

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3       BENNETT GRIMES,                                   )

No. 62835

4                                   Appellant,                                   )

5                                   v.                                   )

6       THE STATE OF NEVADA,                                   )

7                                   Respondent.                                   )

Electronically Filed  
Aug 19 2013 12:33 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

8  
9                                   **APPELLANT'S APPENDIX VOLUME V PAGES 930-1086**

10  
11       PHILIP J. KOHN  
12       Clark County Public Defender  
13       309 South Third Street  
14       Las Vegas, Nevada 89155-2610

STEVE WOLFSON  
Clark County District Attorney  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89155

15       Attorney for Appellant

CATHERINE CORTEZ MASTO  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(702) 687-3538

Counsel for Respondent

**INDEX**  
**BENNETT GRIMES**  
**Case No. 62835**

**PAGE NO.**

Amended Criminal Complaint filed 08/25/11 .....	004-006
Amended Information filed 09/21/11 .....	014-016
Court Exhibit #1 dated 10/10/12 .....	1050
Court Exhibit #2-3 dated 10/11/12 .....	1051
Court Exhibit #4 dated 10/11/12 .....	1052
Court Exhibit #5 dated 10/12/12 .....	1053
Court Exhibit #6 dated 10/12/12 .....	1054
Court Exhibit #7 dated 10/12/12 .....	1055-1061
Court Exhibit #8 dated 10/12/12 .....	1062
Court Exhibit #9 dated 10/12/12 .....	1063
Court Exhibit #10 dated 10/12/12 .....	1064
Court Exhibit #11 dated 10/12/12 .....	1065
Court Exhibit #12 dated 10/12/12 .....	1066
Court Exhibit #13-14 dated 10/15/12 .....	1067
Criminal Complaint filed 07/26/11 .....	001-003
Defendant's Exhibit A dated 10/11/12 .....	1082
Defendant's Exhibit B dated 10/11/12 .....	1083
Defendant's Exhibit C dated 10/11/12 .....	1084
Defendant's Exhibit D dated 10/12/12 .....	1085
Defendants Motion To Dismiss For Failure To Gather Evidence Filed 06/05/12 .....	131-136
Defendants Notice Of Witnesses filed 10/02/12 .....	164-165
Defendants Motion In Limine To Preclude Introduction Of Temporary Protective Order At Trial filed 10/02/12 .....	168-172
District Court Minutes through 02/12/13 .....	230-264
Ex Parte Motion For Release Of Medical Records Filed 02/09/12 .....	086-087

1	Information filed 09/14/11.....	009-011
2	Instructions To The Jury filed 10/15/12 .....	176-210
3	Judgment Of Conviction filed 02/21/13 .....	224-225
4	Justice Court Minutes through 08/25/11 .....	007-008
5	List of Court's Exhibits 10/10/12 through 10/15/12 .....	1049
6	List of Defendant's Exhibits 10/11/12 through 10/12/12.....	1081
7	Motion For Discovery filed 05/25/12.....	105-120
8	Motion For New Trial filed 10/22/12.....	213-216
9	Motion To Continue Trial Date filed 02/27/12 .....	100-102
10	Motion To Continue Trial Date filed 06/12/12 .....	137-139
11	Notice of Exhibits: Trial by Jury-10/10/12 through 10/15/12 filed 10/16/12 .....	1048
12	Notice Of Appeal filed 03/18/13 .....	226-229
13	Notice Of Change Of Hearing filed 09/14/11 .....	012-013
14	Notice Of Expert Witnesses filed 01/31/12.....	078-085
15	Notice Of Intent To Seek Punishment As A Habitual Criminal Filed 10/23/12.....	221-223
16	Notice Of Witnesses filed 01/31/12.....	075-077
17	Order filed 10/14/11 .....	061-062
18	Order Releasing Medical Records filed 02/09/12 .....	088-089
19	Petition For Writ Of Habeas Corpus filed 10/12/11 .....	056-060
20	Proposed Defendant's Exhibit E.....	1086
21	Return To Writ Of Habeas Corpus filed 10/26/11 .....	068-074
22	Second Amended Information filed 10/25/11 .....	065-067
23	Second Supplemental Notice Of Expert Witnesses Filed 05/29/12.....	103-104
24	State's Exhibit #17 dated 10/12/12.....	1068
25	State's Exhibit #19 dated 10/11/12.....	1069
26	State's Exhibit #31 dated 10/11/12.....	1070
27		
28		

1	State's Exhibit #32 dated 10/11/12.....	1071
2	State's Exhibit #33 dated 10/11/12.....	1072
3	State's Exhibit #34 dated 10/12/12.....	1073
4	State's Exhibit #35 dated 10/12/12.....	1074
5	State's Exhibit #36 dated 10/12/12.....	1075
6	State's Exhibit #37 dated 10/12/12.....	1076
7	State's Exhibit #38 dated 10/12/12.....	1077
8	State's Exhibit #68 dated 10/12/12.....	1078
9	State's Exhibit #79 (CD) .....	1087
10	State's Exhibit #80 (CD) .....	1088
11	State's Exhibit #81 dated 10/12/12.....	1079-1080
12	States Opposition To Defendants Motion For A New Trial Filed 11/05/12.....	217-220
13	States Opposition To Defendants Motion To Dismiss For Failure To Gather Evidence filed 07/18/12 .....	140-145
14	States Response To Defendants Motion For Discovery Filed 06/05/12.....	121-130
15	Supplemental Notice Of Expert Witnesses Filed 02/22/12.....	090-099
16	Supplemental Notice Of Expert Witnesses Filed 09/19/12.....	146-154
17	Supplemental Notice Of Expert Witnesses Filed 09/19/12.....	155-163
18	Supplemental Notice Of Witnesses Filed 10/04/12.....	166-167
19	Third Amended Information filed 10/10/12 .....	173-175
20	Verdict filed 10/15/12.....	211-212
21	Writ of Habeas Corpus filed 10/14/11.....	063-064
22	///	
23	///	
24	///	
25	///	
26		
27		
28		

**TRANSCRIPTS**

1		
2		
3	<b><i>Jury Trial- Day 1</i></b>	
4	<b><i>Date of Trial: 10/10/12 .....</i></b>	<b><i>326-550</i></b>
5		
6	<b><i>Jury Trial- Day 2</i></b>	
7	<b><i>Date of Trial: 10/11/12 .....</i></b>	<b><i>551-762</i></b>
8		
9	<b><i>Jury Trial- Day 3</i></b>	
10	<b><i>Date of Trial: 10/12/12 .....</i></b>	<b><i>763-968</i></b>
11		
12	<b><i>Jury Trial- Day 4</i></b>	
13	<b><i>Date of Trial: 1015/12 .....</i></b>	<b><i>969-1010</i></b>
14		
15	Transcript of Proceedings, Recorders Transcript RE: Arraignment	
16	Date of Hrg: 09/20/11 .....	265-270
17		
18	Transcript of Proceedings, Recorders Transcript RE Calendar Call	
19	Date of Hrg: 10/02/12 .....	323-325
20		
21	Transcript of Proceedings, Recorders Transcript RE: Defendants Motion For New Trial	
22	Date of Hrg: 11/06/12 .....	1011-1012
23		
24	Transcript of Proceedings, Recorders Transcript RE: Defendants Motion To Continue Trial Date	
25	Date of Hrg: 03/20/12 .....	274-276
26		
27	Transcript of Proceedings, Recorders Transcript RE: Defendants Motion To Dismiss For Failure To Gather Evidence	
28	Date of Hrg: 07/19/12 .....	292-293
	Transcript of Proceedings, Recorders Transcript RE: Defendants Motion To Dismiss For Failure To Gather Evidence	
	Date of Hrg: 07/31/12 .....	294-296
	Transcript of Proceedings, Recorders Transcript RE: Defendants Motion To Dismiss For Failure To Gather Evidence	
	Date of Hrg: 08/14/12 .....	297-307
	Transcript of Proceedings, Recorders Transcript RE: Defendants Petition For Writ Of Habeas Corpus	
	Date of Hrg: 11/03/11 .....	271-273
	Transcript of Proceedings, Recorders Transcript RE: Status Check: The Defendants Motion To Dismiss For Failure To Gather Evidence	
	Date of Hrg: 08/23/12 .....	308-312

///

1	Transcript of Proceedings, Reporters Transcript of Preliminary Hrg	
2	Date of Hrg: 08/25/11 .....	017-055
3	Transcript of Proceedings, Rough Draft Recorders Transcript of Calendar Call	
4	Date of Hrg: 06/12/12 .....	285-291
5	Transcript of Proceedings, Rough Draft Recorders Transcript of Defendants Motion For Discovery	
6	Date of Hrg: 06/07/12 .....	277-284
7	Transcript of Proceedings, Rough Draft Recorders Transcript of Defendants Motion To Dismiss For Failure To Gather	
8	Evidence	
9	Date of Hrg: 09/13/12 .....	313-322
10	Transcript of Proceedings, Rough Draft Recorders Transcript of Sentencing	
11	Date of Hrg: 12/18/12 .....	1013-1021
12	Transcript of Proceedings, Sentencing	
13	Date of Hrg: 02/07/13 .....	1022-1033
14	Transcript of Proceedings, Sentencing	
15	Date of Hrg: 02/12/13 .....	1034-1047
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 MR. HILLMAN: Mr. Grimes and I have talked about  
2 that.

3 THE COURT: All right. Mr. Grimes, just based on my  
4 cursory review. I mean, the State obviously has to -- I'm  
5 assuming you have certified judgments of conviction?

6 MS. BOTELHO: We do, Your Honor, for both.

7 THE COURT: Okay. And I would look at them, but  
8 based upon their proffer thus far, it looks like -- and  
9 they're battery domestic violence felonies, correct? Is that  
10 correct? Mr. Burns, are they battery DV felonies?

11 MS. BOTELHO: Yes, Your Honor, abuse or injury on a  
12 corporal spouse.

13 THE COURT: Oh, that's right. California says it a  
14 little bit differently. Okay. So if you took the stand and  
15 testified, whoever cross-examines you will be able to ask you  
16 about those prior felonies because they're within the ten  
17 years. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Have you had an opportunity to  
20 discuss whether you should testify or exercise your right to  
21 remain silent with your attorneys?

22 THE DEFENDANT: Yes.

23 THE COURT: Have they answered all your questions?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you have any questions of me? If you

1 have any questions, feel free to ask. Go ahead, just say  
2 whatever it is. I'll figure it out.

3 THE DEFENDANT: I'm just -- I know there's a window  
4 where I could give an answer --

5 THE COURT: It's now.

6 THE DEFENDANT: -- 24 hours.

7 THE COURT: No, you cannot. It's now.

8 THE DEFENDANT: That's what I mean. So I'm just  
9 trying to give it a quick thought.

10 THE COURT: And I don't require you to tell me.  
11 Remember yesterday when I said you're entitled to see and hear  
12 all of the evidence against you before I ask you. That's why  
13 I didn't ask you yesterday. So I got a jury out there  
14 waiting.

15 THE DEFENDANT: No questions.

16 THE COURT: All right. Have you decided whether  
17 you're going to testify or not?

18 THE DEFENDANT: Yes.

19 THE COURT: What are you going to do?

20 THE DEFENDANT: I'm not going to testify.

21 THE COURT: You're not going to testify?

22 THE DEFENDANT: No.

23 THE COURT: Okay. And your attorney has told you how  
24 that could change the case and how I will instruct the jury,  
25 correct?



1 THE DEFENDANT: Yes.

2 MR. HILLMAN: And we'd like to make a record on that  
3 if we could briefly when you're done.

4 THE COURT: I'm done. If he doesn't want to testify.

5 MR. HILLMAN: Right. And I talked to Mr. Grimes for  
6 a few minutes. He indicated he wanted to testify. We talked  
7 about rebuttal evidence. He decided that, and I don't know  
8 what he based his decision on, he decided that he -- it would  
9 be more harm than good for him to testify at this point in  
10 time. Is that correct, Bennett?

11 THE DEFENDANT: Yes.

12 MR. HILLMAN: Okay. And what the basis of our  
13 conversation was is that while reviewing jury instructions we  
14 came to the self-defense instructions and Your Honor indicated  
15 that she felt that the state of the evidence was not such that  
16 we are entitled to argue for self-defense. We respectfully  
17 disagree with Your Honor on that and feel that we've met a  
18 scintilla of evidence.

19 THE COURT: And go ahead and tell me what you think  
20 the evidence is and how you would argue self-defense. Because  
21 I'm not suggesting that there's evidence that you could argue  
22 certain aspects, it was what I was told would be argued. And  
23 so, that's not on the record, so why don't you go ahead and  
24 tell me what your theory is about how Ms. Grimes obtained all  
25 of those wounds and I'll let you make your record.

UNCERTIFIED ROUGH DRAFT

1           MR. HILLMAN: Beginning with the positioning of the  
2 parties as indicated on our diagrams, as well as in the  
3 photographs shown by the State that Mr. Grimes entered the  
4 apartment, spent most of his time near the door. There may  
5 have been some testimony that he approached Aneka. Aneka did  
6 say that he approached her. Grabbed the knife and pulled her  
7 to the door and then began stabbing her.

8           Our argument would be that it was just as reasonable  
9 that -- that's kind of an unreasonable scenario, that actually  
10 Bennett was standing by the door. She said that she wanted to  
11 get him out of her life forever and that she grabbed a knife  
12 and approached Bennett.

13           THE COURT: Okay.

14           MR. HILLMAN: All of the bloodstains --

15           THE COURT: Right up to he's standing by the door.  
16 It's right up to there I'm okay. It's when you cross over to  
17 Ms. Grimes grabbed that knife in the kitchen, went out of the  
18 kitchen and went after him. That's the part that I don't  
19 believe there is any evidence whatsoever, not even a  
20 reasonable inference.

21           MR. HILLMAN: And we're not saying if she went in the  
22 kitchen, grabbed a knife. She was standing at the counter  
23 next to the knife rack and had a direct shot at him five to  
24 seven feet away, as she said. She could not remember how he  
25 grabbed her, how he pulled her over to the door. And if

1 someone's going to stab someone, why in the world would they  
2 pull them five to seven feet next to the door and then start  
3 stabbing them --

4 THE COURT: Block the front door so the mom can't get  
5 out.

6 MR. HILLMAN: -- instead of grabbing the knife from  
7 the dish rack and starting the attack right there? That's the  
8 basis of our self-defense.

9 THE COURT: I think that's fine. I think you can  
10 argue that what she says doesn't make sense.

11 MR. HILLMAN: Correct.

12 THE COURT: That's perfectly permissible. Where I  
13 have the problem is when you want to stand in front of the  
14 jury and say that Ms. Grimes -- I think there's even a  
15 reasonable inference that she was closest to the knife. Okay.  
16 But it's after that when you say that he's by the front door,  
17 she's five to seven feet away and that she was the original  
18 aggressor and that she began stabbing him. And that in order  
19 to save his own life -- well, I guess you didn't even tell --  
20 it wasn't even really that. There was a struggle that ensued  
21 and in that struggle she ended up with 21 stab wounds and that  
22 that was self-defense.

23 MR. HILLMAN: Also, in addition, the DNA on the  
24 knife, the fact that her DNA was on the knife, Mr. Grimes was  
25 not.

1 THE COURT: Okay. I'm okay with all that. It's the  
2 in between. I mean, I'll just tell you straight out. Mr.  
3 Grimes, there's absolutely no evidence, none, that she grabbed  
4 that knife, went after you, attempted to stab you and that  
5 somehow you acted in self-defense and she received 21 stab  
6 wounds in self-defense. Okay? Everything else you've said, I  
7 agree you can argue all that. I'm not going to -- your  
8 attorneys can only argue the evidence and reasonable  
9 inferences of the evidence. They cannot make up a story.  
10 Well, they can defend you to the extent that the evidence  
11 allows them to defend you. Okay?

12 There is -- we had Ms. Grimes here and everybody had  
13 an opportunity to clearly ask her whether she went after him  
14 with the knife and whether this was a struggle. There's --  
15 your attorneys can argue everything except -- I mean, they can  
16 even argue she had her hand on that knife because the evidence  
17 would support that argument, that she had her hand on that  
18 knife. There's just no evidence to support her being the  
19 original aggressor and that there was some kind of -- I don't  
20 even know. I don't want to put words in your mouth. So how  
21 did she get those stab wounds? What would you argue to the  
22 jury? I'm not telling -- Mr. Grimes doesn't have to answer  
23 that.

24 MR. HILLMAN: She approached him with the knife,  
25 there was an altercation over the knife and she got those stab

1 wounds because he's stronger and bigger than she is and they  
2 were fighting over the knife.

3 THE COURT: And you know what? There's no evidence  
4 of how strong he is. There's no evidence of how tall he is.  
5 There's no evidence about how much he weighs. Nor is there  
6 any evidence about Aneka Grimes. None of that was elicited.

7 MR. HILLMAN: Other than the visual that the jurors  
8 have of both parties.

9 THE COURT: I'm not going to let the jury speculate  
10 as to how big the parties are.

11 MR. HILLMAN: They have seen him standing here when  
12 he's -- when they've walked in and walked out.

13 THE COURT: Okay. So? State it one more time for  
14 me. Just state it one more time.

15 MS. HOJJAT: Your Honor, at this point this is our  
16 theory of the case. Our theory of the case basically is that  
17 we have met the scintilla of evidence standard that we need in  
18 order to get a self-defense instruction. We are not required  
19 to get it even to probable cause, just a scintilla of  
20 evidence.

21 THE COURT: I completely agree with you.

22 MS. HOJJAT: We think we've met the scintilla of  
23 evidence due to the fact that all of the testimony places Mr.  
24 Grimes five to seven feet away from the knife. All of the  
25 testimony places Ms. Grimes, the victim, Mrs. Grimes directly

1 next to the knife. Due to the fact that the testimony as to  
2 the forensic analysis of the knife shows that at least what  
3 could be found by the State, there was no touch DNA of Mr.  
4 Grimes on that knife handle. There was another individual's  
5 touch DNA on that knife handle. There was Ms. Grimes' DNA on  
6 that knife handle. We can speculate as to whether it was a  
7 combination of touch DNA and fluids, but the point is --

8 THE COURT: We don't need to speculate because she  
9 told us it was blood.

10 MS. HOJJAT: She said it could have been a  
11 combination of both, Your Honor. She said it wasn't just  
12 blood, it could be touch DNA and blood. And the point is,  
13 Your Honor, that because another male's touch DNA was found on  
14 that knife, the blood had not overwhelmed all of the touch DNA  
15 on this knife. But Mr. Grimes' touch DNA was not found on  
16 this knife.

17 So given the facts and circumstances that he's five  
18 to seven feet away, she's standing right next to the knife,  
19 none of his touch DNA is found on the knife, and we would  
20 argue to the jury how reasonable does it sound that you'd drag  
21 somebody five to seven feet before you stab them. Now,  
22 whether there's a response to that or not, it is an argument  
23 that we can make to the jury. We do believe that those things  
24 together do rise to the level of a scintilla of evidence that  
25 he's not the first person who touched that knife that day,

1 he's not the person who picked up the knife and began the  
2 aggression that day.

3 THE COURT: If that's all you say. I mean, if you  
4 say as little as you say right now, I don't know what that  
5 gets you. I'm not sure that gets you to self-defense. You  
6 still have a person who has 21 stab wounds and another person  
7 with none. With that, with a cut on their right index finger.

8 MS. HOJJAT: And, Judge, clearly, Your Honor doesn't  
9 feel that this rises to the level of more likely than not --

10 THE COURT: It doesn't matter what I think.

11 MS. HOJJAT: -- or beyond a reasonable doubt.

12 THE COURT: I'm trying to find a scintilla of  
13 evidence. I can't even find a scintilla of evidence to --  
14 everything you said, you can argue his DNA wasn't on there.  
15 You can argue his touch DNA, all that you can argue. And you  
16 can argue in her home, her DNA was on her knife. That's all  
17 fine. That doesn't bother me. It's when you then take the  
18 leap and say she took that hand in her knife -- I'm sorry,  
19 that knife in her hand and that she went after your client in  
20 an effort to stab him. And then he had to stab her 21 times  
21 to thwart the attack on himself? Because it would be -- that  
22 would be deadly force. That would be deadly force. He'd have  
23 the right to use deadly force against her if that happened.  
24 But there's got to be something that gets you to your ability  
25 to use deadly force to get you there.

1 MS. HOJJAT: Your Honor, we do think the fact that  
2 she was the one positioned closer to the knife. She was the  
3 only person in that apartment who actually knew that knife was  
4 there because the testimony was the knife was on a drying  
5 rack, it wasn't in the proper place that a knife is going to  
6 be. She was frankly the only person in the apartment who  
7 actually knew that knife was on that drying rack because it  
8 was on the other side of the counter. She's the person  
9 standing next to it.

10 THE COURT: You're getting caught up on where that  
11 knife is. I'd say I agree 100 percent. She's the only person  
12 on the planet that knew where that knife was.

13 MS. HOJJAT: Then we do think we've risen to the  
14 level of the scintilla of evidence of self-defense if she's  
15 the person who grabbed the knife.

16 THE COURT: Who grabbed the knife and then --

17 MS. HOJJAT: Moved towards him, Your Honor.

18 THE COURT: You don't get to -- you don't get to use  
19 deadly force against someone unless deadly force is being used  
20 against you. So you have to tell me there is a scintilla of  
21 evidence that deadly force was used against your client.

22 MS. HOJJAT: Your Honor, the positioning also, we do  
23 believe there's a scintilla of evidence that she moved towards  
24 the entryway, because again, he's in the entryway the whole  
25 time. She's the one at the counter, she's moving towards the



1 entryway. We believe there is enough for a scintilla of  
2 evidence that she grabbed the knife, she moved towards the  
3 entryway. We do think that's enough for a scintilla of  
4 evidence that this was self-defense. Now certainly --

5 THE COURT: She grabbed the knife. What evidence is  
6 there that she moved towards the entryway in an effort to use  
7 that knife on your client?

8 MS. HOJJAT: Again, every single person has placed  
9 Mr. Grimes' positioning at the entryway.

10 THE COURT: I got that. Tell me what evidence there  
11 is that she -- there's evidence you can argue she put that  
12 knife in her hand. Got it. What evidence is there that once  
13 she put that knife in her hand she became an aggressor and  
14 used deadly force against your client? That's what I want to  
15 hear. Not that everybody says where everybody is. Okay?  
16 Because either way, somebody has to come towards somebody in  
17 order for there to be deadly force. Because if you're seven  
18 feet away with a steak knife, no reasonable person is going to  
19 say that's deadly force.

20 MS. HOJJAT: Precisely, Your Honor, but I think there  
21 is a reasonable inference. Your Honor said somebody has to  
22 move towards somebody for there to be deadly force. We think  
23 there's a reasonable inference that she moved towards him. We  
24 think it's enough for a scintilla, that she moved towards him.

25 THE COURT: Tell me what evidence you have that you

1 can argue, what inference, what evidence is there that the  
2 jury can infer she moved towards him with a knife in her hand  
3 and it was exercising deadly force against your client?

4 MS. HOJJAT: Your Honor, she's at the counter and  
5 then she's in the entryway. He's always in the entryway. I  
6 mean, there's --

7 THE COURT: Who testified that she's in the entryway  
8 besides her and her mother and they both said he dragged her  
9 there. So, who other than her and her mother -- every single  
10 person that's gotten up here, Hoffman, the detective today,  
11 mother, Aneka, all of them said he took her there. Every  
12 single person said he took her there.

