

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASE NO. 65193

MICHAEL J. SCHOFIELD,

Appellant,

vs.

STATE OF NEVADA,

Respondent.

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APPEAL

From the Eighth Judicial District Court, Clark County
District Court Case No. C-13-287009-1

APPELLANT'S APPENDIX – VOLUME III

Karen K. Wong
(NV Bar No. 13284)

Wong Appellate Law
9484 S. Eastern Ave., #408
Las Vegas, NV 89012
(702) 830-6080

Attorney for Defendant

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1 Q Did you try to make sounds?

2 A Yeah.

3 Q And what happened when you tried to do that?

4 A It would hurt.

5 Q Okay. Did anything come out, any sounds come out?

6 A Wheezing.

7 Q To your knowledge, did Scott see you? In other
8 words, did you see him see you?

9 A No.

10 Q Did you try to get Scott's attention any other way?

11 A I was going to throw a rock at him.

12 Q Did you actually pick up a rock?

13 A Yes.

14 Q And where would the rock have been that you picked
15 up?

16 A It's not in the picture, but it was in the middle of
17 the street.

18 Q Okay. There was just a rock in the middle of the
19 street?

20 A Yeah.

21 Q Okay. Were you able to throw that rock at Scott?

22 A No.

23 Q Why not?

24 A My dad stopped me from being able to throw it.

25 Q And how did your dad stop you? Did he catch up to

1 you?

2 A Yeah.

3 Q What did he do when he caught up to you?

4 A He grabbed my arm.

5 Q And after he grabbed your arm, what did he do?

6 A He started dragging me along with my arm, pulling me
7 -- pulling me along, sorry.

8 Q Do you remember what he was saying to you at that
9 point?

10 A "Come on, let's go."

11 Q And you weren't able to say anything back?

12 A No.

13 Q Were you struggling against him at that point?

14 A No.

15 Q So you no longer were trying to break free from him?

16 A Right.

17 Q So he pulled you or dragged you towards his car?

18 A Yes.

19 Q And what happened when you reached the van?

20 A He threw me into the car.

21 Q What part of the car?

22 A The passenger seat.

23 Q Was the car pulled in -- was it backed in or pulled
24 forward, straight in?

25 A Pulled forward straight in.

1 Q So he pulled -- he put you in what portion of the
2 car?

3 A Passenger seat.

4 Q The front passenger seat?

5 A Yes.

6 Q And so that would be to the right of -- if we're
7 facing and the car was parked to the right? The door would
8 be to the right?

9 A Yes.

10 Q Okay. Did he open -- was the door already opened or
11 did he open it while he was dragging you?

12 A He opened it while he was dragging me.

13 Q How did he throw you into the car?

14 A He still had a hold of my arm, and then he grabbed
15 the back of my shirt and threw me into the car and like --

16 Q When he threw you into the car, did you go in
17 sideways, front ways or back ways?

18 A Front ways.

19 Q You went in front ways?

20 A Yes.

21 Q So was your chest laying on the seat?

22 A Yes.

23 Q When your chest laying on the seat, where are your
24 legs?

25 A Outside of the car.

1 Q What is happening now in regards to your dad and
2 your legs and you?

3 A He was going to close the door, but I turned around
4 and kept opening the door with my legs.

5 Q So you turned around. Explain to the ladies and
6 gentlemen of the jury what you mean by that.

7 A I got on my back instead of staying on my chest.

8 Q So you rolled over?

9 A Yes, rolled over.

10 Q And then were you facing the -- facing the passenger
11 side door?

12 A Yes.

13 Q What are you doing with your legs?

14 A I'm pushing the door open.

15 Q Or your feet? So are you pushing it open as he's
16 trying to close it or are you just holding it open?

17 A He's trying to close it, and I keep pushing it out,
18 pushing it out.

19 Q How many times would you say he tried to close it
20 and you kept kicking it open?

21 A Ten times.

22 Q And what's going on with your legs at that point?

23 A They were getting tired.

24 Q They were getting tired?

25 A Yeah.

1 Q At any point, did he try to close the door on your
2 legs?

3 A No.

4 Q What happens next?

5 A My next door neighbors, Won and Lisa, tackle him to
6 the ground.

7 Q Okay.

8 A Or pull him away from the car.

9 Q Did you see them tackle him to the ground or did you
10 see him pull him away from the car?

11 A I saw them get him away from the car. I never saw
12 them actually tackle him to the ground or anything.

13 Q At any point, did you see your dad on the ground?

14 A When I got back inside the house.

15 Q You saw him on the ground?

16 A Yes.

17 Q Okay. When you are trying to kick the door and keep
18 him from closing the door, presumably that's because you
19 don't want him to get in the car and drive off with you?

20 A Yes.

21 Q Where are your grandparents; do you know?

22 A I have no idea.

23 Q So it's fair to say you're just focusing on what
24 you're focusing on?

25 A Yeah.

1 Q So Won and Lisa, do you know how they came to get
2 involved?

3 A I guess, they heard all the struggling and
4 everything, and so she came outside to see what was going on
5 and --

6 Q Do you remember at that point whether or not you
7 were screaming, you were able to scream or not?

8 A No.

9 Q You don't remember or you weren't able to scream?

10 A I wasn't able to scream.

11 Q All right. So if they're hearing struggling, who's
12 making noise?

13 A Dad.

14 Q Okay. And what he's saying?

15 A He wasn't saying anything, he was just making
16 struggle noises like (indicating).

17 Q But you're not aware whether or not your
18 grandparents were making any noise as well?

19 A I have no idea.

20 Q Okay.

21 THE COURT: Counsel, can you come on up for just a
22 second.

23 MS. LAVELL: Sure.

24 (Bench conference began)

25 THE COURT: How much more do you have on direct?

1 MS. LAVELL: Not a lot.

2 THE COURT: I mean, how long do you expect your
3 cross to be?

4 MR. PARRIS: And Jess is going to handle this
5 witness.

6 THE COURT: Oh.

7 MR. MATSUDA: It depends on how much (inaudible)

8 MR. MATSUDA: Depends on (indiscernible).

9 MS. LAVELL: Not a lot.

10 MR. MATSUDA: (Indiscernible).

11 THE COURT RECORDER: I can't hear you, Mr. Matsuda.

12 MS. MATSUDA: Jess Matsuda. I don't know, probably
13 about 30 minutes, maybe, give or take.

14 THE COURT: Okay. So what I'm thinking is we'll
15 finish direct, then, and then we'll take our lunch break.
16 We'll deal with the redactions at the front end of the lunch
17 break and then we can get cross and the next witness after
18 the lunch break. Okay, thanks.

19 (Bench conference concluded)

20 THE COURT: Okay, you can proceed, Counsel.

21 BY MS. LAVELL:

22 Q Okay. So your neighbors pulled the Defendant off of
23 you. And once he was off of you, what were you able to do?

24 A Get out of the car and run back inside.

25 Q Did anybody tell you to run back inside?

1 A No.

2 Q You don't remember --

3 A I don't remember.

4 Q You don't remember if one of your neighbors told you
5 to run inside or whether it was --

6 A I didn't really hear anyone.

7 Q Okay. You weren't hearing anything?

8 A I was --

9 Q You were -- okay.

10 A -- tunnel vision.

11 Q Understood. So once you get inside, what happens?

12 A I started having a panic attack.

13 Q And can you describe that?

14 A I was trying to grasp for air, trying to breathe,
15 and -- but I was also squirming out everywhere. I was on the
16 ground like crying and breathing really heavily.

17 Q Okay.

18 A Trying to breathe, at least.

19 Q Trying to breathe? Did you have any sensations,
20 physical sensations, that you believe are a result of your
21 father choking you, even after you were in the house?

22 A Can you repeat that, please?

23 Q Did you have any physical -- could you feel anything
24 physically, beyond your crying and grasping for breath and
25 all of that in regards to your throat, even after dad let go

1 of your throat?

2 A It felt like my windpipe was getting crushed the
3 more I moved.

4 Q So even after you were in the house, you were still
5 feeling as though it was being crushed?

6 A Yes.

7 Q Approximately, how long do you think it took, once
8 you got in the house, to start breathing normally?

9 A Seven to eight minutes.

10 Q Okay. I'm going to jump ahead a little bit, but at
11 some point did you fill out a witness statement?

12 A Yes.

13 Q When you met with that officer and filled out that
14 witness statement, had you already kind of caught your breath
15 and you were able to function at that point?

16 A Yes.

17 Q When you ran into the house and you were crying and
18 trying to catch your breath and having what you referred to
19 as a panic attack, do you know where your grandparents were?

20 A They were outside.

21 Q At some point, did they come in?

22 A Yes.

23 Q At some point, did medical respond?

24 A Yes.

25 Q And who was that? Was it the paramedics?

1 A Yeah.

2 Q Okay. And what did they do?

3 A They -- just to see how my breathing was, making
4 sure that my heart was okay.

5 Q Did they say --

6 THE COURT: I'm sorry, I couldn't hear what you
7 said.

8 THE WITNESS: Just to make sure my heart was okay,
9 I guess.

10 BY MS. LAVELL:

11 Q So they took your blood pressure?

12 A Yeah.

13 Q And monitored your breathing?

14 A Yes.

15 Q Did they decide that you should go to the hospital?

16 A No.

17 Q What did they tell you?

18 A To calm down, relax and catch my breath.

19 Q Did they explain why you couldn't catch your breath?

20 A No.

21 Q Did they wait until you caught your breath before
22 they left the scene?

23 A No.

24 Q At some point, did you speak to police officers?

25 A Yes.

1 Q And did you share with them what you're sharing with
2 the ladies and gentlemen of the jury?

3 A Yes.

4 Q And you also wrote a statement?

5 A Yes.

6 Q Okay. Is it fair to say that your statement that
7 you wrote isn't as detailed as us talking about this?

8 A Yes.

9 Q Did any of the police officers take photos of your
10 injuries when they responded?

11 A Yes.

12 Q Or let me ask you this; were there any injuries
13 beyond what you described already in terms of how you felt
14 and what you saw in the mirror, those might be symptoms.
15 Were there any physical injuries as a result of your dad
16 strangling you?

17 A Bruises, and bruises on my neck.

18 Q I'm showing you State's Exhibit 1. What's this a
19 picture -- or who's this a picture of?

20 A Me.

21 Q This is State's Exhibit 2. What part of your body
22 are we looking at?

23 A My neck, my throat.

24 Q Okay. And right actually, along the middle of your
25 neck from under your chin down to just above the V, what are

1 we looking at there, in the V of the shirt?

2 A My throat.

3 Q Do you see any injury depicted in that picture?

4 A Oh, yes. Bruises.

5 Q Did you have that injury before your father put you
6 in a strangle hold or a choke hold?

7 A No.

8 Q Okay, and this is State's Exhibit 3. Is this the
9 same injury from a different angle?

10 A Yes.

11 Q When you ran into the house after your neighbors
12 were able to get your father off of you, did you notice
13 anything about your eyesight?

14 A I saw black, like it was black.

15 Q What do you mean by that?

16 A It looked like I was going to pass out again, but
17 I --

18 Q How long, if you know -- and time may have gone
19 really slow or really fast given the circumstances -- but do
20 you have an estimate of how long from when your father
21 grabbed you in the house and started choking you, to when the
22 neighbors got your father off of you? Do you know how long
23 that period of time was?

24 A I do not remember.

25 Q Okay. Has your father spoken to you since this

1 happened?

2 A Yes.

3 Q And is that in person or by phone?

4 A Phone.

5 Q How many times would you say he's contacted you
6 since this happened?

7 A Every day.

8 Q Every day since he was arrested for this?

9 A A week after he got arrested, he didn't call, but
10 since that week it happened, he would call basically every
11 day.

12 Q And did you want to speak to your father when he
13 first called?

14 A The first week I didn't really want to talk to
15 him --

16 Q Okay.

17 A -- after this, but after that week, I was going to
18 talk to him.

19 Q Did your father -- strike that.

20 MS. LAVELL: Court's indulgence. Court's
21 indulgence.

22 THE COURT: Uh-huh.

23 BY MS. LAVELL:

24 Q This occurred approximately a year ago, right?

25 A Yes.

1 Q Okay. How tall are you now?

2 A Five, nine.

3 Q How tall were you at the time?

4 A Five, five; five, six.

5 Q About five, five; five, six?

6 MS. LAVELL: Pass the witness.

7 THE COURT: Okay. All right, folks we're going to
8 go ahead and take our lunch break. Since we got started so
9 late, I want to get some evidence before we took our lunch
10 break today.

11 So, I think what we're going to do is go ahead and
12 break until 2:00 o'clock and then we'll pick up with the
13 evidence. During this recess, you're admonished not to talk
14 or converse among yourselves or with anyone else on any
15 subject connected with this trial or to read watch or listen
16 to any report of or commentary on the trial or any person
17 connected with this trial by any medium of information,
18 including without limitation, newspapers, television, the
19 Internet or radio. Or to form or express any opinion on any
20 subject connected with this trial until the case is finally
21 submitted to you.

22 Jurors are excused. Counsel stay.

23 THE MARSHAL: Please rise.

24 (Outside the presence of the jury)

25 THE MARSHAL: Please be seated.

1 THE COURT: All right, the jurors have left the
2 courtroom. Okay. Are you prepared to talk about the
3 redactions, then?

4 MS. LAVELL: I am, Your Honor, but I'd ask to clear
5 the courtroom.

6 THE MARSHAL: Sir, if you could, wait outside in
7 the hallway for me.

8 THE COURT: For what --

9 MS. PARRIS: For what purpose --

10 THE COURT: Yeah.

11 MS. PARRIS: -- out of curiosity?

12 MS. LAVELL: Well, I'd also like to clear the
13 courtroom to make that record or we could approach the bench.

14 THE COURT: Okay. All right. Thanks, if you'd
15 stay outside for a moment.

16 MS. PARRIS: Okay.

17 THE DEFENDANT: Does that mean he can stay inside
18 here?

19 THE COURT: Okay.

20 MS. PARRIS: I don't know yet.

21 THE COURT: I don't know either. Courtroom's
22 cleared. What's going on?

23 MS. LAVELL: Well, there's a lot in the jail calls
24 that my witnesses may not be admitting to on the stand --

25 THE COURT: Uh-huh.

1 MS. LAVELL: -- and there is -- you know, the
2 brother's very involved in terms of having spoken to the
3 Defendant, you know, and back and forth delivering messages
4 and stuff. And I -- you know, I know that he was admonished
5 not to talk to the witnesses. He's -- you know, he's on two
6 of the calls. I just -- just for an abundance of caution, if
7 Your Honor is inclined to allow him to come back in, that's
8 fine. I mean, I don't know him, and I have no reason to
9 doubt that he'll adhere to Your Honor's request, but
10 everybody is breaking for lunch now, and --

11 THE COURT: Well, he -- I mean, we're in open
12 court. I mean, he can be present if he wants to be.

13 MS. LAVELL: Okay.

14 THE COURT: He can certainly be able to be present
15 when it's actually presented, but so he can come back in if
16 he wants to. We're discussing evidentiary matters. It's up
17 to him.

18 MS. LAVELL: Okay. That's fine.

19 THE COURT: And, you know, obviously, he's been
20 admonished, so I will not be happy if he violates court
21 orders.

22 MS. LAVELL: Right. Nor would I.

23 THE COURT: Okay. So let's talk about what the
24 issues are with the redactions.

25 MS. LAVELL: Well, there are a few issues, and I

1 guess, since -- I will say that one of the issues was talking
2 about, again, the sentencing. And even though it's the
3 State's position that this isn't anything -- I mean, it's not
4 even correct that it's -- you know, it is --

5 THE COURT: Okay. You've redacted it. You agreed.
6 Move on.

7 MS. LAVELL: Okay. Okay. All right, sorry. The
8 other thing is that -- and I guess I'll let Counsel, since
9 he's the one that's --

10 MR. PARRIS: I'm happy to. I mean, we did discuss
11 it with -- after court yesterday, we did go back to Ms.
12 Lavell's office, and the four of us, the four attorneys, did
13 listen to the redacted calls. We did agree on some
14 redactions, and it's my understanding that they will be made.

15 However, quite candidly, I had objections to the --
16 for all four -- to all four phone calls for various and
17 sundry reasons, and unfortunately, I think the only way to
18 really resolve it, and I hate to do this to Your Honor, is to
19 have Your Honor listen to the phone calls. Clearly, they're
20 hearsay statements.

21 Now, we were going back and forth regarding --

22 THE COURT: Your client's statements are not
23 hearsay by definition.

24 MR. PARRIS: I agree. But there are hearsay
25 aspects to many of the other statements that are being made

1 in here that really --

2 THE COURT: By others?

3 MR. PARRIS: By other individuals, such as Robert,
4 who was in here earlier, and/or his mother --

5 THE COURT: Okay.

6 MR. PARRIS: -- who very well may take the stand.

7 THE COURT: Uh-huh.

8 MR. PARRIS: In discussing the situation with
9 opposing counsel --

10 MS. LAVELL: You forgot my name.

11 MR. PARRIS: -- there -- well, I didn't -- it was
12 both of you, and I don't recall if she's Thomas or Anthony
13 anymore. I apologize.

14 THE COURT: Yes, I made that mistake yesterday.

15 MR. PARRIS: I know I will --

16 MS. ANTHONY: I'm Anthony. I'm Anthony.

17 THE COURT: I know. Just got to --

18 MR. PARRIS: Yeah, but you --

19 MS. ANTHONY: I'll answer to Thomas, though, so
20 it's okay.

21 THE COURT: Okay want.

22 MR. PARRIS: So, but, we were going back and forth
23 regarding what exceptions there may be to allow in this
24 testimony, certain aspects of the recordings, and we've
25 essentially agreed to disagree.

1 THE COURT: How long are they?

2 MR. PARRIS: There's four phone calls. The actual
3 substance of the phone calls probably 15, 20 minutes total
4 for all four.

5 MS. LAVELL: Your Honor, with respect, I think it's
6 going to be more productive if we make you aware of what the
7 issues are and what the relevant exception is rather than
8 have -- you know, one of the issues is that the Defendant on
9 two phone calls is trying to convince his mother and convince
10 his father through his mother not to testify in court, and
11 Counsel doesn't believe that that is admissible. He says
12 it's a bad act. It is not. It's consciousness of guilt. I
13 have case law here for all of you, and I'll provide that to
14 you, and I'm providing counsel with the case law and I'm
15 providing Your Honor with the case law as well.

16 If I could just briefly make a record in regards to
17 that. And I'm going to read it, Your Honor. And just
18 basically, the Nevada Supreme Court has consistently held
19 that evidence of guilt or consciousness of guilt --

20 THE COURT: Hey, she's talking. We're in open
21 court.

22 THE DEFENDANT: Excuse me.

23 MS. LAVELL: That consciousness of guilt or excuse
24 me, sorry. I'm just going to read it, Your Honor.

25 THE COURT: Which case are you looking at?

1 MS. LAVELL: Well, it's Adams vs. State, Honeycutt
2 vs. State, and Evans vs. State. And basically, in these
3 three cases -- and I've provided both counsel and Your Honor
4 with copies of those cases -- the Supreme Court has
5 consistently held that statements of a defendant, which
6 evidence of consciousness of guilt or are inconsistent with
7 innocence are admissible against the defendant. And that's
8 exactly what these are. These are consciousness of -- this
9 is evidence of consciousness of guilt.

10 He doesn't want his parents coming into court to
11 testify against him. In Evans, Nevada Supreme Court held
12 that an analysis under NRS 48.045 was not even necessary for
13 admission of this type of testimony.

14 So I know -- Counsel indicated to us yesterday in
15 speaking that we had --

16 THE COURT: What kind of testimony was at issue in
17 those cases?

18 MS. LAVELL: You know what, Your Honor, this was
19 like really quick this morning.

20 MS. ANTHONY: Which one is it? Is it Adam?

21 MS. LAVELL: That's Adams. No, Evans.

22 THE COURT: Okay.

23 MS. LAVELL: Evans.

24 MS. ANTHONY: I don't have that one.

25 MR. PARRIS: Adams or Abram? I have Abram. I

1 don't have an Adams.

2 MS. LAVELL: Do you have three?

3 MR. PARRIS: Yes. I have Honeycutt, Evans and
4 Abram.

5 MS. LAVELL: She said Adams, I said Evans. It's
6 Adams.

7 MR. PARRIS: Okay. Evans, I --

8 MS. LAVELL: Evans, yeah.

9 MR. PARRIS: Evans. Okay. Where in Evans are we
10 referring to? Because again, quite candidly, our position
11 and one aspect of our -- the reasons we don't want that in is
12 ostensibly, he's dissuading a witness. Whether that's
13 consciousness or guilt or not -- of guilt or not is somewhat
14 of a side note simply because that's a prior uncharged bad
15 act.

16 MS. LAVELL: Page 628, Your Honor.

17 MR. PARRIS: If they wanted to get in uncharged bad
18 acts, they certainly could have filed an appropriate motion,
19 we could have had a Petrocelli hearing and we could have made
20 a determination, but that did not occur.

21 MS. LAVELL: A Petrocelli hearing, Your Honor, as
22 you know, is necessary in order to determine whether there's
23 probable cause to introduce the bad acts at trial. Here it's
24 the Defendant's own statements. So we don't need a
25 Petrocelli hearing to determine that there's probable cause

1 that the Defendant said these things.

2 Then it's an analysis of whether it's more
3 probative than prejudice, and clearly, it is more probative
4 than substantially prejudicial. In addition to that, the
5 cases that I gave you are very clear that these statements
6 come in. So --

7 MS. ANTHONY: And I can just give some context. In
8 the --

9 THE COURT: Okay, so -- hold on.

10 MS. LAVELL: She read it. I gave her the cite.

11 THE COURT: In the Evans case, evidence that after a
12 crime, a defendant threatened a witness with violence --
13 that's what happened here -- is directly -- "here" being in
14 the case.

15 MR. PARRIS: In Evans, yes.

16 THE COURT: Yes. In the Evans case, is directly
17 relevant to the question of guilt; therefore, evidence of
18 such a threat is neither irrelevant character evidence nor
19 evidence of collateral acts requiring a hearing before its
20 admission.

21 MR. PARRIS: And we have no threats in this case.

22 THE COURT: No, I understand that.

23 MR. PARRIS: In the Schofield matter.

24 THE COURT: Yes. In the --

25 MR. PARRIS: Differentiate the two.

1 THE COURT: -- case before the Court at the moment
2 there are not threats; but okay. But if a threat of another
3 person isn't another bad act that requires a Petrocelli
4 hearing then how is talking to them about not testifying such
5 a bad act that requires a hearing?

6 MR. PARRIS: Well, there's -- I believe -- and
7 again, I've been skimming Evans for the last 30 seconds
8 while --

9 THE COURT: Got it.

10 MR. PARRIS: -- we've all been talking as well.

11 THE COURT: Uh-huh.

12 MR. PARRIS: But to differentiate them, Evans
13 appears to say that -- it references witness intimidation,
14 which it sounds like it just rises to a higher standard,
15 therefore, there is no need for such a Petrocelli hearing
16 regarding that ostensible prior bad act.

17 THE COURT: Say that again.

18 MR. PARRIS: It seems to be more egregious, I
19 think, is what they are saying here. It is more egregious.
20 And because it is such an egregious act, there's no need to
21 go through the analysis. However, here, we have a simple
22 dissuading of a witness. We don't have any threats, but
23 dissuading the witness in and of itself still can be an
24 uncharged bad act.

25 It is not sufficient evidence of guilt simply

1 saying, please don't -- words to the effect of, please don't
2 come, or Norm doesn't have to come. Again, I'm paraphrasing,
3 but words to that effect is -- that's essentially what was on
4 the recordings.

5 MS. LAVELL: And the State would absolutely dispute
6 Counsel's representation of how that was said. But in any
7 case, all three of these cases stand for the proposition that
8 consciousness of guilt is admissible.

9 MR. PARRIS: But again, that's not consciousness of
10 guilt. That's saying --

11 MS. LAVELL: He's telling the --

12 MR. PARRIS: -- he doesn't need to come. He
13 doesn't need to show up or you -- witness X does not need to
14 show up, why is witness X going? That's it. That's not
15 necessarily a consciousness of guilt, per se, and --

16 THE COURT: And it's not even a bad act.

17 MR. PARRIS: Well, if it's not a bad act, then we
18 don't need to do a Petrocelli, but if it's not -- but if it's
19 also not consciousness of guilt, it doesn't come in.

20 MS. LAVELL: Well, it does.

21 MR. PARRIS: So which one is it? It's
22 consciousness of guilt, but it's not a bad act. That's the
23 way the State wants it to be referenced before this Court so
24 it sneaks in under no analysis.

25 MS. LAVELL: The State indicated that it is

1 consciousness of guilt. But if Your Honor determines that
2 it's not, and it's not --

3 THE COURT: Well, I didn't say it's not.

4 MS. LAVELL: Well, no, no, I'm saying --

5 THE COURT: What I said is, is if -- if all he made
6 was, you know, oh, you know, he doesn't have to show up to
7 court, then that wouldn't even be a bad act.

8 MS. LAVELL: Well --

9 MR. PARRIS: But then --

10 MS. LAVELL: -- what I was going to say, if I can
11 just --

12 MR. PARRIS: Please.

13 MS. LAVELL: What I was going to say is if Counsel
14 wants to argue, okay, it's not consciousness of guilt,
15 therefore it's not a bad act, therefore it doesn't come in,
16 it comes in as a statement by a party opponent.

17 THE COURT: Right.

18 MS. LAVELL: So it comes in --

19 THE COURT: It's a party admission.

20 MS. LAVELL: Yeah. So, it is what it is.

21 MR. PARRIS: And there are other reasons. Those
22 are some of the objections we had to --

23 MS. LAVELL: Well, I just want to -- I wanted just
24 to rule on that one so -- because I'm going to have to get
25 this stuff redacted. So I'm going to need to --

1 THE COURT: Okay.

2 MS. LAVELL: -- have -- you know what I mean?

3 Like, so --

4 MR. PARRIS: I understand, but I'm still asking
5 for --

6 THE COURT: So, it appears that statements in the
7 jail phone calls by the Defendant that are being presented by
8 the State as an effort to show that if he was trying to
9 discourage the witnesses from testifying in the case, and in
10 the State theory that there was consciousness of guilt, it
11 appears that that evidence is relevant to the question of
12 guilt in this case, and that it's not irrelevant character
13 evidence or evidence of collateral acts requiring a hearing
14 before its admission in accordance with the Evans case, 117
15 Nevada 609, 28 P.3d 498, a 2001 case from the Nevada Supreme
16 Court.

17 Okay, what's the next issue?

18 MR. PARRIS: Well, I think we had agreed to take
19 out the information regarding the discussion of penalties; is
20 that correct?

21 MS. LAVELL: Sentencing, yes. Yes, all of that.

22 MR. PARRIS: Anything --

23 MS. LAVELL: Yeah.

24 MR. PARRIS: -- penalty related.

25 MS. LAVELL: Anything --

1 MR. PARRIS: And I think that was only in -- it was
2 definitely in call four. I don't know if it was in call
3 three. But just, please, double check.

4 MS. LAVELL: I listened to all of them, and I wrote
5 a note, so.

6 THE COURT: Okay.

7 MR. PARRIS: Okay. With the Court's previous
8 ruling, again, that did clear up many of our objections.

9 THE COURT: Okay.

10 MR. PARRIS: So I --

11 THE COURT: Fair enough.

12 MR. PARRIS: -- at this point in time, I don't
13 think the Court would need to listen to --

14 THE COURT: Okay.

15 MR. PARRIS: -- the actual proposed exhibit at this
16 juncture.

17 THE COURT: Any other requested redactions given my
18 rulings?

19 MS. LAVELL: You did request the -- some of the
20 things that he said that we were going to --

21 MR. PARRIS: Oh, yes, there were also some
22 statements that my client made that were somewhat -- thank
23 you for reminding me, Ms. Lavell.

24 MS. LAVELL: I'm here for you.

25 MR. PARRIS: So simply inflammatory in nature, him

1 essentially venting about his frustration with certain
2 parties to the case that have no evidentiary value, other
3 than to essentially prejudice the jury against my client.
4 Excuse me, Jess, our client. Essentially, words to the
5 effect of, again, inflammatory statements along the lines of,
6 I hate him, I'm very angry with him, that is essentially,
7 him, my client, venting more than anything else, to family
8 members --

9 THE COURT: Okay.

10 MR. PARRIS: -- about why he ended up in the
11 situation in which he is. He's not talking about the facts
12 of the case. He's not talking about what did or did not
13 happen. He's merely making statements that are clearly
14 emotional in nature. And I am asking that --

15 THE COURT: To the witnesses in the case?

16 MR. PARRIS: To I -- the ones that genuinely
17 occurred were to a non-witness in the case. That was to
18 Robert or Bobby.

19 THE COURT: He was telling Robert, but who was he
20 expressing this pleasure with?

21 MR. PARRIS: Witnesses in this case.

22 THE COURT: Okay.

23 MS. LAVELL: The victim.

24 MR. PARRIS: The victim, his son.

25 THE COURT: Okay want.

1 MS. LAVELL: And just to be clear, what he's saying
2 is, Michael is a little bitch. You need to tell him he's a
3 bitch, and you don't need to --

4 THE DEFENDANT: Did I say it like that?

5 MS. LAVELL: You sounded worse than that. And you
6 need to tell him he's a bitch, and I don't want you talking
7 to him, and you need to -- you know, you need to tell him
8 this and that, and then Robert's saying, I'm not going to
9 tell him that. Yeah, that kind of thing.

10 MR. PARRIS: And that's --

11 THE COURT: Sounds relevant to me.

12 MS. LAVELL: I did take out the part where he
13 threatened to kill his family and Michael.

14 THE COURT: Thank you.

15 MS. LAVELL: You're welcome.

16 THE DEFENDANT: Why was that taken out?

17 MR. PARRIS: Appreciate that.

18 THE MARSHAL: Sir, what don't you understand?

19 THE DEFENDANT: About what?

20 THE MARSHAL: Be quiet.

21 THE DEFENDANT: About what? What don't I
22 understand about what?

23 THE MARSHAL: You can --

24 THE COURT: Okay.

25 MR. PARRIS: Your Honor, it's --

1 THE MARSHAL: You can be here or not.

2 THE COURT: Hold on, hold on, hold on. Okay.

3 Look, so you need to speak through your attorney during a
4 hearing on a legal matter like this. You can communicate
5 with him and ask him to present certain arguments, but please
6 don't interrupt or directly address the prosecutor. I would
7 also ask the prosecutor not to directly address him. Okay?

8 MS. LAVELL: Happy to.

9 THE COURT: All right.

10 MR. PARRIS: So it sounds like the Court has made
11 its ruling regarding statements of that nature.

12 THE COURT: Statements of that nature. It sounds
13 to me like they are relevant, and in this context are not
14 substantially more unfairly prejudicial than probative.

15 MR. PARRIS: And if that's the Court's analysis,
16 thank you. I realize we've been here 15 minutes. I think --

17 THE COURT: That's all right.

18 MR. PARRIS: -- that's the -- those are the only
19 issues regarding the potential redactions.

20 THE COURT: So --

21 MS. LAVELL: I think that was it. So then --

22 THE COURT: Okay.

23 MS. LAVELL: -- as it stands right now, the only
24 objections that --

25 MR. PARRIS: We stipulated to removing other stuff.

1 THE COURT: Right.

2 MS. LAVELL: Well, let's be clear because I want --
3 it was just the penalty stuff. Was there something else
4 you're saying that we stipulated to removing?

