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Respondent.

Electronically Filed
Dec 16 2014 08:34 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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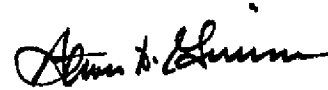
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CLERK OF THE COURT

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 PATRICK NEWELL,

12 Defendant.
13

CASE#: C285825-1

DEPT. XX

14 BEFORE THE HONORABLE JEROME TAO, DISTRICT COURT JUDGE
15 TUESDAY, JUNE 17, 2014

16 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS**
17 **JURY TRIAL - DAY 2**

18 APPEARANCES:

19 For the State:

ROBERT STEPHENS, ESQ.
HETTY O. WONG, ESQ.
Deputy District Attorneys

21 For the Defendant:

SCOTT L. COFFEE, ESQ.
SETH GUTIERREZ, ESQ.
Deputy Public Defenders

23
24
25 RECORDED BY: SARA RICHARDSON, COURT RECORDER

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1 WEDNESDAY, JUNE 17, 2014 AT 10:43 A.M.

2
3 [Outside the presence of the jury]

4 THE COURT: All right. This is State versus Patrick Newell, C285825.
5 We have Mr. Newell present in custody. He has his belt today. All right. Anything
6 you guys want to address or put on the record before we bring the jury in? All right.
7 Let's go ahead and bring 'em in.

8 [Inside the presence of the jury]

9 THE COURT: All right. Will counsel stipulate to the presence of the jury?

10 MS. WONG: Yes.

11 MR. GUTIERREZ: So stipulated.

12 THE COURT: All right. Ladies and gentlemen, good morning. Let me begin
13 by apologizing for the delay. I'm aware that you've been standing out in the hallway
14 for about an hour. On behalf of the Court system I apologize.

15 At the beginning of this trial yesterday I told you that -- I know that jury
16 service is annoying for that exact reason but hopefully -- there are certain things that
17 I have to do that I'm not allowed to tell you yet. After the trial is over I'm happy to let
18 you know, but while you're standing out in the hallway you probably saw people
19 coming in and out of the courtroom all morning long. There are some things that by
20 the nature of what I do I have to attend to them. They come up and they have to be
21 dealt with. But I want you to know that I'm not insensitive to the fact that you guys
22 have been waiting. I try very hard to start on time. I will try very hard to do that for
23 the remainder of the trial, but sometimes things happen that are not necessarily
24 within my control or there are things that by law I have to address them in a timely
25 manner. So, I hope that you will accept my apology.

1 The second thing that you need to know is you will notice that today
2 there are only 13 of you. The juror who was previously Juror number 7 had an
3 emergency come up. She will not be a member of the panel for this case. So, we
4 will be proceeding with 13 jurors. Randy, have the badges all been switched
5 around? I think we will be re-numbering one of the jurors to be Juror number 7.

6 THE MARSHAL: No; just whoever is one -- the first alternate will be -- will just
7 go into the panel.

8 THE COURT: Okay. Your numbers -- basically Badge number will not be
9 used. There's going to be a missing badge number for the remainder of this case
10 because of some emergency that came up last night. She was the juror sitting in
11 the back right corner. It's not going to be a problem. I'm just letting you know in
12 case you're wondering where that person is today.

13 A third thing is late yesterday afternoon I gave you sort of a big block of
14 pre-trial instructions. I know that it's a long set of instructions. There's a hundred
15 different things in there. There's one instruction that maybe you didn't catch but I'll
16 repeat it. During the course of this trial no one associated with this case is allowed
17 to talk with you in any way. That means if I see you in Vons, if any attorneys see
18 you out in the hallway or out in the stairway of the courthouse or any other place,
19 we're not allowed to even say hi to you or even have a social conversation that
20 doesn't have anything to do with this case. So, if somebody associated with this
21 case sees you anywhere in Las Vegas, they will literally probably just drop their
22 eyes and walk in a different direction. Please don't take that as a sign of disrespect.
23 It's because the law requires that nobody involved with this case have any
24 interaction even social interaction with all of you. And the same instruction goes
25 with you if you see one of us or someone involved in this case please don't even say

1 hi. Just sort of, you know, keep your distance because we don't want to have any
2 kind of accusation that, you know, that something improper happened. I know that
3 that was in my block of instructions yesterday and you may not have caught it, but I
4 want to re-instruct you on that today.

5 All right. Is the State ready to make its opening statement?

6 MR. STEPHENS: Yes, Your Honor.

7 THE COURT: You may proceed.

8 MR. STEPHENS: Thank you, Your Honor.

9 THE COURT: And for those of you on that right end, if it's easier, you have
10 this TV here. There's also one behind you if that's easier for you guys to see. All
11 right.

12 MR. STEPHENS: May I proceed, Your Honor?

13 THE COURT: You may.

14 **OPENING STATEMENT BY THE STATE**

15 BY MR. STEPHENS:

16 Thank you. On October 10th of 2012, Patrick Newell set Theodore
17 Bejarano on fire at the Circle K. Before we get too far into this, I'm going to show
18 you what the evidence is. This is Mr. Newell and this is Theodore Bejarano. I'm
19 going to show you a short clip of this. I want you to count down from ten.

20 **[VIDEO PLAYED]**

21 It was this incident that caused serious and severe burning to Theodore
22 Bejarano requiring him to be intubated for several days and put into a coma. So,
23 how did he get here? The evidence is going to show that on October 10th of 2012
24 Theodore Bejarano was the Circle K; he was gambling at one of the machines there.
25 At some point he decides to leave. He has no money to get home. And so he waits

1 outside the Circle K and he waits at this truck of Mr. Newell's and he asks for a ride
2 home. Mr. Theodore Bejarano will tell you that he did have some drinks. They get
3 into an argument about whether or not Mr. Newell should give him a ride home. It's
4 a verbal argument. They argue back and forth.

5 You'll hear from three other people besides Theodore Bejarano who will
6 come in here and tell you more or less the substance of that argument, what was
7 being said back and forth. It's this argument -- during this argument Mr. Newell pulls
8 out a knife on keychain and threatens to cut Theodore Bejarano. Theodore
9 continues to ask for a ride home and continues to ask for a ride home and at some
10 point he says I'm going to light you on fire, douses him with gasoline, flicks the
11 lighter, as you just saw, and lights him on fire for asking for a ride home.

12 You saw in this short clip that Theodore Bejarano disrobed. You'll later
13 see the victim will sit on this little concrete stand here naked. The evidence will
14 show that the Defendant then again with his knife in his hand threatens to cut off his
15 penis. Eventually some of the other witnesses get involved and try to stop what's
16 occurring here. They put out the fire of the clothes that are burning there. And one
17 of the witnesses says what's going on. You just set somebody on fire. The
18 Defendant will then go over and threaten to cut him. This is what the evidence will
19 show.

20 At the conclusion of the evidence, the State's going to ask that you find
21 Mr. Patrick Newell guilty of attempt murder with use of a deadly weapon, battery
22 with deadly weapon resulting in substantial bodily harm, assault with a deadly
23 weapon and performance or act to put other people at risk. We ask that you find
24 him guilty at the conclusion of the evidence. Thank you.

25 THE COURT: Does the defense wish to make an opening statement at this

1 time?

2 MR. COFFEE: We do, Judge. And can we switch the video -- perfect. Thank
3 you.

4 **OPENING STATEMENT BY THE DEFENSE**

5 BY MR. GUTIERREZ:

6 Thank you very much for being here. Patrick Newell didn't try to kill
7 anyone. He didn't intend to kill anyone and there's no going to be any evidence to
8 support it. That's why we're going to be asking you to find him not guilty of attempt
9 murder. That's the easy decision, that's the easy one. All right.

10 But Patrick is also charged with a battery, a battery that results in
11 substantial bodily harm. Okay. Nobody's going to be arguing that a battery
12 occurred. Okay. You're not going to hear any arguments over whether or not it
13 happened. All right. In fact, the only argument you're going to hear at all throughout
14 this trial is over whether or not Patrick's actions were lawful. Okay. Did Patrick
15 Newell have a right to do what he did? Did he have a right to defend himself?

16 Now the evidence is going to show that Patrick did act in self defense.
17 Okay. Each of us has the right to defend ourselves. Okay. The law doesn't require
18 anyone to put themselves in danger. The law doesn't require you to take on the
19 chin. Okay. Patrick had a right to defend himself in any way that he thought was
20 reasonable necessary under the circumstances. Okay. Now by reasonable -- we
21 obviously don't mean perfect --

22 MR. STEPHENS: Objection, Your Honor. This is supposed to be a statement
23 of what the evidence is going to prove.

24 THE COURT: Right. This is kind of versing an argument. Maybe you can
25 stick to what the -- you think the evidence is going to show.

1 MR. GUTIERREZ: Let me rephrase.

2 The evidence is going to show that Patrick was not perfect. The
3 evidence will show that Patrick acted reasonable. Okay. Now reasonable minds will
4 differ and we saw that during jury selection. We had two individuals who had both
5 been faced with a situation which they felt their safety was comprised, that they
6 were in danger; one decided to fight, one did not. Two reasonable people, two
7 completely different responses. Okay.

8 Now your job's not to decide whether or not what Patrick did -- what he
9 could have done differently. All right. Your job is simply go ahead and decide if --

10 MR. STEPHENS: Objection; argument. This is argumentative again.

11 THE COURT: All right. Let's stick with the summary what you think the
12 evidence is going to be.

13 BY MR. GUTIERREZ:

14 All right. Your job's not to go ahead and decide what Patrick Newell
15 could have done differently based on the evidence that you see. Your job is to go
16 ahead and look at the evidence and decide whether or not his actions were criminal.
17 All right. Whether or not Patrick Newell had a right to defend himself.

18 Now I'm talking about, you know, whether or not Patrick Newell had the
19 right to defend himself; something you're going to have to realize and remember
20 throughout this trial. Okay. You're going to hear evidence about -- you're going to
21 hear the term burden of proof. Okay. Now remember that. While this is going on,
22 we don't actually have a burden. The State has to prove, the State has to prove that
23 Patrick Newell did not have the right to do any --

24 MR. STEPHENS: Your Honor, may we approach?

25 MR. GUTIERREZ: The evidence --

1 MR. STEPHENS: Can we approach?

2 THE COURT: You may.

3 [Bench conference -- not recorded]

4 BY MR. GUTIERREZ:

5 As I was saying, the State has the burden of proving that Patrick was
6 not justified. Okay. Now with that in mind let me give you a brief glimpse of what
7 you're going to see and hear throughout this trial. Okay.

8 Now you're going to hear from Mr. Bejarano. He may not be able to tell
9 you much about what happened. There may be some memory issues because
10 there have been in the past when he has been asked questions about this night and
11 what happened. Okay. So, I suspect he'll have some of those same issues here.
12 Now you also got video surveillance. You saw that on the screen. You saw that
13 there is a video. Okay. It's significantly longer than that, but don't worry. You'll
14 have a chance to go ahead and see the video in its entirety. Okay. There's no
15 audio. The video quality -- I mean, it's not the best picture quality. It's the best we
16 got. Okay.

17 You're also going to hear from Patrick himself. All right. Because
18 shortly after all this happens, he actually gave a taped statement to the police
19 narrating basically everything that took place from the time that he showed up at the
20 Circle K. And in his statement to the police Patrick Newell's going to walk you
21 through the events of that night. You'll hear how Patrick arrives at 7-Eleven -- at the
22 Circle K. You'll hear how he goes inside; he's standing in the line to pay for the
23 items he's selected when he notices a drunk guy in front of him in the line. Okay.
24 The drunk guy leaves the store and Patrick pays for his items. All right. You're
25 going to hear that. You'll hear that when Patrick walks out of the store he sees the

1 same drunk guy messing around with his truck. Now we don't know exactly what
2 the drunk guy is doing at the truck, but in legal terms we call this a trespass. Okay.
3 What he's doing is trespassing.

4 Now you'll hear how this drunk belligerent stranger tried then to coerce
5 Patrick into giving him a ride, asking first but then demanding in a threatening and
6 menacing way, and at one point in time even threatening to cut Patrick. Okay.
7 You'll hear how Patrick at first he asked nicely, you know. Please go away. Leave
8 me alone. Then he asked more forcefully. Okay. And at one point he even pulls out
9 -- you remember he has a pocket knife attached to his key ring -- and he pulls out
10 that knife, like one of those little Swiss Army ones, all inch and a half of the blade,
11 and he tries to get rid of this man even waving it at him, trying to let this guy know
12 I'm serious. Please get away and leave me alone.

13 You'll see how Patrick actually asks for help. He actually asked the
14 store clerk to call 9-1-1, to send the police to help him. And you're going to get a
15 chance to ahead and hear that 9-1-1 phone call from the store clerk. Okay. You'll
16 see through the evidence, through the video, through Patrick's statement that he did
17 everything he could to get this drunk, this belligerent unpredictable man to just go
18 away and leave him alone. All right.

19 You're going to hear that Patrick Newell is 61 years old. Okay. You're
20 going to hear about how he's disabled. He was scared. He believed that his life
21 was in danger. He believed his safety and security was threatened. You're going to
22 see and hear and understand how he was alone. He was alone, he was afraid. He
23 had been threatened; he's cornered. And ultimately Patrick Newell does what he
24 thinks is reasonably necessary to go ahead and defend himself, to protect himself
25 from this person. All right. To protect himself from a drunk person who is acting

1 belligerently, who is 35 years old, half his age, and weighs somewhere in the
2 neighborhood of 240 to 250 pounds. Okay. He's threatening him; he's coercing him
3 into giving him a ride; threatening and coercing Patrick to put himself alone in a
4 vehicle with this man who is unpredictable, he's drunk, he's a stranger.

5 You'll see that this is not the ideal situation. You'll see how Patrick first
6 only tries to protect his property. That's all he's doing at first is trying to protect his
7 property. But then you'll see that this drunk stranger he escalates the situation by
8 coming towards Patrick, putting Patrick in a situation where he's no longer just trying
9 to protect his property. He now has to be concerned and is in real fear of his own
10 personal safety because he doesn't know what this man's intentions are.

11 Now you'll see Patrick in the video and you'll hear in his own words how
12 -- when this drunken man approaches on the other side of the truck and comes
13 towards him, Patrick reaches for something, something that he can use as a
14 weapon to keep this man away from him. And the first thing he grabs, the only thing
15 that he sees right there is the gas pump nozzle. He grabs the nozzle and as he
16 turns to go ahead and use that as a weapon to defend himself, gas sprays out.
17 You're going to learn that he's surprised that gas sprayed out because whoever has
18 picked up the gas tank when you take it out, the vacuum block usually stops the gas
19 flow. That didn't happen. And so this drunken man who is approaching was
20 actually sprayed with some gas. All right.

21 Now this man is sprayed with gasoline. You're going to see how he
22 walks away for a second, wipes the gas out of his eyes, comes back again towards
23 Patrick. This time he's angrier, he's more menacing, he's more threatening. Patrick
24 is in fear of his life. He has poked the hornet's nest. And so he sprays the man
25 again. He sprays the man again, a second time. The man does not leave. Patrick

1 remembers he's got a lighter in his pocket. He tells the man I will light you on fire if
2 you don't get away. Go away. Leave me alone or I will light you on fire. The man
3 doesn't leave. Patrick takes the lighter out of his pocket and he flicks it, no once, not
4 twice, but three times. Three times he flicks a lighter to a man who has been
5 sprayed with gasoline and this man does not leave Patrick alone. He does not go
6 away.

7 Then Patrick as a man who is afraid and in fear of his safety facing
8 what to him is a very real very immediate and imminent threat to this physical safety
9 as this desperate situation unfolds, he does as a last resort the only thing he thinks
10 he can, what he believes is reasonably necessary under these circumstances to
11 protect himself. And he reaches the lighter forward and it catches Mr. Bejarano.
12 Why don't you go ahead and take a look at the video one more time. All right.

13 **[VIDEO PLAYED]**

14 It was a desperate act by a man who after doing all he could felt that he
15 had no other choice, a man in fear who did what he believed was necessary to stop
16 what was a very real and very immediate and imminent threat to his physical well
17 being. Okay. Now you know this from this video.

18 As soon as this man is set on fire and he strips out his clothes, the
19 threat has been contained. Patrick Newell stops. Patrick Newell stopped. At this
20 point in time finally you saw that somebody came in to go ahead and assist. You
21 will learn that Patrick Newell listened to this man; he followed instructions. And with
22 regards to any threats he may have made, you'll hear and you'll see, you will learn
23 from the evidence that all Patrick Newell did was go ahead and pull that knife out
24 one more time and tell the man to stay right there because he could hear the sirens
25 finally. He could hear the sirens. He knew the police was coming. He knew they

1 were on their way and he did not want this man to go ahead and get away. He
2 wanted to make sure this man stayed there until the police came.

3 Patrick Newell was reasonable. He did what he thought he had to do to
4 defend himself. He didn't choose to be threatened that night. Patrick Newell didn't
5 head over to the Circle K looking for a fight. Throughout this trial there's one key bit
6 of information I want you to focus on when you review -- when you look at all this
7 evidence, when you hear all the testimony.

8 Patrick Newell is the victim here. Patrick Newell didn't go looking for a
9 fight. He did everything he thought reasonably necessary to avoid a fight. He called
10 the police. He asked for help and when he felt he had no other option, when he was
11 cornered by a drunk, belligerent, threatening and menacing man he then did what
12 he felt ultimately was necessary to protect himself. And that is why at the end of this
13 trial we're going to be asking you to find Patrick Newell not guilty. Thank you.

14 THE COURT: All right. State, who is your first witness.

15 MR. STEPHENS: The State calls Derrick Phillips.

16 THE MARSHAL: If you will step up in the witness and remain standing and
17 raise your right hand and face the clerk.

18 **DERRICK PHILLIPS**

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

20 THE COURT CLERK: Please be seated. Please state your name and spell
21 your first and last name for the record.

22 THE WITNESS: Derrick Phillips, D-E-R-R-I-C-K P-H-I-L-L-I-P-S.

23 THE COURT: You may proceed.

24 **DIRECT EXAMINATION**

25 BY MR. STEPHENS:

1 Q Thank you, Your Honor. Mr. Philips, I want to draw your attention to
2 October 10th of 2012; do you remember that day?
3 A Yes, sir.
4 Q And were you working that day?
5 A Yes, I was.
6 Q Where were you working?
7 A At the South Point hotel.
8 Q What hours were you working that day?
9 A I work 11 to 7 a.m.
10 Q All right. So that would have been 11 p.m. on the 9th into the morning
11 hours of the 10th?
12 A Yes, sir.
13 Q While you're working at the South Point, do you ever take any breaks?
14 A Yes; sometimes.
15 Q Sometimes. On the 10th did you take a break?
16 A Yes.
17 Q Where did you go?
18 A To Circle K.
19 Q Is that located at -- on South Las Vegas Boulevard?
20 A Yes.
21 Q Not too far from the South Point?
22 A No, sir.
23 Q All right. Describe what you see when you arrive there?
24 A I see two guys arguing behind a red truck.
25 Q Okay. There's two guys arguing behind a red truck. Can you -- are

1 either of those individuals currently present in the courtroom today?

2 A Yes.

3 Q Can you describe them, how you saw them that day?

4 A Yelling.

5 Q Yelling. Okay. Was one older than the other?

6 A Yes.

7 Q Okay. The individual that you see in the courtroom today, is he old? Is
8 he the elderly one or the younger one?

9 A The elderly one.

10 Q All right. Can you point to him and describe something he's wearing?

11 A Tan light brown button up shirt.

12 MR. STEPHENS: Thank you. Your Honor, will the record identification of the
13 Defendant?

14 THE COURT: The record will so reflect.

15 BY MR. STEPHENS:

16 Q Okay. Where was it that you saw the Defendant when you arrived?

17 A Towards the rear of the red truck.

18 MR. STEPHENS: Your Honor, by parties agreed, Your Honor, the State and
19 the defense have agreed to the admission of State's proposed Exhibits 1 through
20 17.

21 THE COURT: Is that correct, Mr. Coffee?

22 MR. COFFEE: Absolutely.

23 THE COURT: All right. One through 17 are admitted by stipulation.

24 MR. STEPHENS: Thank you, Your Honor. Your Honor, may I publish some
25 of these exhibits?

1 THE COURT: You may.

2 MR. STEPHENS: Thank you.

3 BY MR. STEPHENS:

4 Q I'm showing you Exhibit 2; do you recognize this?

5 A Yes.

6 Q Where was it -- and you can point on that screen. You can actually
7 touch the screen and it'll appear up there. Tell us where you saw the Defendant
8 when you first arrived?

9 A Right around in this area.

10 Q Okay. And you also said there was a younger gentleman?

11 A Yes.

12 Q Where was he?

13 A I can't remember exactly, but I'm guess maybe right there.

14 Q Where they nearby each other? Not too close?

15 A Not -- arms length maybe.

16 Q Okay.

17 A Maybe a little further.

18 Q And I believe you said there was yelling going on?

19 A Yes.

20 Q What were they yelling?

21 A I could hear the older gentleman more so than the younger saying get
22 away from me.

23 Q And you said he was yelling that?

24 A Yes.

25 Q Was it in an angry or upset tone or just loudly?

1 A Kind of angry upset; irritated.
2 Q What was when the Defendant was yelling that, what was the victim
3 doing -- sorry I apologize -- the younger gentleman doing?
4 A Just standing there trying to talk to him, I guess. I don't know.
5 Q But his voice was not as raised as much as the Defendant's voice?
6 A Yes.
7 Q When you first arrived there, did you either one of them put their hands
8 on each other?
9 A No.
10 Q What is it that you did when you arrived there then?
11 A I stood there for a second and then I went inside.
12 Q Why was it that you stood there for a minute?
13 A Because they were loud and just attention.
14 Q Okay.
15 A It caught my attention.
16 Q How are you employed at South Point?
17 A I work security.
18 Q Were you interested in determining whether or not were safe at that
19 time?
20 A No; 'cause it kind of looked like an argument when I first got there.
21 Q Okay. What did you do after that?
22 A After I went in?
23 Q Yeah. After you went in the store, what did you do?
24 A I told the clerk that they were getting crazy outside and went back out.
25 Q How long were you inside the store for, give or take?

1 A Give or take less than five minutes.

2 Q What did you do inside the store that you remember; purchase

3 anything?

4 A Chocolates.

5 Q Chocolate. Okay.

6 A A couple snakes.

7 Q When you exited the store, what did you observe at this time?

8 A The Defendant sprayed gas and the younger gentleman was yelling he

9 sprayed gas on me, he sprayed gas on me.

10 Q Okay. Did you see -- when you first came out where was the

11 Defendant standing at this time?

12 A He was more towards the gas pump on that side of the truck.

13 Q Okay. And where was the younger gentleman standing?

14 A Closer to the pylon or end cap on that pump.

15 Q Okay. So, towards that concrete little stand there?

16 A Yes.

17 Q How did -- was it that the Defendant sprayed gas on him? Can you

18 describe it for us?

19 A He was filling his tank and he took the hose out and turned the nozzle

20 on the younger guy.

21 Q Okay. And what was it that the victim or the younger gentleman was

22 saying?

23 A He sprayed gas on me.

24 Q What happened after that?

25 A I told the younger guy to leave and he kept saying he sprayed gas on

1 me. I said I know. Just walk away; leave.

2 Q Okay. What happened after that?

3 A He didn't leave. The Defendant threatened him with a lighter.

4 Q Okay. How did he threaten him?

5 A He pulled out a lighter and held it in his hand and said I'm going to burn
6 you.

7 Q All right. At that time did he ignite the lighter?

8 A Not then.

9 Q Okay. What happened after that?

10 A He flicked it a couple times and said you better leave or I'm going to set
11 you on fire.

12 Q Okay. How far apart are the -- is the younger gentleman and the
13 Defendant at this time?

14 A Roughly five feet or so.

15 Q So just beyond arm's length?

16 A Yes.

17 Q Did you anything in the younger gentleman's hand at this time?

18 A No.

19 Q And other than the lighter that you mentioned, did you see anything
20 else in the Defendant's hand?

21 A No.

22 Q So, what happened after that then?

23 A After he flicked the lighter three times, two or three times, it caught
24 flame and he held it up against the younger gentleman's hip area and he ignited.

25 Q What did the victim do -- sorry I apologize -- the younger gentleman do

1 at that time?

