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Feb 19 2015 01:39 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

v.

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Respondent.

APPELLANT'S APPENDIX VOLUME II PAGES 225-457

Attorney for Appellant

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

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

Counsel for Respondent

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Case No. 65856

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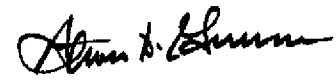
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CLERK OF THE COURT

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 JAMES MANNING aka JAMES
12 DAEVON MANNING,

13 Defendant.

CASE NO. C-13-290624-1

DEPT. XI

14
15 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT
16 JUDGE

17 WEDNESDAY, JANUARY 8, 2014

18 ROUGH DRAFT TRANSCRIPT

19 RECORDER'S TRANSCRIPT RE:

20 CALENDAR CALL/JACKSON V. DENNO HEARING/ALL PENDING MOTIONS
21 APPEARANCES:

22 For the State:

HAGAR TRIPPIEDI, ESQ.
Deputy District Attorney

23 For the Defendant:

BELINDA HARRIS, ESQ.
MARISSA PENSABENE, ESQ.
JEFFREY BANKS, ESQ.
Deputy Public Defender

24 RECORDED BY: JILL HAWKINS, COURT RECORDER

25 ROUGH DRAFT TRANSCRIPT

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ROUGH DRAFT TRANSCRIPT

1 Las Vegas, Nevada, Wednesday, January 8, 2014 at 10:04 a.m.

2
3 MS. HARRIS: Judge, we're announcing ready.

4 THE COURT: You're announcing ready?

5 MS. HARRIS: Yes.

6 MS. TRIPPIED!: We're ready as well, Your Honor.

7 THE COURT: All right. I gotta send you guys to overflow, because
8 Manning takes longer than yours, right?

9 MS. TRIPPIED!: Manning is not going to take --

10 MS. HARRIS: Manning is going to take 72 hours.

11 THE COURT: So, Manning is the shorter of the two cases?

12 MS. HARRIS: From their representation --

13 MS. TRIPPIED!: We have less witnesses, Your Honor. It's just about four
14 witnesses.

15 THE COURT: Because I have to send the shorter case to overflow is, you
16 know, the guide. So, are you telling me Manning is a shorter case than the
17 Owens' case?

18 MS. HARRIS: How many witnesses do you have?

19 MS. TRIPPIED!: We have about four witnesses --

20 THE COURT: I need you guys to caucus and tell me who -- best guess
21 who's shorter.

22 MS. TRIPPIED!: -- we're anticipating one to two days.

23 MS. HARRIS: Manning is shorter.

24 MS. JACOBS: There's 15 witnesses in our case.

25 STATE: Sounds like Manning is shorter, Your Honor.

ROUGH DRAFT TRANSCRIPT

1 THE COURT: All right. So, you guys – Owens is staying in here. So,
2 we'll see you Friday at 9.

3 All right, if I could go to Mr. Manning please that would be on page
4 two. Other than the issues related to this hearing we're going to do, are we
5 ready for trial?

6 MS. TRIPPIED: Yes, Your Honor, we are.

7 MS. PENSABENE: Yes.

8 THE COURT: Okay. Given the discussion we had when the Owens case
9 was up about which case was longer, this case is going to overflow. How long
10 do you think you are? Three days?

11 MS. TRIPPIED: I would say even two, we could probably finish.

12 THE COURT: Let's say three because some judges aren't – so let's say
13 three days. Okay. So, three days.

14 THE CLERK: How many witnesses?

15 MS. TRIPPIED: About four to six.

16 THE CLERK: And will you be both trial counsel?

17 MS. PENSABENE: Yes and Belinda Harris will be Co-Counsel.

18 THE CLERK: Thank you. Overflow will be January 10th at 8:45,
19 Department XVII.

20 THE COURT: All right. So let's talk now about our motion to suppress.
21 Do we have a witness that we want to hear?

22 MS. TRIPPIED: We do, Your Honor. The issue I had is – do you want to
23 hear first the Jackson v. Denno hearing regarding the voluntariness of the
24 statement –

25 THE COURT: I do.

ROUGH DRAFT TRANSCRIPT

1 MS. TRIPPIEDI: -- or do you want to hear first regarding whether the
2 contact at the Doolittle Park was an arrest or not? It seems like there are issues
3 regarding both, so I would do --

4 THE COURT: There are overlapping issues.

5 MS. TRIPPIEDI: I have witnesses to go through each outside and --

6 THE COURT: How many witnesses you got?

7 MS. TRIPPIEDI: I have three total.

8 MS. PENSABENE: And, Your Honor, I would just like to state really
9 quickly that in my motion I did request generally an evidentiary hearing. I never
10 said Jackson v. Denno, and I think that this might be more appropriately titled a
11 Franks suppression hearing, 'cause that's what really what we're going after.
12 Jackson v. Denno is usually used when there's no Miranda or voluntariness is
13 an issue, and I don't think that is an issue here. I think it's just whether or not
14 the illegal arrest supports a suppression based on the Fruits of the Poisonous
15 Tree Doctrine.

16 THE COURT: Okay. I don't care what we call it.

17 MS. PENSABENE: I just wanted to put it on the record, Your Honor.

18 MS. TRIPPIEDI: Well, we can go first then with the arrest or the --

19 THE COURT: Let's go with the Doolittle [phonetics] stuff first.

20 MS. TRIPPIEDI: Okay. So it's going to be Officer Rauchfuss. I'll go grab
21 him.

22 THE COURT: Mr. Manning, you doing okay today?

23 THE DEFENDANT: Yes ma'am.

24 THE COURT: If you need to speak to one of your attorneys and you
25 have comments that you want to make sure they include as part of this, if

ROUGH DRAFT TRANSCRIPT

1 you'll just signal to them, one of the ladies will come over so that you can have
2 your comments included in whatever it is they're doing okay?

3 THE DEFENDANT: Yes.

4 MS. HARRIS: Judge, is it possible that he may be able to sit over here?

5 THE COURT: No, because he's hooked to other people. Sir, if you'll come
6 on up to the witness stand please.

7 MS. PENSABENE: Your Honor, Mr. — may he sit down? Mr. Manning?

8 THE COURT: Yes, Mr. Manning, you can sit down.

9 **JOSEPH RAUCHFUSS**

10 having been first duly sworn to testify to the truth, the whole truth and
11 nothing but the truth was examined and testified as follows:

12 THE CLERK: Thank you. Please be seated. Please state and spell your
13 name for the record.

14 THE WITNESS: Name's Joseph Rauchfuss. Last name is spelled R-a-u-c-
15 h-f-u-s-s; and first is Joseph, J-o-s-e-p-h.

16 THE COURT: Thank you, sir.

17 MS. HARRIS: Judge, one moment before we start. We want to invoke
18 the exclusionary rule. I believe an officer just walked in. I don't know who he
19 is.

20 MS. TRIPPIEDI: And that officer is not related to this case. We're not —

21 THE COURT: Sir, are you testifying in this hearing this morning?

22 THE OFFICER: No.

23 THE COURT: He's just watching.

24 MS. PENSABENE: Thank you.

25 THE COURT: If anybody comes in whose going to be a witness, let's get

ROUGH DRAFT TRANSCRIPT

1 them out of here. So, if you'd proceed.

2 **DIRECT EXAMINATION**

3 BY MS. TRIPPIEDI:

4 Q Sir, how are you employed?

5 A I'm employed as a Deputy City Marshal with the City of Las Vegas
6 for about ten years.

7 Q Okay. And were you so employed on May 18, 2013?

8 A Yes I was.

9 Q And what are your duties as a Deputy City Marshal?

10 A We patrol the city parks, city buildings in the City of Las Vegas; any
11 crimes, anything. We enforce ordinances and patrol those areas and receive
12 radio calls as well.

13 Q Okay. And on May 18th – I'm going to draw your attention directly
14 to that date. Did you make contact with someone you see here today?

15 A Yes.

16 Q Can you point to him? I guess just describe –

17 THE COURT: You have to tell me what chair number he's in.

18 A What chair number is he in?

19 THE COURT: Well, is he in the front row or back row?

20 A [indiscernible] it's been a little bit here. I believe it's the front row
21 right here, number two.

22 THE COURT: Thank you.

23 MS. TRIPPIEDI: And for the record, let the record reflect that he's
24 identified James Manning.

25 THE COURT: Record shall so reflect.

ROUGH DRAFT TRANSCRIPT

1 Q And how did you make contact with him?

2 A I received a radio call from our dispatch stating that there is a male
3 black adult laying up in the children's play area, in the slide area, and it's -

4 Q At what location?

5 A At Doolittle Park.

6 Q Okay, and where exactly is Doolittle Park?

7 A Doolittle Park, I'm not sure of the address, but it's on the corner of
8 J Street and Lake Mead.

9 Q Okay, and that's in Clark County, Las Vegas, Nevada?

10 A Yes it is.

11 Q Okay. And, when you arrived at the park, did you in fact see Mr.
12 Manning laying on the slide area of the park?

13 A Yes I did.

14 Q Okay, and at that point, did you approach him?

15 A Yes I did.

16 Q At that point did you tell him that he was not permitted to be on the
17 slide?

18 A That's correct. I woke him up. I escorted him to the front of my
19 patrol car, and while doing so, I told him; you know, the only way you can be
20 there, you have to be an adult, and you can only supervise the children under
21 12 years of age. If you're there by yourself, you can't be there; and the signs
22 are posted just outside of where he was at, stating that.

23 Q And at that point, was he charged with any crime at that point?

24 A No. At that point, I had a misdemeanor. I could've warned, cite, or
25 arrest at that point. So, I was continuing my investigation at that point.

ROUGH DRAFT TRANSCRIPT

1 Q But, in continuing your investigation, did you run a records check on
2 Mr. Manning?

3 A Yes I did.

4 Q And what did that records check reveal?

5 A The record check revealed in scope that Detective Embry from
6 Metro detectives basically wanted whoever contacted him to give him a call.
7 There's pending a couple outstanding robberies that occurred and I guess he
8 was implicated in this as well.

9 Q Okay and at that point, did you contact detective Embry?

10 A Yeah. Well, at first, our dispatch contacted Officer Embry, and then
11 I had our dispatcher have Embry contact me directly to my personal cell. I had
12 talked to him on my phone.

13 Q Okay. And at that point were you instructed to do anything?

14 A He told me that he had probable cause to arrest on the charges, and
15 I believe he said there was two counts of robbery that occurred on the CAT bus
16 and that would it be okay for you to transport him to Clark County Detention
17 Center, and I'll meet you in the parking lot.

18 Q Okay. I'll stop you right there. At that point, did you make an
19 arrest of Mr. Manning?

20 A Yes. I put handcuffs on him, and prior to department policy, put
21 handcuffs on him, and then put him in the back of the car.

22 Q Okay. Did you actually make an arrest though? Did you – were you
23 actually going to take him to CCDC and book him? Is that you would normally
24 do if you made an arrest?

25 A No, I would – I would say more of a transporting officer for Metro,
ROUGH DRAFT TRANSCRIPT

1 based on their probable cause that he was wanted.

2 Q Okay.

3 A That's why I put the handcuffs on him and I transported him. I told
4 him I'll transport him for them.

5 Q When you arrived at CCDC, did you actually walk him in?

6 A No, actually, the detective was outside in the parking lot just
7 waiting for me to arrive. I pulled in and –

8 Q Okay. And that was detective Kavon?

9 A Yes.

10 Q Okay. And how long from the point that you made contact with him
11 initially at Doolittle Park, to the point that you arrived at CCDC? Was that time
12 period?

13 A I would say tops 40-45 minutes at the most.

14 Q And did that end your involvement?

15 A Yes.

16 MS. TRIPPIED: At this point, I'll pass the witness.

17 THE COURT: Cross examination.

18 MS. PENSABENE: Thank you, Your Honor.

19 **CROSS EXAMINATION**

20 BY MS. PENSABENE:

21 Q Good morning sir.

22 A Morning.

23 Q I just want to confirm the details of May 18, your encounter with
24 Mr. Manning. I know the State has gone through. I just want to get – flush it
25 out a little bit more.

ROUGH DRAFT TRANSCRIPT

1 A Okay.

2 Q So, you received a call that a man was sleeping in Doolittle Park?

3 A In the playground area.

4 Q In the playground, on the slide?

5 A Yeah.

6 Q Okay. And Doolittle Park is a public park?

7 A Yes.

8 Q Does it have hours? Does the park have hours?

9 A It has hours posted. It has park rules, and there's a playground

10 area, you know.

11 Q Do you recall what those hours are?

12 A I want to say it's open 7 to 11 p.m. at night. It states that I

13 believe, along with about seven or other – eight or nine other rules of the park.

14 Q Do you recall around what time you encountered Mr. Manning?

15 A I want to say, approximately 1:10 in the afternoon.

16 Q So, it was within the hours that the park was open?

17 A Yes.

18 Q Was there any kind of construction going on at the park at the

19 time?

20 A No.

21 Q And you got a call that there was a – like we said, a man sleeping

22 in the park?

23 A In the playground area.

24 Q Excuse me, in the playground.

25 A Yeah.

ROUGH DRAFT TRANSCRIPT

1 Q Okay. And, when you approached him, what was he doing at the
2 time?

3 A He was sleeping.

4 Q On the slide?

5 A There's like a top platform, the slide goes up, and there's a platform
6 up at the top. He was laying right there, kinda like the slide goes up -- at the
7 top of the slide let's say.

8 Q Okay. And did he have any sleeping bags with him?

9 A No, I don't recall, no. I don't think so, no.

10 Q No blankets?

11 A No.

12 Q Okay. And what was your intention when you approached him?
13 What were you planning on doing?

14 A I was planning on making sure he was okay, first of all; and once I
15 found out he was okay, I asked him what he was doing here, and he basically
16 said he was waiting for a friend and he fell asleep there. I escorted him to my
17 patrol car, and when I was escorting him over to my patrol car, I let him know
18 that there's signs posted, showed him the sign that you can't be in there unless
19 you're supervising a child under 12, and he wasn't.

20 Q Okay. Now at this point, you decided -- you asked him to come
21 with you to your patrol car?

22 A Yes ma'am.

23 Q And -- and after you gave him the warning of, you know, you can't
24 be in the playground, why did you have him approach the vehicle? Your
25 vehicle?

ROUGH DRAFT TRANSCRIPT

1 A That's where I like to do my contact – after I – I like to take the
2 person out of their area and take them over to where I feel more comfortable.
3 Q Okay and – and why did you run his name in Scope?
4 A I wanted to see – I wanted to see first of all if he had any warrants,
5 what type of record he has.
6 Q And Scope was the database that you used?
7 A Yes. Our dispatcher – what I did is I ran him over the radio; our
8 dispatcher comes back and tells, you know, does the person have warrants,
9 what kind of record and all that, Scope number.
10 Q So, at this time, you have him going to the patrol car? You're
11 asking him to go to the patrol car, so he's under your control at this point?
12 MS. HARRIS: He has to say yes or no.
13 Q Is he under your control at this point?
14 A Yes.
15 Q Thank you. In Scope, was there any arrest warrants for Mr.
16 Manning?
17 A I'm not sure exactly what the wording was in Scope. It said if
18 contacted, the Defendant – if contacted, contact Detective Embry. I believe
19 that's what it said in there.
20 Q So as far as you –
21 A It might've said more but – from what I recall.
22 Q -- as far as you recall right now, there was no arrest warrant in
23 Scope?
24 A Not that I was aware of.
25 Q Okay. And – and like we stated, at that point, there was –

ROUGH DRAFT TRANSCRIPT

1 detective – you wanted – Detective Embry wanted to speak with Mr. Manning.
2 That's as much as you knew at this point?

3 A Yes exactly.

4 Q Okay now, at this point, do you cuff Mr. Manning?

5 A No, I have our dispatcher contact Detective Embry, who in turns
6 calls me on my personal, and then that's when he tells me that he was wanted
7 for two robberies, and he wanted to interview. At that point, I put handcuffs
8 on him.

9 Q Now, while you're waiting to hear from dispatch, what does Mr.
10 Manning do?

11 A We're just conversing.

12 Q Okay. Did you tell Mr. Manning, he was free to leave at that point?

13 A No, we were just conversing. I --

14 Q So, in fact, he had to stay by the vehicle while you were hearing
15 from dispatch?

16 A Yes, he was being detained.

17 Q Now you spoke with Detective Embry, not Detective Kavon;
18 Detective Embry is the one who spoke with on the call?

19 A It was Embry, I believe. I met his partner at Clark County Detention
20 Center in the parking lot.

21 Q Okay, and so based on Detective Embry's direction, you transported
22 Mr. Manning to CCDC?

23 A Yes.

24 Q Okay. And that transportation included handcuffs?

25 A Yes, it's our policy that we handcuff people.

ROUGH DRAFT TRANSCRIPT

1 Q In the back of the patrol car?

2 A Right.

3 Q Okay. Court's indulgence. I want to draw your attention back a
4 little bit to the actual, I guess for lack of a better term, offense of being in a
5 playground with a child.

6 A Yes.

7 Q What – what code is that? Is that City Code or is Clark County
8 Code?

9 A It's a park rule city ordinance I believe. I don't have the violation in
10 front of me or exactly the section but, its part of the park rules, and they are
11 posted at the park.

12 Q Now, are these guidelines or are they ordinances?

13 A They're ordinances. We can enforce them or we choose not to.
14 They're all misdemeanor offenses.

15 Q Okay. So, at the point when you encountered Mr. Manning on the
16 top of the slide, you could have arrested him?

17 A I could've.

18 Q Okay. But you chose not to.

19 A Correct.

20 Q Thank you. I'd like to talk to you about the process of issuing a
21 citation in the park. Is that something that you issue a citation, and the – the
22 individual appears in Justice Court later or do you actually arrest them at that
23 time and transport them?

24 A Are you talking if I was to issue him a citation at the scene?

25 Q If you were to issue him a citation for not having a child in the

ROUGH DRAFT TRANSCRIPT

1 playground and being in the playground at that time.

2 A Yeah. He would sign a court appearance ticket, and I'd give him
3 like a date from like 45 minutes from that – or 45 days out from that day on a
4 Wednesday and then he would take care of –

5 Q So to be clear, you wouldn't actually arrest and transport someone
6 if you issued a misdemeanor citation for the offense that Mr. Manning may or
7 may not have committed?

8 A I'm not understanding so.

9 Q Let me rephrase. I apologize.

10 A That's all right.

11 Q For being in the playground without a child, that particular citation,
12 would you normally arrest that person and bring them to a detention center?

13 A For that charge?

14 Q For that charge.

15 A I have my discretion whether I want to arrest him, cite him, or warn
16 him. If I choose to cite him, I would cite him, obviously run the person to make
17 sure they don't have any outstanding warrants or anything else, and if that
18 came back okay, and I decided I was going to cite the person, they sign the
19 cite, gets a copy of the ticket, and that's it.

20 Q So, the procedure is based on your discretion?

21 A Well it's a misdemeanor, yes.

22 Q Okay. And in this particular case, you did not do that?

23 A No, I didn't issue a citation to him.

24 Q Did you go into detail with Mr. Manning about the friend that was
25 supposed to meet him in the playground that he had –

ROUGH DRAFT TRANSCRIPT

1 A I asked him, you know, what he was doing there, and he said he
2 was waiting for a friend, and apparently he fell asleep. There might've been
3 some other conversation on the friend, but I don't recall exactly what was said.

4 Q Okay. Court's indulgence.

5 THE COURT: Sir, there's water and M&Ms there if you need some.

6 Q And officer just a few more questions.

7 A Sure

8 Q When you did arrive at CCDC, and you met with the detective in
9 the parking lot, and you handed over custody of Mr. Manning, was Mr. Manning
10 cuffed at that time? He was still cuffed?

11 A Yes.

12 Q And just to be perfectly clear, the reason you detained him was
13 because he was in the playground without children?

14 A Correct. That was our radio call.

15 Q That was the initial --

16 A That was the initial call --

17 Q Okay.

18 A And standing to the side, there was parents and a couple children
19 there, and I talked to the parents as well, and they were basically afraid for their
20 kids to use the park playground area because he was up there.

21 MS. TRIPPIED: And I'm going to object to the use of the word detained
22 in that question, Your Honor, I don't think he affirmatively stated that he was
23 under attention at that point.

24 THE COURT: Overruled.

25 Q And you did not cite him for that?

ROUGH DRAFT TRANSCRIPT

1 A I did not.

2 Q Okay. I'll pass the witness. Thank you.

3 THE COURT: Anything else Ms. Trippiedi?

4 MS. TRIPPIEDI: I have no further questions for this witness.

5 THE COURT: Thank you sir, we appreciate your time. Thank you for
6 coming down. Next witness.

7 MS. TRIPPIEDI: It's going to be Detective Chad Embry.

8 THE COURT: Sir, if you'll come on up to the witness stand, climb the
9 stairs, remain standing, and we'll swear you in please.

10 THE CLERK: Please raise your right hand.

11 **CHAD EMBRY**

12 having been first duly sworn to testify to the truth, the whole truth and nothing
13 but the truth was examined and testified as follows:

14 THE CLERK: Thank you, please be seated. Please state and spell your
15 name for the record.

16 THE WITNESS: Chad Embry, C-h-a-d, E-m-b-r-y.

17 **DIRECT EXAMINATION**

18 BY MS. TRIPPIEDI:

19 Q Sir, how are you employed?

20 A With the Las Vegas Metropolitan Police Department.

21 Q What do you do for the police department?

22 A I'm a robbery detective.

23 Q How long have you been a robbery detective?

24 A For five years.

25 Q Okay and you were a robbery detective on May 18, 2013, is that
ROUGH DRAFT TRANSCRIPT

1 correct?

2 A Yes.

3 Q Okay. On that date, did you receive a call from Deputy City
4 Marshal Rauchfuss regarding an individual you were investigating?

5 A I did.

6 Q Okay. Was that individual James Manning?

7 A Yes.

8 Q And did you learn that he made contact with James Manning at
9 Doolittle Park?

10 A I did.

11 Q Okay. And based on that information, what did you tell Officer
12 Rauchfuss to do?

13 A I informed Tim that there was probable cause to place him under
14 arrest for robbery.

15 Q Okay. So, on that point, on May 18, there was in fact probable
16 cause to make an arrest for robbery?

17 A Yes.

18 Q And what was the basis of that probable cause, and you could be
19 brief if you'd like.

20 A Based on victim identification from photo lineups.

21 Q At that point, was there a warrant for arrest issued for James
22 Manning?

23 A There wasn't an active warrant at that point.

24 Q Okay. What -- what was out there?

25 A Basically, there was a line in our Scope system. So, if any officer
ROUGH DRAFT TRANSCRIPT

1 were to come into contact with Mr. Manning, they would notify me 24-7, and I
2 would let them know at that point that there's probable cause to arrest him
3 until the warrant process – until the warrant is actually in effect.

4 Q So, it takes some time to actually effectuate a warrant?

5 A It can take up to a month for a warrant to go.

6 Q Okay. So, what you'll do first is you'll put a line on Scope while
7 you're awaiting a warrant?

8 A Right.

9 Q Okay. So, just because there wasn't an actual warrant out for his
10 arrest, doesn't mean that you didn't submit for it at that point, is that correct?

11 A Right.

12 Q And is there a reason that you had him transported by Officer
13 Rauchfuss?

14 A I was out of town at that point, when I was contacted, and I
15 referred him to my partner, Detective Kavon, and that arrangement was set up
16 between Detective Kavon and the deputy.

17 Q Okay.

18 MS. TRIPPIED: And I'll pass the witness at this time.

19 THE COURT: Cross examination.

20 MS. PENSABENE: Yes, Your Honor.

21 **CROSS EXAMINATION**

22 BY MS. PENSABENE:

23 Q Good morning, detective.

24 A Morning.

25 Q So we spoke a little about the warrant process. If you – do you

ROUGH DRAFT TRANSCRIPT

1 remember the date when the victims in this case actually identified Mr. Manning
2 out of a six-pack lineup?

3 A Off the top of my head without looking at my paperwork, I don't.

4 Q Okay. Well, would it refresh your recollection if I showed you a
5 copy of your report?

6 MS. PENSABENE: May I approach, Your Honor?

7 THE COURT: You may.

8 Q If you could just look at that report and let me know when your
9 recollection is more refreshed.

10 A Okay.

11 Q And do you recall the first date -- before the -- the dates in which
12 the victims in this case identified Mr. Manning in a six-pack?

13 A Yes, April 25th.

14 Q Okay. And, the actual -- I guess when Mr. Manning was
15 encountered by the Marshal that was May 18th, is that correct?

16 A Yes.

17 Q And you stated on direct that it takes some time to get a warrant
18 about a month, is that right?

19 A From the time that the paperwork is actually submitted to DA
20 screening, it could take up to a month, correct.

21 Q And, do you recall when you submitted in the paperwork in this
22 case?

23 A I do not.

24 Q Do you know if you submitted paperwork in this case for a warrant?

25 A Honestly, I don't. A lot of times what happens is we develop our

ROUGH DRAFT TRANSCRIPT

1 probable cause in the investigation, and we'll take a few weeks to try to go to
2 last known addresses to try to locate that individual before we submit for the
3 warrant. We have to do our due diligence to locate the individual before -- if we
4 can't locate them at their last known addresses and whereabouts, then we'll go
5 ahead and submit for the warrant, so that sometimes can take a few weeks,
6 you know, for that process.

