

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

2  
3       PATRICK NEWELL,                                   )

No. 66552

4                                   Appellant,                                   )

5                                   v.                                   )

6       THE STATE OF NEVADA,                                   )

7                                   Respondent.                                   )

Electronically Filed  
Dec 16 2014 08:31 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

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**APPELLANT'S APPENDIX VOLUME I PAGES 001-173**

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

Attorney for Appellant

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

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

Counsel for Respondent

**INDEX**  
**PATRICK NEWELL**  
**Case No. 66552**

	<u>PAGE NO.</u>
Amended Criminal Complaint filed 11/26/2012.....	003-004
Amended Information filed 06/16/2014.....	310-312
Bail Bond filed 02/20/2013 .....	192-195
Criminal Complaint filed 10/11/2012.....	001-002
Defendant's Notice of Witnesses, Pursuant to NRS 174.234 filed 06/09/2014.....	307-308
Demand for a Speedy Trial filed 11/19/2013 .....	219-220
District Court Minutes from 12/04/2012 through 08/21/2014 .....	368-405
Ex Parte Motion for Release of Medical Records filed 12/18/2012.....	170-171
Ex Parte Motion for Release of Medical Records filed 04/08/2013.....	196-197
Ex Parte Order for Release of Records filed 06/10/2014.....	309
Information filed 11/30/2012.....	005-008
Instructions to the Jury filed 06/16/2014.....	316-359
Judgment of Conviction filed 08/29/2014.....	362-363
Justice Court Minutes from 10/12/2012 through 11/27/2012 .....	009-013
Memorandum to Defendant's Motion for Summary Judgment to Compel Discovery filed 01/13/2014.....	269-271
Motion for OR Release or, in the Alternative, Motion to Reduce Bail filed 11/07/2012 .....	018-023
Motion for OR Release or, in the Alternative, Motion to Reduce Bail filed 12/26/2012 .....	174-178
Motion for Reduction in Bail filed 11/06/2013 .....	212-217
Motion for Summary Judgment to Compel Discovery filed 12/26/2013 .....	229-238
Motion to Appoint Counsel filed 01/21/2014.....	273-276
Motion to Continue Trial Date filed 02/27/2014.....	296-298
Motion to Dismiss Counsel and Appointment of Alternate Counsel filed 02/18/2014....	283-291
Motion to Dismiss Counsel and Permit Defendant to Proceed in Pro Per filed 10/15/2013.....	203-210
///	

1	Motion to Dismiss Standby Counsel and Appoint Alternate Standby Counsel filed 01/13/2014..	262-268
2	Motion to Shorten Time filed 01/06/2014.....	255-260
3	Motion to Withdraw as Counsel filed 09/09/2013 .....	200-202
4	Motion to Withdraw as Counsel of Record filed 01/03/2013 .....	187-191
5	Notice of Appeal filed 01/02/2014 .....	251-253
6	Notice of Appeal filed 09/19/2014 .....	364-367
7	Notice of Confirmation of Counsel filed 11/05/2012.....	014
8	Notice of Dismissal of Counsel filed 04/29/2014 .....	301-302
9	Notice of Expert Witnesses filed 01/31/2014.....	280-281
10	Notice of Motion filed 11/06/2013.....	211
11	Notice of Motion filed 11/19/2013.....	218
12	Notice of Motion filed 12/26/2013.....	248
13	Notice of Motion filed 12/26/2013.....	249-250
14	Notice of Motion filed 01/06/2014.....	254
15	Notice of Motion filed 01/13/2014.....	261
16	Notice of Motion filed 01/21/2014.....	272
17	Notice of Motion filed 02/18/2014.....	282
18	Notice of Witnesses filed 01/31/2014 .....	277-279
19	Notice to Place on Calendar filed 11/19/2012.....	024
20	Order Releasing Medical Records filed 12/18/2012 .....	172-173
21	Order Releasing Medical Records filed 04/11/2013 .....	198-199
22	Rebuttal to State's Opposition to Defendant's Motion for a Reduction in Bail Amount filed	
23	12/26/2013 .....	239-247
24	Reporter's Transcript of Preliminary Hearing heard 11/27/2012.....	025-169
25	Second Amended Information filed 06/19/2014 .....	313-315
26	State's Opposition to Defendant's Motion for OR Release or, in the Alternative, Motion to	
27	Reduce Bail filed 01/02/2013 .....	179-186
28	State's Opposition to Defendant's Motion for Reduction in Bail filed 11/21/2013 .....	221-228
	///	

1	Substitution of Attorney filed 04/04/2014.....	299-300
2	Substitution of Attorneys filed 11/07/2012 .....	015-017
3	Supplemental Notice of Wintesses filed 06/05/2014 .....	303-306
4	Supreme Court Order Dismissing Appeal filed 02/26/2014 .....	292-295
5	Verdict filed 06/19/2014.....	360-361

### **TRANSCRIPTS**

8	Recorder's Rough Draft Transcript of Proceedings, <b>Jury Trial—Day One</b> Date of Hrg: 06/16/2014.....	583-767
10	Recorder's Rough Draft Transcript of Proceedings, <b>Jury Trial—Day Two</b> Date of Hrg: 06/17/2014.....	768-936
12	Recorder's Rough Draft Transcript of Proceedings, <b>Jury Trial—Day Three</b> Date of Hrg: 06/18/2014.....	937-1169
14	Recorder's Rough Draft Transcript of Proceedings, <b>Jury Trial—Day Four</b> Date of Hrg: 06/19/2014.....	1170-1278
16	Recorder's Transcript of Hearing, Arraignment Date of Hrg: 12/04/2012.....	406-408
18	Rough Draft Recorder's Transcript, Calendar Call Date of Hrg: 06/10/2014.....	526-535
20	Rough Draft Recorder's Transcript, Calendar Call and Defendant's Motion to Continue Trial Date Date of Hrg: 03/11/2014.....	504-506
22	Rough Draft Recorder's Transcript, Calendar Call and Motion in Limine Date of Hrg: 06/12/2014.....	536-582
24	Rough Draft Recorder's Transcript, Damian R. Sheets, Esq's Motion to Withdraw as Counsel of Record Date of Hrg: 02/05/2013.....	419-422
26	Rough Draft Recorder's Transcript, Damian R. Sheets, Esq's Motion to Withdraw as Counsel of Record; Defendant's Motion for OR Release or, in the Alternative, Motion to Reduce Bail; and Calendar Call Date of Hrg: 01/15/2013.....	409-418

1	Rough Draft Recorder's Transcript, Defendant's Pro Se Demand for Speedy Trial; Status Check: Discovery	
2	Date of Hrg: 12/31/2013.....	481-493
3	Rough Draft Recorder's Transcript, Defendant's Pro Se Demand for Speedy Trial; Status Check: Discovery; and Defendant's Pro Se	
4	Motion for Reduction in Bail	
5	Date of Hrg: 12/03/2013.....	473-476
6	Rough Draft Recorder's Transcript, Defendant's Pro Se Demand for Speedy Trial; Status Check: Discovery; and Defendant's Pro Se	
7	Motion for Reduction in Bail	
8	Date of Hrg: 12/17/2013.....	477-480
9	Rough Draft Recorder's Transcript, Sentencing	
10	Date of Hrg: 08/21/2014.....	1279-1300
11	Rough Draft Recorder's Transcript, State's Request: Address Status of Deft Counsel/Trial Setting	
12	Date of Hrg: 04/29/2014.....	507-516
13	Rough Draft Recorder's Transcript, State's Request: To Address Trial Setting	
14	Date of Hrg: 05/08/2014.....	517-525
15	Rough Draft Recorder's Transcript, Status Check: Confirmation of Counsel	
16	Date of Hrg: 02/19/2013.....	423-426
17	Rough Draft Recorder's Transcript, Status Check: Confirmation of Counsel	
18	Date of Hrg: 02/26/2013.....	427-429
19	Rough Draft Recorder's Transcript, Status Check: Discovery	
20	Date of Hrg: 10/15/2013.....	450-472
21	Rough Draft Recorder's Transcript, Status Check: Discovery; Defendant's Pro Se Demand for Speedy Trial; Motion for Summary	
22	Judgment to Compel Discovery; and Defendant's Motion to Shorten Time	
23	Date of Hrg: 01/14/2014.....	494-503
24	Rough Draft Recorder's Transcript, Status Check: Discovery/Trial Readiness	
25	Date of Hrg: 10/01/2013.....	443-449
26	Rough Draft Recorder's Transcript, Status Check: Trial Readiness	
27	Date of Hrg: 03/26/2013.....	430-432
28	Rough Draft Recorder's Transcript, Steven K. Parke, Esq's Motion to Withdraw as Counsel	
	Date of Hrg: 09/19/2013.....	433-435
	///	

1 Rough Draft Recorder's Transcript,  
2 Steven K. Parke, Esq's Motion to Withdraw as Counsel  
3 Date of Hrg: 09/24/2013 ..... 436-442  
4  
5  
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1 JUSTICE COURT, LAS VEGAS TOWNSHIP  
2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,

4 Plaintiff,

5 -vs-

6 PATRICK NEWELL #2861099,

7 Defendant.

FILED  
OCT 11 12 01 PM '12

JUSTICE COURT  
LAS VEGAS, NEVADA  
BY

CASE NO: 12F16477X

DEPUTY DEPT NO: 1

8 CRIMINAL COMPLAINT

9 The Defendant above named having committed the crimes of ATTEMPT MURDER  
10 WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030,  
11 193.330, 193.165); BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN  
12 SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.481.2e) and ASSAULT  
13 WITH A DEADLY WEAPON (Category B Felony - NRS 200.471), in the manner  
14 following, to-wit: That the said Defendant, on or about the 10th day of October, 2012, at  
15 and within the County of Clark, State of Nevada,

16 COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

17 did then and there, without authority of law, and malice aforethought, willfully and  
18 feloniously attempt to kill THEODORE BEJARNO, a human being, by spraying the said  
19 THEODORE BEJARNO with gasoline and using a lighter to ignite the said THEODORE  
20 BEJARNO and/or set the said THEODORE BEJARNO on fire, with a deadly weapon, to-  
21 wit: gasoline and a lighter/open flame.

22 COUNT 2 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN  
23 SUBSTANTIAL BODILY HARM

24 did then and there wilfully, unlawfully and feloniously use force or violence upon the  
25 person of another, to-wit: THEODORE BEJARNO, with use of a deadly weapon, to-wit:  
26 gasoline and/or lighter/open flame, by spraying gasoline on the said THEODORE  
27 BEJARNO and using a lighter to ignite the said THEODORE BEJARN on fire, resulting in  
28 substantial bodily harm to the said THEODORE BEJARNO.

1 COUNT 3 - ASSAULT WITH A DEADLY WEAPON

2 did then and there wilfully, unlawfully, feloniously and intentionally place another  
3 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt  
4 to use physical force against another person, to-wit: THEODORE BEJARNO, with use of a  
5 deadly weapon, to-wit: a knife, by brandishing said knife and threatening to cut the said  
6 THEODORE BEJARNO.

7 All of which is contrary to the form, force and effect of Statutes in such cases made  
8 and provided and against the peace and dignity of the State of Nevada. Said Complainant  
9 makes this declaration subject to the penalty of perjury.

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Crew Campbell  
10/11/2012

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12F16477X/lal  
LVMPD EV# 1210100143  
(TK1)

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ORIGINAL

12F16477X  
ACRM  
Amended Criminal Complaint  
2025723



FILED IN OPEN COURT

JUSTICE COURT, LAS VEGAS TOWNSHIP  
CLARK COUNTY, NEVADA

DATE: 11/29/12

CLERK: [Signature]

THE STATE OF NEVADA,

Plaintiff,

-vs-

PATRICK NEWELL #2861099,

Defendant.

CASE NO: 12F16477X

DEPT NO: 1

AMENDED

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165); BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.481.2e); ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471) and PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS OR PROPERTY (Category C Felony - NRS 202.595), in the manner following, to-wit: That the said Defendant, on or about the 10th day of October, 2012, at and within the County of Clark, State of Nevada,

COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill THEODORE BEJARNO, a human being, by spraying the said THEODORE BEJARNO with gasoline and using a lighter to ignite the said THEODORE BEJARNO and/or set the said THEODORE BEJARNO on fire, with a deadly weapon, to-wit: gasoline and a lighter/open flame.

COUNT 2 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM

did then and there wilfully, unlawfully and feloniously use force or violence upon the person of another, to-wit: THEODORE BEJARNO, with use of a deadly weapon, to-wit: gasoline and/or lighter/open flame, by spraying gasoline on the said THEODORE BEJARNO and using a lighter to ignite the said THEODORE BEJARNO on fire, resulting

1 in substantial bodily harm to the said THEODORE BEJARNO.

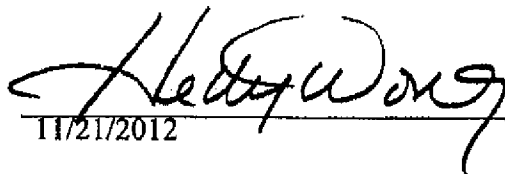
2 COUNT 3 - ASSAULT WITH A DEADLY WEAPON

3 did then and there wilfully, unlawfully, feloniously and intentionally place another  
4 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt  
5 to use physical force against another person, to-wit: THEODORE BEJARNO, with use of a  
6 deadly weapon, to-wit: a knife, by brandishing said knife and threatening to cut the said  
7 THEODORE BEJARNO.

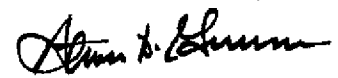
8 COUNT 4 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS OR  
9 PROPERTY

10 did then and there willfully and unlawfully perform an act in willful or wanton  
11 disregard of the safety of persons or property, in the following manner, to-wit: by spraying  
12 the said THEODORE BEJARNO with gasoline and igniting a fire in close proximity to the  
13 body of said THEODORE BEJARNO, causing the said THEODORE BEJARNO to become  
14 engulfed in flames, resulting in substantial bodily harm to the said THEODORE BEJARNO.

15 All of which is contrary to the form, force and effect of Statutes in such cases made  
16 and provided and against the peace and dignity of the State of Nevada. Said Complainant  
17 makes this declaration subject to the penalty of perjury.

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28 LVMPD EV# 1210100143  
(TK1)



CLERK OF THE COURT

1 **INFM**  
2 **STEVEN B. WOLFSON**  
3 **Clark County District Attorney**  
4 **Nevada Bar #001565**  
5 **HETTY O. WONG**  
6 **Deputy District Attorney**  
7 **Nevada Bar #011324**  
8 **200 Lewis Avenue**  
9 **Las Vegas, Nevada 89155-2212**  
10 **(702) 671-2500**  
11 **Attorney for Plaintiff**

12 **I.A. 12/04/12**  
13 **10:30 AM**  
14 **D. SHEETS**

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

15 **THE STATE OF NEVADA,**  
16  
17 **Plaintiff,**

**Case No: C-12-285825-1**  
**Dept No: XX**

18 **-vs-**

19 **PATRICK NEWELL,**  
20 **#2861099,**

21 **Defendant.**

**INFORMATION**

22 **STATE OF NEVADA** }  
23 **COUNTY OF CLARK** } ss.

24 **STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State**  
25 **of Nevada, in the name and by the authority of the State of Nevada, informs the Court:**

26 **That PATRICK NEWELL, the Defendant(s) above named, having committed the**  
27 **crimes of ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B**  
28 **Felony - NRS 200.010, 200.030, 193.330, 193.165); BATTERY WITH USE OF A**  
**DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B**  
**Felony - NRS 200.481.2e); ASSAULT WITH A DEADLY WEAPON (Category B**  
**Felony - NRS 200.471) and PERFORMANCE OF ACT IN RECKLESS DISREGARD**  
**OF PERSONS OR PROPERTY (Category C Felony - NRS 202.595), on or about the**  
**10th day of October, 2012, within the County of Clark, State of Nevada, contrary to the**  
**form, force and effect of statutes in such cases made and provided, and against the peace and**

1 dignity of the State of Nevada,

2 COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

3 did then and there, without authority of law, and malice aforethought, willfully and  
4 feloniously attempt to kill THEODORE BEJARNO, a human being, by spraying the said  
5 THEODORE BEJARNO with gasoline and using a lighter to ignite the said THEODORE  
6 BEJARNO and/or set the said THEODORE BEJARNO on fire, with a deadly weapon, to-  
7 wit: gasoline and a lighter/open flame.

8 COUNT 2 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN  
9 SUBSTANTIAL BODILY HARM

10 did then and there wilfully, unlawfully and feloniously use force or violence upon the  
11 person of another, to-wit: THEODORE BEJARNO, with use of a deadly weapon, to-wit:  
12 gasoline and/or lighter/open flame, by spraying gasoline on the said THEODORE  
13 BEJARNO and using a lighter to ignite the said THEODORE BEJARNO on fire, resulting  
14 in substantial bodily harm to the said THEODORE BEJARNO.

15 COUNT 3 - ASSAULT WITH A DEADLY WEAPON

16 did then and there wilfully, unlawfully, feloniously and intentionally place another  
17 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt  
18 to use physical force against another person, to-wit: THEODORE BEJARNO, with use of a  
19 deadly weapon, to-wit: a knife, by brandishing said knife and threatening to cut the said  
20 THEODORE BEJARNO.

21 COUNT 4 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS OR  
22 PROPERTY

23 did then and there willfully and unlawfully perform an act in willful or wanton  
24 disregard of the safety of persons or property, in the following manner, to-wit: by spraying  
25 the said THEODORE BEJARNO with gasoline and igniting a fire in close proximity to the

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body of said THEODORE BEJARNO, causing the said THEODORE BEJARNO to become engulfed in flames, resulting in substantial bodily harm to the said THEODORE BEJARNO.

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY /s/Hetty O. Wong  
HETTY O. WONG  
Deputy District Attorney  
Nevada Bar #011324

Names of witnesses known to the District Attorney's Office at the time of filing this Information are as follows:

<u>NAME</u>	<u>ADDRESS</u>
ADAM, CARLOS	9000 Las Vegas Bl S #1017, LVN 89123
AQUINO, MAYRIE C.	LVMPD 13993
ARELLANO, JUAN	District Attorney Process Server
BEJARNO, THEODORE	C/O DISTRICT ATTORNEY'S OFFICE
COREA, BRYANT	LVMPD #9389
CUSTODIAN OF RECORDS	CCDC
CUSTODIAN OF RECORDS	CIRCLE K
CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS
CUSTODIAN OF RECORDS	LVMPD RECORDS
GRIGGS, BRYAN	AMR, 1200 S Martin Luther King Bl, LVN 89102
HOGANS, DWAYNE	District Attorney Process Server
JOHNSON, KEVIN C.	LVMPD #2892
KNUDSON, BRETT JAMES	LVMPD #13903
KOWALSKI, BRIAN D.	LVMPD #8550
LEWIS, WILLIAM	1454 Pebble Rd #2059, LVN 89123

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PHILLIPS, DERRICK  
RANDALL, CHAD W.  
TRAMMELL, MATT

Address Unknown  
LVMPD #13427  
District Attorney Investigator

DA#12F16477X/td/L-4  
LVMPD EV#1210100143  
(TK1)

# JUSTICE COURT, LAS VEGAS TOWNSHIP

STATE VS. NEWELL, PATRICK

CASE NO. 12F16477X

PAGE: 1

DATE, JUDGE  
OFFICERS OF COURT  
PRESENT

APPEARANCES - HEARING

CONTINUED TO:

OCTOBER 11, 2012	CRIMINAL COMPLAINT FILED: <b>COUNT 1- ATTEMPT MURDER WITH USE OF A DEADLY WEAPON</b> <b>COUNT 2- BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM</b> <b>COUNT 3- ASSAULT WITH DEADLY WEAPON</b>	JME
OCTOBER 12, 2012 D. LIPPIS C. THOMAN, DA J. STORMS, PD (APPOINTED) J. GRIME, CR M. KARELSE, CLK	INITIAL ARRAIGNMENT DEFENDANT PRESENT IN COURT IN CUSTODY-COUNTS 1,2 DEFENDANT ADVISED OF CHARGES/WAIVES READING OF COMPLAINT PRELIMINARY HEARING DATE SET  DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF-COUNTS 1,2 NO BAIL POSTED- COUNT 3	10/25/12 9AM #1  JME
OCTOBER 25, 2012 J. T. BONAVENTURE FOR D. LIPPIS H. WONG, DA C. ROMNEY, PD J. GRIME, CR J. BRELAND, CLK	TIME SET FOR PRELIMINARY HEARING DEFENDANT PRESENT IN COURT ** IN CUSTODY - COUNTS 1, 2 ** HILL MOTION BY STATE TO CONTINUE PRELIMINARY HEARING - MOTION GRANTED STATE'S WITNESS: THEODORE BEJARNO NOT PRESENT IN COURT ( STATE REPRESENTS DEFENDANT IS IN THE HOSPITAL) MOTION BY DEFENSE TO RELEASE DEFENDANT - OBJECTION TO SAID MOTION BY STATE - MOTION DENIED BAIL RESET: COUNT 1 - \$100,000/100,000 COUNT 2 - \$20,000/20,000 PRELIMINARY HEARING DATE RESET  DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF - COUNTS 1, 2 NO BAIL POSTED AS TO COUNT 3	11/08/12 9:00 #1  JGB
NOVEMBER 05, 2012	NOTICE OF CONFIRMATION OF COUNSEL FILED	JGB
NOVEMBER 07, 2012	MOTION FOR O.R. RELEASE OR, IN THE ALTERNATIVE, MOTION TO REDUCE BAIL FILED BY DEFENSE  SUBSTITUTION OF ATTORNEY FILED	11-13-12 8A #1 DC

# JUSTICE COURT, LAS VEGAS TOWNSHIP

STATE VS. NEWELL, PATRICK

CASE NO. **12F16477X**

PAGE: 2

DATE, JUDGE  
OFFICERS OF COURT  
PRESENT

APPEARANCES - HEARING

CONTINUED TO:

[illegible]



**Justice Court, Las Vegas Township  
Clark County, Nevada**

**Court Minutes**



**12F16477X State of Nevada vs Newell, Patrick**

**11/26/2012 7:30:00 AM Motion**

**Result: Motion Granted**

<b>PARTIES</b>	Attorney	Sheets, Damian R.
<b>PRESENT:</b>	Defendant	Newell, Patrick
<b>Judge:</b>	Lippis, Deborah J.	
<b>Prosecutor:</b>	Thoman, Charles	
<b>Court Reporter:</b>	Grime, Joni	
<b>Court Clerk:</b>	Breland, Jourisha	
<b>DA Clerk:</b>	Vincent, Kitty	

**PROCEEDINGS**

**Events: Future Court Date Stands**

*11/27/12 - Prelim Hearing*

**Comment**

*State files an Amended Criminal Complaint in open court*

**Justice Court, Las Vegas Township  
Clark County, Nevada**

**Court Minutes**



**12F16477X State of Nevada vs Newell, Patrick**

**11/27/2012 9:00:00 AM Preliminary Hearing**

**Result: Bound Over**

**PARTIES** Attorney Sheets, Damian R.  
**PRESENT:** Defendant Newell, Patrick

**Judge:** Lipps, Deborah J.  
**Prosecutor:** Wittenberger, Shannon  
**Court Reporter:** Grime, Joni  
**Court Clerk:** Breland, Jourisha  
**DA Clerk:** Vincent, Kltty

**PROCEEDINGS**

**Exhibits:** Document, Photograph, Etc. **Exhibit #:**

**Events: Preliminary Hearing**

*Motion to Exclude Witnesses by Defense - Motion Granted States Witnesses: 1. Theodore Bejarno - Identified defendant; 2. Derrick Phillips - Identified defendant State Rests. Defendant Advised of His Statutory Right to Make a Statement Defendant Waives the Right to a Sworn or Unsworn Statement Defense Witnesses: Defense Rests Motion to Dismiss and Argument In Favor of Said Motion by Defense Argument Against Said Motion by State Motion to Dismiss Denied*

**Bound Over to District Court as Charged**

**Review Date: 11/28/2012**

**Defendant Bound Over to District Court as Charged**

*Probable Cause Found. Defendant bound over to District Court as Charged. Defendant to appear in Lower Level Arraignment Courtroom A. Time 10:30 Date 12/04/12*

**Motion for O/R or Reasonable Bail Setting**

*Motion denied - Bail stands*

**Plea/Disp: 001: ATT. MURDER WITH A DEADLY WEAPON**

Disposition: Bound Over to District Court as Charged (PC Found)

**002: BATTERY WITH A DEADLY WEAPON W/ SUBSTANTIAL BH**

Disposition: Bound Over to District Court as.Charged (PC Found)

**003: ASSAULT WITH A DEADLY WEAPON**

Disposition: Bound Over to District Court as Charged (PC Found)

**Las Vegas Justice Court: Department 01**

LVJC\_Criminal\_MinuteOrder

Case 12F16477X Prepared By: breij

11/27/2012 1:43 PM

**Justice Court, Las Vegas Township  
Clark County, Nevada**

**Las Vegas Justice Court: Department 01**  
LVJC\_Criminal\_MinuteOrder

11/27/2012 1:43 PM

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# Justice Court, Las Vegas Township

Regional Justice Center  
 200 Lewis Avenue 2nd Fl • PO Box 552511 • Las Vegas NV 89155-2511  
 (702) 671-3201 • Fax (702) 671-3183  
 www.co.clark.nv.us/justicecourt\_lv/welcome.htm

DEPUTY

## NOTICE OF CONFIRMATION OF COUNSEL

### ATTENTION JC CRIMINAL DIVISION:

This notice shall serve as Confirmation of Counsel on the case listed below.

### CASE INFORMATION:

JUSTICE COURT CASE NUMBER: 12F16477X		DEFENDANT'S ID NUMBER: 02861099
DEFENDANT'S FIRST NAME: Patrick	MIDDLE INITIAL: —	LAST NAME: NEWELL

### ATTORNEY OF RECORD INFORMATION:

NAME OF ATTORNEY: DANIAN R. SHEETS		BAR NUMBER: 10755
ADDRESS: 726 S. CASINO CENTER BLVD, SUITE 211		
PHONE NUMBER: 598-1299	E-MAIL ADDRESS:	

This Notice of Confirmation may be submitted to the court via E-mail sent to the address below:

- E-mail: [CounselConfirmationLVJC@clarkcountycourts.us](mailto:CounselConfirmationLVJC@clarkcountycourts.us)

### Alternative methods:

- Fax To: (702) 671-3183
- Mail To: Attn: Counsel Confirmation  
 Justice Court, Las Vegas Township  
 PO Box 552511  
 Las Vegas, NV 89155-2511

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JUSTICE COURT, LAS VEGAS TOWNSHIP  
LAS VEGAS, NEVADA

DC

DAMIAN R. SHEETS, ESQ.  
Nevada Bar No. 10755  
**MAYFIELD, GRUBER & SHEETS**  
726 S. Casino Center Blvd., Ste. 211  
Las Vegas, Nevada 89101  
(702) 598-1299  
Attorney for PATRICK NEWELL

**JUSTICE COURT, LAS VEGAS TOWNSHIP**  
**CLARK COUNTY, NEVADA**

STATE OF NEVADA,  
  
Plaintiff,  
  
vs.  
  
PATRICK NEWELL,  
  
Defendant

CASE NO. 12F16477X  
DEPT NO. 1

**SUBSTITUTION OF ATTORNEYS**

HEARING DATE:  
HEARING TIME:

Defendant, PATRICK NEWELL, hereby substitutes and appoints DAMIAN R. SHEETS, ESQ., of the Law Offices of MAYFIELD, GRUBER & SHEETS, 726 S. Casino Center Blvd, Ste. 211, Las Vegas, Nevada 89101, as his attorney in the above-entitled action in place and instead of The Clark County Public Defender, by and through a Deputy Public Defender, 309 S Third Street, Room number 226, Las Vegas Nevada, 89101.

DATED this 5<sup>TH</sup> day of November, 2012.

  
PATRICK NEWELL

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1 I hereby agree to be substituted in the place of The Clark County Public Defender, by and  
2 through a Deputy Public Defender, in the above-entitled action as attorney for Defendant,  
3 PATRICK NEWELL.  
4

5 DATED this 6 day of November, 2012.

6 MAYFIELD, GRUBER & SHEETS

7  
8 BY *10155* *10155*  
9 DAMIAN R. SHEETS, ESQ. *for R*  
10 Nevada Bar No. 10755  
11 726 S. Casino Center Blvd. Ste. 211  
12 Las Vegas, Nevada 89101  
13  
14  
15  
16

17 **RECEIPT OF COPY**

18 RECEIPT OF COPY of the foregoing SUBSTITUTION OF ATTORNEYS is hereby  
19 acknowledged this 7 day of November, 2012.

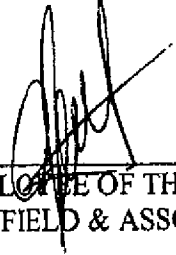
20 STEVE WOLFSON  
21 DISTRICT ATTORNEY

22  
23 BY *[Signature]*  
24 Deputy District Attorney  
25 200 Lewis Ave.  
26 Las Vegas, Nevada 89155  
27  
28

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 6 day of November, 2012, I mailed a copy of  
SUBSTITUTION OF ATTORNEYS, first class mail, postage prepaid, addressed to:

Deputy Public Defender  
309 S. Third Street, Room # 226  
Las Vegas, Nevada 89101

  
AN EMPLOYEE OF THE LAW OFFICES  
OF MAYFIELD & ASSOCIATES

1 **MOT**  
2 Damian R. Sheets, Esq.  
3 Nevada Bar No. 10755  
4 **MAYFIELD GRUBER & SHEETS**  
5 726 S. Casino Center Blvd., Ste. 211  
6 Las Vegas, Nevada 89101  
7 Tel: (702) 598-1299  
8 Fax: (702) 598-1266  
9 E-mail: dsheets@defendingnevada.com

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JY  
DC

7 **JUSTICE COURT, LAS VEGAS TOWNSHIP**  
8 **CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

12 vs.

13 PATRICK NEWELL

14  
15 Defendants;

CASE NO.: 12F16477X  
DEPT. NO.: 1  
Date:  
Time:

**MOTION FOR OR RELEASE OR, IN THE**  
**ALTERNATIVE, MOTION TO REDUCE**  
**BAIL**

17  
18 COMES NOW, Defendant PATRICK NEWELL, by and through his undersigned  
19 counsel, and respectfully submits the foregoing Motion for OR Release or in the Alternative,  
20 Motion to Reduce Bail.

21 ...  
22 ...  
23 ...  
24 ...  
25 ...

26  
27 **RECEIVED**  
28 **NOV 08 2012**

1

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1 This Motion is made and based upon the pleadings and papers on file herein, the attached  
2 Memorandum of Points and Authorities, together with such other oral or documentary evidence  
3 which may be presented to the Court at the time of the hearing of this matter.

4 DATED this 06 day of November, 2012.

5 Respectfully submitted,  
6 MAYFIELD GRUBER & SHEETS

7  
8 BY 10155  
9 DAMIAN R. SHEETS, ESQ.  
10 Nevada Bar No. 10755  
11 726 S. Casino Center Blvd., Ste. 211  
12 Las Vegas, Nevada 89101  
13 (702) 598-1299  
14 Attorney for Defendant  
15 PATRICK NEWELL

16 **NOTICE OF MOTION**

17 TO: THE STATE OF NEVADA, Plaintiff; and

18 TO: DAVID ROGER, District Attorney, by and through his Deputy District Attorney.

19 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing  
20 **MOTION FOR OR RELEASE OR IN THE ALTERNATIVE, MOTION TO REDUCE**  
21 **BAIL** on for hearing on the 13 day of November 2012, at 8 a.m., or as soon thereafter as  
22 counsel may be heard in the above-entitled Court.