5 MR. PARRIS: No.

6 MS. LAVELL: Oh, okay.

7 THE COURT: Right.

8 MS. LAVELL: Just because I don't remember.

9 THE COURT: Okay. So you're taking out the
10 references to the sentencing or penalty related information?

11 MS. LAVELL: Yes.

12 MR. PARRIS: Correct.

13 THE COURT: Okay. So you can have those redactions
14 done. We're coming back at 2:00, we'll have
15 cross-examination of Michael and then go onto the next
16 witness. Okay?

17 MS. LAVELL: Thank you.

18 THE COURT: All right.

19 MR. PARRIS: Did you want to speak, Mr. Schofield?

20 THE COURT: Something else you needed to add to --
21 right now?

22 THE DEFENDANT: Well, I mean, if I can hear the
23 comment where I threatened to kill my son, then I would plead
24 guilty --

25 THE COURT: Well, that's being -- that's --

1 THE DEFENDANT: I'd be pleading guilty to
2 everything that's --

3 THE COURT: That is being taken out.

4 THE DEFENDANT: -- on this table.

5 THE COURT: Okay. That comment is being redacted.

6 MS. LAVELL: It was never included.

7 THE COURT: Right.

8 THE DEFENDANT: Because --

9 THE COURT: Okay.

10 THE DEFENDANT: -- there wasn't --

11 THE COURT: So that's not being presented.

12 THE DEFENDANT: Okay. This whole situation --

13 THE COURT: I'm only --

14 THE DEFENDANT: -- to me --

15 THE COURT: -- dealing with what's actually in
16 evidence.

17 MR. PARRIS: Okay.

18 THE DEFENDANT: Pardon me?

19 THE COURT: That's not coming into evidence, so I
20 don't need to rule on it. Okay. We'll see you in an hour.

21 THE MARSHAL: All rise.

22 MR. PARRIS: Thank you, Your Honor.

23 THE MARSHAL: Court's now in recess.

24 (Court recessed at 1:01 p.m. until 2:06 p.m.)

25 (Outside the presence of the jury)

1 MR. PARRIS: And, Your Honor, if I may. In
2 speaking with Mr. Schofield the last few minutes, he's
3 indicated he wants to place something on the record before
4 Your Honor. Did you want, I don't know, an offer of proof as
5 to where he's going with it, or do you want me just to let
6 him speak?

7 THE COURT: Yeah, at some point you're going to
8 have to speak for him in this case.

9 MR. PARRIS: I know. I will.

10 THE DEFENDANT: Well, then there you go.

11 MR. PARRIS: He's indicated -- and I'm --
12 obviously, he will get a chance to flush this out. He's
13 indicated to me that he would like to inquire of this court
14 regarding a psychological evaluation at this point in time.
15 This is --

16 THE DEFENDANT: Right.

17 MR. PARRIS: -- the first he's bringing it up to me
18 literally within the last five minutes as we walked in the
19 courtroom. He does want to flesh that out some more, but I
20 need to make the Court aware of that fact at this juncture
21 and allow the Court to proceed accordingly.

22 THE COURT: Go ahead.

23 MR. PARRIS: I'm sorry to do this. I'm just --

24 THE COURT: I know.

25 MR. PARRIS: We are all at the mercy of --

1 THE COURT: Yes, we are.

2 MR. PARRIS: -- a situation.

3 THE COURT: Okay.

4 THE DEFENDANT: Right.

5 THE COURT: Go ahead.

6 THE DEFENDANT: It's been -- it's more than just
7 been mentioned to him. It's been continuously mentioned to
8 him throughout my -- any time that I've spoken to him that
9 the --

10 THE COURT: Tell me what your concerns are about
11 your mental health.

12 THE DEFENDANT: Well, all right. Right, I mean,
13 I'm not making it up and it's not something I'm trying to
14 pretend to get something. It's that my recollection of this
15 situation is nothing like that.

16 THE COURT: Okay.

17 THE DEFENDANT: And I don't believe he's lying.

18 THE COURT: Okay.

19 THE DEFENDANT: So to me --

20 THE COURT: So -- hold on. I am concerned about
21 you getting into what your recollection of events is because
22 anything you say in court can be used against you.

23 THE DEFENDANT: Okay.

24 THE COURT: So the fact that you remember things
25 different from another witness doesn't necessarily lead me to

1 think that there is an issue requiring a psychological
2 evaluation.

3 THE DEFENDANT: Well, how about that I take psyche
4 medication in CCDC right now? That I -- that I wasn't taking
5 seizure medication for approximately two months when this
6 happened, because I didn't remember having a seizure so I
7 didn't I believe I had them so I wouldn't take my medication.
8 And I was trying to find out if I had seizures because I
9 didn't remember ever having one.

10 THE COURT: Okay. So --

11 THE DEFENDANT: I've had a situation where I went
12 in front of another judge where the police went -- I went to
13 -- I was at -- found at some woman's house with my key in her
14 door and trying to open the door.

15 THE COURT: Okay.

16 THE DEFENDANT: Can I finish telling you that
17 story --

18 THE COURT: No.

19 THE DEFENDANT: -- because that kind of helps
20 with --

21 THE COURT: Because I'm really not interested,
22 frankly. So, it seems to me that you understand what the
23 charges are against you. It seems to me that you are able to
24 assist your attorney.

25 THE DEFENDANT: My attorney's not able to assist

1 me.

2 THE COURT: That's not the question.

3 THE DEFENDANT: Right. Okay, well, that -- like I
4 told him, there's two issues that I have going on in this
5 situation. I have never -- I have never met with him not one
6 time.

7 THE COURT: You retained your counsel. I'm not
8 changing your counsel. You've chosen to proceed with your
9 counsel. The only thing I am possibly concerned about at
10 this moment is your competence, and it seems to me, given the
11 conversations we have had over the last three days, that
12 you're well aware of what these proceedings are about, that
13 you understand the charges, you've been aware and alert
14 during all the negotiations, know what the options are.

15 THE DEFENDANT: I couldn't hear you. She's --
16 they're talking over you. I couldn't hear you.

17 THE COURT: Okay. That you understand what the
18 charges are, you understood what the options were in
19 negotiations. I think you've been observant of the testimony
20 and understand it and are able to assist your attorney in the
21 proceedings. Therefore, I mean, I'm not a psychological
22 expert, but I'm not aware of any reason and I'm not hearing
23 any reason to question your competency --

24 THE DEFENDANT: Well --

25 THE COURT: -- to proceed.

1 THE MARSHAL: Sir.

2 MR. PARRIS: Address the judge.

3 THE MARSHAL: (Indiscernible), please.

4 THE DEFENDANT: Well, the fact that I was not
5 taking seizure medication, that when I have seizures that are
6 not -- when you fall down and foam at the mouth and bite your
7 tongue.

8 THE COURT: Okay. And I'm sorry, and I'm sorry to
9 interrupt you again, but let me be clear about one thing.
10 The competency issue that I'm talking about, and the only
11 issue that could possibly be of concern here, is whether
12 you're competent now to proceed. So I'm not talking about
13 what your mental state may have been the day of the
14 underlying events at issue.

15 My only issue is at this very moment is competency
16 to proceed forward here. It's not up to me to determine what
17 your state of mind was on the day of the events. So the --
18 if there were a question about competency today, then I would
19 have something that I would need to consider how to deal
20 with. So that's why I cut you off when you were talking
21 about past issues about seizures and medications.

22 THE DEFENDANT: One of the reasons why people don't
23 take the stand is because they look into their -- people's
24 past to determine --

25 THE COURT: Yeah, okay, I'm not --

1 THE DEFENDANT: -- what --

2 THE COURT: -- the jury, I'm not deciding what the
3 right verdict is in this case, and I'm not going to have you
4 keep arguing the case to me.

5 THE DEFENDANT: Okay, I'm not arguing the case.
6 You're saying to me that the past has nothing to do with how
7 -- where my mindset --

8 THE COURT: I'm --

9 THE DEFENDANT: -- set is at. So --

10 THE COURT: The past is involved in the trial,
11 obviously. The trial is about the events that happened in
12 January of 2013. You have your attorney to represent you and
13 present any evidence and cross-examine the State's evidence
14 that is presented. I'm not having that discussion with you
15 now.

16 THE DEFENDANT: About the attorney?

17 THE COURT: The trial is going in front of the
18 jury. The only thing that potentially was appropriate to
19 raise with me, is if there was some concern about your
20 competency. I'm not hearing that. So with that, I think
21 we're ready to continue the trial.

22 THE DEFENDANT: Well, can I address the other
23 issue, then?

24 THE COURT: Okay.

25 THE DEFENDANT: I've not had one meeting with this

1 guy.

2 THE COURT: That's not the issue.

3 THE DEFENDANT: It is. It is an issue because this
4 guy's not prepared. You've seen, what did he do? He gave an
5 instruction to the jury for his opening statement. He didn't
6 give an opening statement. She's giving facts, and he's
7 giving --

8 THE COURT: You hired your --

9 THE DEFENDANT: -- he's giving an opening
10 statement.

11 THE COURT: -- attorney.

12 THE DEFENDANT: I hired an attorney who never sent
13 me a single thing, he doesn't give -- doesn't give me any --
14 any discovery, doesn't meet with me. Not one time. Not one
15 conversation. Tells me on January 22nd --

16 THE COURT: How many times in the last --

17 THE DEFENDANT: -- that I should get probation out
18 of it.

19 THE COURT: -- three days have I asked you if you
20 wanted to terminate his services?

21 THE DEFENDANT: No, you asked me what I -- what my
22 suggestion to do about their prior dealings outside of the
23 court because -- and you brought that up in the first place.

24 THE COURT: You know what?

25 THE DEFENDANT: Do I have -- do I think that

1 there's a conflict of interest as far as that's concerned.

2 The conflict of interest --

3 THE COURT: I didn't hire --

4 THE DEFENDANT: -- now is that I don't think
5 this --

6 THE COURT: -- your attorney, you did. Okay?

7 THE DEFENDANT: And now I'd like to fire him.

8 THE COURT: Okay. What's your plan? Do you intend
9 to represent yourself?

10 THE DEFENDANT: I'd like to have a public defender
11 appointed to me, and if you need to have a public defender
12 appointed to me that's -- that has prior relationship, it
13 would be better than what he's giving me right now.

14 THE COURT: Remind me to never take an overflow
15 case again ever.

16 MS. LAVELL: Your Honor --

17 MR. PARRIS: Your Honor, I -- here's the situation.
18 Going back to Mr. Schofield's first point. Both myself and
19 Mr. Matsuda are well aware of the appropriate guidelines, and
20 while we are not mental health experts, we're aware of the
21 issues regarding competency related filings with the courts
22 through inductive reasoning one can assume where we feel --
23 where we stand on that issue --

24 THE COURT: Um-h'm.

25 MR. PARRIS: -- since we have filed no documents

1 requesting any sort of evaluations.

2 THE COURT: Right.

3 MR. PARRIS: Okay. Regarding the second issue, I
4 would be very remiss to have to undo everything that has been
5 done so far with respect to this trial at this juncture. I
6 understand it's a very stressful situation for everyone
7 involved, for Michael Joshua, for Michael John, for every --
8 the family, for the jurors --

9 THE COURT: Yes.

10 MR. PARRIS: -- for the Court. Everyone involved
11 is certainly stressed, and that stress doesn't always bring
12 out the best in any of us.

13 THE COURT: Right.

14 MR. PARRIS: So -- and I think that this is just a
15 good example of how some people -- how we all tend to act
16 under stressful situations.

17 THE COURT: Uh-huh.

18 MR. PARRIS: But I don't know if -- I don't know
19 what the Court's pleasure is at this particular time. I
20 don't know if --

21 THE COURT: Well, I am not bringing in new counsel
22 in the middle of the trial.

23 MR. PARRIS: Certainly.

24 THE COURT: I am not declaring a mistrial because
25 the Defendant has decided after jeopardy attached and we

1 started the trial that he wants different counsel.

2 THE DEFENDANT: I wrote this stuff --

3 THE COURT: So either --

4 THE DEFENDANT: -- before the --

5 MR. PARRIS: Let the judge talk.

6 THE COURT: So either you are continuing with
7 Parris as your counsel, or I suppose you have a right to
8 represent yourself if I go through a Feretta (phonetic)
9 canvass, but I am not changing counsel at this point of the
10 trial.

11 THE DEFENDANT: Well, I will say this, before there
12 was any testimony, I had this stuff written, and I explained
13 to him before --

14 THE COURT: You can write whatever you want, but
15 I'm telling you --

16 THE DEFENDANT: That was all -- that was all about
17 my disapproval --

18 MR. PARRIS: Let the judge --

19 THE COURT: I am --

20 MR. PARRIS: Let the judge speak.

21 THE COURT: -- really done.

22 MR. PARRIS: There's -- and --

23 THE DEFENDANT: And --

24 MR. PARRIS: -- I apologize, Your Honor.

25 THE DEFENDANT: -- and if you would say that I'm

1 not -- if I'm mentally stable, the words that this man uses
2 when he -- when you have discussions of client/attorney
3 conversations, he calls me narcissist, paranoid, an asshole,
4 many different names.

5 THE COURT: I would advise you not to disclose your
6 attorney/client --

7 THE DEFENDANT: So --

8 THE COURT: -- privileged communications.

9 THE DEFENDANT: -- these -- for him to not think
10 that I have some sort of -- he calls me delusional, he calls
11 me -- so there's many names he's called me that are all part
12 -- that all can be considered psychological issues.

13 MR. PARRIS: Well, I think -- and correct me if I'm
14 wrong, Your Honor, please -- I think, Mr. Schofield, the
15 options that the Court gave you are this: Either A,
16 Mr. Matsuda and I continue to represent you; or B, you
17 represent -- you literally take over the representation of
18 yourself in this particular case. It is -- it's my
19 understanding it's not an option for us to continue the trial
20 or to have someone new come on board to assist you.

21 And Your Honor, are those his two options as the
22 Court laid it out.

23 MS. LAVELL: And before you --

24 THE COURT: As I see them --

25 MS. LAVELL: -- answer, Your Honor, may we

1 approach?

2 THE COURT: I'm sorry?

3 MS. LAVELL: Before you answer that question, may
4 we approach?

5 MR. PARRIS: Well, before we do that, are those his
6 two options so he can think about it while we approach?

7 MS. LAVELL: Well, and that's what we need to
8 discuss with the judge before --

9 MR. PARRIS: Okay.

10 MS. LAVELL: -- he's given those two options.

11 MR. PARRIS: Okay.

12 THE COURT: Well, I'm staying on the record, then.
13 You can come up.

14 MS. LAVELL: Oh, okay. Well, then Ms. Anthony just
15 wanted to make a record.

16 MS. ANTHONY: Your Honor, I was trying to pull up
17 Westlaw right now. I actually had this come up in a case --

18 THE COURT: Okay.

19 MS. ANTHONY: -- in front of, I want to say it was
20 Judge Wall when he was on the bench.

21 THE COURT: Um-h'm.

22 MS. ANTHONY: And the inquiry that happened was
23 very cursory, and as a result -- and it wasn't during trial.
24 It was at calendar call. And the Judge -- we proceeded and
25 then I ended up having an issue with the order. So I was

1 trying to pull it up so that I could give the Court the
2 guidance based on the case, and I will continue to look for
3 it.

4 But I just want to make sure that we have a solid
5 record regarding, I guess, the Defendant's options.

6 THE COURT: Okay.

7 MS. ANTHONY: Does that make sense? I'll try to --
8 can do to pull it up.

9 THE COURT: It makes sense that you're trying to
10 find that, but tell me what you think happened in that case
11 or what -- you don't recall what the ruling was?

12 MS. ANTHONY: I know exactly what happened. I was
13 present, Mr. Brantley tried to fire the Public Defender's
14 Office, said similar statements --

15 THE COURT: Right.

16 MS. ANTHONY: -- that they were, hey, public
17 defender didn't come and meet with me --

18 THE COURT: Right.

19 MS. ANTHONY: -- I'd like to fire my public
20 defender.

21 THE COURT: Um-h'm.

22 MS. ANTHONY: Judge says, look, we're on the eve of
23 trial, calendar call, not going to happen.

24 THE COURT: Um-h'm.

25 MS. ANTHONY: We go to trial, we had a guilty

1 verdict.

2 THE COURT: And?

3 MS. ANTHONY: Case was reversed.

4 MS. LAVELL: Did he represent himself or did the --

5 MS. ANTHONY: The public defenders continued to
6 represent them. I'm just trying to get the case law so that
7 I can make sure that the correct questions that we do have --
8 so that we don't have to do this again. I'm --

9 THE COURT: I'm with you.

10 MS. ANTHONY: I'm just trying to -- if I could just
11 look for it real quick.

12 THE COURT: Go ahead.

13 MS. ANTHONY: I know the case name. I just don't
14 know --

15 MR. PARRIS: And Ms. --

16 THE DEFENDANT: If my only two options are myself
17 and --

18 THE COURT: We're determining --

19 THE DEFENDANT: -- this attorney --

20 THE COURT: -- if that is correct.

21 MR. PARRIS: Yeah. And was it something beyond --
22 above and beyond (indiscernible)?

23 MS. ANTHONY: I -- this is --

24 THE COURT: Sorry, I thought we might actually have
25 a trial this afternoon, but it's too much to expect, you

1 know, more than an hour of trial in this trial.

2 MS. LAVELL: Well, you know, while this is going
3 on, I just received the redacted versions of the CD's. I
4 wasn't able to listen to them, because I had to get to court
5 by 2:00 o'clock. So this may be a good opportunity for
6 counsel and State to listen to these to make sure that
7 everybody's on the right page while Ms. Anthony researches
8 her thing and maybe we can kind of utilize this time more
9 effectively, if Your Honor so desires.

10 I would like the Defense to listen to the redacted,
11 which I -- you know, the final redactions of the calls.

12 THE COURT: Okay. I'm going to take a short break
13 and let you do that in courtroom while she does the research.
14 Okay?

15 MR. PARRIS: Thank you, Your Honor.

16 MS. LAVELL: Thank you, Your Honor.

17 THE MARSHAL: Please rise. Court is now in recess.

18 (Court recessed at 2:19 p.m. until 2:46 p.m.)

19 (Outside the presence of the jury)

20 THE MARSHAL: Remain seated, come to order.

21 THE COURT: All right. So for the record, while he
22 was on the break, Counsel gave my chambers the citations for,
23 I guess, two unpublished decisions from the Nevada Supreme
24 Court, one being Sudberry, S-u-d-b-e-r-r-y vs. State of
25 Nevada, decision dated September 29, 2010, which is Nevada

1 Supreme Court Case No. 55467. As well as the one from
2 Brantley, B-r-a-n-t-l-e-y, vs. State of Nevada, Order of
3 Reversal and Remand filed April 7, 2010, in Nevada Supreme
4 Court, Case No. 52352.

5 So both of these cases appear to involve
6 circumstances where before trial started a defendant sought
7 to terminate his attorney, and certainly, if we were prior to
8 trial and I had this request and this were my case before
9 trial, I probably would have considered that motion and held
10 a hearing outside the presence of the State to consider the
11 issues raised and whether a change of counsel was warranted.

12 Unfortunately, where we are is the middle of trial.

13 MR. PARRIS: And it may be somewhat moot, Your
14 Honor. I'm sorry, to cut the Court off.

15 THE COURT: Go ahead.

16 MR. PARRIS: Mr. Schofield has indicated
17 immediately prior to Your Honor taking the bench that he does
18 want myself and Mr. Matsuda to continue representing him. I
19 was making it very clear to him that if that is, indeed, his
20 desire, we cannot continue going back and forth with respect
21 to that particular question.

22 MS. LAVELL: And the State would respectfully
23 request a very thorough canvass on him as to that particular
24 issue with the understanding what his other option would be,
25 and that would be to represent himself, just so that there's

1 no issues later on to suggest that he didn't really want his
2 attorneys.

3 THE COURT: Right. Okay. So, Mr. Schofield, is
4 Mr. Parris correct that you have informed him you wish to
5 proceed with he and his associate as counsel, or I don't know
6 if you're -- whatever.

7 MR. PARRIS: Partner.

8 THE COURT: Partner. Sorry.

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Yes?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Okay. Now, is that your decision that
13 you are making as your knowing and voluntary decision?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: I'm not going to have this come up
16 every hour the whole rest of the trial. At some point we
17 have to move along and get the trial done. I've got a jury
18 that's had a lot of time spent sitting in the hallway, and
19 this keeps getting pushed back, and it's ten to 3:00 now on
20 the -- on Wednesday of the trial week, and we've still barely
21 gotten any evidence in. So I need the case to start moving
22 along.

23 Now, having said that --

24 THE DEFENDANT: I apologize.

25 THE COURT: That's fine. You don't need to

1 apologize to me, but you do have rights, and I need to make
2 sure that your rights are respected, and I have no intention
3 of depriving you of any of your constitutionally guaranteed
4 rights even in the interest of efficiency. Ultimately, your
5 rights are what's a priority for me.

6 But having said that, if you're telling me you want
7 to proceed with these counsel, who are your retained counsel,
8 that's fine, we're going to proceed, but I can't have that
9 keep going back and forth the whole rest of the trial.

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay, you understand that, and you want
12 to proceed with these gentlemen as your counsel?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. Let's go, get the jury and
15 proceed.

16 MR. PARRIS: Oh, for the record, we did receive the
17 redacted jail calls. We did listen to them during the break.
18 They've been filed as a proposed exhibit. We are stipulating
19 to their -- while we are reserving objection regarding their
20 admission --

21 THE COURT: Right.

22 MR. PARRIS: -- we are stipulating that the disks
23 themselves can come in without other witnesses regarding the
24 authentication of those documents. Their content, obviously,
25 we're making objections to. The authentication we are not.

1 THE COURT: Okay.

2 MS. LAVELL: And based on Your Honor's rulings in
3 regards to the contents coming in, at this time, the State
4 would move to admit State's Proposed Exhibit 16.

5 THE COURT: Okay. So, I understand Defense has
6 objected. I will admit them over objection with the
7 understanding that the redactions discussed have been made.

8 MR. PARRIS: That's correct, Your Honor.

9 THE COURT: Okay.

10 (State's Exhibit 16 admitted)

11 (Pause in the proceedings)

12 MS. LAVELL: And I don't know if we said that
13 counsel had an opportunity to listen to --

14 MR. PARRIS: Yes.

15 MS. LAVELL: -- the areas that were redacted.

16 THE COURT: Yes. Thank you.

17 THE MARSHAL: Please rise.

18 (In the presence of the jury)

19 THE MARSHAL: Please be seated.

20 THE COURT: Do counsel stipulate to the presence of
21 the jury?

22 MS. LAVELL: Yes, Your Honor.

23 MR. PARRIS: Yes, Your Honor.

24 THE COURT: Okay. Folks, I know I sound like a
25 broken record, but I am sorry again for keeping you waiting

1 in the hallway while we dealt with some matters that we had
2 to outside of your presence. With that, let's go ahead and
3 get the witness back on the stand. You can just go ahead and
4 have a seat. You're still under oath.

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Okay. Cross-examination.

7 MR. MATSUDA: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. MATSUDA:

10 Q Good afternoon, Michael.

11 A Good afternoon.

12 Q Now, I want to briefly ask you some questions that
13 the State asked you earlier. Is that okay?

14 A Yes.

15 Q All right, I believe we left off with the phone
16 calls between you and your father. Why did it take you so
17 long to want to talk to him?

18 A I was pretty upset with him after what happened.

19 Q And you say that lasted for about a week --

20 A Yes.

21 Q -- or two weeks? So, you needed some -- it's fair
22 to say that you needed some time to kind of cool off?

23 A Yes.

24 Q And after those two weeks you guys started talking
25 again?

1 A Yes.

2 Q Okay. Now, a lot was brought up about football.

3 A Yes.

4 Q And the football season. How often do you see your
5 father?

6 MS. LAVELL: At what time?

7 MR. MATSUDA: I'm sorry. Let me clarify that.

8 BY MR. MATSUDA:

9 Q Before this incident, how often -- or when was the
10 last time you saw your father before this incident?

11 A Wednesday. The Wednesday before when this happened.

12 Q Okay. And this happened on a Sunday?

13 A Yes.

14 Q Okay. And what did you do on that Wednesday?

15 A Watched football.

16 Q Okay. And where did you watch football?

17 A At his apartment at Budget Suites.

18 Q Okay.

19 MS. LAVELL: At sorry?

20 THE WITNESS: Budget Suites.

21 THE COURT: Okay.

22 BY MR. MATSUDA:

23 Q How long were you there?

24 A Overnight.

25 Q You slept overnight?

1 A Yes.

2 Q Okay. And you guys watched football? Is -- before
3 that, when was the last time you seen him?

4 A Sunday.

5 Q The following Sunday? I mean, I'm sorry, the
6 previous Sunday?

7 A Yes.

8 Q Okay. And what did you guys do on that day?

9 A Watch football.

10 Q Okay. So there's a common theme here?

11 A Yeah.

12 Q You guys enjoying watching football together?

13 A Yes.

14 Q Okay. Now, during football season is it uncommon
15 that you guys spend a lot of time together?

16 A No.

17 Q And how long -- or if you can recall, how long has
18 this been going on?

19 A Since week one of football season.

20 Q I mean, when you were younger?

21 A Oh.

22 Q How old were you?

23 A Eight.

24 Q Eight?

25 A Eight years old.

1 Q So, seven years?

2 A Yeah.

3 Q Do you enjoy spending time with your father?

4 A Yes.

5 Q Okay. You guys let along?

6 A Yes.

7 Q And do you guys root for the same team?

8 A Yes.

9 Q And what team is that?

10 A Patriots.

11 Q Okay. And is there anything in particular you guys
12 do during half-time at football?

13 A We go outside and play catch.

14 Q Okay. Is that normally every game?

15 A Yeah.

16 Q Okay. So during half-time you guys throw the ball
17 around outside?

18 A Yeah. In between games, stuff like that.

19 Q Okay. Now, going back -- I really don't want to
20 hash out the incident that happened on the 6th, but you said
21 that you went to the store to pick up some football items
22 with your cousin; was that correct?

23 A Yes.

24 Q Okay. Now, you said you were trying out for
25 football?

1 A Yes.

2 Q What position do you play?

3 A I did play offensive line, but I lost a lot of
4 weight so I was going to try out for tight end.

5 Q Tight end?

6 A Yes.

7 Q All right. Now, the date in question, I believe
8 it's the 6th, do you normally see your dad on Sundays?

9 A Yeah.

10 Q Because footballs are -- most of the football games
11 are played on Sundays?

12 A Yeah.

13 Q Okay. So it wasn't uncommon that you seen your dad
14 on Sunday?

15 A Right.

16 Q Okay. But your statement or your testimony was that
17 you didn't really want to see him that Sunday because you'd
18 just seen him on Wednesday?

19 A Yes.

20 Q Okay. And you were kind tired?

21 A Yeah.

22 Q Okay.

23 A Had to get up at like 7:00.

24 Q Okay.

25 A On a weekend.

1 Q Now, when your dad showed up to your grandparents'
2 house, he wasn't -- you didn't expect him, you said, right?

3 A Right.

4 Q Okay. Do you know who let him inside the house?

5 A My mom, my grandma.

6 Q Your grandmother?

7 A Yes.

8 Q Okay. And he didn't force his way in?

9 A No.

10 Q Okay. And that's what -- I believe your testimony
11 was you were studying for --

12 A Yeah.

13 Q Okay. Or pretending to study?

14 A Yeah.

15 Q And your testimony was you had to change because you
16 weren't in the appropriate --

17 A Right.

18 Q -- gear to play?

19 A Yeah.

20 Q Okay. Now, previous to the Wednesday before this
21 happened and the Sunday before that, did you ever live with
22 your father?

23 A Yeah.

24 Q Okay. Do you recall when you used to live with him?

25 A It was in the beginning of middle school.

1 Q Beginning of school, so what, three years ago --

2 A Yeah.

3 Q -- give or take? Do you know how long you lived
4 with him?

5 A A year, year-and-a-half.

6 Q A year or year-and-a-half?

7 A Yeah.

8 Q Okay. So the day in question and the weeks prior
9 to, it wasn't out of the blue? I should clarify that. It's
10 not like you didn't see him for a while?

11 A Right.

12 Q Okay. Is it fair to say that your dad has a pretty
13 active role in your life?

14 A Yes.

15 Q Okay. Now, is it just during football season that
16 you guys have a close relationship?

17 A After football season, too.

18 Q Okay.

19 A We'll like go to the park, play catch, basketball,
20 if there's no football games on. Just want to hang out.

21 Q A lot of sport --

22 A Yeah.

23 Q -- sport theme --

24 A Sports.

25 Q Now, there was a mention of phone calls earlier that

1 were made. Do you recall ever stating to your father that
2 you may have exaggerated what happened that day?

3 A No.

4 Q No?

5 A Um-um.

6 Q Okay. Do you ever have histories of -- I believe
7 you said something about a panic attack. Is that something
8 you're familiar with? Does it happen often to you?

9 A No.

10 Q Just that time?

11 A I've had one before, but it wasn't -- it's not
12 regular.

13 Q Okay. And do you know what caused that first panic
14 attack?

15 A A lot of stress on that -- on one little subject and
16 it just goes up and just makes me have to breathe heavily and
17 sweat, all that stuff.

18 Q Okay.

19 MR. MATSUDA: Court's indulgence.

20 THE COURT: Uh-huh.

21 BY MR. MATSUDA:

22 Q Okay, Michael, just a few more questions concerning
23 the football off season. I just want to kind of know how
24 often do you spend time with him when it's not football
25 season?

1 A Twice a week when it's not football season.

2 Q Twice a week when it's not football season?

3 A Yes.

4 Q Is it fair to say that you guys spend more time when
5 it's football season?

6 A Yes.

7 Q Okay. And what other things would you do besides
8 sports when you guys hang out off season?

9 MS. LAVELL: Judge, at this point I'm going to
10 object to relevance.

11 THE COURT: Counsel --

12 MR. MATSUDA: Well, Your Honor, it goes to mind
13 set. I don't know --

14 THE COURT: Come on up, counsel.

15 (Bench conference began)

16 THE COURT: Okay, go ahead.

17 MR. PARRIS: Sorry, John Parris. I'm sorry to step
18 on Mr. Matsuda's (indiscernible). But (indiscernible) sports
19 and the indication here is that dad came out of the blue,
20 showed up at the house, and that was hinted at in some of the
21 voir dire questions. What we're simply trying to establish
22 is the fact that Michael John had a very active role in
23 Michael Joshua's life. And that as part of (indiscernible)
24 which obviously will come out as the case progresses. We're
25 just trying to establish the fact that he was a very active

1 role -- in a very active role --

2 THE COURT: Okay. So I mean --

3 MR. PARRIS: -- (indiscernible) to living with
4 him --

5 THE COURT: Um-h'm.

6 MR. PARRIS: -- in addition to, for that year-and-
7 a-half (indiscernible).

8 THE COURT: Okay. He's acknowledged that. What,
9 do you have one or two more questions on that?

10 MR. MATSUDA: I could --

11 MS. LAVELL: Again, Maria Lavell. I'm objecting.
12 It's irrelevant to what happened on that particular day. The
13 State inquired as well in regards to living together, the
14 fact that they watched football together. They've done it.
15 You know, okay, so enough already. I mean, he's the perfect
16 dad (indiscernible).

