

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS PIMENTEL,  
  
Appellant,  
  
v.  
  
THE STATE OF NEVADA,  
  
Respondent.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 68710  
  
Electronically Filed  
Mar 28 2016 09:46 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

APPELLANT'S APPENDIX VOLUME XII PAGES 2751-3000

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

STEVE WOLFSON  
Clark County District Attorney  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89155  
  
ADAM LAXALT  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(702) 687-3538  
  
Counsel for Respondent

**INDEX**  
**LUIS PIMENTEL**  
**Case No. 68710**

	<u>PAGE NO.</u>
Amended Information filed 05/04/2015 .....	783-784
Amended Motion to Suppress Defendant's Statement filed 09/12/2014 .....	649-685
Amended Third Supplemental Notice of Expert Witnesses filed 10/02/2014 .....	726-728
Criminal Complaint filed 12/24/2013.....	001
Defendant's Amended Notice of Expert Witnesses, Pursuant to NRS 174.234(2) filed 10/01/2014 .....	723-725
Defendant's Notice of Expert Witnesses, Pursuant to NRS 174.234(2) filed 08/25/2014.....	488-500
Defendant's Notice of Witnesses, Pursuant to NRS 174.234 filed 05/01/2014.....	774-775
Defendant's Opposition to Amend Information filed 10/15/2014 .....	737-742
Defendant's Opposition to Motion to Compel Psychiatric Evaluation and Motion in Limine filed 09/18/2014 .....	716-722
Defendant's Proposed Jury Instructions Not Used at Trial filed 05/27/2015.....	792-800
Defendant's Supplemental Notice of Witnesses, Pursuant to NRS 174.234 filed 05/04/2015 .....	776-777
District Court Minutes from 03/06/2014 through 07/17/2015 .....	846-892
Ex Parte Order for Expedited Transcript filed 05/12/2015 .....	787
Ex Parte Order for Transcript filed 08/19/2014.....	444
Ex Parte Order for Transport filed 08/11/2014 .....	442-443
Information filed 02/28/2014.....	184-186
Instructions to the Jury filed 05/27/2015 .....	801-837
Judgment of Conviction filed 08/07/2015 .....	840-841
Justice Court Minutes from 12/26/2013 through 02/26/2014 .....	002-009
Motion in Limine to Exclude Evidence of Illegal Narcotics and Stolen Firearm filed 08/26/2014 .....	506-511
Motion in Limine to Prohibit Reference(s) to the Decedent as a 'Victim' filed 08/26/2014.....	512-517
Motion in Limine to Prohibit Reference(s) to the Trial Phase of the Upcoming Proceedings as the 'Guilt Phase' filed 08/26/2014.....	501-505
///	

1	Motion to Compel Production of Discovery filed 07/30/2014.....	399-421
2	Motion to Exclude Jail Calls filed 08/28/2014.....	521-604
3	Motion to Suppress Defendant's Statement filed 09/08/2014.....	625-639
4	Motion to Withdraw as Attorney of Record filed 07/15/2014 .....	376-381
5	Notice of Appeal filed 08/25/2015 .....	842-845
6	Notice of Expert Witnesses filed 08/20/2014.....	445-465
7	Notice of Motion and Motion for Psychological Evaluation and Motion in Limine filed 09/10/2014 .....	640-648
8	Notice of Motion and Motion to Amend Information filed 10/04/2014 .....	729-736
9	Notice of Witnesses filed 08/25/2014 .....	471-475
10	Order filed 07/16/2014 .....	384-385
11	Order filed 04/28/2015 .....	747-749
12	Order Denying Defendant's Petition for Writ of Habeas Corpus filed 08/27/2014.....	518-520
13	Order Granting the State's Motion to Amend Information; Granting the State's Motion to Compel Psychological Evaluation; and Denying the State's Motion in Limine Without Prejudice filed 05/07/2015.....	785-786
15	Order Shortening Time filed 07/15/2014 .....	382-383
16	Petition for Writ of Habeas Corpus filed 07/09/2014.....	187-375
17	Plaintiff's Proposed Jury Instructions Not Used at Trial filed 05/27/2015 .....	790-791
18	Reply in Support of Petition of Writ of Habeas Corpus filed 08/06/2014 .....	422-425
19	Reporter's Transcript of Preliminary Hearing heard 02/26/2014.....	012-183
20	Request to File Affidavit Under Seal filed 08/07/2014.....	426
21	Request to File Order for Transport Under Seal filed 08/08/2014 .....	441
22	Return to Writ of Habeas Corpus filed 07/25/2014.....	388-398
23	Second Supplemental Notice of Expert Witnesses filed 08/25/2014 .....	476-487
24	Second Supplemental Notice of Witnesses filed 05/04/2015.....	778-782
25	State's Opposition to Defendant's Motion in Limine to Exclude Evidence of Illegal Narcotics and Stolen Firearm filed 09/04/2014.....	615-619
26	State's Opposition to Defendant's Motion in Limine to Preclude Use of the Term "Victim" for the Decedent filed 09/04/2014.....	610-614
27	///	
28		

1	State's Opposition to Defendant's Motion in Limine to Prohibit Reference to the Trial Phase as the Guilt Phase filed 09/04/2014.....	620-624
2	State's Opposition to Defendant's Motion to Exclude Jail Calls filed 09/04/2014.....	605-609
3	State's Opposition to Defendant's Motion to Suppress His Statement filed 09/18/2014 .....	702-715
4	State's Reply to Defendant's Opposition to State's Motion to Amend Information filed 10/17/2014.....	743-746
5	State's Reponse to Defendant's Motion to Compel Production of Discovery filed 08/07/2014 ...	427-440
6	Stipulation and Order Waiving Separate Penalty Hearing filed 05/27/2015.....	788-789
7	Substitution of Attorneys filed 12/27/2014 .....	010-011
8	Supplemental Notice of Expert Witnesses filed 08/22/2014.....	466-470
9	Supplemental Notice of Expert Witnesses filed 04/30/2015.....	750-773
10	Supplemental Notice of Witnesses filed 09/17/2014 .....	686-690
11	Third Supplemental Notice of Expert Witnesses filed 09/17/2014.....	691-701
12	Verdict filed 05/27/2015.....	838-839
13	Writ of Habeas Corpus filed 07/18/2014.....	386-387
14		
15		
16		
17		
18		
19	<b>Recorder's Transcript</b> <b>Jury Trial—Day One</b> Date of Hrg: 05/11/2015.....	1079-1204
20	<b>Recorder's Transcript</b> <b>Jury Trial—Day Two</b> Date of Hrg: 05/12/2015.....	1205-1544
21	<b>Recorder's Transcript</b> <b>Jury Trial—Day Three</b> Date of Hrg: 05/13/2015.....	1545-1689
22	<b>Recorder's Transcript</b> <b>Jury Trial—Day Four</b> Date of Hrg: 05/14/2015.....	1670-1944
23	<b>Recorder's Transcript</b> <b>Jury Trial—Day Five</b> Date of Hrg: 05/15/2015.....	1945-2174
24	///	
25		
26		
27		
28		

1	Recorder's Transcript <b>Jury Trial—Day Six</b>	2175-2338
2	Date of Hrg: 05/18/2015.....	
3	Recorder's Transcript <b>Jury Trial—Day Seven</b>	2339-2596
4	Date of Hrg: 05/19/2015.....	
5	Recorder's Transcript <b>Jury Trial—Day Eight</b>	2597-2795
6	Date of Hrg: 05/20/2015.....	
7	Recorder's Transcript <b>Jury Trial—Day Nine</b>	2796-3012
8	Date of Hrg: 05/21/2015.....	
9	Recorder's Transcript <b>Jury Trial—Day Ten</b>	3013-3037
10	Date of Hrg: 05/22/2015.....	
11	Recorder's Transcript <b>Jury Trial—Day Eleven</b>	3038-3139
12	Date of Hrg: 05/26/2015.....	
13	Recorder's Transcript <b>Jury Trial—Day Twelve</b>	3140-3156
14	Date of Hrg: 05/27/2015.....	
15	Recorder's Rough Draft Transcript, Calendar Call/ All Pending Motions	944-950
16	Date of Hrg: 09/08/2014.....	
17	Recorder's Rough Draft Transcript, Calendar Call/ All Pending Motions	951-955
18	Date of Hrg: 09/22/2014.....	
19	Recorder's Rough Draft Transcript, Calendar Call/ All Pending Motions	956-964
20	Date of Hrg: 09/24/2014.....	
21	Recorder's Rough Draft Transcript, Defendant's Motion for Petition of Habeas Corpus; Defendant's Motion to Withdraw as	
22	Attorney of Record	
23	Date of Hrg: 07/28/2014.....	912-914
24	Recorder's Rough Draft Transcript, Defendant's Motion to Withdraw at Attorney of Record	909-911
25	Date of Hrg: 07/21/2014.....	
26	Recorder's Rough Draft Transcript, Status Check: Trial Setting	906-908
27	Date of Hrg: 05/07/2014.....	
28	///	

1	Recorder's Rough Draft Transcript of Proceedings, Jackson v. Denno Hearing; Status Check; Expert Notices; Reset Motion & Reset Trial	
2	Date of Hrg: 10/07/2014.....	965-1055
3	Recorder's Transcript, Calendar Call	
4	Date of Hrg: 05/04/2015.....	1070-1078
5	Recorder's Transcript, Sentencing: Count 1...Not Guilty Count 2	
6	Date of Hrg: 07/17/2015.....	3157-3167
7	Recorder's Transcript, Status Check: Reset Trial; Plaintiff's Motion to Amend Information; State's Motion for	
8	Psychological Evaluation and Motion in Limine	
9	Date of Hrg: 10/22/2014.....	1056-1069
10	Recorder's Transcript of Hearing, Arraignment Continued	
11	Date of Hrg: 04/10/2014.....	897-899
12	Recorder's Transcript of Hearing, Arraignment Continued	
13	Date of Hrg: 04/24/2014.....	900-902
14	Recorder's Transcript of Hearing, Arraignment Continued	
15	Date of Hrg: 05/01/2014.....	903-905
16	Recorder's Transcript of Hearing, Initial Arraignment	
17	Date of Hrg: 03/27/2014.....	893-896
18	Recorder's Transcript of Proceedings, Defendant's Motion to Withdraw as Counsel; Defendant's Motion to Compel Production of	
19	Discovery; Status Check; Reset Writ	
20	Date of Hrg: 08/11/2014.....	915-943
21		
22		
23		
24		
25		
26		
27		
28		

1 MS. LEMCKE: Probably, but I'd have to hear the  
2 question again.

3 THE COURT: Move on.

4 BY MR. BATEMAN:

5 Q So you -- you said you have a Superman complex, and  
6 you wanted to protect Amanda; is that right?

7 A Yes.

8 Q So at this point you weren't afraid of Bobby?

9 A Oh, no.

10 Q Okay. So on December 22, 2013, Bobby shows up at the  
11 Arizona Charlie's; is that right?

12 A Yes.

13 Q You're there?

14 A Yes.

15 Q Tim shows up at some point?

16 A Yes.

17 Q And someone who you're saying now you don't know, the  
18 dad shows up at some point; is that right?

19 A At the moment I did not know him.

20 Q Okay. In fact, you said to Dr. Piasecki that there  
21 was a scene at the Arizona Charlie's, and you just wanted to  
22 get out of there?

23 A Yes.

24 Q You didn't want any trouble?

25 A No.

1 Q Well, again, you're with someone, a female, who's  
2 already had trouble with a boyfriend, and her boyfriend shows  
3 up; is that right?

4 A Yes.

5 Q So you continued to put yourself in this position; is  
6 that right?

7 A I didn't know I was responsible, but okay, yes.

8 Q You chose to be there with Amanda; she testified to  
9 that, right?

10 A Yes.

11 Q And in fact you told Dr. Piasecki you were concerned  
12 because you thought that Bobby sent these people in to talk to  
13 her; is that right?

14 A Well, I know he -- I didn't know he sent them in.  
15 Like I said, found out later he did. At the moment I just was,  
16 well, thought it was friend of Amanda's just coming in saying  
17 come talk to Bobby.

18 Q So you again weren't avoiding a confrontation at this  
19 point?

20 A I didn't know there was going to be a confrontation  
21 at that point.

22 Q You could have left Amanda there and gone back to  
23 your room without her, couldn't you?

24 A I could have.

25 Q This person that you'd known for just two or three



1 days?

2 A Yes.

3 Q So you had an opportunity to avoid the situation and  
4 you didn't?

5 A Okay.

6 Q Is that, yes?

7 A Apparently.

8 Q Then the next point you go out in the room and you're  
9 in the room at some point and Amanda is not there; is that  
10 right?

11 A No, not yet.

12 Q And you know she's -- you don't know -- do you not  
13 know where she's at, or you're saying that she's -- you know  
14 she's with Bobby?

15 A Like I said, we have separated, and I had told her to  
16 stay at the hotel I'll be -- I mean excuse me, stay at the  
17 casino I'll be five minutes. I just went to get my bags when I  
18 went to my room.

19 Q Well, you saw in the video at some point you're  
20 walking out with Amanda towards your room; is that right?

21 A Yes.

22 Q So you made the choice at this point despite what's  
23 been going on to stay with Amanda; is that right?

24 A Yes.

25 Q Okay. And you go out to the room with Amanda; is

1 that right?

2 A Excuse me, yes.

3 Q So you're not avoiding future issues with Bobby at  
4 this particular point, are you?

5 A I also wasn't anticipating future issues.

6 Q You not avoiding --

7 A No, sir.

8 Q You're not anticipating issues with Bobby despite  
9 everything you've heard from Amanda and the fact that he came  
10 in and started yelling at Amanda in the Arizona Charlie's?

11 A Well, considering when we were inside security took  
12 him off, no, I'm not anticipating any problems at that moment,  
13 sir.

14 Q 'Cause you knew there would be security there?

15 A Excuse me?

16 Q You knew there would be security there?

17 A I knew security had took him off. I don't know  
18 what's going to happen in the future.

19 Q You didn't know what was going to happen when?

20 A In the future.

21 Q When you go out with Amanda?

22 A Yes.

23 Q But you had the opportunity to probably if you didn't  
24 have Amanda with you not have a problem with Bobby; is that  
25 fair to say?

1 A You could.

2 Q At some point Amanda comes into your room, and you're

3 in that room with Tim; is that right?

4 A Yes.

5 Q And you actually exited that room and got into a

6 verbal argument with Bobby; is that right?

7 A That is correct.

8 Q And you actually told him, If you're going to hit a

9 woman come hit a man?

10 A Yes, I did.

11 Q So you don't take, Come hit a man as some sort of

12 challenge to have a fight?

13 A If he's going to hit a woman and he's not making a

14 move to hit a man at that point, no.

15 Q You said, Come hit a man, correct?

16 A Yes.

17 Q Were you referring to yourself?

18 A Yes.

19 Q And you said it to him where he could hear it?

20 A Yes.

21 Q And he responded to you at that point, I think your

22 term was, Fuck you. Where's Amanda; is that what he said?

23 A Yes.

24 Q So he's still directing his attention at Amanda not

25 you, right?

1 A Yes.

2 Q You're actually inserting yourself into an argument  
3 between Amanda and Bobby; is that right?

4 A I wouldn't say inserting myself, but okay.

5 Q Well, what are you doing?

6 A I'm going out there and expressing my unhappiness at  
7 the situation and also trying to be a protective layer for her.

8 Q So you're trying to protect her?

9 A Yes.

10 Q But he's directing his attention at her?

11 A At the time, yes.

12 Q And she was back in your room; is that right?

13 A Yes.

14 Q And when you walked outside you saw security guards  
15 out there too; is that right?

16 A Yes.

17 Q So what was the need at that point to yell at Bobby  
18 if there were security guards out there and Amanda was safe in  
19 your room?

20 A Well, you don't see that when you're inside. You  
21 just hear the girl screaming and I ran out there.

22 Q Okay. And you said you heard the girl screaming; are  
23 you referring to Amanda?

24 A Yes.

25 Q Amanda is now in your room in the bathroom; is that

1 correct?

2 A Yes.

3 Q Then you come out on the video; isn't that true?

4 A Yes.

5 Q And so you see security out there; is that right?

6 A Yes.

7 Q And then you deliberately decided that point to

8 engage with Bobby?

9 A Yes.

10 Q And say, If you want to hit a woman come hit a man?

11 A Yes, I did.

12 Q And you've heard the testimony in this case about the

13 back and forth from the security guards; is that right?

14 A Yes, I have.

15 Q And you said that he threatened to kill you, and your

16 response was, "You know where I be;" is that right?

17 A Yes, sir.

18 Q What does that mean?

19 A Exactly what I said. We've seen each other. He

20 knows the circles around. He knows some of the people I know.

21 So I wasn't exactly that hard to find. That's what I meant,

22 sir.

23 Q You knew he knew where you lived at the Siegel

24 Suites?

25 A Actually, I did not.

1 Q So he -- you had no idea that he knows where you were  
2 at the Siegel Suites, but you said, "You know where I be"?  
3 A Yes.  
4 Q Okay. That's what everyone else said; is that right?  
5 A Yes.  
6 Q You're not afraid of Bobby at this point, are you?  
7 A Afraid of, no.  
8 Q At this point with all this going do you choose to  
9 call the police?  
10 A No, I did not.  
11 Q That's a good way to avoid a problem, isn't it?  
12 A Possibly.  
13 Q That's what the police are there for if someone is  
14 being threatened you call the police?  
15 A Sometimes.  
16 Q But you didn't call the police in this case, did you?  
17 A No, I didn't.  
18 Q Because you knew based upon the conversation that you  
19 were going to go meet Bobby down at the Siegel Suites?  
20 A Actually, I did not know.  
21 Q Even though you had said that, "You know where I be"?  
22 A You know where I be as in I didn't think he'd be at  
23 my place that night.  
24 Q And then you promptly instead of avoiding and calling  
25 the police, you leave the Arizona Charlie's; is that right?

1 A Yes.

2 Q With Amanda?

3 A Yes.

4 Q Security was out there?

5 A Yes, they were.

6 Q Bobby was gone?

7 A Yes.

8 Q And you'd just had this conversation with Bobby

9 about, "You know where I be"?

10 A Yes.

11 Q And you had just had this conversation where you say

12 he said, I'll kill you?

13 A Yes.

14 Q So a good way to avoid the problem probably would've

15 been to stay at the Arizona Charlie's, no?

16 A Well, considering he knows where the room is and

17 everything I kind of wanted to get away from there. I did not

18 know he knew where I stayed. So a good way of avoiding it

19 would be going home to me, sir.

20 Q You heard Amanda say that he knew where you stayed?

21 A No.

22 Q You didn't hear her testify to that today?

23 A Well, I heard her testify it; she knew.

24 Q You had actually purchased a room at the Arizona

25 Charlie's, correct?

1 A Yes.

2 Q The second in a row -- the second night in a row?

3 A Yes.

4 Q You said to Dr. Piasecki, you left to avoid because  
5 home was a safe place?

6 A Yes, it is.

7 Q The Siegel Suites is a safe place?

8 A Well, it was home at the moment.

9 Q Was it a safe place like you told Dr. Piasecki?

10 A That's how I felt, yes.

11 Q Now, you continued to stay with Amanda despite all  
12 this going on; is that right?

13 A Stay with, yes.

14 Q Either you or Amanda set up a ride with Tim to get to  
15 the Siegel Suites; is that right?

16 A Yes.

17 Q So two nights in a row you've left the Arizona  
18 Charlie's; is that right?

19 A Yes.

20 Q Now, you -- Tim is with you during this encounter at  
21 the Arizona Charlie's; is that right?

22 A Towards the last part of it, yes.

23 Q He's in the room?

24 A Yes, he came to the room.

25 Q He and Shannon agreed to give you and Amanda a ride



1 to the Siegel Suites?

2 A Yes.

3 Q They didn't -- Tim didn't go with Bobby; is that  
4 right?

5 A No.

6 Q You get to the Siegel Suites and you encounter Bobby  
7 on the third floor of the Siegel Suites; is that right?

8 A That's correct.

9 Q That's where your room is?

10 A Yes.

11 Q Do you have any idea how Bobby knows that the third  
12 -- not just the Siegel Suites but the third floor is your room?

13 A No, I did not.

14 Q Do you have any idea how Bobby's knocking on your  
15 door on the third four of the Siegel Suites?

16 MR. SLIFE: Asked and answered, Your Honor.

17 THE COURT: Yeah, I think it is. Sustained.

18 BY MR. BATEMAN.

19 Q He wasn't just wondering back and forth on the third  
20 floor was he?

21 A No.

22 Q He wasn't on the ground floor of the Siegel Suites  
23 looking for you?

24 A No, he was not.

25 Q He knew your room?

1 A Yes.

2 Q But today you sit here and say, No idea how he knows  
3 my room?

4 A There's possibilities, but I never gave it to him.  
5 So, no, I was at the moment unaware that he knew where I  
6 stayed.

7 Q So at this point you know that you have -- that  
8 Amanda's having an encounter with Bobby the night of the 20th  
9 to the 21st, and you've just had all of this going on at the  
10 Arizona Charlie's with Bobby, and you decide to get out of the  
11 car at that point?

12 A Yes.

13 Q That probably wouldn't be an example of avoiding  
14 future confrontation, would it?

15 A At that point, no.

16 Q You weren't afraid of Bobby at that point, were you?

17 A No.

18 Q And in fact by getting out of the car and having  
19 Amanda leave, you weren't actually protecting Amanda at all,  
20 were you?

21 A Why not if I'm getting her away from there.

22 Q Why didn't you get yourself away from there as well?

23 A I thought I could calm the guy down.

24 Q After you had -- at the Arizona Charlie's said, Come  
25 hit a man, and he said, I'll kill you if I see you?

1 A Yeah.

2 Q Isn't it true, sir, that you're not afraid of Bobby

3 at that point because you're the one with the firearm?

4 A I did not have a firearm.

5 Q But this again you choose to get out of the car and

6 confront an angry ex-boyfriend of the girl that you've been

7 seeing for two or three days; is that right?

8 A Yes.

9 Q And, in fact, Tim gets out of the car with you as

10 well; is that right?

11 A I didn't see Tim at the moment.

12 Q You didn't see Tim get out of the car?

13 A No, I didn't.

14 Q You heard testimony that he got out of the car from

15 Amanda?

16 A Yes.

17 Q You heard testimony from Tim that he got out of the

18 car; is that right?

19 A I heard it.

20 Q Bobby was asking where Amanda was; is that right?

21 A When he's coming down the stairs, yes.

22 Q And you'd sent Amanda off in the vehicle; is that

23 right?

24 A Yes.

25 Q And did you tell him that, Amanda's gone?

1 A Well, I pretty -- I thought he saw it.  
2 Q You didn't tell him Amanda's gone?  
3 A I thought he saw it. He was coming down the stairs  
4 and saw the car leave, sir.  
5 Q You didn't say, you're beef is not with me; it's with  
6 Amanda?  
7 A I tried to calm him down. I didn't mention those  
8 words, no.  
9 Q So you're not avoiding him at this point; you're  
10 actually engaging him; is that right?  
11 A If that's how you word it, yes.  
12 Q When you got to the Arizona Charlie's and you saw him  
13 out there again, you didn't call the police; is that right?  
14 A No, sir.  
15 Q Did you have two phones?  
16 A Yes, I did.  
17 Q You had two phones at the time, right?  
18 A Yes, I did, sir.  
19 Q You never called the police with this individual who  
20 had slapped his girlfriend and threatened to kill you at the  
21 Arizona Charlie's?  
22 A I thought they were empty threats, sir. No, I did  
23 not need to -- at the time think there was a need to call the  
24 cops.  
25 Q When you saw him there and you sent Amanda away, you

1 didn't go anywhere else to the security office at the Siegel  
2 Suites, did you?

3 A No.

4 Q You actually again went directly to him?

5 A I went to the front of the stairs, yes.

6 Q I'm sorry?

7 A I went to the front of the stairs, yes.

8 Q And then after the shooting in this particular case  
9 you actually ran away; is that correct?

10 A Yes, I did.

11 Q So that would be an example of avoiding; is that  
12 right?

13 A That was just trying to get away, if anything,  
14 self-preservation.

15 Q So up until this point you are Superman complex;  
16 you're trying to help Amanda, and you finally decide to run  
17 away after Bobby's dead on the ground?

18 A After I see another gentleman with what appeared to  
19 be a gun in his hand, yes, that's when I ran away, sir.

20 Q And you've sat through this trial and no one's come  
21 up with any evidence about the other gentleman having a  
22 firearm; is that correct?

23 A That's correct.

24 Q Now, I want to talk about your description of the  
25 actual encounter and shooting in this particular case. It's

1 fair again to say that you didn't give any details of the  
2 shooting to the police when you had an opportunity?

3 A That is correct.

4 Q You had a guy -- you're saying -- pull out a gun on  
5 you, and you didn't tell the police that?

6 A No, I did not.

7 Q And you didn't give a whole heck of a lot of details  
8 about that on your jail calls to your mom; is that right?

9 A That is correct.

10 Q And you didn't give a whole lot of details about  
11 that on your jail calls to Grace; is that correct?

12 A That is correct.

13 Q And in fact, in March of this year you didn't -- you  
14 had the opportunity to give a full explanation of what happened  
15 to Dr. Piasecki and you didn't give her an explanation of that  
16 either, did you?

17 A Well, I wanted to save going in depth until my trial.  
18 Quite honestly it was in the police headquarters, and I was  
19 kind of nervous. So, yes, I decided to hold a little something  
20 back.

21 Q In fact, you never gave her any specific details; is  
22 that right?

23 A As far as --

24 MS. LEMCKE: Well, I'd object to specific details.

25 MR. BATEMAN: Okay. Fine.

1 THE COURT: All right. Sustained.

2 MR. BATEMAN: Thank you, Your Honor.

3 BY MR. BATEMAN:

4 Q You didn't give her any specific details about when  
5 you engaged Bobby in the actual physical encounter?

6 A I might've -- I did mention that he pulled a gun on  
7 me and I removed it.

8 Q You didn't say how you removed it?

9 A I thought I did.

10 Q You in fact said, It happened so fast; is that right?

11 A Yes.

12 Q You said that over and over again instead of giving  
13 specific details, didn't you?

14 A Yes.

15 Q Today you said that Bobby threw a punch at you; is  
16 that right?

17 A Yes.

18 Q I think you had testified as well that when Bobby was  
19 coming down the stairs he was saying, Where's Amanda; is that  
20 right?

21 A Yes.

22 Q So what was the exact thing that was said that caused  
23 Bobby to punch you?

24 A I'm saying, Calm down. Calm down.

25 Q I can't hear you, sir?

1           A     I'm thinking before I answer. Once again I would  
2 just say, calm down. Can we just talk about this tomorrow,  
3 some other time, and that's when he said, Fuck this. Let's  
4 finish this.

5           Q     Talk about what?

6           A     Whatever it is he was angry about that day.

7           Q     He was asking for where Amanda was. What did you say  
8 to him that caused him to punch you?

9           MS. LEMCKE: I'd object. Speculation.

10          MR. BATEMAN: It's cross-examination. It's a leading  
11 question that I get ask.

12          MS. LEMCKE: I didn't object leading. I object he's  
13 asking him to divine what was in -- what motivated Bobby to hit  
14 him.

15          THE COURT: All right. I think you can ask him what  
16 he said to Bobby just before Bobby hit him, but I don't know he  
17 can --

18 BY MR. BATEMAN:

19          Q     Let's back up. What did you say specifically to  
20 Bobby that then he -- resulted in him hitting you?

21          A     My last words to him were --

22          MS. LEMCKE: Objection. asked and answered.

23          THE WITNESS: -- can't we talk about this tomorrow?

24 BY MR. BATEMAN:

25          Q     And at that point he just hauled off and punched you?



1           A     No. He said, Fuck this. Let's finish this, and then  
2 he punched me.  
3           Q     Let's finish what?  
4           A     I don't know, sir.  
5           Q     Finish the Come hit a man that you had referred to  
6 earlier?  
7           A     If that's what he was referring to then, yes. I  
8 can't speak for what was in his head.  
9           Q     You heard Tim's testimony in this particular case,  
10 right?  
11          A     Yes, I have.  
12          Q     Okay. And that would be inconsistent with what Tim  
13 said?  
14          A     Yes, it would.  
15          Q     So he says, Let's finish this and he punches you with  
16 what hand?  
17          A     His left -- I mean excuse me, his right.  
18          Q     Because he hits you in the left eye; is that right?  
19          A     Yes, sir.  
20          Q     And you said you immediately punch back; is that  
21 right?  
22          A     Yes, sir.  
23          Q     Which hand did you immediately punch back with?  
24          A     I punch with my right.  
25          Q     Then what was the next blow? What happened

1 immediately after you punched with your right hand -- actually,  
2 that strike that. Before you answer that question. Where did  
3 you hit him?

4 A I hit him in his head. I thought I hit him in his  
5 eye.

6 Q In his head or you thought you hit him in his?

7 A I'm pretty sure I hit him in his eye.

8 Q Which eye?

9 A It would be his left eye.

10 Q And then what was the next specific punch or kick or  
11 whatever?

12 A Then is when the gun is pulled on me.

13 Q So he punches you in the eye with his right hand and  
14 you punch him back with your right hand in his left eye; is  
15 that right?

16 A Yes, sir.

17 Q And where specifically are you standing?

18 A I'm standing in front of him.

19 Q Where at the Siegel Suites?

20 A Pretty much in front of the staircase. It's by the  
21 cars.

22 MR. BATEMAN: May I approach the clerk, Your Honor?

23 THE COURT: Yes.

24 BY MR. BATEMAN:

25 Q Okay. Showing you what's been marked as State's

1 Exhibit 9; do you see that?

2 A Yes, sir.

3 Q Where is this punch and then second punch taking  
4 place?

5 A All right. He's coming down the stairs so it's safe  
6 to say we're about right -- excuse me, back a little further.

7 Q Okay. Right where Tim said you were?

8 A Yes.

9 Q Right where Robert Holland said you were?

10 A About that area, yes.

11 Q Right where James Tabele said you were?

12 A Yes.

13 Q So they got that part right, correct?

14 A Yes.

15 Q And then after you punched him in the eye what  
16 happened next?

17 A And then he pulled a gun on me.

18 Q With what hand?

19 A It looked like his right-hand, sir.

20 Q It looked or was?

21 A Well, it went like this. I don't know if he grabbed  
22 it with this one or this one, but all I knew is when he pointed  
23 at me it was in his right hand.

24 Q Well, do that again. Stand up and tell me where he  
25 pulled with his right hand the gun from?

1 A He had his shirt on and hoodie so he's --  
2 Q Which pocket?  
3 A It wasn't a pocket it was, pulled up his shirt and  
4 pulled it out.  
5 Q So he pulled up his shirt and pulled it out of what,  
6 his belt?  
7 A He wasn't wearing a belt. He was wearing pants.  
8 Q So you're telling me he didn't pull it out of his  
9 right hoodie pocket?  
10 A No.  
11 Q He didn't pull it out of his left hoodie pocket?  
12 A He pulled from his waistband, sir.  
13 Q All right. He didn't pull it from his two pockets in  
14 his pants?  
15 A It looked like he pulled it from his waist pocket,  
16 sir -- or waistband, sir.  
17 Q And he pointed it at you; is that correct?  
18 A Yes.  
19 Q How much space was in between you when he pulled it  
20 out at you?  
21 A Arm's distance give or take a arm's reach about 2,  
22 3 feet if that.  
23 Q And what if anything was said?  
24 A Nothing.  
25 Q Nothing was said?

1 A No, sir.

2 Q And you said you reacted by slamming down on the gun;  
3 is that correct?

4 A On his arm holding the gun.

5 Q Where were you when this was occurring?

6 A Right in front of him.

7 Q Mark it on the map.

8 A It's in the same spot, sir.

9 Q So you didn't move anywhere at the time that these  
10 two punches are happening, that the gun is pulled out and that  
11 you try to get the gun from him; is that right?

12 A Correct.

13 Q All right. And then you struggle over this gun?

14 A Yes. There was a struggle afterwards.

15 Q He's a big guy, right?

16 A Yes.

17 Q He was a lot bigger than you?

18 A Yes.

19 Q At that time how much do you think you weighed?

20 A About 160, 170.

21 Q And you've heard he's about 290; is that right?

22 A Yes.

23 Q And I think earlier you said he was going crazy; is  
24 that right?

25 A Yes.

1 Q And you were able to get away this gun from this guy,  
2 right?  
3 A Yes, I was.  
4 Q And you said I think on direct that you were somehow  
5 between the vehicles?  
6 A We were in front of the vehicles so when the  
7 struggle ensued I know we went back and forth.  
8 Q Write on there where you were going back and forth.  
9 A You can't really tell from here, but between this red  
10 is it -- red truck and the car that's next to it you really  
11 can't tell what it is.  
12 Q Touch your screen. Here I'll put up another, Exhibit  
13 No. 8. Touch the screen where you were.  
14 A (Witnessed complying.)  
15 Q You were going between those cars?  
16 A Yes.  
17 Q Okay. How far into the parking lot did you go?  
18 A Not even -- we were like halfway between the cars so  
19 about -- well, can't -- bad ankles but -- but at the start of  
20 the rear driver side.  
21 Q You never got out into the parking lot?  
22 A No, sir.  
23 Q Okay. So when you heard Tim say, You guys were going  
24 around the vehicles that's not correct?  
25 A No, it is not.

1 Q And when you heard James Tabele say, You were going  
2 around the vehicles that's not correct?

3 A No, sir.

4 Q So you get the gun away in this spot in between the  
5 Chevrolet and the silver vehicle; is that right?

6 A No. We were back on the sidewalk. We were still  
7 struggling.

8 Q So you went out into the parking lot struggling over  
9 the firearm and then back on to the sidewalk?

10 A It was some back and forth, sir; it's a struggle. It  
11 doesn't exactly go one linear way.

12 Q How long was the struggle back and forth going on?

13 A A few seconds actually. I'd say less -- about five  
14 seconds if that.

15 Q And you had to go from the sidewalk, you have the  
16 punch, you punched, he somehow gets a gun out from his pants,  
17 and then you struggle over it all the way out halfway into the  
18 parking lot between those two cars and then back to the  
19 sidewalk; is that what you're saying?

20 A No. I'm saying the struggle took less than five  
21 seconds. The rest of the ordeal I wasn't paying attention to  
22 time, sir.

23 Q And so in the five-second span you went out in  
24 between the vehicles, came back, and then you had the firearm  
25 at that point?

1       A    We were on the sidewalk, and I had removed the  
2   firearm, yes.

3       Q    And you said at that point -- what happened next?

4       A    I had removed the gun, and he came towards me and I  
5   shot.

6       Q    And so when you removed the gun from him, you guys  
7   were hand to hand; is that right?

8       A    Just about, yes.

9       Q    So you get the gun away from him aren't you still  
10   within a very close distance?

11      A    About arm's reach, yes.

12      Q    So he came at you, and you're able to within arm's  
13   reach turn the gun around and shoot him as he; is that correct?

14      A    Yes.

15      Q    You said in fact he -- you grappled and then you're  
16   in between the cars and then he came towards you; is that  
17   right?

