

1 whole statement. He didn't know how they had occurred or even if
2 she had any injuries.

3 Q: Okay. Did he ever during the course of the interview
4 refer to her as being crazy or mentally ill? Do you recall that?

5 A: Yes, he did.

6 Q: What do you remember about him saying she's just crazy
7 or words to that effect?

8 A: During the course of our interview, I don't know if it
9 was another portion of the investigation or during our interview.
10 I believe he said where it was information that they had met in
11 Montevista and that he was in there for alcohol problem that he was
12 trying to get treatment for and she was in there for a mental
13 illness. And he just basically letting me know that he felt she
14 was crazy.

15 Q: And was -- did he relay that information to you to --
16 in a rather dismissive way with respect to anything that she might
17 have said --

18 MS. PALM: Objection, leading.

19 MR. LALLI: -- occurred?

20 THE COURT: Sustained.

21 BY MR. LALLI:

22 Q: Well, what was the context of the -- the -- of this
23 discussion about Victoria being crazy?

24 A: The gist of it that I got out of it was that anything
25 that he said that she was setting him up or that she was just plain

1 crazy and everything that she was telling us that -- that she was
2 mental.

3 Q: Okay. Now, did you have a conversation with Mr.
4 O'Keefe about a battery case that occurred in 2003?

5 A: Yes, sir.

6 Q: During the course of your discussions, did you show Mr.
7 O'Keefe certain photographs?

8 A: Yes, I did.

9 MR. LALLI: May I approach the witness, Your Honor?

10 THE COURT: Yes.

11 BY MR. LALLI:

12 Q: I'm going to show you State's Exhibit Number 6. I know
13 you didn't show that specific exhibit to him, but the photos that
14 are depicted in that exhibit, did you -- did you show those to Mr.
15 O'Keefe?

16 A: Yes, I did, sir.

17 Q: And did you -- did you ask him about -- tell us what
18 your -- what your conversation with respect to those photos was?

19 A: In respect to me bringing out these photos and talking
20 about some of the past history was due to the fact that he was
21 changing the story. I wanted to know whether or not he was denying
22 the allegations that she was making as to whether or not he had
23 battered or sexually assaulted her. I asked him whether or not he
24 had been truthful with the investigators or what the officers that
25 dealt with this specific investigation.

1 Q: The 2003 investigation?

2 A: Yes, sir.

3 Q: Okay.

4 A: Which she eventually said that he had not been
5 initially -- that he had lied to the investigators during that --
6 during that investigation of 2003. I believe later he had admitted
7 his guilt in Court as how I recall.

8 Q: When you confronted the Defendant with those
9 photographs, did he admit that he was responsible for causing those
10 injuries?

11 A: Yes.

12 MR. LALLI: Thank you. Your Honor, that concludes direct
13 examination.

14 THE COURT: Cross?

15 CROSS EXAMINATION

16 BY MS. PALM:

17 Q: Can you point to a page on your statement where he
18 admits that?

19 A: Where he says that he'd admitted that he --

20 Q: That he caused --

21 A: -- lied?

22 Q: -- the injuries in that -- in those photographs?

23 A: In regards to -- I can go back to the statement and the
24 generalities of it.

25 Q: I'd appreciate it 'cause I can't find it.

1 MS. PALM: Which is still dismissed.

2 THE COURT: Right. With the understanding it's pursuant to
3 some negotiations. Do you understand that, Officer?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Okay.

6 BY MS. PALM:

7 Q: So, when you testified that he pled guilty to that,
8 you're not basing that on any firsthand knowledge of a conviction
9 in that case are you?

10 A: I'm just basing it upon what he said in the statement
11 here, ma'am.

12 Q: Does it say in the statement that he pled guilty to
13 that?

14 A: I don't think I said he pled guilty.

15 Q: Well, then I misunderstood you.

16 A: I don't think I said that. I think -- I -- he said
17 that he had mislead the investigators and that in Court he had
18 admitted to the effect that he had lied; something to that effect.
19 If I had said that he had pled guilty, I misspoke.

20 Q: Okay. And you're not aware of any Court records where
21 he said he -- he is guilty of that, are you?

22 A: No. I don't have any Court records during the
23 interview.

24 [Pause in the proceedings]

25 MS. PALM: No more questions, Your Honor.

1 THE COURT: Any redirect?

2 MR. LALLI: Yes.

3 REDIRECT EXAMINATION

4 BY MR. LALLI:

5 Q: Sir, can you go to page 66 of the -- of the Defendant's
6 statement?

7 A: Yes, sir.

8 Q: And let's go down if you would to about, I don't know,
9 two-thirds or three-fourths of the way down. The question that you
10 asked, it says: did -- did the police talk to you about this
11 incident; do you see where I'm at?

12 A: Yes, sir.

13 Q: Did you ask him that: did the police talk to you about
14 this incident; and what was his response?

15 A: Yeah.

16 Q: And do you ask him again: did the police talk to you
17 about this incident; correct?

18 A: Yes, sir.

19 Q: And then it's unintelligible. You apparently say:
20 again, did you fess up to it; did you tell them you did it; is that
21 correct?

22 A: Yes, sir.

23 Q: And then going onto page 67, what does he say?

24 A: Yes, I did.

25 Q: And you're showing him at this time the -- the photos

1 that are contained in, is that State's Exhibit Number 6 that's in
2 front of you?

3 A: Yes, sir.

4 Q: Okay. You're showing him these photos at the time?

5 A: Yes, I am.

6 Q: And then after he says: yes, I did. You say: okay.
7 And what does he say after that?

8 A: Something unintelligible and he says that the whole
9 record.

10 Q: And then what do you ask him?

11 A: I say okay and there's something unintelligible and it
12 says: Court records. I'm not talking about in Court. I'm talking
13 about to the police.

14 Q: And he says: yeah.

15 A: Correct.

16 Q: And then you ask him: did you tell the police you did
17 it, right?

18 A: Yes, sir.

19 Q: And what does he say?

20 A: He says: no, no, no, no, no, no, I didn't, but I
21 didn't.

22 Q: And then you ask him what?

23 A: Okay, so did you lie to the police?

24 Q: And then is it unintelligible?

25 A: Yes, sir.

1 Q: And then you ask him again? What do you ask him after
2 that?

3 A: So did you lie to the police at that time too? Okay,
4 so we've got that established.

5 Q: And then what's his response?

6 A: That is -- that is correct.

7 Q: So he acknowledged to you that he did it and he
8 acknowledged to you that he lied to the police about it; is that --
9 is that fair?

10 A: Yes, sir.

11 Q: Okay. Were you aware that when the responding officer
12 testified earlier this morning, he recounted the conversation with
13 Mr. O'Keefe wherein Mr. O'Keefe denied doing that; were you aware
14 of that?

15 A: I wasn't aware --

16 Q: Okay.

17 A: -- of any prior testimony.

18 Q: Fair enough.

19 MR. LALLI: Your Honor, that completes redirect examination.

20 THE COURT: Any recross?

21 RECROSS EXAMINATION

22 BY MS. PALM:

23 Q: So Mr. O'Keefe never said I lied to the police, did he?
24 Those were in your questions, right?

25 A: Verbatim I said: yeah, did you fess up to it; did you

1 tell them you did it regarding the battery of Victoria in that case
2 and he says: yes, I did. Verbatim, I did not ask that question
3 verbatim, but the -- the direct -- direction of the questioning was
4 in regards to the past battery case.

5 Q: Okay. And you weren't referring to a specific
6 incident, were you?

7 A: Was referring to this incident in Exhibit 6.

8 Q: You weren't giving him an incident number or case
9 number, were you?

10 A: No, ma'am.

11 Q: And then he just generally talked about the Court
12 records? He talked about the whole record?

13 A: He went on to say something about a record.

14 MS. PALM: Okay. No further questions.

15 THE COURT: Thank you, Officer, for your testimony. You are
16 excused. Any other witnesses for the State?

17 MR. LALLI: No, Your Honor.

18 THE COURT: Ms. Palm, do you have any witnesses?

19 MS. PALM: Pardon?

20 THE COURT: Do you have any witnesses to call?

21 MS. PALM: No, Your Honor.

22 THE COURT: Okay.

23 [Off road discussions]

24 THE COURT: Counsel, we do have the issue of the expert we
25 need to address and then hear any argument about this motion here

1 in this hearing. I just want to do it all at one time. Are
2 counsel available May 6th at 11 o'clock?

3 MR. LALLI: May I consult my calendar, Your Honor?

4 THE COURT: It's a Friday.

5 MR. LALLI: Your Honor, I'm going to be out of the
6 jurisdiction on that day, but I am -- I am certainly available the
7 week after any time.

8 MS. PALM: I am available on the 6th and then the week after.

9 THE COURT: Carol, do we have anything May 9th in the morning?

10 MS. PALM: Well, actually -- no -- the 9th and 10th I'm still
11 sitting in North Las Vegas Justice Court.

12 THE COURT: Well, see the problem is, you know, because the
13 courtroom sharing and because that's in my civil stack and I won't
14 know until perhaps the last minute that I have a trial.

15 MR. LALLI: Right.

16 THE COURT: And if I don't have a trial, typically Friday I'd
17 volunteer for an overflow criminal case.

18 Right now, Carol, do we have any civil trial set -- and
19 they're already set. I don't know if we've already booked the week
20 of the 9th.

21 MR. LALLI: You have to book a courtroom?

22 [Colloquy between the Court and the Clerk]

23 THE COURT: There's nothing for next week?

24 MR. LALLI: I'm going to be -- well, I will be in the office.
25 Because of some personal -- personal obligation I was not going to

1 be here next week. However, I will be here on Wednesday, May 4th,
2 in the morning for another appearance that I need to be here for
3 and I could certainly -- I will be in Las Vegas then --

4 THE COURT: Okay.

5 MR. LALLI: -- where as on Friday, I'm not in Las Vegas.

6 THE COURT: Are you available on that day, Ms. Palm? And I'm
7 checking my calendar as well.

8 MS. PALM: No, Your Honor. As I stated --

9 THE COURT: That's right.

10 MS. PALM: -- I am -- the week of May 2nd, I am protenning
11 that entire week beginning at 8:30 and some mornings, 8:15 in the
12 morning.

13 THE COURT: Does it go into the afternoon?

14 MS. PALM: On -- well, potentially there's a preliminary
15 hearing. Otherwise, on Monday and Wednesday, it is scheduled for
16 all day because it's civil in the afternoon. And so Friday is
17 actually the only day next week that I'm good. I'm actually -- you
18 know, I can put it in tomorrow or Friday of this week.