2 A Scream.

3 Q Was he screaming anything specific?

4 A No, just screaming.

5 Q Screaming. Did you hear anything that the Defendant was saying at
6 that time?

7 A Not at that time, no. I yelled at him to stop, drop and roll though. Get
8 down the ground.

9 Q Did the younger gentleman follow your instructions?

10 A No; he started to take off his clothes.

11 Q Did you any other interaction between the Defendant and the younger
12 gentleman prior to this lighting on fire?

13 A Just the argument.

14 Q Just the argument. Did you ever see the Defendant use any other
15 implement or tool against the younger gentleman other than the lighter?

16 A After.

17 Q After he was -- after he used the lighter?

18 A After he used the lighter.

19 Q Let me ask you a couple more questions then. After you told the
20 younger gentleman to stop, drop and roll, you said he disrobed?

21 A He disrobed.

22 Q And what did the -- that individual do after he disrobed?

23 A He kind of went towards him. He had a pocket knife.

24 Q Who's he?

25 A The Defendant.

1 Q Okay.

2 A And he kind of swiped it in his direction and said look at your little dick.
3 I'm going to cut your little dick off.

4 Q And where was the younger gentleman at this point when this was
5 occurring?

6 A Closer to this area right here.

7 Q Okay. And where was the Defendant at that time?

8 A He was out here, maybe about five feet.

9 Q All right. How close did the Defendant get to the younger gentleman
10 when he was making those statement about cutting off his penis?

11 A Maybe -- he kind of lunged forward a little -- within two feet.

12 Q Okay. What was the younger gentleman doing at that time?

13 A Urinating on his burning clothes.

14 Q Was he standing or sitting?

15 A Standing; kind of shivering.

16 Q Was the younger gentleman still screaming?

17 A More moaning than anything else.

18 Q What did you do at that time?

19 A I turned and approached Newell -- or the Defendant and told him to put
20 his knife away and go stand next to his truck and wait for Metro to come.

21 Q What was the Defendant's response when you told him to do that?

22 A He went towards his truck.

23 Q Did you personally ever contact the police?

24 A No.

25 Q The -- after the Defendant went back to his truck, what happened?

1 A I sat the younger guy on this end cap, I guess.
2 Q Okay.
3 A Sat him down and told him to try and stay calm. He was still shivering
4 and kind of in shock. He had picked up his shorts and put those back on.
5 Q Can you describe the way the Defendant looked at that time? Did you
6 see any injury on him?
7 A No.
8 Q No injury?
9 A Not that I could see.
10 Q Did anyone else attempt to intervene at this time?
11 A There's another guy that -- I don't know where he came from but he
12 was walking along this other edge of the gas station area.
13 Q Okay. Can you on the screen can you draw about -- is it on the right
14 side, left side, where is it?
15 A It was along this edge.
16 Q But it's on the street side, not in the actual parking lot?
17 A In the parking lot.
18 Q In the parking lot. Okay. And what was it that that individual did?
19 A He was kind of yelling at the Defendant, how can you set a human
20 being on fire. What's wrong with you. Words and stuff.
21 Q What was the Defendant's response?
22 A He was irritated and said I'll cut you too.
23 Q Did -- at the time did the Defendant have anything in his hands?
24 A He had a -- he still had the knife in his hand. It was a key chain.
25 Q So, it was a knife that was on the keychain?

1 A Yes, sir.

2 Q Okay.

3 A He actually walked from his truck area back across the gas station over
4 towards this back pump.

5 Q Okay. At some point I'll change this picture and we'll describe some of
6 that. So, the -- if I heard you correctly you said that the Defendant at some point
7 then asked this individual that was intervening, do you want me to cut you; is that he
8 said?

9 A Yeah.

10 Q Okay. What happened at that time?

11 A I finally got between both of them and told the other guy to just leave
12 and wait for Metro and told Newell to go back to his truck and wait for Metro was
13 well.

14 Q And Newell, you're referring to the Defendant?

15 A I'm sorry, yes, the Defendant.

16 Q And did the Defendant comply with your request and go back to his
17 truck?

18 A Yes. He went back towards the driver door.

19 Q About how long after that was it that the - let me ask you first. Did the
20 police eventually arrive?

21 A Yes.

22 Q And about how long after this incident with this other individual did the
23 police arrive; if you know?

24 A Less than ten minutes, maybe between five and ten. I'm not sure.

25 Q Did any other emergency response individuals arrive?

1 A After Metro arrived, they called for paramedics to come.

2 Q And paramedics, I'm assuming arrived?

3 A Yes. But I'm not sure how long that took.

4 Q Okay. What were you wearing that night; if you recall?

5 A I was wearing my uniform, OSHA approved.

6 Q Very good. And the vest. Can you describe the vest for us?

7 A It's chartreuse and florescent green with --- what is that -- reflective
8 strips.

9 MR. STEPHENS: Okay. Can we switch back over to the video for a
10 moment? And before this is played, Your Honor, I believe the parties also agreed to
11 stipulate to the admission of this video also.

12 THE COURT: What's the number?

13 MR. COFFEE: This is the one that we corrected to make sure it was the real
14 time.

15 MR. STEPHENS: Correct.

16 THE COURT: What's the exhibit number of this video?

17 MS. STEPHENS: It is Exhibit 18, Your Honor.

18 THE COURT: Is that correct, Mr. Coffee, that it's stipulated into evidence?

19 MR. COFFEE: Yes, Your Honor.

20 MR. STEPHENS: Your Honor, while we're here at this time, Your Honor,
21 we've also agreed to the admission of State's proposed Exhibits 19 and 20 also.

22 THE COURT: All right. Nineteen and 20 are admitted by stipulation.

23 MR. STEPHENS: Thank you, Your Honor. Your Honor, I'd ask that we'd be
24 allowed to publish this today to jurors.

25 THE COURT: You may.

1 MR. STEPHENS: Thank you. We're going to play portions of this --

2 MR. COFFEE: There's just portions isn't published. I wasn't sure if you were
3 playing from the beginning or not.

4 MR. STEPHENS: No, just portions.

5 MR. COFFE: Okay.

6 [EXHIBIT #18 PLAYING]

7 MR. STEPHENS: And I'll start at the ten minute area here. Can you pause
8 that for a moment, Ms. Wong.

9 BY MR. STEPHENS:

10 Q Can you describe what you see here? Is this something that you
11 personally saw at this time, if you remember?

12 A Yes.

13 Q Okay.

14 A It's what I saw when I got there.

15 Q Okay.

16 A Them arguing.

17 Q Can you show us where the Defendant currently is on this screen?

18 A Right here.

19 Q Okay. And where's the other individual, the younger individual?

20 A He's on this side of the truck.

21 MS. STEPHENS: Ms. Wong, continue to play it.

22 BY MR. STEPHENS:

23 Q Mr. Phillips, at this time, it appeared at about 10:48, 10:49, the
24 Defendant was making some gestures; do you to whom he was making those
25 gestures?

1 A I can guess.
2 Q Don't guess. Do you recall what was going on at this time?
3 A Just arguing, yelling.
4 Q What was the Defendant yelling?
5 A Leave me alone.
6 Q Leave me alone. And was this time where you couldn't really hear what
7 the --
8 A Yeah, I couldn't anything he was saying if he was.
9 Q Okay. We'll let it keep playing, but are they still arguing at this point?
10 A Yeah.
11 Q Pause it there. At some point you actually went inside the store to
12 make some purchases?
13 A Yes.
14 Q Is this a portion that you actually remember seeing of what just recently
15 happened?
16 A Yes.
17 Q And what happened there?
18 A He sprayed him with gas. This is where he's yelling at me, he sprayed
19 gas on me, and I'm telling him just leave.
20 Q And when you're saying he you're referring to that younger gentleman
21 kind of in the middle of the screen?
22 A Yes. I'm sorry. That's where he sprayed gas on him.
23 Q That's the one you specifically recall seeing? So, the one previous
24 where you said you saw --
25 A It was a mistake.

1 Q Okay. That was a mistake. This is the one you actually recall seeing?
2 A I'm pretty sure this is the one.
3 Q Okay. You can continue. And it's at this point he's saying he sprayed
4 me with gas?
5 A Yes.
6 Q Pause is there, Ms. Wong. Do you recall seeing this?
7 A Yes; he pushed him and said get away from me.
8 Q And who is he? He pushed who.
9 A The Defendant pushed the younger guy and said leave me alone.
10 Q Okay.
11 A Get away from me. Leave me alone. That's where he's yelling at me,
12 he sprayed gas on me, pointing.
13 Q And is this the part where you're telling him to just leave?
14 A Yes.
15 MR. STEPHENS: We'll watch a couple more minutes. I promise.
16 THE WITNESS: This is where he's threatening him with the lighter.
17 BY MR. STEPHENS:
18 Q How many times did you see him ignite that lighter?
19 A Two, maybe three times and then he -- that on the ground is his shirt
20 and he's taking off his shorts right there.
21 Q So, that first fire closest to the right side is his shirt?
22 A Yes.
23 Q And the one closer to the left side is his shorts?
24 A His shorts. And this is where he comes over and he's laughing at his
25 dick, saying look at your small dick.

1 Q Who's this gentleman entering from the left side?

2 A That handsome gentleman would be me.

3 Q With your chartreuse vest?

4 A Yes. I go over and I stomp out the shirt because it's still on fire. In the
5 meantime, the younger guy urinates on his shorts to put that out. And that's when I
6 tell the Defendant to go stand by his truck. Then I tell him again.

7 Q What was the Defendant doing at this time?

8 A I can't remember. I was more concerned about putting that fire out.

9 Q Why is that?

10 A I didn't want to blow up.

11 Q Given the location you were at?

12 A Location, yes, sir. I'm advising him to go back and stand by his truck
13 and telling the younger guy to stay calm, paramedics are on their way.

14 Q What's the Defendant doing at this time?

15 A He comes to talk to me. I can't remember what he tells me. He was
16 telling me something along the lines of being accosted, but I don't know what
17 accosted means.

18 Q Okay.

19 A So, I tell him to just wait by the truck and when Metro gets here you can
20 tell him your side of the story.

21 Q Are there a lot of people standing outside the store at this time?

22 A There was. Maybe a hand full of people.

23 Q Okay.

24 A I'm not exactly sure how many.

25 Q It looks like you're headed to the left off screen. Do you know where

1 you're going now?

2 A That's when the other gentleman was yelling and asking him how can
3 you do this a human being.

4 Q Where's the Defendant headed?

5 A He's going to try to intercept him along that side of the gas pump. I'm
6 between them at this time just telling the guy to wait for Metro so he can fill out a
7 voluntary statement on what he saw.

8 Q You're telling the individual that tried to intervene to stay until?

9 A And then I tell the Defendant to go stand back by his truck. He's yelling
10 he just burnt me.

11 Q I just have a few more questions for you. Did you ever see the store
12 clerk come outside the store?

13 A No.

14 Q Did you ever at any point as you're watching -- as you are personally
15 there viewing what was occurring, did you ever see anything in the younger
16 gentleman's hand?

17 A No. I didn't see anything on the ground afterwards as well.

18 Q Okay. Other than the clothes?

19 A Other than his clothes.

20 Q And did you ever hear the younger gentleman make any verbal threats
21 to the Defendant?

22 A No.

23 Q So, what was it that the victim was doing that caused the Defendant to
24 set that younger gentleman --

25 MR. COFFEE: Speculation.

1 THE COURT: I'm sorry. What was --

2 MR. STEPHENS: I'm asking what he saw.

3 MR. COFFEE: You asked what it was that caused my client to act. That's for
4 my client to say.

5 MR. STEPHENS: I'll clarify it. I'll clarify.

6 BY MR. STEPHENS:

7 Q What was it that you saw that caused or -- what was it that you saw that
8 would warrant the Defendant setting him on fire?

9 A Being irritating.

10 Q He was just being irritating?

11 A And not leaving.

12 Q And not leaving. So, it was the victim being irritating in your opinion
13 that was why the Defendant set him on fire? There weren't any threats?

14 A I didn't hear any if there were.

15 Q And was the victim being irritating that justifies setting him on fire?

16 MR. COFFEE: Objection; that's a legal conclusion. That's what the jury's
17 going to decide.

18 THE COURT: Sustained.

19 BY MR. STEPHENS:

20 Q Were you surprised by the Defendant's reaction?

21 A Yes.

22 Q Why is that?

23 A I didn't actually think he would do it.

24 Q Why is that?

25 A Because normal people don't set other people on fire.

1 MR. STEPHENS: Court's brief indulgence. Your Honor, I'll pass the witness.

2 THE COURT: Cross-examination.

3 **CROSS-EXAMINATION**

4 BY MR. COFFEE:

5 Q You'd agree, sir, that normal people do all sorts of things when they are
6 threatened or they feel their life's in danger; right?

7 A I suppose; yes.

8 Q You said you didn't hear any threats, you're a security guard; yes?

9 A Yes.

10 Q You've been a security for some time?

11 A Yes.

12 Q You started at the Gold Coast, I think?

13 A Yes, sir.

14 Q And then you went to the --

15 A South Point.

16 Q South Point. Do you have training as a security guard?

17 A Yes.

18 Q In your training as a security guard, do you believe that people always
19 are going to give you a heads up before they take a swing at you?

20 A No.

21 Q I'm going to hit you. You've heard of the term sucker punch before?

22 A Right, right.

23 Q The fact that somebody doesn't verbally make a threat doesn't mean
24 that the person not a threat; would you agree with that?

25 A Yes.

1 Q In this instance when you came on the scene, you didn't see the
2 beginning of the interaction between these two; is that fair?

3 A Yes.

4 Q But it is clear that this gentlemen, Mr. Newell, wants the other
5 gentleman to leave; that parts clear, right?

6 A Yes, sir.

7 Q And he asked him and he asked him again; right?

8 A Yes.

9 Q And he asked him again; yes?

10 A Yes.

11 Q And again; right?

12 A Yes, sir.

13 Q And at some point he even pushes him and the man won't leave; yes?

14 A Yes.

15 Q At some point he sprays him with gasoline. You saw that on the video,
16 right, and the man won't leave?

17 A Yes.

18 Q You even ask the man to leave at that point; yes?

19 A Yes.

20 Q You're in your security uniform; yes?

21 A Yes, sir.

22 Q Now you weren't on the frame when the altercation takes place. You're
23 some distance away when you tell Newell just leave -- not Newell the man that's set
24 on fire; correct?

25 A Yes, sir.

1 Q Fair to say the man was closer to Newell than you were to the two of
2 them; do you understand what I'm saying?

3 A Yes, sir.

4 Q In fact, the distance, when you're telling the man to leave, at one point
5 the man turns and walks -- I think he turns back and walks towards Newell again; is
6 that a fair characterization of what we saw?

7 A Yes.

8 Q And that's after he's been sprayed with gas; yes?

9 A Yes, sir.

10 Q Was he happy about being sprayed with gas?

11 A No.

12 Q All right. Did he raise his voice, that man sprayed me with gas?

13 A Yes.

14 Q Was Newell still asking him to leave at that point?

15 A Yes.

16 Q And you were asking him to leave; yes?

17 A Yes, sir.

18 Q And he wouldn't do it; right?

19 A Right.

20 Q And Newell sprays him again; right? There's a second time?

21 A I'm sure if it was second time or --

22 Q Okay. You're not sure when you asked him to leave, but the man was
23 sprayed twice on the video we saw; right?

24 A Right. I just saw him sprayed once.

25 Q Okay. And at some point Newell pulls out a lighter; yes?

1 A Yes.

2 Q And you said you were scared about putting out the fire because it was
3 near gas pumps; yes?

4 A Yes, sir.

5 Q And you knew that fire and gas aren't a good combination?

6 A Right.

7 Q That's common sense; right?

8 A Yes.

9 Q When Newell pulls out the lighter and flicks it, he's asking the man to
10 leave still; isn't he?

11 A Yes.

12 Q He says leave or I will light you on fire; right?

13 A Yes.

14 Q Leave. Does he say leave don't make me to it, just leave?

15 A He just said leave or I will light you on fire.

16 Q Leave or I'll light you on fire. And he does it three times; yes?

17 A Two or three.

18 Q You testified at a preliminary hearing before; yes?

19 A Yes.

20 Q Do you remember at that hearing saying it was three times?

21 A On the third time I think it was when it ignited.

22 Q I think -- there we go -- the third time is when it ignited?

23 A Yes.

24 Q Now I think we're in -- on the same page.

25 A Okay.

1 Q When the man that's got gas on him sees a open flame near him and
2 somebody is telling him to leave and you're telling him to leave, does he leave?

3 A He should.

4 Q Does he back up?

5 A No; a little bit.

6 Q But not much; right?

7 A Not much.

8 Q Doesn't [indiscernible] moves his feet; right?

9 A Right.

10 Q And you're familiar with the Circle K?

11 A Yes.

12 Q I want to talk to you -- do you remember if the truck door was open or
13 closed when this was going on, the pick-up truck?

14 A I cannot recall.

15 Q And it's not real obvious in the video?

16 A Right.

17 Q You've got some pylons and some other things around where the gas
18 pumps are; is that fair?

19 A Yes.

20 Q And we can't see behind the truck, but it's fair to say that there's that
21 kind of thing on the other side?

22 A Yes.

23 Q You saw the man -- now let me get something marked. You see Newell
24 pumping gas at some point between the pump and the car?

25 A Yes.

1 Q When the man starts to come around the car, what kind of escape route
2 does Newell have; do you know?

3 A He can back up and go towards the front of the truck.

4 Q If the door's not open?

5 A If the door -- well if it's open he can close the door.

6 Q We don't know how quickly Mr. Newell moves; right?

7 A Right.

8 Q And the gentleman that's there is with a couple feet; yes?

9 A Yes.

10 Q I want to talk about the gentleman for a moment. And I'm going to
11 show you Defendant's proposed A. Okay. I'm showing you a picture. I've spoken
12 with the prosecutors a moment ago. They know what I'm going to show. Do you
13 recognize the gentleman in the picture; who is that?

14 A That's the --

15 THE COURT CLERK: That hasn't been admitted yet.

16 MR. COFFEE: Hm.

17 THE COURT CLERK: That hasn't been admitted.

18 MR. COFFEE: I'm going to. Two questions.

19 BY MR. COFFEE:

20 Q I'm just laying foundation now but it's easier to get this picture up. Do
21 you recognize the individual?

22 A Yes.

23 MR. COFFEE: Move to Defendant's [indiscernible].

24 THE COURT: Any objection? All right. A is admitted.

25 **[DEFENSE EXHIBIT A ADMITTED]**

1 MR. COFFEE: And so I don't get in trouble. I done this -- I think we'll do it by
2 stipulation. We'll submit Defendant's B also.

3 MR. STEPHENS: No objection.

4 THE COURT: A and B are admitted.

5 **[DEFENSE EXHIBIT B ADMITTED]**

6 BY MR. COFFEE:

7 Q That's the gentleman that was by the red truck; right?

8 A Yes.

9 Q Did the gentleman appear intoxicated to you?

10 A Not till after he was set on fire that I clearly see that he was intoxicated.

11 Q But even after he went on fire it was clear that he was intoxicated; is
12 that fair?

13 A Yes.

14 Q In fact, we had a discussion a few moments ago outside the courtroom.
15 I asked you if the man appeared drunk and you said --

16 A Yes.

17 Q It appeared that he was drunk. You came in again midway through.
18 You don't know what the man has said to Mr. Newell before you arrived on the
19 scene?

20 A Right.

21 Q Yu went inside the Circle K for a few moments?

22 A Uh-huh.

23 Q Yes?

24 A Yes.

25 Q You don't know what the man said to Mr. Newell during that time?

1 A Yes.

2 Q You came back out and the man wasn't -- Mr. Newell was loudly saying
3 leave but you couldn't tell what the man was saying?

4 A Correct.

5 Q Your position when you came out -- and correct me if I'm wrong -- but
6 Newell was face to face with this individual and you were off to a side; is that fair?

7 A Off to this side, yes.

8 Q Okay. So, you can't see actually what's going on in the man's eyes
9 when he's looking at Newell. That would be the side of his head that you would
10 see?

11 A Side to rear, yes.

12 Q Okay. Now we've been working on the assumption that it was Mr.
13 Newell's truck; right?

14 A Yes.

15 Q It could have been the other individual's, I suppose.

16 A True.

17 Q Okay. I want to show you what's been admitted as State's 6. You see
18 the license plate there?

19 A Yes, sir.

20 Q And that says -- what's it say P Newell?

21 A P Newell.

22 Q P Newell. Okay. Mr. Newell's truck; right?

23 A Yes.

24 Q I want to you Defense B that's been admitted previously. Do you see
25 what's hanging from the mirror of that truck?

1 A Yes, sir.
2 Q What is that?
3 A It is a handicap placard.
4 Q Let me talk to you about the fire for a few moments; all right?
5 A Yes, sir.
6 Q Mr. Newell cooperated with your instructions by and large; is that fair?
7 A For the most part, yes.
8 Q When you asked him to go back towards his truck, he went back
9 towards his truck; yes?
10 A Yes.
11 Q The person that had yelled at Mr. Newell from a distance, the bystander
12 --
13 A Yes, sir.
14 Q -- you don't know if the bystander knew the man that was set on fire?
15 A No, I don't.
16 Q You didn't know if they come into the store together; you just have no
17 idea?
18 A Yes; correct.
19 Q You don't know if Mr. Newell knew any of those things or not?
20 A No, I don't.
21 Q The man was adamant that he shouldn't have set somebody on fire;
22 right? He said something along the lines of how can you set somebody on fire?
23 A Right.
24 Q And you said Mr. Newell's response was I'll cut you or I'll cut you too,
25 something like that?

1 A Yes, something along the line.

2 Q You talked about holding people there to make a voluntary statement;
3 remember that?

4 A Yes.

5 Q You're trained as a security guard; yes?

6 A Yes.

7 Q Why do you hold people there to make a voluntary statement?

8 A To give more than one story.

9 Q More than one point of view?

10 A Yes.

11 Q And memories fade also; right?

12 A Yes, sir.

13 Q You remember writing a voluntary statement?

14 A Yes, sir.

15 Q You remember saying that Mr. Newell said anything else to the
16 bystander beforehand?

17 A I can't remember.

18 MR. COFFEE: Permission to approach.

19 THE COURT: You may.

20 BY MR. COFFEE:

21 Q Counsel looked at the second page of the voluntary statement. Does
22 that refresh your recollection as what Newell said to the bystander?

23 A Pretty much, yes, sir.

24 Q And what did Newell actually say to the bystander; what did he start
25 with?

1 A You don't know what you're talking about.

2 Q You don't know what you're talking about. The man was accusing

3 Newell of lighting somebody on fire and being inhumane and Newell responds, you

4 don't know what you're talking about? I'll cut you or something along those lines;

5 right?

6 A Right.

7 Q He never gets close enough to actually cut the man?

8 A With a few feet. Not --

9 Q He never swings a knife at the man?

10 A No.

11 Q You don't know what Newell's perception of the man was, whether he

12 was a threat or not?

13 A I'm not --

14 Q Just have no idea?

15 A Well he walked towards him.

16 Q Walked towards him. Okay. Did Mr. Newell ever threaten you in any

17 way?

18 A No.

19 Q Did Mr. Newell ever raise a hand to you?

20 A No.

21 Q Did Mr. Newell try to run?

22 A No.

23 Q Did Mr. Newell -- was he agreeable to waiting on the police? Did he

24 have a problem with that?

25 A No.

1 Q But Mr. Newell was anxious to -- for the police to get there; is that true?

2 A Yes.

3 Q Did he mistake you for a police officer at some point?

4 A I'm not sure. He may have.

5 Q Okay. Do you remember Mr. Newell saying to the gentleman that had
6 been lit on fire sit there and don't move, the police are coming?

7 A Before.

8 Q After.

9 A It might have been when I was stomping out the fire. I'm not sure.

10 Q Trying to stomp out the fire. You just don't know. He may have?

11 A He may have.

12 Q He may have tried to hold the gentleman there. You just don't know for
13 certain?

14 A I don't know.

15 Q Again, there was a lot of things going on?

16 A Yes.

17 Q Do you remember Mr. Newell before the fire mentioning that the police
18 were coming, just go way and I won't even tell them which direction you went; did
19 you hear that at any point?

20 A I heard the police are coming and go away.

21 Q And who said the police were coming, Mr. Newell?

22 A Yes and the store clerk.

23 Q And the store clerk. This is before the fire is set?

24 A Yes.

25 Q So, before the fire is set, Mr. Newell and the store clerk both said the

1 police are coming. You have asked the man to leave Mr. Newell alone, just leave
2 after he's sprayed with gas, and the man stays right there?

3 A Yes.

4 MR. COFFEE: Okay. Thank you. Nothing further.

5 THE COURT: Redirect.

6 MR. STEPHENS: Yes, Your Honor.

7 **REDIRECT EXAMINATION**

8 BY MR. STEPHENS:

9 Q Let's start at the portion where -- right after the younger man is set on
10 fire. Did you ever hear the Defendant tell the younger gentleman to stay there and
11 wait there?