18      A    Yes.

19      Q    Did he step towards you?

20      A    Yes.

21      Q    Okay. So you're within arm's reach. How many steps  
22   did he take?

23      A    Not a full step. It was a lunge.

24      Q    He lunged at you?

25      A    Yes.



1 Q So when you pulled the gun away from him, and you  
2 said he was within arm's length, show me how it is you get that  
3 up high enough to hit him in the shoulder.

4 A We were going back and forth, and then all of a  
5 sudden he pulled a gun. He's got it, and it's just like right  
6 here.

7 Q So if you can do -- for the record, you've got it  
8 straight forward; is that right?

9 A Yes, sir.

10 Q You have your hand straight out?

11 A Yes.

12 Q And so you're grappling for this gun talk close  
13 range, arm's length. You've got your gun straight out, and you  
14 say he came towards you. Where was the room for him to come  
15 towards you?

16 A Well, like I said, it was a struggle, sir. I'm not  
17 paying attention to where he's at or how distant he's at.

18 Q How close was he to you when you hit him with the  
19 gun?

20 A That was about -- that was about a foot, foot and a  
21 half give or take.

22 Q So it could be a foot?

23 A A foot and half.

24 Q It was pretty close, right?

25 A Yes.

1 Q You heard testimony in this particular case that  
2 there was no soot on him; is that right?

3 MS. LEMCKE: Objection. Argumentative.

4 THE COURT: Overruled.

5 BY MR. BATEMAN:

6 Q But it was very close range?

7 A Yes.

8 Q Okay. And you saw there was a downward trajectory on  
9 his upper right shoulder; is that right?

10 A Yes.

11 Q Okay. And this happened all within arm's length  
12 distance?

13 A Give or take. Like I said, he's not like out here;  
14 he's a foot from the gun.

15 Q Okay. So if you put your arm straight out with the  
16 gun?

17 A Yes.

18 Q Okay. So that's about how long, 2 feet, 2 and a half  
19 feet?

20 A Yes.

21 Q And then he's another foot back?

22 A Yes.

23 Q Okay. Even though you were just immediately before  
24 that struggling over the firearm?

25 A Yes.

1 Q Now, are you in between the vehicles at this point,  
2 or are you back up on the sidewalk?

3 A No, we were back on the sidewalk.

4 Q After you shoot him in the chest what happens next?

5 A I lowered my hand, and there was a second shot.

6 Q You lowered your hand?

7 A Lowered my arm, yes.

8 Q Well, give me some specifics.

9 A I don't really remember the specifics. I had lowered  
10 my gun and know there was a second shot and that's pretty much  
11 when I come to.

12 Q You came to; what does that mean?

13 A That means it was it was happened fast, and it's like  
14 you hear that second shot in you're awakened.

15 Q Okay. So you've got today some pretty good specifics  
16 about how this encounter happens, and now you're telling me you  
17 don't remember how the second shot happened?

18 A It's not don't remember I just --

19 Q Well, tell me how it happened.

20 A Well, I wish I could say, sir. I don't --

21 Q That's what I'm asking you. Explain to me after  
22 you'd shot him in the chest at close range -- what happened --  
23 what does he do?

24 A I can't explain. Like I said, it's like being on  
25 autopilot at that time.

1 Q You can't explain?

2 A No, sir.

3 Q You won't explain or you can't explain?

4 A I cannot explain, sir.

5 Q Does that mean you don't remember it?

6 A That means exactly as I'm saying, I don't remember

7 it. It's all so fast.

8 Q Okay. So you remember everything up until the point

9 in which right after you shot him out, and we all know Bobby

10 falls on the ground face first, and you walk up and shoot him

11 in the butt. You don't remember that part?

12 A I stood still. I know I don't walk up on anyone.

13 Q You stood still next to him?

14 A I'm pretty much I never leave where I'm at.

15 Q So you do remember that?

16 A I know I was staying still. It was just like when

17 you jump and you're awakened and it's hard to explain, sir.

18 Q You don't remember shooting him in the butt?

19 A No, I don't.

20 Q You would agree with me based upon your training, as

21 you said before, that if you wanted to incapacitate someone you

22 probably wouldn't shoot him in the butt while they were laying

23 face first on the ground, would you?

24 A Exactly.

25 Q You've got that kind of training, correct?

1 A Yes.

2 Q So you remember everything up until the point in  
3 which you shoot this gentleman in the butt?

4 MS. LEMCKE: Objection. Asked and answered like a  
5 hundred times.

6 THE COURT: Sustained.

7 MS. LEMCKE: Argumentative.

8 BY MR. BATEMAN:

9 Q You were -- you had Michael Ortiz come in here and  
10 testify that you're trained to be calm in a stressful situation  
11 and provide care; is that right?

12 A That is correct, sir.

13 Q You didn't provide any care to Bobby in this case,  
14 did you?

15 A No, I did not.

16 Q Now, you said you turned around and saw another  
17 gentleman coming that you now know today as the defendant -- or  
18 is Robert Holland?

19 A I didn't turn around. I looked to my left. I was  
20 still staying still and to the front and left of me, yes.

21 Q And you say he's coming at you with a gun?

22 A Yes.

23 Q So again you remember -- at this point are you  
24 remembering?

25 A Yes.

1 Q Specifically where is he coming from?  
2 A He's coming from the front left.  
3 Q Where that red car was we saw?  
4 A Yes.  
5 Q And you remember him specifically coming towards you?  
6 A He was coming towards us, yes.  
7 Q What hand was he holding the gun with?  
8 A He was holding the gun in his right hand.  
9 Q What kind of gun was it?  
10 A I could not tell.  
11 Q So you remember -- what, he was holding in his right  
12 hand; is that right?  
13 A Yes.  
14 Q And what was he doing with the gun?  
15 A He was walking towards us.  
16 Q And was he running? Was he just walking calmly?  
17 A Walking kind of quickly.  
18 Q And you say "Towards us" you mean you and Bobby?  
19 A Yes.  
20 Q And you remember that very specifically?  
21 A Yes, I do.  
22 Q And you pointed the gun at him?  
23 A No, I did not.  
24 Q What did you do with the gun?  
25 A I held it up, like so, and was starting to back up.

1 Well, he kept on coming so I placed the gun down, and I got out  
2 of there.

3 Q So Robert Holland who you saw ultimately give CPR to  
4 Bobby is coming at you with the firearm; is that right?

5 A That is correct, sir.

6 Q And you then turn around and run away; is that right?

7 A Yes.

8 Q And you remember that all very specifically?

9 A Yes.

10 Q And you ran past an individual by the name of Steve  
11 Burrway (phonetic); is that right. Do remember seeing him?

12 A No, I don't.

13 Q And you ran and got on the bus; is that right?

14 A I ran to the street and the bus was there so, yes, I  
15 ran to get on the bus.

16 MR. BATEMAN: Court's indulgence.

17 BY MR. BATEMAN:

18 Q Do you remember early on in the evening when you were  
19 at the Arizona Charlie's Tim coming up and talking to you?

20 A We were at Arizona Charlie's. Not to me. He had  
21 came to where me and Amanda were.

22 Q Tim didn't talk to you at that point?

23 A Pretty much, no. He had told Amanda, You need to go  
24 talk to Bobby.

25 Q And you didn't step up and involve yourself in that

1 conversation?

2 A If she wanted to go to talk to Bobby after that point  
3 I was, you know, I didn't think she would and, yeah.

4 Q And you specifically heard Tim say he'd talked to you  
5 that night; is that right?

6 A Yes.

7 MR. BATEMAN: I'll pass the witness.

8 THE COURT: Redirect.

9 MR. SLIFE: Thank you, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. SLIFE:

12 Q Luis, during the struggle for the gun was there ever  
13 a kick?

14 A There was some kicks. There were some pushes back  
15 and forth. I mean, I wanted to get the gun out of his hand,  
16 sir.

17 Q Can you describe the kicks?

18 A Pretty much I was just because my strong leg is my  
19 right leg. So I'm just, like, just trying to get -- trying  
20 everything.

21 Q Could you describe the kick?

22 A I'm trying to get his leg, trying to get him off  
23 balance because he's taller than me.

24 Q Did you ever kick him?

25 A Yes.



1 Q Do you remember what leg you kicked him with?  
2 A No, I don't, sir.  
3 Q Do you remember where you kicked him?  
4 A No, I don't. I wasn't paying attention. I was more  
5 or less just worried about the firearm.  
6 Q Do you think it was his leg, or did you kick him in  
7 the head?  
8 A Oh, no. It wasn't in the head. It was definitely in  
9 his leg. Where in his leg I can't say. I know it was below  
10 his knee.  
11 Q All right. You mentioned that after you got the gun  
12 Bobby sort of lunged at you?  
13 A Yes, sir.  
14 Q Could you describe that. Did he move his body  
15 forward?  
16 A Well, like I said, you get it and you got the gun off  
17 you, and like I said, you take that -- it's all happening so  
18 fast, and then when he realizes I have the gun he takes that  
19 step towards, and that's when I fired.  
20 Q He was coming towards you?  
21 A Yes, sir.  
22 Q Now, you had mentioned the fact that you didn't tell  
23 the detectives the whole story. What about the two doctors you  
24 spoke to; did you tell both of them that Bobby had pulled a gun  
25 on you?

1 A Yes, I did.

2 Q When you spoke to Dr. Piasecki, did she ask you the  
3 same specific detailed questions I've asked you today?

4 A No.

5 Q Did she ask you to -- to be -- did she ask you to act  
6 out what exactly happened, what hand was slapped, where --  
7 anything like that?

8 A No, sir.

9 Q All right. So the day before you had said that there  
10 was this encounter you heard about from Amanda and Bobby?

11 A Yes.

12 Q Did you -- did you think based on that that you would  
13 -- I mean, No. 1, from that encounter, did you think that if  
14 you ever Bobby again that he would be violent with you?

15 A No.

16 MR. BATEMAN: Objection. Speculation.

17 MR. SLIFE: Judge, I mean, I think the same exact  
18 questions were asked by Mr. Bateman with regard to what Bobby  
19 thought. What did he think here, what was he doing there.

20 THE COURT: Restate the question again.

21 MR. SLIFE: It all goes to the state of his mind.

22 BY MR. SLIFE:

23 Q Did you think based on the encounter you heard with  
24 Amanda and Bobby the day before the shooting, did you think  
25 that that meant that Bobby would be violent with you the next

1 time you saw him?

2 A No.

3 Q Okay.

4 THE COURT: I would've overruled that objection so  
5 it's fine.

6 MR. SLIFE: Thank you, Your Honor.

7 BY MR. SLIFE:

8 Q So in your mind was there a reason to avoid Bobby?

9 A Like I said, I didn't know the situation would get  
10 that bad. I don't have hindsight. I can't look in the future.  
11 At that moment did I think he would take it there, no.

12 Q Did you ever -- with regard to this one-to-two month  
13 period that you were involved with meth, did you ever have any  
14 violent encounters?

15 A No.

16 Q Did you think that you needed to avoid anything, that  
17 you needed to avoid violent encounters with regard to your  
18 dealings with meth?

19 A Like I said, I was very selective over who I dealt  
20 with, and like I said, I just tried -- I wasn't going to put  
21 myself in a situation. So like I said, it was never going to  
22 get that big.

23 Q So did you want to avoid violent encounters?

24 A I always want to avoid violent encounters.

25 Q Okay. When you saw Bobby in that early morning, did

1 you think that there be a violent encounter that you needed to  
2 avoid?

3 A No I did not.

4 Q And in fact, when you heard that Amanda had been  
5 slapped, what did you do to try to avoid any more drama?

6 A Like I said, when I found out she had been slapped it  
7 was -- you know what; let's go home. Let's --

8 Q Who did you talk to to try to get a ride to try to  
9 avoid anything more with Bobby?

10 A Tim had came in and he had talked to Amanda, and I  
11 had asked him or Amanda had asked him, but I'm pretty sure I  
12 did, if --

13 Q Where did you go to get your stuff to go home with  
14 Time so you could avoid Bobby?

15 A I went to my room to get my stuff.

16 Q When you try -- when you went to your room to try to  
17 avoid Bobby, who came -- who came rushing towards Amanda?

18 A That was Bobby.

19 Q Okay. And when you went with Tim to go back to your  
20 place, who was that to avoid?

21 A It was to avoid Bobby.

22 Q If you thought if you stayed in your room that night,  
23 you think you would've avoided him?

24 A Probably not. If the hotel, and like I said, he  
25 could come back. I said I wanted to get me and Amanda to a

1 safe place, more or less Amanda, but I said, drama I don't do  
2 well with. So I guess in a sense I wanted to get myself there  
3 too. It's home.

4 Q Is there a difference in your mind between drama and  
5 violence?

6 A Yeah. Drama -- like I said, I wasn't anticipating  
7 violence. I don't know what that was all about. Drama just --  
8 like I said, encounters and stuff like that I just didn't want  
9 to be part of.

10 Q Why did you go home that night?

11 A To get away from that, to cheer up Amanda, keep her  
12 safe and like I said, try to make the best of a bad situation.

13 Q But when you got back to the home, got to your safe  
14 place, who was there?

15 A Bobby was there.

16 Q And again, why did you -- why at that point would you  
17 think you needed to call the police?

18 A Like I said, I was -- it was my place. I didn't  
19 think it would get that serious. I just thought he wanted to  
20 blow off steam and it was like all right, fine. Let me just  
21 try to talk the guy down.

22 Q What else are you supposed to do?

23 A I don't know.

24 Q What were your other options? Just drive around all  
25 night?

1 MR. BATEMAN: Objection. Leading.  
2 THE COURT: Sustained.  
3 THE WITNESS: Like I said, I'm not --  
4 THE COURT: There's no question pending.  
5 BY MR. SLIFE:  
6 Q Did you want trouble with Bobby?  
7 A No, I did not.  
8 Q Did you want him to come down the stairs and punch  
9 you in the face?  
10 MR. BATEMAN: Objection. Leading.  
11 THE COURT: Sustained.  
12 BY MR. SLIFE:  
13 Q Did you want what happened that night to happen?  
14 A Absolutely not.  
15 MR. SLIFE: May I have a moment, Your Honor?  
16 THE COURT: Yes. Of course.  
17 MR. SLIFE: Nothing further, Your Honor. Thank you.  
18 MR. BATEMAN: Nothing else, Your Honor.  
19 THE COURT: All right. Thank you. You may return to  
20 counsel table.  
21 It is the witching hour; almost 5. I believe we're  
22 going to start at 10. I have a hearing at 9 o'clock tomorrow  
23 morning, ladies and gentlemen, that shouldn't take very long,  
24 about an hour. And then we should be able to start about  
25 10 o'clock. Is that okay with everybody?

1 MR. BATEMAN: Yes, Your Honor.

2 THE COURT: Schedulingwise. All right.

3 So, ladies and gentlemen, during this over-night  
4 recess it is your duty not to converse among yourself or with  
5 anyone else on any subject connected with this trial or to  
6 read, watch, or listen to any report of or commentary on the  
7 trial by any person connected with the trial or by any medium  
8 of information including without limitation, newspaper,  
9 television, radio, or Internet, and you are not to form or  
10 express an opinion on any subject connected with this case  
11 until it's finally submitted to you.

12 I'll see you tomorrow at 10 a.m.

13 (Jury recessed at 5 p.m.)

14 THE COURT: All right. The record will reflect that  
15 the jury has departed the courtroom.

16 How are we doing on scheduling? How are we  
17 progressing?

18 MS. LEMCKE: Good.

19 MR. BATEMAN: Depends on how many more witnesses we  
20 have.

21 THE COURT: What's it look like for witnesses?

22 MS. LEMCKE: Probably a couple more from us tomorrow,  
23 and then I would think we could be done with ours by lunch.

24 THE COURT: Okay.

25 MS. LEMCKE: And then the State will probably have

1 some rebuttal.

2 What's Your Honor's preference or inclination where  
3 settling instructions and closing argument is concerned?

4 THE COURT: Well, I could look at your -- have you  
5 spoken to each other about your instructions?

6 MS. DI GIACOMO: No.

7 THE COURT: Okay. See, I can't really do my work  
8 until you guys have talked. So that's why I need you to carve  
9 out some time to meet with each other so that when we meet  
10 together I've got the pile that you already agree upon. But I  
11 would like the chance to look through that ahead of time so I  
12 can just review them for typos, for obvious things that I may  
13 want to bring up with you.

14 So when do you think you might be able to meet on  
15 your instructions?

16 MS. LEMCKE: Well, if we finish, let's say -- do you  
17 think we'll finish with the evidence tomorrow? So could we do  
18 it tomorrow afternoon and then close on Friday?

19 THE COURT: That would be fine. Depending on how  
20 late we get done will decide when to tell the jury to come  
21 back, because, you know, if we can do any work on Thursday at  
22 all -- I don't know whether we'll be able to -- if not then  
23 we'll settle the instructions in the morning, have the jury  
24 come in a little later. So once they come in, we're done.  
25 We've got it. They're settled. They're on the record,



1 et cetera.

2 MS. LEMCKE: Here's my thinking and everybody can  
3 correct me if I'm wrong. I don't think that there's going to  
4 be -- you know, I have some objections that I make to some of  
5 the standard language that goes into some of the murder  
6 instructions, you know, that's pretty straightforward, and it  
7 usually goes pretty quickly. I think most of the stuff that we  
8 submitted is pretty standard. It's out of statute and out of  
9 case law.

10 MS. DI GIACOMO: Well, I can tell you we're objecting  
11 to every one of theirs.

12 MS. LEMCKE: Okay.

13 MS. DI GIACOMO: So I don't know if they're objecting  
14 to any of ours, but we can talk and tell them why.

15 MS. LEMCKE: Well, it doesn't matter, I mean, if  
16 they're objecting --

17 THE COURT: Well, but you need to tell them why.

18 MS. DI GIACOMO: Yeah, no problem.

19 THE COURT: I mean if you've got case law to show, I  
20 mean, that's what meeting and conferring is all about.

21 MS. LEMCKE: Then we could either do it -- we could  
22 either meet right after the close of evidence tomorrow and go  
23 through them and put them on the record tomorrow afternoon, or  
24 we could just come back and then put everything on the record  
25 Friday morning.

1 THE COURT: Let's see, you haven't met with each  
2 other. So if there's enough time you could -- at the close of  
3 evidence send the jury home. You could meet right here, and if  
4 there's still enough time then we could potentially work on it.

5 MS. LEMCKE: Perfect.

6 THE COURT: We'll play it by ear a little bit  
7 tomorrow.

8 MS. LEMCKE: Yeah, that's fine. But in any event I  
9 won't plan on closing until Friday.

10 THE COURT: Right. Nobody needs to worry about  
11 closing till Friday at the earliest.

12 MS. LEMCKE: All right. We're burning the midnight  
13 oil tonight.

14 THE COURT: Oh, yes. I need to pat everybody down  
15 before you leave to make sure we get everything -- every piece  
16 of exhibits and everything back.

17 MS. LEMCKE: I think it was everything was in Sam's  
18 after my computer totally failed me today.

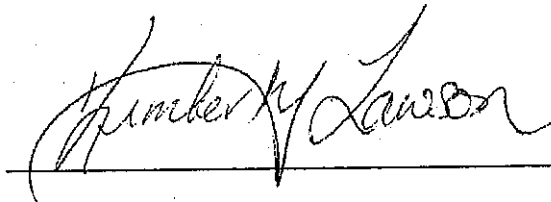
19 THE COURT: All right. Very good. We're in recess.

20 (Proceedings recessed 5:05 p.m.)

21  
22  
23  
24  
25

ACKNOWLEDGMENT:

Pursuant to Rule 3C(d) of Nevada Rules of Appellate Procedure, this is a rough draft transcript expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON  
TRANSCRIBER

UNCERTIFIED ROUGH DRAFT

TRAN

  
CLERK OF THE COURT

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

THE STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
LUIS PIMENTEL, AKA, )  
LUIS GODOFREDO PIMENTEL, III )  
 )  
Defendant. )

CASE NO. C296234-1  
DEPT NO. V

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 9**

THURSDAY, MAY 21, 2015

**APPEARANCES:**

For the State:

SANDRA K. DIGIACOMO, ESQ.  
SAMUEL G. BATEMAN, ESQ.  
Chief Deputy District Attorneys

For the Defendant:

NANCY L. LEMCKE, ESQ.  
CONOR M. SLIFE, ESQ.  
Deputy Public Defenders

RECORDED BY LARA CORCORAN, COURT RECORDER  
TRANSCRIBED BY: KARR Reporting, Inc.

UNCERTIFIED ROUGH DRAFT

## I N D E X

### WITNESSES FOR THE DEFENDANT:

RUBEN GARCIA

Direct Examination By Ms. Lemcke 4

Cross-Examination By Mr. Bateman 7

BRIANA BOYD

Direct Examination By Ms. Lemcke 10

Cross-Examination By Mr. Bateman 75

Redirect Examination By Ms. Lemcke 102

Recross Examination By Mr. Bateman 103

Further Redirect Examination By Ms. Lemcke 109

### REBUTTAL WITNESSES FOR THE STATE:

MELISSA PIASECKI

Direct Examination By Ms. DiGiacomo 114

Cross-Examination By Mr. Slife 159

Redirect Examination By Ms. DiGiacomo 173

Recross Examination By Mr. Slife 179

Further Redirect Examination By Ms. DiGiacomo 179

Further Recross-Examination By Mr. Slife 181

SHANNON SALAZAR

Direct Examination By Ms. DiGiacomo 196

Cross-Examination By Ms. Lemcke 201

TOD WILLIAMS

Direct Examination By Mr. Bateman 203

UNCERTIFIED ROUGH DRAFT

## EXHIBITS

### STATE'S EXHIBITS ADMITTED:

### PAGE

124 through 156      Photographs

205

UNCERTIFIED ROUGH DRAFT

1 LAS VEGAS, NEVADA, THURSDAY, MAY 21, 2015, 10:06 A.M.

2 \* \* \* \* \*

3 (In the presence of the jury.)

4 THE COURT: All right. Thank you. Please be  
5 seated. All right. This is Case No. C296234, State of Nevada  
6 vs. Luis Pimentel. And the record will reflect the presence  
7 of the defendant with his counsel, the deputies district  
8 attorney prosecuting the case, all officers of the court, all  
9 12 members of the jury as well as the three alternates. Will  
10 counsel so stipulate?

11 MS. LEMCKE: Yes, Your Honor.

12 MR. BATEMAN: Yes, Your Honor.

13 THE COURT: Okay. And the defense may call its next  
14 witness.

15 MS. LEMCKE: Ruben Garcia.

16 RUBEN GARCIA, DEFENDANT'S WITNESS, SWORN

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

19 THE WITNESS: Ruben Garcia, R-U-B-E-N G-A-R-C-I-A.

20 THE CLERK: Thank you.

21 DIRECT EXAMINATION

22 BY MS. LEMCKE:

23 Q Mr. Garcia, how are you currently employed?

24 A I'm employed as an investigator for the Clark County  
25 Public Defender's Office.

UNCERTIFIED ROUGH DRAFT

1 Q Okay. And do you work for any particular team in  
2 the Clark County Public Defender's Office?

3 A Yes. I work with the homicide team.

4 Q Okay. Did you have occasion to get assigned to  
5 investigate on a case, State of Nevada vs. Luis Pimentel?

6 A Yes.

7 Q Okay. What are your job duties; like, when you get  
8 assigned to investigate a case, how does it typically work?

9 A The attorney will assign me a worksheet asking for  
10 different investigations to be done --

11 Q Okay. Does --

12 A -- interview people, photographs, crime scenes.

13 Q Okay. So part of your job is to interview witnesses  
14 at the request of the lawyers working a case?

15 A Yes, it is.

16 Q Did you have occasion to do that in Mr. Pimentel's  
17 case?

18 A Yes, I did.

19 Q Did you, at the request of counsel, go out and  
20 actually interview witnesses?

21 A I do, yes.

22 Q Was one of those witnesses a gentleman by the name  
23 of Javon Howard?

24 A Yes, ma'am.

25 Q And who was Mr. Howard?



1 A Mr. Howard was a supervisor, I believe, for the  
2 casino --

3 Q At which casino?

4 A -- Arizona Charlie's.

5 Q At -- I'm sorry, which casino?

6 A The Arizona Charlie's casino.

7 Q Oh. Okay. And was he one of the security officers  
8 at that casino?

9 A Yes.

10 Q Okay. What -- do you remember about when you -- it  
11 was that you did the interview with him initially?

12 A September 9th, 2014.

13 Q Okay. And did you talk to him about what he  
14 observed between Mr. Pimentel and the decedent in this case?

15 A Yes, I did.

16 Q Just to direct you to a particular area that you  
17 spoke to him about, did you ask him about the end of the night  
18 when -- when there was kind of an exchange, a verbal exchange  
19 between Mr. Pimentel and the decedent in this case, Bobby  
20 Holland?

21 A Yes, I did.

22 Q And did he tell you what he remembered Mr. Holland  
23 to have said to Mr. Pimentel at that time?

24 A Yes.

25 Q Let me ask you first, did you -- did he volunteer

1 this information or did you just specifically ask for these  
2 words?

3 A Yes, ma'am. I just asked him to tell me what he  
4 recalled of the incident, and I just listened to him. And at  
5 that point, he stated that the white guy looked at the mix guy  
6 and stated, I'll kill you, as they departed.

7 Q Okay.

8 MS. LEMCKE: Court's indulgence. I have nothing  
9 further.

10 THE COURT: Cross.

11 CROSS-EXAMINATION

12 BY MR. BATEMAN:

13 Q Sir, do you have a background in law enforcement?

14 A Yes, I do.

15 Q And what was that?

16 A I was employed by the Monterey County Sheriff's  
17 Department, Monterey County, California, for 26 years. I  
18 retired as a detective from there.

19 Q And in this particular case, when you went out to  
20 speak with Mr. Howard, you say he was a supervisor or a  
21 security officer, or do you remember?

22 A I believe he was a security officer for the Arizona  
23 Charlie's. And I spoke to him via the phone. I did not  
24 personally contact him.

25 Q You didn't actually talk to him in person?

UNCERTIFIED ROUGH DRAFT

1 A I talked to him on the phone.

2 Q Okay. And this was about eight months after the  
3 incident, is -- nine --

4 A It was --

5 Q -- months after the incident; is that correct?

6 A August -- it's -- yes. September 9th.

7 Q And you -- did you tape record the conversation?

8 A No, I did not.

9 Q Okay. Did you ask him whether you could tape record  
10 the conversation?

11 A No, I did not.

12 Q Okay. So anything that you're testifying to here  
13 today is from your memory of what he told you?

14 A I documented, I kept notes while we were engaged in  
15 the conversation.

16 Q Do you have those notes with you?

17 A No. I have what I wrote down. I have a report that  
18 I wrote.

19 Q You -- you -- you made a report?

20 A Yes.

21 Q Okay. Do you know if that's been turned over to the  
22 State?

23 A I do not know that.

24 Q Oh. Okay. Can I see the report?

25 A Yes, sir.

UNCERTIFIED ROUGH DRAFT

1 MR. BATEMAN: May I approach, Your Honor?

2 THE COURT: Yes.

3 MS. LEMCKE: And, Your Honor, can we approach

4 briefly?

5 THE COURT: Yes.

6 (Off-record bench conference.)

7 MR. BATEMAN: I'll move on, Your Honor.

8 BY MR. BATEMAN:

9 Q So you -- again, you -- you didn't record the

10 statement --

11 A Correct.

12 Q -- on the phone?

13 A Correct.

14 Q It's just what you recollect from what he told you

15 about eight months ago?

16 A From my notes, yes.

17 Q Okay. Thank you. I don't have any other questions.

18 A Thank you.

19 MS. LEMCKE: Nothing further.

20 THE COURT: May this witness be excused?

21 MS. LEMCKE: Yes.

22 THE COURT: Thank you. You may call your next

23 witness.

24 MS. LEMCKE: Briana Boyd.

25 BRIANA BOYD, DEFENDANT'S WITNESS, SWORN

UNCERTIFIED ROUGH DRAFT

1 THE CLERK: Please be seated. And then please state  
2 and spell your first and last name for the record.

3 THE WITNESS: Dr. Briana Boyd.

4 THE CLERK: Please spell your first and last name.

5 THE WITNESS: B-R-I-A-N-A B-O-Y-D.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION

8 BY MS. LEMCKE:

9 Q Ms. Boyd, how are you currently employed?

10 A I'm currently employed at the Veteran's Medical  
11 Research Foundation. I do research and develop treatment,  
12 psychological interventions for combat veterans with  
13 Posttraumatic Stress Disorder and traumatic brain injury.

14 Q Do you have some specialized training or educational  
15 background that allows you to do this?

16 A I do. I did my undergraduate work at Humboldt State  
17 University in California. I received my master's and Ph.D. at  
18 Howard University in Washington, DC. I then went on to do my  
19 internship at the Boston Consortium, which is a consortium of  
20 Harvard Medical School, Boston University Medical School, and  
21 the VA Hospital in Boston. So I saw a lot of veterans there,  
22 did my specialized training at the VA Hospital.

23 Then I went on for my post-doctoral fellowship to  
24 Hartford, Connecticut, where I did a specialization in  
25 assessment and diagnosing.

UNCERTIFIED ROUGH DRAFT

1 Q Okay. Do -- when you say assessment and diagnosing,  
2 what specifically?

3 A In that specific -- that specific year or in  
4 general?

5 Q That specific year.

6 A That specific year, severe mental illness,  
7 Posttraumatic Stress Disorder, anxiety disorder, psychosis,  
8 things of that nature.

9 Q Okay.

10 A Depression.

11 Q Do you have any other specialized training that  
12 you've received regarding to -- regarding Posttraumatic Stress  
13 Disorder and mental illnesses in that regard?

14 A Yes. I've been trained extensively on delivering  
15 treatments. It's called cognitive processing therapy. It's a  
16 really nice intervention for veterans with Posttraumatic  
17 Stress Disorder. I've received probably at least three weeks  
18 of specialized training by the woman who developed the  
19 treatment. I also, where I work, we're doing the cutting edge  
20 research, so we're always kind of involved in the most current  
21 information regarding the brain and Posttraumatic Stress  
22 Disorder.

23 Q Okay. When you mentioned your work, explain to the  
24 jury what specifically it is that you do?

25 A Yeah, okay. So what I do is this particular

1 conflict of -- the most recent conflict, we seem to have  
2 veterans that are returning home that have specific injuries  
3 that are different than the injuries we've seen before. Our  
4 medical advances are such that people are actually surviving  
5 on the battlefield. So that's really great. So more people  
6 are coming home with greater injuries, versus not coming home  
7 at all, if that makes sense.

8           And so with these injuries, we see a lot of  
9 traumatic brain injury. That's from blasts and explosions,  
10 falls, things of that nature, in addition to Posttraumatic  
11 Stress Disorder. They're -- they -- so they have two, a lot  
12 of the time they'll have a brain injury and they'll have  
13 Posttraumatic Stress Disorder. Okay.

14           And the treatments that we use for Posttraumatic  
15 Stress Disorder, they involve a lot of thinking and reading  
16 and writing. And we wonder if -- if the Posttraumatic Stress  
17 Disorder treatments are hard for people with a brain injury.  
18 Okay.

19           So what we do is we're trying to enhance the current  
20 gold standard of Posttraumatic Stress Disorder therapy with  
21 cognitive rehabilitation principles, so that it's more  
22 accessible for these veterans with Posttraumatic Stress  
23 Disorder and traumatic brain injury. So we're trying to kind  
24 of simplify the treatments, because therapists and veterans  
25 have reported that it's difficult for them to engage in these

1 very cognitive activities.

2 So that's what I do is I'm right now currently  
3 working on developing the treatment that's a hybrid treatment.  
4 So we're trying to kind of get it both at the same time. We  
5 wonder if it's kind of easier to treat one and then the other.  
6 And so it's -- it's really exciting. It's a really big  
7 question in the field. It's a very -- like, should we treat  
8 them separately? Should we treat it together? Should we  
9 treat it all at once? And so that's what the research project  
10 that I'm involved in is really designed to answer that  
11 question, is it better to treat them separately? Is it better  
12 to use this hybrid treatment that I designed? So we're really  
13 excited.

14 And so on that treatment, I develop the treatment,  
15 and now I implement the treatment. So I actually give the  
16 treatment both conditions, treatment as usual and the hybrid  
17 that I developed, I now give those treatments, implement those  
18 treatments with the veterans. And we're testing it to see if  
19 it's going to actually be better than treatment as usual. If  
20 it is, then it should be slated to be used in the VA widely  
21 for veterans with Posttraumatic Stress Disorder and traumatic  
22 brain injury.

23 Q Okay. So let me stop you for a second, because you  
24 were talking about hybrid. Are you talking about individuals  
25 who have more than one diagnosis when they return from combat?

UNCERTIFIED ROUGH DRAFT



1           A     Correct. There's actually something called  
2 polytrauma, and that's something that's very common with this  
3 particular returning population. Okay. Polytrauma simply  
4 means more than one injury. And so a lot of times we see this  
5 triad, which just is the three. We see the posttraumatic  
6 stress injury, the psychological injury. Then we see the TBI,  
7 so we see the brain injury. And then we see physical  
8 injuries, which lead to, like, chronic pain and -- and  
9 physical debilitation. And it looks like when people have  
10 polytrauma, these -- these conditions trigger each other,  
11 actually making it kind of more complicated to treat anyone.

12           Q     Okay. So --

13           A     Does that make sense?

14           Q     Yeah. Let me stop you there. So -- so polytrauma  
15 is kind of a new emerging field in the area of PTSD and  
16 treating PTSD --

17           A     That's --

18           Q     -- is that fair to say?

19           A     That's correct.

20           Q     And that's -- the entity that you work for, who  
21 funds that? What -- who kind of created that and is funding  
22 that?

23           A     Well, the Department of Defense is funding it. So I  
24 work on a project by the -- the Department of Defense. We --  
25 the primary -- the -- the principle investigator is a

1 neuropsychologist and I was hired as the PTSD expert

2 consultant on the case. And so then I -- well, not the case,  
3 it's a research study.

4 And so I work with a neuropsychologist and the two  
5 of us work together to create the treatment. Well, I created  
6 it. She oversaw it.

7 Q Is the idea, then, that this will be kind of the  
8 gold standard moving forward for treatment of PTSD throughout  
9 the country?

10 A For veterans with Posttraumatic Stress Disorder and  
11 traumatic brain injury, yes.

12 Q Okay. Now, do you do any teaching where this is  
13 concerned?

14 A I do. I actually work at the local university where  
15 I live. I work at San Diego State University, and I teach a  
16 trauma course there for master's level students who are  
17 therapists in the community. And I teach a trauma course. So  
18 I teach trauma across the lifespan so it does include combat  
19 trauma, but it also includes childhood sexual abuse, sexual  
20 assault, war, refugee types of -- so the -- the trauma course  
21 is very comprehensive.