19 MR. LALLI: I'm available tomorrow if that's --

20 THE COURT: I've got a long -- I've got --

21 [Colloquy between the Court and the Clerk]

22 THE COURT: I've got Lacy Thomas tomorrow; five motions, one
23 to dismiss. It's going to take awhile.

24 MS. PALM: Not Friday, Your Honor?

25 THE COURT: How about tomorrow at 2?

1 MR. LALLI: That's fine for me.
2 THE COURT: Ms. Palm? All right.
3 MS. PALM: Tomorrow, yes. Tomorrow at 2 would work.
4 THE CLERK: The 28th?
5 THE COURT: And you know what --
6 MR. LALLI: So much Court, so little time.
7 THE CLERK: You're gone on Friday.
8 THE COURT: Right. See the week of May 16th and May 23rd I'm
9 in judicial college.
10 MS. PALM: So we don't -- we can't do it either the 11th,
11 12th, 13th or --
12 THE COURT: Are you available -- the State available?
13 MR. LALLI: Yes.
14 THE COURT: How about the 11th at 9:30?
15 MS. PALM: That works for me.
16 THE COURT: That's my civil day, but it maybe a few minutes
17 late if goes long.
18 MS. PALM: It's just argument.
19 MR. LALLI: Did you say the 11th, Your Honor? I'm sorry.
20 THE COURT: Yes; 9:30?
21 MR. LALLI: Yes.
22 THE COURT: Again, with the understanding if civil goes
23 longer than those --
24 MR. LALLI: I understand.
25 MS. PALM: Thank you.

1 MS. MERCER: I'm sorry, Judge --

2 THE COURT: And so we're going to argue this motion, finish
3 up this and the motion for expert.

4 MR. LALLI: Very good.

5 MS. MERCER: And, Judge, before we go, if I could just make a
6 record real quickly on the medical records. Ms. Palm had directed
7 the Court to Vega versus State which is 236 P.3d 632. In that
8 case, the issue was actually of whether or not a doctor who did not
9 conduct the sexual abuse exam could testify to the findings of
10 another doctor, so it doesn't directly pertain to medical records.

11 I then found another case which is --

12 THE COURT: Just don't argue the case. Give me the citation.

13 MS. MERCER: Yeah, that's what I'm doing.

14 THE COURT: Okay.

15 MS. MERCER: Flores versus State, and its 121 Nevada 706.
16 And specifically I would point the Court to footnote number 33 at
17 page 718 or I guess onto the P.3d citation would be 1178 and where
18 it starts out Crawford does not a feared -- appear to affect the
19 admissibility of non-accusatory statements under NRS 51.355 or non-
20 accusatory evidence where the Defendant's availability is
21 irrelevant to wit NRS 51.115.

22 THE COURT: Okay. We'll discuss those two cases on May 11th.

23 MS. MERCER: Thank you, Judge.

24 THE COURT: Thank you.

25 MS. PALM: Your Honor, I have request for transcripts since I

1 can anticipate that maybe we'll need to supplement our Writ with
2 the Supreme Court if this is still pending, so may I approach?

3 THE COURT: Okay. That's been filed?

4 MS. PALM: Oh, yeah.

5 THE COURT: Okay.

6 MS. PALM: I served you.

7 THE COURT: Always that's right, the big box.

8 [Proceeding concluded at 1:46 a.m.]

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ATTEST: I hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled case
to the best of my ability.


Michelle Ramsey
Court Recorder/Transcriber

ORIGINAL

FILED

JUN 13 12 58 PM '11

Ann L. Schuman
CLERK OF THE COURT

0001
PATRICIA PALM
State Bar No. 6009
PALM LAW FIRM, LTD.
1212 Casino Center Blvd.
Las Vegas, NV 89104
Office: (702) 386-9113
Fax: (702) 386-9114
Patricia.palmlaw@gmail.com
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

BRIAN K. O'KEEFE,

Defendant.

CASE NO. C250630
DEPT. NO. XVII

BEC250630
ROC
Receipt of Copy
1488428



RECEIPT OF COPY

RECEIPT OF COPY of Five (5) Banker Boxes holding entire files of Palm Law Firm, Ltd., in the case of State v. Brian K. O'Keefe, C250630, and trial clothing, i.e., five (5) jackets, four (4) shirts, four (4) pairs of pants, five (5) ties, one (1) belt, one (1) pair shoes, and one (1) pair socks, is hereby acknowledged.

DATED: 2, June, 2011.

Nicole Reyes
Printed Name

WRP
Signature

RECEIVED
JUN 13 2011
CLERK OF THE COURT

3163

THIS PAGE ADDED BY IMAGING SERVICES

SOME PAGES IN THIS DOCUMENT ARE LIGHT OR UNREADABLE
IN ORIGINAL FORM AND HAVE BEEN DARKENED AS MUCH AS POSSIBLE.

THE IMAGES THAT FOLLOW ARE THE BEST POSSIBLE

EIGHTH JUDICIAL
DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

OCT 03 2011

CLERK OF COURT

C.C.D.C.
330 S. CASINO CT.
LAS VEGAS, NV. 89101
IN PROPER-PERSON
MOTION # 1

STATE OF NEVADA

Plaintiff,

vs.

BRIAN BERRY COKER

Defendant

1447732

Case No.: C250630

Dept. No.: XVII (17)

Docket No.:

Judge Villani, M.

TOTAL: [2 PY.]

DATE OF HEARING

TIME OF HEARING

(MOTION TO DISMISS APPOINTED COUNSEL
AND FOR FARETTA HEARING)

Now comes Brian Coker, defendant, in proper-
person to invoke my "Constitutional rights" to remove
Court appointed counsel and to proceed in such manner.

At scheduled hearing accordingly convene
defendant pursuant to,

Faretta v. California • [422 U.S. 822]

Respecting all future Motions under the express dictates of
Haines v. Kerner • [404 U.S. 519] as to liberal reading and
construction of said Motions.

Dated: Sept. 18, 2011

Respectfully Submitted,

by Brian B. Coker

Brian B. Coker

IN PROPER-PERSON

1447732

[ORIGINAL COPY]

09C260238
MDC
Motion to Dismiss Counsel
1630308



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SEP 27 2011

CLERK OF THE COURT

003165

Certificate of Mailing

• Clerk of the Court
200 LEWIS AVENUE, 3rd FLOOR
LAS VEGAS, NV. 89155-1140

• District Attorney's Office
200 LEWIS AVENUE, SUITE 800
LAS VEGAS, NV. 89155

• B & M
752 S. SIXTH STREET, SUITE 102
LAS VEGAS, NV. 89101

• Judge Villani, M.
Regional Justice Center
200 LEWIS AVENUE, D.C. #17
LAS VEGAS, NV. 89155
Courtesy Copy

[C/C: FILE]

A copy of this was mailed to
the above listed parties.

DATED THIS 22nd day of September, 2011.

I, Brian Harry O'Keeffe, do

solemnly swear, under the penalty of perjury, that
the above Motion to Denies 1st. Counsel is accurate,
correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.165.

Respectfully submitted,

by Brian H. O'Keeffe
Brian H. O'Keeffe

Defendant 1447732
Pro Se

D. J. Keefe, Brian
C.C.D.C.

Sept. 26, 2011

0250630

D.C. # 17

Villani, J.

Dear Clerk,

Please schedule Motion
in normal course of time. (2 weeks)
and write scheduled hearing date-time on
my copy. Please stamp
• [EMERGENCY] then return to me.

I mailed copy to
parties listed on page two simultaneous.
They will have to check for
scheduled date-time themselves. (I have, too, phone.)

Please keep clearly in mind that
this is not a MOTION to change counsel.
My Point being, I'm not
requesting permission. I'm exercising my
Constitutional right.

3rd Trial in the SAME CASE.

For Judicial ECONOMIC and Judicial
CONSTITUTIONAL I'll save the 225.00 per
\$20,000.00 for the next appointed attorney
fee per N.P.S. 71260

Bless all and thank you.

Sincerely,
D. J. Keefe

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SEP 27 2011

CLERK OF THE COURT

003167

O'Hare, Brian J. - [174773Z]
C.O.D.C.
330 S. Casino Cir. Blvd.
Las Vegas, NV. 89101
SNA-29 North Tower



\$ 001.00

IP 003157314

POSTAGE & FEE

003168

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OCT 26 11 33 AM '11

Ann L. Schuman
CLERK OF THE COURT

09C250630
NTCL
Motion to Clarify
1872196



MOT
BELLON & MANINGO, LTD.
LANCE A. MANINGO, ESQ.
Nevada Bar No.: 006405
AMANDA S. GREGORY
Nevada Bar No.: 11107
732 S. Sixth Street, Suite 102
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Telephone: (702) 452-6299
Facsimile: (702) 452-6298
Email: lam@bellonandmaningo.com
Attorney for Defendant
BRIAN O'KEEFE

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

BRIAN O'KEEFE,

Defendant.

C250630
Case No.: ~~0224254~~
Dept. No.: III

MOTION TO PLACE ON CALENDAR

Upon the application of Defendant, BRIAN O'KEEFE, by and through his attorney, LANCE A. MANINGO, ESQ., of BELLON & MANINGO, LTD., it is hereby requested that the above-entitled matter be placed on calendar to clarify reimbursement of the DNA analysis and administration fees.

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0231/09

BELLON & MANINGO, LTD.
732 SOUTH SIXTH STREET, SUITE 102
LAS VEGAS, NEVADA 89101
702-452-6299 • 702-452-6298 FAX

CLERK OF THE COURT
OCT 26 2011


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BELLON & MANINGO, LTD.
732 SOUTH SIXTH STREET, SUITE 102
LAS VEGAS, NEVADA 89101
702-452-6299 • 702-452-6296 FAX

1 This Motion is made and based upon the Points and Authorities herein and the papers
2 and pleadings previously on file in this matter.
3

4 DATED this 24th day of October, 2011.

5 BELLON & MANINGO, LTD.

6
7 
8 LANCE A. MANINGO, ESQ.
9 Nevada Bar No.: 006405
10 AMANDA S. GREGORY, ESQ.
11 Nevada Bar No.: 11107
12 Attorney for Defendant
13 BRIAN O'KEEFE

14 NOTICE OF MOTION

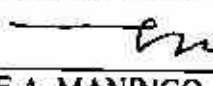
15 TO: STATE OF NEVADA, Plaintiff; and

16 TO: DISTRICT ATTORNEY, its attorneys:

17 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Place
18 on Calendar on for hearing in of the above-entitled Court, on the 8 day of November
19 at the hour of 8:15 A.m., or as soon thereafter as counsel may be heard.

20 DATED this 24th day of October, 2011.

21 BELLON & MANINGO, LTD.

22 
23 LANCE A. MANINGO, ESQ.
24 Nevada Bar No.: 006405
25 AMANDA S. GREGORY, ESQ.
26 Nevada Bar No.: 11107
27 Attorney for Defendant
28 BRIAN O'KEEFE

BELLON & MANINGO, LTD.
732 South Sixth Street, Suite 102
Las Vegas, Nevada 89101
702-452-6298 • 702-452-6298 Fax

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION AND PROCEDURAL HISTORY

Mr. O'Keefe is requesting reimbursement of his DNA analysis fee of one hundred and fifty dollars (\$150.00) and an administration fee of twenty-five dollars (\$25.00). On May 5, 2009, Mr. O'Keefe was convicted of 2nd degree murder and the above fees were waived because they had previously been paid. Please see Exhibit "A." On July 13, 2010, Mr. O'Keefe's prior counsel requested that the \$175.00 in fees be returned to Mr. O'Keefe. Please see Exhibit "B." On July 13, 2011 the Department of Corrections responded to Ms. Palm's request. Please see Exhibit "C." In said correspondence, Ms. Palm was advised that the \$175.00 fee was sent to the Clark County Clerk's office in check number AD000522089 and that the clerk's office would be responsible for refunding said fees. However, as of this date, the fees have not yet been returned to Mr. O'Keefe. Accordingly, undersigned counsel is filing the instant motion.

