Do you
5 have any problem with him representing himself?

6 PROSPECTIVE JUROR NO. 001: No.

7 MR. LALLI: Okay. If we prove to you beyond a
8 reasonable doubt that he's guilty of second degree murder,
9 will you convict him?

10 PROSPECTIVE JUROR NO. 001: Yes.

11 MR. LALLI: Thank you. Your Honor, that -- we would
12 pass for cause.

13 THE COURT: All right. Questions; pass for cause,
14 Mr. O'Keefe?

15 MR. O'KEEFE: Yes. I have some questions, Your
16 Honor. It's Mr. Swift, correct?

17 PROSPECTIVE JUROR NO. 001: Yes.

18 MR. O'KEEFE: Okay. How are you, Mr. Swift?

19 PROSPECTIVE JUROR NO. 001: I'm all right.

20 MR. O'KEEFE: I'm going to be quick with all you
21 jurors, in actuality. I'm going to try to be very expeditious
22 in this matter, get a jury picked, and get everybody out of
23 here. I want to ask you first of all -- Mr. Lalli just
24 touched on it. Can you honestly say without a doubt that
25 you're not prejudiced against me, or biased against me for

ROUGH DRAFT TRANSCRIPT

000204

1 representing myself in this case, sir?

2 PROSPECTIVE JUROR NO. 001: No. I don't understand
3 why representing yourself or not makes a difference either
4 way, but.

5 MR. O'KEEFE: Some jurors feel that the defendant
6 thinks he's a hotshot, or something like that. If you folks
7 only know the passion that I have about this case. You
8 answered the question.

9 Now, I got to ask, does my hair make you prejudiced
10 or biased? This is not me -- this is for personal reasons,
11 sir. But it matters. Would you be biased or prejudiced
12 against me because of this? This is not what's in here. I
13 need to ask that.

14 PROSPECTIVE JUROR NO. 001: I don't believe it would
15 affect me in any way. I did notice it. It doesn't always
16 match the suit.

17 MR. O'KEEFE: Thank you for your honesty. You said
18 you were in the military?

19 PROSPECTIVE JUROR NO. 001: In the National Guard,
20 actually. Yes.

21 MR. O'KEEFE: Are you still in the military?

22 PROSPECTIVE JUROR NO. 001: No. Something I did not
23 cover, though, I'm also FFDO as a pilot. So, technically, I
24 guess that makes me a law enforcement officer, but not the
25 same as another law enforcement officer. I just get to carry

ROUGH DRAFT TRANSCRIPT

000205

1 a firearm in the flight deck.

2 MR. O'KEEFE: Okay. Do you have any family member,
3 Mr. Swift, a relative, a coworker, that's been diagnosed with
4 mental illnesses?

5 PROSPECTIVE JUROR NO. 001: No.

6 MR. O'KEEFE: Do you have a family member or a
7 friend, or anybody that had chronic cirrhosis of the liver,
8 and hep C, and depression problems?

9 PROSPECTIVE JUROR NO. 001: No, I don't.

10 MR. O'KEEFE: Have you ever had a family member or a
11 friend that was admitted to a psychiatric hospital?

12 PROSPECTIVE JUROR NO. 001: I had a friend in high
13 school that I believe was, but I don't know too much about it.

14 MR. O'KEEFE: That's all I'm going to ask at this
15 point, because there's going to be a lot more questions, and
16 let me re-compose. Thank you, sir.

17 THE COURT: All right. You pass for cause, Mr.
18 O'Keefe?

19 MR. O'KEEFE: Yes, sir.

20 THE COURT: Thank you. Victoria Collins?

21 PROSPECTIVE JUROR NO. 002: Yes.

22 THE COURT: How long have you been in this area?

23 PROSPECTIVE JUROR NO. 002: Going on ten years.

24 THE COURT: And what do you do for a living?

25 PROSPECTIVE JUROR NO. 002: I'm a school teacher.

ROUGH DRAFT TRANSCRIPT

000206

1 THE COURT: What grade?

2 PROSPECTIVE JUROR NO. 002: Seventh grade US
3 history.

4 THE COURT: All right. Are you married?

5 PROSPECTIVE JUROR NO. 002: No, I'm single.

6 THE COURT: Children?

7 PROSPECTIVE JUROR NO. 002: No.

8 THE COURT: Have you ever been in the military?

9 PROSPECTIVE JUROR NO. 002: No.

10 THE COURT: Are you -- you, or anyone closely
11 associated with you acquainted with anybody in law
12 enforcement?

13 PROSPECTIVE JUROR NO. 002: No.

14 THE COURT: Have you or anyone closely associated
15 with you ever been the victim of a crime?

16 PROSPECTIVE JUROR NO. 002: Yeah. Yes.

17 THE COURT: What was that?

18 PROSPECTIVE JUROR NO. 002: Most recently, I've --
19 an ex-husband of my cousin was murdered.

20 THE COURT: Ex-husband of your --

21 PROSPECTIVE JUROR NO. 002: Yeah, my first cousin,
22 her ex-husband, who I --

23 THE COURT: Oh. How long ago was that?

24 PROSPECTIVE JUROR NO. 002: He was actually killed
25 in February.

ROUGH DRAFT TRANSCRIPT

000207

1 THE COURT: Here in town, or another --

2 PROSPECTIVE JUROR NO. 002: No, it was in the State
3 of Oregon.

4 THE COURT: Did they catch any individual?

5 PROSPECTIVE JUROR NO. 002: Someone was arrested,
6 yes. His girlfriend.

7 THE COURT: Do you know any results of that?

8 PROSPECTIVE JUROR NO. 002: She's -- I think her
9 trial's going to begin soon.

10 THE COURT: Again, that's not going to affect your
11 deliberation in this case?

12 PROSPECTIVE JUROR NO. 002: No.

13 THE COURT: Okay. Have you or anyone closely
14 associated with you ever been arrested for a crime?

15 PROSPECTIVE JUROR NO. 002: Yes.

16 THE COURT: Who's that?

17 PROSPECTIVE JUROR NO. 002: Where do I begin?
18 Unfortunately --

19 THE COURT: Well, let's start with you. Have you
20 ever been arrested for --

21 PROSPECTIVE JUROR NO. 002: No.

22 THE COURT: Any close relatives?

23 PROSPECTIVE JUROR NO. 002: Yes. My father, and
24 most recently, my brother.

25 THE COURT: All right, father and brother. Anybody

ROUGH DRAFT TRANSCRIPT

000208

1 else?

2 PROSPECTIVE JUROR NO. 002: Cousins.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 002: Classmates. Former
5 classmates.

6 THE COURT: All right. Well, again, your father.
7 [Inaudible] classmate. Your father, what was he arrested for?

8 PROSPECTIVE JUROR NO. 002: My father was charged
9 with murder, and later convicted of manslaughter.

10 THE COURT: Okay. And who was the victim of that?

11 PROSPECTIVE JUROR NO. 002: I believe it was an
12 ex-girlfriend and an associate of hers.

13 THE COURT: All right. So, when was that?

14 PROSPECTIVE JUROR NO. 002: This was in the 1970's,
15 before I was born.

16 THE COURT: Oh.

17 PROSPECTIVE JUROR NO. 002: So, sometime in the
18 70's.

19 THE COURT: Was it in Las Vegas?

20 PROSPECTIVE JUROR NO. 002: No, it was in the State
21 of Oregon.

22 THE COURT: He was convicted of that?

23 PROSPECTIVE JUROR NO. 002: Yeah. And he served a
24 few years, and --

25 THE COURT: Is he out now?

ROUGH DRAFT TRANSCRIPT

000209

1 PROSPECTIVE JUROR NO. 002: Oh, yeah. He's been out
2 since like 1977.

3 THE COURT: That's not going to affect your
4 deliberation in this case?

5 PROSPECTIVE JUROR NO. 002: No, sir.

6 THE COURT: Your brother. What about your brother?

7 PROSPECTIVE JUROR NO. 002: Well, most recently, he
8 was arrested, and he's being charged with aggravated assault.

9 THE COURT: On who?

10 PROSPECTIVE JUROR NO. 002: His wife.

11 THE COURT: Is it here in town?

12 PROSPECTIVE JUROR NO. 002: No, it's in
13 Pennsylvania.

14 THE COURT: All right. All right. Is there any
15 result of that?

16 PROSPECTIVE JUROR NO. 002: No, he goes back to
17 court later this month.

18 THE COURT: Okay. And is that going to affect your
19 deliberation in this case?

20 PROSPECTIVE JUROR NO. 002: No, sir.

21 THE COURT: All right. Cousins?

22 PROSPECTIVE JUROR NO. 002: I've had cousins
23 arrested for check -- like check fraud type of situations.
24 Mostly, it's like fraud, like --

25 THE COURT: Yeah.

ROUGH DRAFT TRANSCRIPT

000210

1 PROSPECTIVE JUROR NO. 002: -- Katrina fraud, and --

2 THE COURT: Here in town, or is it in --

3 PROSPECTIVE JUROR NO. 002: No. State of Oregon.

4 THE COURT: What were the results of those;
5 convictions, some convictions?

6 PROSPECTIVE JUROR NO. 002: I'm not exactly sure in
7 all of them. I know one case for sure was a -- well,
8 actually, a couple of cases were convictions.

9 THE COURT: All right. Again, you've got some
10 family. But that's --

11 PROSPECTIVE JUROR NO. 002: Yeah.

12 THE COURT: That's fine. I mean, we all have some
13 family problems at times, but we just don't want it to spill
14 into this trial. You could sort of set aside what your
15 father, and brother, and cousins, the trouble they had, and
16 you're not going to -- you don't hold any animosity towards
17 the State, do you, because of their trouble?

18 PROSPECTIVE JUROR NO. 002: No. Sometimes, people
19 are guilty.

20 THE COURT: Yeah. And you don't hold that against
21 the defendant, right?

22 PROSPECTIVE JUROR NO. 002: No. No, sir.

23 THE COURT: He had nothing to do with anything.

24 PROSPECTIVE JUROR NO. 002: No.

25 THE COURT: So, you could set that aside, and just

ROUGH DRAFT TRANSCRIPT

000211

1 judge this case solely upon what you hear on that witness
2 stand?

3 PROSPECTIVE JUROR NO. 002: Absolutely.

4 THE COURT: As I said, you're the trier of fact, and
5 you determine the facts. I'll supply the instructions of law,
6 and you go and deliberate. You understand that?

7 PROSPECTIVE JUROR NO. 002: Yes.

8 THE COURT: And you understand what I said -- I'm
9 not going to repeat this all the time. Just once -- maybe
10 once or twice more, that you'll follow my instructions of law;
11 is that correct? It would be a violation not to follow my
12 instructions. So, you'll follow my instructions?

13 PROSPECTIVE JUROR NO. 002: Yes, sir.

14 THE COURT: And you understand, under our system,
15 certain principles of law apply in every criminal trial; that
16 the charging document, if you're picked as a juror, you'll --
17 it will be read to you, that it's a mere accusation, and not
18 evidence of guilt. Do you understand that?

19 PROSPECTIVE JUROR NO. 002: I do understand.

20 THE COURT: And that any defendant in any criminal
21 case is presumed innocent. You understand that?

22 PROSPECTIVE JUROR NO. 002: Yes.

23 THE COURT: He has no burden of proof. The burden
24 -- the State must prove this defendant is guilty beyond a
25 reasonable doubt. Do you understand those basic precepts of

ROUGH DRAFT TRANSCRIPT

000212

1 American justice?

2 PROSPECTIVE JUROR NO. 002: Absolutely.

3 THE COURT: And you have no problems with it?

4 PROSPECTIVE JUROR NO. 002: No.

5 THE COURT: All right. And you could be fair in
6 this case?

7 PROSPECTIVE JUROR NO. 002: Yes.

8 THE COURT: Thank you very much. Questions; pass
9 for cause, State?

10 MS. MERCER: Thank you, Your Honor. Ma'am, you
11 indicated that you teach seventh grade; is that correct?

12 PROSPECTIVE JUROR NO. 002: Yes. Yes, ma'am.

13 MS. MERCER: Have you ever had an experience where a
14 student reported domestic violence going on in their home to
15 you?

16 PROSPECTIVE JUROR NO. 002: No.

17 MS. MERCER: Okay. So, you've never had the
18 opportunity to observe the effects of domestic violence on
19 children?

20 PROSPECTIVE JUROR NO. 002: Well, I mean, I may have
21 had students who were in domestic violence situations, but I
22 don't know of any personally. Like, no one ever came to me
23 and said that they had domestic violence in their home.

24 MS. MERCER: Okay. And how long have you been a
25 teacher?

ROUGH DRAFT TRANSCRIPT

000213

1 PROSPECTIVE JUROR NO. 002: This will be my tenth
2 school year.

3 MS. MERCER: Tenth school year?

4 PROSPECTIVE JUROR NO. 002: Yeah.

5 MS. MERCER: Have you always taught seventh grade?

6 PROSPECTIVE JUROR NO. 002: No. I taught fourth
7 grade for three years.

8 MS. MERCER: Okay. Now, you indicated that before
9 you were even born, your father went to prison?

10 PROSPECTIVE JUROR NO. 002: Yes.

11 MS. MERCER: And do you believe that he was treated
12 fairly, based on what you've heard from other family members
13 that were alive at the time?

14 PROSPECTIVE JUROR NO. 002: Coming from him, yes.

15 MS. MERCER: Okay. He believes he was treated
16 fairly?

17 PROSPECTIVE JUROR NO. 002: Yes.

18 MS. MERCER: Okay. Have you ever been a witness to
19 an incident of domestic violence?

20 PROSPECTIVE JUROR NO. 002: Domestic violence, no.

21 MS. MERCER: Do you have any close friends or family
22 members that have been victims of domestic violence?

23 PROSPECTIVE JUROR NO. 002: Well, I mean, my -- like
24 I said, my brother is currently -- I guess he's going to be
25 facing trial, which is interesting, because he was the one

ROUGH DRAFT TRANSCRIPT

000214

1 abused in that situation, so I don't know why he was arrested.
2 But yeah, he was hit in the head with a statuette by his wife,
3 and he was arrested. So, I don't know why. But --

4 MS. MERCER: Was that an ongoing problem in their
5 relationship?

6 PROSPECTIVE JUROR NO. 002: They -- he's been
7 assaulted by his wife before.

8 MS. MERCER: Okay. And to your knowledge, has he
9 ever assaulted her?

10 PROSPECTIVE JUROR NO. 002: Not to my knowledge, no.

11 MS. MERCER: Do you believe that it's ever
12 appropriate to use violence to solve a verbal argument?

13 PROSPECTIVE JUROR NO. 002: A verbal argument, no.

14 MS. MERCER: Do you think that there are sometimes
15 when, based on the victim's behavior, it's okay to lash out?
16 In other words, if she provokes -- he or she provokes, they
17 deserve it?

18 PROSPECTIVE JUROR NO. 002: Like, lash out
19 physically? Or like --

20 MS. MERCER: Verbally.

21 PROSPECTIVE JUROR NO. 002: Verbally. Like -- I
22 guess it would depend on the situation. If you would, you
23 know, scream or yell at someone, and they yelled, you know, in
24 return, for them yelling at you or something, I guess. I
25 don't --

ROUGH DRAFT TRANSCRIPT

000215

1 MS. MERCER: That was a poorly constructed question.
2 Let me rephrase it. Do you think that it's ever okay to
3 respond to some sort of a verbal assault with physical
4 violence?

5 PROSPECTIVE JUROR NO. 002: No.

6 MS. MERCER: Okay. Even if they say some
7 horrifically offensive things?

8 PROSPECTIVE JUROR NO. 002: I guess you could
9 retaliate verbally if you're going to retaliate, but you don't
10 need to use violence.

11 MS. MERCER: You're aware that the allegation in
12 this case is a second degree murder allegation. Does that
13 cause you any concern?

14 PROSPECTIVE JUROR NO. 002: No.

15 MS. MERCER: Do you -- will you have any difficulty
16 in convicting the defendant, if you believe that we've met our
17 burden?

18 PROSPECTIVE JUROR NO. 002: No.

19 MS. MERCER: If we don't meet our burden, are you
20 going to be able to return a verdict of not guilty?

21 PROSPECTIVE JUROR NO. 002: Yes.

22 MS. MERCER: Okay. Are there any moral,
23 philosophical, or religious reasons that give you pause with
24 regard to sitting in judgment of another person?

25 PROSPECTIVE JUROR NO. 002: No.

ROUGH DRAFT TRANSCRIPT

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1 MS. MERCER: Can you think of any reasons why a
2 victim of domestic violence may stay in an abusive
3 relationship?

4 PROSPECTIVE JUROR NO. 002: Sometimes, people stay
5 in those relationships for financial reasons, like they feel
6 as if they can't support themselves maybe financially, and so
7 they kind of deal with the abuse. Sometimes people will --
8 you know, I've heard of people saying, it's not that bad, you
9 know, it's going to get better.

10 MS. MERCER: Do you -- what about if there's
11 children involved? Do you think that might come into factor?

12 PROSPECTIVE JUROR NO. 002: I've heard of situations
13 where people stay because of the children.

14 MS. MERCER: And do you think it's possible that
15 they might actually just love their abuser, as contradictory
16 as that might seem to some of us?

17 PROSPECTIVE JUROR NO. 002: Yeah, it is possible, I
18 guess, for someone to stay in a relationship and be in love
19 with someone who was abusing them.

20 MS. MERCER: Do you think it's the victim's fault if
21 she's abused later because she stayed in the relationship?

22 PROSPECTIVE JUROR NO. 002: I guess no, if she is --
23 I don't want to say conditioned. But if someone honestly
24 believes in their heart that things will get better, that
25 doesn't give someone the okay to abuse them later.

ROUGH DRAFT TRANSCRIPT

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1 MS. MERCER: Court's indulgence. Pass for cause,
2 Your Honor.

3 THE COURT: Thank you, Ms. Mercer. Mr. O'Keefe,
4 questions; pass for cause?

5 MR. O'KEEFE: Yeah, I'll be brief, Your Honor.
6 Thank you, sir.

7 THE COURT: Thank you.

8 MR. O'KEEFE: Ms. Victoria Collins, correct?

9 PROSPECTIVE JUROR NO. 002: Yes.

10 MR. O'KEEFE: I don't have my glasses. I can see,
11 but not clearly though. So -- but they bother me if I keep
12 them on. So, bear with me as I find my glasses.

13 Since the State keeps referring to battery domestic
14 violence's, do you believe that a woman can be an aggressor
15 then, since they brought it up?

16 PROSPECTIVE JUROR NO. 002: Yes.

17 MR. O'KEEFE: In fact, would you agree that women
18 can tend to be pretty nasty, pretty aggressive?

19 PROSPECTIVE JUROR NO. 002: I think they can be just
20 as aggressive at times as men, as --

21 MR. O'KEEFE: Okay. So -- okay. Have you ever
22 dealt with anyone with a combination of mental illnesses, and
23 as a medical issue, compounded also as a cutter?

24 PROSPECTIVE JUROR NO. 002: Not in a combination. I
25 know of -- I know someone who is suffering from, I guess,

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1 mental illness. But I don't know anyone with a combination of
2 like physical, or any other type of issues compounding that.

3 MR. O'KEEFE: Do you know specifically what type of
4 mental illness this person --

5 PROSPECTIVE JUROR NO. 002: Bipolar.

6 MR. O'KEEFE: Bipolar?

7 PROSPECTIVE JUROR NO. 002: Yes.

8 MR. O'KEEFE: Is that bipolar 1 or 2; do you know?

9 PROSPECTIVE JUROR NO. 002: That I don't know.

10 MR. O'KEEFE: There is a difference. Okay. Have
11 you ever been closely related to a family member -- anybody
12 that's OD'ed?

13 PROSPECTIVE JUROR NO. 002: No.

14 MR. O'KEEFE: Do you have a computer?

15 PROSPECTIVE JUROR NO. 002: Yes.

16 MR. O'KEEFE: Do you use it a lot?

17 PROSPECTIVE JUROR NO. 002: Yes.

18 MR. O'KEEFE: Used to be -- in the days of old, we
19 used to say, you know, who was fortunate enough to have one.
20 Now the question is, who doesn't have one, you know? It kind
21 of flips.

22 Do you feel the police have a -- should be held
23 to a higher standard when they are called to a scene, that
24 they should be responsible collecting all possible evidence in
25 the event of a so-called crime being charged, so it can be

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1 fairly presented to a jury, so the jury can decide the
2 evidence?

3 PROSPECTIVE JUROR NO. 002: I think police officers
4 should probably do their best to gather any potential
5 evidence. I guess it would depend on the situation for them
6 to know whether or not something is potential evidence or not.
7 I'm not a police expert, so I don't know what they would view
8 as evidence, but I would assume that they should do their best
9 to collect anything that could possibly be used as evidence.

10 MR. O'KEEFE: Okay. Let me kind of like rephrase it
11 a little bit more. You did kind of get the gist of what I'm
12 getting at. But as a police officer -- to properly screen the
13 jurors, and to pick jurors that think more like me, is my
14 basis of doing this, do you feel a police officer -- he's not
15 to act as a judge, is what I'm getting at.

16 He's to collect any evidence as possible, and it
17 could be exculpatory or inculpatory, basically, used for both
18 sides. They're not to do -- be a judge. You know what I'm
19 trying to say? It's their -- do you feel they have a
20 responsibility to collect that evidence as part of their job?

21 PROSPECTIVE JUROR NO. 002: I guess it depends on
22 the type of -- I'm assuming a regular officer that would
23 respond to a regular event, they may not be expected to
24 collect as much evidence as maybe a homicide detective, or an
25 arson detective. So, I'm not sure if the expectation is the

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1 same, depending on what type of officer you are.

2 So, I'm -- you know, when an officer responds to a
3 scene, I'm hoping that they would think of any possible
4 evidence. But I would assume that a regular officer who would
5 respond to a 9-11 call, that may not be something that they
6 are expected to do. I don't know if I'm making any sense,
7 but --

8 MR. O'KEEFE: No, you're making perfect sense.
9 Clearly, you --

10 PROSPECTIVE JUROR NO. 002: Okay.

11 MR. O'KEEFE: -- [inaudible]. There is a difference
12 between a regular street officer; a detective, so to speak,
13 for homicide, or for this, that. Can you agree with me -- or
14 would you agree, should I say -- do you feel that just because
15 police come to a -- are called and come to a scene, do you
16 feel that every call, there's got to be a crime committed,
17 just because the police are there?

18 My point being, is, you know how people talk, the
19 community. Wow, the cops are over there at the Joneses. Wow,
20 I wonder what he did, or she did; or do you know what I'm
21 saying? Are you --

22 PROSPECTIVE JUROR NO. 002: Just because an officer
23 is called out doesn't necessarily mean that there has been a
24 crime committed. I'm assuming that the person who has called
25 maybe believes that there is a possible crime taking place, or

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1 has taken place. But that doesn't necessarily mean that just
2 because an officer responds, there is a crime that is in
3 progress, or has taken place.

4 MR. O'KEEFE: Exactly my point. No further
5 questions. Thank you. I'd pass for --

6 THE COURT: Pass for cause, Mr. O'Keefe?

7 MR. O'KEEFE: Yes, sir. I do, Your Honor.

8 THE COURT: Thank you, sir.

9 MR. O'KEEFE: Thank you.

10 THE COURT: Thank you. By the way, anybody wants to
11 use the restroom -- don't go all at once, now. Just go, and
12 come back. Go ahead if you need to use the restroom, all
13 right? Then come right -- one at a time though. You don't go
14 crazy. Yeah, you can go. Yeah, two is all right. Three is
15 all right.

16 Megan -- is it Stutz?

17 PROSPECTIVE JUROR NO. 003: Stutz.

18 THE COURT: What is it?

19 PROSPECTIVE JUROR NO. 003: Stutz.

20 THE COURT: Stutz. All right. How long you been in
21 this area?

22 PROSPECTIVE JUROR NO. 003: Five years.

23 THE COURT: Where did you come from?

24 PROSPECTIVE JUROR NO. 003: California.

25 THE COURT: What did you do in California as far as

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1 work?

2 PROSPECTIVE JUROR NO. 003: I was a medical
3 assistant.

4 THE COURT: And what do you do here?

5 PROSPECTIVE JUROR NO. 003: I'm a medical assistant
6 and a student.

7 THE COURT: Okay. And what type of student?

8 PROSPECTIVE JUROR NO. 003: I'm going for my
9 pre-reqs for nursing.

10 THE COURT: All right. Good. Are you married?

11 PROSPECTIVE JUROR NO. 003: Yes.

12 THE COURT: Does your husband work?

13 PROSPECTIVE JUROR NO. 003: He is currently a
14 full-time student right now, so he's not working.

15 THE COURT: All right. Children?

16 PROSPECTIVE JUROR NO. 003: One.

17 THE COURT: How old?

18 PROSPECTIVE JUROR NO. 003: Seven months.

19 THE COURT: All right. Have you ever been in the
20 military?

21 PROSPECTIVE JUROR NO. 003: No.

22 THE COURT: Are you acquainted with anybody in law
23 enforcement?

24 PROSPECTIVE JUROR NO. 003: No.

25 THE COURT: Have you or anyone closely associated

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1 with you ever been the victim of a crime?

2 PROSPECTIVE JUROR NO. 003: No.

3 THE COURT: Have you or anyone closely associated
4 with you ever been arrested for a crime?

5 PROSPECTIVE JUROR NO. 003: No.

6 THE COURT: Have you ever served on a jury?

7 PROSPECTIVE JUROR NO. 003: No.

8 THE COURT: Are you going to be able to follow my
9 instructions of law?

10 PROSPECTIVE JUROR NO. 003: Yes.

11 THE COURT: And you're going to be fair and
12 impartial, both to the State and to the defense?

13 PROSPECTIVE JUROR NO. 003: Yes.

14 THE COURT: Thank you very much. Questions; pass
15 for cause, Mr. Lalli?

16 MR. LALLI: A few questions, Your Honor. Thank you.
17 Ms. Stutz, can you tell us how frequently or how often you
18 currently are devoted to going to school? Do you -- are you
19 enrolled in classes now?

20 PROSPECTIVE JUROR NO. 003: I am enrolled online
21 right now. Since I had my baby, I haven't been at like
22 regular courses at school.

23 MR. LALLI: And how does online -- how does online
24 work? Do you -- can you study as time permits? Or --

25 PROSPECTIVE JUROR NO. 003: Usually, yeah. There's

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1 tests and quizzes that are that due at like specific times.
2 But they give you a date range, and time to start that and
3 complete it.

4 MR. LALLI: Is -- being a juror on this case, would
5 that interfere with your ability to --

6 PROSPECTIVE JUROR NO. 003: No.

7 MR. LALLI: -- attend your online classes? Okay.
8 And those are nursing type classes?

9 PROSPECTIVE JUROR NO. 003: They just general
10 pre-reqs right now. I have a few before I can apply.

11 MR. LALLI: And you're currently a nursing
12 assistant?

13 PROSPECTIVE JUROR NO. 003: A medical assistant.

14 MR. LALLI: Medical assistant. Can you give us a
15 sense of what's a day in the life of a medical assistant?

16 PROSPECTIVE JUROR NO. 003: I work in the doctor's
17 office. I'm the one that puts you in the room, and talks to
18 you before the doctor sees you.

19 MR. LALLI: What type of doctor?

20 PROSPECTIVE JUROR NO. 003: Orthopedic surgeon.

21 MR. LALLI: How long have you done that?

22 PROSPECTIVE JUROR NO. 003: Five years here, two
23 years in California.

24 MR. LALLI: So, I take it you have some level --
25 some familiarity with medical jargon, vocabulary?

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1 PROSPECTIVE JUROR NO. 003: Yes.

2 MR. LALLI: You have some comfort level with that?

3 PROSPECTIVE JUROR NO. 003: Yes.

4 MR. LALLI: So, if we were to call a forensic
5 pathologist, a person who does autopsies, would you feel
6 comfortable listening to that testimony and understanding it?

7 PROSPECTIVE JUROR NO. 003: The basic stuff, I
8 understand.

9 MR. LALLI: All right.

10 PROSPECTIVE JUROR NO. 003: Yes.

11 MR. LALLI: What is your husband studying? You said
12 he's a full-time student.

13 PROSPECTIVE JUROR NO. 003: He's applying for dental
14 school next year, so a few pre-req's before that.

15 MR. LALLI: Is he studying -- where? Through UNLV,
16 or --

17 PROSPECTIVE JUROR NO. 003: UNLV.

18 MR. LALLI: And would the plan be for him to go to
19 the UNLV --

20 PROSPECTIVE JUROR NO. 003: Yes.

21 MR. LALLI: -- dental school there? Have you -- how
22 do you feel about this idea of domestic violence? Some people
23 think it's a very private matter, and the government --
24 society really has no business in it. It's between two
25 people, it's private, and --

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1 PROSPECTIVE JUROR NO. 003: No.

2 MR. LALLI: -- nobody else should get involved.

3 What do you think about that?

4 PROSPECTIVE JUROR NO. 003: I think that people
5 should be involved if somebody knows somebody's being abused,
6 or what -- they should speak for them. And it's not private.
7 It's something that needs attention.

