

1 of drugs.

2 So right there already, element's not been proven.

3 So it comes down to the issue of actual or  
4 constructive possession, in addition to whether that was even  
5 knowingly done by Mr. Bowman.

6 When we look at Exhibit 1, which is the sallyport  
7 angle from this viewpoint, you can see that there is no actual  
8 possession.

9 As we heard from the State and all the witnesses, no  
10 one saw the bags on Mr. Bowman's person. No one saw it in his  
11 hand, no one saw it in his pocket. No one saw it anywhere on  
12 his person.

13 You heard specifically from Deputy Gerow, who stated  
14 it just appeared. I looked over, and there it was on the  
15 ground. No actual possession.

16 So then you go to well, can the State prove it by  
17 constructive possession?

18 When we look at the issue of constructive  
19 possession, the key element that the State must prove is  
20 whether Mr. Bowman knowingly constructively possessed. Merely  
21 being by something does not mean that I am knowingly in  
22 constructive possession. If I didn't know that there was  
23 something next to me, I wouldn't, that would not be proven  
24 beyond a reasonable doubt.

25 You heard that his first statement when he saw that

1 baggie is "that is not mine." And the State says well, of  
2 course he's distancing himself from it. He doesn't want to  
3 take possession of it. Or the very true fact of the matter is  
4 it's not his, and he's stating that is not his.

5 Furthermore, when you look at those videos in  
6 Exhibit 1, look at his demeanor. Mr. Bowman does not, he's  
7 not looking at the ground searching to make sure that they are  
8 not shaking loose something. He's talking with the deputy,  
9 laughing and smiling. When he gets brought backwards and sat  
10 down, he's not looking at the ground, he's not looking at the  
11 deputy to see whether or not the deputy sees anything. In  
12 fact as you watch the entire video, which we didn't show the  
13 whole video, or I should specifically say the State did not,  
14 as you continue looking through it, it is quite a long time  
15 before Mr. Bowman is even shown the drugs and the baggie. And  
16 the first statement is "that is not mine."

17 In addition, besides the fact that there's no  
18 knowingly constructive possession, there is just no possession  
19 of these drugs. You saw in Exhibit 7, which is the  
20 surveillance video from the Nugget, and you also heard from  
21 Officer Dutra how he did a shake and search of Mr. Bowman  
22 before taking him to his patrol unit. And in fact, when we go  
23 through this, and you can see at least four separate  
24 incidences where either Officer Coombes or Officer Dutra is  
25 reaching in and searching Mr. Bowman's right side or his front

1 or his back, and the last with Officer Dutra.

2 And as you can see, and as we are watching, and I  
3 may have already jumped over it, but the very first one is  
4 Officer Coombes picks something up off the floor and puts it  
5 back into Mr. Bowman's pocket.

6 If I could just rewind a little bit.

7 You see Officer Coombes looking, reaches down, picks  
8 something up, and puts it into Mr. Bowman's pocket. Note  
9 Mr. Bowman's demeanor. He doesn't seem concerned, he doesn't  
10 immediately turn around and look, anxious as to what may be  
11 found. His demeanor is completely cooperative and calm.

12 The next time Officer Coombes you will see reaches  
13 again into the right-hand pocket of Mr. Bowman, right here  
14 (indicating), reaches in deeper. Again look, note the  
15 demeanor. No concern, not anxiously looking to see what's  
16 found or what may have shaken loose.

17 Going through his wallet, grabbing his  
18 identification or some card from his wallet, Officer Dutra  
19 couldn't remember, puts something, probably the wallet, back  
20 into Officer Bowman's pocket, to Mr. Bowman's pocket. Again  
21 demeanor is critical. What is Mr. Bowman doing? He's not  
22 looking at the ground to see if something had fallen out or  
23 shaken loose.

24 You'll next see Officer Dutra pulls something out of  
25 the right-hand side of Mr. Bowman, seems to do a little shake,



1 and then hands something to Officer Coombes. What looks to  
2 appear to be an iPhone. Again Officer Dutra couldn't quite  
3 remember.

4 And then you'll lastly see Officer Dutra do a shake  
5 and a check of the pockets, but more specifically of the  
6 waistband. There again, note the demeanor of Mr. Bowman. Not  
7 looking at the ground, not concerned if something is going to  
8 fall out.

9 From there Mr. Bowman is walked 40 yards to a patrol  
10 unit. You also heard testimony from Officer Dutra who said  
11 Mr. Bowman was wearing loose clothing. You can also see on  
12 the video. There wasn't skintight jeans that he was wearing,  
13 but loose. 40 yards from the Nugget to the patrol car. He  
14 was then walked another 40 to 50 yards upon arrival at the  
15 Washoe County Jail from the patrol car to the sallyport.

16 Why is this even credible, ladies and gentlemen?  
17 Why am I mentioning those? Because the State wants you to  
18 believe that after a short little shake that officer, Deputy  
19 Gerow conducted, that the baggie just fell from Mr. Bowman.  
20 But what we saw here was a definitely shake, search, pat-down,  
21 however we want to call it, but you can see it, and that he  
22 was then taken at least, if not a hundred yards or the length  
23 of a football field, walking, and nothing falls out?

24 The State's theory is implausible based upon what we  
25 know. So the question is, ladies and gentlemen, what we do



1 know. And if it was wasn't Mr. Bowman, how did the baggie get  
2 in there?

3 Deputy Gerow, young deputy, you heard that he had  
4 been out of training for exactly two weeks before this big  
5 arrest and this case. That was the first time he had ever  
6 seen or encountered drugs in his searching at the Washoe  
7 County Jail.

8 You also heard Deputy Gerow that he did not follow  
9 procedures on this case, that specifically it was not  
10 procedure to throw the baggie at the other deputy. And as you  
11 will see in the video, he kind of steps back in surprise.

12 You also heard him testify upon the State's  
13 questioning that he should have immediately stopped the search  
14 when he found anything and immediately turned it over to the  
15 arresting officer. But he didn't. He continued searching.

16 And the State wants to try to make this argument, or  
17 what I'm gathering to be the argument, that somehow it was  
18 secreted away in his socks or lower legs. But in that video,  
19 in Exhibit 1, you will see that they haven't really even  
20 touched his socks or feet before this baggie appears. In  
21 fact, they move him back where his feet are straight up, and  
22 Officer Gerow, as he's touching and feeling the leg and taking  
23 off the shoe, looks down and notices the baggie that we saw  
24 had been, it appeared, prior to that.

25 We also know that Deputy Gerow was walking through

1 the hallway that had light gray floors and white walls, where  
2 other detainees may sit while they are watching other people  
3 being searched. You heard Deputy Gerow say that he had been  
4 in and out of the sallyport numerous times that night already.

5         You also heard Deputy Gerow state that he was  
6 wearing similar clothing, a different uniform that had more  
7 pockets, but everything else the same, including his boots.  
8 And you saw when he walked by, he had standard issue Washoe  
9 County Sheriff heavy tread boots.

10         You also heard from Deputy Gerow his changing  
11 testimony where he informed Officer Dutra that very  
12 specifically, when I was checking the front waistline of  
13 suspect Bowman, that the baggie fell out of his right pant  
14 leg. Then changed, and additional testimony, and Deputy Gerow  
15 stated no, I never saw it fall, I never heard it fall, it just  
16 appeared.

17         In the State's argument they want you to believe now  
18 that it came from the left leg, despite the initial statements  
19 by Deputy Gerow and Officer Dutra. The mere fact of the  
20 matter is it appeared. No one knows from what leg or if it  
21 came from a leg.

22         You also heard some testimony about the baggie.  
23 Where Deputy Gerow did clarify that it was not Saran Wrap that  
24 the baggie was that contained the drugs, that it was in fact  
25 more of a plastic baggie.

1           And why is that even significant, ladies and  
2 gentlemen? Because the State wants you to draw and jump to  
3 the conclusion that because there was some other Saran Wrap,  
4 potentially or not, because remember, ladies and gentlemen,  
5 nothing was booked into evidence. Deputy Gerow did not book  
6 those other things into evidence. So we have no way to  
7 compare to what the State is trying to make you jump to the  
8 conclusion to. We have no way to investigate.

9           But Deputy Gerow did state that it's not the same,  
10 after being shown the photograph and his memory being jogged  
11 as to what had happened.

12           Deputy Gerow, no one, in fact, in that entire room,  
13 you saw there were numerous people in there, the last count I  
14 saw nine, no one saw it fall, no one heard it, it just  
15 appears.

16           So ladies and gentlemen, when we are looking closely  
17 at Exhibit 1, as you can see at 4:05:08 a.m., there were  
18 commentary about someone in the back disrobing, that there was  
19 other arrestees in the room, but you also heard how there was  
20 stuff all over the floor, that Deputy Gerow was like I don't  
21 know what it is, it could be some paper, but I don't really  
22 know.

23           You also see at 4:05:58 a.m., when they bring  
24 Mr. Bowman in, that Deputy Gerow is closest to Mr. Bowman's  
25 right leg, standing there the entire time, and always



1 maintains that position.

2 When you go to 4:04:42 a.m., you will see on Deputy  
3 Gerow's boot a white object. And specifically right there  
4 (indicating).

5 I asked you, ladies and gentlemen, why some cases go  
6 to trial. This is why.

7 Mr. Bowman is not guilty. Not guilty of what the  
8 State wants you to jump to the conclusion of. Because once  
9 you have seen and looked at the evidence, he's never in actual  
10 or constructive possession. And with that, he's innocent.

11 Thank you.

12 THE COURT: Thank you, Miss Ristenpart.

13 Let's all stand one last time.

14 To the State, you have the right of closing  
15 arguments, if you wish, one last time.

16 MR. LUCIA: Thank you, Your Honor.

17 THE COURT: Let's be seated.

18 Carry on, please, counsel.

19 MR. LUCIA: Thank you, Judge.

20 (Video playing.)

21 MR. LUCIA: Now, I want to kind of work backwards a  
22 little bit, and I want to start with the part Miss Ristenpart  
23 closed with, naming that white dot that's on what appears to  
24 be Deputy Gerow's boot.

25 The reason I want to show you Exhibit 1 again, this

1 is the first angle of the search that was conducted in the  
2 sallyport. Now, there's been plenty of discussion here about  
3 where the bag ends up on the floor, right? What we see when  
4 you watch this video is that when Deputy Gerow enters with the  
5 defendant, Deputy Gerow is always on the same side of  
6 Mr. Bowman. He's always on Mr. Bowman's right side  
7 throughout the entire course of the search, throughout the  
8 entire time that he's interacting with him. At no point does  
9 Deputy Gerow's foot or his body ever interact or even  
10 intersect with the area where the narcotics or ultimately  
11 located.

12 This is going to take a couple of minutes, but if  
13 you watch, you will see where Deputy Gerow is standing.  
14 What's important about this is it is kind of a repeating  
15 thread that you heard from Miss Ristenpart. That's the notion  
16 that well, this thing just appeared.

17 Things just don't appear. It got in there somehow.  
18 And the same reason it got in there is the same reason why  
19 it's sitting between Mr. Bowman's legs immediately next to his  
20 foot as he's being walked back.

21 Somehow it's supposed to be presumed that this white  
22 dot on Deputy Bowman's foot somehow jumped from behind his  
23 heel and was in an area immediately underneath Mr. Bowman  
24 between his legs in a split second. Yet none of that shows up  
25 on camera. What you see on camera here is another white dot.

1 behind Deputy Keast, but we know that's not the one that  
2 jumped up underneath the defendant.

3 As Miss Ristenpart also noted, there's other white  
4 dots in this room. But none of those start jumping.

5 I want to play that again for you folks, because  
6 that brings to light another thing I wanted to rebut. So  
7 again pay attention to where Deputy Gerow's feet are and pay  
8 attention to where the bags were.

9 What you do not see in that video is Deputy Gerow  
10 step between Mr. Bowman. And in fact throughout the whole  
11 course of the event up until this moment you never even see  
12 Deputy Gerow's foot even in that same middle area where the  
13 bag is located.

14 Folks, what you know, what you can see here clear as  
15 day, there's white spots on the floor. Yet the only white  
16 spot that shows up that was not there before Mr. Bowman walked  
17 in the door is the one that was directly beneath his foot.

18 There was a lot also mentioned about demeanor and  
19 the importance of demeanor. And the reason why I brought you  
20 back to this one portion of the video is because I want you to  
21 look at something. Specifically not so much Mr. Bowman's  
22 demeanor, but his actions.

23 Now, we heard testimony, and the reason why it was  
24 elicited regarding the video camera was because I was  
25 interested in how noticeable the camera was. Was it hidden?



1 Could you look up and see if there's a camera there?

2 Now watch, because I want to illustrate what it is  
3 that Mr. Bowman does. You can see here he's looking at the  
4 camera, looks down, looks back at the camera, moves his left  
5 foot in a sweeping motion this way with his toe pointed  
6 towards the right side of his body, as if he's trying to take  
7 what he knows is falling from some portion of his body and  
8 move it out of the view of what he can see in the corner. And  
9 what he can see in the corner, folks, is this camera that's  
10 capturing the whole event.

11 So demeanor is important. I agree one hundred  
12 percent. Look at the demeanor. Mr. Bowman's not looking  
13 down. Mr. Bowman doesn't seem concerned about things falling  
14 out of his pockets or things falling out off his person. I  
15 think you folks can see the video here. Take a look for  
16 yourself. Towards the camera, back to the floor, back to the  
17 camera. And watch his left foot. That's demeanor, folks.  
18 That's consciousness of guilt. That's knowledge.

19 The notion that Deputy Gerow's testimony should be  
20 discounted because he broke with procedure, I'm not going to  
21 sit here and contest that he did not follow procedure to a T.  
22 I would submit that the lapse in procedure is minimal.

23 What should he have done? Stopped the search. What  
24 should he have done? Given the drugs immediately to Officer  
25 Dutra.

1           What did you see him do? Well, you saw what he did  
2 with the drugs. He took them, and he set them on the floor.  
3 From angle two, and I won't show it to you, I'm trusting you  
4 will recall the video. You can see the package laying on the  
5 floor the entire time, where moments later Deputy Gerow picks  
6 it up. And what does he do? He holds on to it until Officer  
7 Dutra immediately walks into the room, where he walks right  
8 over and hands it to him.

9           Did he not follow procedure? Not to a T. Did it  
10 matter? No.

11           A couple of other things that I want to point out  
12 just briefly. One of the exhibits that Miss Ristenpart showed  
13 you in making the argument that the defendant was not in  
14 actual possession of the narcotics was a still shot taken from  
15 some time around this portion of the video. Note that this is  
16 after the drugs had fallen from Mr. Bowman's person. What you  
17 saw there three or four more times is what happened that day,  
18 and that is the defendant walked into the Parr Boulevard  
19 facility with those drugs on him.

20           The notion, too, that the defendant's demeanor at  
21 the Nugget is somehow important, or what was not found at the  
22 Nugget is somehow important, I think bears little if nothing  
23 on this case.

24           You know that they didn't find the plastic in his  
25 sock at the Nugget. And why would he be concerned if they are

1 searching his pockets? He knows where the drugs are, and he  
2 knows that they are not there. So why would he be concerned  
3 if they are looking at his cell phone? We know that he had  
4 them hidden on himself sufficiently to avoid detection at the  
5 Nugget. We know the plastic bag is hidden sufficiently in his  
6 sock to avoid the search that they just conducted right there.

7 Circumstantial, direct evidence, you have a jury  
8 instruction. It's number 18. It says either one is fair,  
9 either one is fine.

10 Don't let the fact that there might not be direct  
11 physical evidence, that somebody can say I saw the drugs in  
12 Frederick Bowman's hand, lead you astray. You saw the tape,  
13 you saw the evidence.

14 It's clear those drugs got in there somehow. Were  
15 they on Officer Dutra's boot? Well, he's been there for two  
16 weeks. What he testified to is that he walks that hallway and  
17 brings people down into the sallyport. Do you remember how  
18 often it's cleaned? Daily, if not multiple times a day.

19 He walked down to grab Frederick Bowman. There was  
20 nothing on the ground there. Somehow this bag just magically  
21 sticks like a magnet to Officer Gerow's boot? And even though  
22 he's standing feet away from where the substance was  
23 recovered, it's supposed to transport magically over directly  
24 underneath Mr. Bowman's leg? Ask yourself, is that  
25 reasonable?



1           You have got an instruction, instruction number 24,  
2 and it talks a little bit about common sense. And folks,  
3 there's a way that I like to phrase that, and it goes like  
4 this. The courtroom is not a place where common sense goes to  
5 die. Like I said earlier, I don't mean to be glib, and I  
6 don't mean to insult people, but those drugs got in there  
7 somehow. They didn't grow legs, they didn't run in there.  
8 Somebody carried those drugs in there.

9           Miss Ristenpart's right. I want you to believe it  
10 was Frederick Bowman. Where I disagree with her is that I'm  
11 not asking you to jump to conclusions. The packaging that was  
12 in the drugs, clear plastic bag, no zip top, oddly enough in  
13 his sock clear plastic wrap, no zip top in his sock.

14           It's either a very unfortunate coincidence after a  
15 string of them which lined up all for some reason pointing to  
16 Frederick Bowman, or what you saw in the evidence is true. He  
17 possessed those drugs, he was in possession of them when he  
18 walked into that door, and during this search they were  
19 revealed.

20           And lastly, with respect to the notion that we  
21 didn't provide any evidence as to sales, manufacturing, things  
22 of that sort, you have a jury instruction for that, too. And  
23 it says you know what, possession is enough. And that's what  
24 the evidences shows you clearly in this case, unequivocally,  
25 Frederick Bowman was in possession of those drugs, and we ask

1 you to return a verdict of the same.

2 Thank you.

3 MS. RISTENPART: Your Honor, I would just like it be  
4 known that under the rules of evidence the defense is not  
5 allowed to rebut the rebuttal.

6 Thank you.

7 THE COURT: So that ends the case, ladies and  
8 gentlemen.

9 At this time I'm going to note that our alternate  
10 juror will not deliberate. So you will stay for just a  
11 minute, but when the jury goes into the deliberation room, you  
12 will go first, grab your belongings, and be on your way. If  
13 you would like to be -- we need to know how to find you if  
14 necessary, and if you wish to be notified, we will make  
15 accommodation.

16 Deputy Croxon, stand and be sworn, please.

17 (Bailiff sworn to take charge of the jury.)

18 THE COURT: Thank you, deputy.

19 You may take with you into the jury deliberation  
20 room all papers and other items that have been received into  
21 evidence in the case, including the Court's instructions. You  
22 may also take your individual notes. You may share them with  
23 each other during the course of your deliberations. You will  
24 request additional information, if any, and instructions  
25 through Deputy Croxon.

1           After you begin your deliberations, you may not  
2 separate from each other and continue to deliberate in smaller  
3 numbers than the whole. So if some of you need to go outside,  
4 for example, let Deputy Croxon know, he will accompany you,  
5 but you cannot deliberate when any number fewer than twelve  
6 are present.

7           We give you no further instructions regarding the  
8 nature, the timing of your deliberations.

9           Please, it's five o'clock now, if you wish dinner,  
10 the exchange is that we provide dinner at our expense, but you  
11 don't get a choice in what it is. It's bar food, it's pizza  
12 and wings. It takes about an hour, somewhere between 50  
13 minutes and an hour. So if you want dinner, you need to let  
14 us know. Just knock on the door, and Deputy Croxon will  
15 answer, and we will put an order in for you. But that's  
16 completely up to you.

17           With that, I wish to thank and commend counsel for  
18 their participation. Mr. Bowman, thank you as well.

19           We will now stand for the jury as you begin your  
20 deliberations.

21                   (4:59 p.m., jury excused to deliberate.)

22                               -o0o-



1 RENO, NEVADA, TUESDAY, DECEMBER 2, 2015, 6:10 P.M.

2 -o0o-

3  
4 (The following proceedings held in open court  
5 without the jury present and with counsel  
6 appearing by telephone.)

7 THE COURT: Counsel, it's Judge David Hardy. We are  
8 on the record. I have the reporter in the courtroom. I'm  
9 yelling, and I shouldn't, because the jury can hear through  
10 the courtroom walls.

11 So we have this question, and it has to do with  
12 fingerprints and why the baggie wasn't fingerprinted. I can  
13 have you come down in the rain, or we can just talk about it.  
14 What is your preference?

15 MR. LUCIA: I'm okay talking about it. I'm just  
16 across the street, but the telephone is fine with me.

17 THE COURT: I'll read the question verbatim.

18 Quote: "Why didn't they fingerprint the bag that  
19 had the drugs in it?" Close quote.

20 So we just need to craft an answer that the two of  
21 you, that I vet through the two of you, either for your  
22 approval or your memorialized opposition, one of the two.

23 So what are your thoughts?

24 MR. LUCIA: My thoughts are just to craft an answer  
25 that, "you have already considered the evidence that was

1 presented to you during the course of the trial."

2 MS. RISTENPART: I agree with that.

3 THE COURT: I'm just making a note here. Hold on.

4 So counsel, would you both authorize me to respond,  
5 quote, "You are only to consider the evidence that was  
6 presented during the trial," close quote?

7 MS. RISTENPART: Your Honor, I also request if we  
8 can add in the line of "All the evidence has been presented to  
9 you. You are only to consider the evidence that has been  
10 presented."

11 THE COURT: Say that again. You have confused me,  
12 Miss Ristenpart.

13 MS. RISTENPART: Add in the line, "All the evidence  
14 has been presented to you. You are only to consider the  
15 evidence that has been presented."

16 THE COURT: "All the evidence has been presented to  
17 you, and you are only to consider the evidence that was  
18 presented during the trial."?

19 MS. RISTENPART: Correct, Your Honor. That's what I  
20 would request from defense.

21 THE COURT: Mr. Lucia.

22 MR. LUCIA: I don't have an issue with that, Judge.

23 THE COURT: I'm going to go ahead and draft that  
24 answer, and then initial it and send it in to the jury.

25 And they actually asked for dinner.

1 MR. LUCIA: Okay.

2 THE COURT: So, and that was, I don't know, 45  
3 minutes or so ago. So stay close, but not too close, because  
4 I don't know how long this thing is going to go.

5 MS. RISTENPART: I understand, Your Honor. Thank  
6 you.

7 THE COURT: Good night to you, until I talk to you  
8 again.

9 MR. LUCIA: Thank you, Judge.

10 MS. RISTENPART: Thank you, Your Honor.

11 (Off the record.)

12 -oOo-

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1 RENO, NEVADA, TUESDAY, DECEMBER 2, 2014, 8:11 P.M.

2 -oOo-

3  
4 (The following proceedings held in open court  
5 without the jury present.)

6 THE COURT: It's my intention, counsel, to call the  
7 jury in and determine if there's a foreperson, which I hope  
8 there is, and then inquire gently about the reasonable  
9 probability that the jury can reach a verdict if they are  
10 invited to return tomorrow, and then I'm going to take cues  
11 from what the foreperson says. And I might even poll the  
12 jurors individually. I'm going to try to pierce into the time  
13 that it's taken to determine if they are hopelessly  
14 deadlocked.

15 Any comments?

16 MS. RISTENPART: Your Honor, I just ask if the Allen  
17 charge is going to be read to them or if you are planning or  
18 intending to read the Allen charge to them?

19 THE COURT: I have never had to do it in the past.  
20 I have it right here.

21 MS. RISTENPART: Right.

22 THE COURT: What is your experience and what is your  
23 preference?

24 MS. RISTENPART: Your Honor, just as a matter of  
25 principle we always object to that as defense, as defense



1 counsel, simply because I feel like it makes an environment  
2 that forces them to come to one decision or another and maybe  
3 give up their individual ideas.

4 So I don't, at this point I guess maybe your plan of  
5 questioning them and seeing whether or not they are hopelessly  
6 deadlocked or if they want to come back tomorrow to deliberate  
7 more would be the first step.

8 THE COURT: Okay.

9 MS. RISTENPART: On my viewpoint.

10 THE COURT: Everyone be seated, please.

11 MS. RISTENPART: Thank you.

12 (Off the record.)

13 THE COURT: Let's stand for our jury.

14 (The following proceedings held in open court  
15 with the jury present.)

16 THE COURT: The entire jury is present.

17 Ladies and gentlemen, have you selected a  
18 foreperson?

19 THE FOREPERSON: Yes.

20 THE COURT: You are the foreperson. Okay. You are  
21 juror number 12. My purpose in the next minute or two is to  
22 gently probe where you are in your deliberations.

23 Keep in mind that the Court has spoken to you  
24 through its written instructions, and those instructions  
25 should be your guiding standard. And you should, if according

1 to your discretion it feels appropriate, you should refer to  
2 them if you continue your deliberations.

3 I don't want to know anything that's going on in  
4 that room. That belongs to you. What I'd like to know,  
5 Mr. Foreperson, if you will stand, please.

6 Under the law in the state of Nevada I shall not  
7 discharge the jury until you have reached a verdict or there's  
8 an exception by consent between all the parties, or if I  
9 determine satisfactorily to me that there is not a reasonable  
10 probability that this jury can agree.

11 So at this point, Mr. Foreperson, has your jury  
12 reached a verdict?

13 THE FOREPERSON: No, we haven't, sir.

14 THE COURT: I have two choices. Three choices. The  
15 third, least preferable, is that I send you back into the jury  
16 room.

17 The next two choices I do not assign any preference  
18 to. I can either invite you all to go home and get a good  
19 night's rest, eat, get away from the environment, and return  
20 tomorrow to resume your deliberation. Or upon further inquiry  
21 and consultation with the attorneys, I can declare a mistrial.

22 In your opinion, Mr. Foreperson, is the jury  
23 hopelessly deadlocked, or is there a reasonable probability  
24 that the jury, if continuing its deliberations, there could be  
25 a unanimous verdict?

1           A JUROR: We did speak about that, and if we came  
2 back tomorrow, sleep on it and come back tomorrow, we could  
3 come to a decision possibly.

4           THE COURT: Counsel, the law contemplates and  
5 authorizes that I could poll the jury individually as to the  
6 foreperson's answer. I would only do so if you request.

7           MR. LUCIA: The State does not make that request.

8           MS. RISTENPART: The defense is fine with that, Your  
9 Honor. That's private for the jury deliberations.

10          THE COURT: So during this evening recess -- we are  
11 going to call it quits for the night. I think it's  
12 appropriate that we all go home. During this evening recess,  
13 you are admonished not to converse among yourselves or with  
14 anyone else -- go ahead and be seated. Thank you, sir -- or  
15 with anyone else on any subject connected with this trial.  
16 You are not to read, watch, or listen to any report of or  
17 commentary on the trial by any person connected with this case  
18 or by any medium of information, including without limitation  
19 the newspaper, television, internet, or radio.

20          You are further admonished not to form or express an  
21 opinion until you are together again in deliberations.

22          Mr. Foreperson, tomorrow is wide open. Do you wish  
23 to have your jury come back first thing in the morning? Do  
24 you want me to give you a midmorning start time?

25          THE FOREPERSON: Midmorning.

1 THE COURT: Midmorning to me means ten o'clock.

2 THE FOREPERSON: Ten o'clock sounds fine to me.

3 THE COURT: Ladies and gentlemen, if you will return  
4 to the courthouse for entry into the jury deliberation room at  
5 ten o'clock. I will see you just long enough to count noses.  
6 I will have nothing further to say except good morning, and  
7 you will be charged to further deliberate.

8 Now, I have a criminal calendar in the morning here.  
9 So we can either keep our, we can either populate the jury box  
10 with others tomorrow morning who would normally be in the jury  
11 deliberation room, or I could have this jury, I can populate  
12 another jury deliberation room.

13 Deputy Croxon, I just want to know where it's best  
14 to send these jurors tomorrow morning.

15 THE BAILIFF: We actually used Department 7's jury  
16 room this morning for a little bit and it seemed to work. And  
17 then when it frees up, I can make the switch. I'll show them  
18 where it's at.

19 THE COURT: So on your way out you will get your  
20 phones, and Deputy Croxon is going to show you about ten yards  
21 away from that door where to meet in the morning.

22 Now, ladies and gentlemen, I have no comment upon  
23 what's happening. And when you are done, I will not inquire  
24 or either approve or disapprove. What you are doing is a  
25 time-honored tradition. It's important in our community.



1     Whatever is happening in there belongs to you.

2             But you cannot deliberate until you are all together  
3     again tomorrow morning. So if some of you show up at 9:50,  
4     talk about the Dough Boy doughnuts that will be here for you,  
5     talk about something else, but you may not deliberate until I  
6     have counted noses and charged you to do so.

7             I appreciate your efforts today.

8             We will stand for our jury. Good night.

9             (Jury excused and the following proceedings  
10     held in open court.)

11            THE COURT: I don't have much else to say tonight  
12     except good night, Mr. Bowman, counsel.

13            Four years on this bench, six years before on a  
14     different bench, but four years on this bench I have never  
15     given an Allen charge. I don't know what frequency it occurs  
16     in the district.

17            MS. RISTENPART: I'm going to say rare, Your Honor,  
18     but -- thank you.

19            And we will be back, do you want us here at ten  
20     o'clock also?

21            THE COURT: It will be your call. What we will do,  
22     what I will do is exactly as I said. I'm going to say twelve  
23     good mornings, go deliberate. You are more than welcome to be  
24     here, or I'll put it on the record in your absence. It  
25     doesn't matter to me.

1 MS. RISTENPART: I would prefer to have Mr. Bowman  
2 transported for the ten o'clock if that's possible.

3 THE COURT: No problem whatsoever.

4 MS. RISTENPART: Thank you.

5 THE COURT: We will confirm that that will happen.  
6 So we will see you tomorrow morning here, Mr. Bowman.

7 THE DEFENDANT: Thank you, sir.

8 THE COURT: Good night, everyone.

9 MR. LUCIA: Thank you, Judge.

10 MS. RISTENPART: Thank you.

11 (8:25 p.m., proceedings adjourned.)

12 -o0o-

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25

1 STATE OF NEVADA )  
2 COUNTY OF WASHOE ) ss  
3  
4

5 I, LESLEY A. CLARKSON, Official Reporter of the  
6 Second Judicial District Court of the State of Nevada, in  
7 and for the County of Washoe, DO HEREBY CERTIFY:

8 That I was present in Department No. 15 of the  
9 within-entitled Court on Tuesday, December 2, 2014, and took  
10 stenotype notes of the proceedings entitled herein and  
11 thereafter transcribed them into typewriting as herein  
12 appears;

13 That the foregoing transcript is a full, true and  
14 correct transcription of my stenotype notes of said hearing.

15 Dated this 20th day of April, 2015.  
16  
17  
18  
19

20 /s/ Lesley A. Clarkson

21 Lesley A. Clarkson, CCR #182  
22  
23  
24  
25

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Dept. No. 15

JA 305



A P P E A R A N C E S

FOR THE STATE:

TRAVIS LUCIA  
Deputy District Attorney  
One South Sierra Street  
Reno, Nevada

FOR THE DEFENDANT:

THERESA RISTENPART, ESQ.  
GALEN D. CARRICO, ESQ.  
Attorneys at Law  
200 S. Virginia Street  
Suite 833  
Reno, Nevada

THE DEFENDANT:

Present

1 -o0o-

2 RENO, NEVADA, WEDNESDAY, DECEMBER 3RD, 2014, 9:00 A.M.

3 -o0o-

4  
5  
6 (The following proceedings were held in  
7 open court, outside the presence of the  
8 jury:)

9 THE COURT: Deputy Crockston, do I have the entire  
10 jury?

11 THE BAILIFF: No. We're missing one.

12 THE COURT: We are missing one?

13 THE BAILIFF: Yes.

14 THE COURT: Where is Mr. Bowman? Are you awaiting  
15 the 12 before you bring him down the hallway?

16 THE BAILIFF: Could I approach and ask you about  
17 that?

18 THE COURT: Counsel from trial, will you approach  
19 the bench, please, the three of you?

20 Deputy Crockston, go count noses real quick again.  
21 In fact, stand there. Let's do this on the record.  
22 Okay?

23 So we're switching gears to the Bowman case. It's  
24 the trial case. At your request, I said that Mr. Bowman  
25 should be transferred and should be here.

\*\*\*\* ROUGH DRAFT TRANSCRIPT \*\*\*\*

1 MS. RISTENPART: Correct, your Honor.

2 THE COURT: We don't want him to wear clothes from  
3 yesterday, and we need at least ten more minutes, I  
4 guess, to get him dressed.

5 I saw the jury. I'm just going to count their  
6 noses and I can get them out in 30 seconds.

7 MS. RISTENPART: Your Honor, I think we're just  
8 waiting for a deputy to let me into the holding cell to  
9 give him the clothes.

10 THE COURT: I got him right here -- I got her,  
11 excuse me.

12 Would you make this happen quickly? Because I  
13 don't want that jury to sit and wait.

14 MS. RISTENPART: Absolutely. He's already  
15 dressed. We just need a clean shirt.

16 THE COURT: Deputy Crockston, let me know as soon  
17 as we get the 12 here. Until then, keep calling your  
18 cases, counsel.

19 (Proceedings recessed.)  
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RENO, NEVADA, WEDNESDAY, DECEMBER 3RD, 2014

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(The following proceedings were held in  
open court, outside the presence of the  
jury:)

THE COURT: Are we ready? Where is Mr. Bowman?

THE BAILIFF: Still upstairs. I still need an  
amount of time.

THE COURT: Really?

THE BAILIFF: Yes, sir. We're getting close,  
though.

(Proceedings recessed.)



6  
1 -o0o-

2 RENO, NEVADA, WEDNESDAY, DECEMBER 3RD, 2014

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5

6 (The following proceedings were held in  
7 open court in the presence of the jury:)

8  
9 THE COURT: Do I have them all?

10 THE BAILIFF: Yes, your Honor.

11 THE COURT: All right. Ladies and gentlemen,  
12 let's all stand for our jury.

13 Counsel and Mr. Bowman, quickly jump into your  
14 spots.

15 Come forward, Mr. Bowman. Maybe stand over there  
16 by Mr. Lucia.

17 THE BAILIFF: All stand for the jury.

18 (At 10:20 a.m., jury entered courtroom.)

19 THE COURT: Good morning. Nice to see you again.  
20 Hope your evening was restful and you're ready to resume.  
21 I commend to you again the Court's written instructions.  
22 You refer to them as you continue your deliberations.

23 The entire jury is present, counsel and Mr. Bowman  
24 are present, and you may now begin your deliberations in  
25 the jury deliberation room.

\*\*\*\* ROUGH DRAFT TRANSCRIPT \*\*\*\*

7  
1 Now, Mr. Foreperson, it's 10:20. you monitor how  
2 your jury is doing. and if you wish to be fed you let us  
3 know through Deputy Crockston. We'll bring the food in,  
4 just as we did yesterday, at the county's expense. All  
5 right?

6 FOREPERSON: Yes, sir. Thank you.

7 THE COURT: Okay.

8 (At 10:21 a.m., the jury exited courtroom for  
9 deliberation.)

10 \* \* \* \* \*

11  
12 (The following proceedings were held in  
13 open court, outside the presence of the  
14 jury:)

15 THE COURT: Thank you. Counsel, I have no opinion  
16 about how far to let them go or anything until I hear  
17 back from them and take their temperature. If I hear  
18 anything, I'll let you know. Stay close.

19 MS. RISTENPART: Thank you, your Honor.

20 (Proceedings recessed.)  
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2 RENO, NEVADA, WEDNESDAY, DECEMBER 3RD, 2014

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4  
5  
6 (The following proceedings were held in  
7 open court, outside the presence of the  
8 jury:)

9  
10 THE COURT: Do we have a note?

11 THE BAILIFF: We have a verdict.

12 THE COURT: We do?

13 THE BAILIFF: Yes.

14 THE COURT: We'll go off the record for a moment.  
15 Thank you.

16 (Proceedings recessed.)  
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\*\*\*\* ROUGH DRAFT TRANSCRIPT \*\*\*\*

1 -o0o-

2 RENO, NEVADA, WEDNESDAY, DECEMBER 3RD, 2014

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4  
5  
6 (The following proceedings were held in  
7 open court in the presence of the jury:)

8  
9 THE COURT: Counsel come on forward, please. If  
10 you'll be seated, the jury is present, as are counsel,  
11 Mr. Bowman.

12 Ladies and gentlemen, I'm going to visit with you  
13 for a moment and tell you what will happen in the next  
14 couple of minutes. When I'm finished talking, I'm going  
15 to ask the foreperson, who has previously identified  
16 himself, that the jury has reached a verdict. The  
17 foreperson will stand and you'll either say yes or no.

18 If the jury has reached a verdict, without telling  
19 us what it is, the foreperson will hand the verdict forms  
20 to the deputy, who will bring them to me. I'll then read  
21 the verdict forms, hand them to the clerk, who will read  
22 them aloud. Mr. Bowman and his attorneys will stand  
23 during the recitation of the verdict.

24 Because in the State of Nevada the verdict must be  
25 unanimous, upon my own motion I will cause the clerk to

\*\*\*\* ROUGH DRAFT TRANSCRIPT \*\*\*\*

1 poll the jury. She will ask the exact same question of  
2 each one of you, referring to you by juror number, she  
3 will say, "Juror No. 1, is this your verdict as read," to  
4 which Juror No. 1 will either say yes or no, and she'll  
5 ask that exact same question until we get to Juror No.  
6 12. If the verdict is unanimous, I will accept it and  
7 then proceed from there.

8 Attorneys rarely get honest, fair, constructive  
9 feedback about their work. The best they get is they get  
10 barked at from a judge from time to time. And you're  
11 members of the community who have watched these  
12 attorneys, and it's customary for the attorneys to want  
13 to speak to you after the verdict is read and you are  
14 discharged from service.

15 You are under no obligation to meet with the  
16 attorneys. I hope you do. I hope many of you choose to  
17 stay and talk to the attorneys. I think they're going to  
18 want to talk to you, but I don't know. We used to have  
19 the attorneys just wait in the hallway and as you walked  
20 by they'd kind of feel uncomfortable when they'd stop  
21 you, and it just doesn't feel right. So after the  
22 verdict is read and I've conducted whatever business I'm  
23 compelled to conduct, I'm going to clear the entire  
24 courtroom of everybody, court staff, court reporter.  
25 It's just going to be me. We're going to talk for three



1 or four or five minutes. I'm in the middle of a calendar  
2 anyway so I have to be very quick.

3 Then I'm going to determine who wants to stay and  
4 who wants to go, and we'll put those who want to stay in  
5 the jury deliberation room because I'm going to have to  
6 use the courtroom. Those of who just wish to leave, you  
7 can either walk out on your accord or be escorted by one  
8 of our deputies.

9 Counsel, if you'll just wait in the rotunda, and  
10 then we'll identify if any who wish to speak, that way  
11 they won't be uncomfortable walking by.

12 With that, Mr. Foreperson, if you'll stand. Has  
13 your jury reached a verdict?

14 FOREPERSON: Yes, your Honor, we have.

15 THE COURT: All right. If you'll hand it to  
16 Deputy Crockston, please.

17 Counsel, Mr. Bowman.

18 Ms. Clerk.

19 THE CLERK:

20 In the Second Judicial District Court  
21 of the State of Nevada, in and for the  
22 County of Washoe, the State of Nevada,  
23 Plaintiff, versus Frederick Lewis Bowman,  
24 Defendant, Case No. CR14-0708, Department  
25 No. 15. Verdict.

1 We, the jury in the above-entitled  
2 case, find the defendant Frederick Lewis  
3 Bowman, as follows: Trafficking in a  
4 Schedule I controlled substance, 4 to  
5 14 grams, guilty.

6 Dated: This 3rd day of December 2014.

7 Signed Foreperson.

8 THE COURT: Thank you.

9 Ms. Clerk, please poll the jury.

10 THE CLERK: Juror No. 1, is this your verdict as  
11 read?

12 JUROR NO. 1: Yes.

13 THE CLERK: Juror No. 2, is this your verdict as  
14 read?

15 JUROR NO. 2: Yes.

16 THE CLERK: Juror No. 3, is this your verdict as  
17 read?

18 JUROR NO. 3: Yes.

19 THE CLERK: Juror No. 4, is this your verdict as  
20 read?

21 JUROR NO. 4: Yes.

22 THE CLERK: Juror No. 5, is this your verdict as  
23 read?

24 JUROR NO. 5: Yes.

25 THE CLERK: Juror No. 6, is this your verdict as

\*\*\*\* ROUGH DRAFT TRANSCRIPT \*\*\*\*

1 read?

2 JUROR NO. 6: Yes.

3 THE CLERK: Juror No. 7, is this your verdict as  
4 read?

5 JUROR NO. 7: Yes.

6 THE CLERK: Juror No. 8, is this your verdict as  
7 read?

8 JUROR NO. 8: Yes.

9 THE CLERK: Juror No. 9, is this your verdict as  
10 read?

11 JUROR NO. 9: Yes.

12 THE CLERK: Juror No. 10, is this your verdict as  
13 read?

14 JUROR NO. 10: Yes.

15 THE CLERK: Juror No. 11, is this your verdict as  
16 read?

17 JUROR NO. 11: Yes.

18 THE CLERK: Juror No. 12, is this your verdict as  
19 read?

20 JUROR NO. 12: Yes.

21 THE COURT: Thank you, Ms. Clerk.

22 The verdict being unanimous, you'll record it in  
23 the minutes of the Court's record.

24 Mr. Bowman, please be seated.

25 Thank you, counsel, for your respect for the law.

\*\*\*\*\* ROUGH DRAFT TRANSCRIPT \*\*\*\*\*

1 Mr. Bowman, your presumption of innocence has been  
2 extinguished. A jury, composed of members of our  
3 community, has considered the evidence and determined  
4 that the State has proved the elements of the charge and  
5 you will be adjudged guilty of the offense, but I want  
6 you to know what's going to happen.

7 Your next trip into the courtroom will be for  
8 entry of judgment and disposition of sentencing, and that  
9 will be somewhere in the neighborhood of 45 to 60 days  
10 from now. Between now and then, the Department of Parole  
11 and Probation will visit you, and with your attorney, and  
12 prepare a Presentence Investigation Report. It is there  
13 that information will be developed to assist the judge in  
14 rendering and imposing the appropriate sentence.

15 Ms. Clerk, let's set that date now.

16 THE CLERK: January 29th at 9:00 a.m.

17 THE COURT: January 29th at 9:00 a.m.

18 At this time, Mr. Bowman, I will remand you to the  
19 custody of the Washoe County Sheriff.

20 Deputy Crockston.

21 Ladies and gentlemen, I told you last night that  
22 your verdict belongs to you and you alone. I will never  
23 compliment -- I will neither compliment nor criticize the  
24 work that do you within the jury deliberation room. But  
25 I end this trial in the way that it began, and that is by

1 sharing with you by deep commitment to the jury system,  
2 the inspiration I receive from our community, as I  
3 observe good men and woman come together, responding to  
4 the call of service, composing through random selection  
5 the voice and values of our community.

6 I also told you when we selected the jury that I  
7 considered your service to be similar to our obligations  
8 to pay taxes, to serve abroad in uniform, and to comply  
9 with the criminal and civil codes, and you've done so. I  
10 recognize your service and I thank you very much.

11 At this time, you are discharged from service.  
12 You will no longer be together the jury of this case.  
13 You're now free to talk about this case with whom and  
14 wherever you choose.

15 Ladies and gentlemen, I'll have you remain seated  
16 for a moment while I clear the courtroom.

17 (At 11:07 a.m., court adjourned.)

18 \* \* \*



1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )  
4

5 I, ERIN T. FERRETTO, an Official Reporter  
6 of the Second Judicial District Court of the State of  
7 Nevada, in and for the County of Washoe, DO HEREBY  
8 CERTIFY:

9 That I was present in Department No. 15 of  
10 the above-entitled Court on WEDNESDAY, DECEMBER 3RD,  
11 2014, and took verbatim stenotype notes of the  
12 proceedings had upon the matter captioned within, and  
13 thereafter transcribed as herein appears;

14 That the foregoing transcript is a *ROUGH*  
15 *DRAFT* transcription of my stenotype notes of said  
16 proceedings.

17 DATED: This 1st of May, 2015.  
18

19 /s/ Erin T. Ferretto

20 ERIN T. FERRETTO, CCR #281  
21  
22  
23  
24  
25

\*\*\*\* ROUGH DRAFT TRANSCRIPT \*\*\*\*



1 RISTENPART LAW  
2 Theresa Ristenpart, Esq.  
3 NV #9665  
4 200 S. Virginia Street, Suite 833  
5 Reno, Nevada 89501  
6 ATTORNEY FOR DEFENDANT

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
8 IN AND FOR THE COUNTY OF WASHOE

9  
10 STATE OF NEVADA,  
11 Plaintiff,

12 v.

Case No. CR14-0708

13 FREDRICK LEWIS BOWMAN,  
14 Defendant.

Dept. No. 15

15 **MOTION FOR NEW TRIAL**

16  
17 COMES NOW, Fredrick Lewis Bowman, by and through his Defense Counsel, Theresa  
18 Ristenpart, Esq., and respectfully requests that this Court declare a mistrial on the trial proceedings  
19 pursuant to jury misconduct involving extrinsic independent information and investigation and  
20 order a new trial.

21 This Motion is made upon the following memorandum and points of authority.

22  
23 DATED this 5<sup>th</sup> day of December, 2014.

24 /s/ Theresa Ristenpart  
25 THERESA RISTENPART, Esq.  
26

1 **MEMORANDUM AND POINTS**

2 **Statement of Facts**

3 Defense Counsel was requested to take this case on behalf of the Indigent Defense Counsel  
4 Conflict Group on October 21, 2014 after this Court granted prior conflict counsel's request to  
5 withdrawal from the case due to communication issues with Mr. Bowman.

6 On November 13, 2014, this Court agreed to continue the jury trial, stipulated to by the  
7 State, which had been set for November 17, 2014 until December 1, 2014 in order to allow  
8 Defense Counsel an opportunity to attend a re-weigh of the evidence. Mr. Bowman was charged  
9 with a single count of Trafficking Level I allegedly actually or constructively possessing a small  
10 bag of methamphetamine weighing over 4 grams on February 2, 2014.

11 On December 1, 2014, jury trial commenced. Jury selection occurred Monday December 1,  
12 2014 from 3:00 p.m. until 6 p.m. The entire trial took place on December 2, 2014 in a span of  
13 approximately 5 hours. The State presented 3 witnesses. Defense did not present any witnesses.  
14 The State's theory was that Mr. Bowman secreted a small plastic bag filled with 5 grams of  
15 methamphetamine in his sock area and that it shook loose during an inmate search at Washoe  
16 County jail where it was discovered by Washoe County Sheriff's Office Deputy Gerow who was  
17 performing the search. Defense's theory was that the bag did not belong to Mr. Bowman and that  
18 Deputy Gerow who performed the search may have carried the bag in on his work boot.

19 The jury began deliberations at approximately 5:00 p.m. At approximately 8:30 p.m. on  
20 December 2, 2014, this Court brought the jury into the courtroom to ascertain whether further  
21 deliberations were needed and took a vote as to whether to go home for night or to continue  
22 deliberating. The jury informed the Court that they would like to continue deliberating and in a  
23 close vote determined to go home for the night and continue deliberating the next day. Prior to  
24 releasing the jurors for the night, this Court instructed the jurors:

25 "During this evening recess, you are admonished not to converse among yourselves or with  
26 anyone else – go ahead and be seated. Thank you, sir – or with anyone else on any subject  
connected with this trial. You are not to read, watch, or listen to any report of or  
commentary on the trial by any person connected with this case or by any medium of

1 information, including without limitation the newspaper, television, internet, or radio. You  
2 are further admonished not to form or express an opinion until you are together again in  
3 deliberations.”

*Exhibit 1* Partial Trial Transcript December 2, 2014 pg. 6 lines 10-19.

4 The next day on December 3, 2014, jury began deliberating at approximately 10:30 a.m.  
5 and returned a guilty verdict within approximately thirty (30) minutes by 11:00 a.m. After the  
6 reading of the verdict, DDA Travis Lucia, Defense Counsel Theresa Ristenpart and Galen Carrico  
7 all proceeded into the jury room to discuss the case with the jurors. *See Exhibit 2 affidavit from*  
8 *Defense Counsel Theresa Ristenpart, Esq.* The jury informed counsel that the jury was six (6)  
9 guilty and six (6) not guilty during deliberations on December 2, 2014.

10 During discussion with the nine (9) jurors who elected to stay and talk with counsel, two  
11 jurors informed counsel that they had gone home and conducted independent experiments and  
12 investigation. *Id.* Juror #3 informed counsel that he went home, took a plastic sandwich baggie,  
13 filled it with approximately 5 grams of dirt, and stuck it in his sock. Juror #3 then proceeded to try  
14 to work the baggie loose out of his sock.

15 Juror #10 informed counsel that he went home, took a plastic sandwich bag, filled it with 5  
16 grams of sugar, and then proceeded to try to see if it would stick to his work boot and he could not  
17 make it stick.

### 18 Argument

19 Before a defendant can prevail on a motion for a new trial based on juror misconduct, the  
20 defendant must present admissible evidence sufficient to establish: (1) the occurrence of jury  
21 misconduct, and (2) showing that the misconduct was prejudicial. *Meyer v. State of Nevada*, 119  
22 Nev. 554, 563, 80 P.3d 447, 453 (2003).

#### 23 **I. Jurors conducted independent investigations which was an improper extrinsic 24 influence resulting in misconduct.**

25 The district court is vested with broad discretion in resolving allegations of juror  
26 misconduct. *Meyer v. State of Nevada*, 119 Nev. 554, 562, 80 P.3d 447, 453 (2003). “Juror  
misconduct” falls into two categories: (1) conduct by jurors contrary to their instructions or oaths,



1 and (2) attempts by third parties to influence the jury process. *Id.* at 561. The first category  
2 includes jurors who conduct independent research or investigation and basing their decision on  
3 evidence not admitted. *Id.* Jurors are prohibited from conducting an independent investigation.  
4 *Id.* at 572.

5        Though this Court did not specifically admonish the jurors to not engage in any  
6 independent investigation or research, this Court did make it very clear that jurors were not to  
7 form or express an opinion overnight. Despite this Court's admonishment, two jurors went home  
8 and conducted two different independent investigations. Both of these independent and illegal  
9 investigations were specifically intended to prove or disprove the case theories presented in the  
10 case.

11        **II. Jurors' misconduct could affect the average, hypothetical juror and there is**  
12        **reasonable probability that the information affected the verdict resulting in prejudice**  
13        **to Mr. Bowman.**

14        Prejudice is shown whenever there is a reasonable probability or likelihood that the juror  
15 misconduct affected the verdict. *Id.* at 564. The Nevada Supreme Court has adopted the position  
16 that the court must examine the nature of the extrinsic influence in determining whether such  
17 influence is presumptively prejudicial. *Id.* Juror's exposure to extraneous information via  
18 independent research or improper experiment is likewise unlikely to raise a presumption of  
19 prejudice. *Id.* at 565. "In these cases, the extrinsic information must be analyzed in the context of  
20 the trial as a whole to determine if there is a reasonable probability that the information affected  
21 the verdict." *Id.*

22        To determine whether there is a reasonable probability that juror misconduct affected a  
23 verdict, a court may consider a number of factors, including but not limited to: how material was  
24 introduced to the jury, the timing of its introduction (beginning, shortly before verdict), whether  
25 the information was specific in content, whether it was cumulative of other evidence adduced at  
26 trial, whether it involved a material or collateral issues, whether it involved inadmissible evidence.  
*Id.* at 566. The court must consider extrinsic influence in light of the trial as a whole and the

1 weight of evidence. *Id.* The district court must determine whether the average, hypothetical juror  
2 would be influenced by the juror misconduct.

3 Here, the independent investigations dealt specifically with material issues at trial. On  
4 February 2, 2014, Mr. Bowman was brought to Washoe County jail where Washoe County  
5 Deputy Gerow searched him. During the search, a small plastic bag filled with white crystalline  
6 substance was found on the floor near Mr. Bowman's right foot. Deputy Gerow testified he never  
7 saw the bag fall, never saw it in Mr. Bowman's possession, and never heard it drop. The State's  
8 theory was that the 5 grams of methamphetamine was secreted somewhere in Mr. Bowman's  
9 socks whereupon it fell out while being searched. Defense theory was that Deputy Gerow  
10 unknowingly carried the plastic bag stuck on his work boot into the search room.

11 Juror #3's independent investigation of placing a small plastic bag filled with 5 grams of  
12 dirt and sticking it in his sock, trying to work it loose, goes directly to the viability of the State's  
13 case theory. Juror #10's independent investigation where he tried to ascertain whether 5 grams of  
14 sugar in a plastic bag could become stuck to his work boot goes directly to disprove Defense  
15 theory of the case. This information was specific in content and affected material issues in this  
16 case.

17 In addition, this information was introduced late into deliberations and shortly before the  
18 verdict. For a trial that consisted of three witnesses and approximately five (5) hours of trial, the  
19 jury deliberated for over three hours and was deadlocked at 6:6 before breaking for the night. The  
20 rouge investigations occurred at night and the jury met for approximately thirty (30) minutes after  
21 these investigations before returning a guilty verdict. This information and investigation  
22 undermined Mr. Bowman's theory that bag was inadvertently stuck to Deputy Gerow's boot.

