

1 report that was filled out on July 11, 2013?
2 **A** It is.
3 **MR. COOPER:** Move to admit State's Proposed
4 Exhibit 9, Your Honor.
5 **MS. BONAVENTURE:** No objection.
6 **THE COURT:** State's Exhibit 9 is admitted.
7 (Whereupon, State's Exhibit 9 was
8 admitted into evidence.)
9 **BY MR. COOPER:**
10 **Q** Again, this is a similar report that we were
11 just looking at?
12 **A** Yes.
13 **Q** And the address he put down is at Main and
14 Wyoming?
15 **A** Yes.
16 **Q** Now, when you were, I guess, meeting with him in
17 July what, if anything, did you talk to him about?
18 **A** His noncompliance, the fact that he was not
19 attending counseling. In fact, I wasn't able to see him
20 at his house, his cross streets, that he was not paying
21 his fees, that he wasn't working. It had been where time
22 had elapsed to the point where we were coming to a point
23 where I have to file charges on him for being
24 noncompliant.
25 **Q** And did you do that in July of 2013?

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1 **A** I arrested him in July. I believe it was July
2 11th that I arrested him.
3 **Q** And what were the basis of the charges?
4 **A** Everything I just stated; the violation
5 concerning failure to meet the curfew, failure to pay
6 fees, curfew violation. Anything that he was violating
7 in the agreement I was charging him.
8 **Q** So subsequent to that are you aware if those
9 charges were denied by the District Attorney's Office?
10 **A** They were denied.
11 **Q** Now, did you see him again after July?
12 **A** I saw him in August.
13 **MR. COOPER:** Permission to approach the witness,
14 Your Honor.
15 **THE COURT:** You may.
16 **BY MR. COOPER:**
17 **Q** Ma'am, I am now showing what has been marked as
18 State's Proposed Exhibit 10; do you recognize that?
19 **A** I do.
20 **Q** How do you recognize that?
21 **A** This is a monthly report dated 8/16/13 filled
22 out by Steve McNeill.
23 **Q** And is that a true and correct copy of your
24 report that is contained in your file?
25 **A** It is?

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1 **Q** Do you keep that report and use it in the
2 ordinary course of your duties?
3 **A** I do.
4 **MR. COOPER:** At this point, Your Honor, I would
5 move to admit the State's Proposed Exhibit 10?
6 **MS. BONAVENTURE:** No objection.
7 **THE COURT:** State's Proposed 10 is admitted.
8 (Whereupon, State's Exhibit 10 was
9 admitted into evidence.)
10 **MS. HOJJAT:** Your Honor, we would just maintain
11 the previous objection that had been made.
12 **THE COURT:** The previous objection is noted for
13 the record.
14 **MS. HOJJAT:** Thank you.
15 **MR. COOPER:** Permission to approach, Your Honor.
16 **THE COURT:** You may.
17 **BY MR. COOPER:**
18 **Q** So on the upper top portion it says "refused."
19 Do you see that?
20 **A** Yes.
21 **Q** What does that mean?
22 **A** Refused UA, meaning that he refused to have a
23 urinalysis so I could test for controlled substances.
24 **Q** Would that have happened on the 15th day of
25 August?

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1 **A** Yes.
2 **Q** So walk me through your discussion with the
3 defendant on the 15th day of August when he reported to
4 your office.
5 **A** Right away when he comes in, I ask, Are you
6 ready to give a UA? And he's like, I'm not doing it. I
7 don't know his exact words but he refused.
8 So at that point I took him upstairs to my
9 supervisor's office for noncompliance. He was not
10 listening to me. He can deal with my sergeant. And even
11 my sergeant couldn't get across to him. And at that
12 point he still refused to a UA --
13 **Q** Let me stop you there. So did you actually go
14 in the office of Officer Zana as well?
15 **A** I was in the office.
16 **Q** And what did the defendant say at that point?
17 **A** I was pretty much out of the conversation. It
18 was Sergeant Zana and McNeill talking.
19 **Q** Well, what did you overhear the defendant say?
20 **MS. BONAVENTURE:** Your Honor, I am going to
21 object as hearsay at this point.
22 **THE COURT:** The question was what did you
23 overhear the defendant say. You have an objection with
24 regard to what the defendant said?
25 **MS. BONAVENTURE:** Yes, Your Honor, because it is

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1 hearsay at this point in time. They have witness Officer
2 Zana, and Officer Zana will be here to testify as to
3 exactly the conversation he had.
4 THE COURT: Overruled.
5 MR. COOPER: You can say it.
6 THE WITNESS: Okay. The language was something
7 like, I will not be kept like a dog on a leash. I refuse
8 UAs. I will refuse the curfew hours. I will sleep
9 wherever I want to sleep. You have no authority over me
10 basically.
11 And, specifically, I remember he said that he
12 was doing Parole and Probation a favor by showing up at
13 least one a month to drop off a monthly report. And that
14 was it.
15 BY MR. COOPER:
16 Q Now, while he was in Officer Zana's office with
17 you, did you attempt to give him any additional
18 requirements on his probation period?
19 A At that time I felt there was no point to direct
20 him anymore because he flat out refused to do everything
21 and be compliant with his Supervision Agreement.
22 Q Now, referring your attention back to that on
23 the screen. Is that what you are referring to when you
24 say he is noncompliant?
25 A Right.

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1 Q What's the "no one time weekly OV" mean?
2 A That would be that we would want him to come
3 into the office once a week to report since he was
4 homeless and we could not track him down at his
5 residence. He refused to come in one time a week for an
6 office visit, which would be "OV."
7 Q And "not registering everything 30 days," what
8 does that mean?
9 A Sergeant Zana brought that up. At that time I
10 was unaware, when you are homeless you have to register
11 every 30 days --
12 MS. HOJJAT: Your Honor, I am going object to as
13 hearsay.
14 THE COURT: Overruled.
15 THE WITNESS: Sergeant Zana was saying that
16 every 30 --
17 THE COURT: Hold on. Before you weren't saying
18 what Officer Zana said.
19 MR. COOPER: I can clarify that, Your Honor.
20 THE COURT: Please.
21 BY MR. COOPER:
22 Q What is your understanding of when a homeless
23 person has to register?
24 A Every 30 days.
25 Q And it looks like on the right-hand side here it

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1 Q So what does it mean by "no UA"?
2 A He did not produce and he refused to do a
3 urinalysis test.
4 Q What does it mean by "no curfew"?
5 A He refused to be placed on a curfew. He
6 verbally said, I am not going to be placed on a curfew.
7 Q This was -- well, let me back up. So was it
8 technically the third curfew?
9 A Like I said, I adjusted the curfew from 5:00 to
10 8:00. Again, I was going to say, Hey, man, you're on a
11 curfew, but he said, I am not going to be placed on a
12 curfew.
13 Q So in March, I think you said he was placed on a
14 curfew?
15 A Right.
16 Q And he came back to you at some other point and
17 said that he needed more time?
18 A Yeah, I give him an extension. It's hot out or
19 whatever, and he wanted me to push it back and I did
20 agree to give him the 8:00 p.m. curfew.
21 Q In August were you basically saying you were on
22 a curfew or were you trying to give him a new curfew?
23 A Continuing saying you are still on a curfew.
24 Q And is that when he said no?
25 A Yes.

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1 says "Sergeant Zana office." Is that what you were
2 referring to when --
3 A We were in his office when we discussed those
4 things.
5 Q Now, at some point after August of 2013, did you
6 have contact with the defendant again?
7 A Not physical contact, no.
8 Q What type of contact did you have?
9 A Sergeant Zana did show me a letter addressed
10 from Steve McNeill. The letter was addressed to Captain
11 Sawyer who is in charge of Parole and Probation. It was
12 a cease and desist letter.
13 Q Essentially, what did that letter say?
14 A Basically, it said that Parole and Probation has
15 no authority over him and to stop contacting him.
16 Q After August of 2013, did you see the defendant
17 again in Probation and Parole at the office?
18 A I did not.
19 Q Did he contact you again after August 2013?
20 A He did not.
21 Q Between August 2013 and March 2014, did you have
22 any contact with the defendant?
23 A No.
24 Q Between that time period, did you attempt to
25 contact the defendant?

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1 **A Yes.**
2 **Q** And can you describe to the ladies and gentlemen
3 of the jury what attempts you made.
4 **A Phone calls and more home attempts at Main and**
5 **Wyoming.**
6 **Q** And were you able to find him at Main and
7 Wyoming?
8 **A I was not.**
9 **Q** And at this point he was still required to come
10 in regularly once a month?
11 **A Yes.**
12 **Q** And between August and March that would have
13 been about nine months?
14 **A Correct.**
15 **Q** Nine months of no contact?
16 **A No contact.**
17 **Q** Now, let me ask you a question. We talked about
18 lifetime supervision. Does lifetime supervision actually
19 mean lifetime?
20 **A No. After ten years --**
21 **MS. HOJJAT: Objection. Relevance.**
22 **THE COURT: Mr. Cooper.**
23 **MR. COOPER: Your Honor, this goes directly to**
24 **the charge. I don't understand how it is not relevant.**
25 **THE COURT: I need more explanation of how it**
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1 goes to this particular charge.
2 **MR. COOPER: May we approach Your Honor?**
3 **THE COURT: You may.**
4 (Discussion held at the bench.)
5 **THE COURT: The objection is sustained. You may**
6 **not answer the question. And I will ask counsel to**
7 **proceed.**
8 **MR. COOPER: Court's brief indulgence.**
9 **BY MR. COOPER:**
10 **Q** All the different violations we're talking
11 about, the curfew and the not reporting, that all
12 happened here in Clark County, Nevada?
13 **A It did.**
14 **Q** Do you recall testifying in May at a previous
15 hearing in this matter?
16 **A I do.**
17 **Q** And was that your first time testifying in a
18 hearing like that?
19 **A It was.**
20 **Q** Describe your state of mind at that point?
21 **MS. HOJJAT: Objection. Relevance.**
22 **THE COURT: Mr. Cooper.**
23 **MR. COOPER: Can we approach, Your Honor?**
24 **THE COURT: Sure.**
25 (Discussion held at the bench.)
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1 **THE COURT: The objection is sustained as to the**
2 **form of the question.**
3 **You may proceed.**
4 **MR. COOPER: Thank you, Your Honor.**
5 **BY MR. COOPER:**
6 **Q** I think you said you remember that you testified
7 at a previous hearing?
8 **A I did.**
9 **Q** And during that previous hearing, do you recall
10 if you testified the exact same way as you testified
11 today?
12 **A I did not.**
13 **Q** Do you remember anything that you may have
14 misstated at that previous hearing?
15 **A Yes. I definitely got confused on dates.**
16 **Q** What do you mean by that?
17 **A When his lifetime supervision started, when I**
18 **started supervising him, things of that nature.**
19 **Q** Do you recall what date you said you started
20 supervising him in that previous hearing?
21 **A I believe I misspoke and said March 2012.**
22 **Q** Were you even a probation officer in March of
23 2012?
24 **A I was not.**
25 **Q** And when did you actually become a probation
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1 officer?
2 **A Well, in April 2012 I started the academy.**
3 **Q** Did you remember anything else that you might
4 have misspoke on or anything like that?
5 **A I believe I was asked a question about maps, if**
6 **he had drawn any maps, and at that point I didn't have my**
7 **monthly reports in front of me to say for certain that he**
8 **had, but now that I did go back and look at the monthly**
9 **reports he did draw me maps.**
10 **Q** Those would have been the maps that you would
11 have used in order to try to find him?
12 **A Yes. I take those out in the field with me and**
13 **tried to look for the offender using those maps.**
14 **MR. COOPER: I will pass the witness, Your**
15 **Honor.**
16 **THE COURT: Ms. Bonaventure.**
17 **MS. BONAVENTURE: Thank you, Your Honor.**
18
19 **CROSS-EXAMINATION**
20 **BY MS. BONAVENTURE:**
21 **Q** Nice to see you again, Officer Mangan. How are
22 you doing today?
23 **A I'm really good. Thank you.**
24 **Q** Good. So Mr. Cooper started getting into this
25 when he first started talking to you, basically, your
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1 experience, right?

2 **A Experience in what?**

3 **Q** I'm sorry. As a probation officer in general.

4 **A Okay.**

5 **Q** Let me just reask the question.

6 **A Okay.**

7 **Q** So you said that you were hired April 2012?

8 **A Yes.**

9 **Q** Okay. That's when you were hired. And you said

10 you did go to an academy?

11 **A I did.**

12 **Q** How long was that academy?

13 **A I graduated September 19, 2012.**

14 **Q** Congratulations.

15 **A Thank you.**

16 **Q** After you did the academy, you did say that you

17 did field officer training; is that right?

18 **A Field training, yes.**

19 **Q** And you had a senior officer with you?

20 **A I had several senior officers.**

21 **Q** How long did your field training last?

22 **A I would say approximately two months.**

23 **Q** Two months?

24 **A Approximately, yes.**

25 **Q** So it's your testimony today that by

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1 know like if he's a tier 1, tier 2, tier 3 being a high

2 risk --

3 MS. HOJJAT: Objection.

4 MS. BONAVENTURE: We are going to withdraw that

5 objection, Your Honor.

6 BY MS. BONAVENTURE:

7 **Q** How many hours of training do you think you

8 received in specialized training for this special unit?

9 **A I could not even approximate that. I do not**

10 know.

11 **Q** So then you went from your field training --

12 **A Yes.**

13 **Q** -- to getting assigned cases?

14 **A Right.**

15 **Q** So when you were in field training, were you

16 working on your own cases or were you working with the

17 supervising officer?

18 **A I had my own caseload and my supervisor would**

19 watch me as I am supervising my other officers, so it

20 trickled down.

21 **Q** So they would always be with you?

22 **A Not always but a lot of the time they were.**

23 **Q** So you told me that you were off of your field

24 training about January 2013?

25 **A Between December and January I believe that**

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1 December 2012, you were done with your field training?

2 **A It's possible. I do not know the exact date.**

3 **Q** Okay. You did testify that you graduated from

4 the academy in September?

5 **A Yes.**

6 **Q** You did about two months of field training?

7 **A I did.**

8 **Q** So that would take us into December, maybe

9 December/January?

10 **A Probably December/January.**

11 **Q** Okay. January of 2013?

12 **A I would say yes.**

13 **Q** Now, the sex offender probation or the lifetime

14 supervision, is that a special detail in your office?

15 **A Sex offender unit is a special detail within**

16 Parole and Probation.

17 **Q** Now did you receive any additional training

18 after your academy in order to deal with this population?

19 **A I did.**

20 **Q** What training was that?

21 **A It was general training as in the rules of**

22 lifetime supervision. It was something like -- in the

23 Department of Parole and Probation we have like a

24 thousand-foot rule, so no sex offender can live within a

25 thousand feet of a school, park, stuff like that. You

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1 would be a good approximation.

2 **Q** And then earlier you did testify that in

3 March 2013 that is when you got your first group of

4 cases?

5 **A Yes, sex offender cases.**

6 **Q** So that's when you first got your sex offender

7 cases?

8 **A That's when I transferred to the sex offender**

9 unit in March of 2013.

10 **Q** So up until this point you were working on your

11 own cases with the superior, right?

12 **A Yes.**

13 **Q** And that was generally other kinds of felonies?

14 **A Yes. Anybody on parole and probation.**

15 **Q** Okay. I am following you here. So suffice it

16 to say at this point you had been on your own since

17 January, February and March. So this was your third

18 month kind without a field training officer to run to

19 like a field officer?

20 **A Oh, there's always people to talk to.**

21 **Q** Like Sergeant Zana, which we already know --

22 **A Any senior officer.**

23 **Q** So at this point you were working up your own

24 cases though?

25 **A I was.**

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1 **Q** Okay perfect. Just to clarify about lifetime
2 supervision, probation and parole. Now these are all
3 separate things, right, they are separate institutions?
4 **A** They are separate agreements that they sign.
5 **Q** So lifetime supervision, earlier did you say it
6 was a kind of probation and parole, but it is a
7 completely different kind of supervision?
8 **A** No. I would not say it is completely different.
9 I would say the outcome of your violation will be
10 different. If you violate your parole you are going to
11 go back to the Parole Board to answer. If you violate
12 lifetime supervision I will file charges for a new
13 felony, which is a new case.
14 **Q** Understood. They are separate ways of being
15 supervised, correct. Just like you had to get
16 specialized training to do lifetime supervision versus
17 probation versus parole; is that correct?
18 **A** I don't supervise them really any differently.
19 **Q** Okay.
20 **A** I would not say that there is very much
21 variation.
22 **Q** So you are assigned to that specialized unit in
23 March, that is when you first started getting your cases?
24 **A** March 2013.
25 **Q** So are you still currently assigned to that

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1 detail?
2 **A** I am.
3 **Q** So previously to becoming Mr. McNeill's lifetime
4 supervision officer, he did have other lifetime
5 supervision officers before you, correct?
6 **A** He did.
7 **Q** He had four lifetime supervision officers to be
8 exact before you?
9 **A** Okay.
10 **Q** Is that not correct?
11 **A** I did not look back or count. I can only go off
12 of what you say.
13 **Q** Okay. So when you received this case were you
14 in receipt of a file?
15 **A** I was.
16 **Q** Were there notes from previous lifetime
17 supervision officers in that file?
18 **A** There was.
19 **Q** Did you avail yourself of that information when
20 you became his case manager?
21 **A** Yes, I looked back at the file.
22 **Q** Did you become aware of the fact that he did in
23 fact have four previous probation officers?
24 **A** I know he had previous officers. I did not
25 count the number.

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1 **Q** Okay. So we have already established that he
2 started lifetime supervision in 2007, correct?
3 **A** Yes.
4 **Q** So by the time you became assigned as his
5 probation officer he had basically been on probation for
6 about five years?
7 **A** Lifetime supervision?
8 **Q** Yes. I'm sorry. Lifetime supervision.
9 **A** Yes.
10 **Q** Okay. So after you availed yourself of the
11 information from the notes left by the previous
12 supervising officers, did it ever come to your attention
13 that he was ever arrested on a prior violation for
14 violating lifetime supervision?
15 **A** I do not recall.
16 **Q** He did actually, and I'm sure you know this
17 because I know you said that you went through the notes,
18 that he did not become homeless up until I believe it was
19 February of 2013, correct?
20 **A** I would say January.
21 **Q** January?
22 **A** I would say January.
23 **Q** So based upon the notes left to you by the prior
24 lifetime supervision officer, he was able to maintain a
25 stable residence for that prior time period?

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1 **A** He had a residence. I do not know how stable it
2 was.
3 **Q** So he had been reporting the exact same
4 residence for the last five years?
5 **A** Oh, I don't know about that. I don't know if it
6 was the last five years. I just know as I look back he
7 was staying at a Casino Center address. That's all I
8 know.
9 **Q** So that's the only address you remember from the
10 prior note?
11 **A** Yes. From the file, yes.
12 **Q** And reviewing those prior case notes, I am sure
13 you are aware that he was employed previously to you
14 becoming his supervising officer?
15 **A** I know at one time he did report employment. I
16 don't know what those dates are.
17 **Q** Okay. There were also periods of unemployment,
18 correct?
19 **A** Yes.
20 **Q** Now based on those prior case notes, to your
21 knowledge, he had previously submitted to urinary
22 analysis, correct?
23 **A** Yes, he did.
24 **Q** Which is the drug testing that you say he had
25 refused you?

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1 **A** Yes.
2 **Q** Now based on those prior case notes, I am sure
3 you are aware that Mr. McNeill was previously put on a
4 GPS monitoring when he first started his lifetime
5 supervision?
6 **A** I was not aware of that, no.
7 **Q** You were not aware of that?
8 **A** No.
9 **Q** Did you ever see any indication in the case
10 notes that he had violated any kind of GPS?
11 **MR. COOPER:** Objection, Your Honor. She was not
12 aware that he was on GPS so how is she going to know if
13 he violated GPS.
14 **THE COURT:** So the objection is that it's
15 outside of this witness' knowledge?
16 **MR. COOPER:** It's outside and technically asked
17 and answered in the last question and assumes a fact not
18 in evidence.
19 **MS. BONAVENTURE:** Well, Your Honor, just because
20 she says she doesn't know whether he was on GPS
21 monitoring doesn't mean that she wouldn't know there is
22 a violation as a result of not following the GPS monitor.
23 **THE COURT:** If she knows. Overruled.
24 **THE WITNESS:** I do not know if he was violated
25 on any GPS system.

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1 **A** I don't know what happened in the past. I don't
2 know. He could have been. I do not have any proof in
3 front of me or a computer to show me he was at home or
4 wasn't at home.
5 **Q** Okay. From here on out, when I ask you
6 questions I mean from the time in which you became his
7 probation officer.
8 **A** Since March 2013?
9 **Q** Yes.
10 **A** Okay.
11 **Q** So you previously testified that when you became
12 his probation officer, you did what you usually do which
13 is attempt to contact the person you are assigned to
14 supervise?
15 **A** Yes. He is on lifetime supervision.
16 **Q** Did you try to contact him?
17 **A** I did.
18 **Q** And you said you were unable to contact him?
19 **A** I believe I wrote something along the lines of I
20 attempted to contact him but was unable by phone to make
21 contact with him. I don't know if that meant I got a
22 voice mail or the phone got disconnected. I'm not sure.
23 I just know I was unable to get ahold of him.
24 **Q** At that time did you annotate your notes in the
25 case file saying that you suspected him of being a

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1 **BY MS. BONAVENTURE:**
2 **Q** But you did previously testify that he was never
3 previously violated?
4 **A** I don't recall. I believe I said I do not
5 recall. I don't know if he was or was not. I was only
6 concerned with what he does under my supervision.
7 **Q** And so he had been pretty much making most, if
8 not all, of his monthly reports based on those prior case
9 notes?
10 **A** He had been showing up submitting monthly
11 reports.
12 **Q** And by showing up you mean presenting himself
13 physically at the Department of Parole and Probation?
14 **A** Yes.
15 **Q** So based on the prior case notes in the file,
16 some other supervising officers did in fact conduct house
17 checks, correct?
18 **A** Yes.
19 **Q** In fact, I don't know if you know anymore of the
20 details of it, but when they did do some of the house
21 calls - is that what you call them?
22 **A** Home contact.
23 **Q** Home contact, okay. HC, home contact. Okay.
24 When they did do these house visits he wasn't always at
25 home, correct?

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1 potential absconder?
2 **A** Yes.
3 **Q** Can you for the jury's sake explain what an
4 absconder is?
5 **A** An absconder is someone who is no longer
6 reporting as directed by the Parole and Probation Office.
7 **Q** But when you recall the previous case notes, do
8 you recall whether or not Mr. McNeill had made his
9 February 2013 appointment which was the month that
10 immediately predated the month you became his supervising
11 officer?
12 **A** I believe it is but I would not be able to
13 confirm that without the file in front of me.
14 **Q** Would it refresh your recollection to see it?
15 **A** I would be able to see the monthly report and
16 the date on it to see if that is a monthly report with
17 the February date.
18 **MS. BONAVENTURE:** Your Honor, may I approach?
19 **THE COURT:** You may.
20 **BY MS. BONAVENTURE:**
21 **Q** Tell me what this is that you are looking at?
22 **A** It is a monthly report dated 2/5/2013, Officer
23 Van Dyke. Filled out by Steve McNeill.
24 **Q** So this is the month before you became his
25 probation officer?

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1 A Yes.
 2 Q Did he in fact report the month before you
 3 became his probation officer?
 4 A He did.
 5 Q And then in March he did in fact report to you?
 6 A I was surprised by him reporting, but, yes.
 7 Q Okay. And surprised because you had put him
 8 down as an absconder?
 9 A No. Because I make appointments to see my
 10 offenders to come see me so they don't show up at the
 11 office and I'm not there. So I make appointments. So I
 12 had no appointment with him for March.
 13 Q Did you go look for him at this point?
 14 A I might have. I might have tried to drive by.
 15 I don't know for a fact.
 16 Q If you had gone out would you have annotated
 17 your notes?
 18 A Yes.
 19 Q Did you review that file before you came in here
 20 today?
 21 A It would be on my computer. It's called a
 22 "chrono list." So if I reviewed the chrono list I would
 23 see if I did try to make phone contact.
 24 Q If I showed you the chrono list would you be
 25 able to look at it?

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1 A I could not testify to where he was registered,
 2 only what he is reporting on his monthly report.
 3 Q Fair enough.
 4 A What was your question again?
 5 Q What corner did he put on his monthly report?
 6 A For what month?
 7 Q For the month you were assigned his case?
 8 A March?
 9 Q Yes.
 10 A It doesn't say.
 11 Q So safe to say it was either one?
 12 A Either one of those two. He reports the same
 13 thing every time.
 14 Q So this was the report I had shown you
 15 previously, the February report?
 16 A Yes.
 17 Q So this is the February report that you had
 18 looked at before. This is the one that the supervising
 19 officer before you had seen and this would have been
 20 information you had going in to his case, correct?
 21 A Yes. Colorado and Main.
 22 Q Thank you. So he was registered at Colorado and
 23 Main, correct?
 24 A No. I would not say he was registered --
 25 Q I'm sorry. I keep confusing the words. Thank

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1 A Yes, definitely.
 2 MS. BONAVENTURE: If I may approach, Your Honor.
 3 THE COURT: You may.
 4 BY MS. BONAVENTURE:
 5 Q I know it might take a second as to the dates.
 6 It is not easy to read.
 7 A Looks like March 26th attempted to reach him by
 8 phone and was unsuccessful.
 9 Q Now does it say anything about you conducting a
 10 potential home contact?
 11 A I do not see it on here. I think this should
 12 have only been one page.
 13 Q So you did not attempt a home contact at that
 14 point?
 15 A I did not.
 16 Q But then he showed up in March?
 17 A He did.
 18 Q Do you remember where he was registered?
 19 A I did not check the sex offender registry at
 20 that moment.
 21 Q I am talking about in the monthly report that he
 22 was submitting to the Department of Parole and Probation.
 23 Maybe this will help you recall.
 24 Do you recall him being registered at the corner
 25 of Main and Colorado?

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1 you. He was reporting that his residence was at that
 2 intersection?
 3 A Yes, he was.
 4 Q And he reported the intersection at the
 5 direction of his previous PO, correct?
 6 A I can't speak to what they discussed or I do not
 7 know anything about what happened before I was his PO
 8 really.
 9 Q Okay. Would that information have been put into
 10 a statement?
 11 A If the officer put it in, yes.
 12 Q So he is reporting to the Department of Parole
 13 and Probation an intersection because he is, homeless
 14 correct?
 15 A Yes.
 16 Q And he does that because homeless people are
 17 required by law to register, if they did not have a fixed
 18 address to register at a corner closest to where they
 19 habitually sleep, correct?
 20 A Yes.
 21 Q So now let's turn to your preliminary hearing
 22 testimony because that is very curious to me.
 23 A Okay.
 24 Q Mr. Cooper brought it up on direct, and you did
 25 in fact testify at preliminary hearing, I asked you, I

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1 was like, Officer Mangan, did Mr. McNeill ever provide
 2 you a map specifically indicating where he sleeps?
 3 **A I remember that.**
 4 **Q** And you said, No, he never drew me a map?
 5 **A Yes. I did say no.**
 6 **Q** Which, like I said, is very curious because
 7 everybody did previously see these maps?
 8 **A They did.**
 9 **Q** There is not just one map, but there's two maps?
 10 **THE COURT:** Counsel, for our record, if you are
 11 going to publish, can you identify which proposed or
 12 admitted exhibit that is.
 13 **MS. BONAVENTURE:** Absolutely. This is the
 14 State's Exhibit 6. And this is the monthly report that
 15 he submitted for April 12th of 2013. So there was this
 16 one map. And not only was there one map, there were two
 17 maps. But everybody did in fact see that map.
 18 **THE COURT:** And that is State's exhibit --
 19 **MS. BONAVENTURE:** This is State's Exhibit 7.
 20 **BY MS. BONAVENTURE:**
 21 **Q** So suffice it to say that not just one but two
 22 maps existed and you had no recollection of that at
 23 preliminary hearing?
 24 **A Right. Without my monthly report I could not**
 25 **recall if he had drawn me a map or not.**

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1 **A Yes.**
 2 **Q** And then you received a monthly report from
 3 Mr. McNeill in July?
 4 **A Yes.**
 5 **Q** So by July -- and July 11 is the date that you
 6 arrested him for violations of lifetime supervision?
 7 **A I did.**
 8 **Q** And so by July you had only seen him three or
 9 met with him prior three times, correct?
 10 **A March, June, April -- June, so July that would**
 11 **be four times.**
 12 **Q** I believe the monthly reports indicate that you
 13 met with him March --
 14 **A Oh, are you speaking of the other officer?**
 15 **Q Yes.**
 16 **A Yes.**
 17 **Q** March, April and May?
 18 **A Yes.**
 19 **Q** Not June?
 20 **A Okay.**
 21 **Q** And then you met him again in July?
 22 **A Yes.**
 23 **Q** Okay. And July is the monthly reporting date
 24 that you arrested him?
 25 **A He filled out his monthly report on July 11th.**

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1 **Q** In fact based on your own case notes I believe
 2 you annotated that not only were the maps drawn but you
 3 and Mr. McNeill looked it up Google earth.
 4 **A I pulled up Google earth on my computer, yes.**
 5 **Q** Where he indicated to you on Google earth where
 6 he says he sleeps at night?
 7 **A Yes.**
 8 **Q** Yet you had no recollection of that at
 9 preliminary hearing?
 10 **A I believe the question was of him drawing me a**
 11 **map not whether I looked up a map on my own on Google**
 12 **earth.**
 13 **Q** You made no mention of that at preliminary
 14 hearing?
 15 **A I was not asked that question.**
 16 **Q** Okay. Mr. McNeill report toed you in March of
 17 2013. He reported to you in April of 2013. He reported
 18 to you in March of 2013 --
 19 **A May, yes.**
 20 **Q** Yes, I meant May. And you had said on direct
 21 that some other officer was his officer for the month of
 22 June?
 23 **A Yes. I believe Office White was his officer. I**
 24 **wasn't transferred. I don't know if it was May or June.**
 25 **Q** It was sandwiched right in there, yeah.

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1 **He came in the office. We talked and I arrested him.**
 2 **Q** And like you testified earlier, nothing came of
 3 those charges?
 4 **A No.**
 5 **Q** He was released from custody?
 6 **A He was.**
 7 **Q** So you arrested him on July 11th and then he
 8 reported to you in August, correct?
 9 **A He did.**
 10 **Q** He reported to you on August 19th to be exact?
 11 **A That was a typo. The actual physical date he**
 12 **reported is on 8/15. I entered it in the computer on**
 13 **8/19 and that's where I got that date from.**
 14 **Q** So you entered -- it was a typo that you entered
 15 into the computer?
 16 **A It is not a typo. It is just -- so he comes in**
 17 **on the 16th and I see him. But lets say that was a**
 18 **Thursday, so that was my Friday. I come back on Monday**
 19 **and I would enter when it happened. So on the computer,**
 20 **it puts in that date, which would have been the 19th.**
 21 **Q** Okay.
 22 **A** So when I am looking at the computer it will say
 23 8/19 this is what happened, this is what I saw when it
 24 actually it occurred on the 15th.
 25 **Q** And I see corroborating proof of that. In fact

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1 this is State's Exhibit 10, and right here you can see
2 the report date that Mr. McNeill himself wrote down was
3 August 15th?

4 A Yes.

5 Q So the computer error was because of a typo?

6 A I entered the information on a different date
7 then the 15th.

8 Q Got it. Okay. So on August 15th you testified
9 on direct that he came in, you asked him to take urinary
10 analysis test and he flat out refused?

11 A Yes.

12 Q Did you at any point hand him a cup to, for lack
13 of a better word, pee in?

14 A I don't believe we would have got that far. I
15 don't recall having a cup in my hand or anything like
16 that. I don't think I had a cup and I'm not sure how
17 that makes a difference.

18 Q So you don't remember whether or not you gave
19 him a cup?

20 A I don't.

21 Q And then you said you took him directly to
22 Officer Zana's office?

23 A I took him to my supervisor, Sergeant Zana.

24 Q Sergeant Zana, sorry, who is your supervisor?

25 A Yes, he is.

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1 Department of Parole and Probation that day?

2 A He did.

3 Q So you testified on direct that you never heard
4 from Mr. McNeill again?

5 A I saw the letter he sent but I don't recall ever
6 having a conversation with him.

7 Q Right. You never saw him again, you never had
8 any verbal or telephone communication with him?

9 A No, I don't believe so.

10 Q So the only indication of his existence that you
11 got was a cease and desist letter?

12 A Yes.

13 MS. BONAVENTURE: May I approach, Your Honor?

14 THE COURT: You may.

15 BY MS. BONAVENTURE:

16 Q Is this a true and accurate representation of
17 the cease and desist letter you were shown in reference
18 to Mr. McNeill?

19 A I believe it is.

20 Q You had testified on direct that the basic gist
21 of it is he is telling Parole and Probation don't contact
22 me?

23 A To cease and desist contact with him.

24 Q Any and all contact in fact?

25 A Yes.

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1 Q So at that point you overheard a conversation
2 between Sergeant Zana and Mr. McNeill?

3 A I was in the room as they were speaking.

4 Q So you overheard a conversation?

5 A Yes.

6 Q And so you said that you overheard them have a
7 conversation about the curfew?

8 A Yes.

9 Q Wherein somebody wanted to put him on a curfew?

10 A Well, he had to abide by his curfew.

11 Q Okay. And you said that he had flat out
12 refused?

13 A He refused to be placed on a curfew.

14 Q So a curfew was never set?

15 A Well, his old curfew would still be in effect
16 unless I said this curfew is no longer in effect, which I
17 never did.

18 Q Okay. So a new curfew was never set? On August
19 15th no new curfew was set?

20 A No new curfew.

21 Q And you did not arrest him that day, correct?

22 A I did not.

23 Q Sergeant Zana did not arrest him that day?

24 A No.

25 Q By all accounts Mr. McNeill walked out of the

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1 THE COURT: Ms. Bonaventure, if you want to
2 discuss the document substantively. I don't have a
3 problem with as long as it has been admitted. Do you
4 seek to move to admit it?

5 MS. BONAVENTURE: Yes, Your Honor.

6 THE COURT: We have marked it now as Defense's
7 Exhibit Proposed A. Any objection?

8 MR. COOPER: No, Your Honor.

9 THE COURT: No, then, Defense Proposed A is
10 admitted and you may publish.

11 (Whereupon, Defendant's Exhibit A was
12 admitted into evidence.)

13 MS. BONAVENTURE: Thank you.

14 BY MS. BONAVENTURE:

15 Q So the first couple of pages are the actual
16 notice of the cease and desist letter, right?

17 A I am not really familiar with these kind of
18 letters. I just read it over. But I am not familiar
19 with what this entails.

20 Q I would put it here just so that the jury can
21 see what we are looking at.

22 A Okay.

23 Q So at the top, can see that this is cease and
24 desist in restrictions and harassments, correct?

25 A That's what it says.

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1 Q Okay. And so was this included in the letter
2 that you saw that day?
3 A I believe it was.
4 Q It is a commercial affidavit open verification
5 from Steve McNeill, correct, as part of his cease and
6 desist letter?
7 A It came in the mail, that's all I know.
8 Q And also here is included a UCC financing
9 statement; was that included in the packet?
10 A It was included in the letter.
11 Q Letter, okay. And then this also, an affidavit
12 of political status.
13 A I believe it was included in the letter.
14 Q Looks like it is signed by Mr. Steven Dell
15 McNeill.
16 A Yes.
17 Q So this was in fact an accurate representation
18 of the actual cease and desist letter?
19 A It appears so, yes.
20 Q You previously testified the last time you saw
21 him was August 15, 2013?
22 A Yes.
23 Q You received -- do you remember what day you
24 received the cease and desist letter?
25 A I did not receive it. My sergeant showed it to

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1 me on 8/29/13, around that time. It was later August
2 that he had known me the letter that the captain had
3 received.
4 Q So a little bit after your last meeting with
5 him?
6 A Yes.
7 Q And so you never heard from him again?
8 A I did not.
9 Q Now the charges you filed in this case -- you
10 filed that report with the alleged charges in this case
11 in March of 2014, correct?
12 A Can I see -- I believe so. I know I started
13 that December. I started writing the new charges then
14 and there was a series of corrections that happened and
15 then it was sent to the DA and it comes back with, We
16 want more information. They sent it back, so it was kind
17 of like a back and forth process. But I believe I
18 started writing the charges in December, which should be
19 noted on there.
20 Q So it actually got filed -- here it is. Does
21 that look familiar?
22 A Well, this is part of it. It's not my complete
23 packet, but it is part of it. It was finally approved by
24 my sergeant on 3/10/14.
25 Q So that is the day that it goes to -- when it

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1 gets filed with the court which is why there is a stamp
2 there?
3 A Yes.
4 Q And it's fair to say it's filed on that date,
5 the 14th?
6 A Yes.
7 Q Thank you very much. And so the preliminary
8 hearing transcript that we had earlier alluded to, you
9 testified then that the reason you waited so long or the
10 reason it took so long was that you were attempting to
11 contact Mr. McNeill?
12 A That was part of the reason, yes.
13 Q And you even testified on direct that you said
14 you made attempts to drive by the location he had
15 previously reported?
16 A Yes.
17 Q And to make phone calls?
18 A Yes.
19 Q If you had done those would you have annotated
20 them in your case notes?
21 A They should be noted.
22 Q Do you remember the dates that you made these
23 calls?
24 A I do not remember the dates.
25 Q If I were to show you your case notes would you

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1 be able to refresh your recollection?
2 A Yes.
3 Q Please take your time in looking at that and let
4 me know if you see any notes of any calls or any visits
5 made to contact Mr. McNeill between the dates of
6 August 2013 to March 2013 related to the charges in this
7 case.
8 THE COURT: You mean March 2014.
9 MS. BONAVENTURE: I do.
10 THE WITNESS: February 27, 2014, I tried to look
11 for the subject in alley and cross streets of Main and
12 Wyoming. Subject was not observed. And then the same
13 day I continued my surveillance between Main and Wyoming.
14 I drove around multiple alleys and roads on or near
15 Colorado and Las Vegas Boulevard, Wyoming, Commerce,
16 Utah. That is the only thing I see.
17 Q Between those two dates?
18 A Yes.
19 Q So your case notes they only reflect that you
20 made one attempt to go down to try to locate Mr. McNeill
21 in February, correct?
22 A Correct.
23 Q February 27th?
24 A Correct.
25 Q And there were no case notes that you could find

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1 that you made any calls?
2 **A** It was not written down, no.
3 **Q** Okay. And just to clarify because I know all
4 these dates get confusing to us and they get confusing
5 for our jury members. So you were never able to find him
6 at the corners he had registered at, correct?
7 **A** I never personally saw him at Main and Wyoming,
8 yeah.
9 **Q** You did not see him there while he was reporting
10 to you, correct?
11 **A** I did not.
12 **Q** And you never saw him there after?
13 **A** Right.
14 **Q** Okay. Now I know we touched upon this in the
15 preliminary hearing a little bit, but one of the theories
16 of the State's case is he was failing to cooperate with
17 you, his lifetime supervision officer.
18 Now, so that basically means not cooperating
19 with you, he is not abiding by the terms of his
20 supervision, correct?
21 **A** Can I actually read what cooperation says under
22 his Lifetime Supervision Agreement to better recollect?
23 **Q** Okay. Here you go.
24 **A** Cooperation: You shall at all times cooperate
25 with your supervising officer and behavior should justify

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1 the opportunity granted to you by this lifetime
2 supervision.
3 **Q** Okay. So now a violation of that clause would
4 be violating your lifetime supervision?
5 **A** Yes.
6 **Q** So what you had said earlier you said he refused
7 urinary analysis, correct?
8 **A** Yes.
9 **Q** And so that is part and parcel of his failing to
10 cooperate, right?
11 **A** I would think so, yes.
12 **Q** By just making that one violation. It is not
13 just one violation for refusing to do the urinary
14 analysis, but it's actually two violations because it
15 violates not just having to do the urinary analysis, but
16 it is also a violation of not cooperating with the
17 lifetime supervision?
18 **A** It seems to be the case, yes.
19 **Q** So kind of like a twofer; two violations --
20 **A** It's in there and I can violate on it.
21 **Q** Okay. That is fine. So part of the State's
22 theory of the case is also that he was terminated from
23 sex offender counseling, correct?
24 **A** He was.
25 **Q** And I know that you testified that you had

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1 ordered him to return to sex offender counseling?
2 **A** I did.
3 **Q** Specifically you called Marcia Lee?
4 **A** To get reenrolled in counseling.
5 **Q** Yes. Did you ever yourself just call Marcia
6 Lee?
7 **A** I am sure we spoke. I don't know the date or
8 time.
9 MS. BONAVENTURE: No more questions, Your Honor.
10 Thank you.
11 THE COURT: Mr. Cooper, any redirect?
12 MR. COOPER: No, Your Honor.
13 THE COURT: I gave the instructions yesterday so
14 hopefully the jurors will remember that we give the
15 opportunity for the jurors to ask questions of the
16 witness. May I see by a show of hands if any of you have
17 any questions for this witness. Seeing no hands I
18 believe you are excused, Officer. You may exit the
19 courtroom.
20 (Witness exits the courtroom.)
21 THE COURT: Okay. I think this would be a good
22 time to take a break, ten minutes.
23 During the recess, you are admonished not to
24 talk or converse among yourselves or with anyone else on
25 any subject connected with the trial or read, watch or

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1 listen to any report of or commentary on the trial or any
2 person connected with the trial by any medium of
3 information including without limitation newspaper,
4 television, radio, Internet or social media of any kind,
5 or to form or express any opinion on any subject
6 connected with the trial until the case is finally
7 submitted to you.
8 THE COURT: We'll have to take some time to put
9 on the record the bench conferences that we have had
10 today -- to the extent that I can remember them.
11 MR. COOPER: There was a multitude of them.
12 (Whereupon, a recess was taken.)
13 THE COURT: Now that he have all the jurors
14 present we will have ask the State for their next
15 witness.
16 MR. COOPER: Sergeant Zana.
17
18 Whereupon,
19 BRIAN ZANA,
20 was administered the following oath by the court clerk.
21 THE CLERK: You do solemnly swear that the
22 testimony you give in this action shall be the truth, the
23 whole truth, and nothing but the truth so help you God.
24 THE WITNESS: I do.
25 THE CLERK: Please state and spell your full

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1 name for the record.
2 THE WITNESS: Brian Zana, B-r-i-a-n, Z-a-n-a.
3 THE COURT: Thank you, sir. You may be seated.
4 Mr. Cooper, whenever you are ready.
5 MR. COOPER: Thank you, Your Honor.

6
7 DIRECT EXAMINATION

8 BY MR. COOPER:

9 Q Mr. Zana, how are you currently employed?

10 A I am a sergeant with the Department of Public
11 Safety Division of Parole and Probation.

12 Q How long have you been employed with the
13 Division of Parole and Probation?

14 A Nearly 16 years.

15 Q How long have you been a sergeant?

16 A Six years.

17 Q What particular area or assignment are you as a
18 sergeant?

19 A For the past three years I have been assigned to
20 the sex offender unit.

21 Q I want to turn your attention specifically to
22 August of 2013; do you recall this time period?

23 A Yes.

24 Q And during this time period, did you have an
25 occasion to meet anyone that you recognize here in court?

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1 guidance. We call it kind of like the "come to Jesus
2 meeting" to give them one last opportunity to comply
3 usually. Officer Mangan came into my office and said
4 that she had Mr. McNeill at her desk and would it be all
5 right if she brought him in for me to have a talk with
6 him and I told her of course it would be fine.

7 Q Do you remember the actual date of that?

8 A August 15th.

9 Q And what happened at that point when he came in
10 your office?

11 A He came into my office. I listened to him and
12 he was complaining about how Officer Mangan wanted to put
13 him on weekly reporting and he said that, Well, I am only
14 reporting to her once a month as a courtesy to her now
15 and I explained to him that the law required him to
16 report as instructed by his officer.

17 We got into a little back and forth quoting
18 NRS's and I explained to him that he's going to have to
19 abide by the conditions of his agreement.

20 He continued to go back and forth with me about
21 how he would report when he wanted to report and we
22 discussed other issues, such as his residence where he
23 was living and Officer Mangan had difficulty finding him
24 there. And at that point he said, Well, I'll live where
25 I want to live, and I'm not going to be a dog on a

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1 A Yes.

2 Q Can you please point to that person and describe
3 something they are wearing.

4 A The person who is wearing a khaki shirt with a
5 checkered black and green tie.

6 MR. COOPER: May the record reflect the
7 identification of the defendant, Your Honor.

8 THE COURT: The record will so reflect.

9 BY MR. COOPER:

10 Q Are you familiar with what's called a Lifetime
11 Supervision Agreement?

12 A Yes.

13 Q And what is that agreement?

14 A The Lifetime Supervision Agreement is an
15 agreement created under NRS 213.1243 outlining the
16 conditions of the lifetime supervision offender's
17 supervision.

18 Q And to your knowledge was the defendant under a
19 Lifetime Supervision Agreement in August of 2013?

20 A Yes, he was.

21 Q Now, can you describe how you came in contact
22 with him and what happened as a result of that contact?

23 A My officers routinely when they have issues with
24 some of their offenders will ask to bring an offender in
25 to speak with me so I can kind of give them a little more

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1 leash.

2 Q Did he say anything to you in relation to
3 whether or not he is taking a urinalysis?

4 A Officer Mangan had reported to me that he would
5 not take a urinalysis.

6 Q And specifically during your conversation with
7 him -- how did that conversation end?

8 A Basically, I could tell he just wanted to be
9 argumentative. There was no reason to continue the
10 banter back and forth. I explained to him that he would
11 be required to follow the conditions of his Lifetime
12 Supervision Agreement and follow the rules that are set
13 forth by his officer. And if he didn't report as
14 instructed and do what he was explained to do, that a
15 warrant would issue for him.

16 Q Now, at some point after August 15th, 2013, did
17 you have occasion to receive a letter or anything of that
18 nature?

19 A Yes, I did.

20 Q What did this letter entail?

21 A I was called up on I believe it was August 29th,
22 my captain called me up to his office and said that he
23 had received a certified letter from Mr. McNeill and he
24 was confused as to why he was receiving it. I reviewed
25 the letter and it appeared to be kind of a

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1 self-generating cease and desist letter.
 2 MR. COOPER: Permission to publish, Your Honor.
 3 THE COURT: You may.
 4 BY MR. COOPER:
 5 Q This is Defendant's Exhibit A; is this that
 6 letter that you were talking about?
 7 A Yes, that looks like it is.
 8 Q And when you received this letter did you
 9 forward it on to your supervisor or other individuals?
 10 A The captain advised me to forward it to our
 11 deputy AG that represents this case.
 12 Q And based on all the information you received,
 13 did you continue to supervise the defendant?
 14 A Yes, we did.
 15 Q To your knowledge, that letter had no bearing on
 16 your ability to I guess follow a court order and
 17 supervise him?
 18 A None whatsoever.
 19 Q Now, during your conversation with him in your
 20 office, do you recall any other statements he might have
 21 made to you or anything of that nature in relation to if
 22 he was going to show back up or if he thought that you
 23 guys should be --
 24 MS. BONAVENTURE: Your Honor, I am going to
 25 object. This is leading at this point. Where is the

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1 question?
 2 MR. COOPER: I can rephrase or I can say it
 3 again because that question is not leading.
 4 THE COURT: I will sustain and ask you to
 5 rephrase. I think the question was did you remember any
 6 other comments made by the defendant and that would
 7 suffice.
 8 BY MR. COOPER:
 9 Q Do you remember any other comments made by the
 10 defendant?
 11 A During our conversation he had stated in our
 12 banter back and forth about NRS, he was quoting NRS and
 13 stating that he wasn't required to register with sex
 14 offenders, he wasn't require to report to us. I, of
 15 course, was quoting NRS 176.0931 that clearly states
 16 that, you know, lifetime supervision is where these 23
 17 most egregious offenses passed the law on October 1st,
 18 1995.
 19 After the banter, I decided that he was just
 20 going to want to continue to argue. I had explained to
 21 him that he would report as instructed by his officer.
 22 And at that point he said that he wasn't going to be
 23 coming in. And I told him, Well, if you don't comply, if
 24 you don't report, if don't do what you are ordered to do,
 25 then there will be a warrant issued.

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1 MR. COOPER: Thank you. No further questions,
 2 Your Honor.
 3 THE COURT: Ms. Bonaventure.
 4
 5 CROSS-EXAMINATION
 6 BY MS. BONAVENTURE:
 7 Q Officer Zana, you said that Officer Mangan told
 8 you that he refused a UA?
 9 A That's correct. When she came in and asked if I
 10 would talk to him.
 11 Q And UA meaning urinary analysis?
 12 A That's correct.
 13 Q Did you ever ask him to do a UA?
 14 A No, I did not.
 15 Q You never handed him a cup or anything?
 16 A No, I did not.
 17 Q You testified that he refused to be put on a
 18 curfew?
 19 A That's correct.
 20 Q Was a curfew ever set that day -- on August 16th
 21 did you set a curfew for him?
 22 A No. Officer Mangan would have set one. I do
 23 not micromanage my officers.
 24 Q Okay. Now are there any situations in which you
 25 make annotations to the case notes for a particular

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1 person on lifetime supervision?
 2 A If I get a phone call from a counselor or a
 3 family member or the offender themselves, if I get a
 4 phone call or something like that without the officer
 5 present I will make a notation in the CODIS system.
 6 Q Do you ever remember annotating Mr. McNeill's
 7 file?
 8 A On which day?
 9 Q Any day.
 10 A Yes. When I review a crime report, warrant
 11 request, it's routine that I put in there that I reviewed
 12 it, if there needed to be some corrections or additions I
 13 would make notes that that needs to be done and send to
 14 the officer to be done.
 15 And then once a report would be finalized and it
 16 was acceptable then I would put another chronological
 17 entry noting that it was accepted and sent to the officer
 18 and forwarded to the District Attorney's Office,
 19 something like that.
 20 Q Do you recall particularly in this case making
 21 an annotation on June 12th of 2013?
 22 A I do not remember specifically.
 23 Q If I showed you the chron notes in this case
 24 would that help refresh your memory?
 25 A Yes.

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1 MS. BONAVENTURE: May I approach, Your Honor?
2 THE COURT: Yes.
3 BY MS. BONAVENTURE:
4 Q And are these the chron notes?
5 A Right.
6 Q Okay. And what was that (indicating)?
7 A "HC" refers to home contact.
8 Q What does the note actually say?
9 A The note says that --
10 MR. COOPER: Your Honor, I have to object at
11 this point. She was just refreshing his recollection.
12 THE COURT: That's fine.
13 Do you have a question for him, Ms. Bonaventure,
14 regarding his memory?
15 MS. BONAVENTURE: Sure.
16 BY MS. BONAVENTURE:
17 Q Has this refreshed your memory?
18 A Yes, it has.
19 Q On June 12, 2013 what annotation did you make?
20 A It was a chrono discussing the need for a home
21 contact on Mr. McNeill.
22 Q Specifically because one had not been done?
23 A She was unable to get a home contact on him.
24 Q And it was high priority?
25 A Absolutely.

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1 Q So the file was returned to her to get that home
2 contact?
3 A Absolutely.
4 MS. BONAVENTURE: Okay. Great. No more
5 questions, Your Honor. Thank you.
6 THE COURT: Any redirect?
7 MR. COOPER: No, Your Honor.
8 THE COURT: All right. May I see by a show of
9 hands if any jurors have any questions for this witness.
10 Seeing none, Sergeant Zana, you are excused.
11 THE WITNESS: Thank you.
12 THE COURT: Earlier I had determined with
13 counsel that we would conclude with those witnesses today
14 at/or around 5:00, and it is just after 5:00, so we kept
15 it pretty close to the anticipated time frame. I do need
16 to inform you, though, that yesterday when we were trying
17 to determine what our schedule would be for today and for
18 tomorrow, I had indicated the start time for today and
19 then anticipated perhaps a 1:00 start time for tomorrow.
20 We actually have a witness of the State's that we need to
21 accommodate their schedule and needs to come in tomorrow
22 at 11:00, so I will ask you to return here tomorrow at
23 11:00. We will take a lunch break at the normal time and
24 then conclude with the remainder of the trial in the
25 normal course.