22 Q Okay. And when you say trauma, just so the jury's  
23 clear --

24 A Psychological trauma.

25 Q -- psychological --

1           A     I'm sorry, yes. Psychological trauma.

2           Q     Have you published anything where combat trauma and  
3 Posttraumatic Stress Disorder is concerned?

4           A     I have.

5           Q     And what is -- can you just give us a few of those  
6 publications?

7           A     I can. The most recent one that -- is a case report  
8 on The Effects of Cognitive Processing Therapy on  
9 Psychological, Neuropsychological, and Speech Symptoms in  
10 Comorbid Posttraumatic Stress Disorder and Trauma Brain  
11 Injury. Treatment of veteran -- that was one.

12                 The next one is Treatment of Veterans with Comorbid  
13 Posttraumatic Stress Disorder and Traumatic Brain Injury Using  
14 a Hybrid Approach.

15                 The next one, Mental Health Treatment Reduces  
16 Post-Concussive Symptoms and Symptom Overlapping in Iraq and  
17 Afghanistan Veterans.

18                 And another one is A Study of Self-Injurists and  
19 Suicidal Behavior in the Veteran Population.

20           Q     Okay. Do you -- as part of your current job, do you  
21 -- do -- if I understand you correctly, you do research, is  
22 that right? Do you also treat returning combat veterans?

23           A     Yes. So first we developed the treatment, first we  
24 made the actual protocol. And now we're in the treatment  
25 phase. So now I only exclusively, when I go to work day in

UNCERTIFIED ROUGH DRAFT

1 and day out, I'm just implementing the treatments. Either the  
2 treatment is usual without the enhancements for -- for  
3 traumatic brain injury, or the hybrid treatment. And so  
4 people are randomized to either condition, we don't know which  
5 one people are going to be in, and then when they're  
6 completed, we give them more -- we give them neurological --  
7 neurological-psychological testing to begin with, we give them  
8 the treatment, and then we give them testing at the end to see  
9 their results. And they --

10 Q Okay. So --

11 A -- in about a year we'll be able to kind of figure  
12 out and compare the two.

13 Q Okay. So -- so you're both researching and  
14 treating, is that --

15 A And teaching.

16 Q And teaching?

17 A Correct.

18 Q Okay. And, specifically, individuals. A large  
19 component of the people that you're dealing with are returned  
20 veterans from this most recent conflict?

21 A Exclusively.

22 Q Okay.

23 A I -- my -- our job -- exclusive treat veterans who  
24 are OEF, OIF, that's the short name for the recent conflict,  
25 with Posttraumatic Stress Disorder and traumatic brain injury.

1 They cannot be involved in the research study if they do not  
2 have -- if they don't -- don't meet those criteria.

3 Q Okay. Now, do you typically -- now, I -- I -- did I  
4 hire you to do a review and render an opinion in this  
5 particular case?

6 A Yes, you did.

7 Q And do -- is this something that you typically do?  
8 Are you typically hired to give opinions in cases like this?

9 A I've never done this before.

10 Q Is this your first time testifying?

11 A Yes.

12 Q Okay. And when we hired you, did we -- are we  
13 paying you?

14 A Yes.

15 Q Okay. We're paying you at an hourly rate?

16 A Yes.

17 Q Okay. And that includes all of your review of the  
18 material, as well as your trial prep and your trial testimony;  
19 is that right?

20 A That's correct.

21 Q Okay. The fact that we -- that I have -- my office  
22 has hired you and we're paying you, has that in any way  
23 influenced your opinion that you're going to give today?

24 A No.

25 Q Okay.

1 A Absolutely not.

2 Q I -- I want you to talk to the jury a little bit  
3 about Posttraumatic Stress Disorder. Did you prepare a  
4 Powerpoint presentation that would be helpful for the jury to  
5 understand this condition?

6 A I did.

7 MS. LEMCKE: Your Honor, may I approach the witness  
8 with a clicker to --

9 Q Do you think it would be helpful for the jury's  
10 understanding of Posttraumatic Stress Disorder and how it  
11 affects the brain?

12 A The Powerpoint?

13 Q The Powerpoint, yeah.

14 A Absolutely.

15 Q Okay.

16 MS. LEMCKE: May I approach the witness? I'm just  
17 going to give her a clicker.

18 THE COURT: All right.

19 (Pause in proceedings.)

20 BY MS. LEMCKE:

21 Q All right. So would it help the jury to first kind  
22 of have an understanding of how the normal brain functions?  
23 Okay --

24 A It's very important to have a -- just an idea of how  
25 the normal brain functions, so that you can understand the

1 differences in Posttraumatic Stress Disorder. So I'm just  
2 going to start there. If you don't mind, bear with me.  
3 Because it makes it a lot easier to kind of understand what  
4 I'm talking about. Okay.

5 So let's get started. We know what the  
6 fight-or-flight response is.

7 Right. The fight-or-flight response is an automatic  
8 response that the body produces when it's faced with threats.  
9 Okay. These are some of the changes that happen in the body  
10 that are automatic when we're faced with a life-or-death  
11 situation. Right. So you can see here very quickly, rapid  
12 heart, we're alert, we visually scan for danger, difficulty  
13 sleeping. That's good, because if we're faced with a threat,  
14 that's not a good time to take a nap. It makes us really  
15 vulnerable. So we want to be up and alert. So when we're  
16 faced with threats, it's almost really physiologically  
17 impossible to go to sleep.

18 Irritability, inability to concentrate or shift  
19 focus away. So if we're faced with a threat, can't think  
20 about anything else. We're looking at that threat. Okay.  
21 Now's not a good time to think about, Did I get the  
22 dry-cleaning? It's, like, We're going to get eaten. We  
23 didn't pass on those genes. Okay.

24 So now we find folks that when there's a threat, we  
25 are, like, laser focused on the threat.

1           Okay. And with that same respect, we have a lot of  
2 difficulty making decisions that are not immediately related  
3 to that threat. Okay. What am I going to have for dinner?  
4 Doesn't matter. Right. How am I going to go away -- get away  
5 from this threat?

6           We also have difficulty assessing consequences of  
7 our behavior beyond the threat. Okay. So if I think to  
8 myself, if the threat's coming this way and I need to run, I  
9 may run out into traffic, because I'm not thinking -- I'm  
10 thinking about this threat, I'm not thinking about the  
11 consequences of going this way. Does that makes sense?

12           And then finally, when we're in a fight-or-flight  
13 mode, we get a lot of brain changes that make us in go mode.  
14 So there's not a lot of brakes, but there's a whole lot of  
15 gas, if that makes sense. And any of you might have feel --  
16 felt the fight-or-flight response. It's hard to be a living  
17 human and not have felt it at some point by this time, like,  
18 when you step off the curb and the car surprises you or  
19 something like that.

20           So let me move on. The frontal lobes of the front  
21 part of the brain. Okay. It's actually the most  
22 sophisticated part of the brain and it's involved in making  
23 complicated decisions. All right.

24           Inside of that frontal lobe is something we call  
25 executive functioning. It's really easy to think of it like



1 the CEO of a big company. Okay. The CEO of a big company is  
2 overseeing a lot of different departments making very  
3 complicated decisions. Okay. The -- the CEO is thinking  
4 about consequences, the CEO is making predictions of outcomes,  
5 and the CEO -- oh, this is -- this is cool. The part of the  
6 brain that -- that has the brakes. Okay. So this is also the  
7 part of the brain that stops you from doing things that we  
8 probably -- aren't a good idea.

9           So, for example, if you go into work and your boss  
10 is in a bad mood and you feel really ticked off by your boss,  
11 this is a part of the brain that's going to go, No, no, no,  
12 don't say anything, just let it go, don't quit today. Okay.  
13 That's the part of the brain that we need to go, Brakes, stop.

14           Q     And that's -- just for the record, you're talking  
15 about in the normal functioning brain, right?

16           A     I'm talking about the normal functioning brain when  
17 there's no threat. Okay. This is the -- when we're nice and  
18 relaxed to moderately challenged, this part of the brain is  
19 totally available and we use it all the time. Okay.

20                 Let's see. So in a healthy fight-or-flight response  
21 -- this is why I needed to tell you about the frontal lobe,  
22 because they work -- they -- they have a relationship, it's --  
23 it's opposite, actually. So in response to a threat, the  
24 frontal lobe becomes less available, because it's not useful  
25 in an emergency. It actually might slow us down. If we have

1 all these really complicated things to consider, then we may  
2 not actually be able to give our full attention to the threat.  
3 So that frontal lobe slows way down.

4 And that part in the middle, you see that brown  
5 structure, that's called the limbic system. That part calls  
6 into action. Okay. So the limbic system is really  
7 responsible for driving our fight-or-flight response. Okay.  
8 And during a fight-or-flight response, in a healthy person, we  
9 act only to survive, we have limited complex thinking, we have  
10 limited decision-making capacity beyond the threat, we have  
11 limited assessments of consequences beyond the threat, and we  
12 have limited brakes.

13 So I gave you the analogy of the CEO. This part of  
14 the brain's like the fire department. Okay. This part of the  
15 brain, when there's a fire in the building, the fire  
16 department's busting in. Okay. And they don't care about the  
17 bill for the door they just broke. They care about the fire.  
18 And every decision and every action that the fire department  
19 makes is directly related to putting out the fire. Does that  
20 make sense?

21 And when the fire department shows up, the CEO's no  
22 longer in charge. Now the CEO is taking orders from the fire  
23 department. Does that make sense? Okay, great. Beautiful.

24 THE COURT: Okay. Wait.

25 BY MS. LEMCKE:

1 Q Okay.

2 THE COURT: Just a second. I know you're a  
3 professor --

4 THE WITNESS: Yes.

5 THE COURT: -- so you're used to having interaction.  
6 But you can't ask the jury to --

7 THE WITNESS: Oh, sorry.

8 THE COURT: -- respond to you.

9 THE WITNESS: I'm sorry.

10 THE COURT: And could you just slow down a tad?

11 THE WITNESS: Yes, Your Honor. Sorry.

12 THE COURT: You're great.

13 THE WITNESS: Thank you. Okay.

14 THE COURT: Okay. Good.

15 THE WITNESS: Yes. Okay.

16 BY MS. LEMCKE:

17 Q Okay. So tell -- tell us, moving onto the next  
18 slide, what exactly is Posttraumatic Stress Disorder, then?  
19 Because you've just explained the normal -- how a healthy  
20 brain works, right?

21 A Yes.

22 Q So can you explain to the ladies and gentlemen of  
23 the jury just very generally, like, what is Posttraumatic  
24 Stress Disorder?

25 A Yes. I'd be happy to. So Posttraumatic Stress

1 Disorder is a brain-based disorder that occurs after a  
2 life-threatening situation. And it's also that  
3 fight-or-flight system that we just talked about begins to  
4 trigger kind of -- and -- and -- it begins to trigger and the  
5 brain mechanisms that we usually use to slow it down are  
6 impaired. So it leaves us in this kind of sensitive to  
7 fight-or-flight. Does that make -- oh. Okay. Sorry.

8 Your Honor, I'm sorry.

9 Q Okay. So let me -- let me ask you about PTSD as it  
10 relates now to the fight-or-flight response.

11 A Okay.

12 Q What -- what impact does PTSD have on  
13 fight-or-flight?

14 A Okay. Well, without fight-or-flight, individuals,  
15 when the threat is eliminated, very quickly return to normal.  
16 Okay. So when that car doesn't hit us and we go, Whoo, we --  
17 we return back to normal. PTSD disrupts the body and brain's  
18 ability to return to normal after we're faced with a threat.  
19 So that means we stay in fight-or-flight mode longer.

20 PTSD also impairs the parts of the brain that turn  
21 off the fight-or-flight response.

22 Q Okay. Now, when -- when you go about diagnosing  
23 somebody with PTSD, how do -- how do clinicians and  
24 psychiatrists and psychologists typically do the diagnosis?

25 A Well, with Posttraumatic Stress Disorder

1 specifically, we use the diagnostic and statistical manual.

2 that's the book that we all -- with all the diagnoses in  
3 them --

4 Q Now --

5 A -- all the psychiatric diagnoses.

6 Q -- is -- is there a shortened name that everybody  
7 refers to with that?

8 A Yes. It's called the DSM.

9 Q And are -- have there been different incarnations of  
10 the DSM over the years?

11 A There have.

12 Q And what's the most recent?

13 A Number 5.

14 Q Okay. And so the DSM5, this is what mental health  
15 practitioners use when they're going to diagnose an individual  
16 that might have a mental health condition?

17 A That's correct.

18 Q Okay. So what does the DSM5 say are the criteria  
19 for diagnosing PTSD?

20 A Great. Okay. So the diagnosis includes the  
21 following. You'll see it on the screen. A is very important;  
22 you must have a stressor. B is something we call reliving the  
23 event. You must have, C, avoidance, D, negative thoughts and  
24 emotions, and E, hypervigilance. That's the part where we're  
25 really on edge.

1 Q Do you need to have all of these symptoms in order  
2 to meet the DSM5 criteria for --

3 A Yes.

4 Q -- a PTSD diagnosis? Okay. Then let's go through  
5 and just very briefly kind of touch on some of the -- or each  
6 one of these requirements that you need to get the diagnosis  
7 under the DSM5.

8 A Okay. Great. So the first would be witnessing a  
9 stressor, being involved in a stressor. You only need one of  
10 these. Thank goodness, right? So witnessing a death, a  
11 threat of your own life, so a threat of death, actual or  
12 threatened serious injury, actual or threatened sexual  
13 violence, and repeat or extreme indirect exposure to traumatic  
14 events that are often through the duties of some sort of job,  
15 like a first responder or a combat medic, somebody collecting  
16 body parts, things of that nature. That would also qualify,  
17 even though those people didn't have their own lives directly  
18 threatened.

19 So we're talking about life or death. We're really  
20 talking about -- and threat to physical integrity. So, you  
21 know, it's stressful when we have a breakup, but that wouldn't  
22 count as a stressor under Posttraumatic Stress Disorder. It  
23 really has to be life or death.

24 Q So it would have to be like you're in an airplane  
25 disaster --

1 A Correct.

2 Q -- yes?

3 A Correct. Yes, I'm sorry. Yes.

4 Q Yeah, you need to say yes or no, for the record.  
5 Or, you know, being in combat for a period of time?

6 A Correct.

7 Q Okay. Then moving onto the next DSM criteria?

8 A Okay. That's reliving the event. This is the part  
9 of Posttraumatic Stress Disorder that involves sort of being  
10 intruded upon. Okay. And we only need one of these to  
11 satisfy the criteria. So we have sudden unwanted  
12 trauma-related thoughts. So that's, like, you're just kind of  
13 minding your own business and then bam, you have this thought  
14 that is a visual image you don't want to have about the  
15 traumatic event.

16 Q Can I stop you for just one second?

17 A Sure.

18 Q Because you -- you -- you said something just now,  
19 we only need one of these to meet this criteria. Just so the  
20 jury is clear, when you talk about one required, for each one,  
21 okay, there's five criteria for the DSM5, for it to meet the  
22 diagnosis under DSM5, right?

23 A Yes.

24 Q For each criteria, are there certain things that are  
25 kind of laid out that qualify as meeting each little criteria?

1 A Yes.

2 Q Okay. And so for each criteria of the different  
3 things that you can have that meet that criteria, do you have  
4 to have all of these things, or is it sufficient to just have  
5 one or two, depending on what the criteria is?

6 A Oh, it's just -- it just -- it -- you only need to  
7 satisfy with the criteria outline. So in this particular  
8 symptom, you only need one.

9 Q Okay.

10 A And, in fact, it's not -- it's not common to have  
11 everybody have every single symptom from every single  
12 category. That's kind of what makes my job so cool, is that  
13 these people have the exact same diagnoses, and they vary a  
14 little. You know, some of them will have this symptom, but  
15 not that symptom. But they all have Posttraumatic Stress  
16 Disorder. Because it's about a cluster of symptoms.

17 Q So for each -- each one of the DSM5 criteria, you  
18 have to have at least one, or in certain situations, two of  
19 the kind of examples of that particular criteria?

20 A Correct.

21 Q So when you say there's one required, for example,  
22 with reliving the event, one of the things that you've listed  
23 on there, or you have four examples of reliving the event  
24 listed, only one of those is required to meet that criteria?

25 A Correct.



1 Q Okay. That's what I just wanted to make clear.

2 Okay. Now, go ahead with reliving the event.

3 A And individuals may have two, they may have three,  
4 and they may have all four. But they only need one to be  
5 considered having Posttraumatic Stress Disorder.

6 Q Okay. So go ahead then.

7 A Okay. Great. So the second one is frightening  
8 trauma-related dreams and nightmares. Okay. So if they're  
9 having nightmares about, you know, being in class and not  
10 being prepared for the final, that doesn't count as a  
11 Posttraumatic Stress Disorder nightmare. Okay. It's very  
12 trauma-specific. Okay. And that these nightmares repeat and  
13 they're unwanted and they're very unpleasant, usually very  
14 vivid and very distressing. And usually people cannot return  
15 to bed or sleep after they've been woken from their sleep with  
16 one of these nightmares.

17 Flashbacks also is included in this criteria. This  
18 is, like, feeling like the event is there. Smells can trigger  
19 it, memories can trigger it, sights can trigger, and sometimes  
20 they can be unprovoked completely. So that can be very  
21 unnerving for people when they're trying to conduct their  
22 daily business and then they're all of a sudden feeling like  
23 they have a flashback, like they're there.

24 And they vary in severity. Some flashbacks can be  
25 just sort of a -- a mild daydream, and some flashbacks,

1 really, people can lose time and space and really, like,  
2 visually perceive themselves to be there.

3 The final one here in reliving the event is that  
4 after someone has one of these intrusions, they have a really  
5 hard time calming back down. We call it regulating, getting  
6 back to normal. Okay. So they're going to stay in an intense  
7 prolonged distress after something reminds them of the trauma.

8 Q Okay. And then moving onto the next DSM5 criteria,  
9 this one is avoidance?

10 A Yes.

11 Q Okay. And tell us about avoidance.

12 A Okay. So one of these is required, and there's two  
13 here that you'll see. The bottom -- the third is a point. So  
14 the individual PTSD avoids trauma-related thoughts, feelings,  
15 or conversations, and they avoid trauma-related external  
16 reminders. So trauma-related people, places, conversations,  
17 activities, objects, things of that nature. Okay. So --

18 Q Okay. Oh, I'm sorry. Go ahead.

19 A No, it's fine. And typically these avoidance  
20 behaviors are shaped very much by the trauma. So a lot of  
21 times by listening to the veterans' stories, I have a pretty  
22 good idea of what their trauma was that caused the  
23 Posttraumatic Stress Disorder. For example, if somebody was  
24 attacked by a dog, they -- if their avoidance symptom  
25 according to Posttraumatic Stress Disorder would be that they

1 start to avoid dogs. Okay.

2 And then they might start to avoid things that  
3 remind them of dogs. Like maybe visual images of dogs, videos  
4 of dogs, hearing a dog bark. It could even extend as far as,  
5 like, a collar. Right. But it's not going to generalize  
6 typically as something like birds or lizards. Okay. Because  
7 the cue is paired with dogs.

8 So it doesn't mean they'll avoid all animals. It  
9 means the avoidance would be specific related to the actual  
10 traumatic event.

11 Q Okay. So let me ask you about that for just a  
12 second. I want to ask you just a couple of follow-up  
13 questions about avoidance.

14 So when you talk about avoiding trauma-related  
15 thoughts, feelings, or conversations, you're talking about  
16 avoiding thinking about the source of the trauma. So with a  
17 combat veteran, thinking about the combat?

18 A Yes.

19 Q And -- and the -- and the experiences that went  
20 along with combat?

21 A Correct.

22 Q Including, you know, the life-threatening  
23 experiences or the horror of seeing friends die?

24 A Exactly.

25 Q Okay. And when -- and then moving onto the

1 trauma-related external reminders, are -- are you talking  
2 about, like, you know, people in general, for example? Like,  
3 you know, because you deal with people in combat; is this the  
4 kind of -- is this the kind of things that you would avoid?

5 A Typically, people don't avoid all people. It's --  
6 it -- it happens, but it's not the most common. More  
7 commonly, people will avoid people associated specifically  
8 with the conflict. So what I hear a lot of when I'm treating  
9 people is that -- the -- the veterans that I'm working with  
10 have a lot of mistrust for people who look like the folks that  
11 they were fighting. You also saw that with Vietnam era --  
12 Vietnam era veterans, as well, that they avoided people who  
13 they had conflict with. So it's not typically all people;  
14 it's people that they were fighting with.

15 So in my case, I don't have combat veterans who are  
16 necessarily concerned about people that they look like the  
17 people they fought with, like, their battle buddies. But they  
18 are concerned with people who look like the -- the people they  
19 were fighting with in this specific conflict, is like Middle  
20 Eastern descent or Muslim.

21 Q Okay. You know, so is that where you get when you  
22 talk about, you know, the avoiding trauma-related external  
23 reminders, so things that are really unique to the trauma?  
24 For example, like, if you -- if a combat veteran who dealt  
25 with IEDs a lot or had to confront the danger of that might

1 avoid garbage in the road, or a pothole in the road, like --  
2 and -- there's avoidance of something that is specific to the  
3 trauma that they necessarily experienced; is that right?

4 A That sounds -- that's absolutely correct. And also,  
5 like, the avoidance of -- the -- the top one there, avoid --  
6 trauma-related thoughts, feelings, and conversations, that's  
7 why it's so hard for Posttraumatic Stress Disorder veterans to  
8 get into therapy. There's a couple of reasons. One is  
9 there's kind of this culture in the military that  
10 Posttraumatic Stress Disorder is kind of exaggerated or you're  
11 weak, so it takes a long time for people to really kind of  
12 realize they've got this diagnosis, it's really tough for  
13 them.

14 But another thing is they want to avoid talking  
15 about it. So it's very difficult for them to decide to  
16 initially come to therapy. Because that means they're going  
17 to have to talk about it. Right. So that's the kind of  
18 avoidance we see. I see a lot of people with avoidance of  
19 specific things related to their trauma. Convoys, people who  
20 operated convoys, very specifically, on the road they like to  
21 avoid potholes and trash. Because those things signify danger  
22 in their particular conflict. That's not something we see  
23 with Vietnam veteran eras -- era veterans, because they didn't  
24 convoy. So they're not worried about potholes. Okay. But  
25 these veterans are very worried about potholes.

UNCERTIFIED ROUGH DRAFT

1 And a lot of them, when they first come home, they  
2 actually have a lot of reckless driving and put themselves at  
3 risk. And that's because they're trying to avoid the threat.  
4 So the threat pops up, it's the pothole, and their brain tells  
5 them, Oh, my God, if I run over this pothole, it's going to  
6 blow up. So then they swerve in traffic, they're not thinking  
7 about the consequences of oncoming traffic that are very real.  
8 Right. And they're just thinking about the consequences of  
9 that pothole.

10 But in this context, that's not as likely to happen.  
11 But their brain is, like, I'm not talking any chances with  
12 that. Okay. But it's very trauma-specific --

13 Q Okay.

14 A -- the way that we avoid.

15 Q Okay. So -- so if I understand you correctly, the  
16 things that you're going to avoid are very specific to the  
17 unique trauma that you -- that that individual experienced?

18 A That's correct. And if people experience more than  
19 one life-threatening situation, they may avoid more than one  
20 type of stimulus. Does that make --

21 Q Yes.

22 A Yes.

23 Q Okay. So -- so, you know, I think something that --  
24 that kind of people might very easily think when they hear  
25 avoidance is they might picture somebody curled up in the

1 fetal position in the corner of their bedroom. Is that what  
2 you mean by avoidance?

3 A No. In fact, that wouldn't actually meet the  
4 diagnosis, unless -- that's more agoraphobia. So that's  
5 something we see in generalized anxiety disorder, and that  
6 people get anxious when they leave the house in general, and  
7 so then they -- we -- we diagnose that as called agoraphobia.  
8 So that's more of, like, a general fear, and then, like, a  
9 general avoidance of going out. But Posttraumatic Stress  
10 Disorder is very different.

11 Q Okay. So now let's talk about just a couple ways or  
12 a few ways that people can engage in this avoidance behavior.

13 A Possibly.

14 Q Is suicide and self-harm one of the ways that people  
15 can avoid?

16 A Yes. Because they say, I'm just going to end it  
17 all. I have a lot of veterans that have -- I have a lot of  
18 veterans that have suicide attempts. It's really awful. And  
19 a lot of them battle with suicidal thoughts all the time,  
20 because they say, like, This would just be easier if I wasn't  
21 here. And a lot of them say, I wish I'd have just died in  
22 battle, because I'm so broken now and I can't live with these  
23 symptoms. So avoidance is kind of like, the ultimate would be  
24 suicide.

25 Q Okay. So by -- so in trying to avoid having all

1 these negative thoughts and memories and flashbacks, they  
2 would -- that -- that's what kind of drives them to the point  
3 of thinking, I just want to end my life?

4 A Correct.

5 Q Okay. How about substance abuse?

6 A It's very common. In fact, it's very common in  
7 military males to use substances. Substances are a "wonderful  
8 way" in the short term to avoid these symptoms. Okay. So if  
9 I get really, really, really, really drunk, then I am less  
10 likely to remember. It kind of numbs my feelings and it slows  
11 those thoughts down. So avoidance -- using substances is a  
12 way that male combat veterans especially, but also female  
13 combat veterans rely on and -- when they first get home to try  
14 to manage these symptoms. So substance abuse is actually a  
15 very, very common way to avoid.

16 Q And with substance abuse, is it -- so is it common  
17 that you see people who before their combat experiences don't  
18 use controlled substances, and then they come back and they  
19 start indulging in that kind of thing?

20 A Absolutely. In fact, that's what's so remarkable  
21 about it. And that's why it seems to be so PTSD related.  
22 Because if these people were using substances before, we  
23 wouldn't know if it was a PTSD symptom or not. It seems very  
24 remarkable, because they're in the military, they're these  
25 very clean, sober people. And then all of a sudden they come

UNCERTIFIED ROUGH DRAFT



1 out and they're, like, they're not functioning because of  
2 their substance abuse.

3 They also can use other substances, as well. I've  
4 seen them use methamphetamines, I've seen them use cocaine,  
5 I've seen them, a lot of them use marijuana. Alcohol is very  
6 common. Yeah. So just sort of to take the edge off of the --  
7 of the intrusive symptoms and the nightmares and things like  
8 that.

9 Q Okay. And, in fact, with some of the stimulant  
10 narcotics, it helps them avoid sleep, because it keeps them  
11 awake?

12 A Correct.

13 Q Okay.

14 A Correct.

15 Q How about just bingeing in general? You talked  
16 about the substance abuse; what about other indulgences,  
17 gambling, you know, reckless sexual behavior, that type of  
18 thing?

19 A Absolutely. So if we're having a really good time  
20 and we're out and about living this kind of like fast life,  
21 we're not thinking about the trauma. So a lot of people --  
22 it's -- it's interesting, people can go either way. And it  
23 seems to be a nice split. I see guys who are out burning the  
24 midnight oil, reckless, reckless, reckless, spending, having  
25 sex, drinking, doing drugs, just burning. All right.

1                   And then we see guys who are, you know, they don't  
2 want to do that. And it seems to be a real split. We don't  
3 see people who seem to have this, just, like, normal, healthy  
4 social functioning. Okay. They seem to be really kind of out  
5 there having superficial relationships with people that aren't  
6 so deep, and they also seem to be -- or they can be kind of  
7 like scared of a lot of people. But we -- you know, it's --  
8 it can go either way, but it's usually extreme.

9           Q     What about dissociation?

10          A     Dissociation is psychological shift that occurs,  
11 that kind of gives us a little -- removes us a little bit  
12 psychologically from what's happening. So a nice way to kind  
13 of understand it is if you've ever kind of stared out into the  
14 window, kind of like your eyes go a little fuzzy; that would  
15 have kind of be, like, a really low level of what dissociation  
16 could be like. All the way to, like, people can see  
17 themselves outside of their own body.

18                   And dissociation is an avoidance strategy that the  
19 brain uses so that it can get us a little bit removed from the  
20 pain and the horror of what's happening to us. Okay. But  
21 then after the event, we can -- we see people who will  
22 dissociate. So they see something that reminds them of  
23 something stressful, and then their brain does that  
24 psychological removal so that they're not quite as scared or  
25 on edge.

1           Q    Okay. What about social withdrawal or, like, you  
2 know, reduced intimacy and communications, contacts with your  
3 loved ones, family members?

4           A    Yeah, that's very common. And so a lot of veterans  
5 will withdraw themselves from the more intimate parts of  
6 relationships. A lot of the times they feel like they're bad  
7 people, they don't want to talk about their -- their  
8 experiences. They have trouble with trust.

9                   And so a lot of times you'll see them withdraw from  
10 close family members because it's too -- it's -- it's kind of  
11 too overwhelming for the family members to know what happened,  
12 they don't want to burden their family members. And they have  
13 a lot of shame. And we'll talk about why they have a lot of  
14 shame in just a moment.

15          Q    Okay. So -- so it's not uncommon to see combat vets  
16 that have this mental health condition pull away from family  
17 members because they -- then they don't have to deal with the  
18 discussions that more closer associates might want to have  
19 with them about their experience; is that fair?

20          A    That's correct. And -- and then it would also sort  
21 of limit them from going into deep relationships with new  
22 people.

23          Q    So -- so -- so it would be common, then, to see  
24 somebody, again, like a return combat vet with this condition  
25 to kind of maintain very superficial casual relationships with

1 people?

2 A It would be -- it would be typical.

3 Q Okay. What about, like, risk taking and thrill  
4 seeking behaviors?

5 A Yeah. There's a lot of that. So a lot of the ways  
6 that these vets will avoid it, they come in and they'll talk  
7 about how they just speed down the freeway. And it's really  
8 interesting. So they're flying down the freeway and they'll  
9 say, you know, when I'm flying down the freeway, I'm not  
10 thinking about -- they're focused. They're, like, in the  
11 moment.

12 And so they'll do a lot of reckless behaviors or  
13 thrill seeking behaviors to kind of really get them in that  
14 moment so that their brain isn't thinking about other things,  
15 it's thinking about being on that road in that moment.

16 But, you know, there's also that really good part of  
17 thrill seeking that feels good. And some of them miss that.  
18 Because combat is -- is really filled with a lot of very  
19 high-excitement moments and very low moments. And some of  
20 them kind of miss those adrenaline peaks. And so when that  
21 adrenaline comes rushing, some of them can actually feel, you  
22 know, good. Like, Oh, you know. So they're -- they'll go out  
23 and kind of live this fast life, if that makes any sense.  
24 Because if they have to slow down, they get stuck thinking  
25 with their thoughts and feeling their feelings. And that

1 feels yucky, so they just keep it moving.

2 Q So all of these things are ways that combat vets who  
3 suffer from this condition can kind of avoid letting the  
4 negative thoughts and emotions and the flashbacks and the  
5 memories of what they've experienced start creeping into their  
6 psyche; is that right?

7 A Correct. So it's like, you know, even we -- we do  
8 this on a very low level, like, if we're stressed out about  
9 something, we'll be, like, Oh, I'll just watch a TV program.  
10 Or, Oh, I'll just go in the other room and clean up really  
11 quickly. So something to try to shift our attention to not  
12 have to think about things.

13 Q And this can ultimately, the last two symptoms that  
14 you have, reduce life activities and physical health symptoms,  
15 can ultimately this kind of behavior and avoidance take a toll  
16 on somebody's physical well being?

17 A Absolutely. I would say that it might be one of the  
18 parts that wreaks a lot of havoc on somebody's whole life  
19 picture.

20 Q Is this -- so -- is -- this avoidance stuff that  
21 goes on with some of the returned vets, is this -- is this  
22 kind of what moves a combat veteran from having an otherwise  
23 stable life into just kind of coming off the rails?

24 A It all works together. I would say that the  
25 symptoms give them so much trouble, and then their great

1 lengths to avoid in ways that are less healthy make it really  
2 bad for them.

3 Q Okay. Let's move onto the next DSM5 criteria, we're  
4 on the fourth one, almost done. This one is negative thoughts  
5 and emotions?

6 A Yes.

7 Q What is this?

8 A Okay. So we need two of these to meet the criteria.  
9 So people don't have to have all of these changes, but they do  
10 have to have at least two. So this is what's really  
11 interesting. After a stressful event, the brain does some  
12 interesting things that change the way we see things. Okay.  
13 So one of the things that happens is we get negative beliefs  
14 about ourself and the world. So after, let's say, an assault,  
15 let's say somebody mugs me, right. Now I might have a  
16 negative thought about myself, like I'm weak, I should have  
17 been able to stop it and I couldn't. And I also might have a  
18 negative thought about the world. Everybody's dangerous,  
19 everybody wants to hurt me. Okay. So these changes sort of  
20 set in like a -- like a curtain over us. And they -- they  
21 change the way we see things. Okay.

22 So we also can have distorted thoughts about the  
23 cause of the event. This is very common. I might tell myself  
24 after that mugging, That mugging was my fault, because I left  
25 the house. I shouldn't have left the house. If I didn't

1 leave the house, I wouldn't have been mugged. But that's a  
2 distorted -- distortion. Because really, the person  
3 responsible is the person who mugged me. But my brain isn't  
4 telling me that. My brain is telling me, no, it was my fault.  
5 Okay. So this is one of the symptoms of Posttraumatic Stress  
6 Disorder.

7           Persistent negative emotions, well, those thoughts  
8 are going to lead to some negative emotions. Okay. And so we  
9 do see a lot of fear, anger, guilt, or shame. Usually it has  
10 to do with what we're telling ourselves; it was my fault, I'm  
11 bad, I'm weak, things like that.

12           Inability to experience positive emotions. And so  
13 that negative change in thoughts and feelings kind of shrinks  
14 our emotional continuum. Okay. And unfortunately, it shrinks  
15 it towards the negative end. And so now we do have access to  
16 sort of negative feelings, but we don't have access to those  
17 really nice, positive feelings.

18           We can feel numb or isolated. So instead of feeling  
19 negative feelings, some people don't feel any feelings.  
20 Right. So they sort of lock all of their feelings behind the  
21 curtain. And when they do that, they don't have access to the  
22 good ones or the bad ones. They just sort of numb or flat.  
23 Okay.

24           So not everyone with PTSD is scared, not everyone  
25 with PTSD is always shaking. Sometimes they're just flat as a

1 pancake. Okay. And I'll see them come in for my treatment  
2 and some of them just, like, you know -- and they talk about  
3 their event, like, they're just flat. Okay.

4 Not interested in important activities. So job,  
5 being involved in family life, that is very common. And an  
6 inability to recall important parts of a traumatic event. So  
7 that's actually really interesting. That's part of that  
8 dissociation. But we do see that people can not remember what  
9 would be odd that they don't remember, like pieces are  
10 missing. So that's -- that happens.

11 Q Okay. With -- so with the negative thoughts -- oh,  
12 some of this, if I understand you correctly, is just a lot of  
13 blaming them that -- a combat veteran blaming him or herself  
14 for the loss of a fellow soldier, you know, feeling like they  
15 couldn't do enough to take care of someone or that type of  
16 thing can be part of this, also.