23 DATED this 06 day of November, 2012.

24 MAYFIELD GRUBER & SHEETS

25  
26 BY 10155  
27 DAMIAN R. SHEETS, ESQ.  
28 Nevada Bar No. 10755

5

1                                    **MEMORANDUM OF POINTS AND AUTHORITIES**

2            Defendant Patrick Newell stands before the Court accused of a three firearm related  
3 offenses and two drug related offenses. Because the charges do not include Murder in the 1st  
4 Degree, Nevada law compels this Court to set a reasonable bail. Further, the Defendant is not a  
5 flight risk or a danger to the community so as to prevent this Court from setting a reasonable bail  
6 or release Defendant on his own recognizance, combined with a condition or set of conditions  
7 which will insure the Defendant's presence at scheduled court appearances.  
8

9            The defense offers the following:

- 10            1. Mr. Newell is sixty-one years old, and has been physically disabled as determined by  
11            the Social Security Administration for the past six years.  
12  
13            2. Mr. Newell has been a resident of Las Vegas, Nevada, for over a year.  
14  
15            3. Mr. Newell owns and operates a Furniture and Antique business located in Las  
16            Vegas as well. He has had this business since February of 2011.  
17  
18            4. Mr. Newell's wife, Patricia, is also a resident of Las Vegas, Nevada and she also  
19            works at Mr. Newell's business.  
20  
21            5. Mr. Newell is not a violent man; he has no history of violent crime or any crimes  
22            against persons in his past.  
23  
24            6. Mr. Newell has four grown children and five grandchildren that keep regular contact  
25            with him here in Las Vegas.  
26  
27            7. Mr. Newell has no record of ever failing to appear before courts.  
28            8. Mr. Newell has hired private counsel and intends to face the charges against him.

          Articles One and Six of the Constitution of the State of Nevada provides that excessive  
bail shall not be required. In reaching a conclusion as to what is a reasonable bail, a court should

1 consider that the object of bail is simply to assure the presence of the accused for court  
2 appearances and trial; also, the nature of the offense charged, the penalty which may be inflicted,  
3 the probability of the appearance of the accused, his pecuniary condition, his character and  
4 reputation, and the circumstances surrounding the case relative to the likelihood of conviction.

5 There are those who deem it proper to fix the bonds of all persons charged with crime in  
6 a sum so great as to preclude its being given, but it was the obviation of such a consequence that  
7 prompted the provision in our Constitution against excessive bail. In other words, the idea was  
8 that the punishment, if there is to be any, should follow conviction, and not both precede and  
9 follow it, or be inflicted in spite of possible acquittal.

10 See, In the Matter of Jagles, 44 Nev. 370, 195 P. 808, 808-809 (1921). See also, Ex  
11 Parte Wheeler, 81 Nev. 495, 406 P.2d 713 (1965) at 81 Nev. 500; State v. Teeter, 65 Nev. 584,  
12 200 P.2d 657 (1948).

13 NRS 178.498 provides that the amount of bail shall be set by the magistrate and shall be  
14 such as will in his judgment insure the presence of the defendant, having regard to (1) the nature  
15 and circumstances of the charged offense, (2) the financial ability of the defendant to give bail  
16 and (3) the character of the defendant.

17 The bail should not be prohibitory in amount but the accused is not to be judged on his  
18 ability to give bail or whether the amount is excessive. Ex parte Malley, 50 Nev. 248, 256  
19 P.512 (1927), overruled on other grounds, Ex parte Wheeler, 81 Nev. 495, 406 P.2d 713  
20 (1965). Cf., Fish v. Sheriff, 89 Nev. 250, 510 P.2d 1370 (1973).

21 Articles One and Seven of the Nevada Constitution provide: "All persons shall be  
22 bailable by sufficient sureties; unless for capital offenses when the proof is evident, or the  
23 presumption great."  
24  
25  
26  
27  
28

1 NRS 178.484 (1) and (2) provide: "A person arrested for an offense other than murder of  
2 the first degree shall be admitted to bail. A person arrested for murder of the first degree may be  
3 admitted to bail unless the proof is evident or presumption great by any competent court or  
4 magistrate authorized by law to do so in the exercise of discretion, giving due weight to the  
5 evidence and to the nature and circumstances of the offense." Where bail is discretionary, the  
6 District Attorney must have reasonable notice of the application for bail. NRS 178.486. See also  
7 EDCR 3.20(d).  
8

9 Mr. Newell is an elderly man with several health issues and a network of family and  
10 support in Las Vegas, Nevada. He poses no risk of flight and is not a danger to the community  
11 that requires such a prohibitively high bail amount.  
12

13 CONCLUSION

14 WHEREFORE, Defendant respectfully requests that this Court grant him an O.R. release  
15 or in the alternative, set a bail not more than \$20,000.00; total bail under such conditions as this  
16 Court deems appropriate.  
17

18 DATED this 06 day of November 2012.

19 Respectfully submitted,  
20 MAYFIELD GRUBER & SHEETS

21 10155  
22 BY NDS Nicholas R. Sheets  
23 DAMIAN R. SHEETS, ESQ.  
24 Nevada Bar No. 10755  
25 726 S. Casino Center Blvd., Ste. 211  
26 Las Vegas, Nevada 89101  
27 (702) 598-1299  
28 Attorney for Defendant

1 **ROC**  
2 Damian R. Sheets, ESQ.  
3 Nevada Bar No. 10755  
4 **MAYFIELD GRUBER & SHEETS**  
5 551 Gass Avenue  
6 Las Vegas, Nevada 89101  
7 Tel: (702) 598-1299  
8 Fax: (702) 598-1266  
9 E-mail: dsheets@defendingnevada.com

10 **JUSTICE COURT, LAS VEGAS TOWNSHIP**  
11 **CLARK COUNTY, NEVADA**

12 THE STATE OF NEVADA,  
13 Plaintiff,

14 vs.

15 PATRICK NEWELL,

16 Defendant.

CASE NO.: 12F16477X  
DEPT. NO.: 1

Date:  
Time:

**RECEIPT OF COPY**

17  
18 **RECEIPT OF COPY** of the foregoing **MOTION FOR OR RELEASE OR IN THE**  
19 **ALTERNATIVE, REDUCE BAIL**, is hereby acknowledged this 7 day of November, 2012.

20  
21 DAVID ROGER  
22 DISTRICT ATTORNEY

23 BY 

24 Deputy District Attorney  
25 200 Lewis Ave.  
26 Las Vegas, Nevada 89155  
27  
28

FILED

JUSTICE COURT, TOWNSHIP TOWNSHIP  
CLARK COUNTY, NEVADA

Nov 19 2 40 PM '12

THE STATE OF NEVADA,

Plaintiff,

-vs-

PATRICK NEWELL,  
#2861099

Defendant.

JUSTICE COURT  
LAS VEGAS NEVADA  
BY

CASE NO: 12F16477X

DEPT NO: 1

NOTICE TO PLACE ON CALENDAR

Upon the application of STEVEN B. WOLFSON, Clark County District Attorney, it is hereby requested that the above entitled matter be placed on the arraignment calendar on the <sup>26</sup>21 day of NOVEMBER, 2012, at <sup>7:30</sup>08 o'clock A.M. for the purpose of FILE AMENDED COMPLAINT.

DATED this 19 day of November, 2012.

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

, Clerk of the Court

BY

Hetty Wong HCV  
HETTY WONG  
Deputy District Attorney  
Nevada Bar #2623

BY

[Signature]  
Clerk

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of Notice To Place On Calendar, was made this 19 day of November, 2012, by facsimile transmission to:

RECEIVED

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DAMIAN SHEETS  
598-1266

BY:

Kitty C. Vincent  
KITTY C. VINCENT  
Employee of the District Attorney's Office

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Notice to Place on Calendar  
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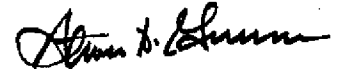


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CASE NO: C285825

DEPARTMENT NO. 1



CLERK OF THE COURT

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP  
COUNTY OF CLARK, STATE OF NEVADA

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

vs.

PATRICK NEWELL,

Defendant.

CASE NO.: 12F16477X

REPORTER'S TRANSCRIPT  
OF  
PRELIMINARY HEARING

BEFORE THE HONORABLE DEBORAH LIPPIS,  
JUSTICE OF THE PEACE

Taken on Tuesday, November 27th, 2012

APPEARANCES:

FOR THE STATE:

HETTY WONG, ESQ.  
MICHAEL SCHWARTZER, ESQ.  
Deputy District Attorneys

FOR THE DEFENDANT:

DAMIAN SHEETS, ESQ.  
Attorney at Law

REPORTED BY:

JOANIE E. GRIME, RPR, CCR NO. 288

JOANIE E. GRIME, RPR, CCR NO. 288  
702) 671.3464

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I N D E X

<u>WITNESSES ON BEHALF OF THE STATE:</u>	<u>PAGE</u>
THEODORE BEJARANO	
Direct Examination by Ms. Wong	6
Cross Examination by Mr. Sheets	26
DERRICK PHILLIPS	
Direct Examination by Mr. Schwartz	80
Cross Examination by Mr. Sheets	87

\* \* \*

E X H I B I T S

<u>STATE'S</u>	<u>DESCRIPTION</u>	<u>MARKED/ADMITTED</u>
1 -	Video	/5



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LAS VEGAS, CLARK COUNTY, NEVADA  
TUESDAY, NOVEMBER 27TH, 2012  
9:00 A.M.

\* \* \*  
P R O C E E D I N G S

THE COURT: Patrick Newell.

Good morning.

THE DEFENDANT: Good morning.

MS. WONG: Your Honor, Mr. Sheets stepped out  
to go do a sentencing up in District Court, but the State and  
the defense are ready, two witnesses.

THE COURT: Thank you.

(Whereupon, there was a pause in the  
proceedings and other matters were heard.)

THE COURT: Let's see. Who is the defense  
attorney for Mr. Newell?

MS. ROMNEY: It's Mr. Sheets.

(Whereupon, there was a pause in the  
proceedings and other matters were heard.)

THE COURT: Do we know where Mr. Sheets went?

MS. WONG: I know he went up to District Court  
to do a sentencing. I'll text him.

THE COURT: Thank you. And let me know as soon  
as you're ready.

1 MS. WONG: Thank you.  
2 (Whereupon, there was a pause in the  
3 proceedings and other matters were heard.)  
4  
5 THE COURT: We're on the record with regard to  
6 Mr. Patrick Newell, who's present with his attorney,  
7 Mr. Sheets.  
8 Are we ready to proceed everyone?  
9 MS. WONG: We are, Your Honor.  
10 MR. SHEETS: We are, Your Honor.  
11 If we could invoke the Exclusionary Rule.  
12 THE COURT: Who's your first witness?  
13 MS. WONG: Theodore Bejarano.  
14 THE COURT: You can probably do this in one?  
15 MS. WONG: Two, Your Honor.  
16 THE COURT: Why do you need two?  
17 MS. WONG: The victim does not recall some of  
18 the events.  
19 THE COURT: Okay. Thank you.  
20 Is -- let's see -- Theodore Bejarano here?  
21 MS. WONG: He was here.  
22 THE COURT: My marshal went to get him.  
23 MS. WONG: Yes.  
24 THE COURT: Any and all witnesses must wait out  
25 in the hallway. Please do not discuss your testimony with

1 anyone until called by the Court.

2 MS. WONG: And, Your Honor, while we are  
3 waiting, the parties have stipulated to the admission of  
4 State's Proposed Exhibit Number 1, which is a video, and I've  
5 already inserted the video into the --

6 THE COURT: And it's ready?

7 MS. WONG: And it's ready.

8 MR. SHEETS: And that's right. And that  
9 stipulation was for preliminary hearing purposes only.

10 THE COURT: Thank you very much.

11 MS. WONG: That is correct.

12 (Whereupon, State's Exhibit 1 was admitted into  
13 evidence.)

14

15 THE COURT: Good morning, sir. If you'd just  
16 follow my marshal up to the witness stand.

17 Why don't you go ahead and take your seat.

18 We'll let you get sworn in seated.

19 If you'd raise your right --

20 THE WITNESS: Whoa.

21 THE COURT: Are you in?

22 THE WITNESS: Yeah. It fell down.

23 THE COURT: Okay. Why don't you scoot up a  
24 little bit for me, please.

25 THE WITNESS: All right.

1 THE COURT: If you could raise your right hand  
2 for me, please, and listen to my clerk.

3

4

THEODORE MAX BEJARANO

5

was called as a witness by the State, having

6

been first duly sworn did testify as follows:

7

8

THE WITNESS: I do.

9

MS. CLERK: If you could state your full name  
10 and spell it -- and spell the first and last for the record.

11

THE WITNESS: Theodore Max Bejarano,  
12 T-h-e-o-d-o-r-e, B-e-j-a-r-a-n-o.

13

THE COURT: Good morning, sir.

14

Counsel, you may proceed.

15

MS. WONG: Thank you, Your Honor.

16

17

DIRECT EXAMINATION

18 BY MS. WONG:

19

Q Mr. Bejarano, good morning.

20

Mr. Bejarano, I want to direct your attention  
21 to about 12:00 midnight on October the 10th of 2012.

22

Do you remember where you were that day?

23

A At Circle K.

24

Q Is that the Circle K located at 9487 South Las  
25 Vegas Boulevard?

1           A       Yeah. It's on the corner of Las Vegas  
2 Boulevard and the street that we live on.  
3           Q       What's the street that you live on?  
4           A       The street name -- I can't remember.  
5           Q       Okay. Now, is that located -- is that Circle K  
6 located here in Clark County?  
7           A       I don't know that information.  
8           Q       Okay. So --  
9           THE COURT: What's the address, counsel, again?  
10          MS. WONG: 9487 South Las Vegas Boulevard.  
11          THE WITNESS: Yeah.  
12          THE COURT: The Court can take judicial notice  
13 that that is in Clark County.  
14          MS. WONG: Thank you, Your Honor.  
15 BY MS. WONG:  
16          Q       Now, you mentioned you lived on a street that's  
17 close to the Circle K?  
18          A       Yeah. On the street that runs on the corner,  
19 also perpendicular to Las Vegas Boulevard.  
20          Q       Right.  
21          A       But it is also connected to that corner of that  
22 Circle K.  
23          Q       All right. So do you live in an apartment  
24 complex?  
25          A       It's a -- it's -- yeah, in apartments.

1           Q       All right. And how far is the apartment  
2 complex from that Circle K?  
3           THE COURT: If you had to walk, sir, how far  
4 would it be?  
5           THE WITNESS: It's a pretty far walk. It goes  
6 at least to about the distance where Giles pie would be from  
7 Las Vegas Boulevard.  
8 BY MS. WONG:  
9           Q       I'm sorry?  
10          A       The street Giles pie, which is the next major  
11 street from Las Vegas Boulevard going east.  
12          Q       So in terms of minutes, how long would it take  
13 for you to walk from your apartment to the Circle K?  
14          A       Fifteen minutes.  
15          Q       Fifteen minutes.  
16                  Now, how did you actually get to the Circle K  
17 on October 10th, 2012?  
18          A       Walked.  
19          Q       You walked there?  
20          A       Yes.  
21          Q       Why did you decide to go to Circle K that  
22 night?  
23          A       To gamble.  
24          Q       To gamble. Okay.  
25                  And did you in fact go to the Circle K to

1 gamble?

2 A I did, and I did gamble, yes.

3 Q Did you drink any alcoholic beverages while you

4 were there?

5 A Yes, I did.

6 Q What did you drink?

7 A I drink Silver Ice, it's called.

8 Q Silver Ice?

9 A One can, one can of alcohol.

10 Q Is that beer?

11 A Yeah.

12 Q I'm sorry. I don't --

13 A Yeah, it's beer.

14 Q Okay. Now, did something occur that night at

15 the Circle K?

16 A Yeah.

17 Q Okay. Can you tell us about that?

18 A I remember -- the last thing I remember was

19 seeing a lighter flip and --

20 Q So that's the last thing that you remember.

21 Let's talk about the first thing that you do remember.

22 A I was gambling on the end machine. It has like

23 a few multi-gamble.

24 Q All right.

25 A Multi-Strike, I think it's called.

1 Q All right.

2 A I remember gambling, and I remember -- I  
3 remember asking for a ride.

4 Q All right.

5 A I remember -- I remember that I -- I just  
6 remember that I -- I left, you know. I got up and left.

7 Q Meaning you left the Circle K?

8 A Yeah.

9 Q All right.

10 A I walked out of the Circle K. I wasn't -- I  
11 remember that I wasn't being pushed out or anything, you  
12 know, thrown out.

13 I do remember asking for a ride.

14 Q Now, do you remember who you asked for a ride?

15 A I remember, yes.

16 Q And do you see that person in the --

17 A Yes.

18 Q -- courtroom today?

19 A Yes.

20 Q Will you please point to him and describe an  
21 article of clothing that he's wearing?

22 A He's wearing a blue shirt with the glasses on  
23 his shirt.

24 THE COURT: Record reflect identification of  
25 the defendant.



1 MS. WONG: Thank you, Your Honor.  
2 BY MS. WONG:  
3 Q Now, when you asked the defendant for a ride,  
4 where was the defendant?  
5 A He was on the -- he was -- he was at his truck.  
6 Q At his truck. And where was his truck?  
7 A It was next to the gas pump.  
8 Q All right. And so what do you recall after  
9 that?  
10 A I recall getting sprayed with gasoline --  
11 Q And do you recall who sprayed --  
12 A -- taking off my shirt.  
13 Q I'm sorry. Do you recall who sprayed you with  
14 gasoline?  
15 A Yes, I do.  
16 Q Who was that?  
17 A The man there.  
18 Q The defendant?  
19 A Yes.  
20 Q And do you recall how he sprayed you with  
21 gasoline?  
22 A He had a longer beard at the time.  
23 Q The defendant had a longer beard at the time?  
24 A Yeah.  
25 Q Okay. Now, do you recall how the defendant

1 sprayed you with gasoline?

2 A No. I just remember getting sprayed and  
3 putting out my hands.

4 Q And --

5 A I remember that part. That's it.

6 Q Okay. And did gasoline actually get onto your  
7 body?

8 A Yeah.

9 Q Which part of your body did the gasoline get  
10 onto?

11 A Just on my body. I -- just all over. I  
12 thought it was all over.

13 Q All right.

14 A I remember taking off my shirt, and I remember  
15 seeing the lighter flip.

16 Q Okay. So after you were sprayed with gasoline  
17 and -- was gasoline sprayed onto your shirt?

18 Do you recall that?

19 A Yes. I remember being -- I remember it was a  
20 shirt that I just had gotten. My wife just had gotten that  
21 shirt for me, and I remember that it was one of my new  
22 shirts, so I remember that. I remember saying that.

23 Q Saying what?

24 A That it's a new shirt my wife just got me.

25 Q And who were you saying that to?

1           A       To the defendant.

2           Q       Were you upset when you said that?

3           A       I remember -- I don't remember being angry.

4           Q       Okay. So now --

5           A       I didn't wake up angry.

6           Q       All right. What do you recall after making the

7 statement to the defendant that this was a new shirt?

8           A       Seeing a flame.

9           Q       Seeing the flame?

10          A       Of the lighter, yeah.

11          Q       And can you describe what you mean by you

12 "seeing a flame"?

13          A       I saw just the flame of the lighter, right like

14 here.

15          Q       Did you actually see a lighter?

16               MR. SHEETS: Your Honor, could the record

17 reflect that his fingers were approximately one-inch apart.

18               THE COURT: Yes.

19 BY MS. WONG:

20          Q       Now, you mentioned a lighter. \_\_\_\_\_

21               Did you actually see the lighter?

22          A       No. I don't remember seeing a lighter.

23          Q       So the only thing you remember seeing is the

24 flame?

25          A       The flame.

1           Q       Okay. And do you remember what the defendant  
2 was doing when you saw that flame?  
3           A       No.  
4           Q       And what happened after you saw the flame?  
5           A       I woke up in the hospital.  
6           Q       Okay. Do you remember at all how you got  
7 there?  
8           A       No.  
9           Q       Now, previously you mentioned something about  
10 taking off your shirt.  
11                    At what point does that happen? Before or  
12 after you saw the flame?  
13           A       I remember it as before.  
14           Q       Okay. So now you mentioned you woke up in the  
15 hospital.  
16                    Do you recall what day you woke up in the  
17 hospital?  
18           A       I remember it was the 23rd.  
19           Q       And why do you -- October 23rd?  
20           A       No, I don't know what 23rd. I just remember it  
21 was the 23rd.  
22           Q       Okay. And how do you remember the number 23?  
23           A       It was up on the board.  
24           Q       Did you -- just the number 23?  
25           A       No. The whole date was there. They change the

1 date every day.

2 Q Okay. So do you recall, specifically recall --

3 A I just remember it being the 23rd, yeah.

4 Q Okay. And from there you assume it was  
5 October 23rd?

6 A I thought I missed -- you know, I thought I  
7 missed -- I thought I missed Christmas and New Year's and my  
8 wife's birthday and Thanksgiving.

9 Q All right. Now, between the dates of October  
10 10th up until October 23rd when you woke up, do you recall  
11 anything that happened during that time period?

12 A I don't -- I don't recall any stuff that is  
13 real. I just recall dreams that I know to be dreams, because  
14 they are not -- they didn't happen.

15 Q Okay.

16 A None of what I recall happened.

17 Q All right.

18 MS. WONG: And, Your Honor, at this point the  
19 parties have stipulated to the admission of State's Proposed  
20 Exhibit Number 1 and permission to publish it.

21 THE COURT: For purpose of preliminary hearing,  
22 you may.

23 MS. WONG: Thank you, Judge.

24 THE COURT: Play the video.

25 MR. SHEETS: Can I move just to see the video

1 going on?

2 THE COURT: Sure.

3 BY MS. WONG:

4 Q Now, Mr. Bejarano, I know there are some things  
5 that you don't recall, but when we're watching this video, if  
6 there are points in the video that you do recall, will you  
7 please let us know and tell us what's going on in that video.

8 Okay?

9 A Okay.

10 Q Thank you.

11 (Whereupon, the video was played in open court  
12 and questions were asked.)  
13

14 BY MS. WONG:

15 Q Now, Mr. Bejarano, you recognize anybody that  
16 was just in that video?

17 A That was me.

18 Q That was you. Okay.

19 A That's the defendant. That's where I asked for  
20 a ride.

21 Q I'm sorry?

22 A That's where I asked for a ride.

23 Q That's when you asked for a ride. Okay.

24 A I remember he had a knife.

25 Q You remember he had a knife?

1           A       Or he was talking about a knife.  
2           Q       Okay. He was talking about a knife.  
3                    Can you tell us more about that?  
4           A       I don't recall anything more about that, except  
5 remember him saying that he had a knife or he's going to get  
6 a knife. I remember that part.  
7           Q       And was that during the portion of the video --  
8 did that already happen in the video?  
9           A       Yeah, just now.  
10           THE COURT: Okay. Let's watch the video. It's  
11 running again.  
12                    Are you backing it up?  
13           MS. WONG: Yes.  
14 BY MS. WONG:  
15           Q       Okay. Let us know when you think the defendant  
16 was threatening you with a knife.  
17           A       At that moment.  
18           THE COURT: I'm sorry, sir. I can't hear you.  
19           THE WITNESS: At that moment.  
20           THE COURT: Thank you.  
21 BY MS. WONG:  
22           Q       Did you actually ever see a knife?  
23           A       I don't remember ever seeing a knife. No, I  
24 don't remember.  
25           Q       You don't remember?

1           A           I remember thinking -- I remember believing he  
2 either had a knife or was telling me he's going to get a  
3 knife or he told me that he had a knife. I don't remember  
4 seeing it.

5                       That's where I remember being sprayed with  
6 gasoline.

7           Q           So at 12:44:40?

8           A           And putting up my arms.

9                       THE COURT: I can't hear you, sir.

10                      THE WITNESS: That's where I remember being  
11 sprayed with gasoline and putting up my arms.

12                      THE COURT: Thank you.

13                      THE WITNESS: And saying that this is a new  
14 shirt.

15                      MR. SHEETS: And -- I didn't hear that.

16                      THE WITNESS: And saying that this is a new  
17 shirt, that my wife bought me this shirt recently.

18 BY MS. WONG:

19           Q           Do you remember the flame?

20           A           I remember seeing the flame, and I remember  
21 taking off my shirt.

22           Q           Do you remember anybody else being at the gas  
23 station besides you and the defendant?

24           A           No. I had visions of a woman helping me put  
25 out the fire, and that was part of when I was not conscious



1 in the ambulance and/or during the stay at the hospital.

2 I was -- that was part of my dream and stuff  
3 that I had.

4 MR. SHEETS: I'm going to object to that whole  
5 statement.

6 THE COURT: Sustained. It was nonresponsive.

7 MR. SHEETS: Thank you.

8 MS. WONG: With the Court's permission, we  
9 would like to speed up the video just a little bit.

10 THE COURT: Go ahead.

11 BY MS. WONG:

12 Q Mr. Bejarano, is it still fair to say that you  
13 don't recall anything else that happened after you saw the  
14 flame and took your shirt off?

15 A Correct.

16 (Whereupon, the video stopped playing.)

17 BY MS. WONG:

18 Q Now, I want to go back to when you woke up from  
19 the hospital on October 23rd.

20 When you woke up, did you notice any injuries  
21 on yourself?

22 MR. SHEETS: Your Honor, I'm going to object to  
23 her saying that it was for sure October 23rd. He stated that  
24 he believed it was October 23rd based on seeing it on the  
25 door.

1 THE COURT: Just rephrase it to when you woke  
2 up.

3 MS. WONG: Okay.

4 BY MS. WONG:

5 Q Now, Mr. Bejarano, when you woke up from the  
6 hospital, did you notice any injuries on yourself?

7 A The first I -- I woke up. The first thing I  
8 remember is someone telling me that I looked better. I  
9 looked a lot better.

10 Q Okay.

11 A And I just saw -- the only -- what I saw was on  
12 my arm.

13 Q And what was on your arm?

14 A I don't know what they're called, but they had  
15 things on my arm here that were connected to my arm, and you  
16 couldn't pull them off or anything, and it was just having  
17 some -- having pain.

18 Q Okay.

19 A Being cold.

20 Q Okay. Now, these things on your arm that  
21 you're referencing, is it hard? Is it something soft, gel  
22 like? It is metal?

23 Can you give us a description about what it is  
24 that was on your arm?

25 A It's bandage-like.

1 Q And how long did that material have to stay on  
2 your arm?  
3 A At least -- it was still there when I got home.  
4 It was still there.  
5 Q When you got home --  
6 A It was a few days after I got home before all  
7 of it was, I guess, washed off or -- or just -- or I thought  
8 it turned into skin.  
9 Q Okay. And you mentioned getting home.  
10 Do you recall when you were discharged from the  
11 hospital?  
12 A Yes.  
13 Q And what date was that?  
14 A The 26th.  
15 Q Of 2012?  
16 A Yes.  
17 THE COURT: What month, sir?  
18 THE WITNESS: October.  
19 THE COURT: Thank you.  
20 BY MS. WONG:  
21 Q When you woke up at the hospital, did you feel  
22 any pain?  
23 A Yes.  
24 Q Okay. Where was that pain coming from?  
25 A I felt pain in my arms. I felt pain in my

1 chest. I felt pain in my head. I felt pain in my lips and  
2 my face. I felt pain on my back. I felt pain in my stomach.

3 Q Now, would you reference that pain -- can you  
4 describe is it a headache? Is it -- can you tell us what  
5 kind of pain you're referencing?

6 A I would say I had, I guess, a dull pain that  
7 maybe had sharp -- sharpness pains at different spots at  
8 different times.

9 Q Okay. Was it a burning sensation that you're  
10 feeling?

11 MR. SHEETS: Objection, Your Honor, leading.

12 THE COURT: Sustained.

13 How about a scale of 1 to 10, 10 being the  
14 worst?

15 Where would you place your pain when you woke  
16 up, sir?

17 THE WITNESS: I would say 8, 8, because I  
18 wasn't -- I wasn't screaming and I wasn't -- I just had pain  
19 enough to ask for help.

20 BY MS. WONG:

21 Q Okay. Now, was any part of your skin exposed?

22 A Yes. Just like this here is finally getting  
23 scabbed up. All this would be -- there was no -- this healed  
24 up. Before that came out, this right here had absolutely no  
25 skin while healing while even when I was at home.

1                   And we put on this mixture that we made with  
2 Vitamin E and other creams and lotions and now Aloe Vera.  
3 And this blistered up here on its own, just like I get  
4 some -- a little here.

5                   MS. WONG: And, just for the record, the  
6 witness is describing the part of his left arm below the  
7 elbow.

8                   THE COURT: Well, his arm and his hand, and  
9 he's describing where there was no skin and skin grew back;  
10 is that correct?

11                  THE WITNESS: Yeah, skin grew back here.

12                  THE COURT: The injury that I'm looking at now  
13 on your left arm, did you have any of that before the fire?

14                  THE WITNESS: No.

15                  THE COURT: So all that is the result of the  
16 fire?

17                  THE WITNESS: Correct.

18                  THE COURT: You also described your chest and  
19 stomach area.

20                  Were you burnt there?

21                  You're showing me now your upper portion of  
22 your left arm, which again shows a burn.

23                  THE WITNESS: See how it's healing a lot?

24                  THE COURT: It looks like your left side is the  
25 part of you that got burnt.

1 THE WITNESS: Yes. And then I got some here  
2 and then --  
3 THE COURT: And on your belly and on your  
4 chest.  
5 THE WITNESS: -- where that same skin thing  
6 here, I didn't see it, I felt it, because that stuff makes,  
7 you know, digs into part where it isn't, but this has healed  
8 up, and all that had open skin.  
9 THE COURT: On your left side.  
10 THE WITNESS: On the left side.  
11 On my ear and it blistered up sometimes.  
12 THE COURT: On your face?  
13 THE WITNESS: And on my face.  
14 THE COURT: Okay.  
15 THE WITNESS: A lot of times I don't talk  
16 right, and I could feel the -- well, I could see that -- you  
17 could see the difference in skin coloration.  
18 If I don't have this cream on, you could see  
19 the difference in skin coloration around my eye from where  
20 the flame -- when I had my eyes closed or where the flame  
21 would be away from it.  
22 THE COURT: Thank you.  
23 MS. WONG: Thank you, Your Honor.  
24 THE WITNESS: If I didn't have eye cream on.  
25 THE COURT: You could put your shirt back on,

1 sir.

2 THE WITNESS: Thank you.

3 THE COURT: Get comfortable.

4 MS. WONG: Thank you, Your Honor.

5 BY MS. WONG:

6 Q Today are you still experiencing pain?

7 A Yes.

8 Q On a scale of 1 to 10?

9 A It fluctuates.

10 Q Between what?

11 A Depending on how I manage it.

12 THE COURT: Depending on what, sir?

13 THE WITNESS: How I'm managing it, manage it.

14 Whether I get more active or less active, if we have to go to  
15 the store, if I involve myself in going to the store or if  
16 it's time where I have -- I have to babysit, depending on how  
17 active our child is, and it fluctuates on how much activity I  
18 do --

19 BY MS. WONG:

20 Q Okay.

21 A -- and the pain.

22 Q So how has this incident affected your ability  
23 to perform manual labor?

24 A I cannot work at this time.

25 Q Can you give us an example?

1           A       Well, I was a union high-rigor, ground rigor,  
2 stagehand, had multiple -- I was involved in multiple crafts,  
3 such as head electrician, assistant electrician, AV tech. I  
4 could drive a condor lift, scissor lift.

5           THE COURT: Are those the things you could no  
6 longer do, sir?

7           THE WITNESS: Correct. I would not be safe in  
8 operating those lifts.

9 BY MS. WONG:

10          Q       Now what about --

11          A       It wouldn't be safe for myself in lifting the  
12 types of instruments, such as a TV screen, that I would be  
13 putting up for a booth at the convention center.