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1 I hope nobody has any difficulty with that
2 slight adjustment to the start time. Otherwise, I do
3 need to admonish you during this overnight recess, you
4 are admonished not to talk or converse among yourselves
5 or with anyone else on any subject connected with the
6 trial or read, watch or listen to any report of or
7 commentary on the trial or any person connected with the
8 trial by any medium of information including without
9 limitation newspaper, television, radio, Internet or
10 social media of any kind, or to form or express any
11 opinion on any subject connected with the trial until the
12 case is finally submitted to you.
13 (Jury exits the courtroom.)
14 THE COURT: So I gave you my card that had my
15 e-mail address where I can receive the jury instructions.
16 I think the earliest I would probably be able to work on
17 it would be after 9:00 tonight so no need to rush it.
18 MR. COOPER: All right. Thank you, Your Honor.
19 THE COURT: I want to try my best to put into
20 the record those key bench conferences that we have had
21 throughout the course today. A number of them took place
22 during opening statements, but I am actually going to
23 start with the bench conferences that occurred when
24 Officer Mangan was on the stand.
25 We have already addressed the objection that was

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1 made when Officer Mangan testified what was State's
2 Proposed and is now State's Exhibit 2, the Lifetime
3 Supervision Agreement that was signed while the defendant
4 was incarcerated and was what prompted us to actually
5 excuse the jury.
6 And we have already put in the record with
7 regard to the request for a mistrial and those
8 circumstances. I just wanted to invite to see if anybody
9 had anything further to add in the record on that before
10 I then go back to the other bench conferences that I
11 noted.
12 MS. HOJJAT: Yes, Your Honor. We had also
13 objected and then at the bench further elaborated on our
14 objection that the State's Exhibit 2 that was admitted,
15 we were objecting that it was a fugitive document because
16 it was not a document that was signed while the defendant
17 was on lifetime supervision. It was not a document --
18 essentially, it was a document that was signed while he
19 was still incarcerated prior to his sentence.
20 And our objection was essentially the terms of
21 lifetime supervision are fairly clear in the statute. A
22 term of supervision does not begin until all other
23 sentences have expired. That includes parole and
24 probation and incarceration.

25 THE COURT: And your basis for -- you use the

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1 term "fugitive document" and I have to be honest, at the
2 time at the bench, and you used it again now, it doesn't
3 really resonate with me. I have a very specific idea of
4 what, to me, a fugitive document is, but that doesn't
5 necessarily mean that it isn't. That just did not
6 resonate with me, as I said. To me a fugitive document
7 is one that's filed that shouldn't be filed.

8 Can you help me understand on what basis do you
9 argue that it's a fugitive document? I mean, clearly, it
10 is a document that was signed by this defendant. That's
11 not protested as I understand. And clearly it was a
12 document that was part and parcel of the process.

13 Are you suggesting that it is fugitive because
14 it should not have been signed at the time that it was
15 signed, or I guess I am not clear on what you mean by it
16 being a fugitive document.

17 MS. HOJJAT: I guess I can rephrase the
18 terminology for the Court, I guess. Basically, what I am
19 saying is lifetime supervision, nothing about lifetime
20 supervision commences, nothing having to do with lifetime
21 supervision commences until all prior terms, sentences
22 have been finished, including parole, probation and
23 imprisonment.

24 If he was still incarcerated in prison, he was
25 not on lifetime supervision. It is not a valid document.

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1 the day, there is a point in time when someone is
2 releasing from incarceration and they get their stuff,
3 they sign something and they walk out the door. So
4 presumably it could be signed as he was walking out the
5 door. Presumably it could be signed at some other time.
6 I don't think that is the point.

7 I think really the argument is this document is
8 something that the defendant signed. You argued that it
9 had relevancy. I allowed it to be admitted. We are just
10 making a record now I think primarily of what was argued
11 at the bench and ultimately trying to set forth so that
12 there is clarity for the Court when we had this bench
13 conference at the time that this document was objected
14 to, this was the nature of the discussion.

15 So rather than sort of embellish on the argument
16 now too much, along those lines do you have anything that
17 you want to either put in the record that was said at the
18 bench that we haven't covered or do you have anything
19 else specific to add --

20 MR. COOPER: Yes, Your Honor.

21 THE COURT: -- I am not going to change my mind
22 and kick the document out.

23 MR. COOPER: Just as a base, I think they said
24 it was a fugitive document and I think the Court also
25 agreed it wasn't a fugitive document when it was signed

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1 Essentially, it was a document that was signed regarding
2 lifetime supervision before anybody had any authority
3 over him via lifetime supervision. It's very clear.
4 There is no authority of lifetime supervision. It
5 doesn't begin until after everything is done and
6 everything was not done. This document is not valid.

7 THE COURT: Okay. Before I respond, Mr. Cooper,
8 did you want to respond?

9 MR. COOPER: Their argument factually flawed in
10 the sense of when you are on lifetime supervision you
11 have to at some point sign your lifetime supervision
12 agreement. Why would they release someone from prison
13 and then let them run around the streets and then weeks
14 later say, Hey, oh, by the way, we did not have you sign
15 your Lifetime Supervision Agreement.

16 Obviously, there has to be a first time for it
17 to be signed and the only reasonable time for that to be
18 is when they are still in prison when we can still find
19 them and we can say, Hey, you are about to get out in ten
20 days. You need to sign this Lifetime Supervision
21 Agreement because this is explaining to you the terms of
22 your lifetime supervision that you are --

23 THE COURT: Well, before we go too much further
24 down the road of making either argument sound ridiculous
25 and counterargument that that's ridiculous, at the end of

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1 by the defendant and it obviously has relevance in this
2 case and I think that should be enough.

3 THE COURT: That is the Court's ultimate
4 determination was that the document is relevant. That
5 there were three variations on this Lifetime Supervision
6 Agreement in terms of when they were signed. I can't
7 speak to for purposes of the admissibility of the
8 evidence, I could, but I am not going to speak to in
9 terms of whether or not the NDOC is following a procedure
10 in which perhaps is in some way flawed because of some
11 interpretation that defense counsel has that others may
12 share that it really shouldn't be done until he has
13 completed his term of incarceration.

14 I think it would have been inappropriate to
15 address that issue in terms of their protocol through
16 this ruling. What this court is looking at is whether or
17 not there was any issue as to the authenticity of the
18 document, the fact that the defendant signed the
19 document, the facts that I do want to put in the record
20 that at the bench the main concern expressed, and it was
21 expressed on the record in the previous argument as well
22 when we were discussing redactions prior to starting the
23 trial, that the main concern about that particular
24 exhibit version of Lifetime Supervision Agreement was
25 that Mr. McNeill had written "under duress."

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1 That testimony was not elicited at this time.
2 Yes, it is still remaining on the document. I did not
3 redact it. Should the jurors choose to look at that
4 exhibit when they go to deliberate, they may very well
5 see it, but there was no testimony or information
6 elicited that indicated that indicated that this type of
7 protesting occurred then prior to Officer Mangan or
8 anything else, so at this point I think that record is
9 completed as to that.

10 The only other objection that took place during
11 Officer Mangan's testimony was an initial objection as
12 she began responding to a question from Mr. Cooper
13 regarding what is lifetime supervision and she was
14 explaining what it means to her and she was liking it to
15 a type of parole and probation and there was an objection
16 posed as to she should not testify to the law.

17 I honestly I cannot recall if I sustained or
18 overruled the objection but I did ask Mr. Cooper to
19 further clarify that we were just looking for what
20 specifics of lifetime supervision applied to this
21 defendant in this case and the witness's knowledge with
22 regard to that.

23 But I think she was allowed to sort of finish
24 her knowledge base and I think I indicated it was
25 relevant for her to share what she understands it to be

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1 with the understanding that we are ultimately going to
2 provide to the jurors the clarification of what the law
3 is in regards to this case.

4 And so is there anything that either counsel
5 said that they would like to add to the record for that
6 objection?

7 MS. HOJJAT: Yes, Your Honor. I wanted to ask
8 that that objection also kind of supplement the previous
9 objection that we discussed about the Lifetime
10 Supervision Agreements and knowledge because our
11 objections on those two were kind of connected. We
12 objected and said that she should not be instructing the
13 jury on what the law is and what lifetime supervision is
14 and further objected that she was giving an incorrect
15 statement. And when we objected to the lifetime
16 supervision agreement we objected to relevance as well at
17 the bench to all three documents.

18 Specifically, to Exhibit 2, we objected to it
19 being a fugitive document but we also stated to the Court
20 that the Lifetime Supervision Agreement was not an
21 accurate statement of the law and we objected on that
22 ground.

23 And just to supplement that record, I do have a
24 copy of NRS 213.1243 that the defendant is being charged
25 under. I mean, you can mark it as a court exhibit --

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1 THE COURT: Well, we'll have the reference for
2 the record and the Court will obviously have it as well.

3 MS. HOJJAT: Yes. Basically, to supplement what
4 we were saying at the bench, obviously, we have this time
5 to make a more protracted argument, but what we were
6 saying is we did object to relevance and we said that
7 it's not an accurate statement of the law.

8 Essentially, I believe I said some of the
9 requirements are not enumerated into 213.1243. And then
10 at that point things were getting longer and we were told
11 that we would put this on the record later.

12 But essentially our position is that NRS
13 213.1243 lays out very specifically and enumerates the
14 conditions that Parole and Probation have the authority
15 to impose on sex offenders. We completely agree that the
16 Department of Parole and Probation does have the
17 authority to impose conditions, but the plain language of
18 the statute lists the conditions. It enumerates every
19 single one and there is no catchall phrase. There is no
20 subordinate as it deems necessary to impose any other
21 conditions. There is no statement of any other
22 conditions set forth by the Division, nothing like that.
23 There is no catchall that allows Parole and Probation to
24 set whatever regulations they want to.

25 The enumerated regulation gives Parole and

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1 Probation -- essentially, it says that we have decided P
2 and P is the best organization to take care of this
3 because they supervise many other people in the sense
4 that they are equipped to do this, but it doesn't give
5 them the cart blanche that exists in Parole and Probation
6 statutes and that these are Parole and Probation statutes
7 for sex offenders that do give Parole and Probation those
8 catchalls and that cart blanche and express and enumerate
9 those things that are in the Lifetime Supervision
10 Agreement.

11 Those are not contained in NRS 213.1243, so our
12 objection was that this is not a relevant document
13 because it is not an accurate statement of law. And in
14 fact it is an inaccurate statement of the law that can
15 confuse the jury.

16 THE COURT: All right. I am assuming that we
17 will have tomorrow is the settling of the jury
18 instructions with regard to jury instructions on this
19 point. But we will address that then.

20 Mr. Cooper, do you have anything you want to add
21 on this point or if you want to reserve further
22 discussion for the jury instructions tomorrow.

23 MR. COOPER: I would reserve for the jury
24 instructions since these issues have already been ruled
25 on.

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1 THE COURT: Okay. And the main part of me
2 putting this in the record now is so that what occurred
3 at the bench conference is in the record because
4 obviously it wasn't otherwise reported contemporaneous
5 with the discussion. But appreciate the foreshadowing
6 for the discussion tomorrow.

7 The other bench conferences that occurred, I
8 noted five, there may have been more. There was two
9 during State's opening and three during the defense
10 opening. And the one that I noted specifically at the
11 beginning of the State's opening, again, went to the
12 issue of whether or not counsel could speak to what the
13 law of lifetime supervision was.

14 There was some discussion about whether or not
15 that had actually been broached or simply a statement of
16 what the charge was. And then we again clarified that
17 the discussion should proceed by counsel not generally
18 discussing what the law requires because that is
19 something that is ultimately what the Court will instruct
20 on and the jury will need to apply to the facts, but that
21 to speak specifically as to what the evidence is intended
22 to show or is expected to show with regard to this
23 particular defendant's requirements. So I did in fact
24 sustain that objection.

25 I honestly can't pull together my notes of what

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1 the second or if there were more objections during the
2 State's opening. I know that there was at least one
3 other. I don't think it was significant. It was simply
4 some guidance as to the tenor of the discussion but I
5 don't remember the specifics.

6 MS. HOJJAT: I believe it was again relating to
7 the instructions of law essentially that -- oh, I'm
8 sorry. It was to the statement about what Marcia Lee
9 would be testifying to. That was the second objection
10 that we made because --

11 MS. BONAVENTURE: No progress.

12 MS. HOJJAT: Right. There was a ruling about
13 her not being able to get into expert testimony. To
14 clarify the defense's position on that, the defense had
15 originally been requesting that she can't testify to
16 anything other than those two things that were checked
17 off.

18 My understanding is that that defense request
19 was denied. There were redactions made. It was ordered
20 that she could not testify to any predictions about
21 future conduct and that she could not testify to any sort
22 of -- anything having to do with expert testimony due to
23 the insufficient notice, but that she could testify to
24 things as aggressive behavior in therapy only as it
25 relates to what she observed, not from a professional

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1 perspective but just from a layperson's perspective of
2 behavior.

3 The State pointed out that we were objecting to
4 something that we had originally asked for but there was
5 a modified ruling. Part of what we wanted was not
6 granted and then there was a modified ruling.

7 And so our position is that the Court's ruling
8 at this point is that she cannot render any expert
9 opinion because her expert notice was stricken. That she
10 can testify to things she observed as a layperson and to
11 the financial reasons for termination. And so we
12 objected to what we believe was going into the
13 professional diagnosis.

14 THE COURT: The only clarification I need is I
15 am not certain it was my intent behind my ruling,
16 although the wording of it may have given that
17 impression. The issue that was raised was with regard to
18 notes that appeared to opine to being moderate, I
19 believe, in parentheses, at best, to re-offend and some
20 aspect of that in these notes and what began the
21 discussion and the Court determined that it would be
22 inappropriate and those statements needed to be redacted
23 for her to do that.

24 However, the Court did indicate that she could
25 testify as the professional that she is in her treatment

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1 of the defendant and the determination of that counseling
2 and the basis for that and the circumstances. And so I
3 am concerned about the way you are phrasing what you
4 believe the Court's ruling to be that somehow she is a
5 lay witness who can only testify to certain things.

6 She is a professional and she is able to testify
7 to her professional encounters with the defendant. What
8 she is not able to do because she wasn't noticed as an
9 expert witness is opine to something of a particular
10 expertise that has not been allowed or established. But
11 as a counselor in this context her counseling with this
12 defendant and the circumstances of it and the
13 circumstances of the conclusion of it are all fair game
14 to testify to. So I just want to make sure we are not on
15 different pages as far as that goes.

16 MS. HOJJAT: And, Your Honor, I think we were on
17 different pages. And for the record, I guess we did not
18 receive a CV and we did not receive actual reports, so
19 the defense would ask the Court to reconsider -- we
20 misunderstood the ruling because --

21 THE COURT: And I don't disagree you are
22 misunderstanding the ruling, so let me try to say it one
23 more time. Anything up to the conclusion of her
24 treatment of the defendant, she can testify to. I never
25 said otherwise. What you were concerned about is if she

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1 were to be allowed to testify to her belief of what his
2 likelihood to re-offend is or other aspects that would
3 call for her to have been noticed as an expert witness
4 and that expertise to be established to give that kind of
5 testimony. I wasn't going to allow it because, again,
6 this was just provided to you and this was something that
7 we hadn't had notice of as an expert.

8 But her ability to testify as a percipient
9 witness and her treatment is -- I guess, I don't think
10 we're saying different things unless somehow once she got
11 up there and said, Well, I was counseling and this is
12 what as a counselor I observed. And you are going to go,
13 Oh, no, objection because that requires expert testimony.
14 I'm going to overrule that. If we're on the same page,
15 then, okay, we're on the same page.

16 But I can't imagine that what you are suggesting
17 is that this treating physician as a percipient witness
18 to her treatment of this individual she can't testify
19 about her treatment and her observation during her
20 treatment. That's not what you are suggesting, is it?

21 MS. HOJJAT: What we are suggesting is because
22 the State has talked about him acting out in the group
23 session. Our suggestion was for percipient things that
24 she had observed, such as him acting out. That's
25 different in my one-on-one with him, not reaching to

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1 expert conclusion, but saying in my one-on-one with him I
2 didn't believe he was making any progress.

3 It is our position that's still an expert
4 opinion. We haven't had the opportunity to challenge it
5 and she wasn't properly noticed as an expert and we still
6 don't have a CV to challenge her on.

7 THE COURT: Then we were not on the same page
8 because I clearly, I believe, sorry, I can't say that
9 because if it wasn't understood it wasn't clear and that
10 is my responsibility, that anything that led to her
11 determination that treatment was concluded or terminated
12 and the basis upon that determination of treatment was
13 fair game to testify to. I never said in my opinion that
14 it wasn't. I never intended to say that it wasn't.

15 I simply felt that you were correct in your
16 assessment that she could not further opine to something
17 that would fall into the realm of an expert type report
18 of this is what I think he is going to do in the future.
19 That it was speculation and that it was expert.

20 But in terms of her being able to say that she
21 did not feel that -- whatever underpinning there were for
22 the termination of the counseling in terms of not making
23 progress, which is clearly marked, and the nonpayment,
24 she can testify to those and I don't believe I ever
25 indicated she couldn't testify to those.

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1 MS. HOJJAT: Okay.

2 THE COURT: And I remember distinctly you
3 indicating can she just testify to what were the
4 underpinnings again of her determination but not beyond
5 that. So I am sorry if there was confusion on that
6 point. That's ultimately my responsibility, but I'm glad
7 we ironed that out today.

8 MS. HOJJAT: Yes, Your Honor. In that case, we
9 would ask that the State be ordered to bring us a CV. If
10 she is going to be rendering opinions based on her
11 training and experience, we still don't have a CV to this
12 day. My understanding just from Googling, I don't see
13 any sort of training that she has actually had as a sex
14 offender counselor. I have seen marriage and family
15 counseling as the only counseling experience that she
16 has. I am sure there is other stuff, I just don't have a
17 CV, so I don't know about it.

18 THE COURT: Do you have one handy?

19 MR. COOPER: I don't have a CV for her.

20 MS. HOJJAT: And the Court can see where our
21 concern comes from if defense counsel -- if her degree
22 isn't even remotely related to sex offender and she has
23 no training.

24 THE COURT: Actually, no, I would not agree with
25 you, counselor, because I happen to know any number of

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1 marriage and family therapists where their training is
2 across the board on many, many things and I am not sure
3 that I would agree that you can automatically presuppose
4 that she doesn't have it. But you can cross on that and
5 you can find out what she has.

6 So, again, you seeing her CV in advance -- he
7 doesn't have it. I can't make him give it to you. And
8 she is not being allowed to be an expert and I don't want
9 to get into the territory of, oh, now you have a CV so
10 now she can testify. And the State is going to ask if
11 she can testify to all this other stuff that I've already
12 precluded.

13 Bottom line is that she has one with her
14 tomorrow, then I will give you a few minutes to take a
15 look at it and see what you want to do with it. You have
16 already done your research, you can see what you think
17 she has. If you believe that marriage and family therapy
18 licensing doesn't give her any of that background, you
19 know, go for it. It very well may be that she's gotten
20 it from other sources.

21 I get it that you want to go into that area
22 because you believe that her percipient witness testimony
23 of her evaluation of him during the term of her handling
24 of him and why she checked the box, little or no
25 progress, opens the door to, you know, wanting to now

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1 question her credentials, go for it. But it is not going
2 to be reliant on you getting a CV in advance and if you
3 don't have a CV now she's an expert and you can't --
4 that's not what is happening here.

5 She checked the box "little or no progress."
6 She is allowed to testify why she checked the box and
7 what she observed and that doesn't change. But if you
8 want to go after what you believe her credentials or her
9 training or her expertise is to do that I don't have a
10 problem with you doing that and I will give you some time
11 to take a look at her CV if she has one with her
12 tomorrow.

13 But we have already determined that she's
14 already an expert and we already determined that she
15 cannot testify to certain things that would require that,
16 okay?

17 MS. HOJJAT: Yes, Your Honor.

18 MR. COOPER: Your Honor, just to correct the
19 record, all of her reports were previously handed over
20 and in my discovery review that I previously was -- we
21 are talking about all of her reports were contained in
22 there. I don't know what they are talking about a final
23 report or something like that, but every report she ever
24 made was given to them previously.

25 THE COURT: I was more focusing on the documents

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1 that we reviewed yesterday in terms of what needed to be
2 redacted from them or not redacted from them, so that's
3 all I understand we were talking about. If there is
4 something --

5 MS. HOJJAT: The only comments I had made, yes,
6 we did receive monthly therapy assessments. It's
7 basically like a two-sentence synopsis. When I said we
8 didn't receive the report, what I meant was typically
9 speaking, when a therapist or psychiatrist, people with
10 those credentials sit down and talk with someone for an
11 hour or more usually the report gets generated
12 particularly upon termination or things like that, a
13 little bit more detailed, a little bit more like what we
14 see in competency court or things like that where there's
15 some sort of assessment. Here's what we talked about,
16 here's my assessment of what I'm basing it on. What I am
17 saying is we did not receive one. We did receive the
18 monthly two-sentence synopsis.

19 THE COURT: It sounds like whatever there was
20 you did receive, so we'll work with that.

21 Bear with me here, I noted we have three bench
22 conferences during the opening of the defense. The first
23 is related to sort of a counterargument of that you were
24 commenting on the law in basing the comments in regard to
25 when lifetime supervision would kick in and the way that

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1 that was being argued.

2 I sustained that objection sort of the same way
3 I did from the State's side basically that you needed to
4 keep it to what the law that was applicable in this case
5 was about starting after he had completed his other
6 proponents of his sentence. And then be specific as to
7 requirements with regard to this defendant and so that is
8 how we will address the first one.

9 Does anybody have anything further to add to
10 that?

11 MS. HOJJAT: I will submit, Your Honor.

12 MR. COOPER: No, Your Honor.

13 THE COURT: The second bench conference was an
14 objection made by Mr. Cooper that there were certain
15 facts not in evidence that were being testified to and it
16 would not be able to be brought into evidence unless the
17 defendant himself testified. Specifically, a reference
18 to the fact that he was without employment and some other
19 things that the argument was made that that evidence
20 would only be able to come in if the defendant testified.

21 The counterargument at the bench was that, no,
22 if in fact, this information exists in these monthly
23 reports, or the check-in reports with the parole and
24 probation officer but that ultimately the PO had noted or
25 the defendant had noted and then the PO had further with

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1 these records indicated things and there was a whole
2 argument about whether it was hearsay, whether it was a
3 hearsay exception there was some business records. There
4 was some argument that opened the door if those are
5 business records other business would come in.

6 Ultimately the Court determined that it was
7 information contained in a record. It was a defendant
8 statement. There was any number of basis upon which
9 hearsay would be excepted even if hearsay would be
10 applicable in the circumstances. And, of course, was
11 this being offered for the same thing that he was in fact
12 unemployed.

13 But the opening statement was fair game to go
14 into this information because they were contained in the
15 Probation Department's official record and they were
16 provided by the defendant.

17 Does anybody have anything that they want to add
18 to that objection or that bench conference?

19 MS. HOJJAT: I will submit it, Your Honor.

20 MR. COOPER: No, Your Honor.

21 THE COURT: And then the last objection that I
22 noted was, again, related to facts not being in evidence.
23 And I believe I sustained this objection but this was
24 specifically related to the argument that was being made
25 in the defense's opening going into sort of the state of

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1 mind of whether the PO liked Mr. McNeill, whether
2 Mr. McNeill liked the PO, whether this was a clash of
3 personalities.

4 I didn't preclude the theory of the defense in
5 terms of that clash of personalities but I did indicate
6 that there couldn't be any testimony with regard to the
7 defendant's opinion of whether the PO liked him because,
8 again, that would be something that unless the defendant
9 took the stand there would not be any independent
10 evidence of that and it was not likely to be elicited
11 testimony from the PO, so I did preclude that but I did
12 allow the theory of the defense to still be argued.

13 Does anybody have anything to add to that?

14 MR. COOPER: No, Your Honor.

15 MS. HOJJAT: Submit it, Your Honor.

16 THE COURT: All right. Those are the bench
17 conferences that I noted. Can anybody think of anything
18 that I did not note. There might have been a few minor
19 ones here and there that sort of follow-ups to other ones
20 that have already been addressed and sort of
21 clarification.

22 And then my ruling was made on the record in
23 terms of whether I sustained or overruled. But I don't h
24 have any other bench conferences that I thought had
25 substance that needed to be put into the record.

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1 that you had already talked to him and he understood he
2 wasn't to comment on the law.

3 MR. COOPER: My intern talked to him and he said
4 he was not going to comment on the charge and lewdness
5 with a minor charge. And I think there was another thing
6 he wasn't supposed to talk about.

7 THE COURT: Well, we had the discussion about we
8 weren't going to comment on the law.

9 MR. COOPER: And he did neither one of those
10 things.

11 THE COURT: But this discussion, and I
12 distinctly heard that and actually looked over because I
13 think I anticipated that there would be an objection was
14 of a general nature not related to this particular
15 defendant, however, obviously was talking about lifetime
16 supervision as being required in certain circumstances.

17 Again, I guess I will take it under advisement
18 and we'll address it tomorrow if you believe it needs a
19 mistrial and/or a curative instruction. Again, I did not
20 perceive it as it was occurring that it would be anything
21 that would require a mistrial or anything that would be
22 inappropriate.

23 The difficulty that we have here, again, and I
24 think this all comes back to the mistrial, and I did have
25 my law clerk pull those few cases while we were on the

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1 MS. HOJJAT: I don't recall any, Your Honor.
2 There was one new matter that the defense wanted
3 to raise. We did not object to the testimony at the time
4 because it was so fast and we did not want to draw the
5 jury's attention to it, but we are moving for a mistrial
6 again.

7 Sergeant Zana was up there -- and, again, we ask
8 that they be admonished before they testify not to say
9 anything other than he is a sex offender, he's on
10 lifetime supervision. And he started on, Well, this is
11 one of the 23 most serious offenses and that's how they
12 get on lifetime supervision and these are more serious
13 sex offenses and he touched on that.

14 We didn't want to draw the jury's attention to
15 it but they were specifically supposed to admonished not
16 to be saying things like that so we would be moving for a
17 mistrial.

18 THE COURT: I don't remember there being a
19 discussion about an admonishment of the kind of
20 specificity that you are talking about. We certainly had
21 the discussion and I actually looked at Mr. Cooper before
22 we called the sergeant in --

23 MR. COOPER: Yes, Your Honor.

24 THE COURT: -- to say do you need to talk to
25 him. And you indicated, no, so it was my presumption

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1 break and take a look at a few of them. All of these
2 circumstances that go to not wanting to discussing
3 incarceration goes because we are trying to avoid the
4 fact of a prior criminal history coming to the jury's
5 attention such as that would be used against him to bias
6 the defendant or in this circumstance in terms of a sex
7 offense that requires lifetime supervision without
8 necessarily it biasing them against the defendant.

9 But the reality is this is the charge. This is
10 this the defendant. He is a defendant with a sex offense
11 subject to lifetime supervision. There is no
12 sugarcoating that. There is no sanitizing that further
13 than what we have had. And the testimony here is not
14 going to be anything other than what these individuals
15 would, I believe, already perceive to be of a convicted
16 felon who is under lifetime supervision.

17 So I fail to see how there is manifest injustice
18 that would be occasioned by a reference of a general
19 nature to a lifetime supervision applies to a certain
20 type of crime. And that's just giving you, again, the
21 benefit of my thoughts.

22 But I will certainly take it under advisement
23 and I will give a final determination on whether or not
24 to grant a mistrial, whether or not to give a curative
25 instruction, or whether or not to do neither.

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<p>1 But at this point, again, I am failing to see 2 where this type of required or proposed sanitizing is 3 required in a case such as this.</p> <p>4 MS. HOJJAT: Very well, Your Honor. Would the 5 Court prefer to reserve my argument for tomorrow?</p> <p>6 THE COURT: No. I would like to complete the 7 arguments now and make my ruling tomorrow. I am guessing 8 that the settling of instructions is not going to be as 9 quick as I anticipated and then my putting together the 10 instructions is not going to be as quick, so this is one 11 of the reasons why I want to get it done now.</p> <p>12 MS. HOJJAT: Thank you, Your Honor.</p> <p>13 Just to finish my argument, our argument is it 14 rises to manifest injustice. At this point, I understand 15 the Court's position that this is what it is. It is a 16 sex offender. It is a violation of lifetime supervision, 17 and that's correct. But the Court and attorneys are 18 coming from a place of familiarity with the law. The 19 jurors do not have familiarity with the law and they do 20 not need familiarity with these specifics of the law.</p> <p>21 It's one thing to tell them he's a sex offender 22 and he's on lifetime supervision. They don't know what 23 that means. They don't know what that means. They don't 24 know what level offense rises to a sex offender on 25 lifetime supervision.</p> <p style="text-align: right;">180</p>	<p>1 credit for. That they don't know that a lifetime 2 supervision is not your run-of-the-mill case.</p> <p>3 I guess they want to assume that they don't know 4 that. But, I mean, it does not rise to the level of 5 manifest injustice by any stretch of the word.</p> <p>6 Like the Court already said, the charge is the 7 charge. Violation of lifetime supervision by a sex 8 offender. They know he's a sex offender and they know 9 he's a convicted felon. They know that he has a lot of 10 different requirements that he needs to abide by.</p> <p>11 I mean the common sense argument is that 12 obviously the State is not going to waste their resources 13 on making someone do all these conditions if they are 14 just peeing in a park. I mean, it just doesn't make any 15 sense for them to think that the jury doesn't already 16 know any of the stuff that has already come out.</p> <p>17 And I think the curative instruction to tell the 18 jury that, Hey, you can't think about that or it can't 19 enter into your deliberation is sufficient because -- and 20 I don't have any cases because this is kind of being 21 sprung on me, but I do remember previous cases that I 22 have read where other things that have come out in front 23 of the jury.</p> <p>24 For example, in a case it comes out that someone 25 is incarcerated but it's not this type offense. It's not</p> <p style="text-align: right;">182</p>
<p>1 What will happen with each of the State's 2 witnesses is it's becoming familiar that they are 3 backdooring in evidence. The first one talking about 4 incarceration. The second one talking about one of the 5 23 most serious sex offenses. And I may be misquoting 6 him but I'm trying to get it specific. He said it's one 7 of the 23 more serious sex offenses, that's how you get 8 on lifetime supervision.</p> <p>9 So, now the jury is hearing, well, one of the 10 more serious ones. He was sent to prison for this. It 11 is putting evidence before the jury that the jury does 12 not need to make this determination. And it's become 13 evidence on top of evidence on top of evidence. It seems 14 like a little bit on its own but when you take the 15 evidence in conjunction with each other, it's painting an 16 impression for the jury that is not relevant and is 17 incredibly prejudicial.</p> <p>18 THE COURT: Mr. Cooper.</p> <p>19 MR. COOPER: Your Honor, I think a curative 20 instruction should be sufficient. I believe anymore, I 21 guess, harmful to the defendant than saying imprisonment 22 or incarceration or whatever it was that my first witness 23 did say.</p> <p>24 I guess I believe that the jury knows more about 25 the law than the defense is attempting to give them</p> <p style="text-align: right;">181</p>	<p>1 an ex-felon in possession. It is not a lifetime 2 supervision case, but it did come out that he was 3 incarcerated. I think it magnifies the situation the 4 prejudicial effect is far greater when the jury should be 5 seeing this guy as a first time offender and he has never 6 done anything wrong before or anything like that, when in 7 fact that's not the case here. And I have seen those 8 cases be upheld when they had a curative instruction.</p> <p>9 THE COURT: Well, the case law that I saw 10 indicated that this primary concern when the reference to 11 incarceration either in the past or currently, and there 12 is cases on both, go to the issue of whether or not it 13 revealed that there is a prior criminal history or a 14 criminal history related to the defendant in question.</p> <p>15 There is no issue with regard to the fact that 16 there is a criminal history with this defendant in this 17 case based on these charges. But that alone isn't the 18 concluding factor.</p> <p>19 Ultimately, the one statement of the document 20 being signed while incarcerated, it was not set forth in 21 a time frame. It wasn't set forth in terms of length of 22 incarceration. It was a reference that was absolutely 23 ended and admonishment given to the witness and a 24 curative instruction given to the jury.</p> <p>25 The only other mention of anything related to</p> <p style="text-align: right;">183</p>

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, BRENDA SCHROEDER, a certified court reporter in and for the State of Nevada, do hereby certify that the foregoing and attached pages 1-207, inclusive, comprise a true, and accurate transcript of the proceedings reported by me in the matter of THE STATE OF NEVADA, Plaintiff, versus STEVE MCNEILL, Defendant, Case No. C297725, on July 8, 2014.

Dated this 6th day of January, 2015.

/s/ Brenda Schroeder
BRENDA SCHROEDER, CCR NO. 867

the history of the defendant was the mention by Sergeant Zana in the general remarks of what a lifetime supervision defendant of how someone gets on lifetime supervision.

And, again, I will take under advisement the request of a mistrial and/or the curative instruction and address that tomorrow.

MR. COOPER: Your Honor, I would just note that the defense can't create their own mistrial in the sense of when they heard it they should have objected at that point. And they should have said something at that point. A curative instruction would have happened close in time after that.

Now they are waiting until after the jury is gone. And now they want to say, Oh, we need a mistrial. They obviously heard it so I don't understand. I guess they have their strategic reasons why they didn't want to object, and that's fine. But --

THE COURT: And you had just concluded Sergeant Zana's testimony and this request is timely. And how the Court will address it will still be determined.

Is there anything else before we adjourn for the evening?

MR. COOPER: No, Your Honor.

MS. HOJJAT: No, Your Honor.

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THE COURT: All right. See you all tomorrow.
(Proceedings were adjourned.)

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No. 66697

v.

Respondent.

10

Counsel for Respondent

17

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28

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

2
3 STEVE DELL MCNEILL,

) No. 66697

4 Appellant,

5 v.

) Electronically Filed
) Apr 30 2015 09:16 a.m.
) Tracie K. Lindeman
) Clerk of Supreme Court

6
7 THE STATE OF NEVADA,

8 Respondent.

9
10 **APPELLANT'S APPENDIX VOLUME II PAGES 243-398**

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Case No. 66697

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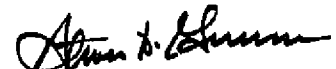
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DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

THE STATE OF NEVADA,)
)
Plaintiff,) Case No. C-14-297725-1
)
vs.) Dept No. XXV
)
STEVE DELL MCNEILL,)
)
Defendant.)
)
)

BEFORE THE HONORABLE JUDGE JENNIFER TOGLIATTI

JUNE 30, 2014, 9:00 A.M.

REPORTER'S TRANSCRIPT
OF
CALENDAR CALL;
DEFENDANT'S MOTION
FOR DISCOVERY

APPEARANCES:

(See separate page)

REPORTED BY: BRENDA SCHROEDER, CCR NO. 867

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APPEARANCES:

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1 LAS VEGAS, CLARK COUNTY, NEVADA
2 MONDAY, JUNE 30, 2014, 9:00 A.M.

3 PROCEEDINGS

4 * * *

5 THE COURT: Okay. We discussed several things
6 up at the bench on Mr. McNeill's matter, including but
7 not limited to the trial schedule. My understanding is
8 that both sides are calling ready; is that correct?

9 MS. BONAVENTURE: Yes, Your Honor.

10 MR. JONES: That is correct, Your.

11 THE COURT: Okay. And so I went through and
12 showed you the Judge's calendar, and so you said you
13 would be ready to go on Monday picking a jury at
14 1:00 p.m.

15 Then the Department is advising me that you
16 would be dark in the trial on Tuesday, not because she is
17 not doing anything but because she has a full docket that
18 day. And then you could start 10:30 on Wednesday.

19 And then for the record, how many witnesses is
20 it for the State?

21 MR. JONES: Your Honor, for the record, three to
22 four witnesses and one to two days.

23 THE COURT: And the defense told me up at the
24 bench that you concurred in that estimate. You may have
25 more witnesses but that you concurred it might be able to

1 be done in two days.

2 MS. BONAVENTURE: Yes, Your Honor.

3 THE COURT: But if it wasn't done then I have
4 advised the parties that the next available date for
5 trial would be July 15th at 10:30. So the understanding
6 is maybe you will finish on Wednesday, but if you don't
7 when you are picking a jury you have to keep in mind the
8 schedule, which is a Monday, Wednesday, Tuesday trial.

9 So everybody is in agreement with that and we
10 know that going in, right?

11 MS. BONAVENTURE: Yes, Your Honor.

12 THE COURT: State, right?

13 MR. JONES: Yes, Your Honor.

14 THE COURT: Okay. And you said three to four
15 witnesses, one to two days. Any out of state?

16 MR. JONES: I show no out of state.

17 THE COURT: How about for you, any out-of-state
18 witnesses?

19 MS. BONAVENTURE: No, Your Honor.

20 THE COURT: Do you have witnesses?

21 MS. BONAVENTURE: At this point, Your Honor,
22 that is unknown.

23 THE COURT: Okay. So the trial is set. Let's
24 go then to Defendant's Motion for Discovery. I would
25 like to go to the last page, starting with Number 1, any

1 and all written sworn statements made by agents in the
2 police department, including but not limited to the P and
3 P file.

4 State, your response to this was that you --

5 MR. JONES: We have disclosed everything that
6 should be disclosed, Your Honor.

7 THE COURT: And that you have requested it from
8 McNeill or that you already got it? It says that you
9 requested it from McNeill on page 6 of your response.

10 MR. JONES: I am going to submit on the written
11 opposition with respect to that question, Your Honor.

12 THE COURT: Did you get it yet?

13 MS. BONAVENTURE: Your Honor, we did get a
14 substantial amount of discovery based on Number 1. I did
15 have one issue, Your Honor, based on facts that have come
16 to light. Apparently there was an arrest -- or two
17 arrests which were in July of 2013 and October of 2013,
18 which I believe had to do with violations of his lifetime
19 supervision.

20 What we have been trying to do, Your Honor, is
21 get violation reports that went along with those
22 violations as they will have bearing on the case and is
23 relevant to our defense.

24 We attempted to get those files, the court
25 files, through the Clerk's Office and we were told that

1 we had to get an order from the Court releasing those
2 documents for us to acquire it and it was never turned
3 over by the State, Your Honor.

4 THE COURT: So in this case you have violation
5 reports from July and October of 2013 pending in the case
6 that is the subject of the trial, the one that he's on
7 probation for or should have been on lifetime supervision
8 for. I mean, that's what I am trying to understand what
9 it is you want the Court to give you.

10 MS. BONAVENTURE: I would like the Court to
11 grant me an order releasing the documents that were filed
12 in that case by either the State or the P and P officer
13 that went to very similar charges that are very
14 reminiscent in this case that have to do with violations
15 of his lifetime supervision.

16 THE COURT: Okay. So let's just go back to the
17 request. The request says give us McNeill's file. The
18 answer says, the State's response, copy of all relevant
19 information as legally required to the extent any exist
20 contained in the P and P file for Mr. McNeill has been
21 requested and will be provided once received.

22 So you are telling me that what was provided
23 from Mr. McNeill's file did not include those things; is
24 that what you are saying?

25 MS. BONAVENTURE: Yes.

1 THE COURT: And you believe that the Court has
2 them on the left side of the file?

3 MS. BONAVENTURE: Yes.

4 THE COURT: Any objection?

5 MR. JONES: Your Honor, I'm sort of standing
6 here with my hands tied because I was not aware of that
7 particular request. I am covering this matter for
8 Jonathan Cooper.

9 THE COURT: Don't take this the wrong way, but I
10 don't know what your objection possibly is.

11 MR. JONES: I don't know what it would be
12 either, Your Honor, but I --

13 THE COURT: I am going to let you know out of
14 courtesy, I hope I'm not cutting you short, but your
15 motion is granted. You need to submit an order that
16 requires the Clerk's Office to produce a copy of the left
17 side of the file of the subject case. Do you have a case
18 number for the record, not this case but the other case.

19 MS. BONAVENTURE: Yes, Your Honor. There is two
20 case numbers. One is 13-F11219-X, the other is
21 13-F17150-X.

22 THE COURT: So are you saying that both of these
23 cases were bound over to district court?

24 MS. BONAVENTURE: No, Your Honor. I am saying
25 that these were filed and nothing ever came from them.

1 But they are violation reports that I believe were filed
2 in order to even get them to that place that has
3 information that would be relevant to our case that was
4 not turned over.

5 THE COURT: Okay. I can order production by the
6 Clerk's Office anything on the left side file of the
7 district court case. I have no power to get these
8 documents in a justice court case that was never bound
9 over, so I'm kind of confused.

10 If you have a pending district court case where
11 there was a violation the Court prepared and it's on the
12 left-hand side of the file with the PSI and everything
13 else, I can get you that. If, however, you have
14 documents that you believe to be out of a justice court
15 case you are in the wrong court. I have no ability to
16 order discovery there. I don't even know what they have.

17 But, I mean, if it's a violation report prepared
18 by P and P it should be in some district court case, no?

19 MS. BONAVENTURE: Not that I know of, Your
20 Honor. It was never turned over and there has never been
21 any other violation in this defendant's record.

22 THE COURT: My Clerk's Office told you need a
23 court order -- I mean you're in the wrong Clerk's Office,
24 Number 1; you have to go to justice court.

25 Even if I give you an order you are still going

1 to have to go to the Justice Court's Clerk's Office.
2 We're not the keeper of the justice court record.

3 MS. HOJJAT: And, Your Honor, just to clarify
4 the record, that was what we were requesting. We were
5 requesting an order to serve on the Justice Court Clerk's
6 Office.

7 THE COURT: That's fine.

8 MS. HOJJAT: It's not a district court violation
9 of --

10 THE COURT: Okay.

11 MS. HOJJAT: -- lifetime supervision so the case
12 is filed in the justice court, discovery that was turned
13 over to the justice court. The cases were just never
14 pursued. We believe there is exculpatory material in
15 that discovery, that's why we are trying to get our hands
16 on it.

17 THE COURT: I will sign an order for the Justice
18 Court Clerk to provide any and all records on file for
19 13-F11219-X and 13-F17150-X.

20 Number 2, any and all lifetime supervision
21 agreements signed by Mr. McNeill from 2007 and 2012.

22 State, your response was any and all lifetime
23 supervision agreements have been requested and provided
24 once received.

25 MR. JONES: And, Your Honor, I show those are

1 provided. That information has been previously provided.

2 MS. BONAVENTURE: And, Your Honor, upon a review
3 of my file we have the one from 2012 but we do not have
4 the one from 2007.

5 THE COURT: Okay. Is it something that would
6 normally be kept? I mean this is one of those things
7 where it's not in Mr. McNeill's file and has nothing to
8 do with this particular case, or the underlying case that
9 is the subject of trial.

10 THE DEFENDANT: Begging the Court's pardon. It
11 is specifically of November of 2007.

12 MS. BONAVENTURE: It does have to do
13 specifically with this case, Your Honor. It is the
14 lifetime agreement that was signed that resulted in his
15 responsibility and which was violated in this case.

16 MR. JONES: Your Honor, according to the copy I
17 have it says this information has been provided.

18 THE COURT: Okay. Counsel, can you show that to
19 her, please.

20 MR. JONES: Yes.

21 THE COURT: Can you make another copy?

22 MR. JONES: I will do that and give it to
23 defense as soon as this hearing is over, Your Honor.

24 THE COURT: Okay. So that will be produced in
25 court today.

1 Number 3, cease and desist letter.

2 MS. BONAVENTURE: We have it, Your Honor.

3 THE COURT: Okay. Number 4, letter from sex
4 offender counseling referred to by both Probation
5 Officers Ashley Mendez and Marsha Lee at preliminary
6 hearing.

7 MS. BONAVENTURE: We have one, Your Honor.

8 THE COURT: Okay. Standard State requirement if
9 there has been any inconsistent statements made to you or
10 any representative of your office that you have to
11 produce those and advise the defense of their existence.

12 MR. JONES: And I will submit on our response,
13 Your Honor.

14 THE COURT: I am going to ask that you make a
15 record of that at the time of trial. You asked for it
16 and that the State's position is during pretrial
17 conferences they don't have to give you that information.
18 So that the inquiry can be made for the record, you
19 reserve that at the time of trial.

20 Next, any information on criminal history of any
21 material witnesses in the case. Is this more than
22 probation officers?

23 MS. BONAVENTURE: It is their probation officer,
24 Your Honor.

25 THE COURT: You want me to --

1 MS. BONAVENTURE: Your Honor, I just include
2 that as standard language.

3 THE COURT: Okay. You understand in order to
4 keep their peace officer certification they cannot be
5 convicted of any crime. Post would not allow them to
6 continue on their job at this point. And if they were to
7 get a conviction at any time during the term of their
8 employment there's audits, there's intermittent criminal
9 background checks.

10 And so are you withdrawing that or do you want a
11 ruling?

12 MS. BONAVENTURE: I want a ruling, Your Honor.

13 THE COURT: All right. It's denied as being an
14 unreasonable burden and waste of taxpayer money.

15 Anything else?

16 MS. BONAVENTURE: No, Your Honor.

17 THE COURT: So you did say you have a writ that
18 you filed. I don't have a copy of it. The parties are
19 asking me to set that on the 7th so it gets heard before
20 the trial.

21 And then you said something else. Was there
22 something else you wanted to discuss?

23 MS. BONAVENTURE: No, Your Honor.

24 THE COURT: Okay. Sir, you are Number 1 to go
25 to trial on Monday, July 7th, at 1:00. There is a writ

1 pending that has just been filed that will be heard that
2 morning and a couple of discovery issues will have to be
3 addressed by the judge at that time. Good luck.

4 MS. BONAVENTURE: Thank you.

5 (Proceedings were concluded.)
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REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, BRENDA SCHROEDER, a certified court reporter
in and for the State of Nevada, do hereby certify that
the foregoing and attached pages 1-16, inclusive,
comprise a true, and accurate transcript of the
proceedings reported by me in the matter of THE STATE OF
NEVADA, Plaintiff, versus STEVE DELL MCNEILL, Defendant,
Case No. C297725, on June 30, 2014.

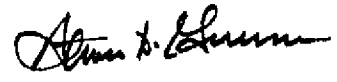
Dated this 28th day of December, 2014.

/s/ Brenda Schroeder
BRENDA SCHROEDER, CCR NO. 867

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DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

THE STATE OF NEVADA,)
)
Plaintiff,) Case No. C-14-297725-1
)
vs.) Dept No. XXV
)
STEVE DELL MCNEILL,)
)
Defendant.)
)
)
)

BEFORE THE HONORABLE KATHLEEN DELANEY

JULY 7, 2014, 9:00 A.M.

REPORTER'S TRANSCRIPT
OF
PETITION FOR WRIT
OF HABEAS CORPUS

APPEARANCES:

(See separate page)

REPORTED BY: BRENDA SCHROEDER, CCR NO. 867

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LAS VEGAS, CLARK COUNTY, NEVADA
MONDAY, JULY 7, 2014, 9:00 A.M.

PROCEEDINGS

* * *

THE COURT: Call the State of Nevada versus
Steve McNeill.

MR. COOPER: Jonathan Cooper on behalf of the
State.

MS. BONAVENTURE: Xiomara Bonaventure on behalf
of the State.

MS. HOJATT: Nadia Hojjat.

THE COURT: Good morning. Thank you.

I've got the Petition for Writ of Habeas Corpus,
I've got the State's return to that. There was an issue
raised in the return, and there's not been a reply filed,
so I just want to address the issue first with regard to
the timeliness of the Petition, if you could.

MS. BONAVENTURE: Yes, Your Honor. As far as
the timeliness goes, there had been an issue with the
filing because this was the trial that was set on a
60-day-speedy-trial setting, we only received the
transcript on the 6th of June. The 21st day would have
been, I believe, the 27th, 28th of June. I had given
this to my secretary, I believe, the 24th of June, which
was within that filing period. I believe she attempted

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1 to file the writ and it was rejected.

2 I do have communication between my secretary,
3 Carolyn Gray, and somebody from your office, Jamie Combs,
4 your law clerk, I believe, trying to figure out exactly
5 what the problem was because it was getting rejected from
6 the Clerk's Office.

7 Apparently, things were only able to be figured
8 out by the 30th, at which pointed it was officially
9 electronically e-filed, Your Honor.

10 At this point, it was filed on the 30th,
11 although, we did attempt to file it previous to that time
12 and simply had to deal with the procedural aspects of it.

13 On top of that, Your Honor, the State has
14 already had time to reply. They have replied. I don't
15 seen any prejudice at this point in time to the State.

16 MR. COOPER: Well, Your Honor, there is
17 prejudice because obviously if I was given my statutory
18 allowed ten days to actually respond my response would
19 have been a lot more in depth. I actually would have
20 went into the facts a little bit more. This was set on a
21 short setting. I did not get this until, I believe,
22 Tuesday of last week, and so I had two days to respond to
23 a writ, and pursuant to statute I am actually supposed to
24 have ten judicial days to respond. So I don't even know
25 how it got short set, but regardless of that, it was

1 untimely, so I think it's procedurally barred based on
2 that fact alone.

3 THE COURT: Well, you know, we were originally
4 looking at the record that Arraignment Master DeLaGarza
5 saw that if everything, you know, went before us then
6 there would be an even earlier request, but the
7 transcript didn't come out. There is some question about
8 when the transcripts were due. It's pretty close.

9 While I don't typically give too much leeway on
10 these things, I am not going to consider this a bright
11 line procedural bar. I think there is some good cause
12 for the circumstances of the delays.

13 I am actually growing ever increasingly
14 concerned about how long it's taking these transcripts to
15 come out. I have another case on the calendar today
16 where we have been looking for something since April. It
17 is still not there from what we can see from the record.

18 So I don't know what the circumstances were, but
19 I'm going to give, since it was just a few day swing, the
20 benefit of the doubt in terms of the procedural component
21 of this. I'm going to deem it as it is possible that it
22 is untimely, however, I am going to exercise my
23 discretion to show good cause for that few days of
24 untimeliness and I'm going to proceed substantively.

25 MR. COOPER: Your Honor, also the other problem

1 is I had no idea this was even going to come. Obviously,
2 they could have contacted my office and let me know, Hey,
3 we've been trying to file this writ, or something of that
4 nature.

5 I did not find out until after calendar call.
6 Calendar call happened in front of Judge Togliatti. The
7 defense and the State announced ready. It's not until
8 that afternoon where I get a writ. I don't understand
9 how somebody can announce ready on a trial and then file
10 a writ a couple hours later. I just don't think it makes
11 sense.

12 And the problem is I did not get my ten days
13 response, so if this writ is going to be heard
14 substantively, I would actually ask for my ten-day time
15 to actually sit down and do a complete response. That
16 would actually bump his trial date. Pursuant to statute
17 if he files a writ his 60 day trial date is waived.

18 So again, it was the case where I put together
19 an extremely quick response; as you can see it's only a
20 couple of paragraphs. It puts the State in a very bad
21 position where I am expected to go forward with trial
22 today and now we are going to hear a writ and I've only
23 had two days to respond to it.

24 MS. BONAVENTURE: Your Honor, if I could respond
25 to his comments?

1 THE COURT: Yes.

2 MS. BONAVENTURE: I actually showed up at
3 calendar call surprised that nobody had received copies
4 of my writ. In fact, if you do pull the transcript you
5 will 100 percent see that. It was my understanding that
6 the writ had already been filed the week before, and that
7 the DA had already been sent a courtesy copy at that
8 point, which is why I was also extremely unhappy that the
9 Court had not yet received a copy, and it was Judge
10 Togliatti sitting in on that day.

11 THE COURT: Yes. There had been some
12 communication -- my law clerk is confirming for me so we
13 have it in the record -- been some communication from
14 your office November 26th, as indicated. And so, again,
15 whatever the circumstances were, this is why I feel there
16 is good cause to find that to the extent that it could be
17 deemed untimely, once the dust settles when exactly it
18 was filed and when exactly it was due that there is good
19 cause and it came when it came.

20 But Mr. Cooper has asked for additional time to
21 supplement his return to the Petition. I agree with his
22 assessment that the filing of the writ does effectuate
23 the waiver of his right to speedy trial, so at this point
24 I am inclined to consider his request for additional time
25 to file further or a more supplemental, more established

1 response if he so wishes.

2 What is your position on that, Ms. Bonaventure?

3 MS. BONAVENTURE: Well, Your Honor, I would ask
4 just for a moment of the Court's time so I can confer
5 with my client. So I do want to trail it.