17 THE COURT: All right.

18 MR. MATSUDA: (Indiscernible) If the State wants to
19 stipulate to that on the record, we'll (indiscernible).

20 MS. LAVELL: No. I mean, it's irrelevant to what
21 happened on that day, and I think it's asked and answered and
22 I'd just object to further questions.

23 THE COURT: Okay. So I'm going to overrule it at
24 this point. I'm going to allow a couple more questions
25 before it's going to kind of get repetitive.

1 MR. MATSUDA: Certainly, Your Honor.

2 THE COURT: Go ahead.

3 MR. PARRIS: Understood.

4 (Bench conference concluded)

5 BY MR. MATSUDA:

6 Q Okay, Michael --

7 THE COURT: Go ahead, Counsel.

8 MR. MATSUDA: Thank you, Your Honor.

9 BY MR. MATSUDA:

10 Q What would you guys typically on the off-seasons?

11 A Well, watch movies or play video games if we're not
12 doing anything sports related.

13 Q And how frequently would this -- I'm sorry, when did
14 this begin, if you could recall?

15 A I can't recall.

16 Q From as far as back as you can remember?

17 A Long time ago. That's fair to say.

18 Q Okay. Thank you.

19 MR. MATSUDA: Nothing further, Your Honor.

20 THE COURT: Okay. Any redirect?

21 MS. LAVELL: Just real quick.

22 REDIRECT EXAMINATION

23 BY MS. LAVELL:

24 Q Michael, is it fair to assume, based on the fact
25 that after a couple of weeks you started talking to your

1 father on the phone, that you've forgiven him?

2 A Yes.

3 Q Does that mean that he did not do what he did on the
4 6th?

5 A No.

6 MS. LAVELL: Nothing further.

7 THE COURT: Any recross?

8 MR. MATSUDA: None, Your Honor.

9 THE COURT: Okay. All right. Thank you, Michael,
10 you can step down. Okay. All right, next witness for State?

11 MS. LAVELL: Thank you, Your Honor. The State
12 calls Patricia Duplissie.

13 THE MARSHAL: If you could, follow me. You're
14 going to make your way up to the front.

15 THE WITNESS: Where?

16 THE MARSHAL: (Indiscernible).

17 THE COURT: Follow him.

18 THE MARSHAL: Keep following me. Step up into the
19 box. Just remain standing for a second, raise your right
20 hand, face that young lady right there.

21 PATRICIA DUPLISSIE, STATE'S WITNESS, SWORN

22 THE CLERK: Thank you. Please be seated. Please
23 state and spell your first and last name for the record.

24 THE WITNESS: Is this a microphone?

25 THE COURT: Yes.

1 THE WITNESS: My first name is Patricia,
2 P-a-t-r-i-c-i-a. Last name Duplissie, D-u-p-l-i-s-s-i-e.

3 MS. LAVELL: May I proceed, Your Honor?

4 THE COURT: Yes.

5 THE WITNESS: Pardon me?

6 MS. LAVELL: Oh, I was talking.

7 THE WITNESS: Oh.

8 THE COURT: She was making sure it was okay to
9 proceed.

10 DIRECT EXAMINATION

11 BY MS. LAVELL:

12 Q May I call you Patricia?

13 A You may call me Pat.

14 Q Pat, okay. Even better. So --

15 A Yes.

16 Q -- it's difficult for you?

17 A Very.

18 Q Do you recognize the gentleman sitting here in the
19 middle?

20 A Barely.

21 Q Who is that?

22 A He looked way better before. Yes, I do.

23 Q Who is that?

24 A My son.

25 Q What's his name?

1 A Michael John Schofield.

2 Q How many children do you have?

3 A Six.

4 Q Boys or girls?

5 A Four boys and two girls.

6 Q Do you also have a grandson?

7 A I do. I have a lot of grandchildren.

8 Q Well, let's talk about the one that --

9 A Michael Joshua, yes.

10 Q And how old is Michael Joshua?

11 A Fifteen.

12 Q How long has he been living --

13 A Oh, my God.

14 Q -- with you?

15 A Thirteen years.

16 Q Since he was two?

17 A Um-h'm.

18 THE COURT: Is that yes?

19 THE WITNESS: Yes.

20 BY MS. LAVELL:

21 Q And you have legal custody of --

22 A Yes, I do.

23 Q Okay. I'm going to have to ask you to let -- I know
24 you maybe know what I'm going to ask, but let me finish the
25 question, okay, and then make your answer. You have legal

1 custody of Michael?

2 A Yes, I do.

3 Q Okay. The Defendant does not have any custody of
4 Michael, correct?

5 A Not legal custody, no.

6 Q And that's what we're talking about, legal custody,
7 all right? So you don't refer to Michael Joshua as your
8 grandson, do you?

9 A Michael Joshua refers to me as his mom, but I
10 mean --

11 Q And you refer to him as your son, correct?

12 A I don't -- you know, I'm 74 --

13 Q Uh-huh.

14 A -- and you look at somebody and say this is my son.
15 I guess, I just refer to him as -- I consider myself his
16 mom --

17 Q Right.

18 A -- so but I also consider him my grandson.

19 Q Your grandson, okay.

20 A Confusing, right.

21 Q All right. So it's interchangeable?

22 A Right.

23 Q Okay. Where do you currently live?

24 A My address or just what city?

25 Q Your address.

1 A 1111 Aspen Breeze.

2 Q Is that in Las Vegas, Clark County, Nevada?

3 A Yes.

4 Q Who do you currently live with?

5 A My husband and Michael Joshua.

6 Q Okay. And when's your husband's name?

7 A Norman Duplissie.

8 Q I'm going to publish, with Your Honor's permission,
9 State's 1.

10 THE COURT: Sure.

11 THE WITNESS: You're doing what?

12 THE COURT: She's putting up a picture. You can
13 see it right here, ma'am.

14 THE WITNESS: Oh, okay.

15 BY MS. LAVELL:

16 Q Who's this handsome young man?

17 A Michael Joshua.

18 Q Your grandson?

19 A Yes.

20 Q I want to draw your attention to January 6th of last
21 year.

22 A Um-h'm.

23 Q Did you receive a phone call from the Defendant in
24 regards to his not feeling well?

25 A Yes, I did.

1 Q And what was that conversation?

2 A He called and said -- oops. He said he didn't feel
3 well. I asked him if he had taken his seizure medicine? He
4 said that wasn't it. He didn't feel well. I forget
5 something. He needed some kind of medicine. So my husband
6 and I -- he was going to come over and get --

7 Q Okay, I'm going to stop you. Okay? Do you remember
8 speaking with me pretrialing for this particular jury trial?

9 A Yes.

10 Q Okay, do you recall telling me that he needed some
11 cold medicine?

12 A I was just going to get there.

13 Q Okay. So he indicated to you that he needed cold
14 medicine?

15 MR. PARRIS: Your Honor, may we approach briefly?

16 THE COURT: Yeah, come on up.

17 (Bench conference began)

18 MS. LAVELL: Maria Lavell for State. And just FYI,
19 this is the first I'm hearing about seizure medicine.

20 MR. PARRIS: And John Parris (inaudible). That was
21 kind of a leading question. You were referencing some sort
22 of pretrial meeting, and that's fine, but there are --

23 MS. LAVELL: That's not a secret.

24 MR. PARRIS: -- better ways to handle that
25 (indiscernible) just then. (Indiscernible).

1 MS. LAVELL: Well, I'm like --

2 MR. PARRIS: (Indiscernible) it hasn't
3 (indiscernible).

4 MS. LAVELL: Well, it --

5 MR. PARRIS: Nor has a request been made.

6 MS. LAVELL: Well, first of all, Mr. Parris, the
7 way I asked her, there's nothing improper about suggesting
8 that we had a pretrial conference.

9 THE COURT: Of course.

10 MS. LAVELL: Secondly, this is the first time the
11 State's hearing about seizure medication. Interestingly
12 enough, just after the Defendant made his argument to the
13 Court. So obviously, that causes the State concern.
14 Additionally, she has been uncooperative throughout, as
15 you're well aware. So at one point -- at some point I may be
16 asking to treat her as hostile, but what I don't want to
17 allow her to do at this point is to answer questions in a way
18 that she is giving misinformation to the jury to defend her
19 son.

20 MR. PARRIS: John Parris. We don't know if she's
21 giving misinformation or not. She's testifying. It sounds
22 like the State is saying it wants to be able to lead her
23 without having her be qualified as a hostile witness.

24 THE COURT: Right. So I don't think we're there
25 now. We may get there. So, right, you shouldn't ordinarily

1 be impeaching your own witness. If she needs recollection
2 refreshed, you can lay the foundation for that.

3 MS. LAVELL: Okay.

4 THE COURT: Obviously, the questions and answers
5 stand. I'm not striking anything.

6 MR. PARRIS: Thank you.

7 THE COURT: Go on.

8 (Bench conference concluded)

9 BY MS. LAVELL:

10 Q Okay. Thanks for your patience. So he indicated to
11 you -- or you indicated that you were going to take over --
12 or he needed some cold medicine. So when you learned that,
13 what did you do with that information? The Defendant wanted
14 some cold --

15 A What did I do --

16 Q -- medicine.

17 A -- with the information?

18 Q Right.

19 A I told Norm that Michael wasn't feeling well, and we
20 were going out anyway, and I asked him if we could bring
21 something over to him. He doesn't live that far away from
22 us.

23 Q Okay. Approximately, how far away from you does he
24 live?

25 A Approximately, I checked it out, four miles.

1 Q Okay. So it maybe takes you about seven or eight
2 minutes to get there?

3 A About.

4 Q All right. So what time in the morning was this
5 that you received the phone call from the Defendant saying he
6 didn't feel well?

7 A Okay, I told you before, I didn't know what time it
8 was, but after thinking about it, it had to be after 10:00
9 o'clock, because Michael was going shopping with his cousin,
10 and they were going to Dick's, whatever, Sporting Goods, and
11 they don't open until 10:00 o'clock.

12 Q All right.

13 A So --

14 Q So, sometime after 10:00 o'clock --

15 A After 10:00 o'clock.

16 Q -- you and Norm --

17 A And this is a guess. I don't know.

18 Q That's okay.

19 A Okay?

20 Q We won't hold you to it.

21 A Okay.

22 Q So sometime around 10:00 o'clock or a little after
23 10:00 o'clock you and Norman went to your son's home?

24 A Yes.

25 Q And what happened when you arrived at his home?

1 A He was waiting out in front, and we gave him -- he
2 got in the car with us, sat in the back seat.

3 Q And did you provide him with the medication?

4 A I gave him what we had at home, and a year-and-a-
5 half ago, or whatever. It was probably Alka-Seltzer, but he
6 -- if he has a cold, he likes the Alka-Seltzer Cold Plus, and
7 did not have that. And I don't know what I gave him.
8 Tylenol --

9 Q All right.

10 A -- something, aspirin.

11 Q Okay. That's fine.

12 A No, not aspirin. I don't know what I gave him.

13 Q All right.

14 A But I know I -- I know I didn't give him the Tylenol
15 Cold Plus.

16 Q Okay. So, after he sat in the car, you spoke, you
17 gave him the medicine. At some point he leaves, and you and
18 Norman drive off; is that fair to say?

19 A That's fair to say.

20 Q Do you know where you and Norman went after you left
21 his --

22 A I do not --

23 Q -- house?

24 A -- know where we went. We went somewhere. We
25 either went -- my husband seems to think we went to the wine

1 store. I think we either went to Sam's Club or Walmart or
2 somewhere.

3 Q Okay. And I'm going to ask you again just let me
4 finish the question because I think we're both fast talkers,
5 and I think we're --

6 A Sorry, I thought you --

7 Q -- bumping there a little bit.

8 A -- were done.

9 Q That's okay. So at some point you went to one of
10 the stores. And then did you go home? Yes?

11 A Yes. I'm waiting. Yes.

12 Q Okay. And who was home, if anyone, when you both
13 arrived?

14 A I told you then I don't remember if Michael was home
15 or not when we walked in the door, okay? So --

16 Q Okay. And I just want to make something clear.
17 When you say, you told me, are you speaking about when we met
18 and talked about --

19 A Saturday.

20 Q -- what happened? Okay. Saturday?

21 A Saturday.

22 Q Saturday's fine. Okay. So, I appreciate that. But
23 this is the first time that the jury's hearing it.

24 A Okay.

25 Q -- so you don't need to start by, I told you.

1 A Okay.

2 Q And it's my understanding that you also met with the
3 Defense as well on Saturday?

4 A Um-h'm.

5 THE COURT: Is that, yes?

6 THE WITNESS: Yes.

7 THE COURT: Okay.

8 BY MS. LAVELL:

9 Q Okay. So you don't really need to --

10 A Okay, I won't.

11 Q Yeah, we're just -- just answer the question, and
12 we'll be great. So you don't recall if someone was home?

13 A I just was going to say I don't even remember the
14 question now. I do not recall if anybody was home at that
15 time.

16 Q At some point --

17 A Michael was there either before or shortly after.

18 Q All right.

19 A Michael Joshua.

20 Q Michael Joshua, your grandson? Okay. At
21 approximately 12:00 o'clock did someone come to your door?

22 A At approximately 12:00 o'clock.

23 Q And who was that?

24 A No, wait a second. If Michael Joshua was not home
25 already, he would have come to the door. Are you now

1 referring to when my son Michael John came to the store
2 (sic) --

3 THE COURT: Did someone come --

4 THE WITNESS: -- and I don't know what time it was.

5 THE COURT: -- to the door at around 12:00 o'clock?

6 THE WITNESS: I don't know what the time would have
7 been.

8 THE COURT: Okay.

9 THE WITNESS: That's what -- my point. I don't
10 know what time it would have been.

11 BY MS. LAVELL:

12 Q After your grandson was home --

13 A Okay.

14 Q -- did someone come to your door?

15 A Yes.

16 Q And who was that?

17 A Michael John, my son.

18 Q Did you answer the door?

19 A Norman did.

20 Q And do you ever a peephole in your door?

21 A Yes, we have a peephole in my door.

22 Q Did Norman say anything to you and Michael Joshua
23 when he realized the Defendant was at the door?

24 MR. PARRIS: I'll object as to hearsay, Your Honor.
25

1 MS. LAVELL: It's not being offered for the truth
2 of the matter asserted. It's just --

3 THE COURT: Come on up, please.

4 (Bench conference began)

5 THE COURT: Thank you.

6 MS. LAVELL: Maria Lavell for the State. It's not
7 being offered for the truth of the matter asserted. It's
8 going to explain what the victim in this case did as a result
9 of learning that his father was at the door. If you --
10 she'll be able to testify that her son, Michael -- or
11 grandson, Michael went into the other room when he learned
12 his father was there.

13 THE COURT: Right, and of course, he can say that.

14 MS. LAVELL: So this is just -- this isn't being
15 offered for the truth of the matter. It's just explaining --
16 her ability to explain what happened next, her present sense
17 impression in regards to --

18 THE COURT: So what is it that he said?

19 MS. LAVELL: Michael's here. You may want to go
20 into the room and act like you're studying.

21 MR. PARRIS: Or you can just say, okay, after there
22 was a knock at the door, what did you see Michael do --

23 MS. LAVELL: Well, I know I --

24 MR. PARRIS: -- Michael Josh. Yeah, Michael Joshua
25 do.

1 MS. LAVELL: I know I can say that, but I --

2 THE COURT: I think for that purpose, it's
3 admissible. Overruled.

4 MS. LAVELL: Thank you, Your Honor.

5 (Bench conference concluded)

6 THE COURT: Go ahead.

7 BY MS. LAVELL:

8 Q Okay. I'll ask the question again. Did Norman say
9 anything when he saw that it was your son outside the door?

10 A Most likely.

11 Q I don't want you to guess.

12 A I don't know. I can't answer that. I don't
13 remember.

14 Q You can't remember? Okay. Let me ask you this; as
15 a result of what Norman said, did you your grandson do
16 anything?

17 A My grandson came down to do homework because he was
18 supposed to be doing it, and should have been down doing it
19 anyway. So yes, he came down to do homework. We have a room
20 -- Michael's room is upstairs. Do you want me to go? And
21 downstairs there's a room off to the side where he does his
22 -- we call it the homework room.

23 Q And it's your -- it's your -- well, let me ask you
24 this, when the Defendant knocked on your door --

25 A Rang the bell.

1 Q Rang the bell. Thank you for correcting me. When
2 the Defendant rang the bell, are you saying that your
3 grandson was upstairs?

4 A I am saying he probably was upstairs.

5 Q But you don't recall?

6 A I don't absolutely recall.

7 Q But at some point after the -- well, maybe not. At
8 what point did your grandson go into this room to do
9 homework; before or after the Defendant rang the doorbell?

10 A I am going to say after.

11 Q Did your husband let the Defendant inside your
12 residence?

13 A Yes.

14 Q And did he come inside the residence?

15 A Yes.

16 Q Did you have any discussion with your son in regards
17 to his physical appearance when he arrived?

18 A Did I have a discussion? Yeah, I told him how
19 beautiful his eyes were that day. There were as blue as the
20 sky and they -- and I was very happy with that. And he
21 looked happy, and he was happy. That was the discussion I
22 had with his eyes.

23 Q Okay. Did you have any discussion with him in
24 regards to any concerns you had about the way he looked?

25 A Not when he first got there.

1 Q Okay. So after he first arrived and you commented
2 on how beautiful his eyes were, did he go in and speak with
3 your grandson?

4 A He had already spoke with my grandson.

5 Q Were you present when he spoke with your grandson?

6 A Yes, I was.

7 Q And when did he say to your grandson?

8 A He said, "Let's go out and play football." And I
9 said, "Michael, you're doing schoolwork," and he kind of
10 joked and said, "You can do that later." And being 14 at the
11 time, being later would be much better for him than sticking
12 around doing it now. So they -- that was that.

13 Q Did you have a conversation with your grandson the
14 day before on the 5th, where he indicated that he did not
15 want to see his father on Sunday?

16 A You know, I've been trying and trying to think about
17 it. It's -- and this is going to be kind of a long answer,
18 sorry. Christmas had just ended. We had a big bunch of
19 people at our house for --

20 Q Actually --

21 A -- Christmas and --

22 Q -- I want to stop you --

23 THE COURT: Ma'am. Yes, hold on.

24 BY MS. LAVELL:

25 Q -- because the question doesn't require --

1 A Well, it kind of will.

2 Q Okay, well, just, if you can't answer whether or not
3 you had a conversation with your grandson the night before in
4 regards to his not wanting to see his father on Sunday, then
5 just tell me you can't answer that question.

6 A I can't answer that.

7 Q Thank you. So at some point, did Michael -- did
8 Michael appear as though he was going to leave the house to
9 play ball or catch with his father out front?

10 A They did go out to play, yes.

11 Q So -- well, let's talk about that. All right, so
12 when did you have this -- after his father went in and told
13 him he could do his homework later and Michael agreed to play
14 catch with him, do you know if Michael went to change his
15 clothes or anything like that before he went outside?

16 A I don't know, and I doubt it.

17 Q Okay.

18 A But I don't know.

19 Q Okay. Do you recall when you had this conversation
20 with your son in regards to how beautiful and bright his eyes
21 were --

22 A It was just in passing as they were going out.

23 Q As they were going out?

24 A Right.

25 Q Do you remember where you were when they were going

1 out?

2 A I was by the door.

3 Q And --

4 A By the stairs, actually.

5 Q Okay. Now, you have a screen right next to you, and
6 I'm going to put a picture up in just a quick second, and
7 then you can actually -- it's interactive, so you can
8 actually draw on the screen.

9 A I can draw?

10 Q You can. It's magical. Okay, this is State's 7.
11 Do you recognize this?

12 A Yes.

13 Q All right. And what is this a picture of?

14 A My house, or my foyer.

15 Q Okay. And you indicated that as they were going
16 out, you were where?

17 A You want me exactly where I was?

18 Q Well, just get close.

19 A Let's see, this is the door, this is the stairs,
20 this is -- this room I was either probably coming around here
21 or standing here or standing there or standing there.
22 Somewhere in that area.

23 Q Okay. So you were somewhere in that area.

24 A This room, I -- if I can -- is -- is that where the
25 homework room is or that's -- I don't know what -- go ahead.

1 Go ahead.

2 Q Okay, thank you. And you said that you were
3 standing there when they went out?

4 A Yes, I was there when they went out. I believe I
5 was on -- I don't know what I was doing. Yeah, I would have
6 been there, yes.

7 Q All right. Prior to their leaving to go out and
8 play catch, did the Defendant ask you or excuse me, let me
9 say that differently. Did the Defendant ask Michael in front
10 of you to go with him in the car?

11 A I believe that they had gone out to play first and
12 then Michael John -- and I'm going to have to say what he
13 realized. He realized that he --

14 Q Well, I don't want you to tell me what he realizes
15 because --

16 A Okay, well, then -- then they had gone out to play.

17 Q Okay.

18 A And then Michael and his son came back in the house
19 because Michael -- I don't know if they told me before or
20 after that he wanted to go to the store, and I'm a little
21 confused. It was either before or after, but I knew he
22 wanted to go back to the store.

23 Q All right.

24 A But I think they went -- I think he said he wanted
25 to go back to the store, and I think they went out and played

1 for a while, and I think that they talked about going to the
2 store while they were outside, and I think that little
3 Michael did not want to go, and that's when they came back in
4 the house. And where was I when they came back in the house?
5 I was probably either in the kitchen or walking towards the
6 door, and I opened the door, I let them in --

7 Q Okay, I'm going to stop you, okay? You're on a
8 roll, but --

9 A You got to catch me while I got it in memory.

10 Q -- I got to -- I got to catch you. I got to --
11 okay. So at some point the Defendant asks little Michael or
12 Michael Joshua to go to the store with him, and you said you
13 think little Joshua did not want to go. Now, my next
14 question to you, and I want you to try and focus on the
15 question, is did you say anything about Michael Joshua going
16 in the car to the store with his father?

17 A Is this while they're inside or outside?

18 Q At any point, did you say that you did not want him
19 going to the store with his father?

20 A In the very beginning when Michael said he didn't
21 want to go.

22 Q Okay. Did you express any concerns to the Defendant
23 in terms of why you wouldn't want him to go with his father?

24 A Now, you have to let me explain that, okay?

25 Q Well, no, I just need you to tell me whether or

1 not --

2 A As a mom, when a kid doesn't want to do something,
3 you kind of give them an out. And so Norm said that he
4 thought he looked like his dad had been drinking. So I said
5 if your dad's been drinking, you don't have to go. And
6 that's when they went out to play.

7 Q Do you remember having a conversation with your son
8 where you told him that he didn't look like -- right, that
9 he'd been drinking, and he should just go home?

10 A That is what I just said. I did that for Michael's
11 benefit.

12 Q Well, you --

13 A Did I -- personally, I did not think he'd been
14 drinking. I went along with Norm and trying to let Michael
15 -- Michael hates to go to the store. So I was trying to do
16 him a favor.

17 MR. PARRIS: And Your Honor, I'm sorry to
18 interrupt. If we could have a distinction between Michael
19 John and --

20 THE WITNESS: Michael Joshua hates to go to the
21 store.

22 THE COURT: Thank you.

23 THE WITNESS: Sorry.

24 THE COURT: Yeah, it's -- we'll have to work on
25 keeping that straight.

1 MR. PARRIS: Thank you, Your Honor.

2 BY MS. LAVELL:

3 Q Okay.

4 MR. PARRIS: I'm sorry, Ms. Lavell.

5 BY MS. LAVELL:

6 Q So at some point, do you become aware that there is
7 a problem between the Defendant and your grandson?

8 A There became a problem. Michael and his son --
9 Michael's -- how do you want me to say it? Big and little?

10 Q Whatever you're comfortable with.

11 A Michael and Michael, both, came in the house. I let
12 them in the house. He came in to tell me that he would like
13 Michael to go to the store with him, because he left his food
14 stamp card there, and he want today go and pick it up. I
15 said, Michael, you can go to the store with your dad, it
16 won't hurt you. Again, he doesn't like to go to the store.
17 So, he didn't want to go. I said, Michael, go to the store
18 with your dad. It's not going to hurt you. You know, it's
19 the right thing to do.

20 Taking that out of my hands now that he's his
21 father and I've already told him with my authority he could
22 go, Michael said, "I'm still your father, you should go to
23 the store with me," and --

24 Q All right, so I'm just going to stop you. Now, you
25 just said --

1 A Oh, my God.

2 Q -- that you told him with your authority, meaning
3 your authority as the guardian?

4 A As the parent.

5 Q That --

6 A I consider myself as parent.

7 Q -- that he could go to the store with your son?

8 A Right.

9 Q You didn't --

10 A Actually, I told him he should. Not that he could.

11 Q Okay. That he should go? All right. Did you ever
12 give your son permission to take him to the store?

13 A Well, it would seem if they were both standing there
14 and I --

15 Q No, no, no --

16 A Yes. Then the answer --

17 Q -- no. I'm asking you a question.

18 A -- would have to be, yes, in my opinion.

19 Q So you specifically spoke to your son?

20 A Well, they were both standing --

21 Q I understand that. But you just told -- you just
22 said you told Michael he should go with his father.

23 A Michael Joshua, right.

24 Q My question -- I -- my question to you is, did you
25 ever tell Michael John, the Defendant, that he could take him

1 to the store?

2 A And if you want me to remember exactly whether I
3 said yes, Michael, you can take him when I said Michael, you
4 should go with him, I would, in my assumption, say that is
5 the same as saying yes, you can take him to the store. I
6 don't know if those were the exact words that came out of my
7 mouth.

8 Q Why is it that you used the word authority when you
9 just testified --

10 A You know, why did I use the word authority --

11 Q Let me finish --

12 A Oops.

13 Q -- my question. Okay? Why did you use the word
14 authority when you just said that I said -- I used my
15 authority and said Michael, you can go with your father? Why
16 did you choose that word?

17 A I think I chose that word because -- and I'm not
18 supposed to bring this up, that when we talked Saturday, you
19 acted like it's -- that Michael didn't have the authority,
20 and so therefore that word stuck kind of in my head.

21 Q So you got that word from me?

22 A Sort of.

23 Q Okay.

24 A And that's a guess, too.

25 Q That's a guess. All right. Now, you said that you

1 saw a problem between Michael Joshua and Michael John when
2 they came back into the house and you said, I let them in.
3 When did you -- aside from Norman letting him in initially,
4 when did you -- why would you, at that point, need to let
5 anyone in your house the second time?

6 A Because I had just washed my floors, and I did not
7 want them running through there. My kids have a tendency,
8 they go out and play on the blacktop. If you have a house
9 with blacktop out there, they come in and there's nothing but
10 black marks all over. I wanted to stop them before they went
11 through on the carpeting.

12 Q How did you know they were going to be coming in?

13 A Because I was there. Actually, after they went out,
14 I was sitting on these stairs on the phone with my daughter.
15 And how do I remember that? I don't know.

16 Q Well, I didn't ask that, but thank you.

17 A You're welcome.

18 Q So was there a time when your grandson -- without
19 you letting anybody in -- opened the door from outside and
20 ran in with his father chasing him?

21 A No.

22 Q That never happened?

23 A No. You're talking still January 6th?

24 Q Still January 6th.

25 A No, that did not happen.

1 Q That didn't happen? Okay. Let's talk about, you're
2 saying that your grandson did not run in with the Defendant
3 chasing him. That, the Defendant, you gave him -- or you
4 opened the door, invited him in a second time, and then you
5 gave him your authority to go to the store with his father.
6 At some --

7 A Gave him his permission, not his authority.

8 Q You used your authority --

9 A My authority.

10 Q -- I'm sorry, to give him permission? Okay, thank
11 you. At some point after all of that, do you become aware of
12 something happening between Michael Joshua and Michael John?

13 A Yes.

14 Q What is that?

15 A They were -- when Michael -- when I told Michael to
16 go to the store with his dad, and he said he didn't want to,
17 and Michael Joshua took off. The arrows don't go far enough
18 around here. I think this way or that way, I don't know.
19 And anyway, he went -- Michael went off there, he came and
20 said he wasn't going to go, and Michael followed after him.
21 And they got as far as the kitchen, and there was a lot of
22 yelling. I still had the phone in my hand, and I yelled to
23 them, you guys stop or I'm going to call 911. And I believe,
24 and I'm not actually sure, they ran around -- I think they
25 ran around more than once, and I have, I'm sorry to say, kind

1 of -- and they were in my dining room, all I could see was my
2 dining room being smashed and stuff broken, and I kept
3 saying, you guys get outside.

4 I figured if they got outside, there would be
5 neighbors there, they'd all stop their commotion. But in the
6 meantime, I called 911, because I just happen -- and I've
7 never called 911 in my life, and I probably did it because I
8 had the phone in my hand and I forgot --

9 Q All right, I'm going to stop you.

10 A You're stopping me?

11 Q I'm stopping you.

12 A Okay.

13 Q We're going to back up. All right, so you said that
14 they ended up somehow in your living room and --

15 A Actually, the dining room.

16 Q The dining room, okay. I think you and Michael -- I
17 mean, yeah, Michael Joshua may refer to these rooms
18 differently. So let me pull out a picture. Okay, this is
19 State's 9. Is this what you're referring to? Is this your
20 dining room table right here on the bottom left?

21 A Right.

22 Q Okay.

23 A But back here is --

24 Q Back where is what?

25 A Well, back here is my curio cabinet and my --

1 Q Can you draw a circle in the area that your curio
2 cabinet's at.

3 A Well, it's back here. I mean, this is the table.

4 Q Well, and you can actually draw right on that
5 screen. Because when you say, back here, we can't see what
6 you're pointing at.

7 A Well, it's not showing.

8 Q Oh, can you just draw a circle or do something
9 different?

10 THE COURT: An arrow which way.

11 THE WITNESS: Over here, over here. I have a China
12 cabinet and a curio cabinet.

13 BY MS. LAVELL:

14 Q Okay, so is it on the --

15 A But --

16 Q -- bottom right?

17 A See this is --

18 Q The bottom right?

19 A Bottom right and bottom left.

20 Q Bottom right and bottom left, okay. In the area of
21 the dining room table?

22 A See this dining room table? If it was moved over
23 here, you could run around here. Over here --

24 Q Okay.

25 A -- would be a --

1 Q And ma'am, I'm not -- because --

2 A Oh, you're not looking at the same thing I'm looking
3 at?

4 Q Yes --

5 THE COURT: We're looking at it, but --

6 BY MS. LAVELL:

7 Q -- we are.

8 THE COURT: -- we can't see what you mean when you
9 say here, here and here. So that's why you have to mark
10 something on the screen.

11 THE WITNESS: Art is not my thing, even Xs.

12 THE COURT: Me neither.

13 THE WITNESS: This is my -- thank you. This is my
14 dining room table right. I'm touching it. There's your
15 arrow.

16 BY MS. LAVELL:

17 Q All right. There's your dining room table.

18 A There's another arrow. Now, see that window there?
19 Come all the way across here, there's another window.

20 Q Okay.

21 THE COURT: Right behind where the person taking
22 this picture would be?

23 THE WITNESS: Right.

24 THE COURT: Okay.

25 THE WITNESS: Right. This is a living room and

1 dining room combination. As you can see the pillars -- the
2 pillars -- the pillars there that separate it.