12 A After the fire.

13 Q After the fire.

14 A No.

15 Q And in fact just previously he was telling him to leave; right?

16 A Yes.

17 Q Did you ever hear the Defendant tell that younger individual to stay
18 there because the police are coming?

19 A He said leave me alone. Get away from me.

20 Q When the Defendant sprayed gas on the younger gentleman, you said
21 that he started to scream. He started to yell --

22 A No.

23 Q I believe you said he yelled?

24 A Yes.

25 Q Okay. And was that a -- like a angry yell or was it more like a surprise

1 yell?

2 A Surprise yell.

3 Q You've been asked questions about the placard that was in the red
4 truck.

5 A Yes.

6 Q Did you ever personally look at that placard?

7 A No.

8 Q So, you don't know specifically who -- to whom that placard was
9 registered?

10 A No.

11 Q Did you ever see the Defendant use a cane?

12 A No.

13 Q A wheelchair?

14 A No.

15 Q Did you have any reason to believe that he was disabled?

16 A No.

17 Q Did it appear that he was moving okay outside the vehicle?

18 A Yes.

19 Q The intervener, the individual that intervened later on, what was the
20 Defendant doing with the knife when he went over to speak to that individual?

21 A Well he had his keys with the knife in his hand and he was just walking
22 towards him.

23 Q Okay. Was he waving it or swiping it or anything?

24 A More just walking and having it in his hand.

25 Q Okay. And then you were asked a question about your voluntary

1 statement that you wrote for the police; do you recall that?

2 A Yes.

3 Q And it was specifically about what you wrote in there?

4 A Right.

5 Q Do you recall writing in your voluntary statement -- sorry. Let me just
6 read the full sentence. The driver of the truck turned and walked toward the
7 bystander and said, you don't know what you're talking about. Do you want me to
8 cut you.

9 A Right.

10 Q And that was the statement that the Defendant made?

11 A Right.

12 MR. STEPHENS: Brief indulgence. Your Honor, I'll pass the witness.

13 THE COURT: Any recross.

14 MR. COFFEE: Just real quick.

15 **RECROSS EXAMINATION**

16 BY MR. COFFEE:

17 Q Would that voluntary statement, we talked about on direct there was
18 some discussion about Mr. Newell's attitude whether he was irritated, annoyed,
19 and that kind of thing; remember?

20 A Mm-mmh.

21 Q Nothing in your statement says that he was irritated or set the man on
22 fire because he was irritated; right? Is that true?

23 A Yes.

24 Q You're just kind of putting things together after the fact as best you can;
25 is that a fair description?

1 A Yes, sir.

2 MR. COFFEE: Court's indulgence.

3 BY MR. COFFEE:

4 Q That knife, how big was it? Was it a Rambo knife?

5 A No. It was attached to his keys, maybe two to three inches fully
6 extended.

7 Q With the blade open and everything it's maybe two or three inches?

8 A Yeah, with the blade open about three inches.

9 Q Something you might have with toenail clippers?

10 A It was just a knife.

11 Q A little bigger? Like a little utility knife?

12 A Yeah.

13 THE COURT: Okay. Hang on. I'm sorry. Is the blade three inches or is the
14 whole thing three inches.

15 THE WITNESS: The entire knife was about three inches.

16 THE COURT: Okay.

17 THE WITNESS: It was just a small one that you attach to your keychain.

18 THE COURT: Okay. Thanks.

19 BY MR. COFFEE:

20 Q And so the blade would be less than half that size, an inch and a half
21 maybe less?

22 A Right. Inch, inch and a half.

23 MR. COFFEE: Okay. Thanks.

24 THE COURT: State, anything further?

25 MR. STEPHENS: No.

1 THE COURT: All right. Thank you, sir, for your testimony. You're free to go.

2 THE WITNESS: Thank you.

3 THE COURT: Can I get counsel at the bench very quickly.

4 [Bench conference -- not recorded]

5 THE COURT: All right, Ladies and gentlemen. I know we got off to a late
6 start but it's now 12:10. Let's go ahead and take a lunch break now.

7 During this lunch break, you are admonished that until you begin
8 deliberations, you are under oath and have not been discharged. Do not reach any
9 conclusions about this case as you've not heard all the evidence. Do not talk to
10 anyone about this case, do not investigate any facts of this case, do not view any
11 media press or internet reports about this case. Do not talk to anyone who may be
12 involved in any way with this case. Do not discuss the facts of this case with each
13 other. Remember your badge at all times in and around the courthouse. Please
14 leave your notebooks on your chairs. Let me ask the same question. Anybody
15 need long than an hour for lunch? Any, you know, thing that you have to do,
16 errands, phone calls, anything like that? Any hands?

17 All right. So, it's 12:10. Let's make it 1:15. And Randy will take you out
18 in the hallway and tell you where he wants to convene. All right. See you at 1:15.

19 [Outside the presence of the jury]

20 THE COURT: All right. We're still on the record outside the presence of the
21 jury.

22 There was one objection that we probably should memorialize. It was
23 an objection by the State during Mr. Gutierrez's opening statement. There were a
24 couple of objections that were made on the record that Mr. Gutierrez was crossing
25 the line from an opening statement into argument. The first two I didn't use the word

1 sustain or overruled just so as to not embarrass anybody, but they were obviously
2 sustained. The first -- at one point, Mr. Gutierrez was verging into an argument that
3 essentially was applying the facts of the law which is more appropriate for a closing
4 statement. Then subsequently in the opening argument the State asked for a
5 sidebar and they made the same objection that Mr. Gutierrez's argument was again
6 crossing the line into argument. At that sidebar I overruled the objection because at
7 that stage Mr. Gutierrez was talking about things like state of mind and fear. I know
8 the State was concerned -- was probably concerned that he's talking about things
9 that are unprovable but not necessarily so. Again, this is not necessarily what you
10 said. It's sort of my understanding of what your objection is. If I'm incorrect then
11 certainly correct me on that.

12 I overruled that objection because at the time Mr. Gutierrez was talking
13 about things like feeling fear and state of mind which are facts and not necessarily
14 the application of fact or law. That what is what I understood your objection to be.
15 But obviously this is our opportunity to flush it out. If I'm incorrect or if I understood
16 incorrectly then, you know, please let me know.

17 State, do you want to put the basis of your objection on the record?

18 MR. STEPHENS: Your Honor, I think you described really well. I'd just -- to
19 add to that also, Your Honor, is that -- and you already previously mentioned it -- but
20 I also still felt like Mr. Gutierrez is still applying some of the facts with the law and so
21 it was more of a [indiscernible], but your statement was very accurate.

22 THE COURT: All right. Mr. Coffee, anything that you want to add to that
23 record?

24 MR. COFFEE: No.

25 THE COURT: All right. Were there any other sidebars? I don't recall there

1 being any other sidebars other than the last one where we talked about scheduling
2 and lunch is really what was happening [indiscernible] even the technical one. So,
3 just so there's no confusion about what we did.

4 All right then. Anything else you guys want to address outside the
5 presence?

6 MR. STEPHENS: Not from the State.

7 THE COURT: All right. See you guys at around 1:15.

8 [Recess taken at 12:09 p.m.]

9 [Proceedings resumed at 1:19 p.m.]

10 [Outside the presence of the jury]

11 THE COURT: All right. Anything you guys want to address or put on the
12 record before we bring the jury back in?

13 MR. COFFEE: Just one thing real quickly, Judge. And I didn't think of this
14 until we got back to the office.

15 I know the Supreme Court allows the jurors to ask questions. At the
16 end of the last witness, we didn't ask if there were any juror questions, but I may
17 have missed it if we did, but I didn't know the Court's practice on that.

18 THE COURT: Well in these jury instructions that I gave yesterday, I explained
19 the procedure if they want to ask any questions, but I don't typically ask the jury after
20 the witness if they have any questions.

21 MR. COFFEE: Okay.

22 THE COURT: In my experience if they have questions they ask 'em any way.
23 I've had lots of trials where they ask tons of questions. I had one where the jury
24 asked questions after every single witness. But I don't stop and ask the jury if they
25 have any questions, but if they do have any questions I will most certainly address

1 'em. But it was in the instructions that I gave yesterday. I had this whole section
2 where I talk about here's what you do if you have any questions.

3 MR. COFFEE: No, I remember that instruction. I just didn't -- just figured out
4 what the practice was from the various courtrooms because some judges will stop
5 and say is there any juror questions.

6 THE COURT: Yeah. I don't typically stop. My experience is I don't need to.
7 If they have questions they'll ask 'em anyway.

8 All right. Anything else you guys want to address? All right. Let's go
9 ahead and bring them in, Randy.

10 [Inside the presence of the jury]

11 THE COURT: All right. Will counsel stipulate to the presence of the jury?

12 MS. WONG: Yes.

13 MR. COFFEE: Yes, Judge.

14 THE COURT: All right. Let's go ahead and have the next witness sworn.

15 **AARON GACH**

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

17 THE COURT CLERK: Please be seated. Please state your name and spell
18 your first and last name for the record.

19 THE WITNESS: My name is Aaron Gach, A-A-R-O-N, the last name is
20 G-A-C-H.

21 THE COURT: You may proceed.

22 **DIRECT EXAMINATION**

23 BY MS. WONG:

24 Q Sir, do you still live in the state of Nevada today?

25 A I'm presently in Utah right now.

1 Q All right. Did you come back just to testify for this -- in the trial?

2 A I did.

3 Q I want to direct your attention --

4 THE COURT RECORDER: You can get closer to a microphone.

5 BY MS. WONG:

6 Q And I apologize, Mr. Gach. I'm not tall enough to use the podium we
7 have here. So, I'm going to do the questioning from this table. If you can't hear me,
8 let me know and I'll talk louder.

9 A Okay.

10 Q I want to direct your attention to October 10th of 2012 approximately 1
11 o'clock in the morning. Where were you at that time?

12 A I was at Circle K gas station on Las Vegas Boulevard by -- between
13 Pebble and Silverado Ranch.

14 Q So, back in October of 2012, you did reside here in Las Vegas?

15 A I did. I was at Sedona Apartments around the corner.

16 Q And that Circle K that you just mentioned, that's located here in Clark
17 County?

18 A Yes.

19 Q I want to show you what's been admitted as State's Exhibit Number 1.
20 Do you recognize this place?

21 A Yes.

22 Q And that's the Circle K?

23 A Yes.

24 Q That you went to October 10th. Now how did you arrive at the Circle K,
25 what mode of transportation?

1 A I rode by motorcycle there.

2 Q When you rode your motorcycle to the Circle K, where did you park?

3 A I parked, according to this picture, to the right hand side. If you're
4 looking at the building, to the right hand side of the main door there's a handicapped
5 spot and then there's a checkered board. I was in this checkered board spot where
6 I always park there.

7 Q All right. So, where you park is not actually in this picture frame?

8 A Not in this picture.

9 Q So what did you observe while you were there?

10 A When I pulled up, I had observed two gentlemen having a conversation
11 amongst each other on the loud side. It caught my attention so I decided to stand
12 and observe it.

13 Q Okay. Let me show you State's Exhibit Number 2. Can you show us
14 on this exhibit where these gentlemen were having a conversation?

15 A The conversation took place between the first gas pump you see here
16 and --

17 Q Now let me stop right there. You can actually -- if you touch the screen
18 you can draw on it.

19 A Oh, okay. It took place in this area here. This is where it started. When
20 I pulled up I noticed two gentlemen having a conversation around the back of the
21 truck.

22 Q Can you describe these two gentlemen for me?

23 A One of 'em was a man with a gray beard and whitish hair. The other
24 person had his hair pulled back very tight, a little on the heavier set side, probably
25 somewhere in 30s and the other man looked about in his 60s.

1 Q All right. So, this gentleman that you saw who was in the 60s with the
2 white beard, do you see him in the courtroom today?

3 A Yeah.

4 Q Will you please point to him and describe an article of clothing that he is
5 wearing?

6 A He's wearing a tan shirt in between the two people at this table.

7 MS. WONG: May the record reflect the identification of the Defendant.

8 THE COURT: The record will so reflect.

9 BY MS. WONG:

10 Q And the younger gentleman with his hair pulled back -- I'm showing
11 Defense Exhibit A --

12 A Yep.

13 Q That's the individual that you saw talking with the Defendant?

14 A Correct.

15 Q Now where were these two gentlemen standing in relation to one
16 another?

17 A Rather close. I actually thought that the two gentlemen knew each
18 other.

19 Q What gave you that impression?

20 A The conversation that I had overheard was one wanted a ride back to
21 where I thought he came from, is what it sounded like, and the other one said I'm
22 not taking you anywhere. And the other guy said, where am I supposed to go. So,
23 from that it sounded to me like they knew each other and one didn't want to take the
24 other one back to where he started from. That's why I sat there listening to it
25 because I thought it was entertaining.

1 Q You thought it was entertaining?

2 A For a minute, yeah.

3 Q So, the person that was asking for the ride, that was the younger
4 individual?

5 A Yes.

6 Q And the one that was telling the younger one that he wasn't giving him
7 a ride, that was the Defendant?

8 A Correct.

9 Q Now were they arguing at this point or was it just a loud conversation?

10 A I would say it was a disagreement conversation. It wasn't going
11 beneficial in either direction, but one -- the gentleman over here had said for the
12 other gentleman to leave him alone.

13 Q Okay. And what was the younger individual doing?

14 A Persistently keep coming back up to this gentleman, for what reason
15 I'm not sure. He told him he wasn't going to give him a ride anywhere. He said go
16 away from me. Leave me alone. He kept coming back to him.

17 Q Now you said the Defendant kept saying leave me alone. Was this
18 younger gentleman, was he touching the Defendant?

19 A Not him directly, no. His car. He was around his car.

20 Q All right. Was the younger individual making aggressive moves towards
21 the Defendant?

22 A I don't know if I could perceive it as aggressive, but he definitely kept
23 coming back. That's why I thought they knew each other.

24 Q When you say coming back, are you talking about he was just in his
25 space?

1 A Yeah, he got in his face and he walked away and then he came back.
2 Q I mean, not in his face but in his space.
3 A In his space.
4 Q Correct.
5 A Space, yeah, in his space.
6 Q At any point did the younger individual get within -- I'm talking an inch --
7 of the Defendant's face?
8 A Not in like an aggressive manner where someone wants to chest up to
9 you to push you around, not like that, no.
10 Q Okay. At any point did the younger individual threaten the Defendant?
11 A Only in his persistency to keep on returning to this individual.
12 Q And how close did the younger individual actually get to the Defendant?
13 A Close.
14 Q How close?
15 A Almost at his face. Within a foot, one foot from each other, yeah.
16 Q Okay. And what was the younger individual saying when he got within
17 a foot of the Defendant?
18 A Words exactly, I can't recall.
19 Q Were they threatening in nature?
20 A Not really. I didn't see 'em as -- the only thing I perceived as
21 threatening is he kept coming back when he was told leave me alone. He kept
22 coming back.
23 Q Okay. All right. So, what happens after you observed this conversation
24 taking place?
25 A The older gentleman told the guy to leave him alone, to go away. He

1 kept pestering him and coming back to him. He said if you don't get away from me
2 I'm going to cut you with this knife. He waved his hand around. It looked like a
3 keyring. I never saw any weapon like that.

4 Q Did you actually see an object in the Defendant's hand when he said
5 I'm going to cut you?

6 A From where I was I only saw the hand motion.

7 Q Okay.

8 A And it was as if he was griping a set of keys.

9 Q Okay. So, you didn't see the object itself, but it looked like he was
10 grabbing something -- holding something.

11 A He made the gesture if you don't leave me alone I'm going to do
12 something to you.

13 Q Did he say I'm going to do something to you --

14 A No.

15 Q -- or I'm going to cut you?

16 A He said I'm going to cut your little pecker off, is what he said.

17 Q Okay. And where did the Defendant have this knife pointed at when he
18 said I'm going to cut your little pecker off?

19 A In his direction.

20 Q In his direction. Okay. And how far was the Defendant standing from
21 the younger individual at the time?

22 A Maybe four feet.

23 Q And when the Defendant said I'm going to cut your little pecker off, what
24 was the younger individual's reaction?

25 A No, you won't. He tried to turn around and walked two steps back the

1 other direction and then turned around and came back. I haven't really seen the
2 video and it's been a couple years.

3 Q Okay. You've never seen the video of that?

4 A [The witness shakes his head in the negative].

5 Q So, now at any point did you hear the younger individual say he was
6 going to cut the Defendant?

7 A No.

8 Q Did you ever see a weapon in the younger individual's hands?

9 A No.

10 Q All right. So, what happens after the younger individual walks away
11 after being told he's going to have his little pecker cut off?

12 A At that moment, the South Point security guard had gone into the store.
13 When he had come back out I was still watching this going on. He stopped and
14 turned and at that some --

15 Q Who is he?

16 A The security guard. The security turned -- when he came back out and
17 looked at me, I looked at him at that same time. As soon as that had happened, I
18 looked at the security guard. We both looked forward and heard him say, heard the
19 younger man say he sprayed gas on me. He just poured gas on my face.

20 Q Okay. Now did you actually gas being sprayed onto the younger
21 individual's face?

22 A At the exact time that that happened my eyes were turned to the
23 security guard. When I looked back, I saw the younger man wiping his face saying
24 he sprayed me with gas, he poured gas on me.

25 Q All right. And what happened after that?

1 A The security guard told him to walk away. He said just walk away. And
2 he stood there and he goes, he poured gas on me. He said just walk away. And I
3 looked back at the security guard and that guy, the younger gentleman, seemed to
4 have veered towards this direction, if you can see that, over this way. And words
5 were uttered, leave me alone or I'm going to light you on fire.

6 Q And that was uttered by whom?

7 A That was from the man over here, the gentleman there.

8 Q The Defendant?

9 A The Defendant.

10 Q All right. Now when the younger individual was wiping his face saying,
11 you know, he sprayed with gas, what was the Defendant doing?

12 A Pumping gas in his car.

13 Q And then at that point that's when the security guard intervenes and
14 tells the younger individual to just go away?

15 A Right. So, we stand there watching him when he told him to walk away
16 and he kept walking back.

17 Q Okay. And what happened after that?

18 A The Defendant pulled out a BIC lighter and he flicked and said, I'm
19 going to light you on fire if you don't leave me alone. Get away from. He said, no
20 you won't. He flicked the lighter once and he was a decent amount of space away
21 from him that that wasn't going to do it. But when he did it again because the guy --
22 the younger gentleman I think bent forward or took a step towards him. He did it
23 again, he put his arm out that he had just wiped his face off with gas with to block
24 the flame I guess and his arm went up in fire and then the rest of him went up in fire.

25 Q How many times did you see the Defendant actually flick that lighter?

1 A Twice.

2 Q And how many times did you hear the Defendant say he was going to
3 light the individual on fire?

4 A Once.

5 Q Okay. And how close was the younger individual to the Defendant
6 when the Defendant flicked that lighter the second time to light him on fire?

7 A A foot. He was close.

8 Q And was it that the younger individual walked towards the Defendant or
9 did the Defendant walk towards the younger individual?

10 A No; the younger individual walked towards the Defendant.

11 Q That's your recollection of it?

12 A It's been a long time.

13 Q That's okay. All right. Now at this point the younger individual goes up
14 in flames, right? What happens after that?

15 A He's screaming. He shed the clothes that were left on the ground. The
16 brave security officer must have walked -- as I was ready to duck behind the truck
17 thinking the place was going to go up in a burst, he must have walked forward
18 towards him. I remember him stomping out the boxer shorts on the ground; I
19 remember the younger guy running around, it hurts, it hurts. He lit me on fire, he
20 light me on fire. He's running around this area of the gas station over here now.
21 The other gentleman must have finished pumping his truck. I know he was standing
22 by the front of his car, by the door of his car. That all happened fast. The clerk was
23 on the phone. After he got lit on fire and the security guard stomped out the boxer
24 shorts, I went inside the store to go get the frozen coke I originally was going to get
25 30 minutes ago, and when I went in, they're like, what happened, what happened. I

1 said he poured gas on him. He lit him on fire. When I came back out, the younger
2 man was sitting on this pedestal here.

3 Q Hold up. Give me one second to just kind of clear away all this.

4 A He had him sitting here and he gave him a towel to put over his lap.

5 Oh, yeah. When I -- before I went into the store, when that incident was going on
6 and the lighter was lit, another person was walking behind me. He also saw that
7 same incident and he had some words to say at the same time.

8 Q Okay. I don't want to talk about what the other guy saw. However -- so
9 at some point after Defendant lights the younger individual on fire, another individual
10 walks by the gas station?

11 A He's walking up as it was going on. Right.

12 Q Okay. He's walking up as it's going on?

13 A Yep.

14 Q Okay. Is there an interaction then between the Defendant and this
15 other individual?

16 A Yeah.

17 Q Okay. Can you tell us about that?

18 A As I was ready to duck behind that truck because this large ball of
19 flames go up, that guy walked by. He walked all the way to the end of the gas
20 station all the way to this corner. It would be like over here area, way over there.
21 And he says what's matter with you. That's a human being. We don't light human
22 beings on fire at a gas station. The other gentleman, the Defendant, said, it's none
23 of your business. I'm going to cut you with this knife. And he said, are you going to
24 light me on fire too?

25 Q Okay.

1 A He proceeded to walk across the street.

2 Q Who did?

3 A That person who had seen that went across the street. I think he must
4 live at the apartments or whatever. He came back to the gas station after.
5 After that happened, I heard that statement. After I heard that, that's when I went
6 inside the store and then I came back out.

7 Q During that confrontation with the other individual, what was the
8 Defendant doing?

9 A Well he obviously must have heard the other person make the
10 comment to him. He said it's none of your concern. I'll cut you with this knife. He
11 said, are you going to light me on fire too. Then that seemed to end. That guy
12 walked away. The Defendant went back to the front of his truck.

13 Q Okay. Did the Defendant at any point approach that other individual?

14 A No.

15 Q All right. And you say you saw or you heard him say I'm going to cut
16 you with his knife? Did you actually see a knife at that point?

17 A Same thing. Just the hand gesture of pointing.

18 Q Okay. Now other than pointing that knife at the other individual, did the
19 Defendant point the knife at anybody else?

20 A No.

21 Q Okay. So, he didn't point the knife at the younger individual?

22 A Well he did that before he got gas poured on him. He said, I'm going to
23 cut your pecker.

24 Q Okay. But afterwards you didn't see him --

25 A No, no.

1 Q -- point the knife at the younger individual? Okay. And so what
2 happens after the other individual leaves?

3 A After he left I went in the store. I came back out of the store. The
4 security guard was still there. By then, the security guard's boss showed up. The
5 clerk had called the fire department and told them that both fires were out as in the
6 clothes and the individual.

7 Q What was the Defendant doing?

8 A Still standing by his truck.

9 Q What was he doing by his truck?

10 A I think he was eating some of the food that he had bought from the gas
11 station because within maybe a couple minutes after the ambulance showed up, the
12 police showed up, and when that happened, he was still eating the food that he was
13 eating before.

14 Q Okay. All right. And, Mr. Gach, as you testified to earlier you haven't
15 seen this video yet; right?

16 A Mm-mm.

17 **[EXHIBIT #18 PLAYING]**

18 BY MS. WONG:

19 Q All right. Now do you recall what's happening here?

20 A Yeah. That's where he sprayed him with the gas, yeah.

21 Q How far would you say the Defendant is standing from the younger
22 individual when he sprayed him with gas?

23 A About four or five feet. It's like two arm lengths.

24 Q And Mr. Gach, earlier you had said that the younger individual at some
25 had gotten with an inch or inches from the Defendant. When you see that point in

1 the video that you recall, will you let us know?

2 A Mm-hmm.

3 Q Okay.

4 A Right about there, right there.

5 Q Okay. What's right there?

6 A Well that's him reaching out to him.

7 Q Okay. So, earlier I had said when the Defendant flicked his lighter, was
8 it the Defendant who approached the younger individual or was it the individual who
9 approached the Defendant, and you said definitely the younger individual
10 approached the Defendant?

11 A Yeah, I'm wrong.

12 Q And when now seeing this video --

13 A Yeah.

14 Q -- what's your response to that question?

15 A Yeah. He reached out towards him.

16 Q The Defendant reached out towards the younger individual?

17 A Yeah. If you play that -- is that the first flick of the BIC or the second
18 one.

19 Q Are you asking me?

20 A Yeah. I can't tell -- where it's paused I can't tell if that's the first time he
21 reached towards him or if it's the second time that he ignites him.