17 A Absolutely.

18 Q Okay. Now, moving onto the last DSM5 criteria,  
19 hypervigilance?

20 A Yes. Okay. So this symptom category, you need two.  
21 So people don't need all of these, but they do need two to be  
22 -- to satisfy the diagnostic criteria. And these symptoms are  
23 the fight-or-flight response that we talked about in the  
24 beginning. That's why we talked about it. Okay. So this is  
25 the part of the disorder that's related to that



1 fight-or-flight. Okay.

2           So in hypervigilance, we see people that after  
3 they've been exposed to a stressful event, they find  
4 themselves feeling on edge or on guard. They scan their  
5 environment for danger, they have some irritability, they have  
6 anger or aggressive outbursts, difficulty falling or staying  
7 asleep, self-destructive or reckless behavior, difficulty  
8 concentrating -- we talked about how we can shift focus when  
9 we're faced with threat. And exaggerated startle response,  
10 like jumping at noises are also what we often hear, hitting  
11 the ground, so someone will get startled who has military  
12 training and they'll -- they'll duck and cover, like incoming  
13 is -- is happening.

14           Q     Okay. So now again, just so the jury's clear, if  
15 somebody has a PTSD diagnosis, do they necessarily have all of  
16 these things?

17           A     No.

18           Q     In fact, sometimes, do they just have one, two,  
19 three?

20           A     Yes.

21           Q     Okay. And there's really -- it varies from  
22 individual to individual, right? There's no --

23           A     It varies individual to individual. It varies based  
24 on the actual traumatic event.

25           Q     Okay.

1           A     And it varies based on the environment, too.

2           Q     Okay. Let me ask you a couple of questions about  
3 difficulty concentrating --

4           A     Sure.

5           Q     -- just really quick. Would this disrupt somebody's  
6 ability, if they're having difficulty concentrating as a  
7 result of their condition, would it disrupt their ability to,  
8 you know, like, perform well in school or in a job setting,  
9 like that type of thing?

10          A     Very much so. In fact, it's -- this is one of the  
11 things that I see a lot, it breaks my heart, that these vets  
12 come back and they get their GI bill and they want to go to  
13 school and they're all excited to go to school. And then they  
14 find that they just can't focus in school. Because when  
15 they're in class, they're watching the windows to make sure  
16 for incoming, and they're worried that somebody's going to  
17 have some kind of rocket shoot into the classroom. It's  
18 really hard to focus on the history lecture, when you're  
19 worried that a rocket's going to come through the window or a  
20 bullet's going to come through the window.

21                So they just -- and attention is like a spotlight.  
22 It's very limited and we can shift it back and forth, but we  
23 can't split it in half. So they can't be worried about the  
24 window and listen to the lecture at the same time. And their  
25 body is going to tell them to look at the window, because

1 that's what going to keep the body alive more than the history  
2 lecture.

3           So people are -- with Posttraumatic Stress Disorder  
4 find themselves in these fight-or-flight moments when the rest  
5 of us wouldn't find ourselves there. Based on something  
6 they're perceiving related to their trigger that we don't have  
7 a trigger for, because we didn't see danger related to that.  
8 So it makes it very difficult for them to be engaged in those  
9 kinds of life activities. It's really sad, because they get  
10 back and they've earned that money, but then they can't  
11 utilize it, because they have such a hard time concentrating  
12 in class.

13           Q     Okay. And is that part of when I asked you a few  
14 minutes ago about you -- you see these guys who leave for  
15 combat, they are in combat for a while and they come back and  
16 they try to maintain normal -- what we would do to be a normal  
17 family life that, again, this plays a part in them kind of not  
18 being able to do that?

19           A     Correct.

20           Q     Okay.

21           A     And this varies. I mean, we have folks that have  
22 Posttraumatic Stress Disorder, they're more adaptive and are  
23 able to function. And we have folks that just unhinged coming  
24 in and out of the inpatient unit constantly suicidal,  
25 constantly using substances, constantly dissociating. It

1 really does run a spectrum.

2 Q Okay. Now, are there regions of the brain that we  
3 now know, based on kind of the emerging research, of which you  
4 are a part, that there are actual regions of the brain that  
5 are affected by Posttraumatic Stress Disorder?

6 A Yes.

7 Q How many regions are there that are affected?

8 A Three.

9 Q Okay. Can you tell the ladies and gentlemen of the  
10 jury about that?

11 A Yes. So there are three regions of the brain that  
12 are affected by Posttraumatic Stress Disorder. Okay. The  
13 first is called the amygdala. That's the fire department we  
14 talked about. The second is called the medial pre-frontal  
15 cortex. And the last is called the hippocampus. Okay. So  
16 I'm going to keep it very simple. I promise I will not bore  
17 you. I can't talk direct -- I'm sorry.

18 Assess -- okay. So the amygdala is the fire  
19 department. That's the limbic system. That's the part that's  
20 involved -- that's the part of the brain that's involved with  
21 assessment of threat, expression of fear, fear conditioning.  
22 Fear conditioning essentially means pairing something in the  
23 environment with the -- with the idea of danger. Okay.  
24 That's fear conditioning. All right. So we have fear  
25 conditioning when it comes to a dog after we've been attacked.

1 So if we've never been attacked by a dog, we don't have fear  
2 conditioning that connects dog to danger. But if we have been  
3 attacked by a dog, the amygdala is involved with going, Ooh,  
4 that thing there, very, very dangerous. Because that's really  
5 important for our survival. So that's what the amygdala does.  
6 It's involved in those types of experiences. Okay.

7 And scans of post-traumatic -- of folks' brains with  
8 Posttraumatic Stress Disorder show that their amygdala is  
9 really, really overactive. It's more active than somebody  
10 without Posttraumatic Stress Disorder. So that fire  
11 department is getting called out a lot. Okay. That fire  
12 department is deploying all the time. All right.

13 Q Okay. What about the second part of the brain  
14 that's affected?

15 A Okay. So the medial pre-frontal cortex, this is a  
16 part of the brain that extinguishes the trauma memory. So  
17 what that means is memories after the trauma of when that  
18 stimulus wasn't dangerous. Okay. So if I'm -- if I have  
19 combat and I go and fight somebody who's Middle Eastern, okay,  
20 and I come home and I get Posttraumatic Stress Disorder, if I  
21 see someone who's Middle Eastern and they are safe and they  
22 don't hurt me, this part of the brain would be involved in  
23 keeping that memory for me, making that memory. Like, Oh,  
24 there was one that was dangerous. But I also remember there  
25 was one that wasn't dangerous. So the medial pre-frontal

1 cortex is involved with the remembering the nothing. Okay.

2 Remembering the non-threat. Okay.

3 And so we see folks with Posttraumatic Stress  
4 Disorder, this part of the brain is smaller. It's not -- it's  
5 not functioning the same way that somebody else's brain that's  
6 healthy would be functioning.

7 So if we don't have Posttraumatic Stress Disorder  
8 and we see a dog that looks like it's gnashing its teeth and  
9 we see a dog later that's friendly, we will use -- we will  
10 have access to both of those memories. Right. But if we have  
11 Posttraumatic Stress Disorder, the part of the brain that  
12 would be involved in telling us -- and in remembering and  
13 noticing that dog that wasn't dangerous, that part's impaired.

14 So now when we see dogs, we're responding as if  
15 they're all that same dog that attacked me, because I'm not  
16 forming new memories that tell that that dog can not be  
17 dangerous, too.

18 For the analogy that we're using with, like, the CEO  
19 and the fire department, the best thing that I can -- this  
20 would be like the fire chief. Okay. This is the person who's  
21 in charge when the fire department gets deployed. And this is  
22 the person who has the most senior experience and they say,  
23 That's a small fire, we don't need to worry about that.  
24 That's a big fire, let's put all our juice there. Okay. So  
25 this medial pre-frontal cortex is kind of like the fire chief,

1 in charge once the amygdala gets deployed. Okay.

2 And that fire chief is off. Okay. So in the  
3 Posttraumatic Stress Disorder brain, that fire chief is off  
4 his game. Okay. He's responding to every fire the same now,  
5 instead of saying, like, No, let's not use our energy here,  
6 let's use our energy there. Okay.

7 Q All right. How about the third region of the brain  
8 that's affected?

9 A Yes. The third region of the brain that's affected  
10 is called the hippocampus. This is the part of the brain  
11 that's involved with storing long-term memories. So it takes  
12 a short-term experience and processes it to turn it into a  
13 long-term memory so we can have it later. Okay. So this is  
14 the part of the brain that's going to remember that the medial  
15 pre-frontal cortex decided it wasn't paired with danger. This  
16 is the part of the brain that's going to file away that  
17 nothing happened. Okay.

18 So this part of the brain is actually a bit smaller.  
19 You can see the pink one is a nicer example. These organs are  
20 so tiny that volume loss of that -- of that -- of that nature  
21 is actually significant, because they're so tiny to begin  
22 with. Okay.

23 So this part takes the information that the medial  
24 pre-frontal cortex is able to tell us, which is yes, that dog  
25 was dangerous, no, that dog is not, and then file it away for

1 later. So that's also very important. In the future when  
2 we're faced with danger, that little organ is going to have --  
3 have been what put that information away. If it doesn't put  
4 it away, I can't find it later. Okay.

5 So these -- how all these things work together to  
6 sort of slow down our fight-or-flight response. But in  
7 persons with Posttraumatic Stress Disorder, these parts of the  
8 brain show impairment, so that they're not as able to slow  
9 down that fight-or-flight response like the rest of us are.  
10 Because these are the organelles that are important and  
11 involved in doing so. So --

12 Q Okay.

13 A -- we see cell damage, we see reduced volume,  
14 abnormal functioning, and then inability to recall new  
15 threat-related information. So new information about an old  
16 threat that wasn't dangerous.

17 Q And again, just so that we're clear, we're talking  
18 about threats that are specific to the combat experience?

19 A We're talking about trauma triggers that are related  
20 to the -- the combat experience or a true threat.

21 Q Okay. Or -- or a true threat?

22 A Or a true threat.

23 Q Okay.

24 A Yes.

25 Q All right. Now, there's one last aspect -- well,



1 let me ask you this, is there one last aspect then, of the  
2 brain that we know now based on the scans and the testing that  
3 have been done on our returning vets that is affected by PTSD?

4 A Yes.

5 Q Like the brain chemistry?

6 A Yes.

7 Q Okay.

8 A Yes.

9 Q Very -- very briefly tell us about that.

10 A Yes. So brain chemistry also seems to change.  
11 Brain chemistry, the chemicals that kind of send signals. And  
12 so the brain chemistry looks different in folks with  
13 Posttraumatic Stress Disorder. On the left you can just see  
14 an example of normal -- normal brain chemistry. Involved in  
15 the fight-or-flight reps, we see norepinephrine, so that fires  
16 our fight-or-flight response and it consolidates memory.  
17 Consolidating, that's the dressed up word for taking that  
18 memory and making it a long-term memory. That's what we call  
19 memory consolidation. Okay.

20 Also in a normal, healthy brain during the  
21 fight-or-flight we have serotonin that gets produced. That  
22 serotonin is responsible for our sense of feeling  
23 self-defensive. Also for that rage that we see when we're  
24 faced with a true threat for our life. And for attention to  
25 fear, only being able to focus on that fear. So that -- that

1. brain chemical's responsible for that.

2           In a brain with Posttraumatic Stress Disorder, the  
3 brain chemistry looks different. We see too much  
4 norepinephrine, so that's what causes the hypervigilance. The  
5 autonomic arousal. The -- the flashbacks and intrusive  
6 memories, and in people with Posttraumatic Stress Disorder,  
7 there's not enough serotonin, which leads to aggressive --  
8 aggression, violence, impulsivity, depression, and anxiety.

9           Q    Okay. Now, is this true of every single person that  
10 has Posttraumatic Stress Disorder?

11          A    The objective portions? Yes. The brain, the bio --  
12 the -- the brain chemistry, yes.

13          Q    Okay. Now, you mentioned just -- just a couple of  
14 minutes ago that really what we're talking about a lot of  
15 times with Posttraumatic Stress Disorder is there is a -- an  
16 impact that it has on fight-or-flight.

17          A    Yes.

18          Q    Okay. Tell us -- tell us very briefly or generally  
19 about how PTSD can affect the fight-or-flight response.

20          A    PTSD can actually prolong the fight-or-flight  
21 response. Okay. So we're designed to have a very brief  
22 fight-or-flight response. Because it gives us -- it gives us  
23 all our gas. Our brain -- our bodies like to conserve energy.  
24 So really, the fight-or-flight response is designed to be very  
25 quick, help you address danger, get out of there. Okay.

1 But what we see with people with Posttraumatic  
2 Stress Disorder is that their fight-or-flight response is  
3 prolonged. It's longer than individuals that don't have it,  
4 for the reasons that we just discussed. The brain mechanisms  
5 that are involved in slowing that down are -- are -- are  
6 smaller. They're -- they're impacted. And so they stay in  
7 that heightened mode after being -- after being exposed to a  
8 trauma trigger or a true life threat. Their fight-or-flight,  
9 the mechanisms that we use to slow that down, they're not  
10 going to be as available for people with Posttraumatic Stress  
11 Disorder. So they stay in that state longer.

12 Q Okay. So with -- with the fight-or-flight syndrome,  
13 or -- you might see it, you know, where -- I think if I  
14 understood you correctly, somebody that -- with a normal brain  
15 that does not have the PTSD condition that you've talked  
16 about, they would come out of that fight-or-flight response  
17 quicker than somebody, say, who has PTSD?

18 A Correct. They would come out of it more quickly  
19 once the threat is removed. A person who's -- so a person  
20 without Posttraumatic Stress Disorder wouldn't have a stress  
21 related trigger. So they would be responding to  
22 fight-or-flight with true threats. And when the true threat  
23 is gone, their body would calm down.

24 But with fight-or -- when we have Posttraumatic  
25 Stress Disorder, the mechanisms that we use to slow that down

1 in our brain are -- are affected, and so they are not able to  
2 slow that fight-or-flight down after being exposed to a  
3 trauma-related trigger or an actual true threat.

4 Q Okay. So are there some general conclusions that  
5 you can draw about an individual and how they respond in a  
6 threatening situation that PTSD kind of can affect?

7 A Yes, absolutely. So altogether, individuals,  
8 because the brain changes with Posttraumatic Stress Disorder,  
9 will stay in the fight-or-flight longer. Okay. Why does that  
10 matter? Because, remember, the CEO is not in charge when the  
11 fire department comes in. Okay. So that's why it matters, is  
12 because the part of the brain that we use to the -- really  
13 think through the consequences, when the fire department  
14 comes, they kick in the door, they're not thinking about the  
15 bill. All right. They're not, like, Oh, are we going to get  
16 billed for this? They just kick in the door.

17 Okay. So that part of the brain we use to -- to go,  
18 Whoa, we need to think about the door, that's not available  
19 when we're in the fight-or-flight. People with PTSD stay in  
20 the fight-or-flight longer. An inability to calm down  
21 following an actual threat or a trauma-related trigger, and  
22 then a limited capacity to make decisions unrelated to the  
23 threat, because that's involved in the fight-or-flight  
24 response, and then a limited ability to consider consequences  
25 of actions unrelated to the threat.

1                   A really nice example of that is exactly what we  
2 talked about when people swerve out to get away from those  
3 potholes. Okay. That they have -- they're only considering  
4 the -- the -- the -- they're only considering the consequences  
5 of driving forward over the pothole and possibly blowing up.  
6 That's all they can consider. They are not considering the  
7 consequences of swerving around it. Okay. So they are really  
8 just focused on the consequences related directly to the  
9 threat.

10           Q     Now, as part of your work in this particular matter,  
11 did I ask you to render an opinion with respect to Mr.  
12 Pimentel and whether or not he has PTSD?

13           A     Yes.

14           Q     Okay. And in doing that, what did you review? What  
15 did you do to make a -- render an opinion in that regard?

16           A     I reviewed his medical records from the Veterans  
17 Administration Hospital as well as giving him a clinician  
18 administered Posttraumatic Stress Disorder scale that's  
19 basically a -- a PTSD test, to make sure that he meets  
20 criteria.

21           Q     And where -- where that -- where that test is  
22 concerned, is that kind of the gold standard test that is  
23 administered to individuals that have -- that are suspected to  
24 have PTSD?

25           A     That's correct. It's the gold standard. And when

1 the research that I do, everybody must -- we give everybody a  
2 CAPS before they enter our treatment. And when you look at  
3 the literature about Posttraumatic Stress Disorder, all the  
4 participants have been given CAPS. So CAPS is like the gold  
5 standard for assessing whether there's a presence of  
6 Posttraumatic Stress Disorder.

7 Q But DSM5, the DSM5 criteria, is -- is also -- like,  
8 the primary diagnostic tool that is used across the board with  
9 mental health clinicians in diagnosing this, also?

10 A That's correct. And the -- the CAPS maps onto the  
11 DSM.

12 Q Okay.

13 A The CAPS is a structured interview that goes through  
14 every single one of those symptoms in more detail. And we  
15 just switched to the DSM5. It was the DSM4. So there was  
16 CAPS4 and now they just released CAPS5. But there's always a  
17 lag, because they have to come out with a new book first. The  
18 new -- and then they make the test according to what the new  
19 book says. So yes.

20 Q Did you also -- what else did you review as part of  
21 your assessment that --

22 A The discovery --

23 Q The discovery, for the jury, is what?

24 A The discovery, for the jury, I learned is all the  
25 materials, all the evidence related to the case, everything

1 that they've found so far. So I listened to -- I -- I read  
2 interviews by the police officers for witnesses that were  
3 there at the scene. I read the police report. I read  
4 different witness statements that were -- got -- that were --  
5 interviews at the later time for the police. I read phone  
6 records of -- of Mr. Pimentel while he was in jail. I watched  
7 surveillance video of Arizona Charlie's. I watched  
8 surveillance video of the bus that he was on when he was  
9 apprehended. I -- I -- I interviewed the witnesses, I  
10 interviewed Grace, his wife, I interviewed his mother, Carmen,  
11 and I interviewed Sergeant Ortiz regarding his experiences out  
12 -- on -- on deployment.

13 Q Okay. And you mentioned just briefly also that you  
14 had reviewed Mr. Pimentel's medical records?

15 A That's correct.

16 Q Would -- were these primarily VA medical records?

17 A Yes.

18 Q Is this something that is -- would be typically  
19 relied on by an expert in your field of expertise?

20 A Yes. We do that all the time, in fact, for -- we  
21 exclusively see veterans in my research study and so we go  
22 through their VA medical records before we invite them to  
23 participate just to make sure that they do have a documented  
24 history of Posttraumatic Stress Disorder. And we give them a  
25 CAPS when they come to just be extra sure. So it's very

1 normal practice to review the medical records and then to do  
2 an assessment.

3 Q Okay. In fact, you really wouldn't be able to make  
4 a really informed diagnosis and render an opinion without at  
5 least looking at their medical records?

6 A If the medical records are available. But, no, I  
7 could make one without -- I mean, I could give him an  
8 assessment in an -- in an interview and if he satisfied the  
9 diagnostic criteria, but then I would be able to make a  
10 diagnosis. But it always bolsters your diagnosis when you see  
11 it well documented in the -- in the medical history, and then  
12 in addition to that, you can find it on your own when you do  
13 an assessment.

14 Q Okay. So that reviewing the medical records would  
15 be something that -- well, the medical records would be  
16 reasonably relied upon by somebody doing a -- a diagnosis,  
17 such as what you've described?

18 A If they're available, absolutely.

19 Q Okay.

20 MS. LEMCKE: May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 BY MS. LEMCKE:

23 Q I'm going to show you this big giant stack that has  
24 been marked for identification as Defense Proposed Exhibit 00.  
25 I'd ask you to take a look at that for me.



1 A Okay.

2 Q Kind of flip through it. You don't have to read  
3 every single page line by line --

4 A Okay.

5 Q -- but I'd ask you to take a look at it. Tell me if  
6 that appears to be the records that were provided to you from  
7 my office regarding Mr. Pimentel's medical history?

8 A Yes.

9 Q Or his post-combat medical history?

10 A Yes. And I -- I forgot, you also did give me a copy  
11 of this DD214. I also looked at that.

12 Q And just so the jury is --

13 A The discharge papers from the military. So the  
14 DD214 is papers that are given to a soldier when he departs  
15 from the military stating -- they're, like, the most important  
16 papers to them. It states who their dependents are, it states  
17 that they were honorably discharged, it states all of those  
18 things. So that's just basically his discharge record from  
19 the military.

20 Q Okay.

21 A It also states all of the ranks that he made and all  
22 the different accolades that he earned, medals, things of that  
23 nature.

24 Q Okay. So we have the medical records, and then his  
25 DD214; is that right?

1 A Correct.

2 Q Is -- does that appear to be the -- the records that  
3 you reviewed --

4 A Yes.

5 Q -- at my request?

6 A Yes.

7 Q Okay.

8 MS. LEMCKE: At this point, Your Honor, I would move  
9 the admission of Defense Proposed OO.

10 MR. BATEMAN: I'm going to object. May we approach?

11 THE COURT: Yes.

12 (Off-record bench conference.)

13 THE COURT: All right. So the objection is  
14 sustained at this time until you lay a -- a better foundation.

15 MS. LEMCKE: Okay. And, Your Honor, I think I can  
16 just ask Ms. Boyd about what's in the records as it relates to  
17 her opinion and diagnosis. So I -- I can just move on without  
18 doing some additional foundation stuff.

19 BY MS. LEMCKE:

20 Q Okay. So -- all right. So you did all these  
21 reviews. I think you said you interviewed some witnesses that  
22 relate to the Posttraumatic Stress Disorder, you know,  
23 symptoms, that type of thing?

24 A Yes.

25 Q Okay. All right. And then did you -- and based on

1 all of those -- and you know what, let me take this away.

2 MS. LEMCKE: May I approach the witness, Your Honor?

3 THE COURT: Yes.

4 MS. LEMCKE: I'll remove this stack o'documents.

5 BY MS. LEMCKE:

6 Q Did you render any opinions or come to any  
7 conclusions as to whether or not Mr. Pimentel actually has  
8 PTSD?

9 A Yes. Mr. Pimentel does, in fact, has Posttraumatic  
10 Stress Disorder as well as a history of traumatic brain injury  
11 and the neuropathy, which would put him the classification of  
12 polytrauma.

13 Q Okay. And did he have that diagnosis when he was  
14 treated at the VA since his discharge from the military?

15 A Yes.

16 Q And so as your diagnosis, are you saying that he had  
17 it then, or that he has it now, or both?

18 A Both.

19 Q Okay. And when you said polytrauma -- polytrauma,  
20 does that -- what does that mean?

21 A That just means that he has a trauma or sustained  
22 injuries in different places, different ways. So he's got a  
23 psychological injury, which we call the Posttraumatic Stress  
24 Disorder, he has the traumatic brain injury, which is the  
25 brain injury, and then he has physical injury, which is the

1 neuropathy from the -- from the fall in the back.

2 Q Now, what you do with your work and your capacity as  
3 both a clinician and a research fellow, do you -- do you deal  
4 particularly with return veterans that have this polytrauma  
5 diagnosis, that is the more than one thing going on at once?

6 A Yes, exclusively, in fact. Because they must have  
7 Posttraumatic Stress Disorder and traumatic brain injury to be  
8 involved in the study. Otherwise, we can't compare them to  
9 the other people and see which treatment works better.

10 Q So you have kind of a unique area, a field -- you  
11 have kind of a unique expertise in the area of treating not  
12 just returned combat vets with PTSD, but PTSD as part of this  
13 polytrauma, meaning more than one symptom, like the traumatic  
14 brain injury and the physical problems?

15 A Correct.

16 Q Okay. Now, let me ask you to go back --

17 MS. LEMCKE: Do you have the next slide that you can  
18 go to?

19 Q So you indicated that you came to the conclusion  
20 that Mr. Pimentel has PTSD, did have it, and currently does  
21 have it. Explain to the jury, using the DSM5 criteria now,  
22 starting with the first criteria, the stressor, how you  
23 diagnose that?

24 A Can I back up for just a second?

25 Q Sure.

1           A     So it's important to know, this is really  
2 interesting, too, about Posttraumatic Stress Disorder, that  
3 not everybody who's exposed to a life-threatening situation  
4 will develop it. It's really interesting. Okay. So I like  
5 to give an analogy that is, like, let's say that we're all in  
6 an earthquake together. Okay. After the -- just after the  
7 earthquake, we're all going to look very similar to one  
8 another. All right. If we feel the ground shake, we're going  
9 to look around and we're going to look very similar to one  
10 another. I call that being in trauma pond. Okay.

11               Trauma pond is murky and it's gross and it's  
12 disgusting, and we're all in it together. Okay. There's a  
13 small creek that leads out of trauma pond and goes out to  
14 happy ocean. All right. Every single person in trauma creek  
15 goes -- in trauma pond goes through the creek. Okay. Some of  
16 us make it out all by ourselves, we're able to avoid all the  
17 sticks and every -- and we make it out to happy ocean and  
18 there we are, we're swimming free.

19               Some of us get stuck. Okay. And if we get stuck in  
20 our recovery from the event, we don't seem to go out to happy  
21 ocean on our own. So this is really interesting. So anyone  
22 who has a stressor, not everyone will develop Posttraumatic  
23 Stress Disorder, but if they do develop Posttraumatic Stress  
24 Disorder, it looks like they won't resolve that without  
25 intervention.

1                   Okay. So once you get PTSD, it's really difficult

2 to see people kind of, like, spontaneously cure themselves.

3 Right. So I just wanted to give you that information, too.

4 But --

5           Q     Okay. So let's talk about the DSM5 criteria as it  
6 relates to Mr. Pimentel.

7           A     Wonderful.

8           Q     Criteria No. 1, stressor. Does Mr. Pimentel, did he  
9 have a stressor as defined by DSM5?

10          A     Yes, he did have a life-or-death threatening  
11 situation. He also met the satisfaction of the criteria  
12 through being a medic, where he was also, like, involved in  
13 seeing the injuries and trying to be responsible for treating  
14 the injuries associated with the combat. So he -- he does  
15 meet one, but he actually meets two.

16          Q     Okay.

17          A     Or maybe three, because he has threat -- he had --  
18 witnessed actual death, he had threatened of his own life, and  
19 then he also had, through the duties of his deployment, to be  
20 involved in collection of body parts and being involved in gut  
21 stuff.

22          Q     Okay. How about Criteria B, reliving the event?

23          A     Yes. He actually at least met two other criteria.  
24 One is that he talks about the -- the nightmares that he had  
25 that were very, very prominent. Okay. So he has that. He

1 talked about having flashbacks, so that's No. 2. And he also  
2 described about having the last -- the very bottom one, which  
3 was a prolonged activated state after something reminded him  
4 of the trauma or caught him off guard. And that was something  
5 that I learned from his wife, Grace, who had said that she  
6 needed to announce himself upon arriving into a room, because  
7 if she didn't, he would have a giant startle response, but it  
8 would take him a really long time to settle back down.

9 So the giant startle response would be part of the  
10 hypervigilance, but the really long time calming back down,  
11 that would be part of the reliving event --

12 Q Okay.

13 A -- diagnosis category.

14 Q Okay. What about avoidance?

15 A There was a lot of well-documented avoidance  
16 behaviors not only through the witnesses that I interviewed,  
17 but Mr. Pimentel himself and his VA record. Those types of  
18 avoidance include he was avoidant of Middle Eastern people,  
19 which is very, very common. It's -- it's -- and then he  
20 avoided potholes and trash on the road when he was driving.  
21 In fact, his wife said it took him about a year to be able to  
22 drive on the road without, like, completely swerving and  
23 things of that nature.

24 He avoids loud noises, like fireworks. That's also  
25 very common. It reminds combat soldiers of incoming and

1 rockets. He also was involved in a lot of risk-taking or  
2 thrill-seeking behavior, you know, meeting different women,  
3 going different places, drinking, being out and bingeing, you  
4 know, maybe that was also involved. He did a lot of substance  
5 use, there was some documentation that there was some  
6 substance use. He has two suicide attempts, so that was  
7 another avoidance behavior that he had.

8           It sounds like he avoided intimacy, so he avoided  
9 telling his brother about, like, you know, a lot of the  
10 details, kind of withdrawing from his brother, being  
11 physically present, but not really sharing a lot.

12           It also sounds he started to do some of that with  
13 his wife. That was for -- that was something that Grace said  
14 as well as something that he reported.

15           Q   Let me -- let me stop you there for just a second.  
16 So -- so if we heard testimony that he had -- after he came  
17 back from serving, had, you know, was starting to kind of live  
18 what we would call kind of a normal life, wife, child, you  
19 know, trying to, you know, eventually going back to school and  
20 trying to work and then that just kind of falls apart, there's  
21 infidelity, can't maintain a job, and then separates from his  
22 wife, would that be kind of part of that avoidance that you  
23 see?

24           A   Absolutely.

25           Q   Okay.



1           A     And that's not uncommon. In fact, a lot of the guys  
2 that I see are, like, divorced three or four times. They  
3 really have trouble with their --- with their marriages. It's  
4 just not uncommon, it's very common.

5           Q     And again, just so that --- because that intimacy  
6 might necessarily lead to discussions or something,  
7 conversations that might relate to the experiences they want  
8 to avoid?

9           A     Sure. And also because of vulnerability. I mean,  
10 if you're somebody who has had very life-threatening  
11 experiences, it's very difficult to just be vulnerable. You  
12 know, so they don't like to be vulnerable, and it's also they  
13 don't want to talk about it. It's also part of what -- he  
14 also avoided going to --- you know, in the records it shows  
15 that he did try to engage treatment for his Posttraumatic  
16 Stress Disorder. It's very difficult for veterans to come in  
17 for treatment, because they don't want to talk about it. And  
18 so he did have difficulty engaging and talking about his  
19 symptoms per the VA record. And so that was another way that  
20 he was avoiding, he avoided talking about it.

21                     He also avoided, it sounds like over time, like I  
22 heard from Sergeant Ortiz, he started avoiding talking to his  
23 battle buddies. And that's not uncommon, too, because those  
24 will bring back memories. And so you just avoid people  
25 associated with the actual event. And so if you fought with

1 folks and you don't want to think about your fighting, you  
2 don't really want to reach out and communicate with those  
3 people.

4 Q So -- wait -- let me ask you one more thing. So --  
5 like -- and -- and so with his avoidance, it -- his avoidance  
6 symptoms don't necessarily mean that he would avoid all  
7 people, you know, and be closeted in his apartment 24/7?

8 A No. And that's not the DSM diagnostic criteria for  
9 avoidance. That would be agoraphobia. That's a different  
10 diagnosis.

11 Q Okay. What about guns? Did you see anything in his  
12 medical records about whether or not he avoided guns?

13 A I did. He actually was asked -- it's very common  
14 for us in the VA to ask veterans if they own weapons. And  
15 that's just to make sure that they're safe in case of the  
16 suicide avoidance symptom pops up, we want to make sure that  
17 they don't have access to a firearm, so that they don't do  
18 something impulsive. So it's asked very commonly over and  
19 over, multiple visits. And in his particular records that  
20 date back from I think 2008 -- no, 2010 -- there's several  
21 instances where clinicians and providers ask him if he has  
22 firearms or access to firearms and he consistently denies that  
23 report, that he has a firearm.

24 So no, in his record, it sounds like he avoided  
25 firearms. And he said to me when I interviewed him if he ever

1 owned firearms and he was very scared of firearms. He was  
2 scared that he might hurt himself with a firearm, and he just  
3 didn't like guns in general after what happened, after his  
4 experiences in combat.

5 Q Okay. What about negative thoughts and emotions;  
6 did he have -- did he meet that criteria?

7 A He did. In fact, he has a classic thought as it  
8 relates to the individuals he felt responsible for saving,  
9 which is, I should have been able to save them. And it's very  
10 distorted, because he's not taking into account that those  
11 individuals were very severely injured by enemy fire. And  
12 that that wasn't his fault. Right. The enemy fire was not  
13 his fault.

14 But he's disregarding that and very much focused on  
15 I still should be able to fix it, I still should have been  
16 able to bring them home. It was my job, it was my fault, he's  
17 the reason I'm dead -- I mean, I'm the reason he's not here.  
18 Okay. So he absolutely meets that criteria.

19 But he also meets -- he has a lot of depressive  
20 symptoms that show up in his VA records over and over and  
21 over. That's part of that negative changes and thoughts and  
22 mood that we talked about, you know, those people have the --  
23 their -- their limited emotions and that it includes, like,  
24 fear, shame, guilt, sadness. So he does meet that criteria,  
25 as well. He's not feeling, like, this full range of emotions.

1                   So those are some of the ways he satisfies that  
2 criteria.

3           Q     Okay. And then hypervigilance?

4           A     Well, his wife reported that he would kind of hit  
5 the ground or be on edge. Hypervigilance, he also reported  
6 just -- yeah, being on guard. Like, the -- the pothole would  
7 be a really great example. Like, hypervigilant of pothole,  
8 hypervigilant of trash, looking around, being hypervigilant of  
9 people of Middle Eastern descent. So yeah, he would meet that  
10 criteria, as well. Difficulty sleeping, he had a lot of  
11 difficulty sleeping. That's all over his record. It seems  
12 like they tried a lot of different ways to try to get him to  
13 sleep.

14          Q     Okay.

15          A     In terms of medication.

16          Q     And again, he -- did Mr. Pimentel -- because you  
17 mentioned just before we move on, kind of, to the conclusion,  
18 you indicated that he did have that polytrauma diagnosis. He  
19 had the three different issues that are kind of in your area  
20 of expertise; is that right?

21          A     Correct.

22          Q     And again, just so the jury's clear before we sum  
23 up, those are what with Mr. Pimentel?

24          A     Oh, that he has Posttraumatic Stress Disorder, he  
25 has a history of traumatic brain injury, and he's got the

1 neuropathy. So that would be three. He would only need two  
2 to qualify for polytrauma, so he would just -- he could have a  
3 -- a brain injury and TBI, post -- I'm sorry, he could have a  
4 brain injury and Posttraumatic Stress Disorder, but he happens  
5 to have all three.

6 Q Okay. So now going to kind of what we talked about  
7 before in terms of the effects of PTSD on the brain and  
8 ultimately the fight-or-flight, moving to your next slide,  
9 would you expect somebody with Mr. Pimentel's condition to  
10 have that longer flight -- flight-or-flight response?

11 A Yes.

12 Q Would you expect somebody with Mr. Pimentel's  
13 condition to have that inability to calm down following an  
14 actual threat or a trauma-related trigger?

15 A Yes.

16 Q Would you expect somebody with Mr. Pimentel's  
17 condition to have a limited capacity to make decisions  
18 unrelated to threats?

19 A Yes.

20 Q And would --

21 A In the moment of being exposed to a trauma trigger  
22 or a real threat.

23 Q Or a real threat --

24 A Yes.

25 Q -- either one?

1 A Either one. But not all the time.

2 Q Okay. And would you expect somebody with Mr.  
3 Pimentel's condition to have a limited ability to consider the  
4 consequences of his actions unrelated to a threat?