3 THE COURT: Uh-huh.

4 BY MS. LAVELL:

5 Q Okay, Pat, I think --

6 A Over --

7 Q -- we're close enough, actually. We got to --

8 A Just when I was getting to it.

9 Q Getting right there, yeah. I think we're kind of
10 close enough. Now, you said you heard a commotion. Where
11 were you? Were you actually in --

12 A I was --

13 Q Well, hold on. Were you actually in a situation
14 where you were able to observe your son and your grandson
15 when you heard the commotion?

16 A No.

17 Q All right. So you simply heard the commotion?

18 A Yeah, not even in this area.

19 Q All right. And what -- if you can't see the
20 commotion, what makes you think they're by your curio
21 cabinet?

22 A Well, because I was by -- do you remember where the
23 front door was?

24 Q I do.

25 A Okay. So when you're at the door, that's right to

1 the left, it -- you're in the area, and I know that they were
2 running through there. And we do not use this area of our
3 house very often.

4 Q Okay.

5 A This area, I'm pointing to this whole thing.

6 Q So --

7 A We don't use this area. So when they're over in
8 there, I'm very nervous because I don't want everything
9 broken.

10 Q Okay. So you hear a commotion and you say you've
11 never called 911 before, but there was something about this
12 commotion, and you indicated it's because they were by your
13 curio cabinet that caused you to want to call 911?

14 A Right. I really wanted them to get outside and not
15 have anymore commotion in the house. I just wanted to go
16 out.

17 Q And what were you hearing? What kind of commotion
18 were you hearing?

19 A I don't know how to describe commotion.

20 Q All right, well, was it yelling? Was it --

21 A Well, I think --

22 Q -- struggling?

23 A -- it -- I think -- I think a chair was knocked
24 over. I think that the dog was barking like crazy. You
25 know, I mean, I don't know how to describe commotion.

1 Q All right. Did you think to walk in and look to see
2 what your son and your grandson were doing?

3 A I don't even know what time frame we're talking
4 about, whether there would be time for me to walk there and
5 walk over to see what was going on. I --

6 Q Well, let me get you to the time frame. You
7 indicated that you saw them running to the -- your dining
8 area, and you couldn't see them from your position, but you
9 heard a commotion, and you thought that they may be your by
10 your curio cabinet. So you said, go outside or I'm going to
11 call 911.

12 A I said, if you don't stop, right.

13 Q Right. At that point -- well, let me ask you, did
14 they stop when you said that?

15 A Nope.

16 Q All right. So at that point, did you think to walk
17 into that area to see what it was that was actually
18 happening?

19 A I didn't have to walk in that. They were continuing
20 moving on.

21 Q All right. So explain that. What do you mean they
22 continued to move on?

23 A If somebody is running around -- am I supposed to be
24 pointing to anything? If somebody's running around and
25 running around -- I don't -- I don't quite understand your

1 question. I don't know what you want me to say.

2 Q Well, I don't want you to say anything but the
3 truth.

4 A I don't know what you're asking me. I'm not talking
5 about being truth. I don't understand your question.

6 Q Well, I guess, what's confusing me now is that
7 you've testified in such a way to suggest that they have now
8 stopped in this area near your curio cabinet and there's a
9 commotion --

10 A I never --

11 Q -- going on.

12 A -- said they stopped. I just said they were running
13 around through there. If you -- that's what I was trying to
14 show you, this dining room table, and they're running around
15 here. Back over here is the curio cabinet over here. You
16 can't see it in this picture. So if you're -- you know,
17 Michael -- if you're running around a house --

18 Q I understand.

19 A I don't --

20 Q I understand --

21 A -- understand how you're confused.

22 Q -- this is difficult for you. All right.
23 Initially, he ran in the door. He ran --

24 A No, he did not run in the door.

25 Q I'm sorry. He -- and let me ask you a question.

1 Some things you appear to be extremely clear on. You --

2 A I am extremely clear on --

3 Q Hold on a minute.

4 A -- a lot -- oops.

5 Q Let me ask the question. Some things you appear to
6 be extremely clear on, and there are other things that you
7 are having a difficult time remembering. Can you explain why
8 that might be?

9 A I probably could for mostly the house-wise. I told
10 you, I don't let them come in with the mud on their shoes and
11 the black tar. So I know that I didn't let them just come in
12 with their shoes. I know I stood there and waited for them
13 to come in.

14 Q And --

15 A And the other part of being confused.

16 Q Uh-huh.

17 A I'm confused with trying to make you understand what
18 it was like where they were running. I mean, you don't have
19 a picture of my house, so you can't see what I'm --

20 Q Right.

21 A -- talking about and --

22 Q Yeah, that makes it --

23 A -- I don't think I'm as confused as we both are.

24 Q That makes it difficult since we don't have a view
25 of your entire house. So let's try and break this down a

1 little bit so that everybody understands and we're all on the
2 same page, all right? You indicated that you let them in and
3 you gave permission to the Defendant to come back into your
4 house after he'd already been given permission the first
5 time.

6 A Could I ask you a simple question?

7 Q No, you may not.

8 A Oh.

9 Q You're here to answer, sorry. And that there was a
10 conversation once they entered, after which time --

11 A Wait, I -- you know what, I just phased out. I --

12 Q You faded out?

13 A Yeah.

14 Q Okay, I do that, too.

15 A Go ahead, sorry.

16 Q So that you let the Defendant and your grandson back
17 into the house basically giving them permission to come back
18 into the house?

19 A Um-h'm.

20 Q And that there was some sort of a conversation. You
21 don't remember exactly the time frame, but there's some sort
22 of conversation, after which time Michael starts to run --

23 A You're referring to the conversation where I said he
24 could go -- should go to the store?

25 Q Yes.

1 A Okay.

2 Q That's the conversation I'm referring to. Thank you
3 for remembering that. And that the Defendant then went after
4 Michael. What was the Defendant's, if you know, did he run
5 after Michael Joshua when Michael Joshua started to run
6 through the house?

7 A Now, that would be where I would have to say he
8 went --

9 Q He who?

10 A Michael -- the one you asked me if he was --

11 Q Joshua?

12 A -- run after him. You said did he go after him.
13 Michael John --

14 Q Michael John --

15 A -- went after him. Michael Joshua -- oh, gosh, if
16 you -- have you ever tried to remember something a year ago
17 and get it in exact detail? I believe that Michael Joshua
18 was probably on the stairs behind me probably, and then he
19 came down and probably went around and his father went
20 around. Were they running at that point? I don't think they
21 were running. I think Michael walked away, young Michael,
22 saying, "I'm not going to go, I don't want to go to the
23 store." And his father probably walked after him and said --
24 probably said mom said you could go, you can go with me --

25 Q Okay.

1 A -- probably.

2 Q Okay, and we're doing a lot of probablies.

3 A Well, I can't help anything --

4 Q I don't want you to guess.

5 A -- but probably.

6 Q I don't want you to guess.

7 A Okay.

8 Q If you don't know the answer to a question --

9 A All right, I don't know if they were running.

10 Q If you don't know the answer to the question, the
11 answer is simply, I don't know.

12 A Okay.

13 Q All right?

14 A Okay.

15 MR. PARRIS: Well, Your Honor, we're almost --
16 we're crossing the line to badgering the witness. Now she's
17 being instructed as to how to answer questions. She's
18 answering them to the best of her ability saying --

19 THE COURT: Come on up, please.

20 MR. PARRIS: -- it's probably this.

21 THE COURT: Come on up, please.

22 MS. LAVELL: Your Honor, and I object to that
23 objection.

24 THE COURT: Come on up, please.

25 (Bench conference began)

1 THE COURT: No speaking objections in front of the
2 jury. Okay. Now, it's okay for her to tell her that she
3 should only answer if she knows the answer, or she can say, I
4 don't know, if she doesn't know the answer. I would like
5 some clarification on whether those probablies are based on
6 recollection, or just based on her guessing about what may
7 have happened. If it's based on perception or something
8 other than perception. So see if you can clarify that,
9 but --

10 MS. LAVELL: Well, I think she said, probably, I
11 don't know, a hundred times. So I think --

12 THE COURT: I know, but what I'm saying is, is she
13 thinking, yeah, I think that's what I remember or is this
14 just --

15 MS. LAVELL: And I think --

16 THE COURT: -- making it up.

17 MS. LAVELL: I think I would appreciate you, if you
18 agree, overruling the objection I wasn't badgering her. I
19 think badgering is very clearly --

20 THE COURT: Okay. I don't think --

21 MS. LAVELL: She's clearly --

22 THE COURT: -- you were badgering her, so
23 overruled.

24 MR. PARRIS: John Parris. That was Maria Lavell
25 speaking. John Parris speaking now. To me it seems like Ms.

1 Lavell is trying to get under the skin of Patricia at this
2 point in time. We have heard that she may become a hostile
3 witness and just there is some pushing back and forth between
4 the two of them, and that's my concern (indiscernible).

5 THE COURT: There is clearly pushing back and
6 forth.

7 MR. PARRIS: Thank you.

8 THE COURT: I don't think it's badgering, though.

9 MS. LAVELL: And Maria Lavell for the record.
10 Obviously, it's my job as the State's attorney to have her
11 answer the questions. She's clearly being evasive. It's my
12 job to do exactly what I'm doing, Mr. Parris. Based on your
13 pretrial with her, you should be aware that this was going to
14 take place. Thank you.

15 MR. PARRIS: Well --

16 THE COURT: Okay.

17 MR. PARRIS: -- and it's my job to --

18 THE COURT: Why don't we go on with the trial.
19 Thanks.

20 MS. LAVELL: Thank you.

21 (Bench conference concluded)

22 THE COURT: All right. Ma'am, I understand it's a
23 year ago and you may not remember everything. So if you
24 don't remember the answer to a question, it's okay to say, I
25 don't remember. If you do remember, say what you remember.

1 Okay?

2 Now, when you do answer, the answer should be based
3 on what -- only if it's what you remember, not based on what
4 anybody else may have told you. So if you remember, say what
5 you remember. If you don't, you don't. You can't testify
6 just based on guessing or what anybody else may have told
7 you. You understand?

8 THE WITNESS: If I said what somebody else told me?

9 THE COURT: Did you understand what I just told
10 you?

11 THE WITNESS: Yeah.

12 THE COURT: Will you follow that?

13 THE WITNESS: Okay.

14 THE COURT: Okay? Yes?

15 THE WITNESS: Yes.

16 THE COURT: Okay. Nodding isn't on the record.

17 THE WITNESS: Yes.

18 THE COURT: Thank you.

19 THE WITNESS: Yes.

20 MS. LAVELL: And Your Honor, would you be so kind
21 as to rule on Defense's motion that I was badgering the
22 witness.

23 THE COURT: Yes, I've overruled the objection.

24 MS. LAVELL: The objection.

25 THE COURT: Go ahead.

1 MS. LAVELL: Thank you.

2 BY MS. LAVELL:

3 Q Okay. So -- I don't even know where I was. All
4 right. So you think that -- you think, although you're not
5 sure, that Michael Joshua walked away and his father walked
6 after him?

7 A I'm not sure.

8 Q Okay. When you said that you heard the commotion in
9 the dining room and you said, take it outside or I'm going to
10 call 911, did they remain in that dining room or were they
11 continuing to maneuver around the house?

12 A I believe they were continuing to maneuver around
13 the house.

14 Q At some point, did they become stationary still
15 inside the house?

16 A Not to my knowledge.

17 Q And you don't see them, from the time that you let
18 them in the second -- you let the Defendant in the house the
19 second time and Michael walked off, you don't see them again,
20 you only hear what you describe as a commotion until they're
21 outside the house?

22 A Now, that's different than did they stop sanding in
23 the house, isn't it? They continued and yes, and if I could
24 show where I was, which I can't, I was by the door, and
25 they --

1 Q You can. State's 7.

2 A Okay, now, I would have been here because -- or
3 here. Here, here.

4 Q Okay.

5 A As they're coming -- you know, this is where the
6 dining room is and they would be coming around here.

7 Q All right, so you remained in that same area --

8 A This area.

9 Q -- from the time they came in the house to the time
10 they came back around after you heard the commotion?

11 A Yes.

12 Q What did they do next? Or did the Defendant, your
13 son, do next?

14 A I'm a little confused as to next after what?

15 Q Well, let's -- when they came back around and you
16 were still standing in the same position you had been in when
17 Michael walked off originally --

18 A Right.

19 Q -- what did your son do next?

20 A They -- this door was now open, and went out.

21 Q When you say "they," are you talking about Michael
22 Joshua and --

23 A I'm talking about all -- I'm talking about Michael
24 Joshua and his father and Norm.

25 Q All right.

1 A And wait, but I have to back you up. And I'm sorry,
2 but this is confusing and it's confusing to me, too. Because
3 there was so much stress going on, and I know that Norm
4 probably went out, but when I sit there -- and obviously,
5 knowing that I'm coming to court, I've had time to sit and
6 think and try and recollect something. I really don't
7 remember seeing Norm until -- can I move forward and --
8 because everybody knows the police were involved, right?

9 Q Well, I kind of -- I appreciate that what you're
10 saying now is that you're not sure that Norm --

11 A Okay, I wasn't --

12 Q -- went out.

13 A -- sure if Norm was part of --

14 Q At that point?

15 A -- going out the door.

16 Q At that point?

17 A At that point.

18 Q All right, so while you're standing there and you
19 observe your son and your grandson going out that door, okay,
20 and you know what we're talking about? We're talking about
21 after the commotion, they've come around and you're still in
22 the same position, that door is open, and they go out. How
23 are they going out? In other words, is your grandson walking
24 out on his own freely?

25 A I believe, Michael was shoving him, pushing him.

1 Michael was crying, and that's what I believe.

2 THE COURT: Who was crying?

3 THE WITNESS: The young Michael.

4 THE COURT: Thank you. And who was shoving and
5 pushing?

6 THE WITNESS: Big Michael.

7 BY MS. LAVELL:

8 Q And what are you saying, if anything, when you're
9 observing them?

10 A I am on the phone calling 911 ,and very uptight
11 because, as I say, I never call them before, and they were
12 not responding. They're asking me the dumbest, in my
13 opinion, dumbest questions I have ever heard, and I'm
14 standing there trying to get them to come so there is no
15 commotion, and I am saying things, and they're responding
16 crazy. And so that added to my confusion.

17 Q All right. So what about what you saw caused you to
18 call 911?

19 A Nothing that I saw caused me to call 911. The fact
20 that I didn't want the commotion in the house is what caused
21 me to call 911. I called 911 right away. And, you know, if
22 you could --

23 Q Well, hold on, hold on.

24 A I wasn't done with the answer.

25 Q I know, but you answered the question.

1 A Oh.

2 Q So I know you want to say a whole lot of stuff, and
3 I appreciate that, but I --

4 A Okay.

5 Q -- need to kind of stay on track. So it was the
6 commotion that had you call 911. You called 911 right away.
7 Do you mean that you called 911 when you first heard the
8 commotion in your -- let me finish the question. When you
9 first heard the commotion in the dining room or when you saw
10 your grandson being pushed out by your son?

11 A I'm going to back up and think that I called before,
12 because I already had the phone. So I'm going to assume I
13 had done talking to one of my kids because that's all I do
14 anyway, in my hand, and I think that it's possible that I may
15 have called -- and I'm -- and now I'm going to look like a
16 jackass, excuse me, but because I'm going to say I may have
17 called even before the commotion because they were going
18 around, but I don't know that for sure.

19 Q All right. But it's your testimony that you've
20 never called 911 before?

21 A I have never.

22 Q All right.

23 A Never will again.

24 Q I'm trying -- I guess, I'm trying to understand in
25 regards to this commotion because you think you may have

1 called the commotion or you may have called when they were
2 exiting the house?

3 A When -- no, I called before that.

4 Q Before that. Okay, so I guess I'm trying to find
5 out, I mean, you said you raised six kids. You've never
6 called 911 before. So I'm trying to find out what is it
7 about this commotion in the dining room that you cannot see
8 that is so concerning to you that you called 911?

9 A Okay, I started to tell you that before, and you
10 said it wasn't relevant, so.

11 THE COURT: Go ahead and answer, ma'am.

12 THE WITNESS: But it's a long story. I was
13 starting to say it was right after Christmas, we have -- we
14 do a lot of decorating for Christmas. In fact, Michael had
15 just been over and put our Christmas tree up overhead in our
16 loft.

17 BY MS. LAVELL:

18 Q Ma'am --

19 A We --

20 Q -- I'm going to stop you.

21 A We're tired.

22 Q I'm going to stop you.

23 A Okay.

24 Q You know, was there something precious that you
25 thought they were going to break? Was there -- I mean, what

1 -- I don't need the whole Christmas thing and how Michael
2 came up and set things up for you, isn't the question. The
3 question is, what about this particular commotion caused you,
4 after raising six kids, to call 911? What was special about
5 this commotion? What was -- what got you upset? What caused
6 you to dial 911?

7 A Do you think people dial 911 automatically just
8 because they have six kids?

9 THE COURT: Why did you dial 911? That's the
10 question.

11 THE WITNESS: Because -- I don't know why this
12 time, because I happened to have the phone in my hand and
13 because it seemed like there was go to be a commotion, and it
14 seemed like I didn't want to put up with it, and so I
15 thought, I will say I'm going to call 911. Everybody's going
16 to stop and everything's going to stand still, but it didn't.

17 BY MS. LAVELL:

18 Q All right. Did you ever become concerned for your
19 grandson's safety or Norman's safety? Were you ever
20 concerned on this day --

21 A On this day?

22 Q -- before you called 911, for your grandson's
23 physical safety or your husband's physical safety?

24 A I was concerned about a commotion, yes. Commotion.
25 You don't like the word commotion.

1 Q Well, I -- I love the word commotion. I think it's
2 a great word. What I'm trying -- I still don't -- am not 100
3 percent clear what you mean by commotion, but my question is,
4 did you become concerned about your grandson's physical
5 safety with his father, or Norman's physical safety with his
6 father?

7 A I don't believe I was concerned about their physical
8 safety. I just did not want anything to escalate. I did not
9 want anything to escalate into a problem. That's it.

10 Q Okay. Now, you said that --

11 THE COURT: Sorry, come on up.

12 (Bench conference began)

13 THE COURT: Do we have the 911 call?

14 MS. LAVELL: Yes.

15 THE COURT: Well, can't we just listen to the 911
16 call and see what she was concerned about because whatever
17 she said is what she was concerned about?

18 MS. LAVELL: Not yet, Your Honor.

19 THE COURT: Huh? Well, okay. It's getting
20 repetitive. So I'm going to need you to move forward. I
21 understand that you -- and it's legitimate to push her on
22 what she remembers, and that it's clear she called 911. I
23 think you've made your point about why she called it and
24 whether she was concerned about more than her curio cabinet,
25 but I think we need to move forward.

1 MS. LAVELL: Okay. And I appreciate that, Your
2 Honor, but she is a hostile witness.

3 THE COURT: Uh-huh.

4 MS. LAVELL: She was not --

5 THE COURT: Okay.

6 MS. LAVELL: -- (indiscernible).

7 THE COURT: -- even if she were his witness, at
8 this point, you're going over the same point. You got to
9 move forward.

10 MS. LAVELL: Well, I'm only going over the same
11 point because I have to get her back to, I mean, with
12 respect. I mean, you know, she's purposely being --

13 THE COURT: Right.

14 MS. LAVELL: -- not tracking. And so it's taking
15 longer than I would like, but.

16 THE COURT: I don't plan to be here Saturday. So
17 let's move forward.

18 MS. LAVELL: All right, you got it.

19 (Bench conference concluded)

20 BY MS. LAVELL:

21 Q Okay, so you indicated that you saw your son pushing
22 Michael out the door. Can you describe for the ladies and
23 gentlemen of the jury how your son was doing that.

24 A I really cannot.

25 Q Okay. But at some point, he gets him outside?

1 A At some point they were outside. At some -- do you
2 want me to go on or do you --

3 Q Well, you said that your son was pushing your
4 grandson outside?

5 A Okay, I did say that. But here, I'm on the phone --
6 I'll tell you. I'm calling 911. I'm a nervous wreck at this
7 point in time, okay? The next thing I -- the next thing that
8 actually that I can visualize is my son -- my grandson --
9 would that be better? My grandson is in the car.

10 Q Did you see how he got in the car?

11 A No, the next thing I saw was my grandson in the car.
12 Okay? And then I was standing by the car. His father was
13 standing next to me, and I was -- at this point Michael is
14 now crying, young Michael is crying. So now I'm out there.
15 Now, I'm out there. And within that kind of time, my
16 neighbors, next door neighbors --

17 Q Okay, I'm going to stop you. And ma'am, I
18 understand you want to tell the story and you get frustrated
19 when I stop you, but I have to ask you questions, okay?

20 A Okay.

21 Q You said you saw your grandson in the car. So it's
22 -- you're saying that you don't know how he got into the car?

23 A I am saying I don't know how he got in there. I'm
24 saying there was -- it was very chaotic. I don't have visual
25 of everything. I was just trying to tell you what I do see

1 and remember.

2 Q Okay. That's what I'm trying to find out.

3 A Okay.

4 Q Okay? So you didn't see how he got in the car. You
5 saw --

6 A No, I did not see how he got in the car.

7 Q You saw him in the car?

8 A Yes.

9 Q Where was the Defendant when you saw your grandson
10 in the car?

11 A When I saw my grandson in the car, I was standing
12 next to my grandson with the door open, and my son was on the
13 left side of me.

14 Q All right. Now, before your grandson was in the
15 car, before you saw your grandson in the car, did you see
16 your husband, Norman, trying to get your grandson away from
17 your son?

18 A I would say, get him away, I saw that he was behind
19 him. I didn't see -- you know, you're all running, and then
20 you get this glimpse, him, him, him and him and yeah. And
21 I'm over here trying to call 911. Norm wouldn't be trying to
22 get him away. Norm's about this tall, and Michael's this
23 tall, but yeah.

24 Q Did you ever see your son pushing Norm?

25 A No.

1 Q Has your son had conversations with you since this
2 incident about --

3 A Yes, he has.

4 Q -- this incident?

5 A This son? Yes, this son.

6 Q This son --

7 A Yes.

8 Q -- has he had -- has he had conversations --

9 A Yes.

10 Q -- with you about this incident?

11 A Well, he's -- he -- now you're going to say
12 (indiscernible). He has a memory lapse, and he doesn't
13 remember --

14 Q Ma'am, that wasn't my question.

15 A Well, it's kind of the answer.

16 Q No, that's not --

17 THE COURT: No.

18 BY MS. LAVELL:

19 Q -- the answer.

20 A That's not the answer.

21 Q The question was, have you had phone -- let me
22 finish. Have you had phone calls from your son where he has
23 discussed this incident with you?

24 A I have phone calls --

25 Q That's a yes or no answer, ma'am. Either you have

1 or you have not.

2 A Yes.

3 Q All right. Approximately, how many phone calls have
4 you had with your son where he has discussed this incident
5 with you?

6 A I've had -- he's been out of my picture for a year.
7 I have a phone call from him just about every day. All of
8 the conversations don't involve this incident.

9 Q Okay.

10 A Several of them have.

11 Q All right. Has he tried in any way during those
12 phone calls or via letters or through his brother, Bobby, has
13 he tried to get you not to participate in the court
14 proceedings against him?

15 MR. PARRIS: Your Honor, I'd object.

16 THE WITNESS: Actually --

17 THE COURT: Hold on.

18 MR. PARRIS: I'm sorry. I would object as to
19 speculation regarding what other efforts may have been made
20 that she's not aware of. We ask efforts through person X, Y
21 or Z.

22 THE COURT: Okay. So she can only testify about
23 what she's observed.

24 MS. LAVELL: Right. I thought that was the
25 question.

1 BY MS. LAVELL:

2 Q But has your son tried to cause you not to testify
3 against him?

4 A Actually, my son didn't even want me to spend my
5 money to get a lawyer for him.

6 Q Ma'am, that wasn't --

7 A That --

8 Q That wasn't my --

9 A Well, it's --

10 Q -- question.

11 A It is the answer.

12 Q No.

13 THE COURT: Ma'am --

14 THE WITNESS: It's not?

15 THE COURT: -- listen to the question and answer
16 the question.

17 THE WITNESS: The questions are difficult.

18 THE COURT: Did he try to cause you not to testify?

19 THE WITNESS: No, he never tried to cause me not to
20 testify.

21 BY MS. LAVELL:

22 Q Did he ever ask you not to come to court?

23 A No. If he did and it's something that's everybody
24 -- I don't believe he did.

25 Q Did he ever ask you to tell your husband, Norman,

1 not to come to court?

2 A I don't believe he did.

3 Q Has he ever told you to change your story or to say
4 that you gave him permission to come into the house the
5 second time?

6 A Is that -- I can't answer it that way. No.

7 Q Did he ever tell you to say that you didn't observe
8 certain physical behaviors that he -- or injuries that he
9 inflicted upon your grandson?

10 A To my knowledge, the conversations were never asking
11 him to say anything different than what I actually knew.

12 Q Okay. So at some point, while you're calling 911,
13 you had mentioned earlier about some neighbors. What
14 neighbors were you referring to?

15 A To the next door neighbors who happened to be police
16 officers. And they're going to be witnesses here, Won and
17 Lisa.

18 Q And how did they become involved?

19 A When we were out by the car and I -- they were
20 taking down Christmas decorations. I've tried to wonder that
21 one myself, too, if they heard my 911 call because they came
22 out while I was standing with Michael and tackled him. Never
23 said they were police officers. She was actually in her
24 pajamas.

25 Q Okay, I'm going to stop you. When they tackled him,

1 and when you say tackled, do you mean they took him to the
2 ground?

3 A I mean they took him to the ground.

4 Q And you saw that?

5 A I saw him on the ground, yes.

6 Q And --

7 THE COURT: And we're talking about --

8 MS. LAVELL: Him --

9 THE COURT: -- Michael John Schofield?

10 THE WITNESS: Michael John Schofield was taken to
11 the ground by the neighbor.

12 THE COURT: Okay.

13 BY MS. LAVELL:

14 Q Okay. And you said they never identified as police
15 officers, but you knew they were police --

16 A I knew they were police officers.

17 Q Let me finish. You knew they were police officers,
18 didn't you?

19 A I knew they were police officers, but they didn't
20 tackle me.

21 Q Okay. And what was your son doing when they tackled
22 him?

23 A I would imagine he was probably --

24 Q I don't want you --

25 A Oh, my God.

1 Q I don't want you imagine. If you don't recall what
2 he was doing, you can say, I don't recall. If you do recall
3 what he was doing when he was tackled by your neighbors in
4 their pajamas, I would like you to tell us.

5 A I don't recall.

6 Q Okay. You said that you thought that they may
7 possibly come over because they heard your 911 call. What do
8 you mean by that?

9 A Could you repeat that question, please?

10 Q Yeah. I mean, you said that you thought they might
11 have heard your 911 call. Do you mean that over some sort of
12 police scanner or that you were talking so loudly --

13 A Sorry.

14 Q -- that you were talking so loudly that they heard
15 it?

16 A I would -- I'm not -- I would imagine that if they
17 heard it because they have a police scanner, not because I
18 was talking loudly. She was taking her Christmas decorations
19 down from the window and looked out the window. But after I
20 think about it, that's just kind of strange because why would
21 they come running out? So I'm assuming that they heard it on
22 their police scanner.

23 Q Okay. Was there any yelling when -- was there --
24 you know, we've referred to a commotion earlier, although,
25 you didn't indicate that that meant yelling, but was there

1 any sort of commotion going on when you were on the phone
2 with 911 outside?

3 A If you would have heard my call to 911, it was
4 amazing. I was crying, screaming, yelling, telling -- saying
5 you don't know what I'm talking about, this is what I'm
6 saying, and the 911 lady thought my husband was being dragged
7 into a car. It was a crazy call. Yes, I was yelling. In
8 fact, I believe that when Lisa got there, the -- Lisa is the
9 next door neighbor. The actual police, whoever, showed up
10 later, and I gave her the phone and said would you finish
11 taking this call, they don't know what I'm talking about.

12 Q Okay. So now I'm trying to understand, you said
13 that when you went outside, your grandson was already in the
14 car, that you walked over and was standing next to him, that
15 your son, you couldn't remember exactly where your son was,
16 but he was no longer -- he wasn't around your grandson.
17 What's all the -- why are you so upset on the phone if the
18 only reason you really called was because you just wanted him
19 to take it outside? What was going on that would cause you
20 to be crying on the phone and so upset?

21 A Why was I upset?

22 Q Yeah.

23 A I don't know.

24 Q Okay.

25 MS. LAVELL: Your Honor, at this time, State would

1 request permission to publish State's Exhibit --

2 MS. ANTHONY: 15.

3 MS. LAVELL: -- 15 for the jury.

4 THE COURT: And that is?

5 MS. LAVELL: That is the 911 call that --

6 THE COURT: Go ahead. It's --

7 MS. LAVELL: -- Pat made.

8 THE COURT: -- admitted. I just wanted to know
9 what we were talking about.

10 MS. LAVELL: Thank you, Your Honor. I appreciate
11 it.

12 THE WITNESS: Are we going to hear that?

13 THE COURT: Yes. They're about to play it.

14 THE WITNESS: This should be interesting.

15 THE COURT: Okay.

16 (State's Exhibit 15, 911 call, was played)

17 THE WITNESS: That's not me saying those curse
18 words.

19 THE COURT: Ma'am, not now. You wait for
20 questions.

21 THE WITNESS: Sorry.

22 (State's Exhibit 15, 911 call, playing)

23 BY MS. LAVELL:

24 Q I previously showed you a picture, State's Exhibit
25 1, of your grandson. Do you remember that, Pat?

1 A The one that --

2 Q It's not up there right now.

3 A The red shirt on, yeah.

4 Q Okay. Did you observe your grandson after this
5 incident occurred? After the incident, did you observe your
6 grandson?

7 A What does that mean?

8 Q Did you see your grandson immediately after or after
9 this incident?

10 A Yes.

11 Q Okay. Did you see any injuries on your grandson?

12 A He had a red mark on his neck.

13 Q Okay. This is State's Exhibit 2. Is that the red
14 mark depicted in State's Exhibit 2 that you're referring to?

15 A Most probably, yeah.

16 Q Did you observe him receive that injury?

17 A No, I did not.

18 Q At some point, did the police officers try to speak
19 with you in regards to what had all happened? At some point,
20 after the incident, did the police --

21 A They were at our house, right.

22 Q Did they attempt to speak with you in regards to
23 what happened?

24 A Yeah, I guess.

25 Q Do you remember speaking with them and answering

1 their questions?

2 A After all this happened, I sat on the couch with
3 Michael and hugged him, little Michael, my grandson.

4 Q All right. Little Michael filled out a written
5 statement for the police. Did you provide a written
6 statement --

7 A I did not.

8 Q -- as well? How come?

9 A Because I really didn't know what was going on.

10 (Pause in the proceedings)

11 MS. LAVELL: Your Honor, permission to publish
12 State's 16. Out of the presence of the jury while they were
13 on a break, the State moved to have that admitted, and it was
14 admitted as an exhibit.

15 THE COURT: Correct, 16 is admitted. You can
16 publish.

17 MS. LAVELL: Okay.

18 (Pause in the proceedings)

19 BY MS. LAVELL:

20 Q All right, so what we're going to do is -- or what
21 I'm going to do is play a couple of phone calls. The first
22 two are going to be phone calls between you and the
23 Defendant, your son, okay?