14          Q       Now I want to focus on your activities inside  
15 your household.

16                   Are you able to --

17           THE COURT: Counsel, I think you're fine.

18           MS. WONG: Okay. Well, then, I'll pass the  
19 witness.

20           THE COURT: Cross.

21

22                   CROSS EXAMINATION

23 BY MR. SHEETS:

24          Q       Mr. Bejarano --

25           MR. SHEETS: And before we get started,



1 Your Honor, I just want to let you know I may be wandering  
2 over here playing things on the video, because that's where  
3 the control is for the video.

4 THE COURT: You're fine.

5 BY MR. SHEETS:

6 Q Mr. Bejarano, so it's your testimony here that  
7 you don't remember any of the events -- the events that  
8 occurred inside the store prior to exiting; is that correct?

9 A I do remember some of the events.

10 Q What are some of those events that you  
11 remember?

12 A I remember gambling at the machine, the machine  
13 I was playing on. I remember drinking --

14 THE COURT: You need to keep your voice up a  
15 little bit, sir.

16 THE WITNESS: I remember the events that I was  
17 gambling and what machine I was gambling on and what I was  
18 drinking and why I went to the store.

19 BY MR. SHEETS:

20 Q And it's your testimony that you only had one  
21 can of Silver Ice; is that correct?

22 A Correct.

23 Q And what alcohol did you have before that,  
24 before you got there?

25 A I don't remember that.

1           Q       But you do remember having consumed alcohol  
2 prior to walking to that Circle K; isn't that correct?  
3           A       I would say yes. I would say yes. I would say  
4 that I -- I would say that I -- I would have a Silver Ice can  
5 before I went there.  
6           Q       But you're not sure, but what you can  
7 testify --  
8           A       I'm not sure, because I --  
9           Q       -- is that you had consumed alcohol before you  
10 walked there; correct?  
11          A       Correct.  
12          Q       Okay. And you were feeling the effects of that  
13 alcohol when you walked there?  
14          A       The effects of the alcohol?  
15          Q       Yeah.  
16          A       Such as?  
17          Q       Dizziness?  
18          A       No dizziness. I walked all --  
19          Q       Impaired vision?  
20          A       No. I walked all the way to there.  
21          Q       Was your vision impaired at all?  
22          A       Not that I can remember.  
23          Q       Do you remember your speech being slurred?  
24          A       Not that I can remember.  
25          Q       So it's your -- so it's your testimony that you

1 were feeling no effects of the alcohol --

2           A           I'm sure I spoke clear enough that the clerk  
3 there did -- did sell me alcohol.

4           Q           Well, can you go back to that? Could you  
5 restate that?

6                       I didn't hear it very clear.

7           A           I'm sure that I spoke clearly enough that the  
8 clerk did sell me alcohol.

9           Q           Okay.

10          A           Clearly -- clearly enough and loud enough then.

11          Q           And do you remember at some point when the  
12 cashier refuses service to you --

13          A           No, I don't.

14          Q           -- in that store?

15          A           I don't believe he ever did.

16          Q           And you don't remember being asked to leave  
17 that store?

18          A           No. I never was.

19          Q           So if I show you a video of that, would that  
20 refresh your recollection?

21          A           I don't believe so. I don't believe that I  
22 was -- was told to leave the store. I don't believe that.

23          Q           Then why did you leave?

24          A           I finished the can of alcohol, and I cashed out  
25 and I was going to go home.

1           Q       You testified earlier on direct examination  
2 that when you left you did not remember being pushed out of  
3 the store and that was before I asked this question.

4           A       Yes. I do remember that I wasn't.

5           Q       Is there -- is there a reason why you felt the  
6 need to clarify that you weren't asked to leave the store?

7           A       Because I've been told many times that the  
8 statements are that I was told to leave the store. My wife  
9 has been told on the way to the hospital, when she stopped  
10 there for gas numerous nights in a row, that I wasn't -- I  
11 was told that I couldn't come back into that store.

12          Q       So is it -- is it your knowledge now that  
13 you're no longer allowed at that store?

14          A       So I -- I have been at that store, and the  
15 clerk said that what that person did was --

16          Q       I didn't ask you what the clerk said, sir.

17          A       Okay.

18          Q       I asked you: Is it your knowledge that you are  
19 not allowed to be at that store anymore?

20          A       It is my knowledge I haven't been directly told  
21 by that store, confirmed in any way with written knowledge or  
22 spoken knowledge by any member of that store that I am not  
23 allowed to be at that store.

24          Q       So who did you speak to while you were at the  
25 store that evening, other than the clerk and my client?

1           A           That evening?

2           Q           Correct.

3           A           Nobody else that I could recall.

4           Q           Okay. You didn't speak to a security guard at

5 all?

6           A           I remember -- I do not remember speaking to a

7 security guard.

8           Q           Okay. Do you recall looking at the video when

9 a security guard came up and was speaking to you?

10          A           I recall seeing the security guard coming up

11 and helping me put out the fire just now.

12          Q           Okay. So now you do recall having a

13 conversation with the security guard?

14          A           That security guard that was in the video.

15 There is no security guard at that gas station.

16                    The security guard at that gas station was from

17 somewhere else, I believe.

18           MR. SHEETS: Court's indulgence.

19           THE WITNESS: Isn't the security guard the

20 person who helped me sit down there, who told me to sit down,

21 from what I seen in the video?

22           MR. SHEETS: You have to forgive me,

23 Your Honor, we have to queue up each video.

24           THE COURT: Okay. Hang on a second, sir. Wait

25 for a question at this time.

1 THE WITNESS: Oh, okay.

2 THE COURT: That's all right.

3 MR. SHEETS: It's going to take a moment,  
4 Your Honor. The video starts before we have any substantial  
5 activity. About seven minutes.

6 (Whereupon, the video was played in open court  
7 and questions were asked.)  
8

9 BY MR. SHEETS:

10 Q Is that you in the back of the video right  
11 there?

12 A Yes, that's me.

13 Q Okay. Now, during this video inside the store,  
14 do you recognize that individual?

15 A Yes.

16 THE COURT: There's two individuals.

17 MR. SHEETS: I'm sorry.

18 BY MR. SHEETS:

19 Q The individual that would be on your right  
20 side.

21 A Yes.

22 Q On the purchasing side of the counter.

23 A The defendant.

24 Q Okay. And you were within direct proximity  
25 with him there; correct?

1                   You were right next to him?

2           A       No.  Actually I think I'm behind him.

3           Q       Okay.

4           A       I'm not on the screen.

5           Q       That's not close to him?

6                   So is that footprint --

7           A       I'm behind him.  He's engaging other people.

8           Q       Is that footstep you?

9           A       That footstep is me, yeah.

10          Q       Okay.  So you are close to him at that point?

11          A       Absolutely.

12          Q       Okay.  And he's not saying anything to you at

13 that point; is that correct?

14          A       I'm not speaking to him at that time.

15          Q       Well, that's not my question.

16                   He's not saying anything to you at that point;

17 is that correct?

18          A       That would appear correct, yes.

19          Q       Okay.  And you have no recollection of him

20 saying anything or doing anything to you at that point; isn't

21 that correct?

22          A       Is that the security guard you're talking about

23 that --

24          Q       No.  I'm asking you specifically about --

25                   (Reporter interruption.)

1 THE COURT: Hang on just a moment. You can't  
2 talk over each other.

3 BY MR. SHEETS:

4 Q I'm asking you specifically: At that point in  
5 this video, 12:37:04, my client is not speaking with you; is  
6 that correct?

7 A I'm sorry. I thought you were going to show --  
8 you were going to show me that I was being --

9 Q Sir, I'm asking you about the video. Will you  
10 please answer the question?

11 THE COURT: You need to let him finish.

12 THE WITNESS: But you --

13 THE COURT: Stop. Both of you.

14 Sir, the question is: You've identified that  
15 man as the defendant.

16 THE WITNESS: Yes.

17 THE COURT: In this video, right now looking at  
18 it, is he speaking to you?

19 THE WITNESS: At this moment, no.

20 THE COURT: Thank you.

21 Next question.

22 BY MR. SHEETS:

23 Q He's not threatening you at this moment;  
24 correct?

25 A Correct.



1 Q Okay.

2 A Where --

3 THE COURT: Sir, just answer the questions.

4 Mr. Sheets.

5 BY MR. SHEETS:

6 Q And now, as it goes on, it's been approximately

7 a minute. We're at 12:38:07.

8 He -- the defendant has checked out at this

9 point; correct?

10 A Correct.

11 Q And he still has not spoken to you; correct?

12 A Not what I can remember.

13 Q Okay. And then he proceeds to exit the store;

14 is that correct?

15 A That's what the video appears to show, yes.

16 Q Okay. He comes back in; is that correct?

17 A That's correct.

18 Q And is that you?

19 A That's me.

20 Q Okay. And at that point what were you doing?

21 You had testified earlier you were cashing out;

22 is that correct?

23 A I --

24 MS. WONG: Judge, can we get -- object as to

25 foundation.

1 THE COURT: What kind of foundation?

2 MS. WONG: He hasn't asked him if he recalls.

3 He asking him if this is what --

4 THE COURT: He doesn't have to recall it.

5 We're all watching the video and he's identifying him, but he  
6 did testify he had checked out, cashed out.

7 So play that part again.

8 BY MR. SHEETS:

9 Q So is this the cashing out you were talking  
10 about?

11 A That I don't recall, but --

12 Q So you're not sure if this is when you cashed  
13 out?

14 A When I cash out, I go up to the clerk, like if  
15 I -- and I say you can keep the change. That's your tip. I  
16 tip well. And --

17 THE COURT: Sir, you weren't asked about  
18 whether you tip well or not.

19 MR. SHEETS: And I would move to strike that  
20 statement.

21 THE COURT: It's stricken.

22 Just play it a little bit and see if you see  
23 any exchange.

24 BY MR. SHEETS:

25 Q And at that point there's no cash exchanged, is

1 there?

2 A As I would say, I would say cash -- you can  
3 keep the change.

4 Q At this point the clerk did not hand you any  
5 currency at all; correct?

6 A Not according to that, what I seen there.

7 Q So it's your testimony that when you are done  
8 using a gambling machine --

9 A Um-hmm.

10 Q -- you give the clerk all of your money as a  
11 tip that you had in that machine?

12 A Depending on how much there is left, yes.

13 Q Now, when you left, my client then approached  
14 the clerk again on this video; is that correct?

15 A A second time, yes.

16 Q And still my client had not said anything to  
17 you?

18 A Not -- not apparently. He wasn't on video the  
19 entire time, but I do not recall that, that he has or not.  
20 There's two definitive times --

21 Q Sir, there's not an open question at this time.  
22 So at that point my client leaves again;  
23 correct?

24 A Correct.

25 Q And this time is approximately 12:40 -- let me

1 just backtrack a little bit here.

2 So my client steps out of the store at  
3 approximately 12:40:09.

4 MR. SHEETS: And that's just for the record,  
5 Your Honor.

6 THE COURT: Yes.

7 BY MR. SHEETS:

8 Q Now, at any point in between when you were at  
9 the counter and when my client leaves the store, did you see  
10 the clerk take any cash out of any register and put it in his  
11 pocket or in a tip jar?

12 A Not at this time.

13 Q Okay. I think that's it for the video.

14 MR. SHEETS: Your Honor, I'm just going to  
15 reset this, Your Honor, back to the start.

16 BY MR. SHEETS:

17 Q So this, for the record, is starting at 12:40,  
18 about the time that my client came out of the store.

19 And you said you recognize that man as  
20 yourself; correct?

21 A Correct.

22 Q Is that your truck?

23 A No, it's not.

24 Q To your knowledge, who owns that truck?

25 A Today I know the owner of the truck is the

1 defendant.

2 Q Okay. Did you have permission to lean on that  
3 truck?

4 A I didn't have any knowledge. I don't remember  
5 that.

6 Q So you don't remember if you had any permission  
7 to lean on that truck?

8 A Correct.

9 Q Do you remember walking over and leaning on  
10 that truck?

11 A I don't recall that.

12 Q Okay. Do you remember walking towards the  
13 passenger door of that truck first?

14 A No, I don't remember that.

15 Q Okay. But in this video that's exactly what  
16 you're doing; correct?

17 A Looking to see if someone is sitting there.

18 Q That's you at the passenger door of a truck  
19 that's not yours; correct?

20 A Correct.

21 Q Okay. And it appears that you make either  
22 physical contact with that door or you come close to it;  
23 correct?

24 A It appears that I come close to it.

25 Q Okay. And then you disappear off camera for a

1 while.  
2 And you're still standing --  
3 A That was --  
4 Q And you're still standing next to the door at  
5 12:40:30; correct?  
6 A Correct.  
7 Q Okay. I'm going backwards. The first moment  
8 you actually arrived at the door or come into contact with  
9 the truck is 12:40:14; correct?  
10 A I didn't seem to be in contact with that truck  
11 at that time.  
12 Q You were right next to the passenger door of  
13 the --  
14 A I'm right --  
15 Q -- truck?  
16 A -- next to it, but I'm not in contact with it.  
17 Q So you're right there at 12:40:15?  
18 A I'm close to proximity of the vehicle, yes.  
19 Q And you testified that you were looking -- you  
20 just testified a few seconds ago that you were --  
21 A I didn't testify --  
22 Q Sir --  
23 (Reporter interruption.)  
24 THE COURT: Gentlemen.  
25 Excuse me, sir. You can't interrupt.

1 THE WITNESS: Okay.

2 THE COURT: Mr. Sheets won't either.

3 You may ask your question again.

4 BY MR. SHEETS:

5 Q And you testified earlier that you were looking  
6 in the passenger seat to see if someone was there at that  
7 time; correct?

8 A That's what it appeared on screen.

9 Q Okay.

10 A But I don't recall that.

11 Q So you're not really sure why you would have  
12 been looking in the passenger seat today because you have no  
13 recollection of it; correct?

14 A Correct. I don't recollect looking into the  
15 vehicle, no.

16 Q Okay. So between 12:40:16 and 12:40:40, you're  
17 standing near the passenger door and you actually come into  
18 contact with and lean on a truck that doesn't belong to you;  
19 correct?

20 Is that correct?

21 A That's what appears to be.

22 Q Okay. Do you recall at this point you  
23 testified that you asked for a ride; correct?

24 A I do remember asking for a ride.

25 Q And you recall my client telling you -- telling

1 you that he could not give you a ride?

2 A I don't recall that.

3 Q Do you recall what his answer was?

4 A I don't recall that.

5 Q Okay. So you remember asking for the ride, but  
6 you don't know what the answer is.

7 Do you remember at this point my client telling  
8 you to get off of his truck?

9 A I don't recall that.

10 Q Okay. So now here we are at 12:41:12,  
11 approximately one minute after you first came to that side of  
12 the truck, and you're still leaning on the truck; isn't that  
13 correct?

14 A I wasn't leaning for that entire minute on the  
15 truck.

16 Q Correct. But you were still near or in close  
17 proximity to the truck a minute after first doing so;  
18 correct?

19 A That's what it shows.

20 Q And at this point you were leaning on the  
21 truck; correct?

22 A Yes.

23 Q Okay. And you've been leaning on that truck  
24 for approximately 30 seconds; correct?

25 A I wasn't watching the time of that video, as I



1 was looking at you to hear what your question was.

2 Q Fair enough. Do you remember telling my client  
3 that it was public property and you could go where you wanted  
4 to?

5 A No, I don't recall that.

6 Q And you don't recall my client at that point  
7 telling you to leave?

8 A No, I don't recall that.

9 Q So you continue to lean on his truck.  
10 Do you remember anything my client is saying to  
11 you at this point?

12 A I believe I testified that he had said that he  
13 had a knife or was going to get a knife.

14 Q Okay. So it's at 12:41, approximately 12:41:20  
15 that you testify that he says he's going to get a knife or  
16 that he has a knife?

17 THE COURT: Is that a yes?

18 THE WITNESS: Yes.

19 THE COURT: Thank you.

20 BY MR. SHEETS:

21 Q And so it's your testimony that my client, who  
22 did not make contact with you inside the store --

23 A He wasn't on video --

24 Q -- when you made first contact with his  
25 truck --

1           A       -- the entire time when he was in the store.  
2                   THE COURT: Excuse me. You need to let him  
3 finish.

4                   Excuse me. You need to let counsel finish the  
5 question. Please don't interrupt each other.

6                   THE WITNESS: Okay.

7 BY MR. SHEETS:

8           Q       So it's your testimony that my client, who did  
9 not come into contact with you in the store, when you came  
10 into first contact with his truck, is now randomly  
11 threatening you with a knife?

12          A       The --

13                  THE COURT: Counsel, I'm not even sure I  
14 understand that question.

15                  MR. SHEETS: I'll withdraw the question,  
16 Your Honor.

17                  THE COURT: Thank you.

18 BY MR. SHEETS:

19          Q       And at this point it's my client that backs  
20 off; is that correct?

21          A       My hands are up in the air as I am backing off.

22          Q       And --

23          A       And I move backwards just at that second he  
24 was.

25          Q       Well -- well, let's get to that, then.

1                   So at this point you're leaning --  
2           A       No. My hands are up.  
3           Q       Hang on. Sir, please let me finish my  
4 question, then we'll have more context.  
5                   So at this point you're standing right where  
6 the back of the cab meets the front of the bed; correct?  
7           A       Correct.  
8           Q       Okay. So now I'm going to go ahead five  
9 seconds.  
10                  You're still standing right where the back of  
11 cab meets the front of the bed; is that correct?  
12                  Yes --  
13           A       Correct, but my arm's up.  
14           Q       Yes or no, sir?  
15           A       Yes.  
16           Q       Okay. And now, approximately five seconds  
17 more, you are still standing about where the back of the cab  
18 meets the front of the bed; correct?  
19           A       Correct.  
20           Q       And my client has now walked behind his truck  
21 and away from you; is that correct?  
22           A       Correct.  
23           Q       Okay. My client then goes and returns to the  
24 other side of his truck; correct?  
25           A       Correct.

1           Q       And even though you -- you claim to have been  
2 threatened with a knife, you were so -- were you afraid?

3           A       I don't remember that.

4           Q       Okay. You lean -- at 12:41:37 you lean back on  
5 to the truck, don't you?

6           A       That's what it shows, yes.

7           Q       Is that typically something that you would do  
8 if you feared that you were going to be stabbed or --

9           A       I don't recollect that --

10          Q       -- hit with knife?

11          A       -- I was in fear.

12          Q       That's not the question I asked you.

13                 Is that typically something that you, as an  
14 individual, would do if you were threatened?

15          A       I was taught that the best way to defeat an  
16 enemy is to create them into a friend, to make them your  
17 friend.

18                 So, typically, I wouldn't be in fear and I  
19 wouldn't try to attack, and I wouldn't try to do anything but  
20 make somebody who was going to -- or who had threatened me  
21 with a knife, I would typically try to create them as a  
22 friend.

23          Q       So based on what you see in this video here,  
24 it's your testimony that you likely would not have been in  
25 fear?

1           A       I likely would have not been in fear of -- I  
2 would likely not be in fear, yes.

3           Q       Okay.

4           A       As I am today.

5           Q       Continuing on.  
6                   At this point my client comes up to you.  
7                   And you don't remember what happens here;  
8 correct?

9           A       Correct.

10          Q       Okay. And there appears to be a discussion of  
11 some kind; correct?

12          A       Correct.

13          Q       Okay. And as my client backs off, you still  
14 remain at his truck; isn't that correct?

15          A       I'm further in proximity to the truck.

16          Q       But you're still standing within approximately  
17 three feet of that truck; isn't that correct?

18          A       Correct.

19          Q       And my client appears to be walking into the  
20 store; isn't that correct?

21          A       Correct.

22          Q       Again, while my client withdraws, you are still  
23 standing near his truck, and you appear --

24          A       I'm standing on private property.

25          Q       Now, your arms are swinging to the side here?

1           A       I'm on public property.  
2           THE COURT: I'm sorry, sir. What did you say?  
3           THE WITNESS: I'm standing on private or public  
4 property there at that time.  
5           THE COURT: Right next to the truck.  
6           THE WITNESS: Right next to the truck.  
7 BY MR. SHEETS:  
8           Q       And what's the importance of it being public  
9 property?  
10          A       That I'm able to stand there.  
11          Q       So it's your position because it was on public  
12 property --  
13          A       If I was threatening him, I was -- he had his  
14 back turned to me. I would have -- there's something that I  
15 could have done to him if I was trying to do something to  
16 him.  
17          Q       So I just heard you say his back was turned to  
18 you; you were not threatened?  
19          A       That's what it shows.  
20          Q       Well, I just want to make sure I heard you say  
21 it.  
22          A       Well, he had to walk into the store.  
23          Q       Sir, you just said that he had his back turned  
24 to you and you were not threatened by him; correct?  
25          A       I said I was not threatening him.

1 Q Okay. And because it was public property,  
2 you -- you had the right to stand near his truck; correct?  
3 A And not threatening him.  
4 Q And you had -- well, is that correct, you did  
5 have the right to stand next to his truck; correct?  
6 A Correct.  
7 Q And you had the right to lean on his truck  
8 because it's public property; correct?  
9 A That's not what I stated.  
10 Q No. That's what I'm asking you, sir.  
11 A No.  
12 Q Okay. So if he had asked you to step away from  
13 his truck and you did not, that would be wrong in your mind?  
14 A If he asked me to step away from his truck --  
15 Q If he asked you not to lean on his truck and  
16 you refused and continued to lean on his truck, would that be  
17 wrong in your mind?  
18 A Typically, that would be wrong.  
19 Q How about in this situation?  
20 A I'm not leaning on his truck.  
21 Q I understand. But in this situation where --  
22 A I haven't leaned --  
23 Q -- you were on his truck --  
24 A -- on his truck for more than a minute.  
25 Q In this situation where you were leaning on his

1 truck, would that have been right or wrong in your mind?

2 A If I was still leaning on his truck?

3 Q Yes.

4 A It appears that would be wrong, yeah --

5 Q Okay.

6 A -- in the mind I have today.

7 Q Okay. So watching the video, continuing now

8 that my client's withdrawn to the store, do you see your arms

9 swinging from side to side there?

10 You see that?

11 A Yes.

12 Q Okay. So it appears that you are having a

13 conversation or are saying some statement to my client at

14 that point; right?

15 A I'm expressing something, yeah.

16 Q But you don't know what that is?

17 A I don't recall what that is --

18 Q Okay.

19 A -- at this time.

20 Q But because you can't remember?

21 THE COURT: Correct?

22 THE WITNESS: Correct.

23 BY MR. SHEETS:

24 Q And this continues on for quite some time,

25 isn't that correct, and now you're pointing at his truck?



1           A       Correct.

2           Q       Okay. And this is at 12:42:48, approximately  
3 two and-a-half minutes after you first came into contact with  
4 my client; correct?

5           A       I never came into contact with your client.

6           Q       You never came into contact with my client?

7                   Then how do you explain all this video?

8                   You never contacted my client verbally or  
9 physically?

10          A       Well, verbally, yeah. That's contact? I  
11 didn't understand that, and I did not understand that  
12 verbally is contacting somebody.

13          Q       Fair enough.

14          A       I'm sorry.

15          Q       Okay. So just for the purposes of time, my  
16 client's walking away at 24 -- 12:42:23; correct?

17          A       Correct.

18          Q       Okay.

19          A       He's going to the store.

20          Q       And you appear to continue to be having words  
21 with him at 12:42:54, and now you're pointing at his truck;  
22 correct?

23          A       It looks like I'm pointing at the tail end of  
24 his truck, yes.

25          Q       So you're -- over a 30-second period, he's

1 withdrawn from the truck and you hadn't gone anywhere and you  
2 were having words with my client; correct?

3 A Correct.

4 Q Are you aware of what my client did when he  
5 walked away at 12:42?

6 A I am today.

7 Q Do you remember whether or not my client walked  
8 inside the store and asked for some help?

9 A I don't recall, but now I am told.

10 Q Okay. So my client, then, when he approaches  
11 the truck, he approaches the truck on the other side of the  
12 truck as you; isn't that correct?

13 A Yeah, where the gas -- where the gas handle and  
14 stuff is, yeah.

15 Q And this was 12:43:02; right?

16 A That's correct.

17 Q And you are still standing towards the rear of  
18 the cab where it meets the front of the bed on that side of  
19 the truck; isn't that correct?

20 A Correct.

21 Q So up until this point my client has walked  
22 away from you on two separate occasions and you have stayed  
23 right where you were; correct?

24 A Not right where I was, but the --

25 Q You haven't stayed --

1           A       -- same proximity.  
2           Q       Okay. Fair enough.  
3                    So at this point, at 12:43:09, my client  
4 approaches you again; correct?  
5           A       Correct.  
6           Q       And do you remember what's being said at this  
7 point?  
8           A       I don't recall.  
9           Q       Okay. But at this point very clearly it seems  
10 that there are words being exchanged; correct?  
11          A       Yes. I do see his arms waving back and forth  
12 and him pointing at me, and yes.  
13          Q       Okay. And at 12:43:19 my client then walks  
14 away from you again; correct?  
15          A       He gets further distance, yes, correct.  
16          Q       Okay. So now this is the third time my  
17 client's walking away from you, and at this time you are  
18 still standing near the rear of the cab towards the front of  
19 the bed in the same approximate location; correct?  
20          A       Approximate location, yes.  
21          Q       Okay. So on three separate times now my client  
22 has tried to walk away and you're still there?  
23                    THE COURT: Is that a question?  
24                    MR. SHEETS: Yes.  
25                    / / /

1 BY MR. SHEETS:  
2 Q Correct?  
3 A Correct.  
4 Q Okay. Then my client returns again to the  
5 passenger side of his vehicle?  
6 I mean, to the driver's side of his vehicle;  
7 correct?  
8 A Not right there. He doesn't go to the -- yes,  
9 right there.  
10 Q He is driving -- he is walking towards the  
11 driver's side --  
12 A Right there, yes.  
13 Q -- of his vehicle; correct?  
14 A Right there.  
15 Q And 12:43:24 he is now standing on the driver's  
16 side of this vehicle towards the back of the bed; correct?  
17 A Where the gas pumps are, yes.  
18 Q And at this point now you take steps, and  
19 you've now moved towards the back of the bed as well;  
20 correct?  
21 A I'm moving further away from the vehicle.  
22 Q But you've also moved closer to the rear of the  
23 truck; correct?  
24 A Correct.  
25 Q All right. So, again, my client --

1           A       I'm engaged in --  
2           Q       My client -- you're engaged.  
3                    Do you remember being engaged?  
4           A       No. What I'm saying is there, which now I'm  
5 being -- so he is coming towards me at that time.  
6           Q       Okay.  
7           A       Before I get --  
8           Q       All right.  
9           A       -- further away from that truck.  
10          Q       So at 12:43:30 it's your testimony my client's  
11 coming towards you.  
12                   At this point there still appears to be a three  
13 or four-foot gap between the two of you; isn't that correct?  
14          A       At this point, correct.  
15          Q       Correct?  
16                   And at that point my client then takes two  
17 steps backwards; isn't that correct?  
18          A       That is correct.  
19          Q       Okay.  
20          A       And there he goes towards me. I'm sorry.  
21          Q       Again, coming no closer than three or four  
22 feet; correct?  
23          A       Oh, correct.  
24          Q       And then he withdraws again and walks back to  
25 the driver's side of the vehicle?

1           A       Where the gas tank is, yes.

2           Q       Okay. But at this point he doesn't have a

3 gas -- a gas pump or anything in his hand?

4           A       At this point, he may have the gas pump.

5           Q       But you don't remember?

6           A       I don't recall, but --

7           Q       Okay.

8           A       -- at this point the video showed that he may

9 have the gas pump in his hand.

10           THE COURT: I don't think the video shows --

11           MR. SHEETS: I don't think it does.

12           THE COURT: -- that, sir.

13           So for the record it just shows him on the side

14 of the vehicle. Whether he has a gas pump in his hand is not

15 visible at this juncture.

16 BY MR. SHEETS:

17           Q       So he heads back to that side, and he's

18 actually leaning over the truck and pointing at you; isn't

19 that correct?

20           A       Is that what he's doing, pointing at me? Okay.

21           Q       I mean, if that's not what you see, then you

22 could certainly say that.

23           Looking at the video does it appear that he's

24 leaning over the truck and pointing at you?

25           A       It appears that he's leaning over the truck.

1 Q Okay. He comes back around again; correct?  
2 A Correct.  
3 Q But there's still a gap between you guys; isn't  
4 that correct?  
5 A Because I don't come towards him.  
6 Q Well, you've moved and you're still standing  
7 towards the rear corner of the truck; isn't that correct?  
8 A Yes.  
9 Q Okay.  
10 THE COURT: For the record there's no gas pump  
11 in his hand either.  
12 MR. SHEETS: Okay. Thank you, Your Honor.  
13 BY MR. SHEETS:  
14 Q And at that point he points his arm out to the  
15 side; correct?  
16 A Well, he was waving his arms --  
17 Q Well --  
18 A -- back and forth.  
19 Q -- you don't remember whether he was waving  
20 his arms?  
21 A No.  
22 Q But you --  
23 A You stop it at a point where he's further away  
24 but he has --  
25 Q Well, let me --

1           A       -- both arms up in the air.  
2           Q       Okay. His -- his arm is pointed to the side,  
3 whether by wailing motion or not, on this video?  
4           A       Correct.  
5           Q       Okay. But you don't know whether it was  
6 wailing because you don't remember?  
7           A       I don't recall --  
8           Q       Okay.  
9           A       -- the situation.  
10          Q       Okay.  
11          A       This part is -- I don't recall.  
12          Q       So at this point there's still discussion.  
13                You haven't moved from your location; correct?  
14          A       Correct.  
15          Q       And he's now walking away at 12:44:09; correct?  
16          A       Correct.  
17          Q       All right. And again he returns to the other  
18 side of the truck opposite of you; correct?  
19          A       Correct.  
20          Q       So at this point -- up until this point he  
21 hasn't closed the gap --  
22          A       Right.  
23          Q       -- closer than three or four feet, but he has  
24 moved away from you on four separate occasions; correct?  
25          A       Correct.



1 Q And you're still standing within a three or  
2 four-foot radius of where you were when this all started?  
3 A Yes, correct.  
4 Q Okay. So at this point now you're walking  
5 around the truck; isn't that correct?  
6 A I'm behind the -- I'm behind the truck.  
7 Q At 12:44:21 you're now behind the truck --  
8 A Yes.  
9 Q -- walking towards the driver's side of the  
10 truck; correct?  
11 A I'm moving towards the driver's -- I'm moving  
12 towards that side of the vehicle, yeah.  
13 Q And you don't remember why you're doing that?  
14 A I don't recall even doing that, but --  
15 Q Okay.  
16 A -- that's what I see.  
17 Q And now you've actually turned the corner, you  
18 are beyond the back of the bed, and you can see my client  
19 directly at 12:44:25; correct?  
20 A From what the video shows, correct.  
21 Q Okay. So now you have direct access to my  
22 client with no obstruction; correct?  
23 A I don't know what's on -- I don't see anything  
24 there, no.  
25 Q Okay. And at this point now you're pointing at

1 my client; isn't that correct?

2 A It appears that I'm pointing.

3 Q Okay. And this continues on, and my client  
4 again stays where he's at; isn't that correct?

5 A No. It appears at that point he pulls the gas  
6 pump out of his vehicle, sprays me with gas --

7 Q Okay.

8 A -- at that point.

9 Q And that's --

10 A That would be correct.

11 Q Correct. That's only after you've come around  
12 the back side of the truck; correct?

13 A I'm still behind the truck. I haven't enclosed  
14 the gap within more than four feet.

15 Q You're on the other side of the truck, aren't  
16 you?

17 A But I haven't closed the gap within the four  
18 feet.

19 Q Sir, I'm asking you --

20 A Yes.

21 Q -- a question.

22 And this entire time before that you were  
23 standing on the opposite side of the truck, and now you've  
24 approached my client after he walked away from you four  
25 times?