6 THE COURT: Yes. Why don't you take a few
7 minutes and we will recall it.

8 MS. BONAVENTURE: Thank you, Your Honor.

9 * * *

10 THE COURT: Let's recall page 10, McNeill.

11 Ms. Bonaventure.

12 MS. BONAVENTURE: Thank you very much, Your
13 Honor. We had a chance to speak to Mr. McNeill. He
14 would like to at this point continue to invoke his right
15 to a speedy trial. Based on that we will withdraw the
16 writ under consideration.

17 THE COURT: All right. If he wants to withdraw
18 the writ we will proceed with trial if you're ready.

19 MR. COOPER: I am, Your Honor.

20 THE COURT: Then we will proceed with trial
21 today.

22 MR. COOPER: And, Your Honor, one additional
23 matter. I do have an Amended Information. I actually
24 went through the transcripts in this matter and in the
25 transcripts Mr. Zadrowski actually amended the Complaint.

1 It was just never transferred into the actual
2 Information. So I have the page of the transcript where
3 the amendment happened.

4 It is one minor amendment on Count 1, Your
5 Honor. It says the original Complaint -- I believe that
6 he signed the document in 2007. And I added in "or
7 November 2012." That actually is what conforms to the
8 Criminal Complaint that changes line 64 of the
9 transcript. I do have a copy for the defense.

10 It goes from -- just for some reason it was a
11 typo that didn't get changed in the actual Information
12 itself.

13 Can I approach with this Amended Information,
14 Your Honor.

15 THE COURT: Yes.

16 Ms. Bonaventure, any questions or concerns about
17 that?

18 MS. BONAVENTURE: No, Your Honor.

19 THE COURT: All right. So we have the amended
20 charging document and it looks like we can proceed.

21 Well, then, I will state for the record I accept
22 the representations that the Petition for Writ of Habeas
23 Corpus has now been withdrawn and that we will proceed
24 with trial at 1:00. We will bring the jury up and begin
25 the selection.

1 It would be my hope that we would have opening
2 statements if everybody is prepared to do that. The only
3 reason I suggested that was because I don't know how long
4 jury selection would or should take. I typically do it
5 very quickly. We have not had occasion, I don't think,
6 with either counsel here for a trial but you may have
7 spoken with your colleagues. The questions that I will
8 allow are of a general nature to the panel to see what
9 positive responses are had and then follow-up inquires of
10 those positive responses.

11 There will be some opportunity for individual
12 questioning following up on questions that I asked of the
13 panel. But ultimately the voir dire is usually a fairly
14 quick process. I know we do not have the ability to do
15 trial tomorrow. I know you are aware of that. And then
16 we are reconvening on Wednesday and I am unavailable the
17 remainder of the week, so if we don't complete by
18 Wednesday then we are looking to have to carry it over to
19 the next week, but as you know, I have a trial that needs
20 to get started on Monday, so it would be a little tricky.
21 I am trying to create as many efficiencies and get us as
22 much trial time in as possible.

23 MS. HOJATT: Your Honor, we are prepared to do
24 opening statements today. The only thing that I was
25 going to suggest is if it gets to about 4:00 or 4:30 and

1 we are done finishing that voir dire, my suggestion was
2 going to be that we do the preliminary objections to the
3 jury. And then because there is that Tuesday off, I
4 think openings are going to be relatively short here.
5 Again, it is going to depend on when voir dire finishes,
6 but because openings literally are so short it might be
7 just a little easier for the jury in terms of retaining
8 information.

9 THE COURT: It's not my favorite thing to do
10 when they're in the shock of realizing that they ended up
11 on the panel and to then end up do opening statements at
12 the same time.

13 MS. HOJATT: Right.

14 THE COURT: So depending on the timing of it,
15 let's just see how we do with voir dire.

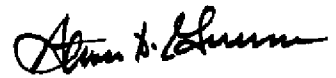
16 Again, I have a set of questions; they are not
17 lengthy. They would be mostly general type questions to
18 elicit positive responses, not a one by one type of
19 thing. But beyond that I think we can create some
20 efficiencies. Let's see how it goes. We'll have the
21 panel here at 1:00 and be ready to get started.

22 MR. COOPER: Thank you, Your Honor.

23 MS. HOJATT: Thank you, Your Honor.

24 MS. BONAVENTURE: Thank you, Your Honor.

25 (Proceedings were concluded.)



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,) Case No. C-14-297725-1
)
vs.) Dept No. XXV
)
STEVE DELL MCNEILL,)
)
Defendant.)

BEFORE THE HONORABLE JUDGE JENNIFER TOGLIATTI

JULY 7, 2014, 1:00 P.M.

REPORTER'S TRANSCRIPT
OF
JURY TRIAL - VOL. 1

APPEARANCES:

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REPORTED BY: BRENDA SCHROEDER, CCR NO. 867

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1	LAS VEGAS, CLARK COUNTY, NEVADA	1	there's different things that we've had.
2	MONDAY, JULY 7, 2014, 1:00 P.M.	2	But I would like to try to get the shoes, but we
3	PROCEEDINGS	3	have a whole panel sitting out there ready to go. I
4	* * *	4	appreciate that this is not your fault, but I do not know
5	THE COURT: I understand we have some	5	why somebody was brought up here without shoes unless,
6	housekeeping matters.	6	obviously, he didn't have any in his mix, but why didn't
7	MS. HOJJAT: Yes, Your Honor. First, at this	7	we know that and why didn't we take care of that, you
8	point the defense cannot proceed. Mr. McNeill was	8	know what I mean. Why didn't we get him the shoes. Why
9	brought and he is dressed out but he is in jail shoes.	9	wasn't there the communication regarding that -- and this
10	Bright orange socks and jail shoes. They have not	10	is just rhetorical.
11	provided him with --	11	What else do we have that we need to address?
12	THE COURT: Does he want to take his socks off?	12	MS. HOJJAT: Your Honor, other than that, the
13	MR. HOJJAT: You know, he's only got the jail	13	defense did have two other preliminary matters. First,
14	sandals.	14	there was no bad acts motion by the State in this case.
15	THE COURT: Do you think people would realize	15	There was no motion to bring in any prior bad acts, but
16	that? I'm not trying to be weird about it --	16	we would be moving for this State to admonish all of
17	MS. HOJJAT: I know.	17	their witnesses and make sure that all of their exhibits
18	THE COURT: -- I just don't think that much of	18	don't mention any prior bad act.
19	somebody in those shoes without the socks.	19	Obviously, this is a sex offender failure to
20	MS. HOJJAT: And, Your Honor, our concern is	20	comply with lifetime supervision, so it's a little bit
21	even without those socks, those are sandals. Essentially	21	unique in that respect, however, in terms of details
22	it would be him sitting in trial with sandals. It's	22	about the prior bad acts or anything like that, no
23	pretty obvious something is going on, the implication	23	motions have been filed.
24	that he is in custody is very strong given that he	24	Specifically relating to two issues I wanted to
25	doesn't have regular shoes.	25	address in light of the fact that no bad acts motion had
	3		5
1	I am trying to contact somebody from my office	1	been filed. First, is the name of the prior offense that
2	to see if we can come up with some shoes, but at this	2	he was convicted of. It is a sex offense relating to a
3	point we need my client to have regular shoes before we	3	minor, victim under the age of 14.
4	can proceed.	4	There is case law directly on point. I have
5	THE COURT: Well, let's try to find him some	5	brought a copy for the Court and for the District
6	shoes. What size is he?	6	Attorney that essentially says if the defense is willing
7	MS. HOJJAT: 14.	7	to stipulate that he is -- in that case it was ex-felon
8	THE COURT: Here's the thing, I don't want to	8	possession of firearm case, but here we are willing to
9	speak to how and when I think we should proceed because	9	stipulate he is a sex offender.
10	he doesn't have the proper shoes, but there are always	10	We would ask that this jury not be informed of
11	some indicia with the ones who are in custody. Sometimes	11	what the underlying offense was. And the United States
12	there are things that make it patently obvious that	12	Supreme Court case <i>Goldcheek</i> (phonetic) specifically said
13	someone is in custody and we still have to proceed and we	13	that where the defense was willing to stipulate it was a
14	still can tell the jury to disregard it if it gets to	14	felony it was more prejudicial than probative. The jury
15	that point. I do not anticipate that happening here.	15	did not need to know what the underlying felony was.
16	There is not a black-and-white rule that it has	16	We would like to stipulate that he is a sex
17	to be a certain dress out or a certain way. I have had	17	offender and for the jury not to be informed of what the
18	questions come up -- I always try to accommodate -- but I	18	underlying sex offense was. There is no probative value
19	have had questions come up because the person is wearing	19	in what the underlying sex offense was. The only
20	the same outfit every day for the week of trial and	20	probative value in this case is that he is a sex offender
21	that's an indicia that he's in custody and other things.	21	and that he is on lifetime supervision. We will
22	I don't think that the jury does not necessarily pay	22	stipulate to both of those.
23	attention to those types of details, but at the end of	23	MR. COOPER: This issue was just brought up
24	the day, we can't necessarily eliminate it. We have	24	right now so I haven't had a chance to actually
25	officers of the court; why do we have them here. I mean,	25	thoroughly read the case they're citing. But I do
	4		6

1 generally know what that case refers to. I have heard of
2 it before. And that case was a felon case.

3 Obviously, this court is fully aware that any
4 felon found in possession of a firearm, it's a crime. So
5 just stipulating to the fact that a felon is enough. In
6 this case, stipulating to the fact that he's a sex
7 offender is not enough because he has to also be on
8 lifetime supervision.

9 The JOC I have actually explicitly lays out that
10 he is further ordered a special sentence of lifetime
11 supervision. Just being a sex offender is not enough for
12 me to prove my case. I have to also prove that he is on
13 lifetime supervision --

14 THE COURT: But they said they would stipulate
15 to that as well.

16 MR. COOPER: If they are stipulating to he's on
17 lifetime supervision as well --

18 THE COURT: Yes. They said they would stipulate
19 to both.

20 MR. COOPER: Okay. I'm sorry.

21 THE COURT: At first when we first started
22 talking we were just talking about the one stipulation,
23 but at the conclusion she indicated, correct me if I'm
24 wrong, that he would stipulate to both predicates for the
25 crime and I think in that respect it does seem that that

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1 is sufficient and we don't need the other details.

2 MR. COOPER: So he would agree that he is a sex
3 offender and that he is on a sentence of lifetime
4 supervision.

5 I guess the only issue would be the redacting of
6 documents because I just now received this information.
7 And I would say a majority of my documents do mention the
8 fact that he has an attempt lewdness with a minor.

9 For example, the Lifetime Supervision Agreement
10 dated from November of '07, the Lifetime Supervision
11 Agreement dated from December of '07, the Lifetime
12 Supervision Agreement, again, dated from I think this is
13 2012. All of these say "attempt lewdness with a minor"
14 in the very first paragraph.

15 I would have to actually sit down and redact
16 these documents. I wish I would have known this issue
17 was going to come up before and I could have done that
18 previously. But, obviously, now I need to take time to
19 actually revise these documents to conform with any court
20 order.

21 THE COURT: Well, I think we would have time to
22 do that in that, you know, if we were to get to openings,
23 I don't know that any of that would be shown to the jury.
24 But we would have to take the time to do that; you could
25 have a staff member do that. We would just need to have

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1 time to review to ensure that the redactions were
2 complete because people are human and mistakes do get
3 made.

4 MR. COOPER: The other issue is that, again, I
5 was just brought this issue right now, is that Marcia
6 Lee, who is his therapist, is expected to testify on
7 Wednesday and my understanding is that individuals that
8 are some type of sex offenders get certain counseling,
9 other type of sex offenders get a different type of
10 counseling. So for her to go into detail about the type
11 of counseling he was receiving and how he was not
12 actually being compliant with that therapy, she is going
13 to have to go into detail about he was doing this kind of
14 counseling and it bodes the question why was he in that
15 kind of counseling versus the other kind of counseling.

16 There are a lot of different issues that get
17 raised. And I like I said, if I would have known about
18 this issue earlier, if there was a motion in limine filed
19 or something like that I would have definitely been able
20 to address these issues, so I am kind of put in a bad
21 situation.

22 MS. HOJJAT: Your Honor, if I may address that?

23 THE COURT: Go ahead.

24 MS. HOJJAT: Well, actually Marcia Lee was going
25 to be the second issue that we wanted to address with the

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1 Court. First, as to the State's statement about motions
2 in limine. Motions in limine are issues that can be
3 raised by objection during trial. There is no required
4 motion in limine. So for the State to say that somehow
5 it's our burden to somehow litigate something like this
6 ahead of time --

7 THE COURT: No. I think all the State is saying
8 is this is a lot of maneuvering that he's going to have
9 to do to make sure that witnesses are prepared and that
10 documents are accurate so what is not supposed to go to
11 the jury doesn't, and he hasn't had a heads-up. That's
12 all I hear him arguing.

13 So in fairness, if and when you all knew you
14 were going to have this stipulation and you were going to
15 not have all this stuff in the record, you should have
16 given him a heads-up so he had time to do it, that's all.

17 MS. HOJJAT: And, Your Honor, as to the issue of
18 Marcia Lee, that is actually the second issue we wanted
19 to address.

20 First and foremost, Your Honor, Marcia Lee was
21 not properly noticed as an expert in this case. We
22 received a document saying that she was going to be
23 called to testify. We didn't receive a CV from Marcia
24 Lee. We didn't receive any sort of -- I mean we received
25 summary reports but there is no report from Marcia Lee

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<p>1 explaining how she reached the conclusion she reached 2 about the defendant, why she reached the conclusion she 3 reached.</p> <p>4 Just to give an example, in competency court we 5 receive reports saying competent or incompetent and 6 there's a report that backs it up. Here's what was said, 7 here's what was argued, here's what the exchange was, 8 this is why I find this person is incompetent. No such 9 report has been produced from Marcia Lee. No CV was 10 given to us by Marcia Lee. She had not been properly 11 noticed as an expert.</p> <p>12 Additionally, the reason for termination, the 13 only thing we received that explains the reason for 14 termination is a document that essentially says that 15 Marcia Lee determined she thinks he is going to 16 re-offend. That's not admissible, Your Honor. That's, 17 again, no bad acts motion was filed and, frankly, it's 18 not even a bad act. It's an anticipated potential future 19 bad act that's why he was terminated from counseling.</p> <p>20 And I have that document, the termination 21 summary, if I can approach with a copy for the Court so 22 the Court can see precisely what it is.</p> <p>23 THE COURT: You may.</p> <p>24 MS. BONAVENTURE: And, Your Honor, if I may, I 25 did bring this up prior to trial with Mr. Cooper at our</p> <p style="text-align: right;">11</p>	<p>1 because that crosses the line into expert testimony. 2 Certainly if she is just going to get up there 3 and say, I treated him, he was terminated. We are not 4 objecting to her testifying to that. We are objecting to 5 testimony that goes into expert opinion because there was 6 not proper expert notice, CVs weren't prepared, reports 7 weren't prepared. And, frankly, the opinion is about 8 future behavior that hasn't been shown in this case.</p> <p>9 I mean, again, I could say that a bad acts 10 motion needs to be filed to bring in testimony that is 11 that prejudicial but it is not even a bad act that is 12 something that occurred. It something that she believes 13 may occur in the future. That's our understanding of why 14 he was terminated from the counseling. And we just don't 15 believe it's appropriate and that no proper motion has 16 been filed for that kind of opinion to be presented to 17 the jury.</p> <p>18 MR. COOPER: Your Honor, I do not anticipate her 19 saying that. When I talked to her in length, she did not 20 say the reason she terminated him was because she thought 21 he was going to be a danger in the future. There was 22 some other reason given to me as to why she terminated 23 him. I will get those out. But obviously I know it 24 would be prejudicial for me to get that he might 25 re-offend in the future. I don't plan on going down that</p> <p style="text-align: right;">13</p>
<p>1 final review and I asked him, I need the CV for Marcia 2 Lee, you have her noticed as an expert. And he said, I'm 3 not calling her as an expert in the sense that she needs 4 to testify to expert opinions.</p> <p>5 THE COURT: It was not my understanding that he 6 wasn't calling her as an expert. All I heard him say was 7 that he was -- you know, one of the predicates to the 8 violation and the predicate acts, the predicate to Count 9 1 was that he was terminated from the sex offender 10 counseling and that is one of the underlying for the 11 violation of lifetime supervision. It's one of the 12 and/or's but there's a number of matters.</p> <p>13 So, I mean, he's on notice that that's a 14 possibility and this is the witness that would testify 15 that he was in fact terminated. We can certainly figure 16 out what the parameters of that examination would be, but 17 I don't think it's a basis to exclude her as a witness.</p> <p>18 MS. HOJJAT: We are not moving to exclude her.</p> <p>19 THE COURT: Oh, okay.</p> <p>20 MS. HOJJAT: We're just -- the reason I brought 21 it up in that light was because Mr. Cooper seemed to be 22 implying that -- at least what I heard was he was talking 23 about tier offender and type of treatment that was going 24 to be received and determinations that were made from the 25 treatment, those are things we will be addressing too</p> <p style="text-align: right;">12</p>	<p>1 road.</p> <p>2 And I don't plan on asking her for her expert 3 opinion or anything like that regarding his ability to do 4 anything. I am just going to strictly ask her about what 5 she did in this specific case with this specific 6 defendant and why he was terminated in this specific 7 case. There is not going to be any opinions or anything 8 like that from this witness.</p> <p>9 THE COURT: Well, we will have to tread lightly. 10 But this last little piece that you said determining when 11 you talk about, you know, why she terminated because she 12 does say in her own report here, He lacks integration of 13 the treatment concepts such that he is a moderate, at 14 least, risk to re-offend given the opportunity.</p> <p>15 MR. COOPER: Your Honor, if the Court wants me 16 to admonish her not to say he's a moderate risk to 17 re-offend, that's fine. I can make sure I admonish her. 18 I actually planned on admitting that document, so I can 19 have that redacted out of there as well.</p> <p>20 THE COURT: Well, it's a fine line to walk, 21 right. I mean, she terminated him. Why did she 22 terminate him. There's some reference to inability to 23 pay, going back through the file. So I don't know if it 24 was a pay issue. I don't know if it was a -- you 25 normally make the evaluation of somebody likelihood to</p> <p style="text-align: right;">14</p>

1 re-offend when you are completing your process, not
2 that's your reason to cut someone loose. So I'm assuming
3 that the reason that she ended it was because he wasn't
4 coming or he wasn't paying and it wasn't anything to do
5 with this. And this was sort of like now that it's done,
6 here's what I think my thoughts are. I mean that makes
7 sense to me why she would put that there.

8 So I think depending on when you talk to her
9 what her basis for the termination was but I think you
10 would need to assess that, but I would like her to be
11 admonished that any speculation that she might have had
12 even if it's based on her, again, expertise or her
13 thought process of once she terminated as his therapist
14 what she thought would happen in the future she can't
15 testify to that.

16 She can only testify as to what caused the
17 separation from the treatment or what caused the
18 termination. Now, if it is anything other than failure
19 to appear or pay, and it goes into things that would go
20 into the facts and the details of her supposition that
21 he's going to re-offend, then we would have to figure out
22 how we do that.

23 MR. COOPER: Your Honor, I can tell it is things
24 other than being able to be pay. I don't think it's
25 going to go into his ability to re-offend. It was

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1 basically his behavior in the program itself. And I can
2 make sure to admonish her not to say that she thinks he
3 is going to re-offend or anything like that. So that
4 should be fine.

5 MS. HOJJAT: And, Your Honor, I think, again, we
6 are getting into -- basically this sheet without the
7 handwritten portion talking about re-offending, we are
8 not objecting to this sheet without that handwritten
9 portion because I think it fairly reflects little or no
10 progress, refused to make payment. That we're not
11 objecting to. We think that that's appropriate
12 testimony.

13 But once we are starting to get into -- if she
14 is going to start talking about behavioral and my expert
15 opinion, that behavior indicated it wasn't going to be
16 successful, things that are expert opinions, again, she
17 was not noticed as an expert.

18 MR. COOPER: And I did not say I was to going
19 have an expert opinion, Your Honor. She can say what she
20 observed him do in classes in treatment and she can say
21 that that was either beneficial to the group, that hurt
22 the group. She can say everything like that. I am not
23 asking her, In your expert opinion does that behavior
24 make you think that he is going to re-offend? I don't
25 plan on going down that road whatsoever.

16

1 THE COURT: If the underlying basis for
2 violation of lifetime supervision in addition to some of
3 these other things that are listed that the officers can
4 testify to. If the doctor is going to testify to being
5 terminated, what is the relevancy of the basis for the
6 termination?

7 MR. COOPER: Your Honor, she is going to say
8 that he was terminated, but then obviously she is going
9 to need to explain why he was terminated.

10 THE COURT: Why? What's the relevance? As long
11 as I can make an analysis for the balance of the
12 relevancy against the substantial prejudice. What was
13 clearly a substantial prejudice here, potential from what
14 you are describing to me she is going to say.

15 MR. COOPER: Well, Your Honor, I guess I was not
16 detailed enough as to what she was going to say.
17 Basically, all she is going to say is he was aggressive
18 in group and he was not complying with what I told him to
19 do. She is not going to go down any road about how he's
20 going to re-offend or anything like that. So, I mean,
21 that is basically what she is going to say. He didn't do
22 what I wanted him to do. He said that he wanted to leave
23 so I said, that's fine, you can leave. And that was it.
24 That is basically my questioning for her.

25 THE COURT: Okay. So it's more of his demeanor

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1 and attitude at the time of treatment not the treatment
2 itself.

3 MR. COOPER: Exactly, Your Honor.

4 THE COURT: Okay. Did you want to discuss it
5 further?

6 MS. HOJJAT: If the Court wants us to object
7 contemporaneously we can certainly do that. Again, our
8 position is little or no progress in treatment is what we
9 received in the termination find. That is a big
10 difference from aggressive in group. I mean, aggressive,
11 again, it is implying a bad act. It's implying some sort
12 of violent tendencies it sounds like.

13 Our position would be that -- and I agree with
14 the Court's assessment of relevance versus probative
15 nature. Probative nature they need to show that he was
16 terminated. We are not trying to keep them from showing
17 he was terminated. We just think that couldn't make
18 payments and little or no progress in treatment, which is
19 precisely what was checked off on the termination sheet
20 is sufficient to reach that probative value and it would
21 limit the undue prejudice that would otherwise result
22 from things like aggressive to group, which we have not
23 heard before today.

24 MR. COOPER: And, Your Honor, I'm going to need
25 to be able to explain what do you mean by little or no

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<p>1 progress in treatment, and she's going to say, Well, he 2 acted like he was entitled. He didn't want to do things, 3 blah, blah, blah. She is not -- I mean, these are the 4 violations. It's not like I am going out on a limb right 5 now.</p> <p>6 THE COURT: From counsel's explanation of what 7 the testimony will be I believe that that testimony is 8 valid. It is relevant and it is not outweighed by 9 substantial prejudice. I do still though want Mr. Cooper 10 to admonish the witness that anything that would go into 11 her expertise area of her evaluation of him as a 12 candidate likely to re-offend or anything in that regard 13 is not permissible. I do believe that going into that 14 analysis, that discussion would be substantially 15 prejudice and would outweigh the relevancy.</p> <p>16 MR. COOPER: I agree.</p> <p>17 THE COURT: But the minimal explanation of what 18 the circumstances were, why there was little or no 19 progress is valid and doesn't sound like that crosses the 20 line. So, appreciate that. But no expertise, no expert 21 testimony.</p> <p>22 MS. HOJJAT: Thank you, Your Honor.</p> <p>23 And we would just ask in line with the Court's 24 ruling that all witnesses be admonished on that because I 25 know POs are often aware of what the counselors say and</p> <p style="text-align: right;">19</p>	<p>1 THE COURT: All right. Keep checking on that if 2 you can.</p> <p>3 The difficult balance here is that if this 4 gentleman is going to be convicted on these charges it 5 can't be because of any kind of bias or prejudice of him 6 because of what his prior conviction is. And the line 7 that we have to walk here has to be because, again, he 8 fits the elements of these crimes.</p> <p>9 And the line that we have to walk here is how 10 much information comes in about the prior such that and 11 we get the predicate but we don't inflame and we don't 12 cause concern.</p> <p>13 As I look at this, I don't disagree that the 14 first part of this is handwritten notation could be 15 complimentary or a positive, that he has completed his 16 homework, he passed his history by a polygraph.</p> <p>17 But then going into the lacks integration of the 18 treatment concept, you know, again, this is all sort of 19 talking about who he is as this convicted sex offender 20 and those kinds of details of treatment I am worried 21 about crossing that line.</p> <p>22 So because there are some things that are 23 positive and there are some things that are negative, out 24 of an abundance of caution if the termination summary 25 needs to come in to show that he was in fact terminated,</p> <p style="text-align: right;">21</p>
<p>1 we would ask that all of State's witnesses be admonished 2 not to talk about anything about risk to re-offend or 3 things like that they might be aware of.</p> <p>4 And we would also ask that that document -- 5 we're not necessarily objecting to its entry but we would 6 ask that that handwritten portion be redacted.</p> <p>7 MR. COOPER: Your Honor, I would agree, and I 8 will make sure my witnesses are admonished. Obviously, I 9 am not going to backdoor the Court by any means, however, 10 on the document, again, I would agree that maybe the last 11 part of that sentence needs to be redacted, such that he 12 is a moderate at least risk to re-offend, but I think 13 Steven completed his homework -- actually it's beneficial 14 to him -- however it appears he lacks integration or the 15 treatment concept. I think that should be left. The 16 only thing that should be redacted is, "such that he is a 17 moderate at least risk to re-offend given the 18 opportunity."</p> <p>19 MS. HOJJAT: And, Your Honor, we would ask that 20 the whole paragraph be redacted.</p> <p>21 THE COURT: The most difficult balance in this 22 whole case, and I really do appreciate that we have the 23 time to talk about this, but just because it's weighing 24 on my mind, what's the status on the shoes, anything?</p> <p>25 MS. BONAVENTURE: No. I haven't heard anything.</p> <p style="text-align: right;">20</p>	<p>1 it should come in with all of the handwritten portions 2 above the date of intake, date of last session and the 3 amount owed. Anything in that small paragraph that is 4 sort of adjacent to Section B should be redacted.</p> <p>5 MS. BONAVENTURE: Thank you, Your Honor.</p> <p>6 THE COURT: And, of course, that is just part 7 and parcel of the various redactions that are going to be 8 necessary to remove the reference to charge and to remove 9 anything that would run afoul of the stipulation.</p> <p>10 Now, I don't know, Mr. Cooper, that I got it 11 nailed for the record. Do you accept the stipulation to 12 the fact that he is a convicted sex offender and subject 13 to lifetime supervision, and I appreciate the 14 difficulties of the need to redact and admonish the 15 witnesses, but do we think we can accomplish that by 16 Wednesday?</p> <p>17 MR. COOPER: I can redact it and have everything 18 done by Wednesday, yes. Obviously, for the record I 19 would just object. I think my previous recitation of the 20 facts as well as the law about whether or not the JOC is 21 admissible was appropriate and should come in, but 22 obviously I understand the Court's order and I will make 23 sure everything is redacted.</p> <p>24 THE COURT: Okay. We will go ahead and note the 25 stipulation for the record that that is how we would</p> <p style="text-align: right;">22</p>

1 proceed is that you will be referred to as a convicted
2 sex offender. There has been a stipulation. I don't
3 know how you want to address it at some point with the
4 jury, or if we do, in terms of the parties have
5 stipulated to these facts for purposes of proceeding with
6 the trial because it is going to get out there anyway.
7 Maybe it needs to get out there as sort of a
8 beginning point of the case and then the charges are what
9 the charges are related to that and then we just proceed
10 with the proof of the charges.
11 MS. HOJJAT: Your Honor, we had not really
12 discussed too much how we are going to bring it out. But
13 it might be simplest to have the PO get up there and say
14 are you familiar with Mr. McNeill? Yes. Do you know him
15 to be a -- and obviously there will need to be some
16 leading during this part of the direct examination --
17 THE COURT: Right.
18 MS. HOJJAT: -- but simply do you know him to be
19 a convicted sex offender? Yes. Do you know him to be on
20 lifetime supervision? Yes. And the defense would not
21 object to any of that. And that might be the simplest
22 way to present the evidence at the beginning of the
23 direct examination to the jury.
24 THE COURT: Well, one of the things that my
25 clerk was just pointing out as I was raising this issue

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1 is that we have this Amended Information that was filed
2 this morning and the Amended Information does indicate
3 that the person -- the defendant violated conditions of
4 Lifetime Supervision Agreement, signed and gives a date.
5 And pursuant to having been in convicted of, and then it
6 goes into the specific style of the crime --
7 MS. HOJJAT: Yes, Your Honor.
8 THE COURT: -- so we're going to have to redact
9 that then my clerk can read that. We wouldn't read it
10 today obviously during jury selection, obviously not
11 until we began on Wednesday with the beginning before we
12 get to opening statements.
13 MS. HOJJAT: Yes, Honor.
14 THE COURT: So we would have to fix that. But
15 it does reference already in the charge that there is
16 Lifetime Supervision Agreement and a date and prior
17 conviction.
18 MS. HOJJAT: Yes.
19 THE COURT: So I think that's got it covered.
20 MR. COOPER: So, Your Honor, do you want me to
21 do a second amended information or can we just, I guess,
22 interlineation to take that out just for the purposes of
23 my jury instructions because when I do jury instructions
24 I have to make sure that the correct information is in
25 there.

24

1 THE COURT: Right.
2 MR. COOPER: So I want to make sure.
3 THE COURT: I would rather have the -- we kind
4 of file-stamped this -- why don't we do a second amended
5 that just removes the charge but keeps the date and the
6 reference to the Lifetime Supervision Agreement date and
7 the prior case date --
8 MS. HOJJAT: Yes, Your Honor.
9 THE COURT: -- but doesn't have the type of
10 charge. And that is the second amended information will
11 be actually what we read to the jury on Wednesday
12 morning.
13 MR. COOPER: Yes, Your Honor.
14 MS. HOJJAT: Thank you, Your Honor.
15 MS. BONAVENTURE: And the way we would propose
16 if the court and parties have no objection would be
17 Lifetime Supervision Agreement signed by this defendant
18 in 2007. And I believe the new one says and signed in
19 2012. And then say pursuant to having in 2004 being
20 convicted of a sex offense in the Eighth Judicial
21 District Court, Clark County, Nevada, to-wit by refusing
22 to submit -- literally just taking out the convicted of,
23 the name of, the charge, and replacing the name of the
24 charge with "of sex offense in the Eighth Judicial
25 District Court."

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1 THE COURT: Mr. Cooper, what do you think about
2 that?
3 MR. COOPER: That's fine, Your Honor.
4 THE COURT: It's referenced in both Counts 1 and
5 2.
6 MR. COOPER: That's fine, Your Honor.
7 THE COURT: All right. That sounds like that's
8 agreed to then. So we will get that adjusted and we'll
9 have a Second Amended Information.
10 MR. COOPER: Your Honor, my apologies. The only
11 other issue that I can think of is that because he would
12 be stipulating to actually one of the facts or one of the
13 issues that I would have to prove that he was on lifetime
14 supervision I think he needs to be, I guess, admonished
15 that he is actually stipulating to a fact that the State
16 would be required to prove -- and I'm sorry, I just
17 forget the name of the --
18 MS. BONAVENTURE: Hernandez.
19 MR. COOPER: Hernandez.
20 MS. HOJJAT: And that is fine. Mr. McNeill will
21 stipulate if the Court wants to change that, he
22 understands. We have discussed with him the importance
23 of keeping out the name of the charges.
24 THE COURT: Yes. I don't have my cheat sheet
25 for the Hernandez hearing in front of me. But certainly

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<p>1 what we need to accomplish, Mr. McNeill, is your counsel 2 is doing a lot of talking for you, obviously, when it 3 comes to certain things like whether or not you would 4 intend to testify on your own behalf, which we won't 5 discuss that until it's closer to the time to do that. 6 But for purposes of today, as we are proceeding, 7 we have you through your counsel indicating that you are 8 choosing to do a stipulation to a particular fact, that 9 particular fact being that you are someone who is 10 currently subject to a requirement of lifetime 11 supervision, that you did in fact sign the Lifetime 12 Supervision Agreement back in 2007, and then another one 13 it sounds like in 2012, although I haven't seen the 14 reference to that. 15 And if you stipulate to those facts then that 16 means that there is not the same requirement on the State 17 to establish all the details to establish those facts to 18 the jury. You would just stipulate and agree to them. 19 But if you do that, you are stipulating to facts that are 20 a component of the crime charged. So it's not the same 21 as stipulating that you are guilty, but it is basically 22 stipulating that you are guilty to a fact which may in 23 turn result in you being found guilty to the charge as a 24 whole. 25 Do you understand what all that means? Do you</p> <p style="text-align: right;">27</p>	<p>1 inquiry can be with regard to that, although it is still 2 very limited, that it might implicate something that 3 today we've otherwise agreed to try to redact in the 4 record and have not introduced. 5 But in keeping with what we were trying to do, 6 we would probably need to address that in some fashion 7 unless it's already likely that the defendant won't 8 testify. So I think what would happen is I would like to 9 canvass Mr. McNeill at the appropriate time regarding his 10 desire to testify. I typically do that after the State 11 rests, before the defense begins their case. If they are 12 going to have witnesses then maybe later in the case, but 13 before if they are not going to have witnesses, certainly 14 before we bring the jury back. 15 If something were to occur that he would wish to 16 testify certainly that canvass whether he wishes to or 17 doesn't wish to would include what could be gotten into 18 as far as the prior history. But typically it is what 19 the charge is and not the details and the background, but 20 that there was a charge -- 21 MR. COOPER: Yes, Your Honor. 22 THE COURT: -- or what the conviction was only 23 if there was to be some representation with documentation 24 necessarily be provided. 25 So, again, I am not sure we are going to cross</p> <p style="text-align: right;">29</p>
<p>1 understand the circumstances of what you are doing? 2 THE DEFENDANT: Yes, I can comprehend that. 3 THE COURT: Okay. Can I just get you to 4 indicate for the record then what it is you are agreeing 5 to for purposes of this hearing; what fact or facts are 6 you agreeing to stipulate to. 7 THE DEFENDANT: I am agreeing I am a sex 8 offender and I am on lifetime supervision. 9 THE COURT: Okay. Anything else that we should 10 canvass or question to complete the record? 11 MS. HOJJAT: I think the record is -- 12 THE COURT: As long as we heard it from 13 Mr. McNeill directly, which is what we need to achieve, 14 and so we have. 15 MR. COOPER: Your Honor, my other issue would 16 just be that if Mr. McNeill did decide to testify the 17 State still would be able to introduce his certified JOC 18 pursuant to statute because it is still within the time 19 period allowed and everything like that. None of the 20 rulings that happened today affect the State's right to 21 go forward with impeachment with the JOC. I just wanted 22 to make sure that we are clear on that point. 23 THE COURT: I would agree with you in terms of 24 the fact if you look at what the State's rights are with 25 a conviction that's been within ten years and what the</p> <p style="text-align: right;">28</p>	<p>1 that line and have a problem, but I don't know until we 2 get there. And I am assuming at this point there has 3 been some discussion but it is unlikely that Mr. McNeill 4 is going testify. We'll just leave it at that to be 5 determined at a future date. 6 Anything else that we need to cover -- well, 7 just to summarize, there is a stipulation that has been 8 accepted by counsel and by the Court that Mr. McNeill is 9 a convicted sex offender subject to lifetime supervision, 10 as such, that obviates the need to go into what the 11 actual prior conviction in 2004 was for. 12 The records that are going to be -- the evidence 13 that is going to be introduced by the State will be 14 redacted to remove reference to the prior charge and the 15 witnesses will be admonished not to go into the details 16 of the prior charge. And further, there was an issue 17 raised with regard to the treatment provider and that 18 there is no CV been provided so that treatment provider 19 will not be qualified or be able to testify as an expert, 20 but will be allowed to testify as a percipient witness to 21 the treatment, the reasons of the termination of the 22 treatment but no details further as to what was the 23 offense or how that would be ranked. 24 And then as far as the further need to canvass 25 as far as the defendant testifying, we will do that in</p> <p style="text-align: right;">30</p>

1 the normal course and address any issues that might be
2 implicated by that testimony should he give it at that
3 time.
4 Is there anything that we need to cover further?
5 MS. BONAVENTURE: No, Your Honor.
6 MS. HOJJAT: I do not think there is anything
7 further, Your Honor. Just the defense's objection based
8 on the shoes.
9 MS. BONAVENTURE: And I have Mr. Gutierrez right
10 now going down to the murder team who has a closet full
11 of stuff and they are checking right now to see if they
12 have size 14 shoes. And we do have pretty big guys on
13 the homicide team.
14 THE COURT: Okay. Officer, what is the rule
15 with regard to the socks; do we have to keep those on?
16 UNIDENTIFIED OFFICER: No. If they don't have
17 socks we will provide socks for them, but we didn't have
18 socks or shoes for him over at the jail.
19 THE COURT: All right. I was just curious.
20 I will give it a little bit longer, but in all
21 honesty, it would be my intention if we cannot locate
22 shoes within the next 10 or 15 minutes that we would
23 remove the socks and allow him to proceed with the
24 sandals.
25 Again, I look at those and I don't necessarily

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1 perceive those to be anything that would be indicative of
2 -- plus the way he is seated with his feet adjacent to
3 the desk and where the jury panel is going to be, he
4 might stand up briefly to be introduced, but other than
5 that -- oh, do we have shoes?
6 MS. BONAVENTURE: Yes, size 13's are on the way,
7 Judge.
8 THE COURT: We'll make them work. All right.
9 Good to know.
10 I looked through the list and I did not
11 recognize any names on the potential panel. We did bring
12 forward a slightly additional number of people just
13 because, again, even though we're not going to
14 necessarily I would think be canvassing folks on, you
15 know, well, I take that back, we might have to go into
16 and I typically would with any kind of sex offense, I
17 would typically when I do the part of the questioning
18 about whether or not you have had any prior involvement
19 with the legal criminal justice system and we talk about
20 victim of crime or accused of crime, I will typically in
21 any case that involves a sex offense further inquire
22 specifically about whether there has been any sex abuse
23 or sex history. So I will be doing that.
24 And, again, just a fine line to walk in terms of
25 depending on what panel we get is how much detail to go

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1 into. So nobody misunderstands that this case is not the
2 2004 case.
3 MS. HOJJAT: Yes, Your Honor.
4 THE COURT: This is the current. But we'll
5 figure it out. I'm going to step out so somebody let me
6 know when the shoes get here.
7 MS. HOJJAT: Thank you, Your Honor.
8 MS. BONAVENTURE: Thank you, Your Honor.
9 (Whereupon, a recess was taken.)
10 THE COURT: All right. I guess we are ready to
11 bring the jury in.
12 (Jury enters the courtroom.)
13 THE COURT: Welcome to Department 25 of the
14 Eighth Judicial District Court. My name is Kathleen
15 Delaney. I am the district court judge who will be
16 presiding over the trial. You have been sent to
17 Department 25 as potential jurors for the case of the
18 State of Nevada versus Steve Deil McNeill, and the record
19 will reflect the presence of counsel for the State,
20 counsel for the defense and the defendant.
21 In a moment we will give you a little bit more
22 information with regard to the case specifically, but I
23 will do some introductions right now because we need to
24 first and foremost find out if there are any of you here
25 today that are familiar with any of us, and whether or

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1 not that will interfere with your ability to serve as
2 fair and impartial jurors.
3 We will also get into some discussion and
4 details about the length of this trial and whether or not
5 there is any conflicts of your ability to serve.
6 I can always tell when I see folks coming in,
7 especially on a Monday afternoon, oftentimes they would
8 rather be anywhere but here. But I'm sure you can
9 appreciate that if you feel that way, certainly parties
10 to the case who have endeavored to be prepared, but
11 obviously this matter has been unable to be resolved in
12 any other way, that we need to have that fair and
13 impartial jury that will be attentive to the details of
14 the case here and do their duty as jurors.
15 So we just really appreciate your service in
16 advance, and we also want to be sure that you are going
17 to be honest and candid in all of your responses to our
18 questions.
19 But I do have one piece of business before we
20 get started and that is that I will ask each of you to
21 stand and pay attention to my court clerk here. Raise
22 your right hand and she will swear you in as possible
23 jurors.
24 THE CLERK: You do solemnly swear that you will
25 well and truly answer such questions that may be put to

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1 you touching upon your qualifications as jurors in the
2 case at issue.
3 (Potential jurors answer affirmatively.)
4 THE COURT: Thank you. Noting that everyone
5 appears to have taken the oath and not objected to the
6 oath. At this time, I will take a moment to introduce
7 you to the remainder of my staff, then I am going to ask
8 the counsel for the State to introduce themselves and to
9 give a brief a synopsis of the case as well as what
10 witnesses he intends to call.
11 And then I am going to turn it to counsel for
12 the defendant and find out what witnesses they intend to
13 call and that way we can take a question to each of you
14 as to whether or not you are familiar with any of us.
15 What will happen is any question that is posed
16 to you either by the Court or by counsel if you have an
17 answer to give to the question, raise your hand and then
18 you will be called on by me to give your answer. And I
19 usually call on the folks in the order in which you were
20 seated. And of course the order in which you were seated
21 is the order in which you came into the courtroom
22 starting in the far back row further left, and then all
23 the way down to the front and then with the remaining
24 panel there.
25 I should also just give a little bit of

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1 background so you understand what's going to happen
2 today. A lot of times there is the question of why is
3 there a certain number of people to my right in the jury
4 box, and why are there a certain number of people seated
5 behind counsel table. And here's the reason for that.
6 We utilize the selection method that hopefully will
7 expedite things and make things go a little bit quicker
8 and that is we ultimately need for this trial to qualify
9 24 people.
10 Ultimately, 14 of those will serve; 12 as jurors
11 to deliberate and two alternates. So 14 of course will
12 be geared throughout the course of the trial, but the 12
13 will deliberate. And if there is a need to call on an
14 alternate then we can do so.
15 So we have to qualify 24 people because
16 ultimately each side has the opportunity to preempt five
17 people to serve and allow for the final 14 to be decided.
18 So essentially if you are in the first 24 seats to my
19 right, unless some reason comes up that you cannot serve,
20 you will be in that qualified panel. If some reason
21 comes up that you cannot serve and you are excused then
22 we fill those empty seats with the group to my left
23 behind counsel table staring with the first row, first
24 seat and then on down through the remaining of the panel.
25 So if you are in the back of the panel, unless

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1 something extraordinary happens you can be pretty sure
2 that you are not going to be called forward, but we never
3 know. If you are in the front of this secondary panel,
4 it is very possible that you may be filling one of the
5 seats, but we never know. But I like to give folks sort
6 of the understanding of why you are seated where you are
7 and what's going on.
8 So let me introduce the rest of my staff present
9 in the courtroom. I've got my marshal, who just stepped
10 out of the courtroom, Jonathan Crenshaw. You have
11 already seen him as he has escorted you into the
12 courtroom. I have a court clerk, Kristen Brown. I have
13 a court reporter, Brenda Schroeder. Behind the scenes I
14 have a judicial executive assistant, Cindy Springberg. I
15 have a law clerk Jamie Combs. And I have an extern for
16 the summer who's name is Eli Trodatt. That's my staff.
17 I am going to now turn it over to Mr. Cooper to
18 ask you to introduce yourself and any potential witnesses
19 for the State, and then we will hear from the defense.
20 MR. COOPER: Thank you, Your Honor.
21 Greetings, ladies and gentlemen. My name is
22 Jonathan Cooper and I am a deputy district attorney with
23 the Clark County District Attorney's Office. The
24 defendant in this case is charged with violation of
25 lifetime supervision by a convicted sex offender and one

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1 count of prohibited acts by a sex offender.
2 These violations and prohibitive acts were said
3 to have occurred between December 2012 and March 2014.
4 In my case-in-chief I plan on calling three witnesses;
5 Probation and Parole Officer Ashley Mangan, Probation and
6 Parole Sergeant Brian Zana, and licensed therapy Marcia
7 Lee. Thank you.
8 THE COURT: All right. Ms. Bonaventure.
9 MS. BONAVENTURE: Thank you, Your Honor.
10 Good afternoon. My name is Xiomara Bonaventure.
11 I was previously known as Xiomora Ferrera, just for some
12 people that I might recognize here. This is my
13 co-counsel, Nadia Hojjat. We are counsel for Mr. McNeill
14 and he has pled not guilty to these charges. Thank you
15 very much.
16 THE COURT: Thank you. So may I see by a show
17 of hands at this time if there are any members of the
18 potential jury panel that are familiar with any of the
19 names, any of the witnesses that have been identified.
20 I see just a couple of hands. Let me tell you
21 how this works. Until we get to know you a little bit
22 better we need you to identify yourself by your name and
23 the last three digits on the badge that you are wearing.
24 There is a long number on there but we just need those
25 last three so that we can find you on our list and be

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1 able to make notes.
2 So, sir, what is your name and the last three
3 digits of your badge number.
4 A PROSPECTIVE JUROR: Jacob Spooner, Number 708.
5 THE COURT: All right. Mr. Spooner, who are you
6 familiar with?
7 PROSPECTIVE JUROR NO. 708: Eli.
8 THE COURT: And how do you know Mr. Trodatt?
9 PROSPECTIVE JUROR NO. 708: I went to a couple
10 of classes at UNLV with him.
11 THE COURT: Do you believe that there is any
12 reason why having a familiarity with my extern would
13 interfere with your ability to be a fair and impartial
14 juror in this case?
15 PROSPECTIVE JUROR NO. 708: No.
16 THE COURT: All right. Anybody else?
17 Ma'am?
18 A PROSPECTIVE JUROR: Bonnie Schultz, Number
19 958. I was your eighth grade teacher.
20 THE COURT: I don't even want to say how long
21 ago that was. And I am sorry I did not recognize you.
22 But thank you for remembering me. I hope it's in a good
23 way. For the record, Cashman Junior High. Born and
24 raised in Las Vegas so I have a lot of connections.
25 Any reason why you being familiar with me would

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1 interfere in any way of you being able to be a fair and
2 impartial juror?
3 PROSPECTIVE JUROR NO. 958: No.
4 THE COURT: Thank you. Good to see you again.
5 Was there anyone else? Seeing no other hands.
6 Let me advise you then that this is a two-day trial,
7 however, it is a little unique because the court
8 otherwise was obligated on Tuesday to handle a matter
9 unrelated to the trial. The trial is going to commence
10 today with jury selection and then resume again on
11 Wednesday, midmorning, about 10:30 for opening statements
12 and presentation of evidence.
13 We do anticipate absent some unique
14 circumstances that even with a lunch recess on Wednesday
15 that we would be able to at least deliver the case to you
16 for deliberations on Wednesday. Now, whether or not that
17 is late enough in the day that you would elect to come
18 back another day to deliberate or to further deliberate
19 that day. But it is our belief that we can complete this
20 trial within that two day time frame.
21 Is that still true for counsel?
22 MR. COOPER: Yes, Your Honor.
23 THE COURT: All right. So it is essentially two
24 days of your time, with the second day being Wednesday
25 approximately 10:30 in the morning. So unlike some

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1 trials where we have had multiple days or weeks, and it
2 is very difficult and we appreciate that with people's
3 schedules to accommodate that time, we hope that this
4 limited amount of time will not be difficult beyond any
5 typical inconvenience for folks.

6 Now, of course, it needs to be something much
7 more significant than a typical inconvenience that would
8 prevent you from jury service. Mainly if someone has
9 travel plans for which they have already paid for airline
10 tickets that's nonrefundable or a doctor's appointment
11 that cannot be rescheduled, although in most cases even
12 that is not necessarily a basis to preclude your service.
13 But we need to know if you do in fact have a hardship
14 with this time frame. So can I see by a show of hands if
15 anybody does have a hardship.

16 I see just a few hands so I will call on you in
17 the order in which you are seated. Gentleman in the very
18 back left; what is your name and badge number?

19 A PROSPECTIVE JUROR: Darrell Hoss, Badge No.
20 008. I have a traveling job and I'm supposed to be
21 leaving Thursday morning. If this goes too long then I
22 will not be able to go.

23 THE COURT: What is your job?

24 PROSPECTIVE JUROR NO. 008: I am a concert
25 technician or you can call me a "roady."

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1 THE COURT: And your next travel is Thursday
2 morning. Would there be any ability to delay that
3 slightly if needed?

4 PROSPECTIVE JUROR NO. 008: No.

5 THE COURT: All right. We don't necessarily
6 anticipate that this is going to carry over that time
7 frame but I do appreciate you bringing that to our
8 attention.

9 I saw another hand. Sir, in the back row.

10 PROSPECTIVE JUROR NO: Jeffrey Swain, 679. We
11 have set plans for Monday to travel to San Diego. It
12 should be okay but...

13 THE COURT: I would not anticipate this trial
14 going that long. Now if you were to travel on Monday,
15 when would you be returning?

16 PROSPECTIVE JUROR NO. 679: Monday, and we're
17 coming back this Saturday.

18 THE COURT: I do not -- the difficulty with this
19 is if we finish on Wednesday in terms of deliberating --
20 if we finish on time to deliver the evidence to you and
21 you are able to start your deliberations, then it is up
22 to you whether you continue through on Wednesday to
23 deliberate and reach a verdict, or you need to come back.
24 If you need to come back, you would probably come back on
25 Thursday. The Court would not be available on Thursday,

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1 there is a State bar conference which I am required to
2 attend and I would not be present. But the jury could
3 certainly deliberate and one of the other judges
4 available could receive the verdict if need be.
5 If, however, we have not completed evidence, it
6 is possible that we would need to return for that and
7 that would be one day next week. So, again, I do not
8 think it is likely at all. We are going to do everything
9 we can to complete the trial and deliver it for
10 deliberations in time, but I do appreciate you letting me
11 know about that.
12 But our main need to know is if you have
13 hardship with these two days or any portion.
14 Ma'am.
15 A PROSPECTIVE JUROR: Erika Rojas, Badge No.
16 913. I have a daughter who is 22 months. She was born
17 with down syndrome and she has an appointment this
18 Wednesday at 2:10 with her hematologist.
19 THE COURT: Okay. Thank you.
20 Go ahead, sir.
21 A PROSPECTIVE JUROR: Merrill Whittenberger,
22 951. My wife is eight months pregnant and it is a high
23 risk pregnancy. She works during the day and I work at
24 night and we also have a toddler and we have no daycare.
25 THE COURT: Okay. How is that being handled

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1 today?
2 PROSPECTIVE JUROR NO. 951: I dropped her off at
3 a friend's house.
4 THE COURT: So you were already able to pick up
5 your child from the daycare and take her somewhere. I'm
6 trying to understand what you indicated. Your wife is
7 eight months pregnant but she is in fact working?
8 PROSPECTIVE JUROR NO. 951: Yes, in the morning.
9 THE COURT: So who picks up your child at
10 daycare?
11 PROSPECTIVE JUROR NO. 951: I take care of her
12 during the morning when she goes to work. When she comes
13 back she takes care of her.
14 THE COURT: I see. So you are unavailable in
15 the day but found a babysitter for today.
16 PROSPECTIVE JUROR NO. 951: Yes.
17 THE COURT: Would you be able to do something
18 for tomorrow like that?
19 PROSPECTIVE JUROR NO. 951: It's possible but it
20 is hard.
21 THE COURT: I appreciate your candor.
22 Next.
23 A PROSPECTIVE JUROR: Mary Neven, 936. I baby
24 sit my grand baby on Thursday and Friday for the summer
25 while she is out of school. My son is a single parent

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1 and so it helps him out.
2 THE COURT: Okay. Has he ever had occasion to
3 use a different babysitter if you were not available?
4 PROSPECTIVE JUROR NO. 936: Yes, he has.
5 THE COURT: So in the off chance that we needed
6 you on Thursday, you might be able to make other
7 arrangements?
8 PROSPECTIVE JUROR NO. 936: It would not be
9 easy.
10 THE COURT: It would not be easy but you might
11 be able to do it; is that fair?
12 PROSPECTIVE JUROR NO. 936: My grand baby would
13 not like it but I could do it.
14 THE COURT: I appreciate that.
15 Anybody in the row behind counsel table?
16 All right. Thank you. Give me just a moment
17 with counsel at the bench and we will get back to you.
18 (Discussion held at the bench.)
19 THE COURT: All right. Thank you. At this time
20 I will excuse and I want to thank very much for your
21 service, and since it is so early please go back to Jury
22 Services to see if they might have something else for
23 you.
24 At this time we are going to excuse Juror No.
25 913, Erika Rojas; Juror No. 936, Mary Neven; and Juror

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1 No. 951, Merrill Whittenberger. Thank you for your time.
2 Please take your belongings. Again, please go back down
3 to Jury Services on the third floor to check in with them
4 to make sure they don't need you for any other purposes.
5 I will ask my clerk to fill the vacant seat
6 starting with the middle row, the middle spot.
7 THE CLERK: Badge No. 985, Justin Walker.
8 THE COURT: All right. Next.
9 THE CLERK: Badge No. 987, Steven Manning.
10 THE COURT: Take the first seat in the front row
11 here on the left.
12 Next.
13 THE CLERK: Badge No. 000, Martin Burgess.
14 THE COURT: All right. Thank you very much.
15 I guess I should ask just out of an abundance of
16 caution Jury Service is very good about catching these
17 things but just to make sure, is there anyone here who is
18 not a US citizen or who is a convicted felon who has not
19 had their rights restored? May I see by a show of hands.
20 Sir.
21 A PROSPECTIVE JUROR: I am a convicted felon
22 from '92. I don't know if my rights are restored.
23 THE COURT: Well, there is after you -- well, I
24 don't want to go necessarily into too much detail --
25 first of all, give us your name and number.