7 Q Okay and did you do that in this case? Did you try to find Mr.
8 Manning via local address?

9 A Yes. Well we went to -- we checked some of his previous
10 addresses which I believe were in different names and were clearly places that
11 he wasn't residing. I'm not sure if patrol officers went to his last known
12 addresses or not, honestly. Like I said, I left out of town for vacation so --

13 Q Okay.

14 A -- the probable cause definitely was established.

15 Q Okay. There's no question, let me just interject.

16 A Okay.

17 Q Do you have paperwork or any kind of documentation showing that
18 you checked at these residences?

19 A No.

20 Q Okay. So this is just based on your memory?

21 A Yes.

22 Q So, did you have any -- did you yourself go to these addresses?

23 A No.

24 Q Okay so the -- you asked patrol officers to go to these addresses?

25 A I don't recall.

ROUGH DRAFT TRANSCRIPT

1 Q Okay. So theoretically, there should be some logs if you were not
2 the one that actually went and checked on these addresses?

3 A If he has last known addresses, and patrol officers went out there,
4 and they assigned themselves to that address, there would be a log.

5 Q Okay. And you're the lead detective on this case?

6 A Yes.

7 Q Was there a log ever returned to you on this case about checking
8 in?

9 A There wouldn't be a log, it would be returned to me.

10 Q That's not the protocol?

11 A No.

12 THE COURT: To the best of your recollection, what discussion did you
13 have with the Marshal when you spoke to him on his cell phone?

14 THE WITNESS: I instructed them that I have probable cause for Mr.
15 Manning for robbery that occurred, and I instructed him that I was out of town,
16 if he could contact my partner, who has the arrest paperwork and, which was
17 Detective Kavon; gave him Detective Kavon's number, instructed him to call him,
18 and Detective Kavon would arrange to meet him, and you know, coordinate
19 with him the rest of the arrest process.

20 THE COURT: Thank you, sir.

21 MS. PENSABENE: Court's indulgence. Thank you.

22 THE WITNESS: Thanks.

23 THE COURT: Any further questions? Wait.

24 MS. TRIPPIED: No, Your Honor.

25 THE COURT: Thank you sir, we appreciate your time. Have a nice day.

ROUGH DRAFT TRANSCRIPT

1 Next witness.

2 MS. TRIPPIED!: And our next witness is going to be Detective Kavon,
3 and I am going to go in a little bit of detail of the Jackson v. Denno related
4 hearing, unless they want to withdraw their request for that hearing.

5 MS. PENSABENE: We did not request a Jackson v. Denno we just
6 requested an evidentiary hearing, I think it was kind of –

7 THE COURT: Are you – at some point in time, I will have to make the
8 determination as to the voluntariness of the statement. Since you are going to
9 overflow, I have to make that determination prior to 8:45 on Friday morning. Is
10 anybody going to want me to make that determination?

11 MS. PENSABENE: At this point, Your Honor, we're just arguing the Fruit
12 of the Poisonous Tree Doctrine.

13 THE COURT: Okay.

14 MS. TRIPPIED!: We'll still go ahead and call Detective Kavon.

15 THE COURT: All right. Because Mr. Burns really wants to get back to his
16 trial.

17 MS. TRIPPIED!: I just have a few questions for him.

18 THE COURT: Sir, if you'll come on up to the witness stand, climb the
19 stairs.

20 THE CLERK: Please raise your right hand.

21 **SCOTT KAVON**

22 having been first duly sworn to testify to the truth, the whole truth and nothing
23 but the truth was examined and testified as follows:

24 THE CLERK: Thank you. Please state and spell your name for the record.

25 THE WITNESS: My name is Scott Kavon, S-c-o-t-t, K-a-v, as I Victor, o-n.

ROUGH DRAFT TRANSCRIPT

1 THE COURT: Thank you, sir. There's also water and M&M's there if you
2 need them.

3 THE WITNESS: Thank you very much.

4 **DIRECT EXAMINATION**

5 BY MS. TRIPPIED:

6 Q Sir, how are you employed?

7 A I'm a detective with the Las Vegas Metropolitan Police Department,
8 assigned to the Robbery/Homicide Bureau.

9 Q Were you contacted by another detective, Detective Embry on May
10 18, 2013, related to a James Manning?

11 A Yes, I was.

12 Q And what did Embry tell you?

13 A Detective Embry is my partner. We work together in the
14 Robbery/Homicide Bureau. He was on vacation and out of state. He contacted
15 me and told me that reference a case he was investigating with the Defendant
16 by the name of James Manning, that subject was currently being detained by
17 the Las Vegas City Marshal's Office; and that Detective Embry told me he had
18 probable cause to believe that James Manning committed the crime of robbery
19 and asked me if I would meet with James Manning in the City Marshal's Office
20 to facilitate James Manning's arrest.

21 Q Okay. And, at some point that day, did you in fact meet with a
22 representative of the City Marshal's Office and James Manning?

23 A Yes I did.

24 Q Where was that location?

25 A Right down at the Clark County Detention Center, outside of the

ROUGH DRAFT TRANSCRIPT

1 detention center, just in the parking lot, the Sally Port [phonetics] parking lot.

2 Q And at that point, you had arrest paperwork ready to go on the
3 probable cause for the robbery?

4 A I did, I had detective Embry's case file, as well as the paperwork,
5 yes.

6 Q And then did you proceed to interview the Defendant, James
7 Manning, at that point?

8 A I did, yes.

9 MS. TRIPPIED: I'll pass the witness at this point.

10 THE COURT: Cross examination.

11 **CROSS EXAMINATION**

12 BY MS. PENSABENE:

13 Q Good morning, detective.

14 A Morning.

15 Q So, you were contacted by Detective Embry, that's correct?

16 A Yes.

17 Q On May 18th?

18 A I'm sorry, I didn't hear you.

19 Q On May 18th?

20 A Yes I was.

21 Q And he told you that city marshals were detaining Mr. Manning at
22 the time?

23 A Yes.

24 Q And, at the time, there was no arrest warrant for Mr. Manning, is
25 that correct?

ROUGH DRAFT TRANSCRIPT

1 A Not to my knowledge, no.

2 Q Okay. So, detective Embry told you that he wanted to speak with
3 Mr. Manning?

4 A Detective Embry told me that he had probable cause to believe that
5 James Manning committed a robbery, and that's what he told me.

6 Q Okay. And there was at the time -- are you aware if an arrest
7 warrant was in the process of being completed?

8 A I'm not aware of that, no.

9 Q And you didn't have an arrest warrant with you?

10 A No ma'am, I did not have an arrest warrant for James Manning.

11 MR. BANKS: Judge is it okay if I ask one or two questions?

12 THE COURT: No, you gotta help your team. One voice. Caucus please.

13 Q And did you have any contact with the City Marshal? Who had --

14 A Can you be more specific?

15 Q The City Marshal that was detaining Mr. Manning, did you speak
16 with him?

17 A Yes I did.

18 Q Okay. And at what point did you speak with him?

19 A I spoke with him on the telephone prior to meeting him at the Clark
20 County Detention Center.

21 Q Is this after you've already spoken with Detective Embry?

22 A Yes.

23 Q Did he explain the facts and circumstances of the client's
24 apprehension? The Defendant, I apologize.

25 A No, to my knowledge, he did -- we didn't -- he didn't talk about that

ROUGH DRAFT TRANSCRIPT

1 at all. I don't remember that, no.

2 Q Do you recall – Detective, you have no knowledge of how Mr.
3 Manning was initially taken into custody?

4 A Later on I learned how he was taken into custody.

5 Q At the time when you went to CCDC to meet the Marshal, you had
6 no knowledge at that point?

7 A When I talked to the Marshal on the phone, I had no knowledge of
8 the circumstances of his arrest, no.

9 Q Okay. And you did not participate in that initial detention arrest?

10 A No, I did not.

11 MS. PENSABENE: No further questions, thank you.

12 THE COURT: Further examination?

13 MS. TRIPPIEDI: No, Your Honor.

14 THE COURT: Thank you. We appreciate your time. Have a very nice
15 afternoon. Would you like to make any argument?

16 MS. TRIPPIEDI: Yes, Your Honor.

17 THE COURT: I'd neglesse [phonetics] the Public Defender's motion, so
18 they get to go first.

19 MS. TRIPPIEDI: Okay.

20 **CLOSING ARGUMENT - DEFENSE**

21 MS. PENSABENE: And, Your Honor, what we're here for today is
22 basically a Frank's hearing on suppression of the statement provided by Mr.
23 Manning. We believe that this is an illegal arrest without probable cause by an
24 officer who didn't have the authority to make the actual arrest.

25 First of all, we heard that this was an arrest. He was handcuffed.

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1 He was handcuffed. He was in the back of the patrol car. He was transported
2 to the detention center, not to a police station for question but to a detention
3 center. We also heard that he was not free to leave when he was being I guess
4 interviewed by the Marshal by the patrol car. He was standing there, waiting to
5 hear back from the dispatch to find out, you know, what was going on. He
6 was not free to leave. At that point, he was cuffed. He was transported. We
7 heard that all today in the testimony, but moreover, even just in the discovery
8 that we have, the booking sheet states, place of arrest: Doolittle Park. So, he
9 was under arrest at that time.

10 Furthermore, there was absolutely no probable cause to arrest him.
11 We've already established that the offense of, you know, being in a park
12 without a child under the age of 12, the Marshal used his discretion not to issue
13 a citation, not to proceed on that offense. The only reason he was taken into
14 custody is because of a Scope entry, and that Scope entry was not an arrest
15 warrant. It was a; detective wants to speak with this person.

16 To the fact that – or to the point that Detective Embry directed the
17 Marshal to arrest Mr. Manning, I don't think that that is correct. I don't think
18 that that's the proper procedure here. This is not an agency relationship.
19 The Marshal cannot be an agent of the detective. The detective cannot give
20 the Marshal directions; oh, I need you to take an interview. Can you do that for
21 me at my direction? I need you to fill out my report. I need you to generate a
22 report a find these witnesses or do that or do this. That doesn't happen here.
23 We have procedure for a reason. There should've been an arrest warrant.

24 Basically, a detective telling a Marshal that I have probable cause to
25 arrest, so you have to arrest, that's – that's not how it works in the county.

ROUGH DRAFT TRANSCRIPT

1 That's just not how it's supposed to be done. So, no probable cause here.

2 Finally, the Marshal didn't even have the authority to take Mr.
3 Manning into custody. In m motion, I did discuss the four different types of
4 limited –

5 THE COURT: So you don't think there is an ordinance that says that
6 people have to comply with park rules?

7 MS. PENSABENE: I do think that –

8 THE COURT: Posted park rules.

9 MS. PENSABENE: I do think that the – I haven't seen the ordinance. I
10 don't know what it is. I'm taking the Marshal at his word; however, we've
11 moved past that point. The Marshal could have cited him or arrested him for
12 the offense of being in a park, not for the Scope entry of Detective Embry
13 wants to speak with him. At that point, when he decided to move past that,
14 and he decided not to issue the citation, not to arrest him on that, he had no
15 idea whether or not Detective Embry wanted him. We moved past that.

16 He clearly said in his testimony that he used is discretion not to
17 issue a citation. The only reason he was brought into custody because of the
18 line in Scope. That's the only reason – and because Detective Embry asked him
19 – and like I said that's – there's no arrest warrant. This isn't an agency
20 relationship where he can act as an agent of the detective. Court' brief
21 indulgence.

22 And further, Your Honor, we'll take the detective at his word, but
23 we don't know what ordinances this was. We don't know what park regulation
24 this was. Basically, what the Marshal is stating is that, we're precluding a man
25 from walking through a park. We don't know exactly what the – the ordinance

ROUGH DRAFT TRANSCRIPT

1 was, whether it was a municipal code or whether it was a park regulation. He
2 wasn't able to clearly state that to us. Anything that's preventing a man from
3 walking through a park or going in a park, we believe is unconstitutional.

4 THE COURT: Thank you. State's response.

5 **CLOSING ARGUMENT – STATE**

6 MS. TRIPPIED: Your Honor, it's the State's position that at the point that
7 the stop was made at Doolittle Park, at that point, there was no arrest made. It
8 was a stop based on the violation of the ordinance. The City Marshal told us
9 that there was in fact an ordinance that adults can't be in parks when they are
10 not accompanied by small children. The Defendant, he stated was in violation
11 of the ordinance. He doesn't need to – he's not required to give us an
12 ordinance number.

13 So, we have a stop at that point. At that point, he did what he
14 ordinarily does, and he runs a record check. He ran the records check and
15 learned that he – there was a line entry in Scope from the robbery detective.
16 At that point, he calls the robbery detective, learns that there is probable cause
17 to arrest him, and at that point he then proceeds to transport Mr. Manning to
18 CCDC. He doesn't arrest him at that point. He transports him so that the
19 arrest can occur at CCDC.

20 There – in determining whether an arrest actually takes place,
21 there's a number of cases that – that use the totality of circumstances test, and
22 there are also a number of cases that state that just near use of handcuffs are
23 not indicative of an arrest. So the fact that he was actually handcuffed by the
24 City Marshal when being transported doesn't indicate that he was actually
25 under arrest at that point.

ROUGH DRAFT TRANSCRIPT

1 The City Marshal stated that he has discretion on whether he wants
2 to arrest or issue a citation. At this point, he didn't need to issue a citation
3 because he already learned there was probable cause for arrest on a robbery.
4 He then transports him over to CCDC, the detectives are waiting. We have
5 evidence testimony that there was in fact probable cause at that point to arrest
6 him.

7 I think there – I think there's certainly – you know, City Marshals
8 do this all the time where they'll stop someone and then they learn that there
9 are warrants, and then they end up transporting them to CCDC where people
10 are booked on warrants. They, you know, he's acting in his scope as a City
11 Marshal, so he stated that that's, you know, he followed all the procedures,
12 and I just think that everything that followed is absolutely admissible, and we'll
13 submit it.

14 THE COURT: Thank you, the motion to suppress the statements is
15 denied. The City Marshal had authority to detain the Defendant at the Doolittle
16 Park for violation of the ordinance related to posted park rules. His transporting
17 of the Defendant at the request of the detective, who told him he had probable
18 cause to CCDC, does not render that detention improper. So, the motion is
19 denied. Anything else?

20 MS. PENSABENE: That's all, Your Honor.

21 THE COURT: All right. You're at overflow, Friday morning at 8:45.

22 MR. BANKS: Oh –

23 THE COURT: Yes?

24 MR. BANKS: Just trying to federalize stuff, Judge. Just as to the
25 constitutionality of that ordinance.

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1 THE COURT: Of the park ordinance?

2 MR. BANKS: Correct.

3 THE COURT: It is my opinion that the City of Las Vegas has the authority
4 to post rules in playground areas for the protection of the children using the
5 park, and the playground area is the area this particular Marshal testified he
6 showed the Defendant the sign, as he was escorting him out, that you could
7 only as an adult be in the play area, which is where the slide on which the
8 Defendant was sleeping is located, with a child under 12 that you were
9 supervising.

10 So, in my opinion, that is not an unconstitutional use of the City of
11 Las Vegas' police power. And will somebody send them a copy of that,
12 because they sometimes think I over reach on my determination of
13 constitutionality.

14 MR. BANKS: And that's as to the ordinance, but as to the park rule, you
15 can't -- can you even make a determination as to the actual rule?

16 THE COURT: I just told you, the park rule --

17 MR. BANKS: Is for the safety?

18 THE COURT: -- I believe is a reasonable use of the police powers, since
19 the people who were supposed to be playing on a slide are younger than the
20 Defendant, and a posting of a rule in a park that an adult present in the park
21 must be with a child around 12; the play area, not the park itself, the play area
22 is a reasonable use of the police powers.

23 MR. BANKS: Thank you.

24 MS. PENSABENE: Thank you.

25 THE COURT: Anything else?

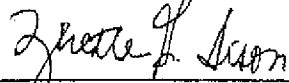
ROUGH DRAFT TRANSCRIPT

1 MS. TRIPPIED: That's all.

2 THE COURT: Somebody needs to send that to the City of Las Vegas
3 though because anytime you have a question about constitutionality on one of
4 their stuffs, the attorneys must be involved, and Mr. Jerbic is gonna be mad at
5 me.

6 [Proceedings concluded at 11:25 a.m.]
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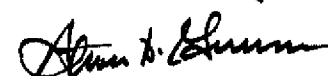
16 ATTEST: Pursuant to Rule 3C (d) of the Nevada Rules of Appellate Procedure, I
17 acknowledge that this is a rough draft transcript, expeditiously prepared, not
18 proofread, corrected, or certified to be an accurate transcript.

19 
20 Yvette G. Sison
21 Court Recorder/Transcriber
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ROUGH DRAFT TRANSCRIPT

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TRAN
CASE NO. C-290624
DEPT. NO. 3



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA,)
)
Plaintiff,)
)
)
vs.)
)
JAMES MANNING,)
)
Defendant.)

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

BEFORE THE HONORABLE DOUGLAS
DISTRICT COURT JUDGE

DATED MONDAY, JANUARY 13, 2014

REPORTED BY: Sharon Howard, C.C.R. #745

1 APPEARANCES:

2 For the State: HAGAR TRIPPIEDI, ESQ.

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6 For the Defendant: MARISSA PENSABENE, ESQ.

7 BELINDA HARRIS, ESQ.

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1 LAS VEGAS, NEVADA; MONDAY, JANUARY 13, 2014

2 P R O C E E D I N G S

3 * * * * *

4
5 THE COURT: Good morning.

6 On the record in C-290624, outside the presence of
7 our panel.

8 Did you have anything you want to put on the record
9 before we begin.

10 MS. PENSABENE: We do, your Honor.

11 We would like that the bench conferences be recorded
12 in this case. I know your prior rulings, I just need to
13 make a record and let it be known our office has a policy
14 that we ask that all bench conferences be recorded.

15 THE COURT: I don't record bench conferences.
16 There's a variety of reasons. Rule 250 cases might be
17 different. In my experience a lot of times when folks are
18 approaching the bench it may be when do we take a break,
19 when is the next break, my client has to go to the
20 bathroom.

21 I know there are some times when substantive things
22 get discussed as well, but I always tell people you can
23 make a record at any recess, next recess. If there is
24 something that comes up, if you feel it necessary, rather
25 then discussing it at the bench, you can request to take a

1 recess and we can put it on the record.

2 Personally I have been a reporting department because
3 I think there's problems with the system. The whole JAVZ
4 system went down today, so they weren't able to record
5 proceedings going on. From a reporting standpoint, I know
6 that my reporter will stop us if she doesn't understand
7 something said or whatever, so that we're not having to go
8 back and try and listen to a recording. Just a personal
9 choice do it the way we do it.

10 I know your office is making that request. I don't
11 begrudge you that. If there is a time that something is
12 getting discussed or we're at the bench and you say, hey,
13 we're going off onto an area I want to be on the record
14 about it, just ask for a recess and we'll put it on the
15 record.

16 MS. PENSABENE: I understand, your Honor.

17 Just to make it clear why we are addressing it is
18 because we have noticed on appeal the Supreme Court is
19 deciding not to make issue of something or not to rule on
20 something because bench conferences are not recorded.

21 And that and the State have kind of figured that out,
22 and a lot of their appeals motions they make light of the
23 fact that we have not requested the bench conferences be
24 recorded.

25 That's why we ask for it.

1 THE COURT: Thank you.

2 MS. TRIPPIEDI: We did have one small thing.

3 Page 2 of the information on top, we noticed a small
4 typo. It reads, in her presence -- but it should be in
5 his presence, as the victim is a male. We wanted it read
6 the correct way to the jury.

7 THE COURT: Okay. You have any objection to
8 amending it by interlineation, line 1 of page 2 to reflect
9 her instead of him.

10 MS. PENSABENE: No objection.

11 One final matter. We'd ask that the State not
12 refer to us as public defenders.

13 THE COURT: Okay.

14 MS. TRIPPIEDI: No problem with that.

15 THE COURT: Okay.

16 Leslie, go ahead and get them in.

17 On the record in State of Nevada vs. James Manning,
18 C-290624. Good morning, ladies and gentlemen.

19 My name is Douglas Herndon. I'm the presiding judge
20 here. As you all have guessed, you've been summoned here
21 as potential jurors in what is a criminal trial.

22 In a moment I'll have the attorneys introduce
23 themselves to you. They'll tell you a brief synopsis of
24 what the case is about. They'll speak to you about
25 potential witnesses, and we'll get into the process of

1 picking a jury, which I expect is going to take the better
2 part of today.

3 I don't expect that we're going to get to the point
4 of having opening statements and calling witnesses today.
5 Nonetheless, we'll get there.

6 Before we get into the questioning process, let me
7 tell you about the court staff that you're going to come
8 into contact with and some court procedure things.

9 To begin with, seated in front of me is Sharon.
10 Sharon is my court reporter. Everything we do in open
11 court, she's typing down and is going to make a transcript
12 of later on, so that we all know what took place here in
13 court. Because of that, it's real important before we get
14 into the questioning process that you help me out with a
15 couple of things.

16 Number one, please answer questions out loud. I may
17 know who I direct a question to, and I'm looking at the
18 audience, where you are nodding your head or shaking your
19 head, but it's real difficult for Sharon to figure out who
20 I was talking to. So please answer out loud.

21 Also please answer "yes" or "no" type questions with
22 a "yes" or "no." Most of the questions will be "yes" or
23 "no," I imagine.

24 And uh-uh or uh-huh doesn't always translate well
25 when you're trying to hear what somebody is saying, so if

1 you would say "yes" or "no," it would be greatly
2 appreciated.

3 Finally, generally speaking, fairly quickly into this
4 I'll figure out where everybody is seated such that if I'm
5 asking a question I can look at my list of potential
6 jurors and point out your name and your badge number when
7 I call on you to answer a question. If I don't do that,
8 please identify yourself.

9 For instance, if I ask a general question and you've
10 got your hand up because you want to answer it, if I don't
11 say, Mr. Jones, badge number 123, what do you need to tell
12 me. If I don't do that, or if the attorneys don't do
13 that, please identify yourself by your name and badge
14 number. That way the transcript will always reflect the
15 comments that are being attributed to the right person.
16 Because, again, Sharon can't figure that out.

17 And don't be offended if I stop you, if you start to
18 answer, to get your name and badge number down so we know
19 to get your comments attributed to the right person.

20 Seated to my left is Carol. Carol is my court clerk.
21 She keeps track of everything that's going on in court as
22 well from a court minutes standpoint. She administers the
23 oath to you all before you answer questions. Same thing
24 to witnesses, since juror questions, just like witness
25 testimony, is done under oath.

1 She also keeps track of all the exhibits that are
2 introduced here in court, witnesses that are called, where
3 we are in the proceeding, what we're doing. A great
4 number of things I can't keep track of, to be honest.

5 Leslie, you have had some contact with. Leslie is my
6 marshal assigned to my courtroom. She's certainly not the
7 only marshal that takes care of this courtroom. You are
8 going to see a number of other people come in and out of
9 the courtroom. There may be times when Leslie is gone
10 assisting downstairs.

11 When you all come into the building, they have
12 marshals down there. We have a whole host of marshals
13 that are responsible for not only security in the building
14 and court rooms, but also help to facilitate jurors moving
15 around, the general public moving around, and so forth.

16 So although Leslie is particularly assigned to this
17 court and working with me, there's also the other folks
18 you see in and out of court during the proceedings.

19 Leslie is a little different from the other court
20 staff and the attorneys in that what you're going to come
21 to find out is that most all of us are prohibited from
22 having any communication or contact with you outside the
23 setting we're in right now. It's not that people don't
24 like you, or that they're anti-social or anything like
25 that. But we're all bound, and in particular the

1 attorneys are bound, by certain ethical and legal
2 obligations not to talk to you outside the court setting,
3 because they don't want to be accused of trying to win
4 favor with you or contaminate your verdict or anything
5 like that.

6 It will go so far, if they're doing what they should
7 do, that they're not going to chat with you about the
8 weather or sports or anything like that. They're not
9 going to chat with you in the elevators or anything like
10 that. So please don't try and talk to them either.

11 Leslie is a little different, as I said, in that I
12 know there may be things that come up you think you need
13 to communicate to the court. You can always talk to
14 Leslie in that regard. You can't talk to her about the
15 case or about what's going on, whether she liked this
16 witness or didn't like that witness, things like that.
17 But certainly if there's some issue in your life, whether
18 it's today or during the pendency of the trial that you
19 think needs to be communicated to me, then by all means
20 you can talk to Leslie about that.

21 I suspect at the end of the day, once we have the
22 people that are going to hear this case, you all will
23 exchange phone numbers with Leslie in case you need to get
24 in contact with her.

25 Couple other folks you may have contact with,

1 particularly when we get to the point of being a
2 deliberating juror, my JEA Molly and my law clerk Steve.
3 You may see them coming in and out of court on occasion,
4 as well. That's pretty much it from a court staff
5 standpoint that you're going to come into contact with.

6 I'll have the attorneys introduce themselves and let
7 you learn a little about this case and about them before
8 we move forward.