5 A Yes. At the time of being presented with a threat  
6 or a trauma-related trigger, yes.

7 Q Okay.

8 MS. LEMCKE: Court's indulgence. I have nothing  
9 further, Your Honor.

10 THE COURT: Cross?

11 MR. BATEMAN: Thank you.

12 CROSS-EXAMINATION

13 BY MR. BATEMAN:

14 Q I don't know if you want to use this, ma'am. This  
15 is the DSM5; is that right?

16 A It is.

17 Q All right. Just brought it in case you wanted to  
18 take a look.

19 A Thank you.

20 Q I wanted to -- when did you ultimately graduate in  
21 with your Ph.D.?

22 A 2008.

23 Q And you've been practicing since then?

24 A Yes.

25 Q Okay. Mostly in California?

UNCERTIFIED ROUGH DRAFT

1 A Yes.

2 Q Okay. You said you were a clinical psychologist; is  
3 that right?

4 A That's correct.

5 Q Can you tell me the difference between a clinical  
6 psychologist and a forensic psychologist?

7 A No. I guess involved in treatment and research, and  
8 actually implement treatments. I believe a forensic  
9 psychologist or psychiatrist would be involved in maybe look  
10 at things after the fact. Like going back and kind of doing,  
11 like, an autopsy of what happened and then making speculations  
12 from what they see after the fact.

13 Q Okay. So you're -- you're involved in treatment?

14 A And development of treatment.

15 Q I gotcha. Okay.

16 A Yes. And teaching.

17 Q Right. Teaching about?

18 A Trauma.

19 Q Trauma?

20 A Psychological trauma.

21 Q And you talked a little bit about what a healthy  
22 functioning brain is as opposed to what PT -- someone with  
23 PTSD is, right?

24 A Yes.

25 Q And I think you talked about a little bit about the

1 executive functioning of the brain in a fight-or-flight  
2 situation; is that right?

3 A Correct.

4 Q Okay. And the executive function of the brain is  
5 something that causes you, I think -- I don't think it was  
6 your term, maybe I just wrote it down this way, but it said,  
7 Don't do dumb things?

8 A It's more like considering the consequences if you  
9 do dumb things.

10 Q Right.

11 A It's like a limited ability to consider the  
12 consequences. So it could tell you don't do dumb things. We  
13 hope it does.

14 Q Right. In -- in a normal -- and that's when faced  
15 with a threat, correct?

16 A In a normal, healthy brain, when faced with a  
17 threat, a real threat, that part of the brain is not  
18 available.

19 Q The fire department comes in?

20 A Correct.

21 Q And that's the limbic system; is that right?

22 A That's right.

23 Q And so in a normal brain, what happens when the  
24 fire's put out? The -- the -- the executive functioning comes  
25 back?



1           A     Yes. The -- the fire department goes back across  
2 town and the CEO starts to take over the functioning again.

3           Q     And in a normal brain, they know when the fire's put  
4 out; is that right?

5           A     Yes. Yes.

6           Q     In a normal brain, do they -- you talked about -- a  
7 lot about threat.

8           A     Uh-huh.

9           Q     How do you define threat?

10          A     That's a good question. Threat would be defined by  
11 the moment that the environment -- you're faced with something  
12 that overwhelms your resources. Okay. So if you see a bug on  
13 the wall and you don't like bugs, but you know you're bigger  
14 than the bug, you're not overwhelmed. Your resources are not  
15 overwhelmed. Okay. But with a threat, we're faced with  
16 something and our resources are not adequate. So we're going  
17 to fight, but we don't know if we're going to be able to win.  
18 Does that makes sense? So it's kind of like the moment that  
19 we're faced with, like, oh, my God, I don't know if I got --  
20 if I got what it takes to survive this. So a threat is  
21 something that would be a threat to your life or physical  
22 integrity and it's something that overwhelms your resources.

23          Q     Okay. Did you in your research or in your opinion  
24 today, and we're talking about a threat, it seems -- and you  
25 correct me if I'm wrong -- you're talking about something that

1 happens relatively quickly and unforeseeably; is that fair to  
2 say?

3 A Let me think. Sure.

4 Q Right. Sneaks up on you a little bit, you're faced  
5 with it all the sudden?

6 A Well, kind of. But, I mean, with police officers,  
7 for example, like, they may know that they're going to go out  
8 to a call, they haven't seen anything yet directly, but  
9 they're still in the fight-or-flight mode. So not  
10 necessarily.

11 Q Non-police officers, with an average person, you're  
12 probably talking more about finding themselves in a  
13 threatening situation without knowing --

14 A Sure.

15 Q -- that it was going to happen?

16 A Sure.

17 Q Okay. And so how does -- how does all of -- in a  
18 normal brain, if you're having these processes, with regard to  
19 a threat that you see coming down the road?

20 A It has to be life or death. We really have to  
21 perceive in that moment that it overwhelms our resources.  
22 Okay. So it's not just any old threat. Right. So getting in  
23 a fight with somebody doesn't necessarily warrant that. It  
24 really has to be, like, a threat to your life or physical  
25 integrity. So you really have to believe that your, like,

1 life is in danger.

2 Q Okay. So the threat doesn't -- the threats that  
3 you're talking about don't become what you're talking about  
4 until your life's in danger; you're talking about --

5 A I'm talking about --

6 Q -- life-threatening --

7 A -- level 10 threat.

8 Q Right. And so you would agree with me that there's  
9 probably some threats that are a level 10 that you, in fact,  
10 could, based on things that are occurring minutes -- hours  
11 before that threat, you could possibly see it coming?

12 A Can you ask me that --

13 Q You bet, it was a terrible question.

14 A Okay.

15 Q Not all life-threatening threats occur in an  
16 instant; is that fair to say?

17 A Not all life-threatening threats occur in an  
18 instant. Does that mean that they are drawn out over a period  
19 of time?

20 Q Correct.

21 A Sure.

22 Q There could be facts that build up over time that a  
23 normal person or -- could -- would see the potential for that  
24 life-threatening threat coming?

25 A No. I'm talking about the fight-or-flight being

1 presented with the threat and the system goes in that moment.

2 Q Correct. But you would agree with me that there are  
3 threats in which -- life-threatening threats that have -- that  
4 a person would see facts that they would associate that threat  
5 coming towards them?

6 A Can you be more -- can I --

7 Q Well --

8 A Can you be more specific?

9 Q There -- let me -- let me say it -- let me ask you  
10 this way.

11 Might there be warnings before the -- a  
12 life-threatening threat occurs?

13 A It depends.

14 Q Right. There could be --

15 A It depends.

16 Q -- instances in which there are warnings; is that  
17 right?

18 A It -- there could be. Sure. Sure. But it's not  
19 typically till that moment comes that we realize that our life  
20 is in danger.

21 Q But -- but these warnings could tell you that that  
22 might be on the horizon? That doesn't -- that doesn't occur?

23 A I don't know if I would say it quite like that.

24 It's really, like, in that moment when you're, like, Oh, my  
25 God, this is happening, I could die.

UNCERTIFIED ROUGH DRAFT

1 Q Well, I'm just talking generally about  
2 life-threatening threats. Not necessarily --  
3 A Like cancer?  
4 Q Let's say someone threatening to kill you --  
5 A Uh-huh.  
6 Q -- and then you drive to them and are you -- and  
7 they threaten to kill you with a gun?  
8 A Well, if you -- if you believe that they're actually  
9 going to kill you, then yes.  
10 Q Right.  
11 A Yes.  
12 Q Right.  
13 A Absolutely. Sure.  
14 Q Be a warning?  
15 A If you were really concerned that that person was  
16 going to kill you, then yeah, absolutely. I would imagine,  
17 sure. I -- I know I would be.  
18 Q All right.  
19 A Yeah.  
20 Q So those kind of instances could occur, you could  
21 imagine scenarios like that?  
22 A If you believe that that person poses a true  
23 life-threatening potential, then yes.  
24 Q Okay. And that's for maybe a normal person, right?  
25 It would -- well, let me ask you this. Would that warning

1 system be different for someone with PTSD that came from the  
2 stressors of, for instance, violence and combat?

3 A No. It's a little different because the -- the cues  
4 are associated specifically. So combat vets are actually  
5 very, very, very brave people. They're very, very, very  
6 brave. And especially the ones that do multiple tours. So  
7 they're not kind of as afraid of things as -- as I might be.  
8 Right. And so their idea of threat is very related to their  
9 experiences. But I don't know that I would say that they  
10 would be sort of scared of everything and that they --  
11 especially combat related vets. Like, they -- they actually  
12 will report to me, I'm not scared. I'm not scared. Like,  
13 they're very brave.

14 Q They're very brave. They may engage in a fight?

15 A No. But they're not scared. That's what they  
16 report to me. I'm not going to say that they would engage in  
17 a fight, because that's -- I don't know that that's 100  
18 percent accurate or that it could be really cooked down to  
19 that tiny. But they do report to me that they are not afraid.  
20 And if they see -- they're especially protective of women and  
21 children. And so they say things like, you know, if I see a  
22 woman being hurt, then I --

23 Q They'll actually engage?

24 A Well, I'll do something to protect her, I'll try to  
25 protect her. I don't -- they wouldn't, like, engage. But

1 they -- they're very protective. And my -- my veterans that  
2 -- that I treat are very sweet. They're always worried about  
3 my -- my open-toed shoes. They always say, Doc, how are you  
4 going to run from an emergency? They're very protective,  
5 they're very concerned.

6 And I have one vet who's, like, do you have tennis  
7 shoes in here? Where are your tennis shoes, Ma'am? Where are  
8 your tennis shoes, Doc? They always --

9 Q Sure.

10 A -- joke with me.

11 Q Okay.

12 A Oh, I'm sorry, I'm --

13 Q That's all right. I know you're excited.

14 A -- I'm so sorry.

15 Q So, my question is you said that they're very  
16 protective. What are some of the types of things someone  
17 might do to protect, for instance, a woman who's in danger?  
18 Your combat veterans that you say are very brave?

19 A I really can't say with any major certainty. I'm  
20 sorry.

21 Q They might actually engage the threat --

22 A Well, they might --

23 Q -- of the female?

24 A -- they might defend. They might put themselves in  
25 between. Like, if they saw a man hurting a woman, they might

1 put themselves in between.

2 Q Okay.

3 A But I don't -- I mean, I can't say that with  
4 certainty that 100 percent of all combat veterans would do  
5 exactly that.

6 Q And some of those combat veterans would also,  
7 because of the combat they've had and the stressors, avoid; is  
8 that fair to say?

9 A Avoid trauma-related triggers.

10 Q Correct. And violence in front of them might be a  
11 combat-related trigger?

12 A No. It's more specific than that. That's actually  
13 kind of mischaracterized. That's too vague.

14 Q Okay.

15 A And actually, in -- in effect, they see a lot of  
16 people acting violently in combat. But a lot of them are  
17 their friends. They're their battle buddies. And so a lot of  
18 times they see violent behavior and it's not paired with a  
19 threat; it's paired with protection and safety.

20 And in this particular instance, the individual who  
21 -- who was shot doesn't actually fit any kind of trigger --  
22 trigger cue or trigger pairing. So this individual would have  
23 no idea that he might be in a life-threatening situation until  
24 after he's in a life-threatening situation, now his brain  
25 might pair that kind of a stimulus with a life-threatening



1 situation.

2 But your brain can't make a cueing pairing like that  
3 without a stimulus. So you can't -- you don't have anything  
4 to pair until you have something to pair.

5 Q You used the term when you were making an example of  
6 someone who was attacked by a dog and then becomes fearful of  
7 dogs; is that right?

8 A Correct.

9 Q Okay. You didn't say if they were attacked by a  
10 French bulldog, they would then be fearful of French bulldogs,  
11 but not any other dogs; is that fair to say?

12 A They -- they could. They could. They could  
13 avoid --

14 Q So it could be all dogs?

15 A I -- I -- yeah, I --

16 Q Or it could be an individual dog?

17 A Both. I said that. I said it actually could even  
18 generalize to leashes, it could be very specific to the actual  
19 dog, it could generalize to all dogs. It could generalize to  
20 dog barking, it could generalize to collars. So it's very  
21 specific to the dog and it could vary with the individual. So  
22 it doesn't always extend that far.

23 Q But it could?

24 A Sure. Sure it could.

25 Q It could be more general?

1 A Not general in general, but vary specific to the  
2 dog.  
3 Q That specific dog or all dogs?  
4 A Specific to dogs.  
5 Q Right.  
6 A Yes.  
7 Q All dogs, all breeds of dog?  
8 A It could.  
9 Q It could?  
10 A It could.  
11 Q Okay.  
12 A Correct, yeah.  
13 Q So you could be avoiding violence in general because  
14 of your stressors of combat violence, correct? It could?  
15 A It's very specific to the actual life-threatening  
16 event you experience. So if you experience life-threatening  
17 events with IEDs, you're very specific to avoid things that  
18 are like IEDs.  
19 Q You had -- you -- you noted with the defendant that  
20 he had multiple deployments; is that right?  
21 A Two.  
22 Q Okay. And he had different combat scenarios that he  
23 involved himself in, correct?  
24 A Correct.  
25 Q And those were different experiences?

1 A Correct.

2 Q All right. And he had, I think you said, stressors  
3 were life or death, being a medic, you know, dealing with body  
4 parts, and there was a bunch of different types, three  
5 different types of stressors; is that correct?

6 A They were all very specific in that context. So  
7 they're all very specific to combat.

8 Q Combat?

9 A Correct.

10 Q Right. Violence at --- in combat?

11 A Combat violence.

12 Q Or ---

13 A Combat-related violence.

14 Q All right. And that's different than regular  
15 related violence?

16 A Sure, general. Yeah, I mean, you might not be so  
17 afraid of the guy who's belligerent at a bar as you are when  
18 you see an Afghani national coming at you with baggy clothes  
19 when it's hot, wondering if they have a suicide bomb under  
20 their -- under their clothes.

21 So, no, it's not necessarily accurate to say that  
22 they're avoiding all violence because they saw violence in  
23 combat. Because combat's a very specific type of violence.  
24 It's a very specific type of engagement. And so they're --  
25 they would avoid that specific type of engagement.

UNCERTIFIED ROUGH DRAFT

1 We know it's really interesting is sometimes they do  
2 multiple deployments. So, you know, they go back in.

3 Q Well, you would agree, there's probably not a lot  
4 of, like, combat going on in Las Vegas that is similar to the  
5 type of combat that'd be going on in Afghanistan?

6 A Correct.

7 Q Okay. So you're saying, basically, that if you have  
8 Afghanistan-type combat, violence in Las Vegas probably would  
9 never be something that a person with PTSD would avoid?

10 A I wouldn't say never, but it would -- no, it  
11 wouldn't -- they wouldn't be avoiding it like they avoid --  
12 like the avoidance category of PTSD. Now, a general person  
13 might avoid violence. And I would think that that might a  
14 smart thing to do. But specifically related to avoidance and  
15 Posttraumatic Stress Disorder, it's -- it's related to the  
16 actual threat that that person experienced.

17 Q Let me ask you this. You -- you said with regard to  
18 negative thoughts and emotions, that sometimes people would  
19 have the feeling that they were weak because of something -- I  
20 think the term used, if you got mugged, you'd -- you'd feel  
21 like you were weak, because you didn't stop it or something  
22 like that. Is that correct?

23 A I'm what?

24 Q You were referring to a -- a mugging, you know --

25 A Oh, sure, sure, sure.

1 Q -- to the negative thoughts?

2 A Uh-huh.

3 Q Right. So this reaction of I'm weak, is that often  
4 -- if that occurs, does that result in people with PTSD then  
5 overcompensating in life for the feeling of, I'm weak, and  
6 actually showing strength when unnecessary?

7 A No.

8 Q No?

9 A They're mostly just ashamed. And they don't usually  
10 -- they tell me, because I'm their therapist -- but they don't  
11 usually share that idea. And I don't know that they overreact  
12 to that idea of being weak, either. I mean, they really  
13 believe in a part that they're broken.

14 Q The avoidance you talked about substance abuse, and  
15 you said that the defendant had substance abuse in his history  
16 in terms of your interviewee?

17 A Well, no. He reported that he had tried it a couple  
18 of times. And one of the VA reports that he said when he came  
19 in he was really doing poorly and he was really having trouble  
20 with nightmares and sleep. And he wrote in -- and -- and they  
21 wrote in his document, then, that he was -- tried to use  
22 alcohol and marijuana to go to sleep and it wasn't working.

23 Q That's the substance abuse that you were talking  
24 about in --

25 A Oh, and then yesterday he said that he had tried it

1 a couple of times. But, I mean if you look at the picture  
2 when he was arrested, it looks like he was using to me. I  
3 mean, I wouldn't be surprised if he was using methamphetamine,  
4 to be honest with you.

5 Q Wouldn't surprise you?

6 A It wouldn't surprise me at all.

7 Q And you heard about him actually being a  
8 methamphetamine dealer; is that correct?

9 A That's correct.

10 Q Okay. And so methamphetamine dealing, you would  
11 agree, probably puts you into a lot of dangerous  
12 circumstances?

13 A I wouldn't be able to tell you. I don't deal meth.  
14 I don't -- I don't know about -- a lot about the circumstances  
15 that are involved. I -- I would speculate if I told you.

16 Q It would -- okay.

17 A Is that okay? I don't --

18 Q No, that's all right.

19 A Okay.

20 Q I mean, I think we all kind of understand what meth  
21 dealing would probably involve.

22 A Yeah, I agree. Yeah, sure.

23 Q Would -- not with --

24 A I mean, I don't know that it involves danger or not.  
25 I don't know -- my expertise is not in meth.

1 Q Now, with the PTSD, you were talking about the fire  
2 department again. My -- my question, and you and I had a  
3 conversation on the phone; is that correct?

4 A Yes.

5 Q All right. And we talked a little bit about whether  
6 people with PTSD perceive threat the same way that people  
7 without PTSD perceive threat; is that correct?

8 A Yes.

9 Q Okay. I think you said something along the lines of  
10 sometimes people with PTSD have a hard time discriminating  
11 between true threat and not true threat?

12 A Correct. Trauma specific. So a great example's the  
13 potholes. They have a very difficult time discriminating.  
14 Like, this pothole here in Las Vegas is not dangerous, but  
15 that pothole in Afghanistan was.

16 Q But it --

17 A Specifically.

18 Q And if it was a -- some sort of a combat related,  
19 like, hand-to-hand fight that was their particular experience  
20 that they were trying to avoid, it's possible that they could  
21 perceive non-threat and believe it to be true threat?

22 A Well, there aren't a lot of hand-to-hand combat  
23 moments in the type of deployments we see now. It's a lot of  
24 IED, a lot of incoming, a lot of RPGs, that's the rocket  
25 propelled grenades, that's the short word for it. So there's

1 not a lot of, like, hand-to-hand combat. In fact, a lot of  
2 the times, the folks who are involved in more hand-to-hand  
3 combat are special operations forces, because they're deployed  
4 in smaller units, do these more detailed types of work. And  
5 so they may find themselves in kind of more hand-to-hand  
6 combat.

7 But it's not something that you would generalize  
8 when this most recent conflict that someone was involved in a  
9 lot of hand-to-hand combat and then comes back and would avoid  
10 hand-to-hand combat. There was just not a lot of hand-to-hand  
11 combat.

12 Q It wouldn't avoid violent situations?

13 A They would avoid trauma-related triggers.

14 Q You talked about some of the brain chemistry too  
15 much -- what is it --

16 A Norepinephrine.

17 Q Thank you.

18 A Say that five times fast.

19 Q Right. And you said that can -- that can cause  
20 aggression and violence --

21 A Sure.

22 Q -- is that right? Okay. And you talked a little  
23 bit about the prolonged fight-or-flight response, or are you  
24 saying it's prolonged after the threat is over?

25 A It's prolonged after being exposed to a



1 trauma-related trigger or a true threat. So it means it's --  
2 takes them longer to regulate or calm down. So -- but it's  
3 that moment that the life or death thing pops up, that level  
4 10 threat or a trauma-related trigger.

5 Q So if that level -- the threat pops up --

6 A Uh-huh.

7 Q -- and at some point we would all agree that the  
8 threat becomes nonthreatening? There's -- there's going to be  
9 a point in time with the threat where it's no longer a threat.

10 A Sure. I mean, if you don't make it, that's true.  
11 And if you make it, that's true. Yes. At some point the  
12 threat will be nonthreatening.

13 Q Are you saying that their -- their PTSD continues  
14 their fight-or-flight after that threat ceases being a threat?

15 A That we would perceive, yes. But their brain can't  
16 slow the fight-or-flight as fast as our brains can -- I don't  
17 -- I don't mean to presume that you don't have those, but I --  
18 but --

19 Q The fight-or-flight, does that make them more  
20 sensitive before a --- and I guess goes back to my first  
21 question, before a threat actually materializes, you're  
22 talking about it takes them a long time to calm down --

23 A Yes.

24 Q -- or to -- to get out of it.

25 A Uh-huh.

1 Q Does it work the other direction? So, again, can  
2 they become overly sensitive to fight-or-flight when there  
3 starts to be cues that a threat is coming?

4 A Sure.

5 Q Okay.

6 A Yeah. It can be.

7 Q And at that --

8 A It doesn't mean --

9 Q And at that point --

10 A -- that they will be --

11 Q I'm sorry.

12 A -- but they can be.

13 Q But it can?

14 A Sure.

15 Q And then when you factor in their lack of ability to  
16 discriminate between a true threat and what isn't maybe a true  
17 threat, that can factor in, as well?

18 A But it's trauma-related.

19 Q I gotcha.

20 A They could -- they lose their ability to  
21 discriminate specifically around trauma-related stimulus. So  
22 if I'm sexually assaulted by a male, right, I might lose my --  
23 my ability to discriminate between a good male and a bad male.  
24 But I don't lose my ability to discriminate overall. Like, I  
25 can still discriminate amongst children or amongst women, or

1 even amongst dogs, like that would be a nondangerous -- so  
2 does that make sense?

3 Q You talked about avoiding guns and the information  
4 that you received; is that correct?

5 A Correct. In the VA records.

6 Q And was all of that before -- to your knowledge --  
7 you've looked at the discovery in the case; is that right?

8 A Yes.

9 Q You've talked to the defendant, as well?

10 A Yes.

11 Q You're aware that at some point in late 2013, he  
12 began selling methamphetamine?

13 A Yes.

14 Q Okay. And so these avoidance of guns, was all that  
15 reporting prior to the defendant begin -- becoming a  
16 methamphetamine dealer, to your knowledge?

17 A To my knowledge, there before that, yes. I mean, I  
18 don't know when he started dealing meth, but I know that the  
19 records indicate that those reports were as early as 2010.

20 Q Okay. And as late as?

21 A Oh, I don't know. He departed from the VA and  
22 stopped getting treatment there at sometime in, like, 2012, I  
23 believe. I don't want to misspeak on that. I -- there's a  
24 lot of records there. So I can't remember the exact date, but  
25 it's --

1 Q He stopped getting -- he stopped getting treatment  
2 at the VA; is that right?

3 A For the PTSD.

4 Q For the PTSD. All right. And all that reporting of  
5 -- of avoiding guns would have been before, let's say,  
6 mid-2013?

7 A Yes.

8 Q Okay. And to your knowledge, that's approximately  
9 when the methamphetamine dealing got started?

10 A You know, I -- I --

11 Q All right. The -- the last question I had, we  
12 talked about whether people with PTSD and they're engaged in  
13 the trauma-related fight-or-flight threat situation can  
14 sometimes black out; is that right?

15 A Yeah, they can. You can lose part -- you can lose  
16 important parts of a stressor, like, while it's happening.  
17 Yeah. You can lose important parts of it.

18 Q And you can -- can you lose all of it?

19 A Sure.

20 Q Okay. And as a result of that, is it -- is it  
21 uncommon for people after the fact to come up with facts or to  
22 try to create facts even though they forgot them? You haven't  
23 seen that before?

24 A Let me think. No. I mean, a lot of times they'll  
25 say, like, I don't recall. And sometimes they won't even know

1 they won't recall. That's the part about not recalling.

2 Like, somebody may tell them, Hey, you were doing something  
3 weird. Like, sometimes my guys will have a trauma trigger and  
4 then they'll dissociate for a long period of time. And one  
5 guy specifically, like, on the anniversary of a death date, he  
6 goes up to his attic and he, like, looks at all his medals and  
7 he touches all of his medals and he has all of these memories;  
8 he doesn't remember that. His wife tells him about it. It's  
9 really interesting stuff. So there can be times where people  
10 lose time and space. But, yeah. So...

11 Q Thank you. So they -- they could not remember an  
12 entirety of a trauma-related event; is that right?

13 A They could not remember all or part.

14 Q Okay.

15 A And that varies based on individual and event.

16 Q And then they could -- okay. And then they try to  
17 relate it later?

18 A Sometimes -- I mean, I don't know that they try to  
19 relate it later. Like, if they don't remember that they don't  
20 remember, then they don't try to relate it later.

21 Q Let me ask you this --

22 A Yeah.

23 Q -- in the case -- you've been talking about  
24 trauma-related events, correct?

25 A Correct.

1 Q All right. And that's what triggers the PTSD  
2 reaction?

3 A We always have PTSD.

4 Q Right.

5 A That's what triggers the fight-or-flight, right, as  
6 a threat -- as a true threat or trauma-related threat, and  
7 once an individual's in the fight-or-flight base -- because  
8 they were presented with -- with -- with a trauma-related  
9 threat or a threat, it takes them longer to what we call down  
10 regulate.

11 Q And what's -- you -- you keep referring to  
12 trauma-related threat versus true threat, correct?

13 A And true threat. I mean to include both.

14 Q All right.

15 A So I don't want to say to the exclusion that people  
16 only respond to trauma triggers. People with PTSD also still  
17 respond to true threat.

18 Q If it's a true threat, what -- what is an example of  
19 a true threat?

20 A Being attacked or being -- having a gun pulled in  
21 your face, being robbed at gunpoint, being raped.

22 Q And the reaction that is related to the PTSD is  
23 what?

24 A The reaction?

25 Q How is that different than a normal person?

1       A     It's the same. It has to do with how long it takes  
2     you to calm down after.

3       Q     Afterward?

4       A     Yeah.

5       Q     Okay.

6       A     When the threat is gone. We are all supposed to be  
7     really on fire when there's a threat.

8       Q     Okay. But my question is with the PTSD, with a true  
9     threat, what happens on the front end before the true threat?  
10    You -- you say it has nothing to do until the true threat  
11    presents itself?

12      A     Well, it has to do with when the individual  
13    perceives it as a life-or-death threat.

14      Q     Okay. They may --

15      A     Like, when that moment shifts and you're, like, Oh,  
16    Lord, this is a real problem.

17      Q     And they perceive it because of their hypervigilance  
18    much, much earlier?

19      A     They could, or they could not. They could say, you  
20    know, I've been to combat and I've seen lots of people -- so  
21    it varies. Like I said, these people vary a lot. So some  
22    individuals may be like, Hey, I have nothing to do with this.  
23    Some individuals may be like, Oh, that guy's not going to give  
24    me a lot of trouble.

25      Q     Okay. So that's different than the normal person

UNCERTIFIED ROUGH DRAFT

1 how?

2 A Well, the normal person doesn't have trauma-related  
3 triggers.

4 Q Well, I'm talk -- okay. I'm talking about true  
5 threat.

6 A Can you ask me again, please.

7 Q That's fine.

8 A No, no, I -- I don't --

9 Q I think -- I think we covered it.

10 A Okay.

11 Q All right.

12 A Sorry. Thanks.

13 MR. BATEMAN: Court's indulgence one second.

14 Q So one last question. I -- maybe I'm just  
15 misunderstanding. If you're -- if a person with PTSD is -- is  
16 approaching a true threat, a real threat as opposed to the  
17 specific trauma-related threat, what's the difference?

18 A Nothing, until the threat is eliminated.

19 Q They're --

20 A Once the threat is eliminated. They -- we look the  
21 same in that moment.

22 Q The trauma-related threat may not be a true threat  
23 and it often isn't; is that correct? Like avoiding the  
24 pothole, that's not necessarily a true threat; that's a  
25 trauma-related threat?



1 A Yes.

2 Q Okay. And then there's true threats?

3 A Correct.

4 Q Okay. And so their reaction is specific to that --  
5 that fight-or-flight goes on longer whether it's a fake threat  
6 or a real threat?

7 A Correct.

8 Q Okay.

9 A Good.

10 Q Thank you.

11 A Yeah, sorry. But thanks.

12 Q No, you're all right.

13 A Okay.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MS. LEMCKE:

17 Q Well, but with the fake threat -- the fake threat  
18 that Mr. Bateman's talking about is a trauma-related trigger,  
19 right?

20 A Correct. Specifically.

21 Q Okay. And so there's -- there -- I just want to  
22 make this clear for the jury, because they got a little  
23 confusing there. A fake threat is not a true threat -- well,  
24 okay. A fake threat, being a trauma-related trigger that  
25 somebody misperceives, such as, like, the pothole or trash in

UNCERTIFIED ROUGH DRAFT

1 the road, someone thinking, Oh, my God, you know, erroneously,  
2 falsely thinking that that might be an IED?

3 A The brain has paired certain things with danger. So  
4 it's not that he's "misperceiving," it's that his brain is  
5 telling him, Oh, we've seen these before, these things blow  
6 up.

7 Q Okay. But now going to the true threat, it's not --  
8 he -- you're not saying that somebody exaggerates or  
9 misperceives, you know, for example, someone coming at them,  
10 punching them, maybe pulling a gun on them, attacking them,  
11 you're not necessarily thinking misperceive the threat  
12 involved in that?

13 A No.

14 Q Okay. You're talk --

15 A No, that's a true threat.

16 Q Okay. I have nothing further.

17 A Once that moment happens.

18 Q Okay. Once the moment happens?

19 A Once they're, like, once it starts to be -- that --  
20 that's true threat.

21 Q Regardless of whatever has happened before?

22 A Correct.

23 Q Okay. Nothing further.

24 RECROSS-EXAMINATION

25 BY MR. BATEMAN:

UNCERTIFIED ROUGH DRAFT

1 Q Just, I'm sorry, don't mean to beat a dead horse.

2 If it's a true threat, does the PTSD always factor into their  
3 reaction to a true threat versus the more symptomatic one?

4 A As it relates to calming down.

5 Q Always?

6 A It should. Yeah, with the brain, with the objective  
7 things we know, yes.

8 Q Even if --

9 A The brakes are -- the brakes are faulty.

10 Q Even if it's a true threat that's unrelated to what  
11 that stressor was?

12 A Once their fight-or-flight is activated, the brakes  
13 involved will take them longer to get that frontal lobe back  
14 online.

15 Q But they know -- they understand what the true  
16 threat is?

17 A They're in a true threat situation. They understand  
18 themselves to be in a true threat.

19 Q Like a normal -- like a normal person?

20 A Right, like a normal person who got punched.

21 Q Right. So they can -- they can make decisions like  
22 a normal person if it's a true threat versus one that is one  
23 that comes from their stressor?

24 A No.

25 Q They can't make decisions?

1           A     Wait -- can you ask -- I don't understand that  
2 question.

3           Q     I'm sorry. Separate one more time. True threat  
4 versus the traumatic threat. May be the same, may be  
5 different.

6           A     True threat -- okay. True threat versus traumatic  
7 trigger?

8           Q     Correct. May be the same type of thing, may be  
9 different?

10          A     No. A trauma-related trigger in that moment, if it  
11 were really happening, it wouldn't be a trauma-related  
12 trigger, it'd be a true threat.

13          Q     Okay. And then there's --

14          A     Right, so -- let me give you this example. If I  
15 have a trauma-related trigger of driving around potholes, that  
16 potholes are dangerous, if I drive over a pothole and that  
17 pothole blows up, it wasn't a trauma trigger.

18          Q     I understand.

19          A     It was a true threat.

20          Q     Okay. So your trauma -- using your words, your  
21 trauma trigger is the pothole. True threat, somebody pull --  
22 you get into a fight over a gun or something like that?

23          A     Yes.

24          Q     Totally different?

25          A     Yes.

1 Q Okay. One you're saying could or -- the -- the  
2 fight over the gun could be a traumatic event based upon your  
3 stressors, or it may not, traumatic --

4 A A life-threatening event.

5 Q Right.

6 A Yes.

7 Q Okay. Could or could not, one's a pothole, one's  
8 something completely different.

9 A An actual threat.

10 Q Okay.

11 A Okay.

12 Q So the actual threat that is not the same as the  
13 pothole --

14 A Correct.

15 Q -- okay. In those circumstances, even though your  
16 fight-or-flight might go on a little bit longer, because you  
17 have PTSD --

18 A Uh-huh.

19 Q -- you're still able to make -- you're able to  
20 understand the consequences of that?

21 A No.

22 Q No. So under any threat you're not able to  
23 understand the consequences?

24 A Correct.

25 Q Okay.

1 A One -- life or death. Yeah. We're only --

2 Q Any life or death?

3 A We're only involved in consequences that involve us  
4 staying alive.

5 Q Okay.

6 A Like, so in that moment we can make decisions, but  
7 our decisions are very -- our decisional capacity is very  
8 limited to -- to the threat.

9 Q Normal people or people with PTSD?

10 A Both. That's the fight-or-flight.

11 Q So it's the same in those situations with someone  
12 with PTSD in terms of their understanding consequences as a  
13 normal person; is that correct?

14 A Yes. But the --

15 Q Okay.

16 A -- problem is that then they stay in that mode --

17 Q Longer?

18 A -- longer, even after the threat is removed, they're  
19 going to stay in that mode, which means their CEO is offline  
20 longer.

21 Q I gotcha. So when it's happening, and it's the  
22 non-trauma trigger, right? It's just a -- a different threat?

23 A A true threat.

24 Q A true threat?

25 A Uh-huh. When a true threat's happening.

1 Q Their ability to understand consequences at the  
2 time --

3 A Uh-huh.

4 Q -- is the same as someone without PTSD?

5 A Anybody's -- anybody faced with a true threat --

6 Q Right.

7 A -- anybody faced with a true threat, in the moment  
8 of having that true threat in their face like a gun --

9 Q Right.

10 A -- would only be able to make decisions related  
11 specifically to safety and getting away from that gun.

12 Q Right. Anybody?

13 A Now if we -- anybody. Now, if we get away from that  
14 gun and we're healthy, then we would regulate quickly.

15 Q Okay.

16 A And we'd be, like, Oh, God, what am I doing, what's  
17 going on? What's going on? But if we don't have the  
18 mechanisms to slow the fight-or-flight, then we -- then we'll  
19 stay in that mode longer. The fire department will be  
20 deployed longer.

21 Q Right. That's after the threat is eliminated?

22 A Correct. Well, that we would perceive that the  
23 threat is eliminated.

24 Q That's the difference between someone with PTSD and  
25 someone without PTSD is what happens after that threat?

1 A The down regulation.

2 Q Okay. During the threat or right before the threat,  
3 it's the same as someone PTSD -- with PTSD or without PTSD?

4 A Their fight-or-flight?

5 Q Correct.

6 A Yes.

7 Q Thank you.

8 A Yes. You're welcome.

9 FURTHER REDIRECT EXAMINATION

10 BY MS. LEMCKE:

11 Q Just to clarify that it's when you're in that  
12 fight-or-flight mode, then, that you're -- you have that  
13 limited capacity to make decisions?