### 23 Conclusion

24 Considering all of the circumstances, the average, hypothetical juror could have been  
25 affected by this extraneous information and there is a reasonable probability that the information  
26

1 affected the verdict. As a result of this juror misconduct, Mr. Bowman has been unfairly  
2 prejudiced by the juror misconduct.

3 **WHEREFORE**, Mr. Bowman is respectfully requesting that this Court grant a new trial.  
4

5 **AFFIRMATION PURSUANT TO NRS 239b.030**

6 The undersigned hereby affirms the preceding document does not contain the social  
7 security number of any person.

8 DATED this 5<sup>th</sup> day of December, 2014.

9 Theresa Ristenpart, Esq.

10  
11 By           /s/ Theresa Ristenpart          

12 Theresa Ristenpart, Esq.  
13 Attorney for Defendant  
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CERTIFICATE OF SERVICE

I hereby certify that on this date I forwarded copies of the foregoing documents through  
electronic service addressed to:

Travis Lucia  
DEPUTY DISTRICT ATTORNEY  
ELECTRONIC SERVICE

DATED this 8<sup>th</sup> day of November, 2014.

/s/ Theresa Ristenpart  
THERESA RISTENPART, Esq.

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**EXHIBIT 1**

Code No. 4190

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE  
BEFORE THE HONORABLE DAVID A. HARDY, DISTRICT JUDGE

THE STATE OF NEVADA,  
Plaintiff,  
-vs-  
FREDERICK LEWIS BOWMAN,  
Defendant.

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Case No. CR14-0708  
Dept. No. 15

TRIAL

Partial Transcript of Proceedings  
Jury Released and to Continue  
Deliberations the Following Day

December 2, 2014

Reno, Nevada

Reported by: Lesley A. Clarkson, CCR #182

A P P E A R A N C E S

FOR THE STATE:

TRAVIS B. LUCIA  
Deputy District Attorney  
One South Sierra Street  
Reno, Nevada

FOR THE DEFENDANT:

THERESA RISTENPART, ESQ.  
GALEN D. CARRICO, ESQ.  
200 South Virginia St., Ste. 833  
Reno, Nevada

THE DEFENDANT:

FREDERICK LEWIS BOWMAN

1 RENO, NEVADA, TUESDAY, DECEMBER 2, 2014, 8:11 P.M.

2 -o0o-

3  
4 (The following proceedings held in open court  
5 without the jury present.)

6 THE COURT: It's my intention, counsel, to call the  
7 jury in and determine if there's a foreperson, which I hope  
8 there is, and then inquire gently about the reasonable  
9 probability that the jury can reach a verdict if they are  
10 invited to return tomorrow, and then I'm going to take cues  
11 from what the foreperson says. And I might even poll the  
12 jurors individually. I'm going to try to pierce into the time  
13 that it's taken to determine if they are hopelessly  
14 deadlocked.

15 Any comments?

16 MS. RISTENPART: Your Honor, I just ask if the Allen  
17 charge is going to be read to them or if you are planning or  
18 intending to read the Allen charge to them?

19 THE COURT: I have never had to do it in the past.  
20 I have it right here.

21 MS. RISTENPART: Right.

22 THE COURT: What is your experience and what is your  
23 preference?

24 MS. RISTENPART: Your Honor, just as a matter of  
25 principle we always object to that as defense, as defense

1 counsel, simply because I feel like it makes an environment  
2 that forces them to come to one decision or another and maybe  
3 give up their individual ideas.

4 So I don't, at this point I guess maybe your plan of  
5 questioning them and seeing whether or not they are hopelessly  
6 deadlocked or if they want to come back tomorrow to deliberate  
7 more would be the first step.

8 THE COURT: Okay.

9 MS. RISTENPART: On my viewpoint.

10 THE COURT: Everyone be seated, please.

11 MS. RISTENPART: Thank you.

12 THE COURT: Let's stand for our jury.

13 (The following proceedings held in open court  
14 with the jury present.)

15 THE COURT: The entire jury is present.

16 Ladies and gentlemen, have you selected a  
17 foreperson?

18 JUROR NO. 12: Yes.

19 THE COURT: You are the foreperson. Okay. You are  
20 juror number 12. My purpose in the next minute or two is to  
21 gently probe where you are in your deliberations.

22 Keep in mind that the Court has spoken to you  
23 through its written instructions, and those instructions  
24 should be your guiding standard. And you should, if according  
25 to your discretion it feels appropriate, you should refer to

1    them if you continue your deliberations.

2               I don't want to know anything that's going on in  
3    that room. That belongs to you. What I'd like to know,  
4    Mr. Foreperson, if you will stand, please.

5               Under the law in the state of Nevada I shall not  
6    discharge the jury until you have reached a verdict or there's  
7    an exception by consent between all the parties, or if I  
8    determine satisfactorily to me that there is not a reasonable  
9    probability that this jury can agree.

10              So at this point, Mr. Foreperson, has your jury  
11    reached a verdict?

12              JUROR NO. 12: No, we haven't, sir.

13              THE COURT: I have two choices. Three choices. The  
14    third, least preferable, is that I send you back into the jury  
15    room. The next two choices I do not assign any preference to.  
16    I can either invite you all to go home and get a good night's  
17    rest, eat, get away from the environment, and return tomorrow  
18    to resume your deliberation. Or upon further inquiry and  
19    consultation with the attorneys, I can declare a mistrial.

20              In your opinion, Mr. Foreperson, is the jury  
21    hopelessly deadlocked, or is there a reasonable probability  
22    that the jury, if continuing its deliberations, there could be  
23    a unanimous verdict?

24              A JUROR: We did speak about that, and if we came  
25    back tomorrow, sleep on it and come back tomorrow, we could



1 come to a decision possibly.

2 THE COURT: Counsel, the law contemplates and  
3 authorizes that I could poll the jury individually as to the  
4 foreperson's answer. I would only do so if you request.

5 MR. LUCIA: The State does not make that request.

6 MS. RISTENPART: The defense is fine with that, Your  
7 Honor. That's private for the jury deliberations.

8 THE COURT: So during this evening recess, we are  
9 going to call it quits for the night. I think it's  
10 appropriate that we all go home. During this evening recess,  
11 you are admonished not to converse among yourselves or with  
12 anyone else -- go ahead and be seated. Thank you, sir -- or  
13 with anyone else on any subject connected with this trial.  
14 You are not to read, watch, or listen to any report of or  
15 commentary on the trial by any person connected with this case  
16 or by any medium of information, including without limitation  
17 the newspaper, television, internet, or radio.

18 You are further admonished not to form or express an  
19 opinion until you are together again in deliberations.

20 Mr. Foreperson, tomorrow is wide open. Do you wish  
21 to have your jury come back first thing in the morning, do you  
22 want me to give you a midmorning start time?

23 JUROR NO. 12: Midmorning.

24 THE COURT: Midmorning to me means ten o'clock.

25 JUROR NO. 12: Ten o'clock sounds fine to me.

1           THE COURT: Ladies and gentlemen, if you will return  
2 to the courthouse for entry into the jury deliberation room at  
3 ten o'clock. I will see you just long enough to count noses.  
4 I will have nothing further to say except good morning, and  
5 you will be charged to further deliberate.

6           Now, I have a criminal calendar in the morning here.  
7 So we can either keep our, we can either populate the jury box  
8 with others tomorrow morning who would normally be in the jury  
9 deliberation room, or I could have this jury, I can populate  
10 another jury deliberation room. Deputy Croxon, I just want to  
11 know where it's best to send these jurors tomorrow morning.

12           THE BAILIFF: We actually used Department 7's jury  
13 room this morning for a little bit and it seemed to work. And  
14 then when it frees up, I can make the switch. I'll show them  
15 where it's at.

16           THE COURT: So on your way out you will get your  
17 phones, and Deputy Croxon is going to show you about ten yards  
18 away from that door where to meet in the morning.

19           Now, ladies and gentlemen, I have no comment upon  
20 what's happening. And when you are done, I will not inquire  
21 or either approve or disapprove. What you are doing is a  
22 time-honored tradition. It's important in our community.  
23 Whatever is happening in there belongs to you.

24           But you cannot deliberate until you are all together  
25 again tomorrow morning. So if some of you show up at 9:50,

1 talk about the Dough Boy doughnuts that will be here for you,  
2 talk something else, but you may not deliberate until I have  
3 counted noses and charged you to do so.

4 I appreciate your efforts today. We will stand for  
5 our jury. Good night.

6 (Jury excused and the following proceedings  
7 held in open court.)

8 THE COURT: I don't have much else to say tonight  
9 except good night, Mr. Bowman, counsel.

10 Four years on this bench, six years before on a  
11 different bench, but four years on this bench I have never  
12 given an Allen charge. I don't know what frequency it occurs  
13 in the district.

14 MS. RISTENPART: I'm going to say rare, Your Honor,  
15 but -- thank you.

16 And we will be back, do you want us here at ten  
17 o'clock also?

18 THE COURT: It will be your call. What we will do,  
19 what I will do is exactly as I said. I'm going to say twelve  
20 good morning, go deliberate. You are more than welcome to be  
21 here, or I'll put it on the record in your absence. It  
22 doesn't matter to me.

23 MS. RISTENPART: I would professor to have Mr.  
24 Bowman transported for the ten o'clock if that's possible.

25 THE COURT: No problem whatsoever.

1 MS. RISTENPART: Thank you.

2 THE COURT: We will confirm that that will happen.

3 So we will see you tomorrow morning here, Mr. Bowman.

4 THE DEFENDANT: Thank you, sir.

5 THE COURT: Good night, everyone.

6 MR. LUCIA: Thank you, Judge.

7 MS. RISTENPART: Thank you.

8 (8:25 p.m., proceedings adjourned.)

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## EXHIBIT 2

1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )

4 **AFFIDAVIT OF COUNSEL**

5 THERESA RISTENPART, Esq., does hereby swear under penalty of perjury that the  
6 assertions of this affidavit are true:

- 7 1. That I am assigned counsel representing Mr. Fredrick Lewis Bowman in CR14-  
8 0708.
- 9 2. Mr. Bowman's case went to jury trial on the allegation of Trafficking Level I.
- 10 3. Jury trial began at 3:30 p.m. on Monday December 1, 2014.
- 11 4. Jury was seated by 5:30 p.m. on Monday December 1, 2014.
- 12 5. The Court let the jury leave for the night to return Tuesday December 2, 2014.
- 13 6. Trial resumed on Tuesday December 2, 2014 at 11:00 a.m.
- 14 7. The trial consisted of 3 witnesses and lasted approximately 5 hours.
- 15 8. Jurors began deliberations on Tuesday, December 2, 2014 at approximately 4:45  
16 p.m.
- 17 9. At 8:30 p.m., the Court brought the jury into the courtroom to inquire as to the  
18 status of deliberations.
- 19 10. The juror foreman indicated to the Court that they wanted more deliberation time.
- 20 11. The Court allowed the jury to leave for the night to resume deliberations at 10:00  
21 a.m. the next day.
- 22 12. On Wednesday December 3, 2014, the jury began deliberations at approximately  
23 10:15 a.m. and returned a guilty verdict by 11:00 a.m.
- 24
- 25
- 26



1 13. By the Court's invite, nine (9) members of the jury elected to stay and discuss the  
2 case and counsel's performance with DDA Travis Lucia, Galen Carrico, and  
3 undersigned.

4 14. All Counsel and the jurors met in the jury room attached to D/15.

5 15. Jurors informed all counsel that the jury "vote" was 6 in favor of guilt and 6 in  
6 favor of acquittal.

7 16. DDA Lucia asked what they considered when coming to a verdict of guilty.

8 17. Juror #3 informed all counsel that he went home Tuesday Decebmer 2, 2014, got  
9 a small sandwich baggie which he filled with approximately 5 grams of dirt.

10 Juror #3 informed counsel that he then tried to kick it loose, shake it loose for a  
11 "good half hour."  
12

13 18. Juror #10 informed all counsel that he went home Tuesday December 2, 2014, got  
14 a sandwich baggie that he filled with approximately 5 grams of sugar. Juror #10  
15 then proceeded to step on the bag with his work boot in order to determine if the  
16 baggie could get stuck on his shoe.

17 19. DDA Lucia, Galen Carrico, and undersigned were all present during these  
18 conversations.  
19

20 //

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1 20. Undersigned would obtain affidavits from the jurors, but the jury questionnaires  
2 containing the juror's personal information and contact information had been  
3 dutifully returned to the Court on December 2, 2014 and undersigned has no  
4 recourse to obtain that information.

5 Theresa Ristenpart  
6 Theresa Ristenpart, Esq.

7 STATE OF NEVADA )  
8 ) ss.  
9 COUNTY OF WASHOE )

10 Subscribed and sworn to before me this  
11 8th day of December, 2014.

12 Judy Phelps  
13 Notary Public



1 Code No. 4185

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5 IN THE SECOND JUDICIAL DISTRICT COURT  
6 OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8 THE HONORABLE DAVID A. HARDY

9 -oOo-

10 STATE OF NEVADA, )  
11 Plaintiff, ) Case No. CR14-0708  
12 vs. ) Dept. No. 15  
13 FREDERICK LEWIS BOWMAN, )  
14 Defendant. )  
15 \_\_\_\_\_ )

16 ROUGH-DRAFT TRANSCRIPT OF PROCEEDINGS

17 Motions

18 Thursday, January 29, 2015

19 RENO, NEVADA

20  
21  
22  
23  
24 Reported By: RANDI LEE WALKER, CCR No. 137

1 APPEARANCES:

2  
3 For the State:

4 WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE  
5 By: TRAVIS LUCIA, DDA  
6 RENO, NV. 89520

7 For the Defendant:

8 RISTENPART LAW  
9 By: THERESA RISTENPART, ESQ.  
10 200 S. VIRGINIA ST., STE. 833  
11 RENO, NV. 89501

12 DENNIS HOUGH  
13 ATTORNEY AT LAW  
14 RENO, NV. 89501  
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1 RENO, NEVADA, THURSDAY, JANUARY 29, 2015, 9:00 A.M.

2 -oOo-

3  
4 THE COURT: CR14-0708, the State versus Frederick  
5 Lewis Bowman.

6 MR. LUCIA: Good morning, Your Honor.

7 Travis Lucia, on behalf of the State.

8 THE COURT: Good morning.

9 MS. RISTENPART: Good morning, Your Honor.

10 Theresa Ristenpart, on behalf of Mr. Bowman, who  
11 is present.

12 MR. HOUGH: Dennis Hough, Your Honor.

13 THE COURT: Good morning, sir.

14 I was very pleased with the nature of the moving  
15 papers. I felt, upon reading them, that I was informed.  
16 I read all the decisional authorities -- decisional and  
17 statutory authorities -- I read all decisional and  
18 statutory authorities, and, really, just the one evidence  
19 code.

20 I have outlined what I believe a decision -- my  
21 decision would be. This is the first time in my four  
22 years on this bench that I have entertained a motion for  
23 new trial based upon the extrinsic influence.

24 I can launch into my inclination, or I can just

1 pause for a moment and see if there's anything else that  
2 I'm unaware of.

3 MS. RISTENPART: Your Honor, I would just submit  
4 on the moving papers, unless there's specific questions  
5 for defense counsel.

6 THE COURT: My questions will be for the State.

7 MR. LUCIA: Sure. And I would be happy to answer  
8 those.

9 THE COURT: I actually want to cut this short,  
10 because I know that two attorneys are here just for an  
11 arraignment, but I told them 9:30, so I wanted to call it  
12 quick.

13 I'm required to determine if there's misconduct;  
14 and, if so, whether that misconduct is prejudicial. I  
15 believe that I will conclude that there is misconduct.

16 It's dangerous to use that word because it  
17 implies something pejorative, and I don't mean that.  
18 There was an event -- independent examination, research,  
19 experimentation of some type -- that was disclosed to  
20 counsel after the verdict was rendered.

21 The problem for the Court is analyzing the  
22 prejudicial nature. And this will be a de novo review by  
23 the Supreme Court. I'm not clothed in great discretion.  
24 And it seems to me that I don't know this morning how the



1 extrinsic information was introduced, if at all, to the  
2 jury.

3 In your reply, Miss Ristenpart, you indicated  
4 that there was a statement of the events in front of seven  
5 others, and they seemed to nod in agreement.

6 Pendleton allows me to consider your affidavit;  
7 but, typically, I would get an affidavit from a juror and  
8 conduct a hearing of some type. But I don't know how the  
9 material was introduced. I don't know the length of the  
10 time that it was discussed. I presume the timing of its  
11 introduction was after the evening recess, where there was  
12 lengthy deliberations, a nighttime recess, and then a  
13 quick verdict the next morning. I don't know whether it  
14 was ambiguous, vague or specific. I can make some  
15 determinations without additional information regarding  
16 the cumulative nature, if at all, of other trial evidence.  
17 I would find, likely, that it was -- that what was done  
18 formed inadmissible evidence. I would not allow it in  
19 trial for the reasons you said: dissimilarities of  
20 experiments.

21 So if I'm to consider the extrinsic influence of  
22 this examination in light of the trial as a whole, and the  
23 weight of the evidence, I just need to know how  
24 broadcast -- how that information was broadcast to the

1 jury, and, objectively, to what extent it entered the  
2 jury-deliberation room.

3 I'm clear that I will not get into the  
4 deliberation process, content, effect upon jurors' minds,  
5 all apply some objective testing. And so I thought, I can  
6 set a hearing, we can bring jurors 3 and 10 in. At some  
7 point, it's going to take longer than probably retrying  
8 the case.

9 The Court seems in its published decisions to be  
10 about 90 percent reversal on these things, indicating some  
11 level of significance.

12 So I won't recite all of the analysis that I have  
13 set forth in my own personally drafted memo, but I can't  
14 make a decision today without knowing more.

15 I invite you to comment on whether I should  
16 pursue knowing more, or if I ought to just set another  
17 five-hour trial, plus jury selection, plus deliberations.

18 MR. LUCIA: To that end, Judge, I would echo  
19 those sentiments.

20 I think, in this case, probably the most prudent  
21 thing to do -- at least in the State's position -- is to  
22 see if we can find jurors 3 and 10. And then, perhaps, if  
23 I may cut through all of that, I think the more focused  
24 inquiry from the State's mindset is, this is essentially

1 two actions.

2 The one individual action with respect to the  
3 dirt in the sock, as I echoed in my briefing, I don't  
4 necessarily think that would arise to prejudice Mr. Bowman  
5 because that expressly refutes an argument that was  
6 advanced by the State for the possible location of the  
7 methamphetamine.

8 I think the more focused inquiry would be on the  
9 action with respect to the sugar and the shoe trip,  
10 because I think that was, as Ms. Ristenpart correctly  
11 notes, one of the primary arguments that was advanced by  
12 the defense in this case.

13 When I saw the clerk had provided the names of  
14 the jurors on a minute sheet, I realized that the  
15 individual juror who conducted that experiment -- I have  
16 his name. My intention then, if we do go forward, is to  
17 actually see if I can get an investigator to perhaps make  
18 contact with that individual on the basis of that name and  
19 try and answer those questions.

20 When it was introduced -- and I agree with the  
21 Court -- it must have been introduced, if at all, during  
22 the next morning's re-deliberations. There's just no way  
23 time-wise that it could have taken place.

24 But I think those are important issues. And

1 that's one of the things I obviously raised in my  
2 opposition, is that I think the authority in this state is  
3 relatively clear that every single other case that I could  
4 find out of the Nevada Supreme Court at least involves not  
5 only the act of extrinsic investigation, but also the  
6 introduction of that to the fellow jurors.

7 So I think the more prudent course of action  
8 would be to see if we could set that date at some point in  
9 the future. I can try and get an affidavit from that  
10 individual, detailing those questions. And then I think  
11 that might suss the issue out a little bit more. I think  
12 that might be more a prudent use of resources than to  
13 reset the matter and poll a whole new jury and start over  
14 from scratch.

15 THE COURT: Would it be appropriate -- as I  
16 always strive to balance competing interests, would it be  
17 appropriate to set a new trial date today, subject to  
18 vacating -- if I deny the motion for new trial. This  
19 gentleman has been in custody for 370-something days.  
20 He's facing upon the front conviction up to 72 on the  
21 highest end. But I don't know that I want to -- and this  
22 matter is presented to me by submission now at least four  
23 weeks ago -- I don't know that I want to wait until the  
24 next phase, and then set trial, which is going to put us

1 into July or August.

2 MR. LUCIA: I'm happy to do that, Judge. I  
3 brought my trial calendar just in case we wanted to set  
4 that. I've got some dates available in mid-February and  
5 early March that I can make available for the Court. I  
6 can even move things, if necessary. I think that would be  
7 wise. I have no problem with that.

8 THE COURT: One more question for Miss  
9 Ristenpart. I'm not sure if I should consider the  
10 six-to-six preliminary vote, because that does go to the  
11 intra jury, intrinsic deliberations.

12 My inclination was to not probe the initial  
13 six-to-six. But then, in the Tanksley decision, the  
14 Supreme Court noted -- and I'm not sure if the six-to-six  
15 should guide my decision in any way.

16 MR. LUCIA: I think -- if I may, Your Honor -- I  
17 know you posed the question to Miss Ristenpart -- but, in  
18 looking at this body of law, to me it's unusual, because  
19 we're trying to get at the heart of the issue, which is  
20 what the jurors were thinking, how much of an impact did  
21 this possibly have on their thought process, without  
22 asking that question. So we can consider objective  
23 factors, but not subjective factors.

24 I certainly think that, when I read Tanksley, I



1 took it for the supposition that, at the end of the day,  
2 how many were for guilty, how many for not guilty? I  
3 think that is an objective factor that the Court can  
4 consider.

5 To me, it's walking a razor's edge insofar as  
6 we're obligated to essentially pick around this issue,  
7 without delving too far into it. I think that would be  
8 allowable. Because I think, in Tanksley, they did  
9 expressly comment on the fact that, even after this juror  
10 performed that act -- and in that case, it was lighting  
11 the mattress on fire -- that, nonetheless, he still came  
12 back and said, "I'm still for not guilty."

13 I just think the line would be crossed, if the  
14 follow-up interview, "Well, why did you elect not guilty  
15 even after the performance of the act?" Which is, to me,  
16 I think what we're trying to answer without being able to  
17 ask.

18 THE COURT: Miss Ristenpart, after you comment,  
19 I'm inclined to set an evidentiary hearing today. I'm  
20 inclined to set a new trial date today.

21 Is there anything else you would like to say?

22 MS. RISTENPART: Thank you, Your Honor.

23 I just believe that, based upon the information  
24 before this Court and the very specific standard under



1 Myer versus State of Nevada, that we're not looking at the  
2 actual jurors themselves, but a reasonable hypothetical  
3 juror, that there's enough information before this Court  
4 to make a decision.

5 I do appreciate that this Court may want to delve  
6 into a very specific questioning as to -- extremely  
7 limited -- for, if the State wants to track down the two  
8 jurors and ask them, "Did you tell the other jurors this  
9 information the next morning, of your experiment?"

10 THE COURT: Well, I read and re-read Myer. And  
11 it adopts a hybrid position and is very clear that not  
12 every independent examination is prejudicial. There's not  
13 a conclusive presumption of prejudice.

14 I think I have to know how that event in  
15 somebody's home was broadcast into the jury. I think I  
16 just need to know that.

17 MS. RISTENPART: And I do agree with this Court  
18 that we're walking a very fine line of not delving into  
19 the sacrosanct jury deliberations, but also trying to get  
20 down to whether there was actual prejudice if -- based  
21 upon the totality of the circumstances. And that's why  
22 I'm arguing.

23 They even take away the six-to-six. The fact  
24 that we had a three-witness trial, five hours from start

1 to finish, and they were out for three hours deliberating,  
2 and then came back the next morning, after these  
3 experiments, and came back within 30 minutes,  
4 approximately, with a guilty verdict, I think, based upon  
5 that and the information before this Court.

6 I respect the Court's decision, if you would like  
7 to set for evidentiary and also trial.

8 THE COURT: I will say two things. Hopefully,  
9 what I say is helpful. At some point, I will have to  
10 answer a question about my role in evaluating the  
11 cumulative weight of trial evidence. I'm instructed to do  
12 so. I have an opinion about the cumulative weight of  
13 evidence. But I feel like I just become a 13th juror,  
14 with an absolute veto. And that feels wrong, as well.

15 You spend some time in your moving paper about  
16 the cumulative weight of the evidence. And I tend to  
17 agree. And I don't know that I want to be just that  
18 particular. So we can comment upon that at the  
19 evidentiary hearing.

20 And, finally, off the record, in a private way, I  
21 would invite your assistance, counsel, as I use this  
22 experience to formulate my post-trial decisions. I have  
23 always wanted a jury to be available to trial attorneys,  
24 because they are so valuable.

1 But since this event occurred in Department 15. I  
2 have had other judges in this district tell me they are  
3 not as accommodating as I am with respect to the  
4 relationship between jury and trial counsel.

5 I don't know what to do. So if you want to pop  
6 in chambers and tell me what your opinion is, I'll  
7 certainly listen to it.

8 What I don't want to do is -- I'll leave it at  
9 that.

10 Mr. Lucia, if you left this courtroom today and  
11 put sending your investigator out to jurors 3 and 10 a  
12 high priority, given the workload in your office, what's a  
13 reasonable time to set the evidentiary hearing? And to  
14 what extent should your investigator's results be  
15 available to Ms. Ristenpart -- if at all -- before the  
16 evidentiary hearing?

17 MR. LUCIA: With respect to the first question, I  
18 would ask for three weeks. I know, personally, I've got a  
19 trial starting February 9. I know at least three other  
20 attorneys on the criminal division in our office that have  
21 the same schedule. Whenever there's a trial set, an  
22 investigator from our office is assigned to that case.  
23 And usually the work-up to that obligates them to serve  
24 subpoenas, tie up last-minute evidentiary issues and

1 things of that sort.

2 I think, reasonably, with three weeks, we can get  
3 that done.

4 With respect to the second question, Your Honor,  
5 as soon as I get that information -- whatever it is -- I  
6 will disclose it to Miss Ristenpart.

7 My intention is to draft almost a sheet of  
8 questions that I think would fit with the Myer decision  
9 and those decisions that would be permissible, present  
10 that to my investigator, and ask them to, effectively,  
11 have a question-and-answer session with those respective  
12 jurors. And then I would turn that over immediately.

13 MS. RISTENPART: I would just ask that, before  
14 that prospective question sheet -- because I'm pretty  
15 clear, Your Honor, that there should be one question,  
16 based upon the Court's consideration, as to whether this  
17 information was relayed to the other jurors the next  
18 morning. So I don't know what the other questions would  
19 be.

20 THE COURT: I can think of a follow-up  
21 immediately. There may be others. But the next follow-up  
22 question would be: To what extent? Was it a brief  
23 reference, or was it the subject of extended -- that's  
24 where we get to the fine line. But I can read directly --

1 MR. LUCIA: Myer gives you the examples. My  
2 intention would be to lead them. Essentially: Did you do  
3 this? Yes or no?

4 THE COURT: Let me interrupt you for a moment.  
5 From Myer directly. The length of time discussed  
6 is verbatim from Myer.

7 MR. LUCIA: I think those are fair questions.  
8 And I don't intend -- to the extent, then, that the  
9 affidavit would come back -- and I know that's kind of  
10 sprinkled throughout this case law -- and I can't remember  
11 the case off the top -- but there's one instance where an  
12 affidavit was submitted: the parties litigated whether  
13 portions of that affidavit should be stricken.

14 So, certainly, I think that, once I got the  
15 affidavit back from the two jurors, I could provide that  
16 to Miss Ristenpart. If there were issues that she or I  
17 had with the content, we could flush that out at the  
18 evidentiary hearing.

19 THE COURT: Let's look at February 16th.

20 And you're right. It was the Myer decision.  
21 Judge Polaha struck certain portions, but deliberate  
22 portions of the affidavit, the juror affidavit.

23 Looking at the week of July 16th, if we were to  
24 go into Thursday -- I'm sorry -- February 19th, Thursday,

1 how would that look for you, counsel?

2 MR. LUCIA: That would work for the State, Judge.

3 MS. RISTENPART: What time, Your Honor?

4 THE COURT: Miss Ristenpart.

5 MS. RISTENPART: What time?

6 THE COURT: I'm actually open all day, as soon as  
7 the criminal calendar ends.

8 MS. RISTENPART: If it was approximately 11 a.m.,  
9 Your Honor, the 19th, that would work for defense counsel.

10 THE COURT: We will set it for an hour.

11 Let's also set a trial date.

12 Ms. Clerk, the Helms trial was scheduled for  
13 March 16th?

14 THE CLERK: Yes.

15 THE COURT: Then we have the Hanke trial that  
16 begins on Tuesday, the 17th?

17 THE CLERK: Correct.

18 THE COURT: I don't want to set -- if I go to the  
19 10th -- counsel, let's try this case on Monday, March 9th.

20 MR. LUCIA: That will work for the State, Judge.

21 THE COURT: Miss Ristenpart.

22 MS. RISTENPART: Your Honor, I start a murder  
23 trial the 16th. But I do anticipate this is a one-day  
24 trial, based upon the last results. And I do believe I



1 would like to come back as co-counsel and retry.

2 So I will accept the 9th, Your Honor, based upon  
3 that.

4 THE COURT: Motion to Confirm, Miss Clerk.

5 We're going to be together on the 19th anyway.  
6 Why don't we just discuss the motion on the 19th,

7 All right, counsel. This has been very good.  
8 Feel like I'm fully informed. You're engaged, and I  
9 appreciate your assistance.

10 Mr. Bowman, I don't have anything to say to you.

11 Mr. Hough, is there anything I should do with  
12 your case? You have sat here now. I have attempted  
13 possession of a controlled substance.

14 MR. HOUGH: Your Honor, I think what we want to  
15 do is just let the tail continue to follow the dog.

16 THE COURT: I'm sorry your time has been taken in  
17 this way, but it's the best thing I could do.

18 MR. HOUGH: No problem.

19 THE COURT: Mr. Bowman, see you in a couple  
20 weeks.

21 MR. LUCIA: Thank you, Your Honor.

22 (Proceedings concluded.)  
23  
24



1 STATE OF NEVADA )  
2 )  
3 COUNTY OF WASHOE )

4 I, RANDI LEE WALKER, Certified Shorthand  
5 Reporter of the Second Judicial District Court of the  
6 State of Nevada, in and for the County of Washoe, do  
7 hereby certify:

8 That I was present in Department No. 15 of  
9 the above-entitled Court and took stenotype notes of the  
10 proceedings entitled herein, and thereafter transcribed  
11 the same into typewriting as herein appears;

12 That the foregoing transcript is a full, true  
13 and correct transcription of my stenotype notes of said  
14 proceedings.

15 DATED: At Reno, Nevada, this 19th day of  
16 April, 2015.

17  
18 /s/ Randi Lee Walker  
19 RANDI LEE WALKER, CCR No. 137  
20  
21  
22  
23  
24

1 CODE  
2 Richard A. Gammick  
3 #001510  
4 P.O. Box 30083  
5 Reno, NV 89520-3083  
6 (775) 328-3200  
7 Attorney for Plaintiff

8  
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
10  
11 IN AND FOR THE COUNTY OF WASHOE

12 \* \* \*

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No. CR14-0708

15 v.

Dept. No. 15

16 FREDERICK LEWIS BOWMAN,

17 Defendant.

18 \_\_\_\_\_/  
19 SUPPLEMENT TO STATE'S OPPOSITION TO MOTION FOR NEW TRIAL

20 COMES NOW, the State of Nevada, by and through CHRISTOPHER  
21 J. HICKS, District Attorney of Washoe County, and Travis Lucia,  
22 Deputy District Attorney, and hereby supplements the "Opposition To  
23 Motion for New Trial" as filed previously in the above-entitled case  
24 with the attached affidavits.

25 ///

26 ///

///

///

///

///

1                   AFFIRMATION PURSUANT TO NRS 239B.030

2                   The undersigned does hereby affirm that the preceding  
3 document does not contain the social security number of any person.

4                   Dated this 10th day of February, 2015.

5                                   RICHARD A. GAMMICK  
6                                   District Attorney  
7                                   Washoe County, Nevada

8  
9                                   By      /s/ Travis Lucia       
10                                  TRAVIS LUCIA  
11                                  11188  
12                                  Deputy District Attorney

1                                    CERTIFICATE OF SERVICE BY E-FILING

2                    I certify that I am an employee of the Washoe County  
3 District Attorney's Office and that, on this date, I electronically  
4 filed the foregoing with the Clerk of the Court by using the ECF  
5 system which will send a notice of electronic filing to the  
6 following:

7  
8                    THERESA RISTENPART  
9                    630 E. PLUMB LANE  
10                   RENO, NEVADA 89502

11                   DATED this 10th day of February, 2015.

12  
13                   /S/TERRI NORRIS  
14                   TERRI NORRIS  
15  
16  
17  
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Index of Exhibits

1. Affidavit of Richard Nielson

6 PAGES

2. Affidavit of Dean Tsuda,

6 PAGES

3. Affidavit of Paul Uzarski,

6 pages

**EXHIBIT 1**

**EXHIBIT 1**

1 CODE  
Christopher J. Hicks  
2 #7747  
P.O. Box 30083  
3 Reno, NV 89520-3083  
(775) 328-3200  
4 Attorney for Plaintiff  
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 THE STATE OF NEVADA,  
Plaintiff,

Case No. CR14-0708

10 v.

Dept. No. 15

11 FREDERICK LEWIS BOWMAN,

12 Defendant.  
13

14 \_\_\_\_\_/  
AFFIDAVIT

15 STATE OF NEVADA )  
16 ) ss.  
17 COUNTY OF WASHOE)

18 I, RICHARD NIELSON, do hereby swear under information and  
19 belief and penalty of perjury that the assertions of this affidavit  
20 are true and correct.

21 1. That your affiant was a juror in the case of the State  
22 of Nevada vs. Frederick Lewis Bowman between December 1, 2014 and  
23 December 3, 2014.

24 2. That I do / do not (circle one) recall conducting an  
25 experiment to test a theory of the case advanced by either the State  
26 or the Defendant.



1           3.    The experiment I performed consisted of the following  
2 (please describe the act in as much detail as possible):

3    I PLACED A SMALL AMOUNT OF DIRT  
4    IN A PLASTIC SANDWICH BAG CUT OFF  
5    EXCESS PLASTIC. I PLACED THIS SMALL  
6    BAG IN MY RIGHT SOCK & TRIED TO REMOVE  
7    IT WITHOUT USING MY HANDS. I TRIED THIS  
8    FOR ABOUT 15 TO 20 MINUTES  
9  
10

11           4.    The results of my experiment were as follows (please  
12 describe what occurred with as much detail as possible):

13    I COULD NOT GET THE BAG OUT OF  
14    MY SOCK  
15  
16  
17  
18  
19  
20

21           5.    I performed this experiment during the following  
22 portion of my participation in this case as a juror (for example,  
23 before deliberations began, during deliberations while on a break,  
24 after deliberations, etc.):

25    DURING ~~BE~~ DELIBERATIONS WE WERE  
26    EXCUSED FOR THE DAY. I DID THIS

1 EXPERIMENT AT HOME BY MYSELF

2  
3 6. I did / did not (circle one) inform my fellow jurors  
4 of the experiment that I conducted.

5 7. I did / did not (circle one) inform my fellow jurors  
6 of the results of the experiment that I conducted.

7 8. I informed my fellow jurors of the following (please  
8 describe to the best of your recollection what you specifically  
9 stated to your fellow jurors):

10 THAT LAST NIGHT I PUT A BAG IN MY  
11 SOCK AND TRIED TO REMOVE IT USING MY  
12 THE OTHER FOOT & I COULDN'T DO IT  
13  
14  
15  
16  
17  
18  
19  
20

21 9. I disclosed the above information to my fellow jurors  
22 at the following time (please describe as specifically as possible  
23 **when** you informed your fellow jurors of the above - e.g. during  
24 deliberations, shortly before a unanimous verdict was reached,  
25 shortly after a unanimous verdict was reached, after deliberations  
26 concluded, etc.):

1 THE FOLLOWING MORNING I TOLD THE  
2 OTHER JURORS & CHANGED MY VOTE  
3  
4  
5  
6

7 10. Prior to my disclosure listed above, a vote as to  
8 guilty or not guilty was was not (circle one) taken.

9 11. This vote was taken at the following time during the  
10 deliberation process (for example, shortly before my disclosure, well  
11 in advance of my disclosure, etc.):

12 FIRST VOTE WAS BEFORE EVENING, THIS  
13 WAS SECOND VOTE.  
14  
15  
16  
17

18 12. The results of this vote were as follows (please  
19 describe the number of jurors who voted in favor of guilty or not  
20 guilty):

21 G. N.G.  
22 FIRST VOTE 6-6  
23 SECOND VOTE 7-5

24 13. After my disclosure listed above, a vote as to guilty  
25 or not guilty was / was not (circle one) taken.

26 ///

///

14. This vote was taken at the following time during the deliberation process (for example, shortly before my disclosure, well in advance of my disclosure, etc.):

SECOND DAY FOREMAN ASKED IF OVERNIGHT IF ANYONE HAD CHANGED THEIR VOTE. I SAID YES & EXPLAINED WHY

15. The results of this vote were as follows (please describe the number of jurors who voted in favor of guilty or not guilty):

GUILTY 7. NOT GUILTY 5

FURTHER your affiant sayeth not.

*Richard Nielson*

RICHARD NIELSON

STATE OF NEVADA )

) ss.

COUNTY OF WASHOE)

Subscribed and sworn to before me this 5th day of

February, 2015.

*Linda Bucher*

NOTARY PUBLIC



AFFIRMATION PURSUANT TO NRS 239B.030

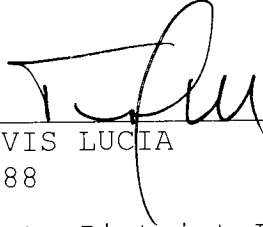
The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 10 day of February, 2015.

CHRISTOPHER J. HICKS  
District Attorney

Washoe County, Nevada

By

  
TRAVIS LUCIA  
11188

Deputy District Attorney

**EXHIBIT 2**

**EXHIBIT 2**

CODE

Christopher J. Hicks  
#7747  
P.O. Box 30083  
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Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF WASHOE

\* \* \*

THE STATE OF NEVADA,  
Plaintiff,

Case No. CR14-0708

v.

Dept. No. 15

FREDERICK LEWIS BOWMAN,  
Defendant.

/ AFFIDAVIT

STATE OF NEVADA )  
                  ) ss.  
COUNTY OF WASHOE)

I, DEAN TSUDA do hereby swear under information and belief  
and penalty of perjury that the assertions of this affidavit are true  
and correct.

1. That your affiant was a juror in the case of the State  
of Nevada vs. Frederick Lewis Bowman between December 1, 2014 and  
December 3, 2014.

2. That I do / do not (circle one) recall conducting an  
experiment to test a theory of the case advanced by either the State  
or the Defendant.



1           3.    The experiment I performed consisted of the following  
2 (please describe the act in as much detail as possible):

3           I PUT SUGAR IN A BAG + TRIED TO  
4 GET IT TO STICK TO SHOE + FAILED  
5  
6  
7  
8  
9  
10

11           4.    The results of my experiment were as follows (please  
12 describe what occurred with as much detail as possible):

13           COULDN'T GET BAG TO STICK TO  
14 SHOE  
15  
16  
17  
18  
19  
20

21           5.    I performed this experiment during the following  
22 portion of my participation in this case as a juror (for example,  
23 before deliberations began, during deliberations while on a break,  
24 after deliberations, etc.):

25           AT HOME BY MYSELF  
26

1  
2  
3 6. I did / did not (circle one) inform my fellow jurors  
4 of the experiment that I conducted.

5 7. I did / did not (circle one) inform my fellow jurors  
6 of the results of the experiment that I conducted.

7 8. I informed my fellow jurors of the following (please  
8 describe to the best of your recollection what you specifically  
9 stated to your fellow jurors):

10 INFORMED OTHER JURORS DURING  
11 DELIBERATIONS, NOT DURING TRIAL  
12  
13  
14  
15  
16  
17  
18  
19  
20

21 9. I disclosed the above information to my fellow jurors  
22 at the following time (please describe as specifically as possible  
23 **when** you informed your fellow jurors of the above - e.g. during  
24 deliberations, shortly before a unanimous verdict was reached,  
25 shortly after a unanimous verdict was reached, after deliberations  
26 concluded, etc.):

DURING DELIBERATIONS JA 376

1  
2  
3  
4  
5  
6  
7 10. Prior to my disclosure listed above, a vote as to  
8 guilty or not guilty was / was not (circle one) taken.

9 11. This vote was taken at the following time during the  
10 deliberation process (for example, shortly before my disclosure, well  
11 in advance of my disclosure, etc.):  
12  
13  
14  
15  
16  
17

18 12. The results of this vote were as follows (please  
19 describe the number of jurors who voted in favor of guilty or not  
20 guilty):  
21 50/50  
22

23 13. After my disclosure listed above, a vote as to guilty  
24 or not guilty was / was not (circle one) taken.

25 ///

26 ///

14. This vote was taken at the following time during the deliberation process (for example, shortly before my disclosure, well in advance of my disclosure, etc.):

TOOK 1<sup>ST</sup> VOTE UPON ENTERING JURY ROOM  
SEVERAL VOTES WERE TAKEN THEREAFTER

15. The results of this vote were as follows (please describe the number of jurors who voted in favor of guilty or not guilty):

AFTER SEVERAL VOTES WE CAME BACK  
THURS. & FOUND HIM GUILTY

FURTHER your affiant sayeth not.

*Dean Tsuda*

DEAN TSUDA

STATE OF NEVADA )

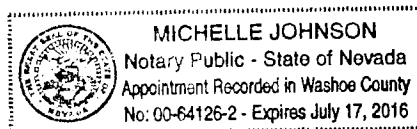
) ss.

COUNTY OF WASHOE)

Subscribed and sworn to before me this 3<sup>rd</sup> day of

February, 2015.

*Michelle Johnson*



NOTARY PUBLIC

1                    AFFIRMATION PURSUANT TO NRS 239B.030


2                    The undersigned does hereby affirm that the preceding  
3 document does not contain the social security number of any person.

4                    Dated this 10 day of February, 2015.

5                    CHRISTOPHER J. HICKS  
6                    District Attorney

7                    Washoe County, Nevada

8  
9                    By

10                      
11                    TRAVIS LUCIA  
12                    11188

13                    Deputy District Attorney  
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1 Code No. 4185

2  
3  
4  
5 IN THE SECOND JUDICIAL DISTRICT COURT  
6 OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8 THE HONORABLE DAVID A. HARDY

9 -oOo-

10 STATE OF NEVADA, )  
11 Plaintiff, ) Case No. CR14-0708  
12 vs. ) Dept. No. 15  
13 FREDERICK LEWIS BOWMAN, )  
14 Defendant. )  
15 \_\_\_\_\_ )

16 ROUGH-DRAFT TRANSCRIPT OF PROCEEDINGS  
17 Evidentiary Hearing  
18 Thursday, February 19, 2015  
19 RENO, NEVADA  
20  
21  
22  
23

24 Reported By: RANDI LEE WALKER, CCR No. 137

1 APPEARANCES:

2  
3 For the State:

4 WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE  
5 By: TRAVIS LUCIA, DDA  
6 RENO, NV. 89520

7 For the Defendant:

8 THERESA RISTENPART  
9 ATTORNEY AT LAW  
10 RENO, NV. 89501  
11  
12  
13  
14  
15  
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1 RENO, NEVADA, THURSDAY, FEBRUARY 19, 2015, 11:00 A.M.

2 -oOo-

3  
4 THE COURT: We're on the record.

5 Good morning.

6 MS. RISTENPART: Good morning, Your Honor.

7 THE COURT: Mr. Bowman is present, in custody,  
8 with his attorney, Ms. Ristenpart. Mr. Lucia, for the  
9 State.

10 I have reviewed the file.

11 The only thing new in the file that I'm aware of  
12 are the three standard form affidavits.

13 I have reviewed them. Two of the three have some  
14 details consistent with what has been told to me. The  
15 third --

16 What is your intention, Mr. Lucia?

17 MR. LUCIA: Your Honor, this morning, in light of  
18 the affidavits that we did file in this case, I did  
19 endeavor to subpoena two of the jurors who participated in  
20 the trial.

21 THE COURT: Good morning.

22 Nice to see you both.

23 MR. LUCIA: To my right, Mr. Nielson; and on my  
24 left, Mr. Tsuda. It was Mr. Jugarski, who was the third

1 affidavit that we submitted. Essentially he said: "I  
2 didn't do anything."

3 My hope is that this morning, Your Honor, with  
4 the Court's permission, I would like to call these  
5 gentlemen. I only have about four questions for them that  
6 I think would probably give the Court a little bit more  
7 information than what was contained in the affidavits.

8 I think, as we discussed previously in this case,  
9 the law in this matter is relatively specific as far as  
10 what we can delve into. And I'm not sure that I drafted,  
11 at least, an affidavit, that was able to obtain that  
12 result.

13 THE COURT: Okay. Call your --

14 MR. LUCIA: That's what I would ask.

15 THE COURT: Call your first witness.

16 The first witness would be Mr. Tsuda.

17 Do you mind if I ask Mr. Nielson to just step  
18 out?

19 THE COURT: Yes.

20 Sir, that's the normal protocol. It's called the  
21 Rule of Exclusion. I'm going to invoke it.

22 Sir, if you'll please follow the deputy's  
23 instructions.  
24

1 DEAN TSUDA,

2 called as a witness by the State,

3 who, having been first duly sworn, was examined

4 and testified as follows:

5 THE COURT: Mr. Lucia.

6 MR. LUCIA: Thank you, Your Honor.

7 EXAMINATION

8 BY MR. LUCIA:

9 Q Sir, can you do me a favor? Once you get  
10 comfortable, can you just say your name out loud, and  
11 spell it for the Reporter?

12 A Dean Tsuda: D-e-a-n T-s-u-d-a.

13 Q Mr. Tsuda, do you recall your service as a juror  
14 in the case of State of Nevada versus Frederick Bowman?

15 A Yes, I do.

16 Q Now, during the course of your service, did you  
17 have an opportunity to perform any experiment or engage in  
18 any conduct to vet a theory either advanced by the State  
19 or the defense?

20 A Yes, I did.

21 Q And can you just briefly describe for the  
22 reporter what you did?

23 A On Tuesday evening, after I went home, I went  
24 home and put about five teaspoons of sugar in a baggie.

1 and then placed it on the floor and walked over it several  
2 times on the linoleum, and on carpet similar to this.

3 Q And what were the results of that?

4 A It didn't stick to my foot.

5 Q And that was on Tuesday evening, so --

6 A After we got done deliberating here and couldn't  
7 come to a verdict.

8 Q Now, with respect to -- and I want to ask this as  
9 specifically as I can. Before you left the jury room that  
10 night, that first night, was your vote guilty or not  
11 guilty?

12 A Guilty.

13 Q When you returned the following day, did you  
14 inform any of your fellow jurors about your experiment?

15 A Not until after we came to our verdict, when we  
16 were in the jury room.

17 Q So, if I understand you correctly, sir, a verdict  
18 was reached -- a unanimous verdict was reached amongst all  
19 12 jurors?

20 A Yes.

21 Q Was that verdict then handed to the bailiff or  
22 provided to somebody?

23 A Yes. We were in the there talking. And then I  
24 think Richard brought it up first. And then I said, "Hey,

1 I did the same thing, too."

2 Q So once that disclosure was made, the verdicts  
3 had already been reached, and it was out of the jury room?

4 A Yes.

5 Q Do you recall, sir, how long those experiments  
6 were discussed amongst the fellow jurors and yourself?

7 A Almost not at all. I think, besides me and  
8 Richard, maybe one or two other people. They didn't  
9 really -- it kind of just went like this. (Indicating.)  
10 You know. I don't think anyone was really paying  
11 attention, to tell you the truth.

12 MS. RISTENPART: For the record, Your Honor, he  
13 made a movement over his head. I would anticipate that  
14 meant, over their head.

15 THE WITNESS: Yes. Kind of like -- you know.  
16 BY MR. LUCIA:

17 Q It didn't really seem to --

18 A It didn't really seem to make an impression on  
19 anybody.

20 Q And just for the record, the Richard that you're  
21 referring to --

22 A -- is the gentleman that just left the courtroom.

23 Q Your fellow juror in this case?

24 A Yes.

1 MR. LUCIA: All right, Your Honor. I have no  
2 further questions for this witness.

3 THE COURT: Ms. Ristenpart.

4 MS. RISTENPART: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. RISTENPART:

7 Q And to specify, you discussed this experiment  
8 with the other jurors, all 12 were present?

9 A I think maybe -- I'm not sure if some of them had  
10 gone home by then or not. I don't remember if all of us  
11 went back after the verdict.

12 But it wasn't ever a discussion. Let's put it  
13 that way. Richard just brought up the fact that he had  
14 done similar to what I did. And I said, "Hey, I did that,  
15 too." And, you know -- and we both said it didn't stick  
16 to our shoe. And that was basically the end of it. There  
17 was no further elaboration. No one seemed to want to --  
18 "Oh, really?" Not even -- it was -- you know, it was just  
19 seconds, you know.

20 Q And to clarify, you brought this up before coming  
21 out and presenting the verdict to the judge?

22 A No. I think the verdict was already done. I  
23 think it was during -- it might have even -- you know, my  
24 recollection is a little fuzzy, but it might have been

1 when -- no, I think -- yeah, it was after the thing was --  
2 we were done, and the verdict was in the judge's hand.

3 Q Okay. And this was a while ago. Sorry. I just  
4 want to --

5 A Yes.

6 Q Do you remember discussing it before you came  
7 out, and the jury verdict was handed to the judge, that  
8 the clerk then read?

9 A No. No. It was after the clerk had the verdict.  
10 Richard kind of just brought it up in passing.

11 THE COURT: Any Redirect, Mr. Lucia?

12 MR. LUCIA: No.

13 MS. RISTENPART: I have no further questions,  
14 Your Honor.

15 THE COURT: Thank you, sir. I'm going to ask you  
16 to leave the courtroom, though, so we can hear from the  
17 other witness. I appreciate you being here.

18 (The witness was excused.)

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///



1 RICHARD NIELSON,

2 called as a witness by the State,

3 who, having been first duly sworn, was examined

4 and testified as follows:

5 DIRECT EXAMINATION

6 THE COURT: Mr. Lucia, you may proceed.

7 MR. LUCIA: Thank you, Your Honor.

8 BY MR. LUCIA:

9 Q Sir, can you do me a favor, please, and once you  
10 get comfortable, can you just say your name out loud and  
11 spell it for the court reporter?

12 A Yes. Richard L. Nielson: That's N-i-e-l-s-o-n.

13 Q Mr. Nielson, do you recall your service as a  
14 juror in the case of the State of Nevada versus Frederick  
15 Bowman?

16 A Yes, I do.

17 Q And during the course of your service as a juror,  
18 do you recall if you performed any sort of act or  
19 experiment to vet a theory of the case, either proposed by  
20 the State or the defense?

21 A Yes, I did.

22 Q Can you describe for us what it is that you did,  
23 sir?

24 A Excuse me.



1 THE COURT: There's water there, if you need it.

2 THE WITNESS: At the end of the first night of  
3 deliberation, when it was decided that nobody else's vote  
4 was going to change that night, we asked the judge for an  
5 evening break. It was granted. Went home.

6 And while I was at home, just sitting there  
7 thinking about the events of the day and certain things  
8 that were brought to our attention while we were  
9 deliberating, somebody had suggested that maybe the bag  
10 was in his shorts. Which I couldn't see. Maybe it was  
11 tucked inside his sock. Which, yeah, okay.

12 And then I got home, and sitting there thinking  
13 about it, and I'm thinking about the sheriff's car ride to  
14 Parr Boulevard. And I'm just thinking I could have taken  
15 that out of my sock. I know I could have. And so I  
16 tried.

17 I went out in my back -- got a little sandwich  
18 bag. Went out in my backyard, got what I figured was  
19 about the right amount of dirt and pebbles. Twisted the  
20 top, folded it over, cut off the excess, stuffed it in my  
21 sock. Sat down for about 15 minutes and tried. The shoe  
22 on, shoe off, because hands were -- can't use my hands  
23 because his were handcuffed. Fifteen minutes. Could not  
24 do it.

1 BY MR. LUCIA:

2 Q Do you mind if I interrupt you --

3 A Sure.

4 Q Was that eventually the only experiment that you  
5 performed?

6 A Yes.

7 Q Now, before you retired for that evening -- so  
8 during that first break from deliberations -- what was  
9 your vote, so to speak, in this case? Guilty or not  
10 guilty?

11 A My vote when we broke that night was guilty.

12 Q It was?

13 A Yes.

14 Q Now, did you subsequently, upon returning the  
15 next day, inform any of your fellow jurors about your  
16 experiment?