1           A       I'm not approaching him.  
2           Q       You're not walking any closer to my client?  
3           A       I'm not within four feet of your client.  
4           Q       That's not my question.  
5                   Are you walking closer to my client? Have you  
6 walked closer to my client now?  
7                   Yes or no?  
8           A       Well, if "closer" means more than three to four  
9 feet of proximity, then no.  
10          Q       Sir, you walked from the opposite side of the  
11 truck --  
12          A       Excuse me. To the --  
13          Q       -- as my client to the same side of the truck  
14 as my client; correct?  
15          A       To the same side where there -- to the same  
16 side of the vehicle.  
17          Q       Yes or no, the same side?  
18          A       But I'm not even -- I'm still -- I'm three feet  
19 away from the vehicle at that point.  
20                   THE COURT: Sir, you need to answer the  
21 question that's asked of you.  
22                   It's obvious from the video that you walked  
23 closer to him, so the answer is obviously yes.  
24 BY MR. SHEETS:  
25          Q       And that was on the same side of the truck as

1 my client now; correct?

2 A We're on the same side of the vehicle, yes.

3 Q And that was the driver's side of the vehicle;

4 correct?

5 A That's the driver's side of the vehicle.

6 Q And then you made the pointing movement towards

7 my client; correct?

8 A That was before that.

9 Q That was before that.

10 A We said that --

11 Q Hang on, sir.

12 So at 12:44:29 --

13 A And he appears --

14 Q -- you're pointing at him; correct?

15 A He appears to be -- yes. He appears to be

16 coming closer to me, moving to me.

17 Q Sir, that's not my question.

18 A Yes.

19 Q Okay. You are pointing at him?

20 A Yes.

21 Q Okay. And you are on the driver's side of the

22 truck at this point?

23 A I'm -- I'm four feet -- I'm at least three feet

24 behind the vehicle on the driver's side of the truck.

25 Q All right. And it's only at this point that

1 you've been sprayed with gasoline; isn't that correct?  
2 A Within -- by 12:44:31 I was sprayed with  
3 gasoline.  
4 Q Correct.  
5 After the pointing motion; correct?  
6 A Or at the time of the pointing motion.  
7 Q Okay.  
8 A Because it appears that he is pointing the gas  
9 pump at me at that point right there.  
10 Q So he then sprays --  
11 A And I was pointing at him. I am pointing that  
12 he has pulled the gas thing out.  
13 Q And are you in fear at this point?  
14 A I obviously am distressed by holding my hand  
15 up.  
16 Q Do you remember being in fear at this point?  
17 A I don't recall.  
18 Q Okay.  
19 A I don't recall. I recall being poured gas on.  
20 Q And if you're in fear, do you withdraw or do  
21 you stay put?  
22 A Typically? Typically?  
23 Q Yes.  
24 A I stay put.  
25 Q And what do you do?

1 Do you then challenge an individual?

2 A No.

3 Q Or do you just stand there?

4 A No. It's covering -- if I turn -- if I turn my  
5 back to run, then I'm completely defenseless.

6 Q Okay. But you certainly would -- you wouldn't  
7 approach --

8 A Absolutely not.

9 Q You certainly wouldn't come at the other  
10 individual or approach the other individual; correct?

11 A I wouldn't know where I was actually going if I  
12 was sprayed with gas in the eyes, and I wouldn't -- I  
13 wouldn't know which way I would be headed or which I -- from  
14 what I typically would be.

15 A person who gets sprayed in the face with  
16 gasoline would be disoriented and not know which way I was  
17 going.

18 Q But you just said you'd stay put; right?

19 A I wouldn't -- I wouldn't flee in fear, like  
20 what is -- I thought your question was.

21 Q Okay. So you wouldn't withdraw?

22 A I wouldn't -- I wouldn't turn my back and go  
23 and I wouldn't -- I wouldn't know where to go. I wouldn't  
24 know which way to go.

25 Typically, I -- I wouldn't understand. I

1 wouldn't know which way to go.

2 Q All right.

3 A But I don't recall that.

4 Q All right.

5 A I don't recall turning around. I don't recall  
6 going anywhere. I don't recall doing anything.

7 Q I understand.

8 A The only thing I recall is being sprayed with  
9 gas.

10 Q Okay. So you've been sprayed with gas, and you  
11 don't know whether you're in fear because you cannot  
12 remember, but you likely would stay put in that situation?

13 Is that fair to say?

14 A I would likely not --

15 Q Not to flee?

16 A I would not flee. I don't understand staying  
17 put.

18 Like I would not move at all or what?

19 Q Well, would you make any -- any quick movements  
20 towards my client?

21 A No.

22 Q Okay.

23 A Typically, I would understand if someone has  
24 gasoline, they could spray it. I mean, I wouldn't go towards  
25 gasoline.

1 sprayed a little bit longer, see if I'm backing off. I just  
2 know that my hands are up in the air.

3 Q So once you walk back towards my client, you  
4 get sprayed again; correct?

5 A Correct. I got sprayed again, yes.

6 Q Okay. But that was only after you had walked  
7 back towards my client; correct?

8 A Walked.

9 Q Okay.

10 A Yes.

11 Q So at that point --

12 A I'm leaning against something.

13 Q Correct.

14 And now you've actually walked -- and you are  
15 actually at the truck on the driver's side closer to my  
16 client, aren't you?

17 A I'm within four feet, yes.

18 Q You're now standing right at the back of the  
19 truck, though; you're not four feet behind the truck;  
20 correct?

21 A I'm four feet away from him, yes.

22 Q Okay. But you are --

23 A Yes.

24 Q Thank you.

25 And again my client does not come at you again;



1 correct?

2 A It didn't -- no, correct.

3 Q And at this time, at 12:46:22, my client

4 actually turns around and it appears that he may be getting

5 into the driver's seat of his truck; isn't that correct?

6 A It appears that, correct.

7 Q Okay. At that point you then walk closer to my

8 client; isn't that correct?

9 A Correct.

10 Q Okay. And only after that point does my client

11 push you; correct?

12 A Correct. He pushed me, yeah.

13 Q Okay. But again he doesn't -- he doesn't

14 continue to come at you?

15 A Yes, he does.

16 Q Okay.

17 A I was backing up and he was continuing to come

18 after me.

19 Q But at this point there's still a fairly large

20 gap between you.

21 And now you're pointing at my client; correct?

22 A It's appears that I'm pointing at your client

23 and looking towards the -- the store.

24 Q Okay. But again you don't know what's being

25 said because you can't remember?

1           A       I can't remember.

2           Q       Okay. So you keep looking at him and keep

3 pointing at him, and now you -- now, at that point --

4           A       I see a flame, yeah.

5           Q       Well, hang on a minute, sir.

6                   At 12:47:32 you roll your sleeve up, don't you?

7           A       It appears so.

8           Q       And it's at that point that my client walks

9 towards you but then backs off; correct?

10          A       Play that again. I didn't see that.

11          Q       And it appears that my client is now looking

12 towards the store; correct?

13          A       Yeah, if that's what you see.

14          Q       Well, I'll back it up.

15          A       Okay. He is looking at the store there.

16          Q       Okay.

17          A       But I wasn't looking --

18          Q       That's not the question, sir.

19                   So now you look back towards him again, and you

20 point up in the air; correct?

21          A       Yeah.

22          Q       Okay. But again you don't know what's being

23 said because you can't remember?

24          A       Correct.

25          Q       All right. And my client continues to stand

1 there, and it's at that point that he lights you, and that's  
2 approximately --

3 A Well, he didn't continue to stand there. He  
4 actually engaged me, and he came closer to me while I was --  
5 I was standing there.

6 Q Okay. So at approximately 14:20 -- 12:20 --  
7 12:48:25 he steps towards you with his arm extended; correct?

8 A Correct. He steps towards me.

9 Q Okay. And at that point it appears that his  
10 arm touches you at 12:48:27; correct?

11 A Correct.

12 Q Okay. And then you light --

13 A He lights me on fire at that point.

14 Q At that point you light on fire, 12:48:29;  
15 correct?

16 A He lights me on fire.

17 Q Okay. And this is 12:48:28, and you're not on  
18 fire; correct?

19 A Correct.

20 Q All right.

21 A It appears that he --

22 Q That's my only question, sir.

23 A Okay. Correct.

24 Q But at 12:48:29 you are on fire?

25 A Correct.

1           Q       And by 12:48:33 you've already taken your shirt  
2 off and it's on the ground; correct?

3           A       That's my shirt, because my head is still on  
4 fire.

5           Q       Okay. Hang on. So this is you on fire at  
6 12:48:32; correct?

7           A       Correct. That's still me on fire at 12:48:35.  
8                   MR. SHEETS: Sorry, Your Honor.

9                   THE WITNESS: That's still me on fire at 37.  
10 BY MR. SHEETS:

11          Q       So at 12:48:33 it appears you've taken your  
12 shirt off and thrown it off; correct?

13          A       Correct. I do recall --

14          Q       But your shorts are still on fire?

15          A       I do recall pulling off my shirt.

16          Q       And your shorts are still on fire at that time,  
17 though; correct?

18          A       Correct.

19          Q       So then you take your shorts off, and they are  
20 off by 12:48:39?

21          A       Forty-two, they are still on and I'm still on  
22 fire.

23          Q       But you're just standing there pointing at this  
24 point; correct?

25          A       12:48:46 --

1 Q Yes?

2 A -- you -- it's a stopped frame.

3 Q Okay. You're pointing; is that correct?

4 A I don't know what I'm -- I may be defending

5 myself from someone who's trying to light me on fire again,

6 is what it appears to me.

7 Q But you don't know --

8 A It appears to me that I am stopping his arm

9 from lighting me on fire again.

10 Q Okay.

11 A At this point he comes towards me. It appears

12 that he comes towards me and tries to light me on fire again,

13 and my hand puts out to try to stop him from putting me on

14 fire again.

15 Q But you don't know whether you were defending

16 yourself because you don't remember?

17 A I don't recall, but from the video it clearly

18 shows --

19 MR. SHEETS: And I would move to strike the

20 testimony about an attempt --

21 THE COURT: Overruled. You asked him what you

22 thought he saw and he told you.

23 MR. SHEETS: Well, just to clarify my

24 objection, Your Honor, he said -- he didn't say it looked

25 like he was defending himself. He said he believed he was

1 defending himself.

2 THE COURT: Objection's overruled.

3 MR. SHEETS: Okay. Thank you, Your Honor.

4 BY MR. SHEETS:

5 Q And at this point my client walks away, isn't  
6 that correct, and that would be 12:48:59?

7 A There's another person in the video who --

8 THE COURT: Sir, the question was: He walked  
9 away?

10 THE WITNESS: Yes. Right, at this point he's  
11 walking away.

12 He comes closer again there and then again  
13 there.

14 BY MR. SHEETS:

15 Q Does he make any physical contact with you?

16 A He appears to be trying to make physical  
17 contact with me, maybe he appears to be --

18 Q Does he actually make physical contact with  
19 you?

20 A You saw the flame. I'm backing up at that  
21 time.

22 Q So now after he's withdrawn five times --

23 A He wasn't withdrawn --

24 Q -- you are backing up?

25 A -- right there. That was --

1 THE COURT: Please don't talk over each other.  
2 Sir, you need to wait for the question to be  
3 asked.

4 Counsel.

5 BY MR. SHEETS:

6 Q So as it plays, do you see any physical  
7 contact?

8 A I -- I moved out of his vicinity.

9 THE COURT: Sir, answer the question, please.

10 THE WITNESS: Correct.

11 THE COURT: Is the answer yes or no?

12 THE WITNESS: Correct, yes.

13 BY MR. SHEETS:

14 Q You do not see any physical contact?

15 A I do not see any physical contact.

16 THE COURT: Thank you.

17 BY MR. SHEETS:

18 Q And at that point pretty much everything is  
19 done and everybody's been spread out?

20 A Until he starts coming towards me again. He  
21 goes to the --

22 Q Is he talking to you or does it appear like  
23 he's talking to the guard?

24 A No. He went to talk to the guard.

25 Q Okay.

1           A       It appears to be a security guard.  
2           Q       Okay.  
3                   MR. SHEETS:  So I'm just going to speed this  
4 up, Your Honor, for time purposes.  
5 BY MR. SHEETS:  
6           Q       And that was approximately 12:50 --  
7           A       Now he's behind me.  
8                   THE COURT:  Sir, there's no question before  
9 you.  
10                  THE WITNESS:  Oh.  
11                  THE COURT:  Thank you.  
12 BY MR. SHEETS:  
13           Q       And again he has not made any physical contact  
14 with you again, and it's 12:50:55; correct?  
15           A       Correct.  
16           Q       Okay.  Still no physical contact?  
17           A       He did not make physical contact with me when  
18 he lit me on fire.  
19                   THE COURT:  Sir, I want you to just answer the  
20 question that's asked of you.  
21                   Counsel, do you have a question?  
22                   MR. SHEETS:  Yeah.  
23 BY MR. SHEETS:  
24           Q       There was -- at 12:51:35 he still hasn't made  
25 any additional physical contact with you; correct?



1           A       Correct.

2           Q       Okay. And now at 12:54:39 it appears that my

3 client is still in his truck waiting there; correct?

4           A       I don't know where he is.

5           Q       Okay. But his truck is still there; correct?

6           A       His truck is still there, correct.

7           Q       Now, is that my client?

8           A       Yes, moving towards me.

9           Q       So at 1:00:15 my client is still there?

10          A       Correct, and moving towards me.

11          Q       So he hasn't left?

12          A       And he's moving towards me, yes.

13                THE COURT: Sir, the question was: He hasn't

14 left; is that correct?

15                THE WITNESS: Correct.

16                THE COURT: Thank you.

17 BY MR. SHEETS:

18          Q       And the police are there at this point;

19 correct?

20          A       Correct.

21          Q       So my client waited for the police to arrive;

22 correct?

23          A       Correct.

24                MR. SHEETS: No further questions.

25                THE COURT: Thank you.

1 MS. WONG: No questions, Your Honor.  
2 THE COURT: Thank you very much, sir. You are  
3 excused.  
4 State, call your next witness.  
5 THE WITNESS: Thank you, ma'am.  
6 MR. SCHWARTZER: The State calls Derrick  
7 Phillips.  
8 Counsel, can I release the detective or do you  
9 want me to keep him some more?  
10 THE COURT: He's the graveyard detective?  
11 MR. SHEETS: Give me one second.  
12 I would like to keep him.  
13 THE COURT: Call the detective please, first,  
14 so we can get him on his way.  
15 MR. SCHWARTZER: They are both graveyard,  
16 Your Honor.  
17 THE COURT: Are they both --  
18 MR. SCHWARTZER: We actually don't plan on  
19 calling the detective as long as everything comes out with  
20 the security guard.  
21 THE COURT: Do you plan on calling him,  
22 counsel?  
23 MR. SHEETS: I think it depends on the  
24 testimony of the security guard, if he has knowledge of the  
25 events inside the store.

1 THE COURT: I -- just they have been -- what  
2 time do they get off? Eight this morning?

3 MR. SCHWARTZER: I don't think he worked today,  
4 but they get off at eight, Your Honor.

5 THE COURT: Hi, sir. Raise your right hand for  
6 me, please.

7 THE WITNESS: Hi.

8

9

DERRICK PHILLIPS

10 was called as a witness by the State, having  
11 been first duly sworn did testify as follows:

12

13 THE WITNESS: Yes, ma'am.

14 MS. CLERK: Please be seated.

15 THE COURT: If you'll state -- I'm sorry. I'm  
16 going to move this along.

17 Please state your full name and spell it, sir.

18 THE WITNESS: Derrick Phillips, D-e-r-r-i-c-k,  
19 P-h-i-l-l-i-p-s.

20 THE COURT: Thank you, so much.

21 Counsel, you may proceed.

22 MR. SCHWARTZER: Thank you, Your Honor.

23 / / /

24 / / /

25 / / /

DIRECT EXAMINATION

2 BY MR. SCHWARTZER:

3 Q Mr. Phillips, how are you employed?

4 A I work for the South Point.

5 Q In what capacity?

6 A I work security at the South Point.

7 Q And on October 10th, 2012, were you working in  
8 security at South Point?

9 A Yes, sir.

10 Q Around -- do you work graveyard?

11 A Yes, sir.

12 Q So I want to direct your attention on  
13 October 10th, 2012, approximately 12:45 a.m., were you on  
14 shift?

15 A Yes, sir.

16 Q And around that time were you at the South  
17 Point or did you go somewhere else?

18 A I left the South Point property and went to the  
19 Circle K.

20 Q And that Circle K, the Circle K that you went  
21 to, is that located at 9487 Las Vegas Boulevard?

22 A Yes.

23 Q And is that in Clark County?

24 A Yes.

25 Q Now, is that -- and that's pretty close to the

1 South Point?

2 A Less than a 10th of a mile or 10th of a mile,  
3 roughly.

4 Q Now, when you -- did you drive there?

5 A Yes.

6 Q And when you drove there, did you pull into  
7 the -- a parking spot by the store or did you pull into the  
8 gas pumps?

9 A I pulled in right in front of the doors.

10 Q And I imagine you exited the vehicle?

11 A Yes.

12 Q Did you see anything when you were exiting the  
13 vehicle that caught your eye?

14 A I saw two people arguing in front -- right in  
15 front of me, in front of my vehicle.

16 Q Were they by the gas pump?

17 A Yes.

18 Q Okay. By in front of you, were the gas pumps  
19 in front of you?

20 A There was a truck there and then the gas pumps  
21 next to the truck.

22 Q Do you recognize one of the individuals that  
23 were arguing in the courtroom today?

24 A Yes.

25 Q Could you point to him and identify a piece of

1 his clothing?

2 A He's wearing a blue shirt with glasses on the  
3 front.

4 Q Did you hear --

5 THE COURT: Let the record reflect  
6 identification of the defendant.

7 MR. SCHWARTZER: I apologize, Your Honor.  
8 Thank you.

9 BY MR. SCHWARTZER:

10 Q Did you hear anything that the defendant said  
11 during that part of the argument?

12 A Get away from me.

13 Q Okay. Did you -- and did it look like it was a  
14 physical confrontation or was it just verbal?

15 A At that time it looked verbal, more than  
16 physical. He may have pushed him. I can't remember.

17 Q Who might have -- if you don't recall, then  
18 that's fine.

19 At some point did the defendant start pumping  
20 gas into his vehicle?

21 A Yes.

22 Q Did you see anything that caught your eye after  
23 the defendant started pumping gas in his vehicle?

24 A He took his gas pump out of his truck and  
25 turned it to the Hispanic male and kind of sprayed him down

1 with gasoline.

2 Q Now, that Hispanic male, he was the person he  
3 was arguing -- that the defendant was arguing with?

4 A Yes. Yes.

5 Q Was that the same male that just exited the  
6 courtroom?

7 A Yes.

8 Q Do you recall the defendant saying anything  
9 when he sprayed the Hispanic male with gasoline?

10 A Just get away from me, leave me alone.

11 Q Okay. Now, did you see the reaction of the  
12 Hispanic male?

13 A He looked to be surprised.

14 Q Now, shortly thereafter did you go into the  
15 store?

16 A Right after that I went into the store, yes.

17 Q And why did you do that?

18 A I went into -- to first tell the attendant to  
19 call Metro and let them know what was going on, because they  
20 are getting -- told him that they're getting crazy out there,  
21 and get some chocolate, because I was sleepy.

22 Q Now, after you made your purchase and you told  
23 the clerk, did you exit the store?

24 A Yes.

25 Q And when you exited the store, was the Hispanic

1 male and the defendant still arguing?

2 A Yes.

3 Q Now, did something happen -- was it a verbal  
4 argument at that point?

5 A Yes. It was verbal.

6 Q Now, did something occur while you were  
7 witnessing this argument that caught your eye?

8 A Yeah. He -- he took a lighter out of his  
9 pocket and kind of lit it.

10 Q Let me stop you there.

11 Who took a lighter out of his pocket?

12 A The gentleman there with the glasses on the  
13 front of his shirt.

14 Q The defendant?

15 A Yes, sir.

16 Q Now, did you see the lighter?

17 A I seen it after he sparked it.

18 Q You saw the lighter after he sparked it?

19 A Yes.

20 Q Now, what did the defendant do with the lighter  
21 after he sparked it?

22 A He sparked it three times, and then after each  
23 sparked he kind of took a step closer, and then he pressed it  
24 towards his -- his hip area, upper leg, hip, waist.

25 Q By "him" do you mean the Hispanic male?



1           A       Yes.

2           Q       And so every time he would spark the lighter,  
3 he would get closer to the Hispanic male?

4           A       Right.

5           Q       At some point did he make contact with the  
6 Hispanic male?

7           A       Yeah. After the third or fourth spark, then he  
8 kind of pressed it up on his leg.

9           Q       And then what happened when he pressed the  
10 lighter against the Hispanic male's leg?

11          A       He -- he kind of got engulfed with flames, like  
12 a stuntman.

13          Q       And, now, was this by a gas pump?

14          A       Yes.

15          Q       Did that -- what were you thinking when you saw  
16 this individual lit on fire by the gas pumps?

17          A       I was in shock. I was -- I can't believe  
18 somebody just did that.

19          Q       Were you in fear of your safety?

20          A       I don't think so.

21          Q       Okay. Now, what did you do when you saw this  
22 individual get lit up on fire?

23          A       I yelled out towards them, and I told him to  
24 get down and role around and try and put out the flames that  
25 way.

1           Q       Did you -- did you see the defendant during the  
2 time that the Hispanic male was on fire?

3           A       I was kind of looking more towards the Hispanic  
4 male.

5           Q       Now, at some point did the Hispanic male get  
6 the fire out?

7           A       He stripped down and got naked and -- and yeah.  
8 He stopped burning at that time.

9           Q       And at that point did the defendant do anything  
10 while the Hispanic male was just -- the fire was just  
11 smothered?

12          A       He came up to him and he was about five or so  
13 feet -- I'm not sure, give or take a few -- and he had a  
14 knife, a little knife with a -- attached to his keys in his  
15 hand, and he was kind of waving it at him, at the Hispanic  
16 male, and saying: Look at your small dick and chuckling.  
17 You have a small dick. I'm going to cut your small dick.

18          Q       And you made a motion with your arm.

19                   Did the defendant --

20          A       Yeah. He kind of swiped, like that.

21          Q       So it's fair to say that the defendant was  
22 waving a knife at the naked victim --

23          A       Right.

24          Q       -- or Hispanic male?

25          A       Hispanic male, yes.

1 Q And you said he said the words that he would --  
2 he was going cut him?

3 A Right.

4 THE COURT: Pass the witness?

5 MR. SCHWARTZER: Yes, Your Honor.

6 THE COURT: Cross.

7

8 CROSS EXAMINATION

9 BY MR. SHEETS:

10 Q At what point did you get -- did you pull up to  
11 this argument?

12 A They were at the back of the truck. I don't  
13 know what point it would be.

14 Q Did you ever at any point see my client push  
15 the Hispanic male over a concrete barrier at all?

16 A Not over a barrier. I believe they did push  
17 each other right in back of the truck. He pushed him towards  
18 the -- towards the building.

19 "He" being your client pushed the Hispanic male  
20 towards the building.

21 Q And during all of that -- now, you said you  
22 were witnessing.

23 If I were to play a video for you, would you be  
24 able to tell me at what point you arrived and started your  
25 observation?

1 A I could try.

2 Q And what I'll do is I'll just play it real,  
3 real fast and just give me the old holler when you get to the  
4 point that you think you were there.

5 But don't worry about it for a second, because  
6 I have got to go backwards.

7 (Whereupon, the video was played in open court  
8 and questions were asked.)  
9

10 BY MR. SHEETS:

11 Q And you're not there for any of this part;  
12 right?

13 A No. I don't remember this part.

14 Q So once you get to the point you pull up, just  
15 give me the old stop, and I'll try and stop as quickly as I  
16 can.

17 A It had to be before that.

18 Q You saw him get sprayed?

19 A Yeah, I saw him get sprayed.

20 Q Okay.

21 A Unless he got sprayed more than once.

22 Q When you pulled up, did you see --

23 A It was probably right -- no. It was -- your  
24 defendant was -- or your client was at the back of his  
25 truck.

1                   No. It was before that.

2           Q       Okay. I'm going to go backwards. I'm sorry.

3           A       No problem.

4           Q       Right here?

5           A       Yeah.

6           Q       Okay.

7                   MR. SHEETS: So approximately 12:44:06, for the  
8 record.

9 BY MR. SHEETS:

10           Q       And at this point, when my client's at the back  
11 of the truck, what do you see my client -- what's my client  
12 saying?

13           A       Leave me alone. Get away from me.

14           Q       What's the other guy saying, the Hispanic?

15           A       I couldn't tell. I just heard him yelling get  
16 away from me, because I was pulling up and I'm still in my  
17 truck.

18           Q       And between that point and when the gas was  
19 sprayed, did you hear the Hispanic -- did you hear what the  
20 Hispanic male was saying?

21           A       No.

22           Q       But you heard that he was saying something;  
23 correct?

24           A       No. I couldn't hear it.

25           Q       Okay. Are you -- do you know whether the

1 Hispanic male was saying something?

2 A I couldn't tell you if he was or not.

3 Q Okay. Fair enough. That's a fair statement.

4 Now, after he was lit on fire, you're the one

5 who walked up to him; correct?

6 A Yes.

7 Q You were the one with the vest on?

8 A Yes.

9 Q And I'm sorry. To clarify, by "him," you mean

10 the Hispanic male; correct?

11 A Yes.

12 Q When you came -- you were working security for

13 how long?

14 A Since 1999.

15 Q So that's approximately 13 years?

16 A Yes.

17 Q And has that all been at the South Point?

18 A No. I worked at the Gold Coast up until 2007,

19 and June of 2007 I moved to the South Point.

20 Q And working in casino security, have you become

21 familiar with the symptoms that one exhibits when he's under

22 the influence of alcohol?

23 A Yes.

24 Q Okay. Do you know -- or do you know whether or

25 not the Hispanic male was exhibiting any of those symptoms?

1           A       He did. He did exhibit some, yes.  
2           Q       And what symptoms were those?  
3           A       Just he appeared to be intoxicated, just the  
4 way he was postured and holding himself and --  
5           Q       Tell me about how he was holding himself.  
6           A       He was -- I can't do it. I'm kind of --  
7           Q       Just kind of flaccid? Would that be a fair  
8 statement?  
9           A       Wobbly.  
10          Q       Wobbly. Okay.  
11                   Was his speech slurred?  
12          A       I didn't notice that until after I get -- got  
13 up to talk to him.  
14          Q       Do you have any personal knowledge as to  
15 whether or not the Hispanic male was removed from the store  
16 earlier?  
17          A       No. I don't know.  
18          Q       Okay. Fair enough.  
19                   About how many times during this whole exchange  
20 when you pull up do you hear my client say: Get away from  
21 me, leave me alone?  
22          A       I'm not sure how many.  
23          Q       Would you say more than five?  
24          A       Fairly more than five, yeah.  
25          Q       Okay. What about more than ten?

1           A       Can't be for sure, but --

2           Q       So it's fair to say it was quite a few times?

3           A       Yeah.

4           Q       Okay. And I'm just going to resume playing the  
5 video here.

6                    So at that point do you see that -- did you  
7 see -- did you personally witness this part where the  
8 Hispanic male walks around the back of the truck?

9           A       Yes.

10          Q       Okay. And you saw the Hispanic male's arms  
11 moving around; correct?

12          A       Yes.

13          Q       Do you remember -- but you don't know what he  
14 was saying?

15          A       No.

16          Q       Okay. And at that point you said, right when  
17 my client sprayed him, he said: Leave me alone?

18          A       Right.

19          Q       Now, you said my client flickered the lighter  
20 three separate times.

21                   Did he say anything when he was flickering it  
22 those three separate times?

23          A       Leave me alone or I'll burn you.

24          Q       Okay. All right. And did it appear that the  
25 Hispanic male was approaching my client and that my client



1 was just trying to get away?

2 A He was -- he was pretty much where he is now,  
3 maybe a little closer, because I did -- I did approach him  
4 after and told him, you know, why don't you just leave, and  
5 he was standing there and said he poured gasoline on me.

6 And so I was like, yeah, you should go.

7 Q Now, as part of your duties in security have  
8 you ever witnessed individuals that were in fear?

9 A Yes.

10 Q And has that -- have you witnessed that a lot  
11 or a little?

12 A A little.

13 Q Okay. Now, did it appear, based on your  
14 observations, having seen this as a security guard, did it  
15 appear that -- that my client might have been in fear?

16 A No.

17 Q You didn't think my client was in fear?

18 A No.

19 THE COURT: Is that no?

20 THE WITNESS: No. I'm sorry.

21 BY MR. SHEETS:

22 Q Okay. Is it normal for somebody who's not in  
23 fear to say leave me alone and go away?

24 A Yeah, when they're irritated. He might have  
25 been irritated. That would probably be a better description.

1           Q       Okay. So you're not sure if he was -- so you  
2 think he was irritated, but you're not sure if he was in  
3 fear?

4           A       Right.

5           Q       Okay.

6           MR. SHEETS: No further questions.

7           THE COURT: Anything further?

8           MR. SCHWARTZER: No, Your Honor.

9           THE COURT: Thank you so much, sir. You are  
10 excused.

11          THE WITNESS: Thank you.

12          THE COURT: The State has rested.

13          Mr. Sheets.

14          MR. SHEETS: Your Honor, I have informed my  
15 client of his right to testify, his right to refuse to  
16 testify under the 5th Amendment.

17          The District Attorney is going to ask the  
18 officer one question which will determine whether or not I'm  
19 going to call him.

20          THE COURT: Okay.

21          MR. SHEETS: But I believe my client is going  
22 to take my advice and not testify today.

23          THE COURT: Is that right?

24          THE DEFENDANT: Right.

25          THE COURT: Okay. We'll wait for your one

1 question.

2 MS. WONG: The officer is still not back.

3 THE COURT: Okay.

4 MR. SHEETS: He went to go feed the meter.

5 THE COURT: Okay. So what are we doing?

6 I mean, I have got the staff on overtime,

7 so....

8 Okay. They have been on over time now for  
9 probably an hour.

10 MR. SCHWARTZER: I'll wait outside for him,  
11 Your Honor.

12 THE COURT: All right. We'll break. Let me  
13 know when he comes back.

14 MR. SHEETS: All right. Thank you.

15 MR. SCHWARTZER: Your Honor, he's back. He's  
16 walking down the hallway now.

17 THE COURT: Okay. All right. We're on the  
18 record. Actually, we never really went off the record. The  
19 officer came in when we were going to take a break.

20 But I've been now advised that there will be no  
21 further witnesses.

22 Is that correct?

23 MR. SHEETS: Yes, Your Honor.

24 THE COURT: All right. All parties are still  
25 present.

1 Any argument?

2 I believe the State would probably reserve.

3 Mr. Sheets.

4 MR. SHEETS: Yes, Your Honor.

5 A couple of things that I would move to  
6 dismiss.

7 First of all, I would move to dismiss Count 3.  
8 We've heard no testimony at all that he was in fear by the  
9 knife. That's specifically what's charged in Count 3, the  
10 point that hasn't been amended. The only time you hear about  
11 any potential fear comes to do with any kind of gas or being  
12 lit on fire, but we heard zero testimony that he was in fear  
13 by the knife.

14 In fact, we heard that if he had -- we didn't  
15 hear any testimony that there was use of a knife from the  
16 defendant -- or from the victim, and even if it were, he said  
17 that he was not in a fear, because he tries to befriend  
18 individuals, and that was his testimony.

19 More importantly, Your Honor, I do not believe  
20 the State met the burden of proof regarding the Attempt  
21 Murder With Use of a Deadly Weapon. There's been no  
22 testimony here that would indicate that my client was at all  
23 intending to or trying to kill the -- the victim.

24 We've heard no testimony that my client then  
25 approached him or tried to stab him. He had means to do so.

1 He did not. He was simply trying to keep him at bay.

2           The entire testimony that is from anybody who  
3 could remember what went on was that my client was repeatedly  
4 screaming: Get away from me, leave me alone, get away from  
5 me, leave me alone.