24 A Um-h'm.

25 (Pause in the proceedings)

1 (State's Exhibit, recorded phone conversation, was played)

2 BY MS. LAVELL:

3 Q Just -- these have been admitted, but I just want
4 clarification. Is that your voice and the Defendant's voice
5 on that?

6 A I have to hear one more word of mine. I'm going to
7 assume yes, because I'm sure he would have called me right
8 away.

9 Q Well, we'll continue to play it until --

10 A I'll recognize my voice.

11 Q -- you hear your voice again. Is that your son's
12 voice? Was that your son's voice? We'll continue to play it
13 and then we'll stop it.

14 (State's Exhibit, recorded phone conversation, was played)

15 THE WITNESS: Yes, it is.

16 BY MS. LAVELL:

17 Q Okay.

18 (State's Exhibit, recorded phone conversation, was played)

19 BY MS. LAVELL:

20 Q Is that you and your -- and the Defendant speaking?

21 A Yes.

22 Q Thank you.

23 (State's Exhibit, recorded phone conversation, was played)

24 BY MS. LAVELL:

25 Q So the next two calls --

1 A Can I just say one thing?

2 Q No, ma'am. The next two calls are calls between
3 your son and an individual by the name of Bobby or Robert,
4 who the State believes is your other -- one of your other
5 children. So we're going to have you listen to it, and we're
6 going to stop it so that you can identify the voices on the
7 tape for us, okay?

8 (State's Exhibit, recorded phone conversation, was played)

9 BY MS. LAVELL:

10 Q Okay, do you recognize the other individual speaking
11 to Defendant?

12 A Do you even recognize that as a voice? I need to
13 hear more of that as -- I'm sure it probably is Bobby, but.

14 Q All right, we'll continue playing it.

15 (State's Exhibit, recorded phone conversation, was played)

16 THE WITNESS: That's Michael.

17 (State's Exhibit, recorded phone conversation, was played)

18 MS. LAVELL: Go ahead and pause it.

19 BY MS. LAVELL:

20 Q Do you recognize that individual?

21 A I'm going to say I'm sure it's Bob.

22 Q All right, well, we'll continue to play it, then.

23 (State's Exhibit, recorded phone conversation, was played)

24 MS. LAVELL: All right, thank you, Pat. And Your
25 Honor, I will pass the witness. May we approach?

1 MR. PARRIS: May we approach?

2 THE COURT: Yeah, come on up.

3 (Bench conference began)

4 MR. PARRIS: John Parris. We're behind schedule.
5 It's about a quarter until. I'm going to have her up there
6 for a pretty good amount of time. I don't know if the Court
7 wants us to start with her tomorrow or for me to start for 15
8 minutes and then stop. It's the Court's pleasure. My cross
9 will be lengthy.

10 THE COURT: I understand.

11 MR. PARRIS: Leading with my chin.

12 THE COURT: Yeah, and -- I understand. So if we
13 start about 10:00 tomorrow, I don't have a calendar. I have
14 an evidentiary hearing on a habeas petition at 8:30. So I'm
15 expecting that to be done by 10:00. We still have to finish
16 her. I see her counting.

17 MS. LAVELL: She needs to take the shoes off for a
18 minute. We have the grandfather (indiscernible).

19 MR. PARRIS: (Indiscernible) I think our cross of
20 Norm will probably would take -- assuming his testimony is
21 consistent -- John Parris -- assuming his testimony is
22 consistent with the pretrial, our cross will be 20 to 30
23 minutes max.

24 THE COURT: Um-h'm.

25 MR. PARRIS: I'll probably do 45 to an hour-ish

1 with Pat.

2 THE COURT: Right.

3 MR. PARRIS: I'll just tell you, the questions we
4 have for will be anticipated the other police officers and
5 the people who arrived at the scene later on will be rather
6 minimal.

7 THE COURT: Right.

8 MR. PARRIS: So while it's a large number of
9 witnesses, I don't know how long the State is going to be on
10 their direct. That will be the bulk of the time spent on
11 that.

12 MS. LAVELL: Right. And I say is that with
13 pretrial, I don't expect the (indiscernible) difficult at
14 (indiscernible). Maria Lavell. I don't expect that the next
15 witness is going to be anything near difficult. It should be
16 -- so it should be much faster.

17 THE COURT: Okay. All right. We might as well
18 just start tomorrow at this point. Losing 10 more minutes
19 seems like a drop in the bucket.

20 MS. LAVELL: (Indiscernible), Judge.

21 THE COURT: Yeah.

22 MR. PARRIS: For the record, that was Maria Lavell.

23 MS. LAVELL: (Indiscernible).

24 THE COURT: Yes. Apparently, not Mr. Parris's, but
25 that's all right. You don't need to respond. It's fine.

1 MS. LAVELL: Yeah, I will tell you (indiscernible).

2 THE COURT: Okay. All right, so we'll get as much
3 as we can in tomorrow, I hope. And then, you know, we'll see
4 what we have left for Friday. We'll still need to resolve
5 instructions and get everything done.

6 MR. PARRIS: John Parris. We've been talking about
7 instructions already, so (indiscernible) --

8 THE COURT: Oh, good.

9 MR. PARRIS: -- some groundwork regarding that.
10 We're going to keep talking some more tomorrow morning.

11 THE COURT: Okay.

12 MR. PARRIS: Also, we're going ask -- and I know
13 that -- I know the (indiscernible) the (indiscernible)
14 officers want to (indiscernible) the Defendant and get back
15 as close to (indiscernible) as possible. It would expedite
16 matters if we could keep him until 5:00 o'clock, just give
17 him 10, 15 minutes (indiscernible).

18 THE COURT: Few minutes.

19 MR. PARRIS: Especially after today's issues that
20 were raised.

21 THE COURT: I would appreciate that.

22 MR. PARRIS: We're doing our best. As you can see,
23 there's some genetic components to --

24 THE COURT: Uh-huh.

25 MR. PARRIS: -- what we're dealing with here. So,

1 but I'd rather take the time now than delay us in the
2 morning.

3 THE COURT: Yeah.

4 MR. PARRIS: So if we could --

5 THE COURT: Okay.

6 MR. PARRIS: -- (indiscernible).

7 MS. LAVELL: Thank you, Your Honor.

8 THE COURT: Okay. All right.

9 (Bench conference ends)

10 THE COURT: I apologize for that, folks. Rather
11 than start the cross for just a couple minutes and then have
12 to break for the day, we're just going to break for the
13 evening now. And we're scheduled for 10:00 tomorrow morning.
14 I just have one hearing tomorrow morning, and I'm going to do
15 my best for us to really start at 10:00. So I apologize
16 again for the delays you've been putting up with for the last
17 few days.

18 So, between now and tomorrow morning at 10:00, you
19 are admonished not to talk or converse among yourselves or
20 with anyone else on any subject connected with this trial or
21 to read, watch or listen to any report of or commentary on
22 the trial or any person connected with this trial by any
23 medium of information, including without limitation,
24 newspapers, television, the Internet or radio or to form or
25 express any opinion on any subject connected with this trial

1 until the case is finally submitted to you.

2 Jurors are excused. Counsel stay just a moment.

3 THE MARSHAL: Please rise.

4 (Outside the presence of the jury)

5 MR. PARRIS: And Your Honor, actually, I'm
6 referencing to the Judge.

7 THE MARSHAL: No, she's not talking to you. I'm
8 talking to you. Come on.

9 MR. PARRIS: Any admonishments of the witness will
10 continue as well regarding not discussing testimony with
11 anyone?

12 THE COURT: Yes.

13 MR. PARRIS: Yes. Can you make sure she heard
14 that? Judge --

15 THE COURT: Just, of course, you're not to discuss
16 your testimony with anybody else who hasn't testified.

17 THE WITNESS: I can't talk to him about it?

18 MR. PARRIS: I will not speak with her in the midst
19 of the testimony either, for the record.

20 THE COURT: No.

21 THE WITNESS: Can I talk to you?

22 THE COURT: No.

23 THE WITNESS: (Indiscernible).

24 THE COURT: Not about your testimony.

25 THE WITNESS: No, I'm not talking about my

1 testimony. I'm talking about those phone calls.

2 THE COURT: No.

3 THE DEFENDANT: Can we --

4 MR. PARRIS: Wait until the jury (indiscernible).

5 THE DEFENDANT: -- (indiscernible) being about the
6 case?

7 MR. PARRIS: No.

8 THE COURT: The jury is out of the room.

9 THE DEFENDANT: So that's my question.

10 MS. ANTHONY: I'll them 10:00 o'clock tomorrow. We
11 don't need Michael.

12 MS. LAVELL: 10:00 o'clock tomorrow.

13 THE COURT: 10:00 o'clock tomorrow.

14 MS. LAVELL: We don't need -- well, here's the
15 thing, we're not -- let them know they --

16 MS. ANTHONY: (Indiscernible).

17 THE COURT: We're still on the record.

18 MR. PARRIS: We're still on the record, Maria.

19 MS. LAVELL: Hold on. I'm sorry, I apologize, Your
20 Honor.

21 THE COURT: Okay. So we are going to start at
22 10:00 tomorrow morning. Although we've -- breaking a little
23 bit early, I would appreciate it if the COs transporting.
24 And I understand and I appreciate the difficulty of your job,
25 but if you could give them ten minutes to talk with counsel

1 before he gets transported back over there, I would
2 appreciate it.

3 THE CORRECTIONS OFFICER: No problem.

4 THE COURT: They've got some matters that they want
5 to discuss in private. Okay?

6 MR. PARRIS: And Your Honor, there was a previous
7 admonishment that my client should not speak with any of the
8 witnesses on this particular case that --

9 THE COURT: Right.

10 MR. PARRIS: -- began at the beginning of the
11 trial.

12 THE COURT: Yes.

13 MR. PARRIS: His question to me was whether that
14 persists at this point in time, even if they're discussing
15 matters outside the providence of the jury trial itself. And
16 in abundance of caution, I would recommend him not speaking
17 with any of the witnesses listed in this case, but I think
18 he'll want to hear if from the Court.

19 THE COURT: Yeah, don't talk to the witnesses
20 involved the case --

21 THE DEFENDANT: Even --

22 THE COURT: -- until the trial's over.

23 THE DEFENDANT: Even if it's nothing to do with the
24 case at all?

25 THE COURT: Well, you certain --

1 THE DEFENDANT: Say hi to my son?

2 THE COURT: Yes, don't talk with them until we're
3 done.

4 MR. PARRIS: Complete prohibition.

5 THE COURT: Yes.

6 MR. PARRIS: Okay?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. Have a good night.

9 THE MARSHAL: Please rise.

10 MR. PARRIS: Thank you, Your Honor.

11 MR. MATSUDA: Thank you, Judge.

12 (Court recessed at 4:51 p.m., until Thursday,
13 January 30, 2014, at 10:08 a.m.)
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DEFENSE'S OPENING STATEMENT BY MR. PARRIS 18

WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>STATE'S WITNESSES:</u>				
Michael Joshua Schofield	21	100	110	
Patricia Duplissie	112			
	*	*	*	*

EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
<u>STATE'S EXHIBITS:</u>	
Exhibits 1 through 15, 17 and 18	28
Exhibit 16.	99

CERTIFICATION

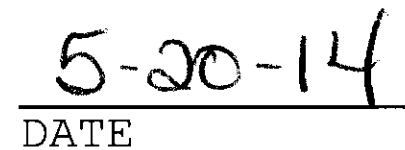
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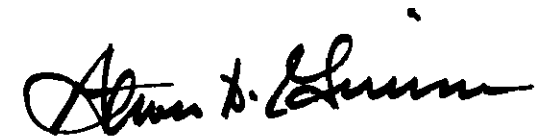
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DATE



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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-287009
	.	
Plaintiff,	.	DEPT. VI
vs.	.	
	.	
MICHAEL JOHN SCHOFIELD,	.	TRANSCRIPT OF
	.	PROCEEDINGS
Defendant.	.	
.	

BEFORE THE HONORABLE ELISSA F. CADISH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 4

THURSDAY, JANUARY 30, 2014

APPEARANCES:

FOR THE PLAINTIFF:	MARIA LAVELL, ESQ.
	MICHELLE ANTHONY, ESQ.

FOR THE DEFENDANT:	JOHN PARRIS, ESQ. ESQ.
	JESS MATSUDA, ESQ.

COURT RECORDER:

JESSICA KIRKPATRICK
District Court

TRANSCRIPTION BY:

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produced by transcription service.

1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 30, 2014, 10:08 A.M.

2 (Outside the presence of the jury)

3 THE MARSHAL: Come to order. Department 6 now in
4 session. The Honorable Judge Elissa Cadish presiding.

5 Please be seated and come to order.

6 MS. LAVELL: Good morning, Your Honor.

7 THE COURT: Good morning. All right. Are we ready
8 to go?

9 MR. PARRIS: I don't believe we have anything else
10 at the present. We have been exchanging some jury
11 instructions. The State had e-mailed us some more this
12 morning.

13 I'll be honest. I haven't really looked at them.
14 I think that's something that the State and ourselves, we can
15 take that up at lunchtime.

16 THE COURT: Good.

17 MR. PARRIS: We talked about it, again, last night
18 after work, but.

19 MS. ANTHONY: And we e-mailed them and there's --
20 it's actually -- I don't -- we'll talk to Mr. Parris.

21 We may only have one jury instruction that we're
22 arguing over, so it should go very smoothly.

23 THE COURT: Good. Okay. I would appreciate that.
24 All right. Let's go ahead and get the jury.

25 MS. LAVELL: We're here for you, Your Honor.

1 THE COURT: Huh?

2 MS. LAVELL: We want to make your life easy.

3 THE COURT: I know.

4 MS. LAVELL: We do, really.

5 THE COURT: It's fine. It is what it is.

6 MS. LAVELL: I know.

7 (Pause in the proceedings)

8 THE COURT RECORDER: Mr. Parris, you're on record.

9 THE COURT: Uh, sorry. I know he's going to come
10 in in a second, but in terms of -- well, we'll talk about it
11 next break. We'll talk about schedule for tomorrow.

12 MS. LAVELL: I -- I did want to make the Court
13 aware. I was --

14 MS. ANTHONY: The jury is coming.

15 THE MARSHAL: Please rise.

16 THE COURT: Take it up at a break.

17 (In the presence of the jury)

18 THE MARSHAL: Please be seated.

19 THE COURT: Do counsel stipulate to the presence of
20 the jury?

21 MS. LAVELL: Yes, Your Honor.

22 MR. PARRIS: Yes, Your Honor.

23 THE COURT: Okay. Thank you for your timeliness.
24 I -- at least we got you in pretty close to on time today.
25 We are working on that -- I'm working on that. And, you

1 know, the snacks are the least we can do, given your extreme
2 patience under the circumstances.

3 With that, let's get the witness back up on the
4 stand.

5 MS. LAVELL: And that was Patricia Duplissie and I
6 think we're at the cross-examination.

7 THE COURT: Right.

8 MR. PARRIS: Good morning. Okay.

9 THE COURT: You're still under oath from yesterday,
10 okay?

11 THE WITNESS: Okay.

12 THE COURT: All right. Cross-examination.

13 MR. PARRIS: Thank you, Your Honor.

14 PATRICIA DUPLISSIE, STATE'S WITNESS, PREVIOUSLY SWORN
15 CROSS-EXAMINATION

16 BY MR. PARRIS:

17 Q May I call you Pat as well?

18 A Yes, you may.

19 Q Thank you, Pat.

20 Pat, yesterday afternoon, we more or less ended
21 listening to the various jail calls and the 911 call. Do you
22 recall listening to those?

23 A Absolutely.

24 Q Okay. Now, the first two of the jail calls
25 involved your conversation or two separate conversations with

1 Mr. Schofield, your son?

2 A Right. Right.

3 Q Now, to the best of your recollection, those calls
4 happened literally the day after the chasing incident
5 occurred, correct?

6 A It would either have been the same day or the day
7 after.

8 Q And to your -- to the best of your recollection,
9 both of those calls happened about 20 minutes apart from one
10 another. Does that sound about right?

11 A Right. Probably, yeah.

12 Q Okay. Now, clearly, during those calls, you would
13 agree that you were still in somewhat of a heightened
14 emotional state?

15 A Yes, I was.

16 Q Pretty angry?

17 A I was very angry.

18 Q Okay. At Mike. And -- and when I say Mike,
19 primarily I will be referring to your son.

20 A Okay. He's Mike and the other one's Michael?

21 Q Why don't we go with that.

22 A You want to be Mike or Michael?

23 Q Well, you're pretty angry at your son, Mike.

24 A Yes, I was.

25 Q Okay. Okay.

1 A Can I tell you --

2 THE COURT: No.

3 A -- why?

4 Q Well --

5 THE COURT: Answer questions that are put to you,
6 ma'am.

7 THE WITNESS: Yes, I was.

8 BY MR. PARRIS:

9 Q Okay. Now, in those phone calls, you -- and I'm
10 going to treat the two phone calls essentially as one
11 conversation which is just broken up by a few minutes.

12 In those two phone calls, you reference the fact
13 that Mike was dragging Michael outside of the house or
14 through the house, words to that effect.

15 A Right.

16 Q Do you recall that?

17 A Yes.

18 Q Okay. And you also referenced the fact that
19 Michael was, excuse me, that Mike was choking Michael at one
20 point in time?

21 A Yes.

22 Q Okay. However, in your testimony yesterday, you
23 did not state that you saw Mike choking Michael, correct?

24 A Yes.

25 Q Okay. Why then in the phone call did you state

1 that your belief that Mike had been choking Michael during
2 this incident?

3 A After Michael was taken to, you know -- with the
4 police, I sat down --

5 THE COURT: Wait. Who?

6 MR. PARRIS: Wait.

7 BY MR. PARRIS:

8 Q After Mike was taken?

9 A Mike. After -- almost everything I say now is
10 going to be Michael, so -- but I'll say Mike.

11 After Mike was taken with the police, I sat down
12 with little Michael and he told me his version of what had
13 happened.

14 Q And I don't want you to get into what specifically
15 you were told, but after that conversation -- well, how did
16 that conversation affect your -- your later conversations
17 with your son?

18 A I was furious. Do you want more than that?

19 Q No, that's pretty clear.

20 THE COURT: No.

21 A You know --

22 THE COURT: No, ma'am. You listen to the questions
23 and answer the questions put to you.

24 BY MR. PARRIS:

25 Q Okay. So you certainly were furious with your son

1 at that point in time?

2 A Correct.

3 Q Now -- but sitting here today, do you -- I mean,
4 you testified yesterday that you personally didn't see your
5 son choking your grandson. Is that an accurate --

6 A And that's still accurate.

7 Q Okay. But you did state on the phone calls that at
8 least it was your understanding that choking did occur?

9 A Yes.

10 Q Okay. Now, also in that phone call, you made it
11 pretty clear -- well, I'll just come right out and say it.
12 You -- you referred to your son as an asshole. Is that -- do
13 you recall that?

14 A Yes, I do.

15 Q And you stand by that statement that at the time,
16 you thought he was an asshole?

17 A Yes. I -- I thought he -- what he did was horrible
18 in my mind from what his son told me.

19 Q Okay.

20 A And I guess that constitutes -- do you want me to
21 say it?

22 Q Him -- him being that?

23 A Right.

24 Q Okay. But obviously, you are being -- while you're
25 protective of your son, you're also protective of your

1 grandson, correct?

2 A Correct. Right.

3 Q Obviously, your son's a grown man and your grandson
4 isn't as of yet, as big as he may be or become.

5 A Right.

6 Q Now, at the time that you made those phone calls
7 either the same day or the next day, within let's call it 48
8 hours of January 6th of last year, were you aware that anyone
9 else in the family was speaking with your son?

10 A No.

11 Q Okay. Why were -- to your knowledge, why were you
12 the only one talking to your son?

13 A Well, you can't just make phone calls anytime you
14 want when you're in jail.

15 Q Okay.

16 A And so you have to -- the first few -- and I'm not
17 exactly sure of the rules, but in the beginning, you get free
18 phone calls and they're limited to how many free. And then
19 after that, you have to set up an account.

20 Q So he was calling you? You obviously could not
21 call.

22 A I couldn't call him, no. He was calling me.

23 Q Okay. And to your knowledge -- did you have any
24 reason to believe that anybody else wanted to speak with him
25 at that time other than you?

1 A Not really.

2 Q Okay.

3 A I know Norm didn't.

4 Q Okay. Then it was your understanding that they
5 were all still really angry with him?

6 A Yes.

7 Q Okay. Now, in that time span, emotions were
8 certainly running high, and emotions were certainly running
9 high going back to the date that this happened on January
10 6th.

11 The timeline, however, as to what did or didn't
12 occur is somewhat -- well, it's a little bit spotty. So, I'm
13 going to try and parse it out as best I can.

14 Sometime on the morning of the 6th, isn't it
15 correct that your son had called your home requesting some
16 cold medicine or something to that effect. Is that fair?

17 A He called and said he wasn't feeling well.

18 Q Okay. So you and Norm dropped off cold medicine to
19 him at his house, which was four miles away I think you had
20 said?

21 A Yes.

22 Q Okay.

23 A But I have to correct that somewhat. We dropped
24 off cold medicine, but not the kind that he wanted because he
25 liked Nighttime because that has a better effect on him.

1 Q Okay. But you brought -- what -- you brought him
2 what you had.

3 A But what -- we brought what we had.

4 Q Okay.

5 A Correct.

6 Q Then approximately around lunchtime that -- that
7 same day, Michael, your grandson, was already home. Is that
8 fair?

9 A Again, when -- yes, probably. Yes.

10 Q Okay. And then, at some point after your grandson
11 was home, your son knocked on the door?

12 A Rang the doorbell.

13 Q Rang the doorbell. Okay. Then -- and at the time
14 that your son rang the doorbell, everything seemed cool
15 between everybody involved. Nothing out of the ordinary.

16 A Yes. Correct.

17 Q Okay. While you weren't expecting your son to stop
18 by, it was not a shock to you or anyone -- well, it wasn't a
19 shock to you at least?

20 A No.

21 Q Okay. Now, they went outside and we're going to
22 play some football or play catch. Is that fair?

23 A Right.

24 Q Okay. Then you had testified that you overheard,
25 because you were sitting on the stairs and -- I'm publishing

1 to the jury, State's Exhibit 7. You were sitting on the
2 stair -- you recognize this exhibit, correct?

3 A Yes, I do.

4 Q It's your foyer in your house?

5 A Yes.

6 Q Okay. And you're sitting on the stairs somewhere
7 in this area. Is that fair to say?

8 A That's fair to say.

9 Q Okay. And you had overheard a conversation between
10 your son and your grandson about going to the store or
11 needing to go to the store, words of that effect. Is that
12 fair?

13 A All right. You know, because it's been awhile, I'm
14 not sure if that conversation took place before they went out
15 to play or after.

16 THE COURT: You weren't asked that, ma'am. Listen
17 to the question.

18 BY MR. PARRIS:

19 Q Okay.

20 A Repeat the question, please.

21 Q Well, it was just that they had a conversation
22 about the store, but again, you had just testified you're not
23 sure if it was before or after they played catch.

24 A Right.

25 Q Okay. For however long they were out there. Now,

1 at some point in time, the two of them returned inside the
2 home.

3 A Yes.

4 Q Okay. From playing catch?

5 A Yes.

6 Q Okay. And I believe it was your testimony that
7 everything at that point in time was still more or less fine
8 between the two of them?

9 A Yes.

10 Q Okay. Now, after they had returned inside, you had
11 testified that there was further discussions about going to
12 the store and whether your grandson wanted to go or not?

13 A Yes.

14 Q Okay. Now, and correct me if I'm wrong, I believe
15 you had said at first -- yesterday, you had testified that at
16 first you said you didn't really want your grandson going to
17 the store with your son?

18 A Right. I told him he didn't have to go.

19 Q Okay. And then at some point in time, you changed
20 your tune?

21 A Yes, I did.

22 Q Okay. Now, you had said that your son was more or
23 less saying words to the effect, "No, you're gonna go to the
24 store with me." Is that a fair assessment?

25 A Initially, he didn't say, "You are going to go."

1 He said he wanted him to go.

2 Q Okay. And is -- go ahead.

3 A And Michael, my grandson, does not like to go to
4 the store, so he said he didn't want to go. And I told him
5 that -- as a mom, I gave him an excuse to not have to go.

6 Q Okay.

7 A But I knew his dad really wanted him to go, so I
8 changed my mind and told Michael he should go.

9 Q Okay. And when you say you knew that he
10 wanted -- you knew that your son wanted your grandson to go
11 with him to the store, how did you know that? Was it based
12 upon the intonation of his voice or was it based upon him
13 pressing the issue? What made you think that he really --
14 your son really wanted your grandson to go with him?

15 A Well, basically, because I know my son, how he is.
16 Doesn't like to go alone. But he asked Michael to go. I
17 knew he wanted him to go. He asked me if he could go.

18 He said -- come on, tell Michael to go with me,
19 blah, blah. And those are not exact words. Okay.

20 Q But words to that effect?

21 A Words to that effect.

22 Q Okay. Then, it sounds like your grandson still
23 said he didn't want to go.

24 A Right.

25 Q Okay. Shortly thereafter, that's -- that's when

1 they started -- when your grandson just started chasing or
2 running around the house.

3 A You see this -- I --

4 Q Well, is that when the running started?

5 A Yeah. And they didn't start running. Michael
6 left -- young Michael left.

7 Q Okay.

8 A And his father, who is probably standing there,
9 went after him.

10 Q Okay.

11 A They went running at that point.

12 Q Okay.

13 A He was -- young Michael was walking, saying, "I
14 don't want to go to the store." And his father walked after
15 him, to say, "I want you to go to the store with me. Mom
16 said you could go to the store with me. You can go to the
17 store with me."

18 Q Okay. Obviously, at some point in time, a lot more
19 commotion or chaos erupted though?

20 A Yes.

21 Q You -- we all agree to that.

22 A Yes.

23 Q Now, when that chaos erupted, you were still
24 sitting in the foyer area, correct?

25 A Yes. Yes.

1 Q Let me clear that for you. Okay. So, you're still
2 sitting in the foyer and you thought you had been talking on
3 the phone with someone?

4 A I have the phone with me, so I -- and I -- like I
5 said, I have six kids. They call all the time. I'm sure I
6 was on the phone Sunday morning with one of them. I'm not
7 positive but pretty sure.

8 Q Okay. Now, when you were on the phone -- or excuse
9 me, when you heard the chaos erupting, I think you had said
10 that you heard some furniture being knocked over. Is that
11 fair to say?

12 A I said -- yeah. I said commotion and I couldn't
13 describe the commotion, but that's pretty much what I -- you
14 know.

15 Q Okay. It was clear that that was out of the
16 ordinary?

17 A Right.

18 Q Okay. But now you had -- I believe you testified
19 that you had said, you know, "I'm gonna call 911," or words
20 to that effect?

21 A If you guys don't stop. Yeah.

22 Q After having raised six children, four of them
23 boys, I'm sure you developed certain ways to try and keep
24 them -- well, keep the chaos to a minimum.

25 A Right.

1 Q Was the phrase "I'm gonna call 911" one of your
2 catchphrases, for lack of a better term, to try and keep
3 things calm?

4 A No. Not really. No.

5 Q Okay. But this time, you said I'm gonna --

6 A I did, right. I --

7 Q -- call 911?

8 A Right.

9 Q And the chaos didn't stop, correct?

10 A No, it didn't.

11 Q Okay. Now, you testified that at some point in
12 time based upon -- even though you were in the foyer, you had
13 thought they were in your dining room, living room area. And
14 I'm showing the jury State's Exhibit 9. Okay. And that's
15 your dining room, living area. Is that correct?

16 A Yes.

17 Q Okay. And you had thought based upon all the noise
18 and chaos that you had thought they were not back corner of
19 the house. Is that correct?

20 A Right.

21 Q Okay. Where in -- well, let me -- let me do it
22 this way. Can you point in this picture to where the front
23 door is located? I mean, is that the front door right here?
24 The front door being open?

25 A Yes.

1 Q Okay. See you were kind of behind where this
2 violin is, is that fair to say, in the foyer area?

3 A Right.

4 Q Okay. And you heard the screaming and yelling and
5 you believed them to be in the back?

6 THE COURT: Yes?

7 BY MR. PARRIS:

8 Q Is that a, yes?

9 A Yes.

10 Q Okay. I'm showing used State's Exhibit 12. Is this
11 another picture of your home?

12 A Yes, it is.

13 Q Okay. In the -- right here, is this the dining
14 room area where you thought they were?

15 A Yes. Back in there.

16 Q Okay. And it looks like you have a -- I don't
17 know, a seven-foot tall glass cabinet. What -- what is that?

18 A It's a china -- china cabinet.

19 Q Okay. Is it full of -- it looks like there may be
20 some dishes in there. I can't really tell. Is that full of
21 china?

22 A Yes, there is. Yes.

23 Q Okay.

24 A And over on this side, over here, I got -- behind
25 there, but either wall, is a curio cabinet.

1 Q Okay. And I'm showing the jury State's Exhibit 9.
2 When you referred to the curio cabinet, are you
3 referring to this -- I don't know what a curio cabinet is.
4 I'll be honest.

5 A It's a cabinet that you have a lot of nice, fancy
6 souvenirs and --

7 Q Chachkas?

8 A Chachkas? I don't know what a Chachkas is.

9 Q Okay. A little -- well -- well, what do you have
10 in your curio cabinet?

11 A Souvenirs from every trip we've ever taken.

12 Q Okay. Okay. And is that -- looking at State's
13 Exhibit 9, would that curio cabinet be essentially right
14 behind where the person taking the picture is?

15 A It would be right across from the china cabinet on
16 the other picture.

17 Q Okay. So over on the -- on this picture, it would
18 be on the lower right-hand side?

19 A I get lost walking out of the store, so you guys
20 are killing me with directions.

21 Q Okay. But it would be somewhere in -- in this
22 area. Is that fair to say?

23 A Yeah.

24 Q Okay.

25 A Yeah. One would be here and one would be there.

1 Q Okay. You've gotten a lot of souvenirs collected
2 over the past however many decades, correct? A lot of trips
3 with a lot of kids and a lot of memories?

4 A A lot of trips after we retired by ourselves.

5 Q And you had said -- your reference to your china
6 cabinet in State's Exhibit 12, was at the china from when you
7 were -- well -- well, how long of you have that china?

8 A Actually, my husband and I -- this is the second
9 marriage. When we got married 25 years ago, we -- we did
10 like kids did and we -- we registered and we bought china and
11 crystal and so forth and that's what everybody gave us
12 basically.

13 Q So, you were -- so, when you heard all -- the
14 complete chaos in the back area, you were pretty concerned
15 about, amongst other things, all of your china and --

16 A Getting broken.

17 Q -- souvenirs --

18 A Yes, I was.

19 Q -- getting destroyed?

20 A Yes, I was.

21 Q Okay. And it seemed to be pretty clear that prior
22 to you calling 911, they weren't stopping, whatever they were
23 doing?

24 A Correct.

25 Q Okay. So is it at that point in time that you felt

1 you had no choice but to call 911?