17 A Not until after we reached a unanimous decision.

18 Q And just so I'm clear on the time line, you  
19 return the following day to meet in the deliberation room?

20 A Correct.

21 Q And a unanimous verdict was reached amongst all  
22 12 jurors, eventually?

23 A Yes, eventually.

24 Q I have to be careful, because we can't -- just so

1 you know, I have to ask very specific questions, so --

2 THE COURT: We don't want you to tell us much, if  
3 anything, about what happened in that room when all of you  
4 were talking together. That's why the attorney is being  
5 very careful.

6 THE WITNESS: Okay.

7 BY MR. LUCIA:

8 Q So a unanimous verdict was then reached that  
9 following day. Yes or no?

10 A Yes.

11 Q It was after that -- at what point after that  
12 verdict was reached was the disclosure made? Was it after  
13 it was read in Court? Was it after you had turned over  
14 the verdict to the bailiff and were waiting for the  
15 parties to come back? Is that --

16 A That's correct.

17 Q Which one? What time?

18 A After we had taken a unanimous vote, the foreman  
19 wrote down the verdict, handed it to the sheriff. And  
20 while we were waiting to be called back into Court, that's  
21 when I shared what had happened.

22 Q Do you recall, sir, how long that discussion was  
23 had with respect to the experiment you performed in this  
24 case?

1 A One or two minutes, and that was it.

2 Q From your recollection -- and, again, like His  
3 Honor mentioned, we don't need to know what was said  
4 specifically -- do you recall if all 12 jurors were  
5 participating in that discussion or --

6 A No.

7 Q Okay.

8 MR. LUCIA: I have no further questions.

9 Thank you, Your Honor.

10 THE COURT: Ms. Ristenpart.

11 CROSS-EXAMINATION

12 BY MS. RISTENPART:

13 Q Good morning.

14 A Good morning.

15 Q Do you remember filling out an affidavit for the  
16 State?

17 A Yes, I do.

18 Q Do you remember specifically a question, Mr.  
19 Nielson, number 9: I disclosed the above information to  
20 my fellow jurors at the following time -- parentheses.  
21 Please describe as specifically as possible when you  
22 informed your fellow jurors of the above example: During  
23 deliberations, shortly before a unanimous verdict was  
24 reached, shortly after a unanimous verdict was reached,

1 after deliberations concluded, et cetera.

2 Do you remember your response to that?

3 A I kind of do. But I called Mary Dolan on Tuesday  
4 morning and -- because after she had said that there was  
5 going to be a hearing, I just started going over  
6 everything in my head again. Realized that the  
7 information I put down in that affidavit was incorrect.

8 Q So let me clarify. So on page 4 of this  
9 affidavit that you signed and returned back to the State,  
10 you stated, "The following morning, I told the other  
11 jurors and changed my vote."

12 A That was incorrect.

13 Q And you changed that after speaking to the D.A.  
14 investigator, Mary, who is present in Court today?

15 A Yes.

16 Q So after speaking to the District Attorney,  
17 you're now clarifying in stating that your -- or you're  
18 saying now that your verdict or your vote was always  
19 guilty, even before the investigation that you did.

20 A No. My original verdict, my original vote, when  
21 we first broke, was not guilty. It was after about an  
22 hour of deliberation that I changed my vote to not  
23 guilty -- or to guilty, I'm sorry.

24 THE COURT: It's so hard not to be the lawyer.

1 I'm sorry, Miss Ristenpart. Go ahead.

2 MS. RISTENPART: That's okay. Thank you.

3 BY MS. RISTENPART:

4 Q And you specifically remember discussing it  
5 before the verdict was delivered in Court?

6 A Yes. It was while we were waiting to be called  
7 back into Court, after the verdict had been handed to the  
8 bailiff.

9 Q Do you remember Mr. Tsuda sharing information  
10 also before going into Court?

11 A Yes. After the verdict had been given to the  
12 bailiff, yes.

13 MS. RISTENPART: Thank you.

14 No further questions, Your Honor.

15 THE COURT: So, when the jury broke for the  
16 evening, and you went home -- I don't want to know the  
17 evolution of the deliberations or the evolution of your  
18 vote -- but when you went home that night, was your vote  
19 guilty or not guilty?

20 THE WITNESS: It was guilty.

21 MS. RISTENPART: Clarification, based on your  
22 question?

23 THE COURT: Certainly.  
24

RECROSS-EXAMINATION

BY MS. RISTENPART:

Q Did your investigation help confirm your vote?

MR. LUCIA: Your Honor, I would object to that. I think that goes to the subjective nature of the effect of his investigation on his verdict, which I don't --

THE COURT: I'm going to overrule it.

THE WITNESS: I'm sorry. Could you repeat the question?

BY MS. RISTENPART:

Q Did your investigation that night help confirm your vote of guilty?

A I don't think so.

THE COURT: Okay. Thank you, sir. You're free to step down.

MR. LUCIA: I have no further witnesses, Judge.

THE COURT: Thank you. I appreciate you being here. You may leave the courtroom.

THE WITNESS: Thank you.

(The witness was excused.)

MR. LUCIA: If Your Honor like to hear argument, I believe it's Miss Ristenpart's motion.

THE COURT: We will wait just a minute.

MR. LUCIA: Sure.



1 THE COURT: Do you intend to call the  
2 investigator, or are you done?

3 MS. RISTENPART: The D.A. investigator, Your  
4 Honor?

5 THE COURT: I'm not suggesting you should.

6 MS. RISTENPART: No. I think the testimony  
7 stands, Your Honor.

8 THE COURT: So, having re-read Myer -- I'm saying  
9 this in advance of your arguments, so you can kind of  
10 narrowly tailor what you're going to say -- we know that  
11 not every incident of juror mis -- first, there are two  
12 species of misconduct. I do believe that  
13 out-of-deliberation experiments falls within one. But we  
14 know from Myer that not every incident of juror misconduct  
15 requires a new trial.

16 And we know from Myer that juror experimentation  
17 is unlikely to raise the presumption of prejudice.

18 The evidence before me is that these gentlemen  
19 each left the evening with a guilty vote and returned the  
20 morning with a guilty vote. They did not disclose their  
21 independent efforts during deliberations, but only as an  
22 afterthought, after the jury had reached a unanimous  
23 verdict.

24 That's the evidence before me.



1           It appears that this motion for new trial should  
2 be denied. And I give you an opportunity now to persuade  
3 me otherwise.

4           MS. RISTENPART: Thank you, Your Honor.

5           Specifically, in regards to time, as this Court  
6 is aware, a verdict is not actually in until read by the  
7 Court imposing the verdict. So the mere fact that the  
8 time frame -- and I'm going with Mr. Nielson's  
9 recollection because he seemed to be -- to remember more  
10 accurately or better than Mr. Tsuda -- that Mr. Nielson  
11 was very clear that, yes, they had come to a vote, a  
12 unanimous vote; that they had signed the form, handed it  
13 to the bailiff. And in that time frame that's why we also  
14 poll jurors after the verdict is read; right?

15           So, in this case, specifically, the fact that  
16 they are saying that, "Oh, we had already casted a vote.  
17 It was unanimous," you have to also look at -- just like  
18 my last question -- when you have a close, hung jury,  
19 which could not come to a decision for three hours the  
20 night before, and then came to a decision within 30  
21 minutes the next day, then this evidence, which is not  
22 allowed, and inadmissible, independent investigation came  
23 in to confirm what people had already been struggling  
24 with, because both of their experiments went directly to

1 disprove defense theory.

2 And for them to come in and then say, "Okay,  
3 Well, that" -- again, this is hard because we can't  
4 hypothesize what the jurors' thoughts were and what they  
5 actually discussed. But we do know it was clearly told to  
6 all the other jurors. All 12 were there. Whether all 12  
7 were listening, we don't know.

8 THE COURT: But after the verdict had been  
9 recorded by the foreperson.

10 MS. RISTENPART: And, Your Honor, Myer  
11 specifically looked at independent investigation that was  
12 discussed during -- quote, unquote -- deliberations.

13 But I think the interesting aspect of this is,  
14 when deliberations end in a jury trial. You can say, you  
15 know, they end when they all sign a form. But then we  
16 have had cases where jurors have signed a form, come out  
17 been polled, and they have said, "No. You know what? I'm  
18 not going to plead not guilty -- I'm not going to say 'Not  
19 guilty.' I think he's guilty. We're not unanimous."

20 And that's why we have those mechanisms and  
21 procedures. So for us to limit and say that deliberations  
22 ended the moment the jury verdict was signed, that's not,  
23 in fact, what happens in our courtrooms every day, and in  
24 this courtroom.

1           They come out, and they then deliver the verdict,  
2 after handing it to you and handing it to the Court clerk  
3 to read out loud. And that is the entry of the verdict.

4           So I'm not aware of any case law that specifies  
5 that deliberations end the moment the bailiff informs the  
6 Court that a verdict form has been signed.

7           And I think what's also interesting, Your Honor,  
8 is the fact that Mr. Nielson specified in an affidavit  
9 that it changed his vote.

10          And I'm directing you to page 4 of his affidavit.  
11 And then, after speaking with the District Attorney also,  
12 I can only fathom the psychology of these poor jurors who  
13 did their service to our community and now are being  
14 brought back in to be questioned about their activities in  
15 coming to a decision.

16          So for them to have spoken to the State, talk to  
17 a D.A. investigation, and now come in and clarify, "Well,  
18 no, my vote was guilty." And the State wants you to focus  
19 on that, Your Honor, that it didn't change their votes.

20          But the fact of the matter is, we had  
21 inadmissible independent investigation that was told to  
22 the rest of the jurors before deliberations had ended.  
23 And I'm talking about that gray area before the verdict  
24 was in and read before this Court.

1           And based upon Myer, I think you also need to  
2 balance in the investigation itself. This wasn't going  
3 and reading an article about methamphetamine. Or, like in  
4 Myer, reading about a rash that could be caused by other  
5 means. This was one of the most in-depth investigations,  
6 conducted by two different individuals. They went home,  
7 wrapped a substance -- either sugar or sand -- in a  
8 sandwich baggie and conducted testing on that.

9           So I do appreciate that this is a very difficult  
10 and gray area based upon, one, our limited case law for  
11 this; two, the fact that many of us don't find ourselves  
12 in this situation in regards to a jury verdict; and,  
13 three, the fact is that we can't really get into the meat  
14 of the matter, which is all we want to know is: Did this  
15 influence anyone? But, again, that's one factor.

16           And I think the totality of the circumstances  
17 shows that this independent investigation that was brought  
18 to the other jurors. And, therefore, we are asking you  
19 grant the motion for a new trial, and err on the side of  
20 caution.

21           With that, Your Honor, in case there's a rebuttal  
22 by the State, I will allow them to go forward.

23           THE COURT: Thank you.

24           Mr. Lucia,

1 MR. LUCIA: Thank you, Judge.

2 I think, Your Honor -- I'm not going to  
3 regurgitate what's in my briefing, but I think Your Honor  
4 has kind of hit the nail right on the head here.

5 The question to me isn't one of: Well, did they  
6 do the experiment, and did they inform their fellow jurors  
7 of that? I think that's clear. The answer to both  
8 is: Yes.

9 The real crux of the analysis here is: When was  
10 that information made available?

11 Prior to this morning's calendar, I think it was  
12 quite clear that we weren't really sure. The affidavits,  
13 admittedly, on my part, were poorly drafted in an attempt  
14 to kind of get to that point.

15 But I think what we now know -- and, again, I  
16 agree with Ms. Ristenpart, I have some sympathy for these  
17 folks. I made it to clear to them -- for whatever this is  
18 worth, as an officer of the Court -- that neither one of  
19 them was under any sort of investigation or accused of any  
20 wrongdoing. We were just trying to get at the heart of  
21 this issue, really.

22 But I think what we now know is that the  
23 announcement of these experiments was performed just like  
24 Your Honor stated: after the unanimous verdict was

1 reached.

2 I think, when you look at Myer, the real  
3 over-arching consideration that we're now asking ourselves  
4 is: Is there a reasonable probability that the juror  
5 misconduct affected the verdict?

6 And I would submit to the Court that, given the  
7 fact that this misconduct occurred after the verdict was  
8 rendered, the answer to that question is, simply: No.

9 Both Mr. Tsuda and Mr. Nielson were unequivocal  
10 and stated that, before they left that night, their vote  
11 was guilty.

12 Mr. Nielson was asked specifically, "Well, did  
13 your experiment confirm that fact for you?" And he said  
14 "No."

15 So for what it's worth, Judge, I don't think  
16 there's a reasonable probability that the verdict was  
17 affected by what these two individuals did.

18 Specifically with respect to Mr. Nielson's  
19 experiment, his experiment refuted an argument that the  
20 State had made as to the location of the methamphetamine.  
21 So to the extent that he was unable to recreate or  
22 replicate what the State was arguing, it only served to  
23 prejudice the State's case. It actually inures to the  
24 defendant's benefit. So I would ask the Court to consider



1 that and weigh that against the case law that we have  
2 here.

3 But, again, I don't really mean to belabor this  
4 point much more, but if you look to Myer, at 571, the jury  
5 in that case was informed at the beginning of  
6 deliberations, so the jury had that notion out there  
7 throughout the entire course of their deliberation;  
8 specifically, the nurse who consulted the Physicians' Desk  
9 Reference Manual and stated that Accutane, in fact, does  
10 lead to these raised bumps in at least one percent of the  
11 population. So that was at the beginning of  
12 deliberations.

13 In Tanksley, at 1,003, the juror in that case,  
14 which -- who went home and lit his mattress on fire to try  
15 and recreate the argument in that case, in Tanksley, the  
16 Court indicated that the juror informed his fellow jurors  
17 of his experiment, and then, nonetheless, continued  
18 deliberating.

19 So in both of those instances, you have a  
20 situation where the experiment is made public, and  
21 deliberations are ongoing. And I don't mean ongoing in  
22 the sense that they are waiting for us to come across the  
23 hall -- or excuse me -- across the street and take the  
24 verdict. They were still deliberating with this

1 experiment out there. And I think that's diametrically  
2 divergent from the facts in this case.

3 So in looking at the case law here, Your Honor, I  
4 would submit that there's not a reasonable probability  
5 that either jurors' experiment had any influence on the  
6 final verdict, as they both said, when they made mention  
7 of it -- as Mr. Tsuda mentioned -- it was in passing. It  
8 didn't seem to really connect to anybody. Mr. Nielson, I  
9 think his testimony was, maybe a minute it was even  
10 bandied about by the other jurors.

11 I would also submit to Your Honor that, getting  
12 past that first prong, in looking at the effect of these  
13 investigations and their disclosure against the balance of  
14 the evidence here, that the evidence in this case was  
15 strong. And, again, that's, I think, sufficiently flushed  
16 out in my pleadings, so I don't mean to belabor that.

17 So that's my position, Judge.

18 THE COURT: Thank you.

19 Any rebuttal?

20 MS. RISTENPART: Your Honor, I would just direct  
21 the Court's attention to page 4 of the affidavit from Mr.  
22 Nielson. Specifically, question number 12, lines 18 to  
23 22, where he indicates the first vote was six guilty, six  
24 not guilty. The second vote was seven guilty, five not



1 guilty.

2 And then, also, Your Honor, in addition, page 4,  
3 same question, number 12, to Mr. Tsuda, lines 18 to 21,  
4 who stated that the vote was 50/50.

5 And just to reinforce, Your Honor, the fact that  
6 these experiments weren't performed for fun. They were  
7 performed to get answers, answers whether they confirmed  
8 or denied how they were feeling about the case on such a  
9 close -- when I say "confirmed or denied," you looked at  
10 me strange.

11 THE COURT: No, no, no. I just want to make sure  
12 counsel knows I'm listening. I don't mean to convey  
13 non-verbally.

14 MS. RISTENPART: And that's, again, where we want  
15 to get into the meat of the matter. The State brings up,  
16 "Well, Mr. Tsuda stated on the stand that he didn't think  
17 the other jurors were really listening or paying attention  
18 when he explained the experiment."

19 We don't know that, Your Honor. We don't know  
20 the effect it had on the other jurors. And we can't get  
21 into it because we're prohibited because of our sacred  
22 respect for juror deliberations. And, so, for us to say,  
23 "Well, it didn't have an effect because these two men are  
24 saying so." I think we need to look at the bigger picture.

1           And we're asking that you grant the motion for a  
2 new trial.

3           Thank you.

4           THE COURT: Thank you.

5           I ended the last hearing acknowledging,  
6 internally, the high possibility that I would grant a new  
7 trial, based upon what I learned. I was so prepared to do  
8 it, that we set a new trial date.

9           Having considered the evidence presented today, I  
10 deny the request for new trial.

11           Shall we proceed to sentencing now, or shall I  
12 set it for March 26th?

13           And I also want to say that I believe there's an  
14 appropriate record that's been made. My job, as a trial  
15 Judge, is to make decisions, and we'll see what happens  
16 after that; but I'm fully informed.

17           Shall we proceed to sentencing right now, or put  
18 it to the 26th?

19           MS. RISTENPART: I would just ask for  
20 specification, Your Honor: Are the parties going to  
21 obtain a written order?

22           THE COURT: Is it your request?

23           MS. RISTENPART: I would request a written order.  
24 And I apologize to the Court.

1           THE COURT: You don't have to apologize. I cash  
2 my paycheck, just like everybody else does.

3           I will enter a written order. It will be very  
4 brief in nature. It will recite, essentially, the  
5 principles of law that we discussed at the last hearing.

6           There are three principles of law that I invoked  
7 this morning. Despite the existence of misconduct, not  
8 every incident of misconduct requires a new trial. The  
9 type of misconduct at issue here is unlikely to raise the  
10 presumption of prejudice. The Court can find no  
11 reasonable probability that the verdict was affected,  
12 because the evidence before the Court was that the  
13 independent experiments did not change the vote of the  
14 jurors who conducted the experiments, and the results of  
15 the experiments were not broadcast to other jurors until  
16 after a unanimous verdict had been reached. And I'm not  
17 certain about whether the verdict forms were filled out.  
18 It appears to me that they were.

19           And the only possibility to countenance the  
20 defense's argument is that, after agreeing to a unanimous  
21 verdict in the jury-deliberation room, and after recording  
22 the unanimous verdict in the jury-deliberation room, that  
23 between the jury-deliberation room and the jury box in the  
24 courtroom, that a juror would have changed his or her mind

1 when polled. And I don't find that as a sound basis for a  
2 new trial.

3 That's what my written order will say,  
4 essentially.

5 MS. RISTENPART: Thank you, Your Honor.  
6 With the Court's indulgence, may I just --

7 THE COURT: Yes.

8 Will you get a rough draft of that last  
9 five minutes for me, please?

10 THE COURT REPORTER: Yes.

11 MR. LUCIA: Your Honor, perhaps, with respect to  
12 sentencing, I know that the Division's representative is  
13 not here. We have, I think, trial set for March 9th.

14 THE COURT: I would like to put this on the  
15 regular sentencing calendar.

16 MR. LUCIA: Okay. Sure.

17 THE COURT: And I'm proposing the 26th.

18 MR. LUCIA: That would be fine with the State.  
19 Whenever Your Honor wants to proceed with sentencing, we  
20 will be ready.

21 MS. RISTENPART: Your Honor, we actually have  
22 both counsel here for both of Mr. Bowman's cases.

23 THE COURT: Oh, Mr. Hough. Good morning.

24 MR. HOUGH: Good morning.

1 MS. RISTENPART: I am not available March 26th.

2 THE COURT: You are unavailable?

3 MS. RISTENPART: Correct. I'm in a murder trial.

4 Therefore, I would be asking if we could do the  
5 week of March 9th, but on your normal calendar -- if  
6 that's okay with other counsel.

7 THE COURT: So your trial commitment will  
8 predominate over the sentencing. Will you tell me what  
9 department it's in?

10 MS. RISTENPART: It's in Department 9. State  
11 versus Julian Acock. (Phonetic.)

12 THE COURT: And it starts next week?

13 MS. RISTENPART: No. You said March.

14 THE COURT: I'm sorry.

15 MS. RISTENPART: I apologize.

16 THE COURT: I'm proposing that we sentence on  
17 February 26th, which is next Thursday --

18 MS. RISTENPART: Excellent.

19 THE COURT: -- a week from today.

20 MS. RISTENPART: That's a totally different  
21 story.

22 THE COURT: Can you be available on  
23 February 26th?

24 MS. RISTENPART: If I could --

1 THE COURT: It's time to get Mr. Bowman out of  
2 the county jail, in whichever direction he's going.

3 MS. RISTENPART: And I'm saying yes, Your Honor.  
4 If I could just --

5 THE COURT: Mr. Hough?

6 MR. HOUGH: I'm available, also.

7 THE COURT: We'll see everybody on next Thursday,  
8 February 26th.

9  
10 (Proceedings concluded.)  
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1 STATE OF NEVADA )  
2 )  
3 COUNTY OF WASHOE )

4 I, RANDI LEE WALKER, Certified Shorthand  
5 Reporter of the Second Judicial District Court of the  
6 State of Nevada, in and for the County of Washoe, do  
7 hereby certify:

8 That I was present in Department No. 15 of  
9 the above-entitled Court and took stenotype notes of the  
10 proceedings entitled herein, and thereafter transcribed  
11 the same into typewriting as herein appears;

12 That the foregoing transcript is a full, true  
13 and correct transcription of my stenotype notes of said  
14 proceedings.

15 DATED: At Reno, Nevada, this 19th day of  
16 April, 2015.

17  
18 /s/ Randi Lee Walker  
19 RANDI LEE WALKER, CCR No. 137  
20  
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8

9  
10 THE STATE OF NEVADA,

Case No.: CR14-0708

11 Plaintiff,

Dept. No.: 15

12 vs.

13 FREDERICK LEWIS BOWMAN,  
14

15 Defendant.  
16 \_\_\_\_\_/

17 ORDER

18 Mr. Bowman was convicted by a jury of one count of trafficking in a Schedule I  
19 controlled substance on December 3, 2014. He filed a motion for a new trial on  
20 December 8, 2014, alleging that two jurors had performed independent experiments  
21 during deliberation to test the parties' respective theories of the case. An evidentiary  
22 hearing was conducted on February 19, 2015. Both jurors gave testimony regarding the  
23 details of their experiments and when and how these details were communicated to  
24 other jurors, if they were communicated at all. Having considered the evidence  
25 presented in the parties' moving papers and at the hearing, the request for a new trial is  
26 denied for the reasons set forth below.

27 "Not every incidence of juror misconduct requires the granting of a motion for  
28 [a] new trial." Barker v. State, 95 Nev. 309, 313, 594 P.2d 719, 721 (1979). The type of



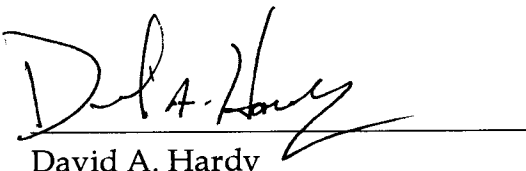
1 misconduct at issue here — conducting independent research — does not necessarily give  
2 rise to a presumption of prejudice. “[A] conclusive presumption of prejudice applies  
3 only in the most egregious of cases of extraneous influence on a juror, such as jury  
4 tampering.” Meyer v. State, 119 Nev. 554, 564, 80 P.3d 447, 455 (2003). The Nevada  
5 Supreme Court has rejected the position that “extrinsic influence is automatically  
6 prejudicial.” Id. at 565, 80 P.3d at 455. “Jurors’ exposure to extraneous information via  
7 independent research or improper experiment is . . . unlikely to raise a presumption of  
8 prejudice. In these cases, the extrinsic information must be analyzed in the context of  
9 the trial as a whole to determine if there is a reasonable probability [it] affected the  
10 verdict.” Id. at 565, 80 P.3d at 456.

11 This Court can find no reasonable probability the verdict was affected because  
12 the evidence before it is that the independent experiments did not change the votes of  
13 the jurors who conducted them and the results of the experiments were not broadcast to  
14 other jurors until after a unanimous guilty verdict had been reached. It appears the  
15 verdict forms had already been filled out when the experimenting jurors informed the  
16 others of their experiments. The only possibility to countenance the defense’s argument  
17 is that after agreeing to a unanimous verdict in the jury deliberation room, and after  
18 recording the unanimous verdict, that between the jury deliberation room and the jury  
19 box, a juror would have changed his or her mind when polled. This Court does not find  
20 this to be a sound basis for a new trial. For these reasons, Mr. Bowman’s motion for a  
21 new trial is denied. The sentencing hearing is scheduled for Thursday, February 26,  
22 2015.

23 **IT IS SO ORDERED.**

24 Dated: ~~January~~ 20, 2015.

25 Feb.

26   
27 David A. Hardy  
28 District Court Judge

1 **CODE 1850**

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF WASHOE**  
8

9 **STATE OF NEVADA,**

10 **Plaintiff,**

11 **vs.**

**Case No. CR14-0708**

12 **FREDERICK LEWIS BOWMAN,**

**Dept. No. 15**

13 **Defendant.**

14 /

15 **JUDGMENT OF CONVICTION**

16 The Defendant, having been found guilty by a jury on January 13, 2015, and no legal cause  
17 being shown as to why judgment should not be pronounced against him, the Court rendered  
18 judgment as follows:

19 1. That Frederick Lewis Bowman is guilty of the crime of Trafficking in a Schedule I  
20 Controlled Substance, 4-14 Grams, a violation of NRS 453-3385(1), a felony, as charged in the  
21 Information.

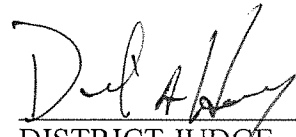
22 2. That Frederick Lewis Bowman be punished by imprisonment in the Nevada  
23 Department of Corrections for a minimum term of 19 months to a maximum term of 48 months,  
24 with credit for time served in the amount of 370 days.

25 3. It is further ordered that Frederick Lewis Bowman shall pay \$25.00 as an  
26 administrative assessment fee, \$60.00 as a chemical analysis fee, \$3.00 as an administrative  
27 assessment for obtaining a biological specimen and conducting a genetic marker analysis, and  
28 reimburse the County of Washoe the sum of \$1,000.00 for legal representation.

1 4. Frederick Lewis Bowman is hereby advised that:

2 **Any fine, fee or administrative assessment imposed today (as**  
3 **reflected in this judgment of conviction) constitutes a lien, as**  
4 **defined in Nevada Revised Statutes 176.275. Should you not pay**  
5 **these fines, fees, or assessments, collection efforts may be**  
6 **undertaken against you.**


7 Dated this 27<sup>th</sup> day of Feb., 2015

8   
9 \_\_\_\_\_  
10 DISTRICT JUDGE

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THERESA RISTENPART, ESQ. for FREDERICK LEWIS BOWMAN  
ZACH YOUNG, ESQ. for STATE OF NEVADA  
TRAVIS B. LUCIA, ESQ. for STATE OF NEVADA  
GALEN D. CARRICO, ESQ. for FREDERICK LEWIS BOWMAN

N/A

  
Department 15 Judicial Assistant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,  
Plaintiff,  
v.

Case No. CR14-0708

FREDRICK LEWIS BOWMAN,  
Defendant.

Dept. No. 15

**NOTICE OF APPEAL**

NOTICE is hereby given that FREDRICK LEWS BOWMAN, Defendant above named,  
hereby appeals to the Supreme Court of Nevada from the Judgment of Conviction entered in  
this action on the 27<sup>th</sup> day of February, 20145.

FURTHERMORE, pursuant to NRS 239B.030, the undersigned hereby affirms this  
document does not contain the social security number of any person.

DATED this 20<sup>th</sup> day of March, 2015.

Theresa Ristenpart, Esq.

By       /s/ Theresa Ristenpart      

Theresa Ristenpart, Esq.  
Attorney for Defendant

1 Code No. 4185  
2 SUNSHINE REPORTING SERVICES  
3 151 Country Estates Circle  
4 Reno, Nevada 89511

**COPY**

6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 HONORABLE DAVID A. HARDY, DISTRICT JUDGE

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 FREDERICK LEWIS BOWMAN,

13 Defendant.  
14 \_\_\_\_\_/

Case No. CR14-0708

Department No. 15

15 TRANSCRIPT OF PROCEEDINGS

16 UNCERTIFIED FAST TRACK TRANSCRIPT

17 MORNING SESSION

18 CRIMINAL JURY TRIAL

19 December 2, 2014

20 Reno, Nevada  
21  
22  
23  
24

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3 A P P E A R A N C E S  
4

5 FOR THE STATE:

6 TRAVIS LUCIA  
7 Deputy District Attorney  
8 One South Sierra Street, 4th Floor  
9 Reno, Nevada

10 FOR THE DEFENDANT

11 THERESA A. RISTENPART  
12 RISTENPART LAW  
13 200 S. Virginia  
14 Suite 833  
15 Reno, NV 89501  
16 775-223-4135  
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I N D E X

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E X H I B I T S

NUMBER	DESCRIPTION	MARKED	ADMITTED
Exhibit 1	DVD/Intake Video - Angle #1	--	29
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1 DECEMBER 2, 2015, TUESDAY, 11:30 A.M., RENO, NEVADA

2 -oOo-

3  
4 (Whereupon the following proceedings were  
5 had outside the presence of the jury.)  
6

7 THE COURT: Good morning.

8 Any issues, Counsel?

9 MR. LUCIA: The razor blade, correct?

10 THE COURT: Let's be seated. Okay.

11 Talk to me.

12 MR. LUCIA: Ms. Ristenpart and I had an  
13 opportunity to discuss the issue before the this morning's  
14 calendar, Judge. I believe we've reached a stipulation.

15 The State doesn't intend to ask any of our  
16 witnesses whatsoever about the presence of a razor blade  
17 that was located on Mr. Bowman at the intake facility at  
18 Parr Boulevard.

19 Specifically there was one exhibit that  
20 photographed that object. That's State's Exhibit 4. I do  
21 not intend to introduce it. As I mentioned, I'm not going  
22 to ask any of the officers about it.

23 Just for the record, there was some plastic  
24 wrap, Saran style plastic wrap that was recovered in that

1 same general area, specifically Mr. Bowman's socks. I am  
2 going to ask Mr. Gerow about that, but I specifically told  
3 him not to discuss the razor blade.

4 THE COURT: So the exhibit depicting the razor  
5 blade has been marked?

6 MR. LUCIA: Yes.

7 THE COURT: But it's going to be withdrawn,  
8 essentially? You're not going to seek its admission?

9 MR. LUCIA: Right. Won't seek its admission,  
10 your Honor.

11 MS. RISTENPART: Thank you. Good morning, your  
12 Honor.

13 We have discussed that with Mr. Bowman, and we  
14 are in agreement with that stipulation as to the evidence  
15 because that takes care of our problem.

16 THE COURT: Thank you. Let's stand for our  
17 jury.

18 (Whereupon the following proceedings were  
19 had in the presence of the jury.)

20 THE COURT: Good morning. It's nice to see you.  
21 You'll remain standing, please.

22 The rest of us will be seated.

23 Ms. Clerk, if you will administer an oath to the  
24 jury.

1 (Whereupon the witness was sworn.)

2 THE COURT: Please be seated. You've seen the  
3 court reporter. She writes every word that is said. From  
4 time to time, she'll switch out.

5 She's been writing since 9:00 o'clock this  
6 morning, furiously. We had 16 cases at some point this  
7 morning. We'll change her out and have another reporter  
8 come in.

9 I might ask the lawyers or witnesses to slow  
10 down. I always say turn the dial back a little bit,  
11 because we each speak at a different speed. And so I'll,  
12 occasionally, interrupt. Not often, and with no ill  
13 intent.

14 You've seen the two clerk courts. They mark  
15 exhibits, keep track of evidence, swear witnesses. They  
16 prepare exhibits and other descriptions of the court  
17 proceeding.

18 They are always present when the court is in  
19 session. You've seen Deputy Croxon. He is in charge of  
20 your security, your comfort.

21 He's a nice man, but he's not your friend. He  
22 is trained in a certain way to avoid any interactions with  
23 you beyond the barest of professional duties because, as  
24 jurors, you belong to each other. She's -- he is not part

1 of you.

2 So please moderate your interactions with him.  
3 That way he does not have to tell you that he can't go to  
4 lunch with you. He can't talk to you in any way.

5 Yesterday, I think it was Mr. Lucia, mentioned  
6 that there are certain rules of professional conduct. And  
7 I want to emphasize them.

8 We each strive to be friendly people.  
9 Mr. Bowman, the attorneys, the Court, the court staff. But  
10 a sacred rule of the jury process is that what you learn  
11 you learn together. And you learn it here in this room.  
12 So everything that's relevant for you will be presented to  
13 you in this room in the presence of each other, in the  
14 presence of the State and Mr. Bowman.

15 To make sure that happens, we restrict contact  
16 with you. So you're already wearing your badges, so the  
17 Court staff, other court users, know that you're hands off,  
18 and not to engage with you in any way. Simply, the  
19 attorneys and the court staff and even the judge will avoid  
20 you.

21 I've instructed the attorneys that they can't  
22 even say hello to you outside in the hallways. We don't  
23 want to have a question about whether or not there was an  
24 innocent but improper conversation. So please acknowledge

1 in your hearts that they're not being antisocial. They're  
2 just following the Court's directions.

3 I'm going to dispense with some of what I  
4 normally say because I want to get right into this trial.

5 At the close of evidence, I will instruct you on  
6 the principles of law that govern your deliberations.

7 You will receive an instruction, probably, about  
8 the difference between direct evidence and circumstantial  
9 evidence. At this point I just want you to know that  
10 everything that you hear, everything that you see, is  
11 available for you. There's no distinction between types of  
12 evidence.

13 It is the State's burden of proof to prove each  
14 element of the charge beyond a reasonable doubt.

15 Mr. Bowman has no burden of proof. He may or  
16 may not present a defense. And I don't want you to think  
17 about whether he does or doesn't. And I certainly don't  
18 want you to think about whether he will or will not  
19 testify.

20 I'll provide an instruction at the appropriate  
21 time. I just know there was a reference to it yesterday in  
22 jury selection and a couple of responses. I don't want  
23 that to be in your mind. Trust me that at the appropriate  
24 time we'll talk about it.

1           Now I have -- I have three good attorneys in  
2     this courtroom, so I don't anticipate any problems. But my  
3     job is to be a problem-solver. And if an attorney asks a  
4     question that is, that the other attorney objects to, it  
5     goes to our evidence code. And I'm going to make a  
6     decision.

7           If I grant an objection, if I don't disallow --  
8     if I disallow evidence, I don't want you to guess about  
9     what might have come before you. I just want you to accept  
10    the fact that I have made a decision and we're moving on.

11          I will from time to time have to admonish  
12    attorneys, I don't think in this case, from these three,  
13    but from time to time I'll have to say things.

14          I have no animus to the attorneys, and I have no  
15    opinion about this case. You're the finders of fact. It's  
16    my job.

17          And I'll be very careful in the way I look to  
18    you because research indicates that you watch the judge,  
19    and you look for visual cues, and you listen to tones.

20          And I will strive to be impassive. In fact, I'm  
21    surrounded by technology, and I do things. I communicate  
22    with the staff, I look at legal research, I look at the  
23    files, I look at the exhibits, I do things, because you  
24    alone will consider the testimony of the witnesses. You

1 alone will consider the appearance, the attitude, the  
2 behavior of the witnesses, the interest in the witness to  
3 testify truthfully or untruthfully.

4 You alone will determine the probability or the  
5 improbability of the trial evidence. You alone will give  
6 as much weight or value to what you hear and the findings  
7 of fact will belong to you.

8 Only lawyers ask questions in this courtroom. I  
9 have the authority to ask questions under the evidence  
10 code, but I will not. The lawyers are highly skilled.  
11 They know their cases. They know what evidence is going to  
12 be presented.

13 In a theoretical world, you also can ask  
14 questions, but never orally, and never directly to a  
15 witness. You can write a question down, present it to  
16 Deputy Croxon, who in turn will give it to me, and we'll  
17 discuss it out of your presence.

18 I don't encourage you to do so. My experience  
19 is that if you're patient, and you await the roll out of  
20 the case evidence, that your questions will be answered.

21 You can also take notes, but you are admonished  
22 to keep those notes to yourself throughout this trial.  
23 Don't become too dependent upon note taking. And only when  
24 you're released to deliberate may you share those notes



1 with others.

2 You will be passive observers of this process.  
3 You're like an audience, and we're the stage. A plate of  
4 glass is essentially being raised between you and us. So  
5 there's not going to be any interaction between the  
6 attorneys and you, and the witnesses and you.

7 I might inquire about your inconvenience. If  
8 one of you are sleepy or you're stretching, I'll have you  
9 stand, we'll get coffee, I'll be responsible for that. The  
10 attorneys will do their best to present to you all of the  
11 relevant information.

12 The State will begin with its opening statement  
13 argument -- opening statement. Excuse me. There is no  
14 argument in opening statements. Because the State has the  
15 burden of proof, the State always goes first. Mr. Bowman  
16 may or may not provide an opening statement. And then the  
17 State will call its first witnesses. And the State will  
18 present its case-in-chief. And then we'll take a break at  
19 some point in the trial process.

20 Counsel in this department, we do one direct,  
21 one cross, one redirect, one recross. And then we're done.

22 I don't think I've ever granted leave to go  
23 beyond that. Maybe in extraordinary circumstances, but  
24 typically that's what we're going to do.

1           Yesterday, you saw a side bar, that's where I  
2   call the attorneys to the bench, I muffle my voice, and I  
3   inquire of them privately. You might see that from time to  
4   time. Please don't guess. It's just a way of getting  
5   through things quickly.

6           If any of you have any physical needs that we  
7   need to accommodate, let me know through Deputy Croxon. If  
8   there are facility needs, raise your hand, and I'll  
9   acknowledge you.

10          With that, we'll begin with our opening  
11   statements. To the State.

12          Oh, I do want you to read the charging document,  
13   yes. Thank you.

14          Ms. Clerk?

15          (Whereupon the Information was read into  
16   the record.)

17          THE COURT: Thank you, Ms. Clerk.

18          Counsel, are you ready to go?

19          MR. LUCIA: The State's ready.

20          MS. RISTENPART: Yes, your Honor.

21          THE COURT: All right. Mr. Lucia.

22   ///

23   ///

24   ///

1                   OPENING STATEMENT BY MR. LUCIA

2  
3           MR. LUCIA: Good morning, ladies and gentlemen.

4           As I mentioned yesterday, my name, again, is  
5 Travis Lucia. I'm a deputy district attorney with the  
6 County of Washoe, State of Nevada. And this is my chance,  
7 like the judge mention, to provide you with my opening  
8 statement.

9           This is in a nutshell my opportunity to explain  
10 to you what the evidence I believe will show you over the  
11 course of this trial as it proceeds to roll out throughout  
12 the rest of this day.

13           And what the evidence will show you, ladies and  
14 gentlemen, is the fact that Mr. Bowen, on or about the 26th  
15 day of February, 2014, possessed, either actually or  
16 constructively, more than 4 grams, but less than 14 grams,  
17 of a Schedule I controlled substance, specifically the  
18 Schedule I controlled substance of methamphetamine.

19           Now you're going to hear from two witnesses this  
20 morning, one of whom works for the Sheriff's Office. His  
21 name is Washoe County Sheriffs Deputy Eric Gerow.

22           Now Deputy Gerow will testify that on the 26th  
23 of February, 2014, he was actually employed at the Washoe  
24 County Jail, the intake facility, specifically up at 911

1 Parr Boulevard. He'll tell you from the witness stand that  
2 during the course of his duties, he was conducting an  
3 inmate search, or actually an intake search, I should say.  
4 During the course of that search, Mr. Bowman was up against  
5 the wall, and he stepped back, and then he's seated in the  
6 chair to continue that search, and during that moment,  
7 Deputy Gerow looked down, and on the floor he observed a  
8 white package.

9 He'll testify that it was Saran wrap, that it  
10 was bundled in such a way to hold what was inside, and  
11 he'll testify that what he saw inside that package was a  
12 white crystalline substance that consistent his training  
13 led him to believe it was the controlled substance  
14 methamphetamine.

15 What he'll also tell you folks is when he  
16 retrieved that package he handed it off to Sparks Police  
17 Department Officer Dutra.

18 Now what Officer Dutra will tell you is that  
19 when he went in that room where the search was being  
20 conducted he was provided a package by Deputy Gerow. He  
21 looked at the package, and in his training and experience,  
22 saw what was inside and that led him to believe that it was  
23 methamphetamine as well.

24 What's important, though, folks, and what's

1 important to this case is that you don't just have to rely  
2 on the testimony of Eric Gerow, and you won't just have to  
3 rely on the testimony of Chris Dutra, because also what  
4 you'll see over the course of this trial is essentially  
5 that exact same series of events. That exact same search.

6 There were two camera angles, two separate  
7 surveillance cameras that were in that same holding cell,  
8 or in that same search room up at the Sheriff's Office  
9 facility that captured that exact same event from two  
10 different angles. And you'll be able to see those tapes  
11 today.

12 What those tapes will show you is exactly what I  
13 just described. They'll show the defendant, Frederick  
14 Bowman, they'll show him standing against wall, and they'll  
15 show Deputy Gerow in the process of his intake search. And  
16 what you'll see is that as Mr. Bowman is standing against  
17 the wall, he takes a step back, and when he lifts his left  
18 foot, on the floor there's a white substance in a plastic  
19 bag.

20 What's important, and what I would like you to  
21 pay specific attention to, is when you're watching the  
22 videos, look at the area of the floor before Mr. Bowman  
23 enters the room.

24 You'll see for yourself folks, how the bag was

1 recovered where the bag fell from. You'll see before  
2 Mr. Bowman walked into that room there was nothing on that  
3 floor.

4 Now the question of what's in the bag, just as  
5 important as all the other elements in this case. That's  
6 where Diane Machen comes in. She's employed as a  
7 criminalist with the Washoe County Sheriff's Department.  
8 What does a criminalist do? They're a lab tech. They're a  
9 chemist basically.

10 So what Diane McKinnon will tell you today is  
11 that when she got that substance, she did two things with  
12 it. She weighed it, and then she tested it. When she  
13 weighed it she was looking for a net weight. And she'll  
14 tell you what the difference is between net weight and  
15 gross weight, and why it's important. She'll tell you that  
16 when she weighed the substance it came back at a net weight  
17 of 5.9 grams. Excess of 4 but more less than 14.

18 She'll also tell you that she tested the  
19 substance to see what it was -- rock candy, flour, what.  
20 She'll tell you she ran four tests, a microcrystalline  
21 test, two color tests, and something I always refer to as a  
22 F-L-I-R test because I can't pronounce the word because  
23 it's about 270 letters long, but what she'll testify to is  
24 that each one of those tests led her to the same



1 conclusion, methamphetamine was present within that bag.

2 Ladies and gentlemen, that's what the evidence  
3 will show you in this case. And what I intend to do is  
4 stand before you at the close of that evidence and remind  
5 you of what you saw, and ask you to return a verdict of  
6 guilty of a single count of trafficking in a controlled  
7 substance, against the defendant, excuse me, Frederick  
8 Bowman, a felony.

9 THE COURT: Thank you. To the defense.

10

11 OPENING STATEMENT BY MS. RISTENPART

12

13 MS. RISTENPART: Thank you, your Honor.

14 Ladies and gentlemen, you just heard part of the  
15 story. On February 26th of 2014, Mr. Bowman was at the  
16 Nugget Casino in Sparks where he was detained by Officer  
17 Dutra of the Sparks Police Department.

18 While there, Officer Dutra and his partner,  
19 Officer Coombes did numerous searches of Mr. Bowman.  
20 Thorough searches. Finding nothing.

21 You'll see video of those searches from the  
22 Nugget surveillance. You'll also then hear how Officer  
23 Dutra transported Mr. Bowman to the Washoe County Jail,  
24 otherwise known as 911 Parr Boulevard, whereupon he dropped

1 Mr. Bowman off into the area commonly referred to as the  
2 sally port, where as you'll see in here, every person  
3 detained in Washoe County gets processed through this area.  
4 Hundreds of individuals.

5 You will also see in the video, which is video  
6 in this area, of Officer, Deputy Dutra searching  
7 Mr. Bowman, and you will hear from Deputy Dutra when he  
8 says, it just appeared; I saw it on the floor. What you  
9 won't hear is Officer Dutra -- excuse me -- there's law  
10 officers and deputies -- Deputy Gerow saying specifically I  
11 saw it on Mr. Bowman, or it fell from Mr. Bowman, or that I  
12 saw it fall.

13 Deputy Gerow merely looked down on the floor and  
14 upon closer examination, as you'll see in the video, sees a  
15 little plastic baggie, picks it up, and chucks it at  
16 another officer.

17 And I agree with the State on one point. Look  
18 carefully at that surveillance video of the sally port  
19 area. What else has been on the floor? Other individuals  
20 coming in and out who they were processing. Because as  
21 we're handing you all these pieces of evidence, and you're  
22 shifting through it, the two issues to truly consider is  
23 whether or not the State has proven beyond a reasonable  
24 doubt that Mr. Bowman actually possessed this baggie of



1       methamphetamine, or had knowingly constructive possession.

2               And once you shift through the evidence, and you  
3       thoroughly do the investigation, you'll see exactly why  
4       we're here today. And Mr. Bowman is not guilty of level 1  
5       trafficking.

6               Thank you.

7               THE COURT: Thank you. To Mr. -- to the State.

8               MR. LUCIA: Thank you, your Honor.

9               The State's first witness will be Deputy Eric  
10       Gerow.

11  
12               ERIC GEROW,  
13               called as a witness in said case,  
14               having been first duly sworn, was  
15               examined and testified as follows:

16  
17                               DIRECT EXAMINATION

18  
19       BY MR. LUCIA:

20               Q       Sir, can you do me a favor, please, once you get  
21       comfortable, can you say your name out loud and spell it  
22       for the reporter.

23               A       Eric Gerow, E-R-I-C-G-E-R-O-W.

24               Q       And Mr. Gerow, where is it that you're currently

1 employed?

2 A The Washoe County Sheriff's Office.

3 Q And with the Washoe County Sheriff's Office do  
4 you have a specific job title?

5 A Deputy sheriff.

6 Q How long has it been that you've been a deputy  
7 sheriff with the Washoe County Sheriff's Office?

8 A A little over a year, sir.

9 Q So before you became employed, did you have to  
10 undertake any sort of training?

11 A Yes, sir.

12 Q And can you describe that for us, please.

13 A I went through a four-month academy, giving a  
14 broad spectrum of training involving laws that are applied  
15 in Nevada, and training for physical tactics, searching  
16 techniques, overview of drug recognition and range and how  
17 to drive cars.

18 Q All right. So would it be fair to say that the  
19 training for the program was pretty expansive, encompassing  
20 all acts of law enforcement?

21 A Yes, sir.

22 Q You mentioned something that I want to kind of  
23 touch upon a little bit more briefly.

24 You said that was a portion of the training that

1 had to do with narcotics?

2 A Yes, sir.

3 Q Can you describe that for us in a little bit  
4 more detail?

5 A We went through a block of instruction that  
6 described the various effects of drugs, whether they're  
7 stimulants or really any type. And then we also had  
8 examples of what some drugs look like in common form.

9 Q So you were provided with examples of various  
10 controlled substances so that you could recognize those?

11 A Yes, sir.

12 Q Now were, to your recollection was one of those  
13 substances methamphetamine?

14 A Yes, sir.

15 Q Now can you describe for us just briefly what  
16 your job duties are as a Washoe County Sheriffs Deputy?

17 A I have multiple job duties. Right now I'm  
18 currently assigned to detention, which is the jail up at  
19 Parr.

20 It ranges from working in intake where we bring  
21 in new people, new inmates that are arrested, all the way  
22 to working housing units that house inmates who aren't fit  
23 to leave.

24 Q Okay. You mentioned that one of your duties was

1 working in the intake area.

2 Let's kind of zero in on that area specifically.

3 A Yes, sir.

4 Q Is that part of the facility located at Parr  
5 Boulevard?

6 A Yes, sir.

7 Q Is Parr Boulevard here in Washoe County?

8 A Yes, sir.

9 Q Now can you describe for us what the process is  
10 of intake? What do you guys do with it?

11 A When any agency, whether it's the Sheriff's  
12 Office, Reno/Sparks, anybody who brings someone in, they  
13 come in through our gating system. They walk up through a  
14 corridor, and then they enter our sally port. In the sally  
15 port they're searched. All their property is inventoried.  
16 Any contraband is taken.

17 Once they're done being searched, they'll have  
18 their mugshot taken, and they'll be moved through the  
19 process.

20 Q Is that the same area for every individual that  
21 comes in through Parr Boulevard?

22 A Yes, sir.

23 Q Is there anything that's done between  
24 individuals with respect to that room, if that makes sense?

1           A       It doesn't, sir.

2           Q       Let's say person 1 comes in at 8:00 o'clock, and  
3 another person comes in at 8:30. That process is the same  
4 for each and every individual?

5           A       Yes, sir.

6           Q       Between the first person and the second person,  
7 do you guys check the room, do you clear the room, is there  
8 anything that's done to that room?

9           A       After every individual that comes through, the  
10 area in which they're searched is made sure that there's no  
11 property or contraband left.

12          Q       Okay. And when you say property, what property  
13 are you referring to?

14          A       It could be any property on a person. Their  
15 wallet, keys, IDs, credit cards.

16          Q       Okay. And when you say contraband, is there  
17 anything specifically that you're referring to?

18          A       Most of the time that involves drugs.

19          Q       All right.

20          A       Sometimes it can be weapons.

21          Q       So you're looking for those things, and after  
22 each individual you're checking to make sure you've got all  
23 of them I guess is the best way to say it?

24          A       Yes, sir.

1 Q Now you also mentioned during your testimony  
2 just a minute ago that a search is conducted.

3 Is a search conducted in that area too?

4 A Yes, sir.

5 Q Can you tell us why the search is being  
6 conducted?

7 A The search is an inventory search to control  
8 everything that comes into our facility, as well as  
9 properly inventory everybody's property that is brought  
10 into our facility.

11 Q So if I understand you properly, Deputy, you're  
12 itemizing what you're finding on a person?

13 A Yes, sir.

14 Q And the purpose of that is to create an  
15 inventory.

16 Why create an inventory?

17 A We don't want to keep anything that's not ours.

18 Q Okay.

19 A When you come in, what you come in with is going  
20 to leave with you when you leave our facility.

21 Q Now, if you can, describe for the jury how that  
22 search is conducted?

23 A The individual search is a systematic  
24 overlapping quadrant search.

1 Q Let me slow that down.

2 A Without using the big words, it's top to bottom.  
3 You start from the top, taking off hats, necklaces, working  
4 your way down, finding anything, that is in a single layer  
5 of clothing, a T-shirt, underwear, pants and socks.

6 You identify that. You go through pockets. Go  
7 through the waistband.

8 We'll eventually sit them down, take off their  
9 shoes, make sure nothing is in their socks. And that's  
10 roughly around when the search is complete.

11 Q All right. Now I want to specifically zero your  
12 attention in to February 26, 2014.

13 Were you working with the Sheriff's Office on  
14 that date and time?

15 A Yes, sir.

16 Q Can you recall what your assignment was on that  
17 date and time?

18 A Intake, sir.

19 Q Is that the intake over on Parr Boulevard that  
20 we were just discussing?

21 A Yes, sir.

22 Q Now on that date did you have an opportunity to  
23 search at that time an individual named Frederick Lewis  
24 Bowman?

1 A I did.

2 Q Can you see him in the courtroom?

3 A Yes, sir.

4 Q Can you tell us where he is sitting, and what  
5 that person is wearing?

6 A He's sitting at that table, and he's wearing a  
7 blue shirt and orange tie.

8 MR. LUCIA: Your Honor, I'd asking the record to  
9 reflect identification of the defendant by the witness.

10 THE COURT: Yes.

11 MR. LUCIA: Thank you, Judge.

12 BY MR. LUCIA:

13 Q Now can you go ahead and just take us through  
14 your involvement with Mr. Bowman.

15 What happened when he entered the facility that  
16 night?

17 A When Mr. Bowman came into our facility, he was  
18 called into --

19 Q Let me stop you right there. There's no reason  
20 to get into that.

21 When you first had contact with him what's the  
22 first thing that you did?

23 A I escorted Mr. Bowman from the Sparks Police  
24 vehicle to the sally port. Once we were in the sally port



1 I placed him in front of one of our search walls, and I  
2 completed an inventory search with one of my partners.

3 Q Do you recall the name of the partner that you  
4 were working with that night?

5 A Deputy Keast.

6 Q Okay. Now that room, the sally port or the  
7 intake room, do you know if there are any camera systems  
8 operating in that room?