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<p>1 A PROSPECTIVE JUROR: Culver Smith, 532. 2 THE COURT: Mr. Smith, did that take place here 3 or in another state? 4 PROSPECTIVE JUROR NO. 532: In Ohio. 5 THE COURT: And obviously if you were either 6 convicted and served a successful term of probation or 7 served some incarceration and successful term for both. 8 I mean how did you complete your -- 9 PROSPECTIVE JUROR NO. 531: It was drug abuse 10 and I was on probation for five years and then at the end 11 of my five years I absconded and so I went and did six 12 months in the penitentiary in Ohio. 13 THE COURT: All right. And that was all 14 completed back when? 15 PROSPECTIVE JUROR NO. 531: I got the case in 16 '92 and then I absconded and -- I ended up getting out in 17 '97. 18 THE COURT: All right. Did you ever do any 19 parole or that was the service of -- 20 PROSPECTIVE JUROR NO. 531: It was just a simple 21 drug -- 22 THE COURT: So you basically completed your 23 underlying sentence? 24 PROSPECTIVE JUROR NO. 531: Right. 25 THE COURT: I am not sure if you would have had</p> <p style="text-align: right;">47</p>	<p>1 PROSPECTIVE JUROR NO. 531: Thank you. 2 THE COURT: All right. Seat 6, then, next juror 3 in line. 4 THE CLERK: Juror No. 001, Brian Lagomarsino. 5 THE COURT: Now, for the remainder of the time 6 we are going to inquire of the panel, we are going to 7 mainly focus our attention to the group here in the first 8 24 seats. The folks over there, pay attention because if 9 you are called forward you may be asked some of the 10 similar questions. 11 But for now we are going to try to get to know 12 these folks a little bit better and find out in fact if 13 there are any conflicts that you may have that would 14 require you to be excused from this trial, based on the 15 subject matter of the trial, the circumstances of the 16 trial, we are going to figure that out now. I do not 17 anticipate that, but we have some questions we need to 18 ask. 19 So we are going to focus our attention on these 20 24 folks here. But, again, I do ask you to pay attention 21 just in the event that you might be called forward. Once 22 we have fully qualified the 24 folks, then the remainder 23 of you will be excused. But until then you are still 24 part of our potential panel. 25 The first thing then that I guess I would like</p> <p style="text-align: right;">49</p>
<p>1 to do anything in particular to have your rights 2 restored, but typically a convicted felon would lose the 3 right to vote. Do you vote? 4 PROSPECTIVE JUROR NO. 531: No, I haven't. 5 THE COURT: Is that by choice? 6 PROSPECTIVE JUROR NO. 531: That's by choice. 7 THE COURT: All right. Well, we need to work on 8 that. Honestly, it is impossible for me to speak to what 9 your ability to serve is based on the fact that this was 10 in Ohio and I don't know if you would have needed to do 11 anything specific or if that would have come naturally 12 with the paperwork upon your discharge from your 13 probation. 14 You were not honorably discharged because you 15 had to serve a term of incarceration. Do you remember 16 what the paperwork was when you finished up? 17 PROSPECTIVE JUROR NO. 531: Yeah, basically, I 18 was on probation. And after I did the six months and I 19 got out free and clear. Honestly, I really don't know. 20 THE COURT: Well, that's good to know. Just out 21 of an abundance of caution, I am going to go ahead and 22 excuse you because I really don't know and I would hate 23 for you to serve and there be any questions with regard 24 to those circumstances. So start voting, we will wish 25 you well and you are excused.</p> <p style="text-align: right;">48</p>	<p>1 to remind you is that you did just take an oath, and to 2 be honest in your answers to all of our questions. It is 3 never our intention to pry into your personal lives or in 4 circumstances that would be uncomfortable for you, but we 5 do by nature of ensuring justice be done and be fair to 6 both sides of the case, the State and the defense, that 7 this is a fair and impartial trial, we must do our best 8 at this process of selection to be sure that whoever is 9 here is not harboring any biases, not going to be unfair 10 or not impartial that would be a problem for our case. 11 So I just want to remind you again that you did 12 take an oath. As we commence this process, there may be 13 some times that I refer to notes just to be sure I 14 haven't missed anything and that we are covering 15 everything that we need to cover. 16 We have already talked about the length of this 17 trial. We know that you are not likely to have hardships 18 with what we anticipate to be the time of the trial. I 19 do want to remind everybody about something that is very, 20 very basic in our criminal justice system and make sure 21 that I have your responses to that. 22 This is, again, a criminal trial. That means 23 that you as the members of the jury are sitting 24 collectively as the judges of the questions of facts in 25 the case. And as the judge in this case I am the one who</p> <p style="text-align: right;">50</p>

1 is going to determine what law you will apply to the
2 facts as you find them to be if you end up being our
3 panel that deliberates.
4 It is my responsibility to give you those
5 instructions and I will do so. Some of the instructions
6 will come early on in the process and the majority and
7 the final set of instructions will come at the end of the
8 process. You will each have your own copy set. It would
9 be a violation of your duty as jurors to render a
10 judgment based upon anything other than what's in those
11 instructions or what you find to be the facts.
12 In other words, you cannot base your judgment on
13 what you believe or think the law should be, you have to
14 base it on what I give you as the instructions on the
15 law.
16 With that in mind, is there anyone here who
17 feels that they cannot be the factfinders and follow my
18 instructions and applicable law in this case?
19 A PROSPECTIVE JUROR: My badge number is 032.
20 Being a person who has had a lot of sexual issues growing
21 up, I think it would be hard to be fair and impartial.
22 THE COURT: Okay. I appreciate your candor.
23 There are other questions that I am going to ask that
24 will be a little bit more about anyone's involvement with
25 the criminal justice system, whether it be as a victim of

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1 crime, whether it be as someone who has been accused of a
2 crime, specifically any involvement with regard to sexual
3 event type crimes.
4 I can have a little bit of that questioning here
5 with you. It is not, again, an intent to embarrass you
6 or to go into any details of something that you would
7 prefer not to go into, but it is important that we
8 understand at least minimally the nature of what that
9 potential bias would be.
10 So can I ask you this: The time frame for your
11 experience was that when you were younger? Was it more
12 recent?
13 PROSPECTIVE JUROR NO. 032: Younger.
14 THE COURT: Was it a situation that ever
15 involved the criminal justice system?
16 PROSPECTIVE JUROR NO. 032: Yes.
17 THE COURT: Was it someone who was known to you?
18 PROSPECTIVE JUROR NO. 032: Yes.
19 THE COURT: Was that person -- ultimately, did
20 you go through a trial process and that person was
21 convicted?
22 PROSPECTIVE JUROR NO. 032: No.
23 THE COURT: Okay. Was there ever any police
24 involvement?
25 PROSPECTIVE JUROR NO. 032: Yes.

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1 THE COURT: Was it an acquittal?
2 PROSPECTIVE JUROR NO. 032: No. I do not know
3 if it ended up being an acquittal.
4 THE COURT: Was there a plea?
5 PROSPECTIVE JUROR NO. 032: Yes.
6 THE COURT: So ultimately a conviction in the
7 case from a plea it sounds like.
8 Was it here in Nevada?
9 PROSPECTIVE JUROR NO. 032: Nevada.
10 THE COURT: All right. And so your connection
11 to that, you do obviously recognize that none of the
12 individuals involved in this case would have had anything
13 to do with that case, I'm assuming from the time frame
14 you are describing.
15 PROSPECTIVE JUROR NO. 032: Right.
16 THE COURT: And I think that you appreciate but
17 it may not be entirely clear that the charges in this
18 case relate to the requirements to have followed
19 directives of lifetime supervision and following
20 directives of the specific charges of violation of
21 lifetime supervision by a convicted sex offender, again,
22 related to address and reporting requirements.
23 So understanding that this is not a case
24 involving directly any allegations of sex offense. But,
25 again, what those particular charges are, do you still

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1 believe that you would be unable to be fair and
2 impartial?
3 PROSPECTIVE JUROR NO. 032: Yes, ma'am.
4 THE COURT: You don't believe that you would be
5 able to receive the evidence provided in this case and
6 apply the law as I give it to you?
7 PROSPECTIVE JUROR NO. 032: No, ma'am.
8 THE COURT: I appreciate your candor.
9 Is there anyone else who would raise their hand
10 to the question that I asked? All right.
11 Under our criminal justice system more generally
12 we have certain principles that we apply to every
13 criminal case. Those principles are that this
14 information as I discussed, the charging document, is
15 simply an accusation. It is in no way, shape or form
16 evidence of guilt.
17 The defendant as he sits here in the courtroom
18 today is not only presumed innocent, he is in fact
19 innocent. He would only be determined to be guilty if
20 the State has proven that he is guilty beyond a
21 reasonable doubt.
22 Does anyone not understand or believe in these
23 basic principles of our American justice system? Seeing
24 no hands.
25 I believe we asked if anybody was familiar with

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1 any of the parties in the case, but just to confirm, is
2 there anyone in the panel who is in anyway familiar with
3 the facts or the circumstances of this case? All right.
4 Seeing none.

5 What I would like to do at this time then is I
6 would like to ask individually, one by one, and you can
7 remain seated if you can speak up a little bit and if not
8 we may ask you to stand.

9 You will see a set of questions on the board,
10 hopefully you can see them, and if not I can certainly
11 assist you by reading the questions to you. But we would
12 like to get to know you a little bit better, who you are,
13 what job you currently have or if you were recently
14 retired or unemployed, what job or jobs you have had
15 recently. A spouse or domestic partner and what is their
16 occupation. If you have any children old enough to work
17 what is their occupation and for whom.

18 This whole idea here is to identify here whether
19 there are inadvertently perhaps some connections to the
20 facts and circumstances of the case.

21 And also how long have you lived here. If it
22 has been less than five years we would like to know where
23 you have lived previously. And we would also like to
24 know whether you have had jury service before, what type
25 and whether a verdict was reached, not what it was, and

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1 whether or not you were the foreperson.

2 Let me start with the juror in the Number 1
3 position. Answer those questions there.

4 PROSPECTIVE JUROR NO. 008: My name is Darrel
5 Hoss, 008. As I said, before I am a roady.

6 THE COURT: What company do you work for or how
7 does that work?

8 PROSPECTIVE JUROR NO. 008: I'm kind of
9 independent.

10 THE COURT: You do not have a paycheck from a
11 company?

12 PROSPECTIVE JUROR NO. 008: Whatever band I am
13 traveling with.

14 THE COURT: Just out of curiosity, who are you
15 traveling with this weekend?

16 PROSPECTIVE JUROR NO. 008: Currently a band
17 called The Reverend 14.

18 THE COURT: I have a friend who would be very
19 jealous of me right now because she's a very big fan.
20 All right. Can you go ahead and answer the remaining
21 questions.

22 PROSPECTIVE JUROR NO. 008: My wife's name is
23 Lonnie Argyle. She is a pharmacy technician at UMC. No
24 children. Been in Vegas coming up on eight years. Never
25 been a juror.

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1 THE COURT: Where did you live previously?

2 PROSPECTIVE JUROR NO. 008: Boise, Idaho.

3 THE COURT: Okay. And just to be clear the
4 question regarding jury service is here or there.

5 PROSPECTIVE JUROR NO. 008: No.

6 THE COURT: Thank you very much. Next.

7 A PROSPECTIVE JUROR: My name is Linda Alarcon,
8 Number 032. I work for United Nissan. I am not married.

9 I have one child at home who is not old enough to work.

10 I have lived here for almost ten years in Las Vegas. I

11 have never been a juror here or anywhere.

12 THE COURT: Thank you.

13 Sir.

14 A PROSPECTIVE JUROR: Jace Mande, 055. I own my
15 own business. I live with my girlfriend. She works for
16 me. No children. Never been a juror. Lived here ten
17 years.

18 THE COURT: Never been a juror here or anywhere?

19 PROSPECTIVE JUROR NO. 055: No.

20 THE COURT: All right. Thank you.

21 A PROSPECTIVE JUROR: Joe Rivera, Badge No. 060.

22 I'm a business agent for the Brick Layer's Union. I'm a
23 delegate. I have a wife and I have two children.

24 THE COURT: Your wife's name is?

25 PROSPECTIVE JUROR NO. 060: Lucile DeLucca.

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1 THE COURT: And what does she do?

2 PROSPECTIVE JUROR NO. 060: She is a housewife.

3 I have a daughter and she is not working. She is a
4 student at Berkley University. I have been in Las Vegas
5 since 1990. I have been a juror before.

6 THE COURT: Do you remember if it was a civil or
7 a criminal case?

8 PROSPECTIVE JUROR NO. 060: Criminal.

9 THE COURT: And did you actually start any part
10 of the jury trial process?

11 PROSPECTIVE JUROR NO. 060: No. I was kicked
12 out of the jury.

13 THE COURT: So you were not actually selected?

14 PROSPECTIVE JUROR NO. 060: No.

15 THE COURT: I see. That question is geared more
16 towards people who were in fact selected and maybe there
17 was a deliberation process and whether or not they were
18 the foreperson. But I am happy to know that you were
19 called but you were not actually selected; is that
20 correct?

21 PROSPECTIVE JUROR NO. 060: Yes.

22 THE COURT: Thank you.

23 Ma'am.

24 A PROSPECTIVE JUROR: My name is Gianni Cardoza.
25 My number is 166. I am a full-time student. I am

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1 married. My husband's name is James Shoemaker. He is a
2 Metro police officer and I have one child who does not
3 work. I lived here all my life, so 29 years, and I have
4 never been a juror.
5 THE COURT: Thank you.
6 A PROSPECTIVE JUROR: My name is Brian
7 Lagomarsino, 001. I work at Mandalay Bay. I am a
8 director of guest services. I am not married. No
9 children. Been in Las Vegas for 11 years in August. I
10 have never been a juror.
11 THE COURT: Here or anywhere?
12 PROSPECTIVE JUROR NO. 001: No.
13 THE COURT: Thank you. Just double checking.
14 Go ahead, sir.
15 A PROSPECTIVE JUROR: Jeff Swain, 679. I work
16 at Encore Casino. My wife's name is Emma Swain. She
17 also works at Encore. We have a five-year-old daughter.
18 THE COURT: What do you and your wife do at
19 Encore?
20 PROSPECTIVE JUROR NO. 679: She is a dealer and
21 I'm a baccarat manager.
22 THE COURT: Okay.
23 PROSPECTIVE JUROR NO. 679: I have lived in Las
24 Vegas for 15 years. And I have made it to the selection
25 process but was not actually selected as a juror.

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1 THE COURT: Never on a panel.
2 PROSPECTIVE JUROR NO. 679: Right.
3 THE COURT: Thank you.
4 Sir.
5 A PROSPECTIVE JUROR: My name is Jacob Spooner,
6 708. I am a poker dealer at Planet Hollywood. I have a
7 fiance who stays at home with my two children.
8 THE COURT: What is her name?
9 PROSPECTIVE JUROR NO. 708: Linda. I have lived
10 in Vegas for about five years and I lived in Wisconsin
11 before that and I have never been a juror.
12 THE COURT: Where did you live in Wisconsin?
13 PROSPECTIVE JUROR NO. 708: O'Claire area.
14 THE COURT: And then you said you moved here
15 about five years ago?
16 PROSPECTIVE JUROR NO. 708: Yes.
17 THE COURT: Thank you.
18 Sir.
19 A PROSPECTIVE JUROR: Isaac Vilchez, 883. I am
20 a ramp agent at the airport.
21 THE COURT: What kind of agent?
22 PROSPECTIVE JUROR NO. 883: Ramp agent.
23 THE COURT: Oh, okay. Go ahead.
24 PROSPECTIVE JUROR NO. 883: I am not married.
25 No kids. Born and raised in Vegas. Never been a juror

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1 before.
2 THE COURT: Never been called, huh?
3 PROSPECTIVE JUROR NO. 883: No.
4 THE COURT: All right.
5 A PROSPECTIVE JUROR: My name is Jason Moore,
6 885. I sold a business. December 2012 was the last time
7 I worked.
8 THE COURT: What kind of business was it?
9 PROSPECTIVE JUROR NO. 885: It was a direct mail
10 company, money mailer.
11 THE COURT: Okay.
12 PROSPECTIVE JUROR NO. 885: I went back to
13 school and got my bachelors degree. My wife is in
14 pharmaceutical sales.
15 THE COURT: What is her name?
16 PROSPECTIVE JUROR NO. 885: Katherine Moore. I
17 do have children. I have three children. One is old
18 enough to work. He did work part time as a sales clerk
19 at the Smith Center. Born and raised here. I also went
20 to Cashman.
21 THE COURT: So you remember Ms. Schultz?
22 PROSPECTIVE JUROR NO. 885: Actually, I don't.
23 And I have never been a juror before.
24 THE COURT: What did you get your bachelors in?
25 PROSPECTIVE JUROR NO. 885: Business

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1 administration and management.
2 THE COURT: Okay. Sometimes these are questions
3 that the counsel like to follow up on, too, so I try to
4 question where I can. Thank you.
5 Ma'am.
6 A PROSPECTIVE JUROR: My name is Idalia Demetria
7 Rice-Wilson, 905. I am a licensed practical nurse. Work
8 for the VA Hospital. I am divorced. I have three
9 children. Two are old enough to work. One is here in
10 Vegas with me, he does not work. And one is in Detroit.
11 THE COURT: Just interested in the ones that
12 might work in our community and might have potential,
13 again, unknown but crossover with the case.
14 So he doesn't work?
15 PROSPECTIVE JUROR NO. 905: No.
16 THE COURT: And your ex-spouse is here?
17 PROSPECTIVE JUROR NO. 905: No.
18 THE COURT: Okay. Proceed.
19 PROSPECTIVE JUROR NO. 905: I have been here
20 five years. Never been a juror, never served.
21 THE COURT: And I assume you moved here from
22 Detroit?
23 PROSPECTIVE JUROR NO. 905: Correct.
24 THE COURT: Thank you.
25 Sir.

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1 A PROSPECTIVE JUROR: Jorge Morales, 907. I
2 work at the MGM. I am an assistant butler. My wife also
3 works at the MGM. She works in environmental services.
4 THE COURT: Her name?
5 PROSPECTIVE JUROR NO. 907: Grace. I have five
6 children. Two live in California. Two in Texas. And
7 the only one with me is 31 years old and he is a civil
8 engineer.
9 THE COURT: For what company?
10 PROSPECTIVE JUROR NO. 907: I have no idea. And
11 the one that lives in Texas she is a chiropractor. And
12 two in California, the twins, one is a medical assistant
13 and the other one is a housewife. And the youngest one,
14 who was a surprise, she is only seven years old.
15 THE COURT: Okay. Again, we are mainly
16 interested if someone is working here in our community.
17 We're going to have some follow-up questions like, for
18 instance, connections to law enforcement that some folks
19 may have in terms of their family member or friends.
20 I think we have covered everything. Did you say
21 that you had jury service?
22 PROSPECTIVE JUROR NO. 907: I haven't had any.
23 THE COURT: Okay. Thank you.
24 Sir.
25 A PROSPECTIVE JUROR: My name is Windell

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1 THE COURT: Did you go to Cashman?
2 PROSPECTIVE JUROR NO. 924: No. I have been a
3 juror before on a criminal case. We reached a verdict
4 and I was not the foreperson.
5 THE COURT: How long ago was your jury service?
6 PROSPECTIVE JUROR NO. 924: Over 20 years ago.
7 THE COURT: Okay. And you did in fact get the
8 opportunity to deliberate?
9 PROSPECTIVE JUROR NO. 924: Yes.
10 THE COURT: Okay. Thank you.
11 Sir.
12 A PROSPECTIVE JUROR: Richard Benson, 927. I
13 work as a dealer at the Encore. I am single. Never been
14 married. No children. I have been here for 17 years and
15 I have never been a juror.
16 THE COURT: Thank you.
17 A PROSPECTIVE JUROR: My name is Gilbert
18 Ganales, 930. I am a raw milk receiver at a local dairy.
19 I am married to Marina Ganales. She is a domestic
20 engineer, stay-at-home mom. We have both lived here
21 since 2005 and I have never been a juror.
22 THE COURT: Since 2005. Okay. And you have
23 never been called here or anywhere to sit on a jury?
24 PROSPECTIVE JUROR NO. 930: Right.
25 THE COURT: All right. Thank you.

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1 Whisenant. Badge No. 009. My wife's name is Maryanne
2 Whisenant. I am a retired construction worker. I worked
3 for Las Vegas Paving for 12 years. My wife is retired
4 from Lockheed. I have four children and one deceased.
5 Two boys. One lives in Oregon and one lives here in
6 town. Both of them are disabled. I have one daughter
7 and she sells online. I have lived in Vegas for 14 years
8 and I have never been a juror.
9 THE COURT: You indicated there is a connection
10 to law enforcement?
11 PROSPECTIVE JUROR NO. 009: No.
12 THE COURT: Okay. I must have misunderstood
13 you, sir. Thank you.
14 Sir.
15 A PROSPECTIVE JUROR: My name is Justin Walker,
16 Badge No. 985. I am a job manager for American Auto
17 Works. I am not married. No children. And lived in
18 Vegas my whole life, 22 years. I have never been a juror
19 before.
20 THE COURT: Thank you.
21 A PROSPECTIVE JUROR: Shirley Towers, 924. I am
22 a school teacher. I am married to Rick Towers. He works
23 at Cesar's Entertainment as a dealer. I have two
24 children. My son is unemployed. My daughter works at
25 Red Rock in hospitality. I was born and raised here.

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1 Ma'am.
2 A PROSPECTIVE JUROR: My name is Tami Taylor,
3 933. I work for Vons Grocery Company.
4 THE COURT: What do you do for Vons?
5 PROSPECTIVE JUROR NO. 933: I am a scanner
6 coordinator/checker.
7 THE COURT: Okay.
8 PROSPECTIVE JUROR NO. 933: I am divorced. I
9 have one son but he lives in San Diego. I lived in Vegas
10 26 years. And I have never been on a jury here or
11 anywhere else.
12 THE COURT: Thank you, ma'am.
13 Sir.
14 A PROSPECTIVE JUROR: My name is Steve Manning,
15 987. I am retired. My wife is Pam.
16 THE COURT: What are you retired from?
17 PROSPECTIVE JUROR NO. 987: I was a programmer
18 analyst for Home Savings of America. And I was
19 responsible for the bank's general ledger system. My
20 wife is also retired. She worked for O'Nelly and Meyers
21 also in data processing, not the legal side. We have no
22 kids. We have lived in Las Vegas since 2006. I have
23 been on a jury before.
24 THE COURT: Was that here?
25 PROSPECTIVE JUROR NO. 987: No. It was in

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<p>1 California. And we didn't come to a conclusion because</p> <p>2 it was a civil case and they settled before -- we were</p> <p>3 deliberating and they said --</p> <p>4 THE COURT: And they settled instead.</p> <p>5 PROSPECTIVE JUROR NO. 987: Yes. Exactly.</p> <p>6 THE COURT: But you had the opportunity to be</p> <p>7 selected, sit as a factfinder.</p> <p>8 PROSPECTIVE JUROR NO. 987: And I was not the</p> <p>9 foreperson.</p> <p>10 THE COURT: All right. But you were able to</p> <p>11 undertake in deliberations so you know what the process</p> <p>12 is like?</p> <p>13 PROSPECTIVE JUROR NO. 987: Yes.</p> <p>14 THE COURT: All right. Thank you.</p> <p>15 Sir.</p> <p>16 A PROSPECTIVE JUROR: My name is James</p> <p>17 Bakkedahl, 940. I am a union electrician here in town.</p> <p>18 My wife, Angela Bakkedahl, is a non-food manager for</p> <p>19 Smiths. We have two children. My stepchild, Alicia, my</p> <p>20 daughter, Jane. They are 16 and 4. She does not work</p> <p>21 right now but is driving now. Lived here over 13 years</p> <p>22 off and on. Never been a jury before in this state or in</p> <p>23 California.</p> <p>24 THE COURT: All right. Thank you very much.</p> <p>25 Sir.</p> <p style="text-align: right;">67</p>	<p>1 Badge No. 971. I am tattoo artist at Club Tattoo in</p> <p>2 Planet Hollywood. My wife is Leona Hamilton. She is a</p> <p>3 IV pro-athlete, like bodybuilder-type stuff. I have a</p> <p>4 son who is not old enough to work. I have lived in Las</p> <p>5 Vegas for eight years. I have never been on a jury</p> <p>6 before.</p> <p>7 THE COURT: Thank you, Mr. Hamilton.</p> <p>8 A PROSPECTIVE JUROR: Phyllis Ash, 976. I am</p> <p>9 retired. I am a widow. I have a daughter who is a</p> <p>10 school teacher at Lee Middle School. I have lived in Las</p> <p>11 Vegas for 22 years and I have never been a juror.</p> <p>12 THE COURT: What position did you retire from?</p> <p>13 PROSPECTIVE JUROR NO. 976: Actually, I have not</p> <p>14 worked for 11 years. I worked at the Star Dust poker</p> <p>15 room and I took care of my husband while he was ill.</p> <p>16 THE COURT: What profession was he in?</p> <p>17 PROSPECTIVE JUROR NO. 976: He was an orthopedic</p> <p>18 surgeon.</p> <p>19 THE COURT: And you said you have never done</p> <p>20 jury service?</p> <p>21 PROSPECTIVE JUROR NO. 976: No. I got called</p> <p>22 while he was sick and I could not do it.</p> <p>23 THE COURT: All right. I appreciate that.</p> <p>24 My follow-up questions then, there are a couple</p> <p>25 of folks who indicated that they have a connection to law</p> <p style="text-align: right;">69</p>
<p>1 A PROSPECTIVE JUROR: My name is Martin Burgess,</p> <p>2 and my badge is 000. I work for Cox Communications as an</p> <p>3 HFC tech. My wife, Julie, is a CNA for a hospital. I</p> <p>4 have been here about 14 years.</p> <p>5 THE COURT: Have you ever been a juror before?</p> <p>6 PROSPECTIVE JUROR NO. 000: Never been on a jury</p> <p>7 before.</p> <p>8 THE COURT: Okay. Thank you.</p> <p>9 A PROSPECTIVE JUROR: I am Bonnie Schultz and my</p> <p>10 badge number is 958. I am a retired school teacher. My</p> <p>11 husband, Gary Schultz, is a retired police officer. We</p> <p>12 don't have children. I have been here for 52 years. I</p> <p>13 have been on a jury. We did reach a verdict and I was</p> <p>14 not the foreperson.</p> <p>15 THE COURT: Do you remember if it was civil or</p> <p>16 criminal?</p> <p>17 PROSPECTIVE JUROR NO. 958: It was criminal.</p> <p>18 THE COURT: And how long ago was that?</p> <p>19 PROSPECTIVE JUROR NO. 958: That was in 2000.</p> <p>20 THE COURT: So 14 years ago. You did</p> <p>21 deliberate, the verdict was reached but you were not the</p> <p>22 foreperson?</p> <p>23 PROSPECTIVE JUROR NO. 958: Correct.</p> <p>24 THE COURT: All right. Thank you.</p> <p>25 A PROSPECTIVE JUROR: My name is Joey Hamilton,</p> <p style="text-align: right;">68</p>	<p>1 enforcement. The remaining questions that I have for you</p> <p>2 are directed to whether you yourself or a family member</p> <p>3 or a close friend, okay, can answer these questions.</p> <p>4 So, first question is has anyone on the panel</p> <p>5 themselves or close friend or family member ever worked</p> <p>6 in the area of law enforcement?</p> <p>7 I know we had a couple of folks that answered</p> <p>8 that already, but let's see your hands again and then I</p> <p>9 will ask a few more questions and details.</p> <p>10 Let me start with Juror No. 1. If you can give</p> <p>11 us your name and badge number and then your response.</p> <p>12 PROSPECTIVE JUROR NO. 008: Darrell Hoss, 008.</p> <p>13 You did say close friend, right?</p> <p>14 THE COURT: Yes.</p> <p>15 PROSPECTIVE JUROR NO. 008: One of my very good</p> <p>16 friends used to be a marshal here.</p> <p>17 THE COURT: In the courthouse or a corrections</p> <p>18 officer?</p> <p>19 PROSPECTIVE JUROR NO. 008: In the courthouse.</p> <p>20 THE COURT: Used to be you said?</p> <p>21 PROSPECTIVE JUROR NO. 008: Up until a couple</p> <p>22 years ago, yeah.</p> <p>23 THE COURT: Okay. And is that the only law</p> <p>24 enforcement connection that you have then?</p> <p>25 PROSPECTIVE JUROR NO. 008: Yes.</p> <p style="text-align: right;">70</p>

<p>1 THE COURT: Okay. I know that you mentioned</p> <p>2 that you had some concerns in terms of time frame of the</p> <p>3 trial, but let me ask you a more specific question about</p> <p>4 that connection to law enforcement. Is there any reason</p> <p>5 that you believe because of that familiarity with that</p> <p>6 person that you would tend to give significantly more</p> <p>7 weight to the testimony of someone just because they are</p> <p>8 a member of law enforcement.</p> <p>9 PROSPECTIVE JUROR NO. 008: No. Just answering</p> <p>10 the question.</p> <p>11 THE COURT: I appreciate that. Is there any</p> <p>12 reason why knowing someone in law enforcement would</p> <p>13 impact your ability to be fair and impartial.</p> <p>14 PROSPECTIVE JUROR NO. 008: Yes, yes.</p> <p>15 THE COURT: So that would impact your ability to</p> <p>16 be fair and impartial?</p> <p>17 PROSPECTIVE JUROR NO. 008: Absolutely.</p> <p>18 THE COURT: But it would not cause you to give</p> <p>19 undue weight to testimony from someone in law</p> <p>20 enforcement?</p> <p>21 PROSPECTIVE JUROR NO. 008: No.</p> <p>22 THE COURT: How would it impact you in terms of</p> <p>23 your impartiality?</p> <p>24 PROSPECTIVE JUROR NO. 008: Not a big fan of the</p> <p>25 whole system to be honest with you.</p> <p style="text-align: right;">71</p>	<p>1 fact innocent. He would have to be proven guilty by the</p> <p>2 State meeting its burden to prove him guilty beyond a</p> <p>3 reasonable doubt. That's our basic tenet of American</p> <p>4 justice. So do you have any questions or concerns about</p> <p>5 that? Would you be able to follow that?</p> <p>6 PROSPECTIVE JUROR NO. 008: Maybe.</p> <p>7 THE COURT: I think we will get some more</p> <p>8 details here in a minute.</p> <p>9 Law enforcement section. Sir.</p> <p>10 A PROSPECTIVE JUROR: Jace Mande, 055. A couple</p> <p>11 of friends are cops back in New York.</p> <p>12 THE COURT: Okay. How long has it been since</p> <p>13 you lived in New York?</p> <p>14 PROSPECTIVE JUROR NO. 055: Ten years.</p> <p>15 THE COURT: Are you still friends with them?</p> <p>16 PROSPECTIVE JUROR NO. 055: Yes.</p> <p>17 THE COURT: Do you believe that those folks</p> <p>18 being your friends would cause you to give either greater</p> <p>19 or lesser weight to law enforcement, would that cause you</p> <p>20 to weigh the testimony of law enforcement any greater or</p> <p>21 different than with anyone else?</p> <p>22 PROSPECTIVE JUROR NO. 055: (No audible</p> <p>23 response.)</p> <p>24 THE COURT: The real question is would you be</p> <p>25 biased in favor, would you weigh significantly more in</p> <p style="text-align: right;">73</p>
<p>1 THE COURT: And that's the kind of thing that I</p> <p>2 try to elicit a little bit of information in my questions</p> <p>3 and then I let the counsel do some follow-up stuff. So I</p> <p>4 am going to give you some questions in a minute that</p> <p>5 might help us understand better that response.</p> <p>6 One of the questions that's going to be</p> <p>7 forthcoming is going to be, again, if anyone has ever had</p> <p>8 dealings with the criminal justice system either as a</p> <p>9 victim or accused or whatever those circumstances may be.</p> <p>10 So we'll get to that.</p> <p>11 But appreciate that you feel that perhaps your</p> <p>12 interests would be more in line with the defense, would</p> <p>13 that be fair, that you are not a fan of the system. Or</p> <p>14 are you talking about the system as a whole?</p> <p>15 PROSPECTIVE JUROR NO. 008: Fair.</p> <p>16 THE COURT: Okay. Now, I did ask about the</p> <p>17 basic principles of innocent until proven guilty. The</p> <p>18 State has the burden to prove beyond a reasonable doubt</p> <p>19 and you did not indicate that you couldn't follow that.</p> <p>20 Does it go that deep?</p> <p>21 PROSPECTIVE JUROR NO. 008: I must have missed</p> <p>22 that.</p> <p>23 THE COURT: So our basic principles of American</p> <p>24 justice, again, the defendant is innocent until he's</p> <p>25 proven guilty. In fact, as he sits there today, he is in</p> <p style="text-align: right;">72</p>	<p>1 favor of law enforcement just because you have these</p> <p>2 friends?</p> <p>3 PROSPECTIVE JUROR NO. 055: No.</p> <p>4 THE COURT: Do you believe that you would still</p> <p>5 be able to be fair and impartial in being a juror and</p> <p>6 receiving the evidence in this case, receiving the law as</p> <p>7 I instruct you on the law and actually deliberating</p> <p>8 fairly and impartially. Do you believe you would be able</p> <p>9 to do that?</p> <p>10 PROSPECTIVE JUROR NO. 055: Sure.</p> <p>11 THE COURT: Okay. Thank you.</p> <p>12 Anyone else on law enforcement? Ma'am.</p> <p>13 PROSPECTIVE JUROR NO. 166: My husband and</p> <p>14 grandfather.</p> <p>15 THE COURT: Okay. You mentioned that your</p> <p>16 husband is a current member of Metro; is that correct?</p> <p>17 PROSPECTIVE JUROR NO. 166: Yes.</p> <p>18 THE COURT: And your grandfather?</p> <p>19 PROSPECTIVE JUROR NO. 166: Yes.</p> <p>20 THE COURT: And your grandfather's position?</p> <p>21 PROSPECTIVE JUROR NO. 166: Police officer.</p> <p>22 THE COURT: Do you believe that your husband</p> <p>23 currently being a member of Metro would cause you to give</p> <p>24 significantly more weight to the testimony of a law</p> <p>25 enforcement officer?</p> <p style="text-align: right;">74</p>

1 PROSPECTIVE JUROR NO. 166: I have a similar
2 mindset.
3 THE COURT: Okay. That's an interesting way to
4 answer that question. Counsel may want to follow up
5 further.
6 Do you believe that you would be able to receive
7 the evidence that's provided in this case and weigh it
8 and understand how important it is that that evidence be
9 found to be whatever the facts are by the jury, the law
10 that I give apply to it, and that is basically how our
11 system of justice works.
12 Do you believe that you would be able to do that
13 in this case and be fair and impartial in your
14 deliberations?
15 PROSPECTIVE JUROR NO. 166: I could.
16 THE COURT: Okay. Law enforcement connections
17 in the middle row. Ma'am.
18 A PROSPECTIVE JUROR: Shirley Towers, 924. Law
19 enforcement, does that include probation?
20 THE COURT: Yes. Any connection with law
21 enforcement of any type would be valuable for us too.
22 PROSPECTIVE JUROR NO. 924: My nephew just had a
23 graduation ceremony a couple of weeks ago.
24 THE COURT: For what?
25 PROSPECTIVE JUROR NO. 924: I believe probation.

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1 THE COURT: Parole and Probation or a
2 corrections officer?
3 PROSPECTIVE JUROR NO. 924: Yes.
4 THE COURT: All right. Having a relative that
5 is in that capacity do you think that would cause you to
6 be bias towards or against a law enforcement witness in
7 any way?
8 PROSPECTIVE JUROR NO. 924: Not at all.
9 THE COURT: Do you believe that you would still
10 be able to receive the evidence in this case, apply the
11 law as I give it to you and be able to be fair and
12 impartial in your deliberations?
13 PROSPECTIVE JUROR NO. 924: Yes.
14 THE COURT: Okay. Anybody else in the middle
15 row? How about the front row?
16 THE COURT: Ms. Schultz.
17 PROSPECTIVE JUROR NO. 958: My husband is
18 retired since '96 and we have several friends also who
19 were police officers.
20 THE COURT: Also retired?
21 PROSPECTIVE JUROR NO. 958: Yes.
22 THE COURT: Do you believe that you would be
23 able to receive the testimony from a law enforcement
24 officer and give it substantially greater weight than any
25 other witness in this case?

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1 PROSPECTIVE JUROR NO. 958: No.
2 THE COURT: Do you believe you believe you would
3 be able to be fair and impartial?
4 PROSPECTIVE JUROR NO. 958: Yes.
5 THE COURT: The next question that we would have
6 for you, and this goes a little deeper, closer to the
7 criminal justice system itself. But I am going to ask
8 here if there is anyone on panel who themselves have ever
9 encountered the criminal justice system because they have
10 been a victim of crime.
11 Okay. And I am keeping this that general
12 because I want to get your candid answers. But it would
13 include, though, if there would ever be a crime of a
14 sexual offense type crime.
15 So, ma'am, you gave us some basic information.
16 We may or may not need more information. Can you please
17 identify yourself again.
18 A PROSPECTIVE JUROR: Linda Alarcon, 032.
19 THE COURT: In addition to what you have already
20 told us is there any other situation where you
21 encountered the criminal justice system?
22 PROSPECTIVE JUROR NO. 032: No, ma'am.
23 THE COURT: Okay. So that one circumstance.
24 And we have already I think explored that. And counsel
25 is welcome to further inquire if they wish to do so.

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1 Back row, sir.
2 A PROSPECTIVE JUROR: I was not a victim. I was
3 arrested a couple times.
4 THE COURT: We'll get to that in a minute. Let
5 me first ask -- and remember this applies to you yourself
6 have ever been a victim of crime or a family member or
7 close friend. We are trying to understand if you have
8 had direct knowledge of, or even if it's been through a
9 close friend or family member, involvement with the
10 criminal justice system that might in some way influence
11 your ability to be fair and impartial.
12 In the back row, sir.
13 A PROSPECTIVE JUROR: I'm Jeffrey Swain, 679. I
14 had my car stolen last month.
15 THE COURT: Was anybody caught?
16 PROSPECTIVE JUROR NO. 679: No.
17 THE COURT: Is the case still active?
18 PROSPECTIVE JUROR NO. 679: Yes.
19 THE COURT: How do you feel about how that case
20 has been handled so far by the police?
21 PROSPECTIVE JUROR NO. 679: I don't know.
22 THE COURT: It's just out there.
23 PROSPECTIVE JUROR NO. 679: Yeah, it's out
24 there.
25 THE COURT: Was your car recovered?

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1 PROSPECTIVE JUROR NO. 679: No, ma'am.
2 THE COURT: Do you have any reason to believe
3 that that inaction with law enforcement or the criminal
4 justice system as such would impact your ability to be
5 fair and impartial?
6 PROSPECTIVE JUROR NO. 679: No.
7 THE COURT: Anybody else in the back row? How
8 about the middle row?
9 A PROSPECTIVE JUROR: Could you repeat the
10 question.
11 THE COURT: I will. You yourself, family member
12 or close friend ever been a victim of crime including but
13 not limited to serious crime or a sex offense crime.
14 We're looking for any criminal involvement as a victim
15 that would have brought you into contact with law
16 enforcement, the criminal justice system, anything like
17 that?
18 A PROSPECTIVE JUROR: Idalia Demetria
19 Rice-Wilson, 905. I was a victim of a crime.
20 THE COURT: Can you be more specific.
21 PROSPECTIVE JUROR NO. 905: My son was in a park
22 and someone tried to rob him at gunpoint.
23 THE COURT: Was this in Detroit?
24 PROSPECTIVE JUROR NO. 905: No, this was here.
25 THE COURT: How long ago?

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1 PROSPECTIVE JUROR NO. 905: Maybe a year ago.
2 THE COURT: Was anybody ever caught?
3 PROSPECTIVE JUROR NO. 905: Yes.
4 THE COURT: Did it go to any kind of a
5 preliminary hearing or trial?
6 PROSPECTIVE JUROR NO. 905: No.
7 THE COURT: Do you know how it resolved?
8 PROSPECTIVE JUROR NO. 905: Not really. The
9 last time we went to court the young man -- there was two
10 of them actually, one was caught where my son was able to
11 identify a young man and the other one was not identified
12 or caught.
13 THE COURT: Do you know if the case is still
14 ongoing?
15 PROSPECTIVE JUROR NO. 905: No.
16 THE COURT: Is there anything about that
17 circumstance that you believe would impact your ability
18 to receive the evidence in this case, hear the testimony
19 of the witnesses in this case, apply the law as I give it
20 to you and be fair and impartial?
21 PROSPECTIVE JUROR NO. 905: I think I could do
22 that, yes.
23 THE COURT: Thank you.
24 Sir.
25 A PROSPECTIVE JUROR: Windell Whisenant, 909. I

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1 was assaulted one time. The guy that did it was brought
2 before the system and found guilty.
3 THE COURT: How long ago was this?
4 PROSPECTIVE JUROR NO. 909: About eight years
5 ago.
6 THE COURT: And you said that the person was
7 caught?
8 PROSPECTIVE JUROR NO. 909: Yes.
9 THE COURT: How did you feel about that
10 circumstance? How did you feel about how it was handled?
11 PROSPECTIVE JUROR NO. 909: It was handled to my
12 satisfaction. Really good.
13 THE COURT: And is there anything about that
14 that you think would impact your ability to be fair and
15 impartial, understanding that the whole point is to do
16 equal justice to both sides of this case.
17 PROSPECTIVE JUROR NO. 909: It would not bother
18 me at all.
19 THE COURT: All right. Thank you.
20 Anybody else?
21 A PROSPECTIVE JUROR: Shirley Towers, 924. Over
22 20 years ago my brother-in-law was shot and killed.
23 THE COURT: Was that here in Las Vegas?
24 PROSPECTIVE JUROR NO. 924: Yes.
25 THE COURT: Was the person ever caught?

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1 PROSPECTIVE JUROR NO. 924: Yes.
2 THE COURT: Was it the subject of a criminal
3 case?
4 PROSPECTIVE JUROR NO. 924: Yes.
5 THE COURT: Were you directly involved in that?
6 PROSPECTIVE JUROR NO. 924: Not directly
7 involved, no.
8 THE COURT: But you have knowledge of it.
9 PROSPECTIVE JUROR NO. 924: Yes.
10 THE COURT: Do you believe that this would in
11 any way prevent you from being able to then receive the
12 evidence in this case, apply the law to this case and be
13 fair and impartial in your deliberations in this case.
14 PROSPECTIVE JUROR NO. 924: No.
15 THE COURT: You think you could do that?
16 PROSPECTIVE JUROR NO. 924: Yes.
17 THE COURT: Okay. Anybody else?
18 A PROSPECTIVE JUROR: Martin Burgess, 000.
19 About three years ago my apartment was broken into and
20 burglarized.
21 THE COURT: Was anybody ever caught?
22 PROSPECTIVE JUROR NO. 000: No.
23 THE COURT: Do you know if that case is still
24 ongoing?
25 PROSPECTIVE JUROR NO. 000: I have not heard

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<p>1 anything from Metro.</p> <p>2 THE COURT: Anything about that that would cause</p> <p>3 you to have a difficulty in a criminal case such as this</p> <p>4 to receive the evidence and weigh it and be impartial?</p> <p>5 PROSPECTIVE JUROR NO. 000: No, not at all.</p> <p>6 THE COURT: Okay.</p> <p>7 PROSPECTIVE JUROR NO. 000: The other thing is I</p> <p>8 was rear-ended by an impaired driver last week and that</p> <p>9 went fine -- the cops were fine.</p> <p>10 THE COURT: Do you know if that person was</p> <p>11 arrested?</p> <p>12 PROSPECTIVE JUROR NO. 000: She was taken away</p> <p>13 in an ambulance with two motorcycle cops following.</p> <p>14 THE COURT: But you do not know what has come of</p> <p>15 that?</p> <p>16 PROSPECTIVE JUROR NO. 000: No.</p> <p>17 THE COURT: But so far, as you said, you still</p> <p>18 believe that you could still receive the evidence in this</p> <p>19 case and be fair and impartial?</p> <p>20 PROSPECTIVE JUROR NO. 000: Absolutely.</p> <p>21 THE COURT: All right. Ms. Schultz, did I see</p> <p>22 your hand up?</p> <p>23 PROSPECTIVE JUROR NO. 958: Yes. 46 years ago</p> <p>24 my husband's car was stolen.</p> <p>25 THE COURT: That was a long time ago but I think</p> <p style="text-align: right;">83</p>	<p>1 dropped?</p> <p>2 PROSPECTIVE JUROR NO. 055: I was arrested one</p> <p>3 more time because a friend of mine had come to the club</p> <p>4 and he had drugs on him.</p> <p>5 THE COURT: How did that case turn out?</p> <p>6 PROSPECTIVE JUROR NO. 055: It was dropped.</p> <p>7 THE COURT: Okay. So you have had a couple of</p> <p>8 situations where you had to deal with law enforcement,</p> <p>9 and you had some friends in law enforcement but you have</p> <p>10 also had some run-ins with law enforcement. Do believe</p> <p>11 that that would impact your ability to be fair and</p> <p>12 impartial in this case?</p> <p>13 PROSPECTIVE JUROR NO. 055: No.</p> <p>14 THE COURT: You don't think you would be</p> <p>15 favorable or disfavor law enforcement in any way?</p> <p>16 PROSPECTIVE JUROR NO. 055: I would hope I</p> <p>17 wouldn't. It was over 20 years ago. I have changed my</p> <p>18 life around.</p> <p>19 THE COURT: All right. We just need your best</p> <p>20 candid answer. And counsel may have some follow-up</p> <p>21 questions for you. But I appreciate your candor.</p> <p>22 PROSPECTIVE JUROR NO. 055: Is this going to</p> <p>23 rely on police testimony?</p> <p>24 THE COURT: Well, counsel pointed out that there</p> <p>25 is going to be law enforcement testimony with regard to</p> <p style="text-align: right;">85</p>
<p>1 you also know that we know you have the connection to law</p> <p>2 enforcement that you have. But do you believe anything</p> <p>3 about that incident would impact your ability to be fair</p> <p>4 and impartial?</p> <p>5 PROSPECTIVE JUROR NO. 958: No.</p> <p>6 THE COURT: Okay. The next question, and I</p> <p>7 believe Mr. Mandé got into it. This question is sort of</p> <p>8 the mirror of that. But if you or a family member or</p> <p>9 close friend has ever been accused of a crime of any</p> <p>10 type, and we are trying to find out, again, how that</p> <p>11 might have affect you and your ability to serve as a fair</p> <p>12 and impartial juror.</p> <p>13 So, Mr. Mandé, you indicated that you were</p> <p>14 arrested at some point?</p> <p>15 PROSPECTIVE JUROR NO. 055: It was over 20 years</p> <p>16 ago and everything was dropped.</p> <p>17 THE COURT: Can you just let us know what the</p> <p>18 circumstances of that were briefly.</p> <p>19 PROSPECTIVE JUROR NO. 055: I owned a nightclub</p> <p>20 and I was harassed by the police repeatedly. The chief</p> <p>21 of police owned a restaurant down the street and they</p> <p>22 wanted our business so they did everything they could to</p> <p>23 drive us out of there.</p> <p>24 THE COURT: Sounds like one of those things we</p> <p>25 would see in a movie about New York. But everything was</p> <p style="text-align: right;">84</p>	<p>1 the circumstances. And so that is why we ask these</p> <p>2 questions. And, again, it is a criminal trial at the</p> <p>3 basis so we will find out. I appreciate your candor.</p> <p>4 Anybody else?</p> <p>5 A PROSPECTIVE JUROR: Joe Rivera, 060. I was</p> <p>6 accused of contracting without a license. I did a favor</p> <p>7 for a neighbor and he turned me in that I was contracting</p> <p>8 without a license. So I went to the court system, which</p> <p>9 they had me paid restitution because I did not have the</p> <p>10 license. But I was not contracting. I just did some</p> <p>11 work at his house and turned out I had to pay everything</p> <p>12 back and went through the court system. Of course I was</p> <p>13 not here in town.</p> <p>14 THE COURT: So it sounds like the case went</p> <p>15 forward and you were not present to defend it.</p> <p>16 PROSPECTIVE JUROR NO. 060: Exactly.</p> <p>17 THE COURT: So it sounds like you have some</p> <p>18 reason to believe that what occurred in that case should</p> <p>19 have been different than what occurred?</p> <p>20 PROSPECTIVE JUROR NO. 060: Yes.</p> <p>21 THE COURT: How do you feel about that in terms</p> <p>22 of how the system worked for you?</p> <p>23 PROSPECTIVE JUROR NO. 060: I didn't have the</p> <p>24 chance to present myself to the case. The judge at the</p> <p>25 time said since you were not here they get the file so</p> <p style="text-align: right;">86</p>

<p>1 you end up being guilty.</p> <p>2 THE COURT: All right. That circumstance that</p> <p>3 you had I guess most people would consider it somewhat</p> <p>4 negative about the justice system. Do you think that</p> <p>5 would impact your ability to sit in this case as a juror,</p> <p>6 and understand that this is an unrelated case, but it</p> <p>7 will have facts in evidence that you would have to</p> <p>8 determine facts and weigh what the law as I give it to</p> <p>9 you. Do you believe that you can still do that?</p> <p>10 PROSPECTIVE JUROR NO. 060: It would not affect</p> <p>11 me at all.</p> <p>12 THE COURT: Okay. Anybody else in terms of,</p> <p>13 again, accused of a crime, yourself, family member or</p> <p>14 friend.</p> <p>15 Go ahead, sir.</p> <p>16 A PROSPECTIVE JUROR: Are you asking the</p> <p>17 question if you have been arrested?</p> <p>18 THE COURT: That would be considered to be</p> <p>19 accused of a crime. I hate to say arrested because if I</p> <p>20 say arrested then there's other folks that might have</p> <p>21 been questioned and not arrested. But arrested, again,</p> <p>22 you, close friend or family member as I think again you</p> <p>23 get the gist I am trying to find out if you had</p> <p>24 interactions with the criminal justice system or law</p> <p>25 enforcement.</p> <p style="text-align: right;">87</p>	<p>1 PROSPECTIVE JUROR NO. 927: Not at all.</p> <p>2 THE COURT: Okay. Thank you.</p> <p>3 Sir.</p> <p>4 A PROSPECTIVE JUROR: Gilbert Canales, 930.</p> <p>5 About 13 years ago I was arrested for kidnapping, assault</p> <p>6 with a deadly weapon in California.</p> <p>7 THE COURT: Okay.</p> <p>8 PROSPECTIVE JUROR NO. 930: All charges were</p> <p>9 dropped. And all of my family is not good. They get in</p> <p>10 trouble with the law. A lot of drug trafficking.</p> <p>11 THE COURT: The charges in your case were</p> <p>12 dropped. What was the time frame of when these charges</p> <p>13 were pending?</p> <p>14 PROSPECTIVE JUROR NO. 930: Within a month it</p> <p>15 was all dropped because the guy basically -- this case</p> <p>16 started breaking into houses and cars and me and my</p> <p>17 brother-in-law got fed up with it so we called the cops</p> <p>18 told them to come. And he would do drugs in front of his</p> <p>19 kids and it really bothered us so one day we confronted</p> <p>20 him outside and we took him for a ride to get him about</p> <p>21 an hour away from the house so he could have a long walk</p> <p>22 home to think about it and he pressed charges on us so we</p> <p>23 pressed charges on him and then he was stealing from our</p> <p>24 house including my watch and other stuff so when they</p> <p>25 asked specifics on the watch, I had all the details of</p> <p style="text-align: right;">89</p>
<p>1 A PROSPECTIVE JUROR: Correct.</p> <p>2 THE COURT: And you are again?</p> <p>3 A PROSPECTIVE JUROR: Jason Benson, 927. So I</p> <p>4 have two. The first is I was arrested for littering</p> <p>5 approximately 25 years ago in New Hampshire and I have a</p> <p>6 class C substance arrest about 20 years ago.</p> <p>7 THE COURT: And those cases, were they</p> <p>8 citations? Did they get dropped? How did that get</p> <p>9 resolved?</p> <p>10 PROSPECTIVE JUROR NO. 927: The first one, the</p> <p>11 littering was a fine paid and the second one was a no</p> <p>12 contest plea.</p> <p>13 THE COURT: And the most recent one you said was</p> <p>14 about 20 years ago?</p> <p>15 PROSPECTIVE JUROR NO. 927: Yes.</p> <p>16 THE COURT: And how did you feel about that</p> <p>17 circumstance with your dealing with the criminal justice</p> <p>18 system?</p> <p>19 PROSPECTIVE JUROR NO. 927: Everything went</p> <p>20 fine.</p> <p>21 THE COURT: Thought it was fair?</p> <p>22 PROSPECTIVE JUROR NO. 927: Correct.</p> <p>23 THE COURT: Any reason why you having been</p> <p>24 involved with those circumstances would impact your</p> <p>25 ability to be a fair and impartial juror here?</p> <p style="text-align: right;">88</p>	<p>1 it. But when I went to press charges on him he was set</p> <p>2 free.</p> <p>3 THE COURT: So neither side's charges went</p> <p>4 forward?</p> <p>5 PROSPECTIVE JUROR NO. 930: Right.</p> <p>6 THE COURT: Have you appreciated since then that</p> <p>7 maybe acting as your own law enforcement is not the best</p> <p>8 idea?</p> <p>9 PROSPECTIVE JUROR NO. 930: Yes. They told me</p> <p>10 to just keep calling.</p> <p>11 THE COURT: Okay. You indicated your family</p> <p>12 members have had interaction with law enforcement.</p> <p>13 Again, you have heard the questions that I've asked of</p> <p>14 others who have same or similar circumstances. We could</p> <p>15 go one by one, the point really is here has those</p> <p>16 interactions with law enforcement impacted you in such a</p> <p>17 way that you would not be able to be fair and impartial</p> <p>18 to both sides of this case, the State and the defense,</p> <p>19 weigh the evidence and apply the law; do you think you</p> <p>20 could still do that?</p> <p>21 PROSPECTIVE JUROR NO. 930: I could.</p> <p>22 THE COURT: Think you would be okay. Okay.</p> <p>23 Like I said, counsel may have some follow-up questions</p> <p>24 for you. I appreciate your candor.</p> <p>25 Did I see any more hands? Sir.</p> <p style="text-align: right;">90</p>

1 A PROSPECTIVE JUROR: James Bakkedahl, 940. In
2 '91 I was convicted for assault on an undercover cop. I
3 was guilty. Took a plea. Put on probation and had
4 trouble with possession of paraphernalia about 10 or
5 15 years ago was on probation. Nine years sober
6 July 26th of this year.
7 THE COURT: Congratulations.
8 PROSPECTIVE JUROR NO. 940: And I have no
9 impartial judgment toward either side.
10 THE COURT: Well, congratulations on your sober
11 date and I appreciate your candor on those prior
12 circumstances. You understand that both sides in this
13 case are due your attention and want equal justice
14 because both sides want you to be able to receive the
15 evidence, apply the law and fairly and impartially
16 deliberate with your fellow jurors?
17 PROSPECTIVE JUROR NO. 940: Yes, I could.
18 THE COURT: All right. Thank you.
19 Ms. Schultz.
20 PROSPECTIVE JUROR NO. 958: My dad was arrested
21 several times.
22 THE COURT: And did he ever -- did the cases
23 ever go to court?
24 PROSPECTIVE JUROR NO. 958: Yes. He was
25 convicted and served prison.