8 MR. LALLI: Why do you -- why do you believe that?

9 PROSPECTIVE JUROR NO. 003: I was in a verbal
10 abusive relationship, so I can understand where it comes from.

11 MR. LALLI: When was that relationship?

12 PROSPECTIVE JUROR NO. 003: 2003.

13 MR. LALLI: So, I guess -- was it physical at all?

14 PROSPECTIVE JUROR NO. 003: Minor.

15 MR. LALLI: All right. Were the police ever called?

16 PROSPECTIVE JUROR NO. 003: No.

17 MR. LALLI: So, I -- from your question -- and I
18 don't mean to pry. But you seem to have experience in knowing
19 that domestic violence can be psychological abuse, as well as
20 physical abuse?

21 PROSPECTIVE JUROR NO. 003: Yes.

22 MR. LALLI: Do you think one is more serious than
23 the other?

24 PROSPECTIVE JUROR NO. 003: No. Because I think
25 eventually, if it's bad, it will end in one spot.

ROUGH DRAFT TRANSCRIPT

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1 MR. LALLI: I -- fortunately, you were able to get
2 yourself out of that relationship, it sounds like.

3 PROSPECTIVE JUROR NO. 003: Yes.

4 MR. LALLI: Was that difficult for you?

5 PROSPECTIVE JUROR NO. 003: Yeah.

6 MR. LALLI: Did you -- there's a lot of community
7 resources available; shelters, advocates. And again, I don't
8 want to go too much into your personal life, other than to get
9 some sense of where your head's at. How were you able to get
10 out of the relationship?

11 PROSPECTIVE JUROR NO. 003: My family.

12 MR. LALLI: Does your family -- was that here in Las
13 Vegas?

14 PROSPECTIVE JUROR NO. 003: That was in California.

15 MR. LALLI: In California. Was your family in
16 California with you?

17 PROSPECTIVE JUROR NO. 003: Yes.

18 MR. LALLI: So, you maintained a relationship with
19 your family?

20 PROSPECTIVE JUROR NO. 003: Yes.

21 MR. LALLI: Do you believe that some batterers try
22 to sever the relationship that a victim has with their family,
23 or other support?

24 PROSPECTIVE JUROR NO. 003: Yes.

25 MR. LALLI: Do you think that that happens?

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1 PROSPECTIVE JUROR NO. 003: Um-hum.

2 MR. LALLI: Did you -- as part of getting yourself
3 out of that relationship, did you educate yourself about
4 domestic violence?

5 PROSPECTIVE JUROR NO. 003: No.

6 MR. LALLI: Just your own experience?

7 PROSPECTIVE JUROR NO. 003: Yeah.

8 MR. LALLI: A lot of times, in cases of domestic
9 violence, you have one spousal partner saying something
10 happened, and another spousal partner saying something else
11 happened. It's a he said, she said. What would you think is
12 important to understanding who's telling the truth, or whose
13 credibility are you to give more weight?

14 PROSPECTIVE JUROR NO. 003: It would be hard, unless
15 you had some type of evidence, to see what's going on. It
16 would be hard.

17 MR. LALLI: What would you -- what sorts of other
18 evidence would you think is important?

19 PROSPECTIVE JUROR NO. 003: Like, if they have any
20 witnesses, or anything along those lines. It's always kind of
21 a he said, she said.

22 MR. LALLI: All right. Would you think physical
23 evidence would be important? So, maybe there's a broken
24 chair, or maybe there's redness, evidence of --

25 PROSPECTIVE JUROR NO. 003: Yeah.

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1 MR. LALLI: -- physical injury. Would that be
2 important to you?

3 PROSPECTIVE JUROR NO. 003: Yes.

4 MR. LALLI: What about a history of abuse? Is that
5 important?

6 PROSPECTIVE JUROR NO. 003: Yeah.

7 MR. LALLI: Why do you think a history of abuse
8 would be important?

9 PROSPECTIVE JUROR NO. 003: Because I think some --
10 like, some people don't change to where, if you're in an
11 abusive relationship, and you can end up in another one.

12 MR. LALLI: Do you think that sometimes an abusive
13 history could provide a motivation for committing abuse in the
14 future? So, I've got this history with this person, and this
15 person said things to me, and it made me mad, and I can't get
16 it out of my head. And maybe they called the police, and it's
17 a motivation for me to commit violence in the future. Do you
18 think that happens?

19 PROSPECTIVE JUROR NO. 003: Could be.

20 MR. LALLI: Do you know people with mental illness?

21 PROSPECTIVE JUROR NO. 003: No.

22 MR. LALLI: Have you ever had any experience -- and
23 I know you work for an orthopedic surgeon, so you might have
24 some people with mental illness that happen to come in. But
25 do you have any professional experience as a medical assistant

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1 with mental --

2 PROSPECTIVE JUROR NO. 003: No.

3 MR. LALLI: -- mental illness? Okay. What about
4 the idea that the defendant represents himself? Do you
5 understand that's a constitutional right that we would all
6 have? Do you have a problem with that?

7 PROSPECTIVE JUROR NO. 003: No.

8 MR. LALLI: During the course of a trial, would you
9 have any difficulty assessing the evidence against a person
10 who represents himself?

11 PROSPECTIVE JUROR NO. 003: No.

12 MR. LALLI: Do you believe that you're a fair
13 person?

14 PROSPECTIVE JUROR NO. 003: Yes.

15 MR. LALLI: Do you believe that people ought to be
16 held accountable for their actions?

17 PROSPECTIVE JUROR NO. 003: Yes.

18 MR. LALLI: All right. If we prove to you beyond a
19 reasonable doubt that Mr. O'Keefe is guilty of second degree
20 murder, would you convict him?

21 PROSPECTIVE JUROR NO. 003: Yes.

22 MR. LALLI: Thank you. Your Honor, we'll pass for
23 cause.

24 THE COURT: Thank you, Mr. Lalli. Mr. O'Keefe, do
25 you have any questions; pass for cause?

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1 MR. O'KEEFE: Yes, Your Honor, I have some. Thank
2 you.

3 THE COURT: Thank you.

4 MR. O'KEEFE: It's Pamela?

5 PROSPECTIVE JUROR NO. 003: Megan.

6 MR. O'KEEFE: I apologize. Do you have a family
7 member or anybody that's in NA, or AA? No offense, don't take
8 that wrong. Or basically, are you experienced with anyone
9 that's involved in NA or AA?

10 PROSPECTIVE JUROR NO. 003: No.

11 MR. O'KEEFE: Do you feel that someone is
12 [inaudible] that seeks help for maybe a drinking problem, or
13 NA?

14 PROSPECTIVE JUROR NO. 003: No.

15 MR. O'KEEFE: You wouldn't hold that against anyone?

16 PROSPECTIVE JUROR NO. 003: No.

17 MR. O'KEEFE: Actually, I believe -- tell me if you
18 agree with me. What I'm trying to get at is, do you think
19 that somebody voluntarily seeks help before the court gets
20 them and tells them to, but seeks help on their own, is that a
21 good thing, or bad, or?

22 PROSPECTIVE JUROR NO. 003: Yeah, some people can,
23 and that's good that you're trying.

24 MR. O'KEEFE: Okay. I guess this can kind of --
25 everyone can hear, and I'm sure everyone's listening very

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1 carefully. Do you realize that actually in a trial,
2 sometimes, for reasoning determined by the Court, the Court
3 being the Judge of course, you don't hear all the evidence.

4 MR. LALLI: Objection, Your Honor.

5 THE COURT: Yeah. That's not trying to pick a fair
6 and impartial juror, whether -- the evidence presented is the
7 evidence presented. And we don't want to go into, they don't
8 hear all the evidence. That's not a proper voir dire
9 question. So, I'm going to respectfully sustain the
10 objection. Go on to something else, Mr. --

11 MR. O'KEEFE: Yes, sir, Your Honor. Thank you. I
12 guess I can say, as a regular person, I never knew before the
13 true definition of homicide. And of course the Judge, and I'm
14 sure the State will clearly give that definition of homicide.
15 But do you know yourself, or can you tell me what you feel you
16 think is the true definition of homicide?

17 PROSPECTIVE JUROR NO. 003: I would just -- I guess
18 a murder. Not really sure.

19 MR. O'KEEFE: Okay. Do you know in the State of
20 Nevada, a homicide is actually considered a death, an
21 interaction between two people, and it's actually the opposite
22 of what you just said. It doesn't necessarily mean it's
23 murder.

24 MR. LALLI: Your Honor, I'm sorry. I have to
25 interpose an objection. Under the district court rules, it's

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1 a violation during voir dire to discuss anticipated
2 instructions of law.

3 THE COURT: Yeah. That is true, Mr. O'Keefe. I'm
4 the only one, and I'm going to give instructions to the jury
5 at the particular time. We can't go in now -- I've went into
6 a few instructions, presumption of innocence, guilt beyond a
7 reasonable doubt, the information is a mere charging document;
8 and I don't go into anymore instructions.

9 So, in all due respect, I'm going to sustain the
10 objection. You really can't get into any jury instructions.
11 That will be something that I'll instruct the jury at the
12 appropriate time exactly what the definition of all the legal
13 terms are, all right? Thank you. Go on to something else.

14 MR. O'KEEFE: Thank you, Your Honor. Have you ever
15 experienced -- been around anyone that's been extremely
16 intoxicated? A loud drunk, very loud?

17 PROSPECTIVE JUROR NO. 003: Yes.

18 MR. O'KEEFE: Would you agree that generally -- a
19 drunk person is generally exactly that, a very loud person;
20 obnoxious, loud?

21 PROSPECTIVE JUROR NO. 003: They can be. Not all of
22 them are.

23 MR. O'KEEFE: The majority?

24 PROSPECTIVE JUROR NO. 003: Yeah.

25 MR. O'KEEFE: So, it would be very apparent

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1 generally that -- or it could be easily assessed that somebody
2 was intoxicated by a person's actions, or voice, the smell?

3 PROSPECTIVE JUROR NO. 003: Yeah.

4 MR. O'KEEFE: Easily detectable, you feel?

5 PROSPECTIVE JUROR NO. 003: If you're really drunk,
6 yeah. If it's a drink or two, probably not.

7 MR. O'KEEFE: What if somebody was extremely drunk?

8 PROSPECTIVE JUROR NO. 003: Usually, you can tell.

9 MR. O'KEEFE: Easily recognizable, correct? Would
10 you believe --

11 PROSPECTIVE JUROR NO. 003: Yes.

12 MR. O'KEEFE: Has anybody in your family or yourself
13 ever been blamed for something wrongfully?

14 PROSPECTIVE JUROR NO. 003: No.

15 MR. O'KEEFE: In high school, college, a job?

16 PROSPECTIVE JUROR NO. 003: Not that I can recall.

17 MR. O'KEEFE: Do you have anybody in the family that
18 is an attorney?

19 PROSPECTIVE JUROR NO. 003: No.

20 MR. O'KEEFE: No further questions, Your Honor.
21 I'll pass for cause.

22 THE COURT: Thank you, Mr. O'Keefe. Pam
23 Guzman- Mollinedo.

24 PROSPECTIVE JUROR NO. 004: Mollinedo.

25 THE COURT: All right. How long you been in this

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1 area?
2 PROSPECTIVE JUROR NO. 004: For ten years.
3 THE COURT: For -- what do you do for a living?
4 PROSPECTIVE JUROR NO. 004: I work at the Wynn.
5 THE COURT: Doing what?
6 PROSPECTIVE JUROR NO. 004: In the bakery.
7 THE COURT: Bakery.
8 PROSPECTIVE JUROR NO. 004: Yeah.
9 THE COURT: That's good. You make [inaudible]?
10 PROSPECTIVE JUROR NO. 004: No.
11 THE COURT: [Inaudible]? Nothing?
12 PROSPECTIVE JUROR NO. 004: No. We make like French
13 sandwich, and --
14 THE COURT: Oh. All right, all right. That's all
15 right. That's good. Are you married?
16 PROSPECTIVE JUROR NO. 004: Yes.
17 THE COURT: What does your husband do?
18 PROSPECTIVE JUROR NO. 004: He works in
19 construction.
20 THE COURT: Children?
21 PROSPECTIVE JUROR NO. 004: Two.
22 THE COURT: Too young to work, right?
23 PROSPECTIVE JUROR NO. 004: Yes.
24 THE COURT: Yeah. Have you ever been in the
25 military?

ROUGH DRAFT TRANSCRIPT

000236

1 PROSPECTIVE JUROR NO. 004: No.

2 THE COURT: Are you acquainted with anybody in law
3 enforcement?

4 PROSPECTIVE JUROR NO. 004: No.

5 THE COURT: Have you or anyone close to you ever
6 been the victim of a crime?

7 PROSPECTIVE JUROR NO. 004: No.

8 THE COURT: Have you or anyone close to you ever
9 been arrested for a crime?

10 PROSPECTIVE JUROR NO. 004: No.

11 THE COURT: Have you ever served on a jury before?

12 PROSPECTIVE JUROR NO. 004: No.

13 THE COURT: Are you going to be able to be fair and
14 impartial, both to the State and to the defendant?

15 PROSPECTIVE JUROR NO. 004: Yes.

16 THE COURT: And at the conclusion of this case, if
17 you're picked as a juror, I'm going to instruct you as what
18 the law is. You understand that?

19 PROSPECTIVE JUROR NO. 004: Yeah.

20 THE COURT: It would be a violation of your oath not
21 to follow my instructions. You understand that?

22 PROSPECTIVE JUROR NO. 004: Yes.

23 THE COURT: All right. Well, thank you so much.
24 Questions; pass for cause, Ms. Mercer?

25 MS. MERCER: Thank you, Your Honor. Good morning,

ROUGH DRAFT TRANSCRIPT

000237

1 ma'am.

2 PROSPECTIVE JUROR NO. 004: Good morning.

3 MS. MERCER: Do you know anyone that's ever been the
4 victim of domestic violence?

5 PROSPECTIVE JUROR NO. 004: No.

6 MS. MERCER: No, never?

7 PROSPECTIVE JUROR NO. 004: Never.

8 MS. MERCER: Okay. Do you have any strong feelings
9 about domestic violence that would prevent you from being fair
10 and impartial in this case?

11 PROSPECTIVE JUROR NO. 004: No.

12 MS. MERCER: Do you think that it's ever appropriate
13 to use violence to solve a verbal dispute?

14 PROSPECTIVE JUROR NO. 004: No.

15 MS. MERCER: Are you -- do you think that it's
16 something that should be dealt with within a family, or are
17 you okay with the State becoming involved?

18 PROSPECTIVE JUROR NO. 004: Can you repeat the
19 question again?

20 MS. MERCER: Do you think that domestic violence is
21 a private issue that should be dealt with in the home, or are
22 you okay with the fact that the State becomes involved, and
23 prosecutes cases of domestic violence, regardless of what a
24 victim may want?

25 PROSPECTIVE JUROR NO. 004: Like, I don't

ROUGH DRAFT TRANSCRIPT

000238

1 understand. I need like translation, or --

2 MS. MERCER: Are you having a hard time --

3 PROSPECTIVE JUROR NO. 004: Yeah.

4 MS. MERCER: Is English not your native language?

5 PROSPECTIVE JUROR NO. 004: No.

6 MS. MERCER: Do you think that that might impede
7 your ability to understand what's going on in this case?

8 PROSPECTIVE JUROR NO. 004: I kind of understand
9 like a little bit.

10 MS. MERCER: You understand a little bit.

11 PROSPECTIVE JUROR NO. 004: Yeah.

12 MS. MERCER: Are you going to be able to understand
13 the witnesses when they testify?

14 PROSPECTIVE JUROR NO. 004: Yeah.

15 MS. MERCER: Do you think you would need the
16 assistance of an interpreter --

17 PROSPECTIVE JUROR NO. 004: Yeah.

18 MS. MERCER: -- to fully understand the proceedings?
19 Court's indulgence.

20 (Pause in the proceedings)

21 MS. MERCER: Have you understood everything that's
22 gone on in the courtroom so far?

23 PROSPECTIVE JUROR NO. 004: Um-hum.

24 MS. MERCER: You have? And you know that the
25 allegation in this case is that the defendant committed the

ROUGH DRAFT TRANSCRIPT

000239

1 crime of second degree murder; you understand that?

2 PROSPECTIVE JUROR NO. 004: Yes.

3 MS. MERCER: Do you understand that some of the
4 evidence that may be brought before you will be a little bit
5 difficult to understand? In other words, you'll be hearing
6 from doctors that will use medical terminology, and other
7 experts, DNA analysts, fingerprint experts. Are you going to
8 be comfortable with their testimony? Will you be able to
9 understand it sufficiently?

10 PROSPECTIVE JUROR NO. 004: Yeah, I will understand
11 a little bit.

12 MS. MERCER: How long have you been speaking
13 English?

14 PROSPECTIVE JUROR NO. 004: Like for five years.

15 MS. MERCER: Five years? Is there any reason -- any
16 personal reason that might prevent you from sitting in
17 judgment of the defendant in this case?

18 PROSPECTIVE JUROR NO. 004: No.

19 MS. MERCER: No? If you believe that the State has
20 met it's burden of proof at the end of the case, will you be
21 able to return a verdict of guilty? Do you understand what
22 I'm asking you?

23 PROSPECTIVE JUROR NO. 004: No.

24 MS. MERCER: Well, you understand that after you've
25 heard all the evidence in this case, you're going to be asked

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1 to deliberate, correct?

2 PROSPECTIVE JUROR NO. 004: Okay.

3 MS. MERCER: If you believe that the State has met
4 it's burden of proving the allegation in this case, can you
5 return a verdict of guilty? Or would that be hard for you to
6 do? Are you still not understanding my question?

7 THE COURT: Pardon?

8 MS. MERCER: Your Honor, may we approach, please?

9 (Off-record bench conference)

10 THE COURT: All right. Pamela, you know, we're
11 getting a little impression, you know. And it's not your
12 fault, but you know, maybe you have trouble with some English
13 language, and you might not -- we need a juror to really
14 understand everything that's said. You understand that?

15 PROSPECTIVE JUROR NO. 004: Yes. Yes.

16 THE COURT: Okay. So, I think, with the permission
17 of the State and Mr. O'Keefe, I'm going to excuse you. Maybe
18 -- go back to the jury commissioner. Maybe they have a day or
19 two trial that really won't have this technical testimony that
20 you'd be better at, all right? So, thank you so much, and
21 report back to the jury commissioner. Thank you very much.

22 The clerk will call another prospective juror number
23 4.

24 THE CLERK: Denyce Brown.

25 THE COURT: Denyce?

1 PROSPECTIVE JUROR NO. 017: Yes.

2 MR. O'KEEFE: Thank you.

3 THE COURT: How long you been in this area?

4 PROSPECTIVE JUROR NO. 017: Eight years, Your Honor.

5 THE COURT: What do you do for a living?

6 PROSPECTIVE JUROR NO. 017: Retired.

7 THE COURT: What did you do when you worked?

8 PROSPECTIVE JUROR NO. 017: Mostly -- oh, excuse me.

9 Thank you. Administrative. I've worked in retail. I worked
10 on the B-1B when it was operating in California. But the
11 latter part is mostly retail.

12 THE COURT: All right. You look too young to
13 retire, but you're enjoying it?

14 PROSPECTIVE JUROR NO. 017: Oh, thank you.

15 THE COURT: You're enjoying -- how long have you
16 been retired?

17 PROSPECTIVE JUROR NO. 017: It's been about -- since
18 '99.

19 THE COURT: All right.

20 PROSPECTIVE JUROR NO. 017: When I --

21 THE COURT: How's your health, all right?

22 PROSPECTIVE JUROR NO. 017: -- moved here. When I
23 moved here.

24 THE COURT: Your health's all right --

25 PROSPECTIVE JUROR NO. 017: Yes, so far.

1 THE COURT: -- as you sit here? Okay, good. Are
2 you married?

3 PROSPECTIVE JUROR NO. 017: No.

4 THE COURT: Children?

5 PROSPECTIVE JUROR NO. 017: Two boys.

6 THE COURT: What do they do for a living?

7 PROSPECTIVE JUROR NO. 017: My son lives here in the
8 area, and he works for Clark County.

9 THE COURT: What does he do in Clark County?

10 PROSPECTIVE JUROR NO. 017: Works for
11 transportation, traffic.

12 THE COURT: Okay. And what about the other child?

13 PROSPECTIVE JUROR NO. 017: He's in Michigan.

14 THE COURT: What does he do?

15 PROSPECTIVE JUROR NO. 017: He's a teacher. High
16 school teacher.

17 THE COURT: Grandchildren, I hope?

18 PROSPECTIVE JUROR NO. 017: One.

19 THE COURT: Okay, good.

20 PROSPECTIVE JUROR NO. 017: A grandson.

21 THE COURT: I don't have any, you see.

22 PROSPECTIVE JUROR NO. 017: He's eight years-old,
23 going on 30.

24 THE COURT: Yeah. I know what you mean. Have you
25 ever been in the military?

ROUGH DRAFT TRANSCRIPT

000243

1 PROSPECTIVE JUROR NO. 017: No.

2 THE COURT: Are you acquainted with anybody in law
3 enforcement?

4 PROSPECTIVE JUROR NO. 017: When I was living in
5 Michigan, where I grew up, we had a family member -- well, a
6 friend of my father's was a police officer.

7 THE COURT: Yeah. A lot of people who have
8 neighbors as a police officer --

9 PROSPECTIVE JUROR NO. 017: Right.

10 THE COURT: -- or go bowling -- maybe go to the same
11 church. But the follow up question is, you understand you're
12 not to give greater weight or lesser weight to a police
13 officer's testimony; give it the weight you deem appropriate.
14 You understand that?

15 PROSPECTIVE JUROR NO. 017: Correct. Yes, I --

16 THE COURT: All right.

17 PROSPECTIVE JUROR NO. 017: -- understand.

18 THE COURT: Have you or anyone closely associated
19 with you ever been the victim of a crime?

20 PROSPECTIVE JUROR NO. 017: Vandalism.

21 THE COURT: Yourself?

22 PROSPECTIVE JUROR NO. 017: Personally, yes.

23 THE COURT: Somebody vandalized you?

24 PROSPECTIVE JUROR NO. 017: My car.

25 THE COURT: Oh, okay. All right. How long ago was

ROUGH DRAFT TRANSCRIPT

000244

1 that?

2 PROSPECTIVE JUROR NO. 017: Since I've been here.
3 About five years ago.

4 THE COURT: Did they ever catch the individual?

5 PROSPECTIVE JUROR NO. 017: No, we -- the officer
6 said probably it was children, because they --

7 THE COURT: Yeah.

8 PROSPECTIVE JUROR NO. 017: -- cut my top.

9 THE COURT: All right. You did report it, but they
10 never --

11 PROSPECTIVE JUROR NO. 017: Oh, it was reported,
12 yes.

13 THE COURT: That's not going to affect your
14 deliberation here?

15 PROSPECTIVE JUROR NO. 017: Yeah. Insurance took
16 care of it.

17 THE COURT: You don't hold that against the State or
18 the police for not catching the individual, do you?

19 PROSPECTIVE JUROR NO. 017: No.

20 THE COURT: And you certainly don't hold that
21 against the defendant?

22 PROSPECTIVE JUROR NO. 017: Correct, no.

23 THE COURT: Have you or anyone closely associated
24 with you ever been arrested for a crime?

25 PROSPECTIVE JUROR NO. 017: No, I have not.

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000245

1 THE COURT: Anyone closely associated, like --
2 PROSPECTIVE JUROR NO. 017: No.
3 THE COURT: No. Have you ever served on a jury
4 before?
5 PROSPECTIVE JUROR NO. 017: Not here, but in
6 Connecticut.
7 THE COURT: How many times?
8 PROSPECTIVE JUROR NO. 017: Once.
9 THE COURT: How long ago?
10 PROSPECTIVE JUROR NO. 017: A good 15 years.
11 THE COURT: Was it a criminal case, or a civil case?
12 PROSPECTIVE JUROR NO. 017: Civil.
13 THE COURT: So, somebody wanted money [inaudible] --
14 PROSPECTIVE JUROR NO. 017: Damages.
15 THE COURT: Yeah. Damages, right. And you were
16 picked as a juror?
17 PROSPECTIVE JUROR NO. 017: Yes, I was.
18 THE COURT: Were you picked as foreperson?
19 PROSPECTIVE JUROR NO. 017: No.
20 THE COURT: You did deliberate the case?
21 PROSPECTIVE JUROR NO. 017: Yes, we did.
22 THE COURT: Without telling me what the verdict was,
23 did your jury reach a verdict?
24 PROSPECTIVE JUROR NO. 017: Yes, we did.
25 THE COURT: Different burden of proof between a

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000246

1 criminal case and a civil case. And again, I don't like
2 people going into instructions. But once in a while, I'll
3 instruct you that in a criminal case, as I indicated, the
4 State -- it's incumbent upon the State to prove the defendant
5 guilty beyond a reasonable doubt. Do you understand that?

6 PROSPECTIVE JUROR NO. 017: Yes, I do.

7 THE COURT: In a civil case, it's what they call a
8 preponderance of the evidence. You have to tip the scale,
9 that the plaintiff -- 51 percent, or whatever it is. It's
10 called a preponderance of the evidence. But I'll instruct you
11 as what the law is, and you have to promise me you'll follow
12 my instructions.

13 PROSPECTIVE JUROR NO. 017: I will. Yes.

14 THE COURT: And you'll be fair and impartial in this
15 case?

16 PROSPECTIVE JUROR NO. 017: Fair and impartial.

17 THE COURT: Thank you so much. State, questions;
18 pass for cause?

19 MR. LALLI: Thank you, Your Honor. Good morning,
20 Ms. Brown.

21 PROSPECTIVE JUROR NO. 017: Hello.

22 MR. LALLI: You indicated that you are now retired.
23 Congratulations on that.

24 PROSPECTIVE JUROR NO. 017: Thank you.

25 MR. LALLI: But you indicated that you had

1 experience in administration?

2 PROSPECTIVE JUROR NO. 017: It was like a church
3 organization. Not like; it was a church organization, and I
4 was the office manager for about nine years. And it
5 encompassed a lot of things. So, interaction with the
6 community, and interaction with government. It was a leaning
7 experience, yes.

8 MR. LALLI: Where was that?

9 PROSPECTIVE JUROR NO. 017: Hartford, Connecticut.

10 MR. LALLI: Okay. Did you -- did you supervise
11 employees?

12 PROSPECTIVE JUROR NO. 017: Yes. As a matter of
13 fact, four people.

14 MR. LALLI: And what did they do? What were their
15 responsibilities?

16 PROSPECTIVE JUROR NO. 017: Majority was like making
17 sure letters went out properly, mailing. We had different
18 organization came in as meeting rooms. Setting up meetings,
19 make sure that went smoothly. Donations.

20 MR. LALLI: I'm sure because it was a --

21 PROSPECTIVE JUROR NO. 017: Soliciting, rather.

22 MR. LALLI: I'm sure because it was a church, there
23 were never disagreements between anybody?

24 PROSPECTIVE JUROR NO. 017: Oh, sure. No. Not
25 hardly.

1 MR. LALLI: Did you feel comfortable sorting through
2 those disagreements that folks that you supervised had, and
3 reaching a resolution on that?

4 PROSPECTIVE JUROR NO. 017: I think I know what you
5 mean. Like listening to everyone's opinion?

6 MR. LALLI: Yes, ma'am.

7 PROSPECTIVE JUROR NO. 017: And -- yes. We sorted
8 it out among ourselves, and it usually turned out for the
9 better when we all talked about whatever the problem was.

10 MR. LALLI: Did I also hear you correctly that you
11 worked for the -- did you say B-1B?

12 PROSPECTIVE JUROR NO. 017: Rockwell --

13 MR. LALLI: Okay.

14 PROSPECTIVE JUROR NO. 017: -- as a matter of fact.

15 MR. LALLI: The B-1 Bomber?

16 PROSPECTIVE JUROR NO. 017: Correct.

17 MR. LALLI: What --

18 PROSPECTIVE JUROR NO. 017: It was in the 80's.

19 MR. LALLI: What was your involvement in that
20 program?

21 PROSPECTIVE JUROR NO. 017: Mostly, working on the
22 computer. Procurement. Putting numbers in, and making sure
23 they were right, regarding the production of the airplane.

24 MR. LALLI: Regarding the production?

25 PROSPECTIVE JUROR NO. 017: Of the airplane, yes.

ROUGH DRAFT TRANSCRIPT

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1 MR. LALLI: That was with Rockwell?