13 MS. HOJJAT: And, Your Honor, those are responses to  
14 our argument, absolutely. And we're not saying they're  
15 invalid responses to argument. But our point is that we have  
16 an argument, Your Honor. We have, based on the evidence, the  
17 way that it is, it wouldn't be completely outside the realm --  
18 it's not unreasonable, it's not completely unreasonable for a  
19 juror to think maybe she walked towards him. And that's a  
20 scintilla, Your Honor. If a juror could say you know what,  
21 looking at that positioning, I think she walked towards him.  
22 Then we've met our burden of scintilla.

23 THE COURT: She has to walk towards him with a knife  
24 in her hand and she has to be using deadly force against him.

25 MS. HOJJAT: Your Honor, she has to be using deadly

1 force against him for us to prevail in our self-defense  
2 argument, but not for us to reach a scintilla of self-defense  
3 in a self-defense argument. For us to prevail, absolutely.  
4 There has to be --

5 THE COURT: For you to even argue, you have to --  
6 there has to be some evidence that she had the knife in her  
7 hand and that she moved towards your client in an effort to, I  
8 don't know, guess stab him with it or do something with it.

9 MS. HOJJAT: It's our position that we have met that  
10 burden. We have met the burden of scintilla based on the  
11 forensic evidence that was testified to, based on the  
12 positioning that was testified to, based on where the blood  
13 spatter is in this case, it's our position we've met the  
14 burden of scintilla. This is our theory of the case and we do  
15 think it's fundamentally unfair and in violation of Mr.  
16 Grimes' due process rights under the 14th Amendment if we're  
17 not allowed to present our theory of the case.

18 THE COURT: If you're not allowed to make up  
19 something that isn't supported by the evidence?

20 MS. HOJJAT: Your Honor, we will be drawing  
21 inferences based on the evidence that was presented and we  
22 will be careful not to go outside of drawing inferences based  
23 on the evidence that was presented.

24 THE COURT: And I appreciate because you've been  
25 answering all my questions, you've been doing a really good

1 job, so I don't want you to think I'm -- because you're doing  
2 very, very good. But I think if you rewind the tape and  
3 listen to yourself, you said, at one point you said it's not  
4 unreasonable for the jury to think that maybe she was the one  
5 that grabbed the knife and went towards him. That's a problem  
6 I'm having. I think I've asked like ten times and I keep  
7 getting the same response.

8 The problem is, the state of the record is the state  
9 of the record. There has to be some evidence. There's no  
10 evidence from anybody that's testified that she went towards  
11 him in a manner -- I mean, there has to be some evidence.  
12 Somebody has to testify that she was the initial aggressor and  
13 everything that makes up that. You can't say his DNA wasn't  
14 on the knife so she must have picked it up, went after him and  
15 tried to stab him. That's ridiculous.

16 MS. HOJJAT: And, Your Honor, I guess that's the part  
17 we're disagreeing with. We don't think there has to be some  
18 testimony. We don't think somebody has to get up there and  
19 say she walked towards him for us to be able to make that  
20 inference to the jury. That would be like if there was a gun  
21 and it had been fired and only one person's fingerprints were  
22 on it. Nobody needs to get up there and say I saw him fire  
23 the gun in order for the inference to be drawn that this is  
24 the person who fired the gun. We think that sometimes -- we  
25 think that in this case particularly when the burden is solely

1 a scintilla of evidence, we think positioning, we think  
2 forensics is enough to get us over the burden of scintilla.  
3 We don't think there has to be a person who gets up there and  
4 testifies for us to make that burden.

5 THE COURT: All right. Well, I've asked like ten  
6 times and I haven't gotten anything, so I don't think they  
7 have anything. I've sat here and I know what the state of the  
8 record is. I mean, I'm okay with everything up to her putting  
9 that knife in her hand, but it's the taking the logical leap  
10 that there's some evidence that supports. There's none. That  
11 would be absolutely just making up a story. It's not even in  
12 good -- well, I'm not even quite sure you can tell me that's  
13 in good faith.

14 MS. HOJJAT: Your Honor, we do believe that's what  
15 happened, that she got the knife and -- from the positioning,  
16 from -- it's just not logical, Your Honor.

17 THE COURT: That she grabbed the knife --

18 MS. HOJJAT: For him to have walked five to seven  
19 feet. Grabbed a knife that he didn't know was there. Grabbed  
20 her, dragged her five to seven feet back in the space of --  
21 what the testimony makes it sounds like is 15 to 20 seconds.

22 MS. BOTELHO: But what they believe doesn't  
23 necessarily equal --

24 MS. HOJJAT: To drag another human being that far in  
25 15 to 30 seconds.

1 THE COURT: Yeah, you can't just ignore the evidence.

2 MS. BOTELHO: I mean, what they believe --

3 THE COURT: What you believe and what may have  
4 happened are not evidence and that's a problem. Because every  
5 proffer that you've made is you believe that it's reasonable  
6 or maybe this can happen. Problem is there has to be some  
7 evidence. I have literally strained myself over the last  
8 couple of days because I knew you were going to bring up a  
9 self-defense argument. I'm trying to articulate how you would  
10 do it and I always got stuck at that point.

11 MS. BOTELHO: And the problem is, Your Honor, we went  
12 over some of the self-defense instructions and they say things  
13 like if a person attempts to kill another in self-defense, it  
14 must appear that the danger was so urgent and pressing -- we  
15 don't have --

16 THE COURT: There's none.

17 MS. BOTELHO: -- anyone saying that there was a  
18 danger, that was urgent, that was pressing, that it was needed  
19 to save somebody's life or to prevent them from receiving  
20 great bodily harm, that the non-assailant did it in good  
21 faith, that the defendant, you know, attacked the initial  
22 aggressor, Aneka, allegedly in good faith. We don't have --  
23 when a person without voluntarily seeking, provoking, inviting  
24 or willingly engaging in a difficulty of his [indiscernible]  
25 is attacked by an assailant.

1 First of all, we have no evidence that she's an  
2 assailant. We have no evidence that he was just standing  
3 there, charming as can be, not voluntarily seeking or  
4 provoking some kind of difficulty. He has the right to stand  
5 his ground. We have no evidence of that. The use of a deadly  
6 weapon is justifiable when it's a lawful defense of the person  
7 and he believes he is in danger of death or great bodily  
8 injury and there is imminent danger. There's no testimony of  
9 that.

10 The right to self-defense exists only as long as the  
11 real or apparent threat and danger continues to exist. We  
12 have no evidence of any danger, whether or not it continued,  
13 whether or not it existed. The use of force against a person  
14 is justified. Again, when there is imminent danger necessary  
15 under the circumstances. What circumstances? We don't have  
16 circumstances.

17 The problem with this particular case is it's  
18 fundamentally unfair to the State. Basically, it's allowing  
19 the defense to put forth a story that's not based on evidence  
20 or fact and that allows the defendant to circumvent having to  
21 take the stand to put forth his defense without  
22 cross-examination. And the problem with this is, if they're  
23 allowed to give this story --

24 THE COURT: Basically allows them to basically tell  
25 the jury what the defendant would have said had he taken the

1 stand.

2 MS. BOTELHO: Exactly. And then, if they were to  
3 argue this particular story in closing, we would be objecting  
4 that it's not supported by facts and evidence and they should  
5 not be allowed to argue it. You take that away, they can't  
6 argue -- I mean, a scintilla or whatever piece of evidence  
7 that they need to establish self-defense cannot be based on  
8 inference built upon inference upon inference that then makes  
9 a story.

10 THE COURT: I don't think, in all fairness, I don't  
11 think you have an inference. Once you place her with the  
12 knife, there is not even an inference. I cannot think of any  
13 logical inference that gets her going after him with the knife  
14 in a deadly manner and him having no choice but to do whatever  
15 it is he did. We don't know what that is, we just know she  
16 ended up with 21 stab wounds.

17 So you cannot get up and argue to the jury what he  
18 may have said had he taken the stand. And in all fairness, it  
19 is extraordinarily difficult to assert a self-defense theory  
20 if there isn't something from your client, either a statement  
21 made to the police. I mean, I've had cases where statements  
22 made to the police, but then -- well, that's a whole other  
23 story about how that gets in or doesn't get in. Or the  
24 defendant has to take the stand.

25 I don't know how in the world you get those jury



1 instructions if -- it's very, very difficult. There has to be  
2 something from the defendant, something. We don't have  
3 anything. It's just a tough case. So that's the deal. I  
4 mean, I tried to give --

5 THE DEFENDANT: So from this standpoint standing  
6 here, I don't have any word? I don't have any say so from  
7 here?

8 THE COURT: For what?

9 THE DEFENDANT: To speak? I don't have any say so  
10 from here, from this Court standing here?

11 MS. HOJJAT: No.

12 MR. HILLMAN: No. You get to decide if you testify.

13 THE COURT: You get to decide if you want to testify.  
14 If you want to testify, you can say whatever you want.

15 THE DEFENDANT: No. I'm saying from standing here  
16 right now.

17 MS. HOJJAT: No.

18 THE COURT: What does that mean, from standing here  
19 right now?

20 THE DEFENDANT: Am I allowed to voice my opinion from  
21 this point from here?

22 MS. HOJJAT: No.

23 MR. HILLMAN: No.

24 THE COURT: About what?

25 THE DEFENDANT: Just am I allowed to?

1 THE COURT: About what? About whether you want to  
2 testify or not? You get to, you can --

3 THE DEFENDANT: Things that occurred and things that  
4 are being said.

5 THE COURT: What happened that day? Take the stand,  
6 take the oath --

7 THE DEFENDANT: I was asking about here, right now,  
8 as I'm standing here.

9 THE COURT: To tell me? I'm not the trier of fact.

10 THE DEFENDANT: I mean, as we were all speaking. I  
11 was just saying am I allowed to speak --

12 THE COURT: No, that's why you have lawyers. The  
13 only thing -- I'll tell you, I think you pretty much realize  
14 I'm not going to give any self-defense instructions. I  
15 thought it was only fair to tell your lawyers back in chambers  
16 that they would be --

17 MR. HILLMAN: We appreciate that.

18 THE COURT: I think it's only fair. I knew your  
19 attorneys wanted to raise a self-defense theory. I've been  
20 following the case intently, taking notepads of notes towards  
21 a self-defense theory. I don't always know that up front, but  
22 towards a self-defense theory. It's not there. I told them  
23 in all fairness it wasn't there. I told them that I thought  
24 maybe you would testify in order to put it there. I did not  
25 know you had the priors. Sometimes you have to weigh all that

1 out. I did not know about your priors before then. So  
2 there's no evidence, so I can tell you there's no evidence,  
3 I'm not going to instruct the jury on self-defense. It will  
4 go to the jury on what there is.

5 It doesn't mean the State doesn't have to prove their  
6 case and the jury doesn't have to hold them to each and every  
7 element as alleged in the charging document. That's still a  
8 fact. I'm just not going to let the attorneys basically make  
9 up a story. And if it's the truth, I'm not going to let them  
10 tell it because it wasn't testified to up there. Do you  
11 understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you understand that?

14 THE DEFENDANT: I do.

15 THE COURT: Okay. And I think that's probably why  
16 your attorney came out here to discuss with you whether you  
17 were going to testify or not. Okay? So it's up to you  
18 because it's your life. And again, I want to make sure you  
19 understand this and I usually tell this to everybody no matter  
20 what kind of case it is. This is your right and your right  
21 alone. Regardless of what anybody in this room tells you to  
22 do, it is your decision whether to testify. You can — I  
23 mean, your attorneys can tell you don't testify, don't  
24 testify, or the opposite, testify, testify. It is still your  
25 decision what to do.

1           Now, the decision should be made after consulting  
2 with your attorneys. That's my opinion. However, you can  
3 disagree with everything they say or agree with everything  
4 they say. At the end of the day, it is your right and your  
5 right alone. Do you understand that?

6           THE DEFENDANT: Yes.

7           THE COURT: So you have to search your soul and  
8 determine whether you're going to testify or not. Do you  
9 understand that?

10          THE DEFENDANT: Yes.

11          THE COURT: Okay. After hearing everything I said,  
12 do you want to have more time to talk to your lawyers? I'll  
13 make everyone leave the courtroom and you can talk to your  
14 lawyers privately. Do you want more time?

15          THE DEFENDANT: No.

16          THE COURT: Okay. What are you going to do?

17          THE DEFENDANT: I won't take the stand.

18          THE COURT: All right. And you understand I'm not  
19 going to instruct the jury on self-defense?

20          THE DEFENDANT: Yes.

21          THE COURT: Okay. Do you want the Carter  
22 instruction?

23          MR. HILLMAN: No.

24          THE COURT: Okay. Then let's go back and finalize  
25 the instructions.

1           MR. BURNS: Just one quick thing, Your Honor, I want  
2 to put on the record. Ms. Botelho has argued it. Just the  
3 fact that if the defense is to proceed on this non-existent  
4 showing of this affirmative defense, the Nevada Supreme  
5 Court's been very clear that it's the State's burden to  
6 disprove self-defense. And it effectively puts us in a  
7 catch-22 position where we have really nothing to argue about  
8 because there is no evidence. And if we're commenting on the  
9 complete absence of evidence to the jury, then obviously,  
10 we're going to draw a burden shifting objection from the  
11 defense.

12           Also, if this kind of showing is sufficient for  
13 self-defense in the future, then any case where there's victim  
14 defendant proximity, where there's victim DNA on the weapon,  
15 which will be the case in every knife-type case, then there  
16 would be this kind of -- be automatically entitled to argue  
17 self-defense. We just add those things to the record.

18           THE COURT: Okay.

19           MS. HOJJAT: Your Honor has clearly already made your  
20 ruling, so I would just respond to that and say that it's a  
21 very different situation when the alleged perpetrator's DNA is  
22 found nowhere on the weapon and that's what we think  
23 distinguishes this case and that's why we think we have met  
24 the burden of scintilla.

25           THE COURT: All right. Do you want to come back and

1 we'll -- hopefully, they'll all be done and we can finalize  
2 and we can put them in the order you want?

3 (Court recessed at 3:30 p.m. until 4:29 p.m.)

4 (Outside the presence of the jury.)

5 THE COURT: The record will reflect this hearing is  
6 taking place outside the presence of the jury panel. Mr.  
7 Grimes is present with his attorneys. The State is present as  
8 well.

9 We've taken an opportunity to settle all of the  
10 instructions, formally settle them. Is the State familiar  
11 with Court's proposed instructions 1 through 34?

12 MS. BOTELHO: Yes, we are, Your Honor.

13 THE COURT: Any objection to the Court giving any of  
14 those instructions?

15 MS. BOTELHO: No, Your Honor.

16 THE COURT: Does the State wish to propose any  
17 additional instructions?

18 MS. BOTELHO: No, Your Honor.

19 THE COURT: Okay. Is the defense familiar with  
20 Court's proposed 1 through 34?

21 MR. HILLMAN: Yes, Judge. I apologize. I'm sorry,  
22 I'm a little bit behind the curve here.

23 THE COURT: That's okay. I just numbered them. 1  
24 through 34, does defense have any objection?

25 MR. HILLMAN: There are two we'd like to make a

1 record on.

2 THE COURT: Okay. One of them is the reasonable  
3 doubt instruction, I know that. Instruction Number 5? Do you  
4 want to start making a record on -- it's the reasonable doubt  
5 instruction. Go ahead.

6 MR. HILLMAN: Go ahead.

7 MS. HOJJAT: And, Your Honor, on the reasonable doubt  
8 instruction, Instruction Number 5, what we had asked or was on  
9 line two to read, the defendant is presumed innocent. A  
10 period after innocent and striking the language until the  
11 contrary is proved. We believe the fact that it's saying  
12 until the contrary is proved implies to the jury that it's an  
13 inevitable conclusion that the contrary will be proved. We  
14 believe that the rest of the instruction does thoroughly  
15 inform the jury that they -- if the State meets its burden of  
16 proving beyond a reasonable doubt that the defendant did  
17 commit the crimes, then they are to find him guilty. But we  
18 believe that the until the contrary is proved language is  
19 unduly suggestive to the jury.

20 THE COURT: The objection's noted and I indicated I  
21 was going to give the instruction as stated in number 5 based  
22 upon the Nevada Supreme Court's prior precedent and  
23 [indiscernible] give this instruction exactly as stated. Any  
24 other objections?

25 MR. HILLMAN: We have two more and I'm looking for

1 those instructions, Judge. One of them has to do with  
2 burglary.

3 THE COURT: Oh, I know, the burglary in possession.

4 MR. HILLMAN: Every person who commits --

5 THE COURT: Obtaining possession afterwards.

6 MR. HILLMAN: Yes.

7 THE COURT: I'll help you.

8 MR. HILLMAN: Twenty-four. Our objection to number  
9 24 is that the crime of burglary is either committed or  
10 completed upon entry and the weapon in possession can occur  
11 after entry. It seems to be logically at opposite ends of the  
12 intent of the statute. And that's our objection to number 24.

13 MS. HOJJAT: And, Your Honor, coupled with the  
14 objection in number 24, we did propose a defense instruction,  
15 proposed defense instruction number nine, which was if you  
16 find that the State did not prove beyond a reasonable doubt  
17 that Bennett Grimes entered the apartment with a weapon, you  
18 must find him not guilty of burglary with a deadly weapon in  
19 violation of a temporary protective order.

20 THE COURT: You can approach and that will be marked  
21 as Court's Exhibit Number 6, Court's Exhibit Number 6. And  
22 this was the instruction that was proffered by the defense in  
23 place of Number 24 that was rejected by the Court, but I will  
24 make it part of the record. Does the State want to say  
25 anything?



1 MR. BURNS: Briefly, Your Honor. As to Number,  
2 Instruction Number 24, it's the State's view that the statute  
3 intends essentially a separate offense that when there is a  
4 firearm and it's brought into possession, it's a separate  
5 element added to a burglary that there's not the -- the  
6 burglary still has to have the entry intent contemporaneous,  
7 but not necessarily the firearm. It does constitute a  
8 separate offense.

9 As to the defense's proffered instruction number  
10 nine, it's --

11 THE COURT: They wanted me to take out -- I mean, I  
12 believe the statute says --

13 MR. BURNS: -- an incorrect statement.

14 THE COURT: -- regardless of how logical it is, the  
15 statute indicates he can be charged with burglary and  
16 possession of firearm -- I'm sorry, with a deadly weapon, if  
17 he obtains the possession of the deadly weapon after he's  
18 inside the place, whatever structure he enters.

19 MS. HOJJAT: Yes, Your Honor, and I guess we would be  
20 asking Your Honor to find that statute unconstitutional as  
21 it's written because the offense of burglary is completed upon  
22 entering a dwelling. Indeed, if he had entered the dwelling  
23 with an intent to commit a crime and then committed no crime  
24 within it, he would still be guilty of the burglary. However,  
25 it seems the crime can be extended for the purposes of

1 enhancing it, but is cut off if he chooses not to commit the  
2 crime. Basically, it's --

3 THE COURT: It's not an enhancement, it's another --

4 MS. HOJJAT: The deadly weapon is an enhancement on  
5 the burglary.

6 THE COURT: Burglary while in possession of a deadly  
7 weapon. Is that what you're charging, burglary while in  
8 possession of a deadly weapon?

9 MR. BURNS: Yes, Your Honor.

10 THE COURT: Okay.

11 MS. HOJJAT: Basically, it's our position that the  
12 statute is unconstitutional as written.

13 THE COURT: Okay. Any other objections?

14 MR. HILLMAN: The only other one I was going to  
15 object to appears to have been pulled. So I have no other  
16 objections to the 34.

17 THE COURT: Okay.

18 MS. HOJJAT: And then, Your Honor, we did have --

19 THE COURT: All right. Now, does the defense have  
20 any additional instructions they would like to propose at this  
21 time?

22 MS. HOJJAT: I'm sorry, Your Honor. Yes, we did.

23 THE COURT: You know what? Why don't we start with  
24 the self-defense ones because those will be easy.

25 MS. HOJJAT: Yes, Your Honor.

1 THE COURT: If you want, do you want to just staple  
2 them all together? Are those --

3 MS. HOJJAT: Yes, Your Honor. These are them.

4 THE COURT: Do you mind if we just mark them as one  
5 and they'll will be Court's Exhibit Number 7?

6 MS. HOJJAT: Not at all. We can certainly mark them  
7 as one exhibit. If we could just make a very quick record on  
8 them.

9 THE COURT: Absolutely. Go ahead.

10 MS. HOJJAT: If I may approach, Your Honor?

11 THE COURT: Sure.

12 MS. HOJJAT: Thank you. So we're having marked as  
13 Court's Exhibit 7, I believe. Your Honor, as previously  
14 stated on the record, it was the defense's intention in this  
15 case to argue self-defense. We already had a hearing on  
16 whether the defense had met the scintilla of evidence that was  
17 necessary in order to obtain that affirmative defense. Your  
18 Honor ruled that it was -- we had not met the scintilla of  
19 evidence. Obviously, we argued that we had met it.

20 What's been entered as Court's Exhibit 7 is the jury  
21 instructions that had been agreed upon by the State, the  
22 defense and the Court as the jury instructions that would have  
23 been read to the jury had the defense been allowed to argue  
24 self-defense, had the affirmative defense of self-defense been  
25 allowed for the defense. And so it's our position that those

1 jury instructions should be presented to the jury and read to  
2 the jury and we should be allowed to argue self-defense in  
3 this case.

4 THE COURT: Okay. And I think everyone agrees that  
5 if I did instruct the jury on self-defense, they would be the  
6 instructions from the Runyon case. And we actually worked on  
7 them, but they would be -- if I did believe self-defense was  
8 appropriate to instruct the jury on, these instructions would  
9 have been given.

10 MS. HOJJAT: Yes, Your Honor.

11 THE COURT: So they'll be marked Court's Exhibit  
12 Number 7. Any other instructions the defense would like to  
13 propose?

14 MS. HOJJAT: Yes, Your Honor, there are a couple.  
15 I'm going to go backwards a little bit here. Proposed defense  
16 instruction number 12 is our Daniels instruction. We did  
17 previously have --

18 THE COURT: Your what?

19 MS. HOJJAT: The Daniels instruction. The  
20 instruction pursuant to State v. Daniels. We previously filed  
21 a motion for failure to collect and preserve the fingerprints.  
22 Your Honor heard the motion and denied it. However, we are  
23 also -- our first remedy that we requested was a dismissal.  
24 Our second one was a jury instruction. We are now submitting  
25 a jury instruction to the Court that we are requesting

1 pursuant to that motion.

2 THE COURT: Okay. That will be marked as Court's  
3 Exhibit next in line, 8.

4 MS. HOJJAT: May I approach, Your Honor?

5 THE COURT: Yes. Does the State wish to say  
6 anything?

7 MS. BOTELHO: Yes, Your Honor. You had previously  
8 addressed this particular issue and my understanding of  
9 Daniels is that they're entitled to some kind of jury  
10 instruction if there was bad faith or even gross negligence.  
11 However, this particular case there was no failure to gather  
12 and certainly, the evidence has been available to the defense  
13 to test as previous records have already indicated.

14 THE COURT: Okay. So that would be -- the Court is  
15 not giving this instruction, but it will be made part of the  
16 record. Any other instructions that you would like to  
17 propose?

18 MS. HOJJAT: Yes, Your Honor. There were a couple  
19 more. Proposed defense instruction one was simply a  
20 presumption of innocence and reasonable doubt instruction  
21 pursuant to Bleek v. State. If I may approach?

22 THE COURT: That will be marked as Court's Exhibit  
23 Number 9. Says every person charged with a commission of a  
24 crime shall be presumed innocent. This was apparently a  
25 different -- well, why did you want me to give this?