14 A Yes.

15 Q To weigh --

16 A Beyond the threat.

17 Q Beyond the threat.

18 A Yes.

19 Q To weigh consequences for and against a particular  
20 course of action?

21 A Correct. Beyond the threat.

22 Q That is compromised?

23 A Yes.

24 Q Okay.

25 A In the fight-or-flight.

UNCERTIFIED ROUGH DRAFT



1 Q That is limited?

2 A Correct.

3 MS. LEMCKE: Nothing further, Your Honor.

4 MR. BATEMAN: Nothing else. Thank you.

5 THE COURT: Thank you. May this witness be excused?

6 MS. LEMCKE: Yes.

7 THE COURT: Thank you very much for your testimony.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: All right. Ladies and gentlemen, it's  
10 lunchtime.

11 MS. LEMCKE: Your Honor, could we approach on  
12 timing?

13 THE COURT: Sure.

14 (Off-record bench conference.)

15 THE COURT: Ladies and gentlemen, we're going to  
16 take a little longer lunch than normal. I'm going to have you  
17 come back at 1:30.

18 And during this hour-and-a-half recess, it's your  
19 duty not to converse among yourselves or with anyone else on  
20 any subject connected with the trial or to read, watch, or  
21 listen to any report of or commentary on the trial by any  
22 person connected with the trial or by any medium of  
23 information, including, without limitation, newspaper,  
24 television, radio, or Internet, and you're not to form or  
25 express an opinion on any subject connected with this case

1 until it's finally submitted to you.

2 We'll be in recess till 1:30.

3 (Jury recessed at 12:01 p.m.)

4 THE COURT: And the record will reflect that the  
5 jury has departed the courtroom. Are there any matters  
6 outside the presence before we recess?

7 MR. BATEMAN: No, Your Honor.

8 MS. LEMCKE: No, Your Honor.

9 THE COURT: All right. We'll be in recess till  
10 1:30.

11 (Court recessed at 12:02 p.m., until 1:32 p.m.)

12 (Outside the presence of the jury.)

13 THE COURT: We're back on the record in Case No.  
14 C296234, State of Nevada vs. Luis Pimentel. And the defendant  
15 is present with his counsel, the deputies district attorney  
16 prosecuting the case are present, as are all officers of the  
17 court. However, we are outside the presence of the jury and  
18 the alternates.

19 While we were on recess, about 10 minutes ago,  
20 actually, I received word from the marshal that Juror No. 12,  
21 Seat 12, reported to him that his grandmother had -- he just  
22 had gotten word that his grandmother had passed away. He's  
23 very distraught and believes he can't proceed. He indicated  
24 that all of his family members are arriving in town and -- and  
25 marshal, he appeared very distraught to you?

UNCERTIFIED ROUGH DRAFT

1 THE MARSHAL: Yes, ma'am.

2 THE COURT: Okay. So counsel have agreed that it  
3 would be appropriate to allow him to be dismissed. I mean,  
4 he's not going to be able to concentrate on your case and  
5 deliberate properly, give it the attention I believe that it  
6 deserves, of course. And so I'm going to -- I've asked the  
7 marshal to dismiss him and we'll put in Alternate No. 1 into  
8 Seat No. 12 and proceed.

9 Any comments on that?

10 MR. BATEMAN: No, Your Honor.

11 MS. LEMCKE: No.

12 THE COURT: All right. Thank you.

13 THE MARSHAL: Will Alternate No. 1 be Person 13?

14 MR. BATEMAN: Yes.

15 THE CLERK: It'll be Patricia --

16 MS. DIGIACOMO: The one with the cane.

17 THE MARSHAL: Okay.

18 THE COURT: All right. Going to bring the jury in.

19 (Jury reconvened at 1:34 p.m.)

20 THE COURT: All right. Thank you. Please be  
21 seated. And the record will reflect that we have now been  
22 joined by our remaining 11 members of the jury, our three  
23 alternates, as we've had to excuse Juror No. 12, who's just  
24 had a death in the family. And this is why we have alternate  
25 jurors. So we are inserting now Patricia Salesky, our first

UNCERTIFIED ROUGH DRAFT

1 alternate, into Seat 12. And she's already taken her place.

2 And Ms. Salesky, we'll need you to stand and be  
3 sworn now as a regular member of the jury.

4 (Juror No. 12 sworn.)

5 THE COURT: Thank you. And this -- the defense may  
6 call its next witness.

7 MR. SLIFE: And, Your Honor, at this time, the  
8 defense rests.

9 THE COURT: All right. Would you like to check to  
10 make sure all your exhibits are in?

11 MS. LEMCKE: Oh, yeah.

12 THE CLERK: Do you want me to tell what's not in?

13 THE COURT: Just approach the clerk and...

14 MS. LEMCKE: Yeah, let me just approach.

15 THE COURT: Before you rest.

16 (Pause in proceedings.)

17 MR. SLIFE: Looks like we're good, Your Honor.  
18 Thank you.

19 THE COURT: You're very welcome. And does the State  
20 have a rebuttal case?

21 MS. DiGIACOMO: Yes, Your Honor.

22 THE COURT: All right. You may call your witness.

23 MS. DiGIACOMO: Thank you. The State first calls  
24 Dr. Melissa Piasecki.

25 MELISSA PIASECKI, STATE'S WITNESS, SWORN

1 THE CLERK: Thank you. Please be seated and then  
2 please state and spell your first and last name.

3 THE WITNESS: My name's Melissa Piasecki, and that's  
4 spelled P-I-A-S-E-C-K-I, first name Melissa is spelled  
5 M-E-L-I-S-S-A.

6 THE CLERK: Thank you.

7 THE COURT: You may proceed.

8 MS. DiGIACOMO: Thank you.

9 DIRECT EXAMINATION

10 BY MS. DiGIACOMO:

11 Q What is your occupation?

12 A I am a psychiatrist.

13 THE COURT: I am what?

14 MS. DiGIACOMO: Does she need the mike?

15 THE CLERK: Could we put the mike --

16 THE COURT: Okay. Yeah.

17 THE CLERK: -- right in front of you.

18 THE WITNESS: How about if I -- how about if I get  
19 closer to it.

20 THE COURT: I heard I am, and then you went away.

21 So.

22 THE CLERK: That's perfect.

23 THE WITNESS: Great. So I am a psychiatrist.

24 BY MS. DiGIACOMO:

25 Q And how long have you been a psychiatrist?

UNCERTIFIED ROUGH DRAFT

1           A     I've been in practice about 20 years.

2           Q     All right. Can you explain to the jury your  
3 educational background, training, and experience that allege  
4 -- allows you to be a psychiatrist?

5           A     Sure. So I -- in order to go to medical school --  
6 psychiatry's a medical doctor degree. And so you have to go  
7 to medical school first. And in order to go to medical  
8 school, you have a four-year undergraduate college program.  
9 So I completed the four years, including the basic sciences  
10 that you need to be eligible for medical school, completed a  
11 four-year medical degree program at Washington University in  
12 St. Louis, then went onto a four-year general psychiatry  
13 training program at University of Vermont.

14               Following completion of that general psychiatry  
15 training program, I became a general psychiatrist and was in  
16 practice doing general psychiatry for about 10 years. And  
17 then I decided to go back and do additional training in  
18 forensic psychiatry, so I completed a one-year program called  
19 the fellowship program in forensic psychiatry at University of  
20 Hawaii. And then in the last 10 years I've been doing  
21 forensic psychiatry.

22           Q     All right. What is the difference between a  
23 psychologist and a psychiatrist?

24           A     Well, there's a lot of overlap, because they both  
25 address symptoms of mental health, wellness, and mental

1 illness. So they focus on the same kinds of problem with  
2 living that people have, the same general scope of illness and  
3 behavior problems.

4 But psychiatry comes at it from a little bit more of  
5 a medical background and psychiatrists are able to prescribe  
6 medications and other kinds of somatic of -- or body  
7 treatments for underlying mental health problems.  
8 Psychologists tend to rely more on behavioral treatments or  
9 talk treatments.

10 Q All right. Now, over the course of -- of your 20  
11 years as a psychiatrist, have you published or done any  
12 specific studies or teaching?

13 A I have.

14 Q And can you explain that to the jury?

15 A So for the last 20 years I've been in academic  
16 settings as a teacher of medical students and of residents.  
17 I've also done some teaching for legal professionals.

18 Q What kind of teaching do you do?

19 A I do teaching in large group classrooms, I do  
20 teaching in small groups with residents on -- in hospital  
21 settings, I'll do teaching sort of at the bedsides. And --

22 Q What topics, specifically?

23 A So the topics that I teach include neuroscience,  
24 they include addiction, I've recently done some teaching that  
25 came up with regards to the Nevada board on PTSD,

1 specifically. But usually it's a broader area, not specific  
2 to one diagnosis.

3 Q All right. Anything real -- regarding stress  
4 disorders?

5 A So I do teach in the medical school curriculum on  
6 stress. And it's not so much stress disorders as it is stress  
7 response.

8 Q What do you mean by stress response?

9 A So much what we heard earlier today, which is when  
10 somebody's faced with something that is overwhelming in some  
11 way, either that it's a threat or perhaps a burden, they can  
12 have a stress response. And that is a body response. We  
13 heard a little bit earlier today that your brain and your --  
14 and your body chemistry changes in response to trauma. My  
15 teaching was a little bit broader, but it was just in response  
16 to stress.

17 Q All right. And any publications?

18 A I do have publications, not specific necessarily to  
19 stress and trauma. But I have publications in -- with regards  
20 to risk of suicide, I have publications with regards to  
21 methamphetamine, I have publications with regards to  
22 developmental disabilities. So I have publications that kind  
23 of span a large area in mental health.

24 Q All right. Now, what is the difference between a  
25 clinical psychiatrist and a forensic psychiatrist?



1           A     So a clinical psychiatrist, which is what I did for  
2 10 years, your focus is on treating the person. And being ---  
3 your duty is to treat the person. It's not just your focus,  
4 it's your duty. Your job is to help that person in whatever  
5 professional way you can. You're committed to that person's  
6 best interests.

7           A forensic psychiatrist is -- the focus isn't so  
8 much about treating an individual as it is becoming helpful to  
9 the court and to being at that interface or that intersection  
10 between psychiatry and the law. So your focus is no longer on  
11 the person and it's more on what are the facts and how do the  
12 facts of any specific case related to principles of the  
13 science of medicine or specific to psychiatry.

14          Q     Right. And you said you had to go through  
15 additional -- additional training in order to become a  
16 forensic psychiatrist?

17          A     So there's a one-year forensic psychiatry training  
18 program that's required in order to become what we call  
19 certified. You want to be board-certified in psychiatry. And  
20 that's a program that you're exposed to principles of law,  
21 principles of how do trials work. You also learn to  
22 understand mental health evidence. You learn to understand  
23 the thinking process and the reasoning process by which you  
24 connect findings, behavioral findings to the legal standards.

25          Q     All right. I forgot my next question. So let me

1 ask you, have you ever testified as an expert in court before?

2 A I have.

3 Q All right. And how many times approximately?

4 A In the last 10 years, probably between 50 and 100  
5 times.

6 Q Now, do you -- do you predominantly testify for one  
7 side, State versus the defense, or plaintiff versus defendant?

8 A I wouldn't say that I'm retained more often by  
9 defense attorneys, which means they just ask me to meet with  
10 their client and do an assessment. But when it comes to  
11 testifying, it's probably about 50/50.

12 Q All right. So you don't have a particular bias to  
13 one side as a forensic psychiatrist, do you?

14 A No. In fact, one of the principles of being  
15 board-certified or being part of the community of forensic  
16 psychiatry is that you strive for objectivity. Strive,  
17 because it's a pretty lofty ideal, but it also implies a  
18 really active effort for objectivity. So not being on one  
19 side or the other, but being neutral or objective.

20 Q All right. And that was my question that I forgot.  
21 You said you were board-certified?

22 A Yes.

23 Q In forensic psychiatry?

24 A General psychiatry and forensic psychiatry.

25 Q All right. So you have to get certified for each?

1 A Yes.

2 Q And how -- is there anything that you're required to  
3 do to maintain your certification?

4 A Yes. To retain board-certification, I have to do  
5 continuing education programs and I also have to document my  
6 own self-assessment and quality improvement plan for my  
7 professional development over time.

8 Q How long do you have -- how often do you have to do  
9 that?

10 A Every 10 years.

11 Q All right. Now, in this case, you were hired by the  
12 State?

13 A Yes.

14 Q All right. And you're being paid?

15 A Yes.

16 Q All right. Now, you also -- you said that it's  
17 about 50/50 and so have you also been hired by the defense  
18 down in Las Vegas, as well?

19 A Yes.

20 Q All right. Now, with regard to what you have done  
21 to prepare for your testimony today, have you reviewed any  
22 materials?

23 A I have. I reviewed the VA records, I reviewed some  
24 other hospital records, I reviewed witness statements, I  
25 reviewed some videotapes of the defendant during his

UNCERTIFIED ROUGH DRAFT

1 questioning by the police, I reviewed some videotape from the  
2 bus, I reviewed -- or I listened in on some of the testimony  
3 yesterday and I interviewed the defendant about two months. I  
4 think that's pretty much what I've done.

5 Q All right. So when you were given the discovery in  
6 this case, where you had the witness statements and  
7 surveillance videos, the defendant's statement that I gave to  
8 the police, etcetera, were you also given all of the officers'  
9 reports, all of the CSA reports, etcetera?

10 A Yes. I received the discovery package which is the  
11 police reports, yes.

12 Q All right. And was it -- it pretty lengthy,  
13 everything that was provided to you?

14 A It was.

15 Q And you said that you referred to medical records.  
16 Were those the same medical records that were referred to  
17 earlier in court, that big, thick stack?

18 A Yes. I received them electronically, so I didn't  
19 have the same kind of physical stack. But yes, I believe  
20 they're the same records.

21 Q All right. And so you stated, too, that yesterday  
22 you sat in on some of the testimony?

23 A Yes.

24 Q Which testimony did you sit in on?

25 A I sat in on the latter part of Amanda's testimony

1 and all of Mr. Pimentel's testimony.

2 Q And what about today?

3 A And today I sat in on Dr. Boyd's testimony.

4 Q All right. Now, do you have -- you -- you stated  
5 that you -- you have some experience with PTSD. Can you  
6 explain to the jury what you -- what your experience is?

7 A So my experience is PTSD is -- is a diagnosis that  
8 everyone in psychiatry is trained in, because it's an  
9 important diagnosis. It's not particularly rare,  
10 unfortunately, because it is -- there is a certain amount of  
11 both military related trauma and unmilitary related trauma or  
12 unrelated trauma in our society. So it's not a -- it's not a  
13 rare diagnosis. So basic training, PTSD, treatment of  
14 individuals with Posttraumatic Stress Disorder both in  
15 civilian and military backgrounds.

16 I did work for the VA for about -- I think about six  
17 years, but only on a part-time basis. It wasn't my full-time  
18 job. But during that period of time I did have the  
19 opportunity to work with and treat a number of veterans who  
20 had Posttraumatic Stress Disorder. And then following my  
21 forensic training, I've evaluated a number of veterans in  
22 either criminal or civil context for those intersections  
23 between psychiatry and the law.

24 Q All right. Now, we -- we heard some talk earlier  
25 with Dr. Boyd about the DSM and now we're on the DSM5. Do you

1 keep up with the changes in psychology/psychiatry?

2 A Yes.

3 Q So you're familiar with the status of PTSD  
4 currently?

5 A Yes.

6 Q All right. Now, you watched all of Dr. Boyd's  
7 testimony and explained to the jury about PTSD. Did -- do you  
8 take any issue with anything she said, just to cut to the  
9 chase?

10 A No. She is extremely knowledgeable, experienced and  
11 effective in communicating what I think is the state of the  
12 art knowledge of PTSD.

13 Q All right. Now, when she was talking about the --  
14 the fight-or-flight response and how when persons with PTSD  
15 experience that situation versus a normal person without PTSD  
16 -- I don't know if normal is the right term, but non-PTSD  
17 person -- that she said the fire response or the fire  
18 department will be there longer for somebody who has PTSD than  
19 somebody without?

20 A Yes. So the -- that sort of activation of the fire  
21 department, which I think is a great analogy, because it  
22 really kind of paints a great picture of what's going on  
23 there, that that acute response is more prolonged in people  
24 who have PTSD, or it takes them longer to regulate or get back  
25 down to their -- their baseline before whatever happened,

1 happened.

2 Q All right. Now, with regard to a person who doesn't  
3 have PTSD and a person who does have PTSD, are there some, I  
4 guess, common times that the fire department will be there  
5 before the, I guess, the activation goes down?

6 A So we have research studies or there are research  
7 studies we can look to for guidance on this, because what we  
8 want to understand is what is the normal response to a  
9 stressor and what kind of abnormalities do we see in people  
10 who have certain kinds of conditions, like Posttraumatic  
11 Stress Disorder or another kind of population might look at  
12 are -- are children who have really horrible childhoods.  
13 Maybe they don't have PTSD, but there's something about their  
14 childhood that is different and problematic for them.

15 So what we can do is we can look at different ways  
16 of understanding or measuring that response. We can look at  
17 pulse rates, we can look at chemicals in the blood stream that  
18 are markers for that stress response. One of the markers is  
19 -- it's called a stress hormone, and it's called cortisol. So  
20 that's another example of something that gets triggered when  
21 people are stressed or facing something that they think is a  
22 -- is a threat.

23 And so what we can look at is what is the normal  
24 course of how long those chemicals stay in the bloodstream and  
25 how quickly do they go down. Now, we can't really do the

1 level 10 threat in a research environment, because we can't  
2 expose people to things that are that terrifying for the sake  
3 of research. So we do this -- we give them other terrifying  
4 things to do, like public speaking. And then we measure the  
5 -- the stress response that they have.

6 And what we see is that normal people do need time  
7 to clear the -- normal being folks without a -- some kind of  
8 diagnosis or background problem. They do need some time to  
9 clear the -- the chemical markers of a stress response.  
10 Usually when we look at the timeline for how long it takes  
11 people to clear their stress response, we look in five-minute  
12 increments. Because it takes at least five minutes for folks  
13 to begin to regulate after their stress response has been  
14 triggered in such a major way.

15 Q All right. Is -- is that five minutes also the same  
16 for somebody who would have PS -- PTSD facing the same stress  
17 response -- trigger?

18 A Someone with PTSD it might be prolonged, and that's  
19 what we were hearing earlier this morning when Dr. Boyd was  
20 saying that that activation is abnormal. That the actual  
21 response to the threat may not be very different, but the  
22 activation may be more prolonged, and that can be a real  
23 problem for folks over time.

24 Q Now, when you say activation, you mean once the  
25 fight-or-flight has kicked in, it stays activated longer



1 before it falls off?

2 A Exactly.

3 Q Okay. But is it fair to say that somebody without  
4 PTSD and somebody with PTSD facing a -- a threat situation for  
5 at least five minutes, they're both going to have those  
6 activators?

7 A Yes. Most -- I think -- and there's going to be  
8 interpersonal variations. So within any group of people  
9 without any diagnosis, there's going to be some folks who are  
10 going to be a little bit faster in -- in clearing it, maybe  
11 because their response wasn't as intense as the person next to  
12 them. So there's going to be some interpersonal variation.  
13 But everyone will have -- if it is -- if they have a stress  
14 response, it'll be kind of like the -- the same kind of stress  
15 response, and then there may be some differences in the amount  
16 of time to clear the stress response over time.

17 Q All right. Now, is there a normal clear time to  
18 clear a stress response for somebody who doesn't have PTSD or  
19 any psychological issues?

20 A You know, there's really no one standard you could  
21 say under this experimental condition, this public speaking  
22 condition that I mentioned, you can look at a group of 100  
23 people and say, Okay, this is -- this is what it looks like  
24 for this group of 100 people. This is the range. But it's  
25 going to be specific to different kinds of situations.

1                   And we can simulate pretty intense threat, but we  
2 don't typically do that to people in research settings because  
3 it's not really fair to people to maybe expose them to things  
4 that could be traumatic. So there — there probably is some  
5 research that makes it more and more intense. But the  
6 research I'm most familiar with are the kinds of stressors  
7 that are more like public speaking or reading a script that is  
8 moderately distressing and not a 10-out-of-10 threat.

9           Q     Okay. So then is it also fair to say, then,  
10 somebody who has PTSD, it's -- you can -- you can't gauge how  
11 long it will take them to clear the activation?

12          A     If you look at populations of people with the  
13 diagnosis, you will see that their activation will be more  
14 prolonged.

15          Q     Than normal people?

16          A     Than normal people, yeah.

17          Q     But you can't give a time? Like, it'll be 10  
18 minutes, it'll be 10 minutes?

19          A     I don't know of a time that you could give.

20          Q     Okay. All right. Now, you stated that you had the  
21 opportunity to speak to the defendant or — Mr. Pimentel on I  
22 think you said March 30th of 2014, or two months ago?

23          A     Yes, March 30th, 2015.

24          Q     Oh, 2015. Excuse me. Do you see the person that  
25 you interviewed in the courtroom here today?

1 A Yes.

2 Q Would you point to the person you're referring to  
3 and describe an article of clothing that he's wearing right  
4 now?

5 A Sure. He's sitting before me and he's wearing a  
6 white shirt.

7 Q And where is he seated at the table?

8 A He's sitting in the middle, and he has a blue tie,  
9 blue checked tie, as well.

10 MS. DiGIACOMO: Your Honor, would the record reflect  
11 identification of the defendant?

12 THE COURT: It will.

13 MS. DiGIACOMO: Thank you.

14 BY MS. DiGIACOMO:

15 Q Okay. So you met with him, what was the purpose in  
16 your meeting with him?

17 A It was to assess his background with regards to  
18 mental health symptoms and whether or not mental health  
19 symptoms appear to play a role in the events leading to his  
20 arrest.

21 Q All right. Now, before you met with the defendant,  
22 did you go through all of those medical records from the VA,  
23 etcetera, that were provided to you?

24 A I did.

25 Q All right. And you saw Dr. Boyd's testimony this

1 morning?

2 A I did.

3 Q And so previously he's been clinically diagnosed  
4 with PTSD, correct?

5 A Correct.

6 Q All right. Do you have any issue with that?

7 A No.

8 Q All right. So you agree that he has PTSD?

9 A Yes.

10 Q All right. Now, did you also, in trying to make  
11 your determination with regard to what happened in this case,  
12 did you ask the defendant what happened in this case?

13 A I did.

14 Q All right. Now, did you give him specific questions  
15 that he could answer yes/no to? Or how did you conduct that  
16 part of your interview?

17 A So it's always more productive when you're asking  
18 someone about what happened to -- to hear the narrative or to  
19 hear the story of what happened. So tell me what happened,  
20 tell me what was going on for you, tell me what happened next;  
21 that's the type of approach I would take to that part of the  
22 interview.

23 Q All right. So -- and that's what you did with the  
24 defendant in this case?

25 A Yes.

1 Q All right. Now, where did you start with regard to  
2 the shooting occurring on December 22nd, 2013; where did you  
3 start asking the defendant about what had been going on?

4 A I wanted to know what the day before was like. So I  
5 wanted to find out what's going on for him baseline.  
6 Remember, I'm particularly interested in finding out whether  
7 or not he's suffering from any symptoms that may have played a  
8 role in all of this, because I'm going into this with the  
9 knowledge that, based on the VA records, that he's somebody  
10 who's been diagnosed and who has had some significant mental  
11 health issues. So I want to find out how were you doing the  
12 day before this happened.

13 Q All right. And how did he tell you?

14 A It was a pretty uneventful day. Nothing good,  
15 nothing bad.

16 Q All right. So he had nothing in particular to say  
17 about the day before?

18 A Nothing in particular, slept that night, woke up  
19 usual, that kind of thing.

20 Q All right. Did you ask him -- let me ask you, is it  
21 important to you whether or not somebody is -- as we -- we use  
22 the common term, self-medicating?

23 A So the question would be important in what way?

24 Q Well, would it matter to you whether or not somebody  
25 is taking any medications that might not be prescribed to

1    them, drinking alcohol, using illegal substances, in making  
2    your determination?

3           A     Sure.  So I'm always interested in what are the  
4    influences on someone's behavior.  Again, is it mental  
5    illness, could it be substances, could they have a underlying  
6    medical disorder?  So I do ask individuals, were you under the  
7    influence of medication, your medication, somebody else's  
8    medication, could you have been using alcohol or other  
9    substances at that time.

10          Q     All right.  And in this case did you ask  
11    specifically about any medications that the defendant was  
12    taking for PTSD?

13          A     Yes.

14          Q     All right.  And what did he tell you?

15          A     He was not taking medications around that time.  He  
16    had discontinued medications a few months prior.  He had had a  
17    few drinks earlier in the day.  But on the -- on the day of  
18    the shooting, he was generally not under the influence of  
19    anything.

20          Q     All right.  No alcohol?

21          A     Alcohol maybe earlier in the day --

22          Q     All right.

23          A     -- but not feeling intoxicated or under the  
24    influence at the time.

25          Q     And did he tell you whether or not he had used any

1 illegal substances --

2 A He said --

3 Q -- controlled substances?

4 A He said he had not.

5 Q All right. Now, you said that he had discontinued  
6 his medication for PTSD a few months before this happened?

7 A Yes.

8 Q Do you know what kind of medications he was taking?

9 A Yes. He was taking medications that are commonly  
10 prescribed for people with Posttraumatic Stress Disorder, and  
11 they included an antidepressant and something to help him with  
12 sleep. And there may have been another one, but I'd have to  
13 look at my report to -- to be sure.

14 Q All right. So it -- well, what is the purpose of  
15 prescribing such medications to somebody with PTSD? What --  
16 what would the doctor be trying to fix?

17 A Well, we -- we'd like to think that we could fix.  
18 Prescription medications can definitely help some people with  
19 PTSD with regards to symptoms. The fix is probably more along  
20 the lines of the work that Dr. Boyd is doing, where it's a  
21 more cognitive non-medication kind of approach.

22 But what medications can do is -- is bring the  
23 symptoms under a little bit better control, which allow people  
24 to function at a higher level.

25 Q Like, what kind of symptoms?

1 A So sleep symptoms, anxiety symptoms, mood symptoms.

2 People could achieve a little bit more stability in all those  
3 areas with -- with the help of medication.

4 Q We had heard Dr. Boyd talk about that some people  
5 with PTSD have low -- I don't even remember the name of the  
6 drug -- and low serotonin levels?

7 A So low epinephrine and low serotonin?

8 Q Thank you. And people who have those low levels,  
9 they can be violent, aggressive, irritable, correct?

10 A Those -- dysregulation of those chemicals can lead  
11 to mood problems and behavior problems. Not always, but they  
12 can.

13 Q Right. And so when -- when the medications are  
14 prescribed, are those some of the things that the -- the  
15 medications help with?

16 A They can help with mood problems, irritability,  
17 impulsivity. But there's going to be a lot of variation  
18 amongst individuals.

19 Q Right. And did you know how long that the defendant  
20 had been taking those I guess mood-altering drugs?

21 A Well, he told me he first was prescribed Celexa when  
22 he was in the active duty and actually during a deployment I  
23 think is when he was first exposed to the medication. So it  
24 was probably, like, seven years, six years off and on.

25 Q Now, when you stop those medications, are you



1 supposed to wean off of them or just stop them?

2 A Well, it's -- when people stop medications, it's not  
3 really -- those particular medications aren't going to give  
4 you a big withdrawal problem. But what you worry about is  
5 that they're not going to be functioning very well without the  
6 medication, so you want to monitor very closely if somebody  
7 stops taking medication.

8 Q But at that time, the defendant was not being  
9 monitored by anyone for his PTSD when he stopped the  
10 medication?

11 A I don't think so, no.

12 Q All right. The medical records showed he had  
13 stopped his treatment for PTSD sometime before?

14 A Yes.

15 Q And he told you in your interview that he wasn't  
16 getting treatment from the VA for PTSD anymore?

17 A Correct.

18 Q But he was for a physical issue that he had?

19 A Yes.

20 Q Okay. All right. So when you were asking him about  
21 his normal routine, did he tell you what he was doing for  
22 employment in December of 2013?

23 A At that time he told me he had been dealing  
24 methamphetamine.

25 Q All right. So he was selling methamphetamine?

1 A Yes.

2 Q And when you were asking him about, you know, how --  
3 how much sleep he gets, did it matter to you whether or not he  
4 would be woken up by someone wanting meth?

5 A I did want to know whether or not he was getting  
6 calls during the night. I wanted to find out if his sleep was  
7 being interrupted as a result of that. I knew that, because  
8 we had talked about the fact that he had two phones and that  
9 he was actively responding to requests from customers. I was  
10 just interested in how that was impacting his sleep/wake  
11 cycle.

12 Q All right. And why is the sleep/wake cycle  
13 important?

14 A Well, if somebody's really sleep deprived, that can  
15 change, again, their mental state.

16 Q Regardless if they have PTSD or not?

17 A It -- anybody would be vulnerable to changes as a  
18 result of sleep deprivation.

19 Q All right. Now, when you got to the night before  
20 the shooting occurred, did he talk to you about going to  
21 Arizona Charlie's and getting a hotel room?

22 A So I understood that he was at Arizona Charlie's one  
23 night, had -- had booked a hotel room for one night, and that  
24 was the same night as the shooting. So I learned yesterday  
25 that there was a second night. So the night previous he had

1 been at Arizona Charlie's. I didn't obtain that information  
2 when I interviewed him.

3 Q All right. Did he --

4 MR. SLIFE: Judge, I apologize. Could we approach?

5 (Off-record bench conference.)

6 THE COURT: You may proceed.

7 MS. DiGIACOMO: Thank you, Your Honor.

8 THE COURT: Oh, and the objection is overruled.

9 MS. DiGIACOMO: Thank you.

10 BY MS. DiGIACOMO:

11 Q Forgot where I was. Oh, when he got the hotel room  
12 at Arizona Charlie's, did you ask him why he would go to a  
13 hotel room when he already lived in a weekly?

14 MR. SLIFE: Object to leading.

15 MS. DiGIACOMO: I just said did you ask him why, I  
16 didn't say what he said.

17 THE COURT: All right. Overruled.

18 THE WITNESS: Do I -- I did. I asked a couple of  
19 times, because I was puzzled by someone spending money on a  
20 hotel room when they had within a month or two moved into a  
21 weekly apartment.

22 BY MS. DiGIACOMO:

23 Q All right. What was the defendant's response?

24 A He said he was going for a staycation. Same thing  
25 he said yesterday.

1 Q Okay. Did he also tell you there was no particular  
2 reason?

3 A Yeah.

4 MR. SLIFE: Object to leading.

5 THE COURT: Sustained.

6 BY MS. DiGIACOMO:

7 Q All right. Did he tell you any --

8 MR. SLIFE: Move to strike.

9 THE COURT: Granted. The jury will disregard the  
10 answer.

11 BY MS. DiGIACOMO:

12 Q When he said he was going for a staycation, did he  
13 tell you the reason why he wanted a staycation?

14 A I asked and he said there was no particular reason.

15 Q All right. Did you ask him whether or not he was  
16 meeting with anyone when he went --

17 MR. SLIFE: Object to leading.

18 THE COURT: Sustained.

19 MS. DiGIACOMO: Okay.

20 BY MS. DiGIACOMO:

21 Q What else did you ask him about going to Arizona  
22 Charlie's?

23 A So --

24 THE COURT: If anything. If anything.

25 THE WITNESS: I asked him a number of questions

UNCERTIFIED ROUGH DRAFT

1 about going to Arizona Charlie's. I wanted to know a little  
2 bit more, since it seemed like it played a role in the events  
3 that then unfolded. And so I asked if he met other people  
4 there. And then I asked also if he was meeting people for  
5 methamphetamine purchase. I also wanted to know if he was  
6 bringing his methamphetamine scale with him to the hotel.  
7 Because if he's staying at the hotel and he's meeting people  
8 for dealing the drug, he probably would need to have specific  
9 weights available, people buy by weight. So I wanted to know  
10 more about kind of just the logistics of what was going on  
11 with the -- with the methamphetamine.

12 BY MS. DiGIACOMO:

13 Q All right. And what did the defendant explain to  
14 you?

15 A He said that he didn't bring his scales, his scales  
16 stayed at his apartment. But what he did was met with people  
17 off and on throughout the time he was there.

18 Q At Arizona Charlie's?

19 A At Arizona Charlie's for methamphetamine deals.

20 MR. SLIFE: Judge, I apologize, but may we approach?

21 THE COURT: Yes.

22 (Off-record bench conference.)

23 THE COURT: Proceed.

24 MS. DiGIACOMO: Thank you, Your Honor.

25 BY MS. DiGIACOMO:

1           Q     All right. With regard to what the defendant told  
2 you about what happened in -- at the Arizona Charlie's, do you  
3 recall what he told you about how he got a ride back to the  
4 Siegel Suites?

5           A     Yes.

6           Q     What did he tell you?

7           A     He said that Amanda contacted or worked something  
8 out with Tim to get a ride back to Siegel Suites.

9           Q     All right. Because did he tell you why -- whether  
10 or not -- well, strike that.

11                     Did he tell you whether or not he knew any of the  
12 people involved that night?

13           A     He said he knew Amanda, that they had had a  
14 relationship or at least had been sort of hooking up, I guess,  
15 would be the term for a few days prior to the shooting. He  
16 knew Bobby was Amanda's ex. And he knew of Tim and Shannon,  
17 because everybody was sort of in the same circles, but he  
18 didn't really know them personally.

19           Q     All right. And did he tell you who did know them?

20           A     He said that Amanda knew them, they were friends of  
21 Amanda.

22           Q     All right. Did you ask him about the victim in this  
23 case's demeanor when this was going on at the Arizona  
24 Charlie's?

25           A     So there was a -- a confrontation. It was a verbal

1 confrontation. And it became pretty intense. And he said  
2 that the -- that Bobby started talking like a mad man. And  
3 that he was -- I think this came up because I was asking, do  
4 you think Bobby was under the influence of something? I  
5 wanted to find out what his thoughts were about the victim,  
6 did he see him as being intoxicated or something. So he  
7 thought it was that Bobby may have been under the influence of  
8 methamphetamine, because he was talking like a mad man, and  
9 that he was talking super fast.

10 Q All right. Did you ask what the words were that  
11 were exchanged between the victim and the defendant in this  
12 verbal altercation?

13 A I don't recall if I asked for the specific words or  
14 not.

15 Q Do you recall whether or not the defendant told you  
16 that the victim said, I'm going to kill you?

17 A Yes.

18 Q He did say that?

19 A Well, yesterday I heard the -- Mr. Pimentel talk  
20 about that. I'm not quite sure if I can recall separately  
21 from my interview in March at the same -- if he gave the same  
22 report.

23 Q Okay. All right. So at some point did you talk to  
24 him about whether or not he left the Arizona Charlie's and  
25 went somewhere else?

1           A    Yes. That because there had been a scene at Arizona  
2 Charlie's and security was involved, he decided to go back to  
3 the Siegel Suites with Amanda and avoid the -- I think the  
4 term yesterday that was used was drama, that was coming up at  
5 the -- at Arizona Charlie's.