6           Your Honor saw the video. On several occasions  
7 this individual did approach my client. My client walked  
8 away on several occasions, and that this guy then made  
9 movements towards my client. It was only every time that  
10 this guy made a movement towards my client, that any kind of  
11 action was -- was pushed forward.

12           Certainly with a knife in his possession, my  
13 client could have tried to take this individual's life after  
14 he lit him on fire. He did not. He decided to sit in his  
15 truck and stay put, after walking a far distance from the  
16 alleged victim in this case. He goes and sits in his truck  
17 and waits for police.

18           These are not the indications of anybody who's  
19 trying to attempt to kill him. Again, we've heard no  
20 testimony that there was ever a threat to kill or that there  
21 were any movements, other than the flickering three times,  
22 which simply said get -- according to the one independent  
23 witness, was get away or I'm going to light you on fire.

24           It doesn't appear that there's any intent to  
25 kill. There's been nothing, not slight or marginal, to so

1 show that there was any attempt murder in this case.

2               Simply lighting somebody on fire is not good  
3 enough. There has to be some evidence, slight or marginal,  
4 of intent to kill, and there has been zero testimony to  
5 establish that.

6               In regards to the Battery With Use of a Deadly  
7 Weapon Resulting in Substantial Bodily Harm, we've heard no  
8 medical testimony that any injuries to him are going to be  
9 permanent or are going to result in scars. He didn't provide  
10 that testimony and neither did medical doctors.

11              So I would submit that the substantial bodily  
12 harm there has not been slight or marginal evidence of that  
13 thus far. However, I would submit on the rest of the charge.

14              With regards to the Performance of an Act in  
15 Reckless Disregard for Persons or Property, again,  
16 Your Honor, we would submit on that charge and just note that  
17 there has been no real testimony regarding the circumstance  
18 that led my client to do this in a reckless manner, other  
19 than one where he may have been protecting himself in trying  
20 to get somebody away from him, and you are certainly allowed  
21 to stand your ground when somebody approaches you, especially  
22 when you're attempting to get in your vehicle and he's  
23 charged. He's moved towards, pushed away, and he remains  
24 there.

25              I would submit, Your Honor.

1 THE COURT: Is Count 4 alternative to anything?

2 MS. WONG: Yes.

3 THE COURT: Okay. Let me dispose of a couple  
4 issues now and tell you the one that I need argued from you.

5 MS. WONG: Okay.

6 THE COURT: The intent to kill, if you light  
7 somebody on fire, there's only one conclusion to be drawn,  
8 and that is, I mean, if you use -- your self-defense argument  
9 works at trial, it works, but lighting someone on fire right  
10 next to a gas pump is absolutely unbelievable to me, and in  
11 and of itself circumstantially supports argument for probable  
12 cause for purposes of an intent to kill, so that argument I  
13 think fails.

14 Substantial bodily harm is certainly proven.  
15 Under the statute with prolonged physical pain, the  
16 incredible scarring that the Court saw over the whole half of  
17 his trunk, down to the side of his hip and on his arms, can't  
18 work, so I think substantial bodily harm has -- the State has  
19 met its burden.

20 And here's my question for the State, and it  
21 has to do with obviously Assault With a Deadly Weapon. The  
22 alleged victim says he felt no fear. We have a threat of a  
23 knife, according to the questions that came out, but no knife  
24 seen, at least in the video. That was the first reference to  
25 a knife. The second one was from the security guard who

1 actually saw the knife and saw the defendant -- that the  
2 defendant threatened -- or heard the defendant threaten to  
3 cut off the penis of the victim.

4               So you could respond to the elements that are  
5 required, reasonable apprehension of immediate bodily harm or  
6 unlawful attempt to use physical force. Those are the two.

7               MS. WONG: And Your Honor is correct. Count 3  
8 actually encompasses two separate acts of assault with use of  
9 a deadly weapon. I'll address the first one first.

10              At 12:41:23 a.m., as seen in the video,  
11 although we do not see the defendant holding the actual  
12 knife, we do see the defendant's hand act as though it's  
13 gripping something, and what we see is the victim actually  
14 throwing up both of his hands into the air.

15              Now, although the victim cannot now recall  
16 whether he saw a knife or not, the reasonable inference that  
17 we can gather from that video footage is that the victim saw  
18 a knife, felt threatened and put his hands up. I mean, when  
19 someone puts their hands up, that's a sign of they are  
20 backing off, so --

21              THE COURT: But he keeps moving forward.

22              MS. WONG: Right. Right. I mean, whether or  
23 not -- how the victim responds subsequently to that doesn't  
24 negate the elements that were proven under the assault with  
25 use.



1                   And then with respect to the second act of  
2 assault with use of a deadly weapon, the security guard did  
3 testify that the defendant took out his knife, he actually  
4 saw the knife, and that the defendant waved it near the  
5 victim's penis.

6                   I'm not a man, but I -- the reasonable  
7 inference --

8                   THE COURT: He put it near his penis?

9                   MS. WONG: yes.

10                  THE COURT: I didn't hear that.

11                  MS. WONG: He said he waved it --

12                  THE COURT: Well, waved it.

13                  MS. WONG: -- back and forth around his penis.

14                  THE COURT: And then from the video, you can't  
15 tell how close they got.

16                  I actually think there's -- at least under the  
17 second element --

18                  MR. SHEETS: If I could just note one thing to  
19 clarify on that, Your Honor.

20                  That's not charged in the "to wit" conduct.

21                  The "to wit" conduct is: A knife, by brandishing said knife  
22 and threatening to cut the said Theodore Bejarano.

23                  There is no allegation in the Criminal  
24 Complaint that there was any use of that or attempted use of  
25 that knife.

1 THE COURT: Well, I disagree. I think there's  
2 sufficient evidence for a jury to answer the question. I  
3 mean, it's clear to the Court, even as the victim testified  
4 today, he is a difficult personality, and he was sober today.

5 I don't know if anything that I saw today was  
6 as a result of being burned. I don't know. He talked about  
7 having some difficulty in speaking since being burned on the  
8 side of his face, but add that to the added mixture of being  
9 drunk and belligerent, as he obviously was, still no  
10 justification, unless the jury decides, for setting somebody  
11 on fire. You get in the truck and drive away or go in and  
12 wait for the police to come, either way.

13 But in terms of the jury question whether  
14 brandishing a knife is threatening to cut off his penis, if  
15 that went far enough to constitute an attempt, the jury can  
16 answer that. I think for probable cause purposes it's  
17 sufficient.

18 I'm going to hold you to answer, sir, to all of  
19 the charges. You are to appear for your District Court  
20 arraignment on this date.

21 MS. CLERK: December 4th, 10:30, lower level  
22 District Court arraignment.

23 THE COURT: Thank you.

24 MR. SHEETS: And Your Honor said that you would  
25 re-entertain bail at the preliminary hearing.

1 THE COURT: Yes. I will certainly hear your  
2 arguments.

3 MR. SHEETS: Your Honor has now heard the  
4 testimony. This wasn't exactly as the facts have been  
5 presented to you at the prior bail argument. There are very  
6 clearly some additional issues that were going on here on  
7 this night.

8 You know, as you've seen now at the preliminary  
9 hearing, my client went there. He was peaceful from the very  
10 beginning. He was buying his stuff, doing his thing. He was  
11 going. This individual was drunk and belligerent. He walked  
12 out, leaned on my client's truck. Was very clearly not  
13 moving when my client was, by the testimony, repeatedly  
14 telling him to leave.

15 Whether or not the force was too far or not too  
16 far is certainly a question for a jury, and -- and that's not  
17 what I'm here to address today. However, there very clearly,  
18 as Your Honor can see, there is some very clear issues that I  
19 can present to a jury. This isn't just an incidence, as the  
20 State had presented at the last bail hearing, where my client  
21 goes out there and randomly lights a guy on fire out of some  
22 fit of rage.

23 It was very clear that on at least four or five  
24 separate occasions my client made an attempt to withdraw.

25 While my client does have a record, I would

1 note that he has no failures to appear, and the most recent  
2 felony was 30 years old. He has had zero issues in between  
3 that time period.

4 I believe the bail at one point -- I would also  
5 indicate that my client is disabled, that he does have a -- a  
6 nine-millimeter protrusion in between his third and his fifth  
7 disk on his back. He is 100-percent disabled and is trying  
8 to take care of the family. He does have a business, which  
9 is how the entire family is supported. His wife does live  
10 here in Las Vegas. I have good contact with her.

11 I would ask Your Honor respectfully to reduce  
12 bail down to \$50,000 with house arrest as an added condition.  
13 I think that's sufficient to ensure the appearance, house  
14 arrest is sufficient to protect the community, given that  
15 there have been no allegations of felonious conduct in a  
16 30-year period.

17 That it's very clear that my client went into  
18 this peacefully, that it's very clear that on several  
19 occasions my client was telling this individual to withdraw.

20 Based on that, Your Honor, I do believe that a  
21 reduction in bail would be appropriate.

22 THE COURT: What kind of business does your  
23 client have?

24 THE DEFENDANT: It's an antique business,  
25 Your Honor. We also manufacture reproductions. We did all

1 the furniture for Paramount Studios, for Sacha Baron Cohen's  
2 The Dictator, and I have done some work for Disney.

3 THE COURT: Is it a business that's licensed  
4 here in Nevada?

5 THE DEFENDANT: Yes, it is. And it's  
6 incorporated here in Nevada as well.

7 THE COURT: Where is your office?

8 THE DEFENDANT: Our office was at 9141 Las  
9 Vegas Boulevard South in Las Vegas, Suite 312.

10 THE COURT: You said was. Where is it now?

11 THE DEFENDANT: Well, my wife has shut it down  
12 since -- because I'm not there to run it.

13 THE COURT: Did you have a lease for rent?

14 THE DEFENDANT: Yeah. I was month to month. I  
15 originally had a lease for one year with the landlord and  
16 then I was on month to month after that.

17 THE COURT: How long were you at that location?

18 THE DEFENDANT: We were at that location for  
19 almost 20 months.

20 THE COURT: So how's your wife supporting  
21 herself now?

22 THE DEFENDANT: The only thing that she's got  
23 coming in is my disability check, and she has a piece of  
24 property in California that she sold to -- to someone. It  
25 was in senior community, and she gets a monthly payment from

1 that.

2 THE COURT: Who's going to respond for the  
3 State.

4 MS. WONG: I would, Your Honor.

5 THE COURT: Okay.

6 MS. WONG: Your Honor, I think all the parties  
7 are probably in agreement the victim was somewhat of an  
8 annoyance that night; however, the defendant's over-reaction  
9 to the victim's conduct is very troubling for the State.

10 We did hear testimony from two witnesses today.  
11 Who we did not hear from is actually a witness, Carlos --  
12 Adam Carlos, and Adam Carlos is an independent witness who  
13 happened to walk passed the gas station when he came upon the  
14 defendant and the victim arguing, and he actually did see the  
15 defendant light the victim on fire.

16 After the defendant lit the victim on fire,  
17 Adam went to confront the defendant and asked him -- or told  
18 me you just set a man on fire. The defendant at that point  
19 actually took out his knife again and pointed it at Adam.

20 So there was a second victim that night. We  
21 just didn't charge it. So it's not that the defendant simply  
22 reacted to the victim who was an annoyance in this case, he  
23 went after an independent witness that had nothing to do with  
24 all the events preceding the defendant setting the victim on  
25 fire.

1                   So he is a threat to the community. He has all  
2 these anger issues and impulse control issues, and with that,  
3 I would submit it.

4                   THE COURT: Well, he has been trouble-free for  
5 30 years.

6                   MR. SHEETS: If I could just respond.

7                   THE COURT: Is there something you want me to  
8 look at?

9                   MR. SHEETS: I have a written statement from  
10 Adam Carlos that says nothing about that threat.

11                  THE COURT: I'll take it.

12                  MR. SHEETS: May I approach?

13                  THE COURT: You may.

14                  MR. SHEETS: It says nothing about that threat  
15 in this written statement to the police.

16                   It would certainly have been an issue for cross  
17 examination had he made that threat. Certainly the  
18 Metropolitan Police Department --

19                  THE DEFENDANT: Your Honor, I haven't  
20 threatened anyone.

21                  THE COURT: Gentlemen, please.

22                  MR. SHEETS: Certainly the Metropolitan Police  
23 Department --

24                  THE COURT: Let me read this. Thank you.

25                  MR. SHEETS: And also just to support this

1 position too, had another witness testified, William Lewis,  
2 the clerk at the store --

3 THE COURT: You're going way too fast,  
4 Mr. Sheets.

5 MR. SHEETS: I'm sorry.

6 THE COURT: My court reporter is --

7 MR. SHEETS: Had the clerk, William Lewis, the  
8 clerk at the store, testified, he would have testified that  
9 he told Bejarano that he was not allowed to drink in the  
10 store, and when he continued to drink, he was then told to  
11 leave the store.

12 THE COURT: Okay. Here's the situation.

13 For 30 years the defendant evidently has had no  
14 problems. Well, maybe not quite 30, but close to it. He had  
15 a DUI conviction from 1980, so over 20 years. I don't know  
16 really how long he's been here or the validity of the  
17 comments regarding the business or the lease.

18 What concerns me, however, as irritating as  
19 people can be, and we all can be irritating to others, you  
20 don't light them on fire, and once you do, you don't then  
21 threaten to cut their penis off after they have been lit on  
22 fire.

23 That causes the Court some major concern about  
24 your ability to control your temper.

25 Bail stands as is. Here's your date in



1 District Court.

2 MS. CLERK: December 4th, 10:30, lower level

3 District Court arraignment.

4 THE COURT: Mr. Sheets, here is your statement.

5 MR. SCHWARTZER: Thank you, Your Honor.

6 MS. WONG: Thank you.

7 THE DEFENDANT: Thank you.

8 MR. SHEETS: Thank you, Your Honor.

9 (Proceedings concluded.)

10

\* \* \*

11

12

13 ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED TRANSCRIPT OF  
14 PROCEEDINGS.

15

16

/s/ Joanie E. Grime

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JOANIE E. GRIME, RPR, CCR NO. 288

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JOANIE E. GRIME, RPR, CCR NO. 288  
702) 671.3464

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IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP  
COUNTY OF CLARK, STATE OF NEVADA

STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PATRICK NEWELL, )  
 )  
Defendant. )

CASE NO: 12F16477X  
ATTEST RE: NRS 239B.030

STATE OF NEVADA }  
 } SS  
COUNTY OF CLARK }

I, Joanie Grime, a Certified Shorthand Reporter  
within and for the County of Clark and the State of Nevada,  
do hereby certify:

That REPORTER'S TRANSCRIPT OF PROCEEDINGS was  
reported in open court pursuant to NRS 3.360 regarding the  
above proceedings in Las Vegas Justice Court, 200 Lewis  
Avenue, Las Vegas, Nevada.

That said TRANSCRIPT:  
X  
Does not contain the Social Security number of  
any person.  
Contains the Social Security number of a  
person.

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702) 671.3464

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ATTEST: I further certify that I am not  
interested in the events of this action.

/s/ Joanie E. Grime

JOANIE E. GRIME, RPR, CCR NO. 288

JOANIE E. GRIME, RPR, CCR NO. 288  
702) 671.3464

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19  
20  
21  
22  
23  
24  
25

- - -  
oOo [2] 110:24; 111:1  
- 0 -  
0109 [1] 53:3  
0181182130 [1] 104:2  
- 1 -  
1919 [1] 53:13  
1999 [1] 90:14  
- 2 -  
2007 [2] 90:18, 19  
2012 [7] 1:17; 3:1; 6:21; 8:17; 21:15; 80:7, 13  
- 3 -  
3.360 [1] 110:16  
- 4 -  
4381 [1] 53:13  
- 5 -  
50,000 [1] 104:12  
- 7 -  
7110 [1] 109:2  
7130 [1] 107:5  
72198091 [1] 108:15  
- 9 -  
9487 [3] 6:24; 7:10; 80:21  
- A -  
A.M. [1] 3:2  
a.m. [1] 80:13  
ability [2] 25:22; 108:24

JOANIE E. GRIME, RPR, CCR NO. 288  
702) 671.3464

1 able [3] 26:16; 48:10; 87:24  
 About [2] 32:5; 91:19  
 2 about [27] 6:21; 8:6; 9:17, 21; 14:9; 17:1, 2, 3, 4; 20:23; 22:13; 26:10; 33:22, 24; 34:9; 36:10, 17;  
 38:18; 45:17; 49:19; 73:20; 86:12; 88:5; 91:5, 25; 107:14; 108:23  
 3 above [1] 110:17  
 Absolutely [2] 33:11; 64:8  
 4 absolutely [2] 22:24; 99:10  
 access [1] 59:21  
 5 according [2] 37:6; 97:22  
 ACCURATE [1] 109:12  
 6 action [2] 97:11; 111:3  
 active [3] 25:14, 17  
 7 activities [1] 26:14  
 activity [2] 25:17; 32:5  
 8 Actually [2] 33:2; 95:18  
 actually [20] 8:16; 12:6; 13:15, 21; 17:22; 40:8; 41:17; 56:18; 59:17; 64:11; 68:14, 15; 69:4; 71:4;  
 9 74:18; 78:18; 100:1; 101:3; 106:14, 19  
 Adam [4] 106:12, 17, 19; 107:10  
 10 added [1] 104:12  
 additional [1] 76:25  
 11 address [2] 7:9; 103:17  
 admission [2] 5:3; 15:19  
 12 ADMITTED [1] 2:12  
 admitted [1] 5:12  
 13 advice [1] 94:22  
 advised [1] 95:20  
 14 affected [1] 25:22  
 afraid [1] 46:2  
 15 After [3] 63:5; 85:7; 106:16  
 after [30] 11:8; 12:16; 13:6; 14:4, 12; 19:13; 21:6; 42:11, 17; 51:3; 60:11, 24; 68:6; 69:10, 18; 74:22;  
 16 82:22; 83:16, 22; 84:17, 18, 21, 22; 90:4; 91:12; 93:4; 97:13, 15; 105:16; 108:21  
 Again [3] 47:22; 55:21; 97:19  
 17 again [37] 7:9; 17:11; 23:22; 36:7; 37:14, 22; 41:3; 54:4, 25; 55:24; 57:1; 58:17; 60:4; 67:22, 23, 24,  
 25; 68:4, 5, 25; 69:13, 24; 70:10, 19, 22; 73:5, 9, 12, 14; 74:12; 75:20; 76:13, 14; 98:15; 106:19  
 18 against [2] 68:12; 85:10  
 ahead [3] 5:17; 19:10; 45:8  
 19 alcohol [11] 9:9; 27:23; 28:1, 9, 13, 14; 29:1, 3, 8, 24; 90:22  
 alcoholic [1] 9:3  
 20 allegation [1] 101:23  
 allegations [1] 104:15  
 21 alleged [1] 97:16  
 allowed [3] 30:13, 19, 23  
 22 almost [1] 105:19  
 Aloe [1] 23:2  
 23 alone [7] 83:10; 89:13; 91:21; 92:17, 23; 97:4, 5  
 along [1] 79:16  
 24 already [3] 5:5; 17:8; 72:1  
 also [6] 7:19, 21; 23:18; 54:22; 104:4; 107:25  
 25 ambulance [1] 19:1  
 Amendment [1] 94:16

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464

1 and-a-half [1] 51:3  
 angry [2] 13:3, 5  
 2 annoyance [1] 106:22  
 another [2] 74:7; 108:1  
 3 answer [12] 34:10; 35:3; 42:3, 6; 61:20, 23; 66:20; 75:9, 11; 76:19; 102:2, 18  
 anybody [4] 16:15; 18:22; 97:2, 18  
 4 anymore [1] 30:19  
 anyone [2] 5:1; 107:20  
 5 anything [22] 10:11; 15:11; 17:4; 19:13; 20:16; 33:12, 16, 20; 37:16; 43:10; 46:19; 56:3; 59:23; 65:6;  
 81:12; 82:10, 22; 83:8; 86:9; 92:21; 102:5  
 6 anywhere [2] 52:1; 65:6  
 apart [1] 13:17  
 7 apartment [3] 7:23; 8:1, 13  
 apartments [1] 7:25  
 8 apologize [1] 82:7  
 apparently [1] 37:18  
 9 appear [11] 33:18; 47:23; 51:20; 56:23; 75:22; 92:24; 93:13, 15; 97:24; 102:19; 104:1  
 appearance [1] 104:13  
 10 APPEARANCES [1] 1:19  
 appeared [2] 41:8; 91:3  
 11 appears [33] 35:15; 39:21, 24; 41:21; 47:10, 19; 50:4, 12; 55:12; 56:25; 60:2, 5; 62:13, 15; 63:8;  
 66:13; 67:11; 69:4, 6, 22; 70:7, 11; 71:9, 21; 72:11; 73:6, 8, 11; 74:16, 17; 76:1; 77:2  
 12 apprehension [1] 100:5  
 approach [5] 64:7, 10; 67:1; 93:3; 97:7  
 13 approached [3] 37:13; 60:24; 96:25  
 approaches [4] 52:10, 11; 53:4; 98:21  
 14 approaching [2] 61:1; 92:25  
 Approximate [1] 53:20  
 15 approximate [1] 53:19  
 Approximately [1] 66:24  
 16 approximately [18] 13:17; 35:6; 37:25; 38:3; 42:11, 24; 43:14; 45:16; 47:16; 51:2; 66:3, 22; 71:2;  
 76:6; 80:13; 89:7; 90:15  
 17 area [2] 23:19; 84:24  
 aren't [2] 60:15; 68:16  
 18 argued [1] 99:4  
 arguing [6] 81:14, 23; 83:3; 84:1; 106:14  
 19 argument [7] 82:11; 84:4, 7; 87:11; 96:1; 99:8, 11  
 arguments [1] 103:2  
 20 arm's [1] 45:13  
 arms [9] 18:8, 11; 21:25; 47:25; 50:8; 57:16, 20; 58:1; 92:10  
 21 Around [1] 80:10  
 around [10] 24:19; 57:1; 59:5; 60:11; 65:5; 69:4; 80:16; 85:24; 92:8, 11  
 22 arraignment [2] 102:20, 22  
 arrest [2] 104:12, 14  
 23 arrive [1] 77:21  
 arrived [2] 40:8; 87:24  
 24 article [1] 10:21  
 asked [25] 10:14; 11:3; 16:12, 19, 22, 23; 29:16; 30:3, 18; 32:7; 36:2, 17; 41:23; 46:12; 49:12, 14, 15;  
 25 52:8; 61:21; 73:21; 75:3; 76:20; 88:8; 106:17  
 asking [10] 10:3, 13; 33:24; 34:4, 9; 36:3; 41:24; 42:5; 49:10; 60:10

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464

1 assault [2] 100:24; 101:2  
 assistant [1] 26:3  
 2 assume [1] 15:4  
 attached [1] 86:14  
 3 attack [1] 46:19  
 Attempt [1] 96:20  
 4 attempt [5] 73:20; 97:19; 98:1; 100:6; 103:24  
 attempted [1] 101:24  
 5 attempting [1] 98:22  
 attendant [1] 83:18  
 6 attention [2] 6:20; 80:12  
 ATTEST [3] 109:12; 110:6; 111:2  
 7 Attorney [2] 1:23; 94:17  
 attorney [2] 3:16; 4:6  
 8 Attorneys [1] 1:21  
 Avenue [1] 110:18  
 9 aware [1] 52:4  
 away [31] 24:21; 45:21; 49:12, 14; 51:16; 52:5, 22; 53:22; 54:21; 55:9; 57:23; 58:15, 24; 60:24; 61:19;  
 10 66:23; 68:21; 74:5, 9, 11; 82:12; 83:10; 89:13, 16; 91:20; 93:1; 97:4, 8, 23; 102:11

---

- B -

---

12 B-e-j-a-r-a-n-o [1] 6:12  
 babysit [1] 25:16  
 13 back [42] 19:18; 22:2; 23:9, 11; 24:25; 29:4; 30:11; 32:10; 35:16; 38:15; 45:6, 10, 17; 46:4; 48:14, 17,  
 23; 54:16, 19; 55:24; 56:17; 57:1, 18; 59:18; 60:12; 64:5, 22; 67:14, 23; 68:3, 7, 18; 70:14, 19; 87:12,  
 14 17; 88:24; 89:10; 92:8; 95:2, 13, 15  
 backing [7] 17:12; 44:21; 68:1; 69:17; 74:20, 24; 100:20  
 15 backs [3] 44:19; 47:13; 70:9  
 backtrack [1] 38:1  
 16 backwards [5] 40:7; 44:23; 55:17; 88:6; 89:2  
 Bail [1] 108:25  
 17 bail [3] 102:25; 103:20; 104:21  
 bandage-like [1] 20:25  
 18 Baron [1] 105:1  
 barrier [2] 87:15, 16  
 19 Based [1] 104:20  
 based [3] 19:24; 46:23; 93:13  
 20 Battery [1] 98:6  
 beard [2] 11:22, 23  
 21 Because [3] 30:7; 57:5; 63:8  
 because [25] 15:13; 22:17; 24:6; 27:2; 28:8; 41:12; 48:11; 49:1, 8; 50:20; 58:6; 65:11; 66:7; 67:23;  
 22 69:25; 70:23; 72:3; 73:16; 83:19, 21; 88:5; 89:16; 93:3; 96:17; 105:12  
 become [1] 90:20  
 23 been [31] 6:6; 30:7, 9, 14, 20; 35:6; 41:12; 42:23; 46:1, 24; 47:1; 50:1; 63:1; 65:10; 75:19; 79:1, 11;  
 90:17; 93:15, 25; 95:8, 20; 96:21; 97:25; 98:4, 12, 17; 103:4; 104:15; 107:16; 108:21  
 24 beer [2] 9:10, 13  
 BEFORE [1] 1:16  
 25 Before [3] 14:11; 22:24; 55:7

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464

1 before [16] 14:13; 21:6; 23:13; 26:25; 27:23, 24; 28:5, 9; 30:3; 32:4; 60:22; 62:8, 9; 76:8; 88:17; 89:1  
 befriended [1] 96:17  
 2 beginning [1] 103:10  
 BEHALF [1] 2:2  
 3 behind [10] 33:2, 7; 45:20; 59:6, 7; 60:13; 62:24; 68:19; 76:7  
 Being [1] 20:19  
 4 being [21] 10:11; 12:19; 13:3; 15:3; 18:5, 10, 22; 22:13; 28:23; 29:16; 30:2; 34:8; 48:8; 55:3, 5;  
 63:16, 19; 65:8; 69:24; 70:22; 87:19  
 5 BEJARANO [2] 2:3; 6:4  
 Bejarano [12] 4:13, 20; 6:11, 19, 20; 16:4, 15; 19:12; 20:5; 26:24; 27:6; 101:22  
 6 believe [13] 29:15, 21, 22; 31:17; 43:12; 85:17; 87:16; 94:21; 96:2, 19; 104:4, 20  
 believed [2] 19:24; 73:25  
 7 believing [1] 18:1  
 belly [1] 24:3  
 8 belong [1] 41:18  
 below [1] 23:6  
 9 besides [1] 18:23  
 best [1] 46:15  
 10 better [3] 20:8, 9; 93:25  
 Between [1] 25:10  
 11 between [8] 15:9; 38:8; 41:16; 55:13; 57:3; 69:20; 89:18; 104:6  
 beverages [1] 9:3  
 12 beyond [1] 59:18  
 birthday [1] 15:8  
 13 blistered [2] 23:3; 24:11  
 blue [2] 10:22; 82:2  
 14 board [1] 14:23  
 Bodily [1] 98:7  
 15 bodily [2] 98:11; 100:5  
 body [3] 12:7, 9, 11  
 16 booth [1] 26:13  
 Both [1] 34:13  
 17 both [3] 58:1; 78:15, 17  
 bought [1] 18:17  
 18 Boulevard [8] 6:25; 7:2, 10, 19; 8:7, 11; 80:21; 105:9  
 brandishing [1] 101:21  
 19 break [2] 95:12, 19  
 building [2] 87:18, 20  
 20 burden [1] 96:20  
 burn [2] 23:22; 92:23  
 21 burning [2] 22:9; 86:8  
 burnt [2] 23:20, 25  
 22 business [1] 108:17  
 23 

---

 - C - 

---

  
 24 Call [1] 78:13  
 call [3] 78:4; 83:19; 94:19  
 25 called [6] 5:1; 6:5; 9:7, 25; 20:14; 79:10

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464



1 calling [2] 78:19, 21  
 calls [1] 78:6  
 2 came [13] 22:24; 31:9; 38:18; 42:11; 44:9; 51:3, 5, 6; 71:4; 86:12; 90:12; 95:19; 106:13  
 camera [1] 39:25  
 3 Can't [1] 92:1  
 can't [13] 7:4; 17:18; 18:9; 34:1; 40:25; 50:20; 66:9; 69:25; 70:1, 23; 82:16; 85:17; 91:6  
 4 cannot [2] 25:24; 65:11  
 capacity [1] 80:5  
 5 Carlos [2] 106:12; 107:10  
 CASE [3] 1:1, 9; 110:5  
 6 case [3] 97:16; 98:1; 106:22  
 cash [4] 36:14, 25; 37:2; 38:10  
 7 cashed [3] 29:24; 36:6, 12  
 cashier [1] 29:12  
 8 cashing [2] 35:21; 36:9  
 casino [1] 90:20  
 9 caught [3] 81:13; 82:22; 84:7  
 cause [2] 99:12; 102:16  
 10 causes [1] 108:23  
 center [1] 26:13  
 11 Certainly [3] 97:12; 107:17, 22  
 certainly [5] 56:22; 64:6, 9; 103:1; 107:16  
 12 CERTIFIED [1] 109:12  
 Certified [1] 110:12  
 13 certify [2] 110:14; 111:2  
 challenge [1] 64:1  
 14 change [3] 14:25; 36:15; 37:3  
 charge [1] 98:13  
 15 charges [1] 102:19  
 check [1] 105:23  
 16 checked [2] 35:8; 36:6  
 chest [3] 22:1; 23:18; 24:4  
 17 child [1] 25:17  
 chocolate [1] 83:21  
 18 Christmas [1] 15:7  
 chuckling [1] 86:16  
 19 Circle [17] 6:23, 24; 7:5, 17, 22; 8:2, 13, 16, 21, 25; 9:15; 10:7, 10; 28:2; 80:19, 20  
 circumstantially [1] 99:11  
 20 claim [1] 46:1  
 clarify [3] 30:6; 73:23; 90:9  
 21 CLARK [4] 1:5; 3:1; 110:2, 11  
 Clark [4] 7:6, 13; 80:23; 110:13  
 22 clear [7] 29:2, 6; 102:3; 103:18, 23; 104:17, 18  
 Clearly [1] 29:10  
 23 clearly [4] 29:7, 10; 73:17; 103:12  
 CLERK [3] 6:9; 79:14; 102:21  
 24 clerk [13] 6:2; 29:2, 8; 30:15, 16, 25; 36:14; 37:4, 10, 14; 38:10; 83:23; 108:2  
 client [100] 30:25; 34:5; 37:13, 16, 22; 38:2, 9, 18; 41:25; 42:7; 43:2, 6, 10, 21; 44:8, 19; 45:20, 23;  
 25 47:6, 13, 19, 22; 50:13; 51:4, 5, 6, 8; 52:2, 4, 7, 10, 21; 53:21; 54:4, 25; 55:2; 59:18, 22; 60:1, 3, 24;  
 61:2, 3, 5, 6, 13, 14; 62:1, 7; 65:20; 66:4, 23, 25; 67:9, 11; 68:3, 7, 16, 25; 69:3, 8, 10, 21, 22; 70:8, 11,