1 MS. HOJJAT: Your Honor, we just -- that's the  
2 presumption of innocence instruction that we are requesting  
3 the Court to give. We think that the other instruction kind  
4 of buries the presumption of innocence and doesn't make it  
5 clear. It's a very long instruction. By the time you get to  
6 the end of it, you kind of forget that there's a presumption  
7 of innocence. So we wanted a short statement of that. We  
8 were asking for that to be given.

9 THE COURT: Okay. Does the State wish to respond?

10 MS. BOTELHO: Yes, Your Honor. The State's position  
11 is that this particular instruction is already covered by the  
12 reasonable doubt instruction, which, according to the Nevada  
13 Supreme Court is all that is allowed to be given as far as the  
14 issue of reasonable doubt.

15 THE COURT: Okay. This instruction will be rejected  
16 and will be marked as Court's Exhibit Number 9. Any other  
17 ones?

18 MS. HOJJAT: Yes, Your Honor. Proposed defense  
19 instruction number five, which was basically that to support a  
20 conviction for attempt murder with a deadly weapon, the -- and  
21 I put the District Attorney, but I guess I'll amend that to  
22 say the State must prove beyond a reasonable doubt that Mr.  
23 Grimes had the specific intent to kill Aneka Grimes and that  
24 he used a deadly weapon.

25 THE COURT: Does the State wish to respond?

1 MS. BOTELHO: Your Honor, we indicated that we  
2 believe this to be an incomplete instruction and also  
3 repetitive, as it is already covered by other instructions.  
4 There are lots of instructions right now regarding the attempt  
5 murder charge and also specifically dealing with the elements  
6 of specific intent and also the deadly weapon. And they were  
7 also given their Crawford instruction, the reverse or the  
8 negatively worded version.

9 THE COURT: All right. And I made a determination  
10 that the jury had been accurately instructed on the attempt  
11 murder. This will be the Court's Exhibit next in line, Number  
12 10. Any other instructions the defense would like to  
13 proposed?

14 MS. HOJJAT: Yes, Your Honor. Proposed defense  
15 instruction number six was -- it's language that we've taken  
16 from Holmes v. State where the Nevada Supreme Court is citing  
17 Randolph v. State, another Nevada Supreme Court case. In  
18 those cases, the Nevada Supreme Court discusses the fact that  
19 the reasonable doubt standard requires the jury to reach a  
20 subjective state of near certitude on the facts in issue. We  
21 were asking for an instruction so saying to the jury.

22 THE COURT: Randolph, the same case that they  
23 sanctioned the District Attorneys off for quantifying -- the  
24 District Attorney's Office for trying to quantify -- here it  
25 is. It's the same case. The DA in that case was sanctioned

1 without even a hearing because he attempted to quantify the  
2 reasonable standard. That case?

3 MS. HOJJAT: In that case, Your Honor, the Nevada  
4 Supreme Court did hold that reasonable -- to reach -- place a  
5 reasonable doubt the jury required -- the jury must reach a  
6 subjective state of near certitude, which is why we're  
7 recording the language directly out of that case, Your Honor.

8 THE COURT: I just think it's interesting it came  
9 from that case. Isn't that the case, the Randolph case? I  
10 don't want to say the D.A.'s name because he gets mad when  
11 people bring it up.

12 MR. BURNS: I don't know.

13 THE COURT: I rejected this instruction for reasons  
14 stated previously, that the reasonable doubt standard has been  
15 given in the format that the Supreme Court has indicated we're  
16 supposed to give it. Therefore, this one was rejected for  
17 that reason. It will be marked as Court's Exhibit Number 11.  
18 Any other instructions?

19 MS. HOJJAT: Yes, Your Honor, we do have one final  
20 instruction, which was proposed defense instruction number  
21 seven, that if their evidence allows two reasonable  
22 interpretations, one of which points to innocence, the other  
23 points to guilt, the jury must adopt the interpretation that  
24 -- must adopt the interpretation that points to his innocence  
25 and reject the interpretation that points to guilt. That is



1 from Crane versus State, which is a Nevada Supreme Court case.

2 THE COURT: Any response?

3 MR. BURNS: Your Honor, the Nevada Supreme Court's  
4 been very clear that no kind of variation or other  
5 [indiscernible] can be put on the reasonable doubt  
6 instruction. I think this is pretty clearly a thinly veiled  
7 attempt to recast part of the reasonable doubt instruction.  
8 So in that case really not permitted.

9 MS. HOJJAT: Your Honor, if I can just respond to  
10 that.

11 THE COURT: Sure.

12 MS. HOJJAT: We think this instruction goes to the  
13 presumption of innocence. The point is if there's two  
14 perfectly reasonable interpretations of the evidence, the  
15 presumption of innocence requires the jury to presume the  
16 defendant is innocent. So this is not an attempt to describe  
17 or quantify reasonable doubt. Instead, it is going to the  
18 presumption of innocence.

19 THE COURT: Okay. And this instruction will be  
20 rejected and will be marked Court's Exhibit next in line,  
21 Number 12. Any other instructions that the defense would like  
22 to propose?

23 MS. HOJJAT: No, Your Honor. Thank you.

24 THE COURT: Is the State familiar with the verdict  
25 form?

1 MS. BOTELHO: Yes, we are, Your Honor.  
2 THE COURT: Do you have a copy of it?  
3 MS. BOTELHO: I can grab it.  
4 THE COURT: Do you mind?  
5 MS. BOTELHO: No.  
6 THE COURT: Thanks. Do you want a copy of the jury  
7 instructions, Mr. Grimes?  
8 MR. HILLMAN: I gave him my copy.  
9 THE COURT: Okay. While we're waiting for the DA,  
10 Mr. Grimes, I just want to make sure you understand I know  
11 you're not going to testify and your attorney's asked me not  
12 to give that instruction. Do you understand that?  
13 THE DEFENDANT: Yeah.  
14 THE COURT: Remember when we were talking earlier I  
15 said if you don't testify, I read to you the instruction I  
16 would give to the jury. I said I would only give it if your  
17 attorney requested that I give it. They requested that I not  
18 give it. Okay? So it's not in there. Okay? But the  
19 District Attorney understands they're not permitted to comment  
20 on your right to remain silent. Okay?  
21 THE DEFENDANT: Yeah.  
22 THE COURT: Did you do them all?  
23 MS. HOJJAT: I'm sorry?  
24 THE COURT: Did you make a record on all of them?  
25 MS. HOJJAT: All of the ones that we've submitted to

1 Your Honor, yes.

2 THE COURT: Okay.

3 MS. HOJJAT: Other than the self-defense ones, which  
4 we just submitted as one packet.

5 THE COURT: Okay. Oh, that's why it seems like --  
6 okay. Is the State familiar with the verdict form?

7 MS. BOTELHO: Yes, Your Honor.

8 THE COURT: Is the defense familiar with the verdict  
9 form?

10 MS. HOJJAT: Yes, Your Honor.

11 THE COURT: Any objection by the State?

12 MS. BOTELHO: No, Your Honor.

13 THE COURT: Any objection by the defense?

14 MS. HOJJAT: No, Your Honor.

15 THE COURT: All right. The verdict form will be  
16 lodged with the clerk and the jury has been instructed to  
17 return Monday morning at 10:30 at which time State will have  
18 the right -- you have still not rested in front of the jury.  
19 State will rest their case; the defense, obviously, will rest  
20 their case. They will be instructed and closing and then  
21 they'll be excused to deliberate.

22 Anything else?

23 MR. HILLMAN: No, Judge.

24 MS. BOTELHO: No, Judge.

25 THE COURT: Okay. So I can throw these away and all

1 my notes? These were yours. I'm just going to do it.

2 MS. HOJJAT: Sorry, I got confused. I thought those  
3 were the exhibits.

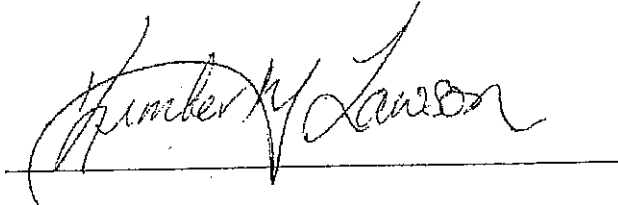
4 THE COURT: No, I get nervous to throw away my notes.  
5 I want to make sure we're done. Monday morning, 10:30.

6 (Court recessed for the evening at 4:47 p.m.)  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNCERTIFIED ROUGH DRAFT

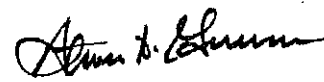
ACKNOWLEDGMENT:

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

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON  
TRANSCRIBER

UNCERTIFIED ROUGH DRAFT



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,

Plaintiff,

vs.

BENNETT GRIMES,

Defendant.

CASE NO. C276163-1  
DEPT NO. XII

TRANSCRIPT OF  
PROCEEDINGS

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

JURY TRIAL - DAY 4

MONDAY, OCTOBER 15, 2012

APPEARANCES:

For the State:

AGNES M. BOTELHO, ESQ.  
Deputy District Attorney  
PATRICK J. BURNS, ESQ.  
Deputy District Attorney

For the Defendant:

RALPH HILLMAN, ESQ.  
Deputy Public Defender  
NADIA HOJJAT, Esq.  
Deputy Public Defender

RECORDED BY KERRY ESPARZA, COURT RECORDER  
TRANSCRIBED BY: KARR Reporting, Inc.

UNCERTIFIED ROUGH DRAFT

## INDEX

### CLOSING ARGUMENTS:

By Mr. Burns	4
By Mr. Hillman	19
By Ms. Botelho	25

UNCERTIFIED ROUGH DRAFT

1 LAS VEGAS, NEVADA, MONDAY, OCTOBER 15, 2012, 10:41 A.M.

2 \* \* \* \* \*

3 (In the presence of the jury.)

4 THE COURT: Do the parties stipulate to the presence  
5 of the jury panel?

6 MS. BOTELHO: Yes, Your Honor.

7 MR. HILLMAN: Yes, Judge.

8 THE COURT: Does the State have any additional  
9 witnesses that they intend to call at this time?

10 MS. BOTELHO: No, Your Honor. At this point the  
11 State rests.

12 THE COURT: Okay. The State rests. The defense?

13 MS. HOJJAT: Your Honor, the defense rests.

14 THE COURT: Okay. At this time, ladies and  
15 gentlemen, you have heard all of the evidence that will be  
16 introduced at the time of the trial in this matter. You have  
17 been provided with the written jury instructions when you came  
18 in. Each of you has a copy. You'll be permitted to take  
19 those with you when you go back to deliberate upon your  
20 verdict. Before the attorneys do address you in their closing  
21 argument, I'm required by law to read the instructions to you.

22 (Jury instructions read - not transcribed)

23 THE COURT: The State of Nevada may open and close  
24 the arguments.

25 MR. BURNS: Thank you, Your Honor.

UNCERTIFIED ROUGH DRAFT



CLOSING ARGUMENT

MR. BURNS: The evidence has shown that on July 22nd, 2011 the defendant, Bennett Grimes, was experiencing two different emotions. The first is the emotion of desperation, that he was completely desperate, at a total sense of loss. The other is that he had a sense of entitlement, that he deserved something, that he owed something.

Now, the sense of desperation he had was because the woman he had been with for ten years, to whom he had been married for seven years, had ended their relationship permanently and forever. You heard Aneka Newman get up there and testify that she wanted "him out of my life forever." She wanted him gone, she wanted him out of her life forever. Aneka was -- had her family, she had her job, her apartment. She had just bought a new car. She was turning her gaze towards a new future and in that new future there was no place for that man, the defendant, Bennett Grimes.

He knew that also. He clearly knew that and he knew she didn't even want him around her. He was not to be around her. So finding that out filled him with a sense of total desperation. You've heard Stephanie's 9-1-1 call, you've heard Aneka's 9-1-1 call and you can hear the defendant's voice. It's a sense of total loss, total desperation, total anxiety.

But that's not the only emotion he was feeling on

UNCERTIFIED ROUGH DRAFT

1 July 22nd, 2011. He was also feeling like he was entitled to  
2 something, like he was owed something by Aneka. He was owed  
3 that she -- he deserved to be taken back by her. He had gone  
4 out, he had gotten this job. He deserved something from her.  
5 He also thought that he deserved to lurk around and hide in  
6 the shadows outside her apartment on that evening, waiting for  
7 Stephanie and Aneka to come home. He felt like he deserved  
8 when they actually got home to burst his way into that house,  
9 to batter his way through the door against the combined  
10 resistance of Aneka and Stephanie.

11         Once inside the house, he felt like he deserved to  
12 block the door, to stand there and make sure that no one left  
13 until he got what he wanted. He also felt like once -- after  
14 they had told him ten plus times that he had to leave, after  
15 you heard Stephanie telling him go outside, Bennett, he felt  
16 like he deserved to stay there. Not only that, he felt like  
17 he deserved to not have the police called. And when he found  
18 out that the police were called, what was the testimony you  
19 heard from Stephanie. He told Stephanie and Aneka that they  
20 were scandalous. They were scandalous for calling 9-1-1 and  
21 trying to have him removed from the house.

22         He also felt -- once it became clear that the police  
23 were going to come and remove him from the house, that he was  
24 probably going to go to jail that night, he felt like -- the  
25 sense of desperation was enhanced and he felt like he deserved

UNCERTIFIED ROUGH DRAFT

1 something else. He felt like he deserved to ruin things for  
2 Aneka, to pick up a knife and to try and murder her. And  
3 that's exactly what he did. But for the heroics of Officer  
4 Bobby Hoffman, that's exactly what he would have done. It's  
5 what he felt entitled to do because she wouldn't take him  
6 back. And that's the state of the evidence. Don't make any  
7 mistake that Aneka is the one who he almost murdered and is  
8 the victim in this case.

9 Now, the point of this first closing argument is to  
10 talk about the elements of the offenses. You have Count One,  
11 attempt murder; Count Two, the burglary, and then Count Three,  
12 the battery offense. I'm going to go through those offenses,  
13 talk about their specific legal elements and talk about the  
14 evidence you've heard over the last three days last week. And  
15 we'll talk about how those facts fit into the elements and how  
16 they demonstrate by proof beyond a reasonable doubt that that  
17 man attempted to murder Aneka Newman with a deadly weapon,  
18 that he committed the battery offense alleged in Count Three  
19 and that he also committed a burglary while in possession of a  
20 deadly weapon.

21 Now, in every criminal case the State has two larger,  
22 general burdens. The first is to show that a crime was  
23 committed. The second is to show that the defendant committed  
24 the crime. Now, the second element in this case, it's not  
25 difficult. It's a question of -- that's the element we

UNCERTIFIED ROUGH DRAFT

1 usually refer to as identify. There's no question who was the  
2 person stabbing Aneka 21 times. There's no alternate suspect  
3 or any kind of theory like that. It's the defendant, Bennett  
4 Grimes. Just a question of running the facts through the  
5 legal elements of the crimes the State of Nevada has charged  
6 and coming to the conclusion that that evidence has shown that  
7 he committed those crimes by proof beyond a reasonable doubt.

8 Let's talk first about Count One, attempted murder  
9 with a deadly weapon in violation of a temporary protective  
10 order. And you've heard some, throughout the trial, about TPO  
11 and you'll hear about it. It's in all the offenses, but we're  
12 not going to talk about it much because it's stipulated  
13 between the parties there was a valid temporary protective  
14 order in place and it was violated.

15 Attempted murder, there are two essential elements,  
16 performance of acts that tend, but fail to kill a human being.  
17 And in this case, stabbing someone 21 times, that's conduct  
18 that tends to kill someone, but it failed in this case because  
19 the defendant's effort to kill Aneka was interrupted by  
20 Officer Hoffman.

21 Second aspect is the mental state element. You have  
22 to find by proof beyond a reasonable doubt that the defendant  
23 intended to kill Aneka when he was stabbing her 21 times. And  
24 we'll talk about how you prove that, how you determine that  
25 from the evidence and then we'll talk about the specific

UNCERTIFIED ROUGH DRAFT

1 evidence. But you have to prove both of those elements that  
2 the defendant had the specific intent to murder Aneka.

3 Intention to kill. You have an instruction on this,  
4 I believe it's Instruction 14. It may be ascertained or  
5 deduced from all the facts and circumstances. We don't need  
6 some mind reader to go into Bennett Grimes' mind and tell us  
7 what he was thinking at the time he stabbed Aneka 21 times.  
8 You look at the facts, you look at the circumstances, you look  
9 at the testimony and you infer from that what his intention  
10 was.

11 You can also infer that intention of the use of a  
12 weapon calculated to produce death and the manner of the  
13 weapon's use. So the fact that a deadly weapon -- and I'll  
14 talk more about the definition of a deadly weapon -- was used  
15 in this case. And the manner, and we'll talk about the  
16 manner that was used.

17 The most important fact is that the defendant in  
18 ascertaining his intent, he stabbed Aneka 21 times. You've  
19 seen that evidence. Stabs her all over her body. She's  
20 literally riddled in stab wounds. In all, 21 stab wounds all  
21 over her body. And the State of Nevada submits to you that  
22 you don't stab your wife in the face, you don't stab her in  
23 the neck, you don't stab her in the head three times and you  
24 don't stab her in the back unless you intend to kill her. And  
25 that evidence is the only evidence you even need in this case

UNCERTIFIED ROUGH DRAFT

1 to convict him of attempted murder.

2           You can also look at the weapon and the use of the  
3 weapon. It's a common steak knife. Probably all have one  
4 like this in your home. Under the circumstances that it was  
5 used, you can infer that his choice of this weapon and the way  
6 that he used it, that he had the specific intent to kill  
7 Aneka. You look at the weapon, the manner of its use is  
8 another factor you can look at. You look at that blade and  
9 that blade is warped from being plunged into Aneka repeatedly.  
10 That shows his intention, it shows the amount of force he was  
11 putting into those stab wounds and it shows exactly what he  
12 wanted to do to Aneka.

13           Also, you look at the defendant's hand. Now, you can  
14 look at that cut and you can see that by repeatedly stabbing  
15 her one, two, three, four, five -- 21 times, that his hand  
16 slipped. That just shows you the amount of force he was  
17 putting into it, the amount of strength he was using.

18           Bobby Hoffman testified about how the defendant was  
19 holding that knife and he used this plastic picnic knife to  
20 show you that he was holding it like this. That lines up  
21 exactly with the defendant's index finger and that cut. You  
22 don't need an expert witness, you don't need a lawyer to tell  
23 you that what the defendant did was while he was stabbing her  
24 21 times so vigorously, so angrily, that his hand slipped and  
25 he cut his finger. That's other evidence you can show, the

1 fact that he would cut himself while stabbing her 21 times and  
2 keep trying to stab her is evidence that he intended to kill  
3 her. And the only thing that stopped him was Officer Hoffman.  
4 So the manner of the weapon's use is a critical factor showing  
5 his intent to murder Aneka.

6 Also, you can look at the types of wounds that the  
7 defendant did inflict and you can infer his intent from that.  
8 You had Dr. Kuhls come in here and testify. She was the  
9 doctor who treated him -- I'm sorry, treated Aneka. And she  
10 testified that a particular stab wound in the neck area, that  
11 it came very close and nicked a blood vessel branch of the  
12 subclavian artery. That injury was bleeding actively. And  
13 that kind of injury, she said, "Brings a risk of bleeding to  
14 death and large internal hematoma."

15 So, based on that type of injury -- and you remember,  
16 she testified that doing a surgery to close that --  
17 fortunately, the active bleeding stopped, but doing the type  
18 of surgery to repair that would have to be very deep, you'd  
19 have to go under all this muscle and that's why they would  
20 prefer to o the radiography type of treatment. That just  
21 shows you that the defendant was stabbing her as hard as he  
22 could and he was stabbing -- getting that knife as deep as he  
23 could into her.

24 Also, the chest wounds. Dr. Kuhls testified about  
25 the chest wounds, the stab that the defendant inflicted on

UNCERTIFIED ROUGH DRAFT

1 Aneka's chest, that it was of the breastbone, it was near the  
2 heart and the blood vessels that are underneath the  
3 breastbone. And she testified that that injury is  
4 "potentially very lethal injuries," those stab wounds to the  
5 chest. So that's more evidence of his intent, that he's  
6 stabbing her all over her body, but he's stabbing her in  
7 potentially vital, critical areas.

8 Now, one element that you have in all of the offenses  
9 is -- in all the Counts is deadly weapon. And the law defines  
10 deadly weapon in one or two ways. And you have a jury  
11 instruction on this. Any instrument which, if used in the  
12 ordinary manner contemplated by its design and construction,  
13 will or is likely to cause substantial bodily harm or death.  
14 And any weapon, device used under the circumstances in which  
15 it is used, attempted to be used is readily capable of causing  
16 substantial bodily harm or death. Although it's just a  
17 mundane, everyday steak knife, that is a deadly weapon the way  
18 he was using it, the injuries he was inflicting on her and the  
19 way he was stabbing her.

20 There's no question it's a deadly weapon under the  
21 circumstances he used it. That's an element you need to find,  
22 but it's an easy element to find based on the way he used the  
23 knife and the all the testimony you've heard from the  
24 witnesses. And you can see further, you know it's a deadly  
25 weapon because it was able to do this.

UNCERTIFIED ROUGH DRAFT



1           Now, temporary protective order, talked about this  
2 very briefly. It's stipulated between the parties. It's not  
3 something that you need to spend a lot of time on. The  
4 defendant should not have been near Aneka.

5           Count Three is a very long, has a very long title,  
6 but it's actually more simple than it looks. It's battery  
7 with the use of a deadly weapon constituting domestic violence  
8 resulting in substantial bodily harm in violation of temporary  
9 protective order. Now, we'll just break it down element by  
10 element. It's actually pretty simple when you break it down.  
11 It's just a mouthful.

12           First, let's look at battery and domestic violence.  
13 Those are two elements that you have to find in order to  
14 convict the defendant of Count Three. First is battery. Any  
15 willful and unlawful use of force or violence upon the person  
16 of another. There's no question, stabbing someone 21 times  
17 constitutes a battery. Domestic violence, it's defined when  
18 an act is committed upon a person -- the battery is committed  
19 upon a person, former spouse, or any other person to whom he  
20 is related by blood or marriage. You heard Aneka testify that  
21 she was married to the defendant, that she finally divorced  
22 him April of this year. So there was this spousal  
23 relationship that makes the battery inflicted on her domestic  
24 violence. Battery, domestic violence, very easy for you to  
25 find based on the evidence.

UNCERTIFIED ROUGH DRAFT

1           Substantial bodily harm. Now, this is another  
2 element you have to find. And there are four different ways  
3 you can find this. State submits that each way that you could  
4 find it has been proved beyond a reasonable doubt based on the  
5 evidence. Look at the first. Creates a substantial risk of  
6 death, that the injury had to have created a substantial risk  
7 of death. I just refer you again to Dr. Kuhls' testimony that  
8 these injuries were potentially very lethal and that they  
9 could have caused Aneka to die. He stabs her in the neck, he  
10 stabs her in the face, he stabs her in the head, he stabs her  
11 in the chest and the back. Now clearly, that created a  
12 substantial risk of death.

13           Next, serious or permanent disfigurement. You saw  
14 Aneka get off the witness stand. She came up to you and she  
15 showed you her scars. You know, she's obviously a very lovely  
16 person. She's not someone you'd describe as disfigured. But  
17 in this case, it meets the elements because you've seen the  
18 disfigurement on her arms, particularly what appear to be  
19 these defensive wounds from being stabbed repeatedly by the  
20 defendant on her arm. You've seen the scars on her neck and  
21 on her chest. She's covered in scars and those will always be  
22 with her. So that second element shows substantial bodily  
23 harm.