2 PROSPECTIVE JUROR NO. 017: Correct.

3 MR. LALLI: Was that in Southern California?

4 PROSPECTIVE JUROR NO. 017: Yes, it was.

5 MR. LALLI: Did you have any specialized training
6 for that position?

7 PROSPECTIVE JUROR NO. 017: As long as I understood
8 computer and knew numbers, I passed the test and got the job.

9 MR. LALLI: Was it mainframe technology; that sort
10 of -- a computer? Or was it special -- I don't want you to --

11 PROSPECTIVE JUROR NO. 017: No, it was mainframe.
12 Yes.

13 MR. LALLI: All right. So, did you work in -- would
14 it be in the accounting department, or --

15 PROSPECTIVE JUROR NO. 017: Avionics.

16 MR. LALLI: Okay. And how long did you do that for?

17 PROSPECTIVE JUROR NO. 017: I think it lasted five
18 and-a-half years, until the last bomber was --.

19 MR. LALLI: You mentioned that you have children.
20 Did -- were you ever -- have you ever been married?

21 PROSPECTIVE JUROR NO. 017: Their father's deceased.

22 MR. LALLI: Okay.

23 PROSPECTIVE JUROR NO. 017: But no, I've never been
24 married.

25 MR. LALLI: Do you ever have any personal or

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IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,)
)
Appellant,)
)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)
_____)

Case No.: 61631
District Court Case No.: C250630

APPELLANT'S APPENDIX

VOLUME 1

**APPEAL FROM JUDGMENT OF CONVICTION AND SENTENCE IN THE
EIGHTH JUDICIAL DISTRICT COURT**

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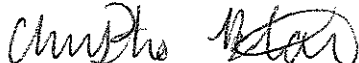
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CERTIFICATE OF MAILING

I, hereby certify that on the 27th day of October, 2012, I did serve a true and correct copy of the foregoing APPELLANT'S APPENDIX by depositing same in the United States mail, first-class postage fully prepaid, addressed as follows:

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FILED IN OPEN COURT

FEB 10 2009

EDWARD A. FRIEDLAND
CLERK OF THE COURT

BY

KRISTEN BROWN

DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 BRIAN KERRY O'KEEFE,
13 #1447732

14 Defendant.

Case No. C250630
Dept No. V

AMENDED
INFORMATION

16 STATE OF NEVADA }
17 COUNTY OF CLARK } ss:

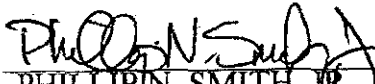
18 DAVID ROGER, District Attorney within and for the County of Clark, State of
19 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

20 That BRIAN KERRY O'KEEFE, the Defendant(s) above named, having committed
21 the crime of **MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)**
22 **(Felony - NRS 200.010, 200.030, 193.165)**, on or about the 5th day of November, 2008,
23 within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes
24 in such cases made and provided, and against the peace and dignity of the State of Nevada,
25 did then and there wilfully, feloniously, without authority of law, and with premeditation and
26 deliberation, and with malice aforethought, kill VICTORIA WHITMARSH, a human being,
27 by stabbing the said VICTORIA WHITMARSH with a deadly weapon, to-wit: a knife.

28 ///

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY


PHILLIP N. SMITH, JR.
Deputy District Attorney
Nevada Bar #010233

Names of witnesses known to the District Attorney's Office at the time of filing this
Information are as follows:

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BUNN, CHRISTOPHER	LVMPD #4407
COLLINS, CHELSEA	LVMPD #9255
CONN, TODD	LVMPD #8101
CUSTODIAN OF RECORDS	CDC
CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS
CUSTODIAN OF RECORDS	LVMPD RECORDS
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HATHCOX, JIMMY	5001 EL PARQUE AVE #C-36 LVNV
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IVIE, TRAVIS	LVMPD #6405
KYGER, TERESA	LVMPD #4191
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5	NEWBERRY, DANIEL	LVMPD #4956
6	PAZOS, EDUARDO	LVMPD #6817
7	RAETZ, DEAN	LVMPD #4234
8	SANTAROSSA, BRIAN	LVMPD #6930
9	SHOEMAKER, RUSSELL	LVMPD #2096
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15	WHITMARSH, DAVID	7648 CELESTIAL GLOW LVNV
16	WILDEMAN, MARTIN	LVMPD #3516

26 DA#08F23348X/ts
 27 LVMPD EV#0811053918
 28 (TK9)

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2009 MAY -8 A 11:46

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRIAN KERRY OKEEFE
#1447732

Defendant.

CASE NO. C250630

DEPT. NO. XVII

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crime of MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER) (Category A Felony) in violation of NRS 200.010, 200.030, 193.165; and the matter having been tried before a jury and the Defendant having been found guilty of the crime of SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165; thereafter, on the 5TH day of May, 2009, the Defendant was present in court for sentencing with his counsel RANDALL PIKE, Special Deputy Public Defender and PATRICIA PALM, Special Deputy Public Defender, and good cause appearing,

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1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said crime as set forth in
2 the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee, \$150.00
3 DNA Analysis Fee including testing to determine genetic markers, the Defendant is
4 SENTENCED as follows: TO A MAXIMUM of TWENTY-FIVE (25) YEARS with a
5 MINIMUM parole eligibility of TEN (10) YEARS plus a CONSECUTIVE term of TWO
6 HUNDRED FORTY (240) MONTHS MAXIMUM with a MINIMUM parole eligibility of
7 NINETY-SIX (96) MONTHS for the Use of a Deadly Weapon in the Nevada Department
8 of Corrections (NDC), with ONE HUNDRED EIGHTY-ONE (181) DAYS credit for time
9 served.
10
11

12
13 DATED this 8th day of May, 2009.

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15 

16 MICHAEL VILLANI
17 DISTRICT JUDGE
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28

ff

ORIGINAL

1 NOAS
2 DAVID M. SCHIECK
3 SPECIAL PUBLIC DEFENDER
4 Nevada Bar #0824
5 JONELL THOMAS
6 DEPUTY SPECIAL PUBLIC DEFENDER
7 Nevada Bar #4771
8 330 South Third Street, Ste. 800
9 Las Vegas, Nevada 89155-2316
10 (702) 455-6265
11 Fax: 455-6273
12 thomasjn@co.clark.nv.us
13 Attorneys for Defendant

FILED

MAY 21 1 49 PM '09

CLERK OF COURT

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 * * *

17 THE STATE OF NEVADA,
18 Plaintiff,

CASE NO. C 250630
DEPT. NO. XVII

19 vs.

20 BRIAN KERRY O'KEEFE,
21 Defendant.

22 NOTICE OF APPEAL

23 DATE: N/A
24 TIME: N/A

25 TO: THE STATE OF NEVADA, Plaintiff;

26 TO: Clark County District Attorney, Plaintiff's attorney; and

27 TO: DEPARTMENT XVII OF THE EIGHTH JUDICIAL DISTRICT COURT
28 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK:

NOTICE is hereby given that Brian Kerry O'Keefe, appeals to the Nevada Supreme Court

CLERK OF THE COURT

MAY 21 2009

RECEIVED

SPECIAL PUBLIC
DEFENDER

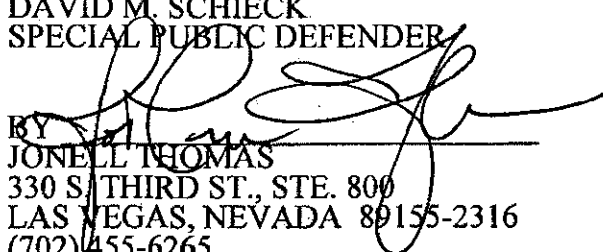
CLARK COUNTY
NEVADA

000006

1 from the judgement of conviction and sentence entered against said Defendant on the 8TH day
2 of May, 2009.

3 DATED this 20th day of May, 2009.

4 DAVID M. SCHIECK
5 SPECIAL PUBLIC DEFENDER

6 BY 
7 JONELL THOMAS
8 330 S. THIRD ST., STE. 800
LAS VEGAS, NEVADA 89155-2316
(702) 455-6265

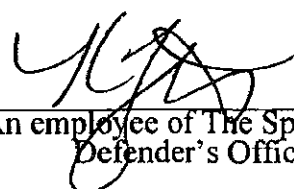
9 **CERTIFICATE OF MAILING**

10 The undersigned does hereby certify that on the 21 day of May, 2009, I deposited in the
11 United States Post Office at Las Vegas, Nevada, a copy of the Notice of Appeal, postage
12 prepaid, addressed to the following:

13 District Attorney's Office
14 200 Lewis Ave., Ste. 800
Las Vegas NV 89155

15 Nevada Attorney General
16 100 N. Carson
Carson City, NV 89701-4717

17 Brian O'Keefe, No. 1447732
18 Clark County Detention Center
330 S. Casino Center Blvd.
19 Las Vegas NV 89101

20
21
22 
23 An employee of The Special Public
24 Defender's Office
25
26
27
28

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. 53859

District Court Case No. C250630

FILED

AUG 19 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

FAST TRACK STATEMENT

1. Name of party filing this fast track statement: Appellant Brian O'Keefe
2. Name, law firm, address, and number of attorney submitting this fast track statement: JoNell Thomas, Clark County Special Public Defender's Office, 330 South 3rd Street, Suite 800, Las Vegas, Nevada 89155, (702) 455-6265.
3. Name if different from trial counsel: n/a
4. Judicial district, county, and district court docket number of lower court proceedings: Eighth Judicial District Court, Clark County, Docket No. C250630
5. Name of judge issuing order appealed from: Honorable Michael Villani
6. Length of trial. 5 days.
7. Conviction appealed from: One count of second degree murder with use of a deadly weapon.
8. Sentence for each count: A term of 10 to 25 years for second degree murder and a consecutive term of 96 months to 240 months for the weapons enhancement.
9. Date district court announced decision, sentence, or order appealed from. 5/5/09.
10. Date of entry of written judgment or order appealed from: 5/8/09
11. If this appeal is from an order on a petition for a writ of habeas corpus n/a
12. If the time for filing the notice of appeal was tolled by a post-judgment motion: n/a



09-20141

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1 13. **Date notice of appeal filed:** 5/21/09
2 14. **Specify rule governing the time limit for filing the notice of appeal:** NRAP 4(b).
3 15. **Specify statute which grants this court jurisdiction:** NRS 177.015.
4 16. **Specify nature of deposition.** Judgment of conviction entered pursuant to a jury verdict.
5 17. **Pending and prior proceedings in this court.** None known to counsel.
6 18. **Pending and prior proceedings in other courts.** None known to counsel.
7 19. **Proceedings raising same issues.** None known to current counsel.
8 20. **Procedural history.** The State charged O'Keefe with murder with use of a deadly
9 weapon. 1 App. 1. He entered a plea of not guilty and invoked his right to a speedy trial.
10 1 App. 5. The State filed a motion to admit bad act evidence which was addressed by the
11 district court. 1 App. 8. It did not include as a bad act the claim that O'Keefe used a racial
12 epithet while talking with an officer. 1 App. 8-9. An Amended Information was filed. 1
13 App. 12. The State did not charge a theory of felony murder. 1 App. 12. Trial began on
14 March 16, 2009. 1 App. 20, 65. During trial, O'Keefe filed a brief on the admissibility of
15 evidence of the alleged victim's history of suicide attempts, anger outbursts, anger
16 management therapy, self-mutilation (with knives and scissors) and erratic behavior. 2 App.
17 313. Proposed jury instructions were submitted by O'Keefe. 2 App. 322. After five days
18 of trial, on March 20, 2009, the jury returned a verdict finding O'Keefe guilty of second
19 degree murder with use of a deadly weapon. 2 App. 309, 380. O'Keefe filed a motion to
20 settle the record, which addressed matters that took place in chambers and during unrecorded
21 bench conferences. 2 App. 381. Argument on the motion took place on April 7, 2009. 2
22 App. 387. The sentencing hearing was held on May 5, 2009. 2 App. 391. As noted above,
23 this timely appeal followed.
24 21. **Statement of facts.** Brian O'Keefe and Victoria Whitmarsh, the alleged victim, met in
25 a treatment facility in 2001. 1 App. 95, 2 App. 256. They dated and co-habitated off and on,
26 and had what could be described as a very tumultuous relationship. 2 App. 256-57. In 2004,
27 O'Keefe was convicted of burglary for entering into the couple's joint dwelling with the
28 intent to commit a crime against Whitmarsh. O'Keefe was sentenced with probation, but his

1 probation was revoked when he was convicted of a third offense of domestic battery against
2 Whitmarsh, and he went to prison in 2006. 1 App. 192, 2 App. 257. Whitmarsh testified
3 against O'Keefe in the domestic battery case. 1 App. 192.

4 When O'Keefe was released from prison in 2007, he met and began a relationship
5 with Cheryl Morris. 1 App. 93, 2 App. 257. He would often speak to Morris about his
6 previous relationship with Whitmarsh, and even expressed to her that he still had strong
7 feelings for Whitmarsh. 1 App. 93-94, 99. Morris claimed at trial that O'Keefe said he was
8 upset with Whitmarsh because she put him in prison and he said he wanted to "kill the bitch."
9 1 App. 94. Morris testified that O'Keefe left at one point to be with Whitmarsh, and then
10 telephoned Morris, asking her to move out of their jointly shared apartment so Whitmarsh
11 could move in. 1 App. 93. Morris testified that Whitmarsh got on the phone with her during
12 that call and told her she had decided to resume her relationship with O'Keefe. The two of
13 them appeared to be a loving couple and were open about their relationship. 1 App. 85; 2
14 App. 215, 218-19.

15 At about 10:00 p.m. on the evening of the incident, in November 2008, a neighbor
16 who lived in the apartment below O'Keefe and Whitmarsh heard what she described as
17 thumping and crying noises coming from upstairs. 1 App. 67. The noise became so loud that
18 it woke her husband, Charles Toliver, who was in bed next to her. 1 App. 67, 70. Toliver
19 went upstairs to inquire about the noise and found the door to O'Keefe's apartment open.
20 1 App. 72. He yelled inside to get the occupants' attention, at which time O'Keefe came out
21 of the bedroom and shouted at Toliver to "come get her!" 1 App. 72-73. When Toliver
22 entered the bedroom, he saw Whitmarsh lying on the floor next to the bed and saw blood on
23 the bed covers. 1 App. 73. O'Keefe was holding her and saying "baby, baby, wake up, don't
24 do me like this." 1 App. 73, 76. O'Keefe did not stop Toliver from going in the apartment
25 or otherwise fight with him. 1 App. 76. Toliver left the apartment immediately and shouted
26 at a neighbor who was outside to call the police. 1 App. 73. He also brought Todd
27 Armbruster, another neighbor, back upstairs. 1 App. 74. O'Keefe was still holding
28 Whitmarsh and told Armbruster to get the hell out of there. 1 App. 74. Armbruster called

1 911. 1 App. 80. He thought that O'Keefe was drunk. 1 App. 80, 81.

2 By this time, shortly after 11:00 p.m., police had arrived on the scene. 1 App. 74, 103.
3 When they entered the bedroom, they found Whitmarsh lying on the floor next to the bed and
4 an unarmed O'Keefe cradling her in his arms and stroking her head. 1 App. 112, 114. The
5 police believed Whitmarsh to be dead and ordered O'Keefe to let go of her, but he refused.
6 1 App. 103, 105, 112. The officers eventually had to subdue him with a taser gun and
7 forcibly carried him out of the bedroom. 1 App. 108, 112, 120, 129. O'Keefe was acting
8 agitated, 1 App. 108, the officers testified that he had a strong odor of alcohol on him, and
9 he appeared to be extremely intoxicated. 1 App. 122, 200-01. Much of his speech was
10 incoherent, but at one point he said that Whitmarsh stabbed herself and he also said that she
11 tried to stab him. 1 App. 104-06, 111, 113, 121, 126. They arrested him and brought him
12 to the homicide offices. 1 App. 134.

13 Subsequent to his arrest, O'Keefe gave a rambling statement indicating he was not
14 aware of Whitmarsh's death or its cause. 1 App. 190. Police interviewed him at 1:20 a.m.,
15 at which time he was crying, raising his voice, talking to himself, and slurring. Detective
16 Wildemann stated that during the interview O'Keefe smelled heavily of alcohol, and when
17 police took photographs of him at about 3:55 a.m., they had to hold him upright to steady
18 him. 1 App. 194. Wildemann said it was pretty obvious that O'Keefe had been drinking,
19 however, law enforcement did not obtain a test for his breath or blood alcohol level either
20 before or after the interview. 1 App. 194.

21 Whitmarsh had also been drinking on the date of the incident, and at the time of her
22 death, her blood alcohol content was 0.24. 1 App. 181, 186. She died of one stab wound to
23 her side and had bruising on the back of her head. 1 App. 180, 183. Medical Examiner Dr.
24 Benjamin testified that Whitmarsh's toxicology screen indicated that she was taking Effexor
25 and that drug should not be taken with alcohol. 1 App. 184-85. Whitmarsh had about three
26 times the target dosage of Effexor in her system. 2 App. 234. The combination of Effexor
27 and alcohol could have caused anxiety, confusion and anger. 2 App. 234. Whitmarsh also
28 had Hepatitis C and advanced Cirrhosis of the liver, which is known to cause bruising with

1 only slight pressure to the body. 1 App. 180-81. Whitmarsh's body displayed multiple
2 bruises at the time Dr. Benjamin examined her and the bruises were different colors, but she
3 could not say that they were associated with Whitmarsh's death or otherwise say how long
4 ago Whitmarsh sustained the bruises. 1 App. 186. DNA belonging to O'Keefe and to
5 Whitmarsh was found on a knife at the scene. 1 App. 173-74.

6 O'Keefe testified. 2 App. 254. He acknowledged his problems with alcohol and
7 described his history with Whitmarsh. 2 App. 254-58. He disputed Morris's claim that he
8 said he wanted to kill Whitmarsh, but he acknowledged being angry with her. 2 App. 258.
9 It was Witmarsh who called O'Keefe and she initiated their renewed relationship. 2 App.
10 258. He was aware that Whitmarsh had Hepatitis C when she moved into his apartment. 2
11 App. 259-60. In November, 2008, Whitmarsh was stressed because of her financial
12 condition. 2 App. 268. A couple of days before the incident at issue here, Whitmarsh
13 confronted O'Keefe with a knife. 2 App. 269. She had been drinking and was on
14 medication. 2 App. 269. O'Keefe had not been drinking that night and was able to diffuse
15 the situation. 2 App. 269. On November 5, 2009, O'Keefe learned that he would be hired
16 for a new job and had two glasses of wine to celebrate. 2 App. 269-70. O'Keefe and
17 Whitmarsh went to the Paris Casino where they both had drinks. 2 App. 270. They returned
18 home and she went upstairs while he reclined in the passenger seat of the car for a period of
19 time. 2 App. 271. He went upstairs and then smoked outside on a balcony while she was in
20 the bathroom. 2 App. 272. He then went in the bedroom and saw Whitmarsh coming at him
21 with a knife. 2 App. 272. He swung his jacket at her and told her to get back. 2 App. 272.
22 He knew that she was mad at him about a lot of things. 2 App. 272. He grabbed the knife,
23 she yanked it and cut his hand. 2 App. 272. They struggled for a period of time. 2 App.
24 272-73. While fighting, she fell down, he fell on top of her and then he realized that she was
25 bleeding. 2 App. 273. He was still drunk at this point and was trying to figure out what
26 happened. 2 App. 273. He tried to stop the bleeding and panicked. 2 App. 274. He tried
27 taking care of Whitmarsh and asked his neighbor to call someone after the neighbor came
28 into his room. 2 App. 274. He became agitated when the neighbor brought another neighbor

1 up to look at Whitmarsh, who was partially undressed, rather than calling the paramedics.
2 2 App. 274. O'Keefe denied hitting or slamming Whitmarsh. 2 App. 275. He testified that
3 he did not intentionally kill Whitmarsh, but felt responsible because he drank that night and
4 he should not have done so. 2 App. 276.

5 **22. Issues on appeal.**

6 A. Whether the district court denied O'Keefe his state and federal constitutional rights to
7 present evidence by prohibiting him from introducing evidence of the deceased's prior
8 suicide attempts, self reported bi-polar conditions, "cutting" and other acts, and anger
management issues and treatment that were contained within her medical records and that
were within the knowledge of O'Keefe.

9 B. Whether the district court erred, and denied O'Keefe his state and federal constitutional
10 rights to due process and a fair trial, by refusing to strike an erroneous jury instruction and
instead directing the State not to rely upon the erroneous instruction in its closing argument.

11 C. Whether the district court erred, and denied O'Keefe his state and federal constitutional
12 rights to due process and a fair trial, by allowing a transportation officer to testify that
O'Keefe "told him to turn off that "nigger" music." O'Keefe's counsel were not given notice
of this highly prejudicial statement.

13 D. Whether the district court erred by allowing photos of bruises on the body of the deceased
14 despite the lack of relevance to this case due to the difficulty in determining the time of the
bruising with the deceased's Hepatitis C and cirrhosis issues.

15 E. Whether the district court denied O'Keefe his state and federal constitutional rights to a
16 fair trial by allowing a police detective to testify and offer his "expert" opinion whether the
wounds on O'Keefe's hands were defensive wounds, while also denying O'Keefe the right
17 to call his own expert to testify as to whether or not the wound on the deceased could have
been caused by an accident.

18 F. Whether the district court's rulings on jury instructions were erroneous.
19

20 **23. Legal argument, including authorities.**

21 A. The district court denied O'Keefe his state and federal constitutional rights to
22 present evidence by prohibiting him from introducing testimony and evidence of the
23 deceased's prior suicide attempts, self reported bi-polar conditions, "cutting" and other acts,
24 and anger management issues and treatment that were contained within her medical records
and that were within O'Keefe's knowledge.

25 The State objected to the admission of any testimony concerning Whitmarsh's suicide
26 attempts and to admission of documents concerning Whitmarsh's medical history. 2 App.
27 230. O'Keefe's counsel submitted points and authorities as to the admissibility of evidence
28

1 showing that Whitmarsh had a history of suicide attempts, depression, panic disorder and
2 incidents with cutting herself with knives. 2 App. 265, 313. The relevant documents were
3 included in Defense Proposed Exhibit B. 2 App. 265. The State argued that evidence of
4 Whitmarsh's suicide attempts was not relevant because it did not constitute a violent act. 2
5 App. 266. The Court found that her attempted suicides were not acts of violence and found
6 that the testimony and evidence from the medical records was not admissible. 2 App. 266.
7 The district court also prohibited admission of evidence concerning her anger management
8 classes. 2 App. 266.

9 O'Keefe wished to testify that as Whitmarsh's partner on and off since 2001, he was
10 aware at the time of the incident of her mental health history, which included multiple suicide
11 attempts, both by overdose and cutting herself with knives or scissors, was aware that she
12 self-mutilated, was aware that she had uncontrollable anger outbursts, and problems when
13 stressed and when abusing drugs or alcohol, and that she was attending anger management
14 counseling. 2 App. 256, 260. In addition, two nights before the incident, Whitmarsh
15 confronted O'Keefe when he was reclining. She was yelling and brandishing a knife at him;
16 however, as he was sober at the time, he was able to calm her down and diffuse the situation.
17 2 App. 269.

18 O'Keefe provided the State with Whitmarsh's medical records and sought admission
19 of these records at trial as they would have corroborated his claims as to her aggression and
20 anger problems and her anger management treatment. 2 App. 265; Exhibit B. Those records
21 include an October 2001 Admission to Montevista Hospital, after she cut both wrists with
22 a knife in what she reported was her fourth suicide attempt. She was on the medications
23 Celexa, Xanax and Vistaril. She was diagnosed with Major Depressive Episode, Panic
24 Disorder with Agoraphobia. It was during this hospitalization that she and O'Keefe met.
25 Next, a May 2002 Admission to Montevista Hospital after she used Xanax, Lortab, Oxycotin;
26 was blacking out and unable to function at work. Her withdrawal was severe. Those
27 documents noted a psychiatric history of severe anxiety and depression; a hospitalization in
28 October 2001 for OD and cutting her wrist; a hospitalization for an overdosed in 1983 and

1 a diagnosis of opiate dependence, continuous, xanax dependence continuous, and major
2 depression, recurrent. Next, she was admitted in September 2006 to Montevista Hospital for
3 a variety of issues, including bipolar disorder and depression. The report noted that she had
4 taken lethal dose of Xanax requiring intubation/mechanical ventilation h/o depression, also
5 has self-inflicted wrist lac." The report noted at least 3 suicide attempts and that she has been
6 self-mutilating for the pasts 15 years, she stated that she cuts herself when she is angry and
7 the last time she cut her left wrist was with a pair of scissors on September 22, 2006. Her
8 treatment included anger management. A Southern Nevada Adult Mental Health October
9 2007 admission showed that in October, Victoria took an overdose of pills in an apparent
10 suicide attempt. Exhibit B.

11 O'Keefe sought to admit portions of the records from the 2001, 2002, and 2006
12 hospitalizations as corroborative evidence of his knowledge about Whitmarsh's and his state
13 of mind regarding whether she was mentally capable and likely to cause him great bodily
14 harm when she came at him with a knife. 2 App. 265. Additionally, he was aware of and
15 had the opinion that Whitmarsh could be irrational and had a temper problem that caused her
16 to be aggressive and violent, especially when she was under the influence of alcohol or drugs.
17 The district court, despite full briefing on the issue by O'Keefe, precluded admission of the
18 evidence. 2 App. 266.

19 The Fifth, Sixth and Fourteenth Amendments to the United States Constitution, as
20 well as the Nevada Constitution, article 1, section 8, protect a criminal defendant's right to
21 a fair trial, at which he may confront and cross-examine witnesses and present evidence in
22 his defense. Preclusion of this evidence violated O'Keefe's rights. Pointer v. Texas, 380
23 U.S. 400 (1965) (recognizing that the right of confrontation requires that a criminal
24 defendant be given an opportunity to cross-examine the witnesses against him); Chambers
25 v. Mississippi, 410 U.S. 284, 294 (1973) (stating that "the rights to confront and cross-
26 examine witnesses and to call witnesses in one's own behalf have long been recognized as
27 essential to due process"). Preclusion of this evidence also violated O'Keefe's statutory
28 rights. NRS 48.045(1)(b); NRS 48.055(1). This Court has interpreted these statutes to

1 require that an accused, who claims he acted in self-defense, be permitted to present evidence
2 of the character of an alleged victim regardless of the accused's knowledge of the victim's
3 character when it tends to prove the victim was the likely aggressor. Petty v. State, 116 Nev.
4 321, 326-27, 997 P.2d 800, 802-03 (2000). Attempts to commit suicide, especially when
5 those attempts are made with knives or other cutting instruments, and acts of self-mutilation
6 with cutting instruments constitute acts of aggression or violence. Such evidence is relevant
7 under the circumstances presented here. State v. Stanley, 37 P.3d 85, 90 (N.M. 2001)
8 (collecting cases and noting that a clear majority of courts hold that evidence of suicide
9 attempts by a victim in a homicide case is admissible); People v. Salcido, 246 Cal.App.2d
10 450, 458-60 (Cal.App. 5th Dist. 1966) (same); State v. Jaeger, 973 P.2d 404, 407-08 (Utah
11 1999) (medical records, containing statements that the victim had previously attempted
12 suicide, were admissible when introduced in a case where defendant claimed the victim
13 committed suicide).

14 Further, at the time of the incident, O'Keefe was aware of Whitmarsh's prior acts of
15 violence and aggressive character. This Court has held that if the accused, who is claiming
16 he acted in self-defense, is aware of specific acts of violence by an alleged victim, then
17 evidence as to those specific acts is admissible to show the accused's state of mind at the
18 time of the alleged crime. Id. at 326-27, 997 P.2d at 803; Daniel v. State, 119 Nev. 498, 78
19 P.3d 890 (2003) ("[A] defendant should be allowed to produce supporting evidence to prove
20 the particular acts of which the accused claims knowledge, thereby proving the
21 reasonableness of the accused's knowledge and apprehension of the victim and the credibility
22 of his assertions about his state of mind. . . . The self-serving nature of an accused's
23 testimony about prior violent acts of the victim makes corroborating evidence of those acts
24 particularly important for an accused's claim of self-defense."). "[W]hen a defendant claims
25 self-defense and knew of relevant specific acts by a victim, evidence of the acts can be
26 presented through the defendant's own testimony, through cross-examination of a surviving
27 victim, and through extrinsic proof." Id. at 516, 78 P.3d at 32-33. O'Keefe was entitled to
28 present this evidence. He is entitled to a new trial based upon the district court's order

1 prohibiting his counsel from presenting this evidence.

2 B. The district court erred, and denied O'Keefe his state and federal constitutional
3 rights to due process and a fair trial, by refusing to strike an erroneous jury instruction and
4 instead directing the State not to rely upon the erroneous instruction in its closing argument.
5 The parties settled jury instructions in chambers. At that time, O'Keefe's counsel objected
6 to the State's proposed instruction defining second degree murder, citing Jennings v. State,
7 116 Nev. 488, 998 P.2d 557 (2000), and argued they had no notice of a second degree felony
8 murder theory and the second paragraph of the State's instruction set forth a felony murder
9 theory. 2 App. 384. The district court determined that the State's proposed instruction
10 defining second degree felony murder in paragraph #2 would not be given because no such
11 theory had been alleged in the Information. 2 App. 384, 388. After the parties returned,
12 made a record of objections, the district court passed out the final instructions just before
13 instructing the jury. 2 App. 296, 384. The reading of the jury instructions was not
14 transcribed, but the record reflects that a bench conference was held during the reading of
15 the instructions. 2 App. 296-97. When the district court got to the instruction (#18) defining
16 "Murder of the Second Degree", the parties approached the bench, and the district court
17 noted that it understood the jury was not going to be instructed on second degree felony
18 murder. 2 App. 384. O'Keefe's counsel agreed with this understanding, and stated that the
19 instruction should not be given with the second paragraph. 2 App. 384. The State argued
20 that they simply would not argue the theory to the jury. 2 App. 384. O'Keefe's counsel
21 argued that this solution was not satisfactory because the jury might still understand that they
22 could find the theory from the district court's instruction. 2 App. 384. The district court
23 overruled O'Keefe's objection and gave the instruction which it knew to be erroneous. 2
24 App. 384, 388. The jury was instructed in the second paragraph of Instruction #18 that
25 "[W]here an involuntary killing occurs in the commission of an unlawful act, the natural
26 consequences of which are dangerous to life, which act is intentionally performed by a
27 person who knows that his conduct endangers the life of another, even though the person has
28 not specifically formed an intention to kill." 2 App. 354.

1 During closing arguments, the prosecutor argued that a finding of murder could be
2 based upon implied malice. 2 App. 298, 299. O'Keefe's counsel objected to this argument
3 and a conference was held at the bench, but it was not recorded. 2 App. 299. The jury was
4 not instructed to disregard this argument and was not instructed that the second paragraph
5 of Instruction #18 could not be used as a basis for a conviction.