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464

1 25; 74:5; 77:3, 7, 9, 21; 87:14, 19; 88:24; 89:11; 91:20; 92:17, 19, 25; 93:15, 17; 94:15, 21; 96:22, 24;  
 97:3, 7, 9, 10, 13; 103:20, 24, 25; 104:17, 19  
 2 client's [5] 50:8; 51:16; 55:10; 89:10; 103:12  
 close [8] 7:17; 33:5, 10; 39:22, 24; 40:18; 42:16; 80:25  
 3 closed [3] 24:20; 58:21; 60:17  
 closer [16] 54:22; 55:21; 58:23; 61:2, 5, 6, 8, 23; 62:16; 68:15; 69:7; 71:4; 74:12; 84:23; 85:3; 93:3  
 4 clothing [2] 10:21; 82:1  
 Coast [1] 90:18  
 5 Cohen's [1] 105:1  
 cold [1] 20:19  
 6 coloration [2] 24:17, 19  
 come [12] 30:11; 39:22, 24; 40:8; 41:17; 44:9; 57:5; 60:11; 64:9; 68:25; 69:14, 17  
 7 comes [8] 35:16; 47:6; 57:1; 73:11, 12; 74:12; 78:19; 95:13  
 comfortable [1] 25:3  
 8 coming [8] 21:24; 31:10; 55:5, 11, 21; 62:16; 75:20; 105:23  
 comments [1] 108:17  
 9 community [1] 104:14  
 Complaint [1] 101:24  
 10 completely [1] 64:5  
 complex [2] 7:24; 8:2  
 11 concern [1] 108:23  
 concerns [1] 108:18  
 12 concluded [1] 109:9  
 conclusion [1] 99:7  
 13 concrete [1] 87:15  
 condition [1] 104:12  
 14 condor [1] 26:4  
 conduct [1] 104:15  
 15 confirmed [1] 30:21  
 confront [1] 106:17  
 16 confrontation [1] 82:14  
 connected [2] 7:21; 20:15  
 17 conscious [1] 18:25  
 consumed [2] 28:1, 9  
 18 contact [24] 39:22; 40:8, 10, 16; 41:18; 43:22, 24; 44:9, 10; 51:3, 5, 6, 10; 74:15, 17, 18; 75:7, 14, 15;  
 76:13, 16, 17, 25; 85:5  
 19 contacted [1] 51:8  
 contacting [1] 51:12  
 20 contain [1] 110:20  
 Contains [1] 110:22  
 21 context [1] 45:4  
 continue [4] 43:9; 51:20; 69:14; 71:3  
 22 continued [2] 49:16; 108:10  
 continues [3] 50:24; 60:3; 70:25  
 23 Continuing [1] 47:5  
 continuing [4] 50:7; 66:25; 67:3; 69:17  
 24 control [2] 27:3; 108:24  
 convention [1] 26:13  
 25 conversation [2] 31:13; 50:13  
 corner [5] 7:1, 18, 21; 57:7; 59:17

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464

1 **Correct** [65] 19:15; 23:17; 26:7; 27:22; 28:11; 31:2; 34:25; 35:10; 37:24; 38:21; 39:8, 20; 40:6; 41:14;  
 2 42:16; 45:7, 13, 19, 22, 25; 47:9, 12, 18, 21; 49:6; 50:21, 22; 51:1, 17; 52:3, 20; 54:2, 3, 24; 55:15; 57:2;  
 3 58:4, 14, 16, 19, 25; 60:11; 63:4; 67:12; 68:5, 13; 69:9, 12; 70:24; 71:8, 11, 19, 23, 25; 72:7, 13, 18;  
 4 75:10, 12; 76:15; 77:1, 10, 15, 20, 23  
 5 **correct** [141] 5:11; 23:10; 27:8, 21; 28:2, 10; 32:25; 33:13, 17, 18, 21; 34:6, 24; 35:9, 11, 14, 16, 17, 22;  
 6 37:5, 14, 23; 38:20; 39:16, 19, 23; 40:5, 9; 41:7, 13, 19, 20, 23; 42:13, 18, 21, 24; 44:20; 45:6, 11, 18, 21,  
 7 24; 47:8, 11, 14, 17, 20; 48:24; 49:2, 4, 5, 8; 50:25; 51:4, 16, 22; 52:2, 12, 16, 19, 23; 53:19; 54:7, 13,  
 8 16, 20, 23; 55:13, 14, 17, 18, 22, 23; 56:19; 57:1, 4, 7, 15; 58:13, 15, 18, 24; 59:3, 5, 10, 19, 20, 22; 60:1,  
 9 4, 10, 12; 61:14; 62:1, 4, 7, 14; 63:1, 5; 64:10; 66:23; 67:10, 24; 68:4, 7, 20; 69:1, 2, 5, 6, 8, 11, 21;  
 10 70:9, 12, 20; 71:7, 10, 15, 18; 72:2, 6, 12, 17, 24; 73:3; 74:6; 76:14, 25; 77:3, 5, 6, 14, 19, 22; 89:23;  
 11 90:5, 10; 92:11; 95:22  
 12 **Could** [2] 29:4; 81:25  
 13 **could** [23] 4:11; 6:1, 9; 13:16; 24:16, 17, 18, 25; 26:4, 5; 31:3; 42:1; 43:3; 48:15; 56:22; 65:24; 88:1;  
 14 97:3, 13; 100:4; 101:18; 107:6  
 15 **couldn't** [5] 20:16; 30:11; 89:15, 24; 90:2  
 16 **Counsel** [7] 6:14; 26:17; 44:13; 75:4; 76:21; 78:8; 79:21  
 17 **counsel** [3] 7:9; 44:4; 78:22  
 18 **counter** [2] 32:22; 38:9  
 19 **COUNTY** [4] 1:5; 3:1; 110:2, 11  
 20 **County** [4] 7:6, 13; 80:23; 110:13  
 21 **couple** [2] 96:5; 99:3  
 22 **COURT** [157] 1:4; 3:5, 11, 15, 21, 24; 4:5, 12, 14, 16, 19, 22, 24; 5:6, 10, 15, 21, 23; 6:1, 13; 7:9, 12; 8:3;  
 23 10:24; 13:18; 15:21, 24; 16:2; 17:10, 18, 20; 18:9, 12; 19:6, 10; 20:1; 21:17, 19; 22:12; 23:8, 12, 15, 18,  
 24 24; 24:3, 9, 12, 14, 22, 25; 25:3, 12; 26:5, 17, 20; 27:4, 14; 31:24; 32:2, 16; 34:1, 11, 13, 17, 20; 35:3;  
 25 36:1, 4, 17, 21; 38:6; 40:24; 41:2; 43:17, 19; 44:2, 13, 17; 48:2, 5; 50:21; 53:23; 56:10, 12; 57:10;  
 58:16, 19; 67:13, 16, 18; 73:21; 74:2, 8; 75:1, 9, 11, 16; 76:8, 11, 19; 77:13, 16, 25; 78:2, 10, 13,  
 79:1, 5, 15, 20; 82:5; 87:4, 6; 93:19; 94:7, 12, 20, 23, 25; 95:3, 5, 12, 17, 24; 99:1, 3, 6; 100:21;  
 101:8, 10, 12, 14; 102:1, 23; 103:1; 104:22; 105:3, 7, 10, 13, 17, 20; 106:2, 5; 107:4, 7, 11, 13, 21,  
 108:3, 6, 12; 110:1  
 109:3; 110:17  
 110:16  
 111:8  
 112:3  
 113:1  
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 997:1  
 998:1  
 999:1  
 1000:1

- D -

D-e-r-r-i-c-k [1] 79:18  
 DAMIAN [1] 1:23

1 date [5] 14:25; 15:1; 21:13; 102:20; 108:25  
 dates [1] 15:9  
 2 days [1] 21:6  
 Deadly [3] 96:21; 98:6; 99:21  
 3 deadly [1] 101:2  
 DEBORAH [1] 1:16  
 4 December [1] 102:21  
 decide [1] 8:21  
 5 decided [1] 97:14  
 defeat [1] 46:15  
 6 DEFENDANT [12] 1:23; 3:7; 94:24; 104:24; 105:5, 8, 11, 14, 18, 22; 107:19; 109:7  
 Defendant [2] 1:12; 110:8  
 7 defendant [40] 10:25; 11:3, 4, 18, 23, 25; 13:1, 7; 14:1; 16:19; 17:15; 18:23; 32:23; 34:15; 35:8; 39:1;  
 82:6, 19, 23; 83:3, 8; 84:1, 14, 20; 86:1, 9, 19, 21; 88:24; 96:16; 100:1, 2; 101:3; 106:14, 15, 16, 17, 18  
 8 defending [4] 73:4, 15, 25; 74:1  
 defense [2] 3:10, 15  
 9 defenseless [1] 64:5  
 definitive [1] 37:20  
 10 DEPARTMENT [1] 1:2  
 Department [2] 107:18, 23  
 11 Depending [3] 25:11, 12; 37:12  
 depending [1] 25:16  
 12 depends [1] 78:23  
 Deputy [1] 1:21  
 13 DERRICK [2] 2:6; 79:9  
 Derrick [2] 78:6; 79:18  
 14 describe [3] 10:20; 13:11; 22:4  
 described [1] 23:18  
 15 describing [2] 23:6, 9  
 DESCRIPTION [1] 2:12  
 16 description [1] 20:23  
 detective [4] 78:8, 10, 13, 19  
 17 determine [1] 94:18  
 dick [3] 86:16, 17  
 18 Dictator [1] 105:2  
 didn't [20] 13:5; 15:14; 18:15; 24:6, 24; 29:6; 30:16; 31:4; 39:4; 40:10, 21; 51:11; 69:2; 70:10; 71:3;  
 19 73:24; 91:12; 93:17; 98:9; 106:21  
 difference [2] 24:17, 19  
 20 different [2] 22:7, 8  
 difficult [1] 102:4  
 21 digs [1] 24:7  
 DIRECT [2] 6:17; 80:1  
 22 Direct [2] 2:4, 7  
 direct [5] 6:20; 30:1; 32:24; 59:21; 80:12  
 23 directly [3] 30:20; 59:19; 67:14  
 disability [1] 105:23  
 24 disabled [1] 104:5  
 disagree [1] 102:1  
 25 disappear [1] 39:25  
 discharged [1] 24:10

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464

1 discuss [1] 4:25  
 discussion [2] 47:10; 58:12  
 2 disk [1] 104:7  
 disoriented [1] 64:16  
 3 Disregard [1] 98:15  
 distance [2] 8:6; 97:15  
 4 distressed [1] 63:14  
 District [7] 1:21; 3:9, 22; 94:17; 102:19, 22; 109:1  
 5 Dizziness [1] 28:17  
 dizziness [1] 28:18  
 6 doctors [1] 98:10  
 Does [3] 74:15, 18; 110:20  
 7 does [11] 4:17; 14:11; 56:11, 23; 66:25; 67:1; 68:25; 69:10, 15; 75:22; 103:25  
 Doesn't [1] 67:16  
 8 doesn't [8] 36:4; 41:18; 54:8; 56:2; 69:13; 97:24; 100:23  
 doing [10] 14:2; 33:20; 35:20; 39:16; 42:17; 56:20; 59:13, 14; 65:6; 95:5  
 9 done [3] 37:7; 48:15; 75:19  
 door [8] 19:25; 39:13, 18, 22; 40:4, 8, 12; 41:17  
 10 doors [1] 81:9  
 down [8] 5:22; 31:20; 82:25; 85:24; 86:7; 95:16; 99:17  
 11 drawn [1] 99:7  
 dream [1] 19:2  
 12 dreams [2] 15:13  
 drink [3] 9:3, 6, 7  
 13 drinking [2] 27:13, 18  
 drive [3] 26:4; 81:4; 102:11  
 14 driver's [12] 54:6, 11, 15; 55:25; 59:9, 11; 62:3, 21, 24; 68:15; 69:5  
 driving [1] 54:10  
 15 drove [1] 81:6  
 dull [1] 22:6  
 16 duly [2] 6:6; 79:11  
 during [8] 15:11; 17:7; 19:1; 32:13; 82:11; 86:1; 87:21; 91:19  
 17 duties [1] 93:7  
 18 

---

 - E - 

---

 19 each [6] 31:23; 34:2; 44:5; 75:1; 84:22; 87:17  
 earlier [4] 30:1; 35:21; 41:5; 91:16  
 20 east [1] 8:11  
 effects [3] 28:12, 14; 29:1  
 21 Eight [1] 79:2  
 eight [3] 66:3, 22; 79:4  
 22 either [4] 18:2; 39:21; 41:2; 57:11  
 elbow [1] 23:7  
 23 electrician [2] 26:3  
 elements [2] 100:4, 24  
 24 else [5] 18:22; 19:13; 31:3, 17; 80:17  
 employed [1] 80:3  
 25 enclosed [1] 60:13

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464

1 enemy [1] 46:16  
 engaged [4] 55:1, 2, 3; 71:4  
 2 engaging [1] 33:7  
 engulfed [1] 85:11  
 3 enough [10] 22:19; 29:2, 10; 43:2; 51:13; 90:3; 91:18; 98:3  
 ensure [1] 104:13  
 4 entire [5] 37:19; 42:14; 44:1; 60:22; 97:2  
 establish [1] 98:5  
 5 even [7] 22:25; 44:13; 46:1; 59:14; 61:18; 96:16; 102:3  
 evening [2] 30:25; 31:1  
 6 events [8] 4:18; 27:7, 9, 10, 16; 78:25; 111:3  
 ever [6] 17:22, 23; 29:15; 87:14; 93:8; 97:20  
 7 every [3] 15:1; 85:2; 97:9  
 everybody's [1] 75:19  
 8 everyone [1] 4:8  
 everything [2] 75:18; 78:19  
 9 evidence [4] 5:13; 98:3, 12; 102:2  
 exactly [2] 39:15; 103:4  
 10 EXAMINATION [4] 6:17; 26:22; 80:1; 87:8  
 Examination [4] 2:4, 5, 7, 8  
 11 examination [2] 30:1; 107:17  
 example [1] 25:25  
 12 except [1] 17:4  
 exchange [2] 36:23; 91:19  
 13 exchanged [1] 36:25  
 Exclusionary [1] 4:11  
 14 Excuse [4] 40:25; 44:2, 4; 61:12  
 excused [1] 78:3  
 15 Exhibit [3] 5:4, 12; 15:20  
 exhibit [1] 91:1  
 16 exhibiting [1] 90:25  
 exhibits [1] 90:21  
 17 exit [2] 35:13; 83:23  
 exited [3] 81:10; 83:5, 25  
 18 exiting [2] 27:8; 81:12  
 experiencing [1] 25:6  
 19 explain [1] 51:7  
 exposed [1] 22:21  
 20 expressing [1] 50:15  
 extended [1] 71:7  
 21 eyes [2] 24:20; 64:12

---

- F -

---

23 face [4] 22:2; 24:12, 13; 64:15  
 facing [1] 67:11  
 24 fact [1] 8:25  
 facts [1] 103:4  
 25 failures [1] 104:1

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464

- 1 Fair [4] 43:2; 51:13; 90:3; 91:18  
fair [6] 19:12; 65:13; 86:21; 90:3; 91:7; 92:2
- 2 Fairly [1] 91:24  
fairly [1] 69:19
- 3 familiar [1] 90:21  
fast [1] 88:3
- 4 fear [16] 46:11, 18, 25; 47:1, 2; 63:13, 16, 20; 64:19; 65:11; 85:19; 93:8, 15, 17, 23; 96:17  
feared [1] 46:8
- 5 feed [1] 95:4  
feel [2] 21:21; 24:16
- 6 feeling [3] 22:10; 28:12; 29:1  
feet [16] 47:17; 55:22; 58:23; 60:14, 18; 61:3, 9, 18; 62:23; 66:4, 23; 68:17, 19, 21; 86:13
- 7 fell [1] 5:22  
felonious [1] 104:15
- 8 felony [1] 104:2  
felt [8] 21:25; 22:1, 2; 24:6; 30:5
- 9 Fifteen [2] 8:14, 15  
fifth [1] 104:6
- 10 finally [1] 22:22  
fine [3] 26:17; 27:4; 82:18
- 11 fingers [1] 13:17  
finish [4] 34:11; 44:3, 4; 45:3
- 12 finished [1] 29:24  
fire [38] 18:25; 23:13, 16; 31:11; 71:13, 14, 16, 18, 24; 72:4, 5, 7, 9, 14, 16, 22; 73:5, 9, 12, 14; 76:18;  
35:16, 22; 86:2, 6, 10; 90:4; 97:14, 23; 98:2; 99:7, 9; 103:21; 106:15, 16, 18; 108:20, 22
- 13 First [1] 96:7
- 14 first [18] 4:12; 6:6, 10; 9:21; 20:7; 39:13; 40:7; 42:11, 17; 43:24; 44:10; 51:3; 78:13; 79:11; 83:18;  
99:24; 100:9
- 15 five [7] 45:8, 16; 74:22; 86:12; 91:23, 24; 103:23  
flaccid [1] 91:7
- 16 flame [16] 13:8, 9, 12, 13, 24, 25; 14:2, 4, 12; 18:19, 20; 19:14; 24:20; 70:4; 74:20  
flames [2] 85:11, 24
- 17 flee [3] 64:19; 65:15, 16  
flickered [1] 92:19
- 18 flickering [2] 92:21; 97:21  
flip [2] 9:19; 12:15
- 19 fluctuates [2] 25:9, 17  
focus [1] 26:14
- 20 follow [1] 5:16  
follows [2] 6:6; 79:11
- 21 foot [1] 66:10  
footprint [1] 33:6
- 22 footprint [2] 33:8, 9  
force [1] 100:6
- 23 forgive [1] 31:22  
forth [2] 57:18; 101:13
- 24 Forty-two [1] 72:21  
forward [3] 66:17; 97:11; 100:21
- 25 foundation [2] 35:25; 36:1  
~~four [13] 55:24; 58:23, 24; 60:14, 17, 24; 61:3; 62:23; 68:17, 19, 21; 103:23~~

JOANIE E. GRIME, RPR, CCR NO. 288  
702) 671.3464

- 1 four-foot [2] 55:13; 59:2  
fourth [1] 85:7
- 2 frame [1] 73:2  
friend [3] 46:16, 17, 22
- 3 From [2] 59:20; 67:17  
from [51] 8:2, 6, 11, 13; 15:4; 19:18; 20:5; 21:10, 24; 24:19, 21; 31:16, 21; 45:21; 49:12, 14; 50:9;  
52:1, 22; 54:21; 55:9; 58:13, 24; 60:24; 61:10, 19, 22; 64:13; 66:4, 23; 67:5; 68:21; 73:5, 9, 13, 17;  
82:12; 83:10; 89:13, 16; 91:15, 20; 96:15, 16; 97:2, 4, 15; 99:4, 25; 107:9
- 5 front [13] 45:6, 11, 18; 52:18; 53:18; 81:9, 14, 15, 18, 19; 82:3; 84:13  
FULL [1] 109:12
- 6 full [2] 6:9; 79:17  
furniture [1] 105:1
- 7 further [8] 47:15; 53:15; 54:21; 55:9; 57:23; 77:24; 95:21; 111:2
- 
- 8 - G -
- 
- 9 gamble [4] 8:23, 24; 9:1, 2  
gambling [6] 9:22; 10:2; 27:12, 17; 37:8
- 10 gasoline [21] 11:10, 14, 21; 12:1, 6, 9, 16, 17; 18:6, 11; 63:1, 3; 64:16; 65:24, 25; 66:5, 15; 67:5; 83:1,  
9; 93:5
- 11 gentleman [1] 84:12  
Gentlemen [2] 40:24; 107:21
- 12 gets [1] 64:15  
getting [7] 11:10; 12:2; 21:9; 22:22; 69:4; 83:20
- 13 Gilespie [2] 8:6, 10  
Give [1] 78:11
- 14 give [7] 20:23; 25:25; 37:10; 42:1; 86:13; 88:3, 15  
given [1] 104:14
- 15 glasses [3] 10:22; 82:2; 84:12  
goes [7] 8:5; 35:6; 45:23; 55:20; 75:21; 97:16; 103:21
- 16 going [39] 8:11; 16:1, 7; 17:5; 18:2; 19:4, 22; 25:15; 29:25; 32:3; 34:7, 8; 38:14; 40:7; 43:13, 15;  
45:8; 46:8, 20; 51:19; 64:11, 17; 65:6; 76:3; 79:16; 83:19; 86:17; 87:2; 89:2; 92:4; 94:17, 19, 21;  
95:19; 97:23; 98:8, 9; 102:18; 108:3
- 17 Gold [1] 90:18
- 18 gone [1] 52:1  
Good [4] 3:6, 7; 5:15; 6:13
- 19 good [2] 6:19; 98:2  
gotten [2] 12:20
- 20 graveyard [3] 78:10, 15; 80:10  
grew [2] 23:9, 11
- 21 GRIME [3] 1:25; 109:16; 111:6  
Grime [3] 109:15; 110:12; 111:5
- 22 ground [2] 26:1; 72:2  
guard [18] 31:4, 7, 9, 10, 13, 14, 15, 16, 19; 33:22; 75:23, 24; 76:1; 78:20, 24; 93:14; 99:25; 101:2
- 23 guess [2] 21:7; 22:6  
guys [1] 57:3
- 
- 24 - H -
- 
- 25

JOANIE E. GRIME, RPR, CCR NO. 288  
702) 671.3464



1 hadn't [1] 52:1  
hallway [2] 4:25; 95:16  
2 hand [11] 6:1; 23:8; 37:4; 56:3, 9, 14; 57:11; 63:14; 73:13; 79:5; 86:15  
handle [1] 52:13  
3 hands [7] 12:3; 44:21; 45:2; 68:2; 100:14, 18, 19  
Hang [5] 31:24; 34:1; 45:3; 62:11; 72:5  
4 hang [1] 70:5  
happen [4] 14:11; 15:14; 17:8; 84:3  
5 happened [6] 14:4; 15:11, 16; 19:13; 85:9; 106:13  
happens [1] 47:7  
6 hard [1] 20:21  
Harm [1] 98:7  
7 harm [3] 98:12; 99:14; 100:5  
hasn't [6] 36:2; 58:21; 76:24; 77:11, 13; 96:10  
8 haven't [7] 30:20; 49:22; 52:25; 58:13; 60:13, 17; 107:19  
having [10] 6:5; 20:16, 17; 28:1; 31:12; 50:12; 51:20; 52:2; 79:10; 93:14  
9 He's [8] 10:22; 33:7, 16; 34:23; 51:19; 78:10; 82:2; 95:15  
he's [22] 10:21; 17:5; 18:2; 23:9; 33:12; 36:5; 43:15; 51:25; 56:17, 20, 23, 25; 57:23; 58:15; 60:4;  
10 74:10, 22; 75:23; 76:7; 77:12; 90:21; 95:15  
head [3] 22:1; 26:3; 72:3  
11 headache [1] 22:4  
headed [1] 64:13  
12 heads [1] 56:17  
healed [2] 22:23; 24:7  
13 healing [2] 22:25; 23:23  
hear [13] 17:18; 18:9, 15; 29:6; 43:1; 82:4, 10; 89:19, 24; 91:20; 96:10; 103:1  
14 heard [13] 3:13, 19; 4:3; 48:17, 20; 89:15, 22; 96:8, 24; 97:19; 98:7; 100:2; 103:3  
HEARING [1] 1:15  
15 hearing [5] 5:9; 15:21; 102:25; 103:9, 20  
help [2] 22:19; 52:8  
16 helped [1] 31:20  
helping [2] 18:24; 31:11  
17 here [25] 4:20, 21; 7:6; 13:14; 20:15; 22:22, 24; 23:3, 4, 11; 24:1, 6; 27:2, 6; 38:1; 42:10; 46:23; 47:7;  
25; 67:22; 89:4; 92:5; 96:22; 103:6; 108:16  
18 Here's [1] 108:25  
here's [1] 99:20  
19 hereby [1] 110:14  
herself [1] 105:21  
20 HETTY [1] 1:20  
high-rigor [1] 26:1  
21 himself [4] 73:25; 74:1; 91:4, 5  
Hispanic [28] 82:25; 83:2, 9, 12, 25; 84:25; 85:3, 6, 10; 86:2, 3, 5, 10, 15, 24, 25; 87:15, 19; 89:14, 19,  
22 20; 90:1, 10, 25; 91:15; 92:8, 10, 25  
hold [1] 102:18  
23 holding [3] 63:14; 91:4, 5  
holler [1] 88:3  
24 home [6] 21:3, 5, 6, 9; 22:25; 29:25  
Honor [47] 3:8; 4:9, 10, 15; 5:2; 6:15; 7:14; 11:1; 13:16; 15:18; 19:22; 22:11; 24:23; 25:4; 27:1;  
25 31:23; 32:4; 38:5, 14, 15; 44:16; 57:12; 66:18; 72:8; 73:24; 74:3; 76:4; 78:1, 16; 79:4, 22; 82:7; 87:5;  
94:14; 95:11, 15, 23; 96:10; 97:6; 98:16; 100:7; 102:24; 103:3, 18; 104:11, 20; 107:19

JOANIE E. GRIME, RPR, CCR NO. 288  
702) 671.3464

1 HONORABLE [1] 1:16  
hospital [9] 14:5, 15, 17; 19:1, 19; 20:6; 21:11, 21; 30:9  
2 hour [1] 95:9  
house [1] 104:13  
3 household [1] 26:15  
how's [1] 105:20  
4 However [1] 98:13  
however [1] 108:18  
5

---

- I -

---

6 I'll [9] 3:23; 26:18; 44:15; 70:14; 88:2, 15; 92:23; 95:10  
7 I've [3] 5:4; 30:7; 95:20  
identification [2] 10:24; 82:6  
8 identified [1] 34:14  
identify [1] 81:25  
9 identifying [1] 36:5  
imagine [1] 81:10  
10 immediate [1] 100:5  
impaired [1] 28:19  
11 impaired [1] 28:21  
importance [1] 48:8  
12 importantly [1] 96:19  
incidence [1] 103:19  
13 incident [1] 25:22  
independent [2] 97:22; 106:12  
14 indicate [1] 96:22  
indications [1] 97:18  
15 individual [10] 32:14, 19; 46:14; 64:1, 10; 85:16, 22; 97:7; 104:19  
individual's [1] 97:13  
16 individuals [4] 32:16; 81:22; 93:8; 96:18  
indulgence [1] 31:18  
17 influence [1] 90:22  
information [1] 7:7  
18 informed [1] 94:14  
injuries [3] 19:20; 20:6; 98:8  
19 injury [1] 23:12  
inserted [1] 5:5  
20 inside [6] 26:14; 27:8; 32:13; 43:22; 52:8; 78:25  
instruments [1] 26:12  
21 intending [1] 96:23  
intent [4] 97:24; 98:4; 99:6, 12  
22 interested [1] 111:3  
interrupt [2] 40:25; 44:5  
23 interruption [2] 33:25; 40:23  
into [24] 5:5, 12; 21:8; 24:7; 30:11; 40:8; 41:14, 17; 44:9, 10; 46:16; 47:19; 48:22; 51:3, 5, 6; 69:5;  
24 81:6, 7; 82:20; 83:14, 16, 18; 104:17  
intoxicated [1] 91:3  
25 invoke [1] 4:11

JOANIE E. GRIME, RPR, CCR NO. 288  
702) 671.3464

1 involve [1] 25:15  
 involved [1] 26:2  
 2 irritating [2] 108:18, 19  
 isn't [1] 31:19  
 3 isn't [24] 24:7; 28:2; 33:20; 42:12; 47:14, 17, 20; 50:25; 52:12, 19; 55:13, 17; 56:18; 57:3, 7; 59:5;  
 60:1, 4; 63:1; 67:9; 69:5, 8; 74:5; 103:19  
 4 issue [1] 107:16  
 issues [1] 103:18  
 5 it's [11] 3:17; 7:1, 25; 8:5; 17:10; 20:25; 32:3; 36:21; 61:22; 64:4; 69:22  
 it's [36] 5:6, 7; 7:25; 9:7, 13, 25; 12:24; 23:23; 25:16; 27:6, 20; 28:25; 35:6; 37:7; 38:23; 43:14, 21;  
 6 44:8, 19; 46:24; 48:11; 49:8; 55:10; 62:25; 70:8; 71:1; 72:2; 73:2; 76:14; 86:21; 92:2; 102:3, 16;  
 104:17, 18  
 7 itself [1] 99:11

- J -

9 JOANIE [3] 1:25; 109:16; 111:6  
 Joanie [3] 109:15; 110:12; 111:5  
 10 Judge [2] 15:23; 35:24  
 judicial [1] 7:12  
 11 juncture [1] 56:15  
 June [1] 90:19  
 12 jury [3] 102:2; 103:16, 19  
 JUSTICE [3] 1:4, 17; 110:1  
 13 Justice [1] 110:17

- K -

15 keep [8] 27:14; 36:15; 37:3; 70:2; 78:9, 12; 97:1  
 keeps [1] 100:21  
 16 keys [1] 86:14  
 kill [6] 96:23; 97:19, 20, 25; 98:4; 99:6  
 17 kind [14] 22:5; 36:1; 47:11; 82:25; 84:9, 23; 85:8, 11; 86:3, 15, 20; 91:6, 7; 97:10  
 knife [33] 16:24, 25; 17:1, 2, 5, 6, 16, 22, 23; 18:2, 3; 43:13, 15, 16; 44:11; 46:2, 10, 21; 86:14, 22;  
 18 96:15; 97:12; 99:23, 25; 100:1; 101:3, 21, 25; 102:14; 106:19  
 know [47] 3:21, 22, 24; 7:7; 10:6, 12; 14:20; 15:6, 13; 16:4, 7; 17:15; 20:14; 24:7; 27:1; 38:25; 42:6;  
 19 50:16; 58:5; 59:23; 64:11, 13, 16, 23, 24; 65:1, 11; 66:6, 7; 67:25; 68:2; 69:24; 70:22; 73:4, 7, 15; 77:4;  
 83:19; 87:13; 89:25; 90:24; 91:17; 92:13; 93:4; 95:13; 102:5  
 20 knowledge [9] 30:12, 18, 20, 21, 22; 38:24; 39:4; 78:24; 91:14

- L -

22 labor [1] 25:23  
 landlord [1] 105:15  
 23 large [1] 69:19  
 last [4] 6:10; 9:18, 20; 103:20  
 24 leading [1] 22:11  
 lean [9] 39:2, 7; 41:18; 43:9; 46:4; 49:7, 15, 16  
 25 leaned [2] 49:22; 103:12

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464

1 leaning [13] 39:9; 42:12, 14, 20, 23; 45:1; 49:20, 25; 50:2; 56:18, 24, 25; 68:12  
 ease [3] 105:13, 15; 108:17  
 2 east [5] 8:6; 21:3; 62:23; 99:24; 103:23  
 Leave [3] 89:13; 92:17, 23  
 3 leave [11] 29:16, 22, 23; 30:6, 8; 43:7; 83:10; 91:21; 93:4; 97:4, 5  
 leaves [2] 37:22; 38:9  
 4 left [15] 10:6, 7; 23:6, 13, 22, 24; 24:9, 10; 30:2; 37:12, 13; 77:11, 14; 80:18  
 Less [1] 81:2  
 5 less [1] 25:14  
 Let's [4] 3:15; 9:21; 17:10; 66:16  
 6 let's [2] 4:20; 44:25  
 level [2] 102:21; 109:2  
 7 Lewis [2] 108:1; 110:17  
 life [1] 97:13  
 8 lift [2] 26:4  
 lifting [1] 26:11  
 9 lifts [1] 26:8  
 light [8] 71:12, 14; 73:5, 12; 97:23; 99:6; 106:15; 108:20  
 10 lighter [16] 9:19; 12:15; 13:10, 13, 15, 20, 21, 22; 84:8, 11, 16, 18, 20; 85:2, 10; 92:19  
 lighting [3] 73:9; 98:2; 99:9  
 11 lights [4] 71:1, 13, 16; 103:21  
 Like [1] 65:18  
 12 like [17] 9:22; 13:13; 19:9; 20:22; 22:22; 23:3, 24; 36:14; 51:23; 64:19; 73:25; 75:22; 78:12; 82:13;  
 85:11; 86:20; 93:6  
 13 likely [5] 46:24; 47:1, 2; 65:12, 14  
 LIPPIS [1] 1:16  
 14 lips [1] 22:1  
 listen [1] 6:2  
 15 little [11] 5:24; 19:9; 23:4; 27:15; 36:22; 38:1; 68:1; 86:14; 93:3, 11, 12  
 live [3] 7:2, 3, 23  
 16 lived [1] 7:16  
 located [4] 6:24; 7:5, 6; 80:21  
 17 location [5] 53:19, 20; 58:13; 105:17, 18  
 long [6] 8:12; 21:1; 78:19; 90:13; 105:17; 108:16  
 18 longer [5] 11:22, 23; 26:6; 30:13; 68:1  
 Look [1] 86:16  
 19 look [3] 70:19; 82:13; 107:8  
 looked [5] 20:8, 9; 73:24; 82:15; 83:13  
 20 Looking [2] 39:17; 56:23  
 looking [14] 23:12; 31:8; 34:17; 40:19; 41:5, 12, 14; 43:1; 69:23; 70:2, 11, 15, 17; 86:3  
 21 looks [2] 23:24; 51:23  
 motions [1] 23:2  
 22 loud [1] 29:10  
 lower [1] 102:21  
 23  