2 A Yes. Nobody was listening to me.

3 Q But you would agree it was -- it's a pretty
4 extraordinary measure, to call 911?

5 A Yes.

6 Q Okay. And at that time, you also heard the dog
7 barking up a storm. Is that correct?

8 A On the call I heard it. I really wasn't paying
9 attention to the dog.

10 Q Okay.

11 A But yes, the dog was barking.

12 Q It's a Chihuahua-type.

13 A Yes, it is.

14 Q Is he a barky dog?

15 A He's not really a barky dog, but when he gets
16 barking, he is a Chihuahua.

17 Q Okay. Now, while you were on the phone with 911,
18 we had heard that you had said words to the effect of, I
19 guess, my son, Mike -- my son is either pushing or pulling my
20 grandson outside. Is that fair?

21 A Right. Right.

22 Q And when you saw that, you would've been -- would
23 you have still been in the foyer area, if you recall? And
24 I'm showing you State's Exhibit 7.

25 A I believe that I had the door open.

1 Q Okay.

2 A I also, after -- can I say this? After hearing
3 that 911 call yesterday, I -- it sounds to me like I called
4 before any of this pushing and shoving, called.

5 Q Okay.

6 A And after, when you heard all of that screaming and
7 swearing, that was not me. That was my neighbor.

8 Q Okay.

9 A And Michael was already on the ground at that time.

10 Q Let me stop you right there.

11 THE COURT: Ma'am, wait until you get a question.

12 THE WITNESS: That's part of the answer.

13 MR. PARRIS: Yeah.

14 BY MR. PARRIS:

15 Q Regarding the -- in the information, so you had
16 called the 911 when you just heard more or less the commotion
17 in the back?

18 A And it was starting to -- yes.

19 Q Okay. Then after the 9 -- after you were
20 on -- already on the phone with 911, shortly thereafter is
21 when, I guess, you saw the physical contact, the pushing,
22 pulling, grabbing, whatever?

23 A I -- and again, it's very difficult. I was not
24 even seen by Michael or Norm or Mike. They didn't even know
25 I was there. I know I was there, because I was standing by

1 the car when -- when Lisa, the neighbor -- and I handed her
2 the phone.

3 THE COURT: Wait. Hold on.

4 MR. PARRIS: Okay.

5 THE COURT: Why don't you re-ask the question.

6 MR. PARRIS: Yeah, if I may.

7 THE WITNESS: I don't even know what the question
8 is anymore.

9 BY MR. PARRIS:

10 Q It sounds like -- and correct me if I'm wrong --
11 you called 911 --

12 A Yes.

13 Q -- when you heard the commotion in the dining room
14 area?

15 A Right.

16 Q After you had called 911, while you were still on
17 the phone with them, that's when you first saw the physical
18 contact between your son and your grandson; is that correct?

19 A And I'm going to say correct, but I'm not positive.

20 Q Okay. I realize this all happened in a -- in, you
21 know --

22 A In a very short amount of time, yes.

23 Q -- split seconds, but to the best of your
24 recollection. Okay.

25 Now, at some point in time, we heard in the 911

1 call that Norm kind of intervened trying to stop your son
2 from dragging your grandson around; is that fair to say?

3 A Probably, yeah.

4 Q Is that yes?

5 A Yes.

6 Q Okay. The next thing was the -- your son being in
7 the car. Now --

8 A No. My grandson was in the car.

9 Q Your grandson. I'm sorry.

10 A Okay.

11 Q Your grandson was in the car.

12 MR. PARRIS: Court's indulgence, if I may.

13 THE COURT: Yep.

14 BY MR. PARRIS:

15 Q I'm showing the witness State's Exhibit 5. This is
16 the front door to your -- the home in question on Aspen
17 Breeze, correct?

18 A Yes, it is.

19 Q Okay. And your son's -- this is the front door
20 right here?

21 A Yes.

22 Q Okay. And your son's car was parked in the first,
23 I guess, stall?

24 A Yes.

25 Q Okay. So at some point in time your grandson was

1 in the passenger seat of your son's car?

2 A Correct.

3 Q Correct. Okay. Then that's when the neighbors
4 came over or whomever -- the neighbors came over and tackled
5 your son?

6 A Right.

7 Q Now, at that point in time, I believe you had said
8 that your grandson came back inside the house once your son
9 was tackled and taken care of. Your grandson came back in
10 the house, correct?

11 A Well, he did come in. Lisa came over and told him
12 to get in and told Norm to go in.

13 Q And Lisa is one of your neighbors?

14 A Lisa is the neighbor.

15 Q Okay. So based upon Lisa's direction, Norm and
16 your son went in the house. You went inside the house also.
17 Is that fair to say?

18 A Can I back you up a little bit?

19 Q Well, it's --

20 THE COURT: Please answer the question that's
21 asked.

22 THE WITNESS: No, that's not correct to say.

23 BY MR. PARRIS:

24 Q That's not correct. Okay. To the best of your
25 recollection, where were you standing when your son got

1 tackled by the neighbors?

2 A By the car door.

3 Q Okay. So that would be by where this tree is?

4 A Right. Yes.

5 Q State's Exhibit 5?

6 A Yes.

7 Q Okay. After your son got tackled, you had said
8 that Lisa, your neighbor, had told you guys to get in the
9 house. Is that correct?

10 A That's correct.

11 Q Who went in the house first?

12 A I was still on the phone. I handed her the phone.
13 My husband was standing in front of the car, and she gave me
14 something that he had in his hand, and I didn't want to go in
15 until Michael went in, so I waited.

16 Q And by "Michael went in" --

17 A Michael, my son -- grandson.

18 Q Grandson.

19 A But I waited and went in the same time as he did.

20 Q So you and your grandson walked together. Did Norm
21 go in the house first then?

22 A Yes.

23 Q So Norm went in the house --

24 A I think. Pretty sure.

25 Q And Norm is your current husband, correct?

1 A He is my current husband.

2 Q And then you and Mike, your grandson, walked inside
3 the house, correct?

4 A Correct.

5 Q And then -- and your son was left --

6 A On the ground.

7 Q -- on the outside. Okay. Now, it would be fair to
8 say that when your son was on the ground outside, he was
9 acting out in a pretty emotional manner; is that fair to say?
10 Acting a little crazy?

11 A Can I -- do I just say yes or can I say something?

12 THE COURT: No. You answer the question, ma'am.

13 MR. PARRIS: Well, it's a --

14 THE WITNESS: Yes.

15 BY MR. PARRIS:

16 Q Yes, he was. Okay. Now, we had talked about the
17 the two phone calls you had with Mike within 48 hours of him
18 being locked up, and that's what we heard on -- on the audio
19 yesterday. But you had also testified yesterday that you had
20 -- since your son is no longer allowed at your home, you had
21 phone contact with him.

22 THE COURT: Whoa.

23 MR. PARRIS: I'm -- I'm sorry.

24 BY MR. PARRIS:

25 Q Yesterday, you testified that your son was no

1 longer allowed at your house. Is that correct?

2 MS. LAVELL: Objection.

3 THE WITNESS: I don't believe I testified to that.

4 THE COURT: Hold on. Please come on up.

5 (Bench conference began)

6 THE COURT: What are you talking about?

7 MR. PARRIS: (Inaudible). Yesterday, she had
8 testified that Mike is no longer -- her son, is no longer
9 -- her son is no longer allowed at her house.

10 MS. LAVELL: No, I think what you're confusing is
11 on the jail call.

12 THE COURT RECORDER: I can't hear you.

13 MS. LAVELL: Maria Lavell. I think what you may be
14 confusing is on the jail call --

15 THE COURT: You need to actually speak, not
16 whisper.

17 MS. LAVELL: Oh.

18 THE COURT: Otherwise, it's not picked up.

19 MS. LAVELL: I think what you were referring to is
20 on the jail call is her son said, I'm no longer allowed.
21 That's where that came from.

22 THE COURT: I don't remember her saying anything
23 like that.

24 MR. PARRIS: Okay.

25 THE COURT: Then I was wondering if you were talking

1 about some kind of order and I was freaking out over it.

2 MR. PARRIS: No, no, no. We wouldn't -- well, we
3 might -- John Parris -- we might do that to you, but no,
4 we're not doing that to you at this point in time.

5 THE COURT: Thank you.

6 MR. PARRIS: I had in my notes that she had said
7 words to the effect of, Michael was not allowed at her place
8 anymore. I guess I was actually --

9 THE COURT: Oh.

10 MR. PARRIS: -- going to get into the fact that --

11 THE COURT: Just make sure she's not going to blurt
12 out --

13 MR. PARRIS: Yes, I know.

14 THE COURT: -- where he's living --

15 MR. PARRIS: I know. I know.

16 THE COURT: -- at the moment. Okay?

17 MR. PARRIS: I know.

18 THE COURT: I don't want to go there.

19 MR. PARRIS: I agree, and I'm not trying to go
20 there. Trust me.

21 MS. ANTHONY: She had picked up -- this is Michelle
22 (inaudible). She apparently wants the jury to (inaudible).
23 She keeps almost giving (inaudible).

24 THE COURT: Uh-huh.

25 MR. PARRIS: Yeah. I will -- I will be very --

1 MS. ANTHONY: (Inaudible).

2 MR. PARRIS: I will be very careful with that.

3 THE COURT: Okay. So --

4 MR. PARRIS: Talk about (inaudible).

5 THE COURT: -- narrowly tailored question.

6 MR. PARRIS: I will.

7 THE COURT: Go ahead.

8 (Bench conference concluded)

9 BY MR. PARRIS:

10 Q Okay. So based upon -- earlier you testified that
11 your son has had almost daily phone contact with you,
12 correct?

13 A That's correct.

14 Q Okay. Now, over the past year, let's call it for
15 argument's sake, you would agree that the phone calls haven't
16 been same or similar to the two phone calls we heard
17 yesterday; is that fair?

18 A That's correct.

19 Q Okay. Is it fair to say that you, sitting here
20 today, aren't nearly as angry with your son as you were
21 within -- on those two phone calls? Is that --

22 A I'm not angry. I'm sad.

23 Q Okay. Regarding the phone contact you've had --
24 well, to your knowledge, has -- your son has also had phone
25 contact with your grandson, correct?

1 A Yes, he has.

2 Q Okay.

3 A And on almost a daily basis.

4 Q Now, even before that -- even before this incident
5 happened, how would you characterize the relationship between
6 your son and your grandson?

7 MS. LAVELL: And, Your Honor, I'm going to object
8 to relevance. It's irrelevant how the --

9 THE COURT: Come on up, please.

10 (Bench conference began)

11 MS. LAVELL: Maria Lavell for the State. Mr.
12 Parrish had asked -- Parris -- sorry, I don't know why I'm
13 doing that.

14 MR. PARRIS: I don't know either.

15 MS. LAVELL: I don't -- I had asked that question
16 of the victim in this case yesterday, and the State didn't
17 object initially, and then objected and he indicated that
18 based on his strategy that you ought to give him a little bit
19 of latitude on that.

20 However, it's irrelevant as to the relationship
21 between the minor child and his father prior to this
22 incident, because it -- it -- it -- it has no bearing on what
23 their relationship was like on the day of the incident.

24 And she -- she was maybe speaking in regards to
25 observation, but she can't speak to how the child felt about
26 his father.

1 I think that, you know, he's already established it
2 through the child. I think that this is just beating a dead
3 horse and it's irrelevant and I would object to it.

4 MS. ANTHONY: And if I may, sorry. Michelle, for
5 the record. (Inaudible) they said, we've been talking about
6 (inaudible). He lived with the dad for a year, year-and-a-
7 half. But the reason he got taken (inaudible).

8 MS. LAVELL: Huh-uh. Don't make a record of that
9 right now, please. Don't make a record about that right now,
10 please.

11 MS. ANTHONY: If you're going to ask about the
12 relationship I think there's a bad act that's going to come
13 in.

14 MR. PARRIS: Well -- John Parris. This bad act is
15 somewhat news to me.

16 THE COURT: Right.

17 MR. PARRIS: And it should --

18 MS. LAVELL: Well --

19 MR. PARRIS: And it should -- it ought to have
20 been --

21 MS. LAVELL: Well, (inaudible), please.

22 MR. PARRIS: Irrespective, it ought to have been
23 dealt with previously.

24 THE COURT: Okay. Well, they're not trying to
25 bring it in, so.

1 MR. PARRIS: Which is good. And I'm not trying to
2 get it in either. But the thing (inaudible) was if we
3 continue this line of bad act --

4 MS. LAVELL: No, it wasn't. She wasn't threatening
5 (inaudible).

6 MR. PARRIS: Okay.

7 MS. LAVELL: But can I just in? Maria Lavell for
8 the State. There's no -- no threat, but obviously, if you
9 open the door to something where we have information, we're
10 going to -- we're going to walk through it, but we'll talk to
11 Your Honor first.

12 And it's information we gleaned during pretrial
13 conferences. It's not information we're obligated to show
14 defense because it has no bearing on this case.

15 MR. PARRIS: This is John Parris again. We're
16 (inaudible) the relevance.

17 The Judge -- Your Honor had allowed us a little bit
18 of latitude and this is where we're going to start exploring
19 it and we may explore it with other witnesses as well.

20 One potential avenue of defense is that as an offer
21 of proof, Michael, the father, played a very active role in
22 the son's life.

23 THE COURT: That's clear.

24 MR. PARRIS: And was it clear. And was acting as
25 a -- in his role as a disciplinarian, and his son, a 14-year-

1 old boy -- and we all know how 14-year-old boys can be -- was
2 acting out.

3 A plausible line of defense could be that because
4 the son had consistently acted out, the father was playing his
5 fatherly role and disciplining him.

6 THE COURT: How is that a defense?

7 MR. PARRIS: Regarding the child abuse and neglect
8 charge, as well, potentially as the strangulation charge,
9 since we're hearing different witnesses -- excuse me -- we're
10 hearing different testimonies regarding whether a
11 strangulation actually occurred.

12 MS. LAVELL: (Inaudible). Maria Lavell for the
13 State. We've only heard one version of what occurred because
14 she's claimed not have seen anything.

15 So, and obviously, even if he was allowed to
16 discipline his child, which there's absolutely no evidence
17 that he is, he can't abuse his child.

18 So again, we would object to getting into that area,
19 since he's not accused of disciplining the child. He's
20 accused of abusing the child.

21 MR. PARRIS: And, John Parris. The lines between
22 abuse and discipline can oftentimes blur. We all are well
23 aware of that. But not allowing us to go into -- and then I
24 asked the question clearly, her view of what their
25 relationship was.

1 THE COURT: All right. So here's the thing. I'll
2 let you ask a couple questions, confirming from her
3 perspective what -- however much time they've spent together
4 and what the roles are from her observation, but again, a
5 couple questions. Move on.

6 MR. PARRIS: I did not plan on dwelling too long.

7 THE COURT: Go ahead.

8 (Bench conference concluded)

9 BY MR. PARRIS:

10 Q So, Pat, I was asking how -- what -- what was your
11 view of the relationship between your son and your grandson in
12 the months and years leading up to January 6th of last year?

13 A More as friends than as a parent and son.

14 Q Okay. In those times, it would be safe to say that
15 your son was over at your house twice a week, three times a
16 week, more or less. How would you characterize it?

17 A That's about good.

18 Q In the times that he was over, two or three times a
19 week, he'd be spending it with?

20 A Michael.

21 Q Primarily with --

22 A Mostly Michael, yes.

23 Q And by Michael, you mean your grandson?

24 A Right. The two of them together. And sometimes
25 with me. Sometimes we played cards, but mostly he came over

1 just to be with his son.

2 Q Now -- paper cut. Now, during --

3 A I got one, too.

4 Q During -- during the times that you would observe
5 your son and grandson interacting, were there times when there
6 would be disputed disagreements between the two of them?

7 A That's why I said they're more like friends than
8 parent and father. Yes, they played football. They had their
9 own strong opinions.

10 Q Okay. And there were times when they would just
11 disagree with one another over all sorts of things?

12 A Everything sometimes, sometimes not. Yes.

13 Q Okay. Sometimes did those disagreements get a
14 little heated?

15 A Yes.

16 Q Okay. But obviously, nothing ever got as heated as
17 it happened on January 6th of last year; is that fair to say?

18 A Right. Correct. And --

19 Q I have nothing further.

20 MR. PARRIS: Do you want these?

21 MS. LAVELL: Uh, yeah. Would you mind?

22 THE COURT: All right. Redirect?

23 MS. LAVELL: Yes, Your Honor. Thank you.

24 REDIRECT EXAMINATION

25 BY MS. LAVELL:

1 Q Good morning.

2 A Good morning.

3 Q Yesterday, while you were on the stand you -- you
4 had said on the recall the police again. What did you mean by
5 that?

6 A You heard that 911 call?

7 Q No. You asked --

8 A That's why I would never call them again. It wasn't
9 worth it.

10 It -- I thought -- first of all, I thought, when I
11 said I was going to call them, I expected, boom, immediate,
12 they would be there. Nothing would have erupted.

13 All that screaming and yelling, and all that
14 screaming and yelling that took place after I was through on
15 the phone wasn't even me. It was terrible. I -- it's not
16 what I expected out of 911. Sorry.

17 Q Well, what did 911 have to do with all of the
18 screaming that was happening out in front of your home and
19 your son being -- and your grandson being --

20 A It didn't -- it didn't --

21 Q Let me finish the question. And your son being
22 dragged into the car by his father; what did 911 have to do
23 with any of that?

24 A If 911 would have gotten there when I called them,
25 he wouldn't of had a chance to drag him into the car.

1 Q Okay. You indicated that when the neighbors arrived
2 -- and this is State's Exhibit 5 --

3 MS. LAVELL: And, Your Honor, do I have permission
4 to publish it while --

5 THE COURT: Yeah. Go ahead and publish any of the
6 admitted exhibits.

7 MS. LAVELL: Thank you.

8 BY MS. LAVELL:

9 Q And you indicated during cross-examination that when
10 the neighbors showed up, they tackled the defendant by this
11 tree?

12 A Okay. I said in the driveway. He said -- is
13 that -- by the tree. Yes. I don't know if he was exactly at
14 the tree, but in that general area, someplace in here.

15 Q Okay. Well, let me ask you this. When they arrived
16 and -- and contacted the defendant, wasn't he standing by the
17 front passenger door with your grandson?

18 A I believe he was standing next to me, behind -- yes.
19 We were both at the door.

20 Michael -- young Michael was in the car. I was
21 standing next to him and he was behind me, to my -- to the
22 best of my knowledge.

23 Q To the best of your knowledge --

24 A And --

25 Q Hold on. To the best of your knowledge, you were

1 between your grandson and your son when the -- when the next
2 door neighbors arrived?

3 A Yes, I think so.

4 Q So, it's your statement as you sit here, that your
5 son was not pushing your grandson in the car when the
6 neighbors arrived?

7 A It's my statement that my grandson was already in
8 the car when the neighbors arrived.

9 Q Okay. And your son was no longer standing next to
10 your son. Instead, he was behind you?

11 A We -- he was probably -- we were probably both by my
12 grandson. I mean, the car is this big. We could both be
13 standing there. We were standing together. I was trying to
14 get between the two of them.

15 Q Okay. Why did you need --

16 A Whether I got between them or not within those two
17 or three seconds, I don't know.

18 Q Why did you need to get between your son and your
19 grandson?

20 A Because he was taking him in the car and he was
21 crying. It was -- it was a big commotion.

22 Q So then, your son was still manhandling your
23 grandson?

24 A No, he was not still manhandling him. He was
25 already in the car.

1 Q And what was your grandson doing when he was in the
2 car?

3 A Crying.

4 Q Was he attempting to get out of the car or keep the
5 door from being closed on him?

6 A He was crying, and I was standing there.

7 Q I understand that. Was he attempting to get out of
8 the car or keep the door from being closed on him?

9 A In the short amount of time that I was there, he was
10 sitting in the car. I was standing there. He was crying.
11 There was no motions.

12 Q Okay. Now, this is State's Exhibit 9.

13 Do you see the -- now, come I grew up knowing this
14 as a chow table. Is that what you understand this to be?

15 A I do not know what a chow table is.

16 Q Okay. Do you -- but -- but you see this table?

17 A Are you talking about this table or are you talking
18 about this table?

19 Q Well, it's the one I'm pointing to.

20 A This one?

21 Q Yeah. Do you want to circle this?

22 A We call it a coffee table.

23 Q A coffee table. So, do you want to just circle it,
24 so I know we're talking about the same? Okay. Perfect.

25 And that coffee table is in the same room with these

1 -- I guess these are chairs of some sort -- these beige -- are
2 these chairs or couches?

3 A Are you talking about this?

4 Q These back in the corner.

5 A Those aren't beige. Gee. Okay. Those are chairs.

6 Q What color -- what color are they?

7 A White. White.

8 Q Okay. So are these couches or chairs?

9 A They are two chairs.

10 Q Okay. And you indicated when Mr. Parris asked you
11 that just to the right of the photograph and it would be to
12 the left of the violin, that would be the front door and the
13 area that -- you were sitting near the stairs, correct?

14 A Right. There's -- the wall goes all the way around
15 here. You have to go up the stair and to -- to the door.
16 Yes.

17 Q Okay. I'm showing you what's been admitted as
18 State's 12. Are these the stairs you were sitting on?

19 A Yes.

20 Q And from your position, are you able to see this
21 coffee table?

22 A From my position, am I able to see the coffee table.

23 Q From your position at these stairs, are you able to
24 just look right over to the left and see this coffee table
25 area?

1 THE COURT: What happened?

2 MS. LAVELL: It didn't like my question.

3 THE WITNESS: Did I do that or --

4 MR. PARRIS: Is the Elmo still on, Maria?

5 MS. LAVELL: Hum-um. I mean, the power.

6 THE COURT: The lights went out. No.

7 MS. LAVELL: Was it me?

8 MR. PARRIS: The Elmo is still -- Your Honor, John
9 Parris. The Elmo is still on, but the top light --

10 THE COURT: Right. Those lights aren't.

11 THE COURT RECORDER: Maybe our lightbulb burned out.

12 (Pause in the proceedings)

13 THE COURT: Well, we're adjusting. Those other
14 lights still aren't on.

15 THE COURT RECORDER It wasn't patient enough.

16 MS. LAVELL: Something happened.

17 THE COURT RECORDER: Lower lamp off. Upper on.

18 THE COURT: There we go.

19 MS. LAVELL: Thank you. I -- I might have leaned on
20 it. I apologize for that.

21 BY MS. LAVELL:

22 Q Okay. So from the stair where you indicated that
23 you were sitting when you heard this commotion, are you able
24 to look to your left and see this table?

25 A Did I say I was sitting -- at all the times, didn't

1 I say I was standing at the door?

2 THE COURT: Ma'am, answer the question.

3 THE WITNESS: Well, I -- no.

4 BY MS. LAVELL:

5 Q Okay. So -- and -- and just to be clear, you
6 indicated that you were, in fact, sitting on the stairs. You
7 had been having a conversation with someone, you thought, one
8 of your children.

9 And so my question is, you're saying you can't look
10 to the left and see that table?

11 A I probably could. I don't know that I do that on
12 any occasion.

13 Q Okay. Well, let's say that the commotion that your
14 hearing was happening right by this table. Would that have
15 been easy for you to see?

16 A Can I correct you?

17 Q Sure.

18 A I said that I had been sitting on the stairs. I
19 also said that I had gotten up and gone to the door and the
20 door was open and I was still on the phone calling 911.

21 Q Okay. Let's look at states Exhibit 7. That's the
22 door?

23 A Yes it is.

24 Q Is the chair and states Exhibit 7 that we see here
25 in states Exhibit 12?

1 A Do you want to back up? I didn't see it.

2 Q I will. See this chair in State's Exhibit 7?

3 A Uh-huh.

4 THE COURT: Yes?

5 THE WITNESS: Yes.

6 BY MR. LAVELL:

7 Q Is that the same chair we were seeing in State's
8 Exhibit 12?

9 A Yes.

10 Q So then wouldn't it make sense that even if you're
11 standing at the door, you can look in and see this area by the

12 A Yes.

13 Q Okay. Did you -- when you heard the commotion, did
14 you look in to see whether or not the commotion was occurring
15 in this area by the dining -- or the coffee table?

16 A When that -- all that commotion was going on, I was
17 standing by the door looking and watching for 911, waiting for
18 them to show up, so I was not really looking back in the
19 house. I was looking at the door, watching for somebody to
20 get there.

21 Q Okay. Let's talk about after the officers --
22 off-duty police officers tackled, you say, your son. You
23 indicated that you went into the house with your grandson.

24 A Yes.

25 Q And you went in at the same time?

1 A I didn't say I exactly went in at the same time. He
2 may have walked a step ahead of me.

3 I -- and it's getting kind of technical and I really
4 don't remember verbatim what step I took when he went in. I
5 didn't -- we went in at approximately the same time.

6 Q Okay. Well -- and you did say that you one and at
7 the same time. It doesn't really matter if his foot when in
8 before yours, but you entered the house at --

9 A Within close proximity.

10 Q -- within -- within seconds of your grandson,
11 correct?

12 A I'm not going to say within seconds. I'm going to
13 say that I don't remember exactly when I went in. We went in
14 right after this. Yes. When they told us to go in, I did go
15 in with my grandson. Sat on the couch with him and hugged
16 him.

17 Q Okay. So, I need to be clear on this. Okay.

18 So, I understand these questions are frustrating to
19 you, but, I mean the purpose of these questions is to get the
20 facts. And I, you know, regardless of whether it's
21 comfortable for you or not, I apologize, but I need to be able
22 to get to the facts.

23 So, when Mr. Parris asked you if you went in with
24 your son, you indicated that you did go into the house at the
25 same time your son did, all right?

1 Now, I'm trying to understand that. And now you're
2 having some difficulty remembering or explaining yourself. So
3 what I need to know is, when you went in the house behind your
4 son, was it at the same time -- were you able to see him walk
5 into the living room where you ultimately sat down on the
6 couch and hugged him, or --

7 THE COURT: Are you talking about her son or her
8 grandson?

9 MR. LAVELL: Grandson. I'm sorry. Grandson.

10 BY MR. LAVELL:

11 Q When you went into the house with your grandson and
12 you said you sat on the couch and hugged him, did you both get
13 to the couch about the same time?

14 A As plain as I can say this, I don't remember exactly
15 step-by-step. I went and sat on the couch with my grandson at
16 some time after the police had my son in custody.

17 THE COURT: Ma'am, ma'am, did you get to the couch
18 at about the same time your grandson did?

19 THE WITNESS: That's what I've been saying. About
20 the same time.

21 THE COURT: That was just the question.

22 THE WITNESS: But I can't say one second or two.

23 THE COURT: So the answer is, yes?

24 THE WITNESS: Yes. About --

25 THE COURT: Okay.

1 THE WITNESS: -- the same time.

2 THE COURT: Good.

3 BY MR. LAVELL:

4 Q When your grandson entered the house after the
5 detectives were able to get your son -- your son off of him,
6 what did your grandson do when he first got into the house?

7 A I do not know what he did exactly when he first
8 walked into the house.

9 Q Okay. Two seconds after he walked into the house,
10 what did he do?

11 A He probably sat down on the couch and cried and I
12 hugged him.

13 Q So did you see her grandson on the floor crying,
14 trying to catch his breath, having a panic attack, did you see
15 him doing any of that?

16 A I did not.

17 Q So what was his demeanor when he went into the house
18 and you came into the house, sat on the couch and you hugged
19 him?

20 A And he was crying.

21 Q And that was it?

22 A He was crying hard.

23 Q Was he able to catch his breath? Was he complaining
24 that he couldn't breathe?

25 A He was complaining. Yes, he was crying. He was

1 crying. He was very, very upset. He was crying hard.

2 Q And that wasn't my question. My question was, was
3 he having a difficult time catching his breath?

4 A And I already said "no" to that.

5 Q All right. I'm going to play that 911 call again
6 because it seems like there may be some confusion as to where
7 you were and what you said and when you said it. So, I just
8 want to try and help you through that so that were clear.

9 A When you play that, I -- I would appreciate, too, if
10 you would point -- and pay attention to all that screaming and
11 yelling was not me. I was off the phone by then.

12 THE COURT: Ma'am, ma'am, this isn't time for you to
13 make speeches or commentary. You answer questions. Okay?

14 MR. PARRIS: Your Honor, I'm being -- I'm sorry.
15 Just to inquire, are we going to listen to the entire 911 call
16 or just snippets? I don't --

17 MR. LAVELL: The entire 911 call, Your Honor.

18 THE COURT: Okay.

19 MR. PARRIS: And I'm going to need that.

20 THE COURT: And the purpose is?

21 MR. LAVELL: Because there was some confusion as to
22 when she called, what she said, what was going on when she
23 called.

24 MR. PARRIS: Your Honor, may we approach?

25 THE COURT: Yeah. Come on up.

1 (Bench conference began)

2 MR. PARRIS: I object. This is just -- it just
3 seems like we've been over this. She doesn't exactly know
4 what happened. I think at this a point it would be redundant
5 for the State to play that CD again.

6 THE COURT: Okay. So what's the point?

7 MR. LAVELL: Maria Lavell for the State. Well, the
8 defense question of her was suggestive that she was in the
9 house when she first called, that she didn't seem to know what
10 was going on. And all of that is disputed by the 911 call.

11 So certainly, I should be allowed to replay the 911
12 call and have her explain how it is that she was inside when
13 she was making this call and not outside.

14 But if Your Honor is not inclined to do it, it will
15 go back to the jury, so I -- I can appreciate that.

16 THE COURT: Yeah. Why don't we move along. I mean,
17 you've played it for them. They've heard it. You can argue
18 it. You can even play parts in closing if you want to.

19 MR. LAVELL: Okay.

20 THE COURT: Okay?

21 MS. LAVELL: Yeah. Thank you, Your Honor.

22 THE COURT: Okay.

23 MR. PARRIS: Thank you.

24 (Bench conference concluded)

25 MR. LAVELL: I'm going to withdraw my request to

1 publish the 911 call that's been admitted into evidence.

2 THE COURT: Okay. Great. And the jury will have
3 all exhibits in the jury room when you go back to deliberate.

4 MR. LAVELL: Thank you, Your Honor. And I will pass
5 the witness.

6 THE COURT: Okay.

7 MR. PARRIS: No follow-up, Your Honor. Thank you.

8 THE COURT: All right. Thank you, ma'am. You're
9 all done.

10 THE WITNESS: Do I leave this cup here or --

11 THE COURT: You can take it or leave it, whichever
12 you prefer.

13 THE WITNESS: I'll leave it.

14 THE COURT: All right. So, the next witness then.

15 MR. LAVELL: Thank you, Your Honor. The State calls
16 Norman Duplissie.

17 THE MARSHAL: Follow me -- If I could have you step
18 up into the box for a second. Remain standing. Raise your
19 right hand and face that gentleman right there for me.

20 NORMAN DUPLISSIE, STATE'S WITNESS, SWORN

21 THE CLERK: Thank you. And please be seated.

22 Please state your complete name, spelling both your first and
23 last name for the record.

24 THE WITNESS: Pardon?

25 THE CLERK: Please spell -- oh, excuse me.

1 MR. LAVELL: And just for the record, he has one
2 good ear. I'm not sure which ear it is.

3 THE COURT: Okay. Hold on. Let's get him the
4 headphones, please.

5 THE WITNESS: My left ear is the good one. I don't
6 hear out of my right one.

7 THE COURT: Okay. We're getting you headphones to
8 help you the best we can.

9 THE WITNESS: Oh, that's okay.

10 THE COURT: Well -- okay. You -- you don't want the
11 headphones?

12 THE WITNESS: I -- I don't think I need them.

13 THE COURT: Okay. Well, we'll -- we'll try it then.

14 MS. LAVELL: Okay.

15 THE COURT: The clerk asked you to state and spell
16 your first and last name.

17 THE WITNESS: Okay. My first name is Norman,
18 N-o-r-m-a-n. The last name is Duplissie. You spell that
19 D-u-p-l-i-s-s-i-e.