22 Q Okay. We'll go back about 15 seconds. Earlier when you said the
23 Defendant got -- or the younger individual got within an inch or inches from the
24 Defendant, at what point did that happen?

25 A Well he got close to him in the very beginning of the -- before he

1 sprayed gas on him he was real close to him. He poured the gas on him and then I
2 guess from where we're at now, he had poured gas on him. Now he's reaching
3 towards him. Can you play that?

4 Q Which part? You want me to play the --

5 A Right where it's at if you can roll it forward.

6 Q Okay. Mr. Gach, right before the Defendant lit the younger individual
7 on fire, did the younger individual even take a step towards the Defendant?

8 A No.

9 Q Now do you recall what the Defendant was doing at this point when he
10 walked into the victim or towards the victim?

11 A No. I think I was probably ducking behind the truck at the same time
12 thinking the place was going to blow up.

13 Q That's a good point. Okay. Why were you so afraid that the whole
14 place was going to blow up?

15 A Because you've got open flame and you've got an open nozzle and
16 everything else gas station. I mean, you saw how big that light was, how much light
17 came off that. It was scary.

18 Q You were scared?

19 A Yeah.

20 Q You thought your life was in danger?

21 A I didn't know if I should run and help the guy that got lit on fire or duck
22 behind the truck because the whole place is going to blow up.

23 Q And do you recall how many people were at the gas station that night
24 that you can see?

25 A That were actually present probably like half a dozen, and then by the

1 time the authorities came probably four more on top of that?

2 Q But at the time that this younger guy got lit on fire, there was about half
3 a dozen people at this gas station?

4 A Including all the staff and all, yeah.

5 Q What's on fire on the ground there?

6 A His boxer shorts.

7 Q What was the younger gentleman wearing at this time

8 A Nothing.

9 Q And do you know what the Defendant was doing at this point, why he
10 was advancing -- what he was doing as he's advancing towards the younger
11 individual?

12 A No. You know, as I said, I was surprised that the security guard walked
13 towards the fire as I moved back. So, by the time I came back up, you know, from in
14 the position to be able to see what was going on, I saw the security guard stomping
15 out the shorts. I thought he went to his truck and got this guy a towel. And then I
16 think the Defendant went back to his truck. I was standing next to the security guard
17 asking him if he was going to let the guy leave.

18 Q Let the Defendant leave?

19 A Yeah.

20 Q Did the younger individual ever try to leave the premises?

21 A Uh-uh; no.

22 Q Do you recall if the Defendant ever told the victim he couldn't leave?

23 A The Defendant ever told the victim he couldn't leave? No. I don't know.

24 Q Did you ever hear that statement?

25 A I never heard that statement.

1 Q Will you let us know when you saw the Defendant engaging that second
2 individual.

3 A Oh, okay. Probably right here.

4 Q Okay. What makes you say that?

5 A Because the way he's attention is directed out toward there.

6 Q Okay.

7 A Out towards that direction.

8 Q Now earlier you said that the Defendant never approached that second
9 individual?

10 A I didn't --

11 Q Does it now appear on the video that he does in fact approach that
12 second individual?

13 A Yeah, yeah, he does. I thought he had yelled that from the corner of his
14 truck, but obviously he walked over there.

15 Q Okay. How soon after the younger individual was set on fire did the
16 police and paramedics actually respond to the scene?

17 A A while, a little while.

18 Q As in minutes, hours?

19 A Enough time for the gentleman who walked up behind me to go across
20 the street to his apartment, come back with a relative, and people were asking why
21 is there naked guy running around the gas station.

22 Q Okay. So, by the time the other guy came back to the gas station, the
23 paramedics and the police still had not arrived?

24 A The ambulance came a couple minutes after that and then two patrol
25 cars came in after that or police cars.

1 Q It was more than a few minutes. Now after the younger individual got
2 burned, did you notice any injuries on him?

3 A No; I heard the ambulance driver take him and said I've got a -- I'm
4 going to UMC, I believe. I have a burn victim, second degree burns all over his
5 body, and we're taking him there now. They left quick. They left real fast.

6 Q So just a few questions before we end here. Did you ever hear this
7 younger individual say anything threatening to the Defendant?

8 A No.

9 Q Did you ever see this younger individual with a weapon?

10 A No.

11 Q Did you ever see this younger individual touch the Defendant?

12 A The actual Defendant, no.

13 Q And you mentioned all he did was lean on his truck?

14 A Mm-hmm.

15 Q Now did you actually see what the younger individual was doing to that
16 truck?

17 A No.

18 Q Okay. Did you ever see the younger individual key his car, key his
19 truck?

20 A I didn't, no.

21 Q Okay. Did you ever see him get into the bed of his truck?

22 A No.

23 Q Did you ever see him go into the -- sit on the driver's side or the driver's
24 seat of the truck?

25 A When I first got there, he was -- the younger individual was around the

1 passenger side of the truck which is why I thought that they were together.

2 Q Okay.

3 A And so --

4 Q You didn't see him in the truck?

5 A I did not see him in the truck. As far as the passenger door, I don't
6 know if the passenger door was open or not but he was definitely on that side of the
7 vehicle.

8 MS. WONG: Okay. I'll pass the witness.

9 THE COURT: Cross-examination.

10 MR. COFFEE: Thanks, Judge.

11 **CROSS-EXAMINATION**

12 BY MR. COFFEE:

13 Q You said you saw the younger man around the passenger side of the
14 truck?

15 A Mm-mm.

16 **[STATE'S EXHIBIT #18 PLAYING]**

17 Q And I'm going back before the State had actually started the video. If I
18 tell you as opposed to running this back, and the State can correct me if I'm wrong,
19 but this is when Mr. Newell walks out of the 7-Eleven [sic]. Did you see Mr. Newell
20 walk out of the 7-Eleven [sic] or do you come in after that?

21 A I came in. He was already outside.

22 Q He was already outside. Okay. The two men were having a
23 discussion, I think you described it as a loud discussion; is that --

24 A A disagreement.

25 Q A disagreement.

1 A Yeah. It wasn't like a hatred argument. It was just --
2 Q The young man wanted a ride?
3 A That's what it -- yeah.
4 Q And the older man said no.
5 A No. Right.
6 Q And the younger man was persistent, I think you said?
7 A He said where am I supposed to go.
8 Q Where am I supposed to go. And you thought that they must be friends
9 because the interaction didn't make a lot of sense unless they were friends; correct?
10 A Yeah.
11 Q It would have been strange, for example, for the younger man to be that
12 persistent with a total stranger?
13 A That was my first thought.
14 Q Okay. It probably would be frightening to a total stranger for the young
15 man to be that persistent to demand a ride of that [indiscernible]?
16 A It's possible.
17 Q Possible. And, again, to this day do you know if the two were friends, if
18 they knew each other at all?
19 A Well I'd hope a friend wouldn't light a friend on fire. It was just that
20 when I got there the conversation where am I supposed to go. I don't care. You're
21 a jackass. Leave me alone. Those are types of things usually you hear between
22 bickering people who know each other. If someone says get out of my face or I'm
23 going to hurt you, usually it's, okay, time to now. That's why I thought they knew
24 each other.
25 Q Okay. And that was the point because you watched this for quite some

1 time; didn't you?

2 A What's that?

3 Q You watched this for quite some time, going on minutes?

4 A Yeah, yeah, yeah.

5 Q And the young man was persistent during the whole time that you
6 watched him wanting a ride, up until -- I mean, he gets lit on fire at some point, but
7 up until that point he's persistent. I want a ride, I've got no place to go, that kind of
8 thing.

9 A Yeah. He didn't seem to want to leave this guy alone, no.

10 Q And the older man said time and time and time again leave me alone,
11 leave the area, leave, but the younger man wouldn't do it; right?

12 A Correct.

13 Q And at some point there was a question about whether or not the young
14 man followed the older man. Now you said before -- you came in a little bit after this
15 so I'm going fast forward. At this point, wouldn't you agree that the younger man is
16 on the passenger side and the older man's walking towards the driver's side; right?
17 It's 630 on the frame.

18 A Yeah, I can't -- I don't see the younger gentleman in the picture there.
19 Is he over here -- there. Okay. Yep. That's him.

20 Q It looks like he's reaching in the back of the truck maybe?

21 A Yeah. I wasn't -- I didn't pay close attention to that because -- I never
22 heard the Defendant don't do that to my truck. I never heard him say get out of my
23 truck. I never heard him say get away from my truck even. I just heard him say get
24 away from me.

25 Q Did you see him approach the man -- both of them on the passenger

1 side and ask him to leave? Did you this or is this before you got there?

2 A This is probably about where -- when I came in.

3 Q Okay.

4 A And this probably where he said I need a ride, and he said no. He says

5 where am I supposed to go.

6 Q Okay. And we're in about eight minutes on the video?

7 A Yep.

8 Q I'm just going to let it play through for a moment, if I might. The older

9 man walks back to the driver's side of the truck?

10 A Mm-hmm.

11 Q And the younger man, it looks like he's reaching across the bed of the

12 truck; is that accurate?

13 A Yeah or he's leaning on it.

14 Q Leaning on it, leaning into it. That's what you saw; right?

15 A Mm-hmm.

16 Q And the older man approaches him again and that's when he waved a

17 knife and said something about his little dick?

18 A Yeah. There you go. Okay. So previous to that happening must have

19 been when he said I need a ride, he said no --

20 Q Okay.

21 A -- and leave me alone, and then he came back around and that's the

22 part that I heard, leave me alone or I'm going to cut you with this knife. I'm going to

23 cut your little pecker off. That's when I realized it was going sour.

24 Q Okay. And there was never actually any contact in this. He waves and

25 kind of tries to scare him. The younger man doesn't leave; does he?

1 A I don't think he ever -- I don't think he goes anywhere past this middle
2 part of the --

3 Q Okay. It looks like the older man is still having discussions. It looks like
4 he's pointing towards the Circle K; do you remember what he saying?

5 A No.

6 Q Do you remember the older man leaving to go to the Circle K to say
7 something to the manager; do you remember this?

8 A I know that the clerk got involved; no, I don't. Are you sure the timing is
9 correct that --

10 Q I'm not sure when you arrived. So, this may have happened even
11 before you arrived; it's possible?

12 A It's hard to tell because I don't remember him walking away from him
13 after threatening him with that knife, which is what you just told me he just said to
14 him, I'm going to cut you, and then you seem him walk away.

15 Q Okay. It may have been as late as this when you come in?

16 A I heard him say I'm going to cut your pecker off. So, whatever scene
17 we're in when that scene takes place is where -- I was there already for that.

18 Q Okay.

19 A I do remember the clerk getting involved but I --

20 Q And I suppose the point is you come in the middle of things, to some
21 extent? You come in the middle of things to some extent. They're already having a
22 discussion.

23 A Yes; agreed.

24 Q Okay. And there's situation where he comes back again towards the
25 gentleman. So, maybe this is -- but maybe -- it's hard to tell what exact happened;

1 right?

2 A If I saw the tape from --

3 Q There's no audio.

4 A I know. I can't tell the frame part of where we are. See, he's waving his
5 hand at him again.

6 Q It looks like he's pointing. And do you know where the -- would I be
7 correct in saying that the front of the store is right in this area from the pumps?

8 A The front of the store is right here.

9 Q Okay.

10 A I'm right -- I'm -- that Hummer that pulled in there, you saw before you
11 saw the outline of a black truck, that Hummer that pulled in --

12 Q Yes; perfect.

13 A -- he pulled into that front space. I'm in the front of that. The security
14 truck, the South Point security truck, is directly in front of the front door.

15 Q Okay. So, when the Hummer comes in we'll be able to tell where the
16 front door is?

17 A Yeah. The front door is here.

18 Q Okay. We're at --

19 A There's the Hummer pulling in. He's pulling in to the very front space

20 Q There we go.

21 A The South Point truck is actually in front of this Hummer. It's actually
22 like here.

23 Q Okay. There's been several times that Mr. Newell's walked around the
24 back of the truck and tried to get this individual to leave, saying, leave, leave, just
25 leave and get off my truck, and it didn't do any good?

1 A See, I remember the Hummer pulling up and I remember it pulling up
2 pretty soon after I got there.

3 Q So, we know for certain you're there at this point, there's no question?

4 A Yeah, yeah.

5 Q Okay.

6 A So, as far as that other point when he pointed his arm at him and
7 saying that that's when he was going to cut him, I'm not so sure that was the right
8 time.

9 Q Okay. Good enough. Now Mr. Newell at this point is between his truck
10 and the gas pump?

11 A I believe he's filling his truck at this point.

12 Q And we don't know if the gas [indiscernible] is behind him or in front of
13 him whether it blocks his exit or not?

14 A He's filling the truck right there, in my opinion.

15 Q Okay. And the other man looks like he's walking around the truck
16 toward Mr. Newell; is that right?

17 A There, sprayed him right there.

18 Q Do you remember if Mr. Newell had a safe exit up toward the front of
19 the truck where the gas --

20 A The door was open.

21 Q The door was open.

22 A The door was open.

23 Q The door was open so he'd have a safe way to get away. He was in a
24 corner and the bigger man approaches and he sprays him; is that accurate?

25 A Yep. I'm almost positive the door was open.

1 Q Okay. And it looks like he's going to walk away and this is the point and
2 where it --

3 A He walked over there.

4 Q -- yeah at 1310 where the security guard says [indiscernible]
5 somewhere right in here; right?

6 A Yeah.

7 Q And there's a pretty good distance. But then he comes back towards
8 Mr. Newell.

9 A That's what I was trying to say was he approached back after being
10 sprayed with gas. Here he is walking up towards him again.

11 Q After being sprayed with gas, after being told to leave, after the security
12 guard tells him to leave, he goes back towards to Mr. Newell and Mr. Newell is still
13 in that little area.

14 A And he's told him I'm going to light you on fire if you don't leave me
15 alone, and he says, no you won't.

16 Q He sprays him a second time, it looks like; is that right?

17 A I don't know.

18 Q Okay.

19 A I can't -- I don't see any gas coming out the same time. I think he's
20 probably threatening him at that point.

21 Q Okay. It looks like he's moving toward him again at 1400.

22 A I don't think his balance was very good.

23 Q Okay. Did it appear that he was drunk?

24 A Yes.

25 Q Okay. But he's in that small space at 1412 between the back of the

1 truck and Mr. Newell's door. Remember him saying anything about his shirt getting
2 ruined? He ruined my shirt; you sprayed my shirt with gas; my wife bought this shirt;
3 you remember that?

4 A I heard him say he sprayed me with gas; you ruined my shirt. I do
5 remember something about a shirt. I don't remember the wife thing about the shirt.
6 I do remember him saying he poured gas all over me.

7 Q Okay. And ruined my shirt. And that's about the time he comes back
8 towards -- it looks like he's back in Mr. Newell's area again at 1450. Mr. Newell
9 pushes him perhaps.

10 A Are you sure he didn't stumble.

11 Q He might stumbled. You may be right.

12 A I just remember after he doused him with gas it wasn't very long until
13 he --

14 Q I think here is where we have the -- he's pointing. And there's
15 something that he does at -- he's pointing at Newell; do you remember what he was
16 saying?

17 A He just keeps saying he poured gas on me, he poured gas on me, and
18 the security guard said just walk away.

19 Q Did he seem upset at that point?

20 A Who?

21 Q The man that got gas poured on him?

22 A He was -- like I said, his state of mind wasn't really --

23 Q Pretty drunk?

24 A Honestly, when I first got there, personally I thought he was mentally
25 challenged when I first got there. I really did not feel that he was -- remember I said

1 he wanted a ride --

2 Q Yeah.

3 A -- and he said where am I supposed to go. The way that all came out to
4 me, the way that I took that was he wasn't in a real clear thinking mind.

5 Q Okay.

6 A Where am I supposed to go, type idea. He wasn't very clear about a
7 lot, but he said his shirt got ruined. He wasn't real clear, like you ruined my shirt. It
8 was, you poured gas on me. My shirt got wet, you know.

9 Q Would erratic be a fair description?

10 A Erratic.

11 Q Yeah.

12 A Confused.

13 Q Confused. Okay.

14 A Drunk.

15 Q Drunk.

16 A You know Vegas. Drunk people come up to you all the time.

17 Q They do. You've lived here for a while?

18 A Uh-hm. I'm from Detroit and I'm a locksmith on top of that. So, I deal
19 with the public in weird situations all the time.

20 Q Usually when you tell 'em to go away they go away; right?

21 A [Inaudible response].

22 Q Usually they don't corner you behind your pick-up between a gas pump
23 and refuse to listen to reason; is that fair?

24 A That's fair but --

25 Q I understand. Now Mr. Newell at this point he approached the

1 individual. Do you remember him making any threats after the individual was set on
2 fire?

3 A I don't remember hearing Mr. Newell say anything after the incident
4 happened. I remember looking at the security guard just saying you're going to let
5 him leave.

6 Q Okay. Did Newell try and leave?

7 A No. That was kind of weird too.

8 Q Do you remember him asking the security guard -- it looks like he
9 follows the security guard and trails along with the security guard?

10 A I was surprised the security guard ran forward.

11 Q Okay. And Mr. Newell seems to be staying in the -- in arms reach of the
12 security guard. He doesn't appear to be threatening to the security guard in any
13 way?

14 A No.

15 Q Mr. Newell wasn't threatening to you in any way?

16 A Not to me directly, but by causing the scene made me feel for my life,
17 yeah.

18 Q Absolutely. He could have put a lot of people in danger. Absolutely no
19 question. But as far as direct threats to you no?

20 A No.

21 Q And the individual that we talked about before that was on the outside
22 that had something about are you going to light me on fire too, that person, Mr.
23 Newell wasn't close enough to actually do damage to that person; was he?

24 A He was never in striking distance if that's what you mean.

25 Q That's what I mean.

1 A No. If he had a knife he wasn't within three feet to reach him, no.

2 Q Okay. So, Mr. Newell didn't want the other person involved at that
3 point? I think he said something along the lines of mind your own business?

4 A He did. It's none of your concern.

5 Q It's none of your concern.

6 A I believe that's what I heard.

7 MR. COFFEE: Court's indulgence. Thank you very much for your testimony.

8 THE WITNESS: Thanks.

9 THE COURT: Any redirect?

10 MS. WONG: Yes, Your Honor.

11 **REDIRECT EXAMINATION**

12 BY MR. WONG:

13 Q Mr. Gach, when you said you -- when you first arrived you heard a loud
14 conversation occurring between the Defendant and the younger gentleman, and
15 somebody called somebody a jackass. Who called who a jackass?

16 A The Defendant called the younger man a jackass.

17 Q Okay. And what was his demeanor like when he said that

18 A He seemed very frustrated that he was being pestered for something,
19 whether it be a ride or money, he said leave me alone.

20 Q Now even after the -- when the Defendant sprayed -- after the sprayed
21 the younger gentleman with gas, who appeared more upset, the Defendant or the
22 guy who just got sprayed with gas?

23 A I don't really think that the Defendant was upset when he did that. The
24 younger guy was upset because he just got gas in his face.

25 Q Okay. At any point did it appear as though the Defendant was upset?

1 A Startled. He was not in the great mindset so I'm not really sure how he
2 would take that, you know. Most people you get burned with gas you don't want to
3 hang around and find out more bad things happen but --

4 Q But my question was did the Defendant appear upset at any point, the
5 Defendant?

6 A No.

7 Q Okay. So, he didn't even appear upset before he lit the --

8 A He was upset with the guy but, I mean, he was agitated. But, I mean,
9 when you say upset, yeah, he was upset. This guy's been pestered him for a while
10 so, yeah, he was upset. But I don't think he was any more upset than, you know, he
11 wasn't out of control at that moment.

12 Q So, were you surprised when the Defendant lit the younger guy on fire?

13 A Personally, I thought he was trying to scare him. That's my -- when it
14 took place, I could have sworn that I saw that BIC flick twice.

15 Q You said you thought he was just trying to scare him; what do you
16 mean by that?

17 A To get him to go away. That's what I thought. He didn't seem to have a
18 -- I'm going to burn you till you die but who knows.

19 Q Now that you've watched the video, now what do you think?

20 A After he douses him with fire, he turns around and he walks back to
21 him. He told him to get away from me. I'm going to light you on fire. He says no
22 you won't. And then he proceeded to remove him from him. He chased him down
23 with a BIC lighter.

24 Q All right. So, in your mind now, having reviewed the video two years
25 later, was that an accident?

1 A No.

2 Q And so now were you -- are you surprised by this reaction?

3 A Yeah.

4 Q Why?

5 A Because he put all of us in harm's way. I was terrified at that moment
6 that the whole gas station was going up in flames.

7 Q So with an extreme reaction?

8 A Uh-huh.

9 Q And then you say you thought it was weird that the Defendant didn't
10 leave after he set the victim on fire.

11 A Because I asked the security guard shouldn't you have done something
12 since you got a gun and he sprayed him with gas, isn't that bad, and he said well
13 there was no threat. He wasn't on fire yet. And then he said once the fire was out
14 then the danger was over. But I said if Mr. Newell tried to leave would you have kept
15 him from going? He said I would have tried to convince him to stay. That's what he
16 said.

17 Q Okay. But you say you thought it was weird the Defendant didn't
18 leave? Why did you think it was weird the Defendant didn't leave? Did you expect
19 the Defendant to leave?

20 A Everybody opts up to what, you know, what they call it, accountability
21 for your actions. Maybe he knew what he had done wasn't good.

22 Q Now at any point did you ever think that the victim was -- the one set on
23 fire -- that he was going to actually hit the Defendant?

24 A I don't think he could have put that together.

25 Q Okay. So, he was so drunk he couldn't punch anybody even if he

1 wanted to? All right. So, you never felt that the victim was going to hit the
2 Defendant?

3 A I didn't see it in the video either.

4 Q All right. So, you've watched the video. You saw the victim go up to
5 Mr. Newell right by his truck. Even at that point you did not think the victim was
6 going to hit the Defendant?

7 A I didn't see any aggression from the Defendant. The actions might be
8 aggressive but I didn't think that his intentions were there.

9 MS. WONG: Okay. No further questions.

10 THE COURT: Anything further?

11 **RECROSS-EXAMINATION**

12 BY MR. COFFEE:

13 Q Understood. You weren't in Mr. Newell's shoes of course?

14 A What's that?

15 Q You weren't in Mr. Newell's shoes?

16 A I agree. I know.

17 Q But you didn't have a 240 pound man walking around the back of a
18 truck at you; correct?

19 A Correct.

20 Q You didn't have 15 minutes of telling a 240 pound man 30 years
21 younger to go away, just leave me alone; is that true?

22 A Personally it would have been better if he would have just hit him. Then
23 I would have said it was self-defense, the guy had got in his face. But by lighting
24 him on fire it almost killed me.

25 Q I understand. I understand. A desperate, a pretty desperate move on

1 Mr. Newell's part; is that fair?

2 A Yeah.

3 Q Scared are people who desperate things; don't they?

4 A Definitely.

5 MR. COFFEE: Thank you. Nothing further.

6 **FURTHER REDIRECT EXAMINATION**

7 BY MS. WONG:

8 Q Did the Defendant seemed scared to you?

9 A After he got gas sprayed on him.

10 Q The Defendant. Did the Defendant --

11 A Oh, the Defendant, oh.

12 Q -- seem scared?

13 A I don't know him well enough to say what signs of fear if he wasn't
14 scared or not.

15 THE COURT: Anything further? All right. Thank you, sir, for your testimony.
16 You're free to go.

17 THE WITNESS: Thank you.

18 THE COURT: State, who's your next witness.

19 MR. STEPHENS: Adam Carlos.

20 **ADAM CARLOS**

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

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

24 THE WITNESS: Adam Carlos, A-D-A-M C-A-R-L-O-S.

25 THE COURT: You may proceed.

1 MR. STEPHENS: Thank you, Your Honor.

2 **DIRECT EXAMINATION**

3 BY MR. STEPHENS:

4 Q Mr. Carlos, did you live near the Circle K on South Las Vegas
5 Boulevard in October of 2012?

6 A Yes.

7 Q Okay. And do you recall that specific the early morning hours of that
8 day?

9 A It was nighttime, like 12, one or something like that.

10 Q Okay. So, just turning into the next day?

11 A Yeah, it was pretty late.

12 Q Okay. Where you headed at that time?

13 A Home.

14 Q And did anything catch your attention that happened at the Circle K?

15 A A small commotion that drew my attention.

16 Q Tell me about this loud commotion. How many people were involved in
17 this loud commotion?

18 A I just looked over and see some people but it was like -- it was the two
19 people.

20 Q Two people.

21 A Two gentlemen.

22 Q Okay. Can you describe those individuals for me?

23 A As far as what they looked like.

24 Q Yeah. Was one of them older, was one of them younger? Were they
25 both males?

1 A Yeah. It was an older man and just like an average, like 30, 40, the
2 other guy.

3 Q Okay. What was it that caught your attention at this time?

4 A Like argument, like arguing, loud arguing that drew my attention. Like, I
5 was walking and it got louder when I got I guess closer towards that way. I kept on
6 walking and I just heard like arguing, but it was like just the one person though. It
7 wasn't like arguing by two people.