9 MS. TRIPPIEDI: Good morning. My name is Hagar
10 Trippiedi. I'm an attorney prosecutor on behalf of the
11 State of Nevada. I was assigned to handle this case,
12 which is State of Nevada versus James Manning.

13 In this case we're alleging that on March 29, 2013,
14 the Defendant, James Manning, robbed a man on a bus near
15 Sam's Town. Sam's Town is located in the area of
16 Boulder Highway and Nellis in Clark County, Las Vegas
17 Nevada.

18 The defendant is being charged with two counts. One
19 of them is robbery, victim over age 60. The other one is
20 battery with intent to commit a crime.

21 At the end of this case we'll ask you to find him
22 guilty of those two counts.

23 Listen to the following list of witnesses. We're not
24 going to call all of these names, but it's important if
25 you recognize any of these name or know any of these

1 people you let the judge know.

2 First one is Dawn Barlow, an investigator with the
3 district attorney's office -- Thor Berg, Callie Borley.
4 The following are going to be detectives or officers with
5 the Las Vegas Metropolitan Police Department -- Benjamin
6 Cobb, Chad Embry, Scott Kovon, Curtis McQuire, Robert
7 Steinbach.

8 The other two are not officers -- Nina Scott and
9 Sherri Washington.

10 Thank you for your time.

11 THE COURT: Thank you.

12 Defense.

13 MS. PENSABENE: Good morning. My name is
14 Marissa Pensabene. This is my co-counsel Ms. Harris. Our
15 client, James Manning, is seated there.

16 We work for James and we'll be telling you that this
17 is a case about misidentification.

18 Thank you.

19 THE COURT: Thank you.

20 Ladies and gentlemen, what I'll do now is have Carol
21 take role of our jury. That's just to make sure we have
22 everybody that jury services tells us we're supposed to
23 have. Before she does that, since I held this up in front
24 of you. A lot of times people are concerned what all is
25 in that list you have. What happens to it.

1 First off we get them all back, so don't worry about
2 that. Second there is not any information in here. There
3 is not any identifying information. No driver's license,
4 social security number, stuff like that. It has your zip
5 code, how long you've lived here, whether you're married
6 or not, and whether you have served as a juror before. So
7 it's very, very limited, which is kind of why we need to
8 ask questions when we go through the process.

9 Don't worry. It's a way to hopefully keep track of
10 everybody he have on our panel.

11 If you hear your name, answer present or here,
12 please.

13 THE CLERK: Amy Raymer.

14 PROSPECTIVE JUROR: Here.

15 THE CLERK: Danielle Battista.

16 PROSPECTIVE JUROR: Here.

17 THE CLERK: Rose Jones.

18 PROSPECTIVE JUROR: Here.

19 THE CLERK: Gregory Chambers.

20 PROSPECTIVE JUROR: Here.

21 THE CLERK: Antonina Magcalas.

22 PROSPECTIVE JUROR: Here.

23 THE CLERK: Tom Engelke.

24 PROSPECTIVE JUROR: Here.

25 THE CLERK: Jemima Guardado.

1 PROSPECTIVE JUROR: Here.
2 THE CLERK: Barbara Devito.
3 PROSPECTIVE JUROR: Here.
4 THE CLERK: Charles Peskin.
5 PROSPECTIVE JUROR: Here.
6 THE CLERK: Merrie Jeannotte.
7 PROSPECTIVE JUROR: Here.
8 THE CLERK: Leon Kermani.
9 PROSPECTIVE JUROR: Here.
10 THE CLERK: Bryant Duran.
11 PROSPECTIVE JUROR: Here.
12 THE CLERK: Rosaisela Campbell.
13 PROSPECTIVE JUROR: Here.
14 THE CLERK: Matthew Lees.
15 PROSPECTIVE JUROR: Here.
16 THE CLERK: Victor Ruiz.
17 PROSPECTIVE JUROR: Here.
18 THE CLERK: William Boyce.
19 PROSPECTIVE JUROR: Here.
20 THE CLERK: Raul Falla.
21 PROSPECTIVE JUROR: Here.
22 THE CLERK: Lili Soto.
23 PROSPECTIVE JUROR: Here.
24 THE CLERK: Mario Alberto-Trejo.
25 PROSPECTIVE JUROR: Here.

1 THE CLERK: Holly Smith.
2 PROSPECTIVE JUROR: Here.
3 THE CLERK: Rex Nokes.
4 PROSPECTIVE JUROR: Here.
5 THE CLERK: Terese Saulski.
6 PROSPECTIVE JUROR: Here.
7 THE CLERK: Timothy Gardner.
8 PROSPECTIVE JUROR: Here.
9 THE CLERK: Chanlee Hall.
10 PROSPECTIVE JUROR: Here.
11 THE CLERK: Purnik Dombagoda-Liyanage.
12 PROSPECTIVE JUROR: Here.
13 THE CLERK: Maria Rojas.
14 PROSPECTIVE JUROR: Here.
15 THE CLERK: Dante Allen.
16 PROSPECTIVE JUROR: Here.
17 THE CLERK: Linda Short.
18 PROSPECTIVE JUROR: Here.
19 THE CLERK: Marisela Ruiz.
20 PROSPECTIVE JUROR: Here.
21 THE CLERK: William Schirmeister.
22 PROSPECTIVE JUROR: Here.
23 THE CLERK: Michelle Bonte.
24 PROSPECTIVE JUROR: Here.
25 THE CLERK: Janel Hall.

1 PROSPECTIVE JUROR: Here.
2 THE CLERK: Jesse Chippoleti.
3 PROSPECTIVE JUROR: Here.
4 THE CLERK: Patricia Walker-Estes.
5 PROSPECTIVE JUROR: Here.
6 THE CLERK: Helen Trujillo.
7 PROSPECTIVE JUROR: Here.
8 THE CLERK: Margery Lucas.
9 PROSPECTIVE JUROR: Here.
10 THE CLERK: Augustus Aguirre-De-Hernandez.
11 PROSPECTIVE JUROR: Here.
12 THE CLERK: Julie Stott.
13 PROSPECTIVE JUROR: Here.
14 THE CLERK: Frank Luceo.
15 PROSPECTIVE JUROR: Here.
16 THE CLERK: Stacy Siford.
17 PROSPECTIVE JUROR: Here.
18 THE CLERK: Charlynn Campos.
19 PROSPECTIVE JUROR: Here.
20 THE CLERK: Leo Lingle.
21 PROSPECTIVE JUROR: Here.
22 THE CLERK: Marilyn Boehm.
23 PROSPECTIVE JUROR: Here.
24 THE CLERK: Marcus Nunez.
25 PROSPECTIVE JUROR: Here.

1 THE CLERK: Tania Zagal.

2 PROSPECTIVE JUROR: Here.

3 THE COURT: Anybody present whose name was not
4 called. I see no hands. Thank you.

5 I'll have you all raise your right hand for me and be
6 sworn so we can get started.

7 THE CLERK: You do solemnly swear you will well
8 and truly answer such questions that may be put to you
9 touching upon your qualifications to act as jurors in the
10 case at issue, so help you God.

11 PROSPECTIVE JUROR: (Choir of I does.)

12 THE COURT: We're going to get into a discussion
13 about how long the case will take, things like that. But
14 realize up front, I know that this is inconvenient for
15 you. It's pretty much nobody that doesn't have things
16 going on in their lives to say, sure, I have time to do
17 jury duty. I realize the inconvenience. I promise to
18 respect your time as best I can and get us started as soon
19 as we can't and get us through this quickly and
20 efficiently as we can, while being fair to the parties in
21 their opportunity to present a case to you.

22 That being said, I will also tell you -- how many of
23 you have served in the military before. How many of you
24 remember back when we made you go into the military as
25 opposed to volunteering for the military.

1 Since we got rid of the draft, there isn't really
2 anything that your country or community asks you to do
3 other than pay taxes and do jury duty. Despite the
4 inconvenience of both of those, we have to do them.
5 Otherwise our system of government, in this instance our
6 system of justice wouldn't happen.

7 So we need people to come in and give up some time.
8 So I'm very respectful of your time here. We'll get you
9 through this as quick as we can. Okay.

10 It's my desire, as well as, the desire of the
11 attorneys to find 13 people to hear this case who are as
12 fair, open-minded, and neutral to the facts and nature of
13 this case as possible. There's a few things that are very
14 important as we go through the jury selection process.

15 Number one, please make sure you give us as full and
16 complete and honest answers as you can to the questions
17 put forth. We don't always ask the best questions. We're
18 not always real articulate. So if you think we're asking
19 about something, but we're not really getting to the point
20 of it with the question, feel free to bring that up with
21 us.

22 If you don't understand a question, please tell us
23 you don't understand the question. It's important that
24 the attorneys get as much information as they can, so that
25 they can intelligently choose 10 people to hear this

1 case.

2 There's going to come a point in time during the
3 selection process where the attorneys get to do challenges
4 for cause. There's challenges for cause. There's
5 preemptory challenges. Essentially what we do in the jury
6 selection process is try to get a group of 32 people what
7 we call passed for cause. That means there's no conflict
8 with those folks, no biases, no preconceived notions or
9 judgments or anything like that.

10 From those 32 people the attorneys get to use
11 preemptory challenges to select 13 of you on the case.
12 Prior to that, as we go through that process to get the 32
13 of you seated, the attorneys can raise what are called
14 challenges for cause. That's simply a challenge based
15 upon some bias, or conflict, or preconceived notion, as I
16 said, you may have about the case. It's not anything you
17 need to take personal. A challenge for cause just excuses
18 you from the jury.

19 Some of you may say, hey, challenge me for cause. I
20 want to leave. It doesn't work quite that way, but it's
21 not anything personal.

22 Understand, if you would please, that as many cases
23 as you can imagine existing within the civil and criminal
24 justice system, I guarantee you there are more.

25 The whole jury selection process is designed to find

1 out if there is anything going on in your personal or
2 professional life, past or present, that causes you some
3 kind of conflict or bias or prejudice about sitting on
4 this particular case.

5 Let's say this was a civil case dealing with some
6 kind of real estate transaction that had gone bad. We all
7 know there is a lot of that going on in Las Vegas. I can
8 tell you about half of my civil case load deals with that.
9 If you were going through something like that right now
10 and somebody had contracted to buy your house and was
11 trying to get out of it and break the contract and there's
12 a lawsuit going on, and that's what this case is about,
13 then you may say, you know what, it touches a nerve with
14 me, Judge. That's too close to home right now. I don't
15 know that I could be fair to one side or the other because
16 I'm going through something like that.

17 That's just a basic example of what I'm talking about
18 in terms of the need to learn about you.

19 We don't know anything about you as you come in right
20 now. I'll answer any questions you have of me when this
21 whole process is done, but for right now I need you to
22 answer all our questions that give the attorney some
23 insight into your personal and professional lives.

24 Nobody has any desire to unnecessarily pry, but
25 understand that we do need to learn a little information

1 about those things to figure out if there's any reasons
2 why you shouldn't sit on this case.

3 The way this will work is I have some questions to
4 ask you all, generally, as a panel to everybody. Then
5 there will come a point in time when I try and focus on
6 everybody over here, because there's 32 of you. If
7 somebody over here is excused, one of you will move over
8 here. It's not that we're ignoring you all at that point,
9 but it's probably more time efficient to focus on the
10 number we need to get passed for cause.

11 Thereafter there will also be some individual
12 questions that I have with you all. Then the attorneys
13 will have an opportunity to ask some questions of you all
14 as well. That's kind of the game plan on how we'll
15 proceed.

16 The first question to everybody is is there anybody
17 here who has ever been convicted of a felony. I see no
18 hands. Thank you.

19 Anybody here who is not a United State's citizen.
20 I see no hands. Thank you.

21 Anybody that believes they know Ms. Trippiedi, the
22 prosecutor. I see no hands.

23 Anybody that believes they know Ms. Pensabene or Ms.
24 Harris, the defense attorneys.

25 Anybody believe they know Mr. Manning, the Defendant.

1 I see no hands to any of those questions.

2 Anybody that believes they know or are acquainted
3 with anybody that works with the Clark County District
4 Attorney's office.

5 Yes, sir.

6 PROSPECTIVE JUROR: Jessie Chippoletti.

7 THE COURT: 408 -- who do you know.

8 PROSPECTIVE JUROR: Janis Listin.

9 THE COURT: She works within the court system.

10 PROSPECTIVE JUROR: Okay.

11 THE COURT: Somebody that you're family friends
12 with.

13 PROSPECTIVE JUROR: Yeah.

14 THE COURT: Okay.

15 Just for the attorneys edification, she is Judge
16 Elsworth's JEA.

17 Thank you.

18 Anybody else.

19 My next question was, do you know anything about the
20 case from the brief synopsis the attorneys talked to you.
21 I see no hands. Thank you.

22 Ladies and gentlemen, the trial is expected to last
23 how long.

24 MS. TRIPPIEDI: 2 to 3 days.

25 THE COURT: So let's say 3 days, meaning it will

1 take you into Wednesday. Maybe we can say take you into
2 Thursday morning if you have to deliberate as well. But
3 that's pretty much the time period for the trial. I trust
4 when they give estimates because they know how many
5 witnesses they'll call, what to do in terms of asking
6 questions, arguing the case.

7 That I have to tell you is as short as a trial gets,
8 in terms of our district. The average trial time is 7 to
9 8 working days. Sometimes you might find a trial that can
10 be done in a couple of days. But 3 to 4 days is pretty
11 much as short as you get anymore, which means for jury
12 duty purposes you have the lottery ticket. That doesn't
13 make it less convenient to be here, but nonetheless that's
14 short.

15 So what I'll do is ask if servicing that amount of
16 time is an undue burden upon anybody. Before I ask you
17 that question and you answer it, let me give you
18 information. I don't know what all they tell you in jury
19 services.

20 If you go through the process and you're not chosen
21 as a juror, you're done with jury duty. You'll have been
22 part of the panel. You stayed here the whole time. You
23 just weren't chosen. You'll be done.

24 If I excuse you for any reason prior to that, you go
25 back down to jury services and they send whether to send

1 you out on another panel today tell you to come back
2 tomorrow, whatever. Because you haven't finished your jury
3 duty, yet.

4 Additionally, if you excuse you, no other judge has
5 to excuse you. If you accuse Mr. Peskin because there's a
6 reason I feel justifies him having an undue burden, he may
7 go to another panel and another judge can say I don't
8 think that's a good enough reason. I'll keep you here.
9 That's up to each of us individually as judges to make
10 those determinations.

11 Secondly, there is a reason I use the word undue
12 burden. I know it's burdensome to be here. Some of you
13 are going to raise reasons and you are still going to be
14 here afterwards. I know it causes financial problems for
15 people. People have child care issues. I get that. But
16 it has to be undue burden that would cause you to not be
17 able to be here, as opposed to the convenience that we all
18 have.

19 Additionally, I'll tell you that from a scheduling
20 standpoint -- people want to know what the schedule of the
21 court will be. We won't start any day before 10:30. We
22 have what are called morning calendars every day where we
23 have other cases that are trying to get ready for trial
24 and we have motions on that need to be decided. We can't
25 start our morning calendars in district court until 9:00

1 o'clock, because the lower courts below us have certain
2 calendars before that. And a lot of the same attorneys
3 that appear in front of us have to be there as well.

4 That usually takes an hour, hour-and-a-half for us to
5 get through the calendars, so trial start 10:30. We
6 always take a break for lunch for an hour. We stop by
7 5:00. I know you have things to do, like anybody else.
8 So that's kind of the scheduling outlook for you to
9 consider.

10 So all of that being said, is it going to be an undue
11 burden upon anybody to serve for the next 3 days,
12 3-and-a-half days.

13 Mr. Peskin, 314.

14 PROSPECTIVE JUROR: Number one, I'm going in for
15 surgery on the 22nd of this year -- this month.

16 Number 2, I just found out I have a broken ankle on
17 my foot, which I'm also going to be needing to go into
18 surgery.

19 I also have a couple of stress tests I need to
20 before I go into surgery. They haven't called me, yet, and
21 I'm very worried about that. So I have to get that done
22 before I go into surgery.

23 Is there anyway that they can reschedule me after
24 March or April. I'd be very honored to serve on any
25 trial.

1 THE COURT: Okay.

2 And out of curiosity -- I'm not saying you had to --
3 but did you raise any of that with jury services before --
4 a lot of times they defer your duty. For further
5 reference, if you have certain issues, they have some
6 autonomy down there to do deferrals. They can't excuse
7 you, but sometimes they can work with you if this comes at
8 a really bad time.

9 Have a seat for right now.

10 PROSPECTIVE JUROR: Thank you.

11 THE COURT: Anybody else.

12 Yes, sir.

13 PROSPECTIVE JUROR: I've been put on orders to
14 leave for the military next week.

15 THE COURT: You are --

16 PROSPECTIVE JUROR: Leo Lingle, 480.

17 THE COURT: Thank you, sir.

18 You are leaving when.

19 PROSPECTIVE JUROR: Saturday next week.

20 THE COURT: Okay. Thank you.

21 Anybody I missed on that.

22 PROSPECTIVE JUROR: 302 -- I don't know if this
23 is an issue or not. I have a bad back and sitting in a
24 chair for more than an hour, hour-and-half can be
25 difficult for me.

1 THE COURT: You'll see me move around a lot as
2 well. I get it. If we keep you here and you're chosen as
3 a juror, if you need to stand up while proceeding are
4 going on to stretch, feel free to do that. People
5 understand that kind of issue.

6 How many, if any, of you has ever been engaged in law
7 enforcement work or you have a close family member that's
8 been engaged in law enforcement.

9 By close, meaning, you'd talk to them about the work
10 they do. Not that you have a 5th cousin that's a cop in
11 Chicago or anything like that.

12 Ms. Saulski, 372 --

13 PROSPECTIVE JUROR: My father is a retired
14 police officer.

15 THE COURT: What jurisdiction did he work in.

16 PROSPECTIVE JUROR: Detroit.

17 THE COURT: Thank you.

18 Anybody else.

19 PROSPECTIVE JUROR: My father was a police
20 officer for 15 years.

21 THE COURT: Ms. Bonte, 397 -- where did your
22 father work.

23 PROSPECTIVE JUROR: He's retired. That was
24 Wisconsin.

25 THE COURT: Thank you.

1 PROSPECTIVE JUROR: Short, 392 -- I don't know
2 if this counts or not, but my brother used to be the court
3 administrator in Clark County.

4 THE COURT: Chuck Short.

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: All right.

7 Tell your brother I said hello the next time you see
8 him. He twice preceded Mr. Christensen. They were in the
9 same role as a CEO of the court system.

10 Yes, sir.

11 PROSPECTIVE JUROR: Boehm, 485, my son is a
12 detective with Las Vegas Metropolitan Police Department.

13 THE COURT: Do you know which bureau he works.

14 PROSPECTIVE JUROR: Tourist crime.

15 THE COURT: Thank you.

16 Where was this.

17 THE COURT: Where did it happen.

18 MS. TRIPPIEDI: Nellis and Boulder Highway.

19 THE COURT: Let's include security officer work
20 in this as well. Yourself or close family members worked
21 in security of any capacity.

22 Mr. Peskin, 314.

23 PROSPECTIVE JUROR: I did 20 years ago.

24 THE COURT: Was that private security or
25 department store.

1 PROSPECTIVE JUROR: Casino.

2 THE COURT: Thank you.

3 I'm assuming Las Vegas.

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: Thank you.

6 Ms. Saulski, 372.

7 PROSPECTIVE JUROR: My sister, who currently
8 lives with me. She worked security for Michigan where the
9 Pistons play. I believe she works security out here at
10 MGM Grand.

11 THE COURT: Thank you.

12 Anybody else. No.

13 Anybody on the panel that believes they would not be
14 able to follow all the instructions on the law, if they
15 differed from your personal belief as to what the law
16 ought to be.

17 I didn't write that question. I'll give a synopsis
18 of the trial. We'll do this process. We'll get a jury
19 seated. The attorneys will have the opportunity to make
20 an opening statement. They call witnesses, whatever pieces
21 of evidence get introduced, piece of paper, photograph,
22 what whatever it is.

23 After all the witnesses and evidence have been
24 produced, before the attorneys give their closing
25 arguments, I'll read to you the law. I's my job to figure

1 out what the law is that applies to this case.

2 So you'll get a packet of instructions to read along.
3 That's the law that has to be applied to the case. Part
4 of your duty as jurors, when you swear your oath is to
5 follow the law as I tell you the law exists.

6 Lots of times people have disagreements with the law
7 that exists. If you want to lobby your legislature to
8 change a law, that's great. But when you go back to
9 deliberate as a body of 12 people, you have to follow the
10 law. It's like fair to the parties to know whether you
11 are going to follow the law, even if you disagree with
12 it.

13 Anybody that feels they'd be unable to follow that
14 law that I've decided applies to this case, if you had
15 disagreement with it. I see no hands. Thank you.

16 As a follow up to the previous question I must tell
17 you that in any criminal trial the members sitting on the
18 jury collectively are the judges of the question of fact.
19 You are the fact finders. You listen to the witnesses,
20 take in the evidence and decide what the facts are that
21 occurred in any particular situation.

22 As the proceeding judge, as I just said, it's my job
23 to be the judge of the law and to give you the law that
24 applies to this case. So understanding all of that, is
25 there anybody who feels they could not be a fact finder if

1 you sit there and listen to witnesses and evidence and
2 decide the facts, then go back and apply the law to come
3 up with a just and proper verdict.

4 I see no hands. Thank you

5 Okay.

6 Under our system of criminal procedure, there are
7 several principles of law that apply to any criminal trial
8 no matter where it occurs, no matter what the charges are,
9 whether it's here or Main or anywhere in between.

10 The first principle of law is that the charging
11 document, the piece of paper that puts somebody on notice
12 of the charges. In this case it's an information. It
13 just telling Mr. Manning, here's what the state has
14 charged you with. It tells the person what the crimes are
15 that's alleged to have been committed.

16 Everybody understand that the charging document, the
17 paper document, is not evidence of the allegations it
18 contains. It's just a notice to a person to tell a person
19 what they're being charged with. Everybody understand
20 that.

21 I see no hands. Thank you.

22 Second, Mr. Manning, the Defendant, is presumed
23 innocent.

24 Everybody understand that.

25 Anybody disagree with the presumption of innocence.

1 I see no hands. Thank you.

2 Finally, the State has the burden of proving the
3 charges in the information beyond a reasonable doubt.
4 Does everybody understand that. I'm not asking if you
5 stand what reasonable doubt means as defined in the law.
6 It's do you understand it's the State's burden to prove
7 the charges, not the Defendant's burden to prove he's
8 innocent. It's an important distinction.

9 Does everybody understand the Defendant has no burden
10 of proof here.

11 Anybody disagree with any of that.

12 I see no hands. Thank you.

13 Could I have the attorneys approach the bench,
14 please.

15 (Discussion held at the bench.)

16 THE COURT: Mr. Peskin, 314 and Mr. Lingle, 480,
17 you both can go ahead and leave. I'll excuse you two. Go
18 back down to jury services.

19 PROSPECTIVE JUROR: Thank you.

20 THE COURT: Thank you.

21 Give the headphones to Leslie when you leave.

22 We need Mr. Hall, 378. I'm going to go through
23 questions with 23 of you all individually. It's
24 repetitive, but I need to ask you the same questions. So
25 like I said, let me get through the questions before I get

1 your answers.

2 Ms. Raymer, how long have you lived here in Las
3 Vegas -- 277.

4 PROSPECTIVE JUROR: 17 years.

5 THE COURT: Your level of education.

6 PROSPECTIVE JUROR: Master's plus.

7 THE COURT: What type of work do you do.

8 PROSPECTIVE JUROR: I work for Clark County
9 School District.

10 THE COURT: Teacher.

11 PROSPECTIVE JUROR: Project facilitator.

12 THE COURT: Are you married.

13 PROSPECTIVE JUROR: No.

14 THE COURT: Children.

15 PROSPECTIVE JUROR: No.

16 THE COURT: Thank you.

17 Ms. Battista, 278 -- how long have you lived here.

18 PROSPECTIVE JUROR: Off and on my whole life.
19 My father is military.

20 THE COURT: What is your level of education.

21 PROSPECTIVE JUROR: 12 years as a
22 cosmetologist.

23 THE COURT: That answers the type of work you
24 do.

25 Are you married.

1 PROSPECTIVE JUROR: No.
2 THE COURT: Children.
3 PROSPECTIVE JUROR: Yes.
4 THE COURT: How many and how old are they.
5 PROSPECTIVE JUROR: 3 children, 12, 5, and 9
6 months.
7 THE COURT: Thank you.
8 Might be a break for you.
9 Ms. Jones, 279 -- how long have you lived here.
10 PROSPECTIVE JUROR: 5 years.
11 THE COURT: If it's less than 10 years, I ask
12 where they came from.
13 PROSPECTIVE JUROR: From north Carolina.
14 THE COURT: What's your level of education.
15 PROSPECTIVE JUROR: Some college I'm in my 4th
16 year of my bachelors.
17 THE COURT: What are you studying.
18 PROSPECTIVE JUROR: Ultrasound.
19 THE COURT: Are you working now as well.
20 PROSPECTIVE JUROR: Yes. I'm a teller.
21 THE COURT: What type of work.
22 PROSPECTIVE JUROR: Teller at Wells Fargo.
23 THE COURT: Are you married.
24 PROSPECTIVE JUROR: No.
25 THE COURT: Children.