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1 THE COURT: Can you be more specific as to the
2 circumstances.
3 PROSPECTIVE JUROR NO. 958: He bounced checks.
4 THE COURT: Financial-type fraud?
5 PROSPECTIVE JUROR NO. 958: Yes.
6 THE COURT: All right. And was that some
7 significant period of time ago or more recent?
8 PROSPECTIVE JUROR NO. 958: It was back in the
9 '60s.
10 THE COURT: Okay. Anything about that that
11 would impact your ability to be fair and impartial?
12 PROSPECTIVE JUROR NO. 958: No.
13 THE COURT: Again, I think you have had dealings
14 on perhaps both sides, but you don't believe that that
15 would impact you in any way?
16 PROSPECTIVE JUROR NO. 958: No.
17 THE COURT: Thank you.
18 Sir.
19 A PROSPECTIVE JUROR: Joey Hamilton, 971. I had
20 a DUI in '89.
21 THE COURT: Was that here?
22 PROSPECTIVE JUROR NO. 971: No, in Florida.
23 THE COURT: Were you able to -- how did that
24 resolve itself?
25 PROSPECTIVE JUROR NO. 971: I paid my fines.

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1 THE COURT: And stayed out of trouble?
2 PROSPECTIVE JUROR NO. 971: Yes.
3 THE COURT: Anything about that situation that
4 impacted you in a way that would impact your ability to
5 serve in this trial?
6 PROSPECTIVE JUROR NO. 971: No.
7 THE COURT: Okay. Anybody else?
8 Go ahead, Mr. Walker.
9 PROSPECTIVE JUROR NO. 985: Last week I was
10 accused of impaired driving. So I'm going through that.
11 THE COURT: So you are currently in the process
12 and currently involved in a case in the system?
13 PROSPECTIVE JUROR NO. 985: Correct.
14 THE COURT: And where does that stand? Were you
15 actually arrested and taken into custody?
16 PROSPECTIVE JUROR NO. 985: Yes.
17 THE COURT: Have you entered a plea yet?
18 PROSPECTIVE JUROR NO. 985: No. I have court
19 date on the 9th of this month.
20 THE COURT: Okay. Don't talk any specifics
21 about the case. Just wanted to know about that
22 connection on the current case.
23 Is there anybody yet that has not answered any
24 of the questions that we have asked, again, being accused
25 of or a victim of crimes specifically involving a sexual

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1 nature that we haven't heard?
2 All right. What we will do now is take about a
3 ten-minute recess. And then when we come back I will
4 invite counsel to further inquire of the panel. Please
5 be aware that it is very important that you not discuss
6 this case or try to speculate about anything about this
7 case. You obviously do not have any facts or
8 circumstances about this case at this time, but try not
9 to talk about it in any way, shape or form, and certainly
10 no Facebook posts or anything like that. At some point
11 you may be able to disclose that you are not impaneled
12 but you were here for the selection process. If you are
13 empaneled you can disclose that you are on a criminal
14 trial but that's it. See you back in about ten minutes.
15 (Jurors exit the courtroom.)
16 THE COURT: The woman in the back, it's up to
17 you guys whether or not you want to ask her any
18 questions. She was pretty adamant that she was not going
19 anywhere in her drawing her line in the sand. I did not
20 want to just let her go because I didn't want to open the
21 door for others, but I would suggest that we could either
22 -- my inclination is that we do all the questioning and
23 then get to the point where we'll discuss privately that
24 way you don't have to do it in front of the panel if you
25 have somebody for cause.

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1 The discussion about whether we are going to
 2 excuse anybody for cause will take place out of the
 3 presence of the jurors either up at the bench or in the
 4 hallway. If it is really just that one that remains then
 5 so be it.
 6 But what will happen, Mr. Cooper, when you
 7 finish you don't have to say I pass the panel. You can
 8 just say I have completed my questions. And then you can
 9 undertake your questions. And then we will deal with
 10 whatever cause issues there might be.
 11 If you really feel strongly about one and you
 12 don't want to inquire further because you think you have
 13 gotten to the point where there is really no going back
 14 and no rehabilitation, you can ask to approach and we can
 15 discuss that potential juror then. But typically I would
 16 rather complete it. Let you complete, and then we will
 17 talk and have our cause discussion about who is going to
 18 go and who is going to stay. I don't know if you want to
 19 inquire of that individual, you are welcome to. I just
 20 know that she was pretty adamant.
 21 MR. COOPER: And, Your Honor, I might have
 22 missed this for the preemptory challenges. Is it four
 23 and then one for the alternate?
 24 THE COURT: No, five. The alternates will be
 25 the last two seated.

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1 MR. COOPER: Thank you, Your Honor.
 2 MS. HOJJAT: But we can exercise all five on
 3 whoever?
 4 THE COURT: Absolutely.
 5 MS. HOJJAT: Thank you, Your Honor.
 6 The State just handed over some monthly reports.
 7 We already had these monthly reports in evidence. Some
 8 of them need to be redacted. The State just handed over
 9 their proposed redactions. We are going to make a copy
 10 of this. We might have some proposed additional
 11 redactions. We are going to work with the State to see
 12 if we can reach redactions that everybody is comfortable
 13 with, if not, we may need to address it with the Court.
 14 THE COURT: Okay.
 15 MS. HOJJAT: But at this point it looks like
 16 hopefully we can reach a state that everybody is happy
 17 with and we can just go forward tomorrow morning.
 18 THE COURT: Okay. Sounds good.
 19 (Whereupon, a recess was taken.)
 20 THE COURT: So something has come up that I just
 21 want to bring to the panel's attention and see if anybody
 22 would have an issue. When you came in here today and we
 23 talked about the time frame for the trial, the two days,
 24 that has only changed slightly and here's what the change
 25 is. The Court's obligation that it had that would have

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1 prevented us from having trial tomorrow has now been -- I
 2 don't know how to describe it -- something has occurred
 3 unexpectedly that will now free up that time for us
 4 tomorrow.
 5 And what the Court intends to do is do what it
 6 would have liked to have done from the beginning, which
 7 is run the trial dates consecutive and get the trial
 8 finished for certain by Wednesday so we did not have any
 9 concern or question about the time frame.
 10 When I mentioned and we talked about the
 11 hardships and not having trial tomorrow, is there anybody
 12 that would have a problem with having trial tomorrow?
 13 Seeing no hands that is good to know. It is
 14 likely, however, from what we know about the witnesses'
 15 availability because with that issue we also had to
 16 determine who was available. We still will be present
 17 for the remainder of trial on Wednesday but it is quite
 18 certain that we will be able to deliver the evidence to
 19 you and allow you to begin your deliberations sometime
 20 midafternoon on Wednesday.
 21 And, of course, depending on your time frame for
 22 deliberation, that you would be able to complete on
 23 Wednesday. So it does not mean that we don't come on
 24 Wednesday it just means that we will absolutely be
 25 certain we will complete on Wednesday. So I just wanted

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1 to clarify that. Does anybody have a question or concern
 2 about that? All right. Thank you very much.
 3 I will invite Mr. Cooper at this time to inquire
 4 of the panel.
 5 MR. COOPER: Thank you, Your Honor.
 6 Ladies and gentlemen, the process of jury
 7 selection is a little bit of a unique process. It allows
 8 the attorneys both for the prosecution and the defense to
 9 ask you guys questions in order to ascertain if you guys
 10 are the best suited jurors for this case in particular.
 11 And everyone is suited to sit on different types of
 12 cases.
 13 For example, if there was a lawsuit over the
 14 producers of the game of *Drone*, or something like that,
 15 because I love that show, I wouldn't be able to sit on
 16 that jury. I would be bias. And that is because of our
 17 life experiences, our opinions, everything of that
 18 nature.
 19 So there are no right or wrong answers to any of
 20 my questions. There is only your answers. And with that
 21 said, I know we all remember back in middle school, I
 22 know Ms. Schultz does, when the teacher picked on us in
 23 front of the whole class and made us answer a question
 24 and it's kind of a nerve-wracking experience. I am going
 25 to ask a couple of questions that will be a little less

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1 nerve wracking.
2 Does anyone watch NCIS or CSI? I see a lot of
3 hands there. Who thinks NCIS is the best? I see a lot
4 of hands going up. Does anybody think that everything
5 that happens on NCIS or CSI is real life? I see no
6 hands.
7 Did anyone see the episode where they got
8 fingerprints off of running water? No one thinks that
9 can happen, right? Does anyone expect in every criminal
10 case for there to be forensic evidence? Who does? I see
11 no hands on that as well.
12 Now, part of instructions the judge has already
13 talked to you guys about is that both sides, the defense
14 and the State, are entitled to a fair and impartial jury.
15 Does everybody understand that?
16 Does anybody think for any reason or any opinion
17 they may have that they might not be able to be fair and
18 impartial to both the defense and to the State?
19 A PROSPECTIVE JUROR: I have been reading true
20 crime books for about 50 years --
21 MR. COOPER: What is your name and badge number?
22 A PROSPECTIVE JUROR: Phyllis Ash, 976. I have
23 been reading true crime novels for about 50 years at
24 least and I think I would have a hard time being
25 impartial.

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1 back of my mind that I could not be that impartial.
2 MR. COOPER: Would you want someone like you
3 sitting on this jury?
4 PROSPECTIVE JUROR NO. 976: On this case, no.
5 MR. COOPER: Thank you.
6 Was there any other -- go ahead, ma'am.
7 A PROSPECTIVE JUROR: Linda Alarcon, 032. I
8 would not be able to fair and impartial either way.
9 MR. COOPER: What do you mean by either way?
10 PROSPECTIVE JUROR NO. 032: For the defense or
11 for the State.
12 MR. COOPER: Could you give me a little more of
13 what you mean. Would you be able to listen to all of the
14 evidence that is given?
15 PROSPECTIVE JUROR NO. 032: Yes.
16 MR. COOPER: And at the end of listening to all
17 of the evidence, do you think you would be able to reach
18 a decision of the guilt or innocence of the defendant?
19 PROSPECTIVE JUROR NO. 032: My brain says he is
20 guilty right now.
21 MR. COOPER: Thank you. Did anyone else want to
22 answer that question or have anything else to add?
23 Now, Ms. Rice-Wilson, you were saying that your
24 son was robbed in a park?
25 PROSPECTIVE JUROR NO. 905: Yes, at gunpoint.

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1 MR. COOPER: Do you mean being impartial toward
2 the defense or toward the State?
3 PROSPECTIVE JUROR NO. 976: To the defense. I
4 do not think I could be that impartial.
5 MR. COOPER: You do understand the concept that
6 everyone is presumed innocent until they are found
7 guilty?
8 PROSPECTIVE JUROR NO. 976: Yeah, but I think by
9 the time we get to court and there is evidence enough to
10 convict.
11 MR. COOPER: Well, let me ask you this: If I
12 didn't do anything throughout the trial and I submitted
13 to you, would you still find him guilty?
14 PROSPECTIVE JUROR NO. 976: Well, if you did not
15 do anything, I mean that's impossible.
16 MR. COOPER: I did not prove my case.
17 PROSPECTIVE JUROR NO. 976: That's just
18 impossible for you not to do anything. That is not a
19 valid question.
20 MR. COOPER: Do you understand the concept of
21 beyond a reasonable -- guilty beyond a reasonable doubt?
22 PROSPECTIVE JUROR NO. 976: Yes.
23 MR. COOPER: Do you think can you apply that
24 concept to the facts of this case?
25 PROSPECTIVE JUROR NO. 976: I still have in the

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1 MR. COOPER: How do you feel the police
2 investigated that matter; do you think they did a good
3 job?
4 PROSPECTIVE JUROR NO. 905: I really can't say
5 because after a period of time I did not hear anything
6 about it. They didn't really contact us as far as the
7 outcome of it so.
8 MR. COOPER: So it might still be going on?
9 PROSPECTIVE JUROR NO. 905: Yes.
10 MR. COOPER: And you said that one person was
11 caught but not both people were caught.
12 PROSPECTIVE JUROR NO. 905: Right.
13 MR. COOPER: Do you know if my office, the Clark
14 County District Attorney's Office would have prosecuted
15 the individual charged?
16 Well, let me ask you, did it happen in Las
17 Vegas?
18 PROSPECTIVE JUROR NO. 905: Yes.
19 MR. COOPER: And based on your interactions with
20 the attorney in charge of that case, did you get any type
21 of opinion on the criminal justice system or anything
22 like that?
23 PROSPECTIVE JUROR NO. 905: I don't remember
24 having any contact, just the two investigators.
25 MR. COOPER: Okay. Well, based on your

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<p>1 interaction with the Las Vegas Metropolitan Police 2 Department, how do you feel about the criminal justice 3 system? 4 PROSPECTIVE JUROR NO. 905: I really do not have 5 an opinion. 6 MR. COOPER: That's fair. Thank you. 7 Mr. Bakkedahl, you did indicate that you had 8 some experience with the criminal justice system. 9 PROSPECTIVE JUROR NO. 940: Yes. 10 MR. COOPER: How do you feel the police treated 11 you in that case? 12 PROSPECTIVE JUROR NO. 940: Fine. Just fine. 13 MR. COOPER: What about the criminal justice 14 system as a whole, how do you feel they treated you? 15 PROSPECTIVE JUROR NO. 940: It was okay. I was 16 guilty. I was caught. 17 MR. COOPER: Thank you. Does anyone else have 18 any experience with the criminal justice system that we 19 haven't talked about yet? 20 What about an opinion? Does anyone have an 21 opinion about the criminal justice system? 22 PROSPECTIVE JUROR NO. 008: It is absolutely 23 ridiculous. Nothing gets accomplished. A lot of money 24 gets spent and nothing gets accomplished. It is a very 25 small portion of my opinion.</p>	<p>1 We talked about police officers. Does anyone 2 have any experience with probation or parole officers? 3 They are a little bit different. 4 Mr. Bakkedahl. 5 PROSPECTIVE JUROR NO. 940: Yes, I was on 6 probation. 7 MR. COOPER: How do you feel your probation 8 officer treated you? 9 PROSPECTIVE JUROR NO. 940: At the time I felt 10 that it was unnecessary, but they were just doing their 11 job. 12 MR. COOPER: How long were you on probation? 13 PROSPECTIVE JUROR NO. 940: 18 months. 14 MR. COOPER: Thank you. 15 Mr. Walker, I do not want you to go into the 16 facts of your pending case or anything like that, but do 17 you know if it was the Clark County District Attorney's 18 Officer or the Las Vegas City Attorney's office that is 19 prosecuting your case? 20 PROSPECTIVE JUROR NO. 985: I honestly do not 21 remember. But it could be the first one. 22 MR. COOPER: The Clark County District 23 Attorney's Office? 24 PROSPECTIVE JUROR NO. 985: Yes. 25 MR. COOPER: And based on that interaction,</p>
<p>1 MR. COOPER: So it is not so much a bias toward 2 the State or a bias toward the defense? 3 PROSPECTIVE JUROR NO. 008: It is pretty bias 4 toward the State. 5 MR. COOPER: What do you mean by that; the State 6 is the one spending the money? 7 PROSPECTIVE JUROR NO. 008: Yes. 8 MR. COOPER: Thank you. Does anyone else have 9 an opinion? 10 PROSPECTIVE JUROR NO. 924: Shirley Towers, 924. 11 I believe in the system. You have to have some type of 12 law. 13 MR. COOPER: Thank you. Now, we have talked 14 about negative experiences. Does anyone have any 15 positive experiences? They were speeding but didn't get 16 a ticket that one time or anything like that? Anything? 17 Okay. You married a cop so you have to have 18 some positive experiences. 19 PROSPECTIVE JUROR NO. 958: I do. There was a 20 couple of things I can think of. It was an accident, it 21 was a hit-and-run accident and the officers helped and 22 there were not many witnesses but they got caught. And I 23 remember speeding and an officer let me go. That was 24 before I was married to an officer. 25 MR. COOPER: Thank you for that.</p>	<p>1 brief interaction you might have had with someone in this 2 office, or my office, have you had an opinion about my 3 office or anything like that? 4 PROSPECTIVE JUROR NO. 985: No. 5 MR. COOPER: Do you think anything that happened 6 in relation to that case would affect your opinion on me 7 as an employee of the Clark County District Attorney's 8 Office? 9 PROSPECTIVE JUROR NO. 985: No, sir. 10 MR. COOPER: Thank you. 11 Now, this is another question that I will just 12 open up to the group. Does anybody do any particular 13 type of blogging? I just learned what that word meant a 14 couple of weeks ago. Does anyone do any blogging? 15 What about when you are reading the Review 16 Journal, there is also the comments on the bottom, does 17 anyone like to comment on the Review Journal or anything 18 like that? I see no hands on that one either. 19 Now, does anyone believe that a person that 20 commits a crime looks a certain way? Does anyone believe 21 that a bank robber has a certain look or someone who 22 would burglarize a home has a certain look? I see no 23 hands on that. 24 At the end of the trial the judge is going to 25 give everyone the law. Does everyone understand and</p>

1 promise that they are going to be able to follow that
2 law?
3 What if there is a law that you don't agree
4 with? Do you think you will still be able to follow a
5 law even if you don't agree with it?
6 A PROSPECTIVE JUROR: No.
7 MR. COOPER: So if there was a law you don't
8 believe you would be able to follow it if the judge gave
9 it to you?
10 A PROSPECTIVE JUROR: If it something that I do
11 not agree with or believe in, no, absolutely not.
12 MR. COOPER: Now, do you also feel the same way,
13 ma'am?
14 A PROSPECTIVE JUROR: Linda Alarcon, 032. Yes.
15 MR. COOPER: And, sir, you also said no.
16 A PROSPECTIVE JUROR: Yes, Jace Mande, 055.
17 MR. COOPER: Do you also agree with Juror No. 1?
18 A PROSPECTIVE JUROR: I cannot speak for Juror
19 No. 1, but if something goes against my own morals then I
20 would not be able to follow it.
21 MR. COOPER: Well, let me ask everyone this: If
22 this was a marijuana case, this isn't, but if it was, and
23 you believe that marijuana should be legal but I prove
24 beyond a reasonable doubt --
25 MS. HOJJAT: Objection. Your Honor, may we

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1 approach?
2 THE COURT: You may.
3 (Discussion held at the bench.)
4 THE COURT: All right. Thank you. I am going
5 to sustain the objection and take a different tactic to
6 see if maybe we can make it a little clearer to the
7 potential jurors what we are talking about here when we
8 say follow the law, what the jury instructions will
9 actually entail. And your duty as jurors to follow those
10 instructions.
11 Go ahead.
12 MR. COOPER: So if there were a law given to
13 you, you said if you disagree with your morals you
14 wouldn't be able to follow it.
15 PROSPECTIVE JUROR NO. 055: Right.
16 MR. COOPER: Okay. I guess do you have an
17 example where that could happen?
18 THE COURT: Actually, I am going to interrupt on
19 that because I want to try to clarify here. There aren't
20 going to be any instructions that I can imagine would
21 offend yours or any other person's morals. The
22 instructions are exactly these, how you as jurors carry
23 out your duties. You need to understand what you are
24 supposed to do.
25 The instructions that will be read to you, if

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1 you are in fact on the panel, will instruct you on how to
2 do that. Some of those instructions will cover what is
3 the charge and what are the elements of the charge and
4 what is the State's burden to prove beyond a reasonable
5 doubt those elements of those charges. That's what the
6 instructions are. That's all we are talking about when
7 we say "follow the law."
8 This isn't hypothetical out in somewhere land
9 where something is going to be offensive to your dignity
10 or anything like that. This is very specific to this
11 case and what has been alleged in this case and what the
12 burden is by the State to prove this beyond a reasonable
13 doubt to the charges in this case.
14 And ultimately we will also have instructions
15 that will help you understand what the defendant's rights
16 are and how to carry out your job. So with that
17 clarification, is there any reason that you believe that
18 you would not be able to apply the law as I give it you
19 if you are empaneled?
20 PROSPECTIVE JUROR NO. 055: No. I can follow
21 instructions.
22 THE COURT: Okay. Thank you.
23 Anything further, Counsel?
24 MR. COOPER: Just briefly. That was a lot
25 better than I could ever do so thank you for that.

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1 Does your opinion still remain the same based on
2 the Judge's recitation?
3 PROSPECTIVE JUROR NO. 008: Which question?
4 MR. COOPER: On whether or not you would be able
5 to follow the law and instructions?
6 PROSPECTIVE JUROR NO. 008: Yes.
7 MR. COOPER: Does yours as well, ma'am?
8 PROSPECTIVE JUROR NO. 032: Yes.
9 MR. COOPER: Thank you, Your Honor. I am done
10 with my questioning.
11 THE COURT: Thank you.
12 Ms. Bonaventure.
13 MS. BONAVENTURE: Thank you.
14 So we have all heard from Ms. Alarcon. We know
15 she has a very strong opinion at this point in time. She
16 did say that she cannot be impartial. She says right now
17 if she was asked whether or not he was guilty she would
18 say he was guilty.
19 Who else here shares that opinion? Anybody else
20 share that opinion? Okay. Well, we have something that
21 is very important. It's called the presumption of
22 innocence. At this point in time, as Mr. McNeill sits
23 there by every law in this land, by the Constitution of
24 the United States he is considered innocent.
25 In fact, you heard Judge Delaney when you sat

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1 down after she read you your oath that he is considered
2 innocent at this point by all accounts.
3 Does anybody have any concerns or issues with
4 that at this point?
5 Your badge?
6 A PROSPECTIVE JUROR: 976.
7 MS. BONAVENTURE: Ms. Ash, you said that you
8 would not be impartial because you read a lot of criminal
9 novels.
10 PROSPECTIVE JUROR NO. 976: True crime novels.
11 I just think by the time something gets to court they've
12 got enough evidence to declare the person guilty. I am
13 just old and I am set in my ways. I'm sorry.
14 MS. BONAVENTURE: That's fine. I am, too, also
15 an avid reader of crime novels. Obviously, my profession
16 in and of itself contradicts what you are saying. I have
17 read many crime novels, would you agree it cuts the other
18 way, too, that somebody has been wrongly accused?
19 PROSPECTIVE JUROR NO. 976: I don't know. For
20 the last 20 years it just seems like everybody bargains
21 unless they have the dead nuts on it.
22 MS. BONAVENTURE: I'm sorry. The what on it?
23 PROSPECTIVE JUROR NO. 976: Just the stone cold
24 facts to, you know.
25 MS. BONAVENTURE: So you thought -- I don't want

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1 proof was in that case?
2 A PROSPECTIVE JUROR: I don't. It was almost 20
3 years ago. All I remember the thing that actually
4 happened. We were there for five minutes.
5 MS. BONAVENTURE: Yes. I'm sorry about that. I
6 am sure you put a lot of time and consideration to
7 everything that was presented before you.
8 The burden at trial in a civil case is much
9 different than the burden at a criminal trial, as I am
10 sure you can appreciate. The burden is much higher. In
11 fact, the State, Mr. Cooper, has to prove every element
12 of every charge that he puts before you.
13 In fact, I and my co-counsel, Ms. Hojjat, can
14 sit there and twiddle our thumbs the entire time and not
15 say one word and it would still be the State's
16 responsibility to prove to you every element of the
17 charge. We have absolutely no burden in this courtroom
18 to prove anything.
19 We do not have to prove that Mr. McNeill is
20 innocent, which leads me to his right not to testify.
21 Does anybody know -- well, you all said you watched NCIS
22 and CSI. Who heard of the Fifth Amendment? Okay.
23 Ms. Schultz, can you tell me what the Fifth
24 Amendment is.
25 PROSPECTIVE JUROR NO. 958: You have the right

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1 to put words in your mouth.
2 PROSPECTIVE JUROR NO. 976: No. It's just that
3 the District Attorney's Office is not going to spend
4 their time on a case that they are not probably
5 99 percent sure it is going to be in his favor.
6 MS. BONAVENTURE: Okay. Well, speaking as a
7 person who has gotten not guilty in courtrooms, I have to
8 respectfully disagree with you. But I absolutely respect
9 your opinion.
10 Does anybody else share that opinion? No.
11 Everybody here understands the presumption of innocence?
12 Great.
13 So we all understand that is a pretty important
14 concept here. Another concept that is really important
15 here is it's the State that has the burden to prove
16 Mr. McNeill is guilty beyond a reasonable doubt.
17 Somebody here said they sat on a civil jury. Can you
18 raise your hand.
19 Did it not come to resolution?
20 A PROSPECTIVE JUROR: They settled. In fact we
21 had just got in the jury room and we had not been there
22 more than five minutes and they came in and interrupted
23 us and said that they had settled.
24 MS. BONAVENTURE: Okay. That's a lot of time to
25 invest in something. Do you remember what the burden of

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1 not to incriminate yourself.
2 MS. BONAVENTURE: And do you believe that that
3 right extends to trial?
4 PROSPECTIVE JUROR NO. 958: Absolutely.
5 MS. BONAVENTURE: Absolutely true. He has the
6 right not to incriminate himself. He does not have to
7 take that stand. But there is a lot of reasons why
8 people decide not to take the stand. Can you think of
9 one?
10 Sir, what's your badge number?
11 A PROSPECTIVE JUROR: 909.
12 MS. BONAVENTURE: Can you think of any reason
13 why Mr. McNeill wouldn't take the stand?
14 PROSPECTIVE JUROR NO. 909: No. It's up to him
15 whether he wants to take the stand or not.
16 MS. BONAVENTURE: Do you agree that maybe he
17 would be afraid to take the stand?
18 PROSPECTIVE JUROR NO. 909: No. Like you said,
19 there are certain reasons why he might not want to take
20 the stand.
21 MS. BONAVENTURE: He may be shy --
22 PROSPECTIVE JUROR NO. 909: Or whatever. He can
23 refuse. That's his business.
24 MS. BONAVENTURE: Right. As a matter of fact I
25 might even tell him not to take the stand. As his

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1 attorney, I definitely have that ability to advise him as
2 to whether or not we believe the State has proven their
3 case beyond a reasonable doubt and whether or not that
4 would be a good thing for him to do at that time,
5 correct?
6 PROSPECTIVE JUROR NO. 909: Correct.
7 MS. BONAVENTURE: Okay. Great.
8 Somebody here said they sat on a criminal trial
9 awhile back. What's your name again, ma'am?
10 A PROSPECTIVE JUROR: Shirley Towers, 924.
11 MS. BONAVENTURE: And you said there was a
12 verdict rendered in that case?
13 PROSPECTIVE JUROR NO. 924: Correct.
14 MS. BONAVENTURE: Out of curiosity, what was the
15 outcome?
16 MR. COOPER: Your Honor, can we approach?
17 THE COURT: You may.
18 (Discussion held at the bench.)
19 THE COURT: I will sustain the objection. We
20 will not inquire as to what the verdict was, but
21 certainly some questions with regard to the jury service
22 is available if you would like to proceed, Ms.
23 Bonaventure.
24 MS. BONAVENTURE: Thank you, Your Honor.
25 So without telling us the actual verdict, based

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1 had the same opinion? What's your name and badge?
2 A PROSPECTIVE JUROR: Phyllis Ash, 976.
3 MS. BONAVENTURE: Oh, I'm sorry. The lady
4 behind you.
5 A PROSPECTIVE JUROR: Tami Taylor, 933.
6 MS. BONAVENTURE: Thank you. Can you explain
7 your response.
8 PROSPECTIVE JUROR NO. 933: I believe that if
9 you don't want to defend yourself that there's a reason
10 why. There's something hidden that you are not coming
11 forth, you are not defending yourself, and I do not
12 understand why somebody would not want to defend
13 yourself.
14 MS. BONAVENTURE: Now, you understand that as
15 Mr. McNeill's attorney we are here to defend him.
16 PROSPECTIVE JUROR NO. 933: But if he takes the
17 stand, if he was telling his side of it.
18 MS. BONAVENTURE: So you feel that unless he
19 takes the stand you just are at a default he is guilty?
20 PROSPECTIVE JUROR NO. 933: I did not say he is
21 guilty. But I would not understand why he didn't do it
22 because he would be able to clarify his side of what
23 happened or whatever the situation was.
24 MS. BONAVENTURE: Okay. I know a lot of you
25 said you had children. When you send your kids out in

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1 on your experience since you were there from opening to
2 closing, do you feel that you would be able to render a
3 verdict of not guilty if the State does not prove their
4 burden?
5 PROSPECTIVE JUROR NO. 924: Yes.
6 MS. BONAVENTURE: Is there anybody here that
7 thinks that they would not be able to render a verdict of
8 not guilty if the State is unable to prove their case
9 beyond a reasonable doubt? I got you Ms. Alarcon, don't
10 worry.
11 And just before we leave the subject of his
12 Fifth Amendment right not to testify, is there anybody
13 here that would hold it against him if he did not take
14 the stand? Is there anybody here who thinks that if he
15 is not guilty then why wouldn't he say his peace? No
16 hands.
17 A PROSPECTIVE JUROR: Jorge Morales, 907. The
18 way I see it, if you have nothing to hide, why not? That
19 is what I feel.
20 MS. BONAVENTURE: Okay. So you think that if he
21 did not take the stand he has something to hide?
22 PROSPECTIVE JUROR NO. 907: That is my opinion.
23 That's the way I see it now. If you don't tell the truth
24 or if you don't mention what you did you are guilty.
25 MR. BONAVENTURE: You over here, you said you

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1 the world are you ever afraid that they would be subject
2 to peer pressure, that somebody might force them based on
3 their opinions to make a certain decision one way or the
4 other?
5 Ma'am, I see you shaking your head. Explain.
6 PROSPECTIVE JUROR NO. 905: Well, in the day in
7 which I am living in that is what our kids are up
8 against. A lot of kids are getting a lot of things off
9 of the Internet going on as much -- as much as we can as
10 a parent to teach them not to do they don't want to
11 listen to those that they are around, their friends and
12 their peers.
13 MS. BONAVENTURE: And, sir, you were nodding
14 your head as well. Your name and badge number.
15 A PROSPECTIVE JUROR: Justin Walker, 985.
16 MS. BONAVENTURE: You nodded your head. Do you
17 agree?
18 PROSPECTIVE JUROR NO. 985: Well, yeah, for the
19 most part I recall what I did as a juvenile and probably
20 got away with a lot of stuff that I shouldn't have and I
21 came from a lower income and I'm trying to have my kids
22 have more, and this is the greatest country in the world.
23 We can be whatever we want to be. So I try to really --
24 I'm their bubble. I try to protect them and show them a
25 better way. I want them to pay for me when I am retired.

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1 MS. BONAVENTURE: So you hope that you kids
2 don't fall victim to peer pressure?
3 PROSPECTIVE JUROR NO. 985: Absolutely. My wife
4 is monitoring constantly.
5 MS. BONAVENTURE: So do you try to practice
6 those own values in your own life?
7 PROSPECTIVE JUROR NO. 985: Absolutely.
8 MS. BONAVENTURE: So if you are picked to be on
9 this jury, and I will direct this question to both of you
10 and then to the rest of the panel. If you are chosen to
11 be on this jury and you get back there with the entire
12 jury, there is going to be 12 of you back there with
13 potentially, if you felt one way and everyone else was
14 thinking another way, would that sway you from changing
15 your opinion just based on everybody's else's opinion and
16 maybe them getting on you about your own opinion?
17 PROSPECTIVE JUROR NO. 985: No. I think I am
18 very objective and working with others in a group and I
19 sometimes am very vocal about what I want to do and it
20 contradicts what the team wants to do and then we work it
21 out, all sides say what they need to say and we come to a
22 resolution.
23 MS. BONAVENTURE: So you feel like you can stand
24 by a decision?
25 PROSPECTIVE JUROR NO. 985: Yes. I also feel

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1 that others can help influence me to change my ways. So
2 sometimes, if I fully believe something very, very
3 strongly that someone is going to have to persuade me
4 otherwise.
5 MS. BONAVENTURE: They have to give you what to
6 persuade you?
7 PROSPECTIVE JUROR NO. 985: Objective
8 quantifiable evidence.
9 MS. BONAVENTURE: All right. Thank you.
10 Ma'am, if you are back there with the jury and
11 if you had already made up your mind either for the State
12 or the defense, that you would feel peer pressure if
13 everybody else was of a different mind.
14 PROSPECTIVE JUROR NO. 905: No. I am not one
15 for peer pressure. If I have my mind made up that is
16 what I am going to stand on.
17 MS. BONAVENTURE: But are you open to logical
18 argument?
19 PROSPECTIVE JUROR NO. 905: I am, but they have
20 to make sense to me. If it didn't make sense I know I
21 have to be able to see it.
22 MS. BONAVENTURE: Okay. And does everybody kind
23 of feel the same way? Is there anybody who feels
24 differently? No? Yes? No responses. Okay.
25 I know some of you are retired but I know even

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1 people who have been retired worked potentially in a work
2 place environment. Conflicts always happen when you get
3 more than three people in a room, I think you are likely
4 to get some kind of a conflict.
5 Let me pick on somebody specifically.
6 Mr. Manning.
7 PROSPECTIVE JUROR NO. 987: Yes.
8 MS. BONAVENTURE: You said that you were an
9 analyst?
10 PROSPECTIVE JUROR NO. 987: Yes.
11 MS. BONAVENTURE: Did you ever work in a work
12 place environment?
13 PROSPECTIVE JUROR NO. 987: Yes. It was quite
14 sometime ago, but yes. It was always very stressful.
15 Corporate accounting was a very stressful place to work
16 in. They had many requirements and they always wanted
17 things done yesterday. And, of course, general ledger
18 ran everyday and if there were problems at night, of
19 course, the bank branches can't open until the general
20 ledger finishes. You have to solve these problems, so it
21 is very high pressure.
22 MS. BONAVENTURE: I would imagine high conflicts
23 then?
24 PROSPECTIVE JUROR NO. 987: Sometimes. You
25 cannot avoid that.

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1 MS. BONAVENTURE: Sometimes you cannot avoid
2 conflict. Did you ever have an instance where you
3 yourself came into conflict with somebody else at work or
4 with two people around you or if your supervisor and you
5 came into some type of a conflict?
6 PROSPECTIVE JUROR NO. 987: Not so much at Home
7 Savings but earlier in my career there were several
8 things that I can think about that were conflicts. And
9 you just have to work through those.
10 MS. BONAVENTURE: By work through them, what do
11 you mean? Talk to out?
12 PROSPECTIVE JUROR NO. 987: Yes. Talk it out.
13 MS. BONAVENTURE: Okay. Ms. Taylor, you work at
14 Vons?
15 PROSPECTIVE JUROR NO. 933: Yes.
16 MS. BONAVENTURE: I know every time I go to Vons
17 they have lots of coworkers there, correct?
18 PROSPECTIVE JUROR NO. 933: Yes.
19 MS. BONAVENTURE: Lots of people working
20 together. And that is a large supermarket, correct?
21 PROSPECTIVE JUROR NO. 933: Yes, ma'am.
22 MS. BONAVENTURE: Have you ever run into any
23 type of conflict at work?
24 PROSPECTIVE JUROR NO. 933: Every day.
25 MS. BONAVENTURE: Every day. How do you deal

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<p>1 with conflict?</p> <p>2 PROSPECTIVE JUROR NO. 933: To the best of my</p> <p>3 ability I try to diffuse it.</p> <p>4 MS. BONAVENTURE: How do you diffuse it?</p> <p>5 PROSPECTIVE JUROR NO. 933: By me weighing the</p> <p>6 situation of what is being presented to me. What they</p> <p>7 are telling me. What the issue is, what the problem is</p> <p>8 and if I can take care of it I will take care of it</p> <p>9 myself, and if I cannot I will call a supervisor over and</p> <p>10 have them take care of the situation.</p> <p>11 MS. BONAVENTURE: So that goes to say that you</p> <p>12 try not to do anything to exacerbate it.</p> <p>13 PROSPECTIVE JUROR NO. 933: I would not want to</p> <p>14 exacerbate it. That can get ugly.</p> <p>15 MS. BONAVENTURE: Okay. Is there somebody here</p> <p>16 who has a lot of kids, three or four kids?</p> <p>17 A PROSPECTIVE JUROR: I do.</p> <p>18 MS. BONAVENTURE: I will ask the both of you</p> <p>19 together, you have quite a few children. Have your kids</p> <p>20 ever fought, not with each other but with other kids?</p> <p>21 A PROSPECTIVE JUROR: No.</p> <p>22 MS. BONAVENTURE: Your kids never fight?</p> <p>23 A PROSPECTIVE JUROR: Not that I know of.</p> <p>24 MS. BONAVENTURE: Sir.</p> <p>25 PROSPECTIVE JUROR NO. 909: When they were</p> <p style="text-align: right;">123</p>	<p>1 dad was in the Army.</p> <p>2 MS. BONAVENTURE: Do you think that would bias</p> <p>3 you in any way?</p> <p>4 PROSPECTIVE JUROR NO. 958: No.</p> <p>5 MS. BONAVENTURE: Okay.</p> <p>6 Sir, we need your badge number.</p> <p>7 PROSPECTIVE JUROR NO. 000: Number 000. I was</p> <p>8 in the Air Force for four years.</p> <p>9 MS. BONAVENTURE: Okay. And do you think that</p> <p>10 that would bias you in any way?</p> <p>11 PROSPECTIVE JUROR NO. 000: No.</p> <p>12 MS. BONAVENTURE: Okay. Anybody else?</p> <p>13 Sir.</p> <p>14 A PROSPECTIVE JUROR: I have a son that was in</p> <p>15 the Army and a daughter that was in the Army and I was in</p> <p>16 the Army.</p> <p>17 MS. BONAVENTURE: Okay.</p> <p>18 Go ahead, sir.</p> <p>19 PROSPECTIVE JUROR NO. 927: Badge 927. I did</p> <p>20 six months in the Army. I had a medical discharge.</p> <p>21 MS. BONAVENTURE: Okay. And, sir, you had</p> <p>22 raised your hand.</p> <p>23 A PROSPECTIVE JUROR: My dad was in the Marines</p> <p>24 and I was in the Army.</p> <p>25 MS. BONAVENTURE: Your name and badge number?</p> <p style="text-align: right;">125</p>
<p>1 younger they would get in scrapes but they knew their dad</p> <p>2 was around to teach them better.</p> <p>3 MS. BONAVENTURE: How did you teach them better?</p> <p>4 PROSPECTIVE JUROR NO. 909: I just lay down the</p> <p>5 law. If they didn't behave they got in trouble. We was</p> <p>6 always good to our kids. Always took them camping and</p> <p>7 fishing. They were raised pretty good.</p> <p>8 MS. BONAVENTURE: Well, that's good to hear.</p> <p>9 PROSPECTIVE JUROR NO. 909: It is easier to stay</p> <p>10 out of trouble then to get out of trouble.</p> <p>11 MS. BONAVENTURE: Right. So I know there is a</p> <p>12 lot of people in the jury who have family members,</p> <p>13 friends, who are police officers. Is there anybody here</p> <p>14 who has friends or family or who they themselves have</p> <p>15 previously served in the military?</p> <p>16 Your badge, sir.</p> <p>17 A PROSPECTIVE JUROR: Joey Hamilton, 971. Ten</p> <p>18 years in the Air Force.</p> <p>19 MS. BONAVENTURE: Okay. Do you think that</p> <p>20 experience would at all bias you in this case?</p> <p>21 PROSPECTIVE JUROR NO. 971: No.</p> <p>22 MS. BONAVENTURE: No. Okay.</p> <p>23 Ma'am, your badge number.</p> <p>24 A PROSPECTIVE JUROR: Number 958. My husband</p> <p>25 was in the Air Force and my brother was in the Army. My</p> <p style="text-align: right;">124</p>	<p>1 A PROSPECTIVE JUROR: Gilbert Canales, 930.</p> <p>2 MS. BONAVENTURE: Anybody else?</p> <p>3 Ms. Rice-Wilson.</p> <p>4 PROSPECTIVE JUROR NO. 905: I worked for the VA.</p> <p>5 MS. BONAVENTURE: Ms. Alarcon, did you raise</p> <p>6 your hand?</p> <p>7 PROSPECTIVE JUROR NO. 032: Yes. I have a</p> <p>8 brother in the Navy.</p> <p>9 MS. BONAVENTURE: Sir.</p> <p>10 A PROSPECTIVE JUROR: Badge No. 606. I was in</p> <p>11 the Army for two years.</p> <p>12 MS. BONAVENTURE: Do you think that would bias</p> <p>13 you in any way?</p> <p>14 PROSPECTIVE JUROR NO. 606: No.</p> <p>15 MS. BONAVENTURE: And I forgot to ask you,</p> <p>16 ma'am. Do you think your current service working for</p> <p>17 Provider Services for the VA would that bias you in any</p> <p>18 way?</p> <p>19 PROSPECTIVE JUROR NO. 032: I cannot see how it</p> <p>20 could.</p> <p>21 MS. BONAVENTURE: Okay. Did anybody else raise</p> <p>22 their hand for that question I did not ask? Okay.</p> <p>23 Now, I know that some of you sat on juries</p> <p>24 previously, and I am sure some of you in the past have</p> <p>25 had legal issues whether they were civil or even trying</p> <p style="text-align: right;">126</p>

1 to look up property or zoning law, any kind of issue.
2 Who thinks the law is easy? Who thinks it is
3 easy to read the law? Who thinks it's easy to interpret
4 the law? Who thinks it is really hard to do that? Has
5 anybody had any legal training?
6 Sir.
7 A PROSPECTIVE JUROR: I took a basic law class
8 in college.
9 MS. BONAVENTURE: How long ago was that?
10 A PROSPECTIVE JUROR: 20 years ago.
11 MS. BONAVENTURE: Do you remember how easy that
12 class was?
13 A PROSPECTIVE JUROR: It was contract law. It
14 was not anything like criminal or anything like that. It
15 was complex and nuances that had to be understood.
16 MS. BONAVENTURE: Yes. I know somebody else
17 raised their hand. Sir.
18 A PROSPECTIVE JUROR: Juror 060. As a union
19 representative in the union being a delegate we have to
20 be trained on labor law.
21 MS. BONAVENTURE: Are they very complicated?
22 PROSPECTIVE JUROR NO. 060: Yes, they are.
23 MS. BONAVENTURE: Does the union have their own
24 attorneys?
25 PROSPECTIVE JUROR NO. 060: Yes, we do.

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1 MS. BONAVENTURE: Still very complicated, I'm
2 sure.
3 PROSPECTIVE JUROR NO. 060: Oh, yes.
4 MS. BONAVENTURE: Your Honor, can we approach?
5 THE COURT: Yes, you may.
6 (Discussion held at the bench.)
7 THE COURT: I have a couple of questions and
8 then counsel is going to follow up with some additional
9 questions that have not been asked yet.
10 Let me start with Mr. Morales. Mr. Morales, you
11 were one of the two folks that expressed a concern, maybe
12 that's the wrong word, but indicated what you might like
13 to see with regard to the defendant's testimony. What I
14 would like to do is I am going to read to you the
15 instruction now that would be included in the packet that
16 would be given at the end of the trial should you be a
17 juror. And I am going to ask you some questions about it
18 after I read it, okay?
19 PROSPECTIVE JUROR NO. 907: Okay.
20 THE COURT: This is how the instruction that
21 goes to the jury reads:
22 "It is a constitutional right of
23 a defendant in a criminal trial that he may
24 not be compelled to testify, thus, the
25 decision as to whether he should testify is

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1 MS. BONAVENTURE: Why do you guys employ your
2 own attorneys?
3 PROSPECTIVE JUROR NO. 060: Why? We do not go
4 to law school. We don't take training within the labor
5 law and the regulations and all that so we have to be
6 aware.
7 MS. BONAVENTURE: But it is very difficult,
8 right? That is why you have an attorney?
9 PROSPECTIVE JUROR NO. 060: Correct.
10 MS. BONAVENTURE: If you had a legal problem do
11 you guys think you would all go to an attorney or try to
12 do it by yourself?
13 A PROSPECTIVE JUROR: Attorney.
14 MS. BONAVENTURE: Have you ever handled a legal
15 issue by yourself, even if it was with your landlord?
16 Ms. Rice-Wilson.
17 PROSPECTIVE JUROR NO. 905: I had a legal issue
18 with my landlord and I had an attorney.
19 MS. BONAVENTURE: Was it still very complicated?
20 PROSPECTIVE JUROR NO. 905: No. It was in and
21 out.
22 MS. BONAVENTURE: Anybody else ever handled --
23 Sir.
24 A PROSPECTIVE JUROR: 060. Yes, I handled the
25 contracting without a license.