24           The third is protracted loss or impairment of the  
25 function of any bodily member or organ. This is pretty simple

UNCERTIFIED ROUGH DRAFT

1 also because you'll remember, Aneka telling you about her  
2 ordeal after she was stabbed. She said that she couldn't use  
3 her left arm. She had to rehabilitate it. In the aftermath  
4 of the stabbing, she could not use it. She could not move it.  
5 She was eventually able to regain movement. On top of that,  
6 she told you that she couldn't -- after the stabbing she  
7 couldn't use her thumb, that she actually had to go and  
8 undergo a surgery that repaired and gave her back the use of  
9 her thumb. That's protracted loss of a bodily member. So  
10 that's substantial bodily harm. That's proved beyond a  
11 reasonable doubt.

12 And finally, prolonged physical pain. Lasted longer  
13 than the pain immediately resulting from the wrongful act.  
14 You'll remember that Aneka testified how much pain she was in.  
15 Also, Dr. Kuhls testified to her complaining about the pain  
16 from the stab wounds. Aneka testified that she was on pain  
17 killers for some amount of time, some months after this  
18 incident. Clearly, there's protracted physical pain based on  
19 what the defendant did to Aneka.

20 So the substantial bodily harm element has been  
21 proved in so many ways. It's been proved by proof beyond a  
22 reasonable doubt. You've heard the doctor's testimony, you've  
23 heard Aneka's testimony and you've also heard Stephanie  
24 provide some testimony about it.

25 Now, let's go to Count Two, it's burglary. There are

1 three elements to burglary. First is that there's a house or  
2 structure; second is that the defendant enters it; third is  
3 that the defendant has the intent to commit an assault,  
4 battery or a felony when he enters the house or structure. He  
5 has to have that intent at the time he enters.

6 There's the structure. It's the apartment 173, West  
7 Desert Inn Road. You heard lots of testimony that the  
8 defendant entered it, that he was hiding out there, that he  
9 battered his way into the house and forced his way in. Once  
10 he was in there, he stabbed Aneka. Both Stephanie and Aneka  
11 testified that he busted his way in there.

12 Now, the specific intent element of burglary is like  
13 the specific intent element of attempted murder. It can be  
14 inferred from the circumstances. And you look at all the  
15 different circumstances showing what the defendant intended to  
16 do. First, that he's lurking outside. He's ready. He  
17 essentially lays in wait and then ambushes them and forces his  
18 way into the house. That's one circumstance you can look at.

19 He pushes his way in, he batters his way into the  
20 house against their will. Stephanie testified that she was  
21 pushed back by the amount of force he applied to get into the  
22 house. Also, once he's in there, he doesn't let anybody  
23 leave. So you know what his intent is. You can infer from  
24 the evidence that he's not leaving until he gets what he  
25 wants. And if he doesn't get what he wants, he's going to

1 perpetrate some violence against someone, specifically Aneka.  
2 And that's exactly what he did. Now, that he might have the  
3 hope that she takes him back or something like that doesn't  
4 mean he didn't commit a burglary because he had the intent to  
5 commit violence. He didn't get what he wanted when he went in  
6 there.

7 Finally, you can infer from the fact that he stabs  
8 Aneka 21 times that he went in there with that intent, to do  
9 something physical to commit violence against Aneka or anybody  
10 else.

11 Now, there's a fourth element to burglary in this  
12 case, it's that the defendant came into possession of a deadly  
13 weapon while he was -- while the burglary was going on. Now,  
14 all you need to find -- you don't need to find that he had the  
15 weapon at the time he entered, right at the time he entered.  
16 It's sufficient, if he commits a burglary and sometime  
17 thereafter he comes into possession of the deadly weapon. So  
18 he gains possession of any firearm or deadly weapon at any  
19 time during the commission of the crime, at any time before  
20 leaving the structure or upon leaving the structure. You  
21 know, he grabbed that knife in the middle of everything and  
22 long before -- you know, he only left the structure after the  
23 police took him. So he came into possession of that deadly  
24 weapon, that steak knife which we've talked about is a deadly  
25 weapon, during the commission of a burglary. The proof is

UNCERTIFIED ROUGH DRAFT

1 overwhelming of that.

2 Now, I want to talk a little bit about your verdict  
3 form, what it's going to look like and what the State submits  
4 you should be -- how you should fill it out. There's page one  
5 of the verdict form. Let's look at Count One, attempt murder  
6 with use of a deadly weapon. You have three choices. The  
7 evidence in this case is overwhelming, so I'll just submit  
8 that you're not even going to consider a not guilty verdict.  
9 And then you have two options. The difference between those  
10 two options is one of them has a deadly weapon, one does not.  
11 Now, the evidence is very clear that the defendant used a  
12 deadly weapon, that steak knife, the way he used it. You find  
13 it's a deadly weapon, so at that point really the only verdict  
14 based on the evidence, only reasonable verdict would be guilty  
15 of attempt murder with the use of a deadly weapon in violation  
16 of a temporary protective order.

17 Count Two is the burglary count. Pretty similar  
18 here. You've got two options. Obviously, it's the State's  
19 view you're not going to take -- you're not going to choose  
20 not guilty. You have one option with a deadly weapon and one  
21 option without. Clearly, he came into possession of a deadly  
22 weapon. He picked it up, he stabbed Aneka 21 times, Aneka  
23 testified to it. Officer Hoffman testified to it. Stephanie  
24 testified to it. The evidence is overwhelming.

25 Let's look at the second page of your verdict form,

UNCERTIFIED ROUGH DRAFT

1 Count Three. This one looks a little crazy. You've got a  
2 bunch of options here and we'll talk about it. It's more  
3 simple than it looks, but we'll just talk more specifically  
4 about it. There are a number of elements. There's battery,  
5 domestic violence, deadly weapon, substantial bodily harm and  
6 TPO. Don't worry about TPO. All your options except for a  
7 not guilty verdict are going to have a TPO.

8 Now, the first option has all of those. It has the  
9 battery, domestic violence, substantial bodily harm, deadly  
10 weapon. Second option drops out the deadly weapon, but keeps  
11 the substantial bodily harm. Third option does the opposite,  
12 drops substantial bodily harm, keeps in deadly weapon. Fourth  
13 option drops substantial bodily harm and drops deadly weapon.

14 Now, based on the evidence, the only reasonable  
15 verdict is going to be the number one option, that there was a  
16 battery, that they were married, it constituted domestic  
17 violence, that the knife was used so there was a deadly weapon  
18 and that all of this -- all of these substantial bodily harm  
19 was inflicted on Aneka. So really, although you have a lot of  
20 options, State submits that you're going to pick the first  
21 option because it has all of those elements. Evidence of each  
22 element is overwhelming.

23 The defendant's not the victim in this case. He's  
24 guilty of Counts One through Three. I ask you to find him as  
25 such. Thank you.

UNCERTIFIED ROUGH DRAFT

1 THE COURT: Thank you. The defense may address the  
2 jury in their closing argument.

3 MR. HILLMAN: Judge, do you mind if I grab the  
4 podium?

5 THE COURT: Not at all.

6 MR. HILLMAN: And may I turn off the monitor for this  
7 portion?

8 THE COURT: Sure.

9 DEFENSE CLOSING ARGUMENT

10 MR. HILLMAN: Good morning, ladies and gentlemen. In  
11 this particular hearing, you folks are the people who are  
12 going to decide the facts in this case. You'll decide what  
13 happened on that day. You'll decide if the State has proven  
14 beyond a reasonable doubt each and every element of the crimes  
15 that have been alleged against Bennett Grimes.

16 Mr. Burns stood up and told you that Bennett Grimes  
17 was desperate when he went there on July 22nd. I don't know  
18 if that's exactly what it sounded like. It may sound like  
19 that. But his family was breaking up, he was concerned. And  
20 you can hear that on the 9-1-1 call. You can hear that in the  
21 testimony that was given by Aneka Grimes, Aneka Newman and  
22 Stephanie Newman as well.

23 Let's talk for a few minutes and I'm not going to put  
24 up any pictures of any jury instructions and read them to you.  
25 You have the jury instructions. You'll be able to read them

UNCERTIFIED ROUGH DRAFT



1 yourselves. Let's talk a little bit about the burglary.

2 Burglary means entry into the structure with the  
3 intent to commit one of those acts as described in the jury  
4 instruction. What evidence do we have of that intent? You  
5 can hear Bennett in the 9-1-1 tape. You can hear what he had  
6 to say. He was upset. He was sad. He was not happy with the  
7 way things were. You heard what Aneka said. Aneka said that  
8 Bennett told her that he loved her, that he wanted her back.  
9 Stephanie said the same thing. He entered that apartment with  
10 no knife, with no gun, with no weapon, with no intent to do  
11 anything other than to try and get Aneka back. He had  
12 obtained a new job and he hoped that would smooth over the  
13 problems that they had and this could be over with.

14 He was in there quite a while. You can hear it in  
15 the 9-1-1 call. Aneka walked over, opened up the sliding  
16 glass door. Stephanie went out while all this was going on  
17 and talked to the police officers. There was no indication  
18 that anything was going to bad at that point in time. He did  
19 not enter that apartment with the intent to do anything other  
20 than to try and get Aneka back.

21 Now, let's go on to the attempt murder. The State  
22 talked an awful lot about the 21 stab wounds. And there's no  
23 doubt that there were 21 stab wounds. But if he intended to  
24 kill her and stabbed her 21 times, how did that not happen?  
25 How did she not die? You see what he looks like. He's a fit

1 looking young man. Twenty-one times? State says that Officer  
2 Hoffman burst in, tackled him off of her, took the knife away.  
3 That's what Officer Hoffman said. Officer Tavaréz says that  
4 when she went in Officer Hoffman was saying where's the knife,  
5 where's the knife. He didn't know where the knife was.  
6 Stephanie Newman said that Officer Hoffman didn't tackle  
7 anybody, that he used his weapon and intimidation to stop  
8 whatever was going on on the floor by the entryway to that  
9 apartment.

10 So we've got several different facts. We've got  
11 several different stories about what was going on in there.  
12 Is that unusual? Probably not. When emotions get high, when  
13 the adrenaline starts to go, everybody sees things a little  
14 bit different. If you watch football, if you watch baseball,  
15 if you watch basketball, they have slow motion replays to show  
16 what the referees didn't see, what everybody else thinks they  
17 saw and people argue about it and argue about it.

18 Officer Hoffman, in his domestic violence report,  
19 indicated that Bennett Grimes was cut on his left hand, even  
20 though it was his right. The AMR, the medic Robison, said  
21 that it was his right ring finger. She said that she filled  
22 this out just a few minutes after it happened. But  
23 perceptions can vary, things can be different.

24 Excuse me for a minute. I wonder if I could have --  
25 approach and get those.

UNCERTIFIED ROUGH DRAFT

1 THE COURT: Sure.

2 MR. HILLMAN: Thank you very much. One thing that's  
3 pretty consistent, though, is that Bennett Grimes spent a lot  
4 of time by the entry, that Aneka spent a lot of time by the  
5 kitchen counter, minutes, several minutes that you can hear on  
6 the 9-1-1 call, that you can hear from the testimony of  
7 Stephanie Newman and Aneka Newman. You can hear the  
8 conversation going on in the background in the 9-1-1 call.  
9 Bennett's over here, Aneka is over here in front of the  
10 counter.

11 Aneka says that Bennett left the entry in five to  
12 seven feet, grabbed her, took her back five to seven feet and  
13 then commenced to stab her. Aneka did not say she was  
14 fighting back. Aneka said she was trying to get away, which  
15 makes sense. Stephanie said she went over and tried to pull  
16 Aneka off of Bennett, away from Bennett. Anybody who's seen a  
17 fight, anybody who's been in a fight knows that if you pull  
18 one combatant off the other, the person who's getting pulled  
19 away is pretty much helpless to the other combatant. If two  
20 guys are fighting and someone grabs one of the guys and pulls  
21 him off, that guy's going to get punched. The guy that's  
22 pulled off is going to get punched.

23 Officer Hoffman said that when he entered Aneka was  
24 standing here, Stephanie was standing directly behind her and  
25 Bennett was standing --

(Cell phone interruption)

MR. HILLMAN: You won't get in as much trouble for that as I would. And Bennett was standing here. At the preliminary hearing, Officer Hoffman testified that Bennett had Aneka in a headlock and was punching her in the head. At trial, Officer Hoffman said Bennett had Aneka in a headlock and was stabbing her in what appeared to be the upper left chest. While these wounds may be consistent with what the State has alleged, they may just as well be consistent with two people struggling over a weapon.

We talk about 21 stab wounds. There is no medical evidence to indicate that that knife was ever plunged completely into her body. None of the stab wounds are that deep. If you look at the pictures, they look like scrapes and cuts and pokes that are also consistent with two people struggling over the weapon. And Aneka said she did struggle over that weapon. She said she was trying to get away.

And the State talks about defensive wounds. Anybody remember when their brother was going to hit them with a wiffle ball bat? How did you block it? Did you block it like this, Bruce Lee style? Or do you put your hands up, cover your face like this? What's the natural reaction? And yet, if you look at the pictures, there are no wounds on the hands. There are no wounds on the fingers. There's no wounds to her thumb.

UNCERTIFIED ROUGH DRAFT

1           The State needs to prove beyond a reasonable doubt  
2 that Bennett Grimes entered the building with the intent to do  
3 something. There was no intent. They need to prove that he  
4 intended to kill Aneka. There's no intent to kill Aneka here.  
5 And there's some other questions that still remain.

6           There's the DNA evidence. There's DNA on that knife.  
7 The DNA belongs to Aneka and an unknown male. What kind of a  
8 palette do we have for that knife? What kind of a palette, as  
9 if we're painting a picture, do we have for the DNA to stick  
10 there? We have a freshly washed knife in the dish drainer  
11 around the corner from where Bennett was standing. Julie  
12 Marschner said well, this knife isn't rough enough to hold any  
13 DNA and yet, it had Aneka's, which may have come from the  
14 blood. I think that's what the testimony was. And another  
15 male that is not Bennett Grimes. It's not rough enough to  
16 hold Bennett Grimes' DNA and yet, the Government says Bennett  
17 Grimes held that knife long enough and hard enough to stab  
18 Aneka 21 times. If you're going to leave DNA, you're going to  
19 leave DNA then. And then there's the matter of fingerprints  
20 on the knife. We don't know who they belong to. We don't  
21 know who they belong to.

22           Ladies and gentlemen, State has not met their burden  
23 in this case. Bennett Grimes did not enter that apartment  
24 with any intent other than to try and talk his wife into  
25 letting him come back. He shouldn't have been there. He

1 shouldn't have gone back. But he didn't have any intent.  
2 Since he had no intent when he entered the apartment, doesn't  
3 matter if he picked up the knife later on because there's no  
4 burglary. He did not attempt to kill Aneka Grimes. He did  
5 not have the specific intent to kill anybody here. No DNA  
6 from Bennett Grimes on the knife, fingerprints that belonged  
7 to who knows. Who knows? Find Bennett Grimes not guilty is  
8 what we're asking. Thank you.

9 THE COURT: The State can address the jury in their  
10 rebuttal.

11 STATE'S REBUTTAL CLOSING ARGUMENT

12 MS. BOTELHO: Ladies and gentlemen of the jury, Mr.  
13 Hillman's right. The State does have the burden of proving to  
14 each of you beyond a reasonable doubt that the defendant  
15 committed each and every element of each of the charges that  
16 we have brought against him. But I'll tell you right now that  
17 it is a burden that the State, Mr. Burns and myself, it's a  
18 burden that we welcome. And I remind you that it is a burden  
19 that is met in courtrooms across America every single day.

20 You heard a lot about this reasonable doubt. State  
21 has to prove this, that, this, that beyond a reasonable doubt.  
22 What is that? I'd like you to turn to jury instruction number  
23 five because this tells you exactly what it is. "A reasonable  
24 doubt is one based on reason. It is not mere possible doubt,  
25 but is such a doubt as would govern or control a person in the

UNCERTIFIED ROUGH DRAFT

1 more weighty affairs of life. If the minds of the jurors,  
2 you, after the comparison and consideration of all the  
3 evidence are in such a condition that you feel an abiding  
4 conviction of the truth of the charge, there is not a  
5 reasonable doubt." There is not. If after looking at the  
6 exhibits, if after hearing all the testimony you have an  
7 abiding conviction of the charges we have brought forth, there  
8 is not a reasonable doubt. Reasonable doubt must be actual.  
9 It is not a possibility or speculation.

10 Now, you're charged with this very, very hard task.  
11 Look at all of the evidence, decide this case. What tools do  
12 you have to make this decision? I'd like you to turn to juror  
13 instruction number 31, towards the back. Instruction number  
14 31 says, "Although you are to consider only the evidence in  
15 this case in reaching a verdict, you must bring to the  
16 consideration of the evidence your everyday common sense and  
17 judgment as reasonable men and women. You're not limited  
18 solely to what you see and hear as the witnesses testify. You  
19 may draw reasonable inferences from the evidence which you  
20 feel are justified in the light of common experience, keeping  
21 in mind that such inferences should not be based on  
22 speculation or guess."

23 You heard a lot of eyewitness testimony in this  
24 particular case. What instruction do you have to guide you in  
25 evaluating that testimony? I ask you to turn your attention

1 to jury instruction number eight. "The credibility of  
2 believability of a witness should be determined by his or her  
3 manner upon the stand, her relationship to the parties, fears,  
4 motives, interests or feelings, opportunity to have observed  
5 the matter to which she or he is testifying, the  
6 reasonableness of the statements and the strengths or  
7 weaknesses of his recollections."

8 Yes, Officer Hoffman, Stephanie Newman and Aneka  
9 Newman all testified for you as eyewitnesses. Yes, some of  
10 their descriptions of what happened kind of varied. But as  
11 Mr. Hillman stated, adrenaline was high. Think about what  
12 Aneka was going through. What were her fears and motivations?  
13 What was it that Aneka, as she was being stabbed 21 times by  
14 her husband, what was she thinking about? Defending herself,  
15 getting out of there. What was her mother thinking about?  
16 Helping her daughter, stopping her daughter from being killed.  
17 What was Officer Hoffman thinking about at that exact moment?  
18 Did he have much time to react, to sit there and take a  
19 snapshot of what exactly he saw? No.

20 Officer Hoffman had just jumped over a balcony,  
21 walked into an apartment, saw the defendant appeared to be  
22 punching his wife. But he wasn't punching her. Officer  
23 Newman sat on the witness stand and told you he had little to  
24 no time to react. What did he do? He tackled the defendant,  
25 shoved the knife away or at least got it out of his hand, and

UNCERTIFIED ROUGH DRAFT



1 brought the defendant outside. Yes, he drew his weapon. He  
2 absolutely did. He told that the defendant, the defendant,  
3 drop your knife or I'm going to fucking shoot you. That's  
4 exactly what he said. That was his reaction. What was  
5 Officer Hoffman thinking at that time? Was he thinking oh, I  
6 need to remember whether or not the victim was laying down or  
7 standing up? I need to remember their exact positioning. I  
8 need to know exactly what was going on. No. What was he  
9 seeing? Danger, fear, get to it. Stop it. Save her life.  
10 You're going to expect variations in testimony.

11       Using your common sense, I ask you, you expect DNA or  
12 at least Aneka's DNA to be everywhere. She was stabbed 21  
13 times. You saw the bloody pictures. You expect her blood to  
14 be everywhere. Julie Marschner, the DNA analyst, told you  
15 blood DNA can consume touch DNA. What's the big deal about  
16 this anyway? DNA is not going to tell you the obvious. You  
17 cannot test for the obvious. It's called common sense. The  
18 defendant is holding the knife, stabbing her 21 times. Yes,  
19 touch DNA may be there. Well, what is going to consume that?  
20 Aneka's blood. The pictures that you saw her being treated at  
21 the hospital was after the blood or the bleeding had been  
22 stopped. You can believe that she was bleeding all over the  
23 place as her mother held her against her chest trying to stop  
24 those wounds. It wasn't that clean, clean wounds that you  
25 saw.

UNCERTIFIED ROUGH DRAFT

1           There was testimony or at least an assertion that  
2 there was another person's DNA on it. So what? So what?  
3 What's the claim? Officer Hoffman stabbed her? Some other  
4 person did it? No, that is not it. You have three eyewitness  
5 testimonies that the defendant held that knife and stabbed  
6 her. You cannot test the obvious. The DNA can't tell you  
7 anymore than what you already know.

8           Burglary. Mr. Hillman talked about this. What was  
9 his intent, what was the defendant's intent when he busted his  
10 way through the apartment door? I submit to you, we don't  
11 have the capability of having a recording of what exactly the  
12 defendant was thinking before, during and after this incident.  
13 No, we don't have the ability to then download his thoughts  
14 and then play it for you. That is why you have to use your  
15 common sense. You have to use your experience. You have to  
16 use the facts and circumstances of this case to decide what  
17 did he mean. That's the one thing you're not going to have  
18 direct evidence of. What did he mean?

19           There's a valid protection order in place. He's  
20 lurking around. He busted his way against the wishes of Mrs.  
21 Newman and Aneka. Burglary is with the intent to commit  
22 assault, battery or felony. You could find that maybe when he  
23 walked in he didn't have the intent to try to kill her. But  
24 if he so much had the intent to scare her or her mother, which  
25 is what assault is, or to batter, use unlawful force against

1 Aneka or her mother, such as shoving the door open, he's  
2 guilty of burglary. Burglary is met. It's not that he had to  
3 have intended to kill her when he walked in, it's with the  
4 intent to commit assault, battery or a felony, such as  
5 attempted murder.

6 If you find that he violated that TPO, that he busted  
7 through that door to scare Aneka into taking him back or to  
8 scare them into allowing him in or to batter them by shoving  
9 the door open, he's guilty of burglary.

10 Where was the defendant once he entered the  
11 residence? Where? What kind of movements did he make? Well,  
12 there's a big deal made about how he stood in front of the  
13 door most of the time. That could be true. But the evidence  
14 has shown and the evidence is that at some point the defendant  
15 walked over to that bar area, grabbed a knife, grabbed Aneka  
16 and dragged her back. How do we know that? Again, we don't  
17 have a videotape of this. We can't just press play and say  
18 here, jurors, this is what happened. Look with your own eyes.  
19 What do we have?

20 Remember that blue bag, the blue bag with the  
21 defendant's work schedule? The blue bag that he brought with  
22 him that day. That blue bag was found near the counter. That  
23 blue bag didn't have blood on it. Why is that important?  
24 Well, because all of the stabbing and the bloody mess happened  
25 near the entrance. That blue bag, we submit to you, the

1 defendant dropped during his struggle with Aneka and in his  
2 attempt to grab a knife and Aneka and drag her towards the  
3 front where he could stab her. That's why there's no blood.

4 Now, could it have been kicked? Yes. But the fact  
5 that there's no blood shows that it was kicked from the bar  
6 area towards the front door, if anything. If anything. It's  
7 not the other way around where you have a clean blue bag with  
8 no blood being kicked to the bar area from the front area  
9 where there's blood everywhere. Use your common sense when  
10 you're looking at the evidence. Yes, he stood there. He  
11 stood near the front door blocking their entrance or exits.  
12 But he moved from there.

13 There's an instruction and I'm not going to read it  
14 to you again that makes a difference between motive and an  
15 attempt to kill. Motive is what causes someone to act a  
16 certain way. The State doesn't have to prove motive in this  
17 case. But I submit to you that we've proven it. As Mr. Burns  
18 told you in closing argument, he wasn't getting what he  
19 wanted. He wanted Aneka back; she wanted nothing to do with  
20 him. So he responded in anger. And he stabbed her, he  
21 attacked her. What motivation does Aneka have to engage in a  
22 struggle with the defendant? Aneka got a temporary  
23 restraining order against domestic violence.