20 THE CLERK: Thank you.

21 THE COURT: Okay. Go ahead, counsel.

22 MR. LAVELL: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. LAVELL:

25 Q Mr. Duplissie, may I call you Norman?

1 A Yes, please.

2 Q Thank you. Norman, do you know an individual by the
3 name of Michael John Schofield?

4 A Yes, I do.

5 Q And how do you know this individual?

6 A He's my stepson.

7 Q Who are you married too?

8 A His mother, Patricia.

9 Q Do you see Michael John Schofield here in the
10 courtroom today?

11 A Yes, I do.

12 Q Would you point in his direction and describe where
13 he is sitting?

14 A He's sitting between, I think, two attorneys and he
15 has on a blue shirt.

16 Q Thank you.

17 MR. LAVELL: Your Honor, may the record reflect that
18 the witness has identified the defendant?

19 THE COURT: Yes, it will.

20 BY MR. LAVELL:

21 Q And are you also familiar with an individual by the
22 name of Michael Joshua Schofield?

23 A Yes, I am.

24 Q And who is that?

25 A That is Michael John Schofield's son, and Michael

1 Joshua is my ward, and he has lived with us on and off for the
2 last 11 years.

3 Q So since he was approximately two or three, he's
4 lived with you?

5 A About two.

6 Q Approximately two.

7 MR. LAVELL: May I approach the witness with what's
8 previously been admitted as -- as State's Exhibit 17?

9 THE COURT: Yes.

10 MR. LAVELL: Or actually, I'm going to just publish
11 it with the Court's permission.

12 THE COURT: Yes.

13 BY MR. LAVELL:

14 Q Norman, there's the screen right next to you. If
15 you'll just take a look at that screen and tell me what we're
16 looking at here.

17 A We're looking at the -- the order to give
18 guardianship of Michael Joshua Schofield to us back on
19 September of 2001, I believe.

20 Q Thank you, sir. And so, by and large, you and
21 Patricia have raised Michael Joshua Schofield his entire life?

22 A He has lived with his father off and on when things
23 were working out. We tried to let him live with his father as
24 much as possible, but I think that, you know, both parties
25 have had a hand in raising him.

1 Q Okay. Michael Joshua Schofield has spent time with
2 Michael -- with -- with the defendant throughout the course of
3 your having guardianship over your grandson?

4 A From time to time, yes.

5 Q And there was a period of time where he actually
6 lived with him in a condo that you purchased?

7 A Yes.

8 Q Okay. But at the time of the incident that we're
9 here to talk about, he was living with you and Patricia?

10 A Yes.

11 Q And where was that?

12 A That's at 1111 Aspen Breeze Avenue. Our ZIP Code is
13 89123. It's probably about 11 miles south of here.

14 Q How old are you, sir?

15 A I'm 80 -- 80-and-a-half.

16 Q 80-and-a-half?

17 A 80-and-a-half.

18 Q We start doing the half's again, huh?

19 A Got get the half.

20 Q Okay. And on January 6, 2013, how old were you?

21 A I was 79-and-a-half.

22 Q 79-and-a-half. Okay. I want to talk specifically
23 about an incident that occurred on January 6th. But before we
24 do that, did you and your grandson have a conversation on the
25 5th in regard to his father, and Sunday, the 6th? Did that

1 make sense to you?

2 A Yes. I think I know what you're getting to. I
3 don't know if I'm allowed to say this.

4 Q Well, let me -- just because I don't -- I want to be
5 clear. Did Michael Joshua, your grandson, say something to
6 you on the 5th in regards to not wanting to hang out with dad?

7 MR. PARRIS: Well, Your Honor, that's a little bit
8 leading at this point in time. Objection, Your Honor.

9 THE WITNESS: Yes, she said we --

10 THE COURT: Okay. Hold -- hold -- hold on.

11 MR. LAVELL: May we approach?

12 THE COURT: Yes, come on up.

13 (Bench conference began)

14 MS. LAVELL: Maria Lavell for the State. There are
15 some bad act sorts of issues that I want to avoid gets into,
16 and so obviously, I need to kind of lead through that in order
17 to make sure that we don't -- he doesn't mention anything he's
18 not supposed to mention.

19 MR. PARRIS: Well, John Parris. The questions have
20 been a little bit too leading up until this point in time. I
21 just don't want to see that occurring. I wasn't aware that
22 we're trying to step -- tip toe through the tulips regarding
23 these other situations.

24 THE COURT: Right.

25 MR. PARRIS: I assumed it was cleaned up during the

1 pretrial. But, the questions are getting leading at this
2 point in time. If it's for a specific purpose to avoid other
3 items, that's fine.

4 THE COURT: Well, okay, so here's the thing.

5 MR. PARRIS: I don't know that.

6 THE COURT: She can ask him if they've discussed
7 whether he wanted his son to come over the next day -- wanted
8 his father to come over the next day.

9 MS. LAVELL: And my concern -- Maria Lavell. My
10 concern was, was that I'm not sure if I'm --

11 THE COURT: Right.

12 MS. LAVELL: -- supposed to say this, so --

13 THE COURT: Right.

14 MS. LAVELL: -- so -- and obviously, during pretrial
15 it has been discussed, but you can never be certain at a
16 trial, and so when Counsel says, I thought it would be cleaned
17 up during pretrial, I hope it is, but I just don't want to
18 take any chances.

19 THE COURT: Okay.

20 MR. PARRIS: I just don't want there to be the
21 leading questions --

22 THE COURT: Okay.

23 MR. PARRIS: -- to continue in perpetuity.

24 THE COURT: Okay. Agreed.

25 MS. LAVELL: Very well.

1 THE COURT: Go ahead.

2 (Bench conference concluded)

3 THE COURT: Okay, go on.

4 BY MS. LAVELL:

5 Q Thank you, sir. So if you'll explain to the ladies
6 and gentlemen of the jury what Michael had said in regards to
7 his dad the day before.

8 A He said he did not wish to spend the Sunday with his
9 dad watching TV as they usually did. And I think they spent
10 just about every Sunday watching TV except maybe one or two,
11 and I can't be positive on that. But there were a few days
12 that he did not do it, but on this Sunday he said I have spent
13 time with dad on Wednesday and Thursday, and I want to be home
14 alone on Sunday. So --

15 Q Now, let's get to Sunday. Did you learn that -- or
16 at some point on Sunday did you or your wife receive a call
17 from the Defendant?

18 A Yes.

19 Q Who received the phone call?

20 A I believe my wife.

21 Q As a result of that phone call, did you and your
22 wife do anything?

23 A Yes.

24 Q What did you do?

25 A Michael John requested some medication in the form

1 of, I believe, it was Alka-Seltzer Plus or Alka-Seltzer Cold
2 medicine and aspirin. And he was going to come over and pick
3 it up, and we said we have some errands to run, and we can
4 drop it off at your place, and his place was Budget Suites on
5 south -- the south Strip.

6 And we were -- it didn't take us far out of our way
7 to do that. We said we'll just drop it off there.

8 Q So then did you eventually go to the Budget Suites
9 in order to do that?

10 A We did.

11 Q What happened when you arrived?

12 A I knew where his apartment was, of course, or unit,
13 and I took the medication up to him. Pat said she would sit
14 in the car. And I took the medication up to his unit, and I
15 knocked on the door, and there was no answer. And I -- we had
16 the aspirin and Alka-Seltzer in a little baggy, okay, a little
17 sandwich bag that's closable.

18 And I then went back to the car to tell Pat that he
19 wasn't up there, and on the way going down the stairs, Michael
20 was coming up the stairs.

21 Q So did you ultimately give him the medication?

22 A Yes.

23 Q And ultimately left?

24 A Michael and I walked back -- he took the medication.
25 I can't remember if he put it in his unit or he put it in his

1 pocket, but we left the stairway, went back to the car. He
2 got into the back seat and talked to his mom for a while, and
3 we sat there, and he gave his mom a kiss and he left.

4 Q Okay. Where did you and Pat go after you left
5 Budget Suites?

6 A You know, I can't remember. It was either like
7 Walmart, the wine store. I mean, I don't know.

8 Q Okay.

9 A Okay? We went somewhere. My focus was on the fact
10 that little Michael had left the house earlier to go to Dick's
11 Sporting Goods so pick up some compression pants and some
12 shoes that were on sale, and he wanted those because at the
13 time, he was weight lifting, and his older cousin, who was --

14 Q Okay.

15 A -- like 21 --

16 MR. PARRIS: Your Honor --

17 THE COURT: Yeah.

18 THE WITNESS: -- 23 years old.

19 MR. PARRIS: -- I'm sorry to interrupt. We are
20 getting a little far afield.

21 THE WITNESS: Oh, sorry.

22 THE COURT: Just -- sorry, just hold on. Try to
23 wait for the questions and respond to the questions, okay?

24 THE WITNESS: Okay.

25 THE COURT: All right, go ahead.

1 BY MS. LAVELL:

2 Q All right. Prior to your going to Budget Suites to
3 drop off medicine, was little -- your grandson or little
4 Michael still at your home?

5 A Yes, he was.

6 Q Were you aware of whether or not he was going to be
7 going out that morning?

8 A He was.

9 Q Where was he supposed to go?

10 A The Dick's Sporting Goods with his cousin.

11 Q Was there a certain time that he left that you're
12 aware of?

13 A He left in order to get there when they opened or
14 shortly after they opened, which is 10:00 o'clock on a Sunday.

15 Q After you left Budget Suites and you ran your
16 errand, did you return home?

17 A Yes, we did.

18 Q What was your reason for returning home so quickly?

19 A We ran our errands and then little Michael, we
20 didn't want him to be alone for a long period of time.

21 Q Was he home when you arrived?

22 A He did. He was, yes.

23 Q At some point after you and Pat arrived home and
24 little Michael was home, was there a ring at the door?

25 A Yes, there was.

1 Q Do you know who was at the door?

2 A Yes, I do.

3 Q And who was that?

4 A Michael John.

5 Q When you realized that Michael John was at the door,
6 did you say anything to your grandson?

7 A I said, Michael, it's your dad. I don't know why
8 he's here, but, you know, you've got homework to do.

9 Q Okay. Was it really that he had homework to do?

10 A I believe, he did, but I can't be certain. I think
11 it was, you know, get down here. I think he was up in the
12 loft.

13 Q Okay. So how long after, if you can recall, how
14 long after you left Budget Suites did the Defendant arrive at
15 your home?

16 A Probably an hour.

17 Q Was that surprising to you at all?

18 A It was.

19 Q How come?

20 A Well, because we had brought him the medicine, he
21 said he wasn't feeling well, I figured he would take the
22 medicine and take a nap.

23 Q Was he invited into the home at that time?

24 A I let him in, yes.

25 Q Was there any conversation with him when he first

1 entered the home?

2 A I asked him, what are you doing here? And he said
3 I've come to talk to little Michael. And I said fine. He
4 said can I have some water? And I said, you know where it is.
5 He went to the refrigerator, got a bottle of water, and then
6 he went in to talk to little Michael. And I busied myself
7 with something else at that point.

8 Q Okay. At in the point, without telling me what she
9 said, did you your wife, Patricia, make you aware of any
10 concerns she had in regards to the Defendant's physical
11 condition?

12 A No, she did not. However, I told her, I think
13 Michael's been, you know, taking too much medicine or
14 something. He appeared somewhat impaired to me.

15 Q Okay. Were you -- did the Defendant go in and speak
16 to your grandson? Are you aware of whether or not -- because
17 you said you busied yourself.

18 A Right.

19 Q So are you aware of whether or not the Defendant
20 went in and spoke to your grandson?

21 A I believe, he did. I did not go with him. I
22 believe that only because he said he was going to do that. He
23 got the water out of the refrigerator, he went toward the
24 little room where Michael was at that point in time.

25 Q Okay. And just so we're clear where this little

1 room is, I'm showing you -- and there's a little screen right
2 there. I'm showing you State's 7. If you look to the right
3 of the photograph, just over the staircase, there's a door
4 right here that you can see pretty significantly, it's opened.
5 What does that lead to?

6 A That's the laundry room.

7 Q Then there are two pictures between another door.
8 What's that second door to the --

9 A That room is a little central area that leads to a
10 bathroom and it also leads to a small room that's an optional
11 bedroom. However, we use it for homework, and I built a wine
12 closet in the back of it and so forth and so on.

13 Q Okay. When you told Michael to come down and go in
14 and do homework, that is his dad was here, where did he go?

15 A Into that second door that you have.

16 Q Thank you. Now, is it fair to say that at some
17 point after the Defendant arrived something happened? And
18 that's just -- I just need a yes or no in regards to that, and
19 then I'm going to get more specific.

20 A Yes.

21 Q So something happened at some point after he
22 arrived?

23 A Yes.

24 Q Okay. When is the first time you became aware that
25 something was happening?

1 A Well, I think there's a space here.

2 Q Okay.

3 A First of all, Michael announced, little Michael, in
4 a loud voice, dad and I going out to throw the football out
5 front --

6 Q Okay.

7 A -- which was not unusual, very usual for that to
8 happen.

9 Q So the Defendant would come over regularly and throw
10 the football with his son out front?

11 A Sure, or play basketball, or whatever.

12 Q What happened next?

13 A I heard the door close. I went -- I was in the
14 kitchen doing something, and I cannot tell you what it was
15 because I can't remember.

16 Q Okay.

17 A Okay? I could have been peeling an orange, I could
18 have been preparing the coffee pot for the next day, but I was
19 doing something in our u-shaped kitchen, so I could not see
20 the front door at that point in time.

21 Q Okay. What happened next?

22 A Very shortly after I heard the door open and close,
23 and I surmised, and I guess I was correct, that both Michaels
24 had come back into the house.

25 Q All right.

1 A I heard little Michael say, "I don't want to go. I
2 don't want to go." Okay?

3 Q All right. And at some point, do you see something?

4 A The first thing I saw -- as I say, I was in the
5 kitchen. And we have a house that's sort of circular pattern
6 as far as footwork goes. You can come through the front door,
7 go around one way all the way around and go back out the front
8 door.

9 Q All right.

10 A I'm in the kitchen, and I hear this commotion going
11 on. The noise is escalating now. There's an argument going
12 on and there's loud voices and this kind of thing.

13 Q Can you tell whose voices those are?

14 A I think they were both Michaels and Pat's involved.

15 Q Okay.

16 A Okay. The next thing I am aware of is I'm at the
17 kitchen, I see little Michael go by very quickly. I think he
18 was walking at this point, but very fast, and I see his father
19 after him. Okay?

20 Q Okay.

21 A There's hollering going on and this kind of thing.
22 And the next thing I know is, they're running one after the
23 other, little Michael being chased by his father, okay? At
24 that point, I figured I'd better get into the fray and see
25 what was going on and see if I could influence people to calm

1 down a bit. And so I took off after the two people who are
2 running.

3 Q All right. And at some point, did you catch up to
4 them?

5 A Yes, I did.

6 Q Where was that?

7 A That was right out of our dining room and into the
8 living room. We have a living room that's 20-and-a-half feet
9 long --

10 Q I'm going to stop you and just put up State's
11 Exhibit 12. Does this particular exhibit help you --

12 A Yes.

13 Q -- in your discussion?

14 A You see where the two pillars are?

15 Q And that's an interactive screen, so you can just
16 touch on it.

17 A Oh, okay. Okay, see where the pillars are? There's
18 one on that side and one on the other side?

19 Q And you're talking about the two pillars that
20 separate the --

21 A Dine --

22 Q -- dining area from the living area?

23 A Yes, I am.

24 Q Okay.

25 A That's about where I caught up to them.

1 Q All right. And when you caught up to them, what
2 happened next?

3 A I screamed, "Michael, stop." And I was referring to
4 big Michael at that point. And the reason I said that was
5 Michael, big Michael, had little Michael in a choke hold,
6 which I have researched and found out it was a choke hold.

7 THE COURT: All right.

8 THE WITNESS: And --

9 MR. PARRIS: Well, Your Honor --

10 THE WITNESS: -- also --

11 THE COURT: Just explain what you saw, okay?

12 BY MS. LAVELL:

13 Q Yeah, and I'm going to back you up so that we have a
14 clear sense of what you saw. So when you get to the pillars,
15 let me just ask you this, so you said that the house is
16 circular?

17 A Yes.

18 Q So is it fair to say that they, at this point anyway
19 when you finally caught up to them, they had run through the
20 dining room and had entered the area by the pillars in the
21 living room?

22 A Yes.

23 Q All right, so that's the direction that they had
24 been --

25 A Yes.

1 Q -- traveling?

2 A Yes.

3 Q All right. And when you caught up with them, what
4 did you actually see? And I want you to describe what you
5 saw.

6 A Big Michael had little Michael with his arm under
7 his neck, okay?

8 Q Now, you're demonstrating your forearm --

9 A I -- right.

10 Q And I'm saying this for the record. You're
11 demonstrating that big Michael had his forearm underneath
12 little Michael's neck?

13 A Yes.

14 Q All right.

15 A And he had his other arm around his head.

16 Q Okay.

17 A Okay?

18 Q And you've got your right arm across your forehead
19 grasping your temple, in essence?

20 A Grasping the side of --

21 Q Or the side of your head.

22 A -- his head.

23 Q All right. And what is -- is big Michael saying
24 anything to little Michael at this time?

25 A Yes.

1 Q What is he saying? And you -- I know it may be
2 uncomfortable, but you can say it out loud.

3 A Well, he was saying, "You fucking little bitch.
4 You're going to do what I fucking tell you and getting in that
5 fucking car because I'm your fucking father, and you'll do
6 what I tell you to do."

7 Q What's little Michael doing at this point?

8 A Michael is gasping for air at this point.

9 Q What are you saying at this point or doing at this
10 point? What are you doing or saying at this point?

11 A First I screamed at Michael to stop, and of course,
12 he didn't stop. I --

13 Q Why did you want him to stop?

14 A Because I felt he was hurting little Michael.

15 Q Okay.

16 A I went up to him, and as you could see when I walked
17 in here, I'm five foot six at a stretch, and I am very small
18 in compared to -- in comparison to big Michael and I'm very
19 weakened in comparison to big Michael. However, I felt I had
20 to do something. And I hit him in the ear twice with the back
21 of my hand.

22 Q So for the record, what you're doing is you're
23 showing that you basically hit him with the palm of your hand
24 in his ear?

25 A Right.

1 Q With an open hand?

2 A Yes.

3 Q All right. Did that have any effect on big Michael?

4 A None whatsoever.

5 Q What happened next?

6 A He kind of shrugged me off. I mean, he didn't touch
7 me, didn't hit me, didn't do anything. He just kept going
8 with little Michael, and he's --

9 Q And what do you --

10 A -- moving him toward the door by forcing little
11 Michael's legs with his own legs.

12 Q Okay. So when you first caught up to them, you
13 indicated that you caught up to them near the pillars.

14 A I'm sorry, say --

15 Q I'm sorry. When you first caught up to them --

16 A Yes.

17 Q -- you said that you caught up to them near the
18 pillars, right?

19 A Yes, yes.

20 Q Near the two pillars?

21 A Yes. Yeah.

22 Q All right. While he was choking Michael, little
23 Michael --

24 A Yeah.

25 Q -- while the Defendant was choking little Michael,

1 was he moving in the direction of the table and then towards
2 the front door?

3 A Yes.

4 Q Okay. So he's choking him. At some point while
5 still in the will you having room, does anything happen in
6 regards to his grip on little Michael?

7 A Little Michael was doing his best to breathe, okay?
8 Little Michael had put his hand up under his father's arm and
9 was trying to get enough room so he could gasp for breath,
10 yes.

11 Q And after you struck him -- and was he able to
12 actually break the grip? Were you aware of whether he broke
13 the grip?

14 A When they went out the front door, the grip was
15 broken.

16 Q Okay. Backing up to where you indicated that you
17 hit him twice in the ear with the palm of your hand and you
18 indicated he kind of is this rugged you off, did you do
19 anything else physical while still in the house to attempt to
20 get him to release your grandson?

21 A I just screamed at him, Michael, you know, you're
22 going to kill the kid.

23 Q Did he have any reaction when you --

24 A None whatsoever.

25 Q -- screamed that? And were you concerned that he

1 might kill the child?

2 A Anything is possible, of course.

3 Q Now, where is Pat when all of this is going on.

4 A I don't know.

5 Q Is it kind of tunnel vision at that point?

6 A I was being distracted by our Chihuahua dog --

7 Q Okay.

8 A -- who was barking fiercely, I mean, for a little
9 four-and-a-half pound dog, and he is barking, and the -- you
10 know, all of our feet, the six of them, are trotting toward
11 the door, and I was afraid we were going to trample the little
12 dog truthfully.

13 Q All right. So you indicated that before they got
14 outside, little Michael was able to break his father's grip.

15 A Right.

16 Q And you indicated that after he broke the grip, he
17 was moving him outside still. Can you describe a little bit
18 more, in more detail, how he was actually moving your
19 grandson, and "he" being the Defendant, moving your grandson
20 out the door.

21 A I'm not sure.

22 Q Okay. But he was physically making him exit?

23 A Yes.

24 Q Okay. You just don't know what --

25 A No.

1 Q -- what the hold was?

2 A No.

3 Q Okay. But he wasn't choking him anymore?

4 A Correct.

5 Q Okay. So at some point, do you observe him take
6 your grandson out the door?

7 A Yes. As we got very close to the door -- in fact,
8 you have to --

9 Q And let me get you another picture that might be
10 helpful.

11 A There's a step up.

12 Q Oops. Well, I don't know if -- yeah, this may show
13 the step up. This is State's 7.

14 A Yeah, you can see a tile.

15 Q Can you just draw a line right there where the step
16 up is.

17 A Right here.

18 Q Okay. So what about the step up?

19 A As he went up to the step up, the hold was released
20 at that point. I scooped up the dog. As you can see, the
21 first door, which I told you was the laundry room earlier --

22 Q Okay.

23 A -- which I have just put a little mark on.

24 Q Okay, I'm going to show you State's 10. Is this
25 inside that laundry room?

1 A Yes, yes.

2 Q Okay.

3 A Yes.

4 Q And is this where you put the --

5 A That's where I put the dog. I scooped the dog up
6 with one hand, went over, put him in his cage, locked the
7 cage.

8 Q Okay. And what's the next thing you did?

9 A I picked up a wrench.

10 Q Okay. And why did you pick up the wrench?

11 A Stupid.

12 Q Well --

13 A I don't -- I'm not sure. I don't know -- I'm sure I
14 wasn't going to go after Michael with it. I think I wanted
15 the wrench for security.

16 Q Okay. And so you and the wrench went outside?

17 A Yes.

18 Q What is the first thing that you saw when you got
19 outside?

20 A I saw -- we're talking about a Montana mini van.
21 There are -- the front door --

22 Q State's Exhibit 5.

23 A The van is parked in front of this garage door that
24 you can see --

25 Q Okay.

1 A -- here. Okay? As I came out the front door and
2 down the side of the garage, there's a lot of hollering and
3 screaming going on.

4 Q Who's hollering and screaming, if you know?

5 A I think big Michael is screaming. I think little
6 Michael is crying. I think Pat is on the phone with the
7 police, this kind of thing. It was chaos, okay? I came out
8 the front door, down the side of the garage, and I see Pat
9 holding the door back and getting little Michael out of the
10 seat.

11 Q Okay.

12 A Okay? At that time, I assume Michael had been near
13 that door -- big Michael had been near that door --

14 MR. PARRIS: Well, Your Honor, I'm going to object.

15 THE WITNESS: -- but he went --

16 THE COURT: Hold on, hold on. You can only say what
17 you actually saw, not what you --

18 THE WITNESS: Okay.

19 THE COURT: -- assume.

20 THE WITNESS: Okay. What I saw next was big Michael
21 was coming up the side of the van on the driver's side --

22 BY MS. LAVELL:

23 Q Okay.

24 A -- toward the garage door.

25 Q Okay. Were your neighbors out there yet?

1 A No.

2 Q Okay. What is big Michael saying at that point?

3 A I stepped in between the car and the -- and I'm
4 still holding the wrench, but I'm holding it close to me. I'm
5 not threatening anybody with it.

6 Q That's okay.

7 A I stepped between the door and the front bumper of
8 the van, and I said, "Michael, do you understand what you're
9 doing to your son? You should be ashamed of yourself."

10 Q And what was his response?

11 A Same kind of response that he's been giving me all
12 along.

13 Q Which was what?

14 A "Fuck you, old man, I'll do whatever I want. I'm
15 his fucking father, and I don't give a shit about that piece
16 of paper that you have that says you're the guardian."

17 Q Did you ever give him permission to force his son in
18 a van or to take his son anywhere on that particular day?

19 A No, I didn't even know there was an issue until I
20 heard little Michael say, "I don't want to go," and then
21 the --

22 MR. PARRIS: Your Honor, I'll object at this point
23 in time, Your Honor --

24 THE WITNESS: -- he --

25 MR. PARRIS: -- as to hearsay what little Michael

1 may or may not have said.

2 MS. LAVELL: Okay.

3 THE COURT: Okay.

4 BY MS. LAVELL:

5 Q So --

6 THE COURT: Sustained.

7 BY MS. LAVELL:

8 Q So your answer is, no, you did not give him
9 permission to take --

10 A No. Right.

11 Q Did you ever hear your wife give him permission to
12 take Michael?

13 A I did not.

14 Q Okay. And based on what your wife was saying when
15 you walked out or based on the fact that your wife was calling
16 911, did you get a sense of whether she gave him permission to
17 take --

18 MR. PARRIS: Your Honor, I'll object as to --

19 THE WITNESS: I don't know.

20 MR. PARRIS: -- speculation.

21 THE COURT: Okay. Sustained.

22 MR. PARRIS: Thank you.

23 THE WITNESS: I do not know.

24 BY MS. LAVELL:

25 Q All right. At some point, do the neighbors -- and

1 at some point do other parties join in the fray, if you will?

2 A Yes.

3 Q And who is that?

4 A We have neighbors that live to our left, and they
5 are both police officers, and we have a waving association. I
6 mean, you know, it's not a visit, I'll visit you, you visit me
7 type thing, but we know who they are, they know who we are.
8 And they came storming out of their house in their bed
9 clothes, yes.

10 Q And what did they do when they came over?

11 A The first thing that I saw them do was tackle big
12 Michael.

13 Q Okay. And when you say "tackle," what do you mean?

14 A They grabbed him and put him on the ground.

15 Q Now, before they grabbed him and put him on the
16 ground, what was his demeanor?

17 A I think he was irrational at that time.

18 Q So he wasn't just standing there calmly and they
19 just body slammed him?

20 A No.

21 Q Okay. Was he still screaming and saying those sorts
22 of things?

23 A Yes.

24 Q Did he do anything with his clothing?

25 A He tore his shirt off. When I say tore it off, he

1 took his shirt off as though he was going to fight the world.

2 Q Okay. And they were able to subdue him?

3 A Yes.

4 Q Were you present when on-duty police officers
5 arrived?

6 A Yes.

7 Q Did you observe your grandson go into the house
8 after he was able to get out of the car?

9 A Yes, he went in with me.

10 Q He went in with you?

11 A Yes.

12 Q Okay. Where was your wife?

13 A She was still outside, but --

14 Q And when you went in with him, did you observe him
15 doing anything?

16 A He said he couldn't breathe.

17 Q And what was -- was he doing anything else? What
18 was his emotional state --

19 A Oh, he was --

20 Q -- beyond --

21 A -- crying.

22 Q Okay. And your wife was still outside?

23 A I think by the time little Michael had sat in one of
24 these white chairs that were in the living room, she had also
25 come in.

1 Q Okay. And what did she do once she came in when
2 Michael was sitting in one of the white chairs, if you recall?

3 A Well, we have to step back for a second. Lisa, the
4 lady on the -- that came out and together with her husband,
5 tackled Michael, she came to me and took the wrench away from
6 me.

7 Q Okay.

8 A She said what are you doing with this?

9 MR. PARRIS: Well --

10 THE WITNESS: And she gave it --

11 THE COURT: Okay. Sir, you got to wait for the --
12 and the questions and answer --

13 THE WITNESS: Oh, okay.

14 THE COURT: -- the questions.

15 BY MS. LAVELL:

16 Q And I don't want you to -- I don't want you to say
17 what she said, okay, because that's hearsay. So, in any case,
18 she took the wrench away from you?

19 A And gave it to Pat.

20 Q Okay, and gave that to Pat. All right. And then
21 you went into the house at some point with your grandson?

22 A Yes.

23 Q And at some point after your grandson was sitting in
24 a chair, your wife came in?

25 A Yes.

1 Q Do you recall what she did when she got into the
2 house?

3 A I do not.

4 Q Okay. Now, at some point did on-duty police
5 officers come in to speak to you and your grandson and Pat?

6 A Yes.

7 Q Did you speak to them?

8 A Yes.

9 Q Did you provide a written statement?

10 A Yes, I did.

11 Q To your knowledge, did your grandson speak to them?

12 A Yes, he did.

13 Q Did he provide a written statement?

14 A Yes, he did.

15 Q Did your wife speak to them?

16 A I don't believe so.

17 Q Okay. Are you aware whether or not she provided a
18 written statement?

19 A She did not.

20 Q Okay. After everything had subsided, did you have
21 an opportunity to view your grandchild, physical view him?
22 Let me just do this differently. I'm publishing State's
23 Exhibit 1. Who is this?

24 A That's Michael Schofield.

25 Q And is this -- to your knowledge, was this photo

1 taken at the time of the incident?

2 A Yes.

3 Q This is State's 2. Oh, I do that all the time. Do
4 you observe anything of this photograph of interest?

5 A Yes, his -- he has a bruise on his larynx.

6 Q Okay. Did you see that the day of the incident?

7 A Yes.

8 Q Prior to the Defendant putting your grandson in a
9 choke hold, had that injury been on his neck?

10 A No.

11 Q Did anybody try and suggest to you -- I'm going to
12 -- strike that.

13 MS. LAVELL: Court's indulgence. I'll pass the
14 witness.

15 THE COURT: Okay. Go ahead with --

16 MR. PARRIS: Your Honor, I -- while I don't know how
17 much recross there will -- excuse me, redirect there will be,
18 I'm pretty confident we can get this done before the lunch
19 hour. I --

20 THE COURT: Okay. Go ahead.

21 MR. PARRIS: Thank you.

22 CROSS-EXAMINATION

23 BY MR. PARRIS:

24 Q Do you prefer Norm or Norman?

25 A Either way. Norm, fine.

1 Q Norm?

2 A Norm.

3 Q Okay, Norm. One of the first things you had said in
4 your questioning by the State was that you had lived -- excuse
5 me, that Michael Joshua had lived with you off and on for the
6 past 11 years.