---

- M -

---

 24  
 25 ma'am [2] 78:5; 79:13  
 machine [6] 9:22; 27:12, 17; 37:8, 11

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464

1 made [11] 23:1; 43:24; 62:6; 76:13, 24; 83:22; 86:18; 97:8, 10; 103:24; 107:17  
major [2] 8:10; 108:23  
2 make [11] 39:21; 43:22; 46:16, 20; 48:20; 65:19; 74:15, 16, 18; 76:17; 85:5  
makes [1] 24:6  
3 making [1] 13:6  
male [25] 82:25; 83:2, 5, 9, 12; 84:1, 25; 85:3, 6; 86:2, 4, 5, 10, 16, 24, 25; 87:15, 19; 89:20; 90:1, 10,  
4 25; 91:15; 92:8, 25  
male's [2] 85:10; 92:10  
5 manage [2] 25:11, 13  
managing [1] 25:13  
6 manual [1] 25:23  
many [3] 30:7; 91:19, 22  
7 marginal [3] 97:25; 98:3, 12  
**MARKED** [1] 2:12  
8 marshal [2] 4:22; 5:16  
material [1] 21:1  
9 matters [3] 3:13, 19; 4:3  
maybe [3] 22:7; 74:17; 93:3  
10 mean [11] 13:11; 54:6; 56:21; 65:24; 84:25; 90:9; 95:6; 99:8; 100:18, 22; 102:3  
**Meaning** [1] 10:7  
11 means [2] 61:8; 96:25  
medical [2] 98:8, 10  
12 meets [4] 45:6, 11, 18; 52:18  
member [1] 30:22  
13 mentioned [5] 7:16; 13:20; 14:9, 14; 21:9  
metal [1] 20:22  
14 meter [1] 95:4  
Metro [1] 83:19  
15 Metropolitan [2] 107:18, 22  
**MICHAEL** [1] 1:21  
16 midnight [1] 6:21  
might [2] 82:17; 93:15  
17 mile [2] 81:2  
mind [4] 49:13, 17; 50:1, 6  
18 minute [7] 35:7; 42:11, 14, 17; 49:24; 67:6; 70:5  
minutes [5] 8:12, 14, 15; 32:5; 51:3  
19 missed [3] 15:6, 7  
mixture [1] 23:1  
20 moment [7] 17:17, 19; 32:3; 34:1, 19, 23; 40:7  
money [1] 37:10  
21 month [5] 21:17; 105:14, 16  
months [1] 105:19  
22 **More** [1] 96:19  
more [16] 17:3, 4; 25:14; 45:4, 17; 49:24; 60:14; 61:8; 66:10; 78:9; 82:15; 86:3; 88:21; 91:23, 24, 25  
23 morning [6] 3:6, 7; 5:15; 6:13, 19; 79:2  
most [1] 104:1  
24 motion [4] 58:3; 63:5, 6; 86:18  
move [7] 15:25; 36:19; 44:23; 65:18; 66:17; 73:19; 79:16  
25 moved [8] 54:19, 22; 57:6; 58:13, 24; 75:8; 90:19; 98:23  
movement [2] 62:6; 97:10

JOANIE E. GRIME, RPR, CCR NO. 288  
702) 671.3464

1 movements [3] 65:19; 97:9, 21  
moving [9] 54:21; 59:11; 62:16; 77:8, 10, 12; 92:11; 100:21  
2 much [7] 5:10; 25:17; 37:12; 75:18; 78:2; 79:20; 93:2  
multi-gamble [1] 9:23  
3 Multi-Strike [1] 9:25  
multiple [2] 26:2  
4 Murder [1] 96:21  
murder [1] 98:1  
5 must [1] 4:24  
myself [3] 25:15; 26:11; 73:5  
6

---

- N -

---

7  
naked [2] 86:7, 22  
8 name [3] 6:9; 7:4; 79:17  
near [6] 41:17; 42:16; 47:23; 49:2; 53:18; 101:4  
9 need [9] 4:16; 27:14; 30:6; 34:11; 44:2, 4; 61:20; 75:2; 99:4  
negate [1] 100:24  
10 neither [1] 98:10  
NEVADA [6] 1:5, 8; 3:1; 110:2, 4, 10  
11 Nevada [2] 110:13, 18  
never [5] 29:18; 51:5, 6, 8; 95:18  
12 NEWELL [2] 1:11; 110:7  
Newell [3] 3:5, 16; 4:6  
13 Next [2] 34:21; 67:2  
next [13] 8:10; 11:7; 33:1; 40:4, 12, 16; 48:5, 6; 49:5; 67:1; 78:4; 81:21; 99:10  
14 night [3] 8:22; 9:14; 106:20  
nights [1] 30:10  
15 nine [1] 66:23  
Nobody [1] 31:3  
16 None [1] 15:16  
nonresponsive [1] 19:6  
17 normal [1] 93:22  
note [1] 104:1  
18 nothing [2] 97:25; 107:14  
notice [4] 7:12; 19:20; 20:6; 91:12  
19 NOVEMBER [1] 3:1  
November [1] 1:17  
20 Number [2] 5:4; 15:20  
number [4] 14:22, 24; 110:20, 22  
21 numerous [1] 30:10

---

- O -

---

22  
23 object [3] 19:4, 22; 35:24  
Objection [1] 22:11  
24 objection [1] 73:24  
Objection's [1] 74:2  
25 observation [1] 87:25

JOANIE E. GRIME, RPR, CCR NO. 288  
702) 671.3464

1 observations [1] 93:14  
 obstruction [1] 59:22  
 2 obvious [1] 61:22  
 obviously [2] 61:23; 63:14  
 3 occasions [6] 52:22; 58:24; 97:6, 8; 103:24; 104:19  
 occur [2] 9:14; 84:6  
 4 occurred [1] 27:8  
 October [12] 6:21; 8:17; 14:19; 15:5, 9, 10; 19:19, 23, 24; 21:18; 80:7, 13  
 5 officer [3] 94:18; 95:2, 19  
 Okay [175] 4:19; 5:23; 7:5, 8; 8:24; 9:14, 17; 11:25; 12:6, 16; 13:4; 14:1, 6, 14, 22; 15:2, 4, 15; 16:8, 9,  
 6 18, 23; 17:2, 10, 15; 20:3, 10, 18, 20; 21:9, 24; 22:9, 21; 24:14; 25:20; 26:18; 28:12; 29:9; 30:17; 31:4,  
 8, 12, 24; 32:13, 24; 33:3, 10, 12, 19; 35:1, 13, 16, 20; 38:13; 39:2, 12, 15, 21, 25; 40:7; 41:1, 9, 16, 22;  
 7 42:5, 10, 23; 43:14; 44:6; 45:8, 16, 23; 46:4; 47:3, 10, 13; 49:1, 12; 50:5, 7, 12, 18; 51:2, 15, 18; 52:10;  
 53:9, 16, 21; 54:4; 55:6, 19; 56:2, 7, 20; 57:1, 9, 12; 58:2, 5, 8, 10; 59:4, 15, 21, 25; 60:3, 7; 62:19, 21;  
 8 63:7, 18; 64:6, 21; 65:10, 22; 66:11, 16, 19, 25; 67:7, 15, 19; 68:6, 9, 22; 69:7, 10, 13, 16, 24; 70:2, 15,  
 16, 22; 71:6, 9, 12, 17, 23; 72:5; 73:3, 10; 74:3; 75:25; 76:2, 16; 77:2, 5; 81:18; 82:13;  
 9 83:11; 85:21; 88:20; 89:2, 6, 25; 90:3, 24; 91:10, 18, 25; 92:4, 10, 16, 24; 93:13, 22; 94:20, 25; 95:3, 5,  
 8, 17; 99:5  
 10 okay [1] 32:1  
 once [4] 68:3; 88:14, 21; 108:20  
 11 one-inch [1] 13:17  
 only [14] 5:9; 13:23; 20:11; 27:20; 60:11; 62:25; 65:8; 66:8; 68:6; 69:10; 71:22; 97:9; 99:7; 105:22  
 12 onto [3] 12:6, 10, 17  
 open [6] 16:11; 24:8; 32:6; 37:21; 88:7; 110:16  
 13 operating [1] 26:8  
 opposite [3] 58:18; 60:23; 61:10  
 14 originally [1] 105:15  
 other [18] 3:13, 19; 4:3; 23:2; 30:25; 33:7; 34:2; 44:5; 45:24; 52:11; 58:17; 60:15; 64:9, 10; 75:1;  
 15 87:17; 89:14; 97:21  
 others [1] 108:19  
 16 outside [1] 95:10  
 over [14] 12:11, 12; 27:2; 34:2; 39:9; 51:25; 56:18, 24, 25; 75:1; 87:15, 16; 95:8; 99:16  
 17 Overruled [1] 73:21  
 overruled [1] 74:2  
 18 overtime [1] 95:6  
 owner [1] 38:25  
 19 owns [1] 38:24  
 20 - P -  
 21 P-h-l-l-l-p-s [1] 79:19  
 PAGE [1] 2:2  
 22 pain [16] 20:17; 21:22, 24, 25; 22:1, 2, 3, 5, 6, 15, 18; 25:6, 21  
 pains [1] 22:7  
 23 Paramount [1] 105:1  
 parking [1] 81:7  
 24 part [16] 12:5, 9; 17:6; 18:25; 19:2; 22:21; 23:6, 25; 24:7; 36:7; 58:11; 82:11; 88:11, 13; 92:7; 93:7  
 parties [4] 5:3; 15:19; 95:24; 106:6  
 25 Pass [1] 87:4

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464

1 pass [1] 26:18  
 passed [1] 106:13  
 2 passenger [7] 39:13, 18; 40:12; 41:6, 12, 17; 54:5  
 PATRICK [2] 1:11; 110:7  
 3 Patrick [2] 3:5; 4:6  
 pause [3] 3:12, 18; 4:2  
 4 PEACE [1] 1:17  
 peacefully [1] 104:18  
 5 penis [3] 100:3; 102:14; 108:21  
 people [3] 33:7; 81:14; 108:19  
 6 perform [1] 25:23  
 Performance [1] 98:14  
 7 period [3] 15:11; 51:25; 104:16  
 permanent [1] 98:9  
 8 permission [4] 15:20; 19:8; 39:2, 6  
 perpendicular [1] 7:19  
 9 person [8] 10:16; 30:15; 31:20; 64:15; 74:7; 83:2; 110:21, 23  
 personal [1] 91:14  
 10 personality [1] 102:4  
 personally [1] 92:7  
 11 Persons [1] 98:15  
 PHILLIPS [2] 2:6; 79:9  
 12 Phillips [3] 78:7; 79:18; 80:3  
 physical [14] 39:22; 74:15, 16, 18; 75:6, 14, 15; 76:13, 16, 17, 25; 82:14, 16; 100:6  
 13 physically [1] 51:9  
 piece [1] 81:25  
 14 place [1] 22:15  
 Plaintiff [2] 1:9; 110:5  
 15 plan [2] 78:18, 21  
 Play [2] 15:24; 70:10  
 16 play [4] 36:7, 22; 87:23; 88:2  
 played [3] 16:11; 32:6; 88:7  
 17 playing [4] 19:16; 27:2, 13; 92:4  
 plays [1] 75:6  
 18 Please [5] 4:25; 44:5; 75:1; 79:14, 17  
 please [10] 5:24; 6:2; 10:20; 16:7; 34:10; 45:3; 75:9; 78:13; 79:6; 107:21  
 19 pocket [3] 38:11; 84:9, 11  
 Point [8] 80:4, 6, 8, 17, 18; 81:1; 90:17, 19  
 20 point [91] 10:20; 14:11; 15:18; 29:11; 33:10, 13, 16, 20; 34:4; 35:9, 20; 36:25; 37:4, 22; 38:8; 41:22;  
 42:7, 20; 43:6, 11; 44:19; 45:1, 5; 47:6; 50:14; 52:21; 53:3, 9; 54:18; 55:12, 14, 16; 56:2, 4, 8; 57:14,  
 21 23; 58:12, 20; 59:4, 25; 60:5, 8; 61:19; 62:22, 25; 63:9, 13, 16; 66:1, 3, 6, 22; 67:17, 21; 68:11; 69:7,  
 10, 19; 70:3, 8, 20; 71:1, 9, 13, 14; 72:24; 73:11; 74:5, 10; 75:18; 77:18; 81:25; 82:19; 84:4; 85:5;  
 22 86:5, 9; 87:10, 13, 14, 24; 88:4, 14; 89:10, 18; 92:6, 16; 104:4; 106:18  
 pointed [2] 58:2; 106:19  
 23 pointing [21] 50:25; 51:21, 23; 56:18, 20, 24; 59:25; 60:2; 62:6, 14, 19; 63:5, 8, 11; 69:21, 22; 70:3;  
 72:23; 73:3  
 24 points [2] 16:6; 57:14  
 Police [2] 107:18, 22  
 25 police [5] 77:18, 21; 97:17; 102:12; 107:15  
 portion [2] 47:7; 23:21

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464



1 position [2] 48:11; 108:1  
 possession [1] 97:12  
 2 postured [1] 91:4  
 poured [2] 63:19; 93:5  
 3 PRELIMINARY [1] 1:15  
 preliminary [3] 5:9; 15:21; 102:25  
 4 present [3] 4:6; 95:25; 103:19  
 presented [2] 103:5, 20  
 5 pressed [3] 84:23; 85:8, 9  
 pretty [4] 8:5; 75:18; 80:25; 93:2  
 6 previously [1] 14:9  
 prior [2] 27:8; 28:2  
 7 private [2] 47:24; 48:3  
 probable [2] 99:11; 102:16  
 8 probably [5] 4:14; 88:23; 95:9; 96:2; 106:7  
 problem [1] 89:3  
 9 proceed [3] 4:8; 6:14; 79:21  
 PROCEEDINGS [2] 109:13; 110:15  
 10 Proceedings [1] 109:9  
 proceedings [4] 3:13, 19; 4:3; 110:17  
 11 proceeds [1] 35:13  
 proof [1] 96:20  
 12 Property [1] 98:15  
 property [9] 43:3; 47:24; 48:1, 4, 9, 12; 49:1, 8; 80:18  
 13 Proposed [2] 5:4; 15:19  
 protect [1] 104:14  
 14 proven [1] 100:24  
 provide [1] 98:9  
 15 proximity [6] 32:24; 40:18; 42:17; 47:15; 53:1; 61:9  
 public [7] 43:3; 48:1, 3, 8, 11; 49:1, 8  
 16 publish [1] 15:20  
 pull [6] 20:16; 81:6, 7; 87:10; 88:14; 91:20  
 17 pulled [3] 63:12; 81:9; 88:22  
 pulling [2] 72:15; 89:16  
 18 pulls [1] 60:5  
 pump [12] 11:7; 56:3, 4, 9, 14; 57:10; 60:6; 63:9; 81:16; 82:24; 85:13; 99:10  
 19 pumping [2] 82:19, 23  
 pumps [5] 54:17; 81:8, 18, 20; 85:16  
 20 purchase [1] 83:22  
 purchasing [1] 32:22  
 21 purpose [1] 15:21  
 purposes [5] 5:9; 51:15; 76:4; 99:12; 102:16  
 22 pursuant [1] 110:16  
 push [3] 69:11; 87:14, 16  
 23 pushed [7] 10:11; 30:2; 69:12; 82:16; 87:17, 19; 97:11  
 puts [2] 73:13; 100:19  
 24 putting [5] 12:3; 18:8, 11; 26:13; 73:13  
 25

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464

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

- Q -

question [33] 30:3; 31:25; 33:15; 34:10, 14, 21; 37:21; 41:3; 43:1; 44:5, 14, 15; 45:4; 46:12; 53:23;  
60:21; 61:4, 21; 62:17; 64:20; 66:19; 70:18; 71:22; 74:8; 75:2, 9; 76:8, 20, 21; 77:13; 94:18; 95:1;  
102:2  
questions [6] 16:12; 32:7; 35:3; 77:24; 78:1; 88:8  
queue [1] 31:23  
quick [1] 65:19  
quickly [1] 88:15  
quite [2] 50:24; 92:2

- R -

radius [1] 59:2  
rage [1] 103:22  
Raise [1] 79:5  
raise [2] 5:19; 6:1  
randomly [2] 44:10; 103:21  
re-entertain [1] 102:25  
reacted [1] 106:22  
reaction [1] 83:11  
read [1] 107:24  
ready [5] 3:10, 25; 4:8; 5:6, 7  
real [3] 15:13; 88:2, 3  
really [2] 41:11; 95:18  
rear [4] 52:17; 53:18; 54:22; 57:7  
reason [1] 30:5  
reasonable [1] 100:5  
recall [60] 4:17; 11:8, 10, 11, 13, 20, 25; 12:18; 13:6; 14:16; 15:2, 10, 12, 13, 16; 16:5, 6; 17:4; 19:13;  
21:10; 31:3, 8, 10, 12; 36:4, 11; 37:19; 39:11; 41:10, 22, 25; 42:2, 3, 4, 9; 43:5, 6, 8; 50:17; 52:9; 56:6;  
58:7, 11; 59:14; 63:17, 19; 65:3, 5, 6, 8; 66:12, 14; 72:13, 15; 73:17; 82:17; 83:8  
recalls [1] 36:2  
recent [1] 104:1  
recently [1] 18:17  
Reckless [1] 98:15  
recognize [4] 16:15; 32:14; 38:19; 81:22  
recollect [2] 41:14; 46:9  
recollection [3] 29:20; 33:19; 41:13  
Record [1] 10:24  
record [13] 4:5; 6:10; 13:16; 23:5; 38:4, 17; 56:13; 57:10; 82:5; 89:8; 95:18; 103:25  
reduction [1] 104:21  
reference [2] 22:3; 99:24  
referencing [2] 20:21; 22:5  
reflect [3] 10:24; 13:17; 82:5  
refresh [1] 29:20  
refuse [1] 94:15  
refused [1] 49:16  
refuses [1] 29:12  
regard [1] 4:5

JOANIE E. GRIME, RPR, CCR NO. 288  
702) 671.3464

1 regarding [3] 96:20; 108:17; 110:16  
 regards [2] 98:6, 14  
 2 register [1] 38:10  
 release [1] 78:8  
 3 remain [1] 47:14  
 remember [103] 6:22; 7:4; 9:18, 20, 21; 10:2, 3, 5, 6, 11, 13, 14, 15; 12:2, 5, 14, 19, 21, 22; 13:3, 22, 23;  
 4 14:1, 6, 13, 18, 20, 22; 15:3; 16:24, 25; 17:5, 6, 23, 24, 25; 18:1, 3, 5, 10, 19, 20, 22; 20:8; 27:7, 9, 11, 12,  
 13, 16, 25; 28:1, 22, 23, 24; 29:11, 16; 30:2, 4; 31:6; 35:12; 39:4, 6, 9, 12, 14; 41:24; 42:5, 7; 43:2, 10;  
 5 46:3; 47:7; 50:20; 52:7; 53:6; 55:3; 56:5; 57:19; 58:6; 59:13; 63:16; 65:12; 66:9, 12; 69:25; 70:1, 23;  
 73:16; 82:16; 88:13; 92:13; 97:3  
 6 removed [1] 91:15  
 rent [1] 105:13  
 7 repeatedly [1] 97:3  
 rephrase [1] 20:1  
 8 REPORTED [1] 1:25  
 reported [1] 110:16  
 9 Reporter [3] 33:25; 40:23; 110:12  
 REPORTER'S [2] 1:14; 110:15  
 10 required [1] 100:5  
 reserve [1] 96:2  
 11 reset [1] 38:15  
 respect [1] 101:1  
 12 respond [3] 100:4; 106:2; 107:6  
 responds [1] 100:23  
 13 rest [1] 98:13  
 restate [1] 29:5  
 14 rested [1] 94:12  
 result [2] 23:15; 98:9  
 15 Resulting [1] 98:7  
 resume [1] 92:4  
 16 returns [3] 45:23; 54:4; 58:17  
 ride [11] 10:3, 13, 14; 11:3; 16:20, 22, 23; 41:23, 24; 42:1, 5  
 17 Right [16] 7:20; 48:5, 6; 54:12, 14; 58:22; 74:10; 83:16; 85:4; 86:23; 87:3; 89:4; 92:18; 94:24; 100:22  
 right [66] 5:8, 19, 25; 6:1; 7:23; 8:1; 9:24; 10:1, 4, 9; 11:8; 12:13; 13:6, 13; 15:9, 17; 22:24; 24:16;  
 18 32:2, 10, 19; 33:1; 34:17; 40:12, 14, 17; 45:5, 10; 49:2, 5, 7; 50:1, 14; 52:15, 23, 24; 54:8, 9, 25; 55:8;  
 58:17; 62:25; 63:9; 64:18; 65:2, 4; 68:18; 70:25; 71:20; 74:25; 79:5; 81:9, 14; 87:17; 88:12, 23; 92:16,  
 19 24; 94:15, 23; 95:12, 14, 17, 24; 99:9  
 rigor [1] 26:1  
 20 role [1] 85:24  
 roll [1] 70:6  
 21 ROMNEY [1] 3:17  
 roughly [1] 81:3  
 22 Rule [1] 4:11  
 running [1] 17:11  
 23 runs [1] 7:18  
 24 - S -  
 25 Sacha [1] 105:1

1 safe [2] 26:7, 11  
 safety [1] 85:19  
 2 said [29] 13:2; 30:15, 16; 37:16; 38:19; 43:12; 48:23, 25; 62:10; 64:18; 69:25; 70:23; 73:24, 25; 82:10;  
 87:1, 21; 92:16, 17, 19; 93:5; 96:16; 97:22; 101:21, 22; 102:24; 106:10; 110:19  
 3 same [10] 24:5; 53:1, 19; 61:13, 15, 17, 25; 62:2; 83:5  
 saying [1] 12:23  
 4 saying [20] 12:22, 25; 17:5; 18:13, 16; 19:23; 33:12, 16, 20; 43:10; 50:13; 55:4; 83:8; 86:16; 89:12, 14,  
 20, 22; 90:1; 92:14  
 5 says [2] 43:15; 107:14  
 scabbed [1] 22:23  
 6 scale [2] 22:13; 25:8  
 scars [1] 98:9  
 7 SCHWARTZER [14] 1:21; 78:6, 15, 18; 79:3, 22; 80:2; 82:7, 9; 87:5; 94:8; 95:10, 15; 109:5  
 Schwartz [1] 2:7  
 8 scissor [1] 26:4  
 scoot [1] 5:23  
 9 screaming [2] 22:18; 97:4  
 screen [3] 26:12; 33:4; 41:8  
 10 seat [4] 5:17; 41:6, 12; 69:5  
 seated [2] 5:18; 79:14  
 11 second [8] 31:24; 37:15; 44:23; 78:11; 88:5; 99:25; 101:1; 106:20  
 seconds [4] 40:20; 42:24; 45:9, 16  
 12 Security [2] 110:20, 22  
 security [21] 31:4, 7, 9, 10, 13, 14, 15, 16, 19; 33:22; 76:1; 78:20, 24; 80:6, 8; 90:12, 20; 93:7, 14;  
 13 99:25; 101:2  
 Seeing [2] 13:8, 9  
 14 seeing [10] 9:19; 12:15; 13:12, 22, 23; 17:23; 18:4, 20; 19:24; 31:10  
 seem [1] 40:10  
 15 seen [7] 31:21; 37:6; 84:17; 93:14; 99:24; 100:10; 103:8  
 self-defense [1] 99:8  
 16 sell [2] 29:3, 8  
 sensation [1] 22:9  
 17 sentencing [2] 3:9, 23  
 separate [7] 52:22; 53:21; 58:24; 92:20, 22; 100:8; 103:24  
 18 service [1] 29:12  
 seven [1] 32:5  
 19 several [3] 97:6, 8; 104:18  
 sharp [1] 22:7  
 20 sharpness [1] 22:7  
 she's [1] 105:22  
 21 SHEETS [90] 1:23; 4:10; 5:8; 13:16; 15:25; 18:15; 19:4, 7, 22; 22:11; 26:23, 25; 27:5, 19; 31:18, 22;  
 32:3, 9, 17, 18; 34:3, 22; 35:5; 36:8, 19, 24; 38:4, 7, 14, 16; 41:4; 43:20; 44:7, 15, 18; 48:7; 50:23;  
 22 53:24; 54:1; 56:11, 16; 57:12, 13; 61:24; 66:17, 21; 67:20; 72:8, 10; 73:19, 23; 74:3, 4, 14; 75:5, 13, 17;  
 76:3, 5, 12, 22, 23; 77:17, 24; 78:11, 23; 87:9; 88:10; 89:7, 9; 93:21; 94:6, 14, 21; 95:4, 14, 23; 96:4;  
 23 101:18; 102:24; 103:3; 107:6, 9, 12, 14, 22, 25; 108:5, 7; 109:8  
 Sheets [11] 2:5, 8; 3:8, 17, 21; 4:7; 35:4; 41:2; 94:13; 96:3; 108:4  
 24 shift [1] 80:14  
 shirt [22] 10:22, 23; 11:12; 12:14, 17, 20, 21, 24; 13:7; 14:10; 18:14, 17, 21; 19:14; 24:25; 72:1, 3, 12,  
 25 15; 82:2; 84:13  
 shirts [1] 12:22

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464

1 shock [1] 85:17  
 Shorthand [1] 110:12  
 2 shortly [1] 83:14  
 shorts [3] 72:14, 16, 19  
 3 should [1] 93:6  
 show [5] 29:19; 34:7, 8; 35:15; 98:1  
 4 showed [1] 56:8  
 showing [1] 23:21  
 5 shows [9] 23:22; 42:19; 46:6; 48:19; 56:10, 13; 59:20; 67:13; 73:18  
 side [39] 23:24; 24:9, 10; 32:20, 22; 42:11; 45:24; 47:25; 50:9; 52:11, 18; 54:5, 6, 11, 16; 55:25; 56:13,  
 6 17; 57:15; 58:2, 18; 59:9, 12; 60:12, 15, 23; 61:10, 13, 15, 16, 17, 25; 62:2, 3, 5, 21, 24; 68:15  
 sign [1] 100:19  
 7 Silver [4] 9:7, 8; 27:21; 28:4  
 Simply [1] 98:2  
 8 simply [2] 97:1, 22  
 Since [1] 90:14  
 9 since [1] 105:12  
 sits [1] 97:16  
 10 sitting [1] 39:17  
 situation [5] 49:19, 21, 25; 58:9; 65:12  
 11 skin [10] 21:8; 22:21, 25; 23:9, 11; 24:5, 8, 17, 19  
 sleepy [1] 83:21  
 12 sleeve [1] 70:6  
 slight [3] 97:25; 98:3, 12  
 13 slurred [2] 28:23; 91:11  
 small [3] 86:16, 17  
 14 smothered [1] 86:11  
 sober [1] 102:4  
 15 Social [2] 110:20, 22  
 soft [1] 20:21  
 16 some [22] 4:17; 16:4; 20:17; 23:4; 24:1; 27:9, 10; 29:11; 47:11; 50:13, 24; 52:8; 78:9; 82:19; 83:21;  
 85:5; 86:5; 91:1; 98:3; 103:18, 21; 108:23  
 17 somebody [7] 46:20; 51:12; 85:18; 98:2, 20, 21; 99:7  
 someone [7] 20:8; 39:17; 41:6; 65:23; 73:5; 99:9; 100:19  
 18 something [14] 9:14; 14:9; 20:21; 46:7, 13; 48:14, 15; 50:15; 68:12; 84:3, 6; 89:22; 90:1; 107:7  
 sometimes [1] 24:11  
 19 somewhere [2] 31:17; 80:17  
 soon [1] 3:24  
 20 Sorry [1] 72:8  
 sorry [14] 8:9; 9:12; 11:13; 16:21; 17:18; 32:17; 34:7; 48:2; 51:14; 55:20; 79:15; 89:2; 90:9; 108:5  
 21 South [10] 6:24; 7:10; 80:4, 6, 8, 16, 18; 81:1; 90:17, 19  
 spark [2] 85:2, 7  
 22 sparked [5] 84:17, 18, 21, 22, 23  
 speak [2] 30:24; 31:4  
 23 speaking [5] 31:6, 9; 33:14; 34:5, 18  
 specifically [3] 15:2; 33:24; 34:4  
 24 speech [2] 28:23; 91:11  
 speed [2] 19:9; 76:3  
 25 spell [3] 6:10; 79:17  
 spoke [2] 29:2, 7

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464

1 spoken [2] 30:22; 35:11  
 spot [1] 81:7  
 2 spots [1] 22:7  
 spray [1] 65:24  
 3 sprayed [32] 11:10, 11, 13, 20; 12:1, 2, 16, 17; 18:5, 11; 63:1, 2; 64:12, 15; 65:8, 10; 66:5, 14; 67:5, 22,  
 23, 25; 68:1, 4, 5; 82:25; 83:9; 88:18, 19, 21; 89:19; 92:17  
 4 sprays [2] 60:6; 63:10  
 spread [1] 75:19  
 5 stab [1] 96:25  
 stabbed [1] 46:8  
 6 staff [1] 95:6  
 stagehand [1] 26:2  
 7 stand [7] 5:16; 48:10; 49:2, 5; 64:3; 70:25; 71:3  
 standing [20] 40:2, 4; 41:17; 45:5, 10, 17; 47:16, 23, 24; 48:3; 52:17; 53:18; 54:15; 57:6; 59:1; 60:23;  
 8 68:18; 71:5; 72:23; 93:5  
 stands [1] 108:25  
 9 start [2] 38:15; 82:19  
 started [4] 26:25; 59:2; 82:23; 87:24  
 10 starting [1] 38:17  
 starts [2] 32:4; 75:20  
 11 STATE [7] 1:5, 8, 20; 2:2; 110:2, 4, 10  
 State [11] 3:9; 6:5; 78:4, 6; 79:10; 94:12; 96:2, 20; 99:18; 103:20; 110:13  
 12 state [3] 6:9; 79:15, 17  
 STATE'S [1] 2:12  
 13 State's [3] 5:4, 12; 15:19  
 stated [2] 19:23; 49:9  
 14 statement [8] 13:7; 19:5; 36:20; 50:13; 90:3; 91:8; 107:9, 15  
 statements [1] 30:8  
 15 station [4] 18:23; 31:15, 16; 106:13  
 stay [7] 19:1; 21:1; 63:21, 24; 64:18; 65:12; 97:15  
 16 stayed [2] 52:22, 25  
 staying [1] 65:16  
 17 stays [1] 60:4  
 step [3] 49:12, 14; 84:23  
 18 stepped [1] 3:8  
 steps [5] 38:2; 54:18; 55:17; 71:7, 8  
 19 Still [1] 76:16  
 still [42] 19:12; 21:3, 4; 25:6; 35:11; 37:16; 40:2, 4; 42:12, 16; 45:10, 17; 47:13, 16, 22; 50:2; 52:17;  
 20 53:22; 55:12; 57:3, 6; 58:12; 59:1; 60:13; 61:18; 69:19; 72:3, 7, 9, 14, 16, 21; 76:24; 77:3, 5, 6, 9; 84:1;  
 89:16; 95:2, 24  
 21 stipulated [2] 5:3; 15:19  
 stipulation [1] 5:9  
 22 stomach [2] 22:2; 23:19  
 Stop [1] 34:13  
 23 stop [6] 57:23; 66:16; 73:13; 84:10; 88:15  
 stopped [4] 19:16; 30:9; 73:2; 86:8  
 24 stopping [1] 73:8  
 store [42] 25:15; 27:8, 18; 29:14, 17, 22; 30:3, 6, 8, 11, 13, 14, 19, 21, 22, 23, 25; 32:13; 35:13; 38:2, 9,  
 25 18; 43:22; 44:1, 9; 47:20; 48:22; 50:8; 51:19; 52:8; 69:23; 70:12, 15; 78:25; 81:7; 83:15, 16, 23, 25;  
 94:15; 108:2