24 When the defendant walked in against her will and  
25 against her mother's will, what did Aneka do? She called

1 9-1-1. Ask them to remove the defendant. Aneka did what she  
2 needed to get help. What motivation does she have to engage  
3 in a struggle with the defendant who's bigger, who's stronger  
4 after she had already called the police for help? None.

5 This attempt to kill. Mr. Hillman talked to you  
6 about the attempt murder with a deadly weapon. There are  
7 three different charges. Attempt murder with a deadly weapon,  
8 burglary while in possession of a deadly weapon and also the  
9 battery charge, which has all the different other elements.  
10 The battery, you don't have to have a specific intent to do  
11 anything. It's just you used force against someone, you used  
12 a deadly weapon, it caused substantial bodily harm. And you  
13 saw the substantial bodily harm. Aneka stood in front of you,  
14 took off her cardigan and showed you the scars. The scars  
15 from the cuts, scrapes and pokes, as the defense would call  
16 it. She stood right here, right in front of you and showed it  
17 to you.

18 You decide whether those were just cuts, scrapes and  
19 pokes. What did the defendant intend to do when he picked up  
20 that steak knife and thrust it into her body 21 times? We may  
21 be losing the effect of this 21 times. You've heard it so  
22 many times, you saw the pokes, you saw the reenactments, but  
23 use your common sense. Each time the defendant grabbed that  
24 knife, thrust it into her body, took it out, thrust it, took  
25 it out, thrust it, took it out, what did he mean? What did he

1 mean? What did he mean to do to Aneka?

2 Use your common sense to fill in the blanks. If  
3 Officer Hoffman had not arrived to stop the defendant, if  
4 Officer Hoffman had not walked in at that exact moment in  
5 time, what would have happened to Aneka? I submit to you that  
6 if Officer Hoffman had not walked in at that exact moment in  
7 time, you would be deliberating a murder case. You would have  
8 heard not from a trauma surgeon, but from a coroner. More  
9 than 21 cuts, scrapes and pokes.

10 I told you in opening statement at the very beginning  
11 of this case the fact that Aneka Newman was alive on July  
12 22nd, 2011 at 7:04 p.m. is nothing short of a miracle. The  
13 defendant tried to kill her. He stabbed her 21 times. It  
14 caused her substantial bodily harm and he went into that  
15 apartment with the intent to do something bad to her. Find  
16 him guilty of all the charges.

17 Thank you, Your Honor.

18 THE COURT: Okay. At this time, the clerk's going to  
19 swear the officers of the Court who will take charge of the  
20 jury panel.

21 Okay. The clerk will now swear the officers of the  
22 Court who will take charge of the jury panel.

23 (Oath to officers given)

24 THE COURT: At this time, ladies and gentlemen, you  
25 are going to be excused to deliberate upon your verdict. When

1 you go back to deliberate upon your verdict you can take your  
2 notes as well as the jury instructions.

3 Mr. Richard Evans, you've been selected to be our  
4 alternate juror, so I'm not going to -- I'm going to let you  
5 go for now. I'm not going to discharge you, but I'm not going  
6 to require you to stay at the courthouse while the jury  
7 deliberates. You haven't been discharged because if for any  
8 reason we need you to come back to help with the jury  
9 deliberations, we need you to be able to come back. So you're  
10 still under the same admonition not to discuss the case with  
11 anyone. Before you go, I'm going to ask that you see the  
12 clerk, Susan, here. She's going to take charge of all of your  
13 notes and your jury instructions. She's also going to get  
14 your phone number so in case we have to call you back. And  
15 I'd just ask that you don't leave the jurisdiction until we  
16 have discharged you. Okay?

17 Thank you very much and the jury is now discharged to  
18 deliberate upon their verdict. Ladies and gentlemen, the  
19 officer is going to take you to deliberate in the back. And  
20 as soon as you get back there we're going to bring lunch back.

21 (Jury recessed at 11:49 a.m.)

22 MR. HILLMAN: One last thing.

23 THE COURT: Sure. Go ahead, Mr. Hillman.

24 MR. HILLMAN: Ms. Hojjat and I were on our way over  
25 here. We got on the elevator downstairs, went down to a lower

1 level, came back up, picked up juror number 11 and rode up in  
2 the elevator with him, but nothing was said.

3 THE COURT: Okay. So it sounds like everyone  
4 complied with the admonition.

5 MR. HILLMAN: Yes, we did.

6 THE COURT: Number 11 didn't even try to talk to you?

7 MR. HILLMAN: No. He just looked at us and we looked  
8 down.

9 THE COURT: Very, very good. Thank you very much for  
10 letting me know. Thank you.

11 (Court recessed at 11:50 a.m. until 2:50 p.m.)

12 (In the presence of the jury.)

13 THE COURT: Do the parties stipulate to the presence  
14 of the jury panel?

15 MS. BOTELHO: Yes, we do, Your Honor.

16 MR. HILLMAN: Yes, Judge.

17 THE COURT: Okay. Has the jury selected a  
18 foreperson?

19 JUROR NO. 12: Yes, Your Honor.

20 THE COURT: Mr. Sanford, have you selected to be the  
21 foreperson?

22 JUROR NO. 12: Yes, Your Honor.

23 THE COURT: Has the jury reached a verdict?

24 JUROR NO. 12: Yes, we have, Your Honor.

25 THE COURT: Okay. Did the Court Marshal bring you in



1 here?

2 JUROR NO. 12: Yes.

3 THE COURT: Okay. Sorry, because he has to get the  
4 verdict form for me.

5 THE MARSHAL: Sorry, Judge.

6 THE COURT: That's okay. Can you just get the  
7 verdict form from Mr. Sanford? The Marshal's going to come  
8 get it. If you'll just present the verdict form to the Court  
9 Marshal, Mr. Sanford. Thank you. Okay.

10 At this time, if the defendant and his attorneys will  
11 please stand and the clerk will read the verdict form out  
12 loud.

13 THE CLERK: District Court, Clark County, Nevada.  
14 The State of Nevada, plaintiff, versus Bennett Grimes,  
15 defendant, Case Number C-11-276163-1, Department 12.

16 Verdict. We the jury in the above entitled case find  
17 the defendant Bennett Grimes as follows:

18 Count One, attempt murder with use of a deadly weapon  
19 in violation of a temporary protective order. Guilty of  
20 attempt murder with use of a deadly weapon in violation of a  
21 temporary protective order.

22 Count Two, burglary while in possession of a deadly  
23 weapon in violation of a temporary protective order. Guilty  
24 of burglary while in possession of a deadly weapon in  
25 violation of a temporary protective order.

1 Count Three, battery with use of a deadly weapon  
2 constituting domestic violence resulting in substantial bodily  
3 harm in violation of a temporary protective order. Guilty of  
4 battery with use of a deadly weapon constituting domestic  
5 violence resulting in substantial bodily harm in violation of  
6 a temporary protective order.

7 Dated this 15th day of October, 2012. Signed by  
8 juror number 12, foreperson.

9 Ladies and gentlemen of the jury, are those your  
10 verdicts as read, so say you one, so say you all?

11 JURORS: Yes.

12 THE COURT: Does either side wish to have the jury  
13 panel polled?

14 MS. BOTELHO: The State does not, Your Honor.

15 MR. HILLMAN: Defense does.

16 THE COURT: Okay. At this time the clerk will poll  
17 the ladies and gentlemen of the jury.

18 THE CLERK: Juror Number 1, are those your verdicts  
19 as read?

20 JUROR NUMBER 1: Yes.

21 THE CLERK: Juror Number 2, are those your verdicts  
22 as read?

23 JUROR NUMBER 2: Yes.

24 THE CLERK: Juror Number 3, are those your verdicts  
25 as read?

1 JUROR NUMBER 3: Yes.  
2 THE CLERK: Juror Number 4, are those your verdicts  
3 as read?  
4 JUROR NUMBER 4: Yes.  
5 THE CLERK: Juror Number 5, are those your verdicts  
6 as read?  
7 JUROR NUMBER 5: Yes.  
8 THE CLERK: Juror Number 6, are those your verdicts  
9 as read?  
10 JUROR NUMBER 6: Yes.  
11 THE CLERK: Juror Number 7, are those your verdicts  
12 as read?  
13 JUROR NUMBER 7: Yes.  
14 THE CLERK: Juror Number 8, are those your verdicts  
15 as read?  
16 JUROR NUMBER 8: Yes.  
17 THE CLERK: Juror Number 9, are those your verdicts  
18 as read?  
19 JUROR NUMBER 9: Yes.  
20 THE CLERK: Juror Number 10, are those your verdicts  
21 as read?  
22 JUROR NUMBER 10: Yes.  
23 THE CLERK: Juror Number 11, are those your verdicts  
24 as read?  
25 JUROR NUMBER 11: Yes.

1 THE CLERK: Juror Number 12, are those your verdicts  
2 as read?

3 JUROR NUMBER 12: Yes.

4 THE COURT: At this time, the Clerk will record the  
5 verdict in the official record of the Court. And at this time  
6 -- you can have a seat, thank you. At this time, ladies and  
7 gentlemen, I am going to discharge you from your duty. You  
8 are no longer under the admonition not to discuss this case  
9 with anyone. You're free to discuss this case, your  
10 deliberation and everything that went on in here with anyone,  
11 but you're under no obligation to discuss this case. I do  
12 give the attorneys the opportunity to speak to the jury panel,  
13 but only if that's what you want to do. So when you do get  
14 discharged, you're going to go back to the jury deliberation  
15 room with the Court Marshal, at which time I will give the  
16 attorneys the opportunity to speak to you. But again, you're  
17 under no obligation to speak to any of us.

18 Before I do excuse you, I do want to extend my  
19 gratitude and thanks to you for your willingness to be here,  
20 especially your willingness to come back this week. I know I  
21 speak on behalf of all of us, the attorneys and the Eighth  
22 Judicial Court in thanking you for your willingness to be  
23 here. At this time you are discharged as jurors. Thank you  
24 very much. You're excused.

25 (Jury exits courtroom at 2:56 p.m.)

1 THE COURT: The record will reflect this hearing is  
2 taking place outside the presence of the jury panel. At this  
3 time the defendant's bail will be revoked. He'll be remanded  
4 pending sentencing. The matter will be referred to parole and  
5 probation and it will be set for sentencing.

6 THE CLERK: Sentencing date, December 18th at 8:30.

7 THE COURT: The Court did receive a note from the  
8 jury panel. I did not respond to the note because my only  
9 response would have been read the jury instructions. But it  
10 will be marked as Court's Exhibit next in line. The note, the  
11 content of it was communicated to myself, but I did not  
12 respond to it. And the note was: Does criminal intent have  
13 to be established before entering a structure or can intent

14 change during the chain of events for the charge of burglary?  
15 I didn't respond to it because my only response would have  
16 been continue to deliberate and look at the instructions.

17 MR. HILLMAN: I think that would have been a correct  
18 response.

19 THE COURT: It will be Court's Exhibit Number 13. Is  
20 there anything else?

21 MS. BOTELHO: No, Your Honor.

22 MR. HILLMAN: No, Judge.

23 THE COURT: Do you want to talk to the jury?

24 MS. BOTELHO: Yes, Your Honor.

25 MS. HOJJAT: Yes, Your Honor.

1 THE COURT: Okay. We'll let you go and you can go  
2 back and chat with the jury.

3 (Court adjourned at 2:58 p.m.)  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13

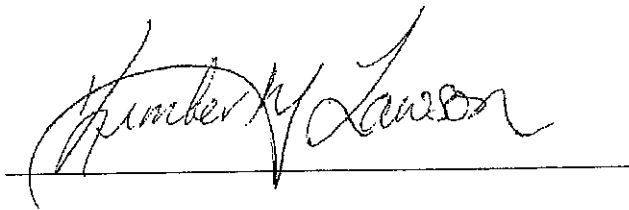
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNCERTIFIED ROUGH DRAFT

001009

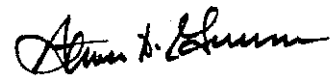
ACKNOWLEDGMENT:

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

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON  
TRANSCRIBER

UNCERTIFIED ROUGH DRAFT



CLERK OF THE COURT

1 RTRAN

2

3

4

DISTRICT COURT  
CLARK COUNTY, NEVADA

5

6

7

THE STATE OF NEVADA,

8

Plaintiff,

9

vs.

10

BENNETT GRIMES,

11

Defendant.

12

13

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

14

15

TUESDAY, NOVEMBER 6, 2012

16

**RECORDER'S TRANSCRIPT RE: DEFENDANT'S MOTION FOR NEW TRIAL**

17

18

APPEARANCES:

19

20

For the State:

JONATHAN COOPER, ESQ.  
Deputy District Attorney

21

22

For the Defendant:

R. ROGER HILLMAN, ESQ.  
Deputy Public Defender

23

24

RECORDED BY: KERRY ESPARZA, COURT RECORDER

25



1 TUESDAY, NOVEMBER 6, 2012 AT 10:18 A.M.

2  
3 THE COURT: State of Nevada versus Bennett Grimes, C276163. He's  
4 present. He's in custody. The motion is on. I've had a chance to read it. Anybody  
5 want to say anything beyond that?

6 MR. HILLMAN: We'll just submit it upon the pleadings, Judge.

7 THE COURT: Okay.

8 MR. COOPER: Correct, Your Honor.

9 THE COURT: At this time, the Court's going to deny the motion and the State  
10 can prepare the order.

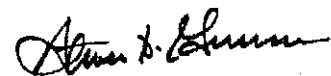
11 MR. COOPER: Yes, Your Honor.

12 [Proceedings concluded at 10:19 a.m.]

13 \*\*\*

14 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
15 audio/video proceedings with the sound recording in the above-entitled case to the  
16 best of my ability.

17   
18 THERESA SANCHEZ  
19 Court Recorder/Transcriber  
20  
21  
22  
23  
24  
25



CLERK OF THE COURT

1 RTRAN

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5 THE STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 BENNETT GRIMES,

9 Defendant.

CASE NO. C276163

DEPT. NO. XII

10  
11 BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

12 TUESDAY, DECEMBER 18, 2012

13 **ROUGH DRAFT**  
14 **RECORDER'S TRANSCRIPT OF SENTENCING**

15  
16  
17  
18  
19 APPEARANCES:

20 For the State:

21 AGNES M. BOTELHO  
HAGAR TRIPPIED  
Deputies District Attorney

22 For the Defendant:

23 LAUREN R. DIEFENBACH  
Deputies Public Defender

24  
25 RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 LAS VEGAS, NEVADA, TUESDAY, DECEMBER 18, 2012, 8:48 A.M.

2 THE COURT: This is C276163, State of Nevada versus Bennett Grimes.  
3 Record should reflect the presence of Mr. Grimes in custody with counsel,  
4 representative of the State. This is time set sentencing. My notes reflect this is  
5 sentencing as a consequence of the jury verdict from October 15, 2012, notes of the  
6 court staff reflects that defense was going to be requesting a continuance until  
7 12-20, based upon the nature of the allegation, the fact that Judge Leavitt heard this  
8 trial, frankly, my inclination would be to pass it to a time when she can address the  
9 sentencing components here because she knows the case and she has a unique  
10 insight in that effort.

11 MS. DIEFENBACH: We would agree, Your Honor. We did not -- we were not  
12 aware that Judge Leavitt was not going to be here on Thursday the 20<sup>th</sup>. That's why  
13 we were going to ask for that date. But whatever date that she's here, we may need  
14 to check -- this is Mr. Hillman's case, he's on a different team. He does the outers  
15 now.

16 THE COURT: Okay.

17 MS. DIEFENBACH: And so, and it was not my case. Also Ms. Hojjat did it  
18 with him. So, we can set it for a date in early January and hope if there's a problem  
19 we would put it back on.

20 THE COURT: I think in talking with the JEA for the Judge, that she may,  
21 we're going to head towards the first week of February, frankly.

22 MS. DIEFENBACH: Oh, really? All right. So it will be the first week of  
23 February.

24 THE COURT: Now, I note also, State has filed a witness notification of oral  
25 statement; is that witness present?

1 MS. TRIPPIED!: Your Honor, this is actually Agnes Botelho was going to be  
2 here to argue this case because she's the one that did the trial.

3 THE COURT: Okay.

4 MS. TRIPPIED!: I can definitely get that February date for her, but if you don't  
5 mind just trailing it 'til the end and then we can just make sure that the date that you  
6 give is --

7 THE COURT: That's fine, we'll --

8 MS. TRIPPIED!: -- a date that is fine for her.

9 THE COURT: -- find a date that works for all parties.

10 Mr. Grimes, you understand what's happening today?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Very good, we'll trail, we can get everybody in the  
13 room that we need.

14 MS. DIEFENBACH: Very good, thank you, Your Honor.

15 [Proceeding trailed until 10:08 a.m.]

16 THE COURT: All right. This is C276163, State of Nevada versus  
17 Bennett Grimes. The record should reflect the presence of Mr. Grimes in custody;  
18 representative of the State, Botelho, Ms. Botelho; Ms. Diefenbach on behalf of  
19 Mr. Hillman. This is the time set for sentencing. Minutes should reflect parties,  
20 sidebar have indicated that the -- now Ms. Botelho's in the room, she's indicating  
21 that there are victim impact statements that the State wishes to present.

22 MS. BOTELHO: Yes.

23 THE COURT: Although we weren't really clear on that before, that because  
24 this is a jury trial and Judge Leavitt has heard the trial and the allegations are  
25 serious -- of a serious nature and the victim impact has flown in to participate, that

1 the idea is to have that victim impact in JAVS, take a video, basically JAVS capture  
2 of that, that Judge Leavitt will have the opportunity to review that as a component of  
3 the sentence effort that will happen on the first of February so they don't have to  
4 return, but that important information can be preserved. Is that where we're  
5 headed?

6 MS. BOTELHO: Yes, Your Honor.

7 THE COURT: Does everybody agree?

8 MS. DIEFENBACH: So it's going to be done and put on JAVS, what -- is that  
9 still on December 20<sup>th</sup>?

10 MS. BOTELHO: Today.

11 THE COURT: No, the December 20<sup>th</sup> date --

12 MS. DIEFENBACH: Today?

13 THE COURT: -- is not a function. I think -- are these folks the victim impact;  
14 is that correct?

15 MS. BOTELHO: Yes, Your Honor.

16 THE COURT: For the record, could you state who these individuals are?

17 MS. BOTELHO: Yes, Your Honor. I have Earl Newman, Anika Grimes --

18 [Colloquy between Ms. Botelho and members of the audience]

19 MS. BOTELHO: -- it's actually just going to be Mr. Earl Grimes, giving a  
20 victim -- oh, I'm sorry, Mr. Earl --

21 THE COURT: Mr. Newman? Earl Newman is the one that's identified by way  
22 of notification.

23 MS. BOTELHO: Yes.

24 THE COURT: So you've met that statutory notice requirement.

25 MS. BOTELHO: Yes.

1 THE COURT: So Mr. Newman is going to give that impact.

2 Officer, I'm going to need -- because I want to do a capture off the  
3 witness stand. So we'll present that information and then set a date in early  
4 February to move forward for the totality of the sentence hearing; fair enough?

5 MS. BOTELHO: Yes, Your Honor.

6 THE COURT: All right, Ms. Diefenbach?

7 MS. DIEFENBACH: Yes, that is -- that is my understanding as well,  
8 Your Honor.

9 THE COURT: All right.

10 THE DEFENDANT: What's the reason for a victim impact?

11 THE COURT: Under Nevada law, a victim or a family member as identified is  
12 permitted to address the Court and to offer what's called classic victim impact, how  
13 the offense has impacted the family and they, under law they get to go last. Okay.

14 You'll get an opportunity, Mr. Grimes, to address the Court too, and offer information  
15 in mitigation of sentence before the judge reviews this information. I'm sure she'll  
16 follow the rules or whoever the sentencing judge is. I would hope it would be  
17 Judge Leavitt because she heard the trial. I don't know the case. I hear lots of  
18 trials. And there's a lot of insight that a judge draws as a function of listening to  
19 witnesses testify. You understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Let's put the witness under oath, please.

22 **EARL LAWRENCE NEWMAN,**

23 [having been called as a victim witness and first duly sworn, testified as follows:]

24 THE CLERK: Thank you, please be seated. And could you please state your  
25 full name spelling your first and last name for the record?

1 THE WITNESS: Okay. My name is Earl Lawrence Newman, first name  
2 spelled Earl, E-A-R-L, last name Newman, N-E-W-M-A-N.

3 THE COURT: Mr. Newman, what would you like Judge Leavitt to  
4 understand?

5 THE WITNESS: Well, I just have a impact statement that I'd like to read.

6 THE COURT: How ever you wish proceed, yes.

7 THE WITNESS: Okay. Thank you. Thank you, Your Honor.

8 I speak today on behalf of my daughter, Anika, and my entire family and  
9 would like to thank you for giving us this opportunity to share the emotional impact  
10 that this horrific act of selfishness has had on all of us, in particular the emotional  
11 stress and anxiety that Bennett Grimes placed on my daughter, Anika.

12 I myself, up until this incident, have never been a victim of violent crime,  
13 and I can only hope that my family or anyone else in this courtroom will never have  
14 to experience this sort of pain in their life either. Acts such as this make us all  
15 victims either directly or indirectly. My daughter, Anika, will always have the  
16 unfortunate scars and memory of this violent act etched in her mind forever. Going  
17 forward, her life will change and she will, without a doubt, move on to better things.  
18 But the marks on her skin will never diminish and will always be a constant reminder  
19 how close she came to having her life ended. Bennett, on the other hand, only  
20 ended up with a small cut on his hand. It just does not seem fair.

21 The vicious and potentially deadly attack on Anika at the hands of  
22 Bennett Grimes did not have to happen. He could have been a true man and  
23 recognized that his relationship with Anika was over. He could have moved on,  
24 changed his life and found someone else. He knew he was not supposed to be at  
25 that apartment. He knew he was not supposed to have any contact with my

1 daughter, Anika. He knew that she had a restraining order against him, but instead  
2 he chose to ignore all of that and lurk in the shadows waiting for his chance to do  
3 harm. It is truly sad to see such irresponsible, angry, and aggressive behavior by  
4 someone who claims to be an adult.

5         Sadly, Your Honor, there is one other victim to this tragedy, and that's  
6 my wife, Stephanie. To have to witness her own flesh and blood attacked in such a  
7 horrible fashion is more than any mother should have to see or endure. And then in  
8 the moments immediately after her attack to see your daughter bleeding profusely  
9 from so many places, not knowing if any of her over 20 stabs wounds would be fatal,  
10 to have your clothing soaked with your child's blood, to be inches away from  
11 potentially being stabbed yourself is more than any mother should have to  
12 comprehend. This too did not have to happen if Bennett had been a real man, a  
13 stand-up man, a man of honor and adhere to the guidelines of the restraining order.

14 ~~He chose not to be any of these things and so today here we are.~~

15         The anguish and worry that we had to endure in the days, weeks, and  
16 months following the attack were unbearable. We wondered if Anika would regain  
17 the use of her hand and her arm. More importantly, we wondered how she would  
18 ever recover mentally. There were many days of tears, depression, followed by  
19 fear, anger, and resentment.

20         In the days and weeks leading up to these proceedings, my daughter  
21 was so fearful that Bennett would some how get out of custody and come back to  
22 harm her. She stressed about what would be the outcome of the court trial, we all  
23 did. Would he figure out a way to beat the charges against him and be found not  
24 guilty was almost as bad as the attack itself. If myself have one regret is that I did  
25 not do more to warn and protect my daughter from the unstable behavior of Bennett



1 that I had witnessed and been made aware of in the past few years.