6 O'Keefe's state and federal constitutional rights to a fair trial, proper jury instructions,
7 and notice of the charges against him were violated by the district court's actions. It is
8 entirely unprecedented for a district court to give a jury instruction, despite a previous order
9 that the instruction would not be given, with full knowledge that the jury instruction was
10 unsupported by authority from this Court. Likewise, there is no precedent holding that such
11 an instruction may be given so long as the prosecutor does not argue the erroneous and
12 unconstitutional theory to the jury. There is no valid question as to the fact that this jury
13 instruction was improper. The State failed to charge O'Keefe with felony-murder and he was
14 given no notice of the State's intent to prosecute him under a felony-murder theory. A
15 defendant has a fundamental right to be clearly informed of the nature and cause of the
16 charges in order to adequately prepare his defense. Jennings, 116 Nev. at 491, 998 P.2d at
17 559 (citing Sheppard v. Rees, 909 F.2d 1234, 1236 (9th Cir. 1989), Cole v. Arkansas, 333
18 U.S. 196 (1948)). See also Alford v. State, 111 Nev. 1409, 1415, 906 P.2d 714, 717 (1995).
19 Despite the fact that the State did not charge O'Keefe under a second-degree felony murder
20 theory, the jury was instructed on this theory of prosecution and under the facts presented
21 here, the jury may have very well relied upon this instruction in reaching its verdict. Reversal
22 of the judgment is therefore required. Cortinas v. State, 195 P.3d 315, 320-21 (Nev. 2008).

23 C. The district court erred, and denied O'Keefe his state and federal constitutional
24 rights to due process and a fair trial, by allowing a transportation officer, Officer Hutcherson,
25 to testify that O'Keefe told him to "turn that nigger music off" and said "I don't listen to
26 nigger music." 1 App. 135. This testimony was sprung upon the defendant during trial
27 without any prior notice. O'Keefe's counsel asked to approach the bench and an unrecorded
28 bench conference took place. 1 App. 135. The officer did not write a report about this

1 matter, did not give a recorded statement, and did not state that this happened in his
2 handwritten note. 1 App. 136. Although the State was aware of these alleged statements,
3 O'Keefe's counsel were not given notice of this highly prejudicial statement. The State did
4 not request a Petrocelli hearing to establish the admissibility of this highly inflammatory and
5 irrelevant evidence. 1 App. 153, 159. The State argued that no discovery violation occurred
6 because the statement was not memorialized and it was not exculpatory. 1 App. 153. The
7 district court ruled that there was no discovery violation and found that O'Keefe was not
8 prejudiced by the testimony. 1 App. 154. O'Keefe's counsel noted that some jurors reacted
9 strongly to the testimony. 1 App. 159. Counsel further noted that the testimony was
10 especially prejudicial as the police officer and one of the prosecutors, and at least one juror,
11 were African-American and testimony concerning the racial slur was likely to cause the
12 jurors to more closely align themselves with the State because of empathy to the officer or
13 prosecutor or because of anger toward O'Keefe. 1 App. 159. Additional prejudice was
14 present as O'Keefe and Whitmarsh were of different races. Counsel requested a mistrial
15 based upon the State's intentional non-disclosure of the evidence, the highly prejudicial
16 testimony, and the inability to conduct voir dire on racial bias which would have been
17 conducted had the statement been disclosed. 1 App. 159. The State offered an additional
18 reason as to why it believed the testimony to be relevant:

19 Now, prejudicial, yes. But probative, very probative as to the state – this is a
20 first degree murder trial. The intent and state of mind of the defendant before,
21 during and after the murder, the stabbing of Victoria, is very important to this
22 case. The fact that he's angry, mean, violent, and is spewing racial slurs is in
23 the State's opinion probative and relevant to the case.

24 1 App. 164. The district court again denied the motion for a mistrial. 1 App. 164.

25 Improper references to race can be so prejudicial as to result in a denial of due
26 process. Moore v. Morton, 255 F.3d 95, 114 (3rd Cir. 2001). There is no suggestion here
27 that this incident in any way involved racial animosity. Admission of the evidence rendered
28 the trial fundamentally unfair, resulting in a denial of due process. The evidence constituted
evidence of bad character which permitted the jury to infer that O'Keefe committed the
charged offense because of his bad character. This evidence uniquely tended to evoke an

1 emotional bias against O'Keefe but had no relevance to the issues of this case. Moreover,
2 admission of this evidence violated O'Keefe's First Amendment rights. Dawson v.
3 Delaware, 503 U.S. 159 (1992). In addition, the State's use of this evidence, as established
4 by the State's remarks above, was an improper use of character evidence. NRS 48.045;
5 Tavares v. State, 117 Nev. 725, 30 P.3d 1128 (2001). For each of these reasons the judgment
6 of conviction must be reversed.

7 D. The district court erred by allowing photos of bruises on the body of the deceased
8 despite the lack of relevance to this case due to the difficulty in determining the time of the
9 bruising with the deceased's Hepatitis C and cirrhosis issues. The medical examiner testified
10 that none of the bruises were life threatening and could have been caused by minimal
11 contact, and could have been inflicted by Whitmarsh herself or another person. 1 App. 182.
12 Although no causation or association with the incident was established, the district court
13 admitted as evidence numerous photographs of bruises on Whitmarsh's body. 1 App. 182
14 (admitting exhibits 32-38, 40, 44-48, and 55-59). Many of these photographs were also
15 referenced during closing arguments. 2 App. 299. O'Keefe has filed a motion requesting
16 that these photographs be transmitted to this Court so that their prejudicial impact may be
17 fully appreciated by the Court. O'Keefe objected to the admission of photographs showing
18 bruising on Whitmarsh's body unless there was a foundation for the assertion that they were
19 caused by O'Keefe and were not the result of other incidents combined with her cirrhosis of
20 the liver medical condition. 1 App. 86, 189. Despite the lack of foundation showing a nexus
21 between the bruises and the events at issue here, and despite their highly prejudicial and
22 inflammatory nature, the district court admitted this evidence. It was error to do so. NRS
23 48.035; Townsend v. State, 103 Nev. 113, 117-18, 734 P.2d 705, 708 (1987). Admission of
24 this evidence violated O'Keefe's constitutional right to a fair trial. Spears v. Mullin, 343
25 F.3d 1215, 1225-26 (10th Cir. 2003); Romano v. Oklahoma, 512 U.S. 1, 12 (1994).

26 E. The district court denied O'Keefe his state and federal constitutional rights to a
27 fair trial by allowing a police detective to testify and offer his "expert" opinion whether the
28 wounds on O'Keefe's hands were defensive wounds, while also denying O'Keefe the right

1 to call his own expert to testify as to whether or not the wound on the deceased could have
2 been caused by an accident. Over an objection by O'Keefe's counsel, Detective Wildemann
3 testified that in his experience as a homicide detective, it has frequently been the case that
4 a suspect in a stabbing has cuts on his fingers on the same area that O'Keefe had a cut on his
5 hand. 1 App. 203. O'Keefe's counsel objected on the basis that the detective was not an
6 expert. 2 App. 211. The district court employed a different standard, however, when it
7 precluded a defense expert from testifying as to whether the crime scene suggested that the
8 death might have been accidental. 2 App. 246. The defense expert, George Schiro, had
9 extensive experience as a forensic scientist and crime scene reconstruction and he had
10 previously testified as to whether wounds were defensive or accidental. 2 App. 240-41, 246-
11 48, 253-54. The district court found that the question was beyond Schiro's expertise and
12 beyond what was identified in his report. 2 App. 248. The district court abused its discretion
13 in allowing the State's expert to testify about his opinion as to the defensive nature of
14 wounds without first establishing that the expert was qualified to make such an opinion.
15 Hallmark v. Eldridge, 189 P.3d 646 (Nev. 2008). This action usurped the jury's function and
16 violated O'Keefe federal constitutional rights to due process and a fair trial. The district
17 court also violated O'Keefe's rights of equal protection and due process by employing a
18 different standard for admission of testimony by a defense expert. Finally, the district court
19 violated O'Keefe's federal constitutional rights of cross-examination and confrontation, and
20 his right to present evidence on his behalf, by precluding the defense expert from testifying.
21 Pointer v. Texas, 380 U.S. 400 (1965) (recognizing that the right of confrontation requires
22 that a criminal defendant be given an opportunity to cross-examine the witnesses against
23 him); Chambers v. Mississippi, 410 U.S. 284, 294 (1973)

24 F. O'Keefe submits that the district court abused its discretion, erred, and violated
25 O'Keefe's state and federal constitutional rights by refusing several instructions proffered
26 by the defense and by overruling several instructions which were objected to by the defense.
27 Specifically, the district court refused to give an anti-flight instruction. 2 App. 230, 294, 326.
28 Cf. Carter v. State, 121 Nev. 759, 770, 121 P.3d 592, 599 (2005). The court overruled

1 O'Keefe's instruction to the State's proffered malice instruction. 2 App. 294, 327. The court
2 overruled O'Keefe's objection to the "absolute necessary" language of the self-defense
3 instruction. 2 App. 294, 328. The court overruled O'Keefe's proffered instruction on
4 voluntary manslaughter and the heat of passion and overruled the defense objection to the
5 instruction given at trial on these issues. 2 App. 294, 296, 329-32. See Crawford v. State,
6 121 Nev. 746, 752, 121 P.3d 582, 587-88 (2005). The court overruled O'Keefe's proffered
7 instruction on good character. 2 App. 295, 333. See Emerson v. State, 98 Nev. 158, 162,
8 643 P.2d 1212, 1214 (1982); Beddow v. State, 93 Nev. 619, 624, 572 P.2d 526-29 (1977).
9 The failure to give the instructions proffered by the defense, and the giving of instructions
10 objected to by the defense, deprived O'Keefe of his state and federal constitutional rights to
11 have the jury properly instructed on the elements of the offense and deprived him of a fair
12 trial. See Sandstrom v. Montana, 442 U.S. 510 (1979). Reversal is also warranted for the
13 cumulative error involving jury instructions and the other issues presented herein.

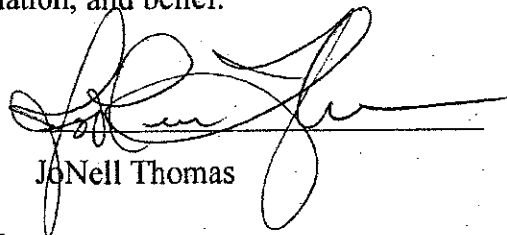
14 **24. Preservation of issues.** All issues raised herein were preserved by timely objections at
15 the time of trial and/or by pretrial motions, as set forth above.

16 **25. Issues of first impression or of public interest.** Yes. O'Keefe respectfully renews his
17 request for full briefing so that each of these issues may be adequately set forth and so
18 appropriate legal authority may be cited in support of each of the issues presented.


19 VERIFICATION

20 I recognize that pursuant to N.R.A.P. 3C I am responsible for filing a timely fast track
21 statement and that the Supreme Court of Nevada may sanction an attorney for failing to file
22 a timely fast track statement, or failing to raise material issues or arguments in the fast track
23 statement, or failing to cooperate fully with appellate counsel during the course of an appeal.
24 I therefore certify that the information provided in this fast track statement is true and
25 complete to the best of my knowledge, information, and belief.

26 Dated this ___ day of August, 2009.

27 
28 Jo Nell Thomas

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KATHLEEN FITZGERALD
an employee of
The Special Public Defender

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53859

FILED

APR 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

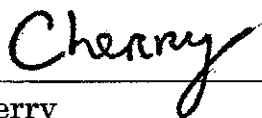
ORDER OF REVERSAL AND REMAND


This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michael Villani, Judge.


Appellant Brian Kerry O'Keefe contends that the district court erred by giving the State's proposed instruction on second-degree murder because it set forth an alternative theory of second-degree murder, the charging document did not allege this alternate theory, and no evidence supported this theory. We agree. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error. An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (internal quotation marks and footnote omitted). Here, the district court abused its discretion when it instructed the jury that second-degree murder includes involuntary killings that occur in the commission of an unlawful act because the State's charging document did not allege that O'Keefe killed the victim while he was

committing an unlawful act and the evidence presented at trial did not support this theory of second-degree murder. Cf., Jennings v. State, 116 Nev. 488, 490, 998 P.2d 557, 559 (2000) (adding an additional theory of murder at the close of the case violates the Sixth Amendment and NRS 173.075(1)). The district court's error in giving this instruction was not harmless because it is not clear beyond a reasonable doubt that a rational juror would have found O'Keefe guilty of second-degree murder absent the error. See Neder v. United States, 527 U.S. 1, 18-19 (1999); Wegner v. State, 116 Nev. 1149, 1155-56, 14 P.3d 25, 30 (2000), overruled on other grounds by Rosas v. State, 122 Nev. 1258, 147 P.3d 1101 (2006). Because we conclude that the judgment of conviction must be reversed and the case remanded for a new trial, we need not reach O'Keefe's remaining contentions. Accordingly, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


Cherry, J.


Saitta, J.


Gibbons, J.

cc: Hon. Michael Villani, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 53859

District Court Case No. C250630

REMITTITUR

TO: Steven D. Grierson, Clark District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: May 3, 2010

Tracie Lindeman, Clerk of Court

By: _____

Deputy Clerk

cc (without enclosures):

Hon. Michael Villani, District Judge
Attorney General/Carson City
Clark County District Attorney
Special Public Defender

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on MAY 06 2010

Deputy

District Court Clerk

FILED

MAY 11 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingersoll
DEPUTY CLERK

000026

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 53859

District Court Case No. C250630

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order."

Judgment, as quoted above, entered this 7th day of April, 2010.

IN WITNESS WHEREOF, I have subscribed my name and affixed
the seal of the Supreme Court at my Office in Carson City,
Nevada, this 3rd day of May, 2010.

Tracie Lindeman, Supreme Court Clerk

By: _____
Deputy Clerk

A. Ingersoll

000027

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

MAY 06 2010

BRIAN KERRY O'KEEFE

BRIAN KERRY O'KEEFE,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

Supreme Court No. 53859

Supreme Court No. 53859

District Court Case No. C250630

Tracie Lindeman
Tracie Lindeman
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order."

Judgment, as quoted above, entered this 7th day of April, 2010.

IN WITNESS WHEREOF, I have subscribed my name and affixed
the seal of the Supreme Court at my Office in Carson City,
Nevada, this 3rd day of May, 2010.

Tracie Lindeman, Supreme Court Clerk

By:
Deputy Clerk

A. Ingersoll

000028

1 AINF

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 CHRISTOPHER J. LALLI
6 Chief Deputy District Attorney
7 Nevada Bar #005398
8 200 South Third Street
9 Las Vegas, Nevada 89155-2211
10 (702) 671-2500
11 Attorney for Plaintiff

FILED IN OPEN COURT
AUG 19 2010 20

CHARLES J. SHORT
CLERK OF THE COURT

BY CAROL DONAHOO
DEPUTY

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 BRIAN KERRY O'KEEFE,
14 #1447732
15 Defendant.

Case No. C250630
Dept No. XVII

SECOND AMENDED
INFORMATION

16 STATE OF NEVADA }
17 COUNTY OF CLARK } ss:

18 DAVID ROGER, District Attorney within and for the County of Clark, State of
19 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

20 That BRIAN KERRY O'KEEFE, the Defendant above named, having committed the
21 crime of **MURDER OF THE SECOND DEGREE WITH USE OF A DEADLY**
22 **WEAPON (Felony - NRS 200.010, 200.030, 193.165)**, on or about the 5th day of
23 November, 2008, within the County of Clark, State of Nevada, contrary to the form, force
24 and effect of statutes in such cases made and provided, and against the peace and dignity of
25 the State of Nevada, did then and there wilfully, feloniously, without authority of law, and
26 with malice aforethought, kill VICTORIA WHITMARSH, a human being, by stabbing at

27 ///

28 ///

1 and into the body of the said VICTORIA WHITMARSH, with a deadly weapon, to-wit: a
2 knife.

3
4 DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

5
6 BY

Christopher J. Lalli
CHRISTOPHER J. LALLI
Chief Deputy District Attorney
Nevada Bar #005398

7
8
9 In addition to any other Notice of Witnesses, names of witnesses known to the
10 District Attorney's Office at the time of filing this Information are as follows:

<u>NAME</u>	<u>ADDRESS</u>
ARMBRUSTER, TODD	5001 OBANNON DR #34 LVNV
BALLEJOS, JEREMIAH	LVMPD #8406
BENJAMIN, JACQUELINE DR	ME 0081
BLASKO, KEITH	LVMPD #2995
BUNN, CHRISTOPHER	LVMPD #4407
COLLINS, CHELSEA	LVMPD #9255
CONN, TODD	LVMPD #8101
CUSTODIAN OF RECORDS	CDC
CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS
CUSTODIAN OF RECORDS	LVMPD RECORDS
FORD, DANIEL	LVMPD #4244
FONBUENA, RICHARD	LVMPD #6834
HATHCOX, JIMMY	3955 CHINCHILLA AVE LVNV
HUTCHERSON, CHRISTOPHER	LVMPD #12996
IVIE, TRAVIS	LVMPD #6405
KYGER, TERESA	LVMPD #4191

1	KOLACZ, ROBIN	5001 EL PARQUE AVE #38 LVNV
2	LOWREY-KNEPP, ELAINE	DISTRICT ATTORNEY INVESTAGATOR
3	MALDONADO, JOCELYN	LVMPD #6920
4	MORRIS, CHERYL	C/O DISTRICT ATTORNEY
5	MURPHY, KATE	LVMPD #9756
6	NEWBERRY, DANIEL	LVMPD #4956
7	PAZOS, EDUARDO	LVMPD #6817
8	RAETZ, DEAN	LVMPD #4234
9	SANTAROSSA, BRIAN	LVMPD #6930
10	SHOEMAKER, RUSSELL	LVMPD #2096
11	TAYLOR, SEAN	LVMPD #8718
12	TINIO, NORMA	2992 ORCHARD MESA HENDERSONNV
13	TOLIVER, CHARLES	1013 N. JONES #101 LVNV
14	TOLIVER, JOYCE	1013 N. JONES #101 LVNV
15	WHITMARSH, ALEXANDRA	7648 CELESTIAL GLOW LVNV
16	WHITMARSH, DAVID	7648 CELESTIAL GLOW LVNV
17	WILDEMANN, MARTIN	LVMPD #3516

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DA#08F23348X/ts
LVMPD EV#0811053918
(TK9)

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Location : District Court Civil/Criminal Help

REGISTER OF ACTIONS

CASE NO. 08C250630

The State of Nevada vs Brian K O'Keefe

Case Type: **Felony/Gross
Misdemeanor**
Date Filed: **12/19/2008**
Location: **Department 17**
Conversion Case Number: **C250630**
Defendant's Scope ID #: **1447732**
Lower Court Case Number: **08F23348**
Supreme Court No.: **61631**

PARTY INFORMATION

Defendant O'Keefe, Brian K

Lead Attorneys
Pro Se

Plaintiff State of Nevada

Steven B Wolfson
702-671-2700(W)

CHARGE INFORMATION

Charges: O'Keefe, Brian K	Statute	Level	Date
1. MURDER.	200.010	Felony	01/01/1900
1. DEGREES OF MURDER	200.030	Felony	01/01/1900
1. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900

EVENTS & ORDERS OF THE COURT

08/23/2010 Jury Trial (10:00 AM) (Judicial Officer Villani, Michael)
08/23/2010, 08/24/2010, 08/25/2010, 08/26/2010, 08/27/2010, 08/30/2010, 08/31/2010, 09/01/2010, 09/02/2010

Minutes

08/23/2010 10:00 AM

08/23/2010 10:00 AM

- Christopher Lalli, Chf Dep DA, and Stephanie Graham, Dep DA, present on behalf of the State; Patricia Palm, Esq., present on behalf of Deft. O'Keefe, who is also present. 10:21 a.m. Jury Trial commenced. Court and counsel begin Voir Dire examination of the prospective Jurors. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Court canvassed Juror No. 0229 for the reasons stated on the record. PROSPECTIVE JURORS PRESENT: Voir Dire examination of the prospective Jurors continued. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Ms. Palm is seeking to admit evidence pertaining to the victim's Mental Health condition and history. Colloquy regarding the excerpts from the victim's medical records. Excerpts from Medical Records of Victim marked for identification and ADMITTED as Court's Exhibit 1. Deft.'s Proposed Jury Instructions FILED IN OPEN COURT. PROSPECTIVE JURORS PRESENT: Voir Dire examination of the prospective Jurors continued. 5:35 a.m. Jury Trial concluded for the day. COURT ORDERED, trial CONTINUED. CUSTODY CONTINUED TO: 08/24/10 10:00 AM

08/24/2010 10:00 AM

- Christopher Lalli, Chf Dep DA, and Stephanie Graham, Dep DA, present on behalf of the State; Patricia Palm, Esq., present on behalf of Deft. O'Keefe, who is also present. 10:30 a.m. Jury Trial resumed. Court and counsel continue Voir Dire examination of the prospective Jurors. 5:00 p.m. Jury Trial concluded for the day. COURT ORDERED, trial CONTINUED. CUSTODY CONTINUED TO: 08/25/10 9:30 AM

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08/25/2010 9:30 AM

- Christopher Lalli, Chf Dept DA, and Stephanie Graham, Dep DA, present on behalf of the State; Patricia Palm, Esq., present on behalf of Deft. O'Keefe, who is also present. 9:43 a.m. Jury Trial commenced. Court and counsel continue Voir Dire examination of the prospective Jurors. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Colloquy regarding redaction issues with regard to the video of Deft.'s interview with the police. PROSPECTIVE JURORS PRESENT: Voir Dire examination of the prospective Jurors continues. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Court canvassed Prospective Juror No. 0210. For the reasons stated on the record, COURT ORDERED, Prospective Juror No. 0210 shall be EXCUSED. PROSPECTIVE JURORS PRESENT: Voir Dire examination of the prospective Jurors continues. Jury and two (2) alternates selected and sworn. Clerk read the Second Amended Information to the Jury and stated the Deft.'s plea thereto. Opening statements by Mr. Lalli and Ms. Palm. Testimony and exhibits presented (see worksheets). 5:35 p.m. Jury Trial concluded for the day. COURT ORDERED, trial CONTINUED. CUSTODY CONTINUED TO: 08/26/10 10:00 AM

08/26/2010 10:00 AM

- Christopher Lalli, Chf Dept DA, and Stephanie Graham, Dep DA, present on behalf of the State; Patricia Palm, Esq., present on behalf of Deft. O'Keefe, who is also present. 10:00 a.m. Jury Trial resumed. OUTSIDE THE PRESENCE OF THE JURY: Court and counsel discuss the issues surrounding the video of Deft.'s interview with the police and the redactions made by the State. Ms. Palm would like to have certain information added back to the disc. JURY PRESENT: Testimony and exhibits presented (see worksheets). 5:30 p.m. Jury Trial concluded for the day. COURT ORDERED, trial CONTINUED. CUSTODY CONTINUED TO: 08/27/10 11:00 AM

08/27/2010 11:00 AM

- Christopher Lalli, Chf Dep DA, and Stephanie Graham, Dep DA, present on behalf of the State; Patricia Palm, Esq., present on behalf of Deft. O'Keefe, who is also present. 11:45 a.m. Jury Trial resumed. Testimony and evidence presented (see worksheets). OUTSIDE THE PRESENCE OF THE JURY: State is objecting to a demonstration by the witness, George Schiro, and Ms. Palm as to how the wound to the victim may have been inflicted. COURT ORDERED, the demonstration may continue. JURY PRESENT: Testimony and evidence presented (see worksheets). 6:30 p.m. Jury Trial concluded for the day. COURT ORDERED, trial CONTINUED. CONTINUED TO: 08/30/10 9:30 AM

08/30/2010 9:30 AM

- Christopher Lalli, Chf Dep DA, and Stephanie Graham, Dep DA, present on behalf of the State; Patricia Palm, Esq., present on behalf of Deft. O'Keefe, who is also present. 9:43 a.m. Jury Trial resumed. OUTSIDE THE PRESENCE OF THE JURY: Ms. Palm is requesting a limited Jury Instruction regarding the testimony by the witness, Cheryl Morris, where she mentioned the killing of a person by cutting them in the sternum area. The medical records of the victim were also discussed. The parties have reached an agreement with regard to the said records and a stipulation will be read to the Jury by the Court. Stipulation marked as Court's Exhibit 14 and ADMITTED. JURY PRESENT: Testimony and exhibits presented (see worksheets). OUTSIDE THE PRESENCE OF THE JURY: Juror No. 2 requested to address the Court regarding a procedural issue. The Juror presented his question to the Court and it was answered by the Court and counsel. JURY PRESENT: Testimony and exhibits presented (see worksheets). 5:30 p.m. Jury Trial concluded for the day. COURT ORDERED, trial

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CONTINUED. CUSTODY CONTINUED TO: 08/31/10
9:45 AM

08/31/2010 9:45 AM

- Christopher Lalli, Chf Dep DA, and Stephanie Graham, Dep DA, present on behalf of the State; Patricia Palm, Esq., present on behalf of Deft. O'Keefe, who is also present. 10:00 a.m. Jury Trial resumed. OUTSIDE THE PRESENCE OF THE JURY: Court and counsel questions Juror No. 6 as to what she may have observed on the elevator when reporting to Court to resume the trial this morning. Court canvassed Deft. with regard to his right not to testify. JURY PRESENT: Testimony and exhibits presented (see worksheets). OUTSIDE THE PRESENCE OF THE JURY: Jury Instructions and Verdict forms settled on the record. JURY PRESENT: Court instructed the Jury. Closing arguments by Ms. Graham and Ms. Palm; rebuttal by Mr. Lalli. OUTSIDE THE PRESENCE OF THE JURY: Ms. Palm orally moved the Court for a mistrial. Arguments by counsel. COURT ORDERED, Motion DENIED; the totality of the circumstances do not warrant a mistrial at this time. JURY PRESENT: At the hour of 5:45 p.m., the Jury retired to deliberate; however, due to the lateness of the hour, the Jury elected to go home and return in the morning to begin deliberations. COURT ORDERED, trial continued. CUSTODY CONTINUED TO: 09/01/10 9:00 AM

09/01/2010 9:00 AM

- 9:00 a.m. Jury returned to deliberate. At the hour of 3:45 p.m. the Jury presented a note with a question to the Court. Court held a telephonic conference with Christopher Lalli, Chf Dep DA, and Patricia Palm, Esq., regarding the note. An answer was provided to the Jury. The Question and Answer provided was marked for identification as Court's Exhibit 16 and ADMITTED. At the hour of 4:55 p.m. the Jury presented another note to the Court indicating that they were still deadlocked. The Court again held a telephonic conference with counsel regarding the note. Court and counsel agreed to release the Jury for the evening with the understanding that they would return at 9:00 a.m., September 2, 2010, to continue deliberations. Court noted there is a possibility of an Allen Charge being given after further deliberations. The Note was marked for identification as Court's Exhibit 17 and ADMITTED. Court thanked and excused the alternates and ORDERED, trial CONTINUED. CUSTODY CONTINUED TO: 09/02/10 9:00 AM

09/02/2010 9:00 AM

- 9:30 a.m. Jurors returned to continue deliberations. At the hour of 10:15 p.m. the Jury presented a note to the Court indicating that they were still deadlocked. The Note was marked for identification as Court's Exhibit 18 and ADMITTED. 10:43 a.m. OUTSIDE THE PRESENCE OF THE JURY: Robert Daskas, Chf Dep DA, present on behalf of Christopher Lalli, Chf Dep DA, and Stephanie Graham, Dep DA, present on behalf of the State; Patricia Palm, Esq., present on behalf of Deft. O'Keefe, who is also present. Court advised counsel of the notes it had received from the Jury. JURY PRESENT: Court gave an Allen Charge to the Jury. At the hour of 10:55 a.m. the Jury returned to the Jury room to continue their deliberations. At the hour of 11:38 a.m. the Jury indicated that they were still deadlocked. The Note was marked for identification as Court's Exhibit 20 and ADMITTED. JURY PRESENT: Stephanie Graham, Dep DA, present on behalf of the State; Patricia Palm, Esq., present on behalf of Deft. O'Keefe, who is also present. Court noted the Jury is deadlocked at 10 to 2. It is fruitless to continue deliberations at this time. Therefore, COURT FINDS, that due to the hopeless deadlock of the Jury, it is a manifest necessity to declare a MISTRIAL. Court thanked and excused the Jury and ORDERED, matter set for status check; Deft. REMANDED to custody. CUSTODY 09/14/10 8:15 AM STATUS CHECK: NEW TRIAL DATE

000034

[Return to Register of Actions](#)

000035

EIGHTH JUDICIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

C.C.D.C.
330 S. CASINO CTR.
LAS VEGAS, NV. 89101
IN PROPER-PERSON
MOTION # 1

STATE OF NEVADA

Plaintiff,

vs.

BRIAN KERRY O'KEEFE

Defendant

1447732

) Case No.: C250630

) Dept. No.: XVII (17)

) Docket No.: _____

Judge Villani, M.

TOTAL: [2 pgs.]

(MOTION TO DISMISS APPOINTED COUNSEL
AND FOR FARETTA HEARING)

Now Comes Brian O'Keefe, defendant, in proper -
person to invoke my "Constitutional rights" to remove
court appointed counsel and to proceed in such manner.