9 A There are, sir.

10 Q Did you have an opportunity before the trial to  
11 look at one of those cameras?

12 A Yes, sir.

13 MR. LUCIA: Your Honor, may I approach and look  
14 at Exhibit 1 at this point?

15 THE COURT: You may.

16 MR. LUCIA: Thank you, Judge.

17 BY MR. LUCIA:

18 Q Now I'm showing you what has been identified as  
19 State's Exhibit 1.

20 MR. LUCIA: And I believe the admissibility of  
21 this evidence has been stipulated to?

22 MS. RISTENPART: Previously, your Honor, yes.

23 THE COURT: Consistent with that stipulation,  
24 Ms. Clerk, please confirm that it is memorialized and that

1 Exhibit 1 is admitted.

2 (Exhibit Number 1 was admitted  
3 into evidence.)

4 THE CLERK: Thank you.

5 MR. LUCIA: Thank you, your Honor.  
6 May I publish?

7 THE COURT: Yes.

8 MR. LUCIA: Now Deputy Gerow, if you'd give me a  
9 moment, let me get this loaded up for you.

10 Eventually, once I get this working, you will be  
11 looking at that screen.

12 I'm going to go ahead and make this big screen  
13 here.

14 (Whereupon the video was played and stopped,  
15 and played and stopped throughout the  
16 examination.)

17 BY MR. LUCIA:

18 Q So if you would, Deputy, can you see that  
19 clearly from where you're seated, sir?

20 A Yes, sir.

21 Q Now the area that we're looking at here, is this  
22 the sally port that you were discussing earlier?

23 A Yes, sir.

24 Q Now do you recall in this room where the search

1 of Mr. Bowman was conducted?

2 A Yes, sir. It's going to be right here to the  
3 left side of the camera frame in front of that red chair.

4 Q Okay. So towards the left edge of that photo,  
5 or that still right there?

6 A Yes, sir.

7 Q Now in the middle of, of that room it looks like  
8 there's a red chair with a little bit of a bucket in it.

9 Can you describe for us what that is and what  
10 the purpose of that is?

11 A That bucket is where we place property while  
12 we're inventorying it, and the red chair is where we'll sit  
13 them down and take off their shoes.

14 Q Okay. And I'm noticing in the video as well  
15 that there are also some other things that are strewn about  
16 on the floor.

17 Can you see those things as well, Deputy?

18 A I believe I can, yes, sir.

19 Q Do you recall what those things were?

20 A No, sir.

21 Q And I'm just going to go ahead and let this  
22 play.

23 Now can you see that where I paused it,  
24 Mr. Gerow?

1           A       Yes, sir.

2           MR. LUCIA: And, your Honor, with your  
3 permission, I'd ask him to point out who we're looking at  
4 on this still here and identify who is who.

5           THE COURT: Yes.

6           THE WITNESS: This right here is Deputy Keast,  
7 that's myself, and that's Deputy Santos.

8 BY MR. LUCIA:

9           Q       All right. And the individual that you're  
10 holding there, who is that?

11          A       That would be Frederick Bowman.

12          Q       All right. And if you would, please, sir,  
13 please take your seat.

14          A       Yes, sir.

15          Q       You indicated a split second ago that the search  
16 will ultimately be conducted towards this area?

17          A       Yes, sir.

18          Q       Okay. If you would, Deputy, as we're watching  
19 this, can you do your best to kind of explain what's going  
20 on?

21                   And what I mean by that, what are your actions,  
22 what are you doing, what are you looking for.

23          A       Yes, sir.

24                   Right now I'd be asking Mr. Bowman if he had

1 anything sharp on him, anything that would poke or hurt me.

2 I'm searching his neck for necklaces. Right  
3 now, from this angle, it looks like I'm going through his  
4 waistband.

5 Q When you say "his waistband," are you talking  
6 about the waistband of his pants?

7 A Yes, sir.

8 THE COURT: Ms. Reporter, can you hear all  
9 right?

10 THE COURT REPORTER: Yes, I can. Thank you.

11 THE COURT: Amplify your voice a little bit,  
12 because where the television is, you're not speaking into  
13 the microphone, which is fine. Just amplify your voice.

14 THE WITNESS: Yes, sir.

15 THE COURT: Thank you.

16 THE WITNESS: At this point I'm going through  
17 his pockets.

18 BY MR. LUCIA:

19 Q When you say you're going through his pockets,  
20 are you leaving his pockets in his pants, or are you trying  
21 to remove them.

22 A I will remove his pockets so that they're inside  
23 out, to make sure that they're a hundred percent empty.

24 Q Okay.

1           A       Also going through the rear pocket and making  
2       sure that nothing is left inside there.

3           Q       Now the individual that you identified for us  
4       that's standing over by the red chair and the bucket, he  
5       looks like he's holding something in his hand.

6                   Do you know what he's doing?

7           A       He's holding a clipboard that has our inventory  
8       sheets. He's actively inventorying Mr. Bowman's clothing  
9       and property as it comes off.

10          Q       Is that something that you're doing, you're  
11       announcing what it is that you're doing, or is he just  
12       looking at it and writing it down?

13          A       Mixing the two. He would write down things that  
14       he can see. Things that he can't see, such as underwear or  
15       socks, those kind of things we call out.

16                   And items that we pull off of a person, such as  
17       necklaces, he isn't always right there to see, so we  
18       describe it to him so he can inventory it.

19          Q       Okay.

20          A       At this point we're going to step back so he can  
21       have a seat in the chair and we can remove the shoes.

22                   Right here I identified a clear plastic bag with  
23       a white crystalline substance had fallen out.

24          Q       I want to take you back to that because that

1 happened kind of fast.

2 So let me kind of break this down a little bit,  
3 if I may, Deputy.

4 What is the reason for moving Mr. Bowman back  
5 from the wall and towards that chair?

6 A To have him sit down. Once he's in a seated  
7 position, we remove his shoes and make sure that nothing is  
8 in his socks.

9 Q Okay. And I believe you mentioned that you  
10 observed something that was on the ground right about the  
11 time that that happened?

12 A Yes, sir.

13 Q And, please, if you would again, just tell us  
14 when that occurred.

15 A At this point we finished our standing portion  
16 of the search. As we were stepping back to have him sit  
17 down, I observed the plastic bag as I was picking up his  
18 foot, and that's when I secured it.

19 Q All right. And just to make sure that I'm  
20 clear, is this the plastic bag that you're talking about,  
21 is what we're seeing right here?

22 A Yes, sir.

23 Q Okay. Now what happened after this point,  
24 Deputy?

1           A       I can -- I finished my search, and I gave those,  
2       or the clear plastic bag to Officer Dutra.

3           Q       Okay. The bag that you observed there, you said  
4       that it was a clear plastic bag?

5           A       It was more of a clear plastic wrapping.

6           Q       Okay.

7           A       That formed into a bag around what was inside of  
8       it.

9           Q       All right. So I'm kind of visualizing what I  
10       would probably coin to be like a zip lock bag, something  
11       that has a sealed top?

12          A       No, sir. It would be something more closely  
13       related to Saran wrap.

14          Q       Okay. Almost like a bundling of something that  
15       you would kind of --

16          A       Yes.

17          Q       -- lay flat and then close?

18          A       Yes.

19          Q       Okay. And what did you do with that item, sir?

20          A       I secured it off the floor right there. To  
21       secure my search, I placed it -- or I looked back, and I  
22       identified a place on the ground that was clear of anything  
23       else, and I placed that clear baggie there, finished my  
24       search, and I secured it and gave it to Officer Dutra.



1 Q Okay. Now I want to go ahead and walk you  
2 through that, or at least have you walk us through that as  
3 we see that on the video. So if you wouldn't mind, sir.

4 So you're holding it in your hand there?

5 A Holding it in my hand. I looked back and found  
6 a clear spot where I could place it, and that's what I did.

7 Q The area where you placed it, was there anything  
8 on the floor there?

9 A No, sir.

10 Q And what are you doing here? It looks like you  
11 took the shoe off?

12 A We both took the shoes off, inspected the shoes  
13 and inspected his socks, looking for any extra property or  
14 contraband. Before we stopped we asked Mr. Bowman to open  
15 his mouth so we could make sure that nothing was in there.

16 Q Okay. And you said that eventually you retook  
17 custody, I guess, of that bag?

18 A I did.

19 Q And just go ahead and let us know -- let me ask  
20 you this.

21 Did you do that in this room?

22 A I did regain custody of that bag.

23 Q And did you do that right there?

24 A Yes, sir.

1 Q And you mentioned that you ultimately gave that  
2 bag to Officer Dutra.

3 Where did that exchange take place?

4 A That exchange is going to take place on this  
5 camera frame at the bottom right. Officer Dutra was back  
6 at his car securing I believe Mr. Bowman's coat.

7 Q Okay. If I can pause it right there.

8 It looks like an individual just entered. For  
9 the record, it looks like he's wearing a blue uniform with  
10 the Nevada style patch on his left shoulder.

11 Do you know who that individual is?

12 A Yes, sir. That's Sparks Police Department  
13 Officer Dutra.

14 Q And at this point, what you're seeing on this  
15 video is your handing him of that bag?

16 A Yes, sir.

17 Q Now what is it that we're seeing here? It looks  
18 like there's some items in that bag -- or excuse me, in  
19 that tub sort of behind Mr. Bowman.

20 What happens to those items?

21 A Once they're inventoried, we take them back.  
22 We'll make sure everything is annotated properly. All of  
23 the valuable smaller property will be secured in a  
24 heat-sealed package.

1                   And all of the clothing property will be  
2                   separate and sealed in a different package.

3           Q        Okay. And is that essentially what we're going  
4                   to see here unfold during the course of the reset of this  
5                   video?

6           A        Yes, sir.

7           Q        Now that camera angle that we just noticed, or  
8                   that we just observed this even from, can you describe for  
9                   us how the camera appears? Is it, I guess, what I would  
10                  term an old style surveillance camera, is it encased in a  
11                  glass orb?

12          A        It's encased in a glass orb. It's in a corner  
13                  in that sally port.

14          Q        Okay. Is it something that is fairly noticeable  
15                  to the naked eye?

16          A        Yes, sir.

17                  MR. LUCIA: And your Honor, can I have this  
18                  marked by the clerk, please?

19                  THE COURT: Go ahead.

20                  MR. LUCIA: Thank you, Judge.

21                  Similar to the State's Exhibit 1, your Honor, I  
22                  believe this will be admitted pursuant to stipulation.

23                  MS. RISTENPART: A prior stipulation yes, your  
24                  Honor.

1 THE COURT: It is admitted, Ms. Clerk.

2 THE CLERK: Thank you.

3 (Exhibit Number 2 was admitted  
4 into evidence.)

5 BY MR. LUCIA:

6 Q Deputy Gerow, in addition to that camera angle,  
7 is there any other camera angle depicting, I guess, a  
8 viewpoint into that sally port area?

9 A Yes, sir. There's another camera on the other  
10 side of the door leading into our facility, that faces the  
11 sally port so it catches another angle for the sally port.

12 Q Okay. I'm going to go ahead and cue this up  
13 too. All right.

14 Can you see that for me, sir?

15 A Yes, sir.

16 Q Now it might be difficult for you to do, but if  
17 you would please do me a favor, and if you could try your  
18 best to point as to where that first angle was or where  
19 that first camera was that we were looking at?

20 A May I stand, sir?

21 Q Certainly, if the Judge --

22 THE COURT: Yes.

23 THE WITNESS: On this angle on the camera, it  
24 would be in the corner just above this exit sign on the

1 inside of that door.

2 BY MR. LUCIA:

3 Q All right. So now this is obviously a different  
4 angle looking at the same room from a different vantage  
5 point?

6 A Yes, sir.

7 Q If you would have a seat, please.

8 A Yes, sir.

9 Q And, again, from what I remember of your  
10 testimony earlier, I'm assuming that the search is  
11 conducted in this general area here against this wall?

12 A Yes, sir.

13 Q Okay. Now could you describe briefly as we're  
14 waiting, it looks like in that room, the entry to the sally  
15 port, one door is opened, one door is closed?

16 A Yes, sir.

17 Q Is there any real reason for that?

18 A Yes, sir. At no point during normal operation  
19 hours do we allow both those doors to be opened at the same  
20 time. It's a security risk.

21 The people on the inside of this camera angle  
22 are not restrained. They're waiting to be booked. They're  
23 waiting to get through their process. And then the people  
24 on the other side are being brought in from other

1 facilities.

2 Q Okay. So normally neither of those two doors  
3 would be opened at the same time.

4 So what we're seeing here is that notion in  
5 operation, correct?

6 A Yes, sir. That's myself and Deputy Keast  
7 bringing Mr. Bowman inside of the sally port when we were  
8 beginning our search.

9 Q From what we saw earlier, is that you standing  
10 with your back towards this camera right here --

11 A Yes, sir.

12 Q -- between those two officers? Okay.  
13 So you would be on Mr. Bowman's right side?

14 A Yes, sir.

15 Q Okay. If you could, do me a favor and tell us  
16 the moment that you observed the bag lying on the floor.

17 A Right there is when I observed it.

18 Q I just want to, to go back, if I may, not too  
19 far back.

20 Now before this moment, did you have an  
21 opportunity to observe that floor?

22 A Yes, sir.

23 Q And did you see anything in that location?

24 A No, sir.

1 Q Okay. Now I want to let this play forward, and  
2 if you could describe for us what it is that you're doing  
3 from the recovery of the bag and so forth.

4 A Yes, sir.

5 After I identified it, once I secured his foot,  
6 I secured the bag. This is when I identified a spot on the  
7 floor that was clear. I placed it on the floor right  
8 there.

9 Q Let me pause that, I believe I saw it, but is  
10 this the location where you placed the item that you  
11 recovered?

12 A Yes, sir.

13 Q And then again, if you could just describe for  
14 us what you're doing as you're seeing it?

15 A Right now we're searching his feet and  
16 inventorying it and making sure that there was no other  
17 property that we missed.

18 Right there I was attempting to remove an  
19 earring.

20 Q Is that attempting, was it --

21 A I wasn't able to. My partner Deputy Keast was  
22 more apt for it.

23 Q She had more experience?

24 A I believe she did.

1 Q Fair enough. Now did we see you take custody of  
2 this bag again in this video, sir?

3 A Yes, sir. That's where I secured it.

4 Q And then do you recall, Deputy Gerow, from this  
5 angle, do you see your interaction with Deputy Dutra?

6 A Yes, sir.

7 Q And if you could do me a favor and let me know  
8 when Officer Dutra enters the frame.

9 A Yes, sir.

10 You can see Officer Dutra on the other side of  
11 the sally port door right now.

12 Q Do those doors automatically open whenever  
13 somebody is there?

14 A No, sir.

15 Q How does that work?

16 A There's a control agent in a separate area of  
17 the facility that responds to intercom buttons being  
18 pressed.

19 Q Okay. And I'm observing you doing something  
20 there.

21 What is it that you just did?

22 A I handed the clear plastic baggie to Officer  
23 Dutra.

24 Q Okay. Did you ever retake custody of the bag



1 after that point?

2 A No, sir.

3 Q Do you know, did you observe Dutra do anything  
4 with the bag?

5 A From that point he took it back to his car and  
6 conducted a presumptive test.

7 Q All right. Now throughout your interaction with  
8 Mr. Bowman, was he conversant, was he talking with you  
9 guys?

10 A He was talking the whole time, yes, sir.

11 Q Were you asking him specific questions at all?

12 A Aside from if there was anything on his person  
13 that could hurt me, I didn't ask any specific questions of  
14 Mr. Bowman.

15 Q Does this communication continue throughout your  
16 entire interaction?

17 A Yes, sir.

18 Q Now the video that we saw of that room, do  
19 individuals stay in that room for a long period of time?

20 A Individuals stay in that room until their  
21 paperwork is completed and accepted by our booking agent.  
22 Once that happens, they'll get their mugshot taken, and  
23 after they're cleared by medical, then they'll be brought  
24 into the facility.

1 Q All right. So eventually they're moved out of  
2 that room?

3 A Yes, sir.

4 Q Now did you have an opportunity to interact with  
5 Mr. Bowman outside of that room that same night?

6 A Yes, sir. I escorted him from that sally port  
7 to a holding cell.

8 Q Okay. When you were interacting with Mr. Bowman  
9 in a holding cell, did you find any other sort of plastic  
10 wrapping on his person at that time?

11 A Yes, sir.

12 Q Okay.

13 A I found multiple pieces of, of that same type of  
14 Saran wrapping in both of his socks.

15 Q Now how did you see that? What did you first  
16 observe?

17 A We laid Mr. Bowman down on the ground, and I was  
18 in charge of securing his legs. At that point I saw some  
19 plastic outside of his sock.

20 Q When you say you saw some plastic outside of his  
21 sock —

22 A I observed it at the top of his left sock.

23 Q And you retrieved that yourself?

24 A I retrieved that, and then I re-checked the

1 right sock and found more of the same.

2 Q You said it's the same plastic wrapping.

3 Is it in that it's just flat, or there's no zip  
4 top to it?

5 A I would say the same type. It was just sheets  
6 of a Saran wrap type of plastic.

7 MR. LUCIA: Your Honor, at this point I pass the  
8 witness.

9 THE COURT: All right. Thank you.

10 MS. RISTENPART: Thank you, your Honor.

11  
12 CROSS-EXAMINATION

13  
14 BY MS. RISTENPART:

15 Q Deputy?

16 A Ma'am.

17 Q You're fairly new to the job, aren't you?

18 A Yes, ma'am.

19 Q In fact, this is one of the first times you ever  
20 testified in court, right?

21 A Yes, ma'am.

22 Q And prior to today you've met with this District  
23 Attorney, right?

24 A Yes, ma'am.

1 Q And you practiced your testimony with him?

2 A No, ma'am.

3 Q Went over your questions with him?

4 A No, ma'am.

5 Q And on February 26th, you've been a brand new  
6 deputy for all of just a few months, right?

7 A Yes, ma'am.

8 Q And this is really kind of your first big case,  
9 right?

10 A I guess you could put it that way, ma'am.

11 Q And, Deputy, on February 26 of 2014, were you  
12 wearing the same outfit?

13 A No, ma'am. We have two types of uniforms. I  
14 was wearing what we call TDUs.

15 Q Okay. And how is that different than what  
16 you're wearing today?

17 A It has more pockets, and it's a different  
18 material.

19 Q Everything else was the same?

20 A Yes, ma'am.

21 Q And let's talk just generally about the  
22 detention center where you've been working as a new deputy,  
23 correct?

24 A Yes, ma'am.

1 Q And an officer who makes a detainment or arrest  
2 outside, drives up to a specific door at the detention  
3 center, correct?

4 A Yes, ma'am.

5 Q And that is where they park their police car,  
6 right?

7 A Yes, ma'am.

8 Q And then you go meet them there, or they bring  
9 in an individual --

10 A Yes, ma'am.

11 Q -- to the detention center?

12 And this whole area is kind of called the sally  
13 port?

14 A The sally port would be just the room that was  
15 depicted.

16 Q Okay. Because from that parking place where  
17 officers pull in, to that room that we just saw in that  
18 video, there's actually a long hallway where you transport  
19 people down?

20 A Yes, ma'am.

21 Q Okay. And that hallway is approximately about  
22 50 yards, right?

23 A From some points. It's longer from end to end.  
24 The sally port entrance is about, I'd say maybe 50 yards.

1 Q Okay. 50 yards from the parked area or where  
2 you park?

3 A Again, depending. It's a parking lot. So it  
4 would get a little bit more every spot you go further out,  
5 but yes, ma'am.

6 Q So to clarify, Deputy, if an officer parked in  
7 the very farthest spot and walked a detainee down, it would  
8 be farther than if they parked right next to the door?

9 A Yes, ma'am.

10 Q But there's a long hallway before you got into  
11 that room?

12 A Yes, ma'am.

13 Q And in that hallway, you actually have a bench  
14 that suspects can sit and wait for their turn to be  
15 inventory searched, correct?

16 A Yes, ma'am.

17 Q And on a busy night you may have several people  
18 sitting outside on that bench?

19 A Yes, ma'am.

20 Q And on that bench they are looking directly into  
21 what you guys are doing and searching, right, because  
22 they're glass doors?

23 A If they're right in front of the glass doors,  
24 yes, ma'am. The bench goes farther down the hallway.

1 Q And then after that, they would come into what  
2 you're terming the sally port?

3 A Yes, ma'am.

4 Q And why do they call it a sally port?

5 A Because of the two doors.

6 Q And on February 26th of 2014, you were working  
7 graveyard? What shift were you working?

8 A At that time I was working graveyard, yes,  
9 ma'am.

10 Q And graveyard is -- when do you start?

11 A The graveyard shift starts at 7:00 p.m. and goes  
12 to 7:00 a.m. On that morning I started at 3:00 a.m.

13 Q Now do you know prior to your arrival how many  
14 arrestees or detainees came in through the sally port that  
15 night?

16 A No, ma'am.

17 Q Do you know how many came in that day?

18 A No, ma'am.

19 Q Do you know how many came in during that week?

20 A No, ma'am.

21 Q And do you know how many of those arrests or  
22 detainees were suspected of drugs?

23 A No, ma'am.

24 Q And do you know how many of those suspects sat

1 in the hallway waiting to be searched?

2 A No, ma'am.

3 Q Now you actually went down the hallway to get  
4 Mr. Bowman, correct?

5 A Yes, ma'am.

6 Q And came back with Mr. Bowman into the sally  
7 port?

8 A Yes, ma'am.

9 Q And how many times was that hallway cleaned?

10 A Daily, ma'am.

11 Q Once a day?

12 A Sometimes more.

13 Q Do you know how many times it was cleaned that  
14 day?

15 A No, ma'am.

16 Q And when we were looking at the video, the State  
17 asked you what other things were on the floor, correct?

18 A Yes, ma'am.

19 Q And you didn't know?

20 A No, ma'am.

21 Q But you're pretty specific in saying that the  
22 area is swept, right?

23 A For inventory and contraband in the event that  
24 there's a piece of paper that has no writing on it and is



1 sometimes left.

2 Q But, again, you don't know what those things  
3 are?

4 A No, ma'am.

5 MS. RISTENPART: And may I approach the witness?

6 THE COURT: Yes.

7 MS. RISTENPART: I'm showing you what's been  
8 marked as Defense Exhibit Number 8.

9 Your Honor, for purposes -- I believe that the  
10 State is stipulating to Exhibit Number 8, which is a still  
11 photograph of the video.

12 THE COURT: It will be admitted, Ms. Clerk.

13 THE CLERK: Thank you.

14 (Exhibit Number 8 was admitted  
15 into evidence.)

16 BY MS. RISTENPART:

17 Q All right, Deputy, if you wouldn't mind taking a  
18 look at this.

19 A Ma'am.

20 Q Okay. So, Deputy, what time is this still taken  
21 from?

22 A It looks like it's at 4:05 a.m.

23 Q Okay. And in the back I notice that there is  
24 another detainee, who is off to the side, correct?

1           A       Yes, ma'am.

2           Q       And as I stand closer, I'm talking about this  
3 individual up here.

4           A       Yes, ma'am.

5           Q       Who looks to be taking off some of his clothing,  
6 correct?

7           A       It's possible, ma'am.

8           Q       You weren't paying attention to what was going  
9 on behind you?

10          A       No, ma'am.

11          Q       And do you know what that person was being  
12 arrested for?

13          A       No, ma'am.

14          Q       Now you stated that once an individual is in the  
15 processing room, you began your search?

16          A       Yes, ma'am.

17          Q       And that you start at the top and you go down?

18          A       Yes, ma'am.

19          Q       Now Mr. Bowman's clothing that night, it was  
20 loose, correct?

21          A       Some of it, yes, ma'am.

22          Q       It wasn't skin tight skinny jeans that he was  
23 wearing?

24          A       No, ma'am.

1 Q And now you just testified today, Deputy, that  
2 the plastic baggie fell from Mr. Bowman?

3 A Yes, ma'am.

4 Q But actually you just saw it on the floor?

5 A Yes, ma'am.

6 Q And, in fact, your story has changed a few times  
7 as to what you think you saw or didn't see.

8 A Ma'am?

9 Q Specifically, you told Officer Dutra when you  
10 handed him the baggie that you saw a clear bag with a white  
11 crystalline substance fell out from inside the pant leg of  
12 Bowman onto the floor?

13 A Ma'am.

14 Q Is that what you told Officer Dutra?

15 A Yes, ma'am.

16 Q And you specified that it fell out while you  
17 were, were doing the front waistline check?

18 A I described that that's where I thought it fell  
19 out, Ma'am.

20 Q But you were very specific to Officer Dutra  
21 about that?

22 A Yes, ma'am.

23 Q And the front waistline check -- just for the  
24 record, I was touching the front waistline area.

1                   Is that what you referring to?

2           A       Ma'am, what I was describing was when I was  
3       checking his waistband, both front and back, but when I do  
4       that, I shake out the pants.

5           Q       But you were very specific with Officer Dutra  
6       that you think it fell out when you were doing the front  
7       waistband check?

8           A       Yes, ma'am.

9           Q       Then in a subsequent hearing, you told a little  
10      bit of a different story, right?

11          A       Ma'am.

12          Q       You actually stated that, and testified that you  
13      never saw it fall out of Mr. Bowman's pants?

14          A       Yes, ma'am. I didn't see it fall.

15          Q       That, in fact, you only saw it when it was on  
16      the floor?

17          A       Yes, ma'am.

18          Q       And you never saw anything fall, right?

19          A       Ma'am?

20          Q       It just appeared?

21          A       Yes, ma'am.

22          Q       Coupled with you didn't hear anything?

23          A       No, ma'am.

24          Q       You didn't hear the drop of anything?

1           A       No, ma'am.

2           Q       And it -- this little plastic baggie was near  
3 Mr. Bowman's foot, correct?

4           A       Yes, ma'am.

5           MS. RISTENPART: I'm showing him Defense Exhibit  
6 Number 9.

7           THE COURT: I didn't hear the Exhibit Number.

8           MS. RISTENPART: Defense number 9, your Honor.

9           And I believe the State has stipulated, it is a  
10 still photograph of the same video.

11          THE COURT: Exhibit 9 will be admitted.

12          (Exhibit Number 9 was admitted  
13 into evidence.)

14          MS. RISTENPART: Thank you.

15 BY MS. RISTENPART:

16          Q       And this is a different viewpoint, correct,  
17 Deputy?

18          A       Same angle, different time.

19          Q       And this is in fact taken at 4:06:49 a.m?

20          A       Yes, ma'am.

21          Q       And this is actually when you see the plastic  
22 baggie?

23          A       Yes, ma'am.

24          Q       And you are bent over close to the ground,

1 right?

2 A At that point, yes, ma'am.

3 Q Okay. The first time you see it?

4 A I saw it when he was sitting down. Before I  
5 bent over is when I observed it, ma'am.

6 Q And his right foot would have been closest to  
7 you, right?

8 A Yes, ma'am.

9 Q Now you say that when you picked up this plastic  
10 baggie, you examined it, Deputy?

11 A Not immediately. I picked it up and secured it.  
12 At that point I found a place to place it behind me, and I  
13 put it in a clear spot.

14 Q Okay.

15 A After I resecured it, I did observe it, yes,  
16 ma'am.

17 Q Let's talk about that, Deputy. You say that you  
18 placed it after looking for a secure spot?

19 A Yes, ma'am.

20 Q When, in fact, you actually threw it towards  
21 your other deputy?

22 A In that direction. That's where I identified a  
23 clear area. I didn't throw it at a deputy, ma'am.

24 Q Well, in fact, the other deputy with the

1 clipboard was surprised, and went like that, correct,  
2 Deputy?

3 A Ma'am?

4 Q Is that correct?

5 A Yes, ma'am.

6 Q And, Deputy, that's not proper procedure, is it?

7 A No, ma'am.

8 Q Okay. Now did you write any reports about this?

9 A Yes, ma'am. I wrote an incident report.

10 Q And did you turn the incident report over to the  
11 District Attorney?

12 A No, ma'am.

13 Q And you state that you examined this little bag  
14 that you found on the ground?

15 A To a small extent, yes, ma'am.

16 Q And you're pretty specific that you say that it  
17 was Saran wrap?

18 A Saran wrap type material, ma'am. That's the  
19 best way I can describe it.

20 Q Would looking at a photograph of it actually jog  
21 your memory as to what it was in?

22 A It may, ma'am.

23 THE COURT: Ladies and gentlemen, let's all  
24 stand for just a moment.

1           Okay. Thank you.

2           MS. RISTENPART: Thank you, your Honor.

3           For the record, I'm showing a photograph that is  
4 on a laptop that I have shown to the District Attorney  
5 also. And I will be having a printout later with Officer  
6 Dutra.

7           If I may approach the witness?

8           THE COURT: Any objection, Mr. Lucia?

9           MR. LUCIA: I have no objection, your Honor.

10          THE COURT: Certainly.

11          MS. RISTENPART: Thank you.

12          BY MS. RISTENPART:

13           Q       (Shows document.)

14           A       Yes, ma'am.

15           Q       Does that refresh your memory?

16           A       Yes, ma'am.

17           Q       Okay. So the little baggie that you found was  
18 not actually wrapped in Saran wrap, was it?

19           A       No, ma'am.

20           Q       It was in a little clear plastic baggie.

21           A       Yes, ma'am.

22           Q       Much like a small sandwich bag?

23           A       Possibly.

24           Q       But smaller?



1 A Ma'am.

2 Q Is ma'am "yes"?

3 A Yes, ma'am. I apologize.

4 Q And, Deputy, there were several things that you  
5 took out of Mr. Bowman's pockets during this inventory  
6 search, right?

7 A Yes, ma'am.

8 Q The keys?

9 A Possibly, ma'am. I'd have to look at an  
10 inventory sheet to identify exactly what was taken off of  
11 Mr. Bowman's person.

12 Q Do you remember taking out a pen?

13 A Not specifically, ma'am.

14 Q Do you remember taking out an iPhone?

15 A Again, not specifically, ma'am.

16 Q Do you remember taking out a cell phone charger?

17 A Not specifically, ma'am.

18 Q Do you remember taking out a wallet?

19 A Not specifically, ma'am.

20 MS. RISTENPART: No further questions, your  
21 Honor. Thank you.

22 THE COURT: Mr. Lucia.

23 MR. LUCIA: Thank you, Judge.

24 ///

REDIRECT EXAMINATION

BY MR. LUCIA:

Q Deputy Gerow, excuse me, let's start, if we may, with the discussion that you were entering into with Ms. Ristenpart about that hallway.

Do you recall that line of testimony?

A Yes, ma'am. Sir.

Q That's okay.

A I apologize.

Q Pretty scary female.

The hallway that you're talking about, I believe that you mentioned that it was about 50 yards long?

A From end to end it's a little bit longer than that, but yes, sir.

Q And I recall if you were testifying correctly, that that's cleaned how many times to your recollection or to your experience?

A At least daily. Sometimes more.

Q And that area is where people sort of cue up, waiting for their chance to go into the sally port, right?

A Again, if we're busy to the point where we can't accept more people in the sally port at one time, that is where they wait.

1           Q       Do you recall on February 26, 2014 what the  
2 traffic was like, for a lack of a better word?

3           A       Slow.

4           Q       Do you recall when if you went to retrieve  
5 Mr. Bowman from that area were there other individuals  
6 sitting there?

7           A       No, sir.

8           Q       When you walked that portion of the hallway to  
9 retrieve Mr. Bowman, do you recall, did you see anything on  
10 the, the floor that caught your attention?

11          A       Nothing of note, sir.

12          Q       Now one of the other things that I wanted to  
13 discuss a little bit more is the portion of the testimony  
14 where you first retrieve the bag and then kind of threw it  
15 or set it over on the ground over there?

16          A       Yes, sir.

17          Q       You said that's not proper procedure?

18          A       No, sir.

19          Q       Can you explain to me what proper procedure  
20 would be?

21          A       Our proper procedure is securing that  
22 contraband, stopping the search and directly give it to the  
23 arresting officer.

24          Q       All right. So in this case where you were

1 derelict in the procedure is that you waited for a few  
2 minutes before handing that over to Officer Dutra?

3 A No, sir. It's, at the first given time to give  
4 it to the officer.

5 Q Oh, okay.

6 A Where I didn't follow procedure was stopping my  
7 search.

8 Q In any event, did you see anyone else interact  
9 with that bag?

10 A No, sir.

11 Q Other than yourself and Officer Dutra?

12 A No, sir.

13 Q Is it the general procedure -- let me ask you  
14 this.

15 Are you familiar with the general procedure with  
16 the Washoe County Sheriff's Office?

17 A Yes, sir.

18 Q With specific respect to the process of like an  
19 intake search?

20 A Yes, sir.

21 Q Do you remember that procedure?

22 A Yes, sir.

23 Q What is the procedure when you find an item of  
24 contraband like narcotics?

1                   Do you keep it until the end of your shift, or  
2                   what do you do with it?

3           A        Again, we stop the search wherever we're at,  
4                   whether it's going through a female's search, and we find  
5                   something in someone's pocket, and we stop where we are and  
6                   take that item directly to the arresting officer.

7           Q        So that item is immediately turned over to  
8                   whoever the arresting officer is?

9           A        Yes, sir.

10          Q        And it's not your practice to keep that on your  
11                   person?

12          A        No, sir.

13          Q        In any of those pockets that were on your  
14                   uniform?

15          A        No, sir.

16          Q        Now there was some discussion about this being  
17                   the first time you've had to testify in your first big  
18                   case, do you recall that?

19          A        Yes, sir.

20          Q        Was there anything else about your interaction  
21                   with Mr. Bowman that night that was a first for you?

22          A        More than a few things, sir.

23          Q        All right.

24          A        At this point I had been off training for a few

1 weeks. This is the first time I had found drugs during a  
2 search.

3 Q So this was the actual first opportunity in your  
4 professional career that you ever recovered narcotics in  
5 the sally port at the jail?

6 A Yes, sir.

7 Q Okay. Now I wanted to ask about --

8 MR. LUCIA: May I approach the clerk, your  
9 Honor, and grab Exhibit 8?

10 THE COURT: Yes.

11 MR. LUCIA: Thank you. Exhibit 8.

12 Do you have it?

13 MS. RISTENPART: Yes. Sorry, Ms. Clerk.

14 BY MR. LUCIA:

15 Q I'm showing you what's been admitted as State's  
16 Exhibit 8. Excuse me. As Exhibit 8. It's upside-down.

17 Now do you recall the line of questioning  
18 regarding this individual that I'm going to point to here  
19 in the back?

20 A Yes, sir.

21 Q When you guys are doing your job there at the  
22 booking facility, do you alternate searches so if that  
23 individual, for example, came in, would you conduct the  
24 search, or somebody else conduct the search?

1           A       I could be the one conducting the search or  
2 someone else could be. There's not an alternating schedule  
3 for who does searches and who doesn't.

4           Q       Is it just whoever is available kind of does  
5 that search?

6           A       Yes, sir.

7           Q       Do you recall who did the search of that  
8 individual?

9           A       I do not, sir.

10          Q       You did not. All right.  
11                   Were you in this room prior to Mr. Bowman's  
12 entry?

13          A       At points during that night, yes, sir.

14          Q       Okay. Were you in this room immediately before  
15 Mr. Bowman's entry?

16          A       Walking through, yes, sir.

17          Q       When you walked through did you observe anything  
18 on the floor in the area where you recovered that bag?

19          A       Nothing of note, sir.

20          Q       You didn't hear anything fall was your testimony  
21 earlier.

22                   Can you describe for us, I guess, what are the  
23 acoustics like in that room? Is it a quiet room, is it a  
24 loud room, is it somewhere in between?

1           A       I would say it's a muffled room mostly because  
2 of the floor and the walls.

3           Q       Is there a lot of people in that room?

4           A       There can be.

5           Q       Do you recall the video that you saw earlier,  
6 either Exhibit 1 or Exhibit 2?

7           A       Yes, sir.

8           Q       Was there a lot of people in the room on the  
9 26th of February, 2014?

10          A       Yes, sir.

11          Q       Do you recall if those people were speaking?

12          A       Yes, sir. I believe they were talking about  
13 various things that they had going on.

14          Q       And when those doors open and close, are those  
15 quiet doors?

16          A       No, sir.

17          Q       Can you describe for me what they sound like?

18          A       Loud snap as the air pressure changes.

19          Q       So were you able to hear everything that was  
20 going on that night?

21          A       No, sir.

22          Q       The plastic bag that you recovered that you  
23 observed on the laptop, do you remember testifying that it  
24 was like Saran wrap or like a sandwich bag -- let me just



1 ask you, did it have a zipping top?

2 A No, sir.

3 Q Okay. Can you describe for me what was similar  
4 or dissimilar about that bag and about the plastic that you  
5 recovered from Mr. Bowman's socks?

6 A It was clear plastic, and it didn't have a zip  
7 lock top. And it was crumpled.

8 MR. LUCIA: Thank you, your Honor. I have no  
9 further questions.

10 THE COURT: Recross.

11 MS. RISTENPART: Thank you.

12

13 RECROSS EXAMINATION

14

15 BY MS. RISTENPART:

16 Q Deputy, that hallway outside of the sally port,  
17 the 50 yards, that hallway is completely white, correct?

18 A The walls are completely white, and the floor is  
19 gray, ma'am.

20 Q But a light gray?

21 A Yes, ma'am.

22 Q And this wrap, or what you're saying you  
23 recovered from Mr. Bowman, you didn't book that into  
24 evidence, did you?

1 A I did not, ma'am.

2 Q And booking into evidence, is pretty important,  
3 correct, Deputy?

4 A Booking evidence is important, yes, ma'am.

5 Q Because that means it has an evidentiary value,  
6 right?

7 A Yes, ma'am.

8 Q But at the time you just threw away what you say  
9 you recovered off Mr. Bowman?

10 A I wouldn't say threw away. But I did place it  
11 on the ground, yes, ma'am.

12 Q And did not recover it?

13 A I did recover it.

14 Q Book it?

15 A I did not book it.

16 Q So where did it go?

17 A Where did it go?

18 Q Um-hum.

19 A To Officer Dutra.

20 Q Oh, you gave it to Officer Dutra?

21 A Yes, ma'am.

22 MS. RISTENPART: No further questions. Thank  
23 you.

24 THE COURT: All right. You're free to step

1 down. Thank you.

2 Ladies and gentlemen, we're going to take a  
3 recess out of the courtroom.

4 During this recess please don't discuss the case  
5 amongst yourselves. Please do not form or express an  
6 opinion about this matter until it is finally submitted to  
7 you.

8 I think we'll be in the neighborhood of 10 to 15  
9 minutes.

10 We'll stand for our jury.

11 (Whereupon the jury was excused.)

12

13 (At this point a recess was taken and this court  
14 reporter was replaced by a different court  
15 reporter who finished the rest of the  
16 proceedings for this day.)

17

-oOo-

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1       STATE OF NEVADA       )  
2       WASHOE COUNTY       )   ss.  
3

4                       I, DEBORA L. CECERE, an Official Reporter of  
5       the State of Nevada, in and for Washoe County, DO HEREBY  
6       CERTIFY:

7                       That I was present at the times, dates, and  
8       places herein set forth, and that I reported in shorthand  
9       notes the proceedings had upon the matter captioned within,  
10      and thereafter transcribed them into typewriting as herein  
11      appears;

12                      That the foregoing transcript, consisting of  
13      pages 1 through 71, is an UNCERTIFIED FAST TRACK  
14      transcription of my stenotype notes of said proceedings.

15                      DATED: At Reno, Nevada, this 25th day of  
16      April, 2015.

COPY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE  
BEFORE THE HONORABLE DAVID A. HARDY, DISTRICT JUDGE

THE STATE OF NEVADA,

Plaintiff,

-vs-

FREDERICK LEWIS BOWMAN,

Defendant.

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Case No. CR14-0708

Dept. No. 15

TRIAL

AFTERNOON SESSION

December 2, 2014

Reno, Nevada

Reported by: Lesley A. Clarkson, CCR #182

A P P E A R A N C E S

FOR THE STATE:

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FOR THE DEFENDANT:

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THE DEFENDANT:

FREDERICK LEWIS BOWMAN

I\_N\_D\_E\_X

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1 RENO, NEVADA, TUESDAY, DECEMBER 2, 2014, 1:15 P.M.

2 -o0o-

3  
4 THE COURT: The State may call your next witness.

5 MR. LUCIA: The State's next witness is Sparks  
6 Police Department Officer Chris Dutra.

7  
8 CHRISTOPHER DUTRA,  
9 called as a witness on behalf of the State,  
10 having been first duly sworn, testified as follows:

11  
12 DIRECT EXAMINATION

13 BY MR. LUCIA:

14 Q A lot of equipment there, so can you do me a favor,  
15 and once you get comfortable, please, sir, can you say your  
16 name out loud and spell it for the reporter.

17 A Christopher Dutra, C-h-r-i-s-t-o-p-h-e-r, D-u-t-r-a.

18 Q Now, Mr. Dutra, are you currently employed, sir?

19 A Yes.

20 Q Where is it that you work?

21 A City of Sparks.

22 Q What do you do for the city?

23 A Police officer.

24 Q How long have you been employed with the Sparks  
25 Police Department?



1 A Eight years.

2 Q Now, prior to becoming employed as a member of the  
3 Sparks Police Department, did you have to undertake any sort  
4 of training?

5 A Through POST, yes.

6 Q Now, what does POST stand for?

7 A It's just a standard that you go through training,  
8 pretraining, you go through before they place you on the  
9 street as an officer or a deputy.

10 Q And can you touch on what that training encompasses?

11 A Sure. It's everything from physical fitness to  
12 dealing with people on a social level to taking people into  
13 custody.

14 Q So --

15 A Firearms instruction. I'm sorry.

16 Q I'm sorry. I didn't mean to interrupt you.

17 Is there anything else you can think of off the top?

18 A No, sir.

19 Q Now, it sounds like it's a pretty broadly  
20 encompassed training program.

21 A It is.

22 Q Did that training program in any way include the  
23 subject of narcotics?

24 A Somewhat, yes.

25 Q And can you touch on what it was that you learned in

1 POST about that?

2 A To distinguish between certain narcotics such as  
3 marijuana and synthetics, methamphetamine, cocaine.

4 Q So with respect to the latter, the synthetics that  
5 you were just mentioning, what was specifically done in POST  
6 with regards to those substances?

7 A They brought them in, laid them out for us, and they  
8 actually had pictures and PowerPoint, brought them in and  
9 showed us and laid out, showed us the differences between  
10 methamphetamine and cocaine, ecstasy, pill form, things of  
11 that.

12 Q Now, can you tell me, sir, what your current  
13 assignment is with the Sparks Police Department?

14 A Patrol.

15 Q As a patrol deputy, what is it that you are tasked  
16 with doing on a day-to-day basis?

17 A We are assigned a beat, that beat has a number  
18 attached to it, and you handle calls for service within that  
19 beat.

20 Q And that calls for service, does that just run the  
21 range from all kinds of different things?

22 A It does.

23 Q And have you been employed as a patrol deputy for  
24 the past eight years?

25 A Yes.

1 Q In that time have you had the occasion to see  
2 methamphetamine on the street or through the course of your  
3 employment?

4 A Yes, sir.

5 Q Do you have any idea as to how often?

6 A Occasionally.

7 Q Okay. More than ten?

8 A Yes.

9 Q Any idea more?

10 A Specifically last year three.

11 Q Okay.

12 A I should say specifically in year, I mean, 2014 is  
13 nearly over, but this year, yeah, three.

14 Q Now, I want to direct your attention to February 26,  
15 2014. Were you working with the Sparks Police Department on  
16 that date, sir?

17 A Yes, sir.

18 Q On that date did you have an opportunity to respond  
19 to a call for service at the Nugget?

20 A Yes, sir.

21 Q Now, is that location of the Nugget here in Washoe  
22 County?

23 A Yes, sir.

24 Q Now, without getting into details as to why, did you  
25 make contact with an individual on the scene there?

1 A Yes, sir.

2 Q Do you see that individual sitting in the courtroom  
3 anywhere today?

4 A Yes, sir.

5 Q Can you tell me where that individual is sitting and  
6 what they are wearing?

7 A Yes, sir. Sitting with counsel, wearing a blue  
8 shirt, striped tie.

9 Q Can you tell me the color of his tie?

10 A Orange.

11 MR. LUCIA: Your Honor, I would ask for the record  
12 to reflect the identification of the defendant by the witness.

13 THE COURT: Yes.

14 MR. LUCIA: Thank you, Judge.

15 BY MR. LUCIA:

16 Q Now, again without getting into the reason why, did  
17 you have an opportunity to conduct any type of search on  
18 Mr. Bowman that day?

19 A I did, sir.

20 Q And at the Nugget, could you tell me what kind of  
21 search you conducted?

22 A Pat-down for weapons.

23 Q And if you can describe that for me, how extensive  
24 is that search?

25 A It's a quadrant search. Subject in this case was in

1 handcuffs, I switched out to my handcuffs, and did a quadrant  
2 search. You sweep the lower back where the hands are placed,  
3 work around the waistband, and you do a quadrant search until  
4 you work from right side to left side.

5 Q Does part of that search necessarily involve the  
6 removal of any clothing?

7 A Not necessarily.

8 Q Okay. Is it an extensive search or a very in-depth  
9 search?

10 A It's a pat-down for weapons, yes. It is a different  
11 type of search that we have that we have been trained to do  
12 specifically to find weapons on a subject.

13 Q Okay. Now, did you recover anything during your  
14 initial pat-down of Mr. Bowman?

15 A No, sir.

16 Q Do you, did you have an opportunity to move Mr.  
17 Bowman to another location on the 16th of February?

18 A Yes, sir.

19 Q Where was that location?

20 A Washoe County Sheriff's Office.

21 Q Is that the sheriff's office located here in Washoe  
22 County?

23 A Yes, sir.

24 Q So it's clever named, right?

25 A Yes.

1 Q Where is that location? What is the address?

2 A 911 Parr.

3 Q When you got to the 911 Parr, were you with  
4 Mr. Bowman the entire time?

5 A Yes, sir.

6 Q Did you see anybody else interact with him from the  
7 time that you first made contact with him at the Nugget until  
8 when you arrived with him at the jail facility at 911 Parr?

9 A No, sir.

10 Q Was there anybody else with you?

11 A Not during my transport and my release to the  
12 deputies, no.

13 Q Let's take it from there. When you released  
14 Mr. Bowman to the deputies, can you describe for us how you  
15 did that, what happened?

16 A When you pull in, you have the subject exit the  
17 vehicle. Then you walk them into the first door, then to the  
18 second door, which is the sallyport door. If it is clear,  
19 then they will open the door for you, and you walk in. From  
20 that point, they will start giving instruction as to what the  
21 subject needs to do.

22 Q Okay. Did you accompany Mr. Bowman into the  
23 sallyport, excuse me, in the sallyport area?

24 A Yes, sir.

25 Q What happened when you got into the sallyport area?

1           A     Deputies were inside. They took him from my custody  
2 into theirs. They asked me, it's a routine question, what  
3 he's charged with. We fill out the medical questionnaire, we  
4 hand him over, and then they go and get into their search.

5           Q     Now, were you present when the Washoe County  
6 sheriff's deputies conducted their search on Mr. Bowman?

7           A     No.

8           Q     You were not in the same room?

9           A     I was not in the same room, correct.

10          Q     Did you ever have an opportunity later on during the  
11 course of your time at the sheriff's office facility to go  
12 into the room where Mr. Bowman was searched?

13          A     Yes, sir.

14          Q     And when you went into that room, did somebody give  
15 you something?

16          A     Yes, sir.

17          Q     Do you know who that person was that handed  
18 something to you?

19          A     A deputy who was in the sallyport conducting a  
20 search.

21          Q     Do you recall the deputy's name?

22          A     Gerow.

23          Q     And can you describe for us what it was that he  
24 handed you?

25          A     He handed me a clear baggie that had a crystal-like



1 substance in it.

2 Q Now, in either your training or your experience had  
3 you ever seen a substance like that before?

4 A Yes, sir.

5 Q Were you able to rely on your training and  
6 experience to come up with an idea as to what that substance  
7 might be?

8 A Yes, sir.

9 Q And what was that?

10 A Methamphetamine.

11 Q Can you describe for us, you said it was in a clear  
12 baggie. Did it have like a zipping top or a secure top across  
13 the top like a ziplock bag would?

14 A No, it did not.

15 Q Can you give us any better idea or description as to  
16 what —

17 A A clear plastic substance that surrounded the  
18 substance inside.

19 Q All right. Do you recall if the top was sealed by  
20 anything at all?

21 A It was bunched together when it was handed to me.

22 Q Now, when it was handed to you, what was it that you  
23 did with that?

24 A Took it into my custody and asked the deputy a  
25 question.



1 Q Now, when you say you took it into your custody, do  
2 you fill out any documentation or complete any records when  
3 that happens?

4 A Well, to, we do what's called a test on it, a  
5 presumptive test.

6 Q Let's jump in right there and stop you for a moment.

7 A Okay.

8 Q Let's talk about that presumptive test. Have you  
9 had the opportunity to perform those before?

10 A Yes, sir.

11 Q How frequently?

12 A Quite frequently.

13 Q Now, what kind of test is it? What is it like?

14 A It's a presumptive test, and it has three vials on  
15 the inside. And you place a quantity, a small quantity inside  
16 the packaging, and you read the instructions, and then you, I  
17 cannot tell you what's inside those vials that determines a  
18 presumptive test on the product that you are putting inside  
19 there. And you follow directions, you break the vials, and it  
20 will turn color and let you know if it is or it is not  
21 presumptive in narcotic.

22 Q And so if I'm understanding you correctly, it's  
23 almost something that you drop the substance in and break it  
24 like a glow stick in a sense?

25 A Yes, sir. There are three vials, sir.

1 Q Now, the color, does it change depending on what the  
2 substance either is or is not?

3 A It does.

4 Q All right. Now, you said that as part of your  
5 actions in this case you performed a presumptive test.

6 A Yes sir.

7 Q Can you describe for us how that took place?

8 A Sure. You take a sample of it, and you place it in  
9 there. Once you follow the directions and break the vials, it  
10 will turn to a deep purple if it's a presumptive positive for  
11 the methamphetamine. That particular test is, it was labeled  
12 for methamphetamine.

13 Q All right. So am I understanding you correctly  
14 there was not a color change, but rather it just read out what  
15 the substance was?

16 A There was a color change.

17 Q Okay.

18 A They are clear liquids, and it will activate with  
19 the substance inside, and once it does that, it turns to a  
20 deep purple, letting you know that you do have a presumptive  
21 positive.

22 Q And in this case it did, the color did change to a  
23 deep purple?

24 A Yes, sir.

25 Q What did that indicate to you?

1       A     Based on the type of narcotic kit that I had, I had  
2 a methamphetamine kit, it did show that it was presumptive  
3 positive for methamphetamine.

4       Q     All right. Now, after you did that, what's the next  
5 thing that you did?

6       A     Well, you, based on my charge, I had to find out the  
7 weight. And I carry a scale with me that allows me to  
8 determine the weight. And at that particular time I weighed  
9 the presumptive in its clear baggie, gross weight, which was  
10 5.3 grams gross.

11       Q     Where did all that occur? Was this in your car, was  
12 this back at the Sparks Police Department? Where were you  
13 doing all this?

14       A     I have a test kit in my storm case, which is  
15 actually in the back of my vehicle.

16       Q     So were you doing this in the parking lot in the  
17 back of your vehicle?

18       A     Sure. Yes, sir.

19       Q     Now, you said that it was 5.3 grams gross weight.

20       A     Yes, sir.

21       Q     Were you interested in obtaining a net weight at  
22 that time?

23       A     No, I was not.

24       Q     So after you conducted this weighing, what is it  
25 that you did next?

1           A     Charged the subject appropriately for the amounts  
2     that we had, with the PCS and the trafficking level one.

3           Q     Let me ask you a little bit more specifically, I  
4     guess. What is it that you did with that narcotic, that  
5     methamphetamine?

6           A     Seal it in an envelope and place it in my custody to  
7     where, until I'm ready to send it to the lab for testing.

8           Q     All right. And on the 26th of February, did you  
9     ultimately retain custody of this item of evidence?

10          A     Yes.

11          Q     Did you have it in your sole custody until you  
12     subsequently did something to it?

13          A     Yes, sir.

14          Q     And what is it that you did? When did you part with  
15     this evidence?

16          A     I take it back to the police department to our  
17     evidence, and I book it under an evidence tag. When I release  
18     it from my custody to evidence, there's a locker that's  
19     locked, you place it in there and shut the door, and then you  
20     take the number off the locker, coincide with your evidence  
21     tag.

22          Q     And what is the purpose of doing that, the evidence  
23     tag, all that stuff that you just explained?

24          A     It just shows chain of custody.

25          Q     Is that so you can identify items with respect to

1 particular cases?

2 A Yes, sir.

3 Q Did you complete any documentation to that end?

4 A I did a chain of custody on the evidence tag, yes.

5 Q If you saw that, do you think you would recognize  
6 it?

7 A Yes, sir.

8 MR. LUCIA: Your Honor, do you mind if I approach  
9 the clerk?

10 THE COURT: Go right ahead.

11 MR. LUCIA: For the record, I'm showing what's been  
12 marked for identification as State's Exhibit 3.

13 Your Honor, do you mind if I approach the witness?

14 THE COURT: Please do, yes.

15 BY MR. LUCIA:

16 Q Would you, Officer Dutra, just keep it to yourself  
17 down there where you can see it.

18 A Okay.

19 Q Do you see anything on there that looks familiar?

20 A I do. My signature, my last, my ID number for the  
21 department, the original date, I'm looking at the first line,  
22 the original date that it was booked in, February 26 of '14,  
23 my notes stating that I received the narcotic from Deputy  
24 Gerow, the date and time, and the chain of custody where I  
25 have signed for the evidence.