1 PROSPECTIVE JUROR: No.
2 THE COURT: Thank you.
3 Mr. Chambers, 381 -- how long have you lived here.
4 PROSPECTIVE JUROR: 7 years.
5 THE COURT: Where did you move here from.
6 PROSPECTIVE JUROR: Los Angeles.
7 THE COURT: Your level of education.
8 PROSPECTIVE JUROR: Bachelor's degree.
9 THE COURT: What type of work do you do.
10 PROSPECTIVE JUROR: I'm a business financial
11 analyst.
12 THE COURT: Are you married, sir.
13 PROSPECTIVE JUROR: No.
14 THE COURT: Any children.
15 PROSPECTIVE JUROR: No.
16 THE COURT: Thank you.
17 Ms. Magcalas, 301 -- how long have you lived here.
18 PROSPECTIVE JUROR: 14 years.
19 THE COURT: Your level of education.
20 PROSPECTIVE JUROR: Some college, almost 4 year,
21 nursing.
22 THE COURT: What type of work do you do.
23 PROSPECTIVE JUROR: I'm a homemaker.
24 THE COURT: You have kids.
25 PROSPECTIVE JUROR: No, I don't.

1 THE COURT: Are you married.

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: What type of work does your husband
4 do.

5 PROSPECTIVE JUROR: He was an accountant.

6 THE COURT: Do you have children.

7 PROSPECTIVE JUROR: 4.

8 THE COURT: What are their ages.

9 PROSPECTIVE JUROR: 35 -- 37, 35, 31, 26.

10 THE COURT: You have grand kids.

11 PROSPECTIVE JUROR: One.

12 THE COURT: Thank you.

13 Mr. Engelke, 302 -- how long have you lived here.

14 PROSPECTIVE JUROR: 25 years.

15 THE COURT: Your level of education.

16 PROSPECTIVE JUROR: 3 years at UNLV.

17 THE COURT: What type of work do you do.

18 PROSPECTIVE JUROR: I'm an auto technician.

19 THE COURT: Are you married, sir.

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: What type of work does your wife
22 do.

23 PROSPECTIVE JUROR: Warehouse manager.

24 THE COURT: Children.

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: How many and how old.

2 PROSPECTIVE JUROR: One 13 year old.

3 THE COURT: Thank you.

4 Ms. Guardado, 304 -- how long have you lived here.

5 PROSPECTIVE JUROR: 10 years.

6 THE COURT: Your level of education.

7 PROSPECTIVE JUROR: 11th grade and I have my
8 certificate for medical billing.

9 THE COURT: You work in medical billing.

10 PROSPECTIVE JUROR: Not at this time.

11 THE COURT: What type of work are you doing
12 currently.

13 PROSPECTIVE JUROR: Housewife.

14 THE COURT: Are you married.

15 PROSPECTIVE JUROR: I am.

16 THE COURT: What type of work does your husband
17 do.

18 PROSPECTIVE JUROR: He is a roofer.

19 THE COURT: Children.

20 PROSPECTIVE JUROR: We do.

21 THE COURT: How many and how old are they.

22 PROSPECTIVE JUROR: Two daughters, 9 and 4.

23 THE COURT: Thank you.

24 Ms. Devito, 309 -- how long have you lived here.

25 PROSPECTIVE JUROR: I've been here 35 years.

1 THE COURT: What's your level of education.

2 PROSPECTIVE JUROR: 12 years.

3 THE COURT: What type of work do you do.

4 PROSPECTIVE JUROR: I work for the Rio Hotel.

5 THE COURT: Are you married.

6 PROSPECTIVE JUROR: Not at present.

7 THE COURT: Children.

8 PROSPECTIVE JUROR: Yes. Two, grown.

9 THE COURT: Grand kids.

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: How many.

12 PROSPECTIVE JUROR: 7.

13 THE COURT: Thank you.

14 All here.

15 PROSPECTIVE JUROR: No. One in Portland. The
16 other one lives in Idaho.

17 THE COURT: Thank you.

18 Mr. Hall, 378 -- how long have you lived here, sir.

19 PROSPECTIVE JUROR: 33 years.

20 THE COURT: Your level of education.

21 PROSPECTIVE JUROR: Bachelor's degree.

22 THE COURT: What type of work do you do.

23 PROSPECTIVE JUROR: Engineering.

24 THE COURT: Married, sir.

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: What type of work does your wife
2 do.

3 PROSPECTIVE JUROR: She's a bookkeeper.

4 THE COURT: Children.

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: How many and how old are they.

7 PROSPECTIVE JUROR: Two -- one is 19 and one is
8 14.

9 THE COURT: Thank you.

10 Ms. Jeannotte, 317 -- how long have you lived here,
11 ma'am.

12 PROSPECTIVE JUROR: 8 years.

13 THE COURT: Where did you move here from.

14 PROSPECTIVE JUROR: Washington State.

15 THE COURT: What's your level of education.

16 PROSPECTIVE JUROR: Bachelor's and CP license.

17 THE COURT: What type of work do you do.

18 PROSPECTIVE JUROR: Accountant. I work in
19 financial reporting.

20 THE COURT: Married.

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: What type of work does your husband
23 do.

24 PROSPECTIVE JUROR: Analyst for Allegiant Air.

25 THE COURT: You have children.

1 PROSPECTIVE JUROR: Two -- 12 and 2, and our
2 third is due in February.

3 THE COURT: Congratulations.

4 Mr. Kermani, 318 -- how long have you lived here.

5 PROSPECTIVE JUROR: 22 years.

6 THE COURT: Your level of education.

7 PROSPECTIVE JUROR: Partial college.

8 THE COURT: What type of work do you do.

9 PROSPECTIVE JUROR: I own a low volume credit
10 company.

11 THE COURT: Are you married.

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: What type of work does your wife
14 do.

15 PROSPECTIVE JUROR: Nurse practitioner.

16 THE COURT: Children.

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: How many and how old.

19 PROSPECTIVE JUROR: One, 18 months old.

20 THE COURT: Thank you.

21 Mr. Duran, 320 -- how long have you lived here.

22 PROSPECTIVE JUROR: 19 years.

23 THE COURT: Your level of education.

24 PROSPECTIVE JUROR: High school -- 12.

25 THE COURT: What type of work do you do.

1 PROSPECTIVE JUROR: Construction.

2 THE COURT: Married.

3 PROSPECTIVE JUROR: No.

4 THE COURT: Children.

5 PROSPECTIVE JUROR: No.

6 THE COURT: Thank you.

7 Ms. Campbell, 322 -- how long have you lived here.

8 PROSPECTIVE JUROR: 45 years.

9 THE COURT: You level of education.

10 PROSPECTIVE JUROR: Some college.

11 THE COURT: What type of work do you do.

12 PROSPECTIVE JUROR: Dean secretary for a middle
13 school, Clark County.

14 THE COURT: Thank you.

15 Are you married.

16 PROSPECTIVE JUROR: No.

17 THE COURT: Children.

18 PROSPECTIVE JUROR: One 14 year old.

19 THE COURT: Thank you.

20 Mr. Lees, 323 -- how long have you lived here.

21 PROSPECTIVE JUROR: 13 years.

22 THE COURT: Your level of education.

23 PROSPECTIVE JUROR: 3 years of college --
24 network security.

25 THE COURT: That's what you were studying in

1 college.
2 PROSPECTIVE JUROR: Yes. Customer service
3 manager.
4 THE COURT: Thank you.
5 Married.
6 PROSPECTIVE JUROR: No.
7 THE COURT: Children.
8 PROSPECTIVE JUROR: No.
9 THE COURT: Thank you.
10 Mr. Ruiz, 324 -- how long have you lived here.
11 PROSPECTIVE JUROR: 25 years.
12 THE COURT: Your level of education.
13 PROSPECTIVE JUROR: Some college.
14 THE COURT: What type of work do you do.
15 PROSPECTIVE JUROR: Auto technician.
16 THE COURT: Married, sir.
17 PROSPECTIVE JUROR: Yes.
18 THE COURT: What type of work does your wife
19 do.
20 PROSPECTIVE JUROR: Dry-cleaning place.
21 THE COURT: Children.
22 PROSPECTIVE JUROR: Yes.
23 THE COURT: How many.
24 PROSPECTIVE JUROR: 3.
25 THE COURT: How old.

1 PROSPECTIVE JUROR: 10, 5, and 8 months.

2 THE COURT: Thank you.

3 Mr. Boyce, 339 -- how long have you lived here.

4 PROSPECTIVE JUROR: 10 years.

5 THE COURT: Your level of education.

6 PROSPECTIVE JUROR: Doctorate.

7 THE COURT: What type of work do you do.

8 PROSPECTIVE JUROR: Senior manager on a program
9 that supplies services to Nellis.

10 THE COURT: Married.

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: What type of work does your wife
13 do.

14 PROSPECTIVE JUROR: Retired.

15 THE COURT: Any particular profession she
16 retired from.

17 PROSPECTIVE JUROR: Animation.

18 THE COURT: Children.

19 PROSPECTIVE JUROR: Step children.

20 THE COURT: Grown.

21 PROSPECTIVE JUROR: Both in there 40s.

22 THE COURT: Grand kids.

23 PROSPECTIVE JUROR: One.

24 THE COURT: Thank you.

25 Mr. Falla, 341 -- how long have you lived here.

1 PROSPECTIVE JUROR: Almost 18 year.

2 THE COURT: Your level of education.

3 PROSPECTIVE JUROR: 7.

4 THE COURT: What type of work do you do.

5 PROSPECTIVE JUROR: Electrical.

6 THE COURT: Married.

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: What type of work does your wife
9 do.

10 PROSPECTIVE JUROR: She work at civic center.

11 THE COURT: Do you have children.

12 PROSPECTIVE JUROR: Yes, one.

13 THE COURT: Grown.

14 PROSPECTIVE JUROR: Girl.

15 THE COURT: How old is she.

16 PROSPECTIVE JUROR: 24.

17 THE COURT: Thank you.

18 Ms. Soto, 349 -- how long have you lived here.

19 PROSPECTIVE JUROR: 7 years.

20 THE COURT: Where did you move here from.

21 PROSPECTIVE JUROR: Downey, California.

22 THE COURT: Your level of education.

23 PROSPECTIVE JUROR: High school -- 12.

24 THE COURT: What type of work do you do.

25 PROSPECTIVE JUROR: I work for Nevada Department

1 of Taxation. I'm an accounting assistant.

2 THE COURT: Married.

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: What type of work does your husband
5 do.

6 PROSPECTIVE JUROR: Works for unemployment
7 security division.

8 THE COURT: Children.

9 PROSPECTIVE JUROR: No.

10 THE COURT: Thank you.

11 Mr. Trejo, 355 -- how long have you lived here.

12 PROSPECTIVE JUROR: 18 years.

13 THE COURT: Your level of education.

14 PROSPECTIVE JUROR: 12.

15 THE COURT: What type of work do you do.

16 PROSPECTIVE JUROR: Music instructor for the
17 City of Las Vegas.

18 THE COURT: Are you married.

19 PROSPECTIVE JUROR: No.

20 THE COURT: Children.

21 PROSPECTIVE JUROR: No.

22 THE COURT: Thank you.

23 Ms. Smith, 356 -- how long have you lived here.

24 PROSPECTIVE JUROR: 8 years.

25 THE COURT: Where did you move here from.

1 PROSPECTIVE JUROR: Kansas.
2 THE COURT: Your level of education.
3 PROSPECTIVE JUROR: Bachelor's.
4 THE COURT: What type of work do you do.
5 PROSPECTIVE JUROR: Registered nurse.
6 THE COURT: Married.
7 PROSPECTIVE JUROR: Yes.
8 THE COURT: What type of work does your husband
9 do.
10 PROSPECTIVE JUROR: He is a high school
11 teacher.
12 THE COURT: Children.
13 PROSPECTIVE JUROR: Yes.
14 THE COURT: How many and how old are they.
15 PROSPECTIVE JUROR: One. She's 4.
16 THE COURT: Thank you.
17 Mr. Nokas, 368 -- how long have you lived here,
18 sir.
19 PROSPECTIVE JUROR: 52 years.
20 THE COURT: Your level of education.
21 PROSPECTIVE JUROR: High school, 10.
22 THE COURT: What type of work do you do.
23 PROSPECTIVE JUROR: Bartender.
24 THE COURT: Are you married, sir.
25 PROSPECTIVE JUROR: No.

1 THE COURT: Children.
2 PROSPECTIVE JUROR: Yes. Grown.
3 THE COURT: How many.
4 PROSPECTIVE JUROR: Three.
5 THE COURT: Grand kids.
6 PROSPECTIVE JUROR: 6 grand kids.
7 THE COURT: Thank you.
8 Saulski, 372 -- how long have you lived here.
9 PROSPECTIVE JUROR: 13 years.
10 THE COURT: Your level of education.
11 PROSPECTIVE JUROR: Master's degree.
12 THE COURT: What type of work do you do.
13 PROSPECTIVE JUROR: Teacher.
14 THE COURT: This school district.
15 PROSPECTIVE JUROR: Yes.
16 THE COURT: What grade level.
17 PROSPECTIVE JUROR: 7th and 8th grade.
18 THE COURT: I have a 7th grader.
19 PROSPECTIVE JUROR: Interesting.
20 THE COURT: Married.
21 PROSPECTIVE JUROR: No.
22 THE COURT: Children.
23 PROSPECTIVE JUROR: One 19 year old.
24 THE COURT: Thank you.
25 Mr. Gardner, 376 -- how long have you lived here.

1 PROSPECTIVE JUROR: 27 years.

2 THE COURT: Your level of education.

3 PROSPECTIVE JUROR: 15 years -- fire captain,
4 Henderson Fire. Two kids -- 14-year-old son, 17-year-old
5 daughter.

6 THE COURT: Married.

7 PROSPECTIVE JUROR: Single.

8 THE COURT: Thank you.

9 Of the 23 of you I've just chatted with, how many of
10 you have been jurors before.

11 Mr. Chambers, how many times.

12 PROSPECTIVE JUROR: In Nevada or --

13 THE COURT: All told.

14 PROSPECTIVE JUROR: A lot.

15 THE COURT: Did you leave California thinking
16 you'd get out of jury duty.

17 PROSPECTIVE JUROR: I'm surprised how many times
18 I got called.

19 THE COURT: How many times were you chosen and
20 heard a trial.

21 PROSPECTIVE JUROR: Total I'm guessing 5.

22 THE COURT: Do you have -- how long ago was the
23 last time, if you recall.

24 PROSPECTIVE JUROR: It was in Nevada. Maybe a
25 few years ago.

1 THE COURT: That trial, do you remember -- was
2 it a civil or criminal case.

3 PROSPECTIVE JUROR: I don't remember.

4 THE COURT: Remember, were you asked find if
5 somebody was liable and do money or decide guilt or
6 innocence.

7 PROSPECTIVE JUROR: It settled out of court.

8 THE COURT: Remember what the nature of the
9 dispute was.

10 PROSPECTIVE JUROR: No, I don't.

11 THE COURT: That impressive.

12 PROSPECTIVE JUROR: It was a low key case.

13 THE COURT: As you go back to -- is that the
14 only ones you've done in Nevada.

15 PROSPECTIVE JUROR: Yeah. I've been on jury
16 duty before. That was the only case I was on.

17 THE COURT: California, the cases you went to
18 trial and selected as a juror on, do you remember the
19 nature of those.

20 PROSPECTIVE JUROR: Yeah.

21 THE COURT: What type of cases did you sit on in
22 California.

23 PROSPECTIVE JUROR: One was a discrimination
24 case against the LAPD.

25 THE COURT: Civil.

1 PROSPECTIVE JUROR: There was another that was a
2 murder case. There was another -- I can't think off the
3 top of my head.

4 One was a property dispute, something like that.
5 There was another one. A minor case.

6 THE COURT: In each of the cases you sat on, did
7 the jury reach a verdict.

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Were you the foreperson of any of
10 the jurors.

11 PROSPECTIVE JUROR: No.

12 THE COURT: Thank you, very much.

13 Ms. Soto, how many times.

14 PROSPECTIVE JUROR: Once.

15 THE COURT: How long ago.

16 PROSPECTIVE JUROR: Like 25 years ago.

17 THE COURT: California.

18 PROSPECTIVE JUROR: Here in Las Vegas.

19 THE COURT: Remember the nature of the case.

20 Was it civil or criminal.

21 PROSPECTIVE JUROR: Criminal.

22 THE COURT: What about the charge, remember what
23 the charges were. The nature of the charges -- violence,
24 drugs, property.

25 PROSPECTIVE JUROR: Violence.

1 THE COURT: Did the jury reach a verdict.

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Were you the foreperson of the
4 jury.

5 PROSPECTIVE JUROR: No.

6 THE COURT: You said that was about 25 years
7 ago.

8 PROSPECTIVE JUROR: Thereabouts.

9 THE COURT: In Nevada we get you once every 25
10 years. California, I can't help you out there.

11 Mr. Nokes, 368 -- how many times.

12 PROSPECTIVE JUROR: Once.

13 THE COURT: How long ago.

14 PROSPECTIVE JUROR: 3 years ago, here in this
15 court house.

16 THE COURT: Do you remember the nature of the
17 case.

18 PROSPECTIVE JUROR: Yeah, criminal.

19 THE COURT: Do you remember the nature of the
20 charges.

21 PROSPECTIVE JUROR: Attempted murder.

22 THE COURT: Jury reach a verdict.

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Were you the foreperson.

25 PROSPECTIVE JUROR: No.

1 THE COURT: Thank you.

2 Mr. Gardner, 376 -- how many times.

3 PROSPECTIVE JUROR: Once. Ten years ago --
4 murder case.

5 THE COURT: Verdict.

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Were you the foreperson.

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Thank you.

10 Here in Las Vegas.

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Thank you.

13 How many, if any, of the 23 of you, have been the
14 victim of a crime.

15 Raymer, 277.

16 PROSPECTIVE JUROR: Someone kicked in my back
17 door of my house.

18 THE COURT: Was that while you were living in
19 Las Vegas.

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Were you home at the time.

22 PROSPECTIVE JUROR: No.

23 THE COURT: How long ago.

24 PROSPECTIVE JUROR: Less then a year.

25 THE COURT: Police called.

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Did you go to court.

3 PROSPECTIVE JUROR: No.

4 THE COURT: Thank you.

5 Ms. Battista, 278.

6 PROSPECTIVE JUROR: Domestic violence.

7 THE COURT: Yourself as a victim.

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: How long ago was that.

10 PROSPECTIVE JUROR: 4 years ago.

11 THE COURT: Was it the gentleman that's the
12 father of your children. Were you in a relationship with
13 that person.

14 PROSPECTIVE JUROR: At the time.

15 THE COURT: Were the police called.

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Did the case go to court.

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Did you testify in court.

20 PROSPECTIVE JUROR: I did.

21 THE COURT: Do you recall what level of the
22 court you were in. We have district court level, a
23 justice court level, kind of municipal court level.

24 PROSPECTIVE JUROR: I'm not sure.

25 THE COURT: Remember who his judge was.

1 PROSPECTIVE JUROR: No. It was here in the
2 court house.

3 THE COURT: We are all in the building now.
4 Supreme Court above and all the way down.

5 Remember whether the district attorney's office was
6 handling it or the city attorney's office.

7 PROSPECTIVE JUROR: District.

8 THE COURT: It wasn't Ms. Trippiedi, I take
9 it.

10 PROSPECTIVE JUROR: No.

11 THE COURT: Thank you.

12 Mr. Engelke, 302.

13 PROSPECTIVE JUROR: Two I can think of. F.

14 First one was equipment stolen out of my car several
15 years ago. Second one was we had a bike thrown through
16 our front window in the middle of the night.

17 THE COURT: Never heard of that before.

18 On each occasions were the police called.

19 PROSPECTIVE JUROR: Second one, yes.

20 THE COURT: Did the matter go to court.

21 PROSPECTIVE JUROR: No. They never found
22 anybody.

23 THE COURT: Okay.

24 Ms. Jeannotte, 317.

25 PROSPECTIVE JUROR: I was a young child when we

1 were robbed when I was home alone.

2 THE COURT: Somebody came in the house while you
3 were in the house.

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Young child, how old.

6 PROSPECTIVE JUROR: 6.

7 THE COURT: Was that Washington.

8 PROSPECTIVE JUROR: California -- Southern
9 California.

10 THE COURT: Was anybody caught.

11 PROSPECTIVE JUROR: No.

12 THE COURT: Never went to court at all.

13 PROSPECTIVE JUROR: No.

14 THE COURT: Were you -- were the police
15 called.

16 PROSPECTIVE JUROR: My sister and I. I was on
17 the phone with 911, and the police came.

18 THE COURT: Your sister was there with you.

19 PROSPECTIVE JUROR: She was 7.

20 THE COURT: Good. You are a 6 year old, that
21 doesn't seem right.

22 Mr. Kermani, 318.

23 PROSPECTIVE JUROR: 4 or 5 years ago my wife was
24 mugged.

25 THE COURT: Here in Las Vegas.

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Were police called.

3 PROSPECTIVE JUROR: They were not.

4 THE COURT: Was she your wife at the time.

5 PROSPECTIVE JUROR: She was.

6 THE COURT: Thank you.

7 Anybody else on that row.

8 Mr. Hall, 378.

9 PROSPECTIVE JUROR: 33 years ago home -- my
10 apartment was robbed.

11 THE COURT: Were you home at the time.

12 PROSPECTIVE JUROR: I wasn't home at the time.

13 THE COURT: Was that here in Las Vegas.

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Were police called.

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Did the matter go to court.

18 PROSPECTIVE JUROR: No.

19 One other instance -- a couple of incidents. I
20 managed a business -- a construction business that was
21 burglarized twice. Cops were called. Never went the
22 court.

23 THE COURT: Thank you.

24 Was that also here in Las Vegas.

25 PROSPECTIVE JUROR: Uh-huh.

1 THE COURT: Thank you.

2 Ms. Soto, 349 -- sorry. Ms. Campbell, 322.

3 PROSPECTIVE JUROR: My house was broken into.

4 THE COURT: How long ago was that.

5 PROSPECTIVE JUROR: 20 years ago.

6 THE COURT: Were you or any family members
7 home.

8 PROSPECTIVE JUROR: No.

9 THE COURT: Police called.

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Matter go to court.

12 PROSPECTIVE JUROR: No.

13 THE COURT: Was it here.

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Thank you.

16 I apologize. I know you had your hand up earlier,
17 Mr. Boyce, 339.

18 PROSPECTIVE JUROR: One here, a theft. Several
19 items were taken. Police were called. Nothing came of
20 it. That was 4 years ago.

21 15 years ago in Southern California breaking and
22 entering. Major theft. Person was caught. Didn't go to
23 trial. Admitted taking and disposing of the items.

24 And here about 4 or 5 years ago, step-son who was
25 accosted beaten with a bat and robbed.

1 THE COURT: Was anybody charged with that.

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Go to court.

4 PROSPECTIVE JUROR: It went to court. I didn't
5 have to.

6 THE COURT: You didn't testify.

7 PROSPECTIVE JUROR: I did not.

8 THE COURT: Did your son.

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: You said that was here as well.

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Thank you.

13 Yes, ma'am.

14 PROSPECTIVE JUROR: 1977, when I was 6, my aunt
15 -- my mother's sister -- was murdered.

16 THE COURT: In Kansas.

17 PROSPECTIVE JUROR: Los Angeles.

18 THE COURT: Okay. This is 356, Ms. Smith.

19 As far as you know was anybody arrested or charged.

20 PROSPECTIVE JUROR: No.

21 THE COURT: Thank you.

22 Mr. Gardner, 376.

23 PROSPECTIVE JUROR: My car was broken into at
24 the house, locally. Police were called. No one was
25 charged.

1 THE COURT: How long ago was that.

2 PROSPECTIVE JUROR: 8 years ago.

3 THE COURT: Thank you.

4 Okay. Top row.

5 PROSPECTIVE JUROR: 3 years ago they broke in
6 our house and stole some of our stuff, but we weren't home
7 at that time.

8 THE COURT: Police called.

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Matter go to court.

11 PROSPECTIVE JUROR: No.

12 THE COURT: Okay -- that's Ms. Guardado, 304.

13 How many of the 23 of you or a close family member or
14 friends have been accused or charged or convicted of a
15 crime.

16 Mr. Hall, 339.

17 PROSPECTIVE JUROR: My stepson.

18 THE COURT: What was he charged with or
19 convicted of.

20 PROSPECTIVE JUROR: Actually drugs and theft.

21 THE COURT: Were those here.

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: As far as you know was he prosecuted
24 by the district attorney's office.

25 PROSPECTIVE JUROR: I don't know because I

1 didn't go into that part of it. All I know is he's out on
2 parole and staying with us.

3 THE COURT: You never had any involvement with
4 whomever it was that was arrested or charged.

5 PROSPECTIVE JUROR: Right.

6 THE COURT: Anybody else.

7 Ms. Soto, 349.

8 PROSPECTIVE JUROR: My brother was charged with
9 stealing.

10 THE COURT: Where is that.

11 PROSPECTIVE JUROR: Smith's here in Las Vegas.

12 THE COURT: Las Vegas.

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Was he charged and prosecuted as far
15 as you know.