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1 left to the defendant on the advice and
2 counsel of his attorney. You must not draw
3 any inference of guilt from the fact that he
4 does not testify nor should this fact be
5 discussed by you or enter into your
6 deliberations in any way."
7 Do you have any reason to believe you would not
8 be able to follow that instruction when it came time to
9 deliberate?
10 PROSPECTIVE JUROR NO. 907: Since you put it
11 that way, no.
12 THE COURT: Well, the instruction is worded that
13 way for a very specific reason because there could be a
14 whole host of reasons why someone would not take the
15 stand in a criminal trial and be subject to
16 cross-examination by the State and for any other reason
17 that has nothing to do with guilt or innocence, but
18 simply by, again, advice of counsel and determination.
19 And it is a constitutional right for a reason.
20 So I always want to address it with folks who
21 indicate, and we appreciate the candor, of what they
22 might like to see to help them understand that the actual
23 law on this point is that you must not draw any inference
24 of guilt from the fact that a defendant does not testify
25 nor may you discuss this or it enter into your verdict in

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<p>1 any way.</p> <p>2 So I just want to be sure that you would</p> <p>3 understand that that is the instruction and that you</p> <p>4 would be able to follow it.</p> <p>5 PROSPECTIVE JUROR NO. 907: Yes.</p> <p>6 THE COURT: Ms. Taylor, same question to you.</p> <p>7 Would you understand that instruction and would you be</p> <p>8 able to follow that instruction if you were to be on the</p> <p>9 panel and deliberate?</p> <p>10 PROSPECTIVE JUROR NO. 933: (No audible</p> <p>11 response.)</p> <p>12 THE COURT: Regardless of what it is that you</p> <p>13 might like to see and regardless of whether or not you</p> <p>14 can perhaps in your mind think of hypothetical reasons</p> <p>15 why someone would not testify, would you be able to</p> <p>16 recognize that this is a constitutional right. There are</p> <p>17 a myriad of reasons why that might be exercised and that</p> <p>18 ultimately that cannot be used as a basis for your</p> <p>19 deliberations. Would you be able to respect that and be</p> <p>20 able to follow that?</p> <p>21 PROSPECTIVE JUROR NO. 933: I think I would have</p> <p>22 a hard time with it.</p> <p>23 THE COURT: I don't typically like to ask these</p> <p>24 kind of open-ended questions because of course everybody</p> <p>25 has their own views and I don't necessarily want to</p> <p style="text-align: right;">131</p>	<p>1 But there is no requirement on the defense to prove</p> <p>2 innocence. In fact innocence is already in place, right.</p> <p>3 So I only give that additional information and</p> <p>4 in no way, shape or form am I trying to put you on the</p> <p>5 spot. I a just want your candid reason for why this</p> <p>6 would be difficult for you to help me better understand</p> <p>7 the thought process.</p> <p>8 PROSPECTIVE JUROR NO. 933: I have always had a</p> <p>9 hard time with -- my life has always been very black and</p> <p>10 white. Very little grey in between. And so I just don't</p> <p>11 understand why somebody would not want to speak up for</p> <p>12 themselves.</p> <p>13 THE COURT: Maybe they do, but for many reasons</p> <p>14 they don't. Can you shift your black and white focus</p> <p>15 over to the idea that the State proved beyond a</p> <p>16 reasonable doubt the elements that lead to a finding of</p> <p>17 guilt on the charges or they do not and that be your</p> <p>18 focus and not be your focus on what you need or expect to</p> <p>19 hear from the defense.</p> <p>20 PROSPECTIVE JUROR NO. 933: I can try. I can</p> <p>21 give it a good try.</p> <p>22 THE COURT: I appreciate your candor.</p> <p>23 I will invite counsel now to make your further</p> <p>24 inquiries and then give the State an opportunity to</p> <p>25 follow up to any of those questions.</p> <p style="text-align: right;">133</p>
<p>1 influence anybody else's views, but I guess, I am a</p> <p>2 little surprised by your answer. I'm going to be candid</p> <p>3 with you. Just because of the other answers you had</p> <p>4 given indicate to me that overall you appear to be able</p> <p>5 to be a fair and impartial juror, and it would seem</p> <p>6 strange to me that that issue would be something that</p> <p>7 might mean that you could not be fair and impartial.</p> <p>8 What I am really ultimately asking you is can</p> <p>9 you be fair and impartial. And part of that goes along</p> <p>10 with this idea of whether you understand why or not,</p> <p>11 there is the basic issue the State has to prove beyond a</p> <p>12 reasonable doubt. The defense doesn't have to do a</p> <p>13 single thing. They don't have to put on a single</p> <p>14 witness. They don't have to do anything.</p> <p>15 If the State proves its burden and you find so,</p> <p>16 so be it, and if they don't and you find so, so be it.</p> <p>17 But the defense does not have to do a thing. And when</p> <p>18 folks begin to maybe go back to what they have seen on TV</p> <p>19 or read in books believe that somehow that this is a</p> <p>20 civil case, if you will, why one side has to prove</p> <p>21 something and the other side has to defend something and</p> <p>22 prove guilt, prove innocence, that's not how this works</p> <p>23 at all. Period. End of story.</p> <p>24 The State has to prove guilt. If they don't</p> <p>25 meet their burden, then they don't meet their burden.</p> <p style="text-align: right;">132</p>	<p>1 MS. HOJJAT: Thank you, Your Honor. Just to</p> <p>2 follow-up on questions to the State's?</p> <p>3 THE COURT: Yes. And Mr. Cooper has the</p> <p>4 opportunity to follow up.</p> <p>5 MS. HOJJAT: Thank you, Your Honor.</p> <p>6 Mr. Morales, the Judge just read directly the</p> <p>7 instruction you will be given at the end of the case.</p> <p>8 When you said, Well, when you put it like that, then,</p> <p>9 yes.</p> <p>10 PROSPECTIVE JUROR NO. 907: Yes.</p> <p>11 MS. HOJJAT: But what you said earlier was, The</p> <p>12 way I was raised, kind of my whole life the way I thought</p> <p>13 if you don't have anything to hide why don't you tell</p> <p>14 your side. And you also said if he doesn't take the</p> <p>15 stand he has something to hide.</p> <p>16 Now, obviously, you will be given the</p> <p>17 instruction that you should not think those things while</p> <p>18 you are deliberating. But it sounds like something that</p> <p>19 you felt strongly about your whole life. This is not</p> <p>20 something that you just walked into the courtroom today</p> <p>21 and thought, You know what, if that guy doesn't take the</p> <p>22 stand, I think he's got something to hide. You have</p> <p>23 always felt you don't have anything to hide you have to</p> <p>24 tell your side of the story?</p> <p>25 PROSPECTIVE JUROR NO. 907: Right.</p> <p style="text-align: right;">134</p>

<p>1 MS. HOJJAT: And that has been ingrained in you 2 for years and years. 3 PROSPECTIVE JUROR NO. 907: Since I was a little 4 kid. 5 MS. HOJJAT: So let me ask you, if you are 6 selected for jury service and Mr. McNeill chooses not to 7 testify, do you think you could put aside the way you 8 felt your whole life about this idea and not hold it 9 against him at all if he doesn't testify? 10 PROSPECTIVE JUROR NO. 907: Um -- 11 MS. HOJJAT: There is no wrong answer. We just 12 want the truth. 13 PROSPECTIVE JUROR NO. 907: You are making a lot 14 of sense. I think I should not think about the way I 15 used to think, the way I was raised. Even though in the 16 past my dad was the one, you know, if it was black, even 17 if it's yellow, it's black. That is the way he thinks. 18 MS. HOJJAT: You think you could do that? 19 PROSPECTIVE JUROR NO. 907: Yes. 20 MS. BONAVENTURE: So you do not think you will 21 have a problem if he does not testify? 22 PROSPECTIVE JUROR NO. 907: No. 23 MS. HOJJAT: Thank you. 24 And, Ms. Taylor, I guess even in speaking with 25 the judge, it sounds like this is something you feel</p> <p style="text-align: right;">135</p>	<p>1 your deliberations. Do you think you can follow that 2 instruction or do you think, if I get back there I am 3 going to be thinking about it and I might hold it against 4 him? 5 PROSPECTIVE JUROR NO. 933: Like I can try. 6 That's all I can say. I don't know what the 7 circumstances are. 8 MS. HOJJAT: Well, you do know what is ahead of 9 you. But what I am asking is the one thing I am asking 10 if you knew he is not going to testify, if you knew he is 11 not going to testify do you think you could tell us -- 12 let me rephrase the question. 13 If you were sitting in Mr. McNeill's seat, you 14 were the one on trial and there was a potential that you 15 weren't going to be testifying and there was a juror 16 sitting in the panel who felt the way you felt, who was 17 saying, You know what, I'm going to try, but I can't be 18 sure that I wouldn't hold it against him if she didn't 19 testify, would you want that juror sitting on your jury? 20 PROSPECTIVE JUROR NO. 933: I can't answer that 21 because you are asking me to try to go against -- I don't 22 understand why somebody won't testify on their own 23 behalf. 24 MS. HOJJAT: Okay. You just said, You are 25 asking me to go against, and I think you were going to</p> <p style="text-align: right;">137</p>
<p>1 strongly about as well? 2 PROSPECTIVE JUROR NO. 933: Yes. 3 MS. HOJJAT: And it sounds like this is not 4 something that you just came up with today. You have 5 always felt this way? 6 PROSPECTIVE JUROR NO. 933: That is how I was 7 raised. You stood up for yourself and that's how I have 8 always been. 9 MS. HOJJAT: And in fact we actually talked a 10 little bit to some of the jurors why somebody would chose 11 not to testify and you heard those reasons? 12 PROSPECTIVE JUROR NO. 933: Yes. 13 MS. HOJJAT: But you still, you know, just in 14 the back of my mind it's going to be why isn't he 15 testifying, he must have done something wrong if he is 16 not testifying. 17 PROSPECTIVE JUROR NO. 933: I do not understand 18 why somebody would not want to stand up for themselves. 19 I was raised you stand up for yourself and that's how it 20 has always been. 21 MS. HOJJAT: Okay. You heard the jury 22 instruction word for word, the instruction that you will 23 be given if you are chosen for the jury, the instruction 24 says that you cannot hold it against Mr. McNeill at all 25 if he doesn't testify. That it cannot even enter into</p> <p style="text-align: right;">136</p>	<p>1 say, I don't want to put words in your mouth, but 2 basically go against what you thought for a very long 3 time. 4 PROSPECTIVE JUROR NO. 933: Yes, exactly. So 5 what are you asking me? 6 MS. HOJJAT: I am asking you not to hold it 7 against him. Can you do that? 8 PROSPECTIVE JUROR NO. 933: That's how I have 9 been raised. It was pounded in my head for years and 10 years and years as a child. 11 MS. HOJJAT: So just sitting there you can't say 12 for sure I won't hold it against him? 13 PROSPECTIVE JUROR NO. 933: No, I can't. 14 MS. HOJJAT: I appreciate your honesty. 15 Now, ladies and gentlemen, you were told that 16 the charges here are violation of lifetime supervision by 17 a sex offender. That means Mr. McNeill is a convicted 18 sex offender who is on lifetime supervision. 19 The judge instructed you that you are to presume 20 him innocent. The presumption of innocence is going to 21 go whether or not he violated lifetime supervision not to 22 whether or not he is a sex offender. You are going to 23 hear in this trial that Mr. McNeill is a convicted sex 24 offender. 25 Is there anybody here who thinks, You know what,</p> <p style="text-align: right;">138</p>

1 knowing that information, I don't know that I can be fair
2 and unbiased towards him in rendering a verdict.
3 Ms. Alarcon.
4 PROSPECTIVE JUROR NO. 032: I can't.
5 MS. HOJJAT: Thank you for your honesty.
6 Is there anybody else here hearing the word sex
7 offender that makes you really uncomfortable, I don't
8 know if I could be fair. Seeing no hands from the panel.
9 Ms. Cardoza, I wanted to speak with you
10 specifically you mentioned that your husband is a police
11 officer. And I believe the judge was asking you about
12 whether or not that would influence you whether or not
13 you could be fair. And I believe you made the comment,
14 and correct me if I'm wrong, I thought you said, I hold
15 the same views as my husband.
16 PROSPECTIVE JUROR NO. 166: In what sense?
17 MS. HOJJAT: Well, I wasn't sure what you were
18 referring to when you said, I hold the same views as my
19 husband, in the response to the question, Can you be
20 fair.
21 PROSPECTIVE JUROR NO. 166: When I said I can be
22 fair I think there is a lot of things as in evidence that
23 I see legal terms, probable cause, then, yes, I do go
24 back and look at everything that comes to me with
25 evidence and weigh in on other situations. Like what if

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1 -- it's hard to explain. What if he did this, what other
2 things are in the situation. I know there's a crime that
3 has been violated so he is obviously guilty in that
4 sense. Do you want me to elaborate?
5 MS. HOJJAT: Go ahead, please.
6 PROSPECTIVE JUROR NO. 166: A lot of things when
7 it comes to being open minded, I am. But there is things
8 that I also think, Okay, maybe this is there on a guilty
9 sense, I think a lot in facts in a mistaken way.
10 MS. HOJJAT: Okay. You mentioned probable
11 cause.
12 PROSPECTIVE JUROR NO. 166: When you come in
13 there is a reason why -- it's kind of hard for me to
14 explain.
15 MS. HOJJAT: Okay. Well, let me ask you, and I
16 believe Ms. Ash had mentioned this earlier about the
17 idea, Well, he's sitting there.
18 PROSPECTIVE JUROR NO. 166: Not because he's
19 sitting here.
20 MS. HOJJAT: Okay.
21 PROSPECTIVE JUROR NO. 166: He cannot not be
22 sitting here and still have a case upon him does not mean
23 he is guilty. But that the cases have to be -- there is
24 a reason why. It's not about he is guilty because he's
25 here. I am not assuming he is guilty. I want to know

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1 why he is here, what made him be in the situation.
2 MS. HOJJAT: Okay.
3 PROSPECTIVE JUROR NO. 166: There is a lot of
4 reasons that led to this situation.
5 MS. HOJJAT: I see. And correct me if I am
6 misunderstanding you, are you saying basically you see
7 him here but you do not necessarily think he's guilty but
8 you are thinking about --
9 PROSPECTIVE JUROR NO. 166: That is not my first
10 automatic go to.
11 MS. HOJJAT: Okay. But you are wondering why is
12 he here?
13 PROSPECTIVE JUROR NO. 166: Yes.
14 MS. HOJJAT: Okay. Does the fact that he is
15 here make you feel like, well, maybe he did do something
16 wrong otherwise he would not be sitting here?
17 PROSPECTIVE JUROR NO. 166: Maybe he could have
18 violated. I don't know.
19 MS. HOJJAT: Does anybody else feel that way
20 about what I just started to say the idea of there has to
21 be a reason if is he sitting here? Seeing no hands from
22 the panel.
23 Speaking about cops, I did want to ask does
24 anybody here have strong feelings about cops good or bad
25 feelings about cops in general. Anybody here think --

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1 oh, Ms. Cardoza.
2 PROSPECTIVE JUROR NO. 166: They are human and
3 cops could be great at their job but they also can be
4 really crappy at their job. It goes both ways because
5 they are all human.
6 MS. HOJJAT: Anybody here disagree with that on
7 the panel? Seeing no hands. So does anybody here think,
8 you know what, if a cop gets up there, I just don't see
9 what reason they have to lie. Seeing no hands.
10 Anybody here feel like, you know what, I just
11 can't imagine why a cop would make something up. Cops
12 just don't make things up. If they are saying it,
13 perhaps, there has to be something to it. Seeing no
14 hands from the panel.
15 Anybody here think that a cop would never lie to
16 get somebody in trouble? They might tell a fib here or
17 there but a cop would never deliberately tell a lie just
18 for the purpose of getting somebody in trouble. Anybody
19 here feel that way? Seeing no hands.
20 I have no more questions.
21 THE COURT: Mr. Cooper.
22 MR. COOPER: No follow-up.
23 THE COURT: My I have counsel at the bench
24 please.
25 (Discussion held at the bench.)

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1 THE COURT: I am going to step into chambers
2 with counsel briefly. Everybody keep your seats. We
3 will be back shortly.
4 (Discussion held in chambers.)
5 THE COURT: All right. We will resume at this
6 time and I will let you know that I have three jurors who
7 at this time we are going to excuse but thank you for
8 your service. At this time I excuse from the panel,
9 Juror No. 032, Linda Alarcon, Juror No. 933, Tami Taylor,
10 and Juror No. 976, Phyllis Ash. Thank you for your
11 service.
12 We will call now the next three members to the
13 jury box.
14 THE CLERK: Juror No. 003, Jason Alper.
15 THE COURT: Next juror.
16 THE CLERK: Juror No. 005, Gary Pollard.
17 THE COURT: And the next juror.
18 THE CLERK: Juror No. 006, John Burris.
19 THE COURT: So we are going to start with
20 Mr. Alper. If you can please answer the questions on the
21 board here.
22 PROSPECTIVE JUROR NO. 003: Badge No. 003. My
23 name is Jason Alper. I work for a company called Cal
24 Pour, it's ready mix concrete. My spouse is Emily Alper.
25 She works at Arnoff Partners, which is an RV company.

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1 And I also went to Cashman Junior High School.
2 THE COURT: What year did you graduate high
3 school?
4 PROSPECTIVE JUROR NO. 003: I graduated in '94.
5 THE COURT: Okay.
6 PROSPECTIVE JUROR NO. 003: I have one child. I
7 was born and raised in Las Vegas. Never been a juror
8 before.
9 THE COURT: First of all, did you know Ms.
10 Schultz?
11 PROSPECTIVE JUROR NO. 003: I did not.
12 THE COURT: Do you have any connections with law
13 enforcement?
14 PROSPECTIVE JUROR NO. 003: I do. My
15 stepbrother works for Metro. I speak to him a couple
16 times a day. Another good friend works out of the north
17 west and then my brother-in-law is the medical director
18 at Metro and another good friend of mine is on SWAT.
19 THE COURT: I think that is the record for the
20 most law enforcement connections.
21 Let me see if we can kind of sum it up. You do
22 have these connections with law enforcement. You
23 obviously have the obligation not to discuss this case
24 with anybody in law enforcement. Would you have any
25 problem following that instruction?

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1 PROSPECTIVE JUROR NO. 003: Not at all.
2 THE COURT: Does the fact that you have these
3 connections with friends and family to law enforcement
4 cause you to believe that you would give any greater
5 weight to the testimony of law enforcement?
6 PROSPECTIVE JUROR NO. 003: No.
7 THE COURT: Is there any reason why you would
8 not be able to be fair and impartial to both sides of
9 this case, the State and to the defense, to receive the
10 evidence and apply the law and fairly and impartially
11 deliberate with your fellow jurors?
12 PROSPECTIVE JUROR NO. 003: I have no problems
13 with that.
14 THE COURT: I appreciate that. Have you ever
15 been, close friend or family member ever been a victim of
16 a crime or had interaction with the criminal justice
17 system or accused of a crime?
18 PROSPECTIVE JUROR NO. 003: When I was a child I
19 was hit by a drunk driver. He was convicted.
20 THE COURT: Do you have a specific recollection
21 of that? Did you have to testify?
22 PROSPECTIVE JUROR NO. 003: I don't think I was
23 old enough to testify. I was in physical therapy for
24 about 10 to 12 years, so I still have some effects of
25 that.

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1 THE COURT: But the person was caught and you
2 say they were convicted?
3 PROSPECTIVE JUROR NO. 003: Correct.
4 THE COURT: Is there anything about that
5 dealings with the criminal justice system that would
6 affect your ability to be fair and impartial here?
7 PROSPECTIVE JUROR NO. 003: No.
8 THE COURT: Have you or a friend or family
9 member ever been accused of a crime or connection with
10 the criminal justice system in that way?
11 PROSPECTIVE JUROR NO. 003: I do not believe so.
12 THE COURT: Anything that you heard us discuss
13 with the other folks that you would think would impact
14 your ability to be fair and impartial in this trial?
15 PROSPECTIVE JUROR NO. 003: No.
16 THE COURT: Thank you. Let me turn then to
17 Mr. Pollard. Please answer the questions that are on the
18 board.
19 PROSPECTIVE JUROR NO. 005: I am retired from
20 the grocery business. I am divorced. I have two
21 children, two sons. One is say policeman in North Las
22 Vegas the other is a podiatrist. I have lived in Vegas
23 way too long. And I have never been a juror before even
24 though I have been summoned three times. Just never
25 picked.

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1 THE COURT: Never made it to the end. Okay.
2 You said you have -- is it your son in law enforcement?
3 PROSPECTIVE JUROR NO. 005: My oldest son.
4 THE COURT: Okay. So how about you and same
5 questions as well with Mr. Alper, is that going to
6 influence the way you receive the evidence if it is
7 coming from law enforcement?
8 PROSPECTIVE JUROR NO. 005: No, it won't.
9 THE COURT: Is it going to impact you in any way
10 being fair and impartial if you are selected as a juror
11 in this case?
12 PROSPECTIVE JUROR NO. 005: I don't think so.
13 THE COURT: You say you don't think so. I
14 appreciate and we have actually had some discussion with
15 counsel about no one can ever say definitively how they
16 would be, but do you believe that you would be able to
17 receive the evidence that is provided in this case and
18 weigh it fairly, apply the law to it and with your fellow
19 jurors deliberate fairly.
20 PROSPECTIVE JUROR NO. 005: Yes.
21 THE COURT: Ever been accused of or been the
22 victim of a crime or involved with the criminal justice
23 system that way?
24 PROSPECTIVE JUROR NO. 005: I have been a victim
25 of crime but it's never gotten to court. I had a vehicle

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1 stolen and it was never recovered and that is about it.
2 THE COURT: All right. Any feelings about the
3 criminal justice system itself and how that operated that
4 might impact your ability to be fair and impartial here?
5 PROSPECTIVE JUROR NO. 005: There's always room
6 for improvement, but I have no problem.
7 THE COURT: I don't think that anybody would
8 disagree with you that there is always room for
9 improvement.
10 Any questions that you have heard or anything
11 that you think you need to bring to our attention?
12 PROSPECTIVE JUROR NO. 005: No.
13 THE COURT: Thank you. Last, but not least,
14 Mr. Burris.
15 PROSPECTIVE JUROR NO. 006: John Burris. I am
16 an attorney. I do civil litigation business commercial.
17 My wife is a stay-at-home mom. The children are too
18 young to work. I have lived in Las Vegas since 2008 and
19 before that I was in Salt Lake City. I practiced there.
20 And I have never been a juror before. I do not have any
21 contacts with police officers or the criminal justice
22 system.
23 THE COURT: No law enforcement in your extended
24 family circle or friend circle?
25 PROSPECTIVE JUROR NO. 006: No. And I do

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1 believe very strongly in our principles of the criminal
2 justice system.
3 THE COURT: Do you have a brother who is an
4 attorney as well?
5 PROSPECTIVE JUROR NO. 006: No, but I sometimes
6 get --
7 THE COURT: Do you get asked that a lot?
8 PROSPECTIVE JUROR NO. 006: Steve?
9 THE COURT: Yes.
10 PROSPECTIVE JUROR NO. 006: I get asked that.
11 THE COURT: I thought you might be related when
12 I first saw you, and I saw the name and it took me a
13 minute to realize you weren't the other attorney. I
14 appreciate that. I do not think I have anything further.
15 I will turn it over to Mr. Cooper.
16 MR. COOPER: Thank you, Your Honor.
17 This is just for the three gentlemen who just
18 joined us. All three of you, do you understand that at
19 the end of all the evidence the judge is going to give
20 you some instructions on the law. Does everyone think
21 that they can follow those instructions?
22 PROSPECTIVE JUROR NO. 003: Yes.
23 PROSPECTIVE JUROR NO. 005: Yes.
24 PROSPECTIVE JUROR NO. 006: Yes.
25 MR. COOPER: Even if you don't agree with them

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1 would you still be able to follow them?
2 PROSPECTIVE JUROR NO. 006: Yes.
3 PROSPECTIVE JUROR NO. 003: Yes.
4 PROSPECTIVE JUROR NO. 005: Yes.
5 MR. COOPER: No further questions. Thank you,
6 Your Honor.
7 THE COURT: Okay. Who is going to go?
8 MS. HOJJAT: I am, Judge.
9 Hello, gentlemen. Welcome to the panel. So I
10 just want to go over some things that we have been
11 talking about with the panel. The presumption of
12 innocence.
13 Do any of you feel the presumption of innocence
14 is kind of bogus, kind of ridiculous. He's sitting here,
15 there must be a reason he is sitting here. Any sort of
16 thoughts like that?
17 PROSPECTIVE JUROR NO. 006: He is sitting here
18 because he thinks he is innocent is my presumption.
19 MS. HOJJAT: Does anyone disagree with Mr.
20 Burris? Okay. Great.
21 We talked about him not testifying. We talked
22 about different reasons people might not want to testify.
23 Is there any reason you can think of why someone would
24 not testify?
25 PROSPECTIVE JUROR NO. 006: Sure. The

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1 prosecution would be able to cross-examine him and that
2 could mischaracterize him.
3 MS. HOJJAT: Okay. That's interesting. You are
4 talking about the prosecution cross-examining him. Do
5 you think cross-examination is something that is scary
6 for somebody?
7 PROSPECTIVE JUROR NO. 006: Absolutely. And it
8 could also be misleading.
9 MS. HOJJAT: Do you think cross-examination
10 would be especially scary if somebody is already a
11 convicted sex offender?
12 PROSPECTIVE JUROR NO. 006: It could be very
13 complicated.
14 MS. HOJJAT: If he did not testify in the back
15 of your mind would you be a little bit uncomfortable with
16 it and maybe wonder why he is not speaking?
17 PROSPECTIVE JUROR NO. 005: I think you always
18 have that question in the back of your mind but it does
19 not mean they aren't innocent. They might have a speech
20 impediment or something or some other reason. Who knows.
21 MS. HOJJAT: So you do not know why he is not
22 testifying.
23 PROSPECTIVE JUROR NO. 005: And you heard the
24 jury instruction that Judge Delaney will be giving you at
25 the end of the trial about not holding it against Mr.

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1 PROSPECTIVE JUROR NO. 005: Maybe a little.
2 MS. HOJJAT: If the State fails to meet their
3 burden of proof would you be comfortable of returning a
4 verdict of not guilty?
5 PROSPECTIVE JUROR NO. 005: If they can prove
6 that he is not guilty of the charges.
7 MS. HOJJAT: Let me ask a little bit more about
8 that. Do you think we need to prove that he is not
9 guilty of the charges?
10 PROSPECTIVE JUROR NO. 005: I think it would
11 depend on the case.
12 MS. HOJJAT: Depends on the case. Okay. Judge
13 Delaney is going to instruct you that I don't have to
14 prove anything and Ms. Bonaventure doesn't have to prove
15 anything, so if we don't prove it but the State also
16 doesn't prove that he's guilty, what would your verdict
17 be?
18 PROSPECTIVE JUROR NO. 005: Probably not guilty.
19 MS. HOJJAT: Probably not guilty.
20 PROSPECTIVE JUROR NO. 005: I have to hear all
21 the evidence. We are presuming. So I am going to
22 presume I have heard all the evidence and if I hear all
23 the evidence then he is not guilty.
24 MS. HOJJAT: Okay. Well, let me ask you a
25 question. Right now you have not heard a bit of

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1 McNeill if he does not testify?
2 PROSPECTIVE JUROR NO. 005: Yes.
3 MS. HOJJAT: Could you follow that instruction?
4 PROSPECTIVE JUROR NO. 005: Yes.
5 MS. HOJJAT: Mr. Burris, could you follow that
6 instruction?
7 PROSPECTIVE JUROR NO. 006: Yes, I could.
8 MS. HOJJAT: I want to talk about the State's
9 burden of proof. Mr. Burris, I know you know this one,
10 law school 101, right?
11 PROSPECTIVE JUROR NO. 006: Yes.
12 MS. HOJJAT: The burden of proof, essentially
13 the judge is going to instruct you that myself and Ms.
14 Bonaventure don't have to do anything. We can sit here
15 and do absolutely nothing through the whole trial. And
16 Mr. Cooper has the burden of proving beyond a reasonable
17 doubt every element of every charge that the State has
18 brought against my client.
19 So even if I do not say a word and Ms.
20 Bonaventure doesn't say a word and Mr. McNeill doesn't
21 say a word, if he doesn't prove the burden you must
22 acquit. Are you comfortable with that? Would you have
23 any problem returning a verdict of not guilty if you
24 believe the defense did not mount a defense? Any problem
25 with that?

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1 evidence.
2 PROSPECTIVE JUROR NO. 005: Right.
3 MS. HOJJAT: The State has not met their burden,
4 right? They haven't shown you a bit of evidence.
5 PROSPECTIVE JUROR NO. 005: Right.
6 MS. HOJJAT: If you were sent to the back and
7 handed a verdict form and you had to vote guilty or not
8 guilty, what would you vote?
9 PROSPECTIVE JUROR NO. 005: Probably not guilty.
10 MS. HOJJAT: Mr. Burris, what are your thoughts
11 on that?
12 PROSPECTIVE JUROR NO. 006: Not guilty.
13 MS. HOJJAT: Why is it not guilty?
14 PROSPECTIVE JUROR NO. 006: The State has to
15 prove every single element beyond a reasonable doubt, so
16 they have their check list and they have to meet every
17 single one of them.
18 MS. HOJJAT: Would you agree or disagree with
19 what Mr. Burris just said?
20 PROSPECTIVE JUROR NO. 005: I would agree.
21 MS. HOJJAT: So if you were to vote right now
22 it's got to be not guilty because they haven't met their
23 burden, right?
24 PROSPECTIVE JUROR NO. 005: That's true.
25 MS. HOJJAT: What about your thoughts on cops.

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1 Does anybody here feel that cops are more honest than
2 other witnesses may be?
3 PROSPECTIVE JUROR NO. 003: They are just human
4 beings just like us. They are everyday people.
5 MS. HOJJAT: So you are saying they are human,
6 some are honest and some are not.
7 PROSPECTIVE JUROR NO. 003: Right. Just like
8 everybody.
9 MS. HOJJAT: What did you think about what I
10 said earlier about when I asked the panel, Would a cop
11 ever lie to deliberately try to put pressure on somebody.
12 Is that something you think is possible or, no, that's
13 just crossing the line. A cop wouldn't do that.
14 PROSPECTIVE JUROR NO. 003: I am sure there are
15 cops that probably push the envelope and then there are
16 cops out there that are 100 percent.
17 MS. HOJJAT: Okay. What about you, sir, what do
18 you think?
19 PROSPECTIVE JUROR NO. 005: I think cops are
20 human. They might lie. And there have been incidents
21 where a cop has placed evidence to get somebody guilty.
22 So, yes, overall I think policeman are very honest. From
23 my experience with the police.
24 MS. HOJJAT: Okay. So overall you think they
25 are very honest?

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1 PROSPECTIVE JUROR NO. 005: Yes.
2 MS. HOJJAT: But there are occasions where --
3 PROSPECTIVE JUROR NO. 005: Yeah, there is
4 always a bad apple in the barrel.
5 MS. HOJJAT: Do you think cops get a higher
6 presumption -- if a cop is up there are you going to
7 think, Well, he is more likely to be telling the truth?
8 PROSPECTIVE JUROR NO. 005: Yes.
9 MS. HOJJAT: What about you, Mr. Alper.
10 PROSPECTIVE JUROR NO. 003: I have heard stories
11 from people and there are some pretty bad apples, so I
12 really cannot truly say.
13 MS. HOJJAT: What are your thoughts, Mr. Burris?
14 PROSPECTIVE JUROR NO. 006: Cops are just like
15 people. Stake out a position and if they believe in it
16 then they probably find ways to support that position
17 just like anybody would be. Might be mistaken. Might be
18 lying. Just like lawyers are people.
19 MS. HOJJAT: Okay. Do any of you gentlemen
20 think, Well, he's sitting here, so he must have done
21 something, there must be a reason he's sitting here.
22 A PROSPECTIVE JUROR: Not necessarily.
23 MS. HOJJAT: What about you, Mr. Alper.
24 PROSPECTIVE JUROR NO. 003: Maybe a procedure
25 that was not done properly or maybe something as simple

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1 as that.
2 MS. HOJJAT: Okay. Is it possible he did
3 nothing wrong and he's sitting here?
4 PROSPECTIVE JUROR NO. 003: Could be an
5 interpretation of something done wrong.
6 MS. HOJJAT: What do you think, Mr. Pollard, is
7 it possible that he did nothing wrong and he's sitting
8 here?
9 PROSPECTIVE JUROR NO. 005: Somebody could have
10 framed him.
11 MS. HOJJAT: And then the last thing I want to
12 talk to you guys about was he is a convicted sex
13 offender. Does that cause you any concern in terms of
14 giving him a fair trial?
15 PROSPECTIVE JUROR NO. 003: He probably has to
16 work twice as hard not to be here.
17 MS. HOJJAT: Do you think that it is going to
18 influence your ability to look at things impartially
19 because he is a sex offender?
20 PROSPECTIVE JUROR NO. 003: Not at all.
21 MS. HOJJAT: What about you, Mr. Pollard?
22 PROSPECTIVE JUROR NO. 005: Yes, I think it
23 would influence my judgment.
24 MS. HOJJAT: Okay. Now, when you are saying
25 influence your judgment did you think that if you were

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1 chosen for the jury when you were deliberating would you
2 hold it against him?
3 PROSPECTIVE JUROR NO. 005: I would try not to.
4 I would try to keep it out because that is not what the
5 trial is about.
6 MS. HOJJAT: So even though he is a sex offender
7 you would not find him guilty?
8 PROSPECTIVE JUROR NO. 005: If the evidence
9 proves he is not guilty. If the evidence proves the
10 other way I would find him to be guilty.
11 MS. HOJJAT: But the fact that he is a sex
12 offender --
13 PROSPECTIVE JUROR NO. 005: Would not make a
14 difference.
15 MS. HOJJAT: So if the State does not meet their
16 burden you would not convict him. What are your
17 thoughts, Mr. Burris?
18 PROSPECTIVE JUROR NO. 006: I would not hold it
19 against him. It does not mean that he actually was a sex
20 offender. I would not hold it against him.
21 MS. HOJJAT: Okay. That's interesting, you said
22 convicted, that does not mean that he necessarily is one.
23 PROSPECTIVE JUROR NO. 006: There are people
24 that get convicted incorrectly.
25 MS. HOJJAT: That's interesting. For the people

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1 in the back who maybe couldn't hear him he said there are
2 people who get convicted incorrectly.
3 So you believe it's possible for a person to be
4 convicted of a crime they didn't commit?
5 PROSPECTIVE JUROR NO. 006: Sure. I cannot help
6 but go through some of the complications of what is at
7 work here. People make mistakes. Cops make mistakes.
8 Lawyers, not the Court of course. I would not hold it
9 against him if he is here for a different charge.
10 MS. HOJJAT: And you would only look at the
11 evidence of --
12 PROSPECTIVE JUROR NO. 006: I would only look at
13 that charge.
14 MS. HOJJAT: Does anybody here feel differently?
15 Seeing no hands.
16 I have no more questions, Your Honor.
17 THE COURT: We'll qualify the panel and that
18 allows me to excuse the remainder of the panel. But we
19 have qualified the 24 that we need to qualify to
20 ultimately wind up with a panel of 14. I am going to
21 allow the attorneys now to complete their final selection
22 process. The remainder of you are excused. I do believe
23 there is someone in Jury Service so just check in for
24 further instruction. Thank you very much for your
25 service.

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1 So what is going to happen now is counsel is
2 going to make their final selection, and unlike in
3 previous times when I read off names and numbers that
4 meant that you are excused then you know that you are on
5 the panel. The final selection will leave us with a
6 panel of 14 individuals, 12 of who will deliberate and
7 two of whom will be alternates throughout the course of
8 the trial. You will not know obviously which of you are
9 the alternates.
10 I am going to read some basic instructions to
11 sort of orient you for how the process will continue for
12 those of you who are able to and will in fact remain on
13 the panel. And for those of you who are not selected, we
14 just want to thank you again. It's been a long afternoon
15 and we appreciate your service very much.
16 I should also note for those who are going to be
17 returning tomorrow that we are going to start tomorrow at
18 1:00 p.m., so you will have the morning free and maybe
19 you can get some work in, and we do expect to break at or
20 around 5:00. Typically we don't go past 5:00. Today, of
21 course, I wanted to make sure we had the full panel
22 before I let the remainder go. So that is for your
23 schedule tomorrow.
24 During the course of this trial, the attorneys
25 for both sides, the parties, the witnesses and court

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1 personnel, other than the marshal are not permitted to
2 converse with members of the jury. These individuals are
3 not being antisocial. We are bound by ethics and the law
4 not to talk to you, to do so might contaminate your
5 verdict whether intended or not.
6 You are admonished additionally that you are not
7 to visit the scene of any acts or occurrences made
8 mention of during the trial unless specifically directed
9 to by me and you are not to investigate this case or
10 anyone who has anything to do with this case on your own
11 or undertake any legal or factual research on your own.
12 Those are the very, very basic general
13 instructions. Basically, what will happen is obviously
14 each day when you return here tomorrow at 1:00 -- but you
15 never know who might be in the hallway, it might be a
16 witness, we just don't want anybody to misunderstand if
17 we happen to see you if you run into us somewhere and
18 say, Nice day or Hello or wave and somebody from across
19 the hallway sees that and doesn't understand that that is
20 not a conversation about the case. We just try to avoid
21 improper appearances.
22 So you can converse with and speak to the
23 marshal, but otherwise the rest of us will not converse
24 with you. The safest people to talk to are the ones
25 wearing the jury badges just like you because they are

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1 under the same admonishment.
2 You are not to discuss this case with anyone,
3 not to do any research to try to understand the case
4 better. Whatever your verdict is will be based on the
5 evidence that is provided in this trial as you find it to
6 be, and the law as I give it to you in the instructions
7 at the end of this case. And then you will deliberate
8 from that and that alone.
9 Again, this is a criminal case brought by the
10 State of Nevada, oftentimes referred to as the State.
11 And it is based upon what will be the information or a
12 charging document. That will be read to you tomorrow
13 before we begin opening statements, and you will have a
14 specific understanding of what the charges are that have
15 been filed against Mr. McNeill.
16 You need to be reminded, however, and I have
17 already gone over this a little bit in the questioning of
18 the jury panel, but that this charging document is simply
19 that. It is simply a charge. It is not in any sense
20 evidence of the allegations it contains. The defendant
21 has pleaded not guilty to these two charges that are set
22 forth in the information that you will hear tomorrow.
23 The State, therefore, has the burden of proving
24 each of the essential elements of the charges beyond a
25 reasonable doubt. As the defendant sits there now he is

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1 innocent. And unless and until he is proven guilty by
2 the State he will remain so.

3 The purpose of this trial is to determine
4 whether the State will meet the burden. It is your
5 primary responsibilities as jurors to find and determine
6 the facts.

7 Under our system of criminal procedure you are
8 the sole judges of the facts. You are to determine the
9 facts from the testimony you hear and the other evidence
10 including exhibits introduced in court. Anything you
11 hear or see outside of courtroom is not evidence and may
12 not be considered by you.

13 It is up to you to determine the inferences
14 which you feel may be properly drawn from the evidence.
15 At times I may sustain objections or direct that you
16 disregard certain testimony or exhibits. You must not
17 consider any evidence to which an objection has been
18 sustained or which I have instructed you to disregard.

19 Anything that you may, again, have seen or heard
20 outside of the courtroom is not evidence and must be
21 disregarded. You must also not be influenced in any
22 degree by any personal feelings or sympathy or prejudice
23 against the State or the defendant. Both sides are
24 entitled to the same fair and impartial consideration.
25 When considering the weight and value of the testimony of

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1 verbally by you engaging with the witness. What will
2 happen is once the witness questioning has commenced and
3 completed then I will invite jurors if they have
4 questions to write a question down. You will all be
5 given notepads and pens, and you will write your question
6 or questions down.

7 I will then go over the questions with counsel
8 and if they are permitted to be asked, they are proper
9 questions and done in the proper format, then we will ask
10 it of the witness. The Court will read the questions
11 verbatim to the witness. The witness will answer and
12 counsel will be given an opportunity to follow-up.

13 There is no right or wrong way to do it, it's
14 just that you are governed by the same rules that counsel
15 are governed by. So obviously you can't ask something
16 that would be impermissible to be asked, and you may or
17 may not know what that is, but the Court will make that
18 determination.

19 And your questions of course should be based on
20 what evidence and questioning has already taken place,
21 things for clarification or further questioning on
22 certain topics that have been asked. But anything that
23 is outside of the scope of what has been asked is also
24 not available to you. And there may be other
25 restrictions. But you do not have to worry about that.

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1 any witness you may take into consideration the
2 appearance, attitude and behavior of the witness, the
3 interest of the witness in the outcome of the case, if
4 any, the relation of the witness to the defendant or the
5 State, the inclination of the witness to speak truthfully
6 or not, and the probability or improbability of the
7 witness's statement and all of the facts and
8 circumstances in evidence, thus, you may give the
9 testimony of any witness just such weight and value you
10 believe the testimony of the witness is entitled to
11 receive.

12 There are two kinds of evidence; direct and
13 circumstantial. Direct evidence is testimony by a
14 witness about what that witness personally saw or heard
15 or did. Circumstantial evidence is testimony or exhibits
16 which are proof of a particular fact from which if proven
17 you may infer a second fact.

18 You may consider both direct and circumstantial
19 evidence in deciding the case. The law permits you to
20 give equal weight to both. But it is of course for you
21 to decide how much weight to give to any of the evidence.

22 This is something new that most jurors are not
23 familiar with if they haven't served recently, but you
24 are given the opportunity to yourself ask questions of
25 the witnesses when they testify. This is not done

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1 If you have a question please do not hesitate to write it
2 down during the course of the testimony because, again,
3 at the end I will ask for questions and you will show me
4 by way of hand if you have a question and my marshal
5 will collect it and bring it to me and then we will
6 proceed.

7 Remember that the questions must be factual in
8 nature and are designed to clarify information already
9 presented. Of course you may not place any undue weight
10 on a response just because a juror asked it and you
11 should not have any adverse inference drawn if the Court
12 determines not to ask a question. Do not speculate as to
13 why that may be the case; there could be any number of
14 reasons.

15 Opening statements and closing arguments of the
16 attorneys are intended to help you in understanding the
17 evidence and applying the law, but they are not
18 themselves evidence. Until this case is submitted to
19 you, again, you must not discuss it with anyone even your
20 fellow jurors. You cannot discuss it with anyone
21 outside, I think everyone knows that, and anyone else
22 means family members and friends. You can of course let
23 them know that you are on a criminal trial jury but that
24 is it until the case is done and you are discharged, at
25 which point you can discuss it with anyone in any way you

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1 see fit. But you are also not entitled to discuss it
2 with other jurors because we don't want there to be any
3 appearance or actual deliberation occurring until all the
4 evidence is received and you have now been instructed on
5 the law and you are now ready to deliberate.

6 If for any reason you cannot hear a witness or
7 you have any other reason to get the Court's attention
8 during the course of while we are in trial, please raise
9 your hand. I will acknowledge you and you can make a
10 written note or you can give a note or speak to the
11 marshal on a break.

12 I will take regular breaks with witness
13 testimony to let everybody have the opportunity to use
14 the restroom and stretch their legs. Again, if you need
15 to get in touch with the Court let the marshal know.

16 I may take notes during the course of the trial
17 of what the witness's is testimony. Please do not make
18 any inference from that action. I am required to prepare
19 for legal arguments and any objections that may be made
20 by counsel and also to put things in the record that are
21 appropriate to put in the record that might take place
22 outside of the jury's presence.

23 You, of course, should be prepared to take your
24 own notes. You are not required, but we will provide a
25 notepad and pen for you to do that.

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1 You will not have a transcript at the end of the
2 trial to consult and readbacks are very, very difficult.
3 And if while you are deliberating want to identify a
4 necessary part of the trial be read back you have to be
5 very specific about what that is so the reporter can
6 gather her notes. That is not encouraged, so we are
7 encouraging you to take notes during the course of the
8 trial.

9 Of course we do not want you to be so busy
10 taking notes of certain testimony that you miss
11 subsequent testimony. So you really have to figure out
12 how to balance receiving the information and taking notes
13 that will help remind you at the end of trial.

14 The trial will proceed in the following manner.
15 The Deputy District Attorney will make an opening
16 statement, which is an outline to help you understand
17 what the State intends to prove. Of course, again, you
18 are reminded that is not in and of itself evidence. That
19 is simply helping you to understand what is coming and
20 what the State will prove.

21 Next the defendant's attorney may but does not
22 have to make an opening statement. Opening statements
23 serve as introductions to the evidence to the party
24 making the statements intend to prove.

25 The State will then present its evidence and

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1 counsel for the defendant may cross-examine the
2 witnesses.

3 Following the State's case the defendant may
4 present evidence if they chose and the Deputy District
5 Attorney may cross-examine the witnesses. However, as I
6 have said and we talked about repeatedly in this voir
7 dire process, the defendant is not obligated to present
8 any evidence.

9 After all of the evidence has been presented, I
10 will instruct you on the law. After the instructions on
11 the law have been read to you, each side has the
12 opportunity to present oral argument in closing.

13 What is said in closing just like what is said
14 in opening is not evidence. It is simply designed to
15 summarize and interpret the evidence, remind you what has
16 been provided into evidence and give you suggestions on
17 how to interpret.

18 Since the State has the burden to prove the
19 defendant guilty beyond a reasonable doubt to each of the
20 charges and the elements of each of those charges the
21 State has the right to open and close the argument.

22 After the arguments have been completed you will
23 retire to deliberate your verdict. Again, let me remind
24 you that until the case is submitted to you do not talk
25 to each other about it or anyone who has anything to do

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1 with it until the end of the case when you go to the jury
2 room to decide on your verdict.

3 Do not talk with anyone else about this case or
4 about anyone who has anything to do with it until the
5 trial has ended and you have been discharged as jurors.
6 Anyone else includes members of your family and friends.
7 You may tell them that you are a juror on a criminal case
8 but do not tell them anything else about it until after
9 you have been discharged by me.

10 The further detailed instructions obviously that
11 you will need to have some of these will be repeated and
12 then additional instructions added including, again, the
13 elements of the charges and all of the instructions you
14 need to have will be made available to you when the case
15 closes before closing arguments and you will each get a
16 copy set so that you have that to refer to. And you will
17 also have all the evidence that was presented in the
18 trial at the time you deliberate and you will have the
19 form of verdict for you to complete your duty.

20 I will check in with counsel at this time to see
21 where we are in the process.

22 MS. BONAVENTURE: On the last one. We're almost
23 done.

24 THE COURT: All right. So as soon the counsel
25 will complete their selection process we will announce

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1 who the 14 jury members. If any of you do need a letter
 2 from the court for your work, we will be happy to provide
 3 one to you, you just have to let the marshall know and my
 4 JEA will prepare one for you. And you will get
 5 additional instructions from the marshal.
 6 Okay. It looks like we are ready to go.
 7 MS. HOJJAT: Your Honor, may we approach
 8 briefly?
 9 THE COURT: You may.
 10 (Discussion held at the bench.)
 11 THE COURT: I appreciate the opportunity to
 12 clear up with counsel a question that they had. We have
 13 now done that. The 14 names are now going to be read and
 14 let me remind you if you do not hear your name you will
 15 remain until the names are all called and then you will
 16 be excused.
 17 THE CLERK: Juror No. 1 is Jason Alper; Juror
 18 No. 2, Gerald Rivera; Juror No. 3, Brian Lagomarsino;
 19 Juror No. 4, Jeffery Swain, Juror No. 5, Jacob Spooner;
 20 Juror No. 6, Isaac Vilchez; Juror No. 7, Jason Moore;
 21 Juror No. 8, Idalia Rice-Wilson; Juror No. 9, Justin
 22 Walker; Juror No. 10, Gilbert Canales; Juror No. 11,
 23 Steven Manning; Juror No. 12, James Bakkedahl; Juror No.
 24 13, Bonnie Schultz, and Juror No. 14 is Joey Hamilton.
 25 THE COURT: All right. If you did not hear your

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1 your deliberations, how long that takes of course depends
 2 on how long you wish to take in those deliberations.
 3 Thank you. I will go ahead and excuse you for
 4 today. We will see you back tomorrow at 1:00. Thank
 5 you.
 6 (Jurors exit the courtroom.)
 7 THE COURT: We do have some things that we need
 8 to put on the record. There was a challenge raised and I
 9 apologize I misunderstood the nature of the challenge.
 10 When counsel asked to approach, the challenge that was
 11 raised was that the five preemption selections made by
 12 the State were all to white males. The same as the
 13 defendant. There was some discussion here at the bench
 14 with regard to the basis, appropriate basis for a Batson
 15 challenge and whether or not that would be an appropriate
 16 basis which is why I had indicated that I wanted to have
 17 that discussion on the record.
 18 I had made a determination based on the full
 19 argument that was made at the bench that the Court would
 20 not change the makeup of the panel as selected by
 21 counsel, but that I would allow for argument to be made
 22 in the record.
 23 One of the things that I did note at the bench
 24 was that a large number of the remaining jurors are also
 25 white males and that was just noted in terms of the

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1 name your are excused.
 2 For those of you who are remaining thank you in
 3 advance for your time today. We very much appreciate,
 4 the counsel and the Court, that you will serve as jurors
 5 in this case and fairly and impartially deliberate once
 6 you receive the evidence and the law from me.
 7 We are going to start tomorrow at 1:00 with
 8 opening statements and we will read the Information and
 9 take at least two of the three witnesses who were
 10 identified by the State which then should complete our
 11 afternoon.
 12 I am still trying to determine the return time
 13 on Wednesday. It is possible that it could be as late as
 14 1:00. It will really depend on what the Court's calendar
 15 looks like. I will certainly be able to tell you
 16 tomorrow whether or not we will return in the morning or
 17 in the afternoon. Right now I would say it will most
 18 likely be the afternoon on Wednesday as well. So at
 19 least your mornings are free and hopefully will have as
 20 little impact on your work and personal life as possible.
 21 But, again, very serious business that we will
 22 be doing here in terms of determination of whether the
 23 State meets its burden on the charges of Mr. McNeill.
 24 And we do anticipate completing at 5:00
 25 tomorrow. Once we provide the case to you and you begin

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1 discussion.
 2 But let me go ahead and turn it over to counsel
 3 for Mr. McNeill to make any further argument or clearer
 4 record on this challenge.
 5 MS. HOJJAT: Thank you, Your Honor. Yes, we
 6 were challenging the fact that all five of the State's
 7 preemptory challenges were white males. I understand the
 8 Court's characterization of who is left on this panel,
 9 however, the defense would respectfully disagree in terms
 10 of Mr. Rivera who is a Hispanic male. I think Mr.
 11 Vilchez is a Hispanic male. Ms. Rice-Wilson is an
 12 African-American female. So there are people -- we are
 13 not just looking at a panel that is all white males.
 14 THE COURT: And Mr. Canales is Hispanic.
 15 MS. HOJJAT: Yes. And Mr. Canales is a Hispanic
 16 male. All of the challenges to white males, frankly, it
 17 shows a pattern of conduct and so we raised a Batson
 18 challenge at the bench. The Court did deny that
 19 challenge. We did ask the State for race-neutral reason.
 20 THE COURT: The State indicated that we would --
 21 let's just be clear, too, of the five preemptions there
 22 was not a dispute raised as to Juror No. 1, Darrell Hoss
 23 --
 24 MS. HOJJAT: That's correct.
 25 THE COURT: -- as we know, and I don't think we

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1 necessarily made any record yet of the cause challenges,
2 but Mr. Hoss was the one juror that the State asked to
3 have removed for cause. The Court determined that he did
4 not reach the level of bias that would be necessary to
5 remove him for cause, that he had indicated ultimately
6 that he would do his analysis, fair and impartial.

7 He indicated concern and questions about the
8 criminal justice system, primarily it appeared to be a
9 bias of the system as a whole against both sides. In any
10 given criminal case I felt that his responses were
11 sufficient that he had not exhibited a basis for the
12 Court to excuse him for cause, so I did encourage that if
13 there was going to be an excuse it would have to be a
14 preemptory challenge which the State exercised as their
15 fifth of their challenges. So that one was not being
16 disputed.

17 But as to Jury No. 3, Jace Mande; Juror No. 16,
18 Richard Benson; Juror No. 21, Martin Burgess; and Juror
19 No. 24, John Burris. And I am referencing these jurors
20 by their seat number not the juror number. Just to be
21 clear in our record, Juror No. 055, Jace Mande; Juror
22 927, Richard Benson; Juror No. 000, Martin Burgess, and
23 Juror No. 006, John Burris, those are the ones that are
24 being challenged.

25 MS. HOJJAT: That's correct, Your Honor. Those
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1 reason. We are seeing four white males kicked off of
2 this jury and we would ask the State for a race-neutral
3 reason.

4 THE COURT: Mr. Cooper, you did indicate that
5 you had race-neutral reasons. I had speculated at the
6 bench that I can determine race-neutral reasons to at
7 least two of the four that are being challenged by them.
8 I wanted to give you the opportunity -- my basis, just so
9 it's clear in the record, for not allowing the jurors to
10 step out and have this discussion before anyone was
11 excused was I do not believe that Batson would apply in
12 this circumstance; however, to the extent that that
13 Batson does apply in this circumstance we need to have a
14 complete record. And I will ask Mr. Cooper at this time
15 if he has race-neutral reasons.

16 MR. COOPER: Yes, Your Honor. And I would
17 concur with the Court's assessment, I think Batson does
18 not apply in this type of scenario. I would also note
19 from my calculation, obviously, I did not go into
20 anyone's ethnicity or background. But there were still
21 eight white males that were still on the jury even now.
22 So, obviously, I was not just kicking white males. I
23 mean I had to kick someone. There was a lot of white
24 males on this jury. So by default a lot of white males
25 are going to be kicked.

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1 are the challenges we raised at the bench.

2 THE COURT: And your basis for believing that
3 Batson would apply to white males is simply that they
4 share the same race identification with the defendant and
5 therefore that's the circumstance --

6 MS. HOJJAT: Well, Your Honor, in this case they
7 do share the same race identification as the defendant,
8 however, that is not the basis for the challenge. It is
9 our position that Batson stands for the idea that no
10 group should be discriminated against based on their
11 gender that Batson and the follow-up case -- I apologize,
12 I cannot remember the name of the case, but the case
13 dealing with gender essentially that race and gender --

14 THE COURT: An Alabama case.

15 MS. HOJJAT: Right. That those cases say race
16 and gender should not be a basis for discrimination and
17 it doesn't matter whether the individual is of a
18 classification that is classified as a minority or
19 classified as a majority. The idea is a person should
20 never be excluded from service based upon their race or
21 ethnicity.

22 And in this case we have five white males
23 kicked. One of whom we understand the State raised a
24 cause challenge on, but the other four of whom there does
25 not appear to be as far as we can see a race-neutral

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1 But with that said, Your Honor, going through my
2 race-neutral reason, I think the juror that was in
3 position 3, Mande, I think that was the first person I
4 kicked. He actually indicated that he had a dispute with
5 police officers back in New York. He seemed to indicate
6 that it was, I guess, a very contentious dispute and
7 police officers were subsequently falsifying issues with
8 him or his business in order for them to drum up business
9 on themselves.

10 Obviously, this Court is aware, my witnesses in
11 this case are law enforcement and he had prior bad
12 experience with law enforcement and could definitely
13 taint his ability to be fair and impartial when he sees
14 somebody with a badge get up there and says something
15 happened. That was my reason for that juror.

16 Benson, I think that was the juror in position
17 16, Richard Benson. He indicated that he was arrested
18 for drug possession and littering. Obviously, the
19 littering is not as concerning as drug possession, but he
20 had a bad interaction with police officers. He also
21 indicated that he had no kids. That was also a concern
22 to the State as well.

23 THE COURT: Can you be more specific on that
24 concern.

25 MR. COOPER: Well, Your Honor, no kids was just

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1 indicating to me that he had no real responsibilities. I
2 think he also indicated that he was also single. He is
3 single, he has no kids and he gets picked up for drugs
4 and littering and that was not the type of person that I
5 would want on my jury because obviously he has shown that
6 he does not really have that much in responsibility, and
7 in this case that is going to be very important to
8 actually ascertain what the responsibility of the
9 defendant had, whether or not they were reasonable to a
10 certain extent, and whether or not he followed through
11 with those responsibilities. For someone that does not
12 have the responsibilities that a lot of people his age
13 have, I would say I did not want him on my jury.