1 Q And let me stop you if I can right there. Is that,  
2 all of that information that you just saw, is that all written  
3 in hand?

4 A It is, sir.

5 Q And whose handwriting is that?

6 A It is mine.

7 Q Is there anything that you can see on that form that  
8 connects it to this case?

9 A I do. It has the suspect's name on it and my name,  
10 the type of narcotic that I booked through a presumptive test,  
11 and the weighing of the, the gross weighing of the narcotic,  
12 yes.

13 Q Can you tell when you completed that form, sir?

14 A 2/26/14. Yeah, 2/26/14.

15 MR. LUCIA: With the Court's permission, I'd ask  
16 that you open the top of that envelope and look inside.

17 MS. RISTENPART: No objection.

18 THE COURT: Go ahead.

19 MR. LUCIA: Never met a cop that didn't carry a  
20 knife.

21 THE WITNESS: I don't have a knife, sir.

22 MR. LUCIA: If I could approach the clerk.

23 Do you have scissors?

24 I wouldn't run with these.

25 //

1 BY MR. LUCIA:

2 Q If you could do me a favor and just open the top of  
3 that envelope there, the Manila one specifically. And once  
4 you've got it open, just do me a favor and set the scissors  
5 right back down on that railing.

6 A Yes, sir.

7 The tape's a little tougher than I am. Excuse me  
8 for a minute here.

9 Q Sure. Take your time.

10 If you would, please, deputy, now that you have got  
11 it open, could you do me a favor and just take a look inside.

12 A Sure.

13 Q Can you see the contents of that envelope?

14 A I cannot. I can see a clear baggie, but I can't see  
15 the —

16 Q Don't let me know what's in there yet.

17 MR. LUCIA: Your Honor, I would defer to the Court's  
18 preference. If he might be able to maybe slide those out so  
19 they are out of the jury's view so we can get a better view of  
20 the contents.

21 THE COURT: Go ahead and pull those out and put it  
22 on the desk in front of you there.

23 THE WITNESS: Pull the baggie out.

24 BY MR. LUCIA:

25 Q Is there anything else in there, or is that all?



1 A That looks like that's all of it.

2 Q Can you get a good look at what that is laying in  
3 front of you there?

4 A Yes, sir.

5 Q Are you familiar with that?

6 A Yes, sir.

7 Q Does that appear to be in substantially the same  
8 condition as when you first gained possession of it?

9 A Yes, sir.

10 Q Does it appear to be altered to you or changed in  
11 any significant way to you?

12 A No, sir.

13 MR. LUCIA: Your Honor, at this time I would move  
14 for admission of State's Exhibit 3.

15 THE COURT: Any objection?

16 MR. CARRICO: No objection, Your Honor.

17 (Exhibit 3 admitted into evidence.)

18 MR. LUCIA: With the Court's permission, I would ask  
19 the deputy at this time to publish it to the jury.

20 THE COURT: Yes.

21 BY MR. LUCIA:

22 Q If you can hand it to me, and I will see -- maybe  
23 before I do that, can you describe for us what it is that we  
24 are seeing in this bag.

25 A Inside this bag and that bag is a clear baggie, and



1 then with that is the crystal-like substance that I tested.

2 Q Okay. The smallest bag, the one that you are  
3 pointing to here, was that the bag that the narcotic was in  
4 when it was originally handed to you?

5 A The smallest bag that's inside crumpled up, yes.

6 Q Okay. If I may, I'll take this bag and return it to  
7 the clerk.

8 A Sir, this goes with it too, here.

9 Q That paper clip.

10 A Yeah.

11 MR. LUCIA: If I could just have a moment, Judge, I  
12 think I might be done.

13 THE COURT: Yes.

14 BY MR. LUCIA:

15 Q One last question, officer. The contents of that  
16 bag, did you send those somewhere or request that those be  
17 sent somewhere for further analysis?

18 A Yes, sir.

19 Q Can you tell us what happened? Actually, where did  
20 you send them?

21 A The request was placed to have it sent to the Washoe  
22 County lab for their testing.

23 MR. LUCIA: At this point, Judge, I pass the  
24 witness.

25 THE COURT: Mr. Carrico.

1 MR. CARRICO: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. CARRICO:

4 Q Good afternoon, Officer Dutra.

5 A Good afternoon to you, too, sir.

6 Q So as I see it, you arrived at the Nugget Casino on  
7 February 26, 2014?

8 A Yes, sir.

9 Q At about what time?

10 A Approximately 3:10 in the morning.

11 Q Were there any other officers there with you?

12 A From my department, yes.

13 Q Is that Officer Coombes?

14 A Yes, sir.

15 Q And are you aware that there is surveillance at the  
16 Nugget Casino?

17 A Yes, sir.

18 Q Have you seen any surveillance from this incident?

19 A From the Nugget? Yes, I have.

20 MR. CARRICO: Your Honor, I believe the video has  
21 been stipulated to by the State, which is defense Exhibit 7.

22 THE COURT: Okay.

23 MR. CARRICO: At this point I'd ask for permission  
24 to publish.

25 THE COURT: Admitted.

1 (Exhibit 7 admitted into evidence.)

2 THE COURT: And you may publish.

3 BY MR. CARRICO:

4 Q So Officer Dutra, does that appear to be the  
5 surveillance video of the night in question?

6 A It does, yes.

7 Q And where are you standing? If you can describe  
8 that.

9 MR. CARRICO: With the judge's permission, can he  
10 point it out?

11 THE COURT: Yes.

12 THE WITNESS: Is it all right if I stand up?

13 THE COURT: Yes, go ahead.

14 THE WITNESS: That's my partner Coombes there, and I  
15 believe that's me right there (indicating).

16 BY MR. CARRICO:

17 Q Thank you. You can sit down if you like.

18 A Okay.

19 Q Now, once you arrived, you asked Mr. Bowman to  
20 stand; is that right?

21 A Yes, sir.

22 Q And he cooperated?

23 A He did.

24 Q And then at that point Officer Coombes, I believe,  
25 did he reach into Mr. Bowman's pocket; is that right?

1 A I do not know that.

2 Q Did Officer Coombes search Mr. Bowman?

3 A No. I did.

4 Q You searched him.

5 A Yes, sir.

6 Q And when you searched him, did you ask for consent?

7 A He had handcuffs on him. I placed my handcuffs on  
8 him, and I did a pat-down search for weapons.

9 Q So he already had handcuffs on him, then you applied  
10 your handcuffs, correct?

11 A Yes. Once I applied my handcuffs, I took the  
12 security officer's handcuffs off.

13 Q And then you searched his pockets; is that right?

14 A I did a pat-down search for weapons.

15 Q Okay. Were you looking for anything else?  
16 Contraband?

17 A Just a pat-down for weapons at that point.

18 Q And at that point did you reach into his right  
19 pocket?

20 A I do not recall. I do a scrunch and a feel quadrant  
21 search. I start my search from the back where his hands are  
22 located, and then I do a quadrant search around. I don't  
23 recall going into his pocket.

24 Q Do you recall grabbing his cell phone?

25 A I do not recall grabbing his cell phone.

1 Q Would it refresh your recollection to view the  
2 video?

3 A Sure.

4 (Video playing.)

5 BY MR. CARRICO:

6 Q So that's you right behind him, correct?

7 A That is correct, sir.

8 Q Sorry. Right there, did Officer Coombes reach into  
9 his pocket?

10 A I can't tell.

11 Q Okay. Let me play it.

12 A His left hand is away from the --

13 (Video playing.)

14 THE WITNESS: With his left hand, I would say yes.

15 BY MR. LUCIA:

16 Q So is it correct that he reached into his right  
17 pocket?

18 A I would say you are correct, yes.

19 Q Mr. Bowman's right pocket. Sorry.

20 A Yes, sir.

21 Q At that point did he reach and grab his cell phone,  
22 or was it his wallet?

23 A I do not know.

24 Q But he pulled something out of his pocket.

25 A Yes, he did. It does show that.

1 Q Okay.

2 A Form of identification.

3 Q So you said that he pulled out a form of  
4 identification.

5 A Possibly, just by looking at the video, yeah.

6 Q Is it likely that he pulled out his wallet at the  
7 same time, do you recall?

8 A I don't recall.

9 Q Okay. So once he pulled out his ID, once Officer  
10 Coombes pulled out the ID, did he return the ID to Mr. Bowman?

11 A I do not know that.

12 Q At any point do you recall him pulling out his cell  
13 phone, Mr. Bowman's cell phone?

14 A I do not recall that.

15 Q So at some point you performed a pat search for  
16 weapons?

17 A Yes, sir.

18 Q And he cooperated during this search, Mr. Bowman?

19 A He did.

20 Q And you checked his waistband in the front?

21 A Yes. I run a sweep with my hand on the back to make  
22 sure there's no weapons right there where his hands are, and  
23 then I will check his waistband, yes.

24 Q And you checked the back part of his waistband as  
25 well?

1 A Yes.

2 Q Do you check his pant legs?

3 A Somewhat. I mean it's a quadrant search, so I will  
4 check to make sure there's nothing in his pockets. But it's  
5 not where I put my hands in the pockets, it's where I'm just  
6 checking to make sure there's nothing in it from the outside,  
7 make sure there's no weapons or anything sharp that could cut  
8 us.

9 Q Did you tug on his shirt and pants?

10 A I don't recall.

11 Q Do you mind if we go back to the video and possibly  
12 refresh your recollection?

13 A Absolutely.

14 Q Thank you.

15 (Video playing.)

16 BY MR. CARRICO:

17 Q I'm sorry. At that point did you hand Officer  
18 Coombes an item, do you recall?

19 A I don't know what I handed him right there.

20 Q You handed him something that you took from  
21 Mr. Bowman?

22 A Yes, I did.

23 Q Perhaps his cell phone?

24 A I can't tell you for sure what I handed him right  
25 there. I know I was putting my handcuffs on the gentleman at

1 that point.

2 Q I'll keep going.

3 (Video playing.)

4 BY MR. CARRICO:

5 Q So at this point you are examining his front and  
6 back waistband, correct?

7 A Yes, sir.

8 Q And his pant legs?

9 A Yes.

10 Q And he's wearing pretty loose-fitting clothing?

11 A Yes. And in answer to your question, I did shake  
12 his clothing on that left side there, you are correct.

13 Q So you shook both of his pant legs; is that correct?

14 A I don't recall, but my hand is hidden on the other  
15 side, but I can definitely, yes, I can tell you I grabbed and  
16 scrunched and feel that left side to make sure he didn't have  
17 any weapons in there.

18 Q And in a pat search is standard to shake the  
19 individual's, both their pant legs?

20 A Well, the subject's clothing is awful loose, and you  
21 don't want to miss anything with weapons. It's hard to go off  
22 indicators, you know, bulges, when clothing is that loose. So  
23 you want to make sure you don't have anything in there.

24 Q Right. If you don't mind I'll keep going here.

25 A Sure.



1 (Video playing.)

2 BY MR. CARRICO:

3 Q Mr. Bowman was cooperative during this entire  
4 process while you are searching him?

5 A While I was searching him, yes.

6 (Video playing.)

7 BY MR. CARRICO:

8 Q At this point are you done with your initial search  
9 of Mr. Bowman?

10 A Yes, sir.

11 MR. CARRICO: Fast forward just a little bit here if  
12 I can.

13 (Video playing.)

14 BY MR. CARRICO:

15 Q At that point right there is Officer Coombes also  
16 searching him, Mr. Bowman?

17 A I can't tell.

18 Q You can't tell?

19 A No. The officer is definitely holding something,  
20 but I couldn't tell you what it is.

21 Q At this point you brought him out to your patrol  
22 car.

23 A Yes, sir.

24 Q I'm sorry, going back to when you searched him, did  
25 you lift both his pant legs and his waistband?

1           A     I would do that on a pat-down search, yes.

2           Q     Did you check his socks?

3           A     No.

4           Q     Did you take your hands all the way down both of his  
5 legs?

6           A     No. There was no indicators to his feet. I don't  
7 pat-down search socks or shoes, no.

8           Q     So you escorted him to your patrol car.

9           A     Yes.

10          Q     And about how far is your patrol car from where,  
11 this angle we are seeing here?

12          A     I parked in valet. I couldn't tell you exactly  
13 where I was parked. I parked in valet enough to be able to  
14 see their flashlights flashing at me through the doors.

15          Q     Would you say 40 yards is a decent guess?

16          A     Approximately, maybe, yeah. Approximate. I would  
17 say yeah.

18          Q     And on your way to the patrol car, did Mr. Bowman  
19 ever look down to see if anything had been dropped?

20          A     I couldn't tell you that. I don't know.

21          Q     And you checked him again before placing him into  
22 your patrol car?

23          A     No. I placed him in my patrol car, and we stopped  
24 there.

25          Q     And then you proceeded to take him to the Washoe

1 County Jail.

2 A Yes, sir.

3 Q About how far is it from the Nugget Casino to the  
4 Washoe County Jail, best estimate?

5 A I should know this exactly. But three point  
6 something miles is a best guess estimate.

7 Q Maybe five miles, is that doable?

8 A I wouldn't say five. Three miles on the freeway to  
9 freeway.

10 Q When you arrived, you transported Mr. Bowman from  
11 your patrol car to the sallyport, correct?

12 A Yes, sir.

13 Q And about how far is it from your patrol car to the  
14 sallyport? Again, best estimate.

15 A 40 to 50 yards approximately.

16 Q When you arrived, you handed Mr. Bowman over to  
17 Washoe County sheriff's deputies.

18 A Yes, sir.

19 Q And you went to file paperwork.

20 A Yes, sir.

21 Q And then sometime after that you were handed a  
22 baggie by Deputy Gerow?

23 A Yes, sir.

24 Q And he said it fell out of Mr. Bowman's pant leg; is  
25 that correct?

1 A Yes, sir.

2 Q And you put that in your report.

3 A Yes, sir.

4 Q And then you showed that package to Mr. Bowman; is  
5 that right?

6 A Mr. Bowman saw Deputy Gerow hand that to me. He  
7 looked right at it.

8 Q And then he stated "that isn't mine," correct?

9 A Spontaneous utterance, yes, sir.

10 Q And then you photographed that baggie, right?

11 A Yes, sir.

12 Q And then booked it into evidence?

13 A Yes, sir.

14 MR. CARRICO: Court's indulgence.

15 I have nothing further, Your Honor.

16 THE COURT: Redirect.

17 MR. LUCIA: Thank you, Judge.

18 REDIRECT EXAMINATION

19 BY MR. LUCIA:

20 Q Officer Dutra, you said that when you were handed  
21 the baggie, it wasn't clear, you said he indicated that's not  
22 mine. Who indicated that?

23 A Mr. Bowman did, sir.

24 Q All right. You also mentioned something earlier. I  
25 think your exact quote was you don't search socks and shoes.

1 Did you see any portion of that video where you actually  
2 checked Mr. Bowman's feet, ankles, or any part of his body  
3 from his thigh down?

4 A No. There are two types of searches.

5 Q Okay. Can you elaborate on that?

6 A Absolutely. Based on training and experience, and  
7 years on the job, there are certain indicators that we go off  
8 of with pat-down searches. And you get that from training  
9 when you find weapons on certain subjects. You know. They  
10 have them placed in certain areas.

11 When they go, when a subject will go from your  
12 custody into the back of your vehicle to sallyport, the Washoe  
13 County Sheriff's Office has an extreme, they have a very more  
14 in-depth search, custodial search, than we do on the street.

15 Q All right.

16 A By far.

17 Q So those are the two types of searches that you are  
18 talking about?

19 A Yes.

20 Q Now, I'm assuming that the patrol car you took Mr.  
21 Bowman to 911 Parr Boulevard in, were you driving that patrol  
22 car earlier that night?

23 A Yes.

24 Q Do you have a partner, or do you just drive alone?

25 A No, I'm by myself.

1           Q     All right. Did you transport anybody, if you can  
2 recall, to the intake facility at Parr Boulevard in that  
3 vehicle that night?

4           A     I do not recall. Standard procedure, I follow it to  
5 a T.

6           Q     Let me ask you about that.

7           A     Okay.

8           Q     Is there a standard procedure that takes place when  
9 you transport somebody in the back of a vehicle?

10          A     Yes, I do.

11          Q     Can you describe what that standard procedure is,  
12 sir?

13          A     When you have the subject exit your vehicle from the  
14 custodial part, back seat, you have them stand and face away  
15 from you. When you do that, you open the door and use your  
16 flashlight, and you look for everything inside. You check and  
17 make sure nothing was inside the vehicle from within his reach  
18 or person. I do that on everyone.

19                After I take the subject in, I come back out, and I  
20 double check again so that I make --

21          Q     Do you mind if I ask you, why?

22          A     I want to make sure that there's something that  
23 hasn't been placed in there that could harm me, my partners,  
24 or a deputy that I might have, another custodial brought up to  
25 the jail, I don't want something that they could grab and hurt

1 one of us. So I'll check it again to make sure.

2 When we check cars, also, before we leave for your  
3 shift, we do an extensive search of our vehicles. Check for  
4 damage, we check the back, the front for all the equipment  
5 that's necessary. We actually have a checkoff card. And you  
6 put a lot of thought and a lot of effort in the custodial area  
7 of that vehicle, because you don't know who's been in there  
8 before, so you search everywhere. And I do that religiously.

9 Q And the custodial area of the vehicle is what we lay  
10 people would say the back seat.

11 A Yes, sir.

12 MR. LUCIA: Thank you. I have no further questions.

13 THE COURT: Recross.

14 MR. CARRICO: Thank you.

15 RECROSS-EXAMINATION

16 BY MR. CARRICO:

17 Q So Officer Dutra, as I understand it, there's  
18 several different kinds of pat-downs. There's some that  
19 search for weapons, and another kind of pat-down that goes on  
20 in the sallyport.

21 A No. I'll clarify if I may, sir.

22 Q Sure.

23 A There's one kind of pat-down search. And then  
24 there's a custodial search done by the deputies at the jail.

25 Q Okay. So what you did was a pat-down search. At



1 the sallyport it's a custodial search. Does that make sense?

2 A More in depth, yes.

3 Q And through your training, when you are searching  
4 for weapons, you don't examine a suspect's socks or lower pant  
5 leg area?

6 A There was no indicators for me to go down and check  
7 his ankles. And no, I did not take his shoes off and take  
8 their socks off or their belt or their layers of clothing.  
9 I'm trained to look for weapons in what's called the scrunch  
10 and feel.

11 Q So in your training there's no reason to search a  
12 suspect's socks for any kind of weapon?

13 A I didn't have any indicators telling me he had any  
14 weapons inside of his socks. There was nothing there that let  
15 me know I need to take socks off and shoes off to go that far.

16 Q But you didn't feel his socks.

17 A No, I did not.

18 Q So how could you know if there was nothing in his  
19 socks to be found?

20 A Well, I didn't feel his socks, so that's the truth  
21 of the matter.

22 Q Okay.

23 A Okay. I did not search his socks or his shoes.

24 MR. CARRICO: Court's indulgence, please, Your  
25 Honor.



1 THE COURT: Yes.

2 MR. CARRICO: Nothing further, Your Honor.

3 THE COURT: Thank you.

4 You can step down and leave the courtroom.

5 THE WITNESS: Thank you, sir.

6 THE COURT: Let's all stand for just a moment as the  
7 State calls its next witness.

8 MR. LUCIA: The State's next witness will be Diane  
9 Machen.

10  
11 DIANE MACHEN,  
12 called as a witness on behalf of the State,  
13 having been first duly sworn, testified as follows:  
14

15 DIRECT EXAMINATION

16 BY MR. LUCIA:

17 Q Ma'am, can you do me a favor, please, and once you  
18 are comfortable, can you go ahead and just say your name out  
19 loud and spell for it for the record.

20 A My name is Diane Machen. D-i-a-n-e M-a-c-h-e-n.

21 Q Miss Machen, are you currently employed?

22 A Yes, I am. I'm employed by the Washoe County  
23 Sheriff's Office forensic science division in the chemistry  
24 unit.

25 Q Now, how long have you been with the forensic

1 science division at the Washoe County Sheriff's Office?

2 A On February 5, 2015, I will have been there for 19  
3 years.

4 Q What is your current job title?

5 A I'm a criminalist.

6 Q As a criminalist, what is it that you do on a  
7 day-to-day basis?

8 A I analyze different types of physical evidence to  
9 help answer legal questions. And for right now I am assigned  
10 to the chemistry unit, and in that unit I analyze suspected  
11 controlled substances and then also fire debris from suspected  
12 arson scenes.

13 Q Now, do you have any prior experience working in a  
14 chemistry unit doing similar work?

15 A Yes, I do.

16 Q Could you touch on that briefly for us?

17 A I worked for the Oakland Police Department in their  
18 crime laboratory for eight years in the controlled substances  
19 or seized drug area. I worked in latent prints. I also  
20 worked in fire debris and trace evidence.

21 Q Did you have to undergo any specific training to  
22 become a criminalist in this field?

23 A Yes. You have to a natural science degree, like a  
24 bachelor's degree. I have a degree in chemistry.

25 And then when you get a criminalist job, you

1 actually get a lot of on-the-job training in the agency you  
2 are working for, but also in external agencies as well. So I  
3 have been to training provided by the Drug Enforcement  
4 Administration, the Federal Bureau of Investigation, the  
5 California Criminalistics Institute, and also professional  
6 organizations such as the clandestine laboratory investigating  
7 chemists.

8 Q As part of your current job do you have the  
9 opportunity to analyze substances to determine the presence of  
10 narcotics?

11 A Yes, to determine the presence of a controlled  
12 substance.

13 Q Okay. And in determining the presence of the  
14 controlled substance, can you give us an idea about how many  
15 times you do that every week?

16 A It depends. I can analyze easy 30 to 50 cases a  
17 month if that's all I'm working on. Like right now I'm  
18 working on validation of an instrument, so maybe doing one or  
19 two cases a week. So it just depends on what your current  
20 assignment or role is as to how many cases you work on.

21 Q Now, Miss Machen, as part of your current job  
22 requirements do you also have the opportunity to analyze  
23 substances to determine if methamphetamine is present?

24 A Yes.

25 Q How frequently is that part of your job duty?

1       A     Out of all of the difference substances that we see  
2 in the laboratory, methamphetamine is the most frequently  
3 encountered controlled substance.

4       Q     So quite regularly is what I assume.

5       A     Yes, quite regularly.

6       Q     Now, in addition to performing a chemical analysis  
7 on a certain substance, do you also perform weight analysis on  
8 substances?

9       A     Yes. Part of the analysis of a suspected controlled  
10 substance is weighing that substance to determine how much it  
11 does weigh.

12      Q     So these two, I don't want to misunderstand you, so  
13 part of the analysis includes the weight.

14      A     That is correct.

15      Q     So they are not two separate acts. It's all under  
16 the same umbrella really?

17      A     That is correct.

18      Q     Now, you perform these tests as part of your regular  
19 job duties at the crime lab?

20      A     Yes.

21      Q     Now, over the course of the last 19 years that you  
22 have been there, have you had the occasion previously to  
23 testify as an expert in this area?

24      A     Yes, I have.

25      Q     And have you qualified as an expert before any

1 courts in the state of Nevada?

2 A Yes, I have, several different courts.

3 Q Do you have an idea of those off the top of your  
4 head?

5 A No. They are reflected in my declaration. I have  
6 testified easily over 150 times in California and Nevada  
7 courts, federal courts as well, and under a wide range of  
8 forensic disciplines, from drug analysis to fire debris,  
9 critical mass, paint over spray, toxicology.

10 Q Now, I want to discuss just a little bit the  
11 procedure generally that we are looking at when we undertake  
12 one of these tests. For starters, can you discuss for us the  
13 procedure that you would undertake when you are weighing a  
14 substance?

15 A I have a balance that is located on my workbench,  
16 and that is the balance that I'm primarily using. If  
17 something weighs more than 300 grams, I cannot use the balance  
18 that is on my bench because it physically won't weigh anything  
19 larger than 300 grams.

20 So I have what we call weighing paper. It's very  
21 similar to wax paper. It comes in precut squares. I  
22 particularly use a square that's six by six inches. I take  
23 and use, these are not reusable, they are disposable, so you  
24 use them once, and you throw them away.

25 I take a piece of weighing paper, I put on the pan

1 of the balance. I close the doors of the air shield that  
2 surrounds the pan of the balance. And then I clear the  
3 balance so that it reads 0.00 grams with that weighing paper  
4 placed on it.

5 I then open the balance air shield, I remove the  
6 weighing paper. I place my substance that I want to weigh on  
7 that weighing paper, lift it up, physically transfer it back  
8 to the pan of the balance, close all the doors. And then I  
9 wait for the reading to stabilize, and then I take that  
10 reading and record it in my laboratory notes.

11 Q Now, the process that you just detailed, what is the  
12 reason or rationale behind all those steps?

13 A It's the proper way for weighing and using a  
14 balance. And then also Nevada Administrative Code is written  
15 to where the weight of a substance can be important, so that  
16 is why we actually weigh substances and record them as part of  
17 our work.

18 Q So to distill that down, it's to insure accuracy; is  
19 that accurate?

20 A Yes.

21 Q Now, are those weights that you use, are those  
22 calibrated in any specific way, or is there a certain  
23 guideline for that portion of it?

24 A Yes. The balances that I'm, or the balance that I'm  
25 using, or any of the balances in our unit, because we actually



1 have six of them in the chemistry unit, six balances. They  
2 are checked internally by one of the two chemists, myself or  
3 my coworker in the section once per month. And then also we  
4 have an external check and cleaning done on the balances once  
5 per year. It's usually in the month of October.

6 Q Now, I want to switch gears a little bit and talk  
7 about the analysis that you perform to determine the presence,  
8 or lack thereof, of a controlled substance in something that's  
9 submitted to you, a sample that comes to the lab. Can you  
10 describe for the jury that portion of the testing or analysis?

11 A After I weigh the substance, then I will perform a  
12 series of tests on that substance. And the tests that I  
13 performed are dependent on the type of substance that I have.

14 If I have green plant material, I would do a certain  
15 group of tests. If I have crystalline substance, I would do a  
16 different set of tests. If I have black tar-like substances  
17 that would be suspected heroin, I would employ a different set  
18 of tests.

19 So again, it's based first on my visual assessment  
20 or examination, evaluation of that evidence as to what tests  
21 that I'm going to employ. I have several tests at my  
22 disposal. They include color test, microscopic examination,  
23 microcrystalline test, Fourier Transform --

24 THE REPORTER: I'm sorry. Could you say that again,  
25 please?

1 THE COURT: We are going to have actually, for  
2 courtesy to the reporter, just write that word on a piece of  
3 paper for us, please.

4 THE WITNESS: Absolutely.

5 MR. LUCIA: Your Honor, I happen to have a Post-it  
6 note here, if you don't mind.

7 THE WITNESS: So again, it's Fourier Transform  
8 Infrared Spectrometry. Short name is FT-IR, because we will  
9 probably talk about it again later.

10 And then I also have an instrument known as a gas  
11 chromatograph mass --

12 THE COURT: Hold on. Hold on. You speak very  
13 quickly, and you are not using, you have a different  
14 vocabulary. I just need you to dial the speed back. I have  
15 got a court reporter, we have been working for some time.

16 Thank you.

17 THE WITNESS: The last one is gas chromatography  
18 with a mass selective detector. And its short name is GCMS.

19 BY MR. LUCIA:

20 Q Do you mind if I approach and grab my pen back?

21 A No, not at all.

22 Q You mentioned that those are the tools sort of that  
23 you have when you are looking at a controlled substance to  
24 analyze it basically, or suspected controlled substance,  
25 correct?



1           A     Correct.

2           Q     With respect to those substances that you see as  
3 crystal, what tests would you perform?

4           A     If I have a crystalline substance, the first test  
5 that I would perform is a color test known as modified  
6 Marquis, that's M-a-r-q-u-i-s, and I'm adding chemicals to a  
7 small portion of crystalline substance that I have isolated,  
8 and I'm looking for a color reaction. If you have this  
9 particular test known as modified Marquis, and you add it to  
10 something that is a methamphetamine type drug, you will see an  
11 orange color reaction.

12                 So that's what I would first do on a crystalline  
13 substance sample.

14          Q     With respect to that test, are there various  
15 entities that produce those tests?

16          A     The chemicals that I'm using in the laboratory are  
17 similar to the types of materials I think you are referring to  
18 like the field test kits and stuff that the officers would  
19 use. We do not use those prepared or premade chemicals. We  
20 buy straight chemicals and make our reagents from them. I  
21 don't use anything else that has been prepared outside of our  
22 laboratory for quality control purposes.

23          Q     To your understanding, Miss Machen, are there  
24 different colors that might come with the different tests that  
25 would indicate the same result?

1           A     Absolutely. There are several different tests that  
2 you can use. We have a battery of about ten that we regularly  
3 employ, but there are other tests that you could use on a  
4 crystalline substance that you thought might contain a  
5 methamphetamine-like drug.

6           Q     Now, in addition to that test, the modified Marquis,  
7 are there other tests that you run?

8           A     Yes. If I performed that modified Marquis on a  
9 crystalline substance sample, and I got an orange color, I  
10 would then proceed to microcrystalline tests. And I would  
11 actually do two different microcrystalline.

12                A microcrystalline test, again you are taking an  
13 isolated portion of the sample, you are placing it on a  
14 microscope slide, you are adding again different chemicals to  
15 that sample on the microscope slide, and then you are viewing  
16 any crystalline precipitate that forms through a microscope at  
17 about a magnification of 100 times.

18                A sample of crystal substance, I would use two  
19 particular tests. I would use the test known as gold  
20 chloride. And if you have that mixed with methamphetamine,  
21 you get a crystalline reagent or a crystalline precipitate,  
22 I'm sorry, that looks like rabbit ears or old-fashioned --

23                THE COURT: You've got to slow down, please. You've  
24 got to dial it back a little bit, please.

25                THE WITNESS: That looks like rabbit ears or old-

1 fashioned clothes pins.

2           And then the next test I would do would be platinum  
3 bromide, b-r-o-m-i-d-e, added to methamphetamine, again  
4 looking at the precipitate through a microscope, you would see  
5 something that is almost like a tree that has a main trunk,  
6 and it's several branches coming off the side.

7 BY MR. LUCIA:

8           Q    All right. And is there any other tests that you  
9 could run on these kinds of substances?

10          A    Yes. Typically the next test I would do would be  
11 that one that I said earlier that the short name is FT-IR.

12          Q    And can you give us just the gist on what you are  
13 looking for when you run that test?

14          A    The instrument shines infrared light through the  
15 sample that you place on it. Different samples absorb  
16 infrared light at different wavelengths. For example, cocaine  
17 looks completely different in the infrared spectrum from  
18 heroin or methamphetamine or hydrocodone. You can actually  
19 tell the difference between salt form with this particular  
20 instrument. So I can tell the difference between cocaine base  
21 and cocaine hydrochloride.

22          Q    Now, you mentioned that in your process you weigh  
23 the substance first. Why do you do that?

24          A    Practice is to record the weight of the substance as  
25 it was received. And in all of these tests that I have just

1 described to you, I'm going to use some amount of substance,  
2 so again we want to record and weigh the amount of substance  
3 as it was received prior to us consuming any of it in our  
4 testing.

5 Q And when you are weighing the substance, just to go  
6 back to that for a moment, are you looking at gross weight or  
7 net weight?

8 A We do both in the laboratory, and it depends on what  
9 we are working on. But our report always reflects what type  
10 of weight we are using.

11 A gross weight is the weight of the substance in  
12 some amount of packaging, and the net weight is the weight of  
13 just the substance itself without any packaging. Similar to  
14 gross and net salary or income.

15 Q Okay. Now, as you have completed this testing, do  
16 you reduce, you said you had lab notes. Do you reduce your  
17 results to any sort of writing?

18 A Yes. As I'm working, I actually have a computer at  
19 my work station, and I'm typing all of my notes. If I hand  
20 wrote them, people wouldn't be able to read them, so I type  
21 them. Actually as I'm working I'm typing what I am doing.  
22 Then at the end I print my notes out as part of my case  
23 record, and I create a laboratory report.

24 Q Now, you mentioned earlier the volume of submissions  
25 that you might get in a given month. Is there any way you can

1 identify a particular substance to a particular case?

2 A We perform work for over 80 agencies in 14 of 17  
3 counties in Nevada, so each item of evidence that we receive  
4 has to have a unique identifier. These are known as control  
5 numbers. They will be reflected in my report. And then I  
6 only have one sample open at a time, and I'm only working on  
7 that one sample from that one case at a time, so that I don't  
8 have the possibility of mixing up different samples.

9 Q Thank you.

10 MR. LUCIA: Your Honor, at this time I'd move to  
11 have Miss Machen qualified as an expert in the field of  
12 chemistry, and specifically in the amount of controlled  
13 substance.

14 MS. RISTENPART: No objection, Your Honor.

15 THE COURT: So qualified.

16 BY MR. LUCIA:

17 Q You can add another one to your list now.

18 A Thank you.

19 Q I want to talk specifically about one testing, or  
20 one analysis in particular. Do you recall if you had an  
21 opportunity through the course of your employment at the lab  
22 to run an analysis involving a subject named Frederick Bowman?

23 A Yes.

24 Q Do you remember what kind of analysis you ran?

25 A I was asked to analyze crystal substance to

1 determine if it contained a controlled substance.

2 Q Now, do you recall the steps that you undertook to  
3 complete that task?

4 A Yes. They were exactly as I have previously  
5 described. I received the evidence from the Washoe County  
6 Sheriff's Office evidence section, took possession of it. I  
7 first went in the laboratory and weighed it, and then I  
8 performed the color test, the two microcrystalline tests, and  
9 then the FT-IR.

10 Q Once you are done with that kind of analysis, what  
11 do you do with the substance?

12 A I package the substance, or I repackage the  
13 substance or put it back into its original packaging. In this  
14 particular case I put it into what I will call a laboratory  
15 ziplock plastic bag, meaning I supplied it, the laboratory  
16 supplied it. I seal it, and then I put it into its original  
17 outer packaging. I seal that, and then I return it to the  
18 Washoe County Sheriff's Office evidence section. And if it's  
19 from an external agency, that evidence again gets returned to  
20 the agency through our Washoe County Sheriff's Office evidence  
21 section.

22 Q With respect to the ziplock bags that you seal the  
23 evidence in, do you place any markings or identifying  
24 information on that?

25 A Yes. I try to put a little green circular tag on it



1 that says lab package. It's abbreviated LAB and then PKG,  
2 with my initials, so I can identify readily, or hopefully  
3 anybody else observing that bag could identify that it was  
4 something that was added by that laboratory.

5 MR. LUCIA: Your Honor, do you mind if I approach  
6 the clerk and grab —

7 THE COURT: No, go ahead.

8 MR. LUCIA: For the record, I'm showing Exhibit 3.

9 Do you mind if I approach the witness, Judge?

10 THE COURT: Go ahead.

11 BY MR. LUCIA:

12 Q Miss Machen, if you would, please, I'm showing you  
13 what's been marked as State's Exhibit 3. Do you see anything  
14 familiar on that packaging?

15 A Yes, I do.

16 Q What is it?

17 A First there's my little green sticker that I just  
18 described, with the words "lab pkg" and my initials. And then  
19 also there's a red tape seal that bears the laboratory number,  
20 my initials, and the date of 17 March 2014.

21 And on the opposite end of the bag there is a heat  
22 seal that has markings heat sealed into it, again the  
23 laboratory number, my initials, and 25 November 14.

24 Q And may I take that back, please. Thank you.

25 Now, with respect to your results in this case, you

1 indicated that you conducted a weighing analysis and then also  
2 did an analysis to determine the presence or lack thereof of a  
3 controlled substance. Is that accurate?

4 A Yes, sir.

5 Q Did you record that information on any sort of  
6 paperwork or documentation?

7 A Yes, sir.

8 Q And if you saw that, do you think you would be able  
9 to recognize it?

10 A Yes, sir.

11 MR. LUCIA: Your Honor, for the record I'm showing  
12 to the defense State's Exhibit 5.

13 Do you mind if I approach, Judge?

14 THE COURT: Go ahead.

15 BY MR. LUCIA:

16 Q If you would, Miss Machen, please take a look at  
17 this, and go ahead and look at that, make sure you have had a  
18 chance to review it.

19 Are you familiar with that item, ma'am?

20 A Yes, I am.

21 Q How are you familiar with that?

22 A It is the laboratory report that I created to  
23 document the evidence that I received, my work that I  
24 performed in the case, and my results. And the laboratory  
25 number is L0714-14-0, and the suspect is Bowman, Frederick



1 Lewis.

2 Q Now, does that information on that sheet fairly and  
3 accurately depict the affidavit that you prepared in this case  
4 and the work that you have done?

5 A Yes, sir.

6 Q Does it appear to you to be substantially changed or  
7 altered in any material way?

8 A No, sir.

9 MR. LUCIA: Your Honor, I move the admission of  
10 State's Exhibit 5 at this time.

11 THE COURT: Defense.

12 MS. RISTENPART: Your Honor, I would object, as I  
13 have some cross-examination questions about that. But if we  
14 could just ask for it after cross-examination?

15 THE COURT: Well, he needs to inquire of this  
16 witness about that exhibit, and I'll only allow him to do so  
17 if it's admitted.

18 MS. RISTENPART: Objection. Lack of foundation as  
19 to the scale.

20 THE COURT: Do you know what that means?

21 MR. LUCIA: I'm not really sure. I guess I could  
22 ask some further questions, maybe see if we can hammer it out.

23 THE COURT: Sure.

24 BY MR. LUCIA:

25 Q Do you recall the scale that you used -- let me just

1 ask you this first. The substance that was involved in this  
2 case, did you weigh it once or twice?

3 A I weighed the substance in this case on two  
4 different occasions two different days.

5 Q All right. Do you recall which scale you used when  
6 you weighed the substance the first time?

7 A Yes. I have, like I described earlier, a balance  
8 that is located on my work space, and it's merely for  
9 convenience so I do not have to go very far in the laboratory  
10 to do my work.

11 I have balance number 5 located at my work space.  
12 And each of the balances in the chemistry unit have a number  
13 so you know which balance, because we have two that are just  
14 alike, so one is number 5 and one is number 7. So I always  
15 use balance number 5 unless the substance weighs an amount  
16 greater than what I can physically weigh on my balance.

17 Q Now, that balance number 5, is it subject to the  
18 same sort of controls and testing as you described earlier?

19 A Yes, sir.

20 MR. LUCIA: Your Honor, I think whatever  
21 foundational issues there are with the scale can be inquired  
22 in cross.

23 THE COURT: So for me there is a difference between  
24 what is admissible and then what is subject to a different  
25 conclusion through the prism of cross-examination. What is

1 the objection to the admissibility of this exhibit?

2 MS. RISTENPART: No objection to the report  
3 admissibility, Your Honor.

4 THE COURT: So it will admitted as 5.

5 MR. LUCIA: Thank you, Judge.

6 BY MR. LUCIA:

7 Q Now, Miss Machen, if you may, please -- if you need  
8 that, do you recall what the weight of the substance was in  
9 this case?

10 A Yes. And I would like to refer to my report.

11 Q Please do.

12 A 5.058 grams net weight.

13 Q When was that measurement taken?

14 A On the 17th of March of 2014.

15 Q Okay. And with respect to the analysis regarding  
16 whether or not a controlled substance was present, do you  
17 recall what your results were?

18 A Yes. I again performed a color test to  
19 microcrystalline tests and the long name known as FT-IR. I  
20 identified methamphetamine in the crystalline substance.

21 Q Now, you indicated just a second ago that there was  
22 a secondary weight taken in this case. Is that accurate?

23 A That is correct.

24 Q When you took that weight, did you undertake the  
25 same procedure that you described for us earlier?

1 A Yes, sir.

2 Q Do you recall which scale you used in that test?

3 A Yes, sir. I used balance number 5. And actually my  
4 laboratory notes required me to record the balance that I  
5 used, so that is part of the records for this case in the  
6 laboratory.

7 Q So it is the same balance that you used during the  
8 first weight, I guess.

9 A Yes, sir.

10 Q Now, with respect to —

11 MR. LUCIA: Let me approach the clerk if I may, Your  
12 Honor, and grab Exhibit 12?

13 THE COURT: Yes.

14 MR. LUCIA: Thank you, Judge.

15 Showing to the defense what's been marked as State's  
16 Exhibit 12.

17 May I approach, Judge?

18 THE COURT: Yes.

19 BY MR. LUCIA:

20 Q Miss Machen, if you would, please, keep that down to  
21 just where you can see it, and take a moment to look at that  
22 document. And let me know once you are done.

23 A (Reviewing document.)

24 Yes.

25 Q Are you familiar with that exhibit, ma'am?

1 A Yes, I am.

2 Q How is it you are familiar with it?

3 A It is again a laboratory report, otherwise known as  
4 a declaration, that I have created in a case with a laboratory  
5 number L0714-14-1, with a suspect name of Bowman, Frederick  
6 Lewis.

7 Q And does that exhibit fairly and accurately detail  
8 the results of your second analysis in this case?

9 A Yes, sir.

10 Q Does it appear to you to be changed or altered in  
11 any material way?

12 A No, it does not.

13 MR. LUCIA: At this point, Judge, I would move for  
14 the admission of State's 12.

15 MS. RISTENPART: No objection.

16 THE COURT: 12 will be admitted, Miss Clerk.

17 (Exhibit 12 admitted into evidence.)

18 BY MR. LUCIA:

19 Q Before we get into the number, time wise, this  
20 analysis, was it just the weight, or was it also to check the  
21 presence of a controlled substance?

22 A In the second report the only function that I was  
23 performing was weighing the substance.

24 Q All right. And this was a weight that was taken  
25 after the testimony that you just provided regarding your



1 analysis of the substance.

2 A Yes, sir.

3 Q Now, would you expect that the quantity, the net  
4 quantity of the substance would be the same, more, or less in  
5 this secondary analysis?

6 A I would expect it to be less.

7 Q Can you explain to us why?

8 A Again, the weight that I recorded and reported on  
9 March 17 was the weight of the sample as I received it. I  
10 then took three different samples from a crystalline substance  
11 to perform my tests, one for the color test, one for the two  
12 microcrystalline tests, because I do them together, and then  
13 one for the FT-IR. So I would expect a weight that was  
14 measured after those tests to be less than the weight that I  
15 measured before those tests.

16 Q And is that because a portion of that is consumed  
17 throughout the course of the testing?

18 A Yes. And the testing that we are performing is, it  
19 consumes the sample. You don't take it and return it to the  
20 bulk crystal sample. You are actually consuming those samples  
21 in the tests that I performed.

22 Q Miss Machen, if you need to refresh your  
23 recollection, please do. But can you tell us the results of  
24 the second weight of the controlled substance in this case?

25 A On 11/25 of 2014 when I weighed the substance, it

1 weighed 4.990 grams net weight.

2 MR. LUCIA: And if I may approach and get that.  
3 Thank you.

4 At this point, Judge, I'd pass the witness.

5 THE COURT: Miss Ristenpart.

6 MS. RISTENPART: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. RISTENPART:

9 Q Miss Machen, you are here just to testify about  
10 testing that you did, correct?

11 A Yes, ma'am.

12 Q You don't have any information beyond what you do in  
13 your laboratory about the case itself.

14 A No, ma'am.

15 Q Specifically in regards to questions of possession.

16 A You are correct. I have no knowledge of that.

17 Q And we just talked about how there's actually two  
18 weights here, or you conducted two weighs, correct?

19 A Yes, ma'am.

20 Q And at separate times. Yes?

21 A Yes, ma'am.

22 Q One in March of 2013, and one again just a few days  
23 ago, November 25 of 2014.

24 A Yes, ma'am, that is correct.

25 Q And that second reweigh was pursuant to a court

1 order.

2 A Yes, ma'am.

3 Q Now, the first weigh came back 5.03 grams, I believe  
4 you said?

5 A I would refer to my laboratory report. I don't have  
6 the number committed to memory.

7 MS. RISTENPART: If I may approach.

8 THE COURT: Yes.

9 BY MS. RISTENPART:

10 Q I'm showing you what has already been admitted as  
11 Exhibit 5. And that is your lab results from March of 2013,  
12 correct?

13 A That is correct.

14 Q Okay. And what is the number on there?

15 A 5.058.

16 MS. RISTENPART: Permission to publish, Your Honor?

17 THE COURT: Yes.

18 MS. RISTENPART: Thank you.

19 BY MS. RISTENPART:

20 Q And this is the lab report that we were looking at,  
21 Exhibit 5.

22 A Yes.

23 Q And as we go down, we see that right here you say  
24 the 5.058, correct?

25 A Correct.



1 Q And you also have a little plus or minus 0.039.  
2 What's that?

3 A The number in parentheses is the certainty of  
4 measurement. Whenever we make a measurement in the  
5 laboratory, we are required to report the certainty that's  
6 associated with that measurement. So the true value of the  
7 weight would be 5.058 in a range of either minus .039 grams or  
8 plus .039 grams.

9 Q And you stated that also in the November 25 of  
10 2014 —

11 MS. RISTENPART: Permission to publish Exhibit 12,  
12 Your Honor?

13 THE COURT: Yes.

14 BY MS. RISTENPART:

15 Q This report is authored by you, as you stated,  
16 correct?

17 A Yes, ma'am.

18 Q And at the very bottom — is it on the second page?

19 A Yes, ma'am.

20 Q Thank you. On the top of the second page you have  
21 the weight of 4.990 plus or minus 0.039 grams.

22 A Yes, ma'am.

23 Q Again, the measurement of uncertainty in the  
24 measurement.

25 A Correct.

1 Q And that's because no measurement is precise to a  
2 hundred percent.

3 A That is correct. And our laboratory accreditation  
4 requires us to report the uncertainty associated with any  
5 measurement..

6 Q Now, when we are talking about a gram, that's a very  
7 small amount.

8 A I would not agree with that statement.

9 Q Okay. Well, you work in a forensic lab that deals  
10 mainly with illegal controlled substances, correct?

11 A Yes, ma'am.

12 Q In the real world a gram would be equivalent to,  
13 what, four or five grains of rice?

14 A Easiest way for me to describe a gram in general  
15 terms is it is the contents of about one of the sugar packets  
16 that you have at the restaurant and you open and pour in your  
17 tea or your coffee. That is a gram.

18 Q Have you actually measured that?

19 A Yes, ma'am, I have.

20 Q Okay. And how much does a dime weigh?

21 A I do not know, because I have never measured that.

22 Q Would 2.268 grams sound about right for the weight  
23 of a dime?

24 A I again have no knowledge because I have never  
25 weighed a dime.

1 Q When we are talking about such finite amounts, it's  
2 important to obviously try to get as accurate as possible,  
3 correct?

4 A Yes, ma'am.

5 Q And for these two separate weights, or weighs, you  
6 were using your laboratory machine that you keep at your desk,  
7 correct?

8 A Yes. I was using the laboratory balance that is  
9 located in my work space.

10 Q And that was, you said balance number 5?

11 A Correct.

12 MS. RISTENPART: May I approach?

13 THE COURT: Yes.

14 BY MS. RISTENPART:

15 Q I'm approaching with defense Exhibit 11. Would you  
16 mind taking a look at that. Do you recognize what's in that  
17 photo?

18 A Yes, ma'am. And the labels actually in the photo  
19 tell me what is in the note. It says CU balance number 5, and  
20 it also has the measurement uncertainty abbreviated with the  
21 initials MU, 0.039-gram.

22 Q And what is exactly in the photo?

23 A It is a photo of balance number 5, with the  
24 crystalline substance, or with crystalline substance on it.  
25 And that is it.

1 Q In other words, your scale?

2 A My scale, my workbench, with a piece of weighing  
3 paper and crystalline substance on it.

4 Q Do you recognize it to be an accurate depiction of  
5 your scale?

6 A Yes, ma'am. That is my work space, and that is my  
7 scale.

8 Q Okay.

9 MS. RISTENPART: Move for admission of defense  
10 number 11.

11 MR. LUCIA: No objection.

12 THE COURT: 11 is admitted, Miss Clerk.

13 (Exhibit 11 admitted into evidence.)

14 MS. RISTENPART: Permission to publish.

15 THE COURT: Yes.

16 BY MS. RISTENPART:

17 Q So this then is Exhibit 11. You were talking about  
18 right here it states balance number 5, correct?

19 A Yes, ma'am.

20 Q And then over here, measure uncertainty of 0.039  
21 grams?

22 A Yes, ma'am.

23 Q And I notice that this is a Sartorius. That's the  
24 company that made your scale, correct?

25 A Yes, ma'am.

1 Q And this is in fact an analytical scale?

2 A I wouldn't call it, I mean there are different types  
3 of balances, and the word that I would use to describe this  
4 wouldn't be an analytical scale. To me an analytical scale  
5 would have another decimal point more out to the right. And I  
6 do have one of those, but I don't use it in casework.

7 THE COURT: We are getting very close to a speed at  
8 which our reporter can't write your words.

9 Go ahead.

10 BY MS. RISTENPART:

11 Q And as you just testified, to maintain the  
12 laboratory up to federal standards to get your federal  
13 certification, you must have this machine calibrated?

14 A Yes. It's not federal certification. It's  
15 accreditation through a private organization known as the  
16 American Society of Crime Laboratory Directors Laboratory  
17 Accreditation Board, short name ASCLD/LAB. And we have to  
18 have quality control procedures in place in our laboratory and  
19 show that we follow them to receive this accreditation.

20 Q And for us lay people, calibration is the  
21 determination of a difference between the weight readout and  
22 the true weight or mass of a sample, correct?

23 A I'm sorry, would you repeat that? Because that's  
24 not a definition that I would use.

25 And I don't, I evaluate the performance of my

1 balance on a monthly basis. I don't calibrate it. That  
2 wouldn't be the terminology that we would use in the  
3 laboratory.

4 Q Let me simplify. Calibration means that the weight  
5 is reporting accurately and as truly as possible. You are  
6 checking to make sure.

7 A Yes, ma'am. I do that every month.

8 Q But you also have an external calibration?

9 A We have an external check of the balance once a  
10 year, yes, ma'am.

11 Q And that is done by a specialist, correct?

12 A Yes, ma'am. And if you look in the photos that are  
13 published, the sticker on the top right above the brush  
14 actually is the sticker from that company showing that this  
15 had been done.

16 Q And this particular Sartorius model has an external  
17 calibration button, correct?

18 A This particular model has two different ways that  
19 you can calibrate it. There is an internal weight, and there  
20 is an external calibration. We do not use the internal  
21 weight, we use the external.

22 Q In fact if we pull that up a little, it's right down  
23 on the bottom.

24 A The CAL button, yes.

25 Q Now, you just stated that you personally do it once

1 a month, the calibration, by pushing the calibration button?

2 A No, ma'am.

3 Q So you do something else?

4 A Yes, ma'am.

5 Q Are you familiar that, per the Sartorius procedure  
6 manual, that in order for these machines to be used in legal  
7 proceedings, it's highly recommended that that external  
8 calibration button be blocked or taped over?

9 A I am not aware of that in the manual. I do have the  
10 manual. But if you taped over that, it's a button that is  
11 activated by pressing it, so placing a piece of tape on it  
12 would not negate you from pressing it.

13 Q You are not aware of that.

14 A No, ma'am. And we have created our own quality  
15 control procedures that we follow, which are probably more  
16 stringent than most manufacturers.

17 Q And this particular model that you are using is an  
18 older model.

19 A No, it's not. This, we have this balance, and  
20 balance number 7 is just like it, and balance number 7 we  
21 purchased in probably the last two, no more than three years.  
22 And balance number 5 is no more than five years old.

23 Q Okay. So five years ago you purchased this model.

24 A At the most.

25 Q And that's because these are really expensive



1 machines.

2 A Well, they are expensive, and they are very robust,  
3 and they last.

4 Q Did you know that Sartorius discontinued this  
5 particular model?

6 A No, ma'am, I did not know that, because I have not  
7 had the need to purchase a balance.

8 MS. RISTENPART: No further questions. Thank you,  
9 Your Honor.

10 THE COURT: Redirect.

11 MR. LUCIA: Thank you, Judge.

12 REDIRECT EXAMINATION

13 BY MR. LUCIA:

14 Q Miss Machen, you said something earlier that kind of  
15 struck me. You said no measurement is one hundred percent  
16 precise. Do you remember that?

17 A Yes.

18 Q Does that mean the same thing as inaccurate?

19 A No, it does not to me.

20 Q Okay. The numbers that we were looking at earlier,  
21 the plus or minus, I think most folks would probably term that  
22 as a margin of error. Would that be something that would be  
23 inaccurate to say?