At scheduled hearing accordingly canvass
defendant pursuant to,

Faretta v. California • [422 U.S. 806]

Respecting all future Motions under the express dictates of
Haines v. Kerner • [404 U.S. 519] as to liberal reading and
construction of said Motions.

Dated: Sept. 18, 2011

Respectfully Submitted,

By Brian K. O'Keefe
Brian K. O'Keefe
IN PROPER-PERSON
1447732

Certificate of Mailing

• Clerk of the Court
200 LEWIS AVENUE, 3rd FLOOR
LAS VEGAS, NV. 89155-1140

• District Attorney's Office
200 LEWIS AVENUE, SUITE 800
LAS VEGAS, NV. 89155

• B & M
732 S. SIXTH STREET, SUITE 102
LAS VEGAS, NV. 89101

• Judge Villanar, M.
Regional Justice Center
200 LEWIS AVENUE, D.C.#17
LAS VEGAS, NV. 89155
Courtesy Copy

[C/C: FILE]

A copy of this was mailed to
the above listed parties.

DATED THIS 22nd day of September, 2011.

I, Brian Kerry O'Keeffe, do

solemnly swear, under the penalty of perjury, that

the above Motion to Dismiss Appt. Counsel is accurate,

correct, and true to the best of my knowledge.

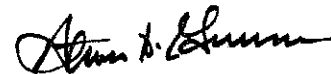
NRS 171.102 and NRS 208.165.

Respectfully submitted,

by Brian K. O'Keeffe
Brian K. O'Keeffe

Defendant # 1447732

Pro Se



CLERK OF THE COURT

1 RTRAN

2
3
4
5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,)

9 Plaintiff,)

CASE NO. C250630

10 vs.)

DEPT. XVII

11 BRIAN KERRY O'KEEFE,)

12 Defendant.)

13)
14 BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

15 FRIDAY, DECEMBER 16, 2011

16 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING RE:**

17 **ALL PENDING MOTIONS**

18
19 APPEARANCES:

20 For the State:

CHRISTOPHER LALLI, ESQ.,
Chief District Attorney
ELIZABETH A. MERCER, ESQ.,
Deputy District Attorney

21
22
23 For the Defendant:

LANCE A. MANINGO, ESQ.,

24
25 RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

1 LAS VEGAS, NEVADA; FRIDAY, DECEMBER 16, 2011

2 [Proceeding commenced at 8:54 a.m.]

3
4 THE COURT: All right, Mr. O'Keefe is here with Mr. Maningo.
5 This is time set for Faretta Canvassing. Do you still wish to
6 represent yourself in this matter?

7 THE DEFENDANT: Yes, I do, Your Honor.

8 THE COURT: All right. Under the Sixth Amendment of the
9 United States Constitution you're entitled to an assistance of an
10 attorney at all stages of a criminal proceeding. You have the
11 right to represent you and conduct your own defense. The Court
12 cannot force a lawyer upon you should you insist that you want to
13 conduct your own defense. You're given this right under the United
14 State's Supreme Court decision of Faretta versus California; that
15 you must first knowingly and voluntarily waive and give up your
16 right to the assistance of an attorney before you can represent
17 yourself; do you understand that, sir?

18 THE DEFENDANT: Yes, I do, Your Honor.

19 THE COURT: And you do understand you have a right to an
20 assistance of an attorney at all stages of a criminal proceeding?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Understand that you have a right to an assistance
23 of an attorney at no cost if you are unable to pay for an attorney?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And, sir, for the record what's your age?

1 THE DEFENDANT: Forty-eight, Your Honor.

2 THE COURT: What's your level of education?

3 THE DEFENDANT: Thirteen and a half, fourteen years, sir.

4 THE COURT: Sir, do you presently have any health issues that
5 place you under medication?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: You have any medical conditions that might affect
8 your ability to represent yourself?

9 THE DEFENDANT: Not that I'm aware of, Your Honor.

10 THE COURT: And, sir, are you aware of any mental health
11 issues?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Are you under -- under any type of medication for
14 mental health issues?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Have you ever been under medication for mental
17 health issues?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: And are you presently taking any medication at
20 this time?

21 THE DEFENDANT: No, Your Honor. None.

22 THE COURT: Sir, have you been coerced or threatened in any
23 way to waive your right to an attorney?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: And, sir, why have you decided that you wish to

1 represent yourself?

2 THE DEFENDANT: It's a personal issue, Your Honor. It's a
3 personal case now. Personal matter and I just desire to defend
4 myself. Keep it simple.

5 THE COURT: I'm just curious. Are you displeased with the
6 services you have received from Mr. Maningo?

7 THE DEFENDANT: I rather not comment on that, Your Honor.

8 THE COURT: And so well are you pleased with his services,
9 we'll put it that way?

10 THE DEFENDANT: I have nothing personal against Mr. Maningo.
11 What I greatly feel I was wrongfully charged and it's a lot of
12 years have gone by. Nothing's getting done. There's a lot of
13 issues that just keep getting ignored and my gosh, I'm going to
14 have to file stuff possibly pro nunc tunc or pro tunc to get airs
15 corrected.

16 I mean, it's just I know the case, Your Honor. I was the
17 only person there. I am the Defendant. I know everything from the
18 beginning to where we stand right now, sir. I desire not to wait
19 any longer. I'm ready to proceed. I've been studying the law for
20 over two years just on specific issues. I'm not trying to impress
21 anyone. I don't want credit, but you will be outstanded at my
22 Writ. You will be amazed; that's all I have to say.

23 THE COURT: But you understand Mr. Maningo had nothing to do
24 with the charges being filed against you?

25 THE DEFENDANT: I understand that, Your Honor, but --

1 THE COURT: And he's advised me that he will be ready for
2 trial June of next year.

3 THE DEFENDANT: Well, see, Your Honor, you're -- you're taking
4 it on the motion already. You're probably going to deny my Writ --

5 THE COURT: Sir --

6 THE DEFENDANT: -- and that this isn't going to proceed.

7 THE COURT: -- sir, listen to me. No Writ has been filed. No
8 Writ is on calendar today, so I'm not denying anyone's Writ.

9 THE DEFENDANT: Yes, Your Honor. You're absolutely right.

10 THE COURT: Do you understand the criminal laws complex area
11 of the law where experience and professional training is both
12 required and desirable?

13 THE DEFENDANT: Yes, Your Honor. It's very -- yes, sir.

14 THE COURT: Sir, do you understand that self representation is
15 often unwise and Defendant may -- and the Defendant may conduct the
16 defense to his or her detriment?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Sir, do you have any experience or familiarity
19 with the legal proceedings besides this particular case?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And what are those?

22 THE DEFENDANT: Battery domestic violence case, Judge Vega,
23 2006.

24 THE COURT: Actually, you've had a couple of domestic violence
25 convictions, correct; misdemeanors and felony?

1 THE DEFENDANT: One felony, Your Honor, [indecipherable] of
2 course, the felony includes two misdemeanors with -- three, total
3 of three misdemeanors that were enhanced to a felony.

4 THE COURT: Sir, have you ever had any legal training either
5 through any trade schools, community colleges, high school, in
6 prison system?

7 THE DEFENDANT: Self education in the last four years, Your
8 Honor.

9 THE COURT: Okay, but no formalized legal training?

10 THE DEFENDANT: Manuals.

11 THE COURT: Sir, do you know the difference between an opening
12 statement and a closing argument?

13 THE DEFENDANT: Absolutely, Your Honor.

14 THE COURT: Sir, do you now how to object to a question that
15 you deem to be improper?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: You understand that you have 30 days within which
18 to file an appeal from an entry of order denying -- denying post
19 conviction relief if we get to that point from previous trials --

20 THE DEFENDANT: Yes, Your Honor. Absolutely.

21 THE COURT: -- to see if anything's been filed? And also
22 there's certain time limitations if you are found guilty in this
23 case, there are time limitations in which you have to file a notice
24 of appeal; do you understand that, sir?

25 THE DEFENDANT: Yes, sir. Thirty days from the judgment of

1 conviction, Your Honor.

2 THE COURT: And do you understand that the -- an attorney
3 representing you is trained in the law, has the skill and
4 experience of properly conducting a defense on your case?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you understand that an attorney knows the
7 elements of the offense you have been charged with and the possible
8 defenses that may be presented on your behalf?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And, sir, often times criminal trials present
11 difficult choices as to strategy and tactics and even attorneys can
12 differ as to the proper defense to make in a case. What I hear
13 from you is you are not trained to make those choices. An attorney
14 knows the degrees of -- the State must prove -- must meet to prove
15 your guilt beyond a reasonable doubt and by investigation review of
16 the State's evidence maybe determined that the State can not prove
17 its case; you understand that, sir?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Are you aware of the dangers and disadvantageous
20 and consequences of self representation?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Sir, I must advise you that you must know and
23 comply with the same procedural rules as lawyers; do you understand
24 that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: I can not help you comply with those rules.

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: You must follow all legal rules even though you
4 may not know them; do you understand that, sir?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: You will not be able allowed to complain later on
7 appeal about the competency of the effectiveness of your
8 representation; do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: You understand that I can not grant you or will
11 the jail grant you any special library privileges?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And, sir, do you understand that the effectiveness
14 of your defense maybe diminished or decreased by your dual role as
15 an attorney and as an accused?

16 THE DEFENDANT: Yes, I thought about it greatly. Yes, Your
17 Honor. I understand.

18 THE COURT: Sir, do you understand a Defendant such as
19 yourself who maybe unfamiliar with all the legal procedures, may
20 allow the Prosecutors an advantage in this case?

21 THE DEFENDANT: Yes, I do, Your Honor.

22 THE COURT: And that you may not be able to make effective use
23 of all of your legal rights; do you understand that, sir?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: You may make tactical decisions that produce

1 unintended consequences.

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Once you decide on self representation, sir, and
4 if I grant your motion, you may not change your mind in the middle
5 of the proceedings and request an attorney.

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Sir, if stand-by counsel is appointed, stand-by
8 counsel is not required to advise or provide you with legal advice;
9 do you understand that, sir?

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: Do you wish the Court to appoint stand-by counsel
12 to assist you?

13 Sir, stand-by counsel, if you don't request any
14 assistance, they won't get involved in your case, but in the event
15 you may have some questions, they would be there to answer your
16 questions for you? Are you requesting stand-by counsel?

17 THE DEFENDANT: I have no -- can I get more clarification on
18 appointment, Your Honor, before I answer the question, sir, with
19 all due respect?

20 THE COURT: What's your question, sir?

21 THE DEFENDANT: Okay. There's certain documents I'm going to
22 need if I would keep -- I'm just saying just for argument right now
23 -- if I would choose to keep Mr. Maningo on as stand-by counsel, I
24 want it to be clarified that there's certain documents I need and I
25 need -- I'll produce a list properly, and I need those documents.

1 So, if I keep him as stand-by, you know, I need access to specific
2 documents, Your Honor, is all I'm saying.

3 I basically have no problem with him staying on, but he
4 can not affect, you know, my discovery requests. Can we come to an
5 agreement there? Otherwise, I'm just going to have to say I'm on
6 my own. I don't need stand-by counsel, and I think I'm trying to
7 be very --

8 THE COURT: Sir --

9 THE DEFENDANT: -- mature and professional and honest about
10 it, you know. I'm just saying I have no problem. I actually have
11 no problem with my documents staying there in the event something
12 and just produce it on a list and saying I'm not going to bother
13 him for anything unnecessary, but then I'll produce a list, this,
14 this, this, get it to me.

15 If -- if the Court feels that's like infringing on the
16 Faretta, then at that point I'll just have to go on my own and --
17 and I won't use him as stand-by counsel, Your Honor.

18 THE COURT: I don't believe it's appropriate for Mr. Maningo
19 to be your runner or your copy assistance, but you have the right -
20 - you have the right since I'm going to deem you indigent to file a
21 motion and to seek an appointment of an investigator. If you have
22 a list of documents, photographs --

23 THE DEFENDANT: Right. I understand that. I didn't mean
24 personally Mr. Maningo. I understand. He's an attorney. That's
25 what the investigator is for, Judge. I understand that.

1 THE COURT: Okay, so I'm not quite clear right now as what you
2 do or do not want Mr. Maningo to do or any other attorney because
3 you can't have it both ways. You can't represent yourself and have
4 him do half your case.

5 THE DEFENDANT: Right. I'll just go with the investigator and
6 go on my own.

7 THE COURT: Okay. Are you sure?

8 THE DEFENDANT: I'm positive. Absolutely.

9 THE COURT: Again, you're going to need to file the
10 appropriate motion to have an investigator appointed; do you
11 understand that?

12 THE DEFENDANT: And I do have something for your already this
13 morning.

14 THE COURT: Well, it has to be filed to the proper procedure -
15 - procedures; do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Sir, do -- you must determine also how to subpoena
18 witness to testify on your half -- on your behalf; do you
19 understand that, sir?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you know how to subpoena an individual?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And also understand that the Deputy District in
24 this case are trained to observe the jurors and select the ones
25 they believe are favorable to their case; do you know how to

1 disqualify a juror, sir?

2 THE DEFENDANT: Absolutely, Your Honor.

3 THE COURT: Sir, do you know the consequence if you decide to
4 testify on your own behalf?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Sir, and do you understand what the charges are
7 that have been filed against you?

8 THE DEFENDANT: Absolutely, Your Honor.

9 THE COURT: And what was that charge?

10 THE DEFENDANT: Second degree malice murder, Your Honor.

11 THE COURT: Well, according to the second amended information,
12 its murder of the second degree with use of a deadly weapon; do you
13 understand that, sir?

14 THE DEFENDANT: Yes, Your Honor. NRS 200.010, 200.030, Your
15 Honor; 193.165, Your Honor. Yes.

16 THE COURT: Do you understand the -- the offense that has been
17 filed against you may include a lesser included offenses, sir?

18 THE DEFENDANT: Shouldn't now, but yes, Your Honor.

19 THE COURT: And that's up to you to decide not me?

20 THE DEFENDANT: I guess I can try.

21 THE COURT: Do you understand that, sir?

22 THE DEFENDANT: That becomes a legal argument. I don't agree
23 with that, Your Honor. You're asking -- you want me to answer that
24 in the affirmative.

25 THE COURT: No. I'm saying, do you understand that there may

1 be lesser included offenses to this charge?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Sir, do you understand the nature of the charge
4 against you?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you understand any possible defenses that you
7 may have to the charge?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: You understand any mitigating factors that you
10 maybe able to assert in this case?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: You understand that an attorney can research the
13 law for similar cases and present possible defenses; do you know
14 how to research the law, sir?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: You know the range of punishment for this
17 particular charge if you were found guilty?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Does the Defendant qualify for habitual treatment?
20 Does anyone know?

21 MR. LALLI: I think he -- he does, Your Honor. He does. He
22 has two Nevada felony priors. One is the domestic violence third
23 offense which is a 2006 conviction. The other is for burglary
24 which is a 2004 conviction. So he does qualify.

25 THE COURT: You understand, sir, that the State may seek to,

1 if you were found guilty of another felony, you may seek to have
2 you treated under the criminal -- criminal habitual enhancement
3 statute?

4 THE DEFENDANT: I guess you can -- yes, Your Honor.

5 THE COURT: Do you understand that, sir?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Sir, do you also understand that its typically
8 very unwise to represent yourself in any criminal proceedings?

9 THE DEFENDANT: Yes, Your Honor. But it also can be very
10 positive, Your Honor.

11 THE COURT: I understand, Your Honor.

12 THE DEFENDANT: Very positive.

13 THE COURT: Well, the Court does find that you are competent
14 to waive your constitutional right to be represented by an
15 attorney, sir. And, sir, are you waiving this right freely and
16 voluntarily and knowingly?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: The Court also so finds. And, sir, do you wish to
19 have stand-by counsel appointed?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Anything from the State?

22 MR. LALLI: No, Your Honor.

23 THE COURT: Mr. Maningo?

24 MR. MANINGO: No, Your Honor. May I just have a moment with
25 Mr. O'Keefe?

1 THE COURT: Sure.

2 MR. MANINGO: I just -- I just want to explain -- I
3 represented other clients as stand-by counsel. If I could just
4 have a moment with him just to explain what I would do; is that
5 appropriate?

6 THE COURT: Absolutely. And, Mr. O'Keefe, if you do request
7 stand-by counsel, I am inclined to grant that request and have Mr.
8 Maningo act as your stand-by counsel.

9 MR. MANINGO: Thank you.

10 [Defense attorney conferring with Defendant]

11 MR. MANINGO: Thank you, Your Honor.

12 THE COURT: Mr. O'Keefe, do you wish to have stand-by counsel
13 appointed?

14 THE DEFENDANT: Yes, Your Honor. I'll take Mr. Maningo if
15 you'll still grant that, Your Honor.

16 THE COURT: All right. I will grant that request, sir.

17 Mr. Maningo, if you need a different type of order
18 appointing you to this case as stand-by, please submit it to
19 chambers and I'll have that signed for you.

20 MR. MANINGO: Thank you, sir. And there is already and
21 investigator appointed --

22 THE COURT: All right.

23 MR. MANINGO: -- or approved through either I think Your Honor
24 or Mr. Christensen's office.

25 THE COURT: And what was that investigator's name?

1 MR. MANINGO: Craig Retke.

2 THE COURT: Mr. O'Keefe, you're representing yourself now. Do
3 you wish to use that investigator in this case? If you don't, you
4 need to file the appropriate motion.

5 THE DEFENDANT: No. He was already assigned, Your Honor. And
6 I have -- I have no problem with Mr. Retke -- I have no problem
7 with him staying on. There's to be no need for any unnecessary
8 extra.

9 THE COURT: Okay. We do have a trial date.

10 THE DEFENDANT: July 11th.

11 THE COURT: June 11th, not July.

12 THE DEFENDANT: July.

13 THE COURT: And we have a calendar call June 5th; do you
14 understand that?

15 THE DEFENDANT: Your Honor, yes I do, Your Honor, but may I
16 take the Court's indulgence. Please, Your Honor, I know it can be
17 done. You have the empowerment. It's properly presented. I have
18 one for Mr. Lalli. Could you just sign this? It's just for copies
19 of the inmate accounts. There's already an account set and I've
20 already properly wrote them.

21 The law library supervisor said I need to contact inmate
22 account which I did. Clearly right here, Your Honor. It's very
23 simple, real quick. And they said -- clearly they said, yeah, just
24 get an order of the Judge sign the document. So I printed it out
25 really nice and made a copy. There's one for you and one for him.

1 If you can just sign it and file it in open Court, it would be --
2 it's --

3 MR. LALLI: Your Honor, I object to the Court signing any
4 order without the State having had the opportunity to review it.

5 THE DEFENDANT: And there's a copy for Mr. Lalli right there.

6 THE COURT: What I'm going to do is if we have copies for
7 everybody.

8 THE DEFENDANT: Yes, sir, there is.

9 THE COURT: Hang on. If not, my law clerk will make them
10 right now. We'll put this on calendar first week of January so the
11 State can file any objections or whatever motions you have there,
12 sir, okay. And I just don't sign things until I read them. Okay,
13 do you understand that?

14 THE DEFENDANT: Well, it's for copies, Your Honor --

15 THE COURT: I understand that, but --

16 THE DEFENDANT: -- that I need to get --

17 THE COURT: -- we're going to review it. If it's -- I'm not
18 going to except any ex parte motions at this time, okay. So if you
19 wish to submit that, please do so. What I'm going to do, sir -- if
20 you have a copy now for the Court --

21 THE DEFENDANT: Yes, I do. I got a copy.

22 THE COURT: Okay.

23 THE DEFENDANT: I --

24 MR. MANINGO: May I approach, Your Honor?

25 THE COURT: Yes. What I'm going to do is I'll have my Court

1 Clerk file -- have this filed and we'll set it -- do you have a
2 motion, sir, you just have an order?

3 THE DEFENDANT: It was just an order. They just said that if
4 we could just get you to sign it. This copy my copies and defer
5 the cost to Drew Christensen's office. There's an account for
6 indigent for pro se litigants. It's very simple. It's just very -
7 - it's just -- you know, I have just a couple of hundred dollars in
8 my account and --

9 THE COURT: Okay, sir, hang on. Your order says, order
10 granting ex parte motion incidental costs, okay. I'm reading it.
11 You wrote it.

12 THE DEFENDANT: Right and I specified that.

13 THE COURT: All right. Hang on. It says, granting ex parte
14 motion, okay. Any motions in this case I want them in writing,
15 okay. So your oral motion is not accepted at this time. So please
16 file a written motion and then we'll put it on calendar. State has
17 any objection, they'll file it and then we can have a hearing on it
18 and I'll make a decision, okay.

19 THE DEFENDANT: I was just orally [indecipherable] I just
20 hoping that you would.

21 THE COURT: But your order is --

22 THE DEFENDANT: Yes, Your Honor. You're absolutely right,
23 Your Honor.

24 THE COURT: Hang on. Let me finish my sentence, okay. Your
25 order is incomplete or it's -- it's not appropriate because its

1 identifying that I've reviewed something that does not exist, okay.
2 And sometimes in open court I will probably accept oral motions as
3 I would with any attorney, but the way your order is written it's
4 inappropriate.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay.

7 THE DEFENDANT: Okay.

8 THE COURT: So I'm not going to put it on calendar. You're
9 going to file the appropriate motion, all right.

10 THE DEFENDANT: Absolutely.

11 THE COURT: And then we'll have a hearing, okay.

12 THE DEFENDANT: If I choose to do that. Otherwise, I'll just
13 pay it myself, Your Honor.

14 THE COURT: Do whatever.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Whatever you decide.

17 THE DEFENDANT: Whatever I have to do. Yes, sir, Your Honor.

18 THE COURT: All right.

19 MR. LALLI: Your Honor, there -- there is one remaining issue
20 and that is the calendaring of a time to argue the bad act motion.

21 THE COURT: Yes.

22 MR. LALLI: The admissibility now that we've had the
23 evidentiary hearing. As the Court knows I'm in a six week capital
24 case with Your Honor starting --

25 THE COURT: January.

1 MR. LALLI: -- January, so January 10th. We're actually
2 starting that on Tuesday.

3 THE COURT: Let's argue that motion on January 5th, Thursday.
4 Do you know what motion we're referring to, sir?

5 THE DEFENDANT: The State's motion in limine for other bad
6 acts for other crimes.

7 THE COURT: Right. And we had an evidentiary hearing I
8 believe one or two days.

9 THE DEFENDANT: I will be -- if Mr. Lalli has no objection
10 could we get a later date, Your Honor, because I would like to now
11 be appointed pro se. I would like to file my own motion and
12 opposition to dismiss the State's motion to enter in limine motion
13 for other crimes.

14 THE COURT: Sir, the time for oppositions in that motion have
15 come and gone. You can argue against the request by the State,
16 okay. This is one of the things when we represent yourself, we
17 don't give you special rules. You're under the same rules as an
18 attorney and if Mr. Maningo asked to file another opposition to the
19 motion, I would deny that, okay 'cause the time for filing that has
20 come and gone.

21 And that's one of the problems of self representation; do
22 you understand that, sir?

23 THE DEFENDANT: That's fine. I'll just go off Ms. Palm's
24 motion and I'll just orally argue it.

25 THE COURT: All right. We'll see you on January 5th.

1 MR. LALLI: Well, I was wondering if the Court would have any
2 desire to perhaps do that at the end of February after the trial.
3 I understand that it's been bumped a number of times.

4 MR. MANINGO: And, Your Honor -- I'm sorry -- I think that
5 might be more appropriate. I've been preparing for that -- for
6 that motion and that argument. Mr. O'Keefe hasn't. I mean, if
7 Your Honor's granting his request to represent himself, then I'll
8 yield to what Mr. O'Keefe wants, but I know that he hasn't had all
9 the file documents in his possession that I have had and he may
10 need more time to review those himself.

11 THE COURT: All right. All right, February 17th, 8:45.

12 MR. LALLI: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MR. MANINGO: Thank you, Your Honor.

15 THE DEFENDANT: Thank you, Your Honor. Happy holidays to you
16 too, sir.

17 THE COURT: You too, sir.

18 THE DEFENDANT: Thank you, Your Honor.

19 [Proceeding concluded at 9:17 a.m.]

20

21

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1 ATTEST: I hereby certify that I have truly and correctly
2 transcribed the audio/video proceedings in the above-entitled case
to the best of my ability.

3 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
4 Procedure, I acknowledge that this is a rough draft transcript,
expeditiously prepared, not proofread, corrected or certified to be
5 an accurate transcript.

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Michelle Ramsey
8 Court Recorder/Transcriber
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REGISTER OF ACTIONS

CASE NO. 08C250630

The State of Nevada vs Brian K O'Keefe

Case Type: Felony/Gross Misdemeanor

Case Type: **Felony/Gross Misdemeanor**
Date Filed: **12/19/2008**
Location: **Department 17**
Conversion Case Number: **C250630**
Defendant's Scope ID #: **1447732**
Lower Court Case Number: **08F23348**
Supreme Court No.: **61631**

PARTY INFORMATION

Defendant O'Keefe, Brian K

Lead Attorneys
Pro Se

Plaintiff State of Nevada

Steven B Wolfson
702-671-2700(W)

CHARGE INFORMATION

Charges: O'Keefe, Brian K	Statute	Level	Date
1. MURDER.	200.010	Felony	01/01/1900
1. DEGREES OF MURDER	200.030	Felony	01/01/1900
1. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900

EVENTS & ORDERS OF THE COURT

12/16/2011 **All Pending Motions (8:45 AM)** (Judicial Officer Villani, Michael)
Deft.'s Motion to Withdraw Counsel . . . Faretta Canvass

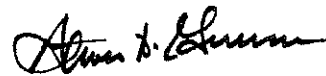
Minutes

12/16/2011 8:45 AM

- DEFT.'S MOTION TO WITHDRAW COUNSEL AND FARETTA CANVASS . . . FARETTA CANVASS
Christopher Lalli, Chf Dep DA, and Liz Mercer, Dep DA, present on behalf of the State; Lance Maningo, Esq., present on behalf of Deft. O'Keefe, who is also present. Upon Court's inquiry, Deft. stated that he still wants to represent himself in this matter. Court conducted a Faretta Canvass and FINDS, Deft. competent to WAIVE his constitutional right to be represented by counsel. COURT FURTHER FINDS, that Deft. is WAIVING such right, freely, knowingly, and voluntarily. Colloquy regarding stand-by counsel and an investigator. COURT ORDERED, Deft.'s pro se Motion to Withdraw Counsel is GRANTED. Mr. Maningo shall be APPOINTED as STAND-BY COUNSEL; he advised Investigator, Craig Retke, has already been appointed and approved in this matter. Deft. indicated that he would like to keep Retke as his investigator. Deft. requested the Court sign an Order for copies from inmate's account, which was presented to the Court for consideration; colloquy. Court directed Deft. to file the appropriate motion. Mr. Lalli advised the hearing on the Bad Acts motion needs to be finished. The hearing was started back on April 27, 2011, and continued to May 11, 2011. On May 11, 2011, Patricia Palm, Esq., withdrew so the Motion now needs to be rescheduled. COURT ORDERED, motion set for hearing. CUSTODY 02/17/12 8:45 AM CONTINUED HEARING: MOTION IN LIMINE TO PRESENT EVIDENCE OF OTHER BAD ACTS

[Return to Register of Actions](#)

000060



CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

BRIAN KERRY O'KEEFE,

Defendant.

CASE NO. C250630

DEPT. XVII

BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

FRIDAY, FEBRUARY 17, 2012

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING RE:

CONTINUED HEARING: MOTION IN LIMINE TO PRESENT

EVIDENCE OF OTHER BAD ACTS

APPEARANCES:

For the State:

CHRISTOPHER LALLI, ESQ.,
Chief District Attorney
ELIZABETH A. MERCER, ESQ.,
Deputy District Attorney

For the Defendant:

LANCE A. MANINGO, ESQ.,
(Stand-by counsel)

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

1 LAS VEGAS, NEVADA; FRIDAY, FEBRUARY 17, 2012

2 [Proceeding commenced at 8:56 a.m.]

3
4 THE COURT: Good morning everyone. This is -- this is a
5 continued hearing on motion by the State to present evidence of
6 other bad acts previously filed. Mr. O'Keefe's here with stand-by
7 counsel.

8 We had exhibits in evidence, argument at previous
9 hearing. I located my notes for the State had presented
10 information regarding various prior acts. Had the State completed
11 their presentation --

12 MS. MERCER: We have, Your Honor.

13 THE COURT: -- as far as prior acts?

14 MS. MERCER: Yes, Your Honor.

15 THE COURT: Okay. And where are we at as far as defense?
16 Were we -- I don't know if it's just for argument, is that why we
17 continue this for?

18 MS. MERCER: Well, in the -- at the January 20th, 2011 hearing
19 Your Honor had indicated that you were -- that you would likely --
20 whatever we can prove you would probably let in because you found
21 that it was relevant given his -- the previous defenses asserted by
22 the Defendant. It was just an issue whether or not we could prove
23 them by clear and convincing evidence. And so I'm not really sure
24 --

25 THE COURT: Okay.

1 MS. MERCER: -- what it's -- I guess today it's just on for --

2 THE COURT: I don't know if I said if any can prove because I
3 mean there's quite a few acts and there's a timeframe.

4 MS. MERCER: You said you'd be inclined to let some of them
5 in.

6 THE COURT: Right.

7 MS. MERCER: Correct. Yeah.

8 THE COURT: Yes. Okay. I guess at this point we'll just have
9 argument. So, any argument by the State for me to allow all of the
10 events in or some of them?