14 THE COURT: Okay.

15 MR. COOPER: And the next one was Burgess.
16 Mr. Burgess, he also indicated that he did not have
17 children as well. He did have a wife, but he didn't have
18 children. Again, a man of that age without children
19 doesn't have the responsibility, not that's he wrong in
20 that, he just doesn't have the responsibility that
21 someone with children have so he might not look as
22 favorably upon the responsibilities that are being put
23 upon this defendant thinking that they are
24 overburdensome, that he shouldn't have to go through with
25 that.

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1 And then also he did indicate that he took a law
2 class in college and he seemed to be very proud about
3 that so I think that he might try to interpret the law in
4 his own way and not give full deference to this court
5 that's due. And that's actually the same reason I kicked
6 the last one, Burris, No. 24. He was an attorney. He
7 made a lot of statements that basically he knows what the
8 burden is and that people are -- I think he said people
9 are wrongfully accused or something.

10 He said a couple things to me that indicated to
11 me that he had somewhat of a bias against the prosecution
12 and actually as he was leaving he looked at the defense
13 attorneys and said, Good luck. So, I mean, it seemed
14 that he did have a bias and that bias was confirmed when
15 he said good luck to them. So I had a reason for him as
16 well.

17 And that would be the same reason I had for
18 Mr. Burgess who took a contract law class and there was
19 some contracts that are going to be involved in this case
20 and he might think he knows too much.

21 THE COURT: Okay. Anything you would like to
22 add?

23 MS. HOJJAT: Yes, Your Honor. And I just want
24 to clarify, the only reason given for Mr. Benson was that
25 he has no kids, right?

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1 MR. COOPER: I did not say that, Your Honor. He
2 was single, had no kids and he also was arrested for drug
3 possession and littering.

4 MS. HOJJAT: Your Honor, I do have some
5 responses to that.

6 THE COURT: Okay.

7 MS. HOJJAT: The third prong of Batson is the
8 defense has the opportunity to present the race-neutral
9 reason are pretextual. At this point we would submit to
10 the Court that the State has now made a reference that
11 two individuals were stricken, at least partially because
12 they had no kids. Mr. Lagomarsino also indicated that he
13 has no kids. Mr. Vilchez also indicated that he has no
14 kids.

15 In terms of that being the reason for Mr. Benson
16 and Mr. Burgess to be kicked -- in terms of Mr. Benson
17 being kicked because he had some sort of criminal arrest,
18 Mr. Morales pretty much confessed to first degree
19 kidnapping during voir dire today and he was not kicked
20 off of the jury. He is not a white male. So, I mean, if
21 we are talking about people who committed crimes and had
22 contact with law enforcement, he was arrested for some
23 really serious charges; kidnapping and assault with a
24 deadly weapon. He was not kicked off. He is not a white
25 male. We have Mr. Lagomarsino, we've got Mr. Vilchez who

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1 has no children. So we would submit to the court that
2 these are pretextual race-neutral reasons to kick these
3 people off the jury.

4 In fact, there were quite a few people who
5 talked about having had contact with law enforcement who
6 haven't had arrests who were not kicked by the State.

7 MR. COOPER: And, Your Honor, I can't kick
8 everyone. That's not as simple as it goes. I have to
9 base it on their answers so that's why I kicked them. It
10 had nothing to do with their race. I can't kick
11 everyone. I don't know what I'm supposed to do.

12 MS. HOJJAT: And, Your Honor, if I can just
13 finish the record. I apologize.

14 THE COURT: No, go ahead.

15 MS. HOJJAT: As to Mr. Burris, I mean, he
16 indicated that he would follow the burden and follow the
17 presumption of innocence. He certainly didn't say
18 anything about knowing better than anybody what the
19 burden is or understanding, you know, he's going to
20 follow his own law, he's not going to follow the Court's
21 instruction. I heard him say, Good luck as he walked out
22 of here. He kind of looked at both tables and said, Good
23 luck to everybody and walked out. We certainly didn't
24 interpret him as saying good luck to us. It seemed like
25 he was talking to all counsel in general who were going

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REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, BRENDA SCHROEDER, a certified court reporter in and for the State of Nevada, do hereby certify that the foregoing and attached pages 1-207, inclusive, comprise a true, and accurate transcript of the proceedings reported by me in the matter of THE STATE OF NEVADA, Plaintiff, versus STEVE DELL MCNEILL, Defendant, Case No. C297725, on July 7, 2014.

Dated this 2nd day of January, 2015.

/s/ Brenda Schroeder
BRENDA SCHROEDER, CCR NO. 867

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to be in trial.
So we would submit that these are pretextual reasons that these four individuals were kicked because they were white males.

THE COURT: Well, again, the Court indicated it does not feel that Batson would apply in these circumstances to the extent that that would apply in these circumstances the Court would find that there is race-neutral basis that has been articulated.

I understand you're arguing it's pretextual because there may be others that on balance maybe that one should have been struck before this one was struck, but as counsel pointed out there are only a certain number of challenges.

Just a couple things that I would add for the record for what they're worth. There are 8 white males by my count that remain on the panel out of 12 that will deliberate. There are 9 total out of the 14 including the one alternate. If Mr. Burris had not been selected he would have been the alternate instead of Mr. Hamilton, so we remain with a white male in the second alternate position, just not Mr. Burris.

And, again, by my count there are 8 white males of the 12 that will ultimately be deliberating unless we lose a juror for whatever reason and have to go to an

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alternate, at which point we have a white female and a white male in the alternate position. So that's just information to conclude the record.

But the Court did make the determination that the panel would remain as is and I trust we will have fair and impartial jurors that will help us receive the evidence and weigh it and reach a verdict. So I will go ahead and conclude today and see you all at 1:00 tomorrow.

I do need to know that at some point tomorrow I will get jury instructions?

MR. COOPER: Yes, Your Honor.

THE COURT: Because I can't receive them on Wednesday morning and still have the opportunity to settle them and get them ready to go. If I can get them at least - well, it depends. As long as I have them by the time we leave court or sometime in the evening, just not too late, it gives me an opportunity to work on them.

MR. COOPER: Yes, Your Honor.

(Proceedings were adjourned.)

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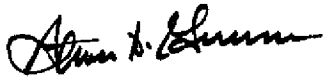
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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

Plaintiff,

vs.

STEVE DELL MCNEILL,

Defendant.

)
)
) Case No. C-14-297725-1

)
) Dept No. XXV
)
)
)
)
)

BEFORE THE HONORABLE JUDGE JENNIFER TOGLIATTI

JULY 8, 2014, 1:00 P.M.

REPORTER'S TRANSCRIPT
OF
JURY TRIAL - VOL. 2

APPEARANCES:

(See separate page)

REPORTED BY: BRENDA SCHROEDER, CCR NO. 867

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TUESDAY, JULY 8, 2014, 1:00 P.M.

PROCEEDINGS

* * *

THE COURT: Is there anything we need to address before we bring in the jury?

MS. HOJJAT: Yes, Your Honor. We did have a couple of preliminary matters outside the presence.

First, before we start with the legal preliminary matters, when we were coming up one of the jurors scurried in the elevator and got in behind us and got in the elevator with us and we just ignored him, but if we could just ask the Court to remind them that we are not ignoring them, it's just --

THE COURT: I did read that in the instructions when you were doing your selection yesterday.

MS. HOJJAT: Right. He tried to say hi and we just ignored him.

THE COURT: I told them that we were not to even acknowledge them, but I will remind them of that.

MS. HOJJAT: Thank you very much, Your Honor.

As to the legal matters --

MR. COOPER: Your Honor, I'm sorry. Can we also just when the juror comes in maybe at the next break we can just put on the record what juror that was.

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MS. BONAVENTURE: It's the one that sits in the far corner over there.

MS. HOJJAT: Yeah, Vilchez I think. I believe it's Juror No. 9, the young Hispanic male, Vilchez.

THE COURT: All right. We'll verify that with him and we will remind them in the record.

MS. HOJJAT: Okay. He did not say anything and we didn't say anything. I don't see any problems with it. I just do not want the jurors to think we are ignoring them or anything.

THE COURT: I covered it yesterday but I will remind them of this now that they are in fact on the panel.

MS. HOJJAT: Thank you very much, Your Honor.

As to the legal matters, we did put it on the record yesterday that we had received the State's proposed redactions from the Division of Parole and Probation that we were working on with the State to agree upon the redactions. We have agreed upon most of the redactions. There are two matters that we wanted to bring to the Court's attention that we disagreed on.

THE COURT: All right.

MS. HOJJAT: If I could approach with the relevant reports.

THE COURT: Sure.

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MS. HOJJAT: Thank you. The reports from March 29, 2013 and April 15, 2013, the areas with the red tabs the DA has agreed to redact. What we are worried about is for the March report, the DA has agreed to redact reference to the knife on page 2 of the March report; however, there is also reference to unemployment and food stamps that we would ask to be redacted.

We believe there is no probative value to the fact that he is receiving unemployment benefits or food stamp benefits. We are not disputing he was transient, the DA will be able to present that to the jury that he was transient. But we believe that unemployment and food stamps are prejudicial.

A lot of people feel very, very strongly about government entitlement, about individuals receiving entitlement. A lot of people have a lot of prejudices towards people who receive entitlement.

We did not voir dire the jury on this issue. It is not probative to any fact in this case. It is not probative to a single alleged violation. It's not probative to the fact that he's a sex offender. There is just no probative value to the fact that he's on food stamps and unemployment.

There's probative value to the fact that he was transient and living on a street corner, and those aren't

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facts that we are trying to get redacted. But the fact that he is on food stamps and unemployment we would ask to be redacted.

THE COURT: What is your other issue and then we'll hear from Mr. Cooper.

MS. HOJJAT: The second page of the August report, we received these reports last week, Your Honor. To put this in context, all of these Division of Parole and Probation monthly reports we received this last week. There is some notes jotted at the bottom.

There is one in particular that talks about no one time weekly OV. We did not know what that was. We were just being informed today and the Parole and Probation officer did say that she tried to put him on once weekly office visits. There was no testimony on this at the preliminary hearing. This was not included in any reports, police report, Parole and Probation reports that we originally received.

None of the discovery that we had up until last week mentioned that. And then once we received that we didn't know what "OV" was. It is only today that we are learning what that is, so we would ask that that be redacted as well given that the defense has had no notice of this.

And, frankly, it's a new theory of the case that

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1 we are learning about mid-trial. And the not registering
2 every 30 days that's also something that was never
3 brought up at the preliminary hearing, never brought up
4 in any of the reports.

5 Failure to have his address approved and failure
6 to change his address after he moved were allegations but
7 not registering every 30 days has never been an
8 allegation in this case. And it has not been contained
9 in any of the reports.

10 THE COURT: Just looking back and then looking
11 obviously at the prior Amended Information but not the
12 one that we are going to read to the jurors --

13 MS. HOJJAT: Yes, Your Honor.

14 THE COURT: -- but I have as the basis for the
15 violation: Failure to submit a UA, failing to report,
16 failing to have residence approved, failing to cooperate
17 with supervising officer, failure to maintain and abide
18 by curfew and being terminated from counseling.

19 MS. HOJJAT: Right. And we are not opposing the
20 first two bullet points. We are only asking that the
21 last two bullet points be redacted. And when we are
22 talking about failing to report in the information, the
23 testimony at preliminary hearing and what was contained
24 in the police report and the original Parole and
25 Probation reports that we received was after August of

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1 first issue, I guess, I don't see what the prejudicial
2 effect is for knowing that he is on food stamps or
3 unemployment.

4 THE COURT: Well, I think more importantly they
5 are arguing relevancy.

6 MR. COOPER: It is relevant because obviously
7 this officer is going to have to be able to attest how he
8 was being able to live. He is a homeless individual, so
9 she is not going to get into he was panhandling or
10 breaking the law or anything like that.

11 I mean, he had a governmental entitlement
12 there's prejudicial effect. But she needs to be able to
13 say that he wasn't living at a homeless shelter, which
14 she actually tried to get him into and he said no. And
15 one of the reasons for that is because he already had
16 food stamps, so he didn't really have to go to a homeless
17 shelter. He was actually getting unemployment benefits
18 which actually goes directly to why he was not employed.

19 So there is no prejudicial effect whatsoever and
20 I think it is probative.

21 THE COURT: I am not sure I am tracking to the
22 probative value. I apologize. Bear with me. I did eat
23 lunch so I should be more in tune, but why does your
24 officers need to go into the details by what means he was
25 living. The whole point is, is it not, where he

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1 2013. That has always been the theory of the case that
2 we were given. That's always been the theory of the
3 violation that we were given was between August of 2013
4 and March of 2014. This now talking about refusing to
5 report once a week.

6 THE COURT: Well, one of my points of confusion,
7 and I apologize, you had referenced that you had reports
8 from March 29th of 2013, and April 15th, 2013, but you
9 actually handed me a report from August 15th.

10 MS. HOJJAT: I'm sorry. I meant August not
11 April.

12 THE COURT: So this is within the time frame.

13 MS. HOJJAT: Yes, Your Honor. It's just the
14 idea of him having to report once a week and it has never
15 been brought up before.

16 THE COURT: Okay. Anything further before I
17 hear from Mr. Cooper?

18 MS. HOJJAT: There was one other matter.

19 THE COURT: Okay. My clerk just informed me
20 that there may be some dispute as to how the Second
21 Amended Information was going to be handled. But we'll
22 deal with that later.

23 All right. Mr. Cooper, on these two concerns
24 with regard to the Parole and Probation monthly reports.

25 MR. COOPER: Yes, Your Honor. Your Honor, the

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1 identified his address to be and she went there and he
2 wasn't there for her search. Or what is the probative
3 value of the use of government entitlement, if you want
4 to call them that. I agree that there are people who
5 differ on these type of things. I don't know that this
6 is substantially prejudicial, but I also don't know that
7 it's relevant.

8 If there is relevance then we have to determine
9 that it's substantially prejudicial and would be
10 excluded, but I am not seeing the relevancy.

11 MR. COOPER: Your Honor, my position is I think
12 it is relevant in order to be able to ascertain how he
13 was able to live. This officer --

14 THE COURT: For what purpose to prove your case?

15 MR. COOPER: Your Honor, because this officer
16 was trying to get him into some type of homeless shelter.
17 He didn't go to that homeless shelter. Obviously, if he
18 would have went to that homeless shelter, because he
19 didn't have money or something of that nature, he would
20 have actually had a bed, had an actual place she could
21 have went to see him at this Catholic charity.

22 Because he decided not to do that because he was
23 getting food stamps, that's why he was sitting on the
24 street or laying behind the church or wherever he was
25 laying at.

11

1 But it all goes back to I tried to get him into
2 a Catholic charity, he didn't want to go because he
3 already had money.

4 MS. HOJJAT: Your Honor, if I could just
5 respond?

6 THE COURT: Yes.

7 MS. HOJJAT: The State is almost trying to turn
8 it into a bad act. That plays directly into the
9 stereotypes and the prejudice.

10 THE COURT: Well, what is your theory about why
11 he wasn't living somewhere where she could go and find
12 him, because he had to live on the street, right? I
13 mean, isn't that your theory? I mean, I am not trying to
14 put words in your mouth. I don't know what you are going
15 to present to the jury; I haven't heard it yet.

16 But your defense, or at least your counter to --
17 I mean, the bottom line is he has requirements as a
18 convicted sex offender to comply with lifetime
19 supervision agreement requirements.

20 MS. HOJJAT: Right.

21 THE COURT: He didn't do that. One of your
22 arguments, I'm assuming, is he couldn't do that or some
23 reason why he didn't do that. Or, maybe your argument
24 just is that he was there and she just didn't find him.
25 I don't know.

12

1 for me why you were trying to make the argument that this
2 is why he was where he was or doing what he was doing.
3 So if you are not in that realm, I hear you, but
4 something you said made me think otherwise.

5 MS. HOJJAT: No, Your Honor.

6 THE COURT: Anything further on that?

7 MS. HOJJAT: On that matter --

8 MR. COOPER: Your Honor, obviously, I am not
9 going to sit here and say that the probative value is so
10 outlandish. It is slight probative value, but the
11 prejudicial effect has to substantially outweigh the
12 probative value. I mean, all they are doing is just
13 speculating that maybe one juror might not like people
14 that get food stamps or might not like somebody that has
15 a government entitlement. It is just complete
16 speculation.

17 Obviously, I understand that having a knife in
18 his pocket or something like that is not necessarily a
19 bad act, that is prejudicial. I understand that. I have
20 agreed to redact that part already. The food stamps, I
21 don't understand why they are so mad about it.

22 THE COURT: The part from "had knife on him" all
23 the way down is redacted. I do not find the relevancy of
24 any of those entries.

25 MS. HOJJAT: Thank you, Your Honor.

14

1 But I mean to the extent that you are going to
2 be talking about who this gentleman is and why he wasn't
3 certain places or doing certain things, I would think
4 there would be relevancy to all of those components.

5 MS. HOJJAT: Well, Your Honor, no, I'm sorry.
6 The issue of fact here is did he register correctly? He
7 has an obligation to register where he is staying. He
8 does not have an obligation to stay anywhere in
9 particular.

10 THE COURT: Understood.

11 MS. HOJJAT: The only obligation he has is to
12 not stay within a certain distance of a school and
13 children and things like that.

14 The question of fact here is was he staying at
15 the place he was registered. Did he move and fail to
16 register his new address. The question of fact here
17 isn't why was he transient, let's get into a
18 philosophical debate about why he was transient.

19 And the State is trying to turn the fact that he
20 was on entitlement into a bad act by saying because he
21 was seeking entitlement he is not trying to better
22 himself. That's exactly the prejudice that people have
23 against these types of programs.

24 THE COURT: Well, it was something you said,
25 Counsel, and now I've forgotten what it is that triggered

13

1 THE COURT: As to the other matters you were
2 arguing, Mr. Cooper, with regard to the August 15, 2013
3 monthly report which has references to no UA and no
4 curfew.

5 MR. COOPER: Yes, Your Honor. Basically, those
6 are notes that actually were written by the defendant's
7 supervising officer during the actual interview. I guess
8 I understand that no questions were asked of the officer
9 at the preliminary hearing whether or not he tried to put
10 him on a one time a week check-in, but that doesn't mean
11 that this information doesn't come.

12 Obviously, it is directly probative as to
13 whether or not he was complying with his supervising
14 officer's recommendations, which is one of the theories
15 that he wasn't complying with supervision.

16 Basically, what happened is the officer says, I
17 am going to put you on a one time a week check-in. He
18 said, No, I'm not going to do that. That's all I am
19 going to get into. Just because somebody did not ask the
20 question at prelim doesn't mean it's not probative, it
21 doesn't mean that it's not relevant.

22 And I am actually checking my e-mail right now.
23 It might have been as late as two weeks ago because I
24 know we did a file review and I didn't have these items.
25 But the file review was done before the calendar call.

15

1 And I would say I am 99 percent sure that I sent all of
2 these items before calendar call, which would have been
3 last Monday.

4 Again, I have to check my e-mail to verify the
5 date but I am very sure I would have sent them before the
6 calendar call date. If I didn't, at the very latest they
7 would have received them on Monday or Tuesday of last
8 week.

9 They had an ample opportunity to talk to the
10 officer. They have the officer's information. They know
11 where she works at. They could have easily called her
12 and could have easily have asked her these questions. I
13 mean, just because they didn't do their own research to
14 determine what OV meant, it's not the State's fault. And
15 I should be able to get into it because it goes directly
16 to one of the elements of my charges.

17 MS. HOJJAT: Your Honor, it is a brand new
18 theory of the case that the State has never before
19 asserted. It is a theory of the case that wasn't
20 consumed in the preliminary hearing transcript. It
21 wasn't contained in a police report that was filed. It
22 wasn't contained in the original Parole and Probation
23 report that was filed.

24 Maybe it was handed over last Friday rather than
25 last Monday. We are talking about the difference of a

16

1 week then, but the point is they had 60 days to turn this
2 over from lower level and we were in justice court before
3 that. This is not something that we've had time to know
4 about or look through. And this wasn't two pages that
5 was handed over to us. This was a big chunk of discovery
6 that was handed over to us last week. We are talking
7 about, I would guesstimate in the realm of over 50 pages
8 of discovery that was handed over to us that we're going
9 through.

10 Today we show up and we hear, Oh, OV means
11 office visit. By the way, we told him he had to report
12 once a week and he didn't report once a week. This is
13 the first time we are hearing that.

14 The not register every 30 days, again, this is
15 not something that was talked about at prelim. This
16 isn't something that was in the police report. This
17 isn't something in a P and P report. And when they
18 handed over a big chunk of discovery like that last
19 minute we are trying to do the best we can to go through
20 everything. We didn't request a continuance. We didn't
21 know about this until this morning.

22 THE COURT: Okay.

23 MR. COOPER: Your Honor, it is kind of
24 misleading that I handed over 50 pages of discovery. I
25 mean, they were all 50 pages like this (indicating).

17

1 Each page maybe has 20 pages on it. It's not like she
2 had to sit there line by line and go through every single
3 little item.

4 THE COURT: I am not as persuaded by the timing
5 of it as I am what is contained here and whether it is in
6 fact a new theory. I don't perceive it to be a new
7 theory of the case. The hearing department failed to
8 cooperate and there are any number of them that seem to
9 fall within. I am not going to have a false impression
10 of who the defendant is and what the defendant did.

11 Ultimately, at the end of day, this officer is
12 going to testify to what occurred in terms of supervision
13 and you are going to be able to cross-examine. But I
14 will not require redaction of the August 15th, 2013
15 report. It falls within the time frame that has been
16 argued. It falls within the theory of the case and it is
17 in fact who he is and what he was doing.

18 The time frame of the disclosure is not
19 persuasive for any basis to exclude it. I find it
20 relevant. I find it not overly prejudicial because or
21 required to be excluded because of the timing.

22 So the August 15th report, no redactions
23 required. And the March 9th report, the required
24 redactions that are outlined.

25 MS. HOPPER: Thank you, Your Honor.

18

1 And there was one other issue, if I may
2 approach?

3 THE COURT: Yes, please.

4 MR. COOPER: Your Honor, I will have to step out
5 to the copy machine and make copies of the redacted
6 version because I will be using this for my first
7 witness.

8 THE COURT: Well, how long do we anticipate our
9 openings?

10 MS. HOJJAT: Five minutes.

11 MR. COOPER: Ten maybe.

12 THE COURT: Okay.

13 MS. HOJJAT: Your Honor, the other issue was I
14 believe P and P Officer Zana will be testifying today.
15 We are not objecting to him; he was noticed. The only
16 thing is we want to make that the witnesses are
17 admonished about is because he is a supervisor to Officer
18 Magnan we just wanted him to be admonished not to be
19 talking about information that he received from Officer
20 Magnan.

21 We are not objecting to things that he directly
22 perceived or did himself in relation to this case, but we
23 don't want bolstering where he is just repeating things
24 that Officer Magnan has told him. We only want him to be
25 testifying to direct involvement. Anything else would be

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1 hearsay and we would like him to be admonished of that
2 before he gets on the stand.
3 MR. COOPER: And, Your Honor, I understand the
4 rules of evidence, that I will not be offering any
5 hearsay. But in full candor to the Court, I did speak to
6 my first witness about not talking about the charge and
7 everything like that, as we discussed yesterday. I
8 talked to Officer Zana but I forgot to tell him that, so
9 if we can take a break after my first witness so I can
10 step out and admonish him not to have the hearsay, which
11 I don't think will be an issue, but to make sure that he
12 doesn't talk about that charge because I did forget to do
13 that last night.

14 THE COURT: I would like you to remind him, of
15 course, he is not to talk about the charge. Let's just
16 say prior sex offense is I think the language that we
17 agreed upon.

18 MR. COOPER: Yes, Your Honor.

19 THE COURT: And I do think if you could advise
20 him because sometimes it's not clear. Unless you direct
21 your questions a certain way or unless you make the
22 admonishment to your witness as you are questioning.
23 Sometimes it is not clear when they are testifying if it
24 is something that they have direct knowledge of or if
25 it's know from somebody else. And so I do need them to

20

1 be admonished that if he is testifying that the
2 presumption is going to be that it's from his own direct
3 knowledge.

4 If he gets into obviously something that was
5 hearsay and there isn't some exception that would allow
6 it, if defense objects to it, obviously, we'll deal with
7 it. But it would be helpful to not have that if we can
8 avoid it.

9 MR. COOPER: Yes, Your Honor.

10 THE COURT: Did you have something?

11 MS. HOJJAT: That was it, Your Honor.

12 MR. COOPER: Your Honor, I do have a few issues
13 to address with the Court as well. The first is just a
14 scheduling matter. I know we talked about 1:00 tomorrow,
15 but the issue is when I spoke to my witness last night
16 she initially thought she was going to be testifying
17 Wednesday morning because I thought the Court was going
18 to be dark today, and then I told her we might be
19 starting at 1:00. She indicated that she had cleared her
20 schedule for the morning --

21 THE COURT: How early in the morning, because I
22 have a calendar.

23 MR. COOPER: Yes, Your Honor, I am actually
24 doing that calendar, so hopefully it won't be too long.

25 When I talked to her 11:00 a.m. would actually

21

1 work for her. If we push it to 11:30 or something I am
2 sure I can get the word to her.

3 THE COURT: Let's just start at 11:00. We'll
4 make sure we're ready to start. We'll take a lunch break
5 somewhere in there and maybe after that testimony,
6 depending on where we are, I still need time to settle
7 instructions.

8 MR. COOPER: Yes, Your Honor. And that was my
9 last witness, so I don't know if you want to just settle
10 instructions. We can send the jury to lunch, settle
11 instructions.

12 THE COURT: Take a little bit longer time to
13 settle them. Like I said, I believe I was going to be
14 getting them today --

15 MR. COOPER: Yes, Your Honor.

16 THE COURT: One of the things I need, you are
17 going to have your stock but you are going to have some
18 that are going to be directly in opposition to the ones
19 they are proposing or newly proposed and I need to be
20 able to -- I cannot just get two chunks -- I mean, I can
21 do that, but it is going to take me a hell of a lot
22 longer to get through everything and figure out what
23 matches up. Give me a break. Give your stock and give
24 me your specials, if you want to call them that, if you
25 have specific ones where you know, and you tell me which

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1 of theirs is in dispute.

2 And this can all be done by e-mail. Say, here's
3 our proposed and we think these match up with those and
4 this is basically what we're ditching out for these
5 topics, and here's the extra ones that we're proposing,
6 if you can. I mean, give me a little bit of where your
7 thought process is at so that we can expedite the
8 settling of them the following day at lunchtime.

9 MR. COOPER: Yes, Your Honor.

10 THE COURT: If there's not that many that are
11 being disagreed upon, that's fine. I don't usually take
12 that long to settle them. But I want to get everything
13 as prepared as possible because I am not going to have a
14 lot of time once we settle them to actually pull the
15 final set together. And I do that myself. I don't
16 delegate it to you all because then it has to go back to
17 staff and then it takes forever. And I don't delegate it
18 to my staff because they are not in here and they don't
19 know what we discussed. So I just need some time to do
20 that and the more information you can give me the better.

21 MR. COOPER: Yes, Your Honor.

22 MS. HOJJAT: Yes, Your Honor. Would Your Honor
23 like us to send you a copy with cites and without cites?

24 THE COURT: You can just send them with cites.
25 But I need you to e-mail them to me before we wrap for

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1 the day otherwise I will give you another e-mail address
2 to send it to.

3 MR. COOPER: And, Your Honor, just so we're
4 clear, we send them to both sides?

5 THE COURT: Absolutely.

6 MS. HOJJAT: And I can tell the Court we are not
7 going to be able send ours before we wrap up today.

8 THE COURT: I will give you a special e-mail to
9 send them to because I don't once I'm home I don't have
10 access to my e-mail here. But I do need them within some
11 reasonable time this evening.

12 MS. HOJJAT: We will have them to you.

13 MR. COOPER: And, Your Honor, the only other
14 issue, I know that the defendant is already stipulating
15 to the fact that he is a sex offender and that he is on
16 lifetime supervision, but my understanding is that
17 stipulation needs to be made in front of the jury
18 because obviously me just asking a witness --

19 THE COURT: We had this discussion yesterday,
20 Mr. Cooper, why are we revisiting this now?

21 MR. COOPER: Your Honor, only because it's a
22 procedural matter of the actual stipulation because my
23 understanding is that they were talking about me just
24 asking a witness, Is he a sex offender. That's not a
25 stipulation.

24

1 that time that we did not need to have a particular
2 stipulation stated to the jury and I talked about if we
3 were going to do that how we were going to do that and
4 that my preference would be something along the lines of
5 when we are reading the information that we would
6 indicate the parties have stipulated to this situation
7 and that there's the information. And we talked about
8 that and I don't know that that was rejected but we had
9 some discussion. But we are not going to have them stand
10 up in front the jury and say this is what we agreed to.

11 MR. COOPER: Yes, Your Honor. I understand.
12 I'm sorry. I must have missed the part when we talked
13 about actually reading the information. That is
14 completely fine with me, Your Honor. I just needed the
15 jury to know that we stipulated to these facts. I don't
16 care who says it, just the jury needs to know, because
17 the jury obviously doesn't know what's going on in here
18 right now, so when I get up there and start asking all
19 these questions and doing all this other stuff they will
20 have no idea that it is a stipulated fact that he is a
21 sex offender.

22 THE COURT: Well, like I said, we had that
23 discussion yesterday about how we needed to do it and I
24 thought we settled on that it would be inquired of and
25 come out at some point in the trial that these facts had

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1 A stipulation is them actually agreeing to the
2 fact in front of the jury. And I just want to make sure
3 we're clear on that because if that's not what they are
4 doing, then that's not a stipulation and obviously we are
5 right back at square one.

6 I can ask my witness if he is a sex offender no
7 matter what; I don't need their permission to do that.

8 THE COURT: Well, I thought we had addressed
9 this more than just it would come up with this witness.

10 We addressed this first of all that we had the
11 stipulation in the record, which was going to lead to the
12 Second Amended Information, which I still don't have.

13 MR. COOPER: I have it right here, Your Honor.

14 THE COURT: And that right there was going to
15 have the reference to the date in which we find the
16 agreement to be under lifetime supervision and it was
17 going to have the reference to the prior sex offense,
18 that it was able to be referenced that he had these chief
19 characteristics. The whole point was just to have that
20 in place in advance with counsel so that it removed the
21 references and we had the redaction so that the actual
22 prior charge was out.

23 Then it opened the door to be able to obviously
24 ask the witness to deal with that. I talked about and
25 yesterday we went back and forth and I was convinced at

25

1 been agreed to. But if there is going to be a dispute or
2 some confusion on that point, I will make the statement
3 to the jury to clear it up in conjunction with the
4 information is the way I intended to handle it yesterday
5 when we were first discussing.

6 But let me hear from counsel what your concerns
7 are.

8 MS. HOJJAT: Your Honor, I would submit to the
9 Court, I think the way we worked it out yesterday was I
10 stood up in voir dire and said, He's a sex offender;
11 we're not arguing he's not a sex offender.

12 THE COURT: So what's the problem with me saying
13 it as a stipulated fact in conjunction with the
14 information?

15 MS. HOJJAT: That's fine.

16 MR. COOPER: That is fine with the State as
17 well, Your Honor. I apologize. I must have
18 misunderstood what we talked about yesterday. I thought
19 they had only agreed to allow me to ask a witness if he
20 was a sex offender and that would not be a stipulation.

21 Obviously, if the Court tells the jury it's
22 stipulated that he's a sex offender and stipulated that
23 he is on lifetime supervision, I am fine with that. That
24 is not a problem with the State.

25 The only other issue would just be that pursuant

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1 to statute and my JOC I would also be giving out the year
2 he was convicted as well as the county he was convicted
3 in. And the county is important because pursuant to the
4 statute I can only prosecute someone in the county in
5 which they were subsequently put on lifetime supervision
6 or something like that. It does not necessarily matter
7 where the violations happened. It matters were they were
8 convicted at.

9 So as long as the stipulation just says he was
10 convicted in Clark County in 2004, he's a sex offender
11 and he's on lifetime supervision, the State has no
12 problem with that stipulation.

13 THE COURT: Well, we discussed the stipulation
14 of he's a convicted sex offender and that he is on
15 lifetime supervision and that was what I would say.

16 You would then elicit the remainder, if
17 necessary, testimony from your witness. I don't know
18 that the stipulation was ever agreed to in specific
19 detail, although in the Amended Information it does
20 specify when he went on the lifetime supervision and that
21 he had a prior sex offense on a certain date in Clark
22 County.

23 MR. COOPER: I would not be able to get into my
24 JOC. And my officer, she would get objected to for
25 hearsay if she said that he was convicted in 2004 in

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1 So that was all just information we put it in.
2 It is not changing any theory of the case. It is not
3 adding any additional -- it's not taking away from any
4 defenses or anything like that. They have already agreed
5 he is on lifetime supervision. They have already agreed
6 that he's a sex offender. I think it clears up the
7 language and I don't think that there is any substantive
8 issues to his rights.

9 The statute says that the court may permit the
10 information to be admitted at the time for verdict if no
11 different or additional charges are added, which is not
12 the case in this situation, and the substantial rights of
13 the defendant are not prejudiced. And I don't know in
14 any way why his rights would be prejudiced just by taking
15 out information.

16 MS. HOJJAT: I'm sorry. I just want to clarify.
17 Is all of this argument over the fact that he took out
18 the fact that the Lifetime Supervision Agreement was
19 signed --

20 THE COURT: Sounds like it.

21 MS. HOJJAT: We are not objecting to that.

22 MR. COOPER: Okay.

23 MS. HOJJAT: We do have one objection to the
24 Second Amended Information, though. Is says on line, I
25 think it's between 4 and 5, they have him in 2004 being

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1 Clark County because she has no personal knowledge. She
2 was not even working with P and P in 2004 in Clark
3 County.

4 MS. HOJJAT: Your Honor, we'll waive the
5 objection.

6 THE COURT: You will waive the objection. Okay.
7 We're fine. I will say the stipulation. You will get to
8 the information.

9 MR. COOPER: Yes, Your Honor. I do have the
10 Second Amended, and I am sure there will be some
11 objections to it, so I have not filed it yet, and I will
12 show a copy to the defense.

13 But basically, Your Honor, as this court is
14 fully aware, the State has the ability to amend the
15 Information up until before a verdict and that is
16 pursuant to NRS 173.095. The State would actually be
17 admitting their information because the initial Amended
18 Information gave a lot more information that is actually
19 isn't required by the statute.

20 I do have the statute right here and the statute
21 specifically says that an individual that is on lifetime
22 supervision that violates lifetime supervision is guilty.
23 There is no mention of the date in which they signed an
24 agreement. There is no mention of anything of that
25 nature.

29

1 convicted of a "certain sex offense." We would ask that
2 it just say "of a sex offense." That is what we
3 discussed yesterday.

4 MR. COOPER: Your Honor, this issue I put
5 "certain" is because every sex offense doesn't actually
6 require lifetime supervision, so that would actually be
7 an incorrect statement of the law that I would have in my
8 Information and then that would create problems going
9 forward in the future because every sex offense does not
10 require lifetime supervision.

11 MS. HOJJAT: We stipulated that he is on
12 lifetime supervision.

13 MR. COOPER: But the problem is only certain sex
14 offenses require lifetime supervision, so --

15 MS. HOJJAT: We stipulated that he is on
16 lifetime.

17 THE COURT: Well, the Information still has to
18 be sufficient and it's not incorrect that not every sex
19 offense requires lifetime supervision. I think this is
20 the proper way to say it and I'm not understanding or
21 hearing why that wording would be problematic.

22 MS. HOJJAT: It sounds seedy saying that he's a
23 certain sex offender. We'd be okay saying having been
24 convicted of a sex offense requiring lifetime
25 supervision. A certain offense just sounds like, wink,

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1 wink, we all know it's something really bad. It has a
2 certain connotation.

3 MR. COOPER: Your Honor, that is not the
4 connotation I meant.

5 THE COURT: So it's something you might object
6 to but you don't have the means to correct it and reprint
7 it?

8 MR. COOPER: I thought they might object to the
9 actual language, the actual part that they didn't object
10 to. That's what I thought they were going to object to.

11 THE COURT: If you needed to make a change, how
12 were you going to do it?

13 MR. COOPER: It's from the --

14 THE COURT: If I want to change something in
15 here, how are we going to do it?

16 MR. COOPER: I have multiple different copies
17 with me right now, Your Honor.

18 THE COURT: Hard copies?

19 MR. COOPER: Yes.

20 THE COURT: I need an electronic version. Where
21 is your electronic version?

22 MR. COOPER: It's on my work computer, Your
23 Honor. But I have a hard copy that fixes the problem.

24 THE COURT: I like the language "convicted of a
25 sex offense requiring lifetime supervision." Do you have
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1 a version that says that?

2 MR. COOPER: No, Your Honor.

3 THE COURT: Can you get somebody to send us an
4 electronic version so we can fix it right now so we can
5 bring the jury in now that we're 45 minutes in to this.

6 Here's my annoyance, I'm sorry, is we know we
7 needed to have this done. Now we're bringing it in here
8 and for the first time we're seeing it. I mean, why
9 couldn't this be changed this morning so we all could
10 talk about it and figure this out and get a version that
11 we agreed upon. I've got jurors out there waiting. I
12 want to get started. I know we are not time crunched but
13 they are sitting out there waiting and I want to bring
14 them in.

15 So I want to make the change. You made some
16 unilateral decisions to change and add and take out where
17 we didn't have that discussion yesterday. We had a
18 particular discussion of what was going to be changed.
19 You didn't do it, Mr. Cooper, fair enough. But you
20 should have showed them and you should have showed the
21 Court so we could have a version we could work with and
22 have an electronic version so we could adjust it. We
23 don't have one. I would like to get one so we can make
24 the adjustment and get it done and print it and be good
25 to go.
33

1 MR. COOPER: Yes, Your Honor.

2 THE COURT: Can we do that?

3 MR. COOPER: And, Your Honor, just so I am
4 clear, what is the exact language you want?

5 THE COURT: At line 4, "having in 2004 been
6 convicted of a sex offense requiring lifetime
7 supervision." So that removes any of the questions or
8 concerns. It addresses your concern, I believe, and
9 still has a correct statement so that we're not just
10 saying sex offense that may not require it despite that
11 it's clear.

12 My clerk has worked out a way to read the
13 information without having to have the Second Amended
14 electronic version right now. So we are going to do that
15 somewhere later today, tonight, figure that out. But my
16 clerk has basically taken the version you handwritten and
17 handed us so she can read it to the jury. So we have the
18 Second Amended Information that we will read from and be
19 good there.

20 What is the ongoing concern of redactions?

21 MS. HOJJAT: We just received a new copy. I
22 understand the State's position is that they sent us a
23 copy. There is a different date. There is a new
24 Lifetime Supervision Agreement that we just received
25 today. If I can approach with a copy to show the Court.
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1 THE COURT: You may.

2 MR. COOPER: Your Honor, I sent that all at the
3 same time. All I did was take the whole stack I have and
4 sent it all over. I don't know why they don't have it
5 but I sent it. And I can look in my e-mail and --

6 THE COURT: Mr. Cooper, I will look at it and
7 maybe my ruling is going to be to stay the way that it is
8 and we won't have a problem.

9 MS. HOJJAT: And if the Court can see, they are
10 both dated 2004.

11 THE COURT: I'm not concerned about the timing
12 of when they were produced. I'm just trying to get this
13 nailed down what evidence we are going to put in front of
14 this jury.

15 I'm sorry, what is it you wanted to say?

16 MS. HOJJAT: As the Court can see, they are both
17 dated in 2007. We were under the impression we had the
18 Lifetime Supervision Agreement from 2007. The new one
19 says "under duress" next to his signature. We did not
20 have that in the copy we have.

21 THE COURT: Well, these are two different
22 documents entirely.

23 MS. HOJJAT: They are two different documents.
24 We had the one that has multiple pages.

25 MR. COOPER: Your Honor, I went through all my
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1 e-mails to make sure I sent it to them. I know I did so
2 all I did was take the whole stack and sent it directly
3 over. There is no reason for me not to send one Lifetime
4 Supervision Agreement.

5 MS. HOJJAT: And the Court is literally holding
6 everything that we received in terms of Lifetime
7 Supervision Agreements. And our objection is to the
8 words "under duress."

9 MR. COOPER: Your Honor, I just found it. I did
10 send it. I have an actual e-mail that I sent directly to
11 them under the attachment and it says right here the
12 e-mail name was "Discovery for McNeill." I don't have
13 the page number for some reason. But it says Steve
14 McNeill under duress. It's that document. I don't know
15 why they don't have it. I sent it. I can show my e-mail
16 to the Court.

17 THE COURT: Any idea why there would be two full
18 Lifetime Supervision Agreements?

19 MR. COOPER: Yes, Your Honor. I can actually
20 explain that to the Court. Basically, what happened is
21 that when he was in prison they make them sign a Lifetime
22 Supervision Agreement in front of his caseworker or
23 someone like that. And then as soon as he gets out and
24 goes directly to the Department of Parole and Probation
25 they make them sign another one. I don't know why but

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1 they do. And then after that when the actual terms of
2 his probation period are actually completely articulated
3 they make them sign a third one that encompasses
4 everything. So there is a total of three different
5 documents.

6 THE COURT: Do we have all three?

7 MR. COOPER: Yes. All three have been provided.

8 THE COURT: And they are all redacted?

9 MR. COOPER: Yes, Your Honor.

10 THE COURT: Counsel, come get your copies.

11 These are obviously all the agreements. You can explain
12 the under the duress. This is not a point -- it sounds
13 like it has been provided. It sounds like it is part and
14 parcel of this documentation and we will just address it.

15 We know that the defendant has agreed to certain
16 things and not agreed to certain things and we need to
17 get the testimony in before the jury so they can weigh
18 it.

19 Any other matters to discuss before we bring the
20 jury in?

21 MS. HOJJAT: No, Your Honor.

22 MR. COOPER: No, Your Honor. I just want to
23 give your clerk my exhibits and we do have to make some
24 redactions. And I know that is going to take some time
25 because the redactions just got changed on this

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1 March 2013 document. I have White-out right now. I can
2 make the reactions really quick and then run back and
3 make the copies.

4 THE COURT: All right. Let's take a couple
5 minutes to do that. We'll plan to start in ten minutes.
6 (Whereupon, a recess was taken.)

7 THE COURT: Are we ready?

8 MR. COOPER: Yes, Your Honor. All my exhibits
9 have been sent over and I did show all of my redactions
10 before I made them.

11 THE COURT: Okay. Great. Like I said, we'll
12 deal with the Second Amended Information later.

13 MR. COOPER: Your Honor, my intern was gracious
14 enough to go upstairs and my secretary is doing it now,
15 but I believe we can start without it.

16 THE COURT: All right. We will start without
17 it. Let's bring in the jurors.

18 (Jury enters the courtroom.)

19 THE COURT: As soon as you reach your seats
20 please remain standing and my clerk will swear you in.

21 THE CLERK: Please raise your right hand. You
22 and each of you do solemnly swear that you will well and
23 truly try the case at issue and a true verdict rendered
24 according to the evidence so help you God.

25 (Jury answers in the affirmative.)

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1 THE COURT: Thank you everybody. Please take
2 your seats. We appreciate your patience very much while
3 we addressed some housekeeping matters to make sure that
4 we would have everything ready so we can proceed
5 uninterrupted once we get started today.

6 Before we get started, though, there is one
7 preliminary matter. We just want to be sure that the
8 folks are reminded of at least one instruction that I
9 went over yesterday and that is it is very important that
10 you understand that none of the participants in the case,
11 the counsel, parties, staff cannot acknowledge you or
12 talk to you in any way, although the Court can
13 acknowledge you, or respond to you or talk to you in any
14 way whatsoever. So if you just happen to come across us
15 we must ignore you. It is our ethical obligation.

16 Please don't read anything into it or think that
17 we are being rude or antisocial. It's just our ethical
18 obligation. And it would really help us if you did not
19 acknowledge us or interact with us in any way so then we
20 do not have to feel so bad when we have to ignore you.

21 So, again, that is just the nature of the beast
22 and it doesn't happen very often, so I just wanted to
23 remind everybody of that because over the course of today
24 and tomorrow that may very well occur.

25 As I indicated, yesterday, we would begin the

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1 trial today with the reading of the charging document in
2 this case so you understand what the charges specifically
3 are. I want to remind you again as I indicated yesterday
4 that this charging document is just that, a charging
5 document. It is not in any sense evidence of the
6 allegations it contains.

7 The defendant has pleaded not guilty to the
8 charges, and therefore, the State has the burden of
9 proving each of the elements of the charge beyond a
10 reasonable doubt.

11 At this time I will ask my clerk to please read
12 the charging document.

13 THE CLERK: District Court, Clark County,
14 Nevada, State of Nevada, Plaintiff, versus Steve Dell
15 McNeill, Defendant, Case No. C-14-297725-1, Department
16 No. 25. Second Amended Information.

17 The State of Nevada, County of Clark, Stephen B.
18 Wolfson, District Attorney, within and for the County of
19 Clark, State of Nevada, in the name and by the authority
20 of the State of Nevada informs the court that Steve Dell
21 McNeill, the defendant above named having committed the
22 crimes of violation of lifetime supervision by a
23 convicted sex offender, category B felony, NRS
24 213.1243-53481 and the prohibited act by a sex offender,
25 category D felony, NRS 179D.441, 179D.441, 179D.447,
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1 enforcement agency before three business days passed and
2 since he changed his address from his last registered
3 address at Main and Wyoming, Las Vegas, Clark County,
4 Nevada to his current unknown address.

5 Steven B. Wolfson, Clark County District
6 Attorney, signed by Jonathan Cooper, Deputy District
7 Attorney to which the defendant has entered a plea of not
8 guilty.

9 THE COURT: Thank you. At this time I would
10 invite the State to make opening remarks.

11 MR. COOPER: Thank you, Your Honor.

12 Ladies and gentlemen, the defendant, Steve
13 McNeill was convicted of a sex offense in 2004. As part
14 of his sentence he was required to register and also to
15 be sentenced to a term of lifetime supervision pursuant
16 to Nevada law.

17 Lifetime supervision is a program ran by the
18 Nevada Department of Public Safety through their Division
19 of Probation and Parole. And essentially the offender he
20 is given a probation officer. They are required to check
21 in on a regular basis and there is also conditions on
22 that as well. They have to let their probation officer
23 know where they are living, who they are living with.

24 MS. HOJJAT: Judge, I am going to object. If we
25 can approach?
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1 179D.550-52950.

2 On or between December 14, 2012 and March 10,
3 2014, within the County of Clark, State of Nevada,
4 contrary to the form, force and effect of statute in such
5 cases made and provided and against the peace and dignity
6 against the State of Nevada.

7 Count 1 - violation of lifetime supervision by a
8 convicted sex offender.

9 Did then and there willfully, unlawfully,
10 knowingly and feloniously violate the conditions of
11 lifetime supervision imposed on said Steve Dell McNeill
12 pursuant to having in 2004 been convicted of a sex
13 offense that requires lifetime supervision in the Eighth
14 Judicial District Court, Clark County, Nevada, to-wit:
15 By refusing to submit to a urinalysis, failing to report,
16 failing to have his residence approved, failing to
17 cooperate with his supervising officer, failing to
18 maintain full-time employment, failing to abide by a
19 curfew and/or was terminated from his sex offender
20 counseling.

21 Count 2 - Prohibited act by a sex offender.

22 Did willfully, unlawfully and feloniously
23 pursuant to his conviction in 2004 of a sex offense in
24 the Eighth Judicial District Court, Clark County, Nevada,
25 did fail to appear in person at the appropriate law
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1 THE COURT: Of course.

2 (Discussion held at the bench.)

3 THE COURT: I appreciate the opportunity to
4 clarify.

5 You may proceed, Mr. Cooper.

6 MR. COOPER: Thank you, Your Honor.

7 As I was saying, the defendant had conditions to
8 abide by while on lifetime supervision. He had to let
9 his probation officer know where he is living. He had to
10 report, things of that nature.

11 And the probation officer also would assign
12 tasks to the offender as well. For example, a probation
13 officer could assign a task to complete counseling or
14 something like that.

15 Now, for the most part the defendant did his
16 requirements until about December of 2012 when he finally
17 just had enough and was fed up with everything. He
18 didn't want to do it anymore. The evidence will show
19 that in December of 2012 he stopped following his
20 Lifetime Supervision Agreement.

21 You will hear from Marcia Lee, who is a licensed
22 therapist and she was also the counselor for the
23 defendant during his sex offender treatment, she will
24 talk to you about how he began to get aggressive. How he
25 was disruptive in group and how he was showing little or
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1 no progress in his treatment.
2 MS. HOJJAT: Objection. May we approach?
3 THE COURT: Please approach.
4 (Discussion held at the bench.)
5 THE COURT: The objection is overruled.
6 You may proceed, Mr. Cooper.
7 MR. COOPER: Thank you, Your Honor.
8 Marcia Lee will tell you that she gave him
9 several opportunities to fix his behaviors but he didn't.
10 He told her, I don't want to be here. So he was
11 terminated from counseling.
12 You will also hear from Officer Ashley Mangan,
13 and she works with the Department of Parole and Probation
14 as a parole officer, and she was the defendant's
15 supervising parole officer starting in March of 2013.
16 Now the defendant was on lifetime supervision
17 well before March of 2013. But like in a lot of offices,
18 people in Probation and Parole they get promoted, they
19 switch positions, so the offender doesn't always have the
20 same probation officer.
21 And Officer Mangan will tell you that as his
22 probation officer his behavior got worse. It did not get
23 better when she started supervising him. He was refusing
24 to do drug tests. He was refusing to be put on a curfew.
25 He didn't live where he said he was living. He even told

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1 Probation and Parole that he was doing them a favor for
2 showing up.
3 Then in August of 2013, the defendant sent
4 Parole and Probation a letter. And basically the letter
5 said he was not going to comply anymore. He was done.
6 And he did just that. He didn't show up to Parole and
7 Probation. He did not call his officer. His officer
8 tried to locate him, she couldn't find him. And this
9 went on for nine months until March of 2014. The
10 defendant was in the wind.
11 The evidence will show that on several different
12 occasions the defendant violated the terms of his
13 lifetime supervision and he also committed an act that is
14 prohibited by sex offenders.
15 And at the close of the evidence I will ask you
16 to return a verdict of guilty on both counts. Thank you.
17 THE COURT: Thank you, Mr. Cooper.
18 Ms. Hojjat.
19 MS. HOJJAT: Thank you, Your Honor.
20 Good afternoon, ladies and gentlemen. The State
21 just started talking to you about 2012, 2013. Officer
22 Mangan. They want you to focus in. They want this case
23 to be about very little. And that's why you just heard
24 very little from the State.
25 To understand what is going on in this case, you

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1 need to take a step back and look at the bigger picture.
2 This case starts in 2007 not 2005. 2007 is the year that
3 Steve McNeill was placed on lifetime supervision. He is
4 a sex offender. I told you that in voir dire. No one is
5 trying to hide the ball. Steve is a sex offender and he
6 is on lifetime supervision but he got placed on lifetime
7 supervision in 2010.
8 To be clear, you are going to hear lifetime
9 supervision is not probation, it's not parole. The State
10 talked about it as part of his sentence.
11 Lifetime supervision, what you are going to hear
12 is what sex offenders are required to do after their
13 sentence is done, after they paid their debt to society.
14 MR. COOPER: Your Honor, can we approach?
15 THE COURT: Sure.
16 (Discussion held at the bench.)
17 THE COURT: All right. Thank you. The
18 objection is sustained. And with that clarification you
19 may proceed.
20 MS. HOJJAT: Steve was not placed on lifetime
21 supervision until any term of probation or parole is
22 expired. Lifetime supervision is a different thing than
23 parole or probation. Steve was placed on lifetime
24 supervision in 2007.
25 In 2007 he reported to his officers, he

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1 registered his address, he had a job. He was paying for
2 his apartment and he was trying to get along. And he
3 continued doing that in 2007 until 2013.
4 There were ups and downs during that time
5 period. Everybody has experienced ups and downs during
6 2007 and 2013. During that time Steve lost his job.
7 During that time he wasn't able to have a place to stay
8 because he couldn't afford his apartment.
9 MR. COOPER: I'm sorry. Your Honor, may we
10 approach again?
11 THE COURT: Yes.
12 (Discussion held at the bench.)
13 THE COURT: The objection is overruled. You may
14 proceed.
15 MS. HOJJAT: As I was saying, you are going to
16 hear that in 2007 Steve was checking in with his officer.
17 He had a place to stay. He had a job. He was doing his
18 best. Same with 2008. Same with 2009. Same with 2010.
19 Same with 2011. Same with 2012.
20 You are going to hear Steve was doing his best
21 to follow the rules. During that time between 2007 and
22 2013, his parole officer changed four different times.
23 When I say parole officer, I mean lifetime supervision
24 officer. Four different people supervising him.
25 And in all that time not a single one ever

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1 arrested him for violation of lifetime supervision. Not
2 a single one said, Steve, you are not registered at the
3 right address. Steve, why aren't you employed. Steve,
4 you failed to check in. He was doing what he was told to
5 do.