24 A A lot of people probably would characterize it with  
25 those words or those terms. In the laboratory, again, it



1 comes from our accreditation. The terminology is certainty  
2 associated with the measurement. Some people say the  
3 uncertainty associated with the measurement. But basically  
4 you are trying to characterize the range where that true value  
5 of whatever type of measurement you are making could lie.  
6 Because again you can't say that it's a particular value. You  
7 have to usually give some sort of range based on scientific  
8 studies.

9 Q Now, that range, then, would encompass every number  
10 from the lowest on that measurement of uncertainty to the  
11 highest. Is that accurate?

12 A I'm sorry, I don't think I understand the question.

13 Q Let me publish one of these, and maybe I can walk  
14 through it.

15 MR. LUCIA: This is State's Exhibit 5 that's been  
16 admitted.

17 BY MR. LUCIA:

18 Q Can you see that, Miss Machen, where the measurement  
19 is noted?

20 A Yes.

21 Q And I believe it indicates that the measurement of  
22 certainty or uncertainty is plus or minus .039 grams.

23 A That is correct.

24 Q So with respect to that figure, is every single  
25 measurement, subtracting .039 from the 5.058 to adding .039 to

1 that figure, would that be the accurate range or the measure  
2 of that substance?

3 A Yes, sir.

4 Q So every number, then, within that range is  
5 scientifically accurate?

6 A Yes, sir.

7 Q And that would be the same thing with respect to  
8 Exhibit 12?

9 A Yes, sir.

10 Q In applying the maximum deviation to both weights in  
11 this case, and what I mean, maximum downward deviation, so  
12 subtracting that figure from this analysis, would that still  
13 put that sample at more than 4 grams net weight?

14 A Absolutely.

15 Q Now, State's Exhibit 12, on page 2, in applying the  
16 same deviation --

17 THE COURT: Juror number 7, can we get some water  
18 for you? Are you okay?

19 A JUROR: Yes, get some water.

20 THE COURT: Deputy Croxon will take care of that for  
21 you real quick.

22 A JUROR: Thank you.

23 BY MR. LUCIA:

24 Q Now, in applying that same thought process to what  
25 you see here in State's Exhibit 12, so if you took that

1 maximum downward deviation off of that 4.990 net weight  
2 number, would the total net weight amount of the measurement  
3 at this time be in excess of 4 grams?

4 A Yes, sir.

5 MR. LUCIA: Thank you, Judge. I have no further  
6 questions.

7 THE COURT: Recross.

8 MS. RISTENPART: No recross, Your Honor.

9 THE COURT: Thank you. You are free to step down.  
10 Let's all stand while we wait.

11 (Off the record.)

12 MR. LUCIA: Your Honor, the State rests.

13 THE COURT: At this time it's appropriate that we  
14 take a break.

15 (Juried admonished by the Court.)

16 THE COURT: I think one of you has a car meter  
17 problem. Yes? So we are going to be in recess for  
18 approximately 20 minutes to 25, although I'm wrong every time  
19 I predict. So enjoy the jury deliberation room, and you can  
20 take care of out of office, out of building needs.

21 You are free to go.

22 (Jury excused and the following proceedings  
23 held in open court.)

24 THE COURT: Mr. Lucia, you may be seated.

25 Mr. Bowman and counsel, remain standing if you

1 would, please.

2 At this time, Mr. Bowman, I need to ask you a series  
3 of questions for you, because the State has now rested its  
4 case in chief, which means this is the time for you, if you  
5 wish, to present a defense. But I want you to understand that  
6 under the Constitution of the United States, and the state of  
7 Nevada, you cannot be forced to testify in this case.

8 Do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. You may of your own free choice  
11 give up this right and take the witness stand and provide  
12 testimony. If you do, you will be subject to cross-  
13 examination by the State's attorney, and anything you say,  
14 whether on direct or cross-examination, will be the subject of  
15 fair comment as the attorneys argue the case to the jury.

16 Do you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Okay. If you choose not to testify, and  
19 your attorneys request, I will instruct the jury that they  
20 will not infer anything negative about your decision. The  
21 instruction will be something similar to this:

22 The law does not compel a defendant in a criminal  
23 case to take the stand and testify, and no presumption may be  
24 raised and no inference of any kind may be drawn from the  
25 defendant's failure to testify.

1 Do you have any question about your rights so far?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: You are further advised if you decide to  
4 take the stand and provide testimony -- do you have  
5 impeachment criminal history that you would get into?

6 MR. LUCIA: I do, Your Honor. I have a certified  
7 copy of it.

8 THE COURT: If you choose to take the stand and  
9 testify, the State's attorney, in the presence of jury, will  
10 be permitted to ask if you have been convicted of a felony,  
11 what the felony was, and when the felony occurred. The  
12 district attorney will not be allowed to go into greater  
13 detail about those prior felonies.

14 If you deny the existence of a felony, the State  
15 will have the opportunity to cause certified copies to be  
16 admitted. Again, they will be subject to argument.

17 Any questions?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: At this time, sir, please be seated.

20 We will take a break. You will need a minute to  
21 consult with your client probably before we begin our, the  
22 next phase of trial?

23 MS. RISTENPART: Yes, Your Honor. And I would like  
24 some kind of time frame as to are we going to try to do jury  
25 instructions and closing tonight?



1 THE COURT: Well, it depends on what type of defense  
2 case you are going to have. We could.

3 MS. RISTENPART: I just want to know a time frame in  
4 my head, Your Honor.

5 THE COURT: If you thought that the defense will  
6 either take no time or limited time, I'd bring the jury in,  
7 and I'd poll them about whether they wanted to stay past five.  
8 They probably will want to, rather than come back tomorrow,  
9 and we will go into the evening.

10 MS. RISTENPART: I would ask for a brief break, or  
11 maybe Mr. Carrico could do the jury instructions so I can work  
12 on the closing. I like to have a half an hour, just time  
13 frame.

14 THE COURT: I can send the jury away for a --

15 MS. RISTENPART: A lunch break or something like  
16 that?

17 THE COURT: So do you think the defense may rest in  
18 the near future?

19 MS. RISTENPART: If I could speak with Mr. Bowman,  
20 then I could probably give that answer in about five minutes.

21 THE COURT: So we are going to give you privacy. So  
22 everyone, including the court reporter and the court's staff,  
23 will leave the courtroom.

24 Deputy Croxon, of course you will remain.

25 And we will check with you in a couple of minutes.

1 MS. RISTENPART: Thank you, Your Honor.

2 (Recess taken.)

3 (The following proceedings held in open court  
4 with the jury present.)

5 THE COURT: Who does not have a notepad with them?  
6 Juror number?

7 A JUROR: I left it in there.

8 THE COURT: So ladies and gentlemen, Mr. Bowman has  
9 exercised his constitutional right and decided not to present  
10 a defense, which means the defense will rest without  
11 presenting any evidence. So the presentation of trial  
12 evidence is complete.

13 What will happen is the lawyers and the Court need  
14 to meet out of your presence for probably 45 minutes to settle  
15 the jury instructions, and then there's production time as we  
16 make copies. Closing arguments I suspect will be in the  
17 neighborhood of, combined closing arguments, somewhere between  
18 30 and 45 minutes, probably somewhere in there?

19 MR. LUCIA: I think that's accurate.

20 THE COURT: I'm not holding you to that in any way.  
21 I'm guessing. Which means we could give this case to you to  
22 begin deliberations probably before five, not much before  
23 five, but before five.

24 And then there are no time restrictions on your  
25 deliberations. If you choose to deliberate through the dinner

1 hour, we will provide dinner at our expense.

2 And the other option is send you home for the day  
3 and have you come back tomorrow, probably at one thirty, and  
4 then you would hear closing arguments and deliberate.

5 And I'm going to give you a choice. I kind of want  
6 a feel. So on a piece of paper on your notepad just write  
7 "today" or write "tomorrow."

8 So we either keep going, but I'm going to let you  
9 break for about 45 minutes, and then you might go until  
10 whenever. I don't know. But then you will be done. Or come  
11 back tomorrow. So either say today or tomorrow. And then rip  
12 that page out and hand it to Deputy Croxon, please.

13 Juror number 13, you are our alternate juror, which  
14 means you will continue to participate through closing  
15 arguments, but you will not be allowed to deliberate with the  
16 jury. I neglected to tell you that.

17 A JUROR: Question on that, Your Honor?

18 THE COURT: Not yet. Not yet, please. Hold on.

19 During this quick time in the jury deliberation room  
20 please don't discuss this case. Please don't form or express  
21 any opinions.

22 We will stand for our jury as you go into the jury  
23 deliberation room. I can't imagine you will be long, so  
24 please stay close to the door.

25 (Jury excused and the following proceedings



1                   held in open court.)

2           THE COURT: Seven to six. Seven today, six  
3 tomorrow. Don't know where the alternate is.

4           MS. RISTENPART: I hope this isn't like a precursor.

5           THE COURT: Usually the problem is, they didn't get  
6 here until eleven, and they are going to get the case by five.

7           MR. LUCIA: I'm happy to stay and knock this out.

8           THE COURT: I can't imagine the instructions are  
9 going to take long. I don't have any defense instructions.

10          MS. RISTENPART: Your Honor, I have one proffered.

11          THE COURT: We have gone through the State's. It's  
12 not going to take a long time.

13          MS. RISTENPART: Your Honor, if you can allow me to  
14 step out while Mr. Carrico does jury instructions with you,  
15 I'm sure I can wrap up my closing arguments in a timely  
16 fashion to get us started faster.

17          THE COURT: So, but to the court staff, we have to,  
18 it's going to be -- I'd rather tell them 45 minutes and have  
19 it be 40 minutes than tell them 30 and have it be 45. That's  
20 why I get the robe. I'll make the call and get the heat.

21               Go ahead and bring them in, please.

22                   (Jury present, and the following proceedings  
23 held in open court.)

24          THE COURT: Sometime yesterday I told you that as a  
25 judge I make decisions. People are griped by the decisions,

1 and if you are so inclined, you can remember my name and vote  
2 against me. Don't ever hold it against any of the trial  
3 participants.

4 It's seven to six. And I have decided that we are  
5 going to stay, and we are going to push through with this  
6 case.

7 And so you are free to leave for 45 minutes. I need  
8 you back here at 3:45.

9 You may write your question and hand it to Deputy  
10 Croxon, and then I'll consider it with the attorneys. But I  
11 don't want you to speak aloud.

12 So 3:45, ladies and gentlemen, we will see you then.

13 Please, again, don't discuss the case, don't form or  
14 express any opinions.

15 Thanks so much.

16 (Jury excused, and the following proceedings  
17 held in open court.)

18 THE COURT: Really, let's not have them wait. So  
19 let's get busy on the instructions.

20 Miss Ristenpart, carry on. Go where you need to go,  
21 start working on your closing.

22 Mr. Carrico, you are with me. We will go into  
23 chambers. At some point we will go on the record, we will  
24 come back into the courtroom and go on the record, and we will  
25 place our instructions before the reporter.

1 Deputy Croxon, see counsel in if you would, please.

2 THE BAILIFF: Yes, Your Honor.

3 (Off the record.)

4 (The following proceedings held in open court  
5 without the jury present.)

6 THE COURT: Mr. Lucia wanted to instruct the jury  
7 from CALJIC regarding admissions and confessions and  
8 statements. It is my intention to reject that instruction as  
9 proffered.

10 Do you want to memorialize any disagreements?

11 MR. LUCIA: Just briefly. The rationale behind my  
12 offering that was in light of the statement elicited from  
13 Officer Dutra in which Mr. Bowman indicated "it is not mine"  
14 or "that is not mine," specifically. So I just offered that  
15 in an abundance of caution. But I respect the Court's ruling.

16 THE COURT: Now, I'm concerned, Miss Clerk, because  
17 "it's the duty of attorneys on either side of the case," that  
18 has been withdrawn. And then the, so this is the offer and  
19 rejected.

20 All right. To our jury, Deputy Croxon.

21 THE BAILIFF: Yes, sir.

22 (Off the record.)

23 (Jury present, and the following proceedings  
24 held in open court.

25 THE COURT: The entire jury is present, as are

1 counsel and other trial participants.

2           It is now my duty to instruct you on the principles  
3 of law that will govern your deliberations. These principles  
4 of law are somewhat voluminous, so I have asked a lawyer in my  
5 chambers, Miss Anderson, to follow along so that you can read  
6 visually as I read them aloud. You will have one copy of  
7 these instructions in the jury deliberation room with you.  
8 I'm required to read these aloud.

9           You, Miss Reporter, do not need to write these.

10           (Instructions read to the jury by the Court.)

11           THE COURT: You will also have with you in the jury  
12 deliberation room a verdict form which allows you to either  
13 conclude Mr. Bowman is guilty or not guilty.

14           And with that, the State may begin its closing  
15 arguments.

16           MR. LUCIA: Thank you, Your Honor.

17           Good afternoon, ladies and gentlemen. I'll save you  
18 the trouble of introducing myself again now for the third  
19 time. I know that we have been at this today, and I expect to  
20 be brief in moving through my closing argument.

21           But if you remember back to the beginning of trial,  
22 specifically the opening statement, I told you that the  
23 evidence would show you certain things, and then in concluding  
24 that statement I told you that I would come back before you  
25 now at the close of trial and remind you of what those thing

1 were and ask you to return a verdict of guilty on a single  
2 count charged.

3           So that's what I want to do. I want to move through  
4 the evidence that you've heard in a manner that allows you to  
5 apply it to the elements that you found and that the judge  
6 just read to you. So that's what you really have here, folks,  
7 are the combination of two things: Evidence and law.

8           So the evidence in this case is what you heard from  
9 this witness stand. It consists of the testimony of the  
10 witnesses that you listened to, that you observed testify. It  
11 consists of the surveillance video that you observed. It  
12 consists of the documents that you were permitted to view from  
13 either Miss Machen, from the surveillance stills, and things  
14 of that sort.

15           Now, the law in this case is what you just heard  
16 Judge Hardy read. Those are your guideposts. Those are the  
17 boxes in which you look through this evidence and that you can  
18 place it in arriving at a determination in this matter.

19           Now, the crime charged in this case is a single  
20 count, trafficking in a Schedule I controlled substance  
21 between 4 and 14 grams. Now, just like every crime, there's  
22 certainly elements that the State must prove. And as the  
23 judge mentioned, it is my obligation to meet every single one  
24 of those elements beyond a reasonable doubt.

25           Now, the elements in this case is that the

1 defendant, Frederick Bowman, on the 26th day of February 2014,  
2 did willfully, knowingly, and/or intentionally have actual or  
3 constructive possession of any controlled substance or any  
4 mixture which contains any such controlled substance in a  
5 quantity of 4 grams or more, but less than 14, and that this  
6 all took place here within the county of Washoe, state of  
7 Nevada.

8 Now, I don't mean to work backwards here, but just  
9 starting with that last one, within the county of Washoe,  
10 state of Nevada. 911 Parr Boulevard is the Washoe County  
11 Sheriff's Office jail facility. It's within the county of  
12 Washoe, state of Nevada.

13 So let's move through the remainder of those from  
14 the top.

15 Now, the first element, willfully, you received an  
16 instruction on this. And what it really speaks to is the  
17 purposefulness of action. It requires some conscious decision  
18 to make a move or to make an act.

19 Now, in this case what you have here is an abundance  
20 of evidence that Mr. Bowman was acting quite consciously and  
21 was acting quite willfully when he was in possession of that  
22 plastic bag. And we are going to get into that a little bit  
23 more here, but I want to also talk about some of the other  
24 elements that we have to discuss.

25 Now, this was provided to you in the packet of jury



1 instructions, but the State must prove as one of the elements  
2 in this case beyond a reasonable doubt that Mr. Bowman  
3 knowingly or intentionally possessed a controlled substance.

4 Now, knowingly. Imports the knowledge that the  
5 facts exist which constitute the act or admission of a crime.  
6 Does not require knowledge of its unlawfulness. And knowledge  
7 of any particular fact may be inferred from the knowledge of  
8 any other such fact as would put an ordinarily prudent person  
9 on inquiry.

10 So what we are really getting at here is we are  
11 trying to get inside Mr. Bowman's mind and prove to you beyond  
12 a reasonable doubt what he knew. And what this instruction  
13 tells you is that you can look to the facts that surround the  
14 circumstances here and infer that knowledge.

15 Intentionally has a definition as well. A person  
16 commits an act intentionally when they act willfully or  
17 purposefully, not accidentally and not involuntarily.

18 Now, folks, the evidence that you have heard from  
19 the beginning of this case until the end of it allows you to  
20 conclude beyond a reasonable doubt that Mr. Bowman was  
21 knowingly and/or intentionally in possession of that plastic  
22 bag.

23 Now, most obviously, the methamphetamine was present  
24 on Mr. Bowman's person. Again, how do we know that? Consider  
25 the evidence.



1 (Video tape playing.)

2 MR. LUCIA: This is the first surveillance tape that  
3 you watched. Of course this is the search area. You have  
4 seen this tape from this angle multiple times. Most  
5 importantly, before Mr. Bowman walks into that room, on that  
6 section of the floor it is absolutely bare. The other  
7 individual who later on in the video ends up around here  
8 (indicating) does never, excuse me, doesn't ever walk by that  
9 area. This little light pockmark here never moves at all.

10 But what's clear as day, as you can see, the spot  
11 where Mr. Bowman was searched was absolutely empty, was  
12 absolutely bare. He walks into the room, you can see where  
13 the search is conducted.

14 If you recall the testimony from Deputy Gerow, this  
15 camera is actually housed in a housing unit, and it's quite  
16 obvious Mr. Bowman is apparently looking in the same direction  
17 as the camera, and the search was being conducted.

18 Now, the search, there was testimony about the  
19 search. If you recall from Deputy Dutra -- excuse me, Officer  
20 Dutra, remember, there's two types of searches. There's the  
21 search that he does on the scene, which is the pat-down  
22 search, and there's a more thorough search that they do at the  
23 jail. You can see the difference.

24 You saw the surveillance footage between both  
25 instances. In that search Mr. Bowman's belt is removed, his

1 pockets are turned inside out, his shoes are taken off. It's  
2 much more thorough, and it's designed to be thorough for this  
3 exact reason.

4 And what I wanted to do is to show you what you saw  
5 in the video, but to break it down. And I've highlighted it  
6 here in the lower left-hand corner in red, second by second,  
7 as this event unfolds.

8 So you see Deputy Keast to his left, Deputy Gerow to  
9 his right. At this point they are moving Mr. Bowman back.  
10 You can see this officer here is moving the tub that was  
11 covering the chair. And as Mr. Bowman is moving back, one  
12 second later you see neither Deputy Gerow nor Deputy Keast in  
13 that general area where the methamphetamine falls from his  
14 pant leg. It is now lying, at 4:40 a.m., right there on the  
15 floor.

16 Again, same search, same date, different view. Same  
17 area of the floor, here, barren. As the video unfolds,  
18 Mr. Bowman, with Mr. Gerow now to his right still, even  
19 further back now from the area where the methamphetamine was  
20 recovered. Mr. Bowman is taking a step back with his right  
21 foot. That same angle, advanced a little bit further. Now a  
22 further step back. And then finally as he lifts his left leg  
23 to complete the act of sitting in the chair, the  
24 methamphetamine falls from his pant leg and is now sitting on  
25 the floor in the area of the search room immediately after the

1 search was conducted, where the floor was totally and  
2 completely bare.

3 Not present before he enters the room, not present  
4 before he was searched, falls from his pant leg directly  
5 underneath his feet. Neither officer is near him at the time  
6 the bag falls.

7 You have heard the testimony from Deputy Gerow.  
8 This notion that there's this 50-yard walkway, there was  
9 nothing on that walkway when he picked Mr. Bowman up to take  
10 him into the room. He never noticed anything before  
11 Mr. Bowman entered the room. It's quite clear from the  
12 evidence, folks, Mr. Bowman had that bag on his person when he  
13 walked in that room and was searched by the deputies.

14 It's also important to consider how the drugs were  
15 present on his person. What I mean by this is consider how, I  
16 guess hidden is the best word I can describe, they were. You  
17 saw the search that was conducted by Officer Dutra at the  
18 Nugget, the pat-down search. You saw him go around the pants,  
19 slightly touch the pockets, go around the back and touch  
20 there. What you never saw Officer Dutra do, interestingly  
21 enough, is search anywhere beneath the knee or the lower thigh  
22 area. And as he told you, he had no reason to think there was  
23 anything there, why would he look.

24 Also consider the other items that were found on  
25 Mr. Bowman's person that night. And this is important. Think

1 back if you can to the testimony from Deputy Gerow regarding  
2 what the bag was like that had the narcotics in it. You  
3 recall there was a lot to be made about whether there was a  
4 zip on the top, whether it was a sandwich bag, whether it was  
5 Saran Wrap.

6 And you recall the testimony of Eric Gerow. It was  
7 not a zip top bag. It was what he called clear plastic Saran  
8 Wrap, and around that it was kind of loosely tied together,  
9 and inside was 5.0 some odd grams net weight of narcotics.

10 Recall the testimony also of Eric Gerow when he went  
11 back and saw that little object peeking out of the defendant's  
12 sock. He removes the object. And what is it? Plastic wrap,  
13 no zip top. I would submit to you the same exact wrapping,  
14 the same type the defendant used to package the narcotics when  
15 he was booked into the facility.

16 And then finally, folks, consider the statements  
17 that the defendant made when the drugs were located. You  
18 recall the testimony from Officer Dutra. "It's not mine."  
19 Mr. Bowman is trying to distance himself immediately from that  
20 packet, because he knows that he's not supposed to have it on  
21 him.

22 Folks, the evidence in this case shows you clearly  
23 Mr. Bowman was knowingly and/or intentionally in possession of  
24 that plastic bag.

25 Now, in getting to that act of possession, as the



1 judge mentioned, there were two kinds really. There's actual  
2 possession and constructive possession. Actual possession is  
3 actual dominion and control over an object. Direct physical  
4 control over a thing at a given time.

5 Now, folks, in this case that same evidence you can  
6 look to and arrive at the same conclusion, that Mr. Bowman had  
7 actual possession of that plastic bag. I don't mean to insult  
8 anybody's intelligence here, but the bag didn't sprout legs  
9 and run into that room on its own. Somebody carried it in  
10 there.

11 And in fact this case shows you that all of the  
12 evidence points to that person being Frederick Bowman, again  
13 for the same reasons. It wasn't there before he went in the  
14 room. You saw the surveillance tape from both angles. When  
15 he steps back, the bag falls to the floor from his left pant  
16 leg area, I would submit to you near where a sock line could  
17 be, near where the other plastic bags were located. And  
18 again, the same evidence will lead you to the same conclusion.

19 Now, just as important is the fact that Mr. Bowman  
20 was in possession of the bag is what's in the bag. Now, in  
21 order to convict Mr. Bowman, like I said, the State must meet  
22 every single element, including the elements that he possessed  
23 a Schedule I controlled substance, or any mixture which  
24 contains a controlled substance, the quantity of the substance  
25 has to be more than 4 grams but less than 14.

1           Methamphetamine is a Schedule I controlled  
2 substance, as were you instructed. And in fact  
3 methamphetamine was what was found in the bag from Deputy  
4 Gerow. The appearance of that substance, crystalline white,  
5 it was similar in his training and experience to  
6 methamphetamine. The testimony of Officer Dutra, the same  
7 training and experience, he actually performed a field testing  
8 kit analysis. This is the one that turned purple, if you  
9 remember.

10           And then finally, who can forget the testimony of  
11 Diane Machen, who in addition to I think memorizing every  
12 acronym for every sort of licensing bureau in the world, ran  
13 her own tests on the substance, performed four of them  
14 actually, and every single one of those results in the same  
15 conclusion that scientifically in that bag was  
16 methamphetamine.

17           And then you can see for yourself. This is her  
18 affidavit, color test, two microcrystalline tests, the FT-IR  
19 test. In the bag was methamphetamine.

20           And then finally, folks, the last element, that that  
21 methamphetamine weighed weight between 4 and 14 grams.

22           Now, this is the analysis the first time that Miss  
23 Machen weighed the substance, 5.058 grams net weight. She  
24 reweighed the substance again and nonetheless found the same  
25 result. It's over 4 grams. It was 4.99 grams the second time

1 around, which is expected given the fact that you are going to  
2 be consuming it in the confirmatory phase of the testing.

3 The plus or minus number, I think we treaded that  
4 quite well. In any event, folks, the methamphetamine that  
5 Mr. Bowman possessed was more than 4 grams.

6 So against that backdrop, the evidence in this case  
7 is clear. The conclusion that I think it begs you to reach is  
8 simply inescapable. Mr. Bowman walked into the sheriff's  
9 facility, 911 Parr Boulevard. He was placed against the wall  
10 and searched. During that search, the methamphetamine that he  
11 secreted on his person fell out, and in fact it weighed at 5  
12 grams.

13 So, folks, I'm going to ask you to return a guilty  
14 verdict on the single count of trafficking in a controlled  
15 substance.

16 Than you for your time, and I appreciate your  
17 attention.

18 THE COURT: Defense counsel.

19 MS. RISTENPART: Thank you, Your Honor. Could we  
20 just have a stretch break while I --

21 THE COURT: Absolutely. Let's all stand, please.

22 (Off the record.)

23 MS. RISTENPART: Ladies and gentlemen, when we  
24 started yesterday, we talked in voir dire about direct and  
25 circumstantial evidence. And we talked about the cookie



1 example as to whether or not direct versus circumstantial  
2 evidence and what we need to do in between jumping to a  
3 conclusion and coming to a sound, investigated, and  
4 knowledgeable decision as to what happened in any specific  
5 event.

6           What you heard right now is the State's theory as to  
7 what they believe they can prove beyond a reasonable doubt in  
8 regards to the level one trafficking charged against  
9 Mr. Bowman.

10           What you didn't hear is any direct evidence. You  
11 did not hear a single officer state I saw the drugs on  
12 Mr. Bowman's person. You heard a lot of circumstantial  
13 evidence that the State wants you to jump to the conclusion  
14 that that bag that was found on the ground in the sallyport  
15 was Mr. Bowman's.

16           So let's look at what we know. We have videos from  
17 the casino showing Officer Dutra's search and also from the  
18 Washoe County sallyport room. Three videos altogether.  
19 Exhibit 7 is the Nugget surveillance video, Exhibit 1 and 2  
20 are from the sallyport surveillance.

21           You also had testimony, albeit brief, but you had  
22 SPD Officer Dutra, Washoe County Deputy Gerow, and also FIS  
23 Washoe County sheriff's Diane Machen, who did the criminology.  
24 Also you had some forensics in this case, specifically two lab  
25 reports, Exhibits 5 and 1.

1           So in looking at the evidence that has been  
2 presented to you, and I know you are sitting here looking at  
3 me thinking we just saw a video. What are we doing here?  
4 Ladies and gentlemen of the jury, this is what we are doing  
5 here, is really critically looking at the evidence that was  
6 handed to you and really actually analyzing what we saw  
7 throughout all of that evidence.

8           Can the State prove beyond a reasonable doubt that  
9 Mr. Bowman willfully, knowingly, and intentionally was in  
10 actual or constructive possession of the drugs? The State  
11 stated, and they left out part of the elements that are  
12 actually part of drug trafficking.

13           If I may approach the television, Your Honor.

14           THE COURT: Yes.

15           (Video playing.)

16           MS. RISTENPART: Defendant Frederick Bowman. We are  
17 not arguing that. They have alleged a charge against  
18 Mr. Bowman.

19           Knowingly and/or intentionally. We will get to  
20 that.

21           Sell, manufacture, deliver or be in actual or  
22 constructive possession.

23           You saw the State just left off the first three of  
24 those elements. There's no evidence of selling, there's no  
25 evidence of manufacturing, there is no evidence of delivering

1 of drugs.

2 So right there already, element's not been proven.

3 So it comes down to the issue of actual or  
4 constructive possession, in addition to whether that was even  
5 knowingly done by Mr. Bowman.

6 When we look at Exhibit 1, which is the sallyport  
7 angle from this viewpoint, you can see that there is no actual  
8 possession.

9 As we heard from the State and all the witnesses, no  
10 one saw the bags on Mr. Bowman's person. No one saw it in his  
11 hand, no one saw it in his pocket. No one saw it anywhere on  
12 his person.

13 You heard specifically from Deputy Gerow, who stated  
14 it just appeared. I looked over, and there it was on the  
15 ground. No actual possession.

16 So then you go to well, can the State prove it by  
17 constructive possession?

18 When we look at the issue of constructive  
19 possession, the key element that the State must prove is  
20 whether Mr. Bowman knowingly constructively possessed. Merely  
21 being by something does not mean that I am knowingly in  
22 constructive possession. If I didn't know that there was  
23 something next to me, I wouldn't, that would not be proven  
24 beyond a reasonable doubt.

25 You heard that his first statement when he saw that

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDRICK LEWIS BOWMAN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondents.

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Clerk of Supreme Court

APPELLANT'S APPENDIX  
VOLUME I

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DA #14-7990

SPD 14-1782

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9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
10  
11 IN AND FOR THE COUNTY OF WASHOE

12 \* \* \*

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No.: CR14-0708

15 v.

Dept. No.: D01

16 FREDERICK LEWIS BOWMAN,

17 Defendant.

18 INFORMATION

19 RICHARD A. GAMMICK, District Attorney within and for the  
20 County of Washoe, State of Nevada, in the name and by the authority  
21 of the State of Nevada, informs the above entitled Court that  
22 FREDERICK LEWIS BOWMAN, the defendant above named, has committed the  
23 crime of:

24 TRAFFICKING IN A SCHEDULE I CONTROLLED SUBSTANCE, 4-14  
25 GRAMS, a violation of NRS 453.3385(1), a felony, in the manner  
26 following:

That the said defendant on the 26th day of February, 2014,  
or thereabout, and before the filing of this Information, at and  
within the County of Washoe, State of Nevada, did willfully,

1 unlawfully, knowingly and/or intentionally, sell, manufacture,  
2 deliver, or be in actual or constructive possession of 4 grams or  
3 more, but less than 14 grams, of a Schedule I controlled substance,  
4 or a mixture which contains a Schedule I controlled substance, to  
5 wit: Methamphetamine, which the Defendant possessed at or near 1100  
6 Nugget Avenue, Sparks, Nevada or 911 Parr Boulevard, Reno, Nevada.  
7

8 All of which is contrary to the form of the Statute in such  
9 case made and provided, and against the peace and dignity of the  
10 State of Nevada.

11  
12 RICHARD A. GAMMICK  
13 District Attorney  
14 Washoe County, Nevada  
15

16 By: /s/ Travis Lucia  
17 TRAVIS LUCIA  
18 11188  
19 Deputy District Attorney  
20  
21  
22  
23  
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25  
26



1           The following are the names and addresses of such witnesses  
2 as are known to me at the time of the filing of the within  
3 Information:

4  
5 SPARKS POLICE DEPARTMENT:

6 OFFICER DUTRA

7 WASHOE COUNTY CRIME LAB:

8 DIANE MACHEN

9 WASHOE COUNTY SHERIFF'S DEPARTMENT:

10 DEPUTY GEROW

11           The party executing this document hereby affirms that this  
12 document submitted for recording does not contain the social security  
13 number of any person or persons pursuant to NRS 239B.230.

14                           RICHARD A. GAMMICK  
15                           District Attorney  
16                           Washoe County, Nevada

17                           By: /s/ Travis Lucia  
18                           TRAVIS LUCIA  
19                           11188  
20                           Deputy District Attorney

21  
22  
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25 PCN: SPPD0037833C  
26

1 Code #4185  
2 SUNSHINE REPORTING SERVICES  
3 151 County Estates Circle  
4 Reno, Nevada 89511

COPY

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 HONORABLE DAVID A. HARDY, DISTRICT JUDGE

8 - o o o -

9 THE STATE OF NEVADA,

Case No. CR14-0708

10 Plaintiff,

Dept No. 15

11 vs.

12 FREDERICK LEWIS BOWMAN,

13 Defendant.  
14 \_\_\_\_\_/

15  
16 TRANSCRIPT OF PROCEEDINGS

17 JURY TRIAL

18 DECEMBER 1, 2014

19 RENO, NEVADA

20  
21  
22  
23 REPORTED BY: CORRIE L. WOLDEN, NV CSR #194, RPR, CP

24 JOB NO. 228433

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A P P E A R A N C E S

FOR THE PLAINTIFF:

WASHOE COUNTY DISTRICT ATTORNEY'S  
OFFICE  
BY: TRAVIS B. LUCIA, ESQ.  
One South Sierra Street  
Reno, Nevada 89520  
775-328-3200

FOR THE DEFENDANT:

RISTENPART LAW  
THERESA ANNE RISTENPART, ESQ.  
GALEN CARRICO, ESQ.  
200 S. Virginia Street, #833  
Reno, Nevada 89501  
775-223-4135

1 RENO, NEVADA, MONDAY, DECEMBER 1, 2014, 3:01 P.M.

2 -o0o-

3

4 MS. RISTENPART: I apologize, Your Honor. I  
5 thought it was 3:30.

6 THE COURT: We are good. So I wanted to ask, how  
7 many alternates?

8 MR. LUCIA: I expect, Judge, that I will be done  
9 with my case-in-chief tomorrow, so I think if we start with  
10 three in the panel and whittle that down to one, I would be  
11 happy with that.

12 MS. RISTENPART: I would agree with that,  
13 Your Honor.

14 THE COURT: Thank you. Next, on the charting  
15 document, when the Clerk reads the Information do you want  
16 her to strike a felony?

17 MS. RISTENPART: No.

18 THE COURT: Or leave it in as --

19 MS. RISTENPART: I would like to keep it in.

20 THE COURT: Okay. Thank you. And then in the  
21 jury pool there are, my Clerk staff tells me, a mother and  
22 daughter, both Cozzo, C-O-Z-Z-O. My practice when this  
23 occurs is to first ask Counsel which of the two they prefer  
24 to keep, and if you don't have a preference I will invite

1    them to decide who gets to go home and who gets to stay, but  
2    generally I won't keep two people who live under the same  
3    roof. This mother and daughter live together,

4               MS. RISTENPART: They live together?

5               THE COURT: They do.

6               MS. RISTENPART: I'm going to defer that to  
7    Mr. Carrico, Your Honor. This is Galen Carrico. I don't  
8    know if you actually met him.

9               THE COURT: Mr. Carrico, nice to see you, sir.

10              MR. CARRICO: Thank you, Your Honor. Cozzo you  
11    said?

12              THE COURT: Cozzo, C-O-Z-Z-O.

13              MR. CARRICO: I think we prefer Shauna Cozzo.

14              THE COURT: Mr. Lucia?

15              MR. LUCIA: Your Honor, that is fine with the  
16    State.

17              THE COURT: All right. Next, do we have anything  
18    before we bring our jury panel in?

19              MS. RISTENPART: Your Honor, I just have, based  
20    upon I got a list of the jury trial exhibits from your Court  
21    Clerk, that apparently Mr. Don White and Mr. Lucia had  
22    marked in as previous Counsel, and I did see an Exhibit  
23    Number 4, which is a photo of a razor blade within a plastic  
24    bag, and I have not had a conversation with the State as to

1 whether or not it is even relevant and whether or not they  
2 have actually done a proper Petrocelli hearing before trying  
3 to admit that evidence before the jury.

4 MR. LUCIA: I'm happy to address that now, Judge.

5 THE COURT: I don't really want to address it now.  
6 I have a jury that is downstairs. I would like to take care  
7 of these things before, after or during breaks.

8 The question for me then, we are not going to do  
9 any closings, we are not going to do any openings, excuse  
10 me, until tomorrow, so there will be no references to a  
11 razor blade during voir dire and we can address it after the  
12 jury goes home.

13 MR. LUCIA: That's fair.

14 THE COURT: Okay?

15 MS. RISTENPART: Understood, Your Honor. Thank  
16 you.

17 THE COURT: All right. Anything else?

18 MR. LUCIA: I have nothing, Judge. Thank you.

19 THE COURT: All right. Miss Clerk, summons the  
20 jury, please. Ladies and gentlemen, in Department 15 we  
21 always stand for our jury and so in a moment you will join  
22 me as we stand for our panel.

23 Mr. Carrico, what is your first name?

24 MR. CARRICO: Galen, Your Honor. G-A-L-E-N is how

1 it is spelled.

2 THE COURT: Mr. Lucia, what is your first name?

3 MR. LUCIA: Travis.

4 THE COURT: So you want to keep Shauna?

5 MR. CARRICO: Yes.

6 THE COURT: Do you know yet how long your  
7 case-in-chief will be?

8 MS. RISTENPART: Your Honor, I would anticipate,  
9 based upon the State's case-in-chief, I would be very brief.

10 THE COURT: Well said. You told me nothing but  
11 everything.

12

13 (Whereupon a break was taken from 3:09 p.m. to 3:12 p.m.)

14

15 THE COURT: Mr. Carrico, Brenda and Shauna didn't  
16 show up.

17 MR. CARRICO: Okay.

18 THE COURT: So when a juror doesn't show up, I  
19 attend to their absence separate from the trial. I summons  
20 them and we have a conversation about it.

21 MR. CARRICO: Thank you.

22 MR. LUCIA: I appreciate that.

23 THE COURT: It is not fun.

24 MR. LUCIA: Uncomfortable conversations with



1 witnesses like that, too, a subpoena is a subpoena, an order  
2 is an order.

3 THE COURT: I have had conversations with law  
4 enforcement who we expect to know.

5 MR. LUCIA: Police officers as well, that is  
6 definitely not fun.

7

8 (Whereupon a break was taken from 3:15 p.m. to 3:19 p.m.)

9 (Whereupon the jury panel was present.)

10

11 THE COURT: We will go on the record in CR14-0708,  
12 The State of Nevada versus Frederick Lewis Bowman.

13 Mr. Bowman is present with his attorneys. Ms. Theresa  
14 Ristenpart and Mr. Galen Carrico are his Counsel.

15 Mr. Travis Lucia is present on behalf of the State.

16 I'm going to begin by speaking for just a moment  
17 about this very unusual hour that we begin. I have never  
18 known a trial to start this late in the day, and as a Judge  
19 I make decisions and some people are very unhappy and others  
20 are okay with the decisions I make.

21 I made the decision to bring you in today as  
22 opposed to tomorrow morning. I feared that many of you  
23 would have blocked off today and made arrangements to be  
24 here. Through no fault of, through no fault of the trial

1 participants, we were unable to begin today's proceeding  
2 until just now.

3           It typically takes us about three hours to select  
4 a jury, so instead of starting at 9:00 and finishing during  
5 the noon hour, we are going to start now and finish  
6 hopefully by 6:30 or 6:00. We are going to be efficient in  
7 the time that we take, though this is an important matter to  
8 both the State and to Mr. Bowman and we will take as much  
9 time as necessary.

10           But if you are not selected for jury duty, I want  
11 you to know that tonight so that you don't have to come back  
12 tomorrow, and those of you who are selected we will see you  
13 tomorrow. Because of the darkness of the hour, we have made  
14 arrangements to have you at your request escorted to your  
15 cars. We are certainly happy to accommodate you in any way  
16 for your safety and security.

17           Welcome to Department 15 of the Second Judicial  
18 District Court. I'm Judge David Hardy. I tell you that  
19 because in a little while I will ask you if any of you know  
20 me.

21           I have introduced Mr. Lucia, Ms. Ristenpart, and  
22 Mr. Carrico. Also, seated in between Ms. Ristenpart and  
23 Mr. Carrico is Mr. Bowman.

24           You have been summoned to serve as prospective

1 jurors in a criminal case that is scheduled to begin  
2 tomorrow morning and will likely be done Wednesday. It is  
3 very difficult for me to anticipate that this case will go  
4 beyond Wednesday and it may not go into Wednesday by much.

5 Now, there are no time restrictions placed upon  
6 Counsel, and I'm frequently wrong when I predict time, but I  
7 want you to know this is a two day criminal trial.

8 Given the late hour, I will dispense with some of  
9 the civics comments and just tell you how rich our jury  
10 tradition is. We rely upon citizens randomly selected to  
11 sit together and compose the voice and values of our  
12 community.

13 The genius of our jury system is that you bring a  
14 diversity of experiences, of perspectives into this room,  
15 and it truly will be a random process by which you are  
16 selected. The jury system prevents despotism. It prevents  
17 rule by those who are in authority.

18 The jury will be the judge, together, the judge of  
19 the facts, and it is a great responsibility to serve on a  
20 jury. I hope that you accept this responsibility as a duty  
21 of your citizenship.

22 In a moment some of you may want to tell me that  
23 this is not a good time for you to serve. I will certainly  
24 listen, but you should know at the outset that I'm a Judge

1 who believes that preserving the random nature of your  
2 service is very important, and I acknowledge that I have  
3 summoned you here for no pay to spend hours with us. I know  
4 that.

5 We also require you to pay taxes in April, and  
6 although we no longer have a draft, we have counted on  
7 involuntary conscriptions in service abroad and this is one  
8 such feature for me. That is how deeply I believe in the  
9 jury system.

10 So please accommodate this obligation, and I trust  
11 that you will have an experience that is memorable,  
12 regardless of what occurs, regardless of what facts are  
13 presented and what verdict may or may not be reached, and I  
14 want you to trust me that at the moment, if you are selected  
15 to serve, the moment when you read a verdict, regardless of  
16 what it is, you will feel the weighted responsibility of  
17 justice.

18 You will understand the significance of your work  
19 both for the State and for Mr. Bowman. This is not a  
20 trifling matter. This is a location in our community where  
21 we do sacred things.

22 Now, that is sacred in a secular sense, not a  
23 spiritual sense. There is something unique and special  
24 about bringing strangers together to sit in judgment of

1 facts and do nothing but the right thing. It is a rare  
2 privilege and I'm always inspired by members of my community  
3 who take that responsibility seriously.

4 At this time I will ask the Clerk to call the  
5 roll. Just please respond audibly when you hear your name.

6 Miss Clerk.

7 THE CLERK: Thank you, Judge. Linda Andreasen?

8 PROSPECTIVE JUROR ANDREASEN: Yes.

9 THE CLERK: Deborah Armstrong?

10 PROSPECTIVE JUROR ARMSTRONG: Yes.

11 THE CLERK: David Barrera?

12 PROSPECTIVE JUROR BARRERA: Yes.

13 THE CLERK: Sheri Bloomquist?

14 PROSPECTIVE JUROR BLOOMQUIST: Yes.

15 THE CLERK: Rhoda Boyd?

16 PROSPECTIVE JUROR BOYD: Present.

17 THE CLERK: Brenda Cozzo-Julian?

18 PROSPECTIVE JUROR COZZO-JULIAN: Yes.

19 THE CLERK: Claire Curatolo?

20 PROSPECTIVE JUROR CURATOLO: Here.

21 THE CLERK: Christine Cutler?

22 PROSPECTIVE JUROR CUTLER: Present.

23 THE CLERK: Charles Darland?

24 PROSPECTIVE JUROR DARLAND: Yes.

1 THE CLERK: Donnie Dungey?  
2 PROSPECTIVE JUROR DUNGEY: Yes.  
3 THE CLERK: Jodi Eldridge?  
4 PROSPECTIVE JUROR ELDRIDGE: Yes.  
5 THE CLERK: Glenn Endslesly?  
6 PROSPECTIVE JUROR ENDSLEY: Yes.  
7 THE COURT: Endsley, probably.  
8 THE CLERK: Endsley.  
9 THE COURT: You should know we practice names  
10 before you come in, but we still make mistakes. No offense  
11 is intended by it.  
12 THE CLERK: Thank you, Judge. Michael Gaige?  
13 PROSPECTIVE JUROR GAIGE: Yes.  
14 THE CLERK: Arthur Gies?  
15 PROSPECTIVE JUROR GIES: Gies.  
16 THE CLERK: Gies. Thank you.  
17 Mysti Harding?  
18 PROSPECTIVE JUROR HARDING: Present.  
19 THE CLERK: Barbara Harkey?  
20 PROSPECTIVE JUROR HARKEY: Here.  
21 THE CLERK: Kathlyn Hogan?  
22 PROSPECTIVE JUROR HOGAN: Here.  
23 THE CLERK: Melissa Hubert?  
24 PROSPECTIVE JUROR HUBERT: Here.

1 THE CLERK: Ana Jones?  
2 PROSPECTIVE JUROR JONES: Present.  
3 THE CLERK: Rocio Abigail Kniesteadt?  
4 PROSPECTIVE JUROR KNIESTEADT: Rocio, here.  
5 THE CLERK: Thank you. Stacy Lauder?  
6 PROSPECTIVE JUROR LAUDER: Here.  
7 THE COURT: Gail Lee?  
8 PROSPECTIVE JUROR LEE: Here.  
9 THE CLERK: Claudia Lindsay?  
10 PROSPECTIVE JUROR LINDSAY: Here.  
11 THE CLERK: Jeremy Luinstra?  
12 PROSPECTIVE JUROR LUINSTRA: Present.  
13 THE CLERK: Benjamin Malley?  
14 PROSPECTIVE JUROR MALLEY: Here.  
15 THE CLERK: Nicole Martinez?  
16 PROSPECTIVE JUROR MARTINEZ: Here.  
17 THE CLERK: Geoffrey Mueller?  
18 PROSPECTIVE JUROR MUELLER: Here.  
19 THE CLERK: Ralph Murphy?  
20 PROSPECTIVE JUROR MURPHY: Here.  
21 THE COURT: Richard Nielson?  
22 PROSPECTIVE JUROR NIELSON: Here.  
23 THE CLERK: Elizabeth Norman?  
24 PROSPECTIVE JUROR NORMAN: Here.



1 THE CLERK: Michael Paul?  
2 PROSPECTIVE JUROR PAUL: Here.  
3 THE CLERK: Beatriz Perez?  
4 PROSPECTIVE JUROR PEREZ: Present.  
5 THE CLERK: Teresa Pierce?  
6 PROSPECTIVE JUROR PIERCE: Here.  
7 THE CLERK: Kelly Price?  
8 PROSPECTIVE JUROR PRICE: Here.  
9 THE CLERK: Sarah Ptaschek?  
10 PROSPECTIVE JUROR PTASCHEK: Present.  
11 THE COURT: Would you say your name, please?  
12 PROSPECTIVE JUROR PTASCHEK: Ptaschek.  
13 THE CLERK: Thank you. Anna Sandoval?  
14 PROSPECTIVE JUROR SANDOVAL: Here.  
15 THE CLERK: David Savoy?  
16 PROSPECTIVE JUROR SAVOY: Savoy, here.  
17 THE CLERK: Thank you. Sean Sinocruz?  
18 PROSPECTIVE JUROR SINOCRUZ: Here.  
19 THE CLERK: Michael Smit?  
20 PROSPECTIVE JUROR SMIT: Here.  
21 THE CLERK: Thomas Smith?  
22 PROSPECTIVE JUROR SMITH: Here.  
23 THE CLERK: Brandon Steadman?  
24 PROSPECTIVE JUROR STEADMAN: Here.

1 THE CLERK: Bette Storey?  
2 PROSPECTIVE JUROR STOREY: Here.  
3 THE CLERK: Gene Thandi?  
4 PROSPECTIVE JUROR THANDI: Here.  
5 THE CLERK: Dean Tsuda.  
6 PROSPECTIVE JUROR TSUDA: Tsuda, here.  
7 THE CLERK: Thank you. Paul Uzarski?  
8 PROSPECTIVE JUROR UZARSKI: Uzarski, here.  
9 THE CLERK: Thank you. Laureana Vargas?  
10 PROSPECTIVE JUROR VARGAS: Present.  
11 THE CLERK: Angel Velez-Maisonette?  
12 PROSPECTIVE JUROR VELEZ-MAISONETTE: Here, Velez.  
13 THE CLERK: Thank you. Michael Williams?  
14 PROSPECTIVE JUROR WILLIAMS: Here.  
15 THE CLERK: Laurie Yott?  
16 PROSPECTIVE JUROR YOTT: Here.  
17 THE COURT: Thank you. Please stand. I'm going  
18 to ask you to be sworn.  
19 THE CLERK: Please raise your right hand.  
20 (Prospector jurors were sworn.)  
21 THE COURT: Thank you. Please be seated. Did we  
22 miss anybody when we called the roll? Yes, we did? No.  
23 My deepest interest along with the attorneys and  
24 Mr. Bowman is that we select a jury that is comprised of 12

1 open minded citizens who are completely neutral who have no  
2 personal prejudices for or against either side in this  
3 trial.

4 In order to accomplish this desired result, it is  
5 necessary for me to ask a series of questions. We refer to  
6 this process as voir dire, which is a Latin phrase meaning  
7 to say what is true. I will ask preliminary voir dire  
8 questions and then the attorneys have the right of  
9 supplemental questions.

10 Our only objective is to determine your ability  
11 and your willingness to be fair and impartial. Although it  
12 is your duty as a citizen of this community to serve when  
13 called upon, it is also your duty not to serve if the case  
14 is not right for you.

15 I encourage you, I admonish you to be honest and  
16 thorough in your answers. For if you are not, you may cause  
17 unnecessary delays, there could be a contaminated verdict,  
18 and you would be called upon to personally account for your  
19 participation in this voir dire.

20 I acknowledge that this process requires the  
21 public disclosure of private facts and regret the public  
22 disclosures, but I will do it nonetheless, because in the  
23 interest of justice, both for the State and Mr. Bowman, it  
24 transcends your interests in privacy.

1           Now, given this type of case I don't imagine we  
2 are going to have too many privacy incursions, and I would  
3 accommodate some privacy conversations, if appropriate. I  
4 don't want to go too far beyond the line, but I will ask  
5 questions and the attorneys may ask questions that cause you  
6 to reflect and they may embarrass you a little bit.

7           For example, I'm going to ask you at some point  
8 who has been charged with a crime, and you are going to tell  
9 me that when you were in college you smoked marijuana and  
10 you regret it, or that three months ago you had a DUI and  
11 you are not going to want to tell your fellow citizens.

12           But these are the type of disclosures that are  
13 necessary, because after we have finished the voir dire  
14 examinations and the attorneys have passed you for cause,  
15 meaning that they are unable to persuade me that you should  
16 be excused, because you have a bias or you cannot be  
17 impartial, they then have the opportunity to meet out of  
18 your presence and to strike several of you without any  
19 explanation.

20           That is called a peremptory challenge, and your  
21 answers will inform their peremptory choices, and so they  
22 are going to want to get to know you a little bit by  
23 listening to your answers. I'm going to ask you who watches  
24 Fox News and who watches MSNBC. Those are the types of

1 questions, and it is all based upon your self reporting.  
2 The system works best when you participate in good faith.

3 And I have done this for awhile and I have great  
4 confidence in our citizens. I know that you will  
5 participate in good faith. That has been my experience,  
6 despite it being prickly from time to time.

7 Let me first ask if there is anybody who has been  
8 unable to follow my words because you do not have sufficient  
9 knowledge of the English language? Has anybody struggled to  
10 follow my words? Everybody is -- Sir, what is your name,  
11 please?

12 PROSPECTIVE JUROR VELEZ: Angel.

13 THE COURT: Velez?

14 PROSPECTIVE JUROR VELEZ: Yes.

15 THE COURT: Are you employed, sir?

16 PROSPECTIVE JUROR VELEZ: No, not at the moment.

17 THE COURT: Is English your first language?

18 PROSPECTIVE JUROR VELEZ: No.

19 THE COURT: What is your first language?

20 PROSPECTIVE JUROR VELEZ: Spanish.

21 THE COURT: How long have you been in an English  
22 speaking country?

23 PROSPECTIVE JUROR VELEZ: About 20 years.

24 THE COURT: 20 years. Did you go to school here?

1 PROSPECTIVE JUROR VELEZ: Yes.

2 THE COURT: Have you been employed here in  
3 America?

4 PROSPECTIVE JUROR VELEZ: Yes.

5 THE COURT: What have you done for work?

6 PROSPECTIVE JUROR VELEZ: Warehouse, cooking,  
7 construction.

8 THE COURT: Thank you. I'm going to keep you on  
9 the panel. Anybody else? Your name, please?

10 PROSPECTIVE JUROR PEREZ: Beatriz Perez.

11 THE COURT: It will take me just a moment.  
12 Beatriz Perez?

13 PROSPECTIVE JUROR PEREZ: Perez.

14 THE COURT: What is your first language?

15 PROSPECTIVE JUROR PEREZ: Spanish.

16 THE COURT: How long have you been speaking  
17 English?

18 PROSPECTIVE JUROR PEREZ: Two years.

19 THE COURT: Two years?

20 PROSPECTIVE JUROR PEREZ: Yes.

21 THE COURT: How long have you been in an English  
22 speaking country?

23 PROSPECTIVE JUROR PEREZ: 10 years.

24 THE COURT: You have been here 10 years and you

1 have been speaking English for 2 years?