11 MS. MERCER: What specifically would you like me to address?
12 Just whether or not we feel that we've proven them --

13 THE COURT: Correct.

14 MS. MERCER: -- by clear and convincing evidence?

15 THE COURT: Yes.

16 MS. MERCER: Okay. Well, with regards to the January 7th of
17 2003 incident, the incident where he slapped Victoria in the face
18 and caused her to have a nose bleed, the State believes that that
19 was proven by clear and convincing evidence.

20 Your Honor heard from David Whitmarsh, Victoria's ex-
21 husband, regarding the excited utterances that she made to him
22 about how she sustained the injuries.

23 In addition, you heard 9-1-1 call that was placed by
24 David with regard to that incident and the background of that 9-1-1
25 call you can actually hear Victoria as well as the Defendant. She

1 says I think my nose is broken. Something to that effect on that
2 9-1-1 call.

3 In addition, David testified to the bruises and swelling
4 that he observed on Victoria after she ran into his apartment.
5 David also testified that after the victim ran to his apartment,
6 the Defendant followed and he was banging on the door making
7 threats. He also testified that when the police showed up there
8 was some sort of a scuffle and he saw the Defendant and the police
9 officer on the ground as they were trying to place him under arrest
10 in the patrol car.

11 Your Honor also received photos of Victoria's injuries
12 from that incident and you've heard from Officer, I believe it was
13 Pointon [phonetic], I'm not sure how you pronounce it, but he
14 observed a nose bleed and he described it as an active nose bleed.
15 He said she was holding an ice pack on her nose and that she was
16 crying hysterically and that Victoria relayed to him that he
17 smacked her on the face.

18 Do you want me to go incident by incident or --

19 THE COURT: Let's do that 'cause you have to prove each by
20 clear and convincing, argue that and I'll let the defense have
21 their opportunity to argue that. You didn't.

22 MS. MERCER: Okay.

23 THE COURT: And also now that you proved them by clear and
24 convincing, but also whether or not it's under 48.045, so --

25 MS. MERCER: Okay.

1 THE COURT: -- go ahead.

2 MS. MERCER: The next incident was the August 4th, 2003
3 incident that we advised Your Honor that we were no longer seeking
4 to go into that incident.

5 So the next one will be the November 14th of 2003
6 incident. In that case, the Defendant pled guilty misdemeanor
7 battery domestic violence and we admitted asserted by the Court
8 records that exhibited that plea of guilty, so obviously it's the
9 State's -- State's position that that has most certainly been
10 proven by clear and convincing evidence.

11 You also heard from Officer Radmonovich [phonetic] who
12 was responding to another incident in the area when he heard the
13 sound of breaking glass and commotion. He and his partner went to
14 go see what was going on. When they made contact with the
15 occupants of the apartment, they came into contact with Ms. Mott
16 [phonetic] and Defendant and Victoria Whitmarsh, they said that --
17 that Victoria was hysterical and that she had visible injuries.
18 She relayed the events to him. He went through those events as
19 relayed to him by Victoria.

20 Your Honor also received an offer of proof with regards
21 to Honey Mott's [phonetic] testimony or expected testimony in
22 regards to that incident. And you received Exhibit 4 which was the
23 certified Court records.

24 The events that had been relayed to the officer where the
25 -- Victoria was grabbed by the arm and pushed down in the kitchen,

1 she was struck in the head with a fist and told her neighbor. They
2 also learned that the neighbor heard the commotion, went to the
3 apartment when she saw Victoria running out, she kind of grabbed
4 her and brought her into the apartment. And once they were inside
5 of Honey Mott's [phonetic] apartment the Defendant came over trying
6 to get in and he ultimately broke out the window of the apartment
7 and entered.

8 The injuries observed on Victoria under that incident
9 were bruising and redness around her neck and a lump on her head;
10 that was per the officer's testimony.

11 Then with regards to the November 26th of 2003 incident,
12 Your Honor also heard quite a bit of evidence with regards to this
13 incident as well as medical records. There was David Whitmarsh's
14 testimony that he saw the victim go downstairs to get her stuff
15 from Brian O'Keefe because he moved out and was staying with David
16 at the time and that she never came back. A few days later he
17 started getting threatening phone calls from the Defendant
18 regarding the return of some property. David ultimately ended up
19 calling the 9-1-1 dispatch to request a well care check because he
20 hadn't seen or heard from Victoria in a few days and he was
21 worried.

22 He said that he made -- that he came into contact with
23 Victoria when she was taken to the hospital following the domestic
24 violence incident; that she was very excited. She was crying. She
25 was black and blue from head to toe. Your Honor received the

1 photos that were taken by David Whitmarsh regarding that incident.
2 You also received medical records that were marked as Exhibit 7.
3 It would be the State's position that those would come in under the
4 Flores State that we previously cited too because they are non-
5 testimonial. And they're obviously business records.

6 You also heard from Officer Pinney [phonetic]. He
7 noticed bruising on Victoria. Some appeared old. Some appeared
8 new. While he was trying to talk to Victoria when he initially
9 responded to the incident, the Defendant was interrupting and
10 telling her to be quiet and don't say anything; things of that
11 nature.

12 When he spoke to the Defendant to try to get his side of
13 the story, the Defendant claimed that nothing happened. He was
14 uncooperative during the course of the investigation and then
15 ultimately was -- his demeanor was documented as being crying and
16 apologetic. That case was ultimately dismissed pursuant to
17 negotiations because he pled in another case, but given the
18 evidence offered by the State at the Petrocelli Hearing that the
19 State would submit that it's been proven by clear and convincing
20 evidence.

21 And I believe there was also testimony from Detective
22 Morgenstern regarding that incident when he was testifying to the
23 April 29th of 2004 incident. Mr. Lalli questioned him with regards
24 to him having confronted the Defendant with the photos from that
25 November 2003 incident and asking him, well didn't you claim that

1 nothing happened here when he spoke to the detectives too. And she
2 said, yeah. And he ultimately admitted that he had lied to the
3 officers that he had, in fact, caused those November 2003 injuries.

4 The next incident would be the April 2nd 2004 incident;
5 that was the incident in which he ultimately ended up being charged
6 and convicted for the battery domestic violence third offense.
7 Once again the State would submit obviously that we've proven that
8 by clear and convincing evidence that he was, in fact, convicted
9 and we offered the judgment of conviction in that case, the verdict
10 form and the information setting forth the specific allegations
11 that he was convicted of. Those were certified copies.

12 You also heard from Sergeant Price who testified that the
13 first time he responded, there was no probable cause to make an
14 arrest because he didn't observe any injuries and it was basically
15 he said, she said; that he had taken the Defendant and dropped him
16 off in the area of a friend's house because he told both parties
17 that he needed to have cooling off period. He didn't want it
18 escalating any further.

19 Then about an hour and fifteen minutes to an hour and a
20 half later, he gets another call to go back to Victoria's residence
21 because there's been a battery. He said that when he returned
22 later the victim had visible injuries; that was the case in which
23 the allegations where he slapped Victoria in the face repeatedly
24 and broke her glasses. He noted -- he noted that the glasses were
25 broken.

1 The next incident would be a day later on April 3rd 2004.
2 The allegation was that he went back to her residence and he was
3 upset with her for having reported the April 2nd incident to the
4 police. He slapped her in the face. Your Honor received Exhibit 9
5 which was the certified copies of the Muni records documenting that
6 he, in fact, pled guilty to that offense. So once again the State
7 would submit its clearly met it's burden of proving that allegation
8 by clear and convincing evidence.

9 The last incident is the May 29th 2004 incident in which
10 the Defendant was charged with multiple offenses. He was found
11 guilty of burglary and battery by a jury at the jury trial. Those
12 were the certified copies of judgment of conviction, the verdict
13 form and the information were admitted as State's Exhibit 10 at the
14 hearing. Once again we would submit that the allegations of
15 burglary and battery were proven by clear and convincing evidence.

16 You heard from -- how do you pronounce this name, Chris?

17 MR. LALLI: Moniot.

18 MS. MERCER: Detective Moniot, the -- one of the sexual
19 assault detectives was assigned to the case, he testified that he
20 came into contact with Victoria at the hospital; that she was
21 crying, she was holding herself, she was walking very gingerly.
22 She had numerous injuries that he testified too.

23 You also heard from Detective -- Detective Morgenstern
24 who interviewed the Defendant. In that case, he claimed that they
25 had an argument, but he had no idea how she received the injuries.

1 It was that statement that caused him to confront the Defendant
2 with the November 2003 photos. The allegations in that case where
3 the over several hours he had physically abused Victoria Whitmarsh.

4 And, Your Honor, as we stated previously it's the State's
5 position that all of those incidents are relative and highly --
6 relevant and highly probative in this case because the Defendant's
7 -- defenses have been kind of a quasi self defense accident-type
8 allegation. He claims that there was a, I believe, a struggle in
9 that he accidentally stabbed the victim when he was trying to get
10 the knife from her. She fell on the -- she fell onto the knife
11 while they were struggling over it.

12 The cases that we cited to in our brief clearly indicate
13 that more than any other type of case in domestic violence homicide
14 cases, those prior incidents are extremely probative because they
15 show -- they go to intent and the Defendant's motive because it
16 shows that over a period of years he has beaten this women and
17 expressed ill-will towards her.

18 Several of the cases also found they come in when the
19 Defendant claims self defense or accident specifically the --
20 Court's indulgence, Your Honor -- in the Benjamin case the
21 Defendant and the victim had a toxic relationship fraught with
22 physical abuse by the Defendant against the victim. They were both
23 alcoholics. They'd broken up recently, but then one night decided
24 to start drinking again. He claimed that he acted in self defense
25 and he couldn't remember very many of the details leading up to her

1 death.

2 And the Court found that it was relevant because it
3 tended to prove the Defendant intentionally murdered his wife and
4 that he had a motive to do so and that the killing was not an
5 accident or a mistake.

6 In the Illgen case, the Defendant's defense was that he
7 actually shot his wife. The Court found that the prior acts of
8 domestic violence by the Defendant against the victims were
9 relevant because it tended to show that it was an intentional act
10 on his part, not an accident; that same principle would seem to
11 apply in this case.

12 They also found that it was relevant to prove motive and
13 they define that as a hostility showing him likely to do violence
14 against the victim.

15 In the State versus Laprade case that we cited; it's a
16 Vermont case. The Court noted that in these types of cases without
17 admitting that evidence of domestic violence, a jury is left
18 without the knowledge of the acts that occurred within a
19 relationship and they don't -- they're not given the full picture.
20 And these types of cases it's important to present them with a full
21 picture so that they can determine whether or not it constitutes
22 murder.

23 And I think that's about it, Your Honor. Unless you have
24 specific questions for me.

25 THE COURT: I think in the -- Ms. Palm did the original

1 opposition. And if I recall from her opposition is that she argued
2 she couldn't prove these. I think that's been established to a
3 certain extent. I think one of her complaints was that if we bring
4 in all of these priors there's a likelihood that the jury will look
5 at it as propensity evidence versus anything under 480.045.
6 Anything to add to that argument that you've -- anything addition
7 that you've -- I just want you to address what was brought up in
8 her brief?

9 MS. MERCER: Well, Your Honor, I think that the potential that
10 that might occur could be remedied with a limiting instruction to
11 the jury that they're not supposed to consider as evidence that --
12 evidence of propensity; that they're only to consider it for the
13 issues that we're asking it that they be admitted for.

14 It's hard -- it would be hard for us to take the position
15 that only certain ones of these incidents should be admitted
16 because this was such a long abusive relationship between the two
17 and I think the length of that abuse is quite possibly the most
18 telling regarding whether or not this was an accident or
19 intentional.

20 THE COURT: All right. Thank you. Mr. O'Keefe, if you could
21 handle those incidents in the same order please.

22 THE DEFENDANT: Well, Your Honor, my approach is going to be a
23 little bit different, Your Honor.

24 THE COURT: Mr. O'Keefe, listen, as far as -- we have a couple
25 of prongs that I have to look at. For each of the incidents, the

1 State must prove by clear and convincing evidence that they
2 occurred. Then we'll deal with the issue of whether or not they
3 fit under 480.045 and whether or not they're relevant and whether
4 or not there's undue prejudice. So lets deal with the first issue
5 is your position on whether or not the State has met their first
6 burden of proving these allegations by clear and convincing
7 evidence.

8 THE DEFENDANT: Well then, Your Honor, what you're doing then
9 is you're telling me how to run my defense.

10 THE COURT: No, sir, what I'm doing is I'm conducting this
11 hearing the way I want too and I would tell Mr. Maningo if he was
12 handling this that please address the clear and convincing prong
13 first, then we'll deal with the 480.045/relevance versus probative
14 value, second. So, if you can go down each incident and if you
15 have any argument that the State has failed to prove these events
16 by clear and convincing evidence, I want to hear your argument.

17 THE DEFENDANT: Okay. On the first event January 7, 2003,
18 they haven't proved it. It's all hearsay. The photos that they
19 supposedly state they have, Your Honor, are supposedly by her
20 husband. Where are the police photos? In fact, that incident also
21 if my memory serves me right, is -- is a resisting arrest. It has
22 nothing to do. So, no they haven't proved it.

23 Number two is out, the 8 -- it's out, Your Honor, of
24 4/8/03.

25 Number three, the November 14th, that act I did plead

1 guilty. I mean, it's in the records. Who are we kidding? I pled
2 guilty to a misdemeanor battery.

3 THE COURT: And so are you stating that the State has met
4 their burden on that one of clear and convincing?

5 THE DEFENDANT: No. Actually they haven't because that act is
6 -- is part of the felony domestic violence battery, C207835.
7 That's included in the offense already. I mean, I pled guilty to
8 it. Yes, I did because at that time it was the thing to do. They
9 offered me, you can walk out the door. The facts were never
10 actually really litigated. Yes, I -- you know, it's a misdemeanor
11 conviction, battery domestic violence. You're trying to bring into
12 a felony Court of law to prove a case, it's going to be your wrong.

13 No, they haven't proved it. I pled guilty to it, Your
14 Honor, but they haven't proved it. It was a lot of hearsay. A lot
15 of statements -- a lot of statements were made by the alleged
16 victim. We now know about her mental health; that was never
17 manifested back then, but no I don't feel they've met it.

18 Eleven twenty-six, that case was dismissed. That case
19 was absolutely dismissed by the State. The State was the one who
20 wanted to get rid of the case because the illegal entry, no
21 warrant, no nothing; that's absolutely out the door. It's
22 dismissed case.

23 The April 2nd 2004 that was again a situation where -- let
24 me see, is that 04/04 --

25 THE COURT: That was the battery domestic violence --

1 THE DEFENDANT: Yes.

2 THE COURT: -- felony.

3 THE DEFENDANT: That's the felony battery domestic violence,
4 right. You know, I took that to trial. I didn't take the stand.
5 I didn't feel I had too. Yes, the jury did convict me, but at that
6 time my Court appointed attorney didn't even call any witnesses.
7 She stood up and she said the defense rests.

8 THE COURT: The question is at this hearing --

9 THE DEFENDANT: Okay.

10 THE COURT: -- the State established that --

11 THE DEFENDANT: No, they didn't prove it, Your Honor. No,
12 they did not prove it. They didn't even see the evidence. I mean,
13 I was found guilty by the jury. No, Your Honor.

14 The thing also on that, the event that sticks out in my
15 mind, Your Honor, is they tried to say that I did three years in
16 prison on that. I didn't thirteen months at fire camp. I mean,
17 it's just absolute ludicrous. They know that.

18 The next event, Your Honor, 04/03 that was a misdemeanor.
19 I pled guilty to that in City Court and the ironic thing about that
20 is that on those two events on 02 -- 0 -- number 5 and number 6,
21 04/02 and 04/03 I was arrested and went to Court on that event in
22 the City and for both events and pled to a misdemeanor on both and
23 they brought that case up a year later and charged me with it. Did
24 they prove it? No. No. I mean, that's the answer that you're
25 looking for, Your Honor. I mean, you know.

1 Going on to number 7 the May 29th 2004, that's a battery,
2 Your Honor. I remember the report that you guys thought it was a
3 battery DV or whatever. No, it was a battery. I was found guilty
4 of a battery lesser included offense. Sally Loehrer, the Judge at
5 that time, Your Honor, sentenced me credit time served. They threw
6 me over to Stuart Bells and he sentenced me on the burglary. How I
7 got convicted of a felony burglary is beyond me of my own place,
8 but I did. So, that's -- that was a simple battery. Not a battery
9 domestic violence, Your Honor.

10 I was kind of thrown out the way you wanted to go through
11 there. I apologize for that. I wasn't prepared for that, Your
12 Honor, but I know it's going to be your ruling; that's -- now, can
13 I continue on now, Your Honor?

14 THE COURT: Yes.

15 THE DEFENDANT: Okay, now --

16 THE COURT: Well, if you're going to address how it does or
17 does not fit under 480.045 and whether or not these are unduly
18 prejudicial.

19 THE DEFENDANT: Your Honor, the probative still out weighs the
20 prejudicial. I mean -- or the prejudicial its just so out weighed.
21 I mean, it's -- per 48.061 even you're trying to bring in domestic
22 violence events to prove the current charge. And on top of it,
23 Your Honor, these are misdemeanor convictions; misdemeanors.

24 When we first litigated these at the beginning of the
25 first trial on February 10th, Phillip Smith, then Prosecutor for the

1 State specifically stated in his motion and in arguing it that he
2 only wanted the felony domestic violence for motive and intent.
3 Now you're trying to do the reversal two trials later the State and
4 now you want to bring them in when the law the case has been
5 established that no bodily act was done. It's getting way out of
6 hand here.

7 He argued that he needed the felony domestic violence.
8 He scheduled the Petrocelli hearing so he could prove his motive
9 and intent of the intentional stabbing at the first trial. The two
10 of the fact at that time the jury had acquitted me of first degree
11 intentional stabbing.

12 Now as you know, Your Honor, remember I was found guilty
13 of second degree malice murder. Now that was their theory. The
14 instruction the case was reversed on, they said it doesn't matter.
15 The State didn't allege the battery, but Phillip Smith at that --
16 Prosecutor Smith at that time in his closing arguments specifically
17 stated, Your Honor, specifically the circumstantial evidence that
18 shows a battery or something that precipitated the stabbing.

19 In closing argument, he specifically used battery. Now
20 when the Supreme Court of Nevada reversed this case and said, sorry
21 you didn't say battery, but the evidence presented at trial did not
22 support this theory. What theory? The theory on second degree
23 murder.

24 In fact, Prosecutor Lalli made a judicial admission at
25 the end of the second trial admitting fact on August 31st, day 7 of

1 the second trial, page 57 of the transcript; the Supreme Court of
2 Nevada reversed this case because they know well themselves how
3 does an involuntary manslaughter become second degree murder by the
4 unlawful act? It wasn't proved. I have the transcript. You'll be
5 amazed. And he stated they reversed this case because the evidence
6 didn't support it.

7 Not only was the instruction improper, but the evidence
8 did not support this and did not support what, Your Honor?
9 Instruction 18 on second degree murder. Their theory that was the
10 State's theory of an intentional stabbing by a battery.

11 Collateral estoppel, I need to claim my attorney never
12 did. She did not claim res judicata on the reversal. The issue
13 too has been decided by the Nevada Supreme Court on April 7th, 2010
14 and it was reversed. And they said I did no unlawful act and that
15 is the definition of battery.

16 Your Honor, in the closing argument -- now collateral
17 estoppel only there. They used the same prosecutions the theory of
18 an intentional stabbing on both trials.

19 Now I filed in the Federal Court and Judge Navarro
20 responded on that and she said they're definitely -- you got the
21 orders, you know -- she said it appears that there's double
22 jeopardy protection clause problem, but you know I'm fighting them
23 now that they're like your attorney basically should have -- should
24 have brought this up. They're basically running around about way
25 that my attorney was ineffective. I've been trying to tell you the

1 whole time.

2 I was reprosecuted on the same offense that they
3 acquitted me of. They acquitted me of the battery act, Your Honor.
4 Let's totally be honest here. We know what the Prosecutor was
5 saying. They know. They also know that a felony domestic violence
6 is three misdemeanors. They know that. They had all that evidence
7 and they reversed the case and they said all the evidence presented
8 at trial. Not in the club, not in the ballroom; at trial did not
9 support this theory of second degree murder. It's the instruction
10 is irrelevant.

11 Now collateral estoppel, constitutional collateral
12 estoppel applies here, Your Honor, because the ultimate fact
13 required to sustain a need -- needed for the general intent
14 required for the second degree malice murder is I've been acquitted
15 of it. In fact, collateral estoppel now applies to the State's
16 through Benton versus Maryland, a 1969. You know that. It's an
17 issue that's not left up to the State.

18 Collateral estoppel was an off-spring of the parent
19 double jeopardy. It is a Fifth Amendment -- Amendment. It's a
20 violation of that. I've already been violated and I'll be further
21 violated again. Basically it comes down to this, we're rehashing
22 the same evidence, Your Honor, with all due respect. This is all
23 being rehashed. Everything to do with battery. The
24 [indecipherable] battery cannot even be -- should not have even be
25 brought up in the second trial.

1 I mean, I'll have too -- I'm going too -- I'm planning --
2 you know, I'm trying to deal with the State's motion in response
3 here. I had an attorney who didn't properly address or bring up --
4 I mean, she did some good work. I'm not saying, but she didn't
5 address the proper issues. I kept arguing her with.

6 I mean, on remand, Your Honor, you know yourself, Your
7 Honor, you know better than me. I'm not trying to tell you. I
8 mean no disrespect. I'm trying to -- I learned the law, I'm trying
9 to teach you guys how. You guys know better than that. You know
10 better than me, but I am saying that on remand she should have
11 filed a motion challenging the second degree malice murder charge.

12 THE COURT: Sir, listen --

13 THE DEFENDANT: She should have challenged --

14 THE COURT: -- you're going --

15 THE DEFENDANT: -- bad acts.

16 THE COURT: -- you're going to some other areas here. The
17 issue is --

18 THE DEFENDANT: Okay, but --

19 THE COURT: Hang on. Hang on. You've already addressed the
20 clear and convincing evidence issue. I'd ask you to address the
21 issue --

22 THE DEFENDANT: Yes, sir.

23 THE COURT: -- under 480.045. You're getting into all these
24 collateral issues. You're done addressing it, please tell me or
25 focus in --

1 THE DEFENDANT: Yes, sir.

2 THE COURT: -- on the area.

3 THE DEFENDANT: All right. Your Honor, again trying to focus
4 in. Clear and convincing no. Absolutely they haven't. I mean, a
5 lot of these -- all these acts the whole when the police wrote all
6 the reports and wrote everything, no one knew about her true mental
7 state. She was totally crazy, bipolar. Well, she wasn't a bad
8 person. See, I don't want to sit here and talk bad about her, but
9 I mean there's a lot of things that were never known. They were
10 never known. A lot of this is hearsay now. God bless her soul,
11 she's dead. I mean, I have the right to confront their witness now
12 based on her true mental known status that no one ever knew at the
13 time that no one wanted to address.

14 Sally Loehrer knew at the time and hid it, but you know
15 that's between here -- neither here nor there. I'm saying there's
16 so many violations of Federal law, Fifth and Sixth Amendment and
17 Fourteenth Amendment, my due process the enforcer.

18 Your Honor, you're trying to allow the State on the third
19 trial to bring in misdemeanor convictions, sir, to prove a felony
20 act in NRS 48.061 even says that you cannot do that, subsection 2.
21 There's so many -- they can't even proceed on the theory of -- the
22 misdemeanor battery is an unlawful intention act of supposedly the
23 intentional stabbing described in the amended information. The
24 battery act I've been acquitted of. This is nothing more than
25 malicious prosecution. Let's face it, the State --

1 THE COURT: Sir, I need you to address -- first off you need
2 to look at me when I talk to you.

3 THE DEFENDANT: Yes, sir, Your Honor. I apologize.

4 THE COURT: Hang on.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Listen very carefully. You have a right under
7 Faretta to represent yourself. However, if you researched the case
8 law it will also tell you that you must follow the same rules as an
9 attorney. If Mr. Maningo was arguing this matter, he would address
10 me, he would look at me and show me respect, okay. And so if you
11 continue in this course, I'm going to take you off the case to
12 represent yourself because its looked like you've researched the
13 law and it's good. You should also research that you're under the
14 duty to act as an attorney. Do you understand that, sir?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: Okay. And first off you had said I'm trying to
17 admit this. No, the State is. Maybe you misspoke, okay. The
18 State is seeking. I'm not trying to do anything. I'm trying to
19 listen to arguments of both sides and make the appropriate
20 decision. Do you understand that?

21 THE DEFENDANT: Yes, sir, Your Honor.

22 THE COURT: Okay. You've already addressed that you don't
23 believe the State has proven these other incidents by clear and
24 convincing evidence, and I understand your argument. You have any
25 further argument in why this does not follow under 480.045? The

1 State is seeking to admit this to rebut any claim of self defense
2 that it was an accident or seeking to admit it for intent and
3 motive, and that's what I need you to focus on.

4 THE DEFENDANT: Okay. Yes. The propensity evidence is not
5 allowed. You cannot use other acts to try to prove the current
6 charge, Your Honor.

7 Again it's a cross over, Your Honor, with all due
8 respect. I mean, what they're trying to do here is violate the
9 law. They're abusing the law. They're looking for exceptions to
10 exceptions and they're trying to get you to push yourself out on a
11 limb and give them a favorable ruling.

12 Your Honor, again in all sincerity, these acts have all
13 been noticed and Phillip Smith the State at the time the State
14 Prosecutor's motion he listed every one of these acts. He
15 specifically asked you, Your Honor, I only want the felony.
16 There's a history of the DV's. I don't want them all.

17 He had all this in his possession; the State did. Their
18 knowledge -- they noticed them, they listed them, they had it.
19 Your Honor, you don't think that if he legally could have used all
20 these acts that they're trying to bring in now that he would have
21 not done that? You think he was just giving me a break and being
22 nice? No, he wasn't --

23 THE COURT: Sir, can you please address --

24 THE DEFENDANT: -- Your Honor.

25 THE COURT: -- can you please address if you have an argument

1 as to why these are irrelevant to the issue of rebutting self
2 defense, rebutting accident and also why --

3 THE DEFENDANT: Okay, Your Honor, yes.

4 THE COURT: -- these don't go to intent or motive.

5 THE DEFENDANT: Yes, okay.

6 THE COURT: Sir, I'm trying to give you a full hearing.

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: If you listen to me carefully, you would
9 understand that. So please address why these other incidents do
10 not fall within the exception regarding self defense accident,
11 intent, motive and anything else under 480.045.

12 THE DEFENDANT: Because they're trying to use them for motive
13 and intent and they've already used it for motive and intent, and
14 the jury at that time acquitted me, Your Honor. Again, in the
15 Nevada Supreme Court acquitted me of second degree.

16 They've already used them. They had them, they used them
17 for motive and intent. They've already used them for it.

18 THE COURT: Okay. Anything else, sir?

19 THE DEFENDANT: No, sir, Your Honor.

20 THE COURT: All right. Any rebuttal argument by the State?

21 MS. MERCER: I don't think I have any further argument unless,
22 Your Honor, has any question for me.

23 THE COURT: I don't have anything further.

24 We had this evidentiary hearing last year some time,
25 correct?

1 MS. MERCER: Yes.

2 THE COURT: And for various reasons it's been bumped a couple
3 of times.

4 MS. MERCER: It was April 27th, Your Honor.

5 THE COURT: And thank God I kept my notes and I do have them
6 here and I found my legal pad and --

7 MR. LALLI: There's also a transcript of that, Your Honor.

8 THE COURT: I've got very detailed notes here. What I'm going
9 to do is I'm going to review these notes and you will have a
10 written decision hopefully this afternoon. I have another hearing
11 at 10 today. If not this afternoon, definitely on Tuesday. I do
12 not have a trial next week, so I can have this finalized by
13 Tuesday.

14 Mr. O'Keefe, again you have the right to represent
15 yourself, but I'll tell you that in your argument you were all over
16 the place and it wasn't as coherent as Mr. Maningo could have
17 presented this. And you may know the dates and perhaps some of the
18 facts better than Mr. Maningo does today, but you know I'm going to
19 advise you again that I think his argument on this issue would have
20 been more coherent.

21 And I could sift through what you're saying and
22 understand it, but I think in front of a jury you would be in a
23 better position to argue the facts in the nuisances of this case,
24 but that's up to you. But if you want to reconsider, that's fine.
25 If you don't, that's fine too. But I think if you look back on

1 your presentation, you'll see that it wasn't as organized as it
2 should be or as Mr. Maningo would have presented it. And that
3 would be to your disadvantage if you go to trial in this case, all
4 right.

5 And so I'll have a written decision hopefully this
6 afternoon. If not, Tuesday.

7 MS. MERCER: Thank you, Your Honor.

8 MR. LALLI: Thank you, Your Honor.

9 THE DEFENDANT: Oh yes, Your Honor, I have a housekeeping
10 matter.

11 THE COURT: All right.

12 THE DEFENDANT: I sole apologize.

13 THE COURT: It's okay.

14 THE DEFENDANT: Skye Campbell here, the old investigator, I
15 need to have her appointed, Your Honor. She came in here today.
16 She's agreed. Craig Retke the old investigator doesn't want --
17 he's too busy. He doesn't want anything to do with the case
18 basically and as you had instructed also told -- she came here
19 today with willingness to, you know, take on the case. It'll be
20 the investigator, but we just want to bring it to your attention
21 and have you appoint her.