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BELLON & MANINGO, LTD.

732 SOUTH SIXTH STREET, SUITE 102

LAS VEGAS, NEVADA 89101

703-452-8299 • 702-452-6286 FAX

11.

CONCLUSION

Therefore, Mr. O'Keefe respectfully requests this matter be placed on calendar for clarification of reimbursement.

DATED this 24th day of October, 2011.

BELLON & MANINGO, LTD.



LANCE A. MANINGO, ESQ.

Nevada Bar No.: 006405

AMANDA S. GREGORY

Nevada Bar No.: 11107

732 S. Sixth Street, Suite 102

Las Vegas, Nevada 89101

Attorney for Defendant

BRIAN O'KEEFE

BELLON & MANINGO, LTD.
782 SOUTH SIXTH STREET, SUITE 102
LAS VEGAS, NEVADA 89101
702-452-6299 • 702-452-6298 FAX

AFFIDAVIT OF NICOLE REYES

STATE OF NEVADA)
)ss:
COUNTY CLARK)

1. On October 6, 2011 the affiant spoke with the Clark County Clerk's office.
2. Affiant was informed an Order from the court was never submitted to the Clerk's office requesting a refund of Mr. O'Keefe's fees.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

WRM
NICOLE REYES

SUBSCRIBED and SWORN to before me
this 24th day of October, 2011.

Dawn Tranquillo
NOTARY PUBLIC



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RECEIPT OF COPY

RECEIPT OF COPY of the foregoing MOTION TO PLACE ON CALENDAR is
herein acknowledged on this ____ day of October, 2011:

By: _____
Deputy District Attorney
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

BELLON & MANINGO, LTD.
732 South Sixth Street, Suite 102
Las Vegas, Nevada 89101
702-452-8299 • 702-452-6298 Fax

EXHIBIT "A"

003175

1 LAS VEGAS, NEVADA, TUESDAY, MAY 5, 2009, 8:02 A.M.

2 THE MARSHAL: O'Keefe.

3 THE COURT: C2506310, State of Nevada versus Brian

4 O'Keefe. Mr. O'Keefe's present in custody. Mr. Pike, Ms.
5 Palm, Mr. Smith for the State. And the jury returned a verdict
6 on March 20, 2009 accordingly, he's hereby judged guilty of
7 second degree murder with use of a deadly weapon. Any argument
8 by the State?

9 MR. SMITH: Judge, we're basically here to
10 essentially argue the consecutive term because the sentence of
11 10 to life is prescribed by statute. I would just submit
12 respectfully, your Honor, that, you know, the defendant's long
13 history of domestic violence against the victim, coupled with
14 the extensive length of time of his overall criminal history
15 spanning several states dictates your Honor imposing the
16 maximum consecutive term of 8 to 20 years in prison.

17 This obviously was a horrible event. I would note
18 that the defendant apparently has still failed to accept full
19 culpability for this crime, despite the jury telling him that
20 he is culpable. I would note that in the PSI he still
21 maintains that this was an accident. The State submits
22 respectfully that the evidence that came out during the course
23 of the jury trial simply belies that.

24 If there's a person who doesn't deserve to be put
25 away for as long as allowed by law, it's certainly not Mr.

Page 2

ROUGH DRAFT TRANSCRIPT

1 range between 1 and 20 years. Next, Mr. O'Keefe disputes on
2 Page 2 that the name Brian Kerry McGill (phonetic) was ever
3 used. I don't know where P&P got that information from. I
4 don't believe that it's validated anywhere that I've seen.

5 Then on page 7 of the PSI the second paragraph states
6 that Mr. O'Keefe was found standing in an open doorway with a
7 knife in his hand. Your Honor heard the evidence in this case.
8 There's no evidence that he was ever holding a knife and that
9 he was seen by anyone, so I'd ask the Court to make that
10 correction.

11 And then as far as page 8 goes and the victim
12 information statement, the PSI is required to adhere to the
13 same terms as a proper victim impact statement. Paragraph 2 of
14 the victim information statement talks about alleged other bad
15 acts. That's entirely improper in a PSI. Mr. O'Keefe did not
16 have any notice of that, and we have no way to counter that.
17 That victim is not here for us to cross-examine, so I would ask
18 the Court to strike the paragraph two of the victim information
19 statement. And that's pursuant to NRS 176.145, which talks
20 about the contents of a PSI, and that they are to address the
21 crime, the person responsible, the impact of the crime and the
22 need for restitution, not other bad acts. Would that Court
23 make that correction?

24 THE COURT: Yes.

25 MS. PALM: Thank you. And as far as the

Page 4

ROUGH DRAFT TRANSCRIPT

1 O'Keefe. I would note that his continued history of domestic
2 violence certainly supports the conclusion that he is a
3 recidivist and that in order to protect the community and
4 specifically to protect women, your Honor should keep him away
5 from society for as long as possible.

6 THE COURT: Mr. Smith, was - I know the previous
7 domestic violence involved the same victim. There was - there
8 was two or three in the past. Was there a different victim or
9 is it the same one in this case?

10 MR. SMITH: The same victim. There was a couple that
11 involved other victims, but if my memory serves me correctly,
12 there were no less than six prior documented domestic violence
13 incidences where the defendant had attacked Mrs. Winmarsh.

14 THE COURT: Okay. All right, thank you. Defense.

15 MS. PALM: Thank you, your Honor.

16 THE COURT: Ms. Palm, Mr. Pike.

17 MS. PALM: I would like to make some corrections to
18 what Mr. Smith just said in the PSI and I would ask the Court
19 to mark the original PSI with the corrections because that's
20 the copy that's going to follow Mr. O'Keefe around.

21 First of all, the options are not only 10 to life.
22 You have a choice of 10 to 25 on a second degree murder. So
23 we're talking about two possible sentences here. The PSI also
24 states that the term for the enhancement for use of a deadly
25 weapon is one year to life. That's incorrect. You have a

Page 3

ROUGH DRAFT TRANSCRIPT

1 recommendation in this case goes, again, the recommendation is
2 for a 10 to life on the second degree and then 12 months to
3 life on the enhancement, that would be improper. We're going
4 to be asking for in accordance with the 12 month minimum, that
5 it be a 12 to 3 on the enhancement. And just want to make sure
6 I didn't have any other factual errors to correct.

7 I would note that on the first arrest mentioned on
8 Page 4, Mr. O'Keefe was a juvenile at that time. He was 16
9 years old.

10 THE COURT: And that's on the 2879?

11 MS. PALM: That is correct. And on Page 5, he also
12 disputes that he was ever violated for probation. He did get
13 picked up for probation violation. It was a mix up. He was
14 honorably discharged from both of his probations in the Nevada
15 cases, and he was never charged or violated in either case. So
16 it's not fair to say that those were violations.

17 He did have - he was - he was - because of this
18 case, that would be a proper entry, but anything prior to this
19 case would not be. So that would be the 7105 probation
20 violation, the 1808 probation violation. And those are all the
21 corrections I have. And then Mr. Pike would like to address
22 the Court briefly.

23 THE COURT: All right, Mr. Pike.

24 MR. PIKE: Thank you, your Honor. As the Court heard
25 in reference to this, this was a long and difficult

Page 5

ROUGH DRAFT TRANSCRIPT

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1 relationship both for Mrs. Witzmarsh and for Brian O'Keefe.
2 Brian having entered into the military at the age of 17
3 distinguished himself as being a bronze star recipient while in
4 battle and thereafter began a long and continuing effects of
5 alcohol.

6 When he and Mrs. Witzmarsh first got together it was
7 one of those things where they would separate, they would get
8 back together, and even when they would charge him with
9 felonies, the burglary or those other offenses, it was her
10 that would go visit him in jail. It was her that would wait
11 for him, and it was her that would pick him up when he came
12 back from any time that he was incarcerated.

13 And so too that happened this last time. They had
14 thought they -- Mr. O'Keefe thought they had terminated it, and
15 then it -- as the evidence was presented at the time of the
16 trial, it was Mrs. Witzmarsh that recontacted him, reinitiated
17 it -- the relationship, and you saw the long attempts that Mr.
18 O'Keefe had had in controlling his alcohol and the people that
19 came in and said that he was a very different person when he
20 was drinking. And the attempts that they both as a couple had
21 in going through this alcohol treatment program as an attendee
22 and as an individual that came in from the testimony of the
23 counselor that treated Mr. O'Keefe particularly, but also dealt
24 with issue itself with Mrs. Witzmarsh.

25 And then also, with her mental condition, her

Page 6

ROUGH DRAFT TRANSCRIPT

1 THE COURT: Okay. All right. Anything else?

2 MR. PIKE: Except for -- except for the bad -- or
3 excuse me, except for the juvenile offense and the bad check
4 which was just -- the account did not have enough funds and
5 that was paid off. Everything in his adult life involves Mrs.
6 Witzmarsh.

7 THE COURT: All right. Anything else, Mr. Pike?

8 MR. PIKE: And the child support, yeah. The child
9 support.

10 THE COURT: Anything else?

11 MR. PIKE: No.

12 THE COURT: All right. Mr. O'Keefe, do you have
13 anything to say before I impose your sentence?

14 THE DEFENDANT: You made a lot of decisions, your Honor,
15 that I must respect but do not agree with. I feel deeply
16 profound that I should be able to freely speak now. I'm not at
17 the trial. I can only hope on appeal more evidence will be
18 looked at the full case. The jury heard part of the story,
19 your Honor.

20 But there will be another day for this to be heard
21 and my (indiscernible) will begin many nights. I loved this
22 woman more than anything, and I did not do what the jury came
23 back with because they did not hear all evidence. I take full
24 responsibility because I shouldn't of drank, and I'm an
25 alcoholic, and I looked for any excuse to drink, and when I got

Page 8

ROUGH DRAFT TRANSCRIPT

1 attempts at suicide and the long mental history that she had,
2 unfortunately, in true -- in true (indiscernible) fashion, this
3 was a tragedy that when they were together occurred and when
4 they were drinking could almost not be avoided. And so based
5 upon that -- upon all the circumstances that involved this and
6 for -- to truly reflect the fact that this was, if a crime at
7 all, was a crime of passion.

8 And I'm certain that the Court isn't going to take
9 (indiscernible) with the fact that Mr. O'Keefe continues to
10 deny his culpability. He testified, and he gave his testimony
11 as to what happened, and unfortunately, the jury did not
12 believe that, but the Court is not going to hold fast against
13 him and not punish him or maintaining his good faith and
14 testified to belief.