2 PROSPECTIVE JUROR PEREZ: Yes, I'm starting.

3 THE COURT: You are just starting?

4 PROSPECTIVE JUROR PEREZ: Yes.

5 THE COURT: Where do you work?

6 PROSPECTIVE JUROR PEREZ: I'm working in Amazon.

7 THE COURT: Where?

8 PROSPECTIVE JUROR PEREZ: Amazon. It is a company  
9 where supplies are sold to customers.

10 THE COURT: Do you speak English or Spanish at  
11 your job?

12 PROSPECTIVE JUROR PEREZ: Spanish.

13 THE COURT: Do you speak English or Spanish at  
14 home?

15 PROSPECTIVE JUROR PEREZ: Spanish in the home, so  
16 the, so if I can help you, so my English is not good and I'm  
17 just starting out so --

18 THE COURT: Okay. So, ladies and gentlemen, I  
19 want you to watch this very carefully, because it is not  
20 going to happen often. I'm going to excuse a member of our  
21 community, but don't get your hopes up, because I'm  
22 reluctant to excuse first out of the box because other  
23 people want excuses.

24 What you need to know is that if I excuse you



1 today, you check in with the Jury Commissioner downstairs  
2 and you will be resummoned, and this is a two day criminal  
3 case and your next case may be a 12 week civil construction  
4 defect case, or the case I last tried a two week medical  
5 malpractice case.

6 If you could choose jury service, a two day  
7 criminal trial is not the worst option, and I'm going to put  
8 you back in the hopper if I excuse you from the room today.

9 Ms. Perez, thank you for coming. I'm going to  
10 have you go downstairs and check in with the Jury  
11 Commissioner. You are free to leave.

12 PROSPECTIVE JUROR PEREZ: Okay. Thank you so  
13 much.

14 THE COURT: Anybody else? Your name, please.

15 PROSPECTIVE JUROR BARRERA: David Barrera.

16 THE COURT: Spell your last name, please.

17 PROSPECTIVE JUROR BARRERA: B-A-R-R-E-R-A.

18 THE COURT: David Barrera, what is your first  
19 language?

20 PROSPECTIVE JUROR BARRERA: Spanish.

21 THE COURT: How long have you been speaking  
22 English?

23 PROSPECTIVE JUROR BARRERA: 25 years like --

24 THE COURT: Have you been in an English speaking

1 country for 25 years?

2 PROSPECTIVE JUROR BARRERA: Try to, try to speak  
3 English, but it is too poor, my English.

4 THE COURT: How long have you been here?

5 PROSPECTIVE JUROR BARRERA: Almost 25 years.

6 THE COURT: Where do you work?

7 PROSPECTIVE JUROR BARRERA: I work for PDM Steel  
8 Service Center.

9 THE COURT: What do you do?

10 PROSPECTIVE JUROR BARRERA: Machine operator.

11 THE COURT: Machine operator. Do you speak  
12 Spanish at the job or English?

13 PROSPECTIVE JUROR BARRERA: Spanish.

14 THE COURT: What about at home, do you speak  
15 Spanish or English at home?

16 PROSPECTIVE JUROR BARRERA: Spanish.

17 THE COURT: Did you go to public school here?

18 PROSPECTIVE JUROR BARRERA: No.

19 THE COURT: You did not?

20 PROSPECTIVE JUROR BARRERA: No.

21 THE COURT: What is your education?

22 PROSPECTIVE JUROR BARRERA: My education?

23 THE COURT: How far did you get in your education?

24 PROSPECTIVE JUROR BARRERA: High school.

1 THE COURT: Where?

2 PROSPECTIVE JUROR BARRERA: Mexico.

3 THE COURT: Are you comfortable with my language?

4 PROSPECTIVE JUROR BARRERA: (Shrugs shoulders.)

5 THE COURT: Counsel, this gentleman is a little

6 more on the bubble for me. I would yield to you if you both

7 agree, otherwise we will keep him on the panel and see if he

8 ends up in the box.

9 MR. LUCIA: Your Honor, I would have no objection

10 to excusing Mr. Barrera for cause.

11 THE COURT: Ms. Ristenpart? I'm sorry --

12 MS. RISTENPART: Mr. Carrico, Your Honor.

13 THE COURT: Mr. Carrico?

14 MR. CARRICO: That's fine, Your Honor. I have no

15 objection either.

16 THE COURT: Mr. Barrera, check in downstairs,

17 please. Thank you, sir, for coming.

18 Anybody else? Anybody else? Now, when we -- yes.

19 PROSPECTIVE JUROR ANDREASEN: Not because of

20 language, but I have another issue. Is this the time or

21 not?

22 THE COURT: No, but it will be, I promise. Stay

23 with me.

24 PROSPECTIVE JUROR ANDREASEN: Okay.

1           THE COURT: As I indicated, this case is going to  
2 take about two days. When we selected you randomly through  
3 a computer program, we did not know what your schedule was  
4 this week.

5           I'm looking for nondiscretionary fixed conflicts,  
6 not inconvenience because of work or family, but  
7 nondiscretionary fixed conflicts. Let me give you an  
8 example. You are scheduled for surgery tomorrow morning and  
9 you have been on the surgeon's wait list for six months, or  
10 it is your 50th wedding anniversary and you and your spouse  
11 are flying to Hawaii tonight, that is an example. That is a  
12 type of extreme conflict.

13           Does anybody have any such conflict I need to know  
14 about? Wonderful.

15           Now, our statute allows me to excuse you for undue  
16 hardship or extreme inconvenience. Note those words. It is  
17 not hardship or inconvenience. It is undue hardship or  
18 extreme inconvenience, and I'm the Judge of that. Do any of  
19 you believe that you have an undue hardship or extreme  
20 inconvenience that would prevent your service? Yes, ma'am.  
21 Your name, please?

22           PROSPECTIVE JUROR ANDREASEN: Linda Andreasen.

23           THE COURT: Linda Andreasen.

24           PROSPECTIVE JUROR ANDREASEN: My husband and I

1 just, it is just the two of us and he is sick. He is on  
2 dialysis, and I take him three days a week. I fix all of  
3 his meals and I bathe him, and he has several conditions  
4 that are life threatening, actually, because he falls, and I  
5 can get a doctor's note, but it is just that I'm the only  
6 one.

7 THE COURT: Do you work during the day?

8 PROSPECTIVE JUROR ANDREASEN: Yes.

9 THE COURT: What do you do with him during the day  
10 when you are gone?

11 PROSPECTIVE JUROR ANDREASEN: When he is at  
12 dialysis, I drop him off at 7:00 and I go to work. I pick  
13 him up at 11:00 and I take him home and I fix him lunch, and  
14 I change the Depends if I need to do that or whatever I need  
15 to do, feed him, and then I go back to work about 12:00 or  
16 12:15 and then I get off at 3:30. I set him up with a phone  
17 and put him on the couch, and he watches TV until I get  
18 home, and that's what we do.

19 THE COURT: Ladies and gentlemen, there is a  
20 standard for my discretion, and under the Nevada Revised  
21 Statute 6.030 if a member of our community with proof is the  
22 primary caregiver of another person who has a documented  
23 medical condition who requires assistance at all times, that  
24 person may be excused from jury service and what I just

1 heard fits within those parameters.

2 I'm not going to request that you bring a doctor's  
3 note. Your words were authentic to me, they are sincere,  
4 and I wish you the best of luck and you are excused. You  
5 will be summoned for another time. Please check in with the  
6 Jury Commissioner downstairs.

7 PROSPECTIVE JUROR ANDREASEN: Thank you.

8 THE COURT: Anybody else? Yes, sir. Your name,  
9 please?

10 PROSPECTIVE JUROR MALLEY: Benjamin Malley.

11 THE COURT: Mr. Benjamin Malley, what have you got  
12 going on?

13 PROSPECTIVE JUROR MALLEY: I'm an owner/operator  
14 of a small business and provide for four children.  
15 Basically, this is putting my livelihood on hold and, I  
16 mean, I don't think that I could honestly be fair and have  
17 my head in this when I'm worried about what is going to  
18 happen with me not answering the phone and not being able to  
19 do my job.

20 THE COURT: What is the nature of your work?

21 PROSPECTIVE JUROR MALLEY: I'm a crane operator.

22 THE COURT: And you own the crane yourself?

23 PROSPECTIVE JUROR MALLEY: Yes.

24 THE COURT: Where are you scheduled to be tomorrow

1 with that crane?

2 PROSPECTIVE JUROR MALLEY: At the Nugget.

3 THE COURT: So this is where it gets a little  
4 dicey, Mr. Malley. I choose to believe what people tell me  
5 in this room, and you may or may not get an excuse. If I  
6 open the door too wide, I have lots of problems.

7 I recently had a medical physician who sat right  
8 in that chair and told me that he had 100 patients scheduled  
9 that week, and the only difference between him and you, I  
10 presume, are some zeros on the paycheck, and I mean this  
11 politely, not disrespectfully. And if you lose money, it  
12 costs bread, cheese, milk, and diapers. If he loses money,  
13 it costs Wave Runners and boats.

14 I still made him stay, so I'm going to hold off  
15 and I'm going to see if you go in the box or not and we are  
16 going to ask a few follow-up questions. Anybody else?  
17 Wonderful.

18 MS. RISTENPART: Your Honor, I believe there was  
19 one hand.

20 THE COURT: Oh, excuse me. Yes, sir. Your name,  
21 please?

22 PROSPECTIVE JUROR THANDI: Gene Thandi.

23 THE COURT: Gene Thandi, yes, sir.

24 PROSPECTIVE JUROR THANDI: I have a problem, my



1 sugar is dropping really low at times and I get confused,  
2 disoriented sometimes.

3 THE COURT: Are you under a doctor's care?

4 PROSPECTIVE JUROR THANDI: Yes.

5 THE COURT: What type of doctor are you seeing?

6 PROSPECTIVE JUROR THANDI: General, Sharon  
7 Silverman.

8 THE COURT: Are you on medications?

9 PROSPECTIVE JUROR THANDI: Yes.

10 THE COURT: Do you work?

11 PROSPECTIVE JUROR THANDI: I do on and off.

12 THE COURT: What do you do when you are on?

13 PROSPECTIVE JUROR THANDI: I have some rentals.

14 THE COURT: And is it a physical limitation  
15 sitting all day or is it a mental limitation where you can't  
16 focus?

17 PROSPECTIVE JUROR THANDI: It is sitting through  
18 a, I urinate often and I get distracted when my sugar goes  
19 down and it gets blurry sometimes, and then I know when my  
20 sugar goes down, so I have orange juice or I take a glucose  
21 pill for the level to come up and then I check my sugar  
22 every 15 minutes to bring it up.

23 THE COURT: How often does this happen, everyday,  
24 several times a day or several weeks?

1               PROSPECTIVE JUROR THANDI: It happens once or  
2 twice a day.

3               THE COURT: Do you have a Driver's License?

4               PROSPECTIVE JUROR THANDI: Yes.

5               THE COURT: Okay. I'm not sure if this is a  
6 physical limitation that we can accommodate or not. I'm  
7 going to have you stay for a little while longer.

8               PROSPECTIVE JUROR THANDI: Okay.

9               THE COURT: Thank you, sir. Anybody else?

10              So I introduced the attorneys. I have introduced  
11 myself. Mr. Lucia, if you will please just read the list of  
12 witnesses who may participate in this trial and I will ask  
13 that you do the entire list stepping over for a moment  
14 Mr. Carrico.

15              MR. LUCIA: Thank you.

16              THE COURT: The purpose of this recitation is to  
17 determine if you know any of these named witnesses.

18              Mr. Lucia.

19              MR. LUCIA: Thank you, Judge. Sergeant Nancy  
20 McGill, Washoe County Sheriff's Deputy Eric Gerow, Washoe  
21 County Sheriff's Deputy Brooke Keast, Sparks Police  
22 Department Officer Chris Dutra, Sparks Police Officer  
23 Coombes, Roger Gattone, Scott Fallis, Savanna Gowins, and  
24 Diane Machen.

1 THE COURT: Thank you. Do any of you know any of  
2 the named witnesses? Yes, ma'am. Your name, please?

3 PROSPECTIVE JUROR NORMAN: Elizabeth Norman.

4 THE COURT: Ms. Norman, who do you know?

5 PROSPECTIVE JUROR NORMAN: Not personally, but I'm  
6 a Deputy Undersheriff and I know the people from the  
7 Sheriff's Department just by name, but not personally.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NORMAN: Just saying that.

10 THE COURT: All right. We will check with you in  
11 a moment. Thank you.

12 Anybody else? Yes, sir. Your name, please?

13 PROSPECTIVE JUROR WILLIAMS: Is Officer Coombes  
14 Mike Coombes?

15 MR. LUCIA: It is, Your Honor.

16 THE COURT: Michael Coombes, yes.

17 PROSPECTIVE JUROR WILLIAMS: I used to work with  
18 him.

19 THE COURT: How long ago?

20 PROSPECTIVE JUROR WILLIAMS: I would say 7 years,  
21 6 years.

22 THE COURT: What type of employment?

23 PROSPECTIVE JUROR WILLIAMS: Wal-Mart Distribution  
24 Center. He trained me.

1               THE COURT: Was he also in law enforcement at the  
2 time?

3               PROSPECTIVE JUROR WILLIAMS: No. He left them to  
4 go into law enforcement.

5               THE COURT: How long did you work with him?

6               PROSPECTIVE JUROR WILLIAMS: Max, a year and a  
7 half, two years.

8               THE COURT: What is your name, please?

9               PROSPECTIVE JUROR WILLIAMS: Mike Williams.

10              THE COURT: Mr. Williams, I'm going to have the  
11 attorneys return to you. They know and I do not know the  
12 extent of Officer Coombes' participation.

13              Anybody else?

14              I hate this question, because I never know  
15 whether, it happened to me on an airplane today, somebody  
16 asked me if I was a judge, and it makes me nervous, because  
17 that person either likes me or hates me. Do any of you know  
18 me? Ms. Yott.

19              PROSPECTIVE JUROR YOTT: Yes, Your Honor. As you  
20 know, I'm an attorney and married to Charles Spann, an  
21 attorney. My daughter is an attorney, likely you have met  
22 her. She works as a law clerk for another Judge in the  
23 courthouse; however, I don't believe I have ever appeared  
24 before you and there is nothing about the fact that I have

1 met you before that would prejudice me in this case.

2 THE COURT: Well said. Thank you. Do you know  
3 any of the attorneys?

4 PROSPECTIVE JUROR YOTT: I do not.

5 THE COURT: Thank you. Anybody else know me?  
6 Your name, please.

7 PROSPECTIVE JUROR LINDSAY: Claudia Lindsay,

8 THE COURT: I'm sorry, Ms. Lindsay, hold on.  
9 Ms. Yott's daughter is a law clerk for 6 and now 9?

10 PROSPECTIVE JUROR YOTT: Correct, Your Honor.

11 THE COURT: Okay. Ms. Lindsay, is it?

12 PROSPECTIVE JUROR LINDSAY: Yes. I believe that  
13 we saw you when you were in private practice about a case my  
14 mother was having.

15 THE COURT: Oh, really?

16 PROSPECTIVE JUROR LINDSAY: It has been awhile.  
17 You are a little more gray, so am I.

18 THE COURT: I recognize you. Did I charge you or  
19 not?

20 PROSPECTIVE JUROR LINDSAY: Of course, but not as  
21 much as the next guy.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR LINDSAY: We had a fair  
24 experience.

1 THE COURT: Okay. Thank you. Anybody else?  
2 Do any of you know the attorneys? Thank you.  
3 Do any of you know Mr. Frederick Lewis Bowman?  
4 Do any of you know any members of the District  
5 Attorney's Office or the Public Defender's Office?  
6 MS. RISTENPART: Your Honor, we are actually  
7 private. We are retained.  
8 THE COURT: Excuse me, I apologize.  
9 MS. RISTENPART: Thank you, Your Honor.  
10 THE COURT: Yes, sir, your name.  
11 PROSPECTIVE JUROR SAVOY: Dave Savoy. I know my  
12 stepson is a Public Defender and I know about three other  
13 Public Defenders and I know probably half the people in the  
14 other one you mentioned,  
15 THE COURT: The District Attorney's Office?  
16 PROSPECTIVE JUROR SAVOY: Because of my business.  
17 THE COURT: What is your business?  
18 PROSPECTIVE JUROR SAVOY: I run a shoe repair shop  
19 down on California Avenue. They get their shoes fixed  
20 there.  
21 THE COURT: Is it your son or your son-in-law?  
22 PROSPECTIVE JUROR SAVOY: Stepson.  
23 THE COURT: What is his name?  
24 PROSPECTIVE JUROR SAVOY: Wait a second,

1 Jim Leslie, and I'm also a good friend with, I can't think  
2 of his name right offhand, but I asked him what to wear when  
3 I come here today.

4 THE COURT: Okay. Ladies and gentlemen, there is  
5 absolutely no distinction between a defense attorney  
6 provided by our community or privately retained. Each is  
7 charged with the duty of zealous representation.

8 I know the attorneys in this case. I have every  
9 confidence in them and you are instructed to disregard my  
10 question regarding the Public Defender's Office. It is  
11 irrelevant to this case.

12 Your name, sir. I saw a hand.

13 PROSPECTIVE JUROR: Yeah. Did you say had worked  
14 for the DA's office, does it matter if it is --

15 THE COURT: I just want to know if any of you have  
16 relationships inside of the Attorney's Office, the District  
17 Attorney's Office and really by extension still the Public  
18 Defender's Office such that you had exposure to criminal  
19 trials. That is what I'm looking for.

20 PROSPECTIVE JUROR: Currently?

21 THE COURT: Yes, sir.

22 PROSPECTIVE JUROR: No.

23 THE COURT: Ms. Norman?

24 PROSPECTIVE JUROR NORMAN: I'm personal friends



1 with Dick Gammick.

2 THE COURT: Okay. Thank you.

3 All right. Now we are going to play some magical  
4 chairs in this courtroom. All of you who sit to my left  
5 need to stand and go to either the corner of the room or  
6 into the jury deliberation room, and what we are going to do  
7 is randomly select names, and as your name is called we are  
8 going to populate these seats here.

9 My Clerk has a Keno looking device. It is a  
10 cylinder device that she is going to turn and then we are  
11 going to follow her instructions. That is why I need all of  
12 you to move for a moment, so if you would be so kind to  
13 follow Deputy Croxon.

14 All right. Ms. Clerk.

15 THE CLERK: Thank you, Judge. Geoffrey Mueller.  
16 Kelly Price. Christine Cutler. Linda Andreasen, previously  
17 excused by the Court. Benjamin Malley. Michael Williams.  
18 Paul Uzarski.

19 PROSPECTIVE JUROR UZARSKI: Uzarski.

20 THE CLERK: Bette Storey. Richard Nielson.

21 THE COURT: Deputy Croxon, I think Nielson is  
22 going to go in this first position here and not the chair.

23 THE CLERK: Charles Darland. Rocio Abigail  
24 Kniesteadt.

1 THE COURT: How do you spell the last name?  
2 THE CLERK: K-N.  
3 THE COURT: Okay. Where did the Abigail come  
4 from?  
5 PROSPECTIVE JUROR KNIESTEADT: My name is Rocio  
6 Abigail Kniesteadt.  
7 THE COURT: Okay. Great. Thank you.  
8 THE CLERK: Thomas Smith. Laureana Vargas.  
9 Ana Jones. David Barrera, previously excused by the Court.  
10 Claire Curatolo.  
11 THE COURT: Deputy, we will use that next chair.  
12 DEPUTY CROXON: Yes.  
13 THE CLERK: Dean Tsuda. Sean Sinocruz. Deborah  
14 Armstrong. Michael Gaige. Brandon Steadman. Donnie  
15 Dungey.  
16 PROSPECTIVE JUROR DUNGEY: Dungey.  
17 THE CLERK: Dungey. Nicole Martinez. Jeremy  
18 Luinstra. Kathlyn Hogan.  
19 THE COURT: Thank you, Miss Clerk. Ladies and  
20 gentlemen, if you sit behind the bar and your name was not  
21 called, your chance of jury service just went down  
22 dramatically, but I still need you to pay attention to the  
23 questions, because if I excuse any members of this box, call  
24 it a box, this panel to my left, if I excuse any of them for

1 cause, then I'm going to randomly fill the vacant seat in  
2 the same way you just observed and we are going to have to  
3 return to the equipment.

4 From time to time I need to visit with the  
5 attorneys out of your presence, but it is very unwieldy to  
6 move you in and out particularly for something that will  
7 just take a short period of time. We refer to it as a  
8 sidebar conference. I will conceal my mouth and I will even  
9 scramble the noise, but I invite Counsel for a moment to  
10 sidebar.

11 (Whereupon a sidebar conference was had.)

12

13 THE COURT: Mr. Malley, I'm going to step out of  
14 my normal inclination. If you promise you love your country  
15 and you love this community and you are not trying to get  
16 out of jury service, I'm going to let you go to work  
17 tomorrow.

18 PROSPECTIVE JUROR MALLEY: I appreciate it.

19 THE COURT: Will you promise me you love your  
20 country and your community?

21 PROSPECTIVE JUROR MALLEY: I promise.

22 THE COURT: And you are not playing games with me?

23 PROSPECTIVE JUROR MALLEY: No, sir, because I have  
24 been working on a sign all day.

1 THE COURT: All right.

2 PROSPECTIVE JUROR MALLEY: Thank you.

3 THE COURT: Good day to you, sir. Miss Clerk.

4 THE CLERK: Laurie Yott.

5 THE COURT: Do any of you have a hearing  
6 disability I need to know about?

7 Do any of you have any other limitation that  
8 requires accommodation from the Court, physical limitation?

9 My goal is to go through this process efficiently,  
10 but not so fast. Who has served on a jury before? You are  
11 Mr. Dungey?

12 PROSPECTIVE JUROR DUNGEY: Yes.

13 THE COURT: When and where?

14 PROSPECTIVE JUROR DUNGEY: Here in Washoe County  
15 four years ago maybe.

16 THE COURT: Criminal or civil?

17 PROSPECTIVE JUROR DUNGEY: I don't even know the  
18 difference really.

19 THE COURT: Were you asked to find guilt or no  
20 guilt?

21 PROSPECTIVE JUROR DUNGEY: Guilt, yes.

22 THE COURT: Without telling me what your finding  
23 was, did you deliberate with the jury?

24 PROSPECTIVE JUROR DUNGEY: Yes.

1 THE COURT: Did the jury reach a result?

2 PROSPECTIVE JUROR DUNGEY: Yes.

3 THE COURT: Were you selected as the foreperson?

4 PROSPECTIVE JUROR DUNGEY: No.

5 THE COURT: Anybody else serve on a jury?

6 Is there anything about that experience that  
7 causes you to be very unhappy today that you have returned  
8 to the courthouse?

9 PROSPECTIVE JUROR DUNGEY: No, other than people I  
10 work with have never been chosen, and I have been chosen  
11 twice now. It doesn't make me unhappy, but, you know, I  
12 just wondered why.

13 THE COURT: Who is really happy to be here today?  
14 Who got a summons and just thought finally I get a chance to  
15 serve on a jury? Ms. Yott has to say yes. Besides  
16 Ms. Yott.

17 PROSPECTIVE JUROR YOTT: I should say yes.

18 THE COURT: You should. Besides Ms. Yott anybody  
19 just really over the top happy? It is okay. My wife is  
20 like your friends at work. I'm just going to focus on these  
21 folks here.

22 PROSPECTIVE JUROR: I'm over the top.

23 THE COURT: Seriously, anybody just really anxious  
24 to sit on a jury? Yes, sir. You are Mr. --

1 PROSPECTIVE JUROR SINOCRUZ: Sean.  
2 THE COURT: Sinocruz?  
3 PROSPECTIVE JUROR SINOCRUZ: Yes.  
4 THE COURT: Tell me why.  
5 PROSPECTIVE JUROR SINOCRUZ: I find it exciting.  
6 THE COURT: Why?  
7 PROSPECTIVE JUROR SINOCRUZ: I'm not sure really,  
8 I just, it seems a little exciting.  
9 THE COURT: Okay. I can accept that. Anybody  
10 else?  
11 Who had the opposite reaction? Who was hoping,  
12 I'm not trying to be cute here, because we have the State  
13 and we have Mr. Bowman and this is important to them, so I  
14 use the words to illustrate, not to try to be a funny man.  
15 If you could have a colonoscopy or come here, you would have  
16 chosen the colonoscopy. You, sir, your name is  
17 Mr. Steadman?  
18 PROSPECTIVE JUROR STEADMAN: Yeah. I don't like  
19 dealing with the courts. I don't like judges personally.  
20 THE COURT: Why?  
21 PROSPECTIVE JUROR STEADMAN: Because I don't like  
22 Judge Doherty. I can't stand her. She is sexist and  
23 biased. Yeah, she is just a piece of work.  
24 THE COURT: Well, we have to keep this PG, so

1    thank you for monitoring yourself, and there is nothing  
2    wrong with your opinion and there is nothing wrong with your  
3    honesty, but we will keep this PG. So you have had a bad  
4    experience in the court system?

5               PROSPECTIVE JUROR STEADMAN: Many times with her.

6               THE COURT: Have you had an experience outside  
7    of -- Counsel, Judge Doherty is Dept 12, Family Division  
8    across the street?

9               MS. RISTENPART: Yes.

10              THE COURT: Have you had any experience with the  
11    court system in addition to that experience?

12              PROSPECTIVE JUROR STEADMAN: Yeah. I have got a  
13    DUI before, about seven years, eight years ago.

14              THE COURT: When? I'm sorry, where?

15              PROSPECTIVE JUROR STEADMAN: Here in Washoe  
16    County.

17              THE COURT: Were you treated fairly by law  
18    enforcement or unfairly?

19              PROSPECTIVE JUROR STEADMAN: I was treated fairly.  
20    They didn't handcuff me or anything, but I was doing 85 in a  
21    50, you know, and they were pretty cool with me when I got  
22    to the jail, assault and battery.

23              THE COURT: So, listen, this is an important  
24    question for me, because you have had a bad experience in



1 another courtroom in this District and you own that  
2 experience and I'm not here to judge you.

3 The question is whether you are going to bring  
4 into this room that experience so that either the State or  
5 Mr. Bowman is affected in a negative way?

6 PROSPECTIVE JUROR STEADMAN: I would try to, but,  
7 like I said, I just don't like being in court. It is  
8 irritating. You know, no offense to anybody, but I just  
9 don't like dealing with it.

10 THE COURT: Okay. Thank you. Anybody else?

11 Who watches crime shows on television? And by  
12 watching I mean set your DVR and you know which ones you  
13 like to watch? Hold your hands up for a minute so I can see  
14 who you are.

15 PROSPECTIVE JUROR: Does Criminal Minds count?

16 THE COURT: I don't know. Okay. Who watches more  
17 than one, you don't have a favorite, but you have several  
18 favorite criminal shows that you like to watch every week?  
19 Keep them high for just a second. Okay. Thank you.

20 Besides Ms. Yott do any of you have any legal  
21 training, law office experience?

22 Do any of you have any law enforcement experience?

23 Mr. --

24 PROSPECTIVE JUROR GAIGE: Gaige.

1 THE COURT: Gaige.

2 PROSPECTIVE JUROR GAIGE: United States Air Force  
3 Security Police.

4 THE COURT: When?

5 PROSPECTIVE JUROR GAIGE: I was trained, never  
6 activated. I got out with an honorable with less than  
7 honorable circumstances shortly after 9/11.

8 THE COURT: Okay. Thank you. Anybody else?

9 What about people that are close to you, and I  
10 will let you define that for yourself. I'm not looking for  
11 an attenuated relationship, but somebody you love, somebody  
12 you share your heart with, a child or a sibling, anybody who  
13 is involved with the law in a way that you talk about it a  
14 lot, that it comes into the Thanksgiving dinner, that your  
15 opinions may be influenced, your opinion in this room may be  
16 influenced by conversations you have outside of this room?  
17 Does that apply to anybody? A little bit, Mr. Uzarski?

18 PROSPECTIVE JUROR UZARSKI: Yeah. I don't know  
19 that it would hinder any decision making here, but, I mean,  
20 I talk about the law every once in awhile with my  
21 brother-in-law.

22 THE COURT: Why?

23 PROSPECTIVE JUROR UZARSKI: He is an attorney.

24 THE COURT: Okay. That's okay. Local attorney?

1 PROSPECTIVE JUROR UZARSKI: Yes, sir.

2 THE COURT: Have you told me his name? Is that

3 Mr. --

4 PROSPECTIVE JUROR UZARSKI: No, I have not.

5 THE COURT: Okay. I was thinking about the  
6 son-in-law. What is his name?

7 PROSPECTIVE JUROR UZARSKI: Mark Wray.

8 THE COURT: Okay. Counsel Mark Wray is a  
9 commercial litigator.

10 PROSPECTIVE JUROR YOTT: Your Honor, I assume you  
11 don't mean me? I talk about law on a daily basis.

12 THE COURT: Right, and I'm going to let Counsel  
13 just kind of operate with you separately.

14 PROSPECTIVE JUROR YOTT: Okay.

15 THE COURT: All right. Yes, sir, Mr. Smith?

16 PROSPECTIVE JUROR SMITH: Yes, it is. In my  
17 former position as a Fire Marshal, I dealt with laws quite a  
18 bit.

19 THE COURT: Did you ever do any arson  
20 investigation?

21 PROSPECTIVE JUROR SMITH: Yes, I did.

22 THE COURT: Did you interact with the law  
23 enforcement community?

24 PROSPECTIVE JUROR SMITH: Yes.

1 THE COURT: How long were you in the Fire Service?  
2 PROSPECTIVE JUROR SMITH: Close to 20 years.  
3 THE COURT: How long have you been out of the Fire  
4 Service?  
5 PROSPECTIVE JUROR SMITH: Five years.  
6 THE COURT: Okay. So the question is whether you  
7 can take each law enforcement officer and each statement on  
8 its own or whether you bring into this courtroom some built  
9 in favoritism or the opposite, some negativity?  
10 PROSPECTIVE JUROR SMITH: I have no prejudice  
11 either way, Your Honor.  
12 THE COURT: So if a law enforcement officer  
13 testified here and you just didn't believe that officer, you  
14 could hold on to that disbelief and even share it with  
15 others during deliberations?  
16 PROSPECTIVE JUROR SMITH: Absolutely.  
17 THE COURT: Okay. So in addition to Mr. Steadman,  
18 who has been charged with a crime? I'm not talking about  
19 moving tickets, driving tickets.  
20 All right. So let's just start at the top row.  
21 Ms. Cutler, when and where?  
22 PROSPECTIVE JUROR CUTLER: DUI, Reno, 7 years, 8  
23 years ago.  
24 THE COURT: Were you fairly treated?

1 PROSPECTIVE JUROR CUTLER: Yeah.

2 THE COURT: Were you convicted?

3 PROSPECTIVE JUROR CUTLER: Yeah.

4 THE COURT: Did you pay your dues, whatever it

5 was?

6 PROSPECTIVE JUROR CUTLER: I did everything.

7 THE COURT: Thank you. Anybody else in the back

8 row? All right. Mr. Nielson?

9 PROSPECTIVE JUROR NIELSON: DUI about 25 years

10 ago.

11 THE COURT: No problems since then?

12 PROSPECTIVE JUROR NIELSON: No.

13 THE COURT: Did you have an experience with law

14 enforcement that causes you to hate law enforcement?

15 PROSPECTIVE JUROR NIELSON: No.

16 THE COURT: Love law enforcement?

17 PROSPECTIVE JUROR NIELSON: I wouldn't go that

18 far.

19 THE COURT: How far should we go?

20 PROSPECTIVE JUROR NIELSON: They are out there to

21 make sure that the laws are enforced. I did something

22 wrong. I paid the price for it.

23 THE COURT: All right. Thank you. Mr. Darland?

24 PROSPECTIVE JUROR DARLAND: DUI.

1 THE COURT: When?

2 PROSPECTIVE JUROR DARLAND: Three times, excuse  
3 me, 13, 8, and a couple months ago, about three or four.

4 THE COURT: So felony DUI?

5 PROSPECTIVE JUROR DARLAND: None.

6 THE COURT: You have had three?

7 PROSPECTIVE JUROR DARLAND: Statute of limitations  
8 is 7 years.

9 THE COURT: So the first one was before 7 years?

10 PROSPECTIVE JUROR DARLAND: 13 years ago, then 8  
11 years ago and --

12 THE COURT: Oh, I thought it was 2013.

13 PROSPECTIVE JUROR DARLAND: Oh, I'm sorry, no.

14 THE COURT: Okay. Tell me about your experience.

15 PROSPECTIVE JUROR DARLAND: A person witnessed me  
16 swerving, called it in. When the officer arrived, I was  
17 already pulled over --

18 THE COURT: Hold on. Can you hear, Counsel?

19 MR. LUCIA: Yes.

20 MS. RISTENPART: Yes.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR DARLAND: When the officer  
23 arrived, I was already pulled over off to the side of the  
24 road and put my hazards on trying to call a friend because I

1 realized I shouldn't have been driving.

2 THE COURT: Were you treated fairly or unfairly?

3 PROSPECTIVE JUROR DARLAND: Fairly.

4 THE COURT: Anybody else in the middle row?

5 Mr. Smith?

6 PROSPECTIVE JUROR SMITH: Most of it was  
7 stupidity, Your Honor. After I got out of the military, I  
8 was a little crazy and a little drunk a lot and I broke and  
9 entered, it was a breaking and entering case about 40 years  
10 ago, 50 years ago, and then brandishing a weapon about 38  
11 years ago. Subsequently turned my life around.

12 THE COURT: Okay. Thank you. Anybody else?

13 PROSPECTIVE JUROR: Are you talking about under  
14 the age of 18 or --

15 THE COURT: Well, technically if you have a  
16 juvenile history it is sealed upon your emancipation.

17 PROSPECTIVE JUROR: Okay.

18 THE COURT: I guess if there is something that is  
19 significant that we need to know about, and I mean like a  
20 commitment to a youth facility, we should talk privately  
21 about some of the details. If it was just a little minor  
22 thing --

23 PROSPECTIVE JUROR: It was just a little minor  
24 thing, I mean.



1 THE COURT: Okay.

2 PROSPECTIVE JUROR: I was just wondering.

3 THE COURT: Did you ever go into custody?

4 PROSPECTIVE JUROR: They took me in for a couple  
5 hours and that's it.

6 THE COURT: Okay. Thank you. Anybody else?

7 How about someone that you are close to, has  
8 somebody that you loved been accused of a crime? Let's  
9 begin here, Mr. Nielson.

10 PROSPECTIVE JUROR NIELSON: I have got several  
11 brother-in-laws that have been in trouble with the law a  
12 lot. I don't think that there is anything that would  
13 prevent me from being objective. It is -- they are idiots,  
14 quite frankly.

15 One of them I would refer to as a habitual  
16 criminal, he is never out of jail more than maybe six  
17 months, and I have got another brother-in-law who will  
18 probably be going to jail for a DUI.

19 THE COURT: Okay. Thank you.

20 PROSPECTIVE JUROR: Your Honor?

21 THE COURT: Hold on. I had Ms. Jones again.

22 PROSPECTIVE JUROR JONES: Brothers.

23 THE COURT: Serious crimes or not serious crimes?

24 PROSPECTIVE JUROR JONES: Drugs.

1 THE COURT: What kind of -- how long ago?

2 PROSPECTIVE JUROR JONES: One already had his  
3 record sealed and the other one passed away, so say about 6  
4 years ago.

5 THE COURT: So your brothers were charged with --

6 PROSPECTIVE JUROR JONES: One of them passed away  
7 about 6 years ago and the other one it has been more than 20  
8 years ago.

9 THE COURT: They were both charged with drug  
10 related offenses?

11 PROSPECTIVE JUROR JONES: Uh-huh. We don't talk  
12 about it. It is none of my business. It is their life, so.

13 THE COURT: Okay. Ms. Yott?

14 PROSPECTIVE JUROR YOTT: I have a brother who has  
15 passed away this year who years ago was charged with DUI.

16 THE COURT: Okay. Thank you. Ms. Rocio, well,  
17 I'm going to know you as Abigail. I can't pronounce your  
18 last name, Kniesteadt?

19 PROSPECTIVE JUROR KNIESTEADT: Kniesteadt.

20 THE COURT: Kniesteadt.

21 PROSPECTIVE JUROR KNIESTEADT: My husband, I'm not  
22 sure how long ago, probably like five or more years ago was  
23 accused of robbing a liquor store, but he was found not  
24 guilty of that.

1                   THE COURT: Okay. Thank you. I saw another one  
2 up here. Was it you, Mr. Luinstra?  
3                   PROSPECTIVE JUROR LUINSTRA: Yes.  
4                   THE COURT: Luinstra?  
5                   PROSPECTIVE JUROR LUINSTRA: Luinstra is right,  
6 actually. Yeah, I didn't know if you were finished with the  
7 personal histories. I thought you were going row-by-row,  
8 but I had some minor, I don't know if it counts as being  
9 charged with anything, but some tickets when I was younger,  
10 like a minor in possession of alcohol kind of thing, yeah,  
11 so I don't know.  
12                  THE COURT: How old are you now?  
13                  PROSPECTIVE JUROR LUINSTRA: Huh?  
14                  THE COURT: How old are you now?  
15                  PROSPECTIVE JUROR LUINSTRA: 33.  
16                  THE COURT: So between 18 and 33 you are clean?  
17                  PROSPECTIVE JUROR LUINSTRA: Yeah.  
18                  THE COURT: Okay. There is a lot of change going  
19 on in our country about marijuana, medical marijuana,  
20 recreational marijuana. Without telling me what your  
21 opinion is yet, do any of you have strong feelings about  
22 whether marijuana ought to be legal or should remain  
23 illegal? Raise your hands for just a moment, strong  
24 feelings.

1                So Mr. Darland is kind of moving his hand, he is  
2 not sure. Mr. Nielson?

3                PROSPECTIVE JUROR NIELSON: Yes.

4                THE COURT: All right. What is it?

5                PROSPECTIVE JUROR NIELSON: I believe it should be  
6 legal. My wife is a diabetic with severe neuropathy in her  
7 feet and it's about the only way she gets any relief.

8                THE COURT: Okay. Who else? Back in the second  
9 row, Mr. Tsuda.

10               PROSPECTIVE JUROR TSUDA: I just think it should  
11 be legalized. You know, half the NBA smokes it. Most of  
12 the guys in the NFL smoke it. It is a no-brainer. It is  
13 harmless.

14               THE COURT: Okay. Thank you for your honesty.  
15 Mr. Luinstra?

16               PROSPECTIVE JUROR LUINSTRA: I think it should be  
17 legal. I think it is classified too harshly for the effects  
18 it has. I think alcohol is more problematic of a drug along  
19 with many others for society. I think it is too critically  
20 classified for the drug that it actually is.

21               THE COURT: Anybody else? Ms. Hogan?

22               PROSPECTIVE JUROR HOGAN: I think it should be  
23 legalized for medical purposes only. I think if somebody  
24 has cancer, I think they should be able to obtain it.

1 THE COURT: Okay. Anybody else?  
2 What about other drugs? Do any of you support the  
3 legalization of other drugs?  
4 Have any of you suffered an addiction to alcohol,  
5 drugs, or gambling? Okay. Let me just identify Mr. Nielson  
6 and Mr. Darland.  
7 PROSPECTIVE JUROR: Alcohol, right?  
8 THE COURT: Yeah, alcohol, drugs or gambling.  
9 Mr. Darland, Mr. Nielson, and Mr. Smith.  
10 PROSPECTIVE JUROR SMITH: Been sober 36, 37 years,  
11 Your Honor.  
12 THE COURT: All right. Thank you.  
13 PROSPECTIVE JUROR: Congrats.  
14 THE COURT: Mr. Dungey?  
15 PROSPECTIVE JUROR DUNGEY: Yes.  
16 THE COURT: I'm sorry, Mr. Steadman?  
17 PROSPECTIVE JUROR STEADMAN: Alcohol.  
18 THE COURT: How are you doing with it right now?  
19 PROSPECTIVE JUROR STEADMAN: I drink on the  
20 weekends like a 12 pack, 18 pack.  
21 THE COURT: Okay. Mr. Sinocruz?  
22 PROSPECTIVE JUROR SINOCRUZ: I used to drink  
23 everyday from when I was 16 to when I was 19.  
24 THE COURT: Okay. Have you, any of you been

1 touched by drug use, a brother killed by a driver who was  
2 impaired, problems within your own family, drug use, drug  
3 addictions that touched you in someway? Mr. Sinocruz?

4 PROSPECTIVE JUROR SINOCRUZ: My mom smoked meth  
5 while she was pregnant with me.

6 THE COURT: Okay. How is your mom doing now?

7 PROSPECTIVE JUROR SINOCRUZ: I was taken away from  
8 her at birth.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR SINOCRUZ: I haven't seen her  
11 since.

12 THE COURT: Mr. Nielson?

13 PROSPECTIVE JUROR NIELSON: Well, alcohol was my  
14 drug of choice. I have been sober for 20 years, but it is  
15 the drug of choice of a lot of people in my family.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR NIELSON: It is unfortunate,  
18 but --

19 THE COURT: Okay. I saw other hands. Going to  
20 Ms. Kniesteadt.

21 PROSPECTIVE JUROR KNIESTEADT: My uncle, I watched  
22 him drink himself to death and he finally passed away from  
23 liver failure.

24 THE COURT: Okay. Mr. Steadman?

1           PROSPECTIVE JUROR STEADMAN: My brother, you know,  
2 I don't get to know my nieces or my nephew basically because  
3 he has been on meth, coke, crank, crack. He has been in and  
4 out of the prison system up in Washington, so he is a piece  
5 of work.

6           THE COURT: Thank you for keeping this G rated.

7           PROSPECTIVE JUROR STEADMAN: You are welcome,  
8 Your Honor.

9           THE COURT: Do you ever talk with him about his  
10 drug use?

11          PROSPECTIVE JUROR STEADMAN: He is a piece of  
12 work, that's about it.

13          THE COURT: Okay.

14          PROSPECTIVE JUROR STEADMAN: I don't have nothing  
15 to do with him, don't want nothing to do with him.

16          THE COURT: All right. Mr. Dungey?

17          PROSPECTIVE JUROR DUNGEY: My sister was killed by  
18 a drunk driver.

19          THE COURT: When?

20          PROSPECTIVE JUROR DUNGEY: About 10, 12 years ago.

21          THE COURT: Where?

22          PROSPECTIVE JUROR DUNGEY: Antioch, California.

23          THE COURT: Anybody else? Mr. Luinstra?

24          PROSPECTIVE JUROR LUINSTRA: My dad had drinking



1 problems when I was very young, caused the break-up of him  
2 and my mom, but he has been sober for as long as I can  
3 remember, so the damage was done early before I can recall  
4 it.

5 THE COURT: Anybody else?

6 Mr. Frederick Lewis Bowman enjoys the presumption  
7 of innocence. I strongly endorse that presumption. I think  
8 it is vital in our community. As he sits here today, while  
9 he is charged with a crime, he is not guilty of anything and  
10 will never be guilty until such time if ever the jury is  
11 persuaded beyond a reasonable doubt. That as we progress  
12 through this trial, he maintains his presumption of  
13 innocence. Do any of you have problems with that? Nobody?

14 Now, Mr. Bowman is charged with a single felony  
15 count of Trafficking in a Schedule I Controlled Substance,  
16 somewhere between 4 and 14 grams. Does your opinion change  
17 at all about his presumption of innocence?

18 Do any of you have a reaction when you learn that  
19 he is charged with Trafficking in a Schedule I Controlled  
20 Substance? Nobody?

21 PROSPECTIVE JUROR: He just has been charged,  
22 right?

23 THE COURT: He just has been charged. No problems  
24 so far?

1 PROSPECTIVE JUROR: Well --

2 THE COURT: Mr. Tsuda?

3 PROSPECTIVE JUROR TSUDA: When you say schedule,  
4 what exactly was it?

5 THE COURT: Mr. Tsuda, you have come at my summons  
6 and I respect you for that and I want to say this  
7 diplomatically. I'm not ready to answer that question yet.  
8 Yeah, I'm going to be ready in a second. Methamphetamine.  
9 Does that change things, Mr. Tsuda?

10 PROSPECTIVE JUROR TSUDA: I could be objective.

11 THE COURT: What do you mean?

12 PROSPECTIVE JUROR TSUDA: Well, I consider that a  
13 bad thing, methamphetamine.

14 THE COURT: Well, I think all of us will agree  
15 that methamphetamine is not a healthy choice.

16 PROSPECTIVE JUROR TSUDA: Right.

17 THE COURT: The question is whether Mr. Bowen is  
18 involved in methamphetamine which is an entirely different  
19 question from whether methamphetamine is good or bad. That  
20 is an important distinction.

21 I just want to root out anybody who now has  
22 something against Mr. Bowman because of what you have  
23 learned. Does anybody think of him differently?

24 Does anybody think the State wastes its time by

1 prosecuting somebody who is accused of Trafficking in a  
2 Schedule I Controlled Substance?

3 Are any of you associated with the Nugget Casino  
4 in any way, used to work there, own stock through a private  
5 closely held family or something or another, go there  
6 frequently? You are going to hear that the events in  
7 controversy occurred at the Nugget and I want to make sure  
8 there is nobody that will be affected by that.

9 Do any of you have any philosophical, moral  
10 impediments to sitting in judgment of others, religious  
11 concerns?

12 All right. Who watches Fox News? Raise your  
13 hands. Raise them again just for a second. Now, I'm going  
14 to be fair and balanced and ask who watches MSNBC in just a  
15 minute. All right. MSNBC, who watches that?

16 PROSPECTIVE JUROR: CNN, yeah, I watch the left  
17 wing news.

18 THE COURT: Who watches both? Fair number of you.  
19 Did anybody not vote in the last election and you are  
20 willing to tell me why? Mr. Steadman?

21 PROSPECTIVE JUROR STEADMAN: I don't vote at all.

22 THE COURT: Why?

23 PROSPECTIVE JUROR STEADMAN: Because I don't want  
24 to.

1           THE COURT: It is a beautiful thing about our  
2 country, isn't it?

3           PROSPECTIVE JUROR STEADMAN: Yeah, I guess. I  
4 mean, my opinion was when George Bush and Al Gore, when he  
5 was elected by the people and the stupid electoral college  
6 elected Bush, I said I will never vote, I will never  
7 register, so I don't do it.

8           THE COURT: Do you pay taxes?

9           PROSPECTIVE JUROR STEADMAN: Yeah. It goes to my  
10 ex wives, but --

11          THE COURT: Who else did not vote and doesn't mind  
12 telling me why? Mr. Gaige.

13          PROSPECTIVE JUROR GAIGE: Pulled a double.

14          THE COURT: I'm sorry?

15          PROSPECTIVE JUROR GAIGE: Pulled two shifts that  
16 day.

17          THE COURT: Would you have voted otherwise?

18          PROSPECTIVE JUROR GAIGE: Probably.

19          THE COURT: You didn't want to early vote?

20          PROSPECTIVE JUROR GAIGE: We didn't get the  
21 paperwork for the early vote because we were in the process  
22 of moving, so just darned if you do, darned if you don't in  
23 that case.

24          THE COURT: Anybody else? Ms. Vargas?

1 PROSPECTIVE JUROR JONES: Jones.

2 THE COURT: I'm sorry, Ms. Jones.

3 PROSPECTIVE JUROR JONES: Just had a lot of family  
4 issues at the time, wasn't paying attention to everything.

5 THE COURT: Okay. Anybody else? Mrs. Kniesteadt?

6 PROSPECTIVE JUROR KNIESTEADT: I didn't vote.  
7 Mostly I just wasn't following along with who was part of  
8 the election and I wasn't well informed enough to make a  
9 vote or make a decision on who I would like to vote for.

10 THE COURT: Anybody else?

11 All right. Ms. Price, we haven't heard from you  
12 at all. Has there been a question that you wanted to answer  
13 but just chose to remain silent?

14 PROSPECTIVE JUROR PRICE: No.

15 THE COURT: No?

16 PROSPECTIVE JUROR PRICE: I'm just silent.

17 THE COURT: Is that typically your nature?

18 PROSPECTIVE JUROR PRICE: Yes.

19 THE COURT: Would that affect deliberations in any  
20 way? At some point 12 of you are going to meet together,  
21 shut the door, and talk about this case. Will you  
22 participate?

23 PROSPECTIVE JUROR PRICE: I would try.

24 THE COURT: What does that mean?

1                   PROSPECTIVE JUROR PRICE: Put in as much input as  
2 I could.

3                   THE COURT: Can you imagine a situation where you  
4 don't talk at all during jury deliberations? You would  
5 talk?

6                   PROSPECTIVE JUROR PRICE: Yeah.

7                   THE COURT: Okay. Ms. Cutler, I barely heard from  
8 you. Do you read books, Ms. Cutler?

9                   PROSPECTIVE JUROR CUTLER: Sometimes.

10                  THE COURT: Magazines or books?

11                  PROSPECTIVE JUROR CUTLER: Books.

12                  THE COURT: Books. Can you remember the last book  
13 that you read?

14                  PROSPECTIVE JUROR CUTLER: I think it was an  
15 herbal remedy or a home remedy book.

16                  THE COURT: Why?

17                  PROSPECTIVE JUROR CUTLER: Good stuff to know --

18                  THE COURT: Okay.

19                  PROSPECTIVE JUROR CUTLER: -- if you don't want to  
20 go to the doctors all the time.

21                  THE COURT: Ms. Yott, I'm going to leave you for  
22 the attorneys.

23                  PROSPECTIVE JUROR YOTT: Thanks, Your Honor, I  
24 think.

1 THE COURT: Ms. Storey, what question would you  
2 have answered if I would have just waited a second longer  
3 before moving on?

4 PROSPECTIVE JUROR STOREY: Let me think. There  
5 was nothing that really stood out that I felt that I --

6 THE COURT: Do you want to be here today?

7 PROSPECTIVE JUROR STOREY: Sure. Why not? I  
8 mean, yeah, I'm not opposed to being here.

9 THE COURT: Okay. Have you silently wanted to  
10 serve on a jury before?

11 PROSPECTIVE JUROR STOREY: I was put on two juries  
12 before, but I had medical physical therapy I had to be in  
13 everyday both times, so I was excused.

14 THE COURT: All right. Ms. Curatolo, you know I'm  
15 coming to you next.

16 PROSPECTIVE JUROR CURATOLO: Okay.

17 THE COURT: What are you thinking?

18 PROSPECTIVE JUROR CURATOLO: I'm not thinking  
19 anything.

20 THE COURT: Really?

21 PROSPECTIVE JUROR CURATOLO: No.

22 THE COURT: Do you want to be here today?

23 PROSPECTIVE JUROR CURATOLO: (Shrugs shoulders.)

24 THE COURT: What do you think about the charge



1 Trafficking in a Schedule I Controlled Substance?

2 PROSPECTIVE JUROR CURATOLO: I think it is very  
3 serious.

4 THE COURT: Why?

5 PROSPECTIVE JUROR CURATOLO: Because of  
6 methamphetamine, because of the drug that was being  
7 trafficked.

8 THE COURT: I'm putting words in your mouth, okay?  
9 Even though you might hate methamphetamine, can you still be  
10 fair to this gentleman as you consider the facts that are  
11 presented to you from the attorneys?

12 PROSPECTIVE JUROR CURATOLO: I think so.

13 THE COURT: Do you have any problem finding him  
14 not guilty if the State has not met its burden of proof?

15 PROSPECTIVE JUROR CURATOLO: If the State hasn't  
16 proven without a reasonable doubt.

17 THE COURT: Okay, Ms. Vargas?

18 PROSPECTIVE JUROR VARGAS: Yes, Your Honor.

19 THE COURT: Anything from you today?

20 PROSPECTIVE JUROR VARGAS: I'm so quiet today.  
21 I'm just listening.

22 THE COURT: Have you wanted to answer any of the  
23 questions?

24 PROSPECTIVE JUROR VARGAS: Maybe, but I don't have

1 any ideas about drugs.

2 THE COURT: Tell me about your family.

3 PROSPECTIVE JUROR VARGAS: I got four kids and  
4 they are all grown up.

5 THE COURT: Were they perfect angels or did any of  
6 them give you fits?

7 PROSPECTIVE JUROR VARGAS: They are good kids, so  
8 right now I don't have any problems.

9 THE COURT: Ms. Martinez, how old are you?

10 PROSPECTIVE JUROR MARTINEZ: 26.

11 THE COURT: What do you do for work?

12 PROSPECTIVE JUROR MARTINEZ: I'm an office  
13 manager.

14 THE COURT: Where?

15 PROSPECTIVE JUROR MARTINEZ: At EBS Racing. We  
16 supply Porsche parts.

17 THE COURT: Do you like your job?

18 PROSPECTIVE JUROR MARTINEZ: I love my job.

19 THE COURT: Why do you say it that way?

20 PROSPECTIVE JUROR MARTINEZ: Because I get to deal  
21 with people all day, make them happy.

22 THE COURT: What do you think about marijuana?

23 PROSPECTIVE JUROR MARTINEZ: I think it should be  
24 legal.

1 THE COURT: It should be legal?

2 PROSPECTIVE JUROR MARTINEZ: (Nods head.)

3 THE COURT: Why did you not raise your hand when I  
4 asked the question?

5 PROSPECTIVE JUROR MARTINEZ: I did, but what he  
6 said I agreed with, so it didn't need to be said twice.

7 THE COURT: Ms. Armstrong?

8 PROSPECTIVE JUROR ARMSTRONG: Yes, sir.

9 THE COURT: Tell me.

10 PROSPECTIVE JUROR ARMSTRONG: I'm a good listener.  
11 The question that I might have answered given a little bit  
12 more time, I do have a friend who had leukemia after the age  
13 of 50 twice and she is alive today as a result of medical  
14 marijuana. She got her treatment through California and was  
15 able to get a card there, so I believe in that.