6           Q    All right. Now, but he had told you that the -- the  
7 victim had been 86'd from the property?

8           A    Yes. He told me the victim had been taken away --  
9 taken off the property, wasn't allowed to come back. But he  
10 had not been. So he was able to stay if he wanted, but he  
11 decided to go back to Siegel Suites.

12          Q    Right. Did you question him about that decision to  
13 go back to the Siegel Suites?

14          A    I did. Because I thought that if your -- if your  
15 problem is removed from the situation and not allowed back to  
16 the situation, why would you -- why would you then feel the  
17 need to leave it.

18          Q    And you posed that question to the defendant?

19          A    In a more articulate way, yeah.

20          Q    All right. And what was his response to you?

21          A    I think he said he just wanted to go back.

22          Q    Do you recall him talking about a -- a safe place?

23          A    Possibly. I would have to look at my notes, sorry.

24          Q    All right. Now, did you talk to him about when he  
25 got back to the Siegel Suites and the victim being there?

UNCERTIFIED ROUGH DRAFT



1       A    Yes, I did. He said that when they pulled up, he  
2 saw the victim right away, as soon as he pulled up, he saw  
3 that he was there at his door, and that he was -- he was  
4 wondering, you know, what's he doing there.

5       Q    Right. And he made the choice at that time to get  
6 out of the car?

7       A    He told me he made the choice to get out of the car.  
8 I questioned it, again, because if you want to avoid a  
9 situation, you can, you know, stay in the car, let's keep  
10 driving, or you can get out of the car and kind of get into  
11 it. So I did question him. And he said, no, he wanted to get  
12 out of the car, he wanted to find out why Bobby was there and  
13 how he found out where he lived.

14       Q    All right. But he did tell you, though -- well, do  
15 you recall him telling you what the victim was saying to him?

16       A    At the Siegel Suites?

17       Q    Yes.

18       A    I think he was saying, Where's Amanda.

19       Q    All right. So his -- his comments weren't directed  
20 towards the defendant?

21       A    Correct.

22       Q    All right. Did you ask him specifically about after  
23 he had the gun away from Bobby, what happened?

24       A    Yes.

25       Q    All right. What was his response to you?

1           A     Well, I asked the same question several times,  
2 because I really wanted to understand what was going on at  
3 that moment. That's really the key moment, if we're going to  
4 look at someone's mental state, is the mental state right at  
5 the time the actions are unfolding that then lead to the --  
6 lead to the criminal situation.

7                     And he told me it just happened so fast. It just  
8 happened so fast. He wasn't able at the time to give me a  
9 clear description of how he got the gun from Bobby or what --  
10 exactly what was going on.

11           Q     Well, you saw him testify yesterday?

12           A     I did.

13           Q     All right. He was able to give a clear description,  
14 though, yesterday, as to what happened?

15           A     Yesterday he gave a very clear demonstration, yes.

16           Q     And you hadn't seen that before?

17           A     No.

18           Q     So he couldn't tell you why he -- once he got the  
19 gun, he didn't leave the situation?

20           A     He said that he was feeling threatened by Bobby, and  
21 that if Bobby got the gun back, he would be -- that Bobby  
22 would probably kill him. He didn't tell me specifically why  
23 he didn't leave. But he told me why he kept the gun.

24           Q     Right. Because he -- he -- he felt he had to defend  
25 himself?

1 A Yes.

2 Q Right. But when you asked him specifics about  
3 shooting Bobby, was he able to give you any?

4 A He was not.

5 Q What did he say?

6 A It happened so fast.

7 Q All right. Did you ask him about there being two  
8 shots?

9 A Yes.

10 Q What did he say about that?

11 A He said that he was aware there was two shots. And  
12 he was aware, based on what he learned afterwards, that the  
13 second shot was -- I think at the time he said he was shot in  
14 the back. But he didn't have an explanation for how it  
15 happened.

16 Q All right. Did -- did he know whether or not there  
17 was a delay between the shots?

18 A He did know there was a delay between the shots,  
19 yes.

20 Q Right. So did you --

21 MR. SLIFE: Judge, I -- I apologize to the Court.  
22 May we approach again, briefly?

23 THE COURT: Yes.

24 (Off-record bench conference.)

25 THE COURT: Proceed.

UNCERTIFIED ROUGH DRAFT

1 MS. DiGIACOMO: Thank you.

2 BY MS. DiGIACOMO:

3 Q With regard to the second shot, you said that you  
4 had asked him about that and he didn't know what happened; is  
5 that what it was?

6 A Yes, he's --

7 Q I forgot where we were.

8 A Yes.

9 Q Okay. Did you ask him that several times or just  
10 the one time?

11 A I asked several times, because again, that's right  
12 at the moment where everything's happening and that's really  
13 where I want to understand what is going on with someone's  
14 thinking or emotional response at that time.

15 Q All right. Now, with regard to his testimony  
16 yesterday, you saw that, when he was talking about the second  
17 shot yesterday, do you recall him saying something about after  
18 the second shot was where he came to?

19 A He woke up.

20 Q He woke up? Okay. Sorry. Thank you for correcting  
21 me. And is that in any way related to symptoms of PTSD,  
22 waking up?

23 A Well, I think that if you look at one of the sort of  
24 broad descriptions of symptom patterns people can have, I  
25 think we heard earlier about dissociation and so forth. So

1 that wouldn't be typical of how dissociation would occur. But  
2 you could say that in Posttraumatic Stress Disorder if  
3 somebody is having a dissociative episode, when they sort of  
4 come back from that dissociative period, they would be sort of  
5 back or feel like they're reengaging with the -- with the  
6 present.

7 I don't think that was the case at this point,  
8 because there isn't a history of dissociation and there's  
9 nothing else that suggests that there was dissociation at the  
10 time. But technically, I would say that it could map onto  
11 that.

12 Q It could. But there's no evidence from what you saw  
13 on your interview with him or in the medical records that at  
14 that --

15 MR. SLIFE: Objection. Leading, Your Honor.

16 THE COURT: Overruled.

17 BY MS. DIGIACOMO:

18 Q -- that at that time he was suffering from some sort  
19 of dissociative episode?

20 A Correct.

21 Q All right. In your interview with him, when you  
22 asked -- or do you recall asking him where he aimed the gun  
23 when he got it away?

24 A Yes.

25 Q What did -- what did you ask him?

1           A     I asked him where he shot the -- the victim. And he  
2 said it was in the chest.

3           Q     Okay. And did he say something about an automatic  
4 reaction?

5           A     Said autopilot.

6           Q     All right. And we'll -- that's what he said  
7 yesterday or to you?

8           A     I thought it was to me. But I could be conflating  
9 the two.

10          Q     So if you have autopilot or an automatic reaction,  
11 is that any sort of symptom of PTSD?

12          A     Not necessarily. I think that we all have reflexive  
13 or reactive responses to certain things that we would consider  
14 to be autopilot.

15          Q     And what does that mean, autopilot?

16          A     It means that you're acting on an impulse as opposed  
17 -- well, it's the -- it's the fire, it's what we heard  
18 earlier, it's the --

19          Q     The fire department?

20          A     -- the fire department coming in through the door,  
21 taking over because there's something really, really important  
22 that has to happen. And we can't -- we can't pause and think  
23 about all the different details.

24          Q     All right. Now, yesterday, do you recall the  
25 defendant testifying and explaining why he didn't talk to the

1 police?

2 A Yes.

3 Q When he gave the statement? Okay. What did he tell  
4 you as to the reason why he didn't give the -- the statement  
5 to the police?

6 A He told me that when he was identified coming off of  
7 the bus, he saw the victim's father, and he thought the  
8 victim's father somehow was -- was with the police, maybe he  
9 was in the car and helped identify him. And he said, I just  
10 -- he didn't trust the situation. It was a crazy situation  
11 and he did not trust it.

12 Q Did you ask him about whether or not the -- the --  
13 the victim's father would be able to identify him?

14 A I don't recall.

15 Q Did you ask him specifically any questions about,  
16 you know, at any point did you lose, like, where you were or  
17 who you were, anything like that?

18 A Right. So it was really important to me, because of  
19 the history of Posttraumatic Stress Disorder that had been  
20 very well documented and very consistently reported. And  
21 because, as we heard earlier, people can have these flashback  
22 experiences, which are very immersive experiences, where  
23 people have this intrusive recall and sometimes they even  
24 become sort of less sure about where they are and what they're  
25 doing.

1 I wanted to really find out whether or not Mr.  
2 Pimentel was reporting that that was an experience that he  
3 had. That's a really important thing to know about someone  
4 that has Posttraumatic Stress Disorder who is facing some  
5 really serious charges.

6 So I -- I probed on that. I wanted to find out did  
7 he have any alterations in his reality. Was he experiencing  
8 being in a different place or time or was there anything that  
9 would have influenced his thinking in such a way that he  
10 wasn't aware of where he was and what he was doing. And he  
11 told me that he was pretty sure he knew where he was and what  
12 he -- he knew where he was and what was going on.

13 Q Right. So he -- he never mentioned to you he was  
14 having a flashback?

15 A In fact, he -- I asked him specifically and he said  
16 he was pretty sure he was not.

17 Q And so did he tell you whether or not -- well, so he  
18 said no flashback, he knew kind of where he was; anything else  
19 about that that he said?

20 A He wasn't disoriented. He wasn't having some kind  
21 of problems understanding the reality of his situation. He  
22 was able to -- he said this was really about self-preservation  
23 based on the real threat that he was experiencing with the  
24 victim.

25 Q So if he was experiencing the fight-or-flight, it



1 would have been due to an actual threat, and this was not a --  
2 a trauma -- was it, trauma-related trigger?

3 A Correct.

4 Q Now, yesterday, you watched his testimony and you  
5 said earlier that PTSD is an anxiety disorder?

6 A It wasn't anxiety -- remember the DSM book that we  
7 looked at that has different versions, DSM4, DSM5? So in DSM4  
8 it was an anxiety disorder. And that's because one of the  
9 major symptoms or problems that people have is anxiety,  
10 nervousness. In DSM5 they created a new category of  
11 trauma-related disorders. But it's still very much a -- a  
12 disorder for which anxiety's a big component.

13 Q All right. From speaking with the defendant  
14 yourself and watching his testimony yesterday, did you have  
15 any opinion about whether or not he appeared to be suffering  
16 from any anxiety during the night that this happened up until  
17 the shooting?

18 A So there -- there wasn't any information from any  
19 source that he was having problems with anxiety that day.

20 Q All right. And, in fact, one of his comments  
21 yesterday that he said on the stand, did that stick out with  
22 you?

23 A I'm not quite sure at what point...

24 Q Does the word "really" refresh your memory?

25 A So he described when he arrived at the Siegel Suites

1 and he saw the victim at his store, his response was, Really?

2 As in, Do you really want to do this? Or, Really, are you  
3 going to be there? And that he had more of a -- a response  
4 that really wasn't anxiety experience, it wasn't a fear  
5 response. It was curiosity, it was, This is my house, why  
6 should I have to leave? Maybe a little defiant or a little  
7 challenging. But he didn't describe anxiety, no.

8 Q All right. Now, when he talked about yesterday as  
9 well as with you about, you know, it happened so fast, is that  
10 another way of saying -- well, one way of saying, I -- I don't  
11 remember?

12 A It -- it is a way of saying I don't remember, or I  
13 -- or I don't remember any details.

14 Q I mean, it could also be I don't want to tell you  
15 the details, as well?

16 A It could be.

17 Q All right. In order --

18 MR. SLIFE: And, Judge, just for the record,  
19 objection to that. That would -- that was speculation as to  
20 what that phrase may or may not mean.

21 THE COURT: So the objection was calls for  
22 speculation?

23 MR. SLIFE: Calls for speculation.

24 THE COURT: She already answered. So if she's  
25 already answered...

1 MR. SLIFE: Then I would move to strike.

2 THE COURT: All right. The jury will disregard, as  
3 the answer was speculative.

4 MS. DiGIACOMO: All right.

5 BY MS. DiGIACOMO:

6 Q If a person truly can't remember, did there have to  
7 be certain physical or mental signs for that to be true?

8 A Well, memory is -- there's different kinds of memory  
9 problems that someone can have. If they have a period of time  
10 for which they have zero memory, like sometimes we call it a  
11 blackout, that's usually based on a underlying physical  
12 chemical or psychologically specific problem that they have.  
13 So that would be amnesia. If somebody has amnesia, which is  
14 no memory for a period of time, there's usually some  
15 underlying problem there.

16 Q Right. Now, with regard to what the defendant had  
17 -- has said about, you know, it happened so fast, did -- did  
18 it, in your professional opinion, did he -- was he suffering  
19 from some sort of amnesia or something that was, you know, due  
20 to a physical or mental deficiency?

21 A He said he had no memory or could not tell me the  
22 details, because it happened so fast. I didn't think that  
23 represented amnesia. I didn't think that that represented a  
24 -- a problem like a blackout or something like that.

25 Q All right. And you didn't notice that he had any

1 sort of physical impairment, such as being too drunk to  
2 remember?

3 A Correct.

4 Q All right. And no sort -- the PTSD wouldn't affect  
5 that?

6 A Again, he doesn't have a history of memory problems  
7 related to his PTSD, and it seems like it would be very  
8 unusual for him to have a super specific, super tiny period of  
9 time that he couldn't remember as a -- as a PTSD thing.

10 Q Right.

11 A He -- he also -- with PTSD, it's -- you have amnesia  
12 or you have problems remembering, you know, periods of the  
13 trauma or the traumatic event. It's recalling the traumatic  
14 event, you'd have to then say that this event would fall into  
15 that category, if you wanted to map it onto the PTSD  
16 diagnoses.

17 Q All right. Well, what -- with what you have heard  
18 and learned in the courtroom as well as from interviewing the  
19 defendant, was any of his behavior unique to somebody  
20 suffering PTSD?

21 A In my opinion, no.

22 Q All right. And why not?

23 A Well, there's no identified trigger, and so his  
24 response to the threat, I think as we've all heard, was, you  
25 know, a threat where somebody was saying he was going to kill

1 him and represented a -- a physical real-life level 10 threat  
2 based on the report that we heard yesterday. So there wasn't  
3 a PTSD related trigger. He responded in it in a  
4 self-preservation way, similar to what any normal person would  
5 do with a level 10 threat, which is self-preservation.

6 And then following the threat and the resolution of  
7 the threat, he left the scene, also sort of a  
8 self-preservation, because he saw or reported yesterday to us  
9 that there was another threat, or he perceived there was  
10 another threat.

11 By the time he got to the bus, it seemed like his  
12 fire department was starting to leave and the CEO was starting  
13 to come back online.

14 Q Now, what makes you think the CEO was coming back  
15 online when he got to the bus?

16 A When he testified yesterday, he said that -- he was  
17 asked why didn't you say to people, Hey, I was just almost  
18 killed by -- you know, how come he didn't -- tell your story  
19 at the time? How come he didn't tell the police this is what  
20 I did and why I did it, so that people could understand. And  
21 he said that he wanted to kind of keep it calm because he  
22 didn't want to appear hostile or uncooperative.

23 And to me, that's really -- he's really thinking  
24 about the consequences of his behavior. He's thinking, I  
25 don't want to tell people -- or I don't want to say certain

1 things, because then they will think -- they will come to  
2 conclusions about me being hostile or uncooperative and  
3 they'll -- and that won't serve me well. So he --

4 MR. SLIFE: And, just, Judge, I'm just going to  
5 object to the extent that it calls for speculation to -- to  
6 have the doctor sort of opine as to why he may or may not have  
7 spoken to police.

8 THE COURT: Overruled.

9 BY MS. DiGIACOMO:

10 Q Go ahead.

11 A So it -- it seems as though whatever kind of  
12 response he had to the situation where he was reacting in pure  
13 self-preservation, that he was able to then act in more  
14 thoughtful way.

15 And so the whole scenario, as I understand it from  
16 his testimony yesterday, is that he responded like anybody  
17 would with that level 10 threat, left the scene, and within  
18 five or seven minutes was able to decide to behave in certain  
19 ways according to the context that he was in.

20 Q So at that point he did have the capacity to make  
21 decisions unrelated to the -- the threat?

22 A I believe so, yes.

23 Q And he had the ability to consider consequences of  
24 actions unrelated to the threat?

25 A Yes. Such as how do you want to present to police

1 so that they don't think that you're being hostile or  
2 uncooperative.

3 Q And he had the -- the ability to calm down?

4 A It appeared to me from the videotape that he was not  
5 -- that he was under pretty good control. And then again, he  
6 was making decisions to not appear hostile and to be  
7 cooperative with the police.

8 Q All right. Now, everything that we're talking  
9 about, we're assuming that, you know, we're assuming and using  
10 the defendant's testimony, his version of what happened?

11 A Yes.

12 Q Okay. You don't know if that's what happened or  
13 not?

14 A I've seen different witnesses with different  
15 accounts of the events.

16 Q Now, does it take the level 10 threat to get into  
17 the fight-or-flight mode? Is that the only type of threat  
18 that will get you to that excited state of activation?

19 A No.

20 Q All right. What kind -- could it be any kind of  
21 stressor?

22 A Well, different stressors will affect different  
23 people in different ways. Chronic stress has one kind of  
24 effect on folks. For some folks, again, the -- one of the  
25 really clever ways that they measure someone's stress response

1 is by this public speaking or by asking people to do  
2 complicated math problems in front of other people. So social  
3 situations can be extremely stressful for folks.

4 And there's going to be a lot of variabilities.  
5 Some people love public speaking. Some people are really  
6 stressed out by it. So it doesn't take a -- a life or death  
7 threat to activate the stress response. But I think when we  
8 were talking about Posttraumatic Stress Disorder, we're  
9 looking at people who have experienced a level 10 threat.

10 Q Okay. But in this case, do you have an opinion,  
11 though, about whether or not a normal person versus someone  
12 with PTSD in this situation, a gun being pointed at you and  
13 grabbing the gun, would react any differently?

14 A No, I think that self-preservation is a fundamental  
15 response that people would have to a threat of life or death.  
16 And that this is how anybody would respond if they were able  
17 to.

18 Q Right. Now, if somebody witnessed this event, could  
19 that be a traumatic experience for them?

20 A It could be.

21 Q Is it something that could even lead to PTSD if they  
22 watch somebody get killed in front of them?

23 A Yes, it could be.

24 Q All right. And would that person who witnesses it  
25 versus being involved in it, could they experience the same



1 kind of --

2 MR. SLIFE: Judge, objection. Outside the scope.

3 THE COURT: Outside the scope?

4 MR. SLIFE: May we approach?

5 (Off-record bench conference.)

6 BY MS. DiGIACOMO:

7 Q All right. Lastly, Doctor, was -- was -- when you  
8 interviewed the defendant in March, was his demeanor the same  
9 or different than what you saw yesterday in the courtroom?

10 A So yesterday Mr. Pimentel, from the perspective of  
11 sitting a couple of rows back there, appeared to be  
12 articulate. I think there were a couple of times he had some  
13 word finding pauses. And he appeared physically quite calm.  
14 When I met with him, he was a little bit more anxious  
15 appearing, and physically, he had a lot of leg-shaking going  
16 on. He also had -- his posture was different. So his  
17 demeanor was different in a number of ways.

18 Q You mean his posture was different? Was he making  
19 eye contact with you?

20 A What I remember most about his posture is that he  
21 was sort of leaning over and wasn't sitting up so much.

22 MS. DiGIACOMO: Nothing further.

23 THE COURT: Cross.

24 MR. SLIFE: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. SLIFE:

2 Q And good afternoon, Doctor.

3 A Good afternoon.

4 Q Always a pleasure to see you.

5 A Same here.

6 Q You and I have spoken before?

7 A Absolutely.

8 Q Okay. Let me just start with some questions about  
9 your training and experience with regard to PTSD, if I may?

10 A Sure.

11 Q Apart from sort of the basic psychiatric training  
12 that you described, you don't have any specialized training  
13 with regard to PTSD; is that right?

14 A That's correct.

15 Q And so no fellowships dealing with PTSD?

16 A Correct.

17 Q You have not been part of any studies with regard to  
18 PTSD?

19 A No.

20 Q You have done -- you haven't done any specific  
21 research with regard to PTSD?

22 A No.

23 Q You haven't published anything related to PTSD?

24 A No.

25 Q And you're not currently treating patients with

1 PTSD?

2 A Correct.

3 Q And you don't have any experience with polytrauma?

4 A Although I've probably seen folks who have that  
5 triad of symptoms, I've not been -- I've not worked within  
6 that research area, and in fact haven't even called it  
7 polytrauma. So that's a -- that's an area that I've probably  
8 seen those patients, but not under that designation.

9 Q Understood. So -- so you haven't -- you haven't  
10 actually heard the -- the term polytrauma until Dr. Boyd  
11 testified today?

12 A Correct.

13 Q Okay. Now, you do have some experience dealing with  
14 patients at -- at -- with the VA, though, right?

15 A In the past, yes.

16 Q And I believe was that from '95 to 2004,  
17 thereabouts?

18 A That sounds right.

19 Q So that's a little over 10 years ago?

20 A Yes.

21 Q And so you had stopped treating people with PTSD  
22 2004, that was about the time that we went into Iraq and  
23 Afghanistan, give or take?

24 A 2002, 2004, I think I was on call at the VA the day  
25 that they started bombing Afghanistan. I think I remember

1 that day.

2 Q Okay. But -- but you stopped towards the beginning  
3 of the Iraq and Afghanistan conflict, so to speak?

4 A Yes.

5 Q Okay. So you don't have any specific clinical  
6 experience dealing with combat veterans from these most recent  
7 conflicts, meaning Iraq and Afghanistan?

8 A Correct.

9 Q Okay. And you would agree that veterans from  
10 Vietnam, for example, could have different manifestations of  
11 PTSD than veterans from more recent conflicts, like Iraq and  
12 Afghanistan?

13 A Yes.

14 Q Okay. And while you worked at the veterans -- well,  
15 you worked -- when you worked with veterans, you treated all  
16 different types of mental health conditions, right?

17 A Yes.

18 Q It wasn't specific to PTSD patients?

19 A Correct.

20 Q And my understanding is that that was part-time  
21 work?

22 A Yes.

23 Q And of the patients you treated part-time, that was  
24 about 20 to 50 percent that had PTSD?

25 A Probably, yeah.

1 Q Okay. There was some discussion about the interview  
2 with Mr. Pimentel. I'd like to ask you some questions on  
3 that, if I may.

4 A Sure.

5 Q Now, when you met with Mr. Pimentel, that was at  
6 police headquarters?

7 A Yes.

8 Q Mr. Pimentel was -- was in jail at the time?

9 A Yes.

10 Q He was escorted in by armed guards?

11 A I don't remember exactly, but probably, yes.

12 Q Okay. He had on jail attire?

13 A Yes.

14 Q He was handcuffed?

15 A He was handcuffed at the beginning. I think he was  
16 handcuffed throughout, yes.

17 Q Okay. Now, specifically, with regard to -- and --  
18 and you -- you saw that -- his testimony yesterday?

19 A Yes.

20 Q You saw the demonstration that I specifically asked  
21 him for?

22 A Yes.

23 Q You never specifically asked him for a demonstration  
24 of what happened?

25 A Correct.

1 Q And --

2 MR. SLIFE: May I have a moment?

3 THE COURT: Yes.

4 BY MR. SLIFE:

5 Q Good point. Obviously, he couldn't do a  
6 demonstration if he was in handcuffs?

7 A Correct.

8 Q And just a few things about that interview that you  
9 had mentioned. He told you that he didn't trust the police  
10 that night?

11 A Correct.

12 Q He told you that Bobby had pulled the gun on him?

13 A Yes.

14 Q He told you that he wanted to go home to avoid  
15 Bobby?

16 A Yes.

17 Q And I think you said, you know, he -- he didn't  
18 really try to blame PTSD for what happened here. He didn't  
19 say, Doctor, I had a flashback that's -- that night, and  
20 that's what happened?

21 A Correct.

22 Q He didn't say anything about PTSD?

23 A Correct.

24 Q All right. If -- if I may ask you some questions  
25 about you -- what -- what you reviewed?

1 A Sure.

2 Q You saw Mr. Pimentel's medical records?

3 A Yes.

4 Q We had provided that, the defense?

5 A I received it from the DA's office, but it's very  
6 likely that it came through your office, yes.

7 Q Understood. Those medical -- those medical records  
8 reflected that Mr. Pimentel had been previously diagnosed with  
9 PTSD?

10 A Yes.

11 Q You don't disagree with that?

12 A No.

13 Q And then when you met with -- when you met with Mr.  
14 Pimentel and interviewed him, you didn't give him any specific  
15 tests related to PTSD, right?

16 A Correct.

17 Q And I think the -- the -- the test that we heard of  
18 before was called the CAPS test?

19 A Yes.

20 Q You did not administer that to Mr. Pimentel?

21 A I did not.

22 Q Okay. Would you agree with Dr. Boyd that that is  
23 the gold standard in diagnosing PTSD?

24 A Yes.

25 Q All right. And you mentioned some other things you

1 reviewed in the case. There were witness statements; is that  
2 right?

3 A Yes.

4 Q Specifically a statement of Tim Hildebrand?

5 A Yes.

6 Q I think there was some prior, even testimony given  
7 at a hearing of Mr. Hildebrand?

8 A Yes. But I haven't reviewed that testimony.

9 Q Okay. You also reviewed police reports?

10 A Yes.

11 Q Now, in everything that was given to you, did you  
12 review anything with regard to interviews that had happened  
13 with security officers at Arizona Charlie's?

14 A I don't recall seeing that.

15 Q Okay. You don't -- you don't recall, or you  
16 definitely did not see that?

17 A I don't recall seeing that.

18 Q Okay. I don't see that you had a chance to review  
19 the coroner's report?

20 A I remember seeing some photos from the autopsy, so I  
21 may have -- I may have had that and not listed it.

22 Q Okay. I don't think that was listed in your report.  
23 If you'd like to look at your report, I have a copy, if it  
24 would help?

25 A That's okay.



1 Q Okay. But if -- if you -- I mean, I -- I think I  
2 remember you saying something about the methamphetamine levels  
3 in the victim. You didn't know that the -- that the victim in  
4 this case, the deceased, had toxic levels of methamphetamine  
5 in his system?

6 A Yeah, that was represented to me, if I hadn't seen  
7 it in a report, it was represented to me from a couple of  
8 sources.

9 Q Okay. But you don't -- you don't specifically  
10 remember seeing a toxicology report in the autopsy?

11 MS. DiGIACOMO: Objection. Relevance.

12 THE COURT: Overruled.

13 MR. SLIFE: Thank you, Your Honor.

14 THE WITNESS: I don't specifically recall seeing it.

15 BY MR. SLIFE:

16 Q Okay. And I -- you didn't ever specifically review  
17 any surveillance videos with regard to Arizona Charlie's?

18 A No, I did not.

19 Q Okay. Just a -- just a few other things. Are you  
20 aware that there -- there has been evidence that Mr. Pimentel  
21 walked away from the deceased when he originally saw him  
22 inside the Arizona Charlie's?

23 A Yes.

24 Q Okay. But you just didn't see the -- the video  
25 depicting what happened inside Arizona Charlie's?

1 A Correct.

2 Q Okay. Were you aware that the deceased was violent  
3 with his girlfriend at Arizona Charlie's?

4 A I was aware that Mr. Pimentel was under the  
5 impression that he had been, that she'd reported to him that  
6 she had been slapped by him.

7 Q You never saw any video of the deceased actually  
8 charging at his girlfriend outside of Arizona Charlie's?

9 A I did not.

10 Q Okay.

11 MS. DIGIACOMO: Your Honor, can we approach?

12 THE COURT: Yes.

13 MS. DIGIACOMO: I object.

14 (Off-record bench conference.)

15 MR. SLIFE: Thank you, Your Honor.

16 BY MR. SLIFE:

17 Q All right, Doctor, just a few more. With regard to  
18 Mr. Pimentel specifically, you don't disagree that he has  
19 PTSD?

20 A Correct.

21 Q You don't disagree with that diagnosis back a few  
22 years ago -- few years ago when he got out of the military --

23 MS. DIGIACOMO: Objection. Asked and answered.

24 THE COURT: Sustained.

25 MR. SLIFE: Well, there's -- there's a few different

1 times, Your Honor. There's back then and there's now, and I'd  
2 like to go through both.

3 THE COURT: Okay. All right. I'll allow it.

4 BY MR. SLIFE:

5 Q So -- so with regard to that diagnosis, you don't  
6 disagree, based on what you saw in the veteran's records, that  
7 he had -- was diagnosed with PTSD at -- at the time he got out  
8 of the military?

9 A Correct.

10 Q And you don't disagree that as he sits here today,  
11 he currently has PTSD?

12 A Correct.

13 Q And -- all right. Now, the fact that he wasn't  
14 specifically treating for PTSD at the time of the shooting,  
15 that doesn't mean that he was just cured, right?

16 A Correct.

17 Q And, in fact, the lack of treatment for PSD [sic]  
18 could have made it worse?

19 A Possibly.

20 Q Okay. If I may talk to you a little bit about this  
21 term, avoidance, we heard this morning?

22 A Sure.

23 Q And that's -- you would agree that the DSM5 defines  
24 avoidance as an effort to avoid the thought or feelings  
25 associated with trauma, right?

1 A Yes.

2 Q And part of that definition is also to avoid  
3 activities, places, people, or situations that arouse  
4 recollection of the trauma?

5 A Yes.

6 Q In Luis's situation, you would agree that the trauma  
7 we're talking about, that -- that's -- the problem for him is  
8 combat in Afghanistan?

9 A That's the general trauma, yes.

10 Q Okay. The general trauma is his combat experience  
11 in Afghanistan?

12 A Yes.

13 Q And that was combat that involved Middle Eastern  
14 people in Afghanistan, right?

15 A The combat did, yes.

16 Q Correct. That combat involved IEDs, explosive  
17 devices?

18 A Yes.

19 Q That combat involved violence with guns?

20 A Yes.

21 Q That combat involved pretty much the continuous  
22 threat to his safety?

23 A Yes.

24 Q Now, going to Arizona Charlie's to gamble, that has  
25 nothing to do with combat in Afghanistan; you would agree?

1 A I would.

2 Q Hanging out with a blonde female has nothing to do  
3 with combat in Afghanistan?

4 A I would agree.

5 Q And, in fact, being with a blonde may help you to  
6 sort of avoid thoughts of trauma?

7 A That's possible.

8 Q Okay.

9 THE COURT: Is it just blondes?

10 MR. SLIFE: No -- no comment. I -- I walked into  
11 that one.

12 BY MR. SLIFE:

13 Q Doctor, knowing someone who's 6'3", 300 pounds of  
14 white male, that doesn't necessarily have anything to do with  
15 combat in Afghanistan; you would agree?

16 A I would agree.

17 Q You know, wanting to go home and just watch Netflix  
18 at your apartment has nothing to do with combat in  
19 Afghanistan?

20 A I would agree.

21 Q Okay. And then lastly, you would agree that PTSD is  
22 a brain-based condition?

23 A I would.

24 Q That affects the structure and chemical components  
25 of the brain?

1 A Yes.

2 Q That it affects how the brain works?

3 A Yes.

4 Q That can cause prolonged fight-or-flight syndrome  
5 that we've discussed?

6 A Yes.

7 Q Can limit people's capacity to make decisions?

8 A Yes.

9 Q Can limit the ability to consider consequences of  
10 actions?

11 A Yes.

12 Q And specifically, where combat trauma is concerned,  
13 when someone is confronted with a threatening situation, you  
14 would agree that a response could be somewhat automated,  
15 consistent with what -- with what they've been trying to do?

16 A Yes.

17 Q Okay. And then with regard to memory, you would  
18 agree that someone -- when someone suffers trauma, it is  
19 possible for them to not remember all or parts of that  
20 traumatic event?

21 A It is possible, yes.

22 Q Okay. You would agree that someone pulling a gun on  
23 someone is a traumatic event?

24 A It could be a traumatic event, yes.

25 Q Well, I think -- I think you referred to it as a

1 level 10 threat?

2 A Right. That most people would perceive that as a  
3 level 10 threat.

4 Q That is a -- that is the highest threat there is?

5 A It is.

6 Q All right. And your take was that when he got on  
7 the bus, sort of his executive function came back to him such  
8 that he was able to make decisions?

9 A Yes.

10 Q And that was on the bus?

11 A Yes.

12 Q Okay.

13 MR. SLIFE: May I have a moment?

14 THE COURT: Yes.

15 (Pause in proceedings.)

16 BY MR. SLIFE:

17 Q Last thing. Would you agree that people with PTSD  
18 can have trust problems?

19 A Yes.

20 Q And that could be with their family?

21 A Could be with anyone.

22 Q It could be with police?

23 A Yes.

24 Q Okay.

25 MR. SLIFE: Nothing further, Your Honor. Thank you.

1 THE COURT: Redirect?

2 MS. DiGIACOMO: Yes.

3 REDIRECT EXAMINATION

4 BY MS. DiGIACOMO:

5 Q You were talking about how his CEO functioning came  
6 back when he was on the bus?

7 A Yes.

8 Q All right. Let's go back to what the defendant said  
9 at -- when he was still at the scene after the second shot; do  
10 you recall what the defendant said his -- his actions were?

11 A After the second shot, he saw the father of the  
12 victim, thought he had a gun, ran away from the scene, threw  
13 his gun down, and then went towards Boulder Highway.

14 Q Now, are his actions somebody that could -- at that  
15 point, is the CEO -- CEO functioning?

16 A I'm not sure. I -- I do think that there is  
17 self-preservation involved in running away from a situation.  
18 And so that could be just responding to the threat and getting  
19 away from harm at that point. Hiding, I don't know if the gun  
20 was hidden, if somebody's hiding the gun or trying to cover up  
21 their -- cover up some aspect of their recent actions, that  
22 would suggest more of that CEO online. Just leaving the  
23 scene, I'm not sure that in itself would be considered.

24 Q But what about the fact that he saw somebody else  
25 coming at him with a gun --

UNCERTIFIED ROUGH DRAFT



1 MR. SLIFE: Object to leading.

2 MS. DiGIACOMO: It's a --

3 THE COURT: Overruled.

4 MS. DiGIACOMO: -- hypothetical.

5 THE COURT: Overruled.

6 MS. DiGIACOMO: Thank you.

7 BY MS. DiGIACOMO:

8 Q He saw somebody else coming at him with a gun and he  
9 made the decision to put his gun down and to leave?

10 A Yeah, that -- that does seem a little inconsistent  
11 with the level 10 fireman coming through the door.

12 Q Right.

13 A It does seem inconsistent.

14 Q If he's got PTSD, we've heard that the fire  
15 department stays there longer.

16 A Fleeing is also -- it's fight-or-flight, though. So  
17 it's possible. I would say it's hard to say just based on the  
18 -- the little fragment of information that we have about his  
19 thinking at that time.

20 Q So it's possible he could have been thinking right  
21 after the shooting at the second shot when he got rid of -- or  
22 put the gun down, it's possible?

23 A Possible.

24 Q But in your opinion, though, he was thinking by the  
25 time that bus was stopped?

1 A Yes.

2 Q All right. Now, you were asked questions about PTSD  
3 for Vietnam War vets versus PTSD for the Iraq and Afghanistan  
4 war vets. And they -- they could have different symptoms.  
5 But under the DSM5 for the diagnosis, it's still the same  
6 diagnosis of PTSD?