15 We'd request in accordance with that that the Court
16 sentence him to 10 to 25 term of years along with the
17 enhancement of 1 to 3. And that's reflected in the indication
18 from the 1 year minimum that was recommended in the charge
19 information on the first page by the Department of Parole of
20 Probation.

21 THE COURT: Mr. Pike, just so the Court is clear, the
22 PSI shows two prior domestic violence, one for November 14th,
23 '03 and April 3rd, '04, just so we're clear here. Do both of
24 those involve the victim in this particular case?

25 MR. PIKE: They do, your Honor.

Page 7

ROUGH DRAFT TRANSCRIPT

1 that job, and I told her don't worry about anything else. It
2 was wrong for birthday take her out to celebrate. The new job,
3 don't worry about anything. She was sick. I'm sick.

4 I can only say that the officers that apprehended me
5 should have taken my blood alcohol level. They destroyed it
6 for life. For life. I couldn't respond. I was caught off
7 guard. This is unbelievable. I must and I do respect your
8 decisions. I know it was very hard for you, and I just think I
9 should stop there, but I want to extremely say to the family
10 please believe me, I didn't -- I should have never let her
11 drink. I had no business drinking. I just completed a
12 program. She went with me every night, three nights a week for
13 two months.

14 And like a good alcoholic, you just want to go out
15 there and drink. And I -- I feel so sorry for her daughter and
16 for her sister, Amy (phonetic). We both had a lot of
17 problems, and I just -- I just -- I talk to her all day long in
18 the room. My cellies think I'm crazy, I don't care.

19 I can only believe in the Lord and ask him to take
20 away the pain from the family and myself and my family. I just
21 hope that I'll just have another (indiscernible). I just -- I
22 just thank you for your time, your Honor. I know it was very
23 hard for you. What I a job you must do. I just -- I don't --
24 I'm sorry. That's enough. I can't even think. Forgive me.

25 THE COURT: All right, thank you, sir. Mr. Smith, as

Page 9

ROUGH DRAFT TRANSCRIPT

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1 far as the corrections that have been identified by Ms. Palm,
2 do you agree with those corrections?

3 MR. SMITH: I do, Judge. Judge, can I just add one
4 final thing of just a brief sentence?

5 THE COURT: All right, just go ahead. Very brief.

6 MR. SMITH: Judge, you know, this is all about
7 choices, your Honor, and Mr. O'Keefe had the choice not to
8 drink. Mr. O'Keefe had a choice not to beat Victoria Wimmer
9 for extended period of time that night which was evidenced by
10 the extensive bruising all over her body, and finally, he had a
11 choice not to plunge that knife into her side.

12 MS. PALM: And your Honor, I think we get rebuttal
13 for that.

14 THE COURT: All right, go ahead. Go ahead, Ms. Palm.

15 MS. PALM: Well, the Court will remember there was no
16 evidence as to when any of those bruises occurred. Ms.
17 Wimmer had extensive liver cirrhosis and bruised easily, and
18 those bruises, I believe the testimony was could have been as
19 long as three weeks old and caused by even minimal contact such
20 as bumping into tables and that type of thing. So I don't
21 think that that's fair argument and in this case.

22 And also, as far as the choice goes, Mr. O'Keefe has
23 a fifth amendment right not to incriminate himself, and it
24 seems like Mr. Smith wants this Court to hold it against him
25 that he has maintained his innocence. He has a right to do so.

Page 10

ROUGH DRAFT TRANSCRIPT

1 So I would object to that.

2 THE COURT: All right, just for the record, the
3 correction and my copy of the PSI will be part of the Court's
4 file, and Page 1 I did correct the weapons enhancement
5 statement. I have a line through the alias of Brian Kerry
6 McGill. On Page 4 I've identified that the charge from
7 February 8th, 1979, tampering with a vehicle, trespass, injure
8 property, identified as a juvenile offense. Page 7 I have
9 lined out the allegation in that Mr. O'Keefe was in the doorway
10 with a knife in his hand. And I have stricken from page 8,
11 paragraph 2, under section 9. So the Court have not
12 considering those items.

13 Sir, to a certain extent it sounds like you're still
14 blaming the victim in this case. Whether she was intoxicated,
15 she didn't plunge the knife into you and have the prior
16 offenses involving her. In accordance with the law of the
17 State of Nevada, this Court does now sentence you to
18 confinement with the Nevada Department of Corrections for a
19 maximum term of 25 years, minimum term of 10 years.

20 On the weapons enhancement, maximum term of 240
21 months, minimum term of 96 months as a consecutive for the
22 weapons enhancement. Defendant has received credit for time
23 served in the amount of 181 days. He's also ordered to pay a
24 \$25 administrative assessment fee, \$150 DNA fee. Well,
25 actually, I see that DNA was taken back in June 3rd, 2005, so

Page 11

ROUGH DRAFT TRANSCRIPT

* 1 that will be waived. He's already complied with that. Thank
2 you.

3 MS. PALM: Thank you.

4 MR. SMITH: Thanks, Judge.

5 MR. PIKE: Thank you, your Honor.

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Page 12

ROUGH DRAFT TRANSCRIPT

ROUGH DRAFT TRANSCRIPT

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EXHIBIT "B"

003179



PALM LAW FIRM, LTD.

July 13, 2010

Nevada Department of Corrections
Inmate Services
5500 Snyder Avenue
Bldg. 17
Carson City, NV 89701

Re: Brian K. O'Keefe, Inmate No. 90244, Clark Co. District Court Case C250630

Dear Sir or Madam:

I currently represent Brian K. O'Keefe, who was serving a sentence within the Nevada Department of Corrections in Case C250630, before his conviction was reversed by the Nevada Supreme Court on April 7, 2010. I have enclosed a copy of the Supreme Court's Order of Reversal and Remand. At this time, Mr. O'Keefe has no valid conviction in Case No. C250630 and is in the custody of Clark County Detention Center while awaiting a retrial.

Mr. O'Keefe has advised me that subsequent to his earlier conviction and prior to the reversal of it, a \$150.00 DNA Analysis Fee was taken from his inmate account by NDOC, as ordered in his Judgment of Conviction (JOC). Further, he made several attempts on his own to obtain a reversal of the withdrawal or a refund of the \$150.00, on the ground that, as indicated in the enclosed sentencing transcript, the sentencing judge actually waived this fee. Unfortunately, the JOC was never corrected to reflect this waiver. Now that Mr. O'Keefe's conviction has been reversed, there is no longer a valid JOC to correct or rely upon as a basis to hold the fees taken. Mr. O'Keefe desires to have the \$150.00 refunded to him at the earliest possible time. I would appreciate it if you would please respond to this letter and advise me as to your procedure for issuance of a refund to Mr. O'Keefe.

Thank you for your attention to this matter.

Sincerely,
PALM LAW FIRM, LTD.


Patricia Palm, Esq.

1212 Casino Center Blvd., Las Vegas, Nevada 89104
Office: (702) 386-0113 Fax: (702) 386-0114 Email: patricia.palm@palmlaw.com

003180

EXHIBIT "C"

003181

BOARD OF COMMISSIONERS
JIM GIBBONS
GOVERNOR
CATHERINE CORTES MASTO
ATTORNEY GENERAL
ROSS MILLER
SECRETARY OF STATE

STATE OF NEVADA



HOWARD SHOLMIX
Director

SUPPORT SERVICES

INMATE BANKING SERVICES

DEPARTMENT OF CORRECTIONS

At Nevada With No More Victims

P.O. Box 7011
Carson City, NV 89701
(775) 887-3316
Fax (775) 887-3361

Patricia Palm, Esq.
Palm Law Firm, LTD
1212 Casino Blvd.
Las Vegas, NV 89104

RE: Your letter dated 7/13/2010

Dear Ms. Palm:

You seek advise as to how your client Brian K. O'Keefe #90244 can recover a \$150.00 DNA analysis fee deducted from his account. Our records indicate that the fee was deducted from his account on 1/27/2010 as well as a \$25.00 administrative assessment fee for a total deduction of \$175.00. The total amount of \$175.00 was sent to the Clark County Clerk included in check #AD000522089 in the amount of \$5,857.52. You will have to contact the Clark County Clerk regarding a refund of the amount.

I have included a voucher detail as well as a vendor detail for your convience. If you need further information please contact me at 775-887-3336.

Yours truly,

A handwritten signature in cursive script, appearing to read "A. Peralta".

Albert G. Peralta
Chief of Inmate Banking Services

303182

ORIGINAL

8

ORD

BELLON & MANINGO, LTD.
LANCE A. MANINGO, ESQ.
Nevada Bar No.: 006405
AMANDA S. GREGORY
Nevada Bar No.: 11107
732 S. Sixth Street, Suite 102
Las Vegas, Nevada 89101
Telephone: (702) 452-6299
Facsimile: (702) 452-6298
Email: lam@bellonandmaningo.com
Attorney for Defendant
BRIAN O'KEEFE

FILED

Nov 10 3 23 PM '11

Ann L. Sullivan
CLERK OF THE COURT

08260630
DNA
Order
1891660



DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

BRIAN O'KEEFE,

Defendant.

Case No.: C250630

Dept. No.: 17

ORDER FOR RETURN OF FEES

IT IS HEREBY ORDERED that the DNA analysis fee and administration fees in the amount of \$175.00 paid by Defendant BRIAN O'KEEFE be returned to Mr. O'Keefe. Mr. O'Keefe is currently in custody at the Clark County Detention Center.

DATED this 8 day of ~~October~~ ^{November}, 2011.

Michael P. Villani
DISTRICT COURT JUDGE

MICHAEL P. VILLANI

Respectfully submitted by: #11902

Lance A. Maningo
LANCE A. MANINGO, ESQ.
Nevada Bar No.: 006405
Attorney for Defendant

BELLON & MANINGO, LTD.

732 SOUTH SIXTH STREET, SUITE 102
LAS VEGAS, NEVADA 89101
702-452-6299 • 702-463-6298 FAX

RECEIVED

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LANCE A. MANINGO, ESQ.
Nevada Bar No.: 006405
AMANDA S. GREGORY, ESQ.
Nevada Bar No.: 11107
BELLON & MANINGO, LTD.
732 S. Sixth Street, Suite 102
Las Vegas, Nevada 89101
Phone: (702) 452-6299
Fax: (702) 452-6298
E-mail: lam@bellonandmaningo.com
Attorney for Defendant
BRIAN O'KEEFE

FILED

Nov 28 11 30 AM '11

Adam S. Robinson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
BRIAN O'KEEFE,)
)
Defendant.)