22 MR. LALLI: I object to the reference to her as old, but other
23 than that I don't --

24 THE DEFENDANT: I apologize.

25 MR. LALLI: -- I don't -- I don't -- we don't oppose the

1 Defendant having an investigator.

2 THE COURT: I would suggest then that you submit an order, Mr.
3 O'Keefe, for her appointment. I'll sign that. And I understand
4 you need to go through the rules of Drew Christensen as far as the
5 amount you can charge, etcetera; do you understand that?

6 Is that a yes?

7 MS. CAMPBELL: Yes. I'm sorry.

8 THE COURT: All right. So, Mr. O'Keefe, before she can get
9 paid on your case, make sure you submit the appropriate order for
10 my signature.

11 THE DEFENDANT: Okay.

12 THE COURT: All right.

13 THE DEFENDANT: Okay.

14 THE COURT: So your oral motion is granted.

15 THE DEFENDANT: Thank you, Your Honor.

16 MR. LALLI: Thank you, Your Honor.

17 MR. MANGANO: Thank you, Your Honor.

18 [Proceeding concluded at 9:36 a.m.]

19 * * * * *

20 ATTEST: I hereby certify that I have truly and correctly transcribed the
21 audio/video proceedings in the above-entitled case to the best of my
22 ability.

23 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
24 Procedure, I acknowledge that this is a rough draft transcript,
25 expeditiously prepared, not proofread, corrected or certified to be an
accurate transcript.


Michelle Ramsey
Court Recorder/Transcriber

Pro SE

BRIAN KEARY O'KEEFE
147732

CLARK COUNTY DETENTION CENTER
330 S. CASINO CENTER BLVD.
LAS VEGAS NEVADA 89101

FILED

MAR 16 12 04 PM '12

Ann L. Shuman
CLERK OF THE COURT

IN THE
EIGHTH JUDICIAL
DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

plaintiff,

vs.

BRIAN KEARY O'KEEFE,
defendant.

CASE NO : C250630

DEPT. No : XVII

DATE OF HEARING: 3-29-12

TIME OF HEARING: 8:15 a

● SEE APPENDIX (B) EXHIBITS

NOTICE OF MOTION AND

MOTION TO DISMISS BASED UPON VIOLATION(S) OF THE
FIFTH AMENDMENT COMPONENT OF THE DOUBLE JEOPARDY
CLAUSE, CONSTITUTIONAL COLLATERAL ESTOPPEL AND, ALTERNATIVELY,
CLAIMING RES JUDICATA, ENFORCEABLE BY THE FOURTEENTH
AMENDMENT UPON THE STATES PRECLUDING STATES THEORY OF
PROSECUTION BY UNLAWFUL INTENTIONAL STABBING WITH KNIFE,
THE ALLEGED BATTERY ACT DESCRIBED IN THE AMENDED INFORMATION.

COMES NOW the defendant BRIAN KEARY O'KEEFE, who hereby moves this
HONORABLE court for an ORDER of dismissal with prejudice on the grounds that true
5th Amendment violations have already occurred and commencement of a third trial
will further violate the Doctrine of the Law of the case of the First appeal with
Constitutional collateral estoppel "barring" prosecutions theory of unlawful intentional
stabbing with knife. The Fifth Amendment guarantee against double jeopardy
is enforceable against the States through the Fourteenth Amendment due
process with equal protection. The State now lacks theory and evidence to SUPPORT
the AMENDED INFORMATION charging Second Degree malice murder, conclusively.

000088

IN accordance with HANES v. KERNER, 424 U.S. 519, 92 S.Ct. 594, defendant humbly requests liberal reading be afforded and less stringent standards be applied to defendant's MOTION TO DISMISS.

This MOTION is made and based upon the Following POINTS and AUTHORITIES, all papers and documents on file in the record, Appendix of exhibits attached, and any argument as will be had at the time of hearing.

Dated this 14th day of MARCH, 2012.

MOTION WITH
APPENDIX OF EXHIBITS.
(1-18) EXHIBITS - (178 pg)

Brian O'Keefe
BRIAN O'KEEFE
C.C.D.C. - #1447732
IN PROSE

NOTICE OF MOTION

TO: STATE of Nevada, Plaintiff, and

TO: STEVE WOLFSON, District Attorney, Attorney for Plaintiff.

You will please take NOTICE that the undersigned will bring on the above and attached MOTION on the 29 day of MARCH, 2012, at the hour of 8:15 a.m., in Department XVII of the above entitled court, or as soon thereafter as defendant may be heard.

DATED this 14th day of MARCH 2012.

By: Brian O'Keefe
BRIAN O'KEEFE
C.C.D.C. - #1447732
PRO SE

I. PROCEDURAL HISTORY

II. PREDOMINATE OVERVIEW

III. DOUBLE JEOPARDY Collateral Estoppel OPERATIVE FACTS, 5th Violations

IV. AUTHORITIES - ARGUMENT

V. CONCLUSION

2 b c d

I. PROCEDURAL HISTORY

The state wrongfully charged Defendant BRIAN KEAY O'KEEFE with murder with use of a deadly weapon for the alleged November 5, 2008 killing of Victoria Whitmarsh. On January 20, 2009 he entered a plea of not guilty and invoked his constitutional and statutory rights to a speedy trial. • On February 2, 2009, State Files Motion to admit evidence of other crimes, hearing set February 10, 2009. On February 10, 2009, state files in OPEN COURT their Amended Information also. (Prior to the hearing) At the conclusion, Court sets a petrucci hearing. This hearing is continued several times finally being conducted immediately preceding trial held MARCH 16, 2009. The Court ruled State could enter O'Keefe's FELONY battery domestic violence case, C207835, in their case in chief through their WITNESSES.

The case was tried ending after five days. On MARCH 20, 2009 the jury found O'Keefe guilty of Second Degree murder with the use of a deadly weapon.

• On APRIL 7, 2009, defense Motion to settle the record was heard concerning INSTRUCTION No. 18 on defining and proving Second Degree MURDER. The Court and State make as a matter of the record, the definition is statutorily correct.

EMPHASIS also made on the judicial admission made by State and Court that jury and all believed O'Keefe was to intoxicated to form, "INTENT", therefore acquitting O'Keefe of INTENTIONALLY STABBING WITH KNIFE.

• On MAY 5, 2009 this Court sentences O'Keefe to 10-25 years for second and 8-20 years for the weapon enhancement. O'Keefe timely appeals. The Court reversed O'Keefe's conviction "DECIDING" ISSUE # 2 on direct appeal.

The Nevada Supreme Court explained, (ORDER OF REVERSAL AND REMAND)

"the State's charging document did not allege that O'Keefe killed the victim while he was committing an UNLAWFUL ACT and the evidence presented at trial did not support this theory of Second Degree Murder."

• ^{see} O'KEEFE v. STATE N.S.C. Docket No. 53859 (Apr 7, 2010)

On June 10, 2010, remand, Scheduled retrial for August 23, 2010. On August 19, 2010, State files a second amended information in OPEN COURT, C250630.

The state's prosecution theory again is unlawful intentional stabbing with knife. Second trial commences with state rehashing exact same evidence used in first trial. Trial ending with a hung jury. Court declares mistrial on September 2, 2010. Defendant now truly indigent. Case status checked until September 16, 2010 for defense attorney to be appointed after approval. Same counsel appointed September 16, 2010 preserving defendant's speedy trial rights.

Third trial calendar call set for January 18, 2011, trial set January 24, 2011.

Now, CONTRARY to the Doctrine of the Law of the case, particularly issue preclusion, and the trial court's late prior ruling on August 23, 2010, being that the State was barred from discussing battered women's syndrome, the State ignores and files a supplemental notice of expert witnesses for the calling of Andrea Sundberg as an expert in BWS in its case in chief.

Also, on January 6, 2011 the State filed a Motion in Limine to Admit Evidence of Other Bad Acts. HIGHLIGHTS ON STATE'S MOTION

2.] STATE REHASHING SAME EVIDENCE BROUGHT IN FIRST PETROCELLI HEARING

3.] ALL ACTS ARE MISDEMEANORS (CONVICTIONS - dismissed cases) N.R.S. 50.095?

4.] MOTION IN LIMINE SCHEDULED FOR AFTER ORIGINAL CALENDAR CALL, LATE.

5.] Violation of the LAW of the CASE, CONSTITUTIONAL COLLATERAL ESTOPPEL.

State's Motion was docketed for January 20, 2011. C/C was 1-18-2011.

1 ● On January 7, 2011, O'Keefe's attorney filed a Motion to Dismiss on Grounds of
2 Double Jeopardy Bar, BASED ON WRONG OPERATIVE FACTS, a "RED HEARING,"
3 and Speedy Trial Violation and, Alternatively, to preclude State's new expert
4 witness, evidence and argument relating to the dynamics of effects of domestic
5 violence and abuse ● On January 14, 2011 State filed a supplemental notice
6 of witnesses. At calendar call, January 18, 2011, the defense stated that
7 it could not announce ready attributable to the State. This was based
8 on state's actual Late Notice on hearing their Motion. Basically,
9 this second bad acts hearing is the rehashing of the exact same crimes
10 litigated 2 years prior on February 10, March 16, of 2009. However, the
11 Court wanted to know if the defense was ready to proceed remembering
12 that this is still January 18, 2011 and the State's Motion is scheduled
13 for January 20, 2011. Ultimately, court continues calendar call to
14 January 20, 2011 for all untimely Motions. Court denies O'Keefe's
15 Del. Jep. Motion but grants State a second petrocelli hearing and
16 vacates O'Keefe's trial date. Third new trial date set June 6, 2011.

17 Sets second petrocelli hearing, on same misdemeanors, for APRIL 7, 2011, then
18 continued hearing to APRIL 12, 2011. Simultaneously on APRIL 8, 2011,

19 O'Keefe's attorney files Writ in N.S.C., docket no. 58109. On APRIL 12,
20 2011 petrocelli hearing again continued to APRIL 27, 2011. With Writ
21 pending, the trial court finally conducts the second petrocelli hearing.

22 At the conclusion of the hearing the court decides to set a two
23 week status check for his final decision. May 11, 2011 set for ruling.

24 ● On APRIL 29, 2011 O'Keefe's attorney files Motion to withdraw, set
25 for MAY 12, 2011. Coincidentally, on MAY 10, 2011 the N.S.C. denies
O'Keefe's Writ, based on prosecutorial misconduct as the operative fact.

● On MAY 11, 2011, which was docketed for the judge's final ruling pertaining to the State's motion in LIMINE, Counsel for the defense advances her Motion to withdraw one day. Motion granted. Final ruling continued until September 23, 2011. Trial date vacated with new counsel being appointed. On July 21, 2011 new THIRD TRIAL date set. C/C June 5, 2012. TRIAL JUNE 11, 2012.

● On September 23, 2011 ruling on misdemeanors continued several times ultimately to February 17, 2012. Defense Motion heard on November 8, 2011 by substitute Judge Brennan. Order signed returning O'Keefe's sentencing fees that were deducted while O'Keefe was in prison before the REVERSAL. MR. Lalli, for the state present, no objection. ● On December 16, 2011, defendant's PRO SE motion granted. Defense counsel goes stand by mode. Parties reminded the final hearing, ruling on misdemeanors set for February 17, 2012. O'Keefe orally requests to file his own opposition. COURT DENIES. On December 20, 2011, O'Keefe mails for pretrial federal habeas relief in the U.S. District Court.

U.S. District Judge NAVARRO responds admitting there are double jeopardy implications. Gives positive direction but dismisses O'Keefe's section 2241 without prejudice. O'Keefe appeals to the NINTH CIRCUIT COURT OF APPEALS. CASE PENDING. Awaiting decision if CoA for single issue advanced, by AMENDED PETITION, will be issued.


● On February 17, 2012, State's Motion in Limine filed (13) months prior is finally completed. Judge temporarily defers decision but on MARCH 13 2012, enters judgment allowing the same felony C207835.

Defendant files Motion why CoA should be granted MARCH 6, 2012 with the NINTH CIRCUIT. O'Keefe notifies all parties. In addition, O'KEEFE directly attacks the trial court with this Motion, on the Collateral Estoppel claims and prior law of the Case of the first appeal. Res Judicata. [Motion for CoA request mailed to Judge.]

II. PREDOMINATE OVERVIEW

Defendant contends this argument holds extreme MERIT. After the first trial, anyone applying honest, intelligent and logical thought, concerning the following facts, would realize the first trial rulings and decisions, made by the Court, ultimately effected the jury returning a guilty verdict of second degree malice murder w.D.W.

Pointing out several rulings were so questionable that anybody reviewing would have severe questions as to the WHY? These rulings definitely became violations of ones due process to a "complete defense".

 The denial alone of allowing "no evidence" on Whitmarsh's mental health, suicides, cutting and self mutilations, anger management classes and therapy was more than questionable. THE FIRST JURY HEARD NOTHING RETURNING A MUCH (HIGHER) VERDICT. The denial of the defense motion to suppress O'Keefe's Voluntary ramblin, when the police even admit O'Keefe was acting like a NUT, INCOHERENT, and extremely INTOXICATED.

The denial of precluding the State to start at first degree murder based on the State destroying O'Keefe's blood-breath drawel.

Police committing PERJURY concerning the existence of the use of force form on a "specific discovery" request.

The State Unnecessarily bringing in Racial slurs. Not taking photos of all cut fingers O'Keefe had.

The scales were tipped heavily. It only makes manifest the backing of ROGUE cops who decided this case by O'Keefe's criminal scope unaware that Whitmarsh was BI-POLAR, depressed, and in a overmedicated drunken rage in an extreme FIT OF ANGER.

(God Bless HER soul!)

III. DOUBLE JEOPARDY COLLATERAL ESTOPPEL OPERATIVE FACTS, 5th VIOLATIONS

- 2. - PROSECUTIONS THEORY - UNLAWFUL INTENTIONAL STABBING WITH KNIFE
 - b. - ISSUE, #2 - DECIDED ON DIRECT APPEAL IN FAVOR OF DEFENDANT
 - c. - Two UNTRUTHS - STATES WITNESSES; CHERYL MORRIS and DETECTIVE WILDEMAN
 - d. - Rehashing Evidence - State held two Petrocilli hearings on misdemeanors
- INFORMATIONS
OPENING STATEMENT **FIRST TRIAL** CLOSING ARGUMENT

2. On November 5, 2008, O'Keefe is wrongfully charged with Battery/Domestic Violence and murder with a deadly weapon. (see BATTERY/DOMESTIC VIOLENCE, MURDER COMPLAINTS EXHIBIT 1)
On December 19, 2008 state electronically filed information. (INFORMATION - C250630 EXHIBIT 2)
On February 10, 2009 state files Amended Information, OpenCourt. (AMENDED INFORMATION EXHIBIT 3)

The state now makes manifest their theory of prosecution. The alleged battery act has been merged into the Amended Information. The same single alleged act is now described in the Amended Information as the "UNLAWFUL INTENTIONAL STABBING WITH KNIFE."

● On Monday, MARCH 16, 2009, opening statement by STATE declaring their THEORY.
(Monday, MARCH 16, 2009 ROUGH DRAFT TRANSCRIPT JURY TRIAL DAY 1 EXHIBIT 4)

● FOR STATE LEAD, MR. SMITH OPENING STATEMENT TRIAL # 1

... the evidence is going to show you that the defendant, in fact, stabbed Victoria ...

... we have to prove the death of Mrs. Whitmarsh was UNLAWFUL ...

... we are going to prove that the death in this case was nothing less than an

INTENTIONAL ACT committed by the defendant against Mrs. Whitmarsh ...

... the defendant had a motive and underlying ill will towards Mrs. Whitmarsh which we submit is going to help us meet our burden of proving beyond a reasonable doubt that this was an INTENTIONAL ACT. (id at PAGE 171, LINES 4-22 EXHIBIT 4)

So the state claims conclusively that O'Keefe had a motive and that he unlawfully, intentionally stabbed Mrs. Whitmarsh with a knife.

Now, we'll jump to closing key statements by the State. Then I will outline second trial opening and closing by the State for double jeopardy

• FOR STATE SECOND CHAIR, MS. GRAHAM CLOSING ARGUMENT TRIAL # 1

• On FRIDAY, MARCH 20, 2009 the State argues what they feel they proved.

(FRIDAY, MARCH 20, 2009 ROUGH DRAFT TRANSCRIPT JURY TRIAL DAY 5 EXHIBIT 5)

... The State's position is that this is first degree murder with a deadly weapon...

(id at RDT Page 130, lines 22-23) ... But what is malice aforethought?,

INTENTIONAL KILLING... OKAY, so it's INTENTIONAL. AN INTENTIONAL KILLING without legal cause or excuse... (id at RDT Page 134, lines 22-25)...

What is second degree murder? The killing... Just INTENTIONAL.

(id at RDT Page 137, lines 6-7) ... what is willfulness? The intent to kill. The intent to kill -- you intend it, kill. That's willful...

(id at RDT Page 135, lines 21-25) ... Our contention is that a knife was the deadly weapon... (id at RDT Page 138, lines 11-12) ... this is how we know it's first degree murder. It wasn't an accident. It was WILLFUL... It was willful. THE ACT OF STABBING VICTORIA WAS WILLFUL...

(id at RDT Page 139, lines 15-25) Now, a "Key" STATEMENT was made.

Key: This is much more than SECOND DEGREE MURDER. SECOND DEGREE WOULD ONLY APPLY if defendant ACTED INTENTIONALLY...

(id at RDT Page 145, lines 16-18)

• FOR STATE LEAD, MR. SMITH CLOSING ARGUMENT TRIAL # 1

TWO Key's: ... That's certainly circumstantial evidence of a BATTERY or something that precipitated the STABBING.

(id at RDT Page 177, lines 1-2)

... The Law says you determine a person's INTENT at the moment they COMMIT the ACT... a lot of times people are sorry that they kill somebody after it's happened and/or before they get caught. But it doesn't mean -- it doesn't MAKE THE UNDERLYING ACT ANY LESS CRIMINAL...

(id at RDT Page 178, lines 16-21) The Alleged MERGED BATTERY ACT.

III.

OPENING STATEMENT

SECOND
AMENDED INFORMATION
SECOND TRIAL

CLOSING ARGUMENT

2. August 19, 2010, in OPEN COURT, state files their Second AMENDED INFORMATION.

Again the state charges not only the SAME OFFENCE, but the same prosecution theory of the INTENTIONAL, UNLAWFUL, STABBING with a KNIFE. (SECOND AMENDED INFORMATION, C250630 EXHIBIT 6)

● On Wednesday, August 25, 2010 Opening Statement made by State on day 3.

(ROUGH DRAFT TRANSCRIPT JURY TRIAL DAY 3 WEDNESDAY, AUGUST 25, 2010 EXHIBIT 7)

● FOR STATE LEAD, MR. Lilli OPENING STATEMENT TRIAL # 2


... BRIAN O'KEEFE was found guilty by a jury of felony battery constituting domestic violence in 2006. The victim in that case, Victoria Whitmarsh is the same woman he murdered on November 5th, 2008. The evidence will show that he STABBED her, that she suffered a fatal stab wound under her arm and that she died as a result of essentially bleeding out.

... Like most domestic violence relationships, there was a fatal attraction between the two.

(id at Page 23, lines 14-16 and id at Page 24, lines 16-18)

... The knife that was used to stab Victoria is located and impounded ...

(id at Page 29, lines 21-22)

 : ... An anonymous domestic violence survivor once made this observation.

If you can't be thankful for what you have, be thankful for what you have escaped.

Well, unfortunately Victoria was not able to escape from the defendant, and he murdered her in a brutal way. (id at Pages 31-32, lines 24-25, lines 1-5)

● On TUESDAY, AUGUST 31, 2010 CLOSING ARGUMENT made by State.

(ROUGH DRAFT TRANSCRIPT JURY TRIAL DAY 7 TUESDAY, AUGUST 31, 2010 EXHIBIT 8)

● FOR STATE SECOND CHAIR, MS. GRAHAM CLOSING ARGUMENT TRIAL # 2

... I hate her and I want to kill her. She took three years of my life.

(id at Page 81, lines 24-25) ... She sent me to prison. That's what the defendant said about Victoria Whitmarsh. He killed her on the night of November 5th, 2008.

He did it INTENTIONALLY and he had a MOTIVE.


(id at Page 82, lines 1-3)


... I think you've heard statements and some evidence throughout these past few days that perhaps Victoria attacked him, that Victoria cut him.

(id at Page 84, lines 11-13)

... And malice aforethought can be either expressed or implied malice. The unlawful killing may be effective by any of the various means by which (indiscernible) in this case a STABBING. Malice aforethought means the INTENTIONAL doing of a wrongful act ... (id at Page 87, lines 19-23)

... malice requires the INTENTIONAL ACT, INTENTIONAL UNLAWFUL ACT, THE STABBING ... (id at Page 91, lines 16-18)

 : ... To CONSTITUTE the crime CHARGED in this case it's SECOND DEGREE MURDER, there must exist a joint -- a union or joint operation of AN ACT that's Forbidden by LAW and INTENT to do that ACT. In summary that means Forbidden by Law, a murder, a stabbing, and the INTENT to do the ACT. The INTENTIONAL STABBING into Victoria's body. The intent with which an ACT is DONE ... (id at Pages 91, line 25; 92, lines 1-5)

●  At this point it is crystal clear that the State has not only charged, in the AMENDED INFORMATION, an unlawful intentional stabbing with knife, this theory was argued by state and proven by trial transcripts. At first glance of O'Keefe's § 2241, U.S. DISTRICT Judge CLORIA NAVARRO already admits in her ORDER that the COLLATERAL ESTOPPEL claim absolutely would appear to be based UPON DOUBLE JEOPARDY PROTECTIONS.

The U.S. DISTRICT JUDGE was more concerned with why this wasn't exhausted in STATE COURT first. It certainly will be now and is just one of the reasons this case is conclusively, OVER. Now on to B Authorities and ARGUMENT, INFRA.

b.

ISSUE #2 - DECIDED ON DIRECT APPEAL IN FAVOR OF DEFENDANT

Before the case was reversed on appeal defendant's Motion to Settle Record was heard on April 7, 2009. Critical statements are made during this hearing.

(TUESDAY, APRIL 7, 2009 ROUGH DRAFT TRANSCRIPT, MOTION TO SETTLE RECORD EXHIBIT 9)
STATE, MR. SMITH and the Court both admit INSTRUCTION #18 is statutory correct in language. (id at Page 3, lines 1-24)

Also, State admits O'Keefe was to drunk to form "INTENT", by JURY DECISION. (id at Page 5, lines 18-22)

~~Open~~: The Court himself places on record the fact the alcohol issue caused the JURY to acquit O'Keefe of INTENTIONAL MURDER. (id at Page 6, lines 6-9)

"DECIDED" ON direct appeal, the argument arises from in fact INSTRUCTION #18. Defendant enters these 3 key instructions.

These 3 instructions are #1, #3, AND #18, defining Second degree Murder. (see INSTRUCTIONS TO THE JURY FILED IN OPEN COURT MARCH 29, 2009 EXHIBIT 10)

Now to bolster my point defendant enters his REVERSAL ORDER. (see ORDER OF REVERSAL AND REMAND M.S.C. No. 53859 APRIL 7, 2010 EXHIBIT 11)

• N.B.S. 200.010 "MURDER" defined: Murder is the unlawful killing of a human being: 1.) With malice aforethought, either express or IMPLIED.

So the alleged single battery act is merged into the murder charge. Instruction #1 identifies case, scenario. Instruction #3 explains the States theory and describes the battery act merged. We also must keep in mind that N.B.S. 200.481 defines "battery" - (MEANS any intentional unlawful act of force upon the person of another.) IN CASE C250630, the ACT is described in INSTRUCTION #3 as the, INTENTIONAL, UNLAWFUL STABBING VICTORIA with knife.

The Jury, as the trier of fact, ACQUITS O'Keefe of FIRST-DEGREE murder, the INTENTIONAL STABBING with KNIFE. However they return

1 2 verdict of Second Degree murder implied, by the argued battery domestic
2 violence in closing. Somehow, the jury is completely lost. When the
3 jury acquitted the defendant of First degree murder, the ACT they
4 acquitted me of APPLIED to either First or Second degree murder.

5 There was no other enumerated felony or inherently dangerous act
6 committed by the defendant. ~~from~~ Closing in on INSTRUCTION # 18 now.

7 The Nevada Supreme Court REVERSAL ORDER READS;

8 Here, the district court abused his discretion when he instructed the jury
9 that second-degree murder includes involuntary killings that occur in the commission
10 of an UNLAWFUL ACT because the state's charging document did not allege O'Keefe
11 killed the victim while he was committing an unlawful act and the evidence
12 presented at trial did not support this theory of SECOND-DEGREE MURDER.

13 • First, the state didn't have to allege any underlying act once they used
14 malice aforethought. Second, if the state would have alleged a battery
15 it wouldn't matter because the evidence presented at trial did not
16 SUPPORT THIS THEORY OF SECOND DEGREE MURDER - What theory?

17 INSTRUCTION # 18 MURDER OF the Second Degree is murder which is:

- 18 1) An unlawful killing of a human being with malice aforethought, but without
19 deliberation and premeditation, or
20 2) Where an involuntary killing occurs in the commission of an unlawful act, the
21 natural consequences of which are dangerous to life, which act is intentionally
22 performed by a person who knows that his conduct endangers the life of
23 another, even though the person has not specifically formed an intention to kill

24 • Noting, theory #2 was the theory complained about and decided.

25 Theory one is nothing more than Second degree murder DEFINED.

Theory two is implied malice murder by the act. It is how you PROVE
theory one. Mainly it is EXACTLY EQUAL in criminal culpability.
Also, felony murder has no intent.

So the jury acquits O'Keefe of FIRST DEGREE INTENTIONAL MURDER

Then, the appellate court acquits O'Keefe of the UNLAWFUL ACT.

Here is what we have.

The jury returns a UNINTENTIONAL, UNPREMEDITATED, UNDELIBERATED guilty verdict of Second Degree malice murder IMPLIED by the SAME alleged single act they acquitted me of in First degree murder. However, the appellate court acquits me of the UNLAWFUL ACT. So, conclusively the battery argued as the underlying act is completely lacking.

Collateral Estoppel clearly applies.

This issue of any battery has been decided and is no longer OPEN to consideration. Remembering the issue was in favor for the defendant.

ONLY the Nevada Supreme Court can change the LAW of the State.

: JUDICIAL ADMISSION MADE BY STATE

At the end of the second trial the state makes judicial admission and makes it a matter of the record. (EXHIBIT B, id at Page 57, lines 7-23)

Clearly the state admits the N.S.C. decided issue #2 on direct appeal. He also repeatedly admits the N.S.C. was aware of what was "second degree murder" and not only was the instruction wrong, but it was precisely why it got REVERSED.

The evidence didn't "SUPPORT IT." Mr. LALLI truly is WISE at times. The second jury hung, not being able to convict beyond a reasonable doubt based on INSUFFICIENT EVIDENCE again.

However, that is what the N.S.C. already said on DIRECT APPEAL.

??

III.

C.

TWO UNTRUTHS - STATE'S WITNESSES; CHERYL MORRIS and DETECTIVE WILDEMANN

UNTRUTH #1: IN the petrocelli hearing conducted on MARCH 16, 2009, the birth of this lie occurred. Mr. Smith, for the State, used his star witnesses for this testimony. This claim has been made to this day which must end. The claim is that Mrs Whitmarsh testified against O'Keefe resulting in O'Keefe getting convicted and going to prison for a three year prison term. The case was the FELONY battery domestic violence case, C207835. How ironic, this was another reason stated in the State's plea to bring in the FELONY battery domestic violence case in their case in chief to help bolster their INTENT and MOTIVE in hopes for a first degree murder verdict. This testimony was given in the State's opening statement, during their C.I.C., and in closing argument for BOTH TRIALS. Here now is the TRUTH.

• (see CASE NO. C207835 WEDNESDAY, SEPTEMBER 21, 2005 RECORDER'S TRANSCRIPT)

(JURY TRIAL DAY TWO - VOLUME TWO EXHIBIT 12)

Mrs Whitmarsh's testimony is COMPLETELY for O'Keefe. Stop the perjury.

(id at Pages 18-34) The state is knowingly allowing this.

Also, O'Keefe was acquitted which makes it no longer relevant.

ALSO, LAW of the Case APPLIES.

UNTRUTH #2: Also, throughout the petrocelli and both trials it repeatedly is misstated that O'Keefe did three years in prison. Another lie. O'Keefe did (13) months at TONOPAH FIRE CAMP. Minimum security, no doors, no locks, worked all over county, outside.

Testimony to this is by O'Keefe's current P.S.I., page 6, II received in fact on this instant case. Stop the UNTRUTHS.

(see P.S.I. CASE C250630 PAGE 6 APRIL 2009 EXHIBIT 13)

READ TOP RIGHT HAND CORNER of RPT. - 15 -

000102

III.

d.

REHASHING EVIDENCE - STATE HELD TWO PETROCELLI HEARINGS ON MISDEMEANORS

FIRST TRIAL

On February 10, 2009 States Motion to Admit Other Crimes is heard.

(See Tuesday, February 10, 2009 ROUGH DRAFT TRANSCRIPT EXHIBIT 14)

The Court inquires about the bad acts. The state submits he is only trying to get the ONE FELONY for his case. (id at Page 8, lines 18-25)

Of course this being the felony battery constituting domestic violence.