8 Q It was one person that was primarily arguing?

9 A Yeah.

10 Q Was it the younger or the older gentleman that was doing -- the older
11 man?

12 A Yeah.

13 Q And what was he saying?

14 A He was saying leave me alone. He said I ain't going to give you a ride,
15 and if you don't leave me alone I'm going to brain you.

16 Q Could you tell whether or not the younger man was responding to those
17 comments?

18 A I didn't hear one thing from the guy at all. It was just the other man
19 screaming at the other guy.

20 Q Now this screaming, was it -- can you describe the scream for us? Was
21 it upset, was it fearful, was it --

22 A Screaming like angry, like leave me alone. Get away from me. I ain't
23 going to give you a ride. I'll light you on fire; I'll burn you. That kind of like rage.

24 Q Okay. I'm showing you Exhibit 2 -- sorry -- State's Exhibit 2. You can
25 point on the screen. Can you point to us where you were kind of located at this

1 time?

2 A Yeah. I was off the screen to the left there was a sidewalk.

3 Q Okay.

4 A On Richmar and Las Vegas. I was on Richmar walking down the
5 sidewalk walking across the street. So, at that time from this picture I'm to the left,
6 like on the sidewalk.

7 Q So, you're over this way but further left even --

8 A Yeah, like right where that side but straight left.

9 Q Okay.

10 A Like where the entrance would be to come in to Circle K but like that
11 whole sidewalk right there.

12 Q Okay.

13 A Walking towards that way.

14 Q Based upon what you're observing and hearing, could you determine I
15 guess the crux of the argument; what was the Defendant yelling about?

16 A Just what I heard -- first it was like commotion. Then I'm like, okay, it
17 looked like it was probably a fight or something. And then it caught my attention as I
18 got closer it got like, you know, louder and more like cursing and stuff and then like,
19 okay, what's about to happen. And then I just look over and then I could see like
20 arguing, the guy like hollering at the guy, just telling him like to leave him alone. If
21 he don't leave me alone how he's going to burn him, to stop bothering him. He's not
22 going to give him a ride, something about a ride.

23 Q Okay. What did you see -- during this argument, did you see the
24 younger gentleman, what was he doing?

25 A Just standing there like -- just standing there. He wasn't like arguing

1 back or anything like that. He was just like, I don't know, it was like -- it was weird,
2 like he wasn't saying nothing or doing anything, but the other guy was just like --
3 from where I saw it I just -- the guy didn't say -- wasn't doing anything, just standing
4 there next to him. He wasn't hollering at him. So, it wasn't really like a conversation
5 back and forth. It was just like one guy hollering at the other guy.

6 Q Okay. What did the older gentleman do at that time after he was yelling
7 at him?

8 A He just spoke on what he said. He just was like leave me alone. I ain't
9 giving you a ride, and he goes get the F--- away from me or I'm going to burn you.
10 All I see is like a lighter, like the ones that you can flick back, like the older school
11 lighters, the nice lighters, you pull back and kind of that. And then after he said that
12 he pulled it out and he had it like this and then he got kind of -- [indiscernible] and
13 then he had it like this and then got like pretty close to the guy where -- like he said
14 and basically he did it. So, it was like boom, boom, and then -- everybody was kind
15 of like [indiscernible] and he just -- the guy started to light on fire, and it was weird to
16 me 'cause I was like, how does that happen, you know. And then I was scared for
17 my life.

18 Q You were scared for your life?

19 A Yeah, I thought the whole gas station was going to blow up. My first
20 thought was I was going to run.

21 Q Okay. Let me ask you a couple of questions. The individual that had
22 the lighter, was that the older gentleman or the younger gentleman?

23 A The older one.

24 Q Okay. And is that older gentleman present in the courtroom today?

25 A Yeah.

1 Q Can you point to him and describe something he's wearing?

2 A Right here with a beige looking shirt and tied up with a beard.

3 MR. STEPHENS: Would the record reflect identification of the Defendant?

4 THE COURT: The record will so reflect.

5 MR. STEPHENS: Thank you, Your Honor.

6 BY MR. STEPHENS:

7 Q So, soon after the Defendant made the statement that he was going to
8 light him on fire he was lit on fire?

9 A Mm-hmm. He actually spoke on what he said he's going to do.

10 Q Did you see the Defendant do anything with -- well let you ask this. Did
11 you see whether or not the Defendant was pumping gas into car?

12 A No, I didn't see none of that.

13 Q Okay. Did you ever whether or not the younger gentlemen was
14 sprayed with anything?

15 A No; that's what was weird to me, like how can someone -- I mean, how
16 can someone -- go with just a lighter. It's not going to light me up head to toe.

17 Q Okay. How, as you recall, what did the younger gentleman do once he
18 was set on fire?

19 A Screaming and crying. He -- it happened so fast though like he was
20 flames but -- and that's when I was going to run but it happened so fast where he
21 just -- it burned all his clothes off. So, he was like a high pitched like scream, cry
22 kind of.

23 Q Did you see any injuries on the younger gentleman?

24 A No; just -- I mean, I saw him burn like head to toe like in flames, like a
25 movie like you would see a stuntman.

1 Q Okay.

2 A I mean, I was still like a little distance when I saw him on fire. So, I was
3 like, okay, I'm just going have to turn -- like start running to the left where it's just a
4 open field. But then I see that it happened so fast where the flames were gone. So,
5 that's why I didn't continue like to run the opposite way.

6 Q Okay. What did you do once the -- as you said the fire burned his
7 clothes, what did you do?

8 A Well at first I was like stunned, like wow, like did that just happen. Did I
9 watch a guy on fire at a gas station. I was like kind like of like shocked. I was
10 checking myself, like what am I seeing. And then I ran over there 'cause the man
11 was still pursing the other guy, the younger guy. So, I went to help the other guy.

12 Q Okay. And you said he was still pursing the younger guy. What do you
13 mean by that? Can you describe that a little further? How was he pursuing him?

14 A With like a little pocket knife or something like -- some kind of little knife
15 where -- because the guy was already burned like head to toe, and he was like -- he
16 started to urinate, like just like -- I don't know if it was from the shock or I don't know
17 why he did what he did.

18 Q Who was urinating?

19 A The guy that got burned. He was just right there peeing. I remember
20 just like going over, like going over because he still like had the pocket knife like
21 pointing to his private part and saying he was going to cut his pencil d-i-c-k that he'll
22 cut it. As the guy was like this and still like in a high pitch cry like --

23 Q Okay.

24 A Like -- kind of like, he just burned me. He just like [indiscernible] and
25 that's when I ran up because the security guard was just like real and cool about it

1 and I was just like heated because I thought my life could got taken, you know what
2 I mean.

3 Q All right. Let me ask you a couple questions. The -- so you said the
4 Defendant was pursuing the younger man, were your words, and you said that he
5 had a knife. What was he doing with that knife?

6 A Kind of like -- maybe like three or four feet from him, like three feet from
7 him and just like pointing kind of like kneeling like pointing to his private part.

8 Q Okay. And what specifically did the Defendant say when he was
9 pointing that knife at his private part?

10 A That he would cut his pencil d-i-c-k --

11 Q You can say it.

12 A -- pencil dick. He goes, I'll cut your dick off and like still that's why I
13 jumped in and tried to help the guy.

14 Q How close was that knife to the younger man's penis?

15 A It was like -- I think it was a small knife because like it was kind of small
16 but, I mean, he was kneeling down by his private like in a rage after he did what did
17 and that's why I was like whoa buddy.

18 Q Okay. If you can estimate how far away was the knife?

19 A If I was standing like from here -- oh, you mean how far were they apart
20 from each other.

21 Q How far was the knife from the younger man's penis?

22 A Maybe like from this edge right here to like right here pointing like this.

23 Q Okay. So, a matter of a foot, foot and a half.

24 A Two feet, something like that, three feet. I'm not sure exactly feet wise.

25 Q Okay. And you said it was a smaller knife. Can you describe that knife

1 for us?

2 A Not too good. It was like all in the moment and I know he had a little --
3 for the words that he said, that I was going to cut, and then the whole thing he was
4 holding then, yeah, I knew it was like a little -- like a pocket knife or something.

5 Q Okay. The -- was the blade just an inch or so or --

6 A Yeah; no, it wasn't big. I know for a fact it wasn't big because I wasn't
7 [indiscernible] at the time when it was all going on maybe because I just like heated
8 at the moment but like I didn't feel like -- I only felt like, you know, threatened when
9 the fire was going on. I thought I was going to blow up. But when the knife was -- I
10 wasn't too scared of the knife. It wasn't like a big old knife or anything like that, but it
11 was a knife.

12 Q Okay. You said that the younger gentleman was screaming. Can you
13 describe that scream for us?

14 A It was like a real high pitched like -- kind of like girl's scream, like, Oh, I
15 just got burned, like, Oh, my God. He wasn't like but he still was like dazed but just
16 like -- and then he kind of coming to me 'cause he saw me like by him and asking for
17 like -- to give him water, like pour water on him from the air and water thing at the
18 gas stations.

19 Q The water pump at the gas station?

20 A Yeah, like 'cause like over -- a little farther to the left where the screen's
21 showing him, there's a little air to put air and water for your -- well kind of like
22 towards that way and somewhat like towards the left and then that's when he was
23 like telling me like if he can have water, and I was like, hey man, it's not my call.
24 That's the medics. I don't want to give you something that I'm not supposed to give
25 you because I don't know that kind of procedure.

1 Q Okay. This is State's Exhibit 18. Is this a better angle to tell you kind of
2 -- to show us where you were?

3 [STATE'S EXHIBIT #18 PLAYED]

4 A We were, I mean, because when I was walking on this curb and then I
5 started approaching more like where -- the pumps --

6 Q If you touch the screen it'll show up on the screen.

7 A I was like -- the commotion and all that stuff was like around this area.
8 That's not exactly where I pointed but --

9 Q Okay.

10 A [Indiscernible].

11 Q Okay.

12 A That's where everything was going down like, the knife situation and --
13 where he was like this, screaming like a little further to like -- it's not in the exact
14 point where I'm trying to point to, but it's a little to the left, like at the edge of that
15 corner.

16 Q Okay. So, a little bit further to the left of that?

17 A Yeah. Just a little bit left. Kind of right there is like he was asking -- he
18 was just right naked and asking for the water and stuff.

19 Q At the time the Defendant had the knife and was pointing it at the
20 younger gentleman's penis, it was at that time that you got more involved in the
21 situation?

22 A Yeah. That's when I made my approach.

23 Q How was it that you got involved? What did you do?

24 A I ran up to him like, yo, what's going on? Why you doing what you just
25 did? Like, kind of like, I was heated 'cause at the moment I thought it could take my

1 life so I was mad at that too. So, I was just like, what's wrong with you. And he's
2 like, you don't fuckin' know and like pointed, you don't fuckin' know, to me like that.
3 And I'm like I don't need effin' to know that you don't light someone on fire for
4 whatever reason. You don't do that. And then, you know, I'm like, what are you
5 going to do, you going to cut me, you going to burn me too. And that's when I was
6 like in his face cussing at him and talking made crap to him for what he did.

7 Q Okay.

8 A And just trying to like -- 'cause the security guard was just more like,
9 okay, okay. So, I was just like well he's acting way too calm for this situation to -- for
10 that kind of situation. And the dude was still like approaching after he did it. So,
11 after he lit on fire and he was naked and he was still doing it with a knife, that's when
12 I approached because I was like whoa, you know, like no one's helping this guy that
13 was just on fire. So, I just took it upon myself just to try to step in --

14 Q Okay.

15 A So, he doesn't do anything more.

16 Q Okay. So, when you approached, were you approaching to assist the
17 victim or to confront the Defendant?

18 A The victim. Well both because it was the same time. So, I noticed that
19 he was on fire when I saw this. And then the reason why I went over because he
20 was still approaching him with the little pocket knife and talking, you know, still
21 approaching him and acting a rage for what reason I don't know but --

22 Q Okay.

23 A -- that's when I stepped in.

24 Q When you were describing as you approached that situation, you were
25 making a motion I believe with your right. What were you motioning? What was

1 happening at that time when you decided to intervene?

2 A Like what was he doing.

3 Q Yeah. Who was making this motion? You were making a motion with
4 your right hand. Who was making that motion?

5 A The older gentleman.

6 Q Okay. And what was the -- was there anything in his hand at that time?

7 A Yeah. It was little pocket knife that he had.

8 Q Okay. And did the Defendant make that gesture at you, the gesture
9 with your hand?

10 A Well he was like you don't fuckin' know, and he was like -- and I'm like
11 -- that's why I said what I said. What are you doing do, you going to cut me, you
12 going to burn me? I'm like is that what you're going to do next. That's why I said
13 what I said because, yeah, he had the little thing right there still.

14 Q Okay. How close did the Defendant get to you with that knife?

15 A I was probably like standing like right here to where you are at probably.

16 Q Okay.

17 A Even like right there maybe. About this distance.

18 Q Okay. So, six or seven feet away?

19 A Yeah, roughly around there.

20 Q And what was he specifically doing with that? You showed us but can
21 you describe for us orally what he was doing?

22 A It was something like -- we're talking like, no, like angered. Not literally
23 like saying he was like pointing to me like this, but like just his movements. You
24 don't effin know to me like that. It was like -- I don't think he was like try to get me or
25 anything, but it was just more like telling me like you don't effin know what

1 happened. But he still had it in his hand when he was like --

2 Q So, he's not necessarily jabbing it at you or anything?

3 A No, no, no.

4 Q He's just more using --

5 A Like as in talk --

6 Q Emphasis.

7 A Yeah, yeah.

8 Q Okay. Did you ever speak to the Defendant?

9 A Did I ever speak to the Defendant, the gentleman right here.

10 Q The older gentleman, yeah.

11 A Just when I was like telling him, like what are you doing; like what the
12 hell. And then a rage from me like being mad like for what I just did and fear of my
13 life. That's why I was kind of like cussing him, like, what the hell; like, what's going
14 on. You don't do that. I don't know where you're from but where I'm from you don't
15 light people on fire at a gas station.

16 Q So, were you surprised by the incident that you saw?

17 A Yeah, I was shocked. I was like am I seeing what I'm seeing. Is this a
18 movie. It's a thing you see a movie, you know, stuff like that doesn't happen every
19 day.

20 Q Why were you surprised?

21 A Because the guy was lit up from head to toe on fire by the gas pump at
22 a gas station.

23 Q What was the younger gentleman doing?

24 A It's like a high pitched --

25 A Sorry. Let me finish my question. I apologize.

1 Q What was the younger gentleman doing just before the Defendant lit
2 him on fire?

3 A Just standing there.

4 Q He wasn't doing anything?

5 A Yeah. The commotion I heard -- I saw a guy hollering at another guy,
6 but I never heard the other guy like, you know, commotion out of him at all. He was
7 just like mute. It was just the other guy telling the other guy leave him alone. He
8 ain't giving him a ride and he'll burn him. He's going to light him on fire and burn
9 him.

10 Q Okay.

11 A That's basically it. The other guy wasn't saying nothing though. He
12 was just like right there.

13 Q Okay. So, did you ever hear the younger gentleman make any threats
14 to the Defendant?

15 A No.

16 Q Did you see anything in this hands?

17 A Uh-uh.

18 Q Did you ever see the younger gentleman ball up his fists?

19 A No.

20 Q Did you ever see the younger gentleman make any aggressive
21 movements towards the Defendant?

22 A No; he just [indiscernible] right there.

23 Q After you had this spat with the Defendant, after you had this argument
24 with the Defendant, what did you do?

25 A Just keep talking more stuff to him and saying like karma is going to get

1 you; God's watching you. You're probably going to hell for this. I was just telling like
2 this for this talking crap to the guy. And then I actually left the scene 'cause I
3 figured, you know, there's a video at the gas station and there wasn't a lot of
4 witnesses. So, you know, it was going to take control of itself [indiscernible]. Then I
5 crossed the street and I went home. My mom and brother-in-law and my sister was
6 -- they noticed, you know, what happened because I just came walking in the door
7 like kind of heated and like shocked. And I told 'em what happened and everything
8 that happened and then they're like you got to go back and make a report. They
9 told me, you know, what if that was your brother. They gave me like a guilt trip kind
10 of like -- just you should go back and do the right thing. That's when afterwards --
11 we literally are three minutes from the store.

12 Q Okay.

13 A So, we jumped in the truck and went back and then made a statement.

14 Q Okay. When you arrived back at the Circle K --

15 A Yeah.

16 Q -- were authorities already there?

17 A They were and ambulance.

18 Q Okay. And you said you made a statement to the police?

19 A Yeah.

20 Q And was it written?

21 A Yes.

22 MR. STEPHENS: Okay. Court's brief indulgence.

23 BY MR. STEPHENS:

24 **[STATE'S EXHIBIT #18 PLAYING]**

25 Q Okay. If you'll watch the monitor, please, for a moment, I'll have some

1 questions for you during this. The gentleman in the middle of the screen here, is
2 that the younger gentleman we've been referring to?

3 A Yeah.

4 Q And do you see the older gentleman in this screen?

5 A Yeah, by the truck, the red truck I saw that night.

6 Q Okay. Is this about the time you arrived or started watching what was
7 going on, if you recall?

8 A They weren't that close. This is before I seen what was going on.

9 Q Okay. Have you seen this video before?

10 A No; first time I saw this.

11 Q Tell me which point you know you were at the scene.

12 A Yeah. This is like when I just seen -- when I was -- that's probably the
13 time I heard the commotion and that's when I just -- when I witnessed it and I said
14 like, oh, should I run or, you know, what should I do kind of thing. My first action
15 was just to say run 'cause I saw flames by the gas pump.

16 Q Okay. So, how much earlier before this gentleman was set on fire,
17 about how much earlier did you arrive?

18 A It was probably around the same -- really close to the same time
19 because I saw the burning part.

20 Q Uh-huh.

21 A And it looked there, you know, a little commotion probably before that,
22 like around that time frame. So, I seen all that like when I was walking. I just don't
23 know the time frame. It had to have been the same time frame though because I
24 seen when he did light him on fire and I seen they were like arguing -- he was
25 arguing with the guy and telling him to leave him alone, he was going to burn him.

1 So, probably the same time.

2 Q Okay. Would you estimate you saw that about a minute of arguing
3 before he was set on fire about?

4 A Maybe even less than a minute.

5 Q Less than a minute. Okay.

6 A Yeah. Just because they were -- like talking to him and he said
7 [indiscernible] and then he did it so that's probably at the same time.

8 Q Okay. Did you continue watching after this?

9 A Mm-hmm; yeah, because he was naked. It burned all the clothes off.

10 Q When you said burned off, did they actually turned to ash or like he took
11 'em off because they were burning?

12 A I don't know, like it just burned 'em all up, like you can see the pants
13 burning right now on the floor. [Indiscernible] the pants after it was taped up and it
14 was like tar, like melted or something like that, struck literally to the ground. The cop
15 had to like or the medic had to lift up like -- use their strength to take it off of the
16 cement, the burning pants.

17 Q You testified about a little bit about a security guard that got involved;
18 do you see him in this?

19 A Yeah, he's trying to -- he's kicking the flame right. It happened so fast,
20 like it was real quick the flames went out.

21 Q Where were you in this video; do you know?

22 A I should be -- I mean, if it has it on video I should be coming up pretty
23 soon or something because this is where the guy, the security guard, it seemed like
24 he, you know, he was kicking the pants, but the guy still's --

25 Q While you're watching right now, do you know where in relation to this

1 picture you're standing which direction?

2 A To the left.

3 Q To the left.

4 A Yeah, I was still, you know, walking on the sideway, like getting closer
5 because of what was going on after I seen the fire go out.

6 Q Were you walking on the sidewalk of Richmar?

7 A Yes.

8 Q And how far away is that sidewalk from where this is occurring?

9 A It's -- I don't know how many feet but it's not like a far distance but it's
10 just like if I keep walking right there, but it's not too far but it's not like real close
11 either.

12 Q Okay.

13 A I mean, it's just from the sidewalk to the gas pump. I estimate, I don't
14 know, a hundred feet maybe.

15 Q Okay. All right. Tell me, do you recall at what point the Defendant was
16 telling you he was going to cut his pencil dick off?

17 A When he was -- at that point it was after like -- I don't remember seeing
18 -- he's sitting down -- I just remember like when I approaching if he was like saying
19 that to him.

20 Q Okay. So, it could have been earlier than this? Was it soon after he
21 was lit on fire that he made that comment?

22 A Because he was already naked when he made that comment.

23 Q Okay. Was it soon after the victim disrobed that he was -- that he made
24 that comment, the Defendant said he was going to cut his pencil dick off?

25 A Can you repeat the question?

1 Q Was it soon after the Defendant --
2 A Oh, after he was on fire.
3 Q -- is that when the Defendant made the comment?
4 A Yeah. He was standing -- it was afterwards, yeah.
5 Q Tell me at what point you get involved here.
6 A I was near the guy. I think it shows me. I don't know.
7 Q You or the defense doing at this time?
8 A He's on the opposite side. I think that's when I was coming up.
9 Q Do you think this is when you started getting involved?
10 A I think so. I'm not sure a hundred percent, but I think that's why he's
11 going that way.
12 Q Okay. And where are you at on this video?
13 A I don't see myself.
14 Q Okay. Can you -- are you to the left of the screen or the right?
15 A Yeah, to the left.
16 Q To the left of the screen?
17 A Where the water pump and all that stuff, like the air and that stuff, was
18 kind of like going to that where he's walking toward that direction, kind of like where I
19 was, like walking towards.
20 Q So, how far away are you from the Defendant right here at this time of
21 2024?
22 A Pretty close. I'm not sure exactly like the amount of feet or anything like
23 that.
24 Q But you're just off the screen someplace?
25 A Yeah, just off the screen. I don't know if they're going to show that

1 whole part but I was like -- that's where I was walking when he was asking for water
2 and stuff. I was to the left of that.

3 Q Okay. I backed it up a little bit. At this point, do you recall whether or
4 not the Defendant had the knife in his hand?

5 A It looks like he might had it in his hand.

6 Q So, you can't tell from the video, but from your memory he had the
7 knife?

8 A Yeah, I know for sure I know he had a knife, yeah.

9 MR. STEPHENS: I'll pass the witness.

10 THE COURT: Cross-examination.

11 **CROSS-EXAMINATION**

12 BY MR. COFFEE:

13 Q So we're clear, he didn't really threaten you with a knife, but you said he
14 was kind of making a point?

15 A Yeah.

16 Q Mind your own business, something like that?

17 A You don't fuckin' know.

18 Q You don't know?

19 A Effin know, yeah.

20 Q Okay. Truth be told, you didn't really had to know what he had done
21 right up to that; did you?

22 A No.

23 Q You hadn't watched the man's truck for the 15 minutes preceding;
24 correct?

25 A Right.

1 Q You got there at or about the time that the fire starts?
2 A Right before the fire started.
3 Q Right before the fire starts. But you were there long enough, you said
4 perhaps as much as a minute to the prosecutor; do you remember that?
5 A As far as about being a minute like beforehand.
6 Q Yeah. Perhaps as much as a minute?
7 A Yeah about --
8 Q Maybe less but somewhere in there?
9 A Mm-hmm.
10 Q And understood we don't have stopwatches. We don't expect you to
11 have a stopwatch.
12 A Yeah, yeah, yeah.
13 Q But even in that amount of time you were there long enough to know
14 that the older man was saying I'm not going to give you a ride, get away from me?
15 A Right.
16 Q Did the younger man do that, did he get away?
17 A He was just mute. Like I said, he was just standing there like -- not
18 even verbally or -- he was just like just stone.
19 Q Did you see the older man spray the younger man with gas?
20 A No.
21 Q So, when the fire went up you don't know if the younger man had been
22 sprayed with gas at that point?
23 A No.
24 Q When the fire went up though it wouldn't surprise you if I told you there
25 was somebody sprayed with gas; right?