Case No.: C250630
Dept. No.: 17

MOTION TO PLACE ON CALENDAR

Upon the application of LANCE A. MANINGO, attorney for the above-named

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BELLON & MANINGO, LTD.
732 South Sixth Street, Suite 102
Las Vegas, Nevada 89101
702-452-6299 • 702-452-6298 FAX

RECEIVED
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CLERK OF THE COURT

00C250630
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Moses
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BELLON & MANINGO, LTD.
732 South Sixth Street, Suite 102
Las Vegas, Nevada 89101
702-452-8399 • 702-452-6298 Fax

1
2 Defendant BRIAN O'KEEFE, it is hereby requested that the above-entitled matter be placed on
3 calendar for the purpose of addressing Mr. O'Keefe's Motion to Withdraw Counsel and Faretta
4 Canvass. See Exhibit "1"

5 DATED this 23rd day of November, 2011.

6 BELLON & MANINGO, LTD.

7
8 By: 

LANCE A. MANINGO, ESQ.
Nevada Bar No.: 006405
AMANDA S. GREGORY, ESQ.
Nevada Bar No.: 11107
BELLON & MANINGO, LTD.
Attorney for Defendant
BRIAN O'KEEFE

9
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12
13 NOTICE OF MOTION

14 TO: STATE OF NEVADA, Plaintiff

15 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and
16 foregoing MOTION TO PLACE ON CALENDAR on the 8 December 815
17 ~~November~~, 2011 at
18 a.m./p.m., in the above-entitled Court, or as soon thereafter as counsel may be heard.

19 DATED this 23rd day of November, 2011.

20 BELLON & MANINGO, LTD.

21 By: 

LANCE A. MANINGO, ESQ.
Nevada Bar No.: 006405
AMANDA S. GREGORY, ESQ.
Nevada Bar No.: 11107
BELLON & MANINGO, LTD.
732 S. Sixth Street, Suite 102
Las Vegas, Nevada 89101
Attorney for Defendant
BRIAN O'KEEFE

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RECEIPT OF COPY

RECEIPT OF COPY of the foregoing MOTION TO PLACE ON CALENDAR is hereby acknowledged this ____ day of November, 2011.

By: _____
Deputy District Attorney
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

BELLON & MANINGO, LTD.
732 South Smith Street, Suite 102
Las Vegas, Nevada 89101
702-452-8999 • 702-452-8288 Fax

EXHIBIT

"1"

003187

1 Brian Kerry O'Keefe #1447732
2 Defendant/In Propria Personam
3 Post Office Box 650 [REDACTED]
4 Indian Springs, Nevada 89018
5 C.C.D.C.
6 330 S. Casino Gtr. Blvd.
7 LAS VEGAS, NV. 89155

EIGHTH
DISTRICT COURT
CLARK COUNTY, NEVADA

8 STATE OF NEVADA

9 Plaintiff,

10 vs.

11 BRIAN KERRY O'KEEFE
12 Defendant,
13 #1447732

EXHIBIT-A ATTACHED

Total Pgs. 5

Case No. CZ50630

Dept. No. XVII

Docket _____

14 MOTION TO WITHDRAW COUNSEL

15 AND FARETTA CANVASS

Date of Hearing: _____

16 Time of Hearing: _____

17 'ORAL ARGUMENT REQUESTED, Yes ☒ No ☐

18 COMES NOW, Defendant, Brian K. O'Keefe, proceeding in proper person,
19 moves this Honorable Court for an ORDER Granting him permission to withdraw his present counsel
20 of record in the proceeding action, namely,

21 STATE OF NEVADA v. O'KEEFE

22 This Motion is made and based on all papers and pleadings on file with the Clerk of the Court
23 which are hereby incorporated by this reference, the Points and Authorities herein, and attached
24 Affidavit of Defendant.

25 DATED: this 15 day of NOVEMBER, 2011.

26 BY: Brian O'Keefe
27 Brian O'Keefe #1447732
28 Defendant/In Propria Personam

1 **POINTS AND AUTHORITIES**

2 NRS 7.055 states in pertinent part:

- 3 1. An attorney who has been discharged by his client shall upon demand and payment of the fee
4 due from the client, immediately deliver to the client all papers, documents, pleadings and items
5 of tangible personal property which belong to or were prepared for that client.
6 2. . . If the court finds that an attorney has, without just cause, refused or neglected to obey its
7 order given under this section, the court may, after notice and fine or imprison him until the
8 contempt purged. If the court finds that the attorney has, without just cause, withheld the
9 client's papers, documents, pleadings, or other property, the attorney is liable for costs and
10 attorney's fees.

11 Counsel in the above-entitled case was court-appointed due to Defendant's indigence. Defendant
12 does not owe counsel any fees.

13 **WHEREFORE**, Defendant prays this Honorable Court, Grant his Motion to Withdraw Counsel
14 and that counsel deliver to Defendant all papers, documents, pleadings, discovery and any other
15 tangible property which belong to or were prepared for the Defendant to allow Defendant the proper
16 assistance that is needed to insure that justice is served.

17 **DATED:** this 15th day of November, 20 11.

18 Respectfully submitted,

19 BY: Ben O'Keefe
20 BENJAMIN O'KEEFE #1447732
21 Defendant/In Propria Personam
22 Post Office Box 650-1100
23 Indian Springs, Nevada 89010
24 C.C.D.C.
25 330 S. Casino Cti. Blvd.
26 Las Vegas, Nv. 89155
27 S-A-29 NORTH TOWER
28 CASE: C250630

CERTIFICATE OF SERVICE BY MAILING

I, BRIAN K. O'KEEFE, hereby certify, pursuant to NRCP 5(b), that on this 17th day of November, 20 11, I mailed a true and correct copy of the foregoing, "MOTION
TO WITHDRAW COUNSEL AND FARETTA CANVASS" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Clerk of the Court
200 Lewis Avenue
3rd Floor
LAS VEGAS, NV 89155-1160
STEVEN D. GREENSON

Regional Justice Center
200 LEWIS AVE
LAS VEGAS, NV 89155
D.L. # 17
Judge Villan

B.M.
732 S. SIXTH ST.
SUITE 102
LAS VEGAS, NV 89101
LANE MANA

District Attorney's Office
200 LEWIS AVE
LAS VEGAS, NV 89155
ATTN: MICHAEL L. LILLI

CC: FILE

DATED: this 15th day of November, 20 11.

Brian O'Keefe
BRIAN O'KEEFE # 1467132

/In Propria Personam

~~Post Office Box 660 (HDBP)~~
~~Indian Springs, Nevada 89010~~
IN FORMA PAUPERIS:

C.C.D.C.
230 S. Casino Ctr Blvd.
LAS Vegas, NV 89155

CASE: CR50630

1 Brian Kerry O'Keefe - 1447732
2 C.C.D.C.

3 330 S. Casino Ctr. Bldg.

4 LAS VEGAS, NV. 89155

5 IN PROPER - PERSON

6 S-A-29 NORTH TOWER

EIGHTH
DISTRICT COURT

CLARK COUNTY, NEVADA

7
8 STATE OF NEVADA

9 Plaintiff,

10 vs.

Case No. C250630

11 BRIAN KERRY O'KEEFE

Dept. No. XV11

12 Defendant,
13 # 1447732

Docket _____

14 ORDER

15 Upon reading the motion of defendant, Brian O'KEEFE, requesting
16 withdrawal of counsel, Mr. Lance Manning, Esq., ~~of the Clark County Public~~
17 ~~Defender's Office~~ and Good Cause Appearing, B & M

18 IT IS HEREBY ORDERED that defendant's Motion for Withdrawal of Counsel is
19 GRANTED.

20 IT IS HEREBY FURTHER ORDERED that Counsel deliver to defendant at his address, all
21 documents, papers, pleadings, discovery and any other tangible property in the above-entitled case.

22 Also to include all clothing.

23 DATED and DONE this ____ day of _____, 20____.

24
25
26
27 DISTRICT COURT JUDGE
28

003191

B&M

BELLON & MANINGO, LTD.

A LAW FIRM

PETER J. BELLON, ESQ.
LANCE A. MANINGO, ESQ.

732 SOUTH STATE STREET, SUITE 102
LAS VEGAS, NEVADA 89101
702-452-6290 • 702-452-6288 FAX

JENNIFER W. AMELBURU, ESQ.
AMANDA S. GREGORY, ESQ.
YVETTE J. ROBERSON, ESQ.
*OF COUNSEL

July 28, 2011

Clark County Detention Center
Attn Inmate: Brian O'Keefe
Inmate ID #: 1447732
330 S. Casino Center Blvd.
Las Vegas, Nevada 89101
LEGAL MAIL

Re: State of Nevada v. Brian O'Keefe
Case No.: C250630

Dear Brian:

I just received your letter, dated July 24, 2011. You'll recall we met on July 22, 2011 and discussed everything. I'll try to address each of your comments:

1. Your \$175.00: I told you on Friday we are looking into it.
2. You're tired of not getting your discovery: I told you on Friday that I would get you what you requested. It is attached here.
3. You're tired of lies and delays: I haven't lied and haven't delayed.
- Read - 4. Filing your writ/motion: I said on Friday I would review everything and file the appropriate writ/motion within approximately three weeks. Yet, 2 days later you have already sent me a frustrated letter. Instead of working on our legal issues, I'm reading your letter and writing you this response- which you demanded. I'm not causing any delay. Maybe you are.
5. You could prepare the writ/motion in one afternoon: Understand that you have lived this case for over 1000 days. I haven't. I have had this file for a few weeks. I'm reading everything and learning the dynamic of the case. I need to review prior transcripts, filings and applicable case law. You are unrealistic in thinking that I could draft the writs/motions you want on the timeline you think reasonable.
- Read - 6. You are not an attorney: In your letter, you admit that you are not an attorney. I agree. So, please let me do my job. I did tell you that "I know what you want." That doesn't mean I don't have to do my own independent review of the law and facts. I'm not your lawyer-puppet. I will not just blindly do what you try to tell me to do. I will listen to you, discuss issues with you and consider everything you have to say. I hope that we can work together. It would benefit us both.
7. Withdrawal as your lawyer: I have no plan to withdraw. Again, I hope we can just work together.
8. You are drafting motion/writ: You stated that you would be putting together a summary or bullet-point draft of the writ/motion you want filed. Call me when you are ready for me to come review it and discuss with you. Please do this- would help me to see your thought process on paper.
9. I "haven't said zero": I've been reviewing everything in your file. And I've been listening to what you have to say. It's a process to learn a case that has the history that your case has. I told you

#6 - Phone call, 2nd week July. Verified Lance received my 13 pg. letter. Said he did
LANCE TOLD ME HE KNEW WHAT I WANTED.

#4 - CONTACT VISIT WITH LANCE JULY 22, 2011. SAID IN EXHIBIT - A73192
THAT ...

HAD A
CONTACT VISIT
WITH LANCE MANINGO
[FRIDAY]
↓

Manningo
Lance

56

Brian Kerry O'Keefe #1447732
Defendant/In Propria Personam
~~Post Office Box 660 Elko NV~~
~~Indian Springs, Nevada 89810~~
C.C.D.C.
330 S. Casino Ctr. Blvd.
LAS VEGAS, NV. 89155

FILED

NOV 28 2011

EIGHTH
DISTRICT COURT
CLERK OF COURT

CLARK COUNTY, NEVADA

12/8/11

STATE OF NEVADA
Plaintiff,

vs.