7 A Correct.

8 Q And he had lived with you consistently for the past
9 two years?

10 A Yes.

11 Q With whom do you live -- well, before that he was
12 living with his father?

13 A He was living with his father. He was staying with
14 us sometimes. But mostly, he was living with his father, yes.

15 Q And when you say mostly living with his father, are
16 you referring to over the course of the last 11 years or --

17 A No.

18 Q Just the time --

19 A There was a period where Michael was away for a
20 while and --

21 Q Okay.

22 A -- and he lived with us during that whole period.
23 And then he -- when he came back into our lives, we assisted
24 him with getting --

25 Q Well --

1 A -- living accommodations.

2 Q Okay.

3 A -- and so forth.

4 Q So but it sounds like when you say on and off for
5 the past 11 years, it's fair to say that he, Michael Joshua,
6 was either living with you or with Michael John during that
7 time, correct?

8 A Yes, absolutely.

9 Q Okay. And you had also testified that to your
10 recollection or as far as you're concerned, both the two of
11 you, meaning you and Pat, and Michael John, I believe you had
12 said, had a hand in raising Michael Joshua?

13 A Yes.

14 Q Then we had spoken about a conversation you had with
15 -- and I'm sorry, I'll try and -- I realize you are somewhat
16 hearing impaired.

17 A Oh, that's okay. I can control it. Don't worry.

18 Q Okay. Well, let's talk about that while I brought
19 it up. Are you -- how much hearing do you have in your left
20 ear?

21 A In my left ear? My left ear is perfect.

22 Q Okay. In your right ear?

23 A Zero.

24 Q Okay.

25 A That's brought about by an acoustic neuroma where

1 they go in -- well, they go in and they take everything out
2 and you don't hear anymore.

3 Q Okay.

4 A I had this about 30 years ago.

5 Q Okay. So you're used to having hearing only in one
6 ear?

7 A Yes.

8 Q Okay. So you were talking about a conversation you
9 had with Michael Joshua the day before this incident occurred,
10 correct?

11 A Right.

12 Q And you had referenced that Michael Joshua had just
13 spent a couple days with his dad earlier that week?

14 A Yes.

15 Q Okay. And he -- it sounded like -- it was your
16 understanding that Michael Joshua didn't want to engage in his
17 normal Sunday football ritual with his dad?

18 A Yes.

19 Q Okay. We talked about the medicine being dropped
20 off and then at some point in time the Defendant shows up at
21 your home, correct?

22 A Yes.

23 Q Okay. And you had said that you had told Mike --
24 excuse me, Michael Joshua to go do his homework.

25 A Right.

1 Q Okay. Which -- and it was your testimony that that
2 was something legitimate; he had homework to do?

3 A Yes.

4 Q Now, you had testified that when Michael John came
5 in, he asked for some water and he went to the kitchen of your
6 house to get some?

7 A No, he went to the kitchen, he got some water out of
8 the refrigerator, and that was a normal thing for people to
9 do.

10 Q Okay. So after he got his bottle of water or --

11 A Right.

12 Q -- drink, whatever --

13 A Right.

14 Q -- it was, I believe you had testified you had heard
15 Michael Joshua say that he and his dad were going to go
16 outside to play catch?

17 A Yes.

18 Q And at that point in time you were in the kitchen
19 doing whatever?

20 A Doing whatever.

21 Q Okay. Now, at some point in time, I believe you had
22 testified that you heard them walk out of the house or heard
23 the door close?

24 A I heard the door close.

25 Q And then at some point in time you heard -- shortly

1 thereafter, you heard the door open and you heard them come
2 back in; is that correct?

3 A Yes.

4 Q Okay. I'm showing you State's Exhibit 7. That's
5 your foyer or front door --

6 A Right.

7 Q -- area, correct?

8 A Yes, it is.

9 Q How far away from the front door is the kitchen
10 where you were --

11 A Thirty feet.

12 Q Thirty feet? Okay. But you distinctly remember
13 hearing them leave and then come back in?

14 A Yeah.

15 Q Okay. And it's when you come back -- when they back
16 in, that's when you first heard Michael Joshua say words to
17 the effect of "I don't want to go" or something --

18 A Yes.

19 Q -- like that?

20 A And I had no idea what this was about --

21 Q You had no context --

22 A -- at that time.

23 Q -- as to what was going on before that? And you
24 kept doing whatever you were doing in the kitchen?

25 A Exactly.

1 Q Okay. That's when -- and it was shortly after that
2 you heard voices get raised; is that correct?

3 A As far -- yeah, Michael Joshua saying, "I don't want
4 to go," and voices were raised, and I can't quote what was
5 said. But the first clue that I had that something was going
6 worse than I had hoped for was little Michael is power walking
7 through the kitchen and is his father's right behind him.

8 Q Okay. So that's when -- when you saw -- fathers and
9 sons raising their voices with one another not an uncommon
10 thing in your life experience?

11 A Right.

12 Q Okay. And fathers and sons raising their voice at
13 each other in their own home between Michael John and Michael
14 Joshua, not all that uncommon?

15 A Exactly.

16 Q So it -- but it was uncommon when Michael Joshua was
17 kind of, I guess, race walking with Michael John following
18 him --

19 A Right.

20 Q -- through the house? Okay. And after that, you
21 had said that you heard -- at some point in time, you heard
22 some yelling going on from the dining room/living room area;
23 is that correct?

24 A Yes. The conversation was exaggerated throughout
25 the first circuit, and then the second circuit around where

1 the walking had turned to running, then it --

2 Q I'm going to stop you right there. So they did two
3 laps around your --

4 A Two laps.

5 Q -- home?

6 A Yes.

7 Q So the first time they, I guess, sped walk through
8 the kitchen, correct?

9 A Correct.

10 Q And then you continued to hear loud voices, people
11 yelling, or whatever?

12 A Right.

13 Q And the second time it was full blown running?

14 A Exactly.

15 Q Okay. So after the second time that's where --
16 that's when you knew this is completely out of the ordinary or
17 is that when you thought things were completely out of the
18 ordinary?

19 A We have a problem, right.

20 Q Okay. I'm showing you State's Exhibit 12, and I
21 believe you had testified that you caught up to the two
22 Michaels somewhere in the vicinity of these pillars; is that
23 correct?

24 A That's correct.

25 Q Okay. And it's at that point in time that you said

1 you saw Michael Joshua in, you had described it as some sort
2 of a choke hold, correct?

3 A Yes.

4 Q And you tried to intervene to get Michael John to at
5 least --

6 A Stop, right.

7 Q -- Michael Joshua?

8 A Right. Correct.

9 Q And you couldn't do it on your own; is that fair to
10 say?

11 A That's very true.

12 Q So at some point in time, Michael John and Michael
13 Joshua are walking from the dining room area, essentially
14 towards the bottom of this photograph; is that --

15 A Yes.

16 Q -- fair to say?

17 A That is correct.

18 Q Towards the front door? And you're not sure where
19 Pat was during this?

20 A No. I cannot testify to that. I --

21 Q Okay.

22 A -- I think I know, but I can't testify.

23 Q Not positive? You were more focused on them and
24 your dog? What's his name?

25 A Tyler.

1 Q Tyler, okay. So when you saw -- well, as the two
2 Michaels were walking out of the house or towards the front
3 door, you reacted by following them as best you could,
4 correct?

5 A Yes.

6 Q And then when they got to the front door or foyer
7 area, your thought changed from them to Tyler --

8 A Yes.

9 Q -- to make sure that Tyler went, and was put in his
10 cage, correct?

11 A Correct.

12 Q Showing State's Exhibit 10. In fact, is that Tyler
13 in his cage?

14 A That is Tyler in his cage.

15 Q Okay. So you went and put Tyler in the cage and
16 then followed everybody -- well, at least Michael and -- the
17 two Michaels, you followed them outside, correct?

18 A Yes. And I think that took about no more than eight
19 seconds.

20 Q Okay. And by that, you're referring to putting
21 Tyler in the cage and then coming back out afterward? So you
22 lost sight of the two Michaels --

23 A Yes.

24 Q -- for approximately eight seconds, is your
25 testimony?

1 A Maybe ten.

2 Q Eight to --

3 A Right.

4 Q -- ten. Now, you said that when you got out, the
5 Defendant was -- excuse me, you heard more screaming, and Pat
6 was trying to get Michael Joshua out of the passenger seat of
7 that mini van, correct?

8 A Correct.

9 Q And Michael -- excuse me, Michael John was walking
10 around the driver's side?

11 A The driver's side.

12 Q Okay.

13 A When I first spotted him, he was about even with the
14 driver's front door of the van.

15 Q Okay. And he was -- you had testified he was
16 walking around the front of the van in between the bumper and
17 the exterior of the garage, correct?

18 A That's where he was headed.

19 Q Okay. And I'm showing you State's Exhibit 5. So
20 you -- that's when you testified you had the wrench in your
21 hand or at least --

22 A I did.

23 Q -- on your chest or --

24 A Yes, I did.

25 Q Okay. And you kind of stood in the way to try and

1 calm things down?

2 A Yeah, I -- as I say, I asked him if he knew what he
3 had done, and I had said you should be ashamed of yourself,
4 Michael.

5 Q Okay.

6 A Yes.

7 Q Okay. And it's at that point in time or shortly
8 thereafter that the neighbors appeared and tackled Michael
9 John, correct?

10 A Yes.

11 Q Okay. And that's when you -- and it was your
12 testimony that you and Michael Joshua then went into the house
13 together?

14 A Lisa, the next door neighbor, took the wrench away
15 from me, and she said you and Michael better go in the house
16 right now.

17 Q Okay.

18 A I said okay, and went in the house.

19 Q So the -- so you and Michael went in and then
20 shortly thereafter Pat came in?

21 A Yes, probably five, six seconds, ten seconds. Very
22 shortly.

23 Q Now, you had testified that on the morning -- sorry.

24 A No, I'm good.

25 Q That's okay.

1 A You're good.

2 Q I -- habit. You had testified that morning or that
3 afternoon you had spoken with the police officers who had
4 responded to the scene. Not your neighbors, but uniformed
5 officers?

6 A It was a lady, yes.

7 Q A woman. And you had filled out a written
8 statement, correct?

9 A But not with her, because about shortly after her
10 squad car arrived, about four other squads arrived in the
11 neighborhood.

12 Q Okay. So with one of the officers, you did fill out
13 a handwritten statement, correct?

14 A I did.

15 Q Okay. And in that statement you had written down
16 more or less a summary of what happened -- of why the police
17 were there?

18 A Right. We were all very, you know, out of sorts at
19 that point in time.

20 Q And by out of sorts, you mean as emotional? It
21 was --

22 A Emotional.

23 Q Okay.

24 A It was a very emotional situation, yes.

25 Q You were emotional, Pat was emotional as far as you

1 could tell?

2 A Right.

3 Q Michael --

4 A We all were emotional.

5 Q Michael Joshua was emotional as far --

6 A Absolutely.

7 Q -- you could tell? Okay. And those emotions ran
8 pretty high for a while after that; is that fair to say?

9 A I would say, yes.

10 Q You were still pretty angry at Michael John --

11 A Yes.

12 Q -- because --

13 A Yes.

14 Q -- of this incident?

15 A Yes.

16 Q Okay. And you were certainly angry with him when
17 you wrote that statement, correct?

18 A Yes.

19 Q Okay. And you're certainly angry that this happened
20 in the first place, correct?

21 A Yes.

22 Q It sounds like nothing like this has ever happened
23 before, correct? Well, let's put it this way --

24 A Not to this extent, no.

25 Q Nowhere near in extent? Okay.

1 A No.

2 Q Fair enough. And in your statement that you wrote
3 out, you said you wanted -- you described it as child abuse;
4 is that fair, what happened to --

5 A Absolutely.

6 Q -- Michael Joshua?

7 A Absolutely.

8 Q Okay.

9 MR. PARRIS: I have nothing further.

10 MS. LAVELL: May we approach, Your Honor?

11 THE COURT: Yes.

12 (Bench conference began)

13 MS. LAVELL: Maria Lavell for the State. It looks
14 like Counsel just opened the door for the State to ask
15 questions in regards to who did happen before and
16 (indiscernible) this child.

17 THE COURT: So what did happen with that?

18 MS. LAVELL: The reason that the child no longer
19 lives with his father is because after a football game, the
20 coach wanted the child to leave because he had been hit in the
21 head a number of times. And so the child was leaving, and the
22 father felt like he was being a punk, and started throwing him
23 around in the parking lot, at which point the grandfather
24 immediately took possession of that child and the Defendant
25 has not -- and the child didn't live with the Defendant after

1 that. So, I think the door --

2 THE COURT: Does he know about that?

3 MS. LAVELL: Yeah. He's the one that took
4 possession of the child. He observed it. He was physically
5 there.

6 MR. PARRIS: I'm sorry, what happened? This is the
7 first I'm hearing of it. So I don't know anything about this.
8 This uncharged bad act.

9 THE COURT: Right.

10 MS. LAVELL: Okay, but you opened the door. He --
11 that child lived with the father for like a year and some
12 months. The reason he no longer lives with the father is
13 because after a football game, the father was physically
14 throwing the child around at which point the grandfather took
15 the child from the father and --

16 THE COURT: At the scene?

17 MS. LAVELL: Um-h'm, yeah. The grandfather was
18 there watching the whole thing, and he walked over, grabbed
19 the kid, and then he didn't live with the kid for
20 (indiscernible).

21 MR. PARRIS: I don't think that the door has been
22 opened to something that wide.

23 THE COURT: You've just asked him whether has ever
24 been anything like this before.

25 MR. PARRIS: If the Court is going to -- if the

1 Court feels like a door was opened, and the State knew about
2 this ahead of time, the State could have handled this in a
3 much different or better way by doing a prior (indiscernible).
4 Now, again, going through the whole Petrocelli process and
5 doing prior uncharged bad acts motion, and putting all of us
6 on notice, okay? And the State did not feel they needed to do
7 so at this juncture. We had spoken about it previously.

8 MS. LAVELL: Maria Lavell for the State. The State
9 isn't obligated to file a bad acts motion for bad acts the
10 State doesn't intend to bring in. I actually warned Counsel
11 at the bench when we were up here previously about this --
12 that there was a bad act, and actually Ms. Anthony did as
13 well, at which point Mr. Parris had indicated that she almost
14 sounded as though she was threatening. And we explained that
15 she was not threatening, that we just wanted him to be clear
16 that there were some bad acts that we were not obligated to
17 share we learned during our pretrial conference. The Defense
18 pretrial conferenced this witness as well. The State is not
19 obligated to provide this information to the Defense. The
20 State is only obligated not to open the door, and we have not.
21 But the door has been opened, and the State has the right to
22 walk through it now.

23 MR. PARRIS: And it's the Defense's position that
24 this could have been handled on an incredibly cleaner fashion
25 than it has been at this point in time, plain and simple.

1 They should have filed a prior bad acts motion. I do not
2 believe the door has been opened that wide for an incident
3 that may have happened two years ago where someone may have
4 been thrown around, which is different from this choking type
5 event at their home. I don't even know what the throwing
6 meant. I don't know if he pushed him or he shoved him. We
7 don't have any pushing, shoving, quite candidly, or even
8 throwing in this case. We have choking. I'm not disputing
9 that we -- this is all John Parris. I'm not disputing that we
10 have (indiscernible) choking, so.

11 THE COURT: Okay. All I'm going to say is when you
12 asked the question about any other incidents, all I can think
13 is, what did you just open the door to? I didn't know what
14 else there was because I'm not involved in your case, but that
15 question made me really nervous, and this is why. I think the
16 door is open, based on asking the question. Overruled.

17 (Bench conference concluded)

18 (Pause in the proceedings)

19 THE COURT: So, folks, I think we're only a few more
20 minutes before lunch. Does someone need to go ahead and take
21 the break now and you can't go, you know, a few minutes or are
22 you okay for a few minutes? I'm getting nods. Raise your
23 hand if you think you need to do it now. Okay, no hands.
24 Let's go.

25 MS. LAVELL: Thank you, Your Honor.

1 REDIRECT EXAMINATION

2 BY MS. LAVELL:

3 Q Norm, I just have a few more questions for you.
4 Now, there was a lot of conversation in regards to little
5 Michael will having with -- okay, living with the Defendant on
6 and off over the course of years. And I want to talk a little
7 bit about that. Since little Michael was two, you and Pat
8 have been the only ones with guardianship or custody of him;
9 is that correct?

10 A That's correct.

11 Q So any opportunities that little Michael had to
12 spend with his father were as a result of you allowing this?

13 A Yes.

14 Q All right. And when you're talking about living
15 with his father on and off, are you talking about for long
16 periods of time or spending the night?

17 A Oh, no, long periods of time.

18 Q I'm sorry?

19 A Long periods of time.

20 Q Okay. Let's talk about the longest period of time,
21 okay? Was that in 2012?

22 A Probably three or four years. I mean, you have to
23 recognize that Michael had to work, big Michael had to work,
24 and we would take care of --

25 THE COURT: Okay.

1 THE WITNESS: -- little Michael --

2 THE COURT: Sir --

3 THE WITNESS: -- while he worked. So he was --

4 THE COURT: Okay.

5 THE WITNESS: -- with us most of his --

6 THE COURT: Sir --

7 THE WITNESS: -- waking --

8 MS. LAVELL: He's not hearing you.

9 THE COURT: Yes, I know.

10 BY MS. LAVELL:

11 Q Norman, hold on.

12 A I'm sorry.

13 THE COURT: Norman, I need you to hold on a minute,
14 okay? Just listen to the question --

15 THE WITNESS: Okay.

16 THE COURT: -- she asks and answer them. I know
17 it's tempting to want to give --

18 THE WITNESS: Sorry.

19 THE COURT: -- other information, but you got to
20 just answer the questions.

21 THE WITNESS: Sorry.

22 BY MS. LAVELL:

23 Q So even on those occasions when Michael lived with
24 his father, you were still watching him for the majority of
25 the day?

1 A Correct.

2 Q His non-sleeping time?

3 A Correct.

4 Q All right. Did there come a time when you purchased
5 a condo?

6 A Yes.

7 Q What year was that?

8 A 2010.

9 Q And what was the purpose of purchasing that condo?

10 A Michael John was living in a one-bedroom rental, and
11 little Michael was getting big enough so he should have his
12 own room.

13 Q Okay.

14 A And we looked at the possibility of renting a larger
15 unit, and felt that a more advantageous way to go financially
16 was to buy a condo that was probably in kind of bad shape so
17 we could get it for a good price, and I fixed it up. I
18 repainted the whole place, that kind of thing and --

19 Q Okay.

20 A -- so that's the reason that we bought -- it was
21 more financially advantageous to buy the condo.

22 Q All right. And Michael -- little Michael moved in
23 with the Defendant into that condo?

24 A Yes.

25 Q Okay. And he lived with him for a period of time?

1 A Couple of years, yeah.

2 Q Okay. Couple years. At some point, however, isn't
3 it true that you took little Michael back?

4 A Yes.

5 Q Okay. Explain why that occurred, what happened that
6 caused you to take little Michael back from big Michael.

7 A There was an incident in a football game, and I
8 think that little Michael was -- may have partially been at
9 fault.

10 Q Okay.

11 A But little Michael was playing Pop Warner Football
12 (phonetic) or one -- I won't say Pop Warner. It was a
13 similarity. If not Pop Warner, then another organization that
14 had football sponsorship. He was playing football. And he
15 had a game at Liberty High School, and they went over and
16 played the game. And he -- about a three-quarters a way
17 through, he claims he hurt his knee.

18 I know that there was conversation about after the
19 game he and some fellow teammates were going to go to a movie.

20 Q Okay.

21 A He claims he hurt his knee. His father wanted him
22 to play a second game with bigger kids, okay? And Michael
23 didn't want to do it, and he was in tears. And he claimed his
24 knee hurt very badly and so forth. That's all beside the
25 point. After -- when he came out and said he was not going to

1 play, his father became quite hard headed about the thing, and
2 was kind of physical with him, not to the point of choking him
3 or anything, but physical. And little Michael fell to the
4 ground a couple of times. And finally, I had had enough, and
5 I said, "Get in the car, we're leaving," and that was it.

6 And we put little Michael in our car, and he never
7 went -- never went back to live with his father after that on
8 a full-time basis.

9 Q All right. You did allow him to spend the night
10 occasionally?

11 A Yes, when --

12 Q But based on what you observed his father do to him
13 physically --

14 A Yes.

15 Q -- you never let him live with him again?

16 A It's very important, I think, that people have
17 family they can relate to, direct family and the -- you know,
18 his father would be one of the primary candidates.

19 Q And that's why you continued to allow the
20 relationship?

21 A Absolutely.

22 Q Okay. Now, I want to talk to you just a little bit
23 more about what happened out in front of the house. You
24 indicated that when you were in the house and you attempted --
25 or you hit him in the ear a couple of times with the open

1 palm, he kind of shrugged you off, but he didn't hit you.

2 A No.

3 Q Okay. When you got out, was there -- did he
4 physically touch you in any way?

5 A No.

6 Q Would you be surprised that when your wife called
7 911, she told the operator that he was pushing you?

8 A I don't think he pushed me. I any he came up with
9 his nose into my face and said things, but, you know, I may
10 have stepped back. He may have brushed me. He did not -- in
11 my estimation, he did not try to physically assault me in any
12 way.

13 Q Okay. And also, when she called, you had indicated
14 that when you got out, Pat was already trying to remove or was
15 already trying to remove little Michael and big Michael was
16 walking down the other side of the car?

17 A Absolutely.

18 Q Would it surprise you that when she called 911,
19 while you were clearly out there, because she's indicating
20 you're being pushed, that she then tells them that he's pushing
21 little Michael in the car? So that would have been when you
22 were physically out there, the Defendant was pushing little
23 Michael in the car.

24 A When I came out, the door was open and she was
25 between the door and the -- you know, you couldn't shut the

1 door because she was standing there, and she's trying to get
2 little Michael out of the car. I have -- you know, I don't
3 know where big Michael was. Was he there next to the car?
4 That would have been to little Michael's testimony. Have I no
5 idea.

6 Q Okay. It was a little chaotic?

7 A Yes.

8 Q Okay.

9 MS. LAVELL: Pass the witness.

10 MR. PARRIS: Very, very briefly, Your Honor, if I
11 may.

12 THE COURT: Go ahead.

13 RECROSS-EXAMINATION

14 BY MR. PARRIS:

15 Q So after the incident about two or three years ago
16 regarding the football game, you still felt confident to allow
17 Michael John to play an active role in Michael Joshua's life,
18 correct?

19 A Yes.

20 Q Still allowed overnights like had occurred two or
21 three days before this incident?

22 A If there were no problems, yes.

23 Q Okay. Still allowed the whole Sunday ritual,
24 basketball, throwing the football around, all of that,
25 correct?

1 A Yes.

2 MR. PARRIS: I have nothing further. Thank you.

3 THE COURT: Okay. Anything further for the State?

4 MS. LAVELL: Nothing further.

5 THE COURT: Hold on. Okay. Counsel, come on up,
6 please.

7 (Bench conference began)

8 THE COURT: Okay, well, we've just had some of that.
9 I don't think we can ask this any further, but why don't you
10 look at that.

11 MS. LAVELL: I think you can ask that.

12 MR. PARRIS: Yes.

13 THE COURT: You both want me to ask it?

14 MS. LAVELL: Yes.

15 THE COURT: You sure.

16 MR. PARRIS: (Indiscernible) question.

17 THE COURT: All right. I will.

18 (Bench conference concluded)

19 THE COURT: Norman -- Norman?

20 THE WITNESS: Yes.

21 THE COURT: I need you over this way.

22 THE WITNESS: Yes.

23 THE COURT: Hi, sorry. I know this is the bad ear.

24 THE WITNESS: That's okay.

25 THE COURT: Okay. Can you tell us whether Michael

1 John has a history of cussing and being disrespectful towards
2 Michael Joshua and/or towards you and your wife in the past,
3 or is this behavior unusual?

4 THE WITNESS: No, it was very usual. It's his
5 method of operation.

6 THE COURT: Okay. Any follow-up for the State?

7 MS. LAVELL: No.

8 THE COURT: Any follow-up --

9 MR. PARRIS: No, Your Honor.

10 THE COURT: -- for the Defense? Anything further?
11 Okay. Sir, you are all done. Thank you very much. We're
12 going to go ahead and take our lunch break. Let's make it
13 until 1:15.

14 During this recess, you're admonished not to talk or
15 converse among yourselves or with anyone else on any subject
16 connected with this trial or to read, watch or listen to any
17 report of or commentary on the trial or any person connected
18 with this trial by any medium of information, including
19 without limitation, newspapers, television, the Internet or
20 radio, or to form or express any opinion on any subject
21 connected with this trial until the case is finally submitted
22 to you.

23 Jury's excused. Counsel stay just a minute.

24 (Outside the presence of the jury)

25 THE COURT: All right. The jurors have left the

1 courtroom. Go ahead and have a seat. I just kept you here
2 for a second to talk about a schedule for tomorrow because we
3 never got to talk about that. Go ahead and have a seat.

4 So I don't have any other matters for hearing
5 tomorrow. But so tell me where we are schedule wise. I'm
6 scared to hear.

7 MS. LAVELL: Well, we eliminated two of our
8 witnesses because we just think it's kind of redundant
9 testimony.

10 THE COURT: Okay.

11 MS. LAVELL: I don't believe that we are going to be
12 done today. I mean, we may --

13 THE COURT: Okay.

14 MS. LAVELL: -- but the medical examiner has a -- I
15 want to say it's a 2:45 that she figures might go as long as
16 an hour, so 3:45. She was going to check in. I told her not
17 to come in the courtroom, and she said she would figure it out
18 -- she's pretty skillful -- to let us know that she's here --

19 THE COURT: Um-h'm.

20 MS. LAVELL: -- so that we have a better sense of
21 whether we're going to need her to stay or whether we need her
22 to come back tomorrow. I mean, I guess, if we get through the
23 witnesses and we get through our medical examiner, we're done.
24 I will share with you that I don't know that we're prepared to
25 close today.

1 THE COURT: Oh, that's not happening.

2 MS. LAVELL: Yeah, I think Ms. Anthony has -- wants
3 to, you know --

4 THE COURT: We still have to talk -- I mean, I'm
5 happy if we close tomorrow morning at this point, so --

6 MS. LAVELL: Okay.

7 THE COURT: -- I'm good.

8 MS. LAVELL: So I think that's it. I think we have
9 like maybe four witnesses.

10 THE COURT: Okay. Okay.

11 MS. LAVELL: So --

12 THE COURT: Okay.

13 MS. LAVELL: We have four witnesses?

14 THE COURT: Okay.

15 MS. ANTHONY: Yeah, we cut out two witnesses
16 yesterday.

17 THE COURT: So to come back, then, we still need to
18 resolve instructions. You've indicated I know you've been
19 talking about them, so there may be only one disputed one. So
20 it shouldn't take an excessive amount of time to resolve, I
21 hope. And then, so, I guess, back to the question, then.
22 Because I want to get it done tomorrow, and I should say
23 tomorrow I am on a panel at a CLE from 12:00 to 1:30. It's
24 hear in the building, so I just need to go to a different
25 courtroom.

1 So I've got to take lunch from 12:00 to 1:30
2 tomorrow because of the commitment that I made a while ago.
3 So I'm thinking we could start even at 9:00 tomorrow morning
4 to try to get stuff done in the morning, if that works for all
5 of you.

6 MR. PARRIS: That would be perfect, Your Honor.

7 THE COURT: Okay.

8 MS. LAVELL: Perfect for the State.

9 THE COURT: All right. So let's put it on calendar
10 for 9:00 to morning. I don't know what we're going to do
11 about the instruction, if we'll try to resolve that late today
12 or tomorrow morning.

13 MR. PARRIS: Let's see how it plays out. I --

14 THE COURT: I'd rather if we can resolve the dispute
15 today and have the instructions ready to go tomorrow, I'd
16 prefer that.

17 MR. PARRIS: And we would as well. Over the lunch
18 break I'll take a look at the instruction --

19 THE COURT: Okay.

20 MR. PARRIS: -- or instructions plural.

21 THE COURT: Okay.

22 MR. PARRIS: I had two e-mails this morning. It was
23 on my cell phone, so I didn't get a chance to look at it. So
24 we'll see what we can do to resolve those difficulties.

25 THE COURT: Okay. Okay. So we're going to start

1 back up at 1:15. Do you have something else?

2 MR. PARRIS: Mr. Schofield would like to be heard
3 again, Your Honor.

4 THE COURT: No.

5 MR. PARRIS: Okay.

6 THE COURT: He's got an attorney. He speaks through
7 his attorney. I'm done.

8 MR. PARRIS: Okay.

9 THE DEFENDANT: The attorney won't speak for me.

10 THE COURT: Okay. Well --

11 THE DEFENDANT: Can I have it on record? I --

12 THE COURT: Okay.

13 THE DEFENDANT: This is -- I have no communication
14 level whatsoever with my attorney.

15 THE COURT: Okay.

16 THE DEFENDANT: I cannot -- he's not working with me
17 whatsoever.

18 MR. PARRIS: And, Your Honor --

19 THE DEFENDANT: Whatsoever. He calls me names.
20 He's a -- he's talking about how good a job -- the
21 relationship he has with this woman is out of line. This has
22 gone too far. What's going on in here is ridiculous that this
23 guy will not work -- this guy will not work with me at all. I
24 was not the one that want -- a part of the testimony he asked
25 this man --

1 THE COURT: Okay.

2 MS. LAVELL: And, Your Honor --

3 THE COURT: I'm not going to change what the
4 representation is at this point --

5 THE DEFENDANT: Well, it's about --

6 THE COURT: -- so we're still where we are
7 yesterday.

8 THE DEFENDANT: -- it's about me objecting the fact
9 that this man will not work with me --

10 MS. LAVELL: Your Honor --

11 THE DEFENDANT: -- at all.

12 MS. LAVELL: -- if I may just briefly.

13 THE DEFENDANT: Excuse me, I'm --

14 THE COURT: Just wait.

15 THE DEFENDANT: -- talking for a second.

16 MR. PARRIS: Maria, Maria, please.

17 THE DEFENDANT: I have also -- he has not looked
18 into this kind of information, which is a doctor telling me
19 that I should be evaluated that works for CCDC, a
20 psychiatrist.

21 THE COURT: Okay.

22 THE DEFENDANT: I know, I'm upset right now --

23 THE COURT: I know you are.

24 THE DEFENDANT: -- because the way that --

25 THE COURT: Yes?

1 THE DEFENDANT: -- it happened. I don't talk
2 whatever about my son like that at all. It very, very --
3 that's not me. But it doesn't matter because this guy, I'm so
4 upset with the way that he handled that -- that --

5 MR. PARRIS: Well, Your Honor, why don't --

6 THE DEFENDANT: -- testimony.

7 MR. PARRIS: -- we let everyone calm down over the
8 lunch break.

9 THE DEFENDANT: Because I had a doctor that told
10 me --

11 MR. PARRIS: We'll speak with him.

12 THE DEFENDANT: -- that I --

13 THE COURT: Please stop, please stop.

14 MR. PARRIS: We will speak with him. It sounds like
15 he's being taken down right now to make sure that he gets
16 lunch.

17 THE COURT: Right.

18 MR. PARRIS: When he comes back up, perhaps we can
19 have him brought up at 1:00, since we're not starting until
20 1:15, I believe it is.

21 THE COURT: It is.

22 MR. PARRIS: Mr. Matsuda and I will come back at
23 1:00. We'll try and address some of his concerns to the best
24 of our abilities.

25 THE DEFENDANT: So you don't -- he don't have time