16 PROSPECTIVE JUROR: He has schizophrenia so they
17 found out it was a misunderstanding.

18 THE COURT: Thank you.

19 How long ago was that.

20 PROSPECTIVE JUROR: 2 years ago.

21 THE COURT: Thank you.

22 Anybody else.

23 Ms. Jeannotte, 317.

24 PROSPECTIVE JUROR: My husband, before I knew
25 him, was charged with a felony theft of artifacts when he

1 was in college. But he paid restitution and the felony
2 charges were dropped.

3 THE COURT: Where.

4 PROSPECTIVE JUROR: Idaho.

5 THE COURT: But you came along and made a good
6 man of him.

7 Anybody else.

8 Ms. Battista, 278.

9 PROSPECTIVE JUROR: I was charged with petty
10 theft.

11 THE COURT: How long ago was that.

12 PROSPECTIVE JUROR: 8 years.

13 THE COURT: Were you a juvenile.

14 PROSPECTIVE JUROR: No.

15 THE COURT: Was the matter -- were you
16 prosecuted for it and have to go to court.

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Here.

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: I'm guessing since it was petty, it
21 would have been in justice court or municipal court.

22 PROSPECTIVE JUROR: North, Las Vegas.

23 THE COURT: Anybody else.

24 Ms. Campbell 322.

25 PROSPECTIVE JUROR: My cousin is being charged

1 with firing a gun.

2 THE COURT: Here in Las Vegas.

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: How long ago.

5 PROSPECTIVE JUROR: It's still pending.

6 THE COURT: As far as you know is it being
7 prosecuted -- is it like discharging of a firearm.

8 PROSPECTIVE JUROR: Right.

9 THE COURT: In an occupied area as opposed to
10 out in the desert.

11 PROSPECTIVE JUROR: Right.

12 THE COURT: Is it being prosecuted by the
13 district attorney's office.

14 PROSPECTIVE JUROR: I don't know.

15 THE COURT: Any of the 23 of you believe that
16 you would have a tendency to give more weight or credence
17 or less weight or credence, whatever the case may be, to
18 the testimony of a police officer just because the person
19 was a police officer. As opposed to treating them like
20 other witnesses evaluating testimony, in light of all
21 other facts and circumstances in the case.

22 Anybody focus on a witness that's a police officer
23 because they were a police officer and decide whether to
24 believe or disbelief them.

25 I see no hands. Thank you.

1 Do the 23 of you all believe you can wait in forming
2 your opinion on the appropriate result here, until after
3 you've heard all the evidence and been given the legal
4 instructions by the court.

5 That means you can't make up your mind after Ms.
6 Trippiedi gives an opening statement or Ms. Pensabene
7 cross-examines the first witness.

8 One of the things you need to do as a juror is be
9 able to keep an open mind and wait until you have all the
10 evidence and go back and deliberate with your fellow
11 jurors and come up with whatever you believe is a just and
12 proper verdict.

13 Does everybody believe they would be able to do
14 that.

15 Anybody who could not do that. I see no hands. Thank
16 you.

17 Okay. That's all the questions I have for you. I
18 appreciate your time with me. I'll turn this over to
19 the State.

20 MS. TRIPPIEDI: Good morning.

21 I'll try not to be too long. The whole purpose of
22 this jury process is to make sure that both sides, myself
23 and the defense, have a fair chance at a fair verdict.

24 So, you know, we want to make sure that we're not
25 going into this with one of us having a head start. Say

1 for example you were driving here for jury services and
2 you got a ticket from a police officer. I don't want you
3 to be coming in today thinking I hate police officers.
4 Whatever a police officer says I'm going to rule against
5 whatever. Whatever he says I'm not going to believe him.
6 I'll go in the jury room and tell everybody police
7 officers are liars. I'm going to go into it already with
8 a bias. So that's what we want to make sure.

9 So keeping that in minds I'll ask you a few
10 questions, kind of following up on what the judge asked
11 you guys.

12 Ms. Battista, you said that you were the victim of
13 domestic violence and you weren't sure when it went to
14 court which attorney in the office handled that.

15 PROSPECTIVE JUROR: Right.

16 MS. TRIPPIEDI: Anything about that experience
17 that would cause you to hold any grudges or biases against
18 my office.

19 PROSPECTIVE JUROR: No.

20 MS. TRIPPIEDI: I want to make sure.

21 Anything about that experience that would cause you
22 to hold police officers in a negative light.

23 PROSPECTIVE JUROR: No.

24 MS. TRIPPIEDI: Mr. Kermani, you said your wife
25 was mugged.

1 PROSPECTIVE JUROR: Yes.

2 MS. TRIPPIEDI: Did you go to court for that.

3 PROSPECTIVE JUROR: No.

4 MS. TRIPPIEDI: Did they find the person.

5 PROSPECTIVE JUROR: Under circumstances around
6 it, they drug my wife to the ground and tried to pull her
7 purse. She fought against it. They ran off. So they
8 didn't catch.

9 MS. TRIPPIEDI: Never caught the person.

10 PROSPECTIVE JUROR: No.

11 MS. TRIPPIEDI: Anything about that experience,
12 are you going to hold it against officers if they weren't
13 able to catch the guy that mugged your wife. Can you
14 still be fair today for our case.

15 PROSPECTIVE JUROR: Yeah.

16 MS. TRIPPIEDI: Mr. Boyce, you said your stepson
17 was robbed. Is there anything about that experience --
18 you said that that went to court and you believe a
19 trial.

20 PROSPECTIVE JUROR: I don't remember if it was a
21 trial. I know that somebody did spend time.

22 MS. TRIPPIEDI: Your stepson lives with you
23 now.

24 PROSPECTIVE JUROR: Yes.

25 MS. TRIPPIEDI: Anything ab out that that would

1 cause you to be unfair towards my office, the district
2 attorney's office, or towards police officers.

3 PROSPECTIVE JUROR: Not on that, no.

4 MS. TRIPPIEDI: You said your stepson was also
5 convicted of some charges -- theft and drug related
6 charges.

7 PROSPECTIVE JUROR: Yes.

8 MS. TRIPPIEDI: Anything about police officers
9 or my office's treatment of him that would cause you to be
10 impartial or unfair.

11 PROSPECTIVE JUROR: Something with that one.

12 MS. TRIPPIEDI: Go into more detail.

13 PROSPECTIVE JUROR: He ended up getting offered
14 a deal. Some information was not made -- not presented at
15 the time that would have made it different. They refused
16 to listen to that or go further with it.

17 MS. TRIPPIEDI: Information from your son, that
18 should have been presented from you think the police.

19 PROSPECTIVE JUROR: Not from him or other -- his
20 record, some other information, should have been
21 presented. And therefore he ended up serving more time, I
22 should say. A few other things.

23 MS. TRIPPIEDI: Did that case, was it a plea
24 deal that happened.

25 PROSPECTIVE JUROR: It ended up in a plea

1 deal.

2 MS. TRIPPIEDI: You basically feel he ended up
3 getting a good deal.

4 PROSPECTIVE JUROR: He did not. He's been
5 trying to talk to people about that and nothing will
6 happen.

7 MS. TRIPPIEDI: Was it with the district
8 attorney's office.

9 PROSPECTIVE JUROR: From what I understand,
10 yes.

11 MS. TRIPPIEDI: Do you think that -- I don't
12 know if I worked on your son's case.

13 PROSPECTIVE JUROR: I don't know either.

14 MS. TRIPPIEDI: I have no idea. I've prosecuted
15 many, many cases. I'm not sure if I worked or anyone on my
16 team worked on it.

17 Would you hold your negative feelings toward the DA's
18 office against me personally in going into this case, or
19 do you think you can still go in fairly and impartial.

20 PROSPECTIVE JUROR: I'd say that there's some
21 bias. Not necessarily a lot but some.

22 MS. TRIPPIEDI: Fair enough.

23 I appreciate your honesty.

24 The next questions I have are going to be for all of
25 you in general.

1 A lot of shows now, a lot of crime related shows, I
2 don'ts have time to watch all of them but I know they're
3 all out there. There's CSI Miami. A lot of prosecution
4 related shows.

5 I don't know if you all watch those shows, but I do
6 want to make you aware that in those shows we have DNA
7 evidence. There's video evidence. There's surveillance,
8 finger print evidence. So my next question in that regard
9 is do you feel that we need DNA or scientific evidence in
10 order to convict somebody.

11 Anybody.

12 Does anybody feel like you don't need scientific
13 evidence in order to convict somebody.

14 PROSPECTIVE JUROR: Depends on the case.

15 MS. TRIPPIEDI: Go into more detail.

16 Your name.

17 PROSPECTIVE JUROR: Greg Chambers, 281.

18 MS. TRIPPIEDI: Depends to the case.

19 PROSPECTIVE JUROR: Like a rape trial or
20 something, where there's some reason that someone would
21 have been at a location at a time or proved that they were
22 involved in that crime, I think DNA would be critical
23 evidence.

24 MS. TRIPPIEDI: Okay. Thank you. I appreciate
25 that.

1 I see some of you shaking your head.

2 PROSPECTIVE JUROR: I agree with him. I think
3 that DNA is just one more thing to link it and make a case
4 stronger.

5 MS. TRIPPIEDI: Do you feel like him, it should
6 be a case by case basis. Do you feel like every single
7 case, in order to convict someone, we need to have DNA.

8 PROSPECTIVE JUROR: Case by case basis. It
9 seems like a lot of people that are innocent for the
10 longest time and now that we have DNA the evidence proved
11 it.

12 MS. TRIPPIEDI: I agree with you.

13 You are Mr. Hall, for the record.

14 Thank you.

15 Anybody else feel one way or the other. I see no
16 hands.

17 My next question is I know some of you said,
18 particularly Ms. Battista, you were charged with petty
19 theft.

20 PROSPECTIVE JUROR: Yes.

21 MS. TRIPPIEDI: So I don't know if anyone else
22 now has been charged with a crime, but do you feel that
23 everybody is entitled to protection of the law.

24 Say you were to learn that the victim in this case
25 has a record -- criminal record. Would you feel that he

1 is still entitled to the protection of the law.

2 You agree with that statement. Everybody is entitled
3 to the protection of the law.

4 Anybody not agree with that statement.

5 That's all I have. I'll pass the panel. Thank you
6 all.

7 THE COURT: Defense, Ms. Pensabene or Ms.
8 Harris.

9 MS. PENSABENE: Thank you, your Honor.

10 Good morning.

11 So what I'm going to try to do is ask some questions
12 to the entire panel, then if no one answers or raises
13 their hands I'll call on people individually. Sorry,
14 ahead of time.

15 First thing I want to talk about, has anyone here
16 heard the saying the devil is in the details.

17 Show of hands.

18 What does that mean. Anyone want to tell me what
19 that means to them.

20 Ms. Chambers.

21 PROSPECTIVE JUROR: So, when you tell a story
22 about any particular situation, you viewpoint takes a
23 strong -- that really drives the essence of a story. So
24 if you are presenting information and data that supports
25 your viewpoint, then obviously that's how it looks.

1 But when you dig into the details in some cases you
2 find out you may have presented some information, but
3 there are key pieces of information that were not
4 presented that would change that presumption.

5 MS. TRIPPIEDI: Exactly.

6 This saying was really important in my own life. So
7 not that that's important, but -- anyway -- a couple of
8 months ago my husband decided we are going to cancel
9 cable. We're done. We're trying to save money, cut
10 expenses. We decided cancel cable. So canceled cable.
11 That lasted a month. We needed it back.

12 We were going to take walks, do puzzles, talk more.
13 We needed the cable back. I call COX and I'm telling them
14 my whole situation, I need it back. They say, you know,
15 you have high speed internet, for \$30.00 you can get a
16 hundred channels. This is the greatest deal ever. Sign
17 me up.

18 The next day, the cable got turned on. Yeah, we had
19 a hundred channels, brand new channels. No ESPN, no TLC.
20 My thinking was it was going to be channels 1 through 100.
21 ESPN is like 30, My TLC channel is 33.

22 So in that situation, I really needed to pay
23 attention to details. I did ask any questions. I'm a
24 lawyer so that was like my bad.

25 Has anyone here had a situation where they didn't get

1 all the details and ended up making a mistake.

2 Mr. Soto.

3 PROSPECTIVE JUROR: Yeah, well, I think
4 everybody's made a mistakes.

5 MS. PENSABENE: Sorry, your name.

6 PROSPECTIVE JUROR: Ms. Smith.

7 MS. PENSABENE: Did you have any experience like
8 that.

9 PROSPECTIVE JUROR: Um, I'm sure I have, but I
10 can't think offhand.

11 MS. PENSABENE: Anyone have the devil in the
12 details, does that mean something different for anyone
13 else here, let's say.

14 Ms. Devito.

15 PROSPECTIVE JUROR: No.

16 MS. PENSABENE: Mr. Boyce, sounded like -- do
17 you anything like that in your life, devil in the
18 details.

19 PROSPECTIVE JUROR: At different times.
20 Depending on what details you pay attention to and how
21 focused. It depends on how much will happen with that.

22 MS. PENSABENE: I want to talk about -- these
23 are random things I'm asking questions about -- the
24 elderly.

25 If I were to tell you that the victim in this case is

1 an old gentleman. Are you going to be able to set aside
2 sympathy and decide this case based on the facts and
3 details.

4 Is that going to be a problem for anybody here.

5 Okay.

6 Ms. Raymer, any point in your life where you feel
7 sympathy for someone and you want to throw them a bone.

8 PROSPECTIVE JUROR: Of course. I was a middle
9 school teacher.

10 MS. PENSABENE: Being a middle school teacher if
11 you feel sympathetic over one child or another, are you
12 able to be fair in the classroom.

13 PROSPECTIVE JUROR: Yes.

14 MS. PENSABENE: So that would carry over and
15 transcend to being fair in the courtroom as well.

16 PROSPECTIVE JUROR: Yes.

17 MS. PENSABENE: Great.

18 So as we stand here today, if you were all about to
19 vote now on go back in the room and you haven't heard any
20 testimony, openings, anything, if you are going to vote
21 guilty or not guilty how many would vote not guilty right
22 now.

23 You haven't heard any testimony. I know it's a weird
24 question. But right now everybody should have their hands
25 up.

1 PROSPECTIVE JUROR: We have to choose one or the
2 other.

3 MS. PENSABENE: Right this second Judge Herndon
4 says you have to make a decision now. You haven't heard
5 anything. You have to decide now. Would you all vote not
6 guilty. Right.

7 My point being is that you haven't heard evidence.
8 It is the State's job to prove this case to you beyond a
9 reasonable doubt.

10 Every single element of this case -- they have to
11 prove my client -- now Mr. Manning enjoys the presumption
12 of innocence. What that means is he is presumed innocent
13 right now.

14 The State has to prove the case. If you didn't hear
15 evidence you have to vote not guilty. Make sure that
16 everyone understand what that really means.

17 Anyone have question about that.

18 Also I wanted to talk about whether or not my client
19 decides to testify. Now the judge went into it with you
20 guys, about a constitutional right whether or not he wants
21 to testify.

22 That's his prerogative, right. Our founding fathers
23 started that. Anyone here going to hold it against my
24 client if he decides not to testify.

25 Do you think that that's a good rule in the

1 constitution. Why.

2 PROSPECTIVE JUROR: Sometimes people get
3 nervous.

4 MS. TRIPPIEDI: Right.

5 PROSPECTIVE JUROR: 349.

6 MS. PENSABENE: Mr. Hall, I'll rephrase that.
7 Do you think that's a good rule we have or why not.

8 PROSPECTIVE JUROR: 378 --

9 Yes, I think it's a good rule. He should have an
10 opinion. He should have a choice. You testify or not
11 testify, one way or the other.

12 MS. PENSABENE: You are shaking your head.

13 PROSPECTIVE JUROR: 317 -- I don't think you
14 should force anybody to testify or speak. They shouldn't
15 do it under duress.

16 MS. PENSABENE: Okay.

17 Can you think of reasons why if, for example, you are
18 falsely accused why you won't want to testify. Can you
19 shout out reasons -- fear -- that's a driving force.

20 Anything else.

21 Maybe you're not a good witness. Maybe you're scared
22 of public speaking. Any other reasons you can think of.
23 No. Thank you.

24 So I want to talk about different police work. Ms.
25 Trippiedi talked about CSI. If you are a detective and

1 piecing together a case, what kind of evidence do you
2 want. Show of hands. Evidence you want to have in a
3 case.

4 Mr. Lees.

5 PROSPECTIVE JUROR: Depends on the case, but
6 something to where -- say a traffic ticket, video evidence
7 of it. Someone saying I saw it. Something along those
8 lines.

9 Violence, rape, murder, the DNA would be most
10 helpful. Try to picture who was there.

11 MS. PENSABENE: Interviews, interviews with
12 people.

13 PROSPECTIVE JUROR: Helpful.

14 MS. PENSABENE: Statements.

15 PROSPECTIVE JUROR: Yes.

16 MS. PENSABENE: Sir.

17 PROSPECTIVE JUROR: Witnesses -- 324.

18 THE COURT: 324.

19 MS. PENSABENE: What else do you want.

20 How about eye-witness, eye-witnesses. How do you feel
21 about eye-witnesses.

22 Ma'am.

23 PROSPECTIVE JUROR: 317 -- I know that I wasn't
24 a good eye-witness when I was robbed, but I was young, in
25 a scary situation. A lot of times you don't remember

1 details. So I think that some people may be better than
2 others.

3 MS. PENSABENE: That's a great point.

4 What are some factors that might affect eye-witness
5 identification.

6 Anyone.

7 We have fear, stress --

8 PROSPECTIVE JUROR: 378 -- not wanting to be
9 involved.

10 MS. PENSABENE: Right.

11 PROSPECTIVE JUROR: There is a lot -- 376 --
12 mental conditions, alcohol, not paying attention to the
13 event. They were there and want to be a witness.

14 MS. PENSABENE: Other things, lighting. What
15 else can we think of.

16 Ms. Battista.

17 PROSPECTIVE JUROR: I think lots of things. I
18 think witnesses are good and bad. Some witnesses may feel
19 a certain way, depending on what crime is taking place.

20 Past experiences, things like that may play on how
21 they feel about something happening at the time.

22 MS. TRIPPIEDI: All great answers. Thank you.

23 Ms. Jones, I haven't heard from you. Anything you
24 can think of that might effect eye-witness ID.

25 PROSPECTIVE JUROR: Well, there has been

1 attempted robberies at my bank, but it was my co-worker.
2 And all I remember -- I was kind of an eye-witness, but
3 like it was all a blur because we are all scared, have to
4 push the signal, you know.

5 MS. PENSABENE: Panic button.

6 PROSPECTIVE JUROR: Emergency button to call the
7 security. So it was just like it would be helpful, but
8 not much because you don't really see the details of the
9 person's face.

10 MS. PENSABENE: Thank you. Thank you.

11 Ms. Jones in that situation, what did you do after
12 you pushed that button. Where did you go.

13 PROSPECTIVE JUROR: I was the drive-up teller.
14 I was behind when everything was going on. It was --
15 there were whispers like, because her face was like --

16 MS. PENSABENE: You could see it on her face.

17 PROSPECTIVE JUROR: She had tears.

18 MS. PENSABENE: Did you pay attention to the
19 person she was helping.

20 PROSPECTIVE JUROR: That's the thing. It was
21 all a blur. I was looking at her and kind of like the
22 side of my eye seeing tall -- she was black.

23 MS. PENSABENE: Okay. But you couldn't
24 recognize her. Very stressful event for you.

25 Are you still work at the same bank.

1 PROSPECTIVE JUROR: Yes, I do. I couldn't
2 concentrate on my work. I had to continue what I was
3 doing. I couldn't tell police the details or how he
4 looked like, but all I could see was he was black tall and
5 he had a hood on.

6 MS. PENSABENE: Just basic details really.

7 I want to move on a little. I want to talk about
8 your role as jurors. You probably all know how important
9 that is. Like the judge mentioned there is not much that
10 our country asks of our citizens, but jury duty is one of
11 them.

12 So, is there anyone here who believes that their role
13 as a juror is to get the bad guys off the street.
14 Anybody.

15 Ms. Devito.

16 PROSPECTIVE JUROR: No.

17 MS. PENSABENE: Why is that.

18 PROSPECTIVE JUROR: That's what the police are
19 there for, investigate, do all that.

20 MS. PENSABENE: Okay.

21 No one here believes it's their job to please a
22 certain person. You are not here to suggest hat to the
23 State or defense.

24 You all understand that.

25 So if you were going to stand trial, what kind of

1 jury would you want, qualities you want.

2 PROSPECTIVE JUROR: 323 -- impartial.

3 MS. TRIPPIEDI: Mr. Nokes.

4 PROSPECTIVE JUROR: Somebody with common
5 sense.

6 MS. PENSABENE: Great -- Mr. Chambers.

7 PROSPECTIVE JUROR: 281 -- someone that
8 listens.

9 MS. PENSABENE: Anybody else.

10 Mr. Trejo, what quality would you like in a juror.

11 PROSPECTIVE JUROR: Attentive.

12 MS. PENSABENE: Not sleeping.

13 PROSPECTIVE JUROR: Ms. Battista -- 278 -- open
14 minded.

15 MS. PENSABENE: Great.

16 I hope that if you are on this jury you bring all of
17 those qualifies to the box as well.

18 We have taken a lot of time. I don't have that much
19 left to talk about.

20 The last thing I want to talk about is reasonable
21 doubt. That's something that's tossed around a lot. Can
22 somebody explain to me what that means.

23 PROSPECTIVE JUROR: Can't prove exactly all of
24 the evidence and --

25 THE COURT: Let me jump in here. I don't want

1 you asking them to speculate what they think reasonable
2 doubt is.

3 Reasonable doubt is a specific law we instruct you on
4 and the attorneys know they can't define it for you in any
5 fashion or argue it.

6 I don't want you all expressing in front of everybody
7 else what you think that means. You can ask questions
8 about your ability to follow the law and pay attention to
9 that, but not ask them to guess at what it is.

10 PROSPECTIVE JUROR: That was badge 309.

11 MS. PENSABENE: Let's talk about the burden of
12 proof.

13 So there is a lot of legal terms getting thrown
14 around throughout the trial, here, in closing arguments,
15 and jury instructions.

16 Everyone should know what the burden of proof is.

17 Anybody know what burden of proof -- what that
18 means.

19 What that means is -- I went into this with the
20 presumption of innocence. The State, they have the
21 burden. They are the ones that bring the charges. They
22 are the ones that have to have proof beyond a reasonable
23 doubt, these charges.

24 Does anyone here think that Mr. Manning needs to
25 prove his innocence.

1 That's the system that we have. Are you happy with
2 that system. Do you think there's a better system out
3 there.

4 Court's indulgence.

5 THE COURT: Okay.

6 MS. PENSABENE: Thank you all for your time.
7 That's all I have.

8 THE COURT: Approach the bench please.

9 Both sides have passed the panel of 23 for cause.

10 MS. PENSABENE: Yes, your Honor.

11 MS. TRIPPIEDI: Yes.

12 THE COURT: Okay.

13 That means the people in my audience, you are done.
14 If the others stayed around, they'd be done before lunch
15 and all done with jury duty.

16 Thank you for coming. Thank you for your
17 participation. Report back to jury services. Everybody
18 else is going to take a recess for a few minutes to allow
19 the attorneys to whittle the 23 of you down to the 13 to
20 hear our case.

21 Once we've done that I'll bring you back in and tell
22 you who it is and we'll take our lunch break.

23 Another 20 or so minutes.

24 Wait outside.

25 JURY ADMONITION

1 During the recess, ladies and gentlemen, you are
2 admonished not to converse among yourselves or with anyone
3 else, including, without limitation, the lawyers, parties
4 and witnesses, on any subject connected with this trial,
5 or any other case referred to during it, or read, watch,
6 or listen to any report of or commentary on the trial, or
7 any person connected with this trial, or any such other
8 case by any medium of information including, without
9 limitation, newspapers, television, internet or radio.

10 You are further admonished not to form or express any
11 opinion on any subject connected with this trial until the
12 case is finally submitted to you.

13 You also cannot form or express an opinion on any
14 subject connected to the trial until I submit it to you
15 for your deliberation.

16 What does that mean.

17 Whenever we take a recess you have to find other
18 things to talk about. You can't go outside and discuss
19 the case and witnesses and stuff like that. Talk about
20 the weather, sports, talk politics. The only time you can
21 talk about the case is when you are back as a deliberating
22 body.

23 We'll be in recess for 20, 25 minutes. Then we'll
24 get you in here and off to lunch.

25 Still on the record, outside the presence of the

1 jury. We can't turn on white noise at the bench, what we
2 discussed by way of writing at the bench was that neither
3 side had any challenges for cause, correct.

4 MS. TRIPPIEDI: Correct.

5 MS. PENSABENE: Correct.

6 THE COURT: The panel was then passed for
7 cause.

8 If you waive one of your challenges you are not
9 waiving them all, so pass this list back and forth and as
10 soon as you'er done, let me know.

11 Thank you.

12 (Brief recess taken.)

13 THE COURT: Back on the record, 290624.

14 With regard to the preemptory challenges, does either
15 side need to make a record as to either side's
16 challenges.