BRIAN KERRY O'KEEFE
#1447732 Defendant,

EXHIBIT-A ATTACHED

Total Pgs. 5

Case No. C250630

Dept. No. XVII

Docket

MOTION TO WITHDRAW COUNSEL

AND FARETTA CANVASS

Date of Hearing:

Time of Hearing:

'ORAL ARGUMENT REQUESTED, Yes ☒ No ☐

COMES NOW, Defendant, Brian K. O'Keefe, proceeding in proper person,
moves this Honorable Court for an ORDER Granting him permission to withdraw his present counsel
of record in the proceeding action, namely,

STATE OF NEVADA v. O'KEEFE

This Motion is made and based on all papers and pleadings on file with the Clerk of the Court
which are hereby incorporated by this reference, the Points and Authorities herein, and attached
Affidavit of Defendant.

DATED: this 15 day of NOVEMBER, 2011.

BY: Brian O'Keefe
Brian O'Keefe #1447732
Defendant/In Propria Personam

RECEIVED

NOV 22 2011

CLERK OF THE COURT

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J8C260630
MDC
Motion to Dismiss Counsel
1782448



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POINTS AND AUTHORITIES

NRS 7.055 states in pertinent part:

1. An attorney who has been discharged by his client shall upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client.
2. . . If the court finds that an attorney has, without just cause, refused or neglected to obey its order given under this section, the court may, after notice and fine or imprison him until the contempt purged. If the court finds that the attorney has, without just cause, withheld the client's papers, documents, pleadings, or other property, the attorney is liable for costs and attorney's fees.

Counsel in the above-entitled case was court-appointed due to Defendant's indigence. Defendant does not owe counsel any fees.

WHEREFORE, Defendant prays this Honorable Court, Grant his Motion to Withdraw Counsel and that counsel deliver to Defendant all papers, documents, pleadings, discovery and any other tangible property which belong to or were prepared for the Defendant to allow Defendant the proper assistance that is needed to insure that justice is served.

DATED: this 15th day of November, 2011.

Respectfully submitted,

BY: Brian O'Keefe
BRIAN O'KEEFE #1047732
Defendant/In Propria Personam
~~Post Office Box 650 (1830P)~~
~~Indian Springs, Nevada 89010~~
C.C.D.C.
330 S. Cassino Ct. Blvd.
Las Vegas, NV. 89155
S-A-29 North Tower
CASE: C250630

CERTIFICATE OF SERVICE BY MAILING

I, BRIAN K. O'KEEFE, hereby certify, pursuant to NRCP 5(b), that on this 17th
day of November, 2011, I mailed a true and correct copy of the foregoing, "MISSION
TO WITHDRAW COUNSEL AND FARETTA CANVASS"
by depositing it in the High District Court, Legal Library, First-Class Postage, fully prepaid,
C.C.D.C. MODULE 5A
addressed as follows:

Clerk of the Court
200 LEWIS AVENUE
3rd FLOOR
LAS VEGAS NV 89155-1160
SCOTT D. GRIFFIN

Regional Justice Center
200 LEWIS AVE
LAS VEGAS, NV. 89155
D.C. # 17
Judge Villan

B. M.
732 S. 61ST ST.
SUITE 102
LAS VEGAS, NV. 89101
LANCE MARANO

District Attorney's Office
200 LEWIS AVE
LAS VEGAS, NV. 89155
ATTN: CHRIS LALLI

CC FILE

DATED: this 15th day of November, 2011.

Brian O'Keefe
BRIAN O'KEEFE # 1447732
/In Propria Personam
Post Office box 650 [1000]
Indian Springs, Nevada 89010
IN FORMA PAUPERIS
C.C.D.C.
330 S. Casino Ctr. Blvd.
Las Vegas, NV. 89155
CASE: CR50630

B&M

BELLON & MANINGO, LTD.
A LAW FIRM

PETER J. BELLON, ESQ.
LANCE A. MANINGO, ESQ.

732 SOUTH SOUTH STREET, SUITE 102
LAS VEGAS, NEVADA 89101
702-452-6299 • 702-452-6298 FAX

JENNIFER W. AMELBURU, ESQ.
AMANDA S. GREGORY, ESQ.
YVETTE J. ROBERSON, ESQ.
OF COUNSEL

July 28, 2011

Clark County Detention Center
Attn Inmate: Brian O'Keefe
Inmate ID #: 1447732
330 S. Casino Center Blvd.
Las Vegas, Nevada 89101
LEGAL MAIL

Re: State of Nevada v. Brian O'Keefe
Case No.: C250630

Dear Brian:

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4. Filing your writ/motion: I said on Friday I would review everything and file the appropriate writ/motion within approximately three weeks. Yet, 2 days later you have already sent me a frustrated letter. Instead of working on our legal issues, I'm reading your letter and writing you this response- which you demanded. I'm not causing any delay. Maybe you are.
5. You could prepare the writ/motion in one afternoon: Understand that you have lived this case for over 1000 days. I haven't. I have had this file for a few weeks. I'm reading everything and learning the dynamic of the case. I need to review prior transcripts, filings and applicable case law. You are unrealistic in thinking that I could draft the writs/motions you want on the timeline you think reasonable.
6. You are not an attorney: In your letter, you admit that you are not an attorney. I agree. So, please let me do my job, I did tell you that "I know what you want." That doesn't mean I don't have to do my own independent review of the law and facts. I'm not your lawyer-puppet. I will not just blindly do what you try to tell me to do. I will listen to you, discuss issues with you and consider everything you have to say. I hope that we can work together. It would benefit us both.
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#7- CONTACT VISIT WITH LANCE JULY 22, 2011. SAID MY
THAT MEETING WRIT WOULD BE FILED IN (2) WKS.

HAD A
CONTACT VISIT
WITH LANCE MANINGO

[FRIDAY]
↓

EXHIBIT - A 3196

Brian O'Keefe - 1447732

C.C.D.C.

Nov. 15, 2011

Dear Clerk of the Court,

File my Motion and STOP playing Judge. Do I need to cite case law on the last clerk that did?

F.V.I. my attorney and I have had a major breakdown and he chooses not to file my Motion(s) as he is engaged. [Last minutes -

Oct. 13, 2011]

I wrote the Judge a nice letter concerning your last actions of refusing my last Motion to dismiss without even stamping received.

The Key B O'K'f

I choose to run my own TRIAL. My Constitutional Right.

By the way, Why Would You Care? We know why, don't we.

003197

Brian T. K. 11/17/32
C.C.D.C.
320 S. Lincoln St. 3rd
Los Angeles, N. H. 900
S-M-29

108

ORIGINAL

FILED

MAR 13 2012

John L. Johnson
CLERK OF COURT

1 **ORDER**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER J. LALLI
6 Chief Deputy District Attorney
7 Nevada Bar #005398
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

DEC250630
06M
Order Granting Motion
1798782



9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 BRIAN KERRY O'KEEFE,
13 #1447732

14 Defendant.

CASE NO: 08C250630

DEPT NO: XVII

15 **ORDER GRANTING, IN PART, THE STATE'S MOTION TO ADMIT EVIDENCE**
16 **OF OTHER BAD ACTS**

17 DATE OF HEARING: February 17, 2012
18 TIME OF HEARING: 8:45 A.M.

19 THIS MATTER having come on for hearing before the above entitled Court on the
20 17th day of February, 2012, the Defendant being present, IN PROPER PERSON, the
21 Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through
22 CHRISTOPHER LALLI, Chief Deputy District Attorney, and LIZ MERCER, Deputy
23 District Attorney, and the Court having heard the arguments of counsel and good cause
24 appearing therefor,

25 THE COURT FINDS, that the State established by clear and convincing evidence the
26 facts and circumstances of the offense occurring on or about April 2, 2004, for which
27 Defendant received a felony conviction under Eighth Judicial District Court, Clark County,
28 Nevada Case No. C207835.

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MAR 13 2012

CLERK OF THE COURT

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003199

1 her arm, threw her on the kitchen ground and put a pillow to her
2 head and attempt to choke and suffocate her. And that -- at that
3 point with Mrs. Mott, she responded over to the apartment and was
4 able to get her to retrieve her over to her apartment in hopes for
5 safety at that point.

6 BY MS. MERCER:

7 Q: Okay.

8 A: And that's when he went to the other apartment, broke
9 the window to make entry into there.

10 Q: Okay. You indicated that Ms. Whitmarsh told you that
11 the Defendant pushed her down to the ground?

12 A: That's --

13 Q: Did she indicate to you whether or not while she was on
14 the ground she was struck by the Defendant?

15 A: Yes.

16 Q: What specifically did she say?

17 A: He struck with his fist, closed fist and her head.

18 Q: Okay. You also had the opportunity to speak with Ms.
19 Mott?

20 A: Yes.

21 Q: Did you have the opportunity to interact with the
22 Defendant?

23 A: I want to say we summons medical. I'd have to look at
24 the reports 'cause he had some -- a cut, laceration to his arm from
25 the glass and honestly I don't --

1 Q: You know, let me--
2 A: -- yeah. I don't remember.
3 Q: -- let me rephrase my question.
4 A: Yeah.
5 Q: At some point during your investigation at the scene,
6 you had contact with him, correct?
7 A: That's correct.
8 Q: Based upon your training and experience as an officer,
9 could you tell whether he was intoxicated?
10 A: Yes, he was intoxicated.
11 Q: And what was his demeanor?
12 A: Loud outburst, irrational speech manners. As far as
13 just outburst of anger at that time.
14 Q: Do you recall anything specific that he was saying?
15 A: I don't.
16 Q: Okay. At some point did you place Brian O'Keefe under
17 arrest?
18 A: Yes.
19 Q: And why was that?
20 A: Due to the nature that -- of the relationship between
21 the victim and him as a domestic relationship, the extent of the
22 injuries to Mrs. Whitmarsh and that the battery had occurred within
23 the 24 hours why we were there and that time. And we had an
24 independent witness at that time that further --
25 MS. PALM: Objection, relying on hearsay.

1 MS. MERCER: And, Judge, it's not -- at this point, it's not
2 offered for the truth of the matter asserted. I'm just trying to
3 get him to explain why he placed the Defendant under arrest.

4 THE COURT: I'm going to overrule the objection. Receive for
5 that purpose only. Go ahead, sir.

6 THE WITNESS: And due to the -- the independent witness
7 further identifying him as the subject that committed a battery on
8 Mrs. Whitmarsh, we arrested him for domestic violence at that time.

9 BY MS. MERCER:

10 Q: Okay. And, Officer, you may have already said this and
11 I missed it, but when you were speaking with Ms. Whitmarsh that
12 night, did she indicate to you how the window -- Ms. Mott's
13 apartment was broken?

14 A: Yes.

15 Q: How was it broken?

16 A: Mr. O'Keefe broke it. Opened the window to make entry
17 into there.

18 MS. MERCER: Court's indulgence. Judge, I'll pass the
19 witness at this point.

20 THE COURT: Okay. Cross examination?

21 MS. PALM: Thank you.

22 CROSS EXAMINATION

23 BY MS. PALM:

24 Q: Officer, do you remember whether Ms. Whitmarsh was
25 drinking at the time that you responded -- whether she had been

1 drinking?