7 A Same diagnosis, same criteria. It's just that the  
8 triggers may be different or they may manifest a little bit  
9 differently.

10 Q Right. And we saw Dr. Boyd go through with the five  
11 different requirements that within that one of the symptoms  
12 have to be required or two, but not all of them?

13 A Correct.

14 Q So different people are going to exhibit different  
15 symptoms?

16 A Yes.

17 Q Now, with regard to whether or not you asked the  
18 defendant to do a demonstration about how he got the gun,  
19 okay, you didn't, correct?

20 A I did not ask him for a demonstration.

21 Q All right. Did he tell you verbally how he got the  
22 gun away?

23 A He just said it happened so fast.

24 Q Now, with regard to whether or not you gave the  
25 defendant a clinical test, the CAPS test, did you have a need

1 to do that?

2 A I did not.

3 Q And why not?

4 A Because his diagnosis appeared to be so solidly  
5 established that I didn't think that I needed to do any  
6 additional assessment either to confirm or refute the  
7 diagnosis. It seemed like it was not really something to --  
8 to question. It seemed pretty solid.

9 Q Now, with regard to the trauma-related triggers,  
10 you've -- you've heard the -- the testimony, I -- I believe  
11 Dr. Boyd said it as well as some family members, his triggers  
12 were more potholes, Middle Eastern men, and loud noises?

13 MR. SLIFE: Judge, object to leading.

14 THE COURT: Overruled.

15 BY MS. DiGIACOMO:

16 Q Okay. His -- his triggers were potholes, Middle  
17 Eastern men, and loud noises, okay?

18 A Yes.

19 Q So being in a situation like this where an  
20 ex-boyfriend wants to confront and talk to the girlfriend, and  
21 he's involved --

22 MR. SLIFE: Objection to leading.

23 THE COURT: Overruled.

24 MS. DiGIACOMO: I mean, it's a -- thank you.

25 BY MS. DiGIACOMO:

1 Q That wouldn't be a trauma-related trigger for him,  
2 that situation, would it?

3 A No.

4 Q Now, I had asked you before about, you know,  
5 assuming the defendant's account is true, whether or not there  
6 was any PTSD -- oh, I forgot the term I used. Whether or not  
7 any of his behavior was unique to somebody with PTSD?

8 A Correct.

9 Q And you said no?

10 A Correct.

11 Q All right. Now, what about assuming the accounts of  
12 the other witnesses, like Tim Hildebrand and his dad's account  
13 are correct, did the defendant exhibit any unique --

14 MR. SLIFE: Objection. Leading.

15 THE COURT: Overruled.

16 BY MS. DiGIACOMO:

17 Q Did the defendant exhibit any unique behavior --  
18 behaviors unique to PTSD, if you believe that scenario is  
19 true?

20 A No.

21 Q And why -- why is your opinion no there?

22 A Because there was no anxiety, avoidance, the kinds  
23 of symptoms that we heard about earlier, distress, none of  
24 those accounts describe Mr. Pimentel as being distressed. In  
25 fact, one of the accounts actually was suggesting that he

1 was --

2 MR. SLIFE: May we approach, Your Honor?

3 THE COURT: No. You have an objection, state it  
4 right now. Just what is the objection? The legal grounds,  
5 and then I'll see if I need you to approach.

6 MR. SLIFE: Beyond the scope of what our expert  
7 testified to.

8 THE COURT: Okay. Overruled.

9 THE WITNESS: One of the accounts was that he  
10 appeared to be in a sort of positive emotional state almost at  
11 the time.

12 BY MS. DiGIACOMO:

13 Q What do you mean by a positive emotional state?

14 A That he may have made facial expressions or laughed  
15 a little bit in such a way that suggested he was in a positive  
16 emotional state.

17 Q And that's the defendant you're talking about?

18 A Correct.

19 Q All right. So -- and is it fair to say that with  
20 either one of the scenarios, the defendant scenario or the  
21 other witnesses scenario, that -- that it makes no difference  
22 if somebody has PTSD or doesn't have PTSD, they'll -- they'll  
23 react the same way?

24 A In both scenarios, the behaviors that are described  
25 are not indicative of PTSD symptoms at the time.

1 MS. DiGIACOMO: Nothing further.

2 THE COURT: Cross?

3 MR. SLIFE: Just one last.

4 RECROSS-EXAMINATION

5 BY MR. SLIFE:

6 Q So it appeared that he was in a positive mood the  
7 day before this incident?

8 A So I'm -- what I was referring to is Tim  
9 Hildebrand's testimony specifically about what he observed at  
10 the time of the shooting. And he made some statement about  
11 there being some -- some expressed emotion that was positive  
12 around that time.

13 Q Okay. And -- and that -- and that's when we're not  
14 sure whether that CEO was functioning or not?

15 A Correct.

16 Q Thank you.

17 MR. SLIFE: Nothing further.

18 MS. DiGIACOMO: Well, wait.

19 FURTHER REDIRECT EXAMINATION

20 BY MS. DiGIACOMO:

21 Q When he said we're not sure if that CEO was  
22 functioning or not, you were talking about after the shooting  
23 before?

24 A The -- the Tim Hildebrand statement that I'm  
25 referring to is the statement about Mr. Pimentel's demeanor in

UNCERTIFIED ROUGH DRAFT

1 between the first and the second shot.

2 Q Okay. Okay. So at that point, though, if -- if  
3 somebody does this, which -- and Mr. Hildebrand's scenario,  
4 there's not a level 10 threat to the defendant?

5 A Right. And Mr. Hildebrand's scenario, there would  
6 not have been a level 10 threat.

7 MR. SLIFE: Judge, objection to speculation as to  
8 what Mr. Hildebrand may or may not have observed.

9 THE COURT: Overruled.

10 MS. DiGIACOMO: Okay.

11 BY MS. DiGIACOMO:

12 Q So with regard to Mr. Hildebrand's scenario as to  
13 what happened, there's not a level 10 threat against the  
14 defendant?

15 MR. SLIFE: Objection to foundation. I don't think  
16 Mr. Hildebrand testified whether the threat was to a level 10  
17 or not.

18 THE COURT: Overruled.

19 BY MS. DiGIACOMO:

20 Q Go ahead, Doctor.

21 A So Mr. Hildebrand gave a different account than the  
22 defendant did. And so the defendant gave an account of a  
23 level 10 threat, which would have activated the full-out  
24 stress response, full-out trauma response.

25 Q The fight-or-flight?

1           A     The fight-or-flight response. Mr. Hildebrand gave a  
2     -- a contrasting account where the defendant would not have  
3     been facing a level 10 threat and therefore would not have had  
4     the full-out response.

5           Q     The fight-or-flight?

6           A     The fight-or-flight response.

7           Q     So the fire department wouldn't have come in that  
8     scenario?

9           A     Correct.

10          Q     And we didn't have to worry about when the CEO  
11     started thinking again, because there's no fire department  
12     called out?

13          A     In -- in Mr. Hildebrand's scenario, the CEO never  
14     leaves the room.

15          Q     Okay. So the CEO's in charge the whole time with  
16     Mr. Hildebrand's scenario?

17          A     In that scenario, yes.

18          Q     Yeah. Okay. Thank you.

19                 MS. DIGIACOMO: Nothing further.

20                 THE COURT: Cross?

21                 MR. SLIFE: May I have a moment?

22                         (Pause in proceedings.)

23                         FURTHER RECROSS-EXAMINATION

24     BY MR. SLIFE:

25           Q     Okay. Mr. Hildebrand, you saw in his statement that

UNCERTIFIED ROUGH DRAFT



1 he was very clear that Bobby had punched Mr. Pimentel first?

2 A Yes.

3 Q I don't know what level that is, but you would  
4 consider that a threat?

5 A Yes.

6 MR. SLIFE: Nothing further.

7 THE COURT: Okay. May this witness be excused?

8 MS. DiGIACOMO: Yes.

9 THE COURT: Thank you very much for your testimony.

10 THE WITNESS: Thank you.

11 THE COURT: All right. Do you have any other  
12 witnesses?

13 MR. BATEMAN: One or two quick ones.

14 THE COURT: All right. So we need to take a break.

15 Jury ready for a break? Okay. All right. So let's see. All  
16 right. We'll be in recess until quarter till 4:00.

17 Ladies and gentlemen of the jury, during this recess  
18 it is your duty not to converse among yourselves or with  
19 anyone else on any subject connected with the trial or to  
20 read, watch, or listen to any report of or commentary on the  
21 trial by any person connected with the trial or by any medium  
22 of information, including, without limitation, newspaper,  
23 television, radio, or Internet, and you're not to form or  
24 express an opinion on any subject connected with this case  
25 until it's finally submitted to you.

1 We'll be in recess until quarter till 4:00.

2 (Jury recessed at 3:24 p.m.)

3 THE COURT: And record will reflect that the jury  
4 has departed the courtroom. Are there any matters outside of  
5 the presence?

6 MS. LEMCKE: Yeah, Your Honor. I just want to make  
7 a record on the fact -- on our objection to when the  
8 prosecution on redirect elicited testimony from Dr. Piasecki,  
9 basically asked her to opine as to whether or not there was a  
10 fight-or-flight response involved in Mr. Hildebrand's  
11 scenario. No. 1, it went beyond the scope of their own direct  
12 examination, they didn't bring that out on direct examination.  
13 No. 2, it went well beyond the scope of anything that our  
14 expert testified to. Our expert simply said, Look, when there  
15 is a threatening situation -- she never offered an opinion as  
16 to when that -- you know, what constitutes a -- a threatening  
17 situation relative to these facts. She just said when there  
18 is a threatening situation, fight-or-flight kicks in. We  
19 never asked her, well, you know, is this situation qualified  
20 as something under which the fight-or-flight response kicks  
21 in? Does this one qualify?

22 Then the State gets into that and they have some --  
23 apparently a threat level scale of which I've never heard  
24 before for which they laid zero foundation, well, what  
25 qualifies as a one or a two or a three or a four or a five or

1 a six and so. So we have no idea what this witness designated  
2 as a level 10, nor do we have any idea as to what threshold,  
3 is it a five that kicks you into flight or -- fight-or-flight?  
4 Is it a two that kicks you into fight-or-flight? Or does it  
5 have to be a 10?

6 So that was the basis for our objection as to that  
7 particular line of inquiry. And I just wanted to make the  
8 record very clear, and I think it was wildly prejudicial  
9 because of her offering an ultimate opinion as to whether or  
10 not our client would have been in flight or -- fight-or-flight  
11 response at any particular time.

12 MS. DiGIACOMO: Well, Your Honor, first of all, as  
13 we stand here before our expert testified, you know, we didn't  
14 even know how the PTSD was relevant whatsoever to what  
15 happened that -- that morning of the shooting, because their  
16 expert didn't give any opinions as to it. We have the  
17 defendant's version, they put on -- he's got PTSD, put on  
18 other people, he's a war veteran, he's got PTSD. But they've  
19 never related it to the crime.

20 With our expert, we related it to the crime, because  
21 we assume that's what they're going to argue. So it's not  
22 wildly prejudicial.

23 And also, when our expert was talking and she was  
24 using the level 10 threat, she was agreeing with Ms. Boyd and  
25 using Ms. Boyd's terminology. So there's nothing prejudicial

1 about what the State did. They put PTSD in front of the jury,  
2 they didn't give any relevance to it, so the State was trying  
3 to do that, because we're the ones that have the burden of  
4 proof here.

5 THE COURT: All right. And so --

6 MS. LEMCKE: May -- may I just say something very  
7 briefly, Your Honor. They can't put on evidence based on what  
8 they assume something is going to show. They have to put on  
9 evidence to directly rebut what we've done, not what they  
10 assume hypothetically somewhere down the road may occur. And  
11 that -- with that, I'll submit it.

12 MS. DiGIACOMO: Well, we could also argue relevance  
13 as to why PTSD has even come in at this point. Because the  
14 defendant never testified that his PTSD affected his intent at  
15 the time of the killing. They've gone with self-defense, so  
16 it was justified. We don't even know -- all PTSD might get  
17 you is from a first to a second. And we have no idea how it's  
18 connected as they closed their case.

19 So it looks to the State that they're putting it on  
20 for other reasons, mitigation.

21 THE COURT: Well, at the bench I did ask that. And  
22 as the Court indicated, that I couldn't see that the defense  
23 expert had really tied the diagnosis of PTSD to the facts of  
24 the case in any way of -- and make it relevant. Ms. Lemcke  
25 disagreed at that point at the bench and said no, that she

1 believed that she had and went through several questions that  
2 she believed did elicit that. So that being the case, I mean,  
3 that's just, I suppose, my perception of it. Ms. Lemcke has a  
4 different perception of what the evidence showed.

5 But based upon her argument that did -- did tie it  
6 up, that then it's perfectly proper for -- for the State in a  
7 rebuttal case to ask hypothetical questions based upon the  
8 evidence that's before the jury. And that's what was done.

9 Moreover, of course, experts can opine as to the  
10 ultimate conclusion in a trial. In this case, of course, they  
11 didn't, either -- either one. But certainly the opinions that  
12 were given by this expert didn't go beyond what an expert may  
13 testify about. And I don't feel it was -- I mean, of course,  
14 all evidence brought by the State is prejudicial.

15 The question is, is it more prejudicial than  
16 probative? If it wasn't prejudicial, i.e., it wasn't  
17 supportive of their case, they wouldn't put it on, because it  
18 wouldn't be relevant. It wasn't more prejudicial than  
19 probative. And -- and since the objection that was stated at  
20 -- from counsel table seemed to be objecting basically to the  
21 objection was relevance, it was relevant, and it was a proper  
22 hypothetically and that's why I overruled the objection.

23 So thank you much. We'll be in recess until quarter  
24 till 4:00.

25 (Court recessed at 3:30 p.m., until 3:45 p.m.)

1 (Outside the presence of the jury.)

2 THE COURT: All right. We're back on the record.  
3 And the record will reflect we're outside the presence of the  
4 jury.

5 MR. BATEMAN: Thank you, Your Honor. Our next  
6 witness, or one of the next two, was Detective Williams, who  
7 was involved in the investigation. Obviously, he came in and  
8 testified. We were going to introduce -- there was a search  
9 warrant executed on the --

10 MS. LEMCKE: Stricken.

11 MR. BATEMAN: -- I'm sorry, on the Siegel Suites of  
12 Mr. Pimentel's apartment --

13 THE COURT: Right.

14 MR. BATEMAN: -- where they found -- they took  
15 photographs of the interior and they found a small amount of,  
16 well, .87 grams of methamphetamine, scales, baggies, things  
17 like that. We didn't initially put this in in our case in  
18 chief because of Your Honor's ruling that the methamphetamine  
19 sales weren't coming in unless the door was open. And so --  
20 right. And they kind of opened it wide. And we didn't know  
21 that that -- now, I guess I could have gone through this with  
22 the defendant, these photographs. But what I assumed I would  
23 do is just bring these in -- instead of just randomly the  
24 defendant, Well, you sell methamphetamine, here you, you know,  
25 go.

1 MS. DiGIACOMO: We're just going to bring in the ---  
2 the search warrant that was executed --

3 MR. BATEMAN: Right.

4 MS. DiGIACOMO: --- in our case.

5 MR. BATEMAN: I was just going to have the detective  
6 testify that --- to introduce the contents of the Siegel  
7 Suites, the search warrant was executed.

8 THE COURT: How is it, though, what's --- what's  
9 the --

10 MR. BATEMAN: It doesn't --

11 THE COURT: -- relevance or what's the --

12 MS. DiGIACOMO: Yeah, it does.

13 THE COURT: --- rebuttal? I mean --

14 MR. BATEMAN: Well, there's --

15 THE COURT: -- how is it rebutting?

16 MR. BATEMAN: -- there's some baggies in this  
17 particular search of his apartment that are similar to the  
18 baggies that are -- the baggie that's found with the --

19 MS. DiGIACOMO: Yeah, it's the -- it's the exact --

20 MR. BATEMAN: -- with the victim. It just shows  
21 some sort of level of connection, is all.

22 MS. DiGIACOMO: It's to rebut the fact defendant  
23 says he did not know the victim, doesn't know why he lived --  
24 he knew his apartment, that the baggie that was in the  
25 victim's pocket with the little ice cream cones, defendant had

1 the same ones in his apartment.

2 MR. BATEMAN: If Your Honor was agreeing to let us  
3 go down that road, what I -- I think there was a stipulation  
4 that we could just put the photos in and these photos were  
5 taken -- a stipulation that this was from the search warrant  
6 that was done that night at his apartment.

7 THE COURT: Okay.

8 MR. BATEMAN: But it's up -- you know, I'm --

9 THE COURT: I appreciate --

10 MR. BATEMAN: -- submitting it to Your Honor.

11 THE COURT: -- it has some relevance in that regard.

12 I mean, I know that there was some testimony that he didn't  
13 know the victim. There was also testimony from Amanda that  
14 she'd been over there many times waiting for --

15 MR. BATEMAN: With Bobby.

16 THE COURT: Yeah, with Bobby, while she stayed in  
17 the car and he went up there. But -- so I guess, I don't  
18 know, what's your position?

19 MS. LEMCKE: Well, I mean, I -- we would just argue  
20 that it's -- that it's not really anything to rebut, because  
21 our guy conceded that he dealt methamphetamine, and Amanda  
22 conceded that she had methamphetamine that she had gotten from  
23 our client. You know, it's not really any surprise that there  
24 was a baggie of similar sort that ended up in the decedent's  
25 pocket. And I -- while I don't do -- deal methamphetamine nor



1 do I purchase it, I would assume that these baggies are not  
2 entirely unique such that only my client would have access to  
3 it.

4 So I would just argue that it's really not offered  
5 to rebut anything. We've conceded he dealt meth, he did meth.  
6 It's in the record. It's not really to rebut anything.

7 However, so we would just object to, you know, the  
8 photos of the meth that was found in his place coming in. But  
9 to the extent that Your Honor is going to overrule the  
10 objection and allow it in, we would stipulate to just put it,  
11 you know, as to foundation. So that if Your Honor rules that  
12 it's proper rebuttal evidence and it comes in, we're not going  
13 to make the State call a live witness to actually put them in.  
14 They can just put the photos in.

15 MS. DiGIACOMO: And, Your Honor, I disagree. They  
16 did not concede. In fact, you know, said the opposite.  
17 Defendant said he didn't know him, had no idea why he was at  
18 his house. Amanda said she bought the drugs from him, you  
19 know, days before. But this was the drugs they had on your --  
20 the baggie with residue had on him that night.

21 And, you know what, I will -- I don't even know  
22 where to buy the little tiny drug baggies that have ice cream  
23 cones on them. So I don't know how easy they are to find.  
24 But this is -- it's the exact same type of baggie, which  
25 connects them to our victim, that he did know him.

1 THE COURT: They don't have them at Smith's, that's  
2 all I know.

3 MS. DiGIACOMO: No, they don't. And I have five  
4 different sizes of Ziplocs in my house. I do Ziplocs. I've  
5 never seen these. Because they're the small ones.

6 THE COURT: All right. Well, I'm going to allow it  
7 in, although I don't know whether you want some type of  
8 instruction or admonition that it's for the -- that limited  
9 purpose or you don't want to draw attention to it, I don't  
10 know.

11 MS. LEMCKE: Oh, yeah. No. I mean, if they're --  
12 if you're -- if they -- if you're going to let it in, then I  
13 just say --

14 MR. BATEMAN: I guess I --

15 MS. LEMCKE: -- put it in.

16 MR. BATEMAN: -- can put -- I can put the detective  
17 on.

18 MS. LEMCKE: Oh, no.

19 MR. BATEMAN: It'll take two minutes.

20 MS. LEMCKE: Oh, god, no.

21 MR. BATEMAN: Just to say what they are.

22 MS. LEMCKE: I don't care.

23 MR. BATEMAN: Or we can -- I mean, it -- otherwise,  
24 it's kind of like they're --

25 MS. DiGIACOMO: Yeah, it just --

1 MR. BATEMAN: -- they're baggies related to -- I --  
2 we probably need to do five minutes.

3 MS. DiGIACOMO: Actually, I think it -- yeah, I  
4 think we do need the detective to show that those are the  
5 baggies that are used with drug dealing. Because that hasn't  
6 come in, even though --

7 THE COURT: Right.

8 MS. DiGIACOMO: -- there -- what was in the --

9 THE COURT: There's no baggies --

10 MS. DiGIACOMO: Yeah, I think --

11 THE COURT: -- in evidence.

12 MS. DiGIACOMO: It'll be quick.

13 MR. BATEMAN: It'll be fast.

14 MS. LEMCKE: But what we [indiscernible] that he's  
15 dealing drugs. We -- you can just do a stipulation, and, like  
16 these were found into the -- this was -- these are photos of  
17 defendants apartment --

18 MS. DiGIACOMO: And you'll stipulate that when he  
19 broke up the meth to sell it, he used those baggies?

20 MR. BATEMAN: He's got a scale.

21 MS. LEMCKE: Well, I mean, I -- I mean --

22 MR. SLIFE: You've already said meth dealer.

23 MS. LEMCKE: I mean, yeah, of course, he's using the  
24 scale.

25 MS. DiGIACOMO: I know, but we wanted to be able to

1 use it to rebut that he -- whether, you know, his statements  
2 that he didn't know the victim.

3 THE COURT: Well, yeah, that's the only reason it's  
4 really relevant at this point on rebuttal with the -- for that  
5 purpose.

6 MS. DiGIACOMO: Oh, that he didn't know where it  
7 lived. You know, so.

8 THE COURT: But do we have any evidence of what the  
9 baggie looked like that --

10 MS. DiGIACOMO: Well, the detective used to work  
11 narcotics, so we can do based on his training and experience,  
12 this is what a scale's used for, these are what these baggies  
13 are used for, and this is meth.

14 THE COURT: Well, yeah, but I mean, do we have any  
15 -- anything that connects it to the drugs that Amanda had that  
16 she said she bought from --

17 MR. BATEMAN: There was a -- a baggie --

18 MS. DiGIACOMO: Yeah, in -- it's already in  
19 evidence. The -- the baggie with residue that was taken out  
20 of the victim's pocket with the meth pipe --

21 THE COURT: Oh.

22 MS. DiGIACOMO: -- it's the exact same baggie.

23 THE COURT: Oh, okay. Okay.

24 MR. SLIFE: Yeah, but, Judge, couldn't he have  
25 gotten that baggie from Amanda, who got -- who said she got

1 drugs from Mr. Pimentel? You know, just because -- just  
2 because he has those baggies in his apartment doesn't mean  
3 that Bobby necessarily went to his house and bought it at his  
4 house.

5 THE COURT: But that --

6 MS. DiGIACOMO: But it's an inference you can make.

7 THE COURT: -- that goes to the weight. Right?

8 That goes to the weight, not the admissibility. So I'm going  
9 to allow it.

10 MR. BATEMAN: I'll burn through it fast.

11 THE COURT: Okay.

12 MR. BATEMAN: Can I approach your clerk?

13 THE COURT: Yes.

14 (Pause in proceedings)

15 THE COURT: Anything else? You have a second  
16 witness, as well?

17 MS. DiGIACOMO: Yeah, but she'll be quick.

18 THE COURT: Okay.

19 MS. DiGIACOMO: It's just the statements I couldn't  
20 get in in our direct or in case in chief.

21 THE COURT: Okay. Are we ready to --

22 MR. BATEMAN: Yes.

23 THE COURT: -- bring the jury back in?

24 (Pause in proceedings.)

25 (Jury reconvened at 3:52 p.m.)

1 THE COURT: All right. Please be seated. All  
2 right. Thank you. And the record will reflect that we've now  
3 been joined by all 12 members of the jury and the remaining  
4 two alternates. Will counsel so stipulate?

5 MR. BATEMAN: Yes, Your Honor.

6 MR. SLIFE: Yes, Your Honor.

7 THE COURT: Thank you. And you may call your next  
8 witness.

9 MS. DiGIACOMO: Thank you. Your Honor, the State at  
10 this time recalls Shannon Salazar.

11 MS. LEMCKE: Your Honor, can we approach before we  
12 get started here?

13 THE COURT: Sure.

14 (Off-record bench conference.)

15 THE COURT: Okay. Proceed.

16 MS. DiGIACOMO: Thank you.

17 SHANNON SALAZAR, STATE'S WITNESS, SWORN

18 THE CLERK: Please state -- please be seated and  
19 state your first and last name and spell it, please.

20 THE WITNESS: Shannon Salazar, S-H-A-N-N-O-N  
21 S-A-L-A-Z-A-R.

22 THE CLERK: Thank you.

23 THE COURT: You may proceed.

24 MS. DiGIACOMO: Thank you, Your Honor.

25 DIRECT EXAMINATION

UNCERTIFIED ROUGH DRAFT

1 BY MS. DiGIACOMO:

2 Q All right, Ms. Salazar. I want to go back to the  
3 night of the shooting, and do you recall when you were  
4 discussing that Tim had told Amanda that Bobby had been shot?

5 A Yes.

6 Q Okay. And what was Amanda's reaction? What did she  
7 say when Tim told her Bobby had been shot?

8 A She asked where Lorenzo was.

9 Q Okay. Did she say anything about Bobby?

10 A She said, Fuck Bobby.

11 Q All right. Now, would it refresh your recollection,  
12 well -- is -- is -- do you recall is that the exact statement  
13 she -- she stated?

14 A Yes.

15 Q All right. Did you make a statement to police?

16 A Yes.

17 Q And that was on January 2nd of 2014?

18 A Yes.

19 Q All right. And do you recall telling them what she  
20 said?

21 A Yes.

22 Q Do you recall if it was Fuck Bobby or something  
23 else?

24 A I believe it was Fuck Bobby.

25 Q All right. Would it refresh your recollection to

1 look at your statement?

2 A Probably.

3 MS. DiGIACOMO: May I approach, Your Honor?

4 THE COURT: You may.

5 BY MS. DiGIACOMO:

6 Q Okay. I'm going to show you a typed statement. Do  
7 you recognize this?

8 A Yes.

9 Q All right. And did you -- have you reviewed it  
10 before?

11 A Yes.

12 Q All right. I'm going to ask you to -- to look at  
13 the bottom of page 12 and then into the top of page 13, if you  
14 could read your answer. And then just read it to yourself and  
15 let me know when you're done, please.

16 A Okay.

17 Q All right. Does that refresh your recollection as  
18 to -- as to what you told the police?

19 A Yeah.

20 Q I'm sorry?

21 A Yes.

22 Q Okay. What did Amanda -- or what did you tell the  
23 police that Amanda said when Tim said, Bobby just got shot?

24 A She had said that she was looking -- Tim asked her  
25 where she wanted to go.



1 Q No, no, no.

2 A [Indiscernible.]

3 Q What did --

4 A I'm sorry.

5 Q Okay. Was -- I'm going back to where you just said

6 Amanda said, Fuck Bobby.

7 A Uh-huh.

8 Q And then I showed you your statement. Did you tell

9 the police what Amanda said when Tim told her Bobby'd been

10 shot?

11 A Concerning, like, I don't -- I don't give a fuck

12 about Bobby, where's Lorenzo? That's --

13 Q Okay. Yes. Is that what you told the police?

14 A Yes.

15 Q I don't give a fuck about Bobby?

16 A Uh-huh.

17 Q Is that a yes?

18 A Yes. Fine.

19 Q And then you said all she cared about was where's

20 Lorenzo?

21 A Yes.

22 Q All right. Now, did she -- did she use the term

23 Lorenzo, or did she use the --

24 A She's -- her baby.

25 Q Okay. So she asked where's her baby?

1 A Yes.

2 Q Did anyone ask whose baby?

3 A We were -- didn't know who she was talking about.

4 And Tim had asked her who -- or do you mean Lorenzo? And --

5 Q And what did she say?

6 A -- she said yes.

7 Q Okay. Now, do you recall before the shooting

8 happened, being in the car with Amanda and talking to her?

9 A Yes.

10 Q All right. And -- well, I think you testified

11 before that she was saying some negative things about Bobby?

12 A Yes.

13 Q All right. Do you recall her making some comment

14 about if something doesn't happen to Bobby tonight?

15 MR. SLIFE: Object to leading.

16 THE COURT: Overruled.

17 THE WITNESS: She had said that if Lorenzo didn't

18 take care of Bobby tonight, that her uncle would tomorrow.

19 BY MS. DIGIACOMO:

20 Q Okay. Did she say anything else about that?

21 A Not that I can remember.

22 Q And that was being -- that was while you were

23 sitting in the car right before the shots?

24 A Yes.

25 Q All right. And then when the shots occurred, did

1 she know that shots had just occurred?

2 MR. SLIFE: Object to speculation.

3 MS. DiGIACOMO: All right. We'll --

4 THE COURT: Sustained.

5 MS. DiGIACOMO: Okay.

6 BY MS. DiGIACOMO:

7 Q Did she indicate to you with what she said that she  
8 knew shots had just occurred?

9 A No.

10 Q All right. Did you or her say to each other about  
11 -- talk to each other about getting out of the car?

12 A Yes. I told her -- she said, Why don't you go  
13 look --

14 MR. SLIFE: Object to hearsay about what she said.

15 MS. DiGIACOMO: Well, Your Honor, I did ask Amanda  
16 about this, as well.

17 THE COURT: Overruled.

18 THE WITNESS: She -- she told me to go out and look.

19 BY MS. DiGIACOMO:

20 Q And did you do that?

21 A Yes.

22 Q And what did you say to her when you went to look?

23 A I said that of course I want to go, because there  
24 are people out there that I love, you know. So I wanted to  
25 make sure everything was okay.

1 Q So you got out of the car that way?

2 A Yes, I did.

3 MS. DiGIACOMO: I have nothing further.

4 THE COURT: Cross.

5 CROSS-EXAMINATION

6 BY MS. LEMCKE:

7 Q Now, you indicated that that's all Amanda said about  
8 where Bobby was concerned; is that right?

9 A Yes.

10 Q That's the only thing you heard her say about Bobby  
11 and Luis?

12 A Yes.

13 Q So you didn't hear -- she didn't say anything to  
14 you, like, Luis and I have hatched a plan to do something to  
15 Bobby?

16 A No.

17 Q She didn't say anything about, Well, Luis and I have  
18 had these discussions in the back of the car about something  
19 happening to Bobby?

20 A No.

21 Q She just made these random statements to you?

22 A Not random. They're just statements as everything  
23 occurred.

24 Q Right. And -- and they were just statements from  
25 her?

1 A Yes.

2 Q Okay. And around that time that night, it was about  
3 4:00 in the morning?

4 A Yes.

5 Q Had you been using methamphetamine that morning?

6 A No.

7 Q Have you used methamphetamine since then?

8 MS. DiGIACOMO: Objection, Your Honor. Relevance?

9 MS. LEMCKE: Goes to her ability to perceive and  
10 recall it.

11 THE COURT: Have you -- are you under the influence  
12 of --

13 THE WITNESS: No, no, no.

14 THE COURT: -- meth today?

15 THE WITNESS: No, no.

16 THE COURT: Have you taken any meth in the last 24  
17 hours?

18 THE WITNESS: No.

19 BY MS. LEMCKE:

20 Q Since this -- how about since this event?

21 MS. DiGIACOMO: Objection, Your Honor.

22 THE COURT: Sustained.

23 THE WITNESS: No.

24 MS. LEMCKE: Court's indulgence. I have nothing  
25 further, Your Honor.

1 THE COURT: Any redirect?

2 MR. BATEMAN: No.

3 MS. DiGIACOMO: No.

4 THE COURT: All right. Thank you. You may be  
5 excused.

6 MS. DiGIACOMO: Yes.

7 THE COURT: Thank you for your testimony. And you  
8 may call your next witness.

9 MR. BATEMAN: Tod Williams. May I approach your  
10 clerk?

11 THE COURT: Yes.

12 (Pause in proceedings.)

13 TOD WILLIAMS, STATE'S WITNESS, SWORN

14 THE CLERK: Please be seated. Please state and  
15 spell your first and last name, spell it for the record.

16 THE WITNESS: Detective Tod, T-O-D, Williams,  
17 W-I-L-L-I-A-M-S.

18 THE COURT: You may proceed.

19 DIRECT EXAMINATION

20 BY MR. BATEMAN:

21 Q Sir, I'm going to just direct your attention to a  
22 search warrant that was executed at the Siegel Suites; are you  
23 aware of that?

24 A Yes, I am.

25 Q And was it -- the search warrant executed on what

1 you believed at the time to be the defendant's apartment?

2 A Yes, it was.

3 Q Is that No. 3034 on the third floor?

4 A Yes, it was.

5 Q As part of executing the search warrant, do  
6 detectives and CSAs go into the room?

7 A Yes.

8 Q And is it documented the same as other processing  
9 that we've heard in this particular case, photographs,  
10 collecting evidence?

11 A Yes.

12 Q Okay. And are you familiar with the evidence that  
13 was impounded and -- and photographed from that particular  
14 apartment, as well as the interior of the apartment?

15 A Yes, I am.

16 MR. BATEMAN: May I approach the witness, Your  
17 Honor?

18 THE COURT: You may.

19 MR. BATEMAN: And I've shown counsel what's been  
20 marked as State's Proposed 124 through 156.

21 BY MR. BATEMAN:

22 Q If you'd just look through these photos for me real  
23 quick, and when you're done, let me know.

24 MR. SLIFE: And, Judge, just so the Court's aware,  
25 we're fine with stipulating to these photographs.

1 THE COURT: You -- you do not object to them being  
2 admitted into evidence?

3 MR. SLIFE: No objection.

4 THE COURT: All right. They'll be admitted.

5 (State's Exhibit 124 through 156 admitted.)

6 BY MR. BATEMAN:

7 Q Do those appear to be the photographs of the  
8 interior of the apartment?

9 A Yes, they do.

10 Q Okay. And in particular, in the interior of this  
11 apartment, were there any items of evidentiary value --

12 THE CLERK: [Indiscernible.]

13 MR. BATEMAN: I'm sorry, 124 through 156.

14 BY MR. BATEMAN:

15 Q -- related to methamphetamine or methamphetamine  
16 sales?

17 A Yes, there was. There were -- was a small pill  
18 bottle that had a small amount of substance that later was  
19 tested to be found to be methamphetamine. There was a small  
20 scale commonly used to weigh out methamphetamine, and there  
21 was numerous amounts of small baggies as used to package  
22 methamphetamine.

23 Q Showing you what's been marked --

24 MR. BATEMAN: May I publish, Your Honor, briefly?

25 THE COURT: You may.



1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

LUIS PIMENTEL,  
  
Appellant,  
  
vi.  
  
THE STATE OF NEVADA,  
  
Respondent.

---

## 10

11  
12  
13  
14

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

ADAM LAXALT  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(702) 687-3538

## Counsel for Respondent

## 17

18  
19  
20

21  
22

HOWARD S. BROOKS  
WILL WATERS

22  
23

LUIS PIMENTEL  
NDOC # 1144889  
c/o ELY STATE PRISON  
PO Box 1989  
Ely, NV 89301

BY \_\_\_\_\_  
Employee, Clark County Public Defender's Office