17 MS. PENSABENE: No, your Honor.

18 MS. TRIPPIEDI: No, your Honor.

19 THE COURT: So I have your jury as Ms. Raymer
20 277; Ms. Battista, 278; Mr. Chambers, 281; Ms. Guardado,
21 304; Mr. Hall, 378; Ms. Jeannotte, 317; Mr. Kermani, 318;
22 Mr. Durn, 320; Mr. Ruiz, 324; Mr. Falla, 341; Mr. Trejo,
23 355; and Ms. Smith, 356. The alternate is Mr. Nokes,
24 368.

25 Is that what you have.

1 MS. PENSABENE: Yes, your Honor.

2 MS. TRIPPIEDI: Yes.

3 THE COURT: Get them in, and we'll tell them the
4 good news and send them home.

5 Back on the record in C-290624. Our jury panel is
6 present. Mr. Manning is here with his attorneys. State's
7 attorneys are present.

8 I'm going to release a number of you. If you'd let
9 me read through your names before you go, please.

10 I'm going to excuse Ms. Jones, 279; Magcalas, 301;
11 Mr. Engelke, 302; Ms. Devito, 309; Campbell, 322; Lees,
12 323; Boyce, 339; Soto, 349; Saulski, 372; Mr. Gardner,
13 376. Thank you all for your time here today. You should
14 be done with your jury duty.

15 Report back down to jury services and you can get on
16 your way. Thank you all.

17 The 13 of you remaining, I'll have you stand up and
18 raise your right hand and be sworn as jurors.

19 THE CLERK: You and each of you do solemnly
20 swear you will well and truly try the case at issue and a
21 true verdict render according to the evidence, so help you
22 God.

23 PROSPECTIVE JUROR: I do.

24 THE COURT: Be seated. Couple of quick
25 things.

1 Number one, Leslie is going to give you blue badges
2 now that replaces the white badge you have. It shows you
3 are a juror, so please make sure you wear that in the
4 building. That let's anybody else know, attorneys, court
5 staff, that you are juror on a trial and it makes sure
6 they don't try to chat you up about thing inappropriate.

7 Additionally, when we take a recess, couple of things
8 that I go through about what you can and cannot do as
9 jurors. I'll read some things to you once we get you
10 seated, but, I'll wait to read that to you till after you
11 get back from lunch.

12 But couple of important things. Number one, you
13 can't engage in any legal or factual research on your own.
14 You all have smart phones, but don't go on the Internet
15 and look up how you define reasonable doubt, robbery,
16 whatever it may be.

17 The information you need to decide a trial you'll get
18 in court. The witnesses, evidence, jury instructions,
19 arguments of the attorneys. That's fair. I'm not just
20 talking about fair to the parties, I'm talking about fair
21 to the 12 of you who deliberate.

22 The only way to have it fair among all of you is if
23 you all deliberate upon the same basis of knowledge you've
24 received here in court. So don't try and learn anything
25 on your own.

1 Additionally how many of you have social media --
2 Facebook. Don't put posts out there about doing jury
3 duty, being selected for jury duty. I know a lot of times
4 social media you put something out there and people
5 respond back to you whether you are soliciting their
6 comments or not. That gets troublesome from the
7 perspective of being on a jury. People want to give you
8 all their opinions about everything. You'll need to tell
9 family members and employers, but limit it to I got
10 selected for jury duty and as soon as I'm done I can talk
11 about the case. Okay.

12 With that I'll send you to lunch. We'll start back
13 up -- I have it being about -- close to 1:20 now. Let's
14 plan on starting at 2:30 to give you more time for people
15 in here to fix this technology.

16 See you then.

17 JURY ADMONITION

18 During the recess, ladies and gentlemen, you are
19 admonished not to converse among yourselves or with anyone
20 else, including, without limitation, the lawyers, parties
21 and witnesses, on any subject connected with this trial,
22 or any other case referred to during it, or read, watch,
23 or listen to any report of or commentary on the trial, or
24 any person connected with this trial, or any such other
25 case by any medium of information including, without

1 limitation, newspapers, television, internet or radio.

2 You are further admonished not to form or express any
3 opinion on any subject connected with this trial until the
4 case is finally submitted to you.

5 See you back at 2:30. Anything outside the
6 presence.

7 MS. PENSABENE: No, your Honor.

8 THE COURT: See you after lunch.

9 (Lunch recess taken.)

10 THE COURT: On the record in C-290624
11 Mr. Manning is here with his attorneys. State's attorneys
12 are present.

13 MS. TRIPPIEDI: Looks like there was two issues.
14 One of them is I just asked defense counsel if they would
15 -- are going to object to the admission of the photo
16 lineup in this case. She said she does object on the
17 basis that it's one of those, where did we get the picture
18 of him.

19 I told her I plan on mentioning it's how we were able
20 to solve the case. The victim does positively identify
21 the Defendant. I'm not going to ask the detective on the
22 stand, how he was able to get a photo of him. I'm not
23 going to imply it's a booking photo from a prior criminal
24 act.

25 You know, there are several ways people can have

1 photos on record. There's drive license pictures -- you
2 know, if it's an issue where she doesn't want it shown to
3 the jury, that's one thing. But I do think it is
4 admissible, if we can support it.

5 THE COURT: Okay.

6 MS. PENSABENE: Your Honor, our objection
7 articulated it well based on the fact that the way the
8 events transpired is a photo lineup was shown to the
9 victim prior to Mr. Manning being arrested. So I think it
10 is going to lead the jury to believe that he has priors,
11 that he has a rap sheet. Where did they get this mug shot
12 of him. I don't want the jury to draw on any of those
13 conclusions and assume that this photo is from a previous
14 booking photo.

15 THE COURT: Well, photo lineups are routinely
16 admitted. I don't have a problem with its admission.
17 Looking at this one there is nothing on any of the
18 gentleman's photographs in the 6 photos that indicates
19 jail clothing or anything like that. We have a couple --
20 3 guys wear dark shirts, two guys with white shirts, one
21 was a gray shirt.

22 Generally speaking the way it's done as well is --
23 Ms. Trippiedi, you need to do it -- lead the detective in
24 terms of you have access to a database that comes from
25 DMV, work card information, to draw photos to produce

1 photo lineups, correct. Yes.

2 As opposed to saying where do you get the photographs
3 from. That way they are not saying I get a mug shot or
4 jail photo.

5 MS. TRIPPIEDI: Or not ask the question. Do you
6 -- were you able to pull a photo of him.

7 THE COURT: I would prefer you do it the way I
8 just said it, because that infers to the jury we have the
9 ability to get photos from drive licenses, work card,
10 people that work serving liquor, whatever the issue may
11 be. Those photos are taken and compiled by Metro to make
12 available to them to put together photo lineups.

13 So that's the way I would prefer that you do it. I
14 don't know if you have an objection.

15 MS. PENSABENE: That's my preference. If it's
16 going to come in, that's my preference as well.

17 THE COURT: The photo lineup is certainly
18 admissible, then just how do you ask the question. I
19 would prefer that you let the detective know ahead of time
20 to do it that way so he's not spouting off anything about
21 mug shots or anything.

22 Sometimes people want to bring that out for a reason,
23 from a defense standpoint, in which case it's fine to go
24 into it. But absent that being the case, let him know you
25 are going to lead him through that and it's a yes or no.

1 MS. TRIPPIEDI: I'll ask the database -- have
2 access to a database to compile photographs --

3 THE COURT: The police department has access to a
4 database containing driver's license photos, work card
5 photos, etc..... you can pull off of those photos to put
6 together a photo lineup, correct.

7 MS. TRIPPIEDI: Okay.

8 MS. PENSABENE: The next issue, your Honor, is
9 media release. The State plans to introduce it as an
10 exhibit. We don't have a problem with the photos. Our
11 issue is we think that the information in the box beneath
12 should be redacted.

13 The information as it reads now basically sounds like
14 fact. It's not allegations, it's this suspect did X. And
15 this suspect did Y.

16 We think that is prejudicial and should be redacted.
17 They will still be able to get the media release in with
18 the photos. I just don't think the information on the
19 bottom is fair. It's more prejudicial.

20 THE COURT: Okay.

21 MS. TRIPPIEDI: Your Honor, in response to that,
22 that's also something that's routinely done. They can
23 explain that away, that it's mere allegation.

24 THE COURT: But this really is hearsay stuff. I
25 have seen it both in terms of media from Metro, as well as

1 internal reasons within the casinos about subjects they're
2 looking for that are on property and redacted out -- the
3 factual allegation. It shows the pictures and the
4 description of the person sought, includes the contact
5 information that stuff.

6 But in terms of the March 29, 2013, this suspect was
7 on the bus, committed a crime. Victim attempted to do A,
8 B, C, et cetera, et cetera. That's the first paragraph.

9 MS. PENSABENE: Correct.

10 THE COURT: You're not objecting to suspect
11 description or any other information.

12 MS. TRIPPIEDI: They did.

13 THE COURT: I don't have problems with the
14 contact stuff remaining in there, as well as the
15 description, since somebody followed up on that. The
16 factual allegation in that paragraph, that's appropriate
17 to redact that.

18 MS. PENSABENE: We just want the factual out.
19 The description and contact information is fine.

20 THE COURT: Okay.

21 MS. PENSABENE: Thank you.

22 MS. TRIPPIEDI: Are you going to be able to
23 redact it --

24 THE COURT: When is it coming up.

25 MS. TRIPPIEDI: It won't be --

1 THE COURT: Before we take our first recess.

2 MS. TRIPPIEDI: No.

3 THE COURT: We can white that out then redact it
4 out. Do you have it on a computer.

5 MS. TRIPPIEDI: No.

6 THE COURT: We'll do the best we can.
7 Get it copied so we can take that portion out.
8 Anything else.

9 MS. PENSABENE: That's all.

10 THE COURT: State.

11 MS. TRIPPIEDI: No, your Honor.

12 THE COURT: Okay.

13 (Lunch recess taken.)

14 THE COURT: Welcome back.

15 On the record in C-290624, State vs. James
16 Manning. Mr. Manning is here with his attorneys. State's
17 attorneys are present.

18 If you recall before we took our break, there was
19 information I wanted to run through with you, before we
20 get to opening statements. It's just a road map as to how
21 a trial will unfold, so you are familiar with that. As
22 well as a couple of things about what you can and cannot
23 do if certain situations arise.

24 Before I get into that, however, I will first have
25 Carol read to you the information. That's what we

1 referred to earlier. It's a paper document that puts a
2 person on notice of what the charges are you're facing.

3 The information isn't evidence of the allegations it
4 contains. It just lists what the charges are. She'll
5 read that to you as well as state the plea that Mr.
6 Manning entered to those charges.

7 THE CLERK: District Court, Clark County,
8 Nevada, State of Nevada, plaintiff, versus James Manning,
9 also known as James Devon manning, defendant, case
10 C-13290624-1.

11 Information: State of Nevada, County of Clark, Steve
12 Wolfson, district attorney within and for the County of
13 Clark, State of Nevada, in the name and by the authority
14 of the State of Nevada, informs the court that James
15 Manning, also known as James Devon Manning, the defendant
16 above-named, having committed the crimes of robbery,
17 victim 60 years of age or old, Category D felony, NRS
18 193.167, 200.380, and battery with intent to commit a
19 crime, Category B felony, NRS 200.400, on or about March
20 29, 2013, within the County of Clark, State of Nevada,
21 contrary to the form, force, and effect of statutes in
22 such cases made and provided, and against the peace and
23 dignity of the State of Nevada.

24 Count (1), robbery, victim 60 years of age or older.
25 Did then and there willfully, unlawfully, and feloniously

1 take personal property, to wit, money from the person of
2 Thor Berg, being 60 years of age or older, or in his
3 presence by means of force or violence or fear of injury
4 to and without the consent and against the will of the
5 said Thor Berg.

6 Count (2), battery with intent to commit a crime.

7 Did then and there willfully, unlawfully, and
8 feloniously use force or violence upon the person of
9 another, to wit, Thor Berg, with the intent to commit
10 robbery, by pushing the said Thor Berg to the ground.

11 Steven Wolfson, Clark County District Attorney, by
12 deputy Hagar Trippiedi, deputy district attorney.

13 To which the Defendant has entered a plea of not
14 guilty.

15 THE COURT: Okay. Thank you.

16 Mr. Manning has pled not guilty to the two charges.
17 As he sits here now he's not guilty to the charges he
18 faces. The presumption of innocence attaches to him, as
19 part of what we talked about with the principles of law
20 and procedure that applies to every criminal.

21 The State is the entity that files the charges, so
22 the State, therefore, has the burden of proving each of
23 the essential elements of the charges beyond a reasonable
24 doubt. Again, as the Defendant sits here now, he is not
25 guilty.

1 The purpose of the trial is to determine whether the
2 State will meet their burden. It is your primary
3 responsibility as jurors to find and determine the facts.
4 Under our system of criminal procedure, you are the sole
5 judge of the facts. You are to determine the facts from
6 the testimony you hear and the evidence, including
7 exhibits introduced in court. It is up to you to
8 determine the inferences which you feel may be properly
9 drawn from the evidence.

10 All right. The trial will begin momentarily with
11 opening statements. The district attorneys have the
12 opportunity to make an opening statement, if they wish.
13 Defense has an opportunity to make an opening statement,
14 if they wish. Defense attorneys have the option of
15 deferring their opening statement until the defense case
16 in chief, as well.

17 After the opening statements, which serve as an
18 introduction to the evidence -- understand that the
19 statements of the attorneys are not evidence. They are
20 statements in which they are telling you what they expect
21 the evidence will be during the course of the trial. It
22 serves as a road map for you in what they expect you'll
23 hear once witnesses and exhibits begin to be produced for
24 you.

25 After the opening statements the State will commence

1 with its case in chief. This is the State's opportunity
2 to present its evidence. This consists of the calling of
3 witnesses and the production of items of evidence;
4 photographs, documents, video tapes, whatever it may be,
5 items of evidence introduced through their witnesses.

6 The defense attorneys will have the opportunity to
7 cross-examine the State's witnesses when they're called to
8 testify. Following the State's case in chief, the defense
9 has an opportunity, but has no requirement to call
10 witnesses on their own behalf in their case in chief. The
11 Defendant is under no obligation to present evidence or to
12 testify himself. That's up to them. They have a case in
13 chief opportunity after the State's case in chief.

14 If the defense case in chief involves calling
15 witnesses, then the State will have the opportunity to
16 cross-examine those witnesses, like the defense can
17 cross-examine the State's witnesses.

18 During the presentation of evidence, there are two
19 kinds of evidence that you'll usually see; direct and
20 circumstantial evidence. Direct evidence is essentially
21 eye-witness testimony. What a person personally saw or
22 hear or did. Where as circumstantial evidence is
23 testimony or exhibits which are proof of a -- well
24 testimony or exhibits which are proof of a particular fact
25 and from which you could infer the existence of another

1 fact. Here is a for instance in this regard.

2 Let's say you are driving home after court and it
3 starts raining. You have your window down and you can
4 feel -- stick you hand out and feel the rain on your hand.
5 It's falling on you car. You turn your windshield wipers
6 on. If somebody asks you to come in and testify that it
7 was raining on a particular day in Las Vegas, you could
8 provide direct evidence, eye-witness testimony.

9 I was there. I saw the rain. I heard the rain on my
10 car. I had to -- people drive crazy in Las Vegas in the
11 rain. They don't know how to drive.

12 On the other hand, let's say you drive home and park
13 your car in the driveway and it's cloudy outside but it's
14 not raining. You go in your house. A couple hours later
15 you come out and the ground is wet. Your car is wet.
16 There's water running off the gutters on your house. It's
17 humid out. You didn't see the rain, but it wasn't raining
18 beforehand and when you came outside everything is all
19 wet.

20 There are some circumstances there which lead you to
21 conclude it was raining. Circumstantial evidence,
22 particular facts, wet ground, water running off the
23 gutters of my house, humidity in the air. A series of
24 other facts from which you can infer the fact that it
25 rained. So you would be able to provide circumstantial

1 evidence by your testimony, from which somebody could
2 conclude the ultimate fact it rained.

3 So that's an example of direct evidence and
4 circumstantial evidence. The law allows you to consider
5 both direct and circumstantial evidence in deciding the
6 case. You can give equal weight to both forms of
7 evidence. The ultimate weight to give any piece of
8 evidence, be it direct or circumstantial, is for you to
9 decide whether a fact has been proven by circumstantial
10 evidence.

11 During the presentation of evidence the testimony of
12 witnesses or the offering of exhibits, both sides have the
13 opportunity to make objections. Please do not hold it
14 against attorneys for raising objections during the course
15 of a trial. That's their obligation to make sure that
16 they believe that the evidence being presented to a jury
17 is properly presented, that questions being asked are
18 properly being asked, and that you are not being exposed
19 to exhibits or questions that are improper to raise in
20 front of a jury.

21 They have an ethical and legal obligation to object,
22 if they believe the rules aren't being followed, or if
23 there is any impropriety in the way a questions is
24 formed.

25 Sometimes I may sustain objections. Sometimes I may

1 overrule objections. Sometimes I may order you to
2 disregard certain things, exhibits or questions that have
3 been asked or answered that have been given in front of
4 you.

5 If I sustain an objection, you are to disregard
6 whatever was objected to. Because I sustained it, I
7 upheld the objection. If I tell you to disregard evidence
8 or order that evidence is stricken, be it an answer or an
9 exhibit that you may have been exposed to, you are to
10 disregard and not consider that evidence at all.
11 Everybody understanding that? Okay.

12 In regard to witness testimony, in considering the
13 weight and value of the testimony of any witness, you may
14 take into consideration the appearance, attitude and
15 behavior of the witness, the interest of the witness in
16 the outcome of the case, if any, the relationship of the
17 witness to the Defendant or the State, the inclination of
18 the witness to speak truthfully or not, and the
19 probability or improbability of the witnesses' statements
20 and all the facts and circumstances that are in evidence.
21 Thus, you may give the testimony of any witness just such
22 weight and value as you believe the testimony of that
23 witness is entitled to receive.

24 We talked about cases in chief. If the State
25 presents a case in chief, and then if the defense presents

1 a case in chief, the State would have the opportunity to
2 present a rebuttal case. If the State presented a
3 rebuttal case, the defense would have the opportunity to
4 present a rebuttal case to the State's rebuttal case.

5 After all the evidence has been presented, cases in
6 chief, rebuttal cases, all the witnesses are called, all
7 the exhibits are introduced, that is when I'll give you
8 the instructions on the law -- read the jury instructions
9 to you.

10 After the jury instructions have been read to you
11 each side will have the opportunity to make closing
12 arguments. What is said in closing arguments is not
13 evidence, just like opening statements are not evidence.
14 The arguments are the arguments of the attorneys. And
15 they're designed to summarize and interpret the evidence
16 for you while discussing with you how to apply the law
17 that I read to you to the facts in reaching your
18 decision.

19 Since the State has the burden of proving the
20 Defendant guilty beyond a reasonable doubt, they have the
21 right to open and close the closing arguments. This means
22 the State will make a closing argument. Defense will have
23 an opportunity to make a closing argument. And the
24 State's attorneys will have the opportunity to make a
25 rebuttal closing argument.

1 After arguments are completed, you will retire to
2 deliberate on your verdict.

3 Couple of other things. I may during the course of
4 the trial take notes during witnesses' testimony. You are
5 not to infer anything from that. I have to keep track of
6 what's going on just like you all do and prepare for jury
7 instructions and such that sometimes I take notes on note
8 pad sometimes I may type them on the computer as well.

9 I will also tell you that you should all have pads
10 and clipboards. Did everybody get one. You'll be allowed
11 to take notes during the course of the trial, obviously.
12 You won't have a transcript at the end of the trial to
13 consult, so your notes are going to be important. On the
14 other hand, I'll just give you a little bit of advise up
15 front and that is don't let overly ambitious note taking
16 interfere with your ability to watch and listen to people
17 as they testify.

18 Additionally, you'll be given the opportunity to ask
19 written questions of any of the witnesses who are called
20 to testify in the case. You are not encouraged to ask a
21 large number of questions, because that's the primary
22 responsibility of the attorneys. You will not be allowed
23 to become the quote, unquote third side by advocating
24 certain positions by questions.

25 I have the discretion to preclude individual jurors

1 from asking excessive numbers of questions. Questions
2 from the jurors may be asked after both sides have
3 finished questioning a witness and only at that time.

4 For example, the State calls a witness in the State's
5 case in chief. A witness comes up and testifies. The
6 State conducts a direct examination, asks questions she
7 wants to ask of a witness. Defense has the opportunity to
8 conduct a cross-examination and examine the witness. They
9 go back and forth a couple of times. We have redirect
10 examination and cross-examination.

11 Once the attorneys are done with the questions of the
12 witness, I'll generally turn to Ms. Jones, say, Ms. Jones,
13 thank you so much for coming in. You are excused. Before
14 I do that, I'll look to see whether any of you have your
15 hands up in the air with your written questions.

16 So you need to get them -- write them down during the
17 course of that testimony as things come to you so when
18 it's your opportunity to ask questions, Leslie will
19 collect the pieces of paper with your questions. I'll
20 read through the questions and discuss them with the
21 attorneys. If they're legally appropriate questions, I'll
22 ask them of the witness, then the attorneys will have a
23 chance to follow up if necessary.

24 When I say legally appropriate questions, your
25 questions have to be factual in nature and designed to

1 clarify information that the witness has already testified
2 about. You know, they have to be proper under the Rules
3 of Evidence. I know at first blush you're thinking that's
4 not fair because we don't know all of the Rules of
5 Evidence. But if you just adhere to asking fact based
6 questions that are related to what the witness has already
7 testified about, you'll generally be fine.

8 So if you have a question write them down on a piece
9 of paper. You can use the whole piece of paper. I have
10 people tearing off Post-It note sizes of paper. We have
11 plenty of notebooks to go around.

12 So write your juror number -- 1 through 14. Not your
13 badge number from yesterday. So just at the top of the
14 paper, juror number one, and write down your questions.
15 Try -- I don't write legibly so I ask you all to write as
16 nicely as you can so we can decipher them. I can ask you
17 to clarify the question if we need to. But, in any event,
18 if you have questions, I'll ask them of the witness if I
19 find them to be appropriate. Then the attorneys can
20 follow up.

21 Also I think I mentioned yesterday, please don't
22 discuss the case with anyone, even your fellow jurors,
23 until after the case is submitted to you. After it's
24 submitted to you you must discuss it but only in the jury
25 room with your fellow jurors while you deliberate.

1 It is also important that you keep an open mind and
2 not decide any issues in the case until the entire case
3 has been submitted to you under the jury instructions from
4 the court.

5 If you can't hear a witness, let me know. If you
6 need a break, let me know. If you're not feeling well --
7 I think we talked yesterday I tend to take a break about
8 every hour-and-a-half, depending on if we're about to call
9 a witness or trying to finish a witness, things like that.
10 We talked about lunch breaks, the schedule of the trial.
11 Like I said, we won't started before 10:00 o'clock.

12 So let me remind you until the case is submitted to
13 you do not talk to each other about the case or about
14 anyone who has anything to do with the case until the end
15 of the case when you go to the jury room to deliberate.
16 Likewise, do not talk to anyone else about the case, as I
17 said last night. Anyone else includes members of your
18 family and friends. You may tell them you're a juror in a
19 criminal case, but don't tell them anything else about it.

20 Do not let anyone talk to you about the case, or
21 about anyone who has anything to do with the case. If
22 someone should try to talk to you about the case, let
23 Leslie know that immediately so she can communicate it to
24 me. Don't read any news stories or articles or listen to
25 any radio or television reports about the case or anyone

1 who has anything to do with the cases. And, again, do not
2 visit the scene of any of the acts or occurrences made
3 mention of during the trial or undertake any investigation
4 or research on your own.

5 All right. It's not pleasant to be read to, so I
6 appreciate your patience with me. We'll move to opening
7 statements.

8 MS. PENSABENE: Approach.

9 THE COURT: Yes.

10 (Discussion held at the bench.)

11 THE COURT: Ms. Trippiedi.

12 MS. TRIPPIEDI: Okay.

13 OPENING STATEMENT

14 BY MS. TRIPPIEDI:

15 So March 29, 2013, began as an ordinary day for
16 Thor Berg. Thor, you're going hear from, he's a
17 62-year-old man. He travels by bus. He doesn't have any
18 other means of transportation.

19 On March 29th, he was up at the Sunset Station Hotel
20 and Casino gambling. Middle of the day. He got on the
21 bus to go get his medication -- Wal-Green's. He headed
22 towards Sam's Town. About 20 minutes into the ride he
23 noticed an individual on the bus that caught his
24 attention. That individual, sitting there, that's James
25 Manning, the Defendant.

1 Shortly after he took notice of Mr. Manning, he felt
2 someone reach into his pocket where he had a stack of his
3 cash, his identification and some player's cards.

4 He didn't have a lot of cash on him. Only about 10-
5 to \$12.00, but he did turn around and take a good look at
6 the Defendant and immediately after that he was knocked to
7 the ground.

8 There was also another witness on the bus that saw
9 the whole exchange and called 911. You'll hear from her
10 today. She called 911 and gave a description of what just
11 happened, gave a description of the suspect. And that's
12 essentially the eye-witness, other than the victim, of the
13 incident that occurred.