2 In closing, Your Honor, we are not the type of people to seek  
3 vengeance or to decide what the punishment should be, we leave that up to you. I  
4 would like to say that we are forgiving but not forgetting. The jury has spoken and  
5 they made their voices heard. We now leave our trust and faith in your just and  
6 capable hands to administer the appropriate punishment. We want him to  
7 understand that not only did he hurt our family, he hurt his family as well.

8 And once again, thank you for your time and for allowing me this  
9 opportunity to present this emotional impact that this horrific crime has had on my  
10 daughter, my wife, and my entire family. Thank you.

11 THE COURT: Are there any questions, Ms. Botelho?

12 MS. BOTELHO: None, from the State, Your Honor.

13 THE COURT: Ms. Diefenbach?

14 MS. DIEFENBACH: No, Your Honor.

15 THE COURT: Thank you, Mr. Newman, please step down.

16 All right, consistent with the discussion prior to Mr. Newman's victim  
17 impact, we're going to set this for sentencing hearing the first week of February.

18 THE COURT CLERK: That'll be February 7<sup>th</sup> at 8:30.

19 MS. BOTELHO: Thank you, Your Honor.

20 THE COURT: Anything else either side?

21 MS. DIEFENBACH: No, Your Honor.

22 MS. BOTELHO: No, thank you, Your Honor.

23 ///

24 ///

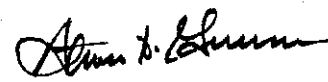
25 ///

PROCEEDING CONCLUDED AT 10:15 A.M.

ATTEST: Pursuant to Rule 3C(9) 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.



SARA RICHARDSON  
Court Recorder/Transcriber



CLERK OF THE COURT

1 RTRAN

2  
3  
4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 STATE OF NEVADA,

9 Plaintiff,

CASE NO. C276163

DEPT. XII

10 vs.

11  
12 BENNETT GRIMES,

13 Defendant.

14 BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

15 THURSDAY, FEBRUARY 7, 2013

16 **TRANSCRIPT OF PROCEEDINGS**  
17 **SENTENCING**

18 APPEARANCES:

19 For the State:

AGNES M. BOTELHO, ESQ.  
J. PATRICK BURNS, ESQ.  
Deputy District Attorneys

21 For the Defendant:

NADIA HOJJAT, ESQ.  
Deputy Public Defender

23  
24  
25 RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 THURSDAY, FEBRUARY 7, 2013 AT 9:33 A.M.

2  
3 THE COURT: State of Nevada v Bennett Grimes, C276163. He's present,  
4 he's in custody. This is the date and time set for entry of judgment, imposition of  
5 sentencing.

6 Mr. Grimes, any legal cause or reason why judgment should not be  
7 pronounced against you at this time?

8 MS. HOJJAT: Your Honor, very briefly, we're not asking for a continuance,  
9 but I did just want to note for the record that the PSI at one point is recommending  
10 large habitual treatment and Mr. Grimes is not eligible for large habitual treatment.

11 THE COURT: Is the State seeking --

12 MS. BOTELHO: No, we're not, Your Honor.

13 THE COURT: You're not seeking to habitualize him at all?

14 ~~MS. BOTELHO: We are seeking for a habitual sentence, but under the small~~

15 THE COURT: Under the small. Okay.

16 MS. HOJJAT: And so we just wanted to note for the record that the PSI was  
17 incorrect in suggesting large habitual, he's not eligible for large habitual treatment.  
18 It was my understanding the State is not seeking large habitual.

19 THE COURT: Okay. That's fine.

20 MS. BOTELHO: That's true.

21 MS. HOJJAT: And then other than that, I just wanted to inquire whether the  
22 Court had received the letters. I believe Mr. Hillman was going to send to the Court  
23 the support letters.

24 THE COURT: Uh-huh.

25 MS. HOJJAT: In that case, no legal cause or reason.

1 THE COURT: Well, let me just make sure they're the ones you think they are.  
2 Uh-huh. Yep.

3 MS. HOJJAT: We're ready to proceed, Your Honor.

4 THE DEFENDANT: Bailiff, the statement form.

5 THE COURT: I'm sorry, Mr. Grimes?

6 THE DEFENDANT: I was trying to hand you a statement.

7 THE COURT: Sure. You can hand it to the -- you can hand it to the CO or  
8 the court marshal and present it to the Court.

9 Okay. So Mr. Grimes, any legal cause or reason -- thank you, thank  
10 you very much -- why judgment should not be pronounced against you at this time?

11 THE DEFENDANT: No, I don't. But I was also aware that a Prop 36 Program  
12 was in effect now.

13 THE COURT: What?

14 ~~THE DEFENDANT: Prop 36 Program. The judge that was here, he --~~

15 THE COURT: Any reason why judgment should not be --

16 THE DEFENDANT: No, ma'am.

17 THE COURT: -- pronounced against you at this time?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: What do you think Prop 6 Program is?

20 THE DEFENDANT: 36. He had mentioned it that it was in effect. It's a  
21 situation where the inmate or whatever can go to a program as far as like an  
22 in-house or halfway program or something.

23 THE COURT: I reviewed his sentencing with Judge Barker. I don't recall  
24 anything even remotely close.

25 MS. BOTELHO: I don't either.

1 THE COURT: That being mentioned.

2 THE DEFENDANT: He had mentioned Prop 36 was in effect in the state,  
3 that's what he had mentioned. So.

4 THE COURT: Prop 36.

5 THE DEFENDANT: That's what he had mentioned.

6 THE COURT: Well, in Nevada we don't call it your -- I mean, in California,  
7 they call it propositions, in Nevada we don't refer to --

8 THE DEFENDANT: That's -- that's what he stated as, what his word, it was  
9 proposition.

10 THE COURT: I reviewed the sentencing and I don't recall anything even  
11 remotely close to that.

12 THE DEFENDANT: He didn't saying during my standing, he said it during  
13 someone else's standing that he had mentioned that it was in effect.

14 [Colloquy between the Court and the Court Clerk]

15 THE COURT: Okay.

16 THE DEFENDANT: By the way, I was just seeking if that was possible.

17 THE COURT: He said it during another case, had nothing to do with you.

18 THE DEFENDANT: I know. I was -- he said that it was in effect so I was  
19 just --

20 THE COURT: Any reason --

21 THE DEFENDANT: -- mentioning if it was available to me as well.

22 THE COURT: Any reason why we shouldn't proceed with your sentencing  
23 today?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Okay. Thank you, sir.

1 Does the State wish -- by virtue of the jury verdict return in this matter, I  
2 hereby adjudicate you guilty of Count 1, attempt murder with use of a deadly  
3 weapon in violation of temporary protective order.

4 Count 2, burglary while in possession of a firearm in violation of  
5 temporary protective order.

6 Count 3, battery with use of a deadly weapon constituting in domestic  
7 violence resulting in substantial bodily harm in violation of a temporary protective  
8 order.

9 Does the State wish to address the Court?

10 MS. BOTELHO: Yes, Your Honor. The State's not going to rehash the facts  
11 and circumstances of this particular case, you presided over the trial and so very  
12 confident in your recollection of what occurred and what the testimony and evidence  
13 showed to be.

14 ~~I will say this, though, that the Defendant's conduct constituted a vicious~~  
15 heinous attack against Anika in front of her mother. Anika is present here today with  
16 her family. And I can also tell the Court this, that Anika would be dead had it not  
17 been for the heroic actions of police officers who saved her life that day who  
18 responded and had to pretty much tackle this knife out of the Defendant's hand as  
19 he was going for his 22<sup>nd</sup> stab.

20 The Defendant has two prior DV convictions from California, Your  
21 Honor, from 2000 and also 2004. I will approach in just a minute and present the  
22 Court with the certified judgments of conviction. I will note there's a Post-it on the  
23 2000 conviction paperwork. I have that noted because the Defendant used a knife  
24 in that particular case. So he has this propensity for not only using violence, but  
25 also using deadly weapons.

1 He's 33 years old and in the 33 years that he has been around, he's  
2 already left two victims -- actually, three victims and just a trail of violence that's  
3 never -- that can never be undone. I read his Presentence Investigation interview  
4 and what really struck me was that given the severity of this particular crime, he  
5 minimized the severity of his offense. In fact, I'll quote him on page 7, he says: I  
6 think people are taking this case more serious than it was.

7 And despite being convicted by a jury and the state of the evidence,  
8 what's missing from this PSI is: And I'm sorry, I shouldn't have done it, I will never  
9 do it again. None of that is here. In fact, he fails to acknowledge any kind of  
10 responsibility for his conduct. And that just shows to us, Your Honor, that he  
11 constitutes an ongoing threat to women, particularly Anika. He hasn't shown any  
12 signs of change. Conviction from 2000, 2004, and now from 2012. He is going to  
13 keep victimizing women. And the next victim, if he's released, he has this  
14 opportunity, may not be as lucky as Anika was.

15 For these reasons, Your Honor, the State is recommending the  
16 following sentence: As to Count 1, the attempt murder, the State is recommending  
17 a sentence of 8 to 20 years. We would ask that for the deadly weapon  
18 enhancement, that he be sentenced to 8 to 20 years consecutive.

19 THE COURT: I think you can only choose one enhancement. I think if you're  
20 asking for the small habitual -- I mean --

21 MS. BOTELHO: We're not asking for habitual on this particular charge --

22 THE COURT: Oh, okay.

23 MS. BOTELHO: -- or on this particular count.

24 THE COURT: I'm sorry.

25 MS. BOTELHO: Yes.



1 THE COURT: So on this particular count, you're not asking him to be  
2 habitualized?

3 MS. BOTELHO: No, Your Honor. We're asking for an 8 to 20 on the attempt  
4 murder, plus a consecutive 8 to 20 on the deadly weapon enhancement. And the  
5 reason for the 8 to 20 being justified in the enhancement is that you heard the  
6 testimony, he stabbed her 21 times barely missing, you know, arteries that really  
7 could have killed her.

8 As to Count 2, we are asking for small habitual treatment. We would  
9 ask for a sentence of 8 to 20 years consecutive to the attempt murder with a deadly  
10 weapon.

11 As to Count 3, we're asking for the battery with a deadly weapon  
12 resulting in substantial domestic violence in violation of a TPO, we ask that small  
13 habitual treatment also be imposed and that an 8- to 20-year term be imposed  
14 consecutive to Counts 1 and 2.

15 THE COURT: Okay. So you're asking for habitual on Count 2 and 3 --

16 MS. BOTELHO: That's correct.

17 THE COURT: -- but not Count 1.

18 MS. BOTELHO: That's correct.

19 THE COURT: Okay.

20 MS. BOTELHO: Your Honor, we believe the Defendant should be in prison  
21 for as long as the scars and these memories live in Anika. So we feel that this is an  
22 appropriate sentence.

23 May I approach with the certified judgments of conviction?

24 THE COURT: Sure. Has the defense seen them?

25 MS. BOTELHO: They have, it was given to them prior to trial.

1 [The State shows documents to Defense Counsel]

2 MS. BOTELHO: Thank you.

3 THE COURT: Okay. Do you want to go through them? How many of them  
4 are there here?

5 MS. BOTELHO: There are two, Your Honor.

6 THE COURT: Okay. There's two?

7 MS. BOTELHO: Yes.

8 THE COURT: Any objection from the defense regarding these and whether  
9 they're your client?

10 MS. HOJJAT: We have no objection regarding the judgments of conviction,  
11 Your Honor.

12 THE COURT: Okay. They'll be marked as Court Exhibit 1 and 2 and made  
13 part of the record.

14 Okay, Mr. Grimes.

15 THE DEFENDANT: I handed you a statement. Also if you could read that.

16 THE COURT: I'm sorry?

17 THE CORRECTIONS OFFICER: Speak up, sir.

18 THE DEFENDANT: I handed you a statement to see if you could read that.

19 THE COURT: Uh-huh.

20 [Court reads statement]

21 THE COURT: So basically you want probation and you want to go on an  
22 interstate compact is what I got out of that.

23 THE DEFENDANT: Well, I've been -- I've been told that it's not available, but  
24 that was my asking.

25 THE COURT: Pardon?

1 THE DEFENDANT: I said I heard that -- they were told me -- they told me it  
2 wasn't available, but that was my asking in the letter, yes.

3 THE COURT: Okay.

4 MS. HOJJAT: And, Your Honor, to start off, I didn't want to interrupt anybody  
5 but we are actually objecting to adjudication of Count 3 in this case, the battery with  
6 use of a deadly weapon constituting domestic violence resulting in substantial bodily  
7 harm in violation of a temporary protective order. There was some talk of this during  
8 the trial, I'm not sure if the Court --

9 THE COURT: You're right. I mean, does the State have any objection to it  
10 being dismissed?

11 MS. BOTELHO: We actually do, Your Honor. I have copy of case law, *Adrian*  
12 *Jackson versus the State of Nevada*, it's an advisory opinion but basically it deals  
13 with the issue of redundancy and also whether or not a Defendant can be  
14 adjudicated guilty of both the Counts 1 -- Count 1, attempt murder with use, and also

15 Count 3, battery with a deadly weapon resulting in substantial bodily harm. It is  
16 directly on point. It essentially says yes, you can adjudicate him guilty as to both.

17 THE COURT: What's an advisory opinion? Because the Nevada Supreme  
18 Court --

19 MS. BOTELHO: It's going to be published and -- it just came out, Your Honor.  
20 May I approach?

21 THE COURT: Sure.

22 MS. HOJJAT: And, Your Honor, if I may --

23 THE COURT: Why do you -- why don't we -- you be able to talk all you want,  
24 but this is a long case and so why don't we trail it? I mean, this is 14 pages. I want  
25 an opportunity to read it.

1 MS. HOJJAT: Yes, Your Honor.

2 THE COURT: Because I'm not quite sure you can be convicted of both. So  
3 I'd like to see what the case says.

4 MS. HOJJAT: Right.

5 THE COURT: So we'll trail it to the end.

6 MS. HOJJAT: Very well, Your Honor.

7 THE COURT: I mean, my instincts are you can be convicted of both, but if  
8 this case says -- I mean, it's a December 6, 2012 --

9 MS. HOJJAT: And, Your Honor, that was going to be my argument. This  
10 case actually came out after we went to trial on this case. The defense did not raise  
11 an objection, the defense did not move to consolidate.

12 THE COURT: So I don't know that it matters whether it came out afterwards  
13 or before or.

14 MS. HOJJAT: Well --

15 THE COURT: I don't know that it would be a new law. But I don't know, let  
16 me read it first.

17 MS. HOJJAT: Very well, Your Honor.

18 THE COURT: Okay?

19 MS. HOJJAT: Very well, Your Honor.

20 THE COURT: If I think I need more time, I'll let you know. Okay?

21 MS. HOJJAT: Thank you, Your Honor.

22 THE COURT: So I'll trail this.

23 MS. HOJJAT: Thank you, Your Honor.

24 THE COURT: You know what? I may need more time. I mean, this case is  
25 like 14, 15 pages long. And I don't want to make a decision on the fly. So can we

1 continue it at least till next Tuesday? Is everyone okay with that?

2 MS. HOJJAT: I have no objections, Your Honor.

3 MS. BOTELHO: And the State is fine with that, Your Honor. Thank you.

4 THE COURT: Okay. So Tuesday.

5 And you have a copy of this case or at least the citation?

6 MS. HOJJAT: I don't, Your Honor, actually.

7 THE COURT: Okay. The citation is 128 Nevada Advanced Opinion 55. I  
8 don't have a Pacific Reporter citation.

9 If you want, I can have Pam come in here and copy it for you. It might  
10 be easier for you to get it.

11 MS. HOJJAT: Thank you. Thank you, Your Honor.

12 THE COURT: It might be easier.

13 MS. HOJJAT: Thank you, Your Honor, I appreciate that.

14 ~~THE COURT: Do you guys get the advanced opinions --~~

15 MS. HOJJAT: I'm not sure.

16 THE COURT: -- e-mailed to you?

17 MS. HOJJAT: We don't, Your Honor, we don't have it e-mailed.

18 THE COURT: Okay. I do, but I have a feeling that it might be harder for you  
19 to get it.

20 MS. HOJJAT: Yes, Your Honor.

21 THE COURT: Okay. So Pam will come in and copy this.

22 MS. HOJJAT: Thank you, Your Honor.

23 ...

24 ...

25 ...

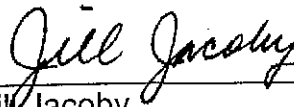
1 THE COURT: Okay. Tuesday.

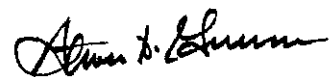
2 THE CLERK: February 12<sup>th</sup> at 8:30.

3 THE COURT: Thank you.

4 [Proceeding concluded at 9:50 a.m.]

15  
16  
17  
18  
19  
20  
21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case.

23   
24 Jill Jacoby  
25 Court Recorder

  
CLERK OF THE COURT

1 RTRAN

2

3

4

5

DISTRICT COURT  
CLARK COUNTY, NEVADA

6

7

8

STATE OF NEVADA,

9

Plaintiff,

10

vs.

11

12

BENNETT GRIMES,

13

Defendant.

CASE NO. C276163

DEPT. XII

14

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

15

TUESDAY, FEBRUARY 12, 2013

16

**TRANSCRIPT OF PROCEEDINGS**  
**SENTENCING**

17

18

APPEARANCES:

19

For the State:

20

AGNES M. BOTELHO, ESQ.

J. PATRICK BURNS, ESQ.

Deputy District Attorneys

21

For the Defendant:

22

R. ROGER HILLMAN, ESQ.

Deputy Public Defender

23

24

25

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 TUESDAY, FEBRUARY 12, 2013 AT 10:00 A.M.

2  
3 THE COURT: State of Nevada versus Bennett Grimes. He's present, he is in  
4 custody. This is on for sentencing.

5 And Mr. Hillman, were you made aware of what the issue was last  
6 time?

7 MR. HILLMAN: Yes, Judge.

8 THE COURT: Okay. And you've read the *Jackson* case?

9 MR. HILLMAN: Yes, Judge.

10 THE COURT: Okay. What's your -- are you in agreement?

11 MR. HILLMAN: Well, the Supreme Court's said what they've said on this.

12 THE COURT: Right.

13 MR. HILLMAN: However, my understanding is that the case wasn't published  
14 until after this case was over with. And I think that that changes things and the fact  
15 that it seems to be ex post facto to me.

16 THE COURT: Well --

17 MR. HILLMAN: If not practically --

18 THE COURT: Okay.

19 MR. HILLMAN: -- I mean, if not legally, at least practically. Because  
20 Mr. Grimes and I have talked about this very issue very first time we talked about  
21 the elements of the case, potential punishment. It affected the way we prepared for  
22 this case, it affected the way we presented this case. And if I remember correctly  
23 when we were settling jury instructions in chambers, we talked specifically about --

24 THE COURT: Uh-huh.

25 MR. HILLMAN: -- Count 3 merging.



1 THE COURT: Okay. I'm not quite sure this is a new rule, it's not a new rule.  
2 I mean, the Supreme Court basically just analyzed it under *Blockburger*. So it  
3 wouldn't be a retroactive, it means we were doing things wrong before. Right?  
4 That's all it means to me is that we were just doing it wrong.

5 MR. HILLMAN: Yeah. And in effect --

6 THE COURT: And the Supreme Court says don't do it wrong anymore.

7 MR. HILLMAN: And in effect what that does, that makes us ineffective in our  
8 representations of the truth for Mr. Grimes.

9 MR. BURNS: Your Honor, if I could respond to that. I'll respond to the ex  
10 post facto issue. The law interpreting *Strickland* is abundantly clear that counsel is  
11 not ineffective for failing to anticipate changes in the law. And I think that's exactly  
12 what Mr. Hillman and Ms. Hojjat were doing. They were clearly not in fact to this  
13 case.

14 ~~As to whether or not this would constitute an ex post facto law, you -- it~~  
15 doesn't fit into any of *Calder versus Bull's* four categories.

16 THE COURT: Uh-huh.

17 MR. BURNS: It's not a law as that term of art would be construed for an ex  
18 post facto analysis. The law is very clear from the U.S. Supreme Court *California*  
19 *Department of Corrections versus Morales* that just because a Defendant ends up  
20 being exposed to a worse situation, that these procedural changes are bad for him  
21 doesn't mean it's an ex post facto violation.

22 And just as juris prudential clarification, it's certainly not a type of -- it's  
23 not a change in a new law, and more importantly the quantum of punishment  
24 attached to his conduct has not changed. So it doesn't meet any of *Calder versus*  
25 *Bull's* four categories which the U.S. Supreme Court has admonished ex post facto

1 analysis should not go beyond.

2 THE COURT: Okay. And everyone agrees -- I know last time there was  
3 some concern, you only get one enhancement.

4 MS. BOTELHO: Yes, Your Honor.

5 THE COURT: So how does the State want to proceed?

6 I mean, I can't rule on any issue about being ineffective --

7 MR. HILLMAN: Right. Not at this point in time.

8 THE COURT: -- you agree, right?

9 MR. HILLMAN: Sure.

10 THE COURT: I mean, you agree that I have to sentence him first?

11 MR. HILLMAN: Correct.

12 THE COURT: Okay. All right.

13 So Mr. Grimes, you understand today's the date and time set for entry

14 of judgment, imposition of sentencing.

15 THE DEFENDANT: Yes.

16 THE COURT: Any legal cause or reason why judgment should not be  
17 pronounced against you at this time?

18 THE DEFENDANT: No.

19 THE COURT: By virtue of the verdict returned by the jury in this matter, I  
20 hereby adjudicate you guilty of Count 1, attempt murder with use of a deadly  
21 weapon in violation of a temporary protective order.

22 Count 2, burglary while in possession of a deadly weapon in violation of  
23 a temporary protective order.

24 Count 3, battery with use of a deadly weapon, constituting domestic  
25 violence resulting in substantial bodily harm in violation of a temporary protective

1 order.

2 So how is the State going to proceed?

3 MS. BOTELHO: Your Honor, as in the previous date, we asked as to the  
4 attempt murder, we asked for 8 to 20 years just for the attempt murder as to that.  
5 With regard to any enhancement, we ask for the deadly weapon enhancement, we  
6 ask for a consecutive 20 -- 8 to 20 years as to that charge.

7 As to Count 2, battery -- or excuse me, burglary with a deadly weapon  
8 with a temporary protective -- violation of temporary protective order, we asked for  
9 treatment under small habitual which is an 8 to 20, consecutive to Count 1.

10 With Count 3, we asked also for small habitual treatment, 8 to 20 years  
11 consecutive to Counts 1 and 2. With us asking for the small habitual treatment kind  
12 of doesn't necessitate the deadly weapon violation of TPO finding or any  
13 enhancement.

14 THE COURT: Okay. Do you have your priors to prove up?

15 MS. BOTELHO: We gave that to the Court at the last hearing --

16 THE COURT: Okay.

17 MS. BOTELHO: -- Your Honor. They've been marked as exhibits. There  
18 were no objections [indiscernible].

19 THE COURT: That's right. There -- Mr. Hillman, there's no objection to the  
20 priors?

21 MR. HILLMAN: I assume Ms. Hojjat looked over them and talked about it.

22 So.

23 THE COURT: Okay. Do you want, I'll get them for you. I just want to make  
24 sure there's no objection.

25 MR. HILLMAN: If they've been marked and admitted, I'm sure that they were

1 reviewed --

2 THE COURT: Okay.

3 MR. HILLMAN: -- and any record needed to be made was made at that time.

4 THE COURT: Okay. So basically the State's asking for the small habitual as  
5 to all three counts?

6 MS. BOTELHO: As to Counts 2 and 3, Your Honor. We're asking for -- not  
7 habitual treatment on Count 1 which is the attempt murder with use. We're asking  
8 for 8 to 20 on the attempt murder and a consecutive 8 to 20 on the deadly weapon.