16 THE COURT: Do you have any experience, maybe not  
17 personal, any experience with methamphetamine? Friends,  
18 family, seen it?

19 PROSPECTIVE JUROR ARMSTRONG: Seen it. As a  
20 matter of fact, there was a, I heard through the  
21 neighborhood word that there was a meth lab two doors down  
22 from my house that was just discovered a couple weeks ago.

23 THE COURT: What do you think about that?

24 PROSPECTIVE JUROR ARMSTRONG: I don't like that.

1 It is hard when it is close enough that if something  
2 exploded it could cause a problem.

3 THE COURT: Okay. Would any of you have a problem  
4 returning a not guilty verdict?

5 Does anybody believe that Mr. Bowman is guilty  
6 just because he is sitting here accused of a crime?

7 Do any of you believe that this is not the case  
8 for you and you might not be a fair juror?

9 PROSPECTIVE JUROR WILLIAMS: The reason why I say  
10 that --

11 THE COURT: Mr Williams?

12 PROSPECTIVE JUROR WILLIAMS: Yeah, if that is  
13 Officer Mike Coombes and I worked with him before and he  
14 were to say this is the case, I would probably believe him.

15 THE COURT: So you like him?

16 PROSPECTIVE JUROR WILLIAMS: Yes. I used to  
17 carpool with him.

18 THE COURT: Okay. So you know him fairly well?

19 PROSPECTIVE JUROR WILLIAMS: Yes.

20 THE COURT: Okay. I'm going to keep you here for  
21 awhile. Anybody else?

22 All right. So we are going to take a break now,  
23 and then when we return the State is going to have an  
24 opportunity to ask questions, and then the Defense is going

1 to have an opportunity to ask questions.

2 That is just the order of trial. I go a long time  
3 and then the attorneys supplement, so they go shorter than I  
4 went and the Defense goes even shorter. He doesn't have to,  
5 but it is just because we have been asking the same  
6 questions. There might be some slightly different  
7 questions, but I don't want you to infer anything negative  
8 about the Defense simply because the Defense questioning may  
9 take a shorter period of time.

10 Now, every trial has its own personality and it is  
11 a little different and I'm about to do something I have  
12 never done before. When we break, all of you who are  
13 sitting there will stand up and leave the courtroom and each  
14 of you who are in the jury box are going to stand up and go  
15 into the jury deliberation room and I'm going to call you in  
16 here one-by-one and ask you a quick question. It is going  
17 to be private, and it is going to take about 5 to 10  
18 seconds.

19 Okay. During this recess, it is important that  
20 you not discuss this case amongst yourselves. You may not  
21 form or express any opinion about this matter until it is  
22 finally submitted to you.

23 You are going to hear that admonition every time  
24 we leave the courtroom. It is now 25 minutes to 5:00. I

1 think we are on pace to be done probably by about 6:00.  
2 That is what I'm thinking.  
3 Okay. With that, we are all going to stand. You  
4 behind the bar will leave the courtroom, and you will then  
5 go into the jury deliberation room.  
6 Hold on, one more thing, I need you to remember  
7 your juror numbers. Raise your hand, please, sir, top to  
8 the left. You are 1, 2, 3, so on and so forth, until we get  
9 to 8, 9, 10. Mr. Tsuda is 15. Mr. Sinocruz, you are 16,  
10 17, 18, 19, 20, 21, 22, 23. Mr. Uzarski, you are 6. All  
11 right. We will stand for our panel.  
12 Shut that door, please, Deputy Croxon, between  
13 each juror.  
14 Juror Number 1, have you ever seen  
15 methamphetamine?  
16 PROSPECTIVE JUROR 1: No.  
17 THE COURT: Have you ever used methamphetamine?  
18 PROSPECTIVE JUROR 1: No.  
19 THE COURT: Thank you, sir.  
20 Juror Number 2. We will just have them stand  
21 enough so that there is some sound distance, maybe approach  
22 that chair. He can now go into the rotunda.  
23 Juror Number 2, have you ever used  
24 methamphetamine?

1 PROSPECTIVE JUROR 2: No, sir.

2 THE COURT: Have you ever seen methamphetamine?

3 PROSPECTIVE JUROR 2: No.

4 THE COURT: Thank you.

5 Come forward just a little bit. You are fine

6 right there. Juror Number 3, have you ever used

7 methamphetamine?

8 PROSPECTIVE JUROR 3: No.

9 THE COURT: Have you ever seen methamphetamine?

10 PROSPECTIVE JUROR 3: Yes.

11 THE COURT: There is no right or wrong answer,

12 okay, and nobody is in trouble. Tell me the circumstances

13 that you have seen it.

14 PROSPECTIVE JUROR 3: My roommate got hooked on

15 it, lost her kid and lost everything, so.

16 THE COURT: But you never experimented, not even

17 once?

18 PROSPECTIVE JUROR 3: If I did, I was probably

19 drinking heavily and I don't remember it, but I never fully

20 desired trying that stuff.

21 THE COURT: You have to speak up. You never had

22 what a desire?

23 PROSPECTIVE JUROR 3: I never had a desire to try

24 that, so.



1 THE COURT: Okay. Thank you, Number 3.  
2 Number 4. That is fine right there, Ms. Yott.  
3 Have you ever used methamphetamine?  
4 PROSPECTIVE JUROR 4: No, Your Honor.  
5 THE COURT: Have you ever seen methamphetamine?  
6 PROSPECTIVE JUROR 4: No.  
7 THE COURT: Thank you.  
8 Sir, have you ever -- you are our Juror Number 5?  
9 PROSPECTIVE JUROR 5: Yes.  
10 THE COURT: Have you ever used methamphetamine?  
11 PROSPECTIVE JUROR 5: No.  
12 THE COURT: Have you ever seen methamphetamine?  
13 PROSPECTIVE JUROR 5: Yes.  
14 THE COURT: Under what circumstance, there is no  
15 right or wrong answer and I have asked you to come in here  
16 privately, because I don't want any unnecessary judgments,  
17 under what circumstances have you seen it?  
18 PROSPECTIVE JUROR 5: Somebody had it in front of  
19 me.  
20 THE COURT: Okay.  
21 PROSPECTIVE JUROR 5: I think they were going to  
22 use it.  
23 THE COURT: You think they were going to use it?  
24 PROSPECTIVE JUROR 5: Yeah.

1 THE COURT: Did you watch them use it?  
2 PROSPECTIVE JUROR 5: No.  
3 THE COURT: Why not? How did that happen?  
4 PROSPECTIVE JUROR 5: You can leave a room, leave  
5 the house.  
6 THE COURT: When did this happen?  
7 PROSPECTIVE JUROR 5: Couple days ago.  
8 THE COURT: Who was, I don't need the person's  
9 name, but was it a brother, was it a friend, a girlfriend?  
10 PROSPECTIVE JUROR 5: Friend of a friend.  
11 THE COURT: Friend of a friend. That was your  
12 only experience with methamphetamine?  
13 PROSPECTIVE JUROR 5: Yeah.  
14 THE COURT: Okay. Thank you, sir.  
15 Number 6. Juror Number 6, have you ever, you are  
16 fine right there, have you ever used methamphetamine?  
17 PROSPECTIVE JUROR 6: No, sir.  
18 THE COURT: Have you ever seen methamphetamine?  
19 PROSPECTIVE JUROR 6: No, sir.  
20 THE COURT: Never?  
21 PROSPECTIVE JUROR 6: TV.  
22 THE COURT: Okay. Thank you.  
23 Number 7. Hi, Juror Number 7. Have you ever used  
24 methamphetamine?

1 PROSPECTIVE JUROR 7: No.

2 THE COURT: Have you ever seen methamphetamine?

3 PROSPECTIVE JUROR 7: No.

4 THE COURT: Thank you.

5 Number 8, hi.

6 PROSPECTIVE JUROR 8: Hi.

7 THE COURT: Have you ever used methamphetamine?

8 PROSPECTIVE JUROR 8: Yes.

9 THE COURT: I very much respect your honesty. You

10 are not in trouble. We are not trying to make any judgments

11 here. We are just trying to kind of get to the heart of

12 what people think. How long ago?

13 PROSPECTIVE JUROR 8: Shortly after I quit

14 drinking, so close to 20 years.

15 THE COURT: Okay. And you have maintained all

16 sobriety in the past 20 years?

17 PROSPECTIVE JUROR 8: Yes.

18 THE COURT: Are you unduly judgmental of people

19 who do use drugs and alcohol? Do you love them like

20 brothers or do you hate them like brothers?

21 PROSPECTIVE JUROR 8: Maybe a little bit of both,

22 because I have got, I have family, well, in-laws that have

23 had problems with meth, have had problems with alcohol like

24 myself. One way or the other I couldn't tell you for sure,

1 Your Honor, because I'm not sure myself. I don't, I don't  
2 hate my brothers that are still using it. I just prefer not  
3 to be around them.

4 THE COURT: Okay. Thank you, sir.

5 Number 9. Hi, Number 9. Have you ever used  
6 methamphetamine?

7 PROSPECTIVE JUROR 9: I have.

8 THE COURT: Come forward a little bit. Yes you  
9 have or no you have not?

10 PROSPECTIVE JUROR 9: Yes, I have.

11 THE COURT: How long ago?

12 PROSPECTIVE JUROR 9: When I was 18. I will be 38  
13 in two months.

14 THE COURT: Okay. I want you to know I respect  
15 your honesty. Nobody is in trouble. Nobody is trying to  
16 judge you. We are just trying to figure out the depth of  
17 your methamphetamine use. Did you use it a lot? Were you  
18 addicted to it?

19 PROSPECTIVE JUROR 9: I would not say I was  
20 addicted, no.

21 THE COURT: How frequent was your use?

22 PROSPECTIVE JUROR 9: It was pretty often in high  
23 school, but after high school not at all.

24 THE COURT: What did you do to stop using it?

1 PROSPECTIVE JUROR 9: I didn't like it, so I just  
2 stopped.

3 THE COURT: Have you ever been in a treatment  
4 program?

5 PROSPECTIVE JUROR 9: No.

6 THE COURT: Thank you, sir.

7 Number 10. Hi, come on forward. Juror Number 10,  
8 have you ever used methamphetamine?

9 PROSPECTIVE JUROR 10: No, I have not.

10 THE COURT: Have you ever seen it?

11 PROSPECTIVE JUROR 10: No.

12 THE COURT: Never?

13 PROSPECTIVE JUROR 10: (Shakes head.)

14 THE COURT: Thank you.

15 11. Juror Number 11, have you ever used  
16 methamphetamine?

17 PROSPECTIVE JUROR 11: Absolutely not.

18 THE COURT: Have you ever seen it?

19 PROSPECTIVE JUROR 11: I have seen it, yes.

20 THE COURT: Under what circumstances, you are fine  
21 right there, under what circumstances did you see it?

22 PROSPECTIVE JUROR 11: I think it was on display,  
23 crystalline meth.

24 THE COURT: Okay. Thank you.

1                   Number 12. Hi, come on forward, please. Juror  
2   Number 12, have you ever used methamphetamine?  
3                   PROSPECTIVE JUROR 12: No.  
4                   THE COURT: Have you ever seen methamphetamine?  
5                   PROSPECTIVE JUROR 12: No.  
6                   THE COURT: Okay. Thank you.  
7                   PROSPECTIVE JUROR 12: Thank you.  
8                   THE COURT: 13. Juror Number 13, have you ever  
9   used methamphetamine?  
10                  PROSPECTIVE JUROR 13: No.  
11                  THE COURT: Have you ever seen methamphetamine?  
12                  PROSPECTIVE JUROR 13: No.  
13                  THE COURT: Never seen it?  
14                  PROSPECTIVE JUROR 13: No.  
15                  THE COURT: Okay. Thank you.  
16                  PROSPECTIVE JUROR 13: You are welcome.  
17                  THE COURT: Number 14. Juror Number 14, have you  
18   ever used methamphetamine?  
19                  PROSPECTIVE JUROR 14: No.  
20                  THE COURT: Have you ever seen methamphetamine?  
21                  PROSPECTIVE JUROR 14: No.  
22                  THE COURT: Thank you.  
23                  Number 15. Mr. Tsuda, you are fine right there.  
24   Have you ever used methamphetamine?

1 PROSPECTIVE JUROR 15: No.

2 THE COURT: Have you ever seen methamphetamine?

3 PROSPECTIVE JUROR 15: No.

4 THE COURT: Thank you, sir.

5 PROSPECTIVE JUROR 15: Okay.

6 THE COURT: Sinocruz, 16. Mr. Sinocruz, have you  
7 ever used methamphetamine?

8 PROSPECTIVE JUROR 16: Yes, I have.

9 THE COURT: Thank you for your honesty. Nobody is  
10 in trouble. We are not trying to make judgments. We are  
11 just trying to figure out what is going on when you did it.  
12 How long ago did you last use methamphetamine?

13 PROSPECTIVE JUROR 16: Well, I would say I'm about  
14 three months off of it.

15 THE COURT: How frequent was your use?

16 PROSPECTIVE JUROR 16: Everyday.

17 THE COURT: What did you do to come off the drug?

18 PROSPECTIVE JUROR 16: What did I do to quit?

19 THE COURT: Yeah. Did you go into a program?

20 PROSPECTIVE JUROR 16: No. I just, my parents --  
21 At the time I was homeless and my parents allowed me to move  
22 back into their house and they are like you have to be drug  
23 free, go to school, get a job, and that's exactly what I  
24 did.



1           THE COURT: Okay. And how long was your use, one  
2 year, three years?

3           PROSPECTIVE JUROR 16: Half a year.

4           THE COURT: Half a year?

5           PROSPECTIVE JUROR 16: Half a year, about six  
6 months.

7           THE COURT: All right. Juror 16, I respect your  
8 honesty. Thank you.

9           PROSPECTIVE JUROR 16: Thank you.

10          THE COURT: 17. Juror Number 17, have you ever  
11 used methamphetamine?

12          PROSPECTIVE JUROR 17: No.

13          THE COURT: Have you ever seen methamphetamine?

14          PROSPECTIVE JUROR 17: On TV.

15          THE COURT: Thank you.

16          PROSPECTIVE JUROR 17: That's it?

17          THE COURT: Yes.

18          18. Juror Number 18, have you ever used  
19 methamphetamine?

20          PROSPECTIVE JUROR 18: Yes.

21          THE COURT: Thank you. I very much respect your  
22 honesty. Nobody is in trouble. Nobody is trying to judge.  
23 We are just trying to understand if you are fit for this  
24 case. How long ago was your last use?

1               PROSPECTIVE JUROR 18: Probably around the time I  
2 was 17, 18. That is the reason why I ended up in the  
3 military in the first place.

4               THE COURT: Okay. How old are you now?

5               PROSPECTIVE JUROR 18: 44.

6               THE COURT: And you haven't used in the last 20  
7 plus years then?

8               PROSPECTIVE JUROR 18: No.

9               THE COURT: How often was your use?

10              PROSPECTIVE JUROR 18: Daily.

11              THE COURT: Okay. For how long, a year, two  
12 years?

13              PROSPECTIVE JUROR 18: Only about two, three  
14 months, that was it.

15              THE COURT: Was your discharge other than  
16 honorable circumstances drug related?

17              PROSPECTIVE JUROR 18: No, it was not. It was due  
18 to a very bad command decision that made me stand up for my  
19 troops. I ended up going to the mat, didn't like the  
20 answers that were given. I took it as high as I could, and  
21 because of my actions I was kicked out and so was he.

22              THE COURT: Okay. Thank you, sir.

23              Juror Number 19. So, Mr. Steadman, I don't -- you  
24 can stay right there. I didn't want to say anything about

1 you in front of the other jurors because I have to be very  
2 careful. I like you, you are a little cantankerous, which  
3 is likable, and you seem honest. Have you ever used  
4 methamphetamine?

5 PROSPECTIVE JUROR 19: I have never done a drug  
6 but alcohol, Your Honor.

7 THE COURT: Have you ever seen methamphetamine?

8 PROSPECTIVE JUROR 19: Yeah.

9 THE COURT: Under what circumstances would you  
10 have seen it?

11 PROSPECTIVE JUROR 19: Out where I'm at, it is all  
12 over out there. People, you know, I have seen friends do it  
13 in front. You know, I have seen them do coke. They have  
14 asked me if I wanted some. No, not my cup of tea.

15 THE COURT: So except for alcohol you have  
16 never tried any illegal substance --

17 PROSPECTIVE JUROR 19: I never even tried a  
18 cigarette.

19 THE COURT: Okay. Thank you, sir.

20 PROSPECTIVE JUROR 19: You are welcome.

21 THE COURT: Number 20. Hi.

22 PROSPECTIVE JUROR 20: Hello.

23 THE COURT: Have you ever used methamphetamine?

24 PROSPECTIVE JUROR 20: Yes, I have.

1 THE COURT: You are okay right there. Thank you.  
2 I appreciate your honesty. I respect it very much. Nobody  
3 is in trouble. Nobody is trying to judge.

4 PROSPECTIVE JUROR 20: Okay.

5 THE COURT: Tell me the circumstance of your use.

6 PROSPECTIVE JUROR 20: 30 years ago, me and my  
7 wife used to use it recreationally.

8 THE COURT: What was the frequency?

9 PROSPECTIVE JUROR 20: Once every couple weeks on  
10 the weekend.

11 THE COURT: Are you still with that wife?

12 PROSPECTIVE JUROR 20: No. We are divorced.

13 THE COURT: For what duration of time, one year,  
14 two years?

15 PROSPECTIVE JUROR 20: Three or four years until  
16 we had a daughter.

17 THE COURT: When is the last time you used?

18 PROSPECTIVE JUROR 20: 15 years.

19 THE COURT: Okay. Thank you, sir.

20 21. Ma'am, have you ever used methamphetamine?

21 PROSPECTIVE JUROR 21: No.

22 THE COURT: Have you ever seen methamphetamine?

23 PROSPECTIVE JUROR 21: No.

24 THE COURT: Never?

1 PROSPECTIVE JUROR 21: No.

2 THE COURT: Thank you.

3 22. Juror Number 22, have you ever used

4 methamphetamine?

5 PROSPECTIVE JUROR 22: No.

6 THE COURT: Have you ever seen methamphetamine?

7 PROSPECTIVE JUROR 22: No.

8 THE COURT: Okay. Thank you.

9 And finally Juror Number 23. Hi.

10 PROSPECTIVE JUROR 23: Hi.

11 THE COURT: Juror Number 23, have you ever used

12 methamphetamine?

13 PROSPECTIVE JUROR 23: No.

14 THE COURT: Have you ever seen methamphetamine?

15 PROSPECTIVE JUROR 23: No.

16 THE COURT: Thank you.

17 Counsel, we are going to be in recess. If you

18 need to, if you need to use the facilities in chambers,

19 let's have you do that. Deputy Croxon, open up the jury

20 room for one of the attorneys. Let's just not have them

21 mingle with the prospective jurors and let's try and get

22 this done probably in the next five minutes.

23

24 (Whereupon a break was taken from 4:48 p.m. to 5:03 p.m.)

1           THE COURT: For the State, you may begin your  
2 supplemental examination.

3           MR. LUCIA: Thank you, Your Honor. Do you mind if  
4 I use the lectern?

5           THE COURT: Feel free.

6           MR. LUCIA: So good evening, ladies and gentlemen.  
7 As I mentioned before, my name is Travis Lucia and I'm a  
8 representative from the District Attorney's Office. Like  
9 the Judge mentioned earlier, the purpose of this really  
10 isn't meant to pry into your personal lives or to try and  
11 lay you out here in front of a room full of folks that you  
12 have never really met before and really expose some things  
13 that you probably wouldn't really stand up and talk about in  
14 this kind of a setting.

15           But the real reason that we are doing this is  
16 because, as His Honor mentioned, we want to try to see if  
17 you are the right person to hear this case. So with that, I  
18 think it was at least a little bit funny, I was looking at a  
19 book the other week and it was called the Book of Lists, and  
20 like the title would suggest, I guess, it is a big book full  
21 of a bunch of random lists.

22           What was important for this type of thing that we  
23 are doing today is that there was a list that listed in  
24 order 1 to 10 humanity's greatest fears, and on that list,

1 of course, as you would probably assume was fear of dying.  
2 Now, if I asked you just throw a number out there, where do  
3 you think fear of death would rank on that list?

4 PROSPECTIVE JUROR: Number one.

5 MR. LUCIA: Number one? Now, what is funny is  
6 that actually is number four. The number one fear of  
7 humanity listed in the Book of Lists is actually the fear of  
8 public speaking.

9 So somebody, I can see some of you shaking your  
10 head, so it sounds like at least there is a reason why that  
11 probably rose to the top of that book, so thank you for what  
12 you have shared thus far. If any question I ask causes you  
13 to feel some trepidation, I'm asking you to overcome that,  
14 conquer that fear, and just be honest with us this  
15 afternoon.

16 Now, if I can just start by asking for a show of  
17 hands here, can you raise your hand if you think that  
18 Mr. Bowman is entitled to a fair trial?

19 Okay. I see every hand go up. Ma'am, you were a  
20 little delayed there. Is there any reason that that kind of  
21 caught you off guard?

22 PROSPECTIVE JUROR: No.

23 MR. LUCIA: Okay. Are you able to understand me  
24 clearly as I'm talking?



1 PROSPECTIVE JUROR: Yes.

2 MR. LUCIA: Okay. Now, let me ask this another  
3 way. If you guys can do me a favor again and just raise  
4 your hand, does everyone also believe that the State is  
5 entitled to a fair trial as well? Okay. And is that true  
6 for everybody? Sir?

7 PROSPECTIVE JUROR: Sorry.

8 MR. LUCIA: Okay. I just wanted to make sure.  
9 Sometimes I might not be able to see because of the Court  
10 Reporter.

11 Now, I wanted to kind of follow up on something  
12 that His Honor talked about just briefly, and I think it is  
13 worth noting, because it is true that for most folks, aside  
14 from those of you who have been lucky enough to be called  
15 for jury duty more than once, this is really the first time  
16 everyone has been in this kind of a setting before. Is that  
17 largely accurate?

18 Aside from Ms. Yott, of course, who probably gets  
19 enough law and order during the 9:00 to 5:00, or I guess in  
20 the civil world probably the 7:00 to 9:00 range, but,  
21 nonetheless, I think it's important because most folks' view  
22 of the criminal justice system is shaped by the media or by  
23 what they see or don't see on TV.

24 So His Honor listed some of the shows that are

1 kind of prevalent. Some of the shows that I always like to  
2 bring up all kind of start with the same three letters and  
3 it is CSI.

4 Is everyone familiar with CSI? There is like CSI  
5 New York, Los Angeles, Las Vegas, New Orleans, I think there  
6 is like an Idaho one now, maybe a Montana. So they are  
7 moving all over the place, but nonetheless is everyone  
8 familiar with those type of shows?

9 PROSPECTIVE JURORS: Yes.

10 MR. LUCIA: Would there be anybody who disagrees  
11 with me that those shows don't necessarily do the best job  
12 of portraying what really happens in the real word? Can  
13 everyone accept that?

14 Is there anybody who sits here today and thinks  
15 that, well, I have seen those shows before, so what I expect  
16 is that in 30 minutes with two limited interruptions for  
17 commercials, the State will go through their case, the  
18 Defense will go through whatever case they have, and then in  
19 a neat little bow we will get this package and then that  
20 will be it, the credits will roll and that will be the end  
21 of it?

22 Is anybody expecting that that will be their  
23 experience if they are selected for the jury? Anybody have  
24 any problem with that? Now, I forgot about Bones, but it is

1 kind of the same difference, right?

2 Now, if you are selected to be a member of this  
3 panel, do you understand that your job would be essentially  
4 to decide the facts in this case?

5 You are not called upon to decide the law, just to  
6 decide what the facts are, and in that vain you will hear  
7 evidence that will come from witnesses and you will, if  
8 selected, deliberate with your fellow jurors to reach a  
9 determination as to guilt beyond a reasonable doubt or not.

10 Does anybody have any problem with the issue that  
11 you are just here to decide the facts, not the law? Can  
12 everyone accept that if you are instructed on the law, it  
13 would be your duty to follow that, even if you had some  
14 personal disagreement to it?

15 Okay. The example that I like to use, even if a  
16 law were ridiculous, like, for example, if it were illegal  
17 to wear a red tie on the Monday following Thanksgiving, we  
18 might all agree with the notion that is a ridiculous law,  
19 but if you were selected as a juror and that was the law in  
20 the case, you would be obligated to follow that. Does  
21 anybody have any issue with that notion?

22 Okay. I wanted to talk briefly to address  
23 something that had come up with respect to Mr. Williams,  
24 your connection possibly to Mr. Coombes in this case. You

1 said that you had known him from some prior experience work  
2 related?

3 PROSPECTIVE JUROR WILLIAMS: Yeah.

4 MR. LUCIA: I can tell you that I don't expect  
5 that he is going to be testifying in this case.

6 PROSPECTIVE JUROR WILLIAMS: That's fine.

7 MR. LUCIA: Nonetheless, you have some connection  
8 with law enforcement, is that true?

9 PROSPECTIVE JUROR WILLIAMS: My brother was a  
10 police officer. Yeah, I have a lot of military.

11 MR. LUCIA: Okay. And I guess this question would  
12 be equally posed for everybody here, but unfortunately I'm  
13 sort of directing it at you, if an officer were to testify,  
14 any officer, is there anybody here that is inclined to  
15 believe that person more just because they are a cop?

16 And think about it, if you want, for a second. It  
17 is a genuine question and just be as honest as you can be  
18 with me. Is there anybody that thinks as they sit here  
19 today, well, if a cop says that that is the way it happened,  
20 well, that must be the way it happened? I can see some  
21 folks, Mr. Dungey.

22 PROSPECTIVE JUROR DUNGEY: My brother is a police  
23 officer and I believe everything he says.

24 MR. LUCIA: All right. And how old, is he an

1 older brother, younger brother?

2 PROSPECTIVE JUROR DUNGEY: The older brother, he  
3 is retired and passed away just a few months ago.

4 MR. LUCIA: Sorry to hear about that. I have got  
5 an older brother. I can tell you I love my brother, but I  
6 would probably say that not everything he said I agree with.

7 PROSPECTIVE JUROR DUNGEY: Certainly, he is my  
8 brother.

9 MR. LUCIA: Sure. Can you accept the fact for the  
10 rest of this hearing if you are selected as a juror that  
11 police officers are just like everybody else?

12 PROSPECTIVE JUROR DUNGEY: Yes.

13 MR. LUCIA: They are human beings. Sometimes they  
14 make mistakes. Can you look at their testimony through the  
15 same lens as you would any other witness even if it were a  
16 lay witness on the street?

17 PROSPECTIVE JUROR DUNGEY: Yes.

18 MR. LUCIA: Okay. Is that true for everybody else  
19 on the panel?

20 Now, to another branch on that same tree, is there  
21 anybody that thinks because they are police officers the  
22 opposite is true? That if a cop says it happened, well, we  
23 know how police are, they must be lying. Is there anybody  
24 that has a feeling like that coming into this case or just

1 as you sit here this afternoon and listen to us talk?

2 Okay. Ms. Yott, I promise I will be as brief as I  
3 can. I understand you are a civil practitioner?

4 PROSPECTIVE JUROR YOTT: That's right.

5 MR. LUCIA: And I believe you mentioned this  
6 earlier when the Judge began talking, but could you tell me  
7 again what kind of law it is that you practice?

8 PROSPECTIVE JUROR YOTT: I primarily practice  
9 Worker's Compensation in the administrative courts. My law  
10 firm represents both insurance companies and plaintiffs. We  
11 do, we are a unique breed in that we do both sides.

12 I personally, I do some civil law, so I have been  
13 in this courthouse before practicing, but mainly I'm down in  
14 Carson City or in Las Vegas in the Worker's Compensation  
15 administrative courts.

16 MR. LUCIA: All right. And you can thank me later  
17 for the opportunity for the skill.

18 PROSPECTIVE JUROR YOTT: That's right.

19 MR. LUCIA: But at any point during the course of  
20 your career in the legal field has it ever crossed into a  
21 criminal arena in any respect?

22 PROSPECTIVE JUROR YOTT: I was trying to think, I  
23 knew you were going to ask me that. I have been a lawyer  
24 for more than 30 years and I think the only time I have ever



1 had an involvement in a criminal case was my brother.

2 He was charged with a DUI. It was out in  
3 Lovelock, and what I think I did was I grabbed someone from  
4 my husband's firm, he was in a separate firm at that time,  
5 and I said come and help me. And we went out there and got  
6 him out of jail and did what was necessary, but as a large,  
7 thousands of cases practical matter, no, I don't know  
8 anything about it, never done it, other than I think that  
9 one time.

10 MR. LUCIA: Okay. Well, then that kind of jumps  
11 to the heart of my next question, then. If you were  
12 selected to be on this jury, would you be able to sort of  
13 set aside any of your legal training that might be  
14 applicable to this case and just hear the facts, hear the  
15 evidence, and make your determination at the end of the day?

16 PROSPECTIVE JUROR YOTT: I would do my very best  
17 and I think the answer to that would be yes.

18 MR. LUCIA: All right. Thank you for that. Now,  
19 Ms. Price, you have been kind of silent, which strikes me as  
20 a little bit odd, because I believe you are a receptionist,  
21 is that correct? And it is through R & R Partners, correct?

22 PROSPECTIVE JUROR PRICE: Uh-huh.

23 MR. LUCIA: Is that the building right by the  
24 river there?



1 PROSPECTIVE JUROR PRICE: Yeah,

2 MR. LUCIA: Okay. So is it just that you are not  
3 talking today because you probably talk a lot during the  
4 course of your 9:00 to 5:00 or --

5 PROSPECTIVE JUROR PRICE: I don't like talking in  
6 front of a big group of people.

7 MR. LUCIA: Certainly, so you are one of the folks  
8 that answered the poll that jumped that public speaking up  
9 to the top of the list. Well, I won't belabor it anymore,  
10 then. I just wanted to make sure that I had that.

11 Now, Ms. Kniesteadt, you mentioned something  
12 earlier with respect to I believe your husband who you said  
13 was involved in accusations involving robbery in sometime  
14 past. You indicated that in that case he was eventually  
15 acquitted or found not guilty of that crime. Do you  
16 remember if that was as a result of a trial or did the case  
17 just go away without having gone to trial?

18 PROSPECTIVE JUROR KNIESTEADT: I think it just  
19 went away without going to trial.

20 MR. LUCIA: All right. Is there anything about  
21 that experience or what you have learned about your  
22 husband's experience that you carry with you into this case?

23 PROSPECTIVE JUROR KNIESTEADT: No.

24 MR. LUCIA: And, in fact, is that true for the

1 entire panel, that we all might have, I guess, individual  
2 life experiences that we can draw on, but are you able to  
3 walk into this courtroom and set those aside and just listen  
4 to the evidence and take it for what it is worth?

5           Okay. I promised I would be quick and I want to  
6 keep to that promise, so I only have a couple other  
7 questions for you folks. If you are selected to make it  
8 onto the panel, one of the things that you will be asked, or  
9 at least instructed, excuse me, is that there is a strict  
10 rule against any of the attorneys having any sort of  
11 interaction with you during the course of a trial.

12           What that means is if you are getting in an  
13 elevator, for example, and I'm walking towards that same  
14 elevator and I see you standing there and I turn around and  
15 run away as fast as I can, that is because that is what the  
16 rules say.

17           Well, they don't say I have to run. They just say  
18 I can't have any contact with anybody. The same thing would  
19 apply to both Mr. Carrico and Ms. Ristenpart. Would anybody  
20 hold that against any of the attorneys?

21           In fact, we all now know of certain things we just  
22 can't do during the course of the trial. There is a sense  
23 of decorum that we would have to uphold and that is one of  
24 those pillars.

1           And, lastly, folks, is there anything that anybody  
2 left out here in our kind of question and answer section  
3 that you think is important to the determination of your  
4 ability to serve as a juror in this case?

5           To say that another way, is there any reason that  
6 you feel, for whatever reason, that you cannot be fair and  
7 impartial, and that is to either Mr. Bowman or to the State?

8           All right. I have no further questions.

9           THE COURT: Thank you, Mr. Lucia. Mr. Carrico.

10          MR. CARRICO: Thank you, Your Honor. Good  
11 evening, everyone. I will try to be brief as well, because  
12 I know your time is very valuable. Following up on  
13 Mr. Lucia's question about does anybody like CSI or crime  
14 shows, does anyone enjoy puzzles? Ms. Yott.

15          PROSPECTIVE JUROR YOTT: I do. I like puzzles.

16          MR. CARRICO: And why do you enjoy puzzles?

17          PROSPECTIVE JUROR YOTT: It makes me think.

18          THE COURT: And, Mr. Mueller, why do you enjoy  
19 puzzles?

20          PROSPECTIVE JUROR MUELLER: Same thing, something  
21 to do. Something to figure out.

22          MR. CARRICO: The reason I ask this question is  
23 because we are going to hand you pieces of evidence if you  
24 do make it onto the jury and we will ask you to put those

1 pieces together. Does anyone enjoy mysteries? Mr. Uzarski?

2 PROSPECTIVE JUROR UZARSKI: Yes, sir.

3 MR. CARRICO: And why do you enjoy mysteries and

4 what about them do you enjoy?

5 PROSPECTIVE JUROR UZARSKI: I like the

6 entertainment value and it keeps me thinking. I always try

7 to figure it out before how it is going down and what is

8 happening.

9 MR. CARRICO: So you enjoy putting some of the

10 clues together?

11 PROSPECTIVE JUROR UZARSKI: I try to, yeah.

12 MR. CARRICO: Does anybody else enjoy mysteries at

13 all? Mr. Mueller, is that mystery novels or mystery films,

14 shows?

15 PROSPECTIVE JUROR MUELLER: Novels, shows,

16 Sherlock Holmes.

17 MR. CARRICO: Sherlock Holmes.

18 PROSPECTIVE JUROR MUELLER: Book, novels,

19 MR. CARRICO: Is that the new Sherlock Holmes on

20 Netflix or --

21 PROSPECTIVE JUROR MUELLER: The new ones. I have

22 read all of the original ones.

23 MR. CARRICO: Okay. Did I see another hand up

24 there, Ms. Cutler?

1 PROSPECTIVE JUROR CUTLER: No.

2 MR. CARRICO: Oh, Ms. Yott, you also like  
3 mysteries?

4 PROSPECTIVE JUROR YOTT: I like mystery novels.

5 MR. CARRICO: Okay. Just briefly, do any of you  
6 know each other by any chance looking around?

7 And does anybody have any thoughts on why some  
8 cases may go to trial and others don't? Mr. Tsuda, any  
9 notions about that?

10 PROSPECTIVE JUROR TSUDA: They either go to trial  
11 or plea bargain.

12 MR. CARRICO: And why would there be a plea  
13 bargain in certain cases and other cases go to trial, if you  
14 know?

15 PROSPECTIVE JUROR TSUDA: I don't really know the  
16 specifics, but that just seems to be what happens, you know.

17 MR. CARRICO: Let's see here, Ms. Kniesteadt, did  
18 I say that right? Okay. I'm glad I didn't butcher your  
19 name there. Do you have any notions why some cases go to  
20 trial and others might be plea bargained or otherwise?

21 PROSPECTIVE JUROR KNIESTEADT: No. I guess it  
22 depends upon the situation and from their advice what would  
23 be best.

24 MR. CARRICO: And like what certain situations

1 would make a case go to trial and maybe based on your own  
2 personal experiences?

3 PROSPECTIVE JUROR KNIESTEADT: I don't know. I  
4 would think probably if there was a, they didn't want to  
5 make the process lengthy in having to go to court and go  
6 through the process going through a jury and all of that.

7 MR. CARRICO: Does anybody else have any other  
8 reasons why a case might go to trial or be plea bargained?  
9 Mr. Luinstra?

10 PROSPECTIVE JUROR LUINSTRA: Luinstra. I imagine  
11 there is a lot of reasons. I would think, I'm not a legal  
12 expert by any means, but I would imagine if a case goes  
13 particularly bad, sometimes a defense attorney might  
14 recommend a plea bargain.

15 Sometimes the evidence is probably not as strong  
16 and it is in the best interest to go to trial. I imagine it  
17 is just varied in every situation, I would think.

18 MR. CARRICO: So in some cases the State's case is  
19 weaker and you would go to trial?

20 PROSPECTIVE JUROR LUINSTRA: Yes.

21 MR. CARRICO: Do some cases go to trial because  
22 the accused may be innocent?

23 PROSPECTIVE JUROR LUINSTRA: Well, obviously, yes.

24 MR. CARRICO: Now, does anybody have an issue with



1 the State's witnesses also being the Defense's witnesses?  
2 Is there any problem with that at all? The reason I asked  
3 is at least in this case there is a limited number of  
4 witnesses who perceived the event and sometimes that's just  
5 how it goes.

6 Is there anyone who would hold it against  
7 Mr. Bowman if he chose not to testify for any reason?

8 Mr. Sinocruz?

9 PROSPECTIVE JUROR SINOCRUZ: None.

10 MR. CARRICO: No issue with that?

11 PROSPECTIVE JUROR: I kind of would.

12 MR. CARRICO: You kind of would, and why is that?

13 PROSPECTIVE JUROR: Because if I wasn't guilty, I  
14 would want to say that I wasn't.

15 MR. CARRICO: Could there be other reasons  
16 for choosing not to testify?

17 PROSPECTIVE JUROR: There could, but personally I  
18 would be like I know I didn't do it, so I would be like I  
19 didn't do it, you know, I would want to.

20 MR. CARRICO: Could someone possibly have that  
21 number one fear that Mr. Lucia mentioned, fear of public  
22 speaking?

23 PROSPECTIVE JUROR: I have it right now. My face  
24 is probably turning bright red, but still --



1                   MR. CARRICO: I'm certain mine is, too. Could  
2   there be some kind of speech impediment issue that would  
3   make someone not want to testify?

4                   PROSPECTIVE JUROR: Well, there is a million  
5   reasons, but I'm just saying personally.

6                   MR. CARRICO: I'm just trying to see if there is  
7   some other reasons out there. What about any mental health  
8   issues?

9                   PROSPECTIVE JUROR: Yeah, I can see that, maybe  
10   feel bad.

11                  MR. CARRICO: Do you agree with any of that,  
12   Ms. Hogan?

13                  PROSPECTIVE JUROR HOGAN: I agree with her, if you  
14   are innocent then I would want to speak the reason why.

15                  MR. CARRICO: Does anyone disagree with that  
16   supposition?

17                  PROSPECTIVE JUROR TSUDA: I think a lot of times  
18   it could be a disadvantage for the defendant to testify,  
19   because then you can cross examine and make a mess out of  
20   him, you know, and so that is why they have hired you, so  
21   you can do all of that and he can just sit there and  
22   hopefully you earn your money well and get him off.

23                  MR. CARRICO: But you can still see there is some  
24   other reasons that he may or may not want to testify?

1 PROSPECTIVE JUROR TSUDA: Yeah.

2 MR. CARRICO: Mr. Luinstra, did I say it right

3 that time?

4 PROSPECTIVE JUROR LUINSTRA: Luinstra.

5 MR. CARRICO: Luinstra.

6 PROSPECTIVE JUROR LUINSTRA: Same thing, if you

7 have ever been in an argument or a discussion with someone

8 that is good at putting words in your mouth or misconstruing

9 what you are saying, you know, the prosecuting attorney may

10 be one of those people. I'm not saying you are.

11 MR. LUCIA: I understand, no offense.

12 PROSPECTIVE JUROR LUINSTRA: I can understand why

13 you wouldn't want to put yourself in that situation and it

14 is also your constitutional right to not do so if you don't

15 want to.

16 MR. CARRICO: Ms. Yott, do you have any insight on

17 that at all?

18 PROSPECTIVE JUROR YOTT: I think that it is the

19 right of the defendant under the Fifth Amendment and

20 otherwise not to testify and I wouldn't hold it against him,

21 if that's your question to me.

22 MR. CARRICO: Thank you. And Mr. Mueller?

23 PROSPECTIVE JUROR MUELLER: I agree with what she

24 said.

1 MR. CARRICO: You agree with that position?

2 PROSPECTIVE JUROR MUELLER: Yeah, it is your  
3 right.

4 MR. CARRICO: Does anyone know anything about  
5 circumstantial evidence? Perhaps I will use an example.  
6 You tell your niece or nephew not to go in the kitchen  
7 because there is a cookie jar there, and you come in an hour  
8 later, the cookie jar is open, he or she has chocolate chips  
9 all over his or her face, and you may jump to a conclusion  
10 such as my niece disobeyed my order not to eat the cookies  
11 in the cookie jar.

12 The reason I'm asking that is because we are  
13 looking for jurors who will not jump to any conclusions  
14 about certain issues, because couldn't there be another  
15 possibility as to why your niece or nephew may have, you  
16 know, evidence pointing towards her disobeying your order?  
17 Anybody have any insight on that?

18 PROSPECTIVE JUROR: Somebody else could have given  
19 her the cookies or offered them, not her actually getting  
20 the cookies and grabbing them for herself.

21 MR. CARRICO: Right, so there could be --

22 PROSPECTIVE JUROR: Many other --

23 MR. CARRICO: So is there a necessity to look at  
24 all of the factors, maybe to ask the other person in the

1 house if they gave permission? Mr. Nielson, do you agree  
2 with that?

3 PROSPECTIVE JUROR NIELSON: Yes, especially seeing  
4 as how I have grand kids and a wife, yes, I definitely agree  
5 with that.

6 MR. CARRICO: Okay. Well, I won't take up any  
7 more of your time. Thank you very much.

8 THE COURT: Counsel, do you both pass this panel  
9 for cause?

10 MR. CARRICO: Yes, Your Honor.

11 MR. LUCIA: The State does, Your Honor.

12 THE COURT: Thank you. Ladies and gentlemen, if  
13 you sit behind the bar, you will not be used in jury  
14 service.

15 I don't have a prepared speech. I sometimes just  
16 say what I think. I'm not reading from a script, but in the  
17 last few moments as I felt jury selection coming to an end,  
18 I thought about the reasons we have to grumble about our  
19 country, about our communities, and seeing you respond to  
20 the call inspires me.

21 We don't know each other. You have left the  
22 activities you would otherwise enjoy and attend to to be in  
23 service to your community. On behalf of the attorneys and  
24 Mr. Bowman, I thank you.

1           We are going to in a moment leave, well, you are  
2 all going to leave. Behind the bar, you may go downstairs  
3 and leave the courthouse. Deputy Croxon will be available  
4 to assist at your request. He might have some friends here  
5 in uniform available to assist you.

6           To those of you who sit in the jury box, you are  
7 not released yet, but soon we will know who our jurors will  
8 be. The attorneys will meet separately and peremptorily  
9 strike some of you.

10           If you are stricken, you haven't done anything  
11 wrong. It just means they believe you are better suited for  
12 another case. I have found your participation to be  
13 refreshing, sincere, and my comments equally apply to you.

14           During this recess, please do not discuss this  
15 case amongst yourselves. Please do not form or express any  
16 opinion about this matter until it is finally submitted to  
17 you.

18           We are going to be probably 15 minutes at the  
19 least and 20 minutes at the most, so if you will be in the  
20 hallway ready for return into the jury deliberation room in  
21 15 minutes. We will stand for our jury.

22 (The following proceedings were outside jurors' presence.)

23           MS. RISTENPART: My understanding from Ms. Clerk  
24 is that the Criminal Complaint states Department 1 and

1 Defense is stipulating to just verbally state that it is  
2 Department 15.

3 MR. LUCIA: Of course, no objection to that.

4 THE COURT: Thank you.

5 MS. RISTENPART: Thank you.

6 MR. LUCIA: Thank you, Your Honor.

7 THE COURT: And we will have to remember to, we  
8 have the razor blade issue.

9 MR. LUCIA: I have that, I have it written down.

10 THE COURT: So either, it depends on how we feel,  
11 either tonight or first thing in the morning before we  
12 start, just don't let me forget.

13 MS. RISTENPART: Okay.

14 MR. LUCIA: Thanks, Judge.

15

16 (Whereupon a break was taken from 5:29 p.m. to 5:38 p.m.)

17 (The following proceedings were outside jurors' presence.)

18

19 THE COURT: To the State, your first peremptory  
20 strike?

21 MR. LUCIA: Thank you, Your Honor. First one will  
22 be Juror Number 9.

23 THE COURT: Charles Darland. To the Defense?

24 MR. CARRICO: Juror Number 4, Your Honor.

1 THE COURT: For the State?

2 MR. LUCIA: Juror Number 3, Ms. Cutler,

3 THE COURT: Ms. Cutler. To the Defense?

4 MR. CARRICO: Juror Number 5.

5 THE COURT: Williams. To the State?

6 MR. LUCIA: Juror Number 19, Mr. Steadman,

7 THE COURT: To the Defense?

8 MR. CARRICO: Juror Number 11.

9 THE COURT: Smith. To the State, your last

10 peremptory?

11 MR. LUCIA: Will be Mr. Sinocruz, Juror Number 16.

12 THE COURT: To the Defense?

13 MR. CARRICO: Juror Number 18, Your Honor.

14 THE COURT: Gaige. Now, Counsel, our three

15 alternates are 21, 22, and 23, Martinez, Luinstra, and

16 Hogan. To the State, you may strike one.

17 MR. LUCIA: It will be Juror Number 21,

18 Ms. Martinez.

19 THE COURT: To the Defense?

20 MR. CARRICO: Juror Number 23, Your Honor.

21 THE COURT: Hogan. Left to right, our jury is

22 Mueller, Price, Uzarski, Storey, Nielson, Kniesteadt,

23 Vargas, Jones, Curatolo, Tsuda, Armstrong, Dungey, with the

24 alternate Luinstra. Are we all on the same sheet of music?



1 MS. RISTENPART: Yes, Your Honor.

2 MR. LUCIA: Yes, Your Honor.

3 THE COURT: All right. Bring them in, please.

4 (Prospective jurors were returned to the courtroom.)

5 THE COURT: All right. As you hear your name,

6 please move toward the jury box. You have been selected to

7 sit on this jury. Where you sit is important, so please

8 follow the order. In the first position, Mueller.

9 DEPUTY CROXON: This way, please.

10 THE COURT: Price, Uzarski, Storey, Nielson,

11 Kniesteadt, Vargas, Jones.

12 PROSPECTIVE JUROR JONES: Jones?

13 THE COURT: Ana Jones, Curatolo, Tsuda, Armstrong,

14 Dungey, Luinstra. If your name is not called, you are not

15 selected for jury service. You are free to go, except, Ms.

16 Yott, thank you for your daughter's service here in the

17 court. You should be very proud of Weston. She does a

18 great job for us.

19 PROSPECTIVE JUROR YOTT: Thank you, Your Honor. I

20 am proud of her.

21 THE COURT: You should be.

22 PROSPECTIVE JUROR YOTT: Merry Christmas,

23 everybody.

24 THE COURT: Deputy Croxon, if you will escort

1 Mr. Steadman to the bench real quick. The rest of you are  
2 free to go.

3 (An off record discussion was had.)

4

5 THE COURT: Ladies and gentlemen, I'm going to  
6 bring this evening to an end. Tomorrow when we reconvene,  
7 you will be sworn to a separate oath. I will then introduce  
8 the chronology of the trial and we will begin with opening  
9 statements.

10 I'm balancing a few things this week. As I said  
11 earlier, whenever I predict time, I'm wrong. The question  
12 is whether I should predict and be wrong or not say  
13 anything. I don't mean to be funny in the slightest. I  
14 said several times, this is important to the State and it is  
15 important to Mr. Bowman.

16 If you are unhappy this week, hold it against me  
17 and not the attorneys or Mr. Bowman. You will even have the  
18 privilege of voting against me, if you want. I'm  
19 responsible for our efficient or inefficient use of your  
20 time.

21 I have other matters to tend to in the morning and  
22 I don't want you to just sit, and so Counsel and Mr. Bowman  
23 are going to have a healthy mid morning snack and we are  
24 going to start at 11:00 and go straight through.

1           We will stand and we will take a recess every hour  
2 to hour and 15 minutes. If some of you need to go outside  
3 and satisfy a nicotine habit, we will know that and we can  
4 help you and we don't have any problems with that.

5           But we will go from 11:00 and go right through  
6 till 5:00, so bring a sack lunch or something. We will take  
7 a 30 minute break, I know, somewhere in the neighborhood of  
8 2:00-ish.

9           So I hope that is enough information that you can  
10 plan your day. So please be in the jury deliberation room  
11 for entry into the courtroom at 11:00, I'm guessing. I have  
12 a criminal calendar in the morning with 16 matters and it  
13 starts at 9:00.

14           A JUROR: That is where we met?

15           THE COURT: No.

16           A JUROR: Oh, right there.

17           THE COURT: You are going to follow Deputy Croxon  
18 in a minute and he is going to badge you up. That is all  
19 the time we are going to take and then, Croxon, send them  
20 home, okay?

21           A JUROR: So 11:00?

22           THE COURT: 11:00. Well, entry into the courtroom  
23 at 11:00, so be here about 10:55-ish, 10:52. You can bring  
24 food and put it in the refrigerator, snacks, whatever you

1 have.

2 It is important this evening that you not discuss  
3 this case amongst yourselves. Don't form or express any  
4 opinion about this matter until it is submitted to you. You  
5 are not to even discuss it with those you go home to tonight  
6 in terms of the details that you have learned.

7 We follow a time-honored tradition. What we do is  
8 well orchestrated. It has existed for hundreds of years and  
9 it is our way to instill justice. I ask that you trust me  
10 and follow my requests. Do you have any questions? Yes,  
11 Juror Number 6?

12 JUROR NUMBER 6: Will there be any paperwork we  
13 can take into work?

14 THE COURT: Yes. When?

15 JUROR NUMBER 6: For tomorrow.

16 THE COURT: Are you going to work tomorrow?

17 JUROR NUMBER 6: Well, I have to at least drop it  
18 off.

19 THE COURT: Check in with the Jury Commissioner  
20 downstairs on your way out of the building. She should give  
21 something to you. My Clerk before you leave the room right  
22 now will grab one of my business cards, it is in the room  
23 where the refrigerator is, and if your employer has any  
24 problems, they can call the Department. One other question?

1 JUROR NUMBER 3: What exactly can we bring for  
2 lunch? No bottles or anything, I mean, we will be eating  
3 where?

4 THE COURT: In the jury deliberation room.

5 JUROR NUMBER 3: Okay.

6 THE COURT: Although you are not constrained to be  
7 there. You can walk around, if you want. Bring a sack  
8 lunch. We have a microwave if you want to heat something up  
9 with Tupperware. We have a little refrigerator in there.

10 JUROR NUMBER 3: Okay. The reason why I asked is  
11 coming through the front door, you know.

12 THE COURT: You are going to have a jury badge on  
13 and they are going to treat you very special downstairs.

14 JUROR NUMBER 3: So we can bring like cokes and  
15 ice, like a little ice chest or something?

16 THE COURT: Sure.

17 A JUROR: It is not TSA down there.

18 MS. RISTENPART: Sometimes it is.

19 A JUROR: You never know.

20 THE COURT: Yes, Juror Number --

21 JUROR NUMBER 8: Jones, that's okay.

22 THE COURT: No, I have to go by number now, six,  
23 seven, eight, Juror Number 8.

24 JUROR NUMBER 8: So anything before 11:00 I'm able

1 to go to work, right, just come back?

2 THE COURT: Yes. Be here at 11:00 and we will  
3 probably do the exact same thing on Wednesday, not start  
4 until 11:00. Okay. Goodnight. Thank you.

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STATE OF NEVADA    )  
                              )    Ss.  
WASHOE COUNTY        )

I, CORRIE L. WOLDEN, an Official Reporter of the  
Second Judicial District Court of the State of Nevada, in  
and for Washoe County, DO HEREBY CERTIFY;

That I am not a relative, employee or independent  
contractor of counsel to any of the parties; or a relative,  
employee or independent contractor of the parties involved  
in the proceeding, or a person financially interested in the  
proceeding;

That I was present in Department No. 15 of the  
above-entitled Court on December 1, 2014, and took verbatim  
stenotype notes of the proceedings had upon the matter  
captioned within, and thereafter transcribed them into  
typewriting as herein appears;

That the foregoing transcript, consisting of pages 1  
through 111, is a full, true and correct transcription of my  
stenotype notes of said proceedings.

DATED: At Reno, Nevada, this 28th day of April, 2015.

/s/Corrie L. Wolden

CORRIE L. WOLDEN  
CSR #194, RPR, CP