14 Shortly after 911 was called officers arrived at the
15 scene. They took a report. But they weren't able to
16 immediately catch the Defendant, because the witness
17 stated he ran off the bus immediately after he committed
18 the act.

19 Further investigation took place and the detective
20 was able to find still photos of the Defendant on the bus
21 that day. They prepared a media release. And they
22 released the photo of the Defendant on the bus. And a few
23 days after that a crime stopper's tip came in and said
24 James Manning is the person in the picture on the media
25 release. They then confirmed with the victim again that

1 this was the person that robbed him on the bus. The
2 victim confirmed that.

3 That's what we have in this case, ladies and
4 gentlemen. What we don't have is DNA evidence. We don't
5 have fingerprint evidence. We don't have surveillance
6 video of the robbery, because due to some technical
7 difficulty they weren't able to get the video, just still
8 photos from the bus.

9 But we do have a man, an innocent man, that said this
10 is the person that robbed him. And, you know, a lot of
11 cases are not able to be solved. But this one, there was
12 a suspect. And there was confirmation from the victim
13 this is the person that robbed him.

14 Another thing I'm going to tell you is that the
15 victim in this case is a 62-year-old man. He does have a
16 criminal history. He does have a record. But his
17 criminal history dates back years and years. It was
18 around the 70s and 80s. It was theft related. Nothing
19 violent. Nothing recent. But I'm telling you that
20 because I want you to know I'm not trying to hide it.
21 Just because he does have a record doesn't mean he is not
22 entitled to the same protection of the law that everyone
23 else is.

24 So we're here today, at the end of the trial, I'll
25 ask you to find the Defendant, James Manning, guilty of

1 the two counts of robbery, victim over 60; battery with
2 intent to commit a crime. The evidence will prove it.
3 The testimony will confirm it. And now justice demands
4 you hold him responsible.

5 Thank you.

6 THE COURT: Thank you.

7 Defense.

8 OPENING STATEMENT

9 BY MS HARRIS:

10 It's been a long day. I know that you're
11 anxious to get ready to hear the evidence in this case.
12 Because of that, I'll be brief. Because right after thus
13 we'll get to the evidence in this case.

14 This case is very simple. It's very serious. It's
15 very important. Just because it's only 2 to 3 days, does
16 not mean that it is not important. You better believe that
17 this case is important to Mr. Manning.

18 Something happened that day on the bus where Mr. Berg
19 landed on the ground. It is unfortunate. It is sad. And
20 I don't like it. But this guy over here, James Manning,
21 did not commit this crime. And that is the one and only
22 issue that we are here to decide today.

23 As you listen to the evidence in this case, you will
24 see that the devil is in the details. The evidence will
25 show 3 thing, that something happened on the bus, that

1 James Manning was misidentified as the person who caused
2 this something to happen on the bus, and how and why James
3 Manning was misidentified.

4 As you listen to the evidence you will see that there
5 are very key details missing. You will see that these
6 details are necessities. You will see they are very
7 important. As you put everything together and putting it
8 in context and you're searching for what's fair and what's
9 just, you will conclude that the devil is in the details
10 in this case, and we don't have any of these details. So
11 because of that, James Manning is not guilty.

12 THE COURT: Thank you.

13 State can call their first witness.

14 MS. TRIPPIEDI: State calls Thor Berg.

15 THE CLERK: You do solemnly swear the testimony
16 you are about to give in this action shall be the truth,
17 the whole truth, and nothing but the truth so help you
18 God.

19 THE WITNESS: I do.

20 THE CLERK: Be seated. State and spell your
21 name for the record.

22 THE WITNESS: Thor Berg, B-E-R-G.

23 THE COURT: Thank you.

24 Ms. Trippiedi.

25 DIRECT EXAMINATION

1 BY MS. TRIPPIEDI:

2 Q. Mr. Berg, where were you on March 29, 2013?

3 A. I left Sunset Station approximately 4:00 p.m.,
4 arrived at Sam's Town approximately 4:30.

5 Q. Is that on the bus?

6 A. That's correct.

7 Q. On that bus ride between Sunset Station and
8 Sam's Town, did you notice someone that you see here in
9 the courtroom today?

10 A. I believe so.

11 Q. Do you -- can you point to the person and tell
12 me something that he or she is wearing?

13 A. Excuse me.

14 Q. Point to the person that you recognize -- you
15 see someone here that you saw on the bus that day?

16 A. Yes. That gentleman there.

17 Q. What is he wearing?

18 A. Blue shirt, black tie.

19 MS. TRIPPIEDI: Record reflect the witness
20 identified the Defendant, James Manning.

21 THE COURT: The record will so reflect. Thank
22 you.

23 BY MS. TRIPPIEDI:

24 Q. When did you notice Mr. Manning on the bus?

25 A. It probably happened -- it happened about 3 or

1 4 stops away from Sunset Station. There was an older lady
2 getting on the bus, and he was in a seat diagonally across
3 from me. And she was approaching the other seat, and he
4 grabbed at her stuff. And she said something. I'm not
5 sure exactly what she said. But it was like, leave me
6 alone.

7 He -- she got up in the seat and sat there. That
8 was first time I noticed him. I turned around and could
9 see who he was.

10 Q. After you noticed this exchange between the
11 lady and him, what happened next, after that, that you
12 took notice of?

13 A. Excuse me.

14 Q. After you noticed the exchange between him and
15 the lady, what happened after that?

16 A. Things kind of quieted down. It went for 2 or
17 3 more stops. We were in front of Sam's Town. I had
18 gotten up to get out of my seat, because I was getting off
19 at Wal-Green's to pick up my medication.

20 Others were coming on the bus and needed seats for
21 going down the line further.

22 I got up out of the seat and the next thing I know
23 a right hand was going in my pocket. I was going to the
24 ground. I fell and hit my back on the ground.

25 At that time my back was broke. I had a fracture

1 in my 12th vertebra. The bus driver, he stopped the bus
2 I'm sure as soon as he could. They were in the new buses
3 where the cabs are forward and sealed. He stopped the bus
4 as soon as he could and the paramedics and Metro were
5 called at the stop in front of Sam's Town.

6 Q. Stop there and take a step back. You said you
7 felt a hand in your pocket?

8 A. Excuse me.

9 Q. You felt a hand reach in your pocket?

10 A. My right pocket.

11 Q. What was in your pocket?

12 A. I carry my identification, my player's cards,
13 my money. They were all kind of wrapped together.

14 Q. What did do you as soon as you felt that hand
15 in your pocket?

16 A. Well, the way it happened so quickly I
17 remember going straight to the ground and the hand right
18 in pocket. Came right back out when I hit the ground. He
19 was moving towards the back.

20 Q. Were you able to get a look at him?

21 A. Yes, ma'am.

22 Q. You are sure it's this man here?

23 A. Yes, ma'am.

24 Q. Then you said after that you hit the ground?

25 A. Correct. Right.

1 Q. Did he push you or did you fall?

2 A. No. I believe that a knee went to the back of
3 my leg or back of my knee and I fell down.

4 Q. You felt a knee to your back?

5 A. I felt pressure in the back of my leg and went
6 down. It happened so quickly.

7 Q. That's when you fell to the grounds?

8 A. Correct.

9 Q. What did you do once you were on the ground?

10 A. The bus driver by then had stopped. The
11 individual had gotten out the back. And the bus driver
12 stopped and called the paramedics. I was there. Finally
13 they came. People came and assisted me and took me
14 outside. At that point Metro apprehended 3 individuals at
15 Papa John's Pizza.

16 Q. Let's take it piece by piece. The individual
17 was he able to get away with your stuff?

18 A. Correct.

19 Q. Were you scared when the whole thing
20 happened?

21 A. Was I scared, no.

22 Q. Did you want to give him your stuff?

23 A. No. Absolutely not.

24 Q. Did you see anyone else around?

25 A. There were approximately 40 people on the

1 bus.

2 Q. You said that police came?

3 A. Correct.

4 Q. A police report was filled out?

5 A. That's correct.

6 Q. You said that there were some suspects that
7 they found they thought might have been the person that
8 did this?

9 A. Right.

10 Q. Did they take you to a location?

11 A. They put me in squad car and took me across
12 the street to where the pizza place was -- Papa John's.
13 They asked me if any of those individuals were the ones on
14 the bus that had done what they did. I told them, no.

15 Q. Was this man one of those people?

16 A. No, he wasn't.

17 Q. You said no, none of these people are the
18 ones.

19 A. Right.

20 Q. Now, you came here in a wheelchair. Is that
21 related to this incident now?

22 A. No. I have COPD, congestive heart failure. I
23 just got out of the hospital, primarily to be here
24 today.

25 Q. That was unrelated. This incident happened

1 about a year ago, right?

2 A. This incident happened March, yes.

3 Q. I know you do have a criminal history?

4 A. Correct.

5 Q. Do you know approximately how many felonies on
6 your record you have?

7 A. Two.

8 Q. Do you know what they are related to?

9 A. They are related to interstate transportation
10 charge and a credit card fraud charge.

11 Q. Tell me the years that -- approximate --

12 A. First was in 1974. The last was in '97,
13 '98.

14 Q. Since then have you been trouble free?

15 A. Correct.

16 Q. How old are you?

17 A. 62.

18 Q. What is your date of birth?

19 A. 2/12/1951.

20 Q. The area where this occurred that was Clark
21 County, Nevada?

22 A. Correct. Right in front of Sam's Town on
23 Boulder Highway.

24 MS. TRIPPIEDI: I'll pass the witness.

25 THE COURT: Ms. Pensabene.

CROSS-EXAMINATION

BY MS. PENSABENE:

Q. Good morning. There is water there if you would like water?

A. Fine. Thank you.

Q. Ms. Trippiedi went through the details with you, but I want to hash it out again. So March 29th, you got on the CAT bus in front of Sunset Station?

A. Correct.

Q. When you got on the bus you were seated in the front of the bus?

A. I was seated towards the front.

Q. Eventually the bus comes to a stop at Sam's Town?

A. Right.

Q. It travels along Boulder Highway?

A. Correct.

Q. There's a lot of stops between Sunset Station and Boulder --

A. Correct. I can name them for you, if you like.

Q. In between all the stops there's a lot of transient people on Boulder Highway?

A. Yes.

Q. A lot of weeklies, meaning people who stay at

1 hotels at a week at a time?

2 A. Sure.

3 Q. There is a lot of people taking the bus?

4 A. Absolutely.

5 Q. You testified there is about 40 people on your
6 bus that day?

7 A. Approximately 40 people.

8 Q. At some point you notice my client Mr.
9 Manning?

10 A. Yes.

11 Q. Because he was bugging people. He was
12 pestering people?

13 A. He pestered that one lady. That's what brought
14 my to his attention -- my attention to him.

15 Q. That's what you observed. You watched him
16 bother that woman?

17 A. Yes, ma'am.

18 Q. Like you said, you're sitting towards the
19 front of the bus?

20 A. Correct.

21 Q. At some point you're getting ready to exit?

22 A. Correct.

23 Q. You are fixed to get off the bus?

24 A. Right.

25 Q. And you stand up?

1 A. Correct.

2 Q. You hold onto the rail?

3 A. Yes.

4 Q. Because you have some health issues, right,
5 sir?

6 A. That's not why I held on. It's just for
7 general safety. They can throw you flying any time they
8 hit the brakes.

9 Q. Are you holding on with your arm up?

10 A. Holding on with my left arm.

11 Q. Above you or are you hold on to the chair?

12 A. I'm not sure. I was holding on to one of the
13 rails. I'm not sure which.

14 Q. You don't want to fall now. The bus could
15 throw you?

16 A. Yes.

17 Q. At some point the bus comes to a stop in front
18 of Sam's Town?

19 A. Correct.

20 Q. At this point you testified people are coming
21 and going?

22 A. Right.

23 Q. Fair to say there is a lot of commotion?

24 A. Not at that point. As soon as I got up the
25 bus stopped is when it happened.

1 Q. There are how many exits on the bus?
2 A. 3.
3 Q. So there is one in front?
4 A. Correct.
5 Q. Center door?
6 A. Correct.
7 Q. And a rear door?
8 A. Correct.
9 Q. You are closest to the front door?
10 A. Correct.
11 Q. When you're standing up, you're facing that
12 door?
13 A. Yes.
14 Q. Doors are open?
15 A. Right.
16 Q. People are coming on and getting off?
17 A. Right.
18 Q. Are you paying attention to the people who
19 want a seat?
20 A. Yes. They are coming in the front.
21 Q. At that point you feel something in your
22 pocket?
23 A. It happened before that. It was -- like I
24 said it was extremely quick. I had just gotten up and
25 down I went.

1 Q. Okay. Timing is everything I know. Right now
2 you're saying that you felt a hand in your pocket before
3 the bus doors opened?

4 A. I'm not saying that. But I mean the bus was
5 there at the bus stop. I'm sure the doors were opening,
6 but it happened that quickly.

7 Q. Now, when you feel the hand in your pocket --

8 A. Right.

9 Q. -- it's your right pocket?

10 A. Correct.

11 Q. You have your arm is holding onto the railing,
12 whether it's here or here?

13 A. Holding onto the railing.

14 Q. For the record, you're holding onto the
15 railing above you or in front of you?

16 A. I was holding on, whatever it was.

17 Q. You feel something here?

18 A. Correct. I felt that and the next thing I
19 know I'm on the ground.

20 Q. How long do you think this lasted. From the
21 time you feel something in the pocket --

22 A. 4 seconds, 5 seconds, no more.

23 Q. You don't see anyone coming from behind you?

24 A. No. I didn't see anybody coming from behind
25 me. But when I hit the ground I saw Mr. Manning.

1 Q. I want to take baby bites. You are standing
2 up. You're focused at the front of the bus?

3 A. Right.

4 Q. You're not turning around at that point,
5 because you're fixing to get off the bus?

6 A. Right.

7 Q. You're not paying attention to the middle of
8 the bus?

9 A. No.

10 Q. You're not paying attention to the rear of the
11 bus?

12 A. Not particularly, no.

13 Q. It's a quick incident. Very quick?

14 A. Yeah.

15 Q. So you don't see anyone coming from behind
16 you?

17 A. No. I don't have eyes in the back of my
18 head.

19 Q. Neither do I, sir. It would be nice, right.
20 You go down instantaneously?

21 A. Excuse me.

22 Q. You go down right away. You fall down right
23 away?

24 A. Right.

25 Q. You testified you felt like a knee to the back

1 of your leg?

2 A. Correct.

3 Q. Just --

4 A. It's extremely easy to knock somebody down by
5 pushing their knee to the back of their leg.

6 Q. The push is coming from behind you?

7 A. Yes. I'm small so it doesn't take much to
8 knock me down.

9 Q. It's forward momentum?

10 A. Well, it was more rear then it was forward.
11 Like going back like this.

12 Q. I want to really break it down.

13 THE COURT: When you said that, sir, you mean
14 when you held your hands up in the air you falling
15 backwards.

16 THE WITNESS: Right.

17 MS. PENSABENE: I want to flesh it out.

18 BY MS. PENSABENE:

19 Q. You feel a knee to the back of your legs. You
20 feel like someone is pushing you from behind?

21 A. No. They are knocking me down from behind and
22 I'm falling backwards.

23 Q. Knocking you down, you're feeling a knee to
24 the back of your leg?

25 A. I assumed it was a knee.

1 Q. You feel pressure?

2 A. Correct.

3 Q. To the back of your leg?

4 A. Right.

5 Q. Yet, you fall on your back?

6 A. That's correct. Right.

7 Q. To be clear. The pressure is the back of your
8 leg somewhere, but you end up falling backwards?

9 A. Yeah. Now the reason I say that is because
10 number one his hand is in my right pocket, which would
11 create the leverage that could force me to the ground as
12 well. And with the knee in the back and my hands in the
13 air, it's very ease to fall backwards.

14 Q. At this point you're on the ground on your
15 back?

16 A. Right.

17 Q. Did you see the person get off the bus?

18 A. Yes.

19 Q. You saw him get off the bus?

20 A. Right. I saw him leave the bus.

21 Q. Court's indulgence.

22 Sir, do you remember a couple months ago testifying
23 again -- or beforehand in a preliminary hearing?

24 A. Yes.

25 Q. Do you remember there was a judge there. Much

1 like there is today.

2 A. Yes.

3 Q. There was a court reporter?

4 A. Right.

5 Q. You swore an oath?

6 A. Correct.

7 Q. To tell the truth?

8 A. Right.

9 Q. Do you remember then stating that you did not

10 see who -- or what exit?

11 A. I didn't see what exit, but I did see him go

12 off the bus. I'm not sure which one it was because I was

13 on the ground at the time.

14 Q. You didn't see which exit he went out?

15 A. No.

16 Q. I want to talk to you about what was in your

17 pockets. You had between 10 - and \$12.00?

18 A. Right.

19 Q. You had a CAT card?

20 A. Yes, a bus pass. I had my Clark County Health

21 card, ID from Amazon, player's cards.

22 Q. These items were not in a wallet?

23 A. No.

24 Q. They weren't in a money clip?

25 A. No.

1 Q. They weren't secured by a rubber band?

2 A. No.

3 Q. Loosely in your pocket?

4 A. Be glad to show you.

5 MS. TRIPPIEDI: Court's indulgence.

6 BY MS. TRIPPIEDI:

7 Q. Did you get any property back?

8 A. No.

9 Q. Ms. Trippiedi talked to you about
10 identification?

11 A. Yes.

12 Q. So that happened about a month after?

13 A. What's that.

14 Q. I'll back up. You know what, I think that's
15 enough?

16 Thank you, Mr. Berg for your testimony?

17 THE WITNESS: Sure.

18 THE COURT: Ms. Trippiedi.

19 REDIRECT EXAMINATION

20 BY MS. TRIPPIEDI:

21 Q. Sir, you said that you don't keep your items
22 in a wallet or anything?

23 A. No.

24 Q. Are they stacked together?

25 A. Yes.

- 1 Q. Do you have them like that today?
- 2 A. Excuse me.
- 3 Q. Do you have them like that today.
- 4 A. These are all new identification, all new bus
5 pass.
- 6 Q. Thank you. You're sure that stuff didn't fall
7 out of your pocket?
- 8 A. It did not fall out of my pocket.
- 9 Q. You said you felt a hand in your pocket?
- 10 A. Correct.
- 11 Q. Are you sure this wasn't an accidental
12 occurrence?
- 13 A. No.
- 14 Q. What makes you so sure?
- 15 A. Well, most people's hands don't go in other
16 people's pockets and steal their money.
- 17 Q. You think it was accidental that you were
18 pushed to the ground?
- 19 A. No.
- 20 Q. What makes you so sure of that?
- 21 A. Well, because I hit the ground so hard.
22 People don't intentionally knock people down for
23 nothing.
- 24 Q. Was it forceful, the knee that you felt?
- 25 A. Yeah.

1 Q. The pressure you felt was forceful?

2 A. Yes. That's what knocked me down. I went
3 down so fast.

4 Q. All in the same time period?

5 A. Within 2, 3, 4, seconds.

6 MS. TRIPPIEDI: No further questions for this
7 witness, your Honor.

8 MS. PENSABENE: Court's indulgence.

9 THE COURT: Okay.

10 MS. PENSABENE: Thank you, Mr. Berg. No further
11 questions.

12 THE COURT: Anything from our jurors. No.
13 Mr. Berg, thank you for your time.

14 THE WITNESS: May I make a statement.

15 THE COURT: No. No. I only allow you to answer
16 questions. Let Leslie assist you. I would appreciate it.

17 MS. TRIPPIEDI: State calls Officer Steinbach.

18 THE CLERK: You do solemnly swear the testimony
19 you are about to give in this action shall be the truth,
20 the whole truth, and nothing but the truth so help you
21 God.

22 THE WITNESS: I do.

23 THE CLERK: Be seated. State and spell your
24 name for the record.

25 THE WITNESS: Robert Steinbach,

1 S-T-E-I-N-B-A-C-H.

2 THE COURT: Ms. Trippiedi.

3 DIRECT EXAMINATION

4 BY MS. TRIPPIEDI:

5 Q. How are you employed?

6 A. I'm a police officer with Las Vegas
7 Metropolitan Police Department.

8 Q. How long have you been a police officer?

9 A. 4-and-a-half years.

10 Q. Have you been with Metro that whole time?

11 A. Yes, ma'am.

12 Q. What unit are you assigned to?

13 A. Patrol -- southeast area command.

14 Q. Patrol officer?

15 A. Yes, ma'am.

16 Q. Were you on duty on March 29, 2013?

17 A. Yes, ma'am.

18 Q. On that day were you dispatched to an incident
19 that occurred on a bus?

20 A. Yes.

21 Q. Do you remember where that incident
22 occurred?

23 A. I was dispatched to the area of Boulder
24 Highway and Nellis.

25 Q. Here in Clark County, Las Vegas, Nevada?

1 A. Yes, ma'am.

2 Q. Before I have you go on, tell me what your
3 main duties are as a patrol officer?

4 A. We handle calls for service. Say someone calls
5 for police, we handle the calls to do -- be pro-active,
6 self-initiated activity.

7 Q. You respond to dispatch calls?

8 A. Yes, ma'am.

9 Q. What typically do you do when you arrive at
10 scenes?

11 A. We handle the call. If it's a call for
12 shoplifting, we handle it in that course. If it's
13 domestic, we handle it in a different course.

14 Q. Did you receive training to become a patrol
15 officer?

16 A. Yes.

17 Q. What kind of training and how long?

18 A. We have an academy, which is 29 weeks. Then
19 after that you have field a training portion which is we
20 ride with a senior officer. That's 4 to 5 months.

21 Q. So on this day March 29, you were on duty?

22 A. Yes.

23 Q. Were you riding alone or were you with a
24 senior officer, partner?

25 A. I was riding by myself.

1 Q. Were you the first officer to arrive at the
2 scene?

3 A. Yes.

4 Q. What did you notice when you arrived?

5 A. I was dispatched to the bus stop where the bus
6 was at. The elderly victim was outside the bus sitting at
7 the bus stop. People were tending to his injury.

8 There was a lot of people around, so I was trying
9 to decipher who was a victim and what was going on. After
10 I established that I try to calm him down, assess his
11 medical needs, then got on with what happened -- the
12 story.

13 Q. You learned the story from him?

14 A. Yes.

15 Q. Did you, based on his history, fill out a
16 report?

17 A. We take a report.

18 Q. Did you -- when you got his story, did you --
19 was it verbal? Did you tape record it?

20 A. Just verbal.

21 Q. Is that pretty typical?

22 A. That's all I know. I have never recorded
23 anything.

24 Q. What did do you next?

25 A. While I'm just getting the story, getting

1 information, talking with witnesses that might be there,
2 the bus driver, I'm having other patrol units that are
3 assigned to attempt to locate a suspect.

4 Q. Do you know if any possible suspects were
5 located in the area?

6 A. I believe that they had some people stopped,
7 but it turned out to be they were not involved.

8 Q. So how did you make that determination?

9 A. Once the other units had the subject stopped,
10 we have the victim come and do a show-up, which is they
11 look at the subject and determine, yes, this was the
12 person, or no it was not the person.

13 Q. Was one of the subjects that you did apprehend
14 at the scene, was one of those subjects James Manning?

15 A. No.

16 Q. You said that victim was -- it was a negative
17 identification. The victim said no, none of these people
18 were the person that did this incident?

19 A. Yes, ma'am.

20 Q. Did that pretty much end your involvement in
21 the case?

22 A. It did. I just finished up my report with the
23 information I was given. Then I submit it up through the
24 submission process.

25 Q. At that point do like robbery detectives from

1 Metro take over the investigation?

2 A. I'm not sure how it goes from there, but once
3 you submit it, I'm done with it. It then goes up to
4 whoever it needs to go up to.

5 Q. You did nothing further?

6 A. Nothing further.

7 MS. TRIPPIEDI: I'll pass the witness.

8 THE COURT: Ms. Harris.

9 CROSS-EXAMINATION

10 BY MS HARRIS:

11 Q. How are you?

12 A. Good. How are you.

13 Q. Good. I want to ask a couple of questions.
14 You've been a police officer for 4 years?

15 A. 4-and-a-half.

16 Q. Before you became a police officer, you had
17 some training?

18 A. Before I was commissioned as an officer?

19 Q. Yes. You had training.

20 And some of that training was where you would ride
21 with senior officers?

22 A. Yes.

23 Q. You did that for how long?

24 A. I don't know the exact weeks. Some people
25 ride longer. You can get extended. I believe it was

1 somewhere around 4 months, maybe 5.