9 THE COURT: Oh, okay. All right. It's basically kind of the same thing,  
10 though. All right.

11 MS. BOTELHO: Yes.

12 THE COURT: That you're asking me to utilize the deadly weapon  
13 enhancement.

14 MS. BOTELHO: Yes, Your Honor.

15 THE COURT: Okay. Got it.

16 Mr. Grimes, do you want to say anything? I have to tell you, I'm a little  
17 disappointed in your statement when you said that we're all making just too big of a  
18 deal about this.

19 THE DEFENDANT: I don't remember saying that.

20 THE COURT: Do you want me to read it to you?

21 THE DEFENDANT: She -- I didn't state that for word for word for her.

22 THE COURT: You think we're making too big of a deal of this and you  
23 deserve probation.

24 THE DEFENDANT: I never told her that it wasn't a serious crime or anything,  
25 I said that --

1 THE COURT: I didn't say that.

2 THE DEFENDANT: No, she said that -- that I -- [indiscernible].

3 THE COURT: I think and it's a quote -- let me just read it to you. It's page 7,  
4 quote: I think people are taking this case more serious than it was.

5 THE DEFENDANT: Well, I think the charges filed were excessive.

6 THE COURT: You've got to be kidding me. How -- you stabbed that woman  
7 numerous times.

8 MR. HILLMAN: Mr. Grimes and I have talked about this exact point. And I  
9 think what happened is there was a bit of miscommunication in that Mr. Grimes  
10 when he went over to Anika's house didn't expect the things to turn out like they did  
11 and that's how --

12 THE COURT: I believe that would probably be true, but it did. Okay. I  
13 believe maybe that's true that you went over there but you didn't expect things to  
14 turn out the way they did, but they did.

15 I sat up here and watched that woman testify and looked over at her  
16 and saw that -- just looking at her, not even trying, and I saw the horrible horrendous  
17 scars left on her, like, area that you can see just in normal clothing. Horrific scars  
18 that she has to live with the rest of her life. I think the girl's lucky that she's alive, if  
19 you want my opinion. How many times was she stabbed? It was --

20 MS. BOTELHO: 21.

21 THE COURT: Pardon?

22 MS. BOTELHO: 21.

23 THE COURT: I mean, 21 times. 21 times. I mean, at some point a voice of  
24 reason has an opportunity to take over and say, ooh, you know, she's going to die.  
25 In front of her mother. Her mother couldn't even protect her from you while her

1 father sat on the phone and listened to the horror that was transpiring.

2 And you have no hope with that girl, you understand that, right? She's  
3 divorcing you, if she hasn't divorced you already.

4 THE DEFENDANT: I heard it was final. So.

5 THE COURT: Pardon?

6 THE DEFENDANT: Our papers are already final.

7 THE COURT: Okay. All right. So you get -- you've got to move on. Okay.  
8 Do you want to say anything prior to sentencing? Because I'm telling you, I don't  
9 think anybody is making this a bigger deal. I think that what happened that day, I  
10 think that girl, I think it's a miracle that she's alive. And I think that police officer, I  
11 think he saved her life because I don't think you were going to stop.

12 THE DEFENDANT: Um.

13 THE COURT: If you're not going to stop with someone's mother there. You  
14 know. It took someone with a gun pointing --

15 THE DEFENDANT: I apologize to the situation that took place --

16 THE COURT: -- it to your head --

17 THE DEFENDANT: -- Your Honor.

18 THE COURT: -- and threaten to kill you.

19 THE DEFENDANT: I take responsibility for what happened there that day,  
20 but all the details don't add up correctly. Like police officers doing this or that or  
21 what happened --

22 THE COURT: Okay. 21 stab wounds don't lie. The doctor, she doesn't have  
23 a dog in this fight. She just happens to be the doctor on duty that the trauma patient  
24 gets brought into. And she talked -- do you remember her testimony?

25 THE DEFENDANT: I never physically had possession of that knife in the first

1 place.

2 THE COURT: Oh, for the love of all that's good in this world. So she stabbed  
3 herself 21 times.

4 THE DEFENDANT: No, we were tussling over the knife.

5 THE COURT: No, no, no, no, no, no, no, no. You can't tussle over a knife  
6 and get 21 stab wounds and you get a scratch on your finger. That's what you got.

7 THE DEFENDANT: Yeah, well, she initiated --

8 THE COURT: You did not get a stab wound, you got a scratch.

9 THE DEFENDANT: But initiated the fight is her first swinging the knife at me.

10 THE COURT: So she was swinging the knife at you?

11 THE DEFENDANT: She swung it at me which initiated a struggle and then  
12 wrestling to get the knife loose.

13 THE COURT: Okay. And everybody's a liar, everybody that saw you  
14 stabbing her.

15 THE DEFENDANT: No one saw -- no one saw anything. No testimony --

16 THE COURT: Her mother did.

17 THE DEFENDANT: She didn't see anything. Neither did the cops.

18 THE COURT: Her mother was there the whole time.

19 Okay. Do you understand that 21 stab wounds is 21 stab wounds?

20 THE DEFENDANT: I understand.

21 THE COURT: That you just sound stupid today by saying that you tussled  
22 with a knife and you came out with an itty bitty scratch? An itty bitty scratch. I'll get  
23 the picture out. Because you came out with an itty bitty scratch and she came out  
24 with 21 stab wounds and horrific scars that I saw with her sitting there with normal  
25 clothes on. Horrific scars.

1 Any wit -- I mean, you stab someone in the chest, they die -- they can  
2 die. It's a miracle that woman didn't die, 21 stab wounds. It is a miracle she didn't  
3 die. You don't get 21 stabs from tussling. So. I mean, I thought after the trial and  
4 you'd heard all the evidence that you would, you know, give up the tussling with the  
5 knife story.

6 THE DEFENDANT: Waver from what actually happened.

7 THE COURT: Okay. Even though it's impossible.

8 THE DEFENDANT: That's an opinion --

9 THE COURT: Unless she stabbed herself.

10 THE DEFENDANT: No. That's an opinion based on someone --

11 THE COURT: It's impossible based upon the facts.

12 THE DEFENDANT: -- looking from the outside in.

13 THE COURT: Okay. I sat here and listened to it every day. It's impossible  
14 based on the facts. Absolutely impossible. But.

15 Mr. Hillman.

16 MR. HILLMAN: Judge, that's been Mr. Grimes' position from when we first  
17 talked about it was that she came at him with a knife. And as I argued to the jury,  
18 they were the result of two people fighting with a knife.

19 THE COURT: And maybe she did. But 21 stab wounds isn't --

20 MR. HILLMAN: And I wasn't there. I mean, that was -- that's always been a  
21 problem, it's always been a problem with this case and --

22 THE COURT: Uh-huh.

23 MR. HILLMAN: -- Bennett and I talked about that as well.

24 The State is in fact asking for 40 to 100 years on this particular case. If  
25 Anika Grimes had died as a result of her wounds, that's pretty much the sentence



1 he would get for first-degree murder with use would be 40 years to life. That's not  
2 what happened here.

3 THE COURT: Problem is, this guy has a history of beating up on women.

4 MR. HILLMAN: She has -- she was stabbed 21 times, she went to the  
5 hospital, she had some sutures, she left the next day. And I admit, it could have  
6 been much worse than it was.

7 THE COURT: Sure.

8 MR. HILLMAN: But I'm thinking that the top end of the sentencing scheme  
9 should be saved for those who are the worst of the worst. Bennett Grimes should  
10 not have gone over to that apartment, we've talked about it. He had a temporary  
11 restraining order. But they had this before where they were on the outs, he'd gone  
12 back, they worked things out.

13 He had gotten a new job, he took the proof that he had a new job to  
14 kind of smooth the domestic relationship out, he wanted to talk to her about that. He  
15 didn't hide in the bushes and wait for them. He didn't break down the door. He  
16 pushed his way in or they gave up talking to him and stepped away and he stepped  
17 in. He didn't bring a weapon --

18 THE COURT: I agree.

19 MR. HILLMAN: -- to this. The weapon was in the apartment. And there's  
20 some dispute in Bennett's mind about how the whole thing started. Bennett  
21 Grimes -- and there was a problem with the burglary as well in that I think that that  
22 burglary while in possession of a deadly weapon confused the jury to a great extent.  
23 Hojjat spoke with the jurors afterwards and several of them said we didn't think that  
24 he went there with the intent to do anything but he got the knife after so he  
25 committed burglary with intent.

1 And I didn't cover that very well in my closing argument because I still  
2 think that the evidence shows that Bennett went over there not with the intent to  
3 commit any particular crime. And that's a real problem in this case.

4 We sent letters to Your Honor from his family, from his friends. I've  
5 spoken a lot with his family, he's got a loving family. He's a young man, he's only  
6 34 years of age. He's got two children.

7 THE COURT: Well, and I can't figure out because your wife is a lovely -- your  
8 ex-wife is a lovely woman.

9 MR. HILLMAN: The children are --

10 THE COURT: I couldn't figure it out.

11 MR. HILLMAN: -- are currently living with Bennett's parents.

12 THE COURT: But they're not -- they're another wife's children.

13 MR. HILLMAN: They're Anika's children, no.

14 THE COURT: Okay.

15 MR. HILLMAN: Bennett understands that there's nothing between him and  
16 Anika anymore. We talked about that several months ago, so that's completely over  
17 with. But these children are going to grow up without seeing Bennett as well. And  
18 that's due in large part to Bennett's own activities and his own actions and he  
19 understands that as well.

20 But what I'm going to ask you to do is to just -- if we're talking 8 to 20s,  
21 let's run them concurrent. That will put him eligible for parole at the age of 42. It will  
22 give the Department of Parole and Probation a lot of time to keep him on parole if  
23 they deem him worthy of parole. And that would be my request.

24 THE COURT: Okay. In accordance with the laws of the state of Nevada, this  
25 Court does now sentence you as follows, in addition to a \$25 administrative

1 assessment, \$150 DNA fee, order that you submit to genetic marker testing.

2 As to Count 1, the attempt murder charge, the Court is going to  
3 sentence you to a term of 8 to 20 years in the Nevada Department of Corrections,  
4 plus a consecutive term of 5 to 15 years in the Nevada Department of Corrections,  
5 based upon the factors enumerated in NRS 193.165, subsection 1.

6 As to Count 2, Count 3, the Court is going to make a determination that  
7 is just and appropriate to treat you as a habitual criminal and sentence you under  
8 the habitual criminal statute, the small habitual.

9 As to Count 2, sentence you to 8 to 20 years in the Nevada Department  
10 of Corrections to run concurrent to Count 1.

11 Count 3, 8 to 20 years in the Nevada Department of Corrections to run  
12 consecutive to Count 1 and 2.

13 How much credit does he have?

14 ~~MR. HILLMAN: Sorry, I didn't figure that out before. Looks like he has 581.~~

15 THE COURT: 581 days credit for time served.

16 I'm sorry, did anybody have victim statements? I apologize.

17 MR. HILLMAN: That was done before.

18 THE COURT: Okay. I know it was done before and I know it was done in  
19 front of Judge Barker and it was preserved, but I would absolutely allow the victims  
20 to speak today.

21 MR. BURNS: Thank you, Your Honor. But I believe only Earl, the father, was  
22 going to speak.

23 THE COURT: Okay.

24 MR. BURNS: So Anika did not plan to speak so I think everything's included  
25 in the record.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Okay. I didn't see Anika here.

Are you Anika's father?

THE DEFENDANT'S FATHER: I'm his father.

THE COURT: I'm sorry?

THE DEFENDANT'S FATHER: I'm Bennett Grimes' father.

THE COURT: Okay. I apologize. Okay. Thank you, sir.

THE DEFENDANT'S FATHER: No, that's okay, Judge.

THE COURT: Thank you.

[Proceeding concluded at 10:20 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual recording in the above-entitled case.

  
\_\_\_\_\_  
Jill Jacoby  
Court Recorder

# Notice

CASE NO.: 02781994 C276163

PLAINTIFF: STATE OF NEVADA

DEFENDANT: BENNETT GRIMES



**EXHIBIT(S): TRIAL BY JURY – 10/10/12 THROUGH 10/15/12**  
(Hearing/Trial Start Date)



**DEPOSITION(S):**  
(Date Filed or Published)



**TRANSCRIPT(S):**  
(Actual Hearing Date(s) of Transcript)

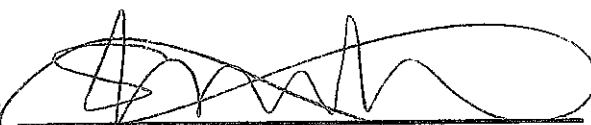


**ADMINISTRATIVE/JUDICIAL REVIEW APPEAL**  
(Record on Appeal) (Date Filed)



(Other- ie: Medical Records, Exhibits to Motion, etc.) (Date Filed)

Received By:



Susan Jovanovich, Deputy

10/16/12

Date

Released To:



Deputy

10/17/12

Date

LEE GUNTER

## FOR STORAGE:



IN THE VAULT



IN THE FILE



ON THE SHELVES



OTHER \_\_\_\_\_

(SPECIFY LOCATION)

001048

## COURT'S EXHIBITS

CASE NO. C276143

[illegible]

## JURY LIST

CASE NO C2761163  
 DEPT. NO. XII

TRIAL DATE October 10, 2012

JUDGE Michelle Leavitt  
 CLERK Susan Jovanovich

REPORTER Kerry Esparza  
 Recorder

JURY FEES

Agnes Botelho / Patrick Burns

COUNSEL FOR PLAINTIFF

Roger Hillman / Nadia Hojjat

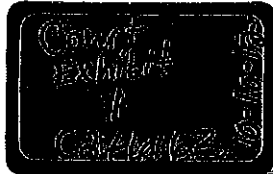
COUNSEL FOR DEFENDANT

State of Nevada

PLAINTIFF

Bennett Grimes

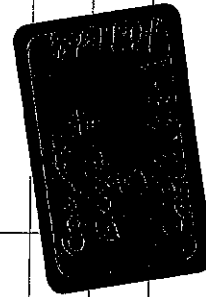
DEFENDANT



Badge No.	Name of Jurors	Plaintiff	EXCUSED		Court
			Defendant		
0001	1. Mark Whelchel (1)				
0005	2. Nick Schettino (2)				
0006	3. Phillip Allen Jennings (3)	1			
0007	4. Usa Pod (4)				
0009	5. Brandon Cruz (5)				
0011	6. Gordon Brooke (6)		1		
0016	7. Janice David (7)				
0017	8. Ruben Placido (8)				
0018	9. Michala Reinholtz (9)				
0020	10. Anthony Martino (10)				
0021	11. Karen Augspurger (11)	3			
0022	12. Jason Morgan (12)				
0023	13. Robert Conley (13)				
0045	14. Michael Andrews (14)		3		
0025	15. Brandon Keenum (15)				
0026	16. Kirk Sanford (16)				
0027	17. Karen Florence Hopkins (17)	4			
0043	18. Daniel Davenport (18)	2			
0034	19. Elizabeth Denny (19)		5		
0036	20. Vicky Woodside (20)		4		
0037	21. Peter Pryor (21)		2		
0038	22. Richard William Evans (22)				
0041	23. Brian Kuntz (23)	5			
	24				
	25				

001050

Jury #12: Clerk Sanford  
Prior to this event, any  
history of Ms. Newman  
being physically aggressive  
towards Mr. Levine?  
What about Mr. Levine's towards  
Mrs. Newman?  
If so, were police reports  
filed?



Jury 1: Mark Wheeler  
When you were on the  
ground being stabbed  
by front door. Do  
you recall if you were  
laying down or upright  
on knees?

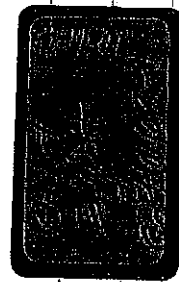




Juror #1 Mark Wheldal

#1 Was the patio door open when you returned from car shopping? If not did you or your daughter open the <sup>Patio</sup> door? If your daughter opened the <sup>Patio</sup> door did Bennett stay at the front door when she opened the ~~back~~ <sup>Patio</sup> door?

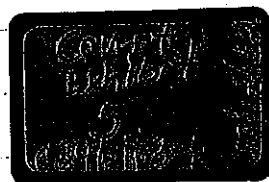
#2 Do you know if Bennett closed & locked the front door after he pushed his way in?



001052

You tested the blood  
on the shirt after  
the defendant was  
handcuffed?

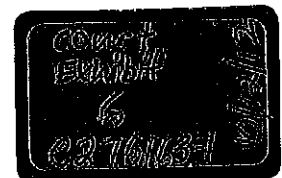
ANTHONY MARTINO  
JUROR #8



If you find that the State did not prove beyond a reasonable doubt that Bennett Grimes entered the apartment with a weapon, you must find him not guilty of Burglary with a Deadly Weapon in Violation of a Temporary Protective Order.

*Crawford v. State*, 121 P3d 582, 586

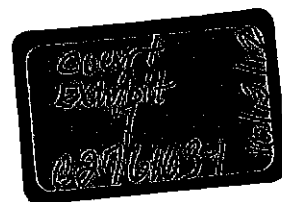
*Rejected  
Michell Bennett  
Officer 12/20/12*



INSTRUCTION NO. \_\_\_\_\_

If evidence of self-defense is present, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, you must find the defendant not guilty.

Reprinted  
Richmond Bennett  
Dallas 12, 2012.



001055

INSTRUCTION NO. \_\_\_\_\_

The right of self-defense is not available to an original aggressor.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

001056

INSTRUCTION NO. \_\_\_\_\_

If a person attempts to kill another in self-defense, it must appear that:

1. The danger was so urgent and pressing that, in order to save the person's own life, or to prevent the person from receiving great bodily harm, the attempt killing of the other was absolutely necessary; and

2. The person attempted to be killed was the assailant, or that the non-assailant had really, and in good faith, endeavored to decline any further struggle before the mortal blow was given.

001057

INSTRUCTION NO. \_\_\_\_\_

Where a person without voluntarily seeking, provoking, inviting, or willingly engaging in a difficulty of his own free will, is attacked by an assailant, he has the right to stand his ground and need not retreat when faced with the threat of deadly force.

001058

INSTRUCTION NO. \_\_\_\_\_

The use of a deadly weapon against another is justifiable and not unlawful when committed by a person in the lawful defense of himself, when he has reasonable ground to believe that he is in danger of death or great bodily injury and that there is imminent danger of such a design being accomplished

In order to justify the use of a deadly weapon in self-defense the person using the weapon, as a reasonable man, must have reason to believe and must believe that he is in imminent danger of death or of great bodily injury; and, further, the circumstances must be such that an ordinarily reasonable person, under similar circumstances, would believe that it was necessary for him to use, in his defense and to avoid imminent death or great bodily injury to himself, such force or means as might cause the death of his adversary.

A bare fear of death or great bodily injury is not sufficient to justify the use of a deadly weapon against another. To justify such use, the circumstances must be such as to excite the fears of a reasonable man placed in a similar position, and the party using the weapon must act under the influence of such fears alone and not in a spirit of revenge.

Words of abuse, insult or reproach addressed to a person, without any threat of injury or attempt to inflict injury, will not justify a battery with the use of a deadly weapon.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

INSTRUCTION NO. \_\_\_\_\_

The right of self-defense exists only as long as the real or apparent threatened danger continues to exist. When such danger ceases to appear to exist, the right to use force in self-defense ends.

001060

INSTRUCTION NO. \_\_\_\_\_

The attempt killing of another person in self-defense is justified and not unlawful when the person who does the attempt killing actually and reasonably believes:

1. That there is imminent danger that the assailant will either kill him or cause him great bodily injury; and

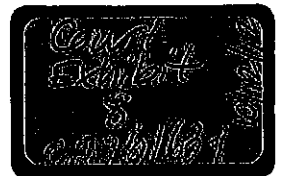
2. That it is absolutely necessary under the circumstances for him to use in self-defense force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to himself.

001061

Due to the fact that the police elected not to collect the fingerprints on the knife, you are to presume the fingerprint evidence would have shown that Bennett Grimes' fingerprints were not on the knife and that Aneka Grimes' fingerprints were on the knife.

*State v. Daniels*, 114 Nev. 261 (1998)

*Repeated  
Fingerprint Search  
October 12, 2012.*



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

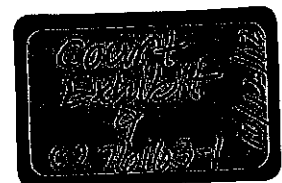
Every person charged with the commission of a crime shall be presumed innocent.

This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of each of the crimes charged.

N.R.S. §175.191

*Blake v. State*, 121 Nev. 779 (2005)

*Revised  
Preliminary Version  
October 12, 2012.*



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

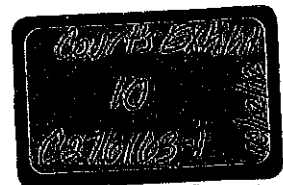
To support a conviction for attempt murder with use of a deadly weapon, the ~~District~~ <sup>State</sup>

~~Attorney~~ must prove beyond a reasonable doubt that:

(1) Mr. Grimes had the specific intent to kill Aneka Grimes and

(2) that Mr. Grimes used a deadly weapon

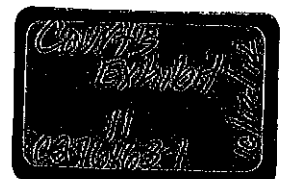
*Rejected  
Marilyn Bennett  
October 12, 2012.*



The reasonable doubt standard requires the jury to reach a subjective state of near certitude on the facts in issue.

*Holmes v. State*, 114 Nev. 1357, 972 P.2d 337 (1998); *Randolph v. State* 117 Nev. 970 (2001.)

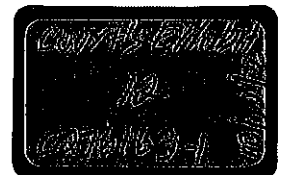
*Rejected  
Michael Asenult  
October 12, 2012.*



If the evidence permits two reasonable interpretations, one of which points to the defendant's guilt and the other to his innocence, you must adopt the interpretation that points to the defendant's innocence, and reject that interpretation that points to his guilt.

*Crane v. State*, 88 Nev. 684 (1972).

*Rejected  
Mullins (Hennett)  
O'Fallon 12, 2012*

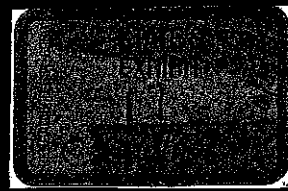


Does criminal intent  
have to be established  
before entering the structure,  
or can intent change during  
the chain of events?  
for the charge of burglary?