1 A Yeah, exactly, yeah.

2 Q Okay. Perfect. That gives an idea as to where you came in.

3 Did you hear -- you said the security guard was down --

4 A Right in the middle.

5 Q -- someplace near where the back of the truck is; right?

6 A Yeah, like in the middle like [indiscernible], yeah.

7 Q Did you hear the security guard tell the man, the younger man, just
8 leave, just walk away and just go?

9 A No.

10 Q Do you know if that might have happened before you got there, that you
11 weren't paying attention; do you know why?

12 A I was just walking minding my business going home and then I just
13 heard the argument, like getting louder and louder and then when he was all flames.
14 The security guard was basically like kind of -- I remember him doing that to the fire,
15 like putting it out. But it wasn't like -- it was just really like calm.

16 Q Okay.

17 A For a situation like that.

18 Q You remember the security guard trying to intervene and telling the man
19 to leave?

20 A He was just -- I don't know. He was just kind of like telling the other
21 guy --

22 Q After the fire; correct?

23 A Yeah.

24 Q Now you gave a written statement that night; yes?

25 A Yeah.

1 Q And in your written statement you didn't mention anything about Mr.
2 Newell threatening you; true?

3 A Right. I told 'em -- they asked me like what are you doing. I'm like I
4 [indiscernible] when he had the little knife because I'm pretty sure I would have
5 [indiscernible], but as far as the gas with the fire I was scared for my life.

6 Q Because there was fire near a gas pump?

7 A Correct.

8 Q And like Scarecrow in the Wizard of Oz you need to be scared of fire
9 near a gas pump; right?

10 A Anybody pretty much would be gas and fire is not a good place to be
11 around.

12 Q Okay. But as far as the knife you weren't -- you didn't feel physically
13 threatened with the knife?

14 A No.

15 Q And you mentioned someplace in your statement that you went up to
16 help the man that had been lit on fire; do you remember that?

17 A Mm-hmm.

18 Q I ran over to help the man on fire. That's what you said in your
19 statement?

20 A Mm-hmm.

21 Q Yes?

22 A I helped the man on fire, yeah.

23 Q And you mentioned on direct I think that -- you said you had to
24 intervene because the older man was still being threatening to the younger man; do
25 you remember saying that?

1 A Yeah. He was still approaching him.

2 Q Okay. Now you say intervene, do you mean you got between the two
3 and broke 'em up? What was going on?

4 A I approached because he was still like -- still going towards the man
5 that just got on fire that was helpless, and he was still -- and he was pointing the
6 little pocketknife to his penis.

7 Q When you say intervene though what we're talking about is you're
8 shouting from off screen, leave the man alone, you've set him on fire, something like
9 that?

10 A Yeah. I was asking what are you, like what's wrong with you? What
11 are you doing? That's what I was like telling him, like, what the hell.

12 Q Okay. But just so we're clear where you were at. You're not in frame.
13 You're yelling things from over on the sidewalk, you set a man on fire?

14 A I was closer from the sidewalk at that point because I was already
15 coming towards -- that's way closer from the sidewalk from that view where he's at.

16 Q Okay.

17 A It's maybe about a good 20 feet probably from the sidewalk from there.

18 Q Okay. Do you ever get close enough to the man that was lit on fire and
19 helping put out the fire and any of that [indiscernible]?

20 A At that time he was already -- flames were going already. He was
21 already naked. So, there was no need to put out no flames. They were already out.

22 Q Okay. You were talking about helping him, but that was actually --
23 you're over at an island. I think it's an island where they have water and they have a
24 air pump and that kind of thing?

25 A Yeah. I was a little closer to, kind of where like he's at just to the left

1 though. That's like similar like close to where that spit is at.

2 Q Just barely off frame?

3 A Yeah, it was barely off frame, yeah.

4 Q But would it surprise you if we played the -- and when you play the rest
5 of the video the State was playing -- but would it surprise you that you don't come in
6 frame throughout the rest of the video? You're never in the immediate area of
7 where the fire is or where this gentleman is sitting down; would that surprise you that
8 you were never any closer than that?

9 A As I recall I'm like kind of where's he at, like that's where I was like kind
10 of like talking smack to him and telling him what -- like I don't -- like when he said
11 you don't know, I was, like, I don't need to know to light someone on fire; like, you
12 know, I know better, like, whatever he did you could have did a different way --

13 Q Okay.

14 A --instead of doing the way he did. So, I was like, yeah, when
15 [indiscernible] -- still -- that's when he -- that might have been the time when he was
16 like, you don't know or I don't know. It looks like he had something in his hand
17 pointing my direction, the same direction I was at.

18 Q And we're at 22 -- it looks like he put his hand forward at some point.
19 That might have been the point that we're talking about right there; right?

20 A Yeah, yeah, right there, yeah.

21 Q And then it looks like Mr. Newell just walks away; is that accurate?

22 A Yeah, he's walking away. And that's when this guy's coming up to me.

23 Q There we go. And that's when you have interaction but, again, we're
24 probably off screen?

25 A Yeah. That's when he's saying he -- he was like in that high pitched

1 voice saying -- like he was like cry a scream, and then that's when he was telling me
2 about the water.

3 Q Now is it fair to say that Mr. Newell -- I mean I know we talked about
4 waving the knife but he doesn't engage the man after he's set on fire, he doesn't
5 tackle him or anything like that; is that fair?

6 A He's going towards him right now like [indiscernible]. You see me.

7 Q There we go. Now that's the security guard.

8 A No, that's the security guard. That's when he's like telling him like just
9 go away, go away. You see he's telling him and he still goes.

10 Q You remember what Mr. Newell is saying at that point?

11 A He was saying about his pencil dick. He was kind of like saying
12 commotion. Before he said to me, like, you don't effin know then he was like in a
13 rage, kind of like just like screaming.

14 Q Do you remember Mr. Newell telling a man not to leave when he goes
15 off screen here? Don't let him leave, don't let him go.

16 A Who said that?

17 Q Mr. Newell.

18 A Telling the guy --

19 Q Yes.

20 A -- I don't remember [indiscernible].

21 Q It looks like he goes to his truck.

22 A Around it to the gas pump actually.

23 Q Mr. Newell's more or less complying with what the security guard's
24 telling him to do; I take it? And there comes the naked man again.

25 A Mm-hmm.

1 Q It looks like things are defused at this point, more of less?

2 A Yeah, as far as that fire for sure. It looks like he pointed for him to sit
3 down. I don't know. That's what it looked to me, you know.

4 MR. COFFEE: Thank you for your testimony, Mr. Carlos.

5 THE COURT: Any redirect?

6 MR. STEPHENS: I do, Your Honor.

7 **REDIRECT EXAMINATION**

8 BY MR. STEPHENS:

9 Q Was it today, was that the first day on cross-examination was that the
10 first time you've ever been asked about whether or not the Defendant told the victim
11 to stay put?

12 A Yeah.

13 Q That's the first time you ever heard that?

14 A Yeah.

15 Q Did the victim ever try to leave?

16 A The victim? No, not what I recall, no. He was just -- right there and
17 crying, like high pitch, he got burned but he --

18 Q Okay. And did you ever see the Defendant with a cane or wheelchair?

19 A No, I didn't none of that from either party.

20 Q Did it appear that the Defendant was able to move okay? He wasn't
21 inhibited by any means?

22 A The one that got burned?

23 Q No, sorry, the older gentleman.

24 A Can you repeat the question?

25 Q Did it appear that the Defendant had any significant problem moving or

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A He moved pretty good to me.

MR. STEPHENS: I'll pass the witness.

THE COURT: Anything further, Mr. Coffee.

MR. COFFEE: Yes. Court's indulgence.

RECROSS EXAMINATION

BY MR. COFFEE:

Q Do you know if Mr. Newell has a herniated disk between L-3 and L-4 or L-4 and L-5?

MR. STEPHENS: Objection.

MR. COFFEE: You asked him if he used a cane.

MR. STEPHENS: I'd like to ask for foundation then as to how this individual --

THE COURT: Yeah. Hang on. Asking him about something that he perceived. Did he see him with a cane is a perception thing. Asking if he had a internal problem, how would he even possibly know that.

MR. COFFEE: Well that's kind of the point. Do you know if he had a problem

--

THE COURT: Hang on. The objection is sustained.

MR. COFFEE: Okay.

THE COURT: Re-ask the question.

BY MR. COFFEE:

Q Okay. Do you know if he had any problem that would interfere with his ability to move, ability to defend himself? Do you know if he had a problem that if he was pushed down he could be paralyzed, anything like that?

A No.

1 Q You just don't know because you don't know Mr. Newell; is that fair
2 enough?

3 A Yeah, it is. I never met the guy in my life.

4 MR. COFFEE: Very good. Thank you.

5 THE COURT: Anything further, State?

6 MR. STEPHENS: No, Your Honor.

7 THE COURT: All right. Thank you, sir, for your testimony. You're free to go.
8 While he's leaving the courtroom, let me ask the members of jury. Anybody need a
9 quick break right now? Let's see a show of hands. Anybody need a break? We
10 have a couple people. Let's go ahead and take a short restroom break then.

11 During this break -- hang on -- you are admonished that until you begin
12 deliberations, you are under oath and have not been discharged. Do not reach any
13 conclusions about this as you've not heard all the evidence. Do not talk to anyone
14 about this case; do not investigate any facts of this case. Do not view any media
15 press or internet reports about this case. Do not talk to anyone who may be
16 involved in any way this case. Do not discuss the facts of this case with each other.
17 Remember to wear your badge all times in the courtroom. Please leave your
18 notebooks on your chairs. There is very likely another -- at least one witness out in
19 the hallway so make sure that you don't talk to anyone who doesn't also have a blue
20 badge on. All right. Let Randy when you're ready.

21 [Outside the presence of the jury]

22 THE COURT: All right. We're outside the presence of the jury. Anything you
23 guys want to address or memorialize and put on the record?

24 MR. COFFEE: No.

25 THE COURT: State, let me ask you just a scheduling. It's 3 o'clock. How

1 many other witnesses do you have lined up for today and do you know how, like you
2 have a time estimate?

3 MS. WONG: Well we were very optimistic and we had everybody lined up for
4 today.

5 THE COURT: Okay.

6 MS. WONG: But that's not going to happen, I don't think. It's already 3
7 o'clock. So, I have the victim coming in next, I have the victim's wife, and then the
8 two paramedics. The victim's wife is very short.

9 THE COURT: So, you have the victim, the victim's wife, two paramedics --

10 MS. WONG: And then we have -- oh, we have the first responding officer
11 before the paramedic.

12 THE COURT: Okay. So, there's one -- okay.

13 MS. WONG: So, I'm thinking -- what are you thinking?

14 MR. COFFEE: I don't know. I read the prelim transcript. I didn't do it so don't
15 blame me so -- but the prelim transcript is kind of a -- it was kind of all over the
16 place. It depends on -- if we get in a rhyme it will quick and we get a ton of I don't
17 remember I don't know [indiscernible].

18 THE COURT: I mean, you know, the obvious concern is it's 3 o'clock. I don't
19 know how much -- I mean, we're only the first day of testimony. So, we're actually
20 making, you know, pretty reasonable progress, and we have almost a full day
21 tomorrow. I'm just thinking that 3 o'clock especially when you come back from the
22 break it's probably going to be 3:05-ish. Well anyway at least, you know --

23 MS. WONG: Would you like the two, the victim and his wife and maybe the
24 first responding officer and send the paramedics home?

25 MR. COFFEE: What I really want to do is --

1 THE COURT: It kind of, you know, I guess it all depends on long the victim is
2 going to be.

3 MS. WONG: Correct. Well my direct of the victim, I can tell you, is going to
4 be very short, maybe 15 minutes, maybe 20. I'm not even playing the video. So, I
5 don't know what you plan on doing on top?

6 MR. COFFEE: I know we've beaten the video to death. We'll probably go
7 through the video because it's the only way to put things in time context.

8 THE COURT: All right. Well it doesn't matter. I guess, you know, we won't
9 know until we get there. I'm just -- I just wanted to have a conversation because
10 remember today is the one day this week that I can't really stay late. I have to leave
11 probably just before 5 o'clock at the latest. So, there's a little bit of timing.
12 Tomorrow, you know, as I mentioned tomorrow and Thursday I'm happy to stay as
13 late as you guys want to accommodate your witnesses. Just today's the one day of
14 the week that I have an issue.

15 MS. WONG: I think we'll just do the victim and his wife and then we'll just call
16 it a day.

17 THE COURT: Okay.

18 MS. WONG: Because that should bring us pretty close to five if we're
19 watching the whole video.

20 THE COURT: Yeah, probably. Well anyway I'm not ordering. I just wanted
21 to at least put that on your radar screen to at least start thinking about because we
22 are inching toward the end of the day.

23 MS. WONG: I just want to be able to relief my officer then with the jury here if
24 we're not going to get to him.

25 THE COURT: Let me ask you this, Mr. Coffee. I know that the one big

1 question that you are obviously thinking about is whether your Defendant -- your
2 client's going to testify. Other than your client, how many witnesses were you
3 intending to call?

4 MR. COFFEE: My client's only the one that we might call.

5 THE COURT: Okay. So, actually then if that's the case we're looking at one,
6 two, three, four, five witnesses plus possibly the Defendant.

7 MS. WONG: Oh, I wasn't listing my --

8 THE COURT: Oh, okay.

9 MS. WONG: I also had a detective.

10 MR. COFFEE: And we've got a 9-1-1 tape that we're going to -- I can't
11 [indiscernible] our case in chief.

12 MS. WONG: Oh, and another officer. So, we have a total of one, two, three,
13 four, five, six, seven, eight, nine, ten, eleven, eleven witnesses.

14 MR. COFFEE: A lot of 'em are quicker.

15 THE COURT: We've been through three of them.

16 MS. WONG: Yeah. And we've already been through three. After the victim
17 testifies everything else is very short because they weren't even at the scene when
18 this crime was --

19 THE COURT: Yeah. I was going to say I'm not even sure what the -- and
20 then I'm assuming the paramedics are going to talk about injuries, right, that this is
21 substantial bodily harm that's the issue here.

22 MS. WONG: Correct.

23 THE COURT: Okay. All right. Well anyway I'm not going to order anything.
24 We'll just have to see how it goes. If it's going to be quick, it's going to be quick but,
25 you know, at least start thinking about it with the time that we have. Like I said

1 today, unfortunately, is the one day I can't stay late. All right. Let's go ahead and
2 take a break and we'll reconvene in a couple minutes then; all right.

3 [Recess taken at 2:59 p.m.]

4 [Proceedings resumed at 3:12 p.m.]

5 [Outside the presence of the jury]

6 THE COURT: Ready, Randy? You guys ready? All right. Okay. Let's go
7 ahead and bring 'em in, Randy.

8 [Inside the presence of the jury]

9 THE COURT: All right. Will counsel stipulate to the presence of the jury?

10 MS. WONG: Yes.

11 MR. COFFEE: Yes, Judge.

12 THE COURT: All right. State, who's your next witness?

13 MS. WONG: Theodore Bejarano.

14 **THEODORE BEJARANO**

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

16 THE COURT CLERK: Please be seated. Please state your name and spell
17 your first and last name for the record.

18 THE WITNESS: Theodore Bejarano, T-H-E-O-D-O-R-E B-E-J-A-R-A-N-O.

19 THE COURT: You may proceed.

20 MS. WONG: Thank you, Your Honor.

21 **DIRECT EXAMINATION**

22 BY MS. WONG:

23 Q Mr. Bejarano, do you also go by the name Teddy?

24 A Yes.

25 Q Would it be okay if I call you Teddy?

1 A Yes.

2 Q I want to direct your attention to October of 2012. Where were you
3 residing at that time?

4 A At the Paradise Spas Apartment complex.

5 Q Located at 9457 South Las Vegas Boulevard?

6 A Yes.

7 Q And did you live there by yourself or with somebody else?

8 A With my girlfriend and kids.

9 Q Your girlfriend and kids?

10 A Yeah.

11 Q Your kids?

12 A Yeah.

13 Q Okay. Is it plural? How many kids?

14 A Well at the time there was three now there's only two there.

15 Q Who is living there?

16 A Yeah.

17 Q All right. And what's the name of the -- of your girlfriend?

18 A Jennifer.

19 Q Jennifer. And is she still your girlfriend today?

20 A Yes.

21 Q Have you guys been married since?

22 A No, not yet but we're planning to.

23 Q You're engaged at the moment?

24 A Yes.

25 Q And she's your fiancé?

1 A Yes.

2 Q I'll direct your attention to October 9th of 2012. Do you recall what you
3 were doing late that night, maybe around 11, 11 o'clock at night?

4 A I went to Circle K to gamble.

5 Q Where were you at before Circle K?

6 A Home.

7 Q Okay. And how far is home from the Circle K that you're referring to?

8 A About a 15 minute walk.

9 Q And the Circle K that you're referring to, that's located at 9487 South
10 Las Vegas Boulevard?

11 A I believe so. It's on Richmar -- on the corner of Richmar and Las Vegas
12 Boulevard, yeah.

13 Q Now you said it takes about 15 minutes to walk there?

14 A Yeah.

15 Q So, on this night at some point did you go home and then go to the
16 Circle K?

17 A I was at home and then I went to Circle K.

18 Q Okay. And while you were at home, did you have anything to drink
19 while you were at home?

20 A Yes.

21 Q What did you have to drink?

22 A A can of Silver Ice.

23 Q A can of Silver Ice? Is that alcohol?

24 A A can of beer. It's beer.

25 Q Okay. And how many cans?

1 A One.
2 Q Just one?
3 A Yeah.
4 Q And do you recall what time it was that you left for Circle K?
5 A No.
6 Q And when you normally go to Circle K, do you normally walk?
7 A Yes, sometimes, and sometimes I get a ride. My fiancé drives me.
8 Q Okay. So, on this day did you ask your girlfriend to drive you?
9 A Yeah, I believe so, but I remember walking.
10 Q Okay.
11 A I walked.
12 Q Okay. Did she say no?
13 A I think so, yes.
14 Q Because it was late at night, right?
15 A Yeah.
16 Q Okay. So, do you recall what time you got to the Circle K?
17 A No.
18 Q Okay. Was it late?
19 A Yeah, it was dark out?
20 Q Okay. Was it late October night?
21 A It was dark out, yeah.
22 Q Dark out. Okay. All right. So, what happened when you got the Circle
23 K?
24 A I remember gambling.
25 Q Okay. Why did you go to the Circle K--

1 A Had a beer.
2 Q -- in the first place?
3 A To gamble.
4 Q To gamble. Okay. And so you in fact gambled at the Circle K?
5 A Yes, I did.
6 Q What were you playing?
7 A It was a game on the end -- I don't know -- I think it's call multi-strike.
8 Q A slot machine game.
9 A Yes, yes, slot machines.
10 Q And how long were you sitting there playing the slot?
11 A I don't recall that.
12 Q All right. And while you were there, did you have anything to drink?
13 A Yes.
14 Q What did you have to drink?
15 A A can of Silver Ice.
16 Q Another can of Silver Ice?
17 A Yeah.
18 Q Now at some point did you actually exit the Circle K?
19 A Yes.
20 Q Okay. And what happened after you left the Circle K?
21 A I only remember -- I only have the memory of gambling, drinking, and
22 asking for a ride.
23 Q Okay. So, at some point after you left Circle K you asked for a ride?
24 A Yeah; yes.
25 Q Do you recall where you were asking for a ride?

1 A I don't recall that.

2 Q You don't recall who you were asking for a ride?

3 A I don't recall that. I don't remember that. I know who now but, yes, I
4 didn't remember it till later.

5 Q Okay. So, you remembered later on who it was that you asked for a
6 ride?

7 A I remember later on, yes.

8 Q Okay. So, who is it that you were asking for a ride?

9 A I asked a ride from Patrick Newell.

10 Q From Patrick Newell. And you started to point at somebody. Will you
11 again point that person and describe the article of clothing that he is wearing?

12 A He's wearing a white button up shirt.

13 MS. WONG: Okay. Let the record reflect the identification of the Defendant.

14 THE COURT: The record will so reflect.

15 BY MS. WONG:

16 Q So, when you first asked the Defendant for a ride, where were you in
17 relation to the Defendant?

18 A In speaking distance. It was either I asked for a ride when I was in the
19 store and he was in the store or I asked for a ride when I was outside.

20 Q Okay. So, you don't --

21 A I'm not sure when I particularly asked for a ride, but I know that I did.

22 Q Okay. And do you recall what the Defendant's response was when you
23 asked for a ride?

24 A No, I don't.

25 Q Okay. Do you recall what happened after you asked for a ride?

1 A I remember getting sprayed on my shirt, taking off my shirt, and seeing
2 a flame.

3 Q So, the next thing that you remember after asking for a ride is being
4 sprayed with what?

5 A Gasoline.

6 Q With gasoline. And were you upset by having been sprayed with
7 gasoline?

8 A Yeah. I couldn't see. I didn't know what to do or where to go.

9 Q Did you see who sprayed you with gasoline?

10 A I seen the person who hold a flame up to me. I remember seeing the
11 flame and that Patrick had his lighter. I seen the flame.

12 Q Okay. We'll get to that in a second, but did you see who sprayed you
13 with gas?

14 A I don't remember that.

15 Q Okay. Do you recall what events led up to you being sprayed with gas?

16 A No, I don't.

17 Q Do you recall where you were when you were sprayed with gas?

18 A I don't -- not -- I remember being by the gas tanks.

19 Q I'm sorry. Say that again.

20 A The area of the gas tanks.

21 Q Gas tanks.

22 A Yeah.

23 Q So, it's a gas pump?

24 A Gas pumps, yes.

25 Q Okay. So, you recall being around the gas pumps?

1 A Yes.

2 Q But you didn't -- you don't recall who actually sprayed you with gas?

3 A I don't remember seeing gas being done. I just remember getting
4 sprayed with the gas and having it burning in my eyes and taking off my shirt.

5 Q And so after being sprayed with gas, the next thing that you recall is
6 what?

7 A Taking off my shirt and not knowing which way to go or what to do.

8 Q Taking off your shirt. Do you recall why you had to take off your shirt?

9 A No.

10 Q Okay. And so you took off your shirt and not knowing where to go?

11 A Yeah. I remember -- well I remember like those things. I don't know --
12 I don't recall what order they were in, but I remember that I took off my shirt because
13 it was a new shirt that I just got --

14 Q You took off your shirt because it was a new shirt?

15 A No; not because it was a new shirt. I'm remembering it's my new shirt
16 that my wife got me and I just got sprayed and I didn't know which way to go or what
17 to do.

18 Q Okay. Do you recall what the temperature was when you took your
19 clothes off?

20 A No.

21 Q Okay. So, you don't recall whether you were burned or not that night?

22 A I don't.

23 Q Okay. So, now -- so the next thing you remember is you don't which
24 direction to go?

25 A Yes.

1 Q Okay. What's the next thing that you remember after that?

2 A Well at a certain point I remember the flame, you know, right in front of

3 me.

4 Q Okay. So, is this before you took off your clothes or after or you don't

5 recall the sequence of events?

6 A I don't recall the sequence.

7 Q Okay. So, you have a memory of a flame? Describe that for us.

8 A And the person behind it, yes.

9 Q Describe that for us.

10 A It was about that big, I guess.

11 Q Oh, you're describing the flame?

12 A Of the lighter, yeah.

13 Q Okay.

14 A I recall the lighter. I don't recall -- you know, I just remember seeing the

15 flame in my face first.

16 Q Okay. See the flame but you don't recall seeing the lighter?

17 A Correct.

18 Q Okay. Do you know where the flame came from? Who was standing

19 by the flame?

20 A I know that he was standing behind the flame, I guess.

21 Q Okay. So, the Defendant was standing behind the flame and you saw

22 the flame, but you didn't see a lighter?

23 A Correct.

24 Q Do you recall whether anything was said to you before you saw that

25 flame?

1 A No.

2 Q Do you recall anything else besides the flame while you were at the gas
3 station?

4 A No.

5 Q No. Okay. So, what's the next memory that you actually have?

6 A Waking up in the hospital.

7 Q Okay. And tell us about that?

8 A I know it was 23rd.

9 Q Do you recall what month?

10 A No. I thought I had missed Thanksgiving and Halloween and New
11 Years and my wife's birthday. I thought it was -- so I thought it was a long time. But
12 I remember it was the 23rd.

13 Q The 23rd. Okay. So, what happened after you work up? Were you in a
14 hospital bed?

15 A Yes.

16 Q Okay. Describe to me your condition when you first woke up?

17 A I remember being in pain. I had -- my lips were in pain. People told me
18 that I look good, I looked better, you know, I looked better. But when I was helped
19 up and I got to the mirror, I thought I looked like a monster.