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464

1 street [7] 7:2, 3, 4, 16, 18; 8:10, 11  
 stricken [1] 36:21  
 2 strike [2] 36:19; 73:19  
 stripped [1] 86:7  
 3 stuff [4] 15:12; 19:2; 24:6; 52:14  
 stuntman [1] 85:12  
 4 submit [2] 98:11, 13  
 subsequently [1] 100:23  
 5 Substantial [2] 98:7; 99:14  
 substantial [2] 32:4; 98:11  
 6 Such [1] 28:16  
 such [2] 26:3, 12  
 7 sufficient [4] 102:2, 17; 104:13, 14  
 support [1] 107:25  
 8 supporting [1] 105:20  
 supports [1] 99:11  
 9 Sure [1] 16:2  
 sure [13] 19:23; 28:6, 8; 29:2, 7; 36:12; 41:11; 44:13; 48:20; 66:2; 86:13; 91:22; 92:1  
 10 surprised [1] 83:13  
 Sustained [2] 19:6; 22:12  
 11 swinging [2] 47:25; 50:9  
 swiped [1] 86:20  
 12 sworn [3] 5:18; 6:6; 79:11  
 symptoms [3] 90:21, 25; 91:2  
 13  


---

 - T -  


---

 14  
 T-h-e-o-d-o-r-e [1] 6:12  
 15 tail [1] 51:23  
 take [11] 5:17; 7:12; 8:12; 32:3; 38:10; 54:18; 72:19; 86:13; 94:22; 95:19; 97:13  
 16 Taken [1] 1:17  
 taken [2] 72:1, 11  
 17 takes [1] 55:16  
 taking [4] 11:12; 12:14; 14:10; 18:21  
 18 talk [6] 9:21; 24:15; 34:2; 75:1, 24; 91:13  
 talking [6] 17:1, 2; 33:22; 36:9; 75:22, 23  
 19 tank [1] 56:1  
 taught [1] 46:15  
 20 tech [1] 26:3  
 Tell [1] 91:5  
 21 tell [8] 9:17; 16:7; 17:3; 22:4; 83:18; 87:24; 89:15; 90:2  
 telling [8] 18:2; 20:8; 41:25; 42:7; 43:2, 7; 104:19  
 22 temper [1] 108:24  
 terms [1] 8:12  
 23 testified [9] 30:1; 35:21; 40:19, 20; 41:5, 23; 43:12; 102:3; 108:1  
 testify [10] 6:6; 28:7; 36:6; 40:21; 43:15; 79:11; 94:15, 16, 22; 101:3  
 24 testimony [20] 4:25; 27:6, 20; 28:25; 37:7; 43:21; 44:8; 46:24; 55:10; 73:20; 78:24; 96:18, 22, 24;  
 97:2, 20; 98:4, 8, 10; 103:4  
 25 text [1] 3:23

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464

1 than [14] 30:25; 49:24; 55:21; 58:23; 60:14; 61:8; 81:2; 82:15; 88:21; 91:23, 24, 25; 97:21; 98:19  
 Thank [38] 3:11, 24; 4:1, 19; 5:10; 6:15; 7:14; 11:1; 15:23; 16:10; 17:20; 18:12; 19:7; 21:19; 24:22,  
 2 23; 25:2, 4; 34:20; 43:19; 44:17; 57:12; 67:18; 68:24; 74:3; 75:16; 76:11; 77:16, 25; 78:2, 5; 79:20,  
 22; 82:8; 94:11; 95:14; 102:23; 107:24  
 3 Thanksgiving [1] 15:8  
 That's [33] 12:5; 16:19, 22, 23; 18:5, 10; 32:2; 33:5; 35:15, 17, 19; 36:15; 39:18; 41:8, 21; 42:19; 46:6,  
 4 12; 48:19; 49:9, 10; 51:10; 52:16; 60:11; 61:4; 62:5; 70:18; 71:22; 72:3, 7, 9; 90:3  
 that's [24] 5:8; 7:16; 9:20; 27:2; 32:12; 33:15; 38:4, 13; 39:15, 19; 56:21; 59:16; 60:9; 61:21; 62:17;  
 5 70:13; 71:1; 76:20; 80:25; 82:18; 90:15; 100:19; 103:16; 104:13  
 their [2] 100:19; 108:21  
 6 them [7] 20:16; 46:16, 21; 83:19; 85:23; 108:20  
 Then [3] 29:23; 51:7; 54:4  
 7 then [35] 24:1, 2; 26:18; 29:10; 35:13; 37:13; 39:25; 44:25; 45:4, 23; 52:10; 55:16, 24; 56:21; 61:9;  
 62:6; 63:10; 64:1, 5; 69:7; 70:9; 71:12; 72:19; 74:12; 81:20; 82:17; 84:22, 23; 85:7, 9; 96:24; 97:8;  
 8 101:1; 105:16; 108:20  
 THEODORE [2] 2:3; 6:4  
 9 Theodore [4] 4:13, 20; 6:11; 101:22  
 There [5] 31:15; 76:24; 81:20; 98:3; 101:23  
 10 there [86] 3:12, 18; 4:2; 8:19; 9:4; 11:17; 14:7, 25; 15:4; 16:4, 6; 21:3, 4; 22:23; 23:9, 20; 27:24; 28:5;  
 10, 13, 20; 29:3; 30:5, 10; 31:20; 32:11, 25; 37:1, 6, 12; 39:17; 40:17; 41:6; 47:10; 48:4, 10; 50:9;  
 11 53:10, 22; 54:8, 9, 12, 14; 55:4, 12, 20; 59:24; 61:15; 63:9; 64:3; 70:15; 71:1, 3, 5; 72:23; 74:12, 13, 25;  
 77:3, 5, 6, 9, 18; 81:4, 6, 20; 83:20; 84:10, 12; 88:4, 11; 93:5; 95:20; 97:20; 98:1, 4, 12; 101:24; 103:18,  
 12 21; 104:15; 105:12; 106:20; 107:7  
 There's [5] 32:16; 37:20; 74:7; 96:21; 97:25  
 13 there's [11] 36:25; 37:21; 48:14; 57:3, 10; 58:12; 69:19; 76:8; 97:24; 99:7; 102:1  
 thereafter [1] 83:14  
 14 These [1] 97:18  
 these [1] 20:20  
 15 They [4] 14:25; 78:15; 87:12; 95:8  
 they [15] 15:14; 20:14; 65:24; 72:19, 21; 78:17; 79:1, 2, 4; 81:16; 83:19; 87:16; 100:19; 108:21  
 16 they're [2] 20:14; 83:20  
 thing [9] 9:18, 20, 21; 13:23; 20:7; 24:5; 63:12; 65:8; 105:22  
 17 things [5] 16:4; 20:15, 20; 26:5; 27:2  
 think [17] 9:25; 17:15; 26:17; 33:2; 38:13; 56:10, 11; 78:23; 79:3; 85:20; 88:4; 93:17; 99:18; 102:1,  
 18 16; 104:13; 106:6  
 thinking [2] 18:1; 85:15  
 19 third [2] 53:16; 85:7  
 This [3] 58:11; 103:4, 19  
 20 this [122] 4:14; 13:7; 15:18; 16:5; 18:13, 16, 17; 22:22, 23, 24; 23:1, 3; 24:7, 18; 25:22, 24; 30:3;  
 31:25; 32:13; 34:5, 17, 19, 23; 35:8; 36:3, 9, 12; 37:4, 14, 21, 25; 38:12, 15, 17; 39:15; 41:22; 42:7, 20;  
 21 43:11; 44:19; 45:1, 5; 46:23; 47:6; 49:19, 21, 25; 50:19, 24; 51:2, 7; 52:15, 21; 53:3, 6, 9, 17; 54:16, 18;  
 55:12, 14; 56:2, 4, 8, 15; 58:3, 12, 20; 59:2, 4, 25; 60:3, 22; 62:22, 25; 63:13, 16; 66:1, 3, 6, 13, 22;  
 22 67:21; 69:3, 19; 71:17; 72:5, 23; 73:11; 74:5, 10; 76:3; 77:18; 79:2, 16; 84:7; 85:13, 16, 21; 87:11;  
 88:11, 13; 89:10; 91:19; 92:7; 93:14; 97:7, 8, 10, 13, 16; 98:1; 102:20; 104:18, 19; 106:22; 107:15, 24,  
 23 25; 111:3  
 Those [1] 100:6  
 24 those [6] 26:5, 8; 27:10; 90:25; 91:2; 92:22  
 though [3] 46:1; 68:19; 72:17  
 25 thought [8] 12:12; 15:6, 7; 21:7; 34:7; 64:20; 73:22  
 threat [3] 97:20; 107:14, 17

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464



1 threaten [2] 100:2; 108:21  
 threatened [7] 46:2, 14, 20; 48:18, 24; 100:2; 107:20  
 2 threatening [8] 17:16; 34:23; 44:11; 48:13, 25; 49:3; 101:22; 102:14  
 three [13] 47:17; 53:21; 55:12, 21; 58:23; 59:1; 61:8, 18; 62:23; 84:22; 92:20, 22; 97:21  
 3 through [1] 67:3  
 thrown [2] 10:12; 72:12  
 4 thus [1] 98:13  
 time [39] 11:22, 23; 15:11; 25:16, 24; 31:25; 33:14; 37:15, 19, 21, 25; 38:12, 18; 40:11; 41:7; 42:25;  
 5 44:1; 48:4; 50:19, 24; 51:15; 53:17; 55:5; 60:22; 63:6; 67:1, 2; 69:3; 72:16; 74:21; 76:4; 79:2; 80:16;  
 82:15; 85:2; 86:2, 8; 95:8; 97:9  
 6 times [13] 22:8; 24:15; 30:7; 37:20; 53:21; 60:25; 74:22; 84:22; 91:19; 92:2, 20, 22; 97:21  
 Today [2] 25:6; 38:25  
 7 today [11] 10:18; 41:12; 47:4; 50:6; 52:6; 79:3; 81:23; 94:22; 102:4; 103:17  
 told [15] 18:3; 29:22; 30:7, 8, 9, 11, 20; 31:20; 52:9; 73:22; 83:20, 22; 85:23; 93:4; 106:17  
 8 took [7] 19:14; 82:24; 84:8, 11, 23; 101:3; 106:19  
 touches [1] 71:10  
 9 toward [1] 67:14  
 towards [41] 39:12; 52:17; 53:18; 54:10, 16, 19; 55:5, 11, 20; 57:5, 7; 59:9, 11, 12; 62:6; 65:20, 24;  
 10 67:9, 17; 68:3, 7; 69:23; 70:9, 12, 19; 71:7, 8; 73:11, 12; 75:20; 77:8, 10, 12; 84:24; 85:23; 86:3; 87:17,  
 18, 20; 97:9, 10  
 11 TOWNSHIP [2] 1:4; 110:1  
 TRANSCRIPT [4] 1:14; 109:12; 110:15, 19  
 12 trial [1] 99:9  
 tried [3] 53:22; 96:25; 97:13  
 13 tries [2] 73:12; 96:17  
 truck [93] 11:5, 6; 38:22, 24, 25; 39:3, 7, 10, 13, 18; 40:9, 10, 15; 41:18; 42:8, 12, 15, 17, 21, 23; 43:9,  
 14 25; 44:10; 45:20, 24; 46:5; 47:14, 15, 17, 23; 48:5, 6; 49:2, 5, 7, 13, 14, 15, 16, 20, 23, 24; 50:1, 2, 25;  
 51:21, 24; 52:1, 11, 12, 19; 54:23; 55:9; 56:18, 24, 25; 57:7; 58:18; 59:5, 6, 7, 10; 60:12, 13, 15, 23;  
 15 61:11, 13, 25; 62:22, 24; 68:15, 19; 69:5; 77:3, 5, 6; 81:20, 21; 82:24; 87:12, 17; 88:25; 89:11, 17; 92:8;  
 97:15, 16; 102:11  
 16 TRUE [1] 109:12  
 trying [10] 48:15; 66:17; 73:5; 74:16; 93:1; 96:23; 97:1, 19; 98:19; 104:7  
 17 TUESDAY [1] 3:1  
 Tuesday [1] 1:17  
 18 turn [3] 64:4, 22  
 turned [6] 21:8; 48:14, 17, 23; 59:17; 82:25  
 19 turning [1] 65:5  
 turns [1] 69:4  
 20 types [1] 26:12  
 Typically [6] 49:18; 63:22; 64:25; 65:23; 66:2  
 21 typically [5] 46:7, 13, 18, 21; 64:14  
 22 

---

 - U - 

---

  
 23 Um-hmm [1] 37:9  
 unbelievable [1] 99:10  
 24 under [3] 90:21; 94:16; 100:24  
 understand [8] 44:14; 49:21; 51:11; 64:25; 65:7, 16, 23  
 25 union [1] 26:1

1 unlawful [1] 100:6  
Unless [1] 88:21  
2 Until [1] 75:20  
until [6] 5:1; 15:10; 52:21; 58:20; 90:18; 91:12  
3 upon [1] 106:13  
upper [2] 23:21; 84:24  
4 upset [1] 13:2  
using [1] 37:8

- V -

6 VEGAS [3] 1:4; 3:1; 110:1  
7 Vegas [11] 6:25; 7:1, 10, 19; 8:7, 11; 80:21; 104:10; 105:9; 110:17, 18  
vehicle [22] 40:18; 41:15; 54:5, 6, 13, 16, 21; 55:25; 56:14; 59:12; 60:6; 61:16, 19; 62:2, 3, 5, 24;  
8 81:10, 13, 15; 82:20, 23  
Vera [1] 23:2  
9 verbal [4] 82:14, 15; 84:3, 5  
verbally [3] 51:8, 10, 12  
10 very [7] 5:10; 29:6; 78:2; 103:18, 23; 104:17, 18  
vest [1] 90:7  
11 vicinity [1] 75:8  
victim [13] 4:17; 86:22; 96:16, 23; 97:16; 100:3, 13, 23; 102:3; 106:14, 15, 16, 20  
12 Video [1] 2:13  
video [54] 5:4, 5; 15:24, 25; 16:5, 6, 7, 11, 16; 17:7, 8, 10; 19:9, 16; 27:2, 3; 29:19; 31:8, 14, 21, 23;  
13 32:4, 6, 10, 13; 34:5, 9, 17; 35:15; 36:5; 37:14, 18; 38:13; 39:15; 42:25; 43:23; 46:23; 50:7; 51:7; 56:8,  
10, 23; 58:3; 59:20; 61:22; 66:13; 67:13; 73:17; 74:7; 87:23; 88:7; 92:5; 97:6; 99:24  
14 visible [1] 56:15  
vision [2] 28:19, 21  
15 visions [1] 18:24  
Vitamin [1] 23:2  
16 voice [1] 27:14

- W -

18 wailing [4] 57:16, 19; 58:3, 6  
waist [1] 84:24  
19 Wait [1] 31:24  
wait [4] 4:24; 75:2; 94:25; 95:10  
20 waited [1] 77:21  
waiting [2] 5:3; 77:3  
21 waits [1] 97:17  
wake [1] 13:5  
22 walk [8] 8:3, 5, 13; 48:22; 53:22; 68:3; 69:7; 106:13  
Walked [2] 8:18; 68:8  
23 walked [19] 8:19; 10:10; 28:10, 13, 18, 20; 45:20; 52:5, 7, 21; 60:24; 61:6, 10, 22; 68:6, 14; 74:8; 90:5;  
97:7  
24 walking [16] 28:2; 39:9, 12; 47:19; 51:16; 54:10; 58:15; 59:4, 9; 61:2, 5; 67:9, 13; 74:11; 95:16; 97:15  
walks [4] 55:24; 70:8; 74:5; 92:8  
25 wandering [1] 27:1

JOANIE E. GRIME, RPR, CCR NO. 288  
702) 671.3464

- 1 want [9] 6:20; 19:18; 26:14; 27:1; 48:20; 76:19; 78:9; 80:12; 107:7  
wanted [1] 43:3
- 2 washed [1] 21:7  
wasn't [14] 10:10, 11; 22:18; 30:4, 10; 37:18; 42:14, 25; 43:23; 70:17; 74:23; 103:4
- 3 watch [1] 17:10  
watching [4] 16:5; 36:5; 42:25; 50:7
- 4 waved [2] 101:11, 12  
waving [2] 86:15, 22
- 5 We'll [3] 5:18; 94:25; 95:12  
we'll [1] 45:4
- 6 We're [5] 4:5; 35:7; 36:5; 62:2; 95:17  
we're [1] 16:5
- 7 We've [1] 96:24  
we've [2] 97:19; 98:7
- 8 Weapon [2] 96:21; 98:7  
weapon [2] 100:9; 101:2
- 9 wearing [3] 10:21, 22; 82:2  
Well [22] 23:8; 26:1, 18; 29:4; 33:15; 44:25; 48:20, 22; 51:10; 57:6, 16, 17, 25; 61:8; 65:19; 67:3, 25;  
70:5, 14; 71:3; 73:23; 102:1
- 10 well [6] 24:16; 36:16, 18; 44:25; 49:4; 54:19
- 11 went [15] 3:21, 22; 4:22; 27:18; 28:5; 75:24; 80:18, 20; 83:16, 18; 95:4, 18; 97:3; 104:17; 106:17  
Were [4] 13:2; 23:20; 81:16; 85:19
- 12 were [67] 3:13, 19; 4:3; 6:22; 9:4; 12:16, 25; 13:17; 16:12; 20:15; 21:10; 28:12; 29:1; 30:24; 32:7, 24;  
33:1; 34:7, 8; 35:20, 21; 36:9; 38:8; 40:12, 19, 20; 41:5; 42:16, 20; 46:2, 8, 14; 48:18, 24; 49:23, 25;  
52:2, 23; 59:2; 60:22; 67:3; 73:15; 80:7, 13, 16; 81:12, 18, 23; 84:6; 85:15; 87:12, 22, 23; 88:4, 8; 90:7,  
12; 91:2; 93:8; 95:19; 96:16; 97:21; 100:24; 103:6; 105:17, 18
- 13 weren't [2] 30:6; 36:17  
What's [3] 7:3, 9; 89:14
- 14 what's [6] 16:7; 48:8; 59:23; 69:24; 70:22; 89:11  
Where [5] 21:24; 22:15; 35:2; 54:17; 56:1
- 15 where [40] 3:21; 6:22; 8:6; 11:4, 6; 16:19, 22; 18:5, 10; 23:9; 24:5, 7, 19, 20; 25:16; 27:2; 43:3; 45:5,  
10, 17; 49:21, 25; 52:13, 18, 23, 24; 57:23; 59:2; 60:4; 61:15; 64:11, 23; 66:6, 14; 77:4; 92:7; 93:2;  
98:19; 103:20
- 16 Whereupon [8] 3:12, 18; 4:2; 5:12; 16:11; 19:16; 32:6; 88:7
- 17 Whether [2] 25:14; 56:14  
whether [12] 36:18; 52:7; 57:19; 58:3, 5; 65:11; 73:15; 89:25; 90:24; 91:15; 94:18; 100:22
- 18 Which [1] 12:9  
which [11] 5:4; 8:10; 23:22; 55:4; 64:13, 16, 24; 65:1; 94:18; 97:22
- 19 Who's [1] 4:12  
who's [3] 4:6; 73:5; 97:18
- 20 Whoa [1] 5:20  
whole [3] 14:25; 19:4; 91:19
- 21 wife [6] 12:20, 24; 18:17; 30:8; 104:9; 105:20  
wife's [1] 15:8
- 22 Will [2] 10:20; 34:9  
will [4] 16:6; 94:18; 95:20; 103:1
- 23 William [1] 108:1  
withdraw [5] 44:15; 63:20; 64:21; 103:24; 104:19
- 24 withdrawn [4] 50:8; 52:1; 74:22, 23  
withdraws [2] 47:22; 55:24

JOANIE E. GRIME, RPR, CCR NO. 288  
702) 671.3464

1 Within [1] 63:2  
 within [8] 32:24; 47:16; 59:1; 60:14, 17; 61:3; 68:17; 110:13  
 2 WITNESS [53] 5:20, 22, 25; 6:8, 11; 7:11; 8:5; 17:19; 18:10, 13, 16; 21:18; 22:17; 23:11, 14, 17, 23;  
 24:1, 10, 13, 15, 24; 25:2, 13; 26:7; 27:16; 31:19; 32:1; 34:12, 16, 19; 41:1; 43:18; 44:6; 48:3, 6; 50:22;  
 3 57:15, 17, 19; 72:9; 74:10; 75:10, 12; 76:10; 77:15; 78:5; 79:7, 13, 18; 93:20; 94:11  
 witness [12] 4:12; 5:16; 6:5; 23:6; 26:19; 78:4; 79:10; 87:4; 92:7; 97:23; 106:12; 108:1  
 4 witnessed [2] 93:8, 10  
 WITNESSES [1] 2:2  
 5 witnesses [3] 3:10; 4:24; 95:21  
 witnessing [2] 84:7; 87:22  
 6 Wobbly [2] 91:9, 10  
 woke [11] 14:5, 14, 16; 15:10; 19:18, 20; 20:1, 5, 7; 21:21; 22:15  
 7 woman [1] 18:24  
 won't [1] 41:2  
 8 WONG [58] 1:20; 3:8, 22; 4:1, 9, 13, 15, 17, 21, 23; 5:2, 7, 11; 6:15, 18; 7:10, 14, 15; 8:8; 11:1, 2;  
 13:19; 15:18, 23; 16:3, 14; 17:13, 14, 21; 18:18; 19:8, 11, 17; 20:3, 4; 21:20; 22:20; 23:5; 24:23; 25:4,  
 9 5, 19; 26:9, 18; 35:24; 36:2; 78:1; 95:2; 99:2, 5; 100:7, 22; 101:9, 11, 13; 106:4, 6; 109:6  
 Wong [1] 2:4  
 10 words [3] 51:20; 52:2; 87:1  
 work [5] 25:24; 80:4, 6, 10; 99:18  
 11 worked [2] 79:3; 90:18  
 working [3] 80:7; 90:12, 20  
 12 works [2] 99:9  
 worry [1] 88:5  
 13 worst [1] 22:14  
 Would [2] 91:7, 23  
 14 would [64] 8:4, 6, 12; 19:9; 22:3, 6, 15, 17, 23; 24:21; 26:7, 12; 28:3, 4; 29:19; 32:19; 33:18; 36:19;  
 37:2; 41:11; 46:7, 14, 21, 24; 47:1, 2; 48:14; 49:13, 16, 18; 50:1, 4; 60:10; 64:6, 13, 14, 16; 65:12, 14,  
 15 16, 18, 19, 23; 73:19; 74:6; 78:12; 85:2, 3; 87:1, 13, 23; 93:25; 98:2, 7, 22; 98:11, 13; 102:24; 103:25;  
 107:16  
 16 wouldn't [21] 28:11; 46:18, 19; 64:6, 9, 11, 12, 13, 19, 21, 22, 23, 25; 65:1, 24; 66:6  
 written [3] 30:21; 107:9, 15  
 17 wrong [5] 49:13, 17, 18; 50:1

---

18 - Y -

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19 year [1] 105:15  
 Year's [1] 15:7  
 20 years [1] 90:15  
 yelled [1] 85:23  
 21 yelling [1] 89:15  
 you'd [3] 5:15, 19; 64:18  
 22 you'll [1] 79:15  
 You're [8] 23:21; 27:4; 45:10; 60:15; 61:2; 68:18; 73:3; 108:3  
 23 you're [45] 3:25; 20:21; 22:5, 9; 26:17; 28:6; 30:13; 33:22; 36:12; 39:16; 40:2, 4, 17; 41:11, 16; 42:12;  
 45:1, 5; 47:16; 50:25; 51:21, 25; 53:22; 55:2; 57:6; 59:1, 4, 7, 13, 25; 62:14; 63:20; 65:11; 66:3, 22;  
 24 67:5, 9, 23; 68:19; 69:21; 71:17; 72:23; 88:11; 90:4; 94:2  
 You've [1] 34:14  
 25 you've [12] 42:23; 54:19, 22; 57:6; 59:17; 60:11, 23; 63:1; 65:10; 68:14; 72:1, 11

JOANIE E. GRIME, RPR, CCR NO. 288  
 702) 671.3464

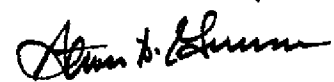
1 Your [48] 3:8; 4:9, 10, 15; 5:2; 6:15; 7:14; 11:1; 13:16; 15:18; 19:22; 22:11; 24:23; 25:4; 27:1; 31:23;  
32:4; 38:5, 14, 15; 44:16; 57:12; 66:18; 72:8; 73:24; 74:3; 76:4; 78:1, 16; 79:4, 22; 82:7; 87:5; 94:8;  
2 14; 95:11, 15, 23; 96:4, 19; 97:6; 98:16; 102:24; 103:3, 18; 104:20; 107:19; 109:8  
your [100] 4:12, 25; 5:17, 19; 6:1, 9, 20; 8:13; 12:6, 9, 17; 14:10; 19:14; 20:13, 20, 24; 21:2; 22:15, 21;  
3 23:13, 18, 21, 22, 24; 24:3, 9, 12, 25; 25:22; 26:14, 15; 27:6, 14, 20; 28:21, 23, 25; 29:20; 30:12, 18;  
32:19; 36:15; 37:7, 10; 38:22, 24; 41:3; 43:1, 21; 44:8; 46:16, 24; 47:25; 48:11; 49:13, 17; 50:1, 8;  
4 51:5; 55:10; 58:13; 61:3; 64:20; 67:11; 69:22; 70:6; 72:1, 11, 14, 16, 19; 78:4; 79:5, 17; 80:12; 81:13;  
82:22; 83:22; 84:7; 85:19; 86:16, 17, 18; 87:19, 24; 88:23, 24; 93:7, 13; 94:25; 98:21; 99:8; 102:19;  
5 103:1; 105:20; 108:24, 25  
yours [1] 39:19  
6 yourself [4] 19:21; 20:6; 38:20; 73:16

- Z -

8 zero [1] 98:4

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JOANIE E. GRIME, RPR, CCR NO. 288  
702) 671.3464



CLERK OF THE COURT

1 **EXMT**

2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 HETTY O. WONG  
6 Deputy District Attorney  
7 Nevada Bar #011324  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -VS-

12 PATRICK NEWELL,  
13 #2861099,

14 Defendant.

CASE NO. C-12-285825-1

DEPT NO. XX

15 **EX PARTE MOTION FOR RELEASE OF MEDICAL RECORDS**

16 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
17 District Attorney, through HETTY O. WONG, Deputy District Attorney, and moves this  
18 Honorable Court for an Order Releasing evidence which includes protected health  
19 information being held by University Medical Center consisting of any and all medical  
20 records for patient: Theodore Bejarno, DOB: April 19, 1975, concerning diagnosis,  
21 prognosis and/or treatment given or provided on or about October 10, 2012 to the present  
22 time, to be released to a representative of the DISTRICT ATTORNEY'S OFFICE for the  
23 purpose of prosecuting the above referenced case charging the crime of Attempt Murder  
24 With Use of a Deadly Weapon, Battery With Use of a Deadly Weapon Resulting in  
25 Substantial Bodily Harm, Assault With Use of a Deadly Weapon, and Performance of Act in  
26 Reckless Disregard of Persons or Property.

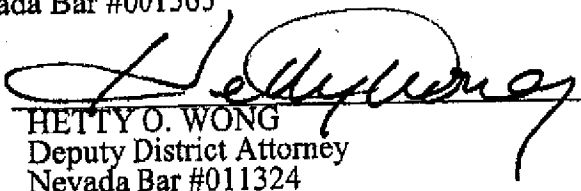
27 Pursuant to 45 CFR 164.512(f), Movant represents that the information sought is  
28 relevant and material to a legitimate law enforcement inquiry; that the request is specific and

1 limited in scope to the extent reasonably practicable in light of the purpose for which the  
2 information is sought; and that de-identified information could not reasonably be used.

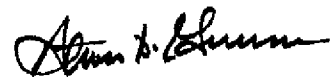
3 DATED this 6th day of December, 2012.

4 STEVEN B. WOLFSON  
5 Clark County District Attorney  
6 Nevada Bar #001565

7 BY

  
8 HETTY O. WONG  
9 Deputy District Attorney  
10 Nevada Bar #011324

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28 HW/td/L-4



CLERK OF THE COURT

1 **ORDR**

2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 HETTY O. WONG  
6 Deputy District Attorney  
7 Nevada Bar #11324  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 PATRICK NEWELL,  
14 #2861099,

15 Defendant.

CASE NO. C-12-285825-1

DEPT NO. XX

16 **ORDER RELEASING MEDICAL RECORDS**

17 Upon the ex parte application and representation of STEVEN B. WOLFSON, Clark  
18 County District Attorney, by and through HETTY O. WONG, Deputy District Attorney, that  
19 certain records containing protected health information are necessary for the prosecution of  
20 the above-captioned criminal case are being held in the custody of University Medical  
21 Center; that said information is relevant and material to a legitimate law enforcement  
22 inquiry; that the application was specific and limited in scope to the extent reasonably  
23 practicable in light of the purpose for which the information is sought; and that de-identified  
24 information could not reasonably be used;

25 NOW THEREFORE, pursuant to 45 CFR 164.512(f), and GOOD CAUSE  
26 APPEARING, University Medical Center, shall release to a representative of the DISTRICT  
27 ATTORNEY'S OFFICE, any and all medical records concerning diagnosis, prognosis,

28 ///

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DEC 07 2012

CLERK OF THE COURT

DEC 10 2012



1 and/or treatment of Theodore Bejarno, whose date of birth is April 19, 1975, for the time  
2 period October 10, 2012.

3 IT IS HEREBY ORDERED.

4 DATED this 11<sup>th</sup> day of December, 2012.

5  
6   
DISTRICT JUDGE 

8  
9 STEVEN B. WOLFSON  
10 Clark County District Attorney  
11 NEVADA BAR #001565

12 BY 

HETTY O. WONG  
13 Deputy District Attorney  
14 Nevada Bar #11324  
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28 HW/td/L-4

PATRICK NEWELL, ) No. 66552  
 )  
 Appellant, )  
 )  
 vi. )  
 )  
 THE STATE OF NEVADA, )  
 )  
 Respondent. )

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

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

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

## CERTIFICATE OF SERVICE

CATHERINE CORTEZ MASTO  
STEVEN S. OWENS

HOWARD S. BROOKS  
SCOTT COFFEE

PATRICK NEWELL  
NDOC # 1126400  
c/o High Desert State Prison  
PO Box 650  
Indian Springs, NV 89070

BY

Employee, Clark County Public Defender's Office