6 So what changed in 2013. You are going to hear
7 Steve, he was still the same person, he was following the
8 rules in 2007 to 2013. But in March of 2013, his officer
9 changed. In March of 2013 someone new is assigned,
10 Officer Mangan.

11 You are going to hear that before Officer Mangan
12 ever met him, before she ever made contact with him,
13 before she had spoken a single word to him, she already
14 noted in her file "possible absconder." This is a guy
15 who for five and a half years had made every check-in,
16 had always registered his address, had always been doing
17 what he needed to do and had never been arrested for
18 violation of lifetime supervision.

19 Before she set eyes on him, in her mind he was a
20 possible absconder. On their first meeting she asked him
21 where he was staying. He told her, I'm registered at a
22 street corner. I am homeless right now, I told my last
23 PO, I'm registered to a corner. I'm registered to a
24 corner.

25 She told him, You better be standing on that
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1 corner. He said, Well, no, I don't stand on this corner
2 24/7. She said, If I drive by that corner you'd better
3 be standing on that corner. He said, I'm not there all
4 the time. I stay other places sometimes. I am generally
5 there.

6 At their second meeting she told him, If you are
7 not there when I go check, I'm arresting you. Violation
8 of lifetime supervision. You are registered to a corner,
9 you can stand on that corner.

10 He's transient, he's homeless. You are going to
11 hear, their third meeting, she arrested him for violation
12 of lifetime supervision. This is the same Steve who
13 since 2007 had never been arrested for violation of
14 lifetime supervision. Four different parole officers,
15 never picked up for a single violation.

16 Officer Mangan is his officer for one month,
17 three meetings, possible absconder, arrested for
18 violation of lifetime supervision. That arrest did not
19 stick. She was told, No, we're not doing this. Steve is
20 released.

21 By this time Steve got the message. Officer
22 Mangan does not like him. Officer Mangan does not like
23 him and she wants to put him exactly in the seat he is
24 sitting in today.

25 MR. COOPER: Your Honor, I'm sorry. May we
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1 approach again?

2 THE COURT: You may.

3 (Discussion held at the bench.)

4 THE COURT: The objection is sustained. Please
5 proceed.

6 MS. HOJJAT: So Steve gets arrested. Steve gets
7 released. At that point, you are going to hear there was
8 a personality difference between Steve and Officer
9 Mangan. You are going to hear that that relationship
10 deteriorated quickly. You are going to hear they didn't
11 get along. You are going to hear they had words. You
12 are going to hear when Steve went into her office and she
13 started setting new guidelines, she set guidelines such
14 as a curfew. You are going to hear she tried to set a
15 curfew on a homeless person. That's one of the
16 violations.

17 But you are going to hear that he was never
18 actually placed on at least one of the curfews she claims
19 he violated. There were multiple curfews; 5:00 p.m. to
20 5:00 a.m., 8:00 p.m. to 5:00 a.m. It changed. And
21 because Steve said no she considered that a curfew of
22 violation.

23 You are going to hear that at least one of the
24 curfews she put on him she never even drove out to
25 actually see if he was there. His statement was, no.
50

1 She accepted his curfew violation.

2 You are going to hear that there was a lot of
3 back and forth between Officer Mangan and Steve. You are
4 going to hear all of this started happening in March of
5 2013. Five and a half years Steve was following all the
6 conditions of his lifetime supervision.

7 You are going to hear that a lot of them have to
8 do with the fact that he is transient. One of the
9 conditions you heard about is that he did not have a job.
10 You are here today to determine if he committed a
11 category B felony because he did not have a job.

12 Ladies and gentlemen, Count 2. The State said
13 he violated a condition. They did not tell you what it
14 was. The information that was read to you, he moved and
15 didn't change his address. You are going to hear that
16 Officer Mangan this time when she submitted charges again
17 changed things up a little bit from last time.

18 The first time she submitted charges they got
19 denied. Second time she submitted charges they were a
20 little more detailed. A little more comfortable. She
21 learned. This time she submitted two. This time she
22 said, When I drove to that location he wasn't there. He
23 must have moved. He moved and he didn't change his
24 address. He's has a entirely new felony all on his own.
25 That's how you get Count 2.
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1 Ladies and gentlemen, this case is about
 2 personality differences. This is a case about a new
 3 officer, hasn't been supervising people long, and you are
 4 going to hear that from her. It is a case about Steve,
 5 who is not always the easiest person to get along with.
 6 It is a case about a rookie who wanted to clear off her
 7 desk. She wanted to get a file off her desk. Have one
 8 less person to supervise.
 9 At the end of this case we are going to ask you
 10 to find Steve McNeill not guilty on Count 1 and Count 2.
 11 Thank you.
 12 THE COURT: Thank you.
 13 Mr. Cooper, are you ready to call your first
 14 witness?
 15 MR. COOPER: Yes, Your Honor.
 16 THE COURT: One of the things that I wanted to
 17 address and remind the jury, we did go over so many
 18 instructions yesterday and it was very quickly done and I
 19 wanted to remind you that although these are opening
 20 statements, they are not evidence themselves. They are
 21 there to help you understand what the evidence will be
 22 and help guide you in your understanding as the case
 23 proceeds.
 24 However, there were mentions made of two facts
 25 that the parties have stipulated to. The fact that the

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1 defendant was under an agreement of lifetime supervision
 2 and that the defendant was a convicted sex offender.
 3 Anything else mentioned in opening statement is not in
 4 and of itself evidence. That evidence that you will
 5 determine what the facts from the evidence will be what
 6 comes through the witnesses and the exhibits that are
 7 received.
 8 At this time, Mr. Cooper, if you are ready to
 9 call your first witness.
 10 MR. COOPER: Thank you, Your Honor.
 11 The State's first witness is Officer Ashley
 12 Mangan.
 13 THE COURT: Officer Mangan, please remain
 14 standing and my clerk will swear you in.
 15 Whereupon,
 16 ASHLEY MANGAN,
 17 was administered the following oath by the court clerk.
 18 THE CLERK: You do solemnly swear that the
 19 testimony you give in this action shall be the truth, the
 20 whole truth, and nothing but the truth so help you God.
 21 THE WITNESS: I do.
 22 THE CLERK: Please state and spell your full
 23 name for the record.
 24 THE WITNESS: Ashley Mangan. A-s-h-l-e-y,
 25

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1 M-a-n-g-a-n.
 2 THE COURT: Thank you. And you may be seated.
 3 Mr. Cooper, whenever you are ready.
 4 MR. COOPER: Thank you, Your Honor.
 5
 6 DIRECT EXAMINATION
 7 BY MR. COOPER:
 8 Q Is it okay if I call you Ashley?
 9 A It is.
 10 Q Ashley, how are you currently employed?
 11 A Parole and Probation, Department of Public
 12 Safety, Sex Offender Unit.
 13 Q And how long have you been employed in this
 14 capacity?
 15 A Two years and two months.
 16 Q Are you employed in a particular type of task or
 17 type of assignment in the section?
 18 A I just currently supervise sex offenders.
 19 Q Are you a parole officer?
 20 A Well, my title is Parole and Probation Officer.
 21 Q And in order for you to become a parole and
 22 probation officer are you required to do any special type
 23 of training or have any type of experience or anything
 24 like that?
 25 A Yes. I went through a police academy and

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1 graduated that. And then when I graduated the academy I
 2 put in for Parole and Probation and received field
 3 training experience for that specific division.
 4 Q What type of training do you go through in the
 5 academy?
 6 A In the academy you are dealing with learning
 7 laws, officer safety, firearm practice, things of that
 8 nature.
 9 Q What about your field training, what did you
 10 learn doing that?
 11 A I followed around a senior officer, watched them
 12 supervise offenders. Learned how an offender is supposed
 13 to report. What is expected of them and what our job is
 14 as an officer to make sure that they are complying with
 15 conditions.
 16 Q Do you have any other police experience?
 17 A I was a correctional sergeant with the
 18 Department of Corrections for seven years.
 19 Q Did you work at a particular prison?
 20 A I worked at prisons throughout the state.
 21 Q I want to turn your attention to March of 2013.
 22 Do you recall this time period?
 23 A Yes.
 24 Q What was your assignment in Parole and Probation
 25 during that time period?

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1 **A** I was recently assigned to the sex offender
2 unit.
3 **Q** Where were you before the sex offender unit?
4 **A** General supervision.
5 **Q** Do you recognize anyone in court here today that
6 you would have had contact with in March of 2013?
7 **A** I do.
8 **Q** Can you please point to that person and describe
9 what he is wearing.
10 **A** Sure. Steven McNeill who is wearing a greenish
11 colored tie.
12 THE COURT: The record will reflect the witness
13 has identified the defendant.
14 MR. COOPER: Thank you.
15 BY MR. COOPER:
16 **Q** Are you aware if he is a convicted sex offender?
17 **A** He is.
18 **Q** And pursuant to his conviction is he required to
19 comply with the requirements of lifetime supervision?
20 **A** Yes, he is.
21 **Q** What is lifetime supervision?
22 **A** The best way I can describe lifetime supervision
23 is similar to a type of parole. It's almost the exact
24 same condition, and actually the Parole Board does --
25 MS. HOJJAT: Objection.

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1 **Q** Are those type of agreements, would those be
2 kept in any type of file or anything like that?
3 **A** Yes. The supervising officer should have that
4 in their file.
5 **Q** Do you have a file for Mr. McNeill?
6 **A** I do.
7 **Q** And were those agreements in your file?
8 **A** They were.
9 MR. COOPER: Permission to approach the witness,
10 Your Honor.
11 THE COURT: You may.
12 MR. COOPER: Permission to approach the witness,
13 again, Your Honor.
14 THE COURT: You may approach.
15 BY MR. COOPER:
16 **Q** I am now showing you the State's Proposed
17 Exhibit 2. Do you recognize this exhibit?
18 **A** I do.
19 **Q** How do you recognize this exhibit?
20 **A** This is a Lifetime Supervision Agreement.
21 **Q** Was this the Lifetime Supervision Agreement that
22 was kept in your file?
23 **A** It is.
24 **Q** And how are you able to ascertain that?
25 **A** This was in the file. It's a Lifetime

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1 THE COURT: What is the basis of your objection?
2 MS. HOJJAT: Your Honor, the witness is stating
3 the law.
4 THE COURT: All right. Go ahead and approach.
5 (Discussion held at the bench.)
6 THE COURT: The objection is overruled. You may
7 proceed. I will ask Mr. Cooper to restate the question.
8 BY MR. COOPER:
9 **Q** What is lifetime supervision?
10 **A** Lifetime supervision is a type -- I would
11 describe it as a type of parole where -- it's not really
12 parole, though, if you violate lifetime supervision you
13 would be subject to new felony charges. Where, if you
14 violated parole you would just be subject to parole
15 violation.
16 There is specific conditions that the Parole
17 Board mandates that the offender comply by. Things like
18 reporting, residence, reporting to your officer, curfew,
19 submitting to urine analysis and things of that nature.
20 They sign that agreement saying that they will abide.
21 **Q** Let me ask you this, how is an offender made
22 aware of these conditions?
23 **A** Usually, there is a Lifetime Supervision
24 Agreement that is signed by the offender and by the
25 officer.

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1 Supervision Agreement. It appears to have some
2 signatures on it.
3 **Q** Was this the Lifetime Supervision Agreement in
4 relation to Steve McNeill?
5 **A** Yes. It does say so at the top.
6 **Q** Is this a true and correct copy of the document
7 that you kept in your file?
8 **A** Yes.
9 **Q** Do you use that document every day in the course
10 of your duties?
11 **A** I do.
12 MR. COOPER: At this point, Your Honor, I would
13 move for admission of Exhibit 2.
14 MS. HOJJAT: Your Honor, I will object to lack
15 of foundation.
16 THE COURT: Foundation seems to have been
17 established. She said this is a true and correct copy as
18 the one in her file. Are you objecting to this Exhibit 2
19 or the other one?
20 MS. HOJJAT: We're objecting to this exhibit.
21 THE COURT: What is your objection with regards
22 to foundation?
23 MS. HOJJAT: It has not been established that
24 the defendant has this fugitive document.
25 THE COURT: Counsel, approach with all three.

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1 (Discussion held at the bench.)
2 THE COURT: Thank you. The objection is
3 overruled, however, Mr. Cooper, you do have three
4 exhibits there that you are going to be seeking to
5 introduce through this witness and they all relate some
6 way, if you could lay a foundation for what those
7 documents are and how they relate to each other that
8 would be helpful.

9 MR. COOPER: Yes, Your Honor.

10 BY MR. COOPER:

11 Q So in order to do that, I will show you all
12 three documents.

13 A Okay.

14 Q This is Exhibits 2 and 3. And this is State's
15 Propose Exhibit 4.

16 A Okay.

17 Q Do you recognize all of these different
18 documents?

19 A I do.

20 Q And what are these documents, starting with
21 State's Exhibit 2.

22 A Lifetime Supervision Agreement for Steve McNeill
23 and Pending Parole Board Order, and Possibility of
24 Release. This was given to him before he was released
25 from prison.

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1 Q Can you explain for the ladies and gentlemen of
2 the jury how that whole process works when they get on
3 lifetime supervision?

4 A Well, he was incarcerated with --

5 MS. HOJJAT: Objection.

6 THE COURT: Basis?

7 MS. HOJJAT: Your Honor --

8 THE COURT: Do you need to approach?

9 MS. HOJJAT: Yes, Your Honor.

10 (Discussion held off the record.)

11 THE COURT: All right. Thank you. I am going
12 to go ahead and ask the jury to take a brief recess. We
13 have some matters that we need to place in the record and
14 resolve a couple of matters before we resume.

15 So I do need to admonish you. Our supreme court
16 requires us to admonish every jury at every break whether
17 it be a short break or a lunch break or an evening recess
18 because they are that important. So let me read this to
19 you now.

20 During the recess, you are admonished not to
21 talk or converse among yourselves or with anyone else on
22 any subject connected with the trial or read, watch or
23 listen to any report of or commentary on the trial or any
24 person connected with the trial by any medium of
25 information including without limitation newspaper,

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1 television, radio, Internet or social media of any kind,
2 or to form or express any opinion on any subject
3 connected with the trial until the case is finally
4 submitted to you.

5 (Jury exits the courtroom.)

6 THE COURT: I will ask the witness to please
7 step down while we have this discussion.

8 (Witness exits the courtroom.)

9 It is my intention before we resume with this
10 jury to address this most immediate issue in the record,
11 but also to address the others to the best of my ability.

12 I think I have most of my notes and certainly a
13 lot of the things overlap and we just kind of verified
14 each time you approached the bench.

15 So let's take care of, first of all, objections
16 related to this witness starting with the last one first,
17 which was the testimony I did ask Mr. Cooper to create
18 some foundation about the circumstances of when each of
19 these would be signed and how they interrelate with each
20 other.

21 That elicited the testimony of at least one
22 point in time the defendant had been incarcerated.
23 Certainly did not raise any other specifics as to his
24 current status or anything else. But the mere fact that
25 he has been incarcerated then prompted their request for

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1 the bench conference, which then prompted counsel to
2 request a mistrial.

3 So at this point I would ask for you to please
4 state for the record your basis upon which you believe
5 this testimony warrants a mistrial.

6 MS. HOJJAT: Yes, Your Honor. We did object and
7 moved for a mistrial at the bench. It is completely
8 improper for a witness to be talking about prior
9 incarceration. And all of the State's witnesses should
10 be admonished before they even got on the stand that they
11 are not supposed to talk about prior incarcerations.
12 Obviously, P and P officers are in a delicate position,
13 they know about prior incarcerations and the State should
14 be admonished not to talk about those things.

15 Foundation for a document is was this signed in
16 July of 2007? Yes. It was signed in July of 2007.
17 There is no need to get into incarceration to lay a
18 proper foundation. It is the date that it was signed.
19 Was he already on lifetime supervision at that point, yes
20 or no.

21 And the State's argument at the bench was that
22 this foundation that was needed that we had addressed
23 with you was absolutely not the foundation that was
24 needed. The foundation for the document was when it was
25 signed date-wise and whether he was on lifetime

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1 supervision at this time not whether he was sitting in
2 custody.

3 It is completely improper for a State's witness
4 to talk about him sitting in custody and they should have
5 been admonished and they know not to talk about it.

6 THE COURT: And maybe they were and maybe at
7 this point in the discussion it is what popped out. But
8 what I am not hearing, Counsel, is that it reaches to the
9 standard of requiring a mistrial and why it cannot be
10 cured by a curative instruction to the jury at this time.

11 Again, let's keep this in perspective. This is
12 a charged crime for someone who has already been
13 stipulated to the facts of and the charging document
14 makes clear, a convicted sex offender. It is not outside
15 the realm of possibility that the jurors would have some
16 belief or understanding that there might have been some
17 sort of incarceration at some point. I understand that
18 we obviously typically would not elicit this testimony.
19 But why would this matter require a mistrial versus a
20 curative instruction?

21 MS. HOJJAT: Your Honor, there isn't an
22 instruction that -- it's information that can't be erased
23 from the minds of the jury.

24 THE COURT: What is prejudicial about it to the
25 level of it creates manifest injustice? If you are not

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1 going to argue for me why you need a mistrial using the
2 law and the case law and the standard, then we are done
3 with this discussion.

4 I don't want to hear anymore about what you
5 think might be in the minds of the jury. I am done with
6 those conversations at the bench. Okay.

7 What is the standard and why does it meet it?

8 MS. HOJJAT: Your Honor, it is prejudicial for
9 the level of manifest injustice because there is multiple
10 potential penalties -- even an individual who is
11 sentenced with lifetime supervision it speaks to the
12 nature of the underlying offense which they've already
13 been precluded from hearing about, and it speaks to the
14 severity of the underlying offense and incarceration
15 occurred as opposed to probation lifetime supervision
16 after a term of probation.

17 They've also heard that lifetime supervision
18 occurs after probation, which is a true fact. It's
19 prejudicial to the level of manifest injustice because
20 it's telling them this was a really bad crime. This
21 wasn't just a crime, this was a really bad crime that
22 warranted prison time. Bad guy right there, that's what
23 it tells them and that is highly prejudicial.

24 THE COURT: Mr. Cooper.

25 MR. COOPER: Your Honor, first and foremost, the

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1 law specifically lays forward the type of offenders that
2 could be put on lifetime supervision; it's only the worst
3 of the worst. It's tier three offenders only. So to
4 state somebody gets probation or something like that or
5 whatever they are saying, it doesn't really bode by the
6 law. And I looked it up earlier today.

7 The problem also is that I was just about to
8 admit the document and then they say that it's a fugitive
9 document. But then I get to lay foundation as to why
10 there's three different documents. The foundation as to
11 why there is three different documents --

12 THE COURT: You are obviously arguing,
13 Mr. Cooper, that it was okay for this witness to lay the
14 foundation that he signed it while he was incarcerated,
15 she could have laid the foundation that there is a
16 initial time that there is a document signing. There's a
17 second time that there is a document signing, there's a
18 third time there is a document signing. This is
19 essentially the same document that the defendant is asked
20 to sign at various times for various reasons without
21 actually going into the fact that he's incarcerated.

22 Are you actually trying to argue to me that it
23 is part of the foundation that she had to say that he was
24 incarcerated?

25 MR. COOPER: Your Honor, the document itself

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1 talks about the fact that he was incarcerated. The
2 document that they had already agreed to the redactions
3 of. I redacted the document and then they said this was
4 fine. I got it marked and then we actually go forward to
5 admit and the document says --

6 THE COURT: Which document are we talking about
7 now, 2, 3 or 4?

8 MR. COOPER: All three of them say it. All
9 three of them say State of Nevada to imprisonment in the
10 Nevada state prison system for the crime of. The only
11 thing I was supposed to do was take out the part that
12 said the crime. That was it. That's what we agreed to.
13 I did that. They agreed to my redaction. It says it in
14 the document.

15 So I do not understand how it can be prejudicial
16 for her to say he was in prison when the document says he
17 was in prison. And that is how the document is written
18 because he wasn't given probation. That mischaracterizes
19 what happened, that mischaracterizes why he was on
20 lifetime supervision. That mischaracterizes why this
21 officer gave him certain requirements.

22 And I think it is prejudicial to the State to
23 not be able to get down that road. Because we already
24 know he's a sex offender. We already know he's on
25 lifetime supervision. Do they want to argue that any

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1 person that might do anything is subject to lifetime
2 supervision, which is not the law and it's not --
3 THE COURT: I just want you to argue what the
4 standard is and whether it meets the standard of manifest
5 injustice.

6 MR. COOPER: It doesn't meet the standard of
7 manifest injustice, Your Honor, because these documents
8 that I have already provided that have been marked and
9 have already been approved by opposing counsel --

10 THE COURT: I am anticipating another objection
11 is forthcoming, Mr. Cooper, that they don't think that
12 that language should be on the document either, so why
13 don't you address that now, whether it's appropriate for
14 that to be part and parcel of this case or not.

15 And if either of you have some cases that you
16 want to throw at me that I am not aware of feel free.

17 MR. COOPER: Your Honor, I do not have any case
18 law off the top of my head. I didn't know this issue was
19 going to come up.

20 Yesterday when we redacted this document -- they
21 had these weeks ago. They knew what was in the document,
22 so for them now to say that it needs to be -- I mean,
23 it's argument, it needs to be redacted, it's whatever
24 they want to do. But the fact is yesterday we sat down,
25 we talked about this earlier this morning. We got the

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1 redactions.

2 I said, Okay, you want me to redact this? I
3 showed this to them. They said, Yes, that's fine.

4 THE COURT: This is not about whether they
5 agreed or disagreed. This is about whether this should
6 be in the document, okay, and this is where we are now.
7 But at the end of the day, whether this should be in the
8 document or not, I just want to hear your final argument.

9 MR. COOPER: It should be in the document, Your
10 Honor, because that is the reason he was on lifetime
11 supervision. That's what happened in his case to get him
12 to lifetime supervision. He was not on probation first.
13 He did not go straight from parole. So all these
14 different things play into the case as to why he wasn't
15 responding to this officer, because if he had a parole
16 officer first then it would be a different situation with
17 a parole officer acted one way and my lifetime
18 supervision officer acted another way. But that's not
19 what happened in this case. He went directly from prison
20 to lifetime supervision and I think that's important.

21 THE COURT: Okay. Counsel.

22 MS. HOJJAT: Your Honor, if I am understanding
23 the State's argument, I think it is prejudicial to them
24 if they don't bring in the fact that he was incarcerated.
25 There is no case law that says that.

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1 THE COURT: I am not focusing on that.

2 MS. HOJJAT: Okay.

3 THE COURT: Let's hear what you have to say
4 about the document, what's pertinent in it and how we
5 proceed.

6 MS. HOJJAT: Your Honor, we believe that it
7 should not mention that he was sentenced to imprisonment.
8 We believe that that should also be redacted. It is not
9 proper for the jury to hear that this defendant has been
10 in prison. There is case law on that. I apologize, I do
11 not have specific cases to give to the Court. I did not
12 anticipate this coming up.

13 THE COURT: That's fine. The Court needs to
14 make a ruling. The Court's aware of the case law to the
15 best of my ability. I don't have the citations in front
16 of me either.

17 We have a specific case here with a specific
18 charge and I guess ultimately what I am asking you to
19 establish for me is why you believe -- I mean, we have
20 already sanitized this through our discussion that the
21 prior charge under which he was convicted, I agree, we
22 didn't need that to make the predicate case. And that
23 potentially could be substantially prejudicial beyond
24 what was necessary obviously and relevant about the fact
25 that there was a prior sex offense.

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1 I think this is a very different situation.

2 This is a situation where, in fact, this individual was
3 incarcerated, in fact, this person went directly to
4 lifetime supervision from incarceration.

5 While we typically would not want to inflame the
6 jurors by suggesting somebody spent time in prison and
7 somehow that now they see the basis of the circumstances
8 or that they are currently incarcerated. At the end of
9 the day, this is somebody who was convicted of an offense
10 that warrants him being in prison and he was in prison.

11 We are not going to overemphasize it but I am
12 not familiar with case law that would require me to
13 further sanitize this case to create some other
14 impression or leave open the question of whether or not
15 he was ever incarcerated. That is not where we are at in
16 this case. That is not what this case is. But I just
17 give you that flavor of my thought process.

18 MS. HOJJAT: I appreciate that, Your Honor. We
19 would submit to the Court that hearing about
20 incarceration greatly aggravates the impression of the
21 underlying charge. I understand the Court saying these
22 are the facts of this case but a lot of cases have a lot
23 of facts in terms of this defendant's priors. That's
24 what this is essentially, Your Honor, the fact that this
25 is a sex offense and the fact that he's on lifetime

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1 supervision are necessary for the charge here. We
2 understand that. We have stipulated to that.
3 But the fact that he was in prison before is not
4 necessary for them to establish that he did not change
5 his address or didn't go to counseling. It's not
6 relevant. There's no relevancy to him having been in
7 prison to the elements of their charges that they need to
8 establish. Especially since we are not talking about an
9 individual who got out of prison yesterday and started
10 allegedly committing these violations today. We are
11 talking about a five-and-a-half-year gap between the time
12 that he was in prison and the time that these alleged
13 violations had occurred.

14 THE COURT: Which you established in your
15 opening.

16 MS. HOJJAT: Things that happened so long ago
17 just in general even when we are talking about bad acts
18 that are admissible, when we look at the time span and
19 how long ago something occurred, relevancy decreases as
20 we go back in time. We are talking about something that
21 has nothing to do with the elements here. The elements
22 here, the elements that they need have already been met.
23 We stipulated to them. There is nothing about the
24 imprisonment that they need in this case. There is
25 nothing about the imprisonment that makes it more or less

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1 likely that he committed the crimes in this case.

2 The imprisonment is solely prejudicial and it's
3 implications of what the underlying crime are. And what
4 the underlying crime was is not relevant to this case but
5 for the fact that he's a sex offender and he is on
6 lifetime supervision.

7 THE COURT: Anything further, Mr. Cooper?

8 MR. COOPER: Nothing further.

9 THE COURT: I am going to redact the reference
10 to imprisonment in the first paragraph of each of the
11 documents. The motion for mistrial is denied. I am
12 going to give a curative instruction to disregard the
13 reference to incarceration. I believe that is
14 sufficient. I will indicate that that is not relevant to
15 the charge in terms of imprisonment.

16 At the end of the day, I believe this is not the
17 manifest injustice necessary to require a mistrial. It
18 was a reference to that there was a time when this
19 individual was in jail, as I said, likely to be in the
20 thought process, in the mindset of all of the jurors. We
21 are not going to belabor the point but we will redact the
22 reference here so that it doesn't come up in the future
23 and we will ask to disregard.

24 And then the additional foundation, I will give
25 you the permission, Mr. Cooper, to lead and just indicate

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1 that that is typical for these things to be signed
2 multiple times, are these the multiple variations of
3 them, et cetera, without asking this witness to further
4 potentially go into those circumstances, okay?

5 MR. COOPER: Yes, Your Honor.

6 THE COURT: But the mistrial request, again, is
7 denied and we will do this further redaction.

8 MS. BONAVENTURE: And, Your Honor, permission to
9 lead for this purpose.

10 THE COURT: Just for this purpose. I thought
11 you were going to lead already with these are multiple
12 documents, are they the same thing type of thing. You
13 just kind of show them to her and this is where they came
14 from.

15 So at the end of the day, we don't need this in
16 the testimony, I agree with counsel, at the base of this
17 the fact that he was incarcerated at some point in time
18 is not relevant to your predicate charges; however, I do
19 not believe we need to declare a mistrial at this point.

20 MR. COOPER: Your Honor, would you like me to
21 talk to my witness right now so we don't have this happen
22 again?

23 THE COURT: We will bring her back in and
24 admonish her before we bring the jury back in.

25 MR. COOPER: Do you want her to come back to the

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1 witness stand now?

2 THE COURT: Yes. I will take care of the rest
3 of the record in a minute.

4 (Witness returns to the stand.)

5 THE COURT: I just have a reminder for you.

6 THE WITNESS: Okay.

7 THE COURT: There is an objection lodged about
8 the statements that the document which was identified as
9 the State's Proposed Exhibit 2, had a reference, or your
10 testimony with regard to this was signed when he was
11 incarcerated. There has been objection to it not being
12 appropriate to put before the jury that this individual
13 was incarcerated at any point in time. We are only
14 dealing with what the charges are here and it is
15 certainly not relevant to these charges.

16 THE WITNESS: Okay.

17 THE COURT: We appreciate that you were giving
18 us the foundation of those records, but I am going to
19 redact from the documents the reference to imprisonment.

20 THE WITNESS: Okay.

21 THE COURT: And I'm going to admonish you to
22 please not make any references to anytime being
23 incarcerated.

24 THE WITNESS: Okay.

25 MR. COOPER: And, Your Honor, because I will be

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1 using those documents do we want to do the redactions
2 now?

3 THE COURT: Sure. Give them back to me and
4 we'll take care of that real quickly. Right up to the
5 word "to the underlying imprisonment in the Nevada State
6 prison" from each of the documents.

7 All right. Let's bring the jurors back in.
8 (Jury enters the courtroom.)

9 THE COURT: The Court has addressed the
10 objection that was made prior to the break and
11 specifically I wanted to at this time give you a specific
12 direction that there was a statement made by the witness
13 regarding incarceration of the defendant at a certain
14 point in time and that that statement is to be
15 disregarded. It is not to be considered by you, or enter
16 into your deliberations in any way. It is not relevant
17 to the charges in this case and, again, should be
18 disregarded and not considered by you in any way.

19 Mr. Cooper, you may proceed.

20 MR. COOPER: Thank you, Your Honor.
21 Permission to approach the witness, Your Honor?

22 THE COURT: You may.

23 ///

24 ///

25 ///

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1 Q And is that the agreement that we are looking at
2 right now on State's Proposed Exhibit 3?

3 A Yes. This is the Lifetime Supervision Agreement
4 with his signature and date of 11/7/12.

5 Q And on the back of it is a third page. Is that
6 the Certificate Board of Parole Action?

7 A Yes. They are the conditions that the Parole
8 Board has ordered per the Lifetime Supervision Agreement.

9 Q Okay. And that is the State's Proposed
10 Exhibit 4?

11 A Yes.

12 Q And it's common to have the different agreements
13 just based on what period of lifetime supervision they
14 are at?

15 A Yes, sir.

16 MR. COOPER: At this point, Your Honor, the
17 State would move for admission of State's Proposed
18 Exhibits 2, 3 and 4.

19 MS. HOJJAT: Your Honor, the defense would just
20 renew the previous objections.

21 THE COURT: And I would just ask you to
22 establish the additional foundation of State's Proposed
23 Exhibits 3 and 4. We only got as far as 2 in terms of it
24 came from the file and that this witness was aware that
25 it is a true and correct copy. So can you just tie that

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1 DIRECT EXAMINATION (RESUMED)

2 BY MR. COOPER:

3 Q Now, Ashley, we were going through these
4 different documents, and I will start again on State's
5 Proposed Exhibit 2. During the time period of lifetime
6 supervision, does one, I guess, get different Lifetime
7 Supervision Agreements or how does that whole process
8 work?

9 A They are given the original at the time of the
10 original agreement. And on it will say "Pending Parole
11 Board Order" and that is just a way for the Parole Board
12 to add or modify conditions later on. And so --

13 Q Let me stop you there. So would that be the
14 first one, State's Exhibit 2?

15 A Yes.

16 Q And that is the one dated on November 8th, 2007?

17 A Yes.

18 Q And going forward, it looks like on December
19 4th, 2007, the defendant would have signed a second
20 Lifetime Supervision Agreement?

21 A Yes. This is a Lifetime Supervision Agreement
22 that also is still pending Parole Board order.

23 Q And I guess at some point the Parole Board comes
24 down and gives whatever they are going to give?

25 A Yes.

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1 up and then we could proceed.

2 MR. COOPER: Yes, Your Honor.

3 MR. COOPER:

4 Q State's Proposed Exhibit 3, do you recognize
5 that document?

6 A Yes.

7 Q Is that the document that was contained in your
8 file?

9 A It was.

10 Q And State's Proposed Exhibit 4, do you recognize
11 that document?

12 A I do.

13 Q And is that another document contained in your
14 file?

15 A Yes.

16 Q So all three of these are contained in your
17 file?

18 A Yes.

19 Q All three are the Lifetime Supervision
20 Agreements of the defendant, Steve McNeill?

21 A Yes.

22 MR. COOPER: At this point, Your Honor, the
23 State would move to admit Exhibits 2, 3 and 4.

24 THE COURT: These are not the originals, they
25 are true and correct copies of the originals; is that

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1 correct?

2 THE WITNESS: Yes.

3 THE COURT: I will admit the State's Exhibits

4 2, 3 and 4, the various signed versions of the Lifetime

5 Supervision Agreement.

6 MR. COOPER: Thank you, Your Honor.

7 (Whereupon, State's Exhibits 2, 3 and 4

8 were admitted into evidence.)

9 MR. COOPER: Permission to publish.

10 THE COURT: You may.

11 BY MR. COOPER:

12 Q So this the agreement that he would have signed?

13 A Yes.

14 Q And it looks like on the left-hand side, there's

15 some numbers 1 through 12 on the career. What are those

16 different categories there, what are they referring to?

17 A Conditions that he has to abide by.

18 Q So Number 1 there, is that reporting --

19 A Reporting/release.

20 Q And Number 2?

21 A Residence.

22 Q Just go through them for me.

23 A Okay. Read them?

24 Q Just the bold parts.

25 A Number 3 would be intoxicants. Number 4 would

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1 be controlled substances. Number 5 is weapons. Number 6

2 is associates. Number 7 is cooperation. Number 8 is

3 laws and conduct. Number 9 is out state travel. Number

4 10 is employment program. Number 11 is supervisions

5 fees. And Number 12 is curfew.

6 Q Okay. Is that referring to all the different

7 things he needs to do while on lifetime supervision?

8 A Yes -- well, can or cannot do.

9 Q Right. He cannot have weapons, correct?

10 A Correct.

11 Q But he has to report?

12 A Correct.

13 Q Does everyone that gets placed on lifetime

14 supervision have these agreements?

15 A Yes.

16 Q And you said the special conditions those can

17 change based upon what the Parole Board wants to do?

18 A Yes. The Parole Board can modify those at any

19 time.

20 Q And now I am showing you what is marked as

21 State's Exhibit 3. Essentially, those are the same type

22 of conditions?

23 A They are the same conditions.

24 Q And State's Exhibit 4, which I am now showing

25 you, the same conditions again?

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1 A The same conditions.

2 Q Now, back in March of 2013, were you assigned to

3 the defendant as an offender or how does that whole

4 process work?

5 A In March of 2013 I was a new officer to the sex

6 offender unit. At that time I was given a caseload and

7 Steve McNeill was part of that caseload that I received.

8 Q And are you only assigned lifetime supervision

9 people or do you have a multitude of different

10 individuals?

11 A My cases are a mixture of probation, parole, and

12 lifetime supervision.

13 Q Approximately how many people do you supervise

14 at any given time?

15 A Approximately 55.

16 Q What's the first thing you do when you get a new

17 assignment or a new offender?

18 A My first thing would be to make contact with

19 that offender and set up an appointment to meet them up

20 in my office and try to get a feel for what is going on.

21 Q And did you do that in this case?

22 A I did.

23 Q Now, do recall the first time that you actually

24 made contact with the defendant?

25 A I do.

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1 Q When was that?

2 A March 29, 2013.

3 Q Before March 29th, did you ever try to contact

4 him before that point?

5 A I believe I tried to make a phone call to his

6 listed phone number and I was not able to get through.

7 Q Did that cause you any concern?

8 A Not at that moment, no, because it is common for

9 offenders to have nonworking phone numbers.

10 Q At that point did you also know whether or not

11 he had a stable residence or he was homeless?

12 A At that point I believe he was homeless.

13 Q So you actually had contact with him on

14 March 29th?

15 A I did.

16 Q Can you describe for the ladies and gentlemen of

17 the jury how that contact happened? What you were doing?

18 What happened at that point?

19 A Yes. On that day I was out in the field away

20 from the office. And I had got a call from another

21 officer who was at the office and said that one of my

22 offenders was there trying to drop off a monthly

23 reporting statement --

24 MS. HOJJAT: Judge, object to hearsay.

25 THE COURT: Sustained.

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1 BY MR. COOPER:

2 Q And without saying what that officer told you,
3 just describe what you did as a result of what that
4 officer said.

5 A So I got the call that my offender was at the
6 office. I reported back to the office and was able to
7 meet with Mr. McNeill and go over his monthly report.

8 Q And you said monthly report. Any time someone
9 actually comes to the Division of Probation and Parole
10 are they required to fill out documentation?

11 A They are.

12 Q And what type of documentation is there?

13 A It is a monthly reporting form.

14 MR. COOPER: Your Honor, may I approach the
15 witness?

16 THE COURT: You may.

17 BY MR. COOPER:

18 Q I am now showing you what has been previously
19 marked as State's Proposed Exhibit 5. Do you recognize
20 this exhibit?

21 A I do.

22 Q What is this?

23 A This is Steve McNeill's monthly report dated
24 3/29/2013.

25 Q And would that document be kept in the ordinary
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1 course of your duties as probation officer?

2 A Yes. I keep it in his file.

3 Q Now, who actually fills out that report?

4 A This was filled out by Steve McNeill.

5 Q And is that a true and correct copy of the
6 report that was filled out on March 29th of 2013?

7 A It is.

8 MR. COOPER: At this point, Your Honor, State
9 would move to admit State's Proposed Exhibit 5.

10 MS. BONAVENTURE: No objection.

11 THE COURT: State's proposed Exhibit 5 is
12 admitted.

13 (Whereupon, State's Exhibit 5 was
14 admitted into evidence.)

15 MR. COOPER: Permission to publish.

16 THE COURT: You may.

17 BY MR. COOPER:

18 Q This is the first monthly report that the
19 defendant would have filled out while you were
20 supervising him?

21 A Yes.

22 Q And you said he filled this out on March 29th.
23 Now, briefly just walk through with me the different type
24 of things that they have to fill out and the form in
25 general.
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1 A I just go down line by line and discuss, you
2 know, where are you living; is this a good number for
3 you; are you employed. I ask how he gets to the office,
4 what his transportation is.

5 Further down if he has been attending counseling
6 I like to address that with sex offenders. And just kind
7 of get a general idea of what is going on in his life.

8 Q Now there also seems to be some handwriting on
9 the left-hand side; do you see that handwriting in the
10 margin?

11 A Yes.

12 Q And whose handwriting would that be?

13 A That's my handwriting.

14 Q Are you actually able to make out what that
15 says?

16 A Yes.

17 Q What does it say?

18 A It says "5:00 p.m. to 5:00 a.m. curfew." And by
19 your address it says "no spot he lays his head."

20 Q What does that mean?

21 A Basically that means he does not have a fixed
22 address, so he is homeless so he is putting down that he
23 lives at Main and Colorado at the corner there, but he
24 probably does not lay specifically on that exact corner
25 so there is no specific spot where he lays down his head.
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1 Q Now, at any point during your supervision of the
2 defendant did you tell him that he needed to stand at a
3 certain corner at all times?

4 A Not at all times. But if his residence is going
5 to be Main and Colorado then he needs to be there at
6 night.

7 Q Now, Main and Colorado, does that signify to you
8 that he was in fact homeless?

9 A Yes, it did.

10 Q And the 5:00 p.m. to 5:00 a.m. curfew, what does
11 that mean?

12 A It means between 5:00 p.m. and 5:00 a.m. he
13 needs to be at the corner of his address he reported as
14 Main and Colorado.

15 Q Now, does he have to report that specific
16 intersection or can he report like a landmark or
17 somewhere else?

18 A No. He has to report a specific -- It would be
19 cross streets, I guess, a landmark would be helpful but
20 they have to report some physical address.

21 Q Are you familiar with this corner of Main and
22 Colorado?

23 A I am.

24 Q And are you familiar if there is also types of
25 inlets and allies in that area?
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1 **A** There are multiple alleyways in that area.
2 **Q** Now, let me ask you a question, I'm sorry, I
3 meant to ask this earlier. Going back to this Lifetime
4 Supervision Agreement --
5 **MR. COOPER:** Permission to publish State's
6 Proposed Exhibit 4, Your Honor?
7 **THE COURT:** You may.
8 **BY MR. COOPER:**
9 **Q** Do you see the date on that one?
10 **A** Yes, I do.
11 **Q** And would this be the most recent one to your
12 knowledge?
13 **A** Yes.
14 **Q** And do you see where it says "agreement of
15 offender"?
16 **A** I do.
17 **Q** And I am going to go ahead and give you this.
18 Just read for me what that says. Are you familiar with
19 that area, that paragraph where it says "agreement of
20 offender"?
21 **A** Yes.
22 **Q** In this paragraph does it talk about the
23 penalties if they don't complete those conditions?
24 **A** Yes.
25 **Q** Thank you. So when was the next time you came

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1 **MS. BONAVENTURE:** No objection.
2 **THE COURT:** State's 6 is admitted.
3 (Whereupon, State's Exhibit 6 was
4 admitted into evidence.)
5 **MR. COOPER:** Permission to publish, Your Honor.
6 **THE COURT:** You may.
7 **BY MR. COOPER:**
8 **Q** So this is State's Exhibit 6. And, again, this
9 would be the report from April of 2013. I actually want
10 to focus with you on the middle part there where it says,
11 "Need to call Marcia Lee." Whose handwriting is that?
12 **A** That is my handwriting.
13 **Q** What does that mean?
14 **A** Basically it means that he is checking "no" for
15 counseling, which concerns me because I have no proof in
16 my file that he has completed sex offender counseling.
17 So he last reported that he was seeing Marcia for
18 counseling, so I would need to call her and see what the
19 status is and why he is not attending counseling.
20 **Q** So as long as you were his parole officer he was
21 not in counseling?
22 **A** He was not.
23 **Q** And on the second page of this document, bottom
24 portion, do you see that thing that kind of looks like a
25 map?

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1 in contact with the defendant after March 2013?
2 **A** I believe it was April 12, 2013.
3 **Q** And would he have filled out a monthly report at
4 that time?
5 **A** Yes.
6 **MR. COOPER:** Permission to approach the witness,
7 Your Honor.
8 **THE COURT:** You may.
9 **BY MR. COOPER:**
10 **Q** Do you recognize this document?
11 **A** Yes.
12 **Q** Is this document kept in the ordinary course of
13 your duties as a probation and parole officer?
14 **A** Yes.
15 **Q** Is that document a fair and accurate depiction
16 of the document that's contained in your file?
17 **A** Yes.
18 **Q** Does that document relate to Mr. Steve McNeill
19 the defendant?
20 **A** Yes.
21 **Q** And is that the report we were just talking
22 about from April 12th of 2013?
23 **A** Yes.
24 **MR. COOPER:** At this point, Your Honor, the
25 State would move to admit Exhibit 6.

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1 **A** I do.
2 **Q** And what is that?
3 **A** That was done in order so I could get a better
4 feel of where he is living and he showed the cross
5 streets of Main and Wyoming and Commerce. And there's an
6 alleyway between Commerce and Main and there's a circle
7 there, most likely where he would be staying.
8 **Q** And is that something he would have drawn or
9 would you have?
10 **A** I know -- I believe he did draw this map. I
11 don't know if I would have written on it as well.
12 **Q** Would this be an area that you would be able to
13 find him during his curfew period?
14 **A** What he's claiming.
15 **Q** And, again, you are familiar with that area?
16 **A** Yes.
17 **Q** Now it looks like on the left-hand side here I
18 think the word curfew is cut off. It says "few
19 8:00 p.m." Do you see that?
20 **A** That would have been "curfew 8:00 p.m."
21 **Q** Do you see that?
22 **A** Yes. That is curfew 8:00 p.m.
23 **Q** Describe for me how that happened or what's
24 going on with that.
25 **A** When I initially set his curfew in March it was

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1 set for 5:00 p.m. During this discussion in April he had
 2 asked for an extended curfew, so it would be effective
 3 from 8:00 p.m. to 5:00 a.m. instead of 5:00 p.m. to 5:00
 4 a.m. So he asked for an extension to 8:00 p.m. and I
 5 granted that. I said yes, it is hot during the day.
 6 8:00 p.m. will be fine. Just be there at your residence
 7 at 8:00 p.m.
 8 Q And the residence you were referring to is that
 9 circle right there in that alleyway?
 10 A Yes.
 11 Q So it was not necessarily directly on the
 12 corner?
 13 A No, it's not.
 14 Q Now at some point when you realized that the
 15 defendant was homeless, did you try to get him a place to
 16 stay or anything like that?
 17 A Yes. I referred him to Catholic Charities.
 18 There was a bed and food and assistance that could be had
 19 there and he refused.
 20 Q Now, in April of 2013, did you have any other
 21 contact with the defendant?
 22 A I believe I did try to see him at his home cross
 23 street.
 24 Q Were you successful?
 25 A I was not.

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1 MR. COOPER: Permission to approach the witness,
 2 Your Honor?
 3 THE COURT: You may.
 4 BY MR. COOPER:
 5 Q I am now showing you what has been previously
 6 marked as State's Proposed Exhibit 7; do you recognize
 7 this exhibit?
 8 A I do.
 9 Q How do you recognize this exhibit?
 10 A That is a monthly report dated 5/8/13 from Steve
 11 McNeill.
 12 Q And is that a true and correct copy of the
 13 report that is kept in your file?
 14 A It is.
 15 Q Do you use that report in your daily duties as a
 16 probation and parole officer?
 17 A I do.
 18 MR. COOPER: At this point, Your Honor, the
 19 State would move to admit State's Exhibit 7.
 20 MS. BONAVENTURE: No objection.
 21 THE COURT: It is admitted.
 22 (Whereupon, State's Exhibit 7 was
 23 admitted into evidence.)
 24 MR. COOPER: May I publish, Your Honor?
 25 THE COURT: You may.

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1 Q Do you recall the time you went out there?
 2 A I believe it was 8:20 p.m.
 3 Q And do you recall how long you actually looked
 4 for him?
 5 A Yes. After my home attempt at Main and Wyoming,
 6 I started my surveillance up until about 9:41 I surveyed
 7 the areas going down alleyways. At no point did I see
 8 the offender anywhere near those areas.
 9 Q And going down the alleyways would include kind
 10 of using this map and going down alleyways?
 11 A The alleyways and I drive down Main, drive down
 12 Wyoming, drive down commerce, back up again and through
 13 alleyways of course.
 14 Q When is the next time you had contact with him
 15 -- I guess you had contact on April 12th?
 16 A Right.
 17 Q And you said you tried to go find him and you
 18 could not find him?
 19 A Right.
 20 Q When is the next time you had contact with him
 21 at that point?
 22 A May 2013.
 23 Q Again, did he fill out a monthly report during
 24 that time as well?
 25 A Yes.

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1 BY MR. COOPER:
 2 Q This is, I guess, a similar report to the one we
 3 have previously seen?
 4 A Yes, monthly report.
 5 Q What did he put for an address?
 6 A Now he is reporting Wyoming and Main.
 7 Q Is that still in the area in which you looked?
 8 A Yes.
 9 Q I am now showing you the last page of this one.
 10 This is a three-page document. Do you recognize this
 11 page?
 12 A I do.
 13 Q And what is this page depicting?
 14 A This is another map trying to locate Mr. McNeill
 15 and where he sleeps.
 16 Q And why was this map drawn?
 17 A Because I was not able to find him on my last
 18 home attempt.
 19 Q Is this map more detailed?
 20 A Yes.
 21 Q And was this still the same general area in
 22 which you were looking the last time?
 23 A Yes. I looked through that whole area.
 24 Q What, if anything, did you talk to the defendant
 25 about in May of 2013?

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1 **A** Probably discussed where he lays his head at
2 night, which would be behind a Spanish church in a gated
3 area. I was just trying to locate, you know, trying to
4 discern where he is living. That was probably the
5 majority of what our conversation was in May.
6 **Q** Did you have any contact with him in June of
7 2013?
8 **A** I believe I did.
9 **Q** At some point during your contact or at some
10 point during your supervising the defendant, did another
11 supervising officer come in as well?
12 **A** Yes. I believe that was in June, Officer White
13 my have had Mr. McNeill.
14 **MR. COOPER:** Permission to approach the witness,
15 Your Honor.
16 **THE COURT:** You may.
17 **BY MR. COOPER:**
18 **Q** Now, are all parole and probation officers
19 trained to make sure that the offender fills out the same
20 type of monthly report?
21 **A** Yes.
22 **Q** And the offender is actually the one that fills
23 that report out?
24 **A** Yes.
25 **Q** I am now showing you what has been previously

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1 so during that time they may have been a situation where
2 he was no longer in the area that I supervised, so I
3 would transfer him to an officer who would go to the area
4 of Main and Wyoming.
5 **Q** Now, at some point did he actually come back on
6 your caseload?
7 **A** He did.
8 **Q** About how long after June of 2013?
9 **A** The next time he reported to me was in July.
10 **Q** Between July and June did you have any contact
11 with him?
12 **A** Yes, I did.
13 **Q** Do you recall was that over the phone or in
14 person?
15 **A** It was over the phone.
16 **Q** Can you describe to the ladies and gentlemen of
17 the jury what happened at that point?
18 **A** Yes. I was attempting to get ahold of
19 Mr. McNeill so I could tell him that I was his PO again,
20 probation/parole officer, and set up an appointment so he
21 could come in and discuss residence again. I was not
22 able to get very far with him; he hung up on me twice.
23 And then the third time I was going to say come in for
24 your July appointment and he said something to the effect
25 of, You fucking cunt, and then hung up on me.

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1 marked as State's Proposed Exhibit 8. Do you recognize
2 this exhibit.
3 **A** Yes.
4 **Q** Is that a true and correct copy of the exhibit
5 that would appear in your file?
6 **A** Yes.
7 **Q** And what is that?
8 **A** It is a monthly report dated June 6, 2013,
9 filled out by Steve McNeill.
10 **MR. COOPER:** At this point, Your Honor, I would
11 move to admit State's Proposed Exhibit 8.
12 **MS. BONAVENTURE:** No objection.
13 **THE COURT:** State's 8 is admitted.
14 (Whereupon, State's Exhibit 8 was
15 admitted into evidence.)
16 **BY MR. COOPER:**
17 **Q** Now you said that at this point it was Officer
18 White and not you?
19 **A** Yes. Officer White was the supervising officer
20 at that time.
21 **Q** And why is that? Do you know what happened or
22 anything like that?
23 **A** Periodically parole and probation officers
24 change depending on location. Like right now my location
25 is I supervise offenders on Boulder Highway in Henderson,

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1 **MS. HOJJAT:** Objection.
2 **THE COURT:** Basis.
3 **MS. HOJJAT:** Relevance, Your Honor.
4 **THE COURT:** Overruled.
5 **BY MR. COOPER:**
6 **Q** At some point you were able to come in contact
7 with him in July though?
8 **A** Yes, he did report in July.
9 **Q** And he filled out another monthly report?
10 **A** He did.
11 **MR. COOPER:** Permission to approach the witness,
12 Your Honor.
13 **THE COURT:** You may.
14 **BY MR. COOPER:**
15 **Q** I am now showing you what has been marked as
16 State's Proposed Exhibit 9; do you recognize this
17 exhibit?
18 **A** I do.
19 **Q** And how do you recognize this?
20 **A** This is a monthly report dated July 11, 2013,
21 filled out by Steve McNeill.
22 **Q** At that point were you his probation officer
23 again?
24 **A** I was.
25 **Q** And is this a true and correct copy of that

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