20 Q Why did you think you looked like a monster?

21 A I was like swollen and burnt and I had crème, you know, where it need
22 to be.

23 Q So, aside from your face, did you notice other areas that were burned
24 on your body?

25 A Yes. My arm and my chest and stomach. It was hard to get up. It hurt.

1 Q Okay. And could you actually see your flesh or were you in bandages?
2 A I was in bandages and I had like a -- something over this like a -- kind of
3 like a metal thing here.
4 Q A metal thing around your --
5 A I didn't know exactly. It was silver, silver bandage to help the skin.
6 Q Okay. And that's what the condition of your arm was when you woke
7 up? Something was wrapped around your arm?
8 A Yeah.
9 Q Was anything wrapped around your face?
10 A No; there was just cream on it.
11 Q Okay. Was there anything wrapped around your chest?
12 A No; they just had bandages.
13 Q Okay. So, they had bandages on your chest?
14 A Yeah, you know, like Band-Aid or big, you know, covering it.
15 Q Okay. And you said it was really painful?
16 A Yeah.
17 Q Can you describe that pain for us?
18 A It was a pain that was like -- it was a constant pain I couldn't rid of and
19 then there were sharp pains that would come in and out at different times and in
20 different spots on my body that hurt.
21 Q So, how long were you actually in the hospital?
22 A After that point, I think like three days. And they said I could go
23 because I was able to clean my wounds.
24 Q Did you have to clean your room?
25 A My wounds.

1 Q Oh, your wounds. Okay. Sorry.

2 A I was able to like clean my own -- I was able to clean my wounds
3 without the nurse being right there by that point. So, they said that I had to -- they
4 let me out there at that time.

5 Q So, you recall being in the hospital for three days?

6 A Yes.

7 Q What were you doing for those three days in the hospital?

8 A Lying in bed with pain.

9 Q So, while you were in the hospital, on a scale of one of ten, how painful
10 was that pain?

11 A Oh, from around like eight to ten until they gave me some pain
12 medication and then it would go down probably to like four, but it wouldn't stop.

13 Q All right. And were there certain areas of your body that were painful
14 than others?

15 A Oh, yes, my arm was a lot more painful.

16 Q Left side or right side or both?

17 A This arm, this left arm.

18 Q Left side.

19 A Was much more painful. My lips hurt more than other places. It was
20 hard to eat. My throat had hurt. It was very hard to go to the bathroom, to urinate
21 because that hurt. And so like it was hard to like walk. It just hurt to get up, it hurt to
22 walk, you know. The easier it got the more I walked or tried to do the little exercises
23 that the therapist would try to have me do; had me try to stretch my face.

24 Q Were these all things that you were doing at the hospital for those three
25 days?

1 A Yes.

2 Q So, you had to see a therapist?

3 A Yes.

4 Q And they were helping you go through some physical therapy?

5 A Yes.

6 Q What sort of things did you have to do during your therapy sessions?

7 A Stretch my face so that I --

8 Q Why did you have to stretch your face?

9 A So the skin wouldn't just stay tight and I was talking funny. I couldn't

10 really talk all that well anymore.

11 Q Why not?

12 A Because it gets like -- just like when my face got burned it just stops it

13 from moving like it used to.

14 Q Was it the left side of your face that was burned?

15 A Yes.

16 Q Okay.

17 A Plus they had to have something stuck down my throat. My throat hurt

18 a lot. It was hard to eat.

19 Q What did they have stuck down your throat?

20 A A tube to help me breathe.

21 Q This is when you woke up?

22 A No, no, no.

23 Q This is before?

24 A It was before. But when I woke up I still had the pain from it.

25 Q All right. So, let's concentrate on your face first. You had to learn to

1 move your mouth and move your cheeks.

2 A My mouth, my cheeks, my eyebrows.

3 Q Okay. What was wrong with it? You couldn't move it?

4 A I couldn't move it, like I couldn't touch it to move it.

5 Q Could you feel your face?

6 A I didn't -- I don't recall feeling my face, no.

7 Q Okay. Could you control that part of your mouth, the left part of your
8 mouth?

9 A No; I had -- I didn't have full control.

10 Q You didn't have full control?

11 A Yes.

12 Q And that affected your ability to speak?

13 A Correct.

14 Q Okay. Were you able to speak without slurring?

15 A No.

16 Q Okay. Were you able to speak as fluidly as you normally would?

17 A Oh, not at all.

18 Q So, what other things did you do during those three days in the
19 hospital?

20 A I couldn't lift my arm all the way up. So, I had to learn techniques of like
21 walking up the wall with my arm. I wouldn't walk all that well. I had to kind of like
22 re-learn to walk and get balanced. I had ringings in my ears. Even after the
23 hospital, I had dizziness problems.

24 Q Okay. Well I'm just focusing on the therapy --

25 A Oh, the therapy --

1 Q -- that you were receiving while you were in the hospital. So, you
2 couldn't walk, you had bad balance --

3 A Yes.

4 Q -- and so you were going through therapy and they were teaching you
5 how to walk?

6 A Yes.

7 Q Anything else?

8 A Balance a ball, a big ball like this.

9 Q Okay. And why were they doing that?

10 A So I could get my movement back in my arms and body. They had me
11 use -- I wouldn't call it -- well they're little like -- little tiny bar bell weights to lay down
12 and try to put 'em all the way up as far as I could stretch.

13 Q And was it painful while you were doing these therapy sessions?

14 A Yes, a lot of 'em were. Some -- I got tired really fast.

15 Q Actually let me ask you. What -- were you employed before this
16 incident?

17 A Yes.

18 Q What were you doing?

19 A I was a union stagehand in Vegas.

20 Q A union stagehand. What does a union stagehand do?

21 A Well I was capable of doing any -- I have multiple craft cards. I was --
22 at that point I was only being a high rigger which I get --

23 Q A high rigger; what is that?

24 A High rigger goes onto -- he gets a lift. They go and like a 70 foot lift or
25 50 foot lift and we drive it into the convention centers where we work and we go up

1 in the air and we climb up on the beams and stuff and we put steel through the
2 beams, you know, have shackles and we hook 'em up. Then we also get a motor
3 which is like about this big and it's -- it was pretty heavy naturally, I assume. I
4 haven't done it since. But we'd put that in the lift and go up with it and we'd pick it
5 up and just hook it on to the -- it motors up. We hook the motors straight up to the
6 spot where we run this steel, you know, 20 foot steels or 10 foot steels with a five
7 foot dead hand shackle. We'd hook the motor straight up to it and it was chain up,
8 then all we had to do was lower the rope and someone to put the chain on the rope
9 and we'd pull up the rope, bringing up the chain all the up to where we're at in the lift
10 and just hook it -- hook the hook on it.

11 Q Okay. So, does your job require a lot of physical labor?

12 A Yeah.

13 Q Okay. So, before this incident actually how much --

14 A And smarts.

15 Q Okay. And brains. Okay. Physical labor and brains.

16 A If those chain motors have an error and they fall, the whole lighting and
17 grid system can fall and be compromised and falling on people and hurting them,
18 killing them.

19 Q How much were you able to lift physically before this incident?

20 A Well I could easily put a chain motor, you know, a chain hoist into the lift
21 I don't know how much they weigh. But I know the [indiscernible], which are the
22 lights about this tall, this big, they were able 20 pounds each, and I could carry one,
23 two, three, four with my fingers.

24 Q So, eight pounds with your fingers?

25 A I have them, yeah -- you know, I hook one because I have the clamps.

1 So, I hook one clamp on one finger and one clamp onto the other and then I carry
2 'em. So, you usually wouldn't have to carry 'em past where like the outside door is
3 from where the box that holds the lights to where the truss, the middle truss would
4 be that we hang 'em on.

5 Q All right. So, now you're going -- now you in the hospital and you're
6 doing physical therapy and you're learning to lift just little dump bells?

7 A Yeah; yes. They also had me use this machine like this so I can get
8 more strength and movement back in my shoulder. I don't know if it was strength,
9 but more movement back in my shouter.

10 Q Okay.

11 A And on the machine.

12 Q So, you spent three days in the hospital doing this type of activity; right?

13 A Yes.

14 Q And do you recall what month it was when you left the hospital?

15 A Yeah, it was October.

16 Q It was October?

17 A Yes.

18 Q Okay. So, would it be fair to say it was around October 26th or so when
19 you left the hospital?

20 A Yes, yes, yes.

21 Q And you had got to the Circle K the night of October 9th into October
22 10th?

23 A Yes.

24 Q So, you were in the hospital for roughly two weeks?

25 A Yes.

1 Q All right. So, now once you get home, were there -- how did you treat
2 your injuries once you got home?

3 A We -- I had a friend give me aloe vera plant and we squeezed the juice
4 out of that or take the peelings of the insides and mix it up with some -- I think it's
5 called -- I don't know if it's called zinc oxide or zinc with Vitamin E as well and mix it
6 up a the cream and mix it up into like a lotion and I put it on basically this whole part
7 of my body because it's up here and here, on my ear, my face.

8 Q Okay. I want to show you some photographs so we can more easily
9 describe where you're putting this cream. I'm showing you State's Exhibit number
10 12.

11 A All like here --

12 Q So, do you recall being burned on the left side of your face?

13 A Yes.

14 Q Okay.

15 A And both sides of my lips.

16 Q On both sides of your lips. Now you don't obviously don't have any
17 recollection of having all these tubes down your throat?

18 A No, no.

19 Q Okay. I just want to concentrate on the burns that you see there on the
20 left side of your face. Was that still there when you went home?

21 A Yes.

22 Q Okay. So, was there raw flesh under there that you could see?

23 A I see it -- discoloration.

24 Q Oh, wait. Not what you see in the picture but actually when you went
25 home --

1 A Oh, when I went home.

2 Q -- was there was raw flesh exposed?

3 A Yes.

4 Q Okay. What did you do to treat the burns?

5 A That's what -- we made that mixture up --

6 Q Okay.

7 A -- of the creams together for healing. They had me read a pamphlet on

8 how the skin grows back and like that.

9 Q Okay. So now --

10 A My arm is worse than my face when I went home.

11 Q Okay. But I want to focus on your face. Okay. What -- as a result of

12 being burned, what affect did it have on your face, which covers your mouth, your

13 cheeks?

14 A For a long time I just had two different colors.

15 Q Okay.

16 A So -- and I had to put the cream on so that was a different color. I

17 remember just looking --

18 Q Let me be more specific. Did it affect your eyes at all?

19 A I don't know. Well there's a little bit more like discoloration from when

20 my eyes close that you can see when I'm opened it, you can see like the line of

21 different levels of burn.

22 Q Could you see as well after being burned as you could before?

23 A No; I've had laser eye surgery done and I don't see as well as I did

24 before.

25 Q Okay. Was it immediately after being burned you didn't see as well?

1 A That I couldn't recall.

2 Q All right. How was your eye hand coordination?

3 A I had to -- that's what the bouncing of the ball was for. Not only for the
4 exercise but so I can get my balance.

5 Q What was wrong with your eye hand coordination?

6 A My coordination, I just -- I wasn't me. I wasn't able to do what I used to
7 do.

8 Q What was wrong with your eye hand coordination?

9 A It wasn't there. You know, I couldn't move as fast; I couldn't see as
10 well.

11 Q After you got home from the hospital if I put a cup in front of you, could
12 you grab it?

13 A Not right away and it would take time.

14 Q What would you end up grabbing?

15 A Some things was easier than other things depending on the size of
16 what I was trying to get, but I had like a lot of help.

17 Q Okay.

18 A A lot of help with these things so I wouldn't have to go through any
19 more stress of how bad things were.

20 Q If I asked you to grab this cup, could you actually grab it?

21 A From what I remember I had a lot of problems grabbing things.

22 Q Okay. Would you miss it?

23 A Yeah.

24 Q Your [indiscernible].

25 A I would miss it.

1 Q How was your depth perception?

2 A Oh, I had no depth perception.

3 Q Okay. Is that why you would miss the cup?

4 A Probably, yes.

5 Q Okay. All right. Let's move on to our chest. Okay. Are those the burns
6 that you suffered as a result of being set on fire?

7 A Yes.

8 Q Okay. So, what did you have to do to treat those injuries?

9 A Just creams on and stay out of the sun. I had to stay out of the sun no
10 matter what now, but putting creams on and keeping it covered. Even under my
11 shirt I had to keep it covered because any time I went out I had to wrap. I was told
12 not to keep it -- let the oxygen go to it more, but I had to have to wrap it even though
13 I put clothes on to go outside because it hurt. We just put -- we put creams on so
14 we left like bandages off on my chest. We left the bandages off and put creams on;
15 I'd go through the pain of it.

16 Q Now did you experience any numbness anywhere?

17 A Yeah, in my lips. Away from my face. I was more like -- I don't
18 remember.

19 Q You don't recall any part of your body was numb or not?

20 A Not my chest. I don't remember numbness on my chest as much as I
21 remember like the numbs in my fingers and the numbs in my lips.

22 Q How were your shoulders?

23 A I still have shoulder issues where my fingers would go numb by
24 sleeping on different sides.

25 Q Did that happen before you were set on fire?

1 A No.

2 Q Or before you went to the hospital?

3 A No. When I got out of the hospital I had -- I couldn't sleep on either --
4 like I'd sleep on side but it would -- I'd have where it sounded fluid be in my ear go
5 like back and forth so I slept over here. I had to sleep on this side on my right side
6 for about at least a week to two weeks out of the hospital I had that -- I had to sleep
7 on one side because I heard the fluids and I'd get a headache --

8 Q How long did the headache last?

9 A -- on that side. Oh, the headache last longer than the fluid and the
10 dizziness. It probably lasted about two months at least.

11 Q Were they constant?

12 A And those when I'd lay down on that side to go bed I'd get a headache.

13 Q Was that every night?

14 A Yeah.

15 Q So, every night you got a headache for two months?

16 A Every night or during the day because I napped at daytime too because
17 I wasn't really that strong. I was still weak.

18 Q Okay.

19 A I had wind problems so I couldn't walk far.

20 Q Okay. So, you experienced headaches once or twice a day every day
21 for two months?

22 A Yes.

23 MS. WONG: For the record, the photographs of the injuries to the victim's
24 chest is State's Exhibit [indiscernible].

25 BY MS. WONG:

1 Q And we're going to get to you walking a little bit later. But right now I'm
2 going to show you State's Exhibit number 14. These were the injuries that you
3 suffered to your arm and your hand?

4 A Yes.

5 Q And did you treat your arm and your hand the same way you had to
6 treat your face and your chest?

7 A No; we had another -- like there's more than just that right there.
8 There's -- it was here and on my hand right here where I had this metal graph stuff.
9 Well it's like a silver taped stuff that they called silver graph paper or something that
10 was on here and here. And that had to be either -- it would peel over time. So, I
11 wasn't allowed to just rip it off or take it off. That would also like scissor off or let it
12 dissolve through taking a shower or a bath. And so this was the worst part here. It
13 had scabbed more than any other part and hurt longer than any part. It still -- I'd
14 have -- even though like my skin was -- got back more [indiscernible] for months
15 afterwards, more than two months, if it got hit like that or something, it was like a big
16 bruise on my arm. It really hurt -- it hurts.

17 Q Okay. You actually get a bruise on your arm?

18 A It wouldn't show a bruise now, but it hurt like it was already bruised and
19 -- you know.

20 Q Let me ask. I know I earlier asked you while you were in the hospital
21 what was your pain scale on a scale of one to ten. After leaving the hospital, how
22 painful was it -- were your injuries?

23 A More -- I'd higher pain like around on my lips for more time, and my arm
24 and my throat was more pain and I'd say there would be probably four to five
25 constant pain. The headaches would come, you know, go. If I lay on that side so I'd

1 had to lay on one side which I didn't -- so it was about a four or five.

2 Q Pain scale four or five?

3 A Yeah, for the pains that were there on my lips and my arm and stuff,
4 and then there were the weakness I had -- I don't know how to scale the weakness.

5 Q The weakness that you had. Okay. We'll talk about those -- that in a
6 second. So, how long did the pain last? How long did you have to deal with pain?

7 A At least six months if not -- at least six months, yeah.

8 Q Okay.

9 A But at least six months.

10 Q Did you ever --

11 A It was hard to go, like there was a holidays so I didn't go to any family
12 functions because I wouldn't be able to have last long and I'd be in too much pain to
13 last probably more than an hour anywhere. So, there's holidays that cut out.

14 Q Okay. Do you have any scarring?

15 A Yes.

16 Q Okay. Where?

17 A I have scarring on my arm here; I have scarring on my shoulder here,
18 right here. It comes over my body here and still down. This is scarring, that's
19 scarring.

20 MS. WONG: Your Honor, can I ask that the witness step so he can show the
21 jury injuries?

22 THE COURT: If you were stand up -- can you guys down at the end see him
23 or do you him to physically walk closer to you guys? I don't know how -- let's do
24 this. Why don't you stand up first and let's see if we can see. If not, then you can
25 walk down. My concern if he walks down he's no longer near a microphone and no

1 one can hear what he's saying.

2 THE WITNESS: There's scarring here, here, my stomach, all the way up
3 here. If I go out in the sun I get more red here. On my neck it gets more red. My
4 ear was blistering still for a couple weeks. So, I continue the cream that we had for
5 at least six months.

6 BY MS. WONG:

7 Q Is there any scarring on your face?

8 A Yes; I can tell the scars when I'm looking in the mirror.

9 THE COURT: For the jurors way down on that end, do you need him a lot
10 closer or do you think that you can see everything? All right. Thank you.

11 BY MS. WONG:

12 Q You said you could see the scarring?

13 A I can see the difference in color of my face, yes.

14 Q So, there's discoloration in your face. Is there discoloration on your
15 arms?

16 A Oh, yes.

17 Q Okay.

18 A In different spots inside my ear.

19 Q Do me a favor. Put out left hand -- your left arm and your right arm. Is
20 your right arm discolored?

21 A No.

22 Q Okay. So, just your left arm?

23 A Well, yeah, it's all this here.

24 Q Put 'em down. Okay. So, your left arm is the one that's slightly
25 discolored?

1 A Yes.

2 Q And that's the side that you were burned?

3 A Yes.

4 Q Okay. Just a few things before we end. Now you said earlier that it
5 hurt to urinate while you were in the hospital; how long did that last?

6 A That lasted for a long time. That lasted for a long time. It lasted at least
7 six months, at least six months the pain was there.

8 Q And you said it hurt to walk; how long did it hurt to walk?

9 A Oh, I think it was about like Easter time. So, it was about six months, I
10 think, and that it was easier to walk. I still can't walk the same distance or speed.

11 Q What do you mean by that? Give us an example.

12 A If I walked -- if I tried to walk to Circle K, I don't make it back all the way.
13 I stop. They used to have a bench there in front. I would stop, I'd sit down.

14 Q All right. So, previously it took 15 minutes to walk from your house to
15 Circle K?

16 A Correct.

17 Q How long does it now take you to walk from your home to Circle K? I'm
18 assuming you live in the same apartment?

19 A Yes.

20 Q Okay. How long does it take for you to walk from those apartments to
21 Circle K?

22 A Probably about a half hour. The last couple times I just I'd call to get a
23 ride back. So, I don't even walk now anymore over there.

24 Q And you said previously it was hard for you to speak, like you didn't
25 speak the same for a while; how long did that last?

1 A I'm not sure.

2 Q Can you think.

3 A It's been a long time that I couldn't speak all the words correctly that I
4 want and articulate the words like I used to, like I know how to speak. But I still have
5 a sound difference to me in my ears. I don't have the ability to converse like I used
6 to.

7 Q So, you're saying even today you still don't speak the same way you
8 used to speak?

9 A Even today I don't speak as clearly as I used to speak.

10 Q Okay. So, are the muscles in your face still affected today?

11 A Yeah, I believe so. I'm not in pain in my face, in my muscles, but they
12 don't work like they used to.

13 Q So, it's not as mobile as --

14 A No, not as mobile, not as controllable.

15 Q Not as controllable. Okay. And this now almost two years later?

16 A Uh-hm.

17 Q And how long did it take to regain your balance?

18 A It was after the pain basically started subsiding after six months then I
19 had a lot better balance. I was able to -- I was able to balance a lot more. I think
20 the perception -- I don't remember having this discrepancy in my --

21 Q Your depth perception?

22 A Depth perception at the time, after that, after the pain.

23 Q So, six months after you regained your depth perception?

24 A Yes.

25 Q Okay.

1 A I wasn't falling down anymore.

2 Q Were you falling down a lot?

3 A I fell down -- yeah, I fell down and I hurt myself falling down, yeah.

4 Q Okay. How many times?

5 A I fell down numerous times. I fell down just trying to carry something I

6 fell down and I tore a muscle and got a hernia.

7 Q Okay.

8 A My muscles were a lot weaker getting out of the hospital from lying in

9 bed for a couple weeks. Then after that I still wasn't strong. I didn't pick up my child

10 or I didn't chase him around the playground or anything. I didn't even to go the

11 playground with him, you know.

12 Q So, you couldn't pick up your child, you said?

13 A Correct.

14 Q How old was your child?

15 A At the time he was born February of 2011 so it was a year old, a year

16 and a half, two years.

17 Q He was born in February of 2011?

18 A Yes.

19 Q Okay.

20 A February 23rd.

21 Q And this occurred October 2012?

22 A Yeah. So, he was a year, year and a half.

23 Q Year and a half. And you couldn't pick him up?

24 A Uh-uh.

25 Q How did your son weigh at the time?

1 A I don't know.

2 Q You don't know how much he weighed at the time?

3 A Nope.

4 Q Is there anything that you need to add that you want to tell these Ladies
5 and gentlemen here about how this incident affected you physically? Is there
6 anything else you need to add?

7 A Not being to pick up my kids; not being able to walk as far. My wind
8 isn't as strong so running. I don't run. I might, you know, I can go run off to my kid
9 right there but I ain't going to chase him down the street, you know. They're faster
10 than I am. They're faster than me, you know. Even one's handicapped and he can't
11 walk that well. He has a foot that's like sideways and he's faster than I am. So, it's
12 my wind, you know, and my eyesight seems better. There's nothing I can recall
13 other than all that.

14 Q Okay. And final question. During the two weeks that you were in the
15 hospital before you woke up and saw the 23 on the board, were you in a medically
16 coma?

17 A That's what they say.

18 Q Okay.

19 A They tried to bring me out of it numerous times and then I couldn't -- I
20 wouldn't come out of it. There's a word -- my disposition would drop or something --
21 some sort of thing.

22 Q All right. And that's why you have no recollection of what happened
23 between October 10th and October 23rd?

24 A Correct; I was on different types of medication and I don't know what
25 they had put me on and, yes, I was -- yes.

1 Q Okay.

2 A Anything that I didn't recognize -- it all didn't happen. It was a dream
3 and I woke up.

4 MS. WONG: Pass the witness.

5 THE COURT: Cross-examination.

6 MR. COFFEE: Thank you, Judge. Can we switch over to [indiscernible]
7 video.

8 **CROSS-EXAMINATION**

9 BY MR. COFFEE:

10 Q We've not met before; have we?

11 A Not that I recall -- no, I don't believe so.

12 Q Okay. Can you pronounce your last name for me because I don't want
13 --

14 A Bejarano.

15 Q Bejarano; is that close enough?

16 A That's close enough, yeah.

17 Q Okay. Very good. You are physically more frail now than you were the
18 night you were lit on fire; is that right?

19 A Yes. I have a statement from what she asked me last because I just
20 recall it seeing the video.

21 Q Okay.

22 A Am I allowed to say it?

23 Q It's okay with me if it's okay with the prosecution. He has a statement.
24 He remembered something from the video.

25 THE COURT: He wants to add something.

1 THE WITNESS: Well my hair fell out. My fiancé would comb my hair and it
2 would just fall out. It was probably about six inches, four to six inches shorter, you
3 know, frayed from burns. That's about it.

4 BY MR. COFFEE:

5 Q Okay. Seeing this picture --

6 A And it's been hard to -- like if I get a scrap or something it's harder to
7 heal or it takes longer to heal. That's it. Sorry.

8 Q Okay. Very good. I'm going to walk you through a step at a time.

9 A Okay.

10 Q All right. If you need me to slow down you tell me to slow down. If you
11 need further explanation, please tell me you need further explanation; is that fair?