✓  
X

001067

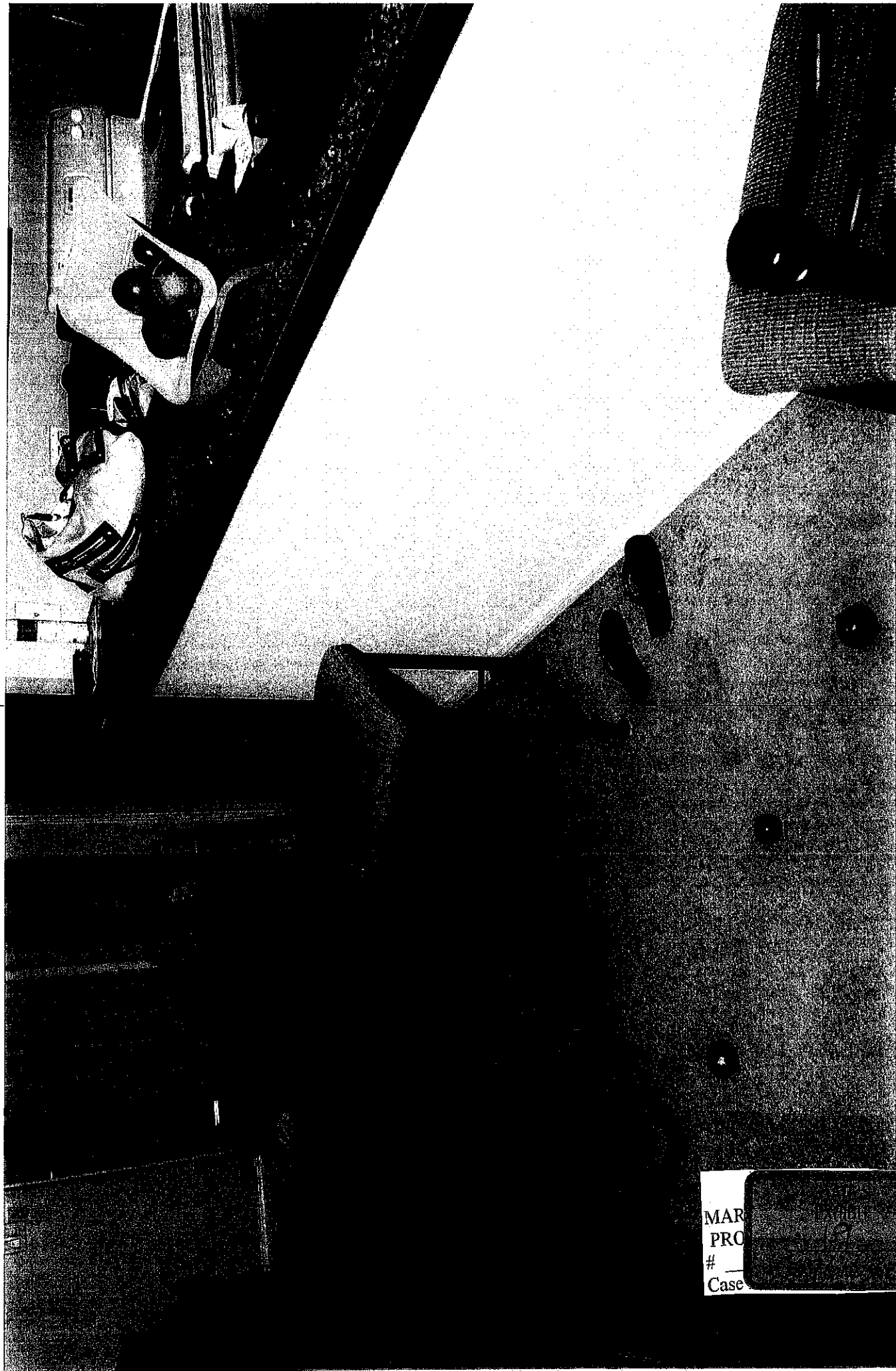




IFICATION

State's

3-1



MAR  
PRO  
#  
Case



ATION  
ate's




STANLEY'S  
STEEL  
CHINA

MARK  
ROPO

Case N

TION  
e's



MARKED FOR  
PROPOSED E  
Case No. 

MARKED FOR  
PROPOSED  
33  
Case No. C

IDENTIFICATION  
EXHIBIT State's  
6/63-1

001073

IDENTIFICATION  
BIT State's

102-1

1074



IFICATION  
State's

001075





na/ant



TIFICATION  
state's

03-1

# New Associate Schedule

New Associate's Name: McNELL C GRIMS

Hire Date: 02/18/2011

Welcome! We are glad you are here. Here is some important information to help you to get started on your new job.

Your sponsor's name is \_\_\_\_\_ Your sponsor will be able to address any questions that you may have concerning your work at Walmart.

You can always contact any member of management if you have any questions or concerns.

Facilities Manager's Name: \_\_\_\_\_ Assistant Manager's Name: \_\_\_\_\_

Here is your schedule for the next three weeks. Your locker number, combination, UserID, and your cashier ID (if applicable). After the 3rd week, your name and work schedule will be on the posted weekly schedule.

1 <sup>st</sup> Week	Sat	Sun	Mon	Tue	Wed	Thu	Fri
Date:				19	20	21	22
Shift Start:				2	3	3	3
Shift End:							
2 <sup>nd</sup> Week	Sat	Sun	Mon	Tue	Wed	Thu	Fri
Date:						27	28
Shift Start:							
Shift End:							
3 <sup>rd</sup> Week	Sat	Sun	Mon	Tue	Wed	Thu	Fri
Date:							
Shift Start:							
Shift End:							

Pay periods are bi-weekly, ending every other Friday. Paydays are on Thursday, following the end of the pay period, except where required to be different by state law, or when affected by a holiday. You can expect your first paycheck on: \_\_\_\_\_

Locker # \_\_\_\_\_ Combination: \_\_\_\_\_ UserID \_\_\_\_\_ Cashier ID \_\_\_\_\_

Last Updated: March 23, 2006

All Material Walmart Stores Inc. Confidential. © 2003.

IFICATION  
State's  
23-1

XXI

1

PT

Ca

ICATION

State's

0210103-1

078

[Las Vegas Metropolitan Police Department]

EV# 1107223412

11052694 <sup>3</sup> ITEM



LAS VEGAS

005223 BLACK HANDLED STEAK KNIFE STAINLESS  
STEEL CHINA 9.75" LONG WITH 5.5" LONG  
SUBOFF BLADE WITH APPARENT BLOOD AND

LABORATORY

11-16-11

Date Prepared 07-22-11 Time Prepared 1936 Event# 110722-3412

<input type="checkbox"/> Recovered	<input checked="" type="checkbox"/> Evidence	<input type="checkbox"/> Found	<input checked="" type="checkbox"/> Felony <input type="checkbox"/> Gross <input type="checkbox"/> Misd.
<input type="checkbox"/> Safekeeping	<input type="checkbox"/> Seizure	<input type="checkbox"/> Other	

Suspect

Charge ATTEMPT HOMICIDE/ DOMESTIC VIOLENCE

Location 9325 W. DESERT INN RD. #4-173

Impounding Officer's  
Initials/P#

L5223R

Signature *[Signature]*

ITEM	IMPOUNDED ITEM DESCRIPTION
# 4	ONE (1) BLACK HANDLED STEAK KNIFE "STAINLESS STEEL
#	CHINA" 9.75" LONG WITH 5.5" LONG BLADE WITH
#	APPARENT BLOOD AND VISIBLE PRINTS ON THE BLADE
#	
#	
#	
#	
#	

CO-DEFENDENT ▼

This Package # 5223-3

Total # of Packages 4

CHAIN OF CUSTODY SIGNATURE AND P# ▼

DATE

TIME

*Julie M. Mantelmer* #8806-2 11-16-11

LVMPD 133 (REV.8-97)

MAR  
PRO  
#  
Case

ATION

001079

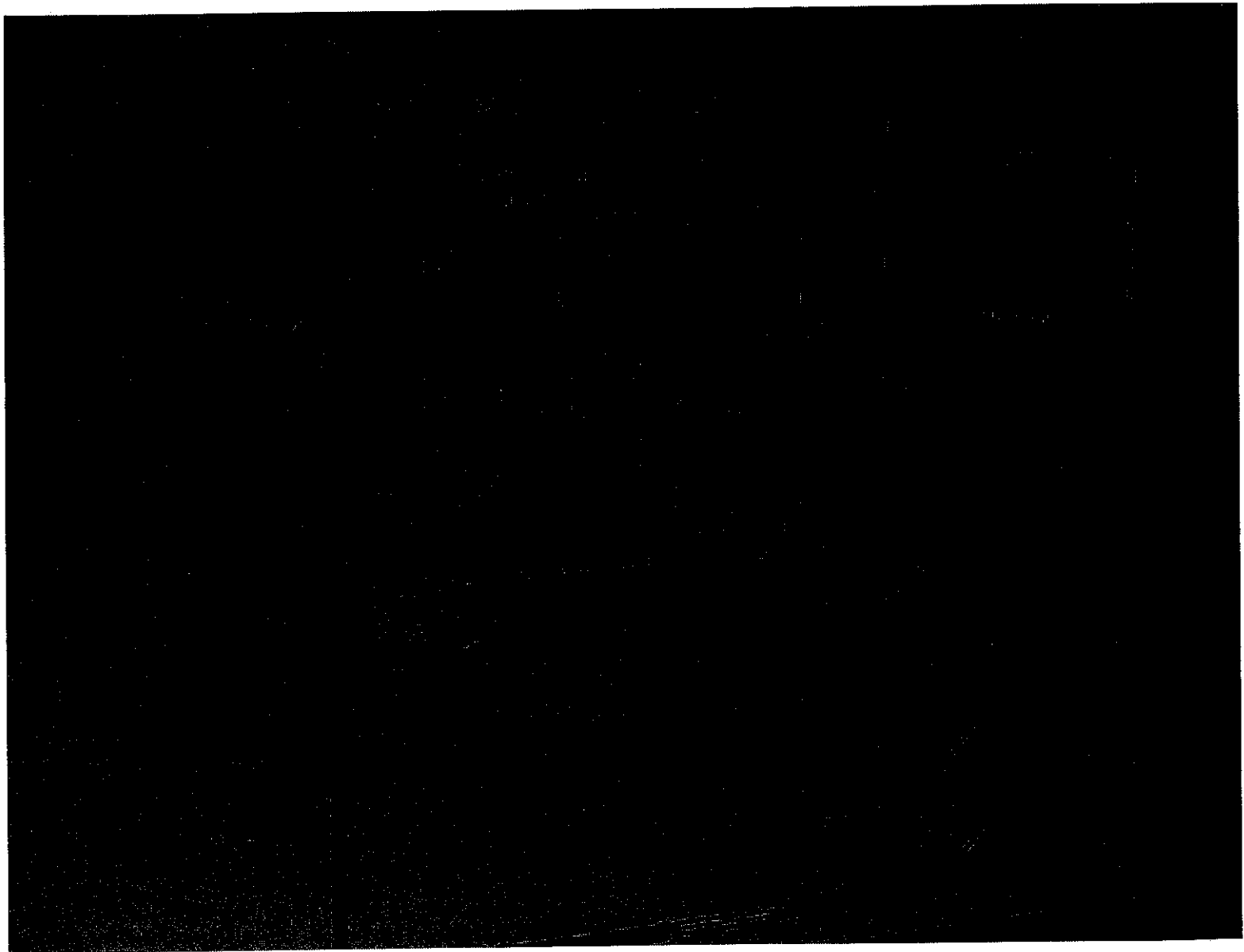
11.0

001080

## DEFT'S EXHIBITS

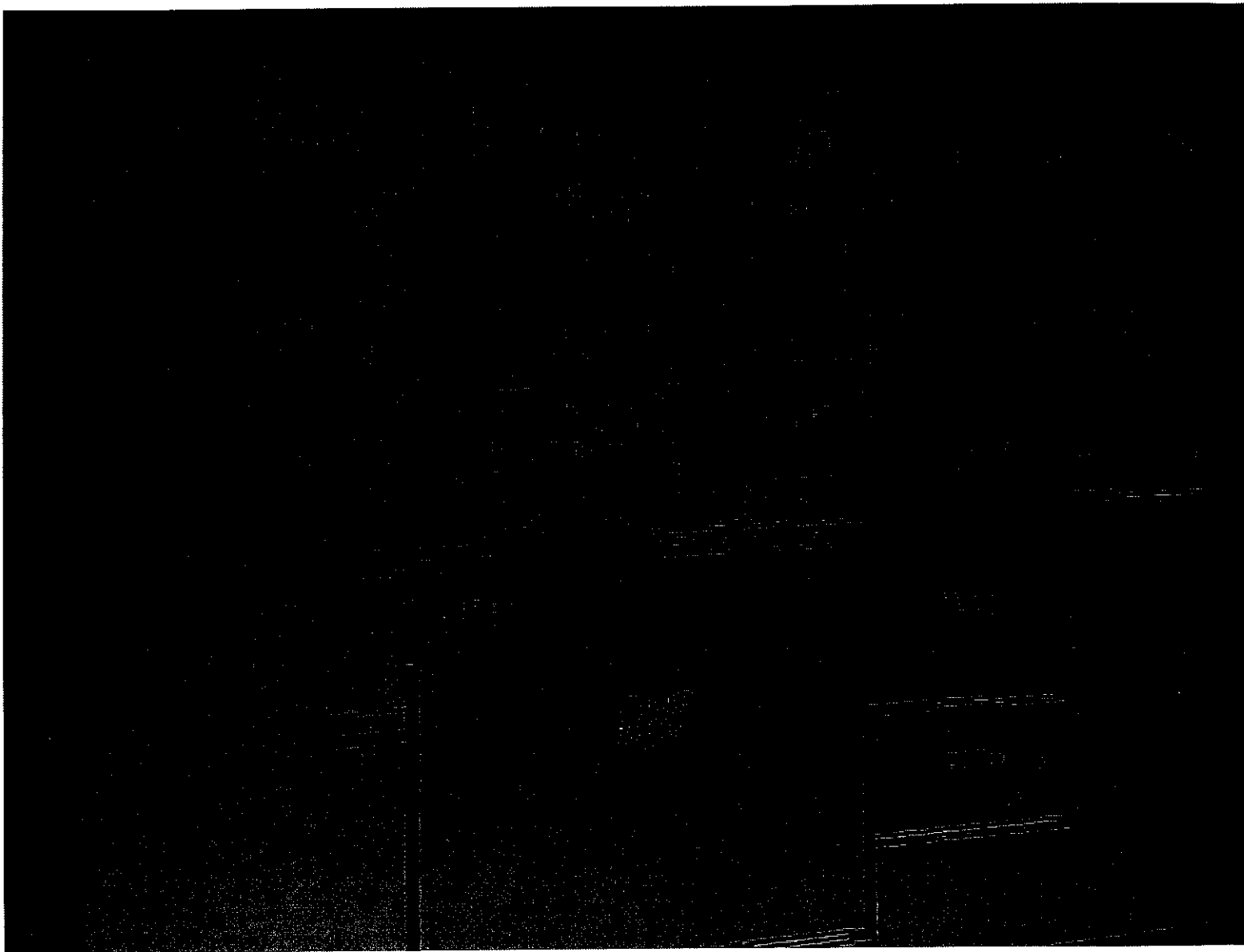
CASE NO. C276163-1

[illegible]



DEF Ex A

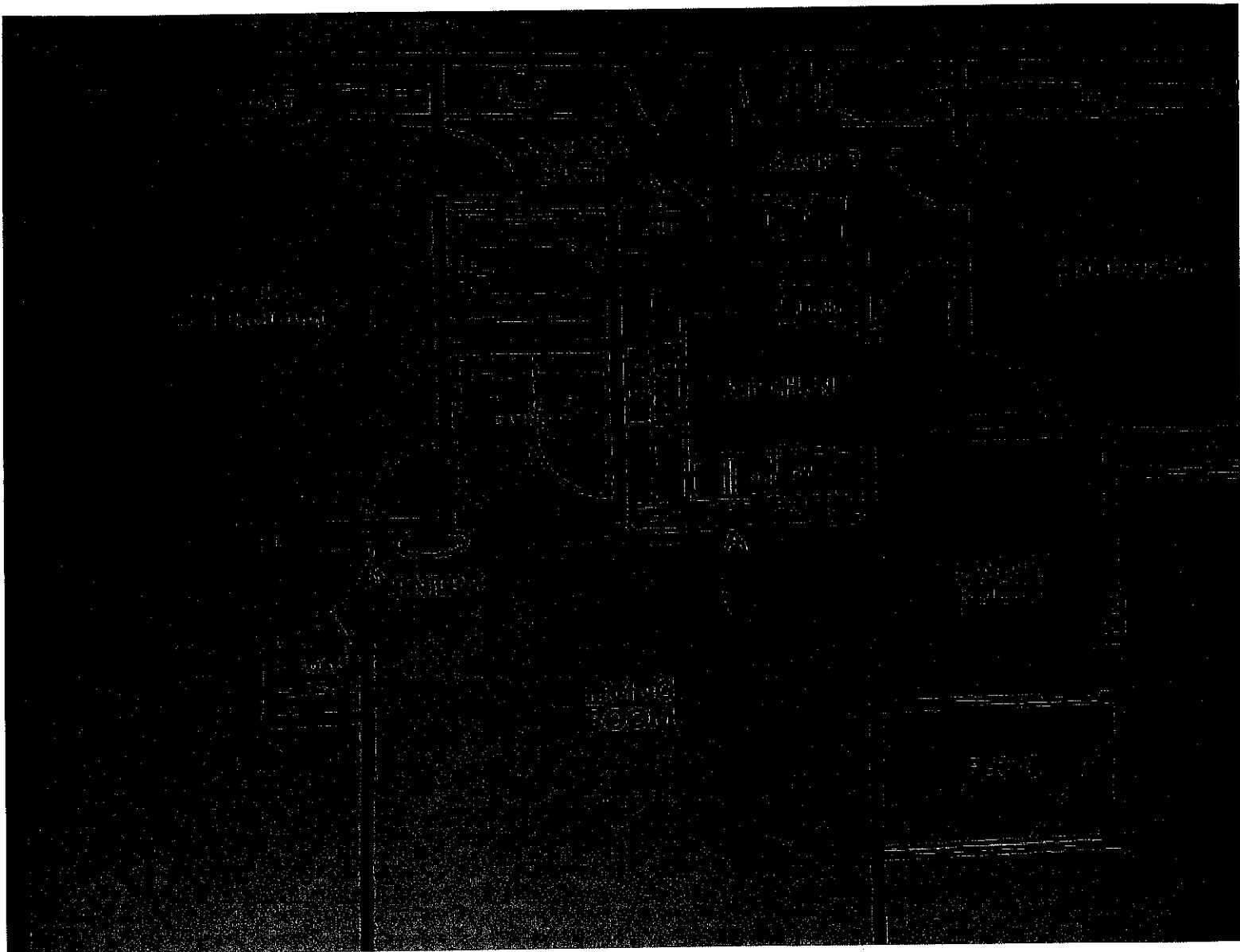
001082



DEF EX B

001083



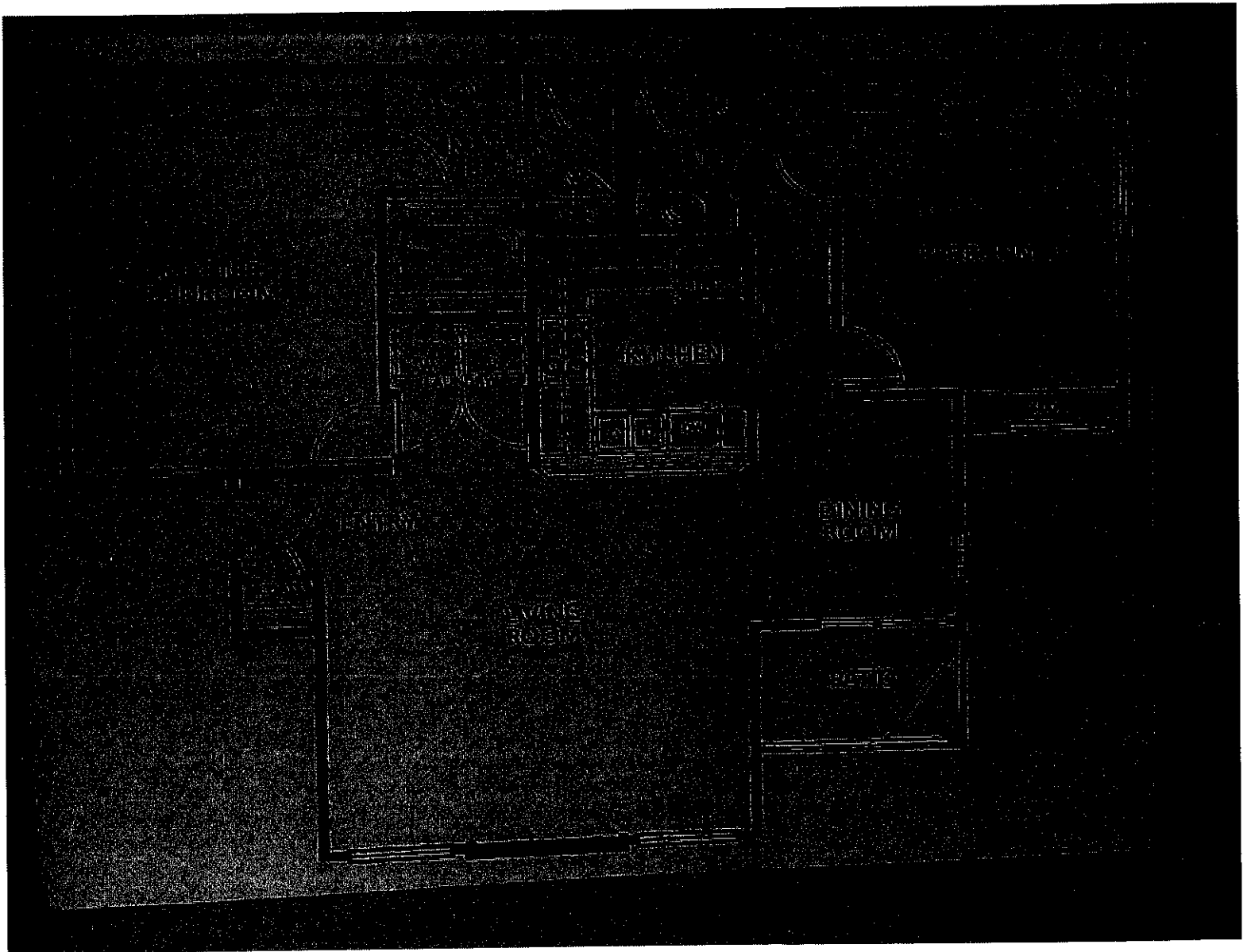


DEF Ex C

001084

DEF Ex D

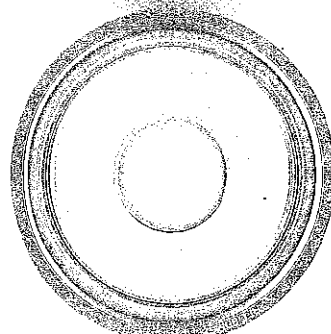
001085



PROPOSED DEF E x E

001086

276163



COPY OF STATE'S  
EX 79

pg #  
1087

Copy  
of  
Exhibit  
of  
States

C276163

BENNETT GRIMES, ) No. 62835  
)  
Appellant, )  
)  
vi. )  
)  
THE STATE OF NEVADA, )  
)  
Respondent. )

**PHILIP J. KOHN**  
Clark County Public Defender  
309 South Third Street  
Las Vegas, Nevada 89155-2610  
Attorney for Appellant

STEVE WOLFSON  
Clark County District Attorney  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89155

**CATHERINE CORTEZ MASTO**  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(702) 687-3538

### Counsel for Respondent

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 19<sup>th</sup> day of Aug, 2013. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO  
STEVEN S. OWENS

HOWARD S. BROOKS  
DEBORAH L. WESTBROOK

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

BENNETT GRIMES  
NDOC # 1098810  
c/o HIGH DESERT STATE PRISON  
P.O. Box 650  
Indian Springs, NV 89070

BY [Signature]  
Employee, Clark County Public Defender's Office