2 A: I don't recall.

3 Q: Okay. Do you recall what time she reported the
4 incident had occurred?

5 A: I'd -- I had assumed at that point 'cause we heard the
6 incident occurring it was happening at the present time I was
7 there. It was happening while we were there.

8 Q: Okay. What was happening when you were there though
9 was trying to break into an apartment not a battery; is that
10 correct?

11 A: No. Through our investigation we learned that the
12 battery was occurring while we were on property. So it was around
13 the 4 o'clock or 5 o'clock when we were there on the other call.

14 Q: Okay. If you have 5 -- 5:45 that the incident occurred
15 would that be about accurate?

16 A: If that's what's listed on the report; yes, ma'am.

17 Q: Would it refresh your recollection to -- as to the time
18 to look at a copy of your report?

19 A: Sure.

20 Q: 'Cause I'm a little confused. May I approach?

21 THE COURT: Yes.

22 THE WITNESS: I can't really read his penmanship. I think
23 it's 5 -- 5:45.

24 BY MS. PALM:

25 Q: So according to the report, it'd be 5:45 in the morning

1 that you were there?

2 A: We were there earlier. I mean, we were on an unrelated
3 call at the time. So, some time within then I'd say between 5 and
4 5:45 the incident occurred.

5 Q: Okay. And if -- you were not the officer that took Ms.
6 Whitmarsh's written statement were you?

7 A: No, I was not.

8 Q: If that statement wasn't taken 'til 7 o'clock, is there
9 a reason for that?

10 A: I wouldn't know that reason, no. We were -- no, I do
11 not.

12 Q: You didn't take Ms. Whitmarsh to the hospital or
13 anything, did you?

14 A: Me personally, no.

15 Q: Or Officer Wong that you know of?

16 A: No.

17 Q: And do you know whether she wrote the statement or
18 Officer Wong wrote it for her?

19 A: I do not know that.

20 MS. PALM: No further questions. Thank you.

21 THE COURT: Redirect?

22 MS. MERCER: No, Your Honor.

23 THE COURT: All right. Thank you, Officer, for your --

24 THE WITNESS: Thank you, sir.

25 THE COURT: -- testimony. You are excused. Next witness for

1 the State.

2 MS. MERCER: Judge, at this point the State's next witness
3 would be Honey Mott, but she's out of State and I believe that
4 matter was discussed at the previous hearing or prior to it, so --

5 MR. LALLI: Your Honor, I don't mean to interrupt, but just
6 to -- to refresh the Court's recollection. She was a witness who
7 was out of State and when -- the last time we were in Court, we --
8 we talked about the need to bring in the out-of-state witness for
9 the purpose of this hearing and I think at least it was
10 preliminarily agreed that we would be able to present to the Court
11 with an offer of proof. Certainly, if the motion were granted at
12 the trial, the witness would be brought in, but as a matter of
13 economics, I think the Court had indicated it would accept an offer
14 of proof with respect to that testimony.

15 THE COURT: Ms. Palm?

16 MS. PALM: I don't disagree with that characterization --

17 THE COURT: All right.

18 MS. PALM: -- of where we are in these proceedings.

19 MS. MERCER: Okay.

20 THE COURT: Okay.

21 MS. MERCER: So, Judge, the State's offer of proof as to Ms.
22 Mott's testimony would be that on November 14th of 2003 she lived
23 next door to Victoria Whitmarsh and Brian O'Keefe and that in the
24 late evening hours around approximately 10 or 11 at night she heard
25 them arguing. The arguing continued throughout the night; that at

1 some point she became aware that Victoria shut the Defendant out of
2 the residence and he'd been drinking quite a bit.

3 At about 5 o'clock in the morning, she heard a knocking
4 on Victoria's door -- the Defendant, I'm sorry, knocking on
5 Victoria's door. And then heard them screaming at one another.
6 She went next door and knocked on the door and when I say she, I
7 mean, Ms. Mott. She went to Victoria's residence, knocked on the
8 door and no one answered. It was quiet inside.

9 A few minutes later, she saw -- saw Victoria get away
10 and run out the front door. She pulled Victoria into her apartment
11 and shut and locked the front door. She -- at that point she was
12 concerned for Victoria's safety because she knew that the Defendant
13 could be violent.

14 When she pulled Victoria into her apartment, the
15 Defendant was still sitting inside of their apartment on the couch
16 and acting kind of out of it. Once Victoria and Ms. Mott got into
17 Ms. Mott's apartment, Ms. Mott tried calling the security for the
18 complex to get help, but learned they were off duty.

19 As she was on the phone, she heard the Defendant begin
20 knocking on her door. They refused to let him in. The Defendant
21 was shouting at them calling them names. He busted out the front
22 window and entered her residence. There was blood on his knuckles
23 from busting out the window.

24 When he came inside, he went after Victoria and
25 cornered Victoria on the couch. Ms. Mott ran to the bedroom and

1 tried to open the bedroom window so that she and Victoria could
2 escape, but the Defendant got to Victoria first.

3 As this was occurring, the police showed up and when
4 the police showed up, the Defendant was towering over Victoria who
5 was on the couch. She would also testify that Victoria had a
6 bruise on her head and on her arm.

7 THE COURT: All right. Thank you.

8 MS. MERCER: And, Judge, I just have one exhibit in regards
9 to this incident. It's the Las Vegas Justice Court records search
10 information sheet and it's been marked as proposed Exhibit Number 4
11 and it's for Case Number 03M25901X which is the case that arose
12 from this incident. It indicates the Defendant pled guilty to one
13 count of battery domestic violence.

14 MS. PALM: And I don't have an objection to that. I would
15 like a copy of it though 'cause again I don't have a copy of it. I
16 never received it.

17 THE COURT: Okay. We'll make sure. What ever copies you
18 need, we'll make sure at the end of the hearing.

19 MS. PALM: Thank you.

20 THE CLERK: Admitted?

21 THE COURT: It's admitted.

22 [State's Exhibit 4 - admitted]

23 THE COURT: Next witness.

24 MS. MERCER: And, Judge, that would conclude the evidence on
25 -- in regards to the November 14th, 2003 incident.

1 THE COURT: Okay.

2 MS. MERCER: So, the next witness will be on the November
3 26th, 2003 incident; and actually before I call the witness, Judge -
4 - Judge, the State would move to admit certified medical records
5 from UMC in regards to the November 26th, 2003 incident. It's been
6 marked as State's proposed Exhibit Number 7 and pursuant to NRS
7 53.325 they're self authenticating when accompanied by an affidavit
8 of the custodian of records which it is.

9 In addition, it's the State's position that the
10 statements made by Victoria Whitmarsh to her treating physicians
11 would be statements made for the purposes of medical diagnosis and
12 treatment.

13 MS. PALM: And --

14 MS. MERCER: And the exception would be the hearsay rule,
15 51.15.

16 MS. PALM: -- and I would object under the Confrontation
17 Clause and the case of Vega which is 2010 Nevada Supreme Court
18 case; that's 236 Pacific 3rd, 632, holding that statements made to
19 nurses and medical practioners where there's a reason to believe
20 the report would be available for later use at trial are
21 testimonial and violate the Confrontation Clause and in this case
22 the police brought Victoria to the hospital and that's when those
23 records were made.

24 THE COURT: What's the case citation?

25 MS. PALM: Vega; it's 236 P.3d, 632, and it's 2010 case.

1 MS. MERCER: And, Judge, it'd be the State's position that it
2 doesn't violate the Confrontation Clause because whether it's
3 testimonial turns on whether a reasonable person would expect those
4 statements to be made or to be used and a prosecution of a later
5 date.

6 At this point -- and, Your Honor, the statements that
7 she made to the doctors who are treating her fits squarely within a
8 well established exception of the hearsay rule which is 51.15. I
9 don't believe that at the time Ms. Whitmarsh was making these
10 statements to the medical personnel, she believes that the
11 statements would be used for the purposes of a prosecution eight
12 years later.

13 MS. PALM: And, Your Honor, the police brought her there to
14 the hospital, so we think it fits under Vega.

15 THE COURT: That may or may not be dispositive to this
16 particular issue. I'll review Vega again and look at it, so at
17 this -- I mean, are you going to --

18 MS. MERCER: Yes. And we would --

19 THE COURT: -- any other testimony regarding the medical
20 records themselves?

21 MS. MERCER: I'm sorry, Judge. I meant to bring this up. In
22 the packet there's what's refer to a domestic violence kit. The
23 State would concede that that's probably -- both documents
24 regarding the domestic violence kit probably should not be admitted
25 as an exception to the hearsay rule because they don't constitute

1 statements made for purposes of medical diagnosis.

2 THE COURT: Okay. I'll look at the materials and I'll defer
3 the ruling at this time.

4 MS. MERCER: And then, Judge, the State would call Officer
5 Penny.

6 THE COURT: Penny like the coin?

7 MS. MERCER: Yes. P-E-N-N-Y, Judge.

8 THE COURT: All right. We have to adjourn about five 'til
9 Noon --

10 MS. MERCER: Okay.

11 THE COURT: -- 'cause we have a Judge's meeting and I'll be
12 back at 1:15.

13 [Off road discussions]

14 THE MARSHAL: Remain standing, raise your right hand please.

15 BLAKE PENNY - SWORN

16 THE CLERK: Please be seated and state and spell your name
17 for the record.

18 THE WITNESS: My name is Blake Penny. It's B-L-A-K-E. Last
19 name P-E-N-N-Y.

20 THE COURT: Go ahead, counsel.

21 MS. MERCER: And, Judge, I believe that the Officer has a
22 copy of his reports up next to him. Do you mind if he just turns
23 them over and then --

24 THE COURT: That's fine.

25 MS. MERCER: -- if he needs to refresh his memory.

1 THE COURT: Officer, at any time you need to refer to the
2 report to answer any questions, please tell us if you're doing so.

3 THE WITNESS: Yes, sir.

4 THE COURT: All right.

5 THE WITNESS: Thank you.

6 DIRECT EXAMINATION

7 BY MS. MERCER:

8 Q: Sir, where are you currently employed?

9 A: With the Las Vegas Metropolitan Police Department.

10 Q: And how long have you been employed with Metro?

11 A: Twelve years, nine months.

12 Q: What is your current assignment?

13 A: I'm currently a detective in the Gang Crimes Bureau.

14 Q: Okay. What was your assignment back in November of
15 2003?

16 A: I was patrol officer in the Southwest Area Command.

17 Q: Okay. I want to direct your attention to November 26th
18 of 2003. Were you working on that date?

19 A: Yes, I was.

20 Q: And on that date, were you dispatched to conduct a
21 welfare check?

22 A: Yes, I was.

23 Q: Do you recall the location where you were asked to
24 conduct the welfare check?

25 A: I believe it was at a daily/weekly I believe on Graphic

1 Center.

2 Q: And can you tell me -- did you actually go to that
3 location?

4 A: Yes, I did.

5 Q: What did you when you arrived on the scene?

6 A: Upon arrival on scene, the original call was a welfare
7 check and the manager of the motel had called reference to
8 receiving information of a possible fight in one of the rooms:
9 Myself, I went to the room and conduct a knock and talk to check
10 the welfare of the residence. Upon not receiving any answer, the
11 manager opened the door so we can conduct a welfare check based on
12 the information that we had received and I came in contact.