12 A Okay. Can I look at this one.

13 Q We're going to look at it together in a just a minute.

14 A Okay.

15 Q I'm going to ask a couple questions beforehand and I promise we'll
16 have enough time to go through stuff; okay?

17 A Okay.

18 Q Okay. You live about 15 minutes from the Circle K walking when you're
19 in good physical condition; is that right?

20 A I take my time, yeah, I wouldn't run but yeah. I just walk.

21 Q About 15 minutes. And the night in question you had a drink at your
22 house, some Silver --

23 A Silver Ice.

24 Q Silver Ice.

25 MR. COFFEE: Permission to approach, Judge.

1 THE COURT: You may.

2 BY MR. COFFEE:

3 Q And I want to show you what's been marked as Defendant C; do you
4 recognize what that might be?

5 A Uh-hm, Silver Ice.

6 Q And is that what we're talking about that you were drinking that night, a
7 24 ounce can of Silver Ice?

8 A Yeah.

9 Q Okay.

10 MR. COFFEE: Okay. Move to admit Defendant C.

11 MS. WONG: No objection.

12 THE COURT: All right. C is admitted.

13 **[DEFENSE EXHIBIT C ADMITTED]**

14 MR. COFFEE: And move to publish.

15 THE COURT: You may.

16 BY MR. COFFEE:

17 Q It's a little dark. It's in black and white. I apologize for that. Silver Ice is
18 one of those -- I think they call it a high gravity beer, is that right?

19 A I wouldn't know. I don't know about that. I don't know what that means.

20 Q Okay. It's fairly strong; is that fair?

21 A Yes.

22 Q And it's fairly inexpensive; is that fair?

23 A Yes.

24 Q You can get a 24 ounce can for maybe \$2.00?

25 A It was like a dollar and a half.

1 Q And the actual brand is Camo Silver Ice that you drank; right?

2 A Yeah. I didn't remember that part but yeah.

3 Q Okay. And you had one of those cans at home and you walked to -- not

4 7-Eleven -- Circle K; yes?

5 A Yes.

6 Q And it's the Circle K by the South Point within a block or two, right, half

7 a block of South Point casino?

8 A The South Point's a little bit -- a lot farther than that.

9 Q A little bit further. It's down that area though. It's between The Strip

10 and the South Point. It's not the far side, not the -- do you understand. Am I being

11 confusing?

12 A Yeah.

13 Q It's the north side not the south side of the South Point casino?

14 A It's north from the South Point casino; a few blocks, yes.

15 Q A few blocks. It's a ten, 15 minute walk, something like that, maybe a

16 little less.

17 A From there, yes.

18 Q And when you got there you said you went there to gamble; yes?

19 A Yes.

20 Q And you also went there to drink?

21 A I drank when I was there, yeah.

22 Q You drank when you were there. Now it's not the first time that you've

23 been to the Circle K; is that right?

24 A Correct.

25 Q In fact, you knew some of the people at the Circle K?

1 A Not personally.

2 Q Okay. Did you know the manager, Flo?

3 A Not personally, no.

4 Q Did you know Mr. Lewis, the clerk that was there at the time?

5 A I've seen him before, yeah; I'm friendly enough to talk to him, yeah.

6 Q Okay. Do you know whether you were supposed to be drinking at the

7 Circle K or not?

8 A I drank there before, yes. There's no sign there that says no drinking.

9 They've allowed me to drink there before.

10 Q Nobody told you that you shouldn't be drinking at the Circle K?

11 A Nobody said that at all.

12 Q Okay. Nobody threw you out of the Circle K?

13 A No, not at all.

14 Q And that's never happened before either?

15 A I've never been thrown out of the Circle K.

16 Q Okay. After this event were you asked not to come back to the Circle

17 K?

18 A I was not told that, no.

19 Q Was your wife telling you that you should have been told?

20 A My wife was told that but I wasn't.

21 Q Okay.

22 A I never received any letter or any phone call or anything stating that,

23 and I've been in there since numerous times as part of my therapy.

24 Q Nobody gave you anything formally and said you can't come back,

25 nothing like that?

1 A Even though I went in there nobody told me I couldn't.

2 Q But you said that your wife had told you that you weren't allowed to
3 return to the Circle K?

4 A My wife told me that they told her that.

5 Q Okay. And we'll play a little bit of the video. And this is the gaming
6 angle. It's on a multiple disk that the jury will receive. It's been admitted into
7 evidence already. We're starting about 36 seconds. Watch with me if you can. You
8 were at the machine and we were talking about Silver Ice a minute ago. That's what
9 we're talking about is that's a can of Silver Ice that you were drinking at the slot
10 machines at the gas station; right?

11 A Correct.

12 Q Okay. And do you know if you had more than that one can of Silver Ice
13 at home?

14 **[VIDEO PLAYED]**

15 A Nope.

16 Q You don't remember or you did have more than one?

17 A I only had one.

18 Q You only had one. And you're sure it was one?

19 A Yes.

20 Q You were testifying at a preliminary hearing saying that you weren't
21 sure if you'd had anything to drink at home or not but you thought you might have?

22 A Yes; at the preliminary hearing I didn't have as good memory.

23 Q Your memory's gotten better with time?

24 A My memory's gotten better since I've had to witness this video.

25 Q Okay.

1 A And see what it was, yes.

2 Q Okay. Fair enough.

3 A Yeah, at that time I still had a lot of memory issues.

4 Q Okay. And you said that you remember asking Mr. Newell for a ride.

5 You called him Patrick before on direct; do you remember that?

6 A Patrick Newell, yeah. I didn't know how to say his last name.

7 Q Okay. You didn't know him before his incident; is that right?

8 A Correct.

9 Q Okay. And you've learned his name since the incident?

10 A Correct.

11 Q I'm going to jump to about 2:44 on position A. It's from the same group.

12 Okay. You see Mr. Newell in this video, we're at 2:25; right?

13 A Well I guess that's when it started, yes.

14 Q Okay. Again, I'm sorry. That's my fault that the time's not up there. It's

15 just for marking so they can find it later.

16 A Okay. Well at the preliminary hearing --

17 Q They had a time stamp on it and --

18 A At some point he wound it backwards and it looked like I was walking

19 forwards.

20 Q Yeah. We're not going to do it. We're going to run everything forward.

21 I promise.

22 A Okay.

23 Q That's you behind Mr. Newell on the right hand side; right?

24 A Yes.

25 Q And by right I mean over Mr. Newell's right shoulder?

1 A Okay; yes.

2 Q And we can agree that at this point you've not talked to Mr. Newell?

3 A Correct.

4 Q Okay. For just a second because there was a question about whether
5 or not you asked for the ride inside the store or outside the store and you said you
6 didn't remember. I want to see if the video will help you remember. Okay.

7 A Okay.

8 Q It looks like you were -- that's your flip flop over to the right side of the
9 screen; right?

10 A Yeah, it looks like it was.

11 Q Okay. It looks like you were just standing behind Mr. Newell while he
12 was buying some things [indiscernible]?

13 A Yeah, I was standing behind other people too.

14 Q Okay. I'm going to wait for Mr. Newell buying things, but I want to make
15 sure there's not a conversation that we'd miss right here. It only takes a few more
16 seconds.

17 A I might be asking other people for a ride at that time. I'm not sure.

18 Q Okay.

19 A I don't recall that.

20 Q Mr. Newell leaves the store and you've not had a conversation with him
21 up to this point; is that fair enough?

22 A Not at what I look at, no.

23 Q Okay. And I'm going to jump forward about a minute and a half to
24 approximately 6:15. It may be a little more than a minute and a half. It looks like Mr.
25 Newell may have come back into the store and getting in line. We don't see what's

1 happening in the camera. I think we're going to see you step up here in just a
2 moment.

3 A I might have asked him for a ride at that point already.

4 Q You don't know for certain?

5 A I don't know for certain.

6 Q Okay.

7 A Because we -- we're both not on screen so I don't know.

8 Q And at this point you don't know what Mr. Newell is driving, for
9 example? You have no idea.

10 A I'm sure I don't have any idea.

11 Q Okay. You pay for your things and you go and you leave the store
12 before Mr. Newell?

13 A And that's where I asked him and he say, yeah, we're at the truck out
14 there. I don't know. I don't recall. And I didn't see it so -- I didn't see what we would
15 say. There's no audio.

16 Q I know. There is no audio. You don't remember Mr. Newell specifically
17 telling you go out and get in my red truck, something like that. You don't remember
18 that; do you?

19 A I don't recall that.

20 Q Okay.

21 A I recall any of that.

22 Q All right. And Mr. Newell leaves --

23 A Because I don't know if it happened or not.

24 Q -- and I'm going to jump to a different camera angle here and we're
25 going to walk through things. You remember asking for a ride. Do you remember

1 Mr. Newell telling you no?

2 A I don't recall that, no.

3 Q Do you remember how long you asked Mr. Newell for a ride?

4 A I don't recall that either.

5 Q Do you remember if it went on five minutes, six minutes, which you
6 keep on asking [inaudible]?

7 A I don't recall if -- like I said, I don't recall if I even asked him in the store

8 -- Q Okay.

9 A -- at that point. I don't recall if he told me where to go. I don't recall if
10 he said no at that point. I don't recall if I asked anybody else either while I was in
11 line.

12 Q And it's not that it didn't happen, it's just that your memory is completely
13 cloudy on this?

14 A No; I don't have -- recollection of a lot of events from after I woke up,
15 yeah.

16 Q We're going to go to real time video at the pumps and jump forward to
17 approximately -- I'm going to let this run while we continue to talk for a minute. You
18 can see yourself walking through the parking lot; right?

19 A Yes. I guess there's only one vehicle out there.

20 Q Yeah. You walked to the vehicle. And you don't know if somebody told
21 you it's okay to have a ride or anything else? Do you know why you're walking to
22 the vehicle?

23 A I don't recall. I don't recall whether they did or not.

24 Q Okay. You remember looking in the vehicle?

25 A Yeah. I guess. I don't know. He goes off screen there.

1 Q Okay. Here, I think it will come back. You see a car moving in the
2 background. That appears to Mr. Newell walking towards his truck and you're near
3 the back of his truck; right?

4 A Mm-hmm.

5 Q Does it look like you're reaching in the back of his truck?

6 A It didn't look like I looked into the vehicle, no.

7 Q Does it look like you're reaching into the back of his truck into the bed of
8 the truck?

9 A No; because my arm would go down if I was reaching in there.

10 Q Okay. You're standing pretty close to it.

11 A It doesn't like I'm reaching into the back of the truck at all. I'm not that
12 tall so. To me it didn't like I was reaching into the back of the truck.

13 Q Is that you touching the truck?

14 A It looks like I'm just leaning on the truck and we were talking.

15 Q It looks like he's approaching you?

16 A Yeah. It looks like he's approaching me. I don't know if he touches me
17 there or not. No.

18 Q Do you remember him telling you to get out of the back of his truck and
19 stop leaning on his truck?

20 A I don't recall that at all.

21 Q Okay. Let's continue to watch. You would agree that Mr. Newell has a
22 right not to give you a ride if he doesn't want to?

23 A Correct. Even if he had said yes and changed his mind at some point
24 which I don't know if he did or not. I don't recall that.

25 Q Now it appears that you stay by the truck and Mr. Newell goes around

1 to the driver's door and then he comes back around again; right?

2 A Correct.

3 Q And you step away from the truck?

4 A Correct.

5 Q Do you remember him threatening you at any point or saying anything?

6 A I think remember something about a knife but I don't remember.

7 Q You don't remember him saying it and don't remember being scared of
8 it?

9 A I never remember seeing it and I never remember -- I don't know what
10 he said of it. I don't remember any of that stuff. I just remember there was
11 something about a knife.

12 Q Okay. You don't remember leaving at that point?

13 A I don't remember any of this at that point.

14 Q Let's continue to watch and see if anything jogs your memory. Mr.
15 Newell walks away and you're reaching into the truck again; is that fair?

16 A No. I'd say it looks like I'm pointing --

17 Q Okay.

18 A -- right towards where I live.

19 Q Oh, okay. There we go. Maybe you're discussing a ride at that point?

20 A Maybe we already did.

21 Q Okay.

22 A I don't know. And maybe I'm just telling him where it is now.

23 Q Okay. And Mr. Newell seems to walk off camera. That would be
24 towards the entrance of the store; is that right?

25 A That's what it looks like.

1 Q Okay.

2 A Maybe he said he had to go get something and I'm waiting for him. I
3 have no idea.

4 Q Okay.

5 A I'm pointing at something.

6 Q I mean we don't know what you might be pointing at, the side of his
7 truck maybe?

8 A I'm pointing and I'm looking towards that way and I'm pointing at the
9 truck or something.

10 Q Okay.

11 A At the bed of the truck I'm point at.

12 Q The bed of the truck. And Mr. Newell walks to the opposite side of the
13 truck?

14 A Yep; yes.

15 Q Okay. Again, it looks like he walks back around and you step back from
16 the truck; is that fair?

17 A I don't see me stepping back from the truck?

18 Q You're near the truck still [indiscernible]?

19 A Yeah.

20 Q And Mr. Newell's pointing at you and saying something?

21 A Yep. I can't see where I'm at close to the truck or not. I can't see. It's
22 too dark on this screen.

23 Q Too dark and not 3D. So, we just can't -- we don't have [indiscernible].

24 A No.

25 Q Do you remember Mr. Newell saying anything about the police are

1 coming or I talked to the clerk inside; I've asked the police to come; do you
2 remember anything like that?

3 A I don't recall that. I don't recall any of that.

4 Q It might have happened again. Your memory is just --

5 A It's not there.

6 Q -- foggy?

7 A It's not foggy; it's just not there.

8 Q It's not there. Non-existent. A better description.

9 A Non-existent, yeah.

10 Q Okay. It looks like Mr. Newell's going over towards where the gas tank
11 might be. So, he's coming back around again. Does any of this jogging anything at
12 all?

13 A Nope. You can see I was just standing there.

14 Q It doesn't look like you physically touched each other up to this point; is
15 that fair?

16 A Yeah.

17 Q It doesn't look like you're physically at contact with each other, you're
18 not physically touching each other?

19 A It looked like we did.

20 Q No, it did not.

21 A No, no. I don't believe so.

22 Q Okay. I think we're in agreement there.

23 Now you walk around from the passenger side towards the driver's side
24 of the truck; can you see that?

25 A Mm-hmm. Yeah. It looks like I'm pointing at something.

1 Q Okay.

2 A It looks like I was pointing at something, yeah.

3 Q It looks like you're sprayed with gas?

4 A Yep. That's what it looked like.

5 Q And you wiped your eyes?

6 A Yeah. It looks like it, yep.

7 Q It looks like you started to walk away?

8 A It looks like I'm walking away. It looks like I'm walking and I touch the
9 pumps. Maybe I was walking away and I kept walking away but I walked right into
10 the pumps.

11 Q It looks like you walked back towards Mr. Newell?

12 A It looks like I'm walking -- yeah, in that direction.

13 Q Do you remember if you angry at this point?

14 A I remember I didn't know which way to look. I had my eyes
15 [indiscernible]. I didn't know which way I was going. I was confused which way
16 here or there to go. I remember feeling that.

17 Q Do you remember hearing a voice telling you to just leave, the security
18 guard?

19 A Just -- just what?

20 Q Just leave?

21 A Nope. I don't remember that.

22 Q You were back towards Mr. Newell?

23 A Do I remember?

24 Q Do you remember going back in there, back in that small space that
25 he's got between his door and the pump?

1 A Nope. Is this in real time?
2 Q Yes.
3 A This is as slow as I walked.
4 Q Yes.
5 A I never got past the bed of his truck. I never walked even closer.
6 Q And here you do.
7 A Here I do.
8 Q There you walk past the bed of the truck, wouldn't you agree; right?
9 A Yep, I walked to the gas tank, yeah. I was sprayed with gas already
10 though. There I was kicked down, I guess, or pushed down.
11 Q He pushed you and you tripped, one or the other?
12 A Or he kicked me, pushed or kicked me. I don't know. I haven't tripped
13 this whole time. I don't know why I tripped there.
14 Q Do you remember if you were drunk? I mean, I know you've had a
15 couple drinks?
16 A I remember drinking but I don't remember being drunk.
17 Q Okay. You were sober enough -- I think you described at preliminary
18 hearing I was sober enough to walk to the Circle K.
19 A The Circle K.
20 Q You were sober enough that you hadn't blacked out?
21 A Correct. Sober enough to talk to the cashier and purchase --
22 Q Sober enough to make a transaction?
23 A Yeah, without any problems. Sober enough to sit there and gamble
24 and drink as I did before and not having any problems.
25 Q Here's the --

1 A After I got back up or wasn't looking.

2 Q After you got back up.

3 A Okay.

4 Q And you're pointing. It looks like you may be talking to somebody off
5 camera?

6 A Yeah, it looks like. I'm just like --

7 Q Do you remember seeing a flame at some point? When he takes out a
8 lighter do you remember seeing a flame?

9 A I don't remember him taking out a lighter. I just remember seeing a
10 flame in front of me.

11 Q Okay. Do you remember him asking you to leave when he had the
12 lighter?

13 A I don't remember him asking me to leave ever. That's how slow it took
14 me to point and come back.

15 Q Yeah. And we marked it off that -- the timing clock that you talked
16 about.

17 A It doesn't look like real time for that car to back up and leave, but okay.

18 Q Okay.

19 A It was that long?

20 Q The interaction between you and Mr. Newell?

21 A Before he lit me on fire.

22 Q Yeah. I know it's probably traumatic to see this. You've seen it before
23 though; right? I think the District Attorney has shown it to you?

24 A Yes.

25 Q And again at preliminary hearing?

1 A I didn't have to see it from the District Attorney. She didn't make me
2 watch this part though.

3 Q Okay.

4 A What is he doing now.

5 Q And that's what I was going to ask you.

6 A He's trying to come back at me.

7 Q I don't know. Trying to come back at you. Is he trying to pat you out?

8 A No. Trying to pat me out or trying to light me up again.

9 Q I don't know.

10 A I don't know. Why would he pat me out if he lit me on fire in the first
11 place?

12 Q Does he charge you at any point?

13 A I thought that was the charge, apparently.

14 Q He doesn't physically touch you; right?

15 A I think he did, yes. I don't look like I saw him touch me.

16 Q Let's go back.

17 A I stopped him from touching me. I don't know.

18 Q Let's go back just to make sure.

19 A I'm telling him to get away from me. I have no idea of what I said.
20 Does he still have the lighter in his hand at this time?

21 Q It's hard to see from the video; right?

22 A Yeah. I can't tell if he put it back in his pocket or he still has it in his
23 hand. There's someone else there.

24 Q The security guard.

25 A Yep.

1 Q Do you remember any of this, the police coming, any of that kind of
2 thing?

3 A Nope. I remember seeing the flame; I remember I had to take off my
4 shirt. It was recently paid for. There's another part where I'm sitting down and he
5 comes at me.

6 MR. COFFEE: Court's indulgence.

7 [VIDEO PLAYING]

8 THE WITNESS: I don't know where I was at that point but --

9 MR. COFFEE: Feel free to stop it if you see the point.

10 BY MR. COFFEE:

11 Q The shirt you were wearing had been a gift from your wife; yes?

12 A Yes.

13 Q Do you remember saying something about that to Mr. Newell, that you
14 ruined a shirt that my wife gave me or something like that?

15 A It looked like he went behind me there and I must have been scared. I
16 got up to see what he was doing, but I don't recall doing that.

17 Q And then at this point I think everything has taken place; right?

18 A Mm-hmm.

19 Q Isn't Mr. Newell sent back towards his truck?

20 A Because -- that's when before he started that. It didn't show me sitting
21 down. It just showed me when I was already sitting down.

22 Q I don't think that we've missed it, and if we have I apologize.

23 A Unless I sit down again at that spot. I'm not sure.

24 Q The video runs quite some time. It's another 20 minutes.

25 A It's look like the security guard has to keep telling him to go back to his

1 truck.

2 Q And here I think maybe you sat back down. Do you remember being
3 angry that night?

4 A No; I don't recall that. I'm sure I'm in pain and I probably was being
5 angry at that point.

6 Q Do you remember being angry about being sprayed with gas?

7 A No; I remember being confused when I got sprayed with gas.

8 Q I'm going to increase the speed on this. I think you see the paramedics
9 pull in in just a moment.

10 A It looks like I'm in pain.

11 Q It looks like Metro arrives at that point?

12 A Mm-hmm.

13 Q Thank you for walking through the video with us. You said some of the
14 times your wife drives you to the Circle K or used to drive you to the Circle K?

15 A Sometimes; sometimes she does and sometimes she don't.

16 Q Okay. A situation one family car at that point?

17 A Yeah, we still only have one family car.

18 MR. COFFEE: Thank you, Mr. Bejarano.

19 THE COURT: Any redirect, State?

20 MS. WONG: Yes, Your Honor.

21 **REDIRECT EXAMINATION**

22 BY MS. WONG:

23 Q Teddy, do you think you were drunk that night?

24 A No, I don't believe I was drunk.

25 Q It's just there was a lot about you simply don't remember?

1 A Correct.

2 Q I'm going to show you State's Exhibit number 8; do you recognize thee
3 items?

4 A Money and pants and it looks like my bracelet.

5 Q Are these your pants?

6 A Shorts, my shorts.

7 Q Are those your shorts? Those are yours?

8 A Yes.

9 Q Okay. And do you recall that's your money over here?

10 A Yes.

11 Q I'm going to show you State's Exhibit number 7; do you recognize what
12 that is?

13 A Yeah. That was my shirt my wife got me.

14 Q So, that was our brand new shirt?

15 A I recognize the design.

16 Q Now do you recall -- I mean, you got to Circle K by walking; right?

17 A Mm-hmm.

18 Q Do you recall why you didn't just walk home? You don't recall why?

19 A No. I know that there's no -- I can't recall. I would assume why but I
20 couldn't recall why

21 Q [Indiscernible]. You just don't remember why?

22 A I don't remember why right now.

23 Q Now you say you recall something about a knife; do you recall actually
24 seeing a knife?

25 A No.

1 Q Okay. But you recall something about a knife?

2 A Yeah.

3 Q All right. Now let me ask you. If you were standing there naked and
4 somebody came and put a knife by your penis while you're standing there naked,
5 would you be afraid?

6 MR. COFFEE: Objection; hypothetical. He doesn't remember [indiscernible].

7 MS. WONG: It goes to the reasonable apprehension.

8 MR. COFFEE: It's a hypothetical. You don't have evidence of that. He
9 doesn't remember it.

10 THE COURT: Yeah. I mean, the problem is he says he doesn't even
11 remember that happening. So, you're kind of asking him -- you are asking him a
12 hypothetical. So, you know, you kind of made your point anyway, but the objection
13 is sustained.

14 MS. WONG: I have no further questions.

15 THE COURT: All right. Any recross.

16 MR. COFFEE: Just one.

17 **RECROSS EXAMINATION**

18 BY MR. COFFEE:

19 Q Do you know why you didn't just walk away from the truck at some
20 point?

21 A I don't recall.

22 MR. COFFEE: Okay. Thank you.

23 THE COURT: Anything further, State?

24 MS. WONG: No, Your Honor.

25 THE COURT: All right. Thank you, sir, for your testimony. You're free to go.

1 All right. Can I get counsel to approach real quickly while he's leaving the
2 courtroom?

3 [Bench conference -- not recorded]

4 THE COURT: Ladies and gentlemen, it's 4:30 now. Rather than start a
5 witness that I'm not sure we're going to have time to finish, we're just going to
6 adjourn for the day. We'll reconvene tomorrow morning at 10 o'clock in the same
7 spot that Randy told you to reconvene this morning.

8 For tonight, you are admonished that until you begin to deliberations,
9 you are under oath and have not been discharged. Do not reach any conclusions
10 as you've not heard all the evidence. Do not talk to anyone about this case; do not
11 investigate any facts of this case; do not review any media, press or internet reports
12 about this case. Do not talk to anyone who may be involved in any way with this
13 case. Do not discuss the facts of this case with each other, and remember to wear
14 your badge at all times in and around the courthouse. Please leave your notebooks
15 on your chairs and we'll see you tomorrow morning at 10 o'clock. Thank you.

16 [Outside the presence of the jury]

17 THE COURT: All right. We're still on the record outside the presence of the
18 jury. Anything either side wanted to memorialize or address outside the presence?

19 MS. WONG: No, Your Honor.

20 MR. COFFEE: No, thank you.

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THE COURT: All right. See you guys tomorrow morning at 10 o'clock.

[Jury trial - Day 2, concluded at 4:32 p.m.]

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

Patricia Slattery
PATRICIA SLATTERY
Court Transcriber

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No. 66552

Appellant,

vi.

THE STATE OF NEVADA.

Respondent.

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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 15th day of December, 2014. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

HOWARD S. BROOKS
SCOTT COFFEE

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

PATRICK NEWELL
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BY

Employee, Clark County Public Defender's Office