2 Q. Your case is only as good as the information
3 you have, correct?

4 A. As far as --

5 Q. When I say that, the more information you have
6 for a case the better?

7 A. If I'm not there to witness it, I go solely
8 off the victim and witnesses' statements.

9 Q. You want to get as much information as you
10 can?

11 A. Yes.

12 Q. So you compile all of there information
13 because you want to be sure you have the right person?

14 A. Yes.

15 Q. You want to be fair -- you have to say yes or
16 no.

17 A. Yes.

18 Q. You want to be fair to both sides --
19 prosecution and defense?

20 A. Yes.

21 Q. And you're seeking the truth?

22 A. Yes.

23 Q. You're seeking justice?

24 A. Yes.

25 Q. You are seeking fairness?

1 A. Yes.

2 Q. You want to do a thorough, accurate and
3 complete investigation?

4 A. Yes.

5 Q. You try to get the information to shed all the
6 light you can on the contents of what happened in any
7 incident?

8 A. Yes.

9 Q. Okay. So when you -- you're the first officer
10 at this bus stop?

11 A. Yes.

12 Q. You arrive and a bus was there?

13 A. Yes.

14 Q. You said there was a bunch of people there.
15 The bus was still there; is that correct?

16 A. Bus was there.

17 Q. Was the paramedic there?

18 A. I believe the ambulance came shortly after.

19 Q. But paramedics were there while you were
20 there?

21 A. They did that while I was there.

22 Q. There were other witnesses from the bus?

23 A. Yes.

24 Q. So I want to talk to you about some of the
25 people who were there?

1 A. Okay.

2 Q. The bus driver. Did you get that person's
3 name?

4 A. I don't recall.

5 Q. So do you know if it was a male or female?

6 A. I don't recall.

7 Q. So looking in your police paperwork, if I tell
8 you that I didn't see any information about you speaking
9 with the bus driver, what their gender is, would that be a
10 shock to you?

11 A. A shock to me, no.

12 Q. Would not be a shock. Because do you think
13 you spoke to the bus driver?

14 A. I may have spoke to him, may not.

15 Q. You make that determination whether this
16 person had pertinent information?

17 A. Yes.

18 Q. You didn't have them fill out a report?

19 A. I did not.

20 Q. You did not take a report?

21 A. I took a report. I didn't have him fill out a
22 voluntarily statement.

23 Q. Did you take out a report based upon what the
24 bus driver said?

25 A. I make a report from the totality of what

1 everybody said.

2 Q. I'm asking about the bus driver. Did you make
3 a report about what the bus driver said?

4 A. No, ma'am.

5 Q. So in speaking to the bus driver he could have
6 provided -- he or she could have provided you with more
7 leads, fair to say?

8 A. If he had a lead, I would have addressed
9 that.

10 Q. But you determined this person did not?

11 A. Yes, ma'am.

12 Q. You said the AMR was there?

13 A. Ambulance.

14 Q. Did you speak to people from the ambulance?

15 A. As far as what?

16 Q. Did you get a report from them?

17 A. Stating?

18 Q. Anything.

19 A. No. I've never in my 4-and-a-half years got a
20 report written from any ambulance driver.

21 Q. So you didn't get any of their information?

22 A. No.

23 Q. Any of the information they may have had about
24 the incident?

25 A. They wouldn't have had any information except

1 possible injuries.

2 Q. But you didn't get that?

3 A. His injuries. I believe the report said he
4 had an injury to his forearm.

5 Q. Did you get that from the ambulance?

6 A. The forearm was visible.

7 Q. Did you talk to anybody else on the bus?

8 A. I'm sure I did.

9 Q. So would it shock you if I tell you I don't
10 have any police reports with any other witness
11 information?

12 A. No, ma'am, it wouldn't shock me.

13 Q. Because I don't. I have been looking. I
14 don't have any information. So that's not a shock to
15 you?

16 A. No.

17 Q. How many reports did you compile in this?

18 A. Statements from witnesses?

19 Q. Both.

20 A. One report.

21 Q. How many statements from witnesses?

22 A. I don't recall.

23 Q. Was it one or two?

24 A. I do not recall statements that may have been
25 taken.

1 Q. Did you know you were coming for trial
2 today?

3 A. I did know.

4 Q. Did you review your file?

5 A. I read the report.

6 Q. You only read the report?

7 A. Yes.

8 Q. Did you speak to Ms. Trippiedi about anything
9 in the case?

10 A. Over the phone.

11 Q. So you reviewed the one report you'd
12 written?

13 A. One report.

14 Q. Now, you spoke with Mr. Berg, correct?

15 A. The victim?

16 Q. Yes.

17 A. Yes.

18 Q. Did he tell you that some items were taken?

19 A. Yes.

20 Q. What do you recall what those items were that
21 were taken?

22 A. I don't recall specifically. The report
23 indicates that some cash was taken.

24 Q. Anything else you remember?

25 A. No, ma'am.

1 Q. Would it shock you if I told you that some
2 player's cards were taken?

3 A. Shock me?

4 Q. Yes.

5 A. No, ma'am.

6 Q. Did you follow up on any of the items taken
7 from him?

8 A. Follow up --

9 Q. If he said player's club cards were taken from
10 him, did you follow up on those?

11 A. I'm not sure what you mean.

12 Q. Do you know what player's club cards are?

13 A. For casinos.

14 Q. Yes.

15 A. Yes, ma'am.

16 Q. How do they work?

17 A. I'm not a gambler. But I think you can swipe
18 your card and it tracks your use.

19 Q. For that person?

20 A. Yes.

21 Q. In casinos they have cameras?

22 A. Yes.

23 Q. So if somebody was using a player's club card
24 that was stolen, you could see it on the surveillance?

25 A. That's possible. But that is outside of my

1 realm of duty. A detective doing follow-up work would get
2 that information. I'm there at the scene, at the time of
3 the call to handle that, not to do a follow-up
4 investigation. That could take hours, months.

5 Q. It's not your job to do follow-up
6 investigation?

7 A. I'm there for the initial crime. Take the
8 initial report. If there is substantial follow-up, it
9 goes to a detectives.

10 Q. Speaking to witnesses who are present would
11 that go to you or the detective?

12 A. Me.

13 Q. Did you subpoena videos from this?

14 A. I never subpoenaed anything. That would be a
15 detective.

16 Q. All you did was write one report. You didn't
17 speak to anybody else there?

18 A. I spoke to the victims, witnesses at scene,
19 compiled the information. And I take one report.

20 Q. No other voluntary statements?

21 A. I don't recall if voluntary statements were
22 taken or not.

23 MS HARRIS: No further questions for the
24 witness.

25 THE COURT: Ms. Trippiedi.

REDIRECT EXAMINATION

BY MS. TRIPPIEDI:

Q. Sir, did you do everything you were trained to do as a police officer in this case?

A. Yes, ma'am.

MS. TRIPPIEDI: No further questions.

THE COURT: Anything further.

MS HARRIS: Briefly.

RECROSS-EXAMINATION

BY MS HARRIS:

Q. Isn't it true that in your training you're trained to take witness statements?

A. Yes.

Q. You are also trained to do police reports?

A. Yes.

Q. And you're also trained to get the names of individuals who are located at a scene of a crime?

A. If they are important to the case we get their information and do a voluntary statement. If they want to. It's also voluntary.

If they don't want to talk, we don't make them. If they have information that's not important or would not be helpful to the case, we may have them write a statement or we may not. It's at the officer's discretion.

MS HARRIS: No further questions.

1 THE COURT: Anything further.

2 MS. TRIPPIEDI: No, your Honor.

3 THE COURT: Anything from our jurors. No.

4 Officer Steinbach, thank you for your time. I
5 appreciate it.

6 THE WITNESS: Thank you.

7 THE COURT: Your next witness short, or --

8 MS. TRIPPIEDI: Pretty short.

9 THE COURT: Go ahead.

10 THE CLERK: You do solemnly swear the testimony
11 you are about to give in this action shall be the truth,
12 the whole truth, and nothing but the truth so help you
13 God.

14 THE WITNESS: I do.

15 THE CLERK: Be seated. State and spell your
16 name for the record.

17 THE WITNESS: Callie Mae Borley, B-O-R-L-E-Y.

18 THE COURT: Ms. Trippiedi.

19 DIRECT EXAMINATION

20 BY MS. TRIPPIEDI:

21 Q. How are you employed?

22 A. I'm employed at asset protection at
23 Wal-Mart.

24 Q. What is asset protection for Wal-Mart?

25 A. Security, loss prevention.

1 MS. PENSABENE: I would object. I don't know
2 how this is relevant.

3 THE COURT: Well, overruled. Go ahead.
4 BY MS. TRIPPIEDI:

5 Q. How long have you been an asset protection
6 officer?

7 A. Going on 11 years.

8 Q. You basically are a security officer that --
9 did you receive training for your job at Wal-Mart?

10 A. Yes.

11 Q. Now, I'll draw your attention to an incident
12 that occurred March 29, 2013. Were you on the bus that
13 day?

14 A. Yes.

15 Q. What were you doing on the bus?

16 A. Going home.

17 Q. Is that going home from work?

18 A. Yes.

19 Q. Did you take notice of someone on the bus that
20 day?

21 A. Yes.

22 Q. What -- you noticed an individual on the bus
23 that drew your attention?

24 A. Yes.

25 Q. I'll ask you to look around the courtroom and

1 see if you recognize that same individual that drew your
2 attention?

3 A. Looks like the guy there. A little more clean
4 cut then he was.

5 Q. Point to him and tell me what he is wearing
6 today?

7 A. Blue shirt.

8 Q. He's wearing a tie, for the record?

9 A. Yes. He's wearing a tie.

10 MS. TRIPPIEDI: Record reflect that she has
11 identified James Manning.

12 THE COURT: Record will so reflect.

13 BY MS. TRIPPIEDI:

14 Q. What made you take notice of the Defendant?

15 A. The say he was scoping.

16 Q. What do you mean by scoping?

17 A. Scoping people, we call it scoping. The way
18 he was watching.

19 MS. PENSABENE: Objection, your Honor. This
20 isn't relevant.

21 THE COURT: Well, from a relevant standpoint
22 I'll overrule the objection.

23 MS. PENSABENE: It calls for speculation.

24 THE COURT: Describe what you mean by scoping.

25 THE WITNESS: Checking people out. Checking

1 everybody that comes out. It's a certain way you check
2 people out.

3 THE COURT: Go ahead.

4 BY MS. TRIPPIEDI:

5 Q. You noticed him looking around. Did you also
6 notice an elderly man on the bus?

7 A. Yes.

8 Q. What made you notice that man?

9 A. He was checking him out.

10 Q. You saw the man, the Defendant, James Manning
11 checking out the elderly man?

12 A. Yes.

13 Q. What else did you notice?

14 A. Just how jittery he was. There is away you
15 move, he was moving like this.

16 THE COURT: You are referring to Mr. Manning or
17 the elderly man.

18 THE WITNESS: Yes. No.

19 BY MS. TRIPPIEDI:

20 Q. Did you notice anything else about the elderly
21 man?

22 A. Something hanging out of his pocket.

23 Q. Could you see what it was?

24 A. To me it looked like a wallet. I don't know
25 what it was.

1 Q. Was it sticking out or what do you mean
2 hanging out?

3 A. Well, my father used to have long wallet like
4 this. He had it chain to his pants. That's what -- I was
5 thinking about that when I looked and saw that.

6 Q. You saw something in his pocket. Was it a
7 wallet or money?

8 A. I think it was. I'm not sure. I wasn't right
9 up on it.

10 Q. You see that in the elderly man's pocket. Is
11 the elderly man sitting or standing?

12 A. Well, he was standing when he got on the bus.
13 That's when I first noticed it. I think he sat down next
14 to a lady. Sat down next to that lady.

15 Q. What if anything did you see the Defendant
16 do?

17 A. The bus stopped at Sam's Town. He jumped
18 up.

19 Q. Jumped up and did what?

20 A. The Defendant, the man there.

21 Q. Jumped up and did what?

22 A. Ran to the man -- ran to the other guy, the
23 old man.

24 Q. What did he do?

25 A. He snatched his wallet. What I think is a

1 wallet.

2 Q. At some point did you see him push the old man
3 down?

4 A. No, he knocked him down.

5 Q. Knocked him down?

6 A. Knocked him down. I saw him swing. It wasn't
7 like this. I saw him swing.

8 Q. The old man fell?

9 A. The old man fell. The stair is up. It got a
10 thing like this. He hit his head on it. I saw blood.

11 THE COURT: The thing like this, you kind of --
12 like a pony wall.

13 THE WITNESS: Raised up. The seats are high on
14 the buses.

15 THE COURT: Like a railing.

16 THE WITNESS: Not like a railing, just raised up
17 from the ground -- from the floor.

18 BY MS. TRIPPIEDI:

19 Q. Based on what you saw you called 911?

20 A. Yes.

21 Q. You reported what you saw?

22 A. Yes.

23 Q. Sitting here today how sure are you that it's
24 the individual sitting there? Did you get a good look at
25 him?

1 A. Yeah. I got a good look at him. He looks
2 cleaner now. I make my living by knowing faces, but he
3 just looks cleaner now to me.

4 MS. TRIPPIEDI: I'll pass the witness.

5 THE COURT: Ms. Harris.

6 MS HARRIS: Thank you.

7 CROSS-EXAMINATION

8 BY MS. HARRIS:

9 Q. You said you work for Wal-Mart in asset
10 protection?

11 A. Yes.

12 Q. Security?

13 A. Yes.

14 Q. On the day in question were you at work that
15 day?

16 A. Early that day I was.

17 Q. You take the bus to get back and forth to
18 work?

19 A. Yes.

20 Q. How long had you worked that day?

21 A. I don't remember. I don't -- I can't tell you
22 what time it was. I don't work the same hours every
23 day.

24 Q. You said you'd been working this job for 11
25 years?

1 A. Going on 11.

2 Q. But you don't remember what time you were at
3 work?

4 A. My hours are different every day.

5 Q. How long do you usually work?

6 A. 8 hours.

7 Q. You can't recall what time it was?

8 A. No.

9 Q. Do recall what day it was?

10 A. No.

11 Q. And where did you get on the bus at?

12 A. Lake Mead and Boulder.

13 Q. You work at Wal-Mart there?

14 A. Yes.

15 Q. How long were you on the bus before you saw
16 the old man, as you referred to him?

17 A. Takes about half an hour to get to Nellis by
18 Sam's Town.

19 Q. You were on the bus 30 minutes?

20 A. Yes.

21 Q. Then you see the old man?

22 A. Yes. I saw the old man actually after I saw
23 the young man there. I wasn't paying attention to the old
24 man. I paid attention to people that's nervous around
25 me.

1 Q. So when did you see the person identified as
2 Mr. Manning?

3 A. He was on there when the bus -- he was already
4 on there.

5 Q. He was on there before you got on?

6 A. No.

7 Q. You were on first. Then the person you've
8 identified as Mr. Manning?

9 A. I was thinking. I'm sorry.

10 I can't tell you if he was on there before I got on
11 there. I can tell you. When he started moving around is
12 when I paid attention to him. That was before Sam's
13 Town.

14 Q. You don't recall if he was on the bus before
15 or after you?

16 A. No. I can't tell you. All I can recall is
17 when he started moving around.

18 Q. You can tell recall if the old man was on the
19 bus before or after?

20 A. I didn't pay attention to the old man first.

21 Q. Were you on the bus by yourself?

22 A. Yes.

23 Q. Where you sitting on the bus?

24 A. Behind the cash box.

25 Q. Is that in the front of the bus or back of the

1 bus?

2 A. Used to be in the back.

3 Q. At the back of the bus?

4 A. Not all the way to the back. In the middle,
5 towards the middle.

6 Q. I want to hash this bus out, so we get a clear
7 picture of what it is. Is it a bus with 3 doors on it?

8 A. Yes.

9 Q. You have the front door would be at the
10 beginning where the bus driver is?

11 A. Yes.

12 Q. Then you have like the middle door, which is
13 kind of in the middle of the bus?

14 A. Right.

15 Q. Then you have the back door?

16 A. Yes.

17 Q. You're toward the middle and back door?

18 A. Yes.

19 Q. Sitting behind the cash box?

20 A. Not behind the cash box. The box was there.

21 Q. The cash box is where that paper cup is?

22 A. No. It's farther, but I'm saying right on the
23 other side of this counter.

24 Q. How tall is the cash box?

25 A. This tall.

1 THE COURT: Is that a height -- are you meaning
2 while you're sitting on the bus.

3 THE WITNESS: No, standing on the bus.

4 THE COURT: 4 feet high.

5 THE WITNESS: Yeah.

6 BY MS HARRIS:

7 Q. When you are sitting down it's about to your
8 chest area?

9 A. This tall against the wall.

10 Q. The person that you identified as Mr. Manning,
11 did you point him out to the police before?

12 A. I don't know him.

13 Q. Did you point him out to police before?

14 A. Any police.

15 Q. Yes.

16 A. No. I didn't know him.

17 Q. Did detectives come and show you pictures and
18 you pointed him out of a picture?

19 A. Detectives, no.

20 Q. Did detective come speak to you?

21 A. No.

22 Q. Did police officers come speak to you?

23 A. That day.

24 Q. Did you write out a statement?

25 A. No.

1 Q. So the incident that you described, the bus
2 was stopping or still moving when you said the person
3 identified Mr. Manning jumped up?

4 A. As soon as the doors flew open, all the doors
5 flew open at the same time. The doors flew open and
6 that's when he jumped up.

7 Q. The bus stopped?

8 A. Yeah.

9 Q. You said that he ran up to the old man. Where
10 was old man?

11 A. Toward the other door.

12 Q. What other door?

13 A. Towards the front.

14 Q. Where did the person that you'd see run from?
15 What area of the bus did he run from?

16 A. Right on other side of that cash box. Pretty
17 much on the other side of the cash box. They have a seat
18 right there.

19 Q. I see you gesture with a fist when you were
20 speaking with the State. You say he swung on him?

21 A. He swung.

22 Q. With a fist?

23 A. A fist.

24 Q. Did you see where his fist made contact to the
25 old man?

1 A. Not really. People started moving. I was
2 paying attention to him -- the other guy, not him.

3 Q. The old man?

4 A. Old man. I wasn't -- he was up here. It was
5 up over here.

6 Q. You think he hit him in and his face?

7 A. That's what it look like.

8 Q. With a fist?

9 A. Yes.

10 Q. Like a punch?

11 A. Yes.

12 Q. Not an open hand?

13 A. I didn't see an open hand.

14 Q. There was a bunch of blood on the ground?

15 A. His arm hit the thing.

16 Q. The old man's arm?

17 A. Yes.

18 Q. Hit what thing?

19 A. The step that was raised up, the metal thing
20 that goes around the step like this. He hit it.

21 Q. Only his arm was bleeding?

22 A. I couldn't tell then. People started moving.
23 I saw blood and got anxious.

24 Q. You said you called 911?

25 A. Yes.

1 Q. You stayed at the bus stop?

2 A. I did until the police came.

3 Q. When the police came what did you do?

4 A. I showed them which way the man ran.

5 Q. So you were giving the police officer
6 information about the case?

7 A. Yes.

8 Q. That you thought was important?

9 A. Just which way he went.

10 Q. Did you give any description?

11 A. Yes.

12 Q. But you never wrote a statement out?

13 A. No.

14 Q. As you sit here today, this person, is this
15 the second time you have seen him in your life?

16 A. Yes. Like I said he looks cleaner. He was
17 dirty. He's more cleaned up.

18 Q. When you say cleaner, do you mean his facial,
19 his air?

20 A. You want me to explain it.

21 Q. Yes.

22 A. He looked like a dope fiend to me. Now he
23 looks more like a young man to me. That's what I mean
24 cleaned up. He looked -- I don't know.

25 MS HARRIS: No further questions.

1 THE WITNESS: Thank you.

2 THE COURT: Mr. Trippiedi, anything.

3 REDIRECT EXAMINATION

4 BY MS. TRIPPIEDI:

5 Q. For the record these 4 photographs I'll show
6 the witness. The admission is stipulated to by the
7 defense?

8 MS. PENSABENE: Yes.

9 THE COURT: Those will be admitted. You can
10 publish.

11 BY MS. TRIPPIEDI:

12 Q. Showing you want's admitted as State's Exhibit
13 1-A through 1-D. Take a look at these and tell me what
14 you see?

15 A. I see the cash box. I see him -- the man.

16 Q. Take a look at all of them.

17 And so these are still photographs from that day on
18 the bus, correct?

19 A. Yes.

20 Q. This is exactly what you remember him wearing
21 and looking like on the bus that day, correct?

22 A. Yes.

23 Q. This is -- you're a hundred percent sure that
24 this is the individual that did this to that old man you
25 were describing?

1 A. Yes.

2 Q. May I publish?

3 THE COURT: You may.

4 BY MS. TRIPPIEDI:

5 Q. That's State's 1-A. That is the Defendant
6 Manning that day on the bus?

7 A. Yes.

8 Q. Here is another picture of that. This is
9 State's 1-B. Do you see the defendant Manning in the
10 picture?

11 A. Yes.

12 Q. Do you see the area that the old man was
13 sitting in this picture?

14 A. No. This one he moved.

15 Q. Showing you 1-C. Is that James Manning in
16 that photo?

17 A. He was in another spot.

18 THE COURT: The yellow dot is where the old man
19 was or Mr. Manning.

20 THE WITNESS: Uh --

21 BY MS. TRIPPIEDI:

22 Q. Circle Mr. Manning in the photo?

23 A. This is him.

24 Q. Can you tell from there where you were at on
25 the bus?

1 A. No. I really can't because the bus is the
2 same way on both sides. He moved from one side to the
3 other here. From that picture to this picture. I can't
4 tell you where I'm at. I'm behind the money box. You
5 have that on the first picture.

6 Q. Just showing you State's 1-D. Is that the --
7 you can't see it. I don't know if the jury is going to be
8 able to see that.

9 Circle where you see James Manning. We'll have
10 these as exhibits.

11 MS. TRIPPIEDI: No further questions.

12 THE COURT: Ms. Harris, anything further.

13 MS HARRIS: No, sir. Thank you.

14 THE COURT: Anything from our jurors.

15 Counsel approach.

16 (Discussion held at the bench.)

17 THE COURT: Mr. Hall, when you say in your
18 question what kind of pants was the plaintiff wearing, are
19 you referring to Mr. Berg.

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: To begin with, do you know what kind
22 of pants the elderly man was wearing you were describing.
23 Were they baggy, tight, dress pants.

24 THE WITNESS: No I don't remember what kind of
25 pants he had on.

1 THE COURT: Secondly, with regard to that
2 same gentleman. Do you recall which pocket it was that
3 the thing you described was hanging out of.

4 THE WITNESS: I believe the right side, right
5 now. I can't be sure. It was on the right side I
6 believe.

7 THE COURT: ms. Trippiedi, any questions based
8 on mine.

9 MS. TRIPPIEDI: No, your Honor.

10 THE COURT: Ms. Harris.

11 MS HARRIS: No, your Honor.

12 THE COURT: Ma'am, thank you for coming in. I
13 appreciate your time.

14 We'll take a recess.

15 JURY ADMONITION

16 During the recess, ladies and gentlemen, you're
17 admonished not to converse among yourselves or with anyone
18 else, including, without limitation, the lawyers, parties
19 and witnesses, on any subject connected with this trial,
20 or any other case referred to during it, or read, watch,
21 or listen to any report of or commentary on the trial, or
22 any person connected with this trial, or any such other
23 case by any medium of information including, without
24 limitation, newspapers, television, internet or radio.

25 You are further admonished not to form or express any

1 opinion on any subject connected with this trial until the
2 case is finally submitted to you.

3 The break will be 10, 15 minutes, and then we'll
4 finish up another witness or so.

5 (Brief recess taken.)

6 THE COURT: The question posed by jurors, there
7 were no objections as we discussed it at the bench.

8 MS. PENSABENE: Correct.

9 THE COURT: We'll be in recess. Thank you.

10 Back on the record in C-290624. Mr. Manning is here
11 with his attorneys. State's present. Our jurors are
12 present.

13 We'll go ahead and break for the day. When you come
14 back tomorrow, come right up here and have a seat. See
15 you tomorrow at 10:30.

16 JURY ADMONITION

17 During the recess, ladies and gentlemen, you're
18 admonished not to converse among yourselves or with anyone
19 else, including, without limitation, the lawyers, parties
20 and witnesses, on any subject connected with this trial,
21 or any other case referred to during it, or read, watch,
22 or listen to any report of or commentary on the trial, or
23 any person connected with this trial, or any such other
24 case by any medium of information including, without
25 limitation, newspapers, television, internet or radio.

1 You are further admonished not to form or express any
2 opinion on any subject connected with this trial until the
3 case is finally submitted to you.

4 Anybody needs letters.

5 THE OFFICER: I have it.

6 THE COURT: See you tomorrow. Thank you.

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CERTIFICATE
OF
CERTIFIED COURT REPORTER

* * * * *

I, the undersigned certified court reporter in and for the
State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the
time and place therein set forth; that the testimony and
all objections made at the time of the proceedings were
recorded stenographically by me and were thereafter
transcribed under my direction; that the foregoing is a
true record of the testimony and of all objections made at
the time of the proceedings.

A handwritten signature in cursive script, reading "Sharon Howard", is written over a horizontal line. The signature is fluid and includes a large, circular flourish at the end.

Sharon Howard
C.C.R. #745

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JAMES MANNING,

No. 65856

Appellant,

vi.

THE STATE OF NEVADA,

Respondent.

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

Attorney for Appellant

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

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

Counsel for Respondent

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 18th day of February, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO
STEVEN S. OWENS

HOWARD S. BROOKS
WILL WATERS

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

JAMES MANNING
NDOC # 1030247
c/o HIGH DESERT STATE PRISON
PO Box 650
Indian Springs, NV 89070

BY

Employee, Clark County Public Defender's Office