CASE C207835. The Court states he wants to hear more on the matter of the crimes and schedules a Petrocelli hearing. (id at Page 9, lines 17-22)

Petrocelli hearing is now completed on March 16, 2009.

(see MONDAY, MARCH 16, 2009 JURY TRIAL DAY 1 TRANSCRIPT EXHIBIT 15)

State starts off with the TWO UNTRUTHS previously brought up in c.

The lies that Whitmarsh testified against O'Keefe in Felony case C207835 and that O'Keefe did three years as a result. (id at Pages 2-3)

Mr Smith declares he only is going to use the felony unless O'Keefe opens the door to the misdemeanors. (id at Page 12, lines 1-7)

The Court explains to O'Keefe that if he takes the stand he should be careful not to blurt anything out and open the door. EMPHASIS on the other misdemeanor domestic violence issues could adversely impact my case. (id at Page 13, lines 1-10)

Now for the record, O'Keefe wishes to manifest the States Motion reflecting knowledge of every act before trial.

(see Notice of Motion and Motion to admit Evidence of other crimes EXHIBIT 16)

(ELECTRONICALLY FILED FEBRUARY 2, 2009 CASE C250630)

The state list every misdemeanor act by their Justice Court numbers. (id at Pages 6-8) Special Note again on PAGE 8, the State specifically requests C207835, only in it's case-in-chief. (LINES 6-8.)

Again also noting the State alleges O'Keefe did (3) years in prison because
"SPECIFICALLY" due to Mrs. Whitmarsh's testimony. Also, he requested the
Febny d.v., C207835, for Motive and INTENT. (id at Page 8, lines 14-20)

SECOND TRIAL

(No BAD ACTS)
MISDEMEANORS


THIRD TRIAL

After second trial hung, based on insufficient evidence to convict, the
State has Second Chair File a Motion in Limine to Admit, MISDEMEANORS.
(Motion in Limine to Admit Evidence of other BAD ACTS. EXHIBIT 17)

(ELECTRONICALLY FILED JANUARY 6, 2011 CASE C250430 HEARING 1/20/2011)

With "DUPPLICITY" the State list exactly, every single misdemeanor case
from the hearing prior to trial #1, almost two years prior.

Also noting, the State now list every misdemeanor case
by the EVENT NUMBER versus the JUSTICE COURT CASE No.
(id at Pages 3-6) How about N.R.S. 50.095.?


★ : The Double Jeopardy CLAUSE requires the
government to put on its strongest case the FIRST TIME. Also,
the State cannot REHASH SAME EVIDENCE FROM FIRST TRIAL. On 3/13/12,
the Judge just gave his ruling that only the misdemeanor event
040402-3158, which was enhanced to the Febny BATTERY d.v. case
C207835 "can again" be used. (ORDER FILED MARCH 13, 2012 EXHIBIT 18)

IV. AUTHORITIES - ARGUMENT

IN Closing Argument, of the first trial, PROSECUTOR SMITH ARGUES
in fact that a "battery domestic violence precipitated the stabbing".
(id at Page 177, lines 1-2, EXHIBIT 5) - "BATTERY OR SOMETHING"

Most important is at the very end of his closing argument, the State again suggest and plants the "seed" again, in the jury's mind, that the BATTERY ACT sustains the INTENT required. (id at Page 178, lines 13-16 EXHIBIT 5)

Specifically, he states, "it doesn't make the UNDERLYING ACT any less criminal." WHAT ACT?
THE SAME SINGLE ALLEGED BATTERY D.V. ACT.!

• IN (STATE v. MANGANA) 33 Nev. 311, 112 P. 693 (NEV 1910) - 

• Allows the State to pursue a First degree murder without charging the other crime. A charging document alleging murder in the ordinary form and proof that it was committed in the perpetration of the underlying act, then MALICE is IMPLIED. Of course, this works for Second Degree, also.

In the INSTANT CASE, without a doubt, the State was prosecuting upon the theory that the HOMICIDE was committed in carrying out the UNDERLYING ACT, (crime) of Battery Constituting Domestic Violence as charged initially when ARRESTED. (11-5-2008)
(see EXHIBIT 1 - Charge Battery D.V. COMPLAINT 11/7/2008)

Malice to sustain the general intent required would then be IMPLIED.

• IN (LABASTIDA v. STATE) 112 Nev. 1502, 931 P.2d 1334 (NEV 1996)

• Implied malice may be found when : 1) The killing resulted from an INTENTIONAL ACT.
2) The natural consequences of the act are dangerous to human life, AND
3) [T]he act was deliberately performed with knowledge of the danger to and with conscious disregard for, HUMAN LIFE. (* 1347)

This is EXACTLY THEORY #2 of JURY INSTRUCTION #18 in the INSTANT CASE, C250630. (see JURY INSTRUCTIONS EXHIBIT 10)

• IN (LABASTIDA v. NEVADA) 115 Nev. 298, 986 P.2d 443 (Nev. 1999)

● INSTRUCTION NO. 27 in

Labastida on Second Degree MURDER was IDENTICAL to O'KEEFE'S INSTRUCTION NO. 18. (* 448) They define what is NOT involuntary manslaughter BUT BECOMES SECOND DEGREE MURDER WHEN,

"the involuntary killing occurs in the commission of an UNLAWFUL ACT, which in its consequences, naturally tend to destroy the life of a HUMAN BEING"...

This is ABSOLUTELY the SECOND THEORY on my INSTRUCTION # 18.

We must remember that defining and proving malice is established.

• IN (KEYS v. NEVADA) 104 NEV. 736, 766 P.2d 270, (Nev. 1988)

● HN [4] Proving express

malice means proving a deliberate intention to kill; ~~WHILE~~ WHILE PROVING IMPLIED MALICE MEANS PROVING ONLY THE COMMISSION OF THE UNLAWFUL ACT.

★ Now the problem O'Keefe has is on my direct appeal, the LAW of the Case has been PRONOUNCED. ADJUDICATED, ALREADY!

The Law of the Case on the First appeal is the LAW of the Case on all subsequent appeals where the Facts remain the same.

see HABERSTROM v. NEVADA, 119 Nev. 173, 69 P.3d 676 (Nev. 2003) HN [26]

The DOCTRINE OF THE LAW of the CASE specifically states,

(1) the judgment of that court is final upon all questions decided and those questions are, ARE NO LONGER OPEN TO CONSIDERATION.

Issue #2 was decided in Favor of the defendant on direct appeal.

The evidence at trial did not prove O'Keefe committed an unlawful act.

So CONVERSELY, if the state's charging document would have alleged a

battery, it would not have mattered. Remembering State ARGUED the ACT.

For Collateral ESTOPPEL PURPOSES the following would then apply.

● IN (U.S. COURT OF APPEALS 9th v. Castillo-BASA) 483 F.3d 890 (9th 2007)

● HN [1]

The Double Jeopardy Clause forbids the government from conducting a series of prosecutions, involving the SAME FUNDAMENTAL ISSUE, in which it presents additional arguments and evidence at each iteration.

● HN [1]

An issue that is an element of the offense is always material to a subsequent claim of Collateral Estoppel.

HN [5][6][7][8]

The Double Jeopardy Clause does not only bar a second prosecution on the same charge of which a defendant has been previously acquitted (or convicted). It also prevents the government from seeking to prosecute a defendant on an ISSUE that has been determined in the defendant's favor in a prior prosecution, regardless of the particular offense involved in the earlier trial.

(Ashcroft v. Swenson, 397 U.S. 443)

Put another way, "[W]hen an issue of fact or law is actually litigated and determined by a final and valid judgment, and the determination is ESSENTIAL to the judgment, the determination is CONCLUSIVE in a subsequent action between the parties, whether on the same or a different claim."

● AS the SUPREME COURT has explained, Collateral Estoppel in the criminal context - the protection against the re-litigation of issues previously determined - is "an integral part of the protection against double jeopardy guaranteed by the Fifth and enforceable by the Fourteenth."

Also, the FIFTH AMENDMENT, as interpreted in (Ashe v. Swenson) BARS
relitigation of an issue already decided, NO MATTER HOW MUCH
ADDITIONAL EVIDENCE the government may wish to introduce at a
THIRD TRIAL, like the instant case.

NEW EVIDENTIARY

FACTS may not be brought forward to obtain a different determination
of the ULTIMATE FACT. see • HERNANDEZ, (572 F.2d at 221 n. 3)

Also, rehashing of old evidence previously presented would
clearly be PROHIBITED by the Collateral Estoppel Doctrine.
• Sarno, (596 F.2d at 407)

The State, in the INSTANT CASE,
has now violated Double Jeopardy's offspring, collateral
estoppel under the 5th AMENDMENT of the Laws and treaties
of the U.S. Constitution, also my due process rights
enforceable by the 14th AMENDMENT that is guaranteed
and applied to the State's. [Under (Benton v. Maryland) CITE:
395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed. 2d 707 (1969)] The mention of any Battery
is barred, in any fashion what-so-ever. The INTENT was
ADJUDICATED as lacking, not proven. The act
has been declared not PROVEN beyond a reasonable doubt.

Also, now "barred"; which also was violated,
was/is the prosecution's theory of the unlawful, intentional
stabbing with a knife.

• IN (SANTAMARIA v. HORSLEY) 133 F.3d 1242 (9th 1998)

The petitioner moved to prevent the State from proceeding on the
theory that he personally used a knife and stabbed victim.
The trial court granted the Motion based on Collateral Estoppel.

• IN (Pettaway v. Plummer) 943 F.2d 1041 (9th Cir 1991)

• The prosecution concedes that at all times [its] theory of prosecution at the First trial and even now at retrial would be Pettaway shot and killed the Victim. Without it, there is no other theory of prosecution to succeed in any conviction.

Point being that in Santamaria's case, the prosecution also admitted that they had no other evidence that the defendant was anything but the stabber...

• Santamaria, 8 Cal.4th at 929, 35 Cal. Rpt.2d 624, 884 P.2d 81.

The Fact remains the same here for O'Keefe in the INSTANT CASE. When the act was not proven the State lost intent. (PERIOD) FOR SECOND DEGREE MALICE MURDER, the state has no other theory available to SUSTAIN the general intent required.

Moreso, in the instant case, O'Keefe has already been acquitted of the INTENT, by the jury, and the underlying act also by the Nevada Supreme Court.

• IN (SCHIRO v. FARLEY) 510 U.S. 222, 114 S.Ct. 783 (1994)

• HN [10][11]

Issue preclusion attaches only to determinations that were necessary to support the judgment entered in the First action.

Schiro didn't convince the Court on the intentional murder argument. In the instant case however, O'Keefe has been acquitted of INTENTIONAL murder, by the JURY, and any underlying act by the N.S.C. (The alleged intentional battery)

V. CONCLUSION

UNITED STATES DISTRICT COURT JUDGE GLORIA NAVARRO already has made a predetermination that as, N.A.S.A. would say, "Houston, we have a PROBLEM!" (Judge Navarro only wants the issue exhausted.)

I read in SANTANARIA, * 1250, it made no difference that Santanaria's claim of exclusion is based on collateral estoppel rather than the more familiar constitutional grounds. IN Fact, they said Pettaway erred in asserting Federal jurisdiction BEFORE retrial. My second trial ended.

☞: My point is, with both trials now completed, it makes it much easier to make MANIFEST my claims on the repeated usage of the evidence, theory of criminal culpability and the adjudicated issue on INTENT. Also the same sovereign, and same statutory charge.

• [ONLY until trial, could we see STATE'S evidence used.] I'm officially declaring that CONSTITUTIONAL COLLATERAL ESTOPPEL applies on several operatives. My 5th and 14th AMENDMENT RIGHTS have been violated and will so further, if the third trial would somehow proceed. Any future theory of intentional stabbing must be barred. Based on no theory of prosecution and violations, I request dismissal with prejudice, of the Second AMENDED INFORMATION charging second-degree murder w.d.w. (Also based on insufficient evidence)

● CONSIDER THIS! - With all the evidence wrongfully used, the State could not prove the charge. Without that evidence, how will State prove something that defendant already, anyway, has been acquitted of? The judgment of acquitted simply was never entered on second degree. (FORMER JEOPARDY ISSUE PENDING IN 9th - Will COA BE ISSUED)

• CASE NO. C250630

DECLARATION

Defendant has constructed and verified contents
of his MOTION to Dismiss. A copy of said motion
was hand delivered and signed for by the parties
listed below.

Dated: March 14, 2012

Brian O'Keefe
BRIAN O'KEEFE - #144TT32

Copies; 1.) Clerk of the Court
2.) District Attorney
3.) Judge M. Villani

(• MOTION TOTAL 24 pgs.
• APPENDIX-EXHIBITS 178 pgs.)
EXHIBITS #'S 1-18
18 TOTAL EXHIBITS

DATED THIS 14th day of MARCH, 2012.

I, BRIAN BERRY O'KEEFE #144TT32, do

solemnly swear, under the penalty of perjury, that

the above MOTION to Dismiss based on 5th Violations is accurate,

correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.165.

Respectfully submitted,

Brian B. O'Keefe
BRIAN B. O'KEEFE

Defendant - PRO SE
#144TT32

R.O.C.

BRIAN O'KEEFE

C.C.D.C.

330 S. Casino Ctr. Blvd.

LAS VEGAS NV 89101

IN THE
EIGHTH JUDICIAL
DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,

VS.

BRIAN KERRY O'KEEFE,
Defendant.

CASE NO: C250630

DEPT NO: XVII

- MOTION TO DISMISS - 24 Pages
- APPENDIX OF EXHIBITS - 178 Pages

RECEIPT OF COPY

Receipt of copy of Defendant's MOTION TO DISMISS BASED
UPON VIOLATION(s) OF THE FIFTH AMENDMENT COMPONENT OF DOUBLE
JEOPARDY CLAUSE, CONSTITUTIONAL COLLATERAL ESTOPPEL AND, ALTERNATIVELY,
... THE ALLEGED BATTERY ACT DESCRIBED IN THE APPENDED INFORMATION,
is hereby acknowledged. (APPENDIX OF EXHIBITS ALSO)
TOTAL 178 PAGES EXHIBITS (1-18)

HONORABLE M. Villan

CLERK OF THE COURT

DISTRICT ATTORNEY

X P.I. CAMPBELL PUT IN BOX X

FRED/STARS X

Eileen Monville

Regional Justice Center
200 LEWIS AVE.

Regional Justice Center
200 LEWIS AVE.

Regional Justice Center
200 LEWIS AVE.

LAS VEGAS, NEVADA 89155

LAS VEGAS, NEVADA 89155

LAS VEGAS, NEVADA 89155

MARCH 16, 2012

MARCH 16, 2012

MARCH 16, 2012

-R.O.C.-

HAND DELIVERED
[SECOND COPY 3-22-12]

P.I. SWE-CAMPBELL

000112

Name: (last)	(first)	(middle initial)	Floor	Housing Unit	Bed
<input type="checkbox"/> REQUEST <input type="checkbox"/> GRIEVANCE			ID Number	Prop Number	

(All grievances must be submitted within 72 hours of incident.)

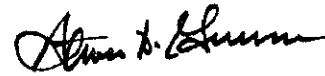
[Handwritten notes and signatures in the main body of the form, including "THANK YOU" and "JAMES JONES"]

Inmate's Signature	Date	Staff Person Receiving	Date/Time
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Issue has been resolved as follows:

Signature of employee who resolved the Request/Grievance Problem	Date/Time
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ORIGINAL—INMATE FILE YELLOW—RETURNED TO INMATE WITH RESPONSE PINK—INMATE KEEPS


CLERK OF THE COURT

1 RTRAN

2
3
4
5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,)

9 Plaintiff,)

CASE NO. C250630

10 vs.)

DEPT. XVII

11 BRIAN KERRY O'KEEFE,)

12 Defendant.)

13)
14 BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

15 THURSDAY, MARCH 29, 2012

16 RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING RE:

17 DEFENDANT'S PRO PER MOTION TO DISMISS BASED UPON VIOLATION(S)

18
19 APPEARANCES:

20 For the State:

CHRISTOPHER LALLI, ESQ.,
Chief District Attorney

21
22 For the Defendant:

Pro Se

23
24
25 RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

1 LAS VEGAS, NEVADA; THURSDAY, MARCH 29, 2012

2 [Proceeding commenced at 8:17 a.m.]

3
4 THE COURT: Brian O'Keefe. Mr. O'Keefe's present in custody.

5 MR. LALLI: Good morning, Your Honor. Christopher Lalli on
6 behalf of the State.

7 THE COURT: All right. Mr. O'Keefe, this is your motion to
8 dismiss. Do you have anything additional to add to your brief?

9 THE DEFENDANT: I just want to verify that you did get the
10 additional copy, Your Honor. It was a little heavily darkened -- a
11 darker copy was delivered last week.

12 THE COURT: Yes.

13 THE DEFENDANT: Okay. Great. I made sure Mr. Lalli received
14 one too.

15 The only thing that I have is that I have not received a
16 file served opposition for EDCR 3.20 within seven days. I have
17 received nothing from Mr. Lalli which the law quite clearly states
18 that's an admission and that my motion is meritorious.

19 These are constitutional issues, Your Honor. Double
20 jeopardy, collateral estoppel is off-spring of double jeopardy
21 Fifth Amendment.

22 THE COURT: Let me stop you right there. So you're saying you
23 did not get their opposition?

24 THE DEFENDANT: I did not receive and I want to say on the
25 record that a week later I filed another motion or dropped off and

1 this was last Thursday, Your Honor, and the Clerk of the Court sent
2 it out Friday, this last Friday, and I received it Monday night.
3 Now, Mr. Lalli clearly had his --

4 THE COURT: Received what Monday night?

5 THE DEFENDANT: Just three days ago, Your Honor.

6 THE COURT: What did you receive Monday night, the opposition?

7 THE DEFENDANT: No. No. No. I sent -- I had Mr. Lalli
8 personally served and you, Your Honor, on the 16th. On the 22nd I
9 had dropped off another motion at the Clerk of the Court. The
10 investigator dropped it off. They filed that motion a week -- they
11 received it a week after.

12 My whole point is they received that motion. They kept
13 it for the day. They filed it. They mailed it the next day. I
14 have it here. They mailed it on Friday and I received it Monday
15 night. My point being is Your Honor clearly the State could have
16 responded and I could have received something within the seven day
17 deadline. I mean --

18 THE COURT: I'm not showing any new pending motions on my
19 calendar.

20 THE DEFENDANT: There is one, Your Honor. I have a copy of
21 it. I gave it --

22 THE COURT: Hang on. I'm going to have Cliff pick up -- the
23 Marshal's going to pick up the motion you received back from the
24 Clerk's Office. Stay right there, sir.

25 THE DEFENDANT: Yeah, I'm just setting this down, Your Honor.

1 All right. Thanks for the Court's indulgence, sir. This is the
2 one that I filed --

3 THE COURT: Hang on. Let me look at it.

4 THE DEFENDANT: It was mailed and I received it Monday night.
5 This is a week after Mr. Lalli's motion.

6 MR. LALLI: Your Honor, may I inquire whether there is proof
7 of service in my office and if so, what date with respect to the
8 motion the Court just received?

9 THE COURT: The motion was filed March 22nd, 2012. There's a
10 receipt of copy. On this copy it's unsigned.

11 MR. LALLI: That's not dated.

12 THE COURT: Well, we're checking right now.

13 [The Court conferring with the Clerk]

14 THE COURT: All right, sir, my Court Clerk pulled this up on
15 Odyssey. Again, it was filed March 22nd, okay. It's your motion to
16 seal records. There is no receipt of copy on file or is that blank
17 or -- receipt of copy has been scanned. However, it's blank.
18 There is no certificate of mailing and the motion is set for
19 hearing April 10th.

20 MR. LALLI: April 10th, Your Honor?

21 THE COURT: Yes.

22 THE DEFENDANT: Yes, Your Honor. Now that is for --

23 THE COURT: Hang on. Hang on.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: So what I'm going to do is State has apparently

1 not received a copy of it. They have access to Odyssey and they
2 will print it out today and file the appropriate response.

3 MR. LALLI: Your Honor, may I have until April 3rd to file a
4 response to that?

5 THE DEFENDANT: Okay. Now that's the motion to seal, Your
6 Honor. That is not the motion to dismiss. The motion to dismiss,
7 Marshal Clifford just brought you the receipt of copy. My point I
8 was trying to make is EDCR 3.20 says the State has to file an
9 opposition, served and filed within seven days.

10 Now they received that motion. They signed for it and I
11 was just trying to prove that I since then filed another motion and
12 the Clerk wouldn't file it at that time. She said she would mail
13 it to us, set the date. She wouldn't sign the receipt of copy
14 which -- and you know I'm just saying they did what they said and
15 they mailed it to me.

16 Now my point being is Mr. Lalli was served that motion
17 and his clerk, they signed for it. Right here, this receipt of
18 copy for the motion to dismiss.

19 Now in Pope versus Nevada, 31d of the Nevada Rules of
20 Appellate procedure when the State fails to respond on
21 constitutional issues, Your Honor, it's a serious thing. And they
22 dismissed -- they reversed the case.

23 Now at the trial level EDCR 3.20 is the same -- serves
24 the same function.

25 MR. LALLI: Your Honor, may I short circuit this?

1 THE COURT: Actually, I'll do that here. Sir, this matter was
2 filed March 16th which is a Friday, okay. I seriously doubt you
3 would have had it back on March 16th because the filing date was
4 12:04 p.m. So if you served -- if you sent it to the D.A.'s Office
5 even on that day they would not have received it on Marcy 19th.

6 THE DEFENDANT: My investigator --

7 THE COURT: Sir, I'm talking.

8 THE DEFENDANT: -- hand delivered it.

9 THE COURT: I'm talking, all right. And so if they received
10 it either March 19th even March 16th their response was filed March
11 21st. So if they received it on the 19th, they filed it a response
12 within two days, okay.

13 So your -- if there's any -- if you're making an oral
14 motion right now I'm not going to accept it. You need to file a
15 written motion, but you might want to look at the timing of this
16 and see if it's a waste of time on your part. I'm not saying don't
17 file it, but you need to look at your calendar.

18 Now let's go to the motion to dismiss. You have anything
19 additional to add to your written motion?

20 THE DEFENDANT: Anything additional to add to what's in the
21 motion. The motion is packed. The only thing I could say then if
22 that's all you're allowing me to do orally is I'm asking you to
23 honor and stare decisis, stand by things decided.

24 In my first trial, Your Honor, it was -- I was taken to
25 trial on the theory of intentional stabbing, the act. The law says

1 you determine the intent once the act is committed. The jury, the
2 tier fact at that time said I did no stabbing. NRS 193.190 to
3 constitute a crime there has to be a unity of act and intent. They
4 took away the actus reus, the physical component.

5 Now you well know, Your Honor, on direct appeal any
6 underlying act that they were trying to throw in the Nevada Supreme
7 Court said I did no unlawful act which is the definition of
8 battery. They acquitted me of the physical act described in the
9 amended information which was the physical act of stabbing.

10 The State reprosecuted me on the same theory, willful
11 means intentional, willfully. They said I didn't do it
12 intentionally which means it was an accident. Second degree malice
13 murder is an unintentional murder, Your Honor, in the commission of
14 a so called act that the Nevada Supreme Court said the evidence did
15 not prove that I did beyond a reasonable doubt. It's over.

16 Not only did they violate the theory of prosecution, they
17 rehashed the same evidence they brought in the first trial.

18 Now in the reversal order, the Nevada Supreme Court
19 clearly said the evidence presented at trial did not support this
20 theory of second degree murder. What theory? Theory number -- or
21 instruction number 18, the State's theory. What evidence? All the
22 evidence they presented that tried to prove criminal -- criminal
23 culpability; the video, the domestic violence. It goes on and on
24 and on, but all the evidence they presented, the tier fact
25 acquitted me of it.

1 And then on top of it on direct appeal, the Supreme Court
2 acquitted me of second degree. They re prosecute me --

3 THE COURT: Actually, the Supreme Court said that there is an
4 error in the jury instruction. They could not determine which
5 theory the jury found you guilty; that's what the opinion states.

6 The second trial was a hung jury. I think it 11 to 1 or
7 10 to 2, okay. On those bases, there's no double jeopardy
8 violation. Anything else to add, sir?

9 THE DEFENDANT: Your Honor, they're prohibited from rehashing
10 any evidence. The same bad acts we just got done and litigated and
11 you have a ruling that C207835, the felony battery domestic
12 violence could be reintroduced again. No, it cannot, Your Honor.
13 This is the same --

14 THE COURT: Okay. Well, sir, this --

15 THE DEFENDANT: Your Honor --

16 THE COURT: -- I've ruled on that motion. If you're saying
17 that I was in error, the proper procedure is a motion for
18 reconsideration or a Writ to the Supreme Court. This is not the
19 time for you to rehash that motion. You need to file the proper
20 procedures.

21 THE DEFENDANT: You asked me, Your Honor, with all due
22 respect, sir. Please, Your Honor, you have to --

23 THE COURT: No, sir, listen. I said you have anything
24 additional to add to your motion to dismiss. If you feel I made an
25 error in the motion for 480.045 you file a motion for

1 reconsideration or you file a Writ to the Supreme Court. You have
2 done neither of those. We are here on a motion to dismiss, okay.
3 Do you have anything additional to add?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Okay. Mr. Lalli, do you have anything additional
6 to add?

7 MR. LALLI: No, Your Honor. I'll submit it on my opposition.

8 THE COURT: The Court does not find any issue of double
9 jeopardy in this particular matter. The State is not precluded
10 from bringing up the matter under 480.045 which I've already made a
11 ruling on that. The Supreme Court reversal does not preclude
12 retrial in this matter, so motion to dismiss is denied.

13 And, State, could you file the opposition to the motion
14 set for April 10th?

15 MR. LALLI: Your Honor, may I have until -- may I just have a
16 week from today to file that; that would be actually April 5th?

17 THE COURT: That'll be fine. Just make sure that Mr. O'Keefe
18 gets a copy of the opposition.

19 MR. LALLI: Yes, Your Honor. He -- with respect to the
20 instant opposition that we filed, one was faxed to him on the same
21 day that it was filed. So there was appropriate service of that.

22 THE COURT: All right.

23 MR. LALLI: Thank you.

24 THE COURT: Thank you. And, State, please prepare the order.

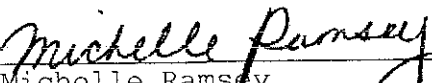
25 MR. LALLI: We'll do that. Thank you.

[Proceeding concluded at 8:30 a.m.]

* * * * *

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.


Michelle Ramsey
Court Recorder/Transcriber

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REGISTER OF ACTIONS

CASE No. 08C250630

The State of Nevada vs Brian K O'Keefe

08C250630

Case Type: **Felony/Gross
Misdemeanor**
Date Filed: **12/19/2008**
Location: **Department 17**
Conversion Case Number: **C250630**
Defendant's Scope ID #: **1447732**
Lower Court Case Number: **08F23348**
Supreme Court No.: **61631**

PARTY INFORMATION

Defendant O'Keefe, Brian K

Lead Attorneys
Pro Se

Plaintiff State of Nevada

Steven B Wolfson
702-671-2700(W)

CHARGE INFORMATION

Charges: O'Keefe, Brian K	Statute	Level	Date
1. MURDER.	200.010	Felony	01/01/1900
1. DEGREES OF MURDER	200.030	Felony	01/01/1900
1. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900

EVENTS & ORDERS OF THE COURT

03/29/2012 **Motion to Dismiss** (8:15 AM) (Judicial Officer Villani, Michael)
Notice of Motion and Motion to Dismiss Based Upon Violation(s) of the Fifth Amendment Component of the Double Jeopardy Clause, Constitutional Collateral Estoppel and Alternatively, Claiming Bes Judicata, Enforceable by the Fourteenth Amendment Upon the States Precluding State's Theory of Prosecution by Unlawful Intentional Stabbing with Knife, the Alleged Battery Act Described in the Amended Information

Minutes

03/29/2012 8:15 AM

- Christopher Lalli, Chf Dep DA, present on behalf of the State; Deft. O'Keefe, present pro se. Deft. filed a Motion to Seal Records on March 22, 2012; hearing is set for April 10, 2012. Court noted there is a Receipt of Copy but it is unsigned and there is no Certificate of Mailing. Mr. Lalli advised that since the State is now aware of said Motion, he will file the appropriate response; he requested that he be given until April 5, 2012, to file a response. COURT SO ORDERED. Further, Deft. advised he did not receive a filed stamped copy of the State's Opposition to his Motion to Dismiss Based upon Violations within the seven (7)-day time period specified in EDCR 3.20. Court noted the Motion to Dismiss was filed on March 16, 2012, and the Opposition was filed by the State on March 21, 2012. Argument by Deft. Mr. Lalli submitted the matter on his Opposition. COURT FINDS, there is no issue of double jeopardy in this particular matter and the State is not precluded from introducing bad-act evidence under NRS 48.045. The Nevada Supreme Court reversal does not preclude a retrial. Therefore, COURT ORDERED, motion DENIED. State to prepare the Order.

[Return to Register of Actions](#)

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FILED

JUN 1 11 16 AM '12

Sharon L. Quinn
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

BRIAN O'KEEFE,

Defendant.

Case No.: C250630

Dept. No.: 17

MOTION TO CONTINUE TRIAL

COMES NOW Defendant BRIAN O'KEEFE, by and through his attorney of record, LANCE A. MANINGO, ESQ., of BELLON & MANINGO, LTD., and moves this court for a continuance of the trial currently set for June 11, 2012.

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