13 Q: Once the manager opened the door, what occurred?

14 A: I came in contact with two occupants.

15 Q: Do you recall those occupant's names?

16 A: If I can refer to my reports?

17 Q: Could you please.

18 A: Came into contact with a female by the name of Victoria
19 Whitmarsh and a male by the name of Brian O'Keefe.

20 Q: Okay. When you came into contact with them, what was
21 occurring?

22 A: Came in contact with them, I immediately noticed that
23 she had fresh and older injuries upon her person. I tried to
24 conduct an interview with the female to find out, you know, what
25 had happened. The male half was argumentative. Told her not to

1 say anything. And she said that she fell down a couple of days
2 ago.

3 MS. PALM: Objection, hearsay.

4 MS. MERCER: And, Judge, any statements made by the Defendant
5 would be non hearsay as they're admissions by a party opponent.

6 THE COURT: Well, he has to identify --

7 MS. PALM: Well, he's going from the --

8 MS. MERCER: Yes.

9 MS. PALM: -- Defendant --

10 MS. MERCER: Okay.

11 MS. PALM: -- to her statements in the same answer.

12 THE COURT: I'm sorry. Say that again, Ms. Palm.

13 MS. PALM: He went from Mr. O'Keefe's statements to Ms.
14 Whitmarsh's statements in the same answer. I'd ask them to cut it
15 up so I can object.

16 MS. MERCER: And, Judge, I'll break them down.

17 THE COURT: All right. I'm going to sustain the objection on
18 that basis.

19 BY MS. MERCER:

20 Q: Okay. When you were speaking to the two occupants,
21 were they in the same vicinity?

22 A: Yes, they were.

23 Q: They had not been separated?

24 A: Not yet.

25 Q: As you were trying to obtain information from Victoria

1 Whitmarsh, what was the male half doing?

2 A: He was telling her not to say anything.

3 Q: Okay. And that person was Brian O'Keefe?

4 A: Yes.

5 Q: At some point did you separate the two of them?

6 A: Yes, I did.

7 Q: And I'm sorry, I need to back up. When you made

8 contact with Victoria Whitmarsh, what was her demeanor?

9 A: She was --

10 Q: And if you're referring to your --

11 A: -- to recollect my -- refresh my memory on the reports.

12 Q: Okay. And just look at the report and then flip it

13 back over when you're done refreshing your memory.

14 A: I'd check that she was nervous, apologetic, crying,

15 fearful and she stated she was in pain and she had visible

16 injuries.

17 Q: Okay. What did she relay to you had occurred?

18 A: After they were separated --

19 MS. PALM: Objection, hearsay.

20 MS. MERCER: Excited utterance, Your Honor.

21 MS. PALM: And I don't have a time frame -- a foundation for

22 the excited utterance.

23 MS. MERCER: Well, Judge --

24 THE COURT: Well, at least according to the motion here, did

25 the alleged beating take place a couple days prior to the officer's

1 arrival?

2 MS. PALM: That's correct, Your Honor.

3 MS. MERCER: Well, Judge, I don't believe there's any time
4 limit on the excited utterance exception. In fact, there's a sex
5 assault case where the excited utterance was made days after the
6 triggering event. All that is required is that she still be under
7 the stress of the triggering event which she makes the statements.

8 THE COURT: No, I know that, but that's my concern here is
9 that it occurred three days prior. I mean, I don't know if I heard
10 enough that she's still under the effects of the event.

11 MS. MERCER: And I believe the Officer testified that she was
12 crying and hysterical and frightened.

13 THE WITNESS: That's correct.

14 MS. PALM: Well, you can cry and be hysterical because the
15 police are at your door.

16 MS. MERCER: And that the Defendant was screaming at her,
17 don't tell them anything happened.

18 THE COURT: Ms. Palm, anything?

19 MS. PALM: Well, we're talking about several days. I have no
20 opportunity to cross this. I don't think it fits in the excited
21 utterance. I think it violates his Confrontation Clause rights to
22 consider anything she said because we all have different time
23 frames when we go through the records two three days versus a week.

24 THE COURT: Anything further from the State?

25 MS. MERCER: On that issue, Judge?

1 THE COURT: Yes.

2 MS. MERCER: No.

3 THE COURT: I'm just concerned about this. I mean, yes

4 there's a case on sexual assault. I mean, it's a little different

5 than this situation.

6 MS. MERCER: I'm sorry, Judge. There is one more thing. The

7 officer also testified that the manager had received calls about a

8 possible disturbance in that room that morning prior to his

9 responding.

10 MS. PALM: And that would be hearsay also.

11 THE COURT: Right. 'Cause he didn't observe that, correct?

12 MS. MERCER: Well, but he -- Metro received the call,

13 correct?

14 THE WITNESS: That's correct.

15 MS. PALM: Metro received hearsay calls.

16 MS. MERCER: But it'll be indicative --

17 THE COURT: But this Officer --

18 MS. MERCER: -- indicative of the time line, Judge. That's

19 what I'm trying to establish.

20 MS. PALM: If you admit that, is it established to show that

21 he's got probable cause to other room not to show what was

22 happened.

23 THE COURT: You know, I'm just concerned about all these.

24 I'm going to sustain the objection.

25 MS. PALM: Thank you.

1 BY MS. MERCER:

2 Q: Okay. Officer, with regards to the injuries you
3 observed I believe you testified that some appeared recent and some
4 appeared --

5 A: Yes. There were fresh injuries and some that were in
6 the healing stage.

7 Q: And do you recall specifically where those injuries
8 were?

9 A: With the extent of injuries that she had, she had the
10 injuries upon her -- her facial area. Looking back at photos were
11 darker and appeared fresher and the injuries that were I marked on
12 her back appeared to be in the healing stage.

13 Q: Okay. During the course of your investigation, did you
14 have the opportunity to speak with Mr. O'Keefe to obtain his side
15 of --

16 A: Yes, I did.

17 Q: -- the story?

18 A: Yes.

19 Q: And what did he relay to you?

20 A: He stated nothing happened and he remained
21 uncooperative.

22 MS. MERCER: Court's indulgence, Your Honor.

23 BY MS. MERCER:

24 Q: While you were on scene, was Ms. Whitmarsh transported
25 to the hospital?

1 A: Yes, she was.

2 Q: Why was that?

3 A: Due to the extent of her injuries and -- her physical
4 injuries and her demeanor, I felt that she required medical
5 attention. I contacted medical to respond and she ended up being
6 transported to the hospital and being admitted.

7 Q: And during your interaction with Mr. O'Keefe, did you
8 happen to observe his demeanor?

9 A: Through my interaction with him, he -- refresh from my
10 report, he was crying and apologetic and he had no physical
11 injuries upon him.

12 Q: Did he appear intoxicated based on your training and
13 experience?

14 A: Due to the time lapse of the report, I cannot recall.
15 However, according to the reports it stated that he had been
16 drinking whiskey.

17 MS. MERCER: And, Judge, at this point, I'll pass the
18 witness.

19 THE COURT: All right. Cross?

20 MS. PALM: Court's indulgence. No questions, Your Honor.
21 Thank you.

22 THE COURT: All right. Thank you, Officer, for your
23 testimony. You're excused. Next witness?

24 MS. MERCER: Court's indulgence, Your Honor.

25 MR. LALLI: Your Honor, at this point I would -- we'd mark as

1 State's proposed Exhibit Number 5, a Las Vegas Justice Court record
2 search information sheet pertaining to an arrest of Brian O'Keefe
3 for this incident on November 26th of 2003 for battery domestic
4 violence. And the disposition of the charge, it was dismissed
5 pursuant to negotiations. It's a certified copy, so I would move
6 for its admission.

7 MS. PALM: And I don't object to that. I would like a copy
8 of it though.

9 THE COURT: I'm sorry.

10 MS. PALM: I would like a copy of it though.

11 THE COURT: Sure.

12 MS. PALM: If I can get one, thank you.

13 THE COURT: It'd be admitted.

14 [State's Exhibit 5 - admitted]

15 MR. LALLI: We do have more evidence to present with respect
16 to this incident. It just comes later in time, so --

17 THE COURT: Okay.

18 MR. LALLI: -- it will be marked.

19 MS. MERCER: And then, Judge, at this point the State would
20 move on to the April 2nd, 2004 incident.

21 THE COURT: Okay.

22 MS. MERCER: And --

23 [Colloquy among State's counsel]

24 MS. MERCER: And, Judge, with regards to this incident the
25 State does have proposed Exhibit Number 8 which is a Judgment of

1 Conviction in Case Number C207835 which is the case that arose from
2 this. And I believe Your Honor's seen it previously. It's the
3 battery constituting domestic violence third JOC.

4 THE COURT: Okay.

5 MS. MERCER: Attached to it is also the verdict form and the
6 information, all are certified.

7 THE COURT: Is this the one that was admitted in trial?

8 MS. MERCER: Yes, it is.

9 THE COURT: Okay.

10 MS. MERCER: And the State's first witness would be Sergeant
11 Price.

12 THE CLERK: It's admitted?

13 THE COURT: Yes.

14 [State's Exhibit 8 - admitted]

15 THE COURT RECORDER: Sergeant who?

16 MS. MERCER: Sergeant Price, P-R-I-C-E.

17 THE MARSHAL: Price?

18 MS. MERCER: Yes.

19 THE MARSHAL: Sergeant Price, remain standing please and
20 raise your right hand.

21 ROGER PRICE - SWORN

22 THE CLERK: Please be seated.

23 THE WITNESS: Thank you.

24 THE CLERK: State and spell your name for the record.

25 THE WITNESS: My name is Roger Price. R-O-G-E-R, P-R-I-C-E.

1 MS. MERCER: May I proceed, Your Honor?

2 THE COURT: Yes.

3 DIRECT EXAMINATION

4 BY MS. MERCER:

5 Q: Sir, where are you currently employed?

6 A: With the Las Vegas Metropolitan Police Department at
7 the Enterprise Area Command.

8 Q: And what is your current rank?

9 A: I'm a sergeant.

10 Q: Were you a sergeant back in April of 2004?

11 A: No, I had been an officer back then.

12 Q: Okay. And which area command would you have been
13 assigned too?

14 A: The Downtown Area Command.

15 Q: When you say officer, you mean patrol officer?

16 A: Patrol officer; yes, ma'am.

17 Q: Do you recall an incident that took place involving an
18 individual by the name of Victoria Whitmarsh on that date?

19 A: There were actually two.

20 Q: Okay. With regard to the first incident, what was your
21 reason for being dispatched to Victoria Whitmarsh's home the first
22 time?

23 A: There was a domestic disturbance at the residence.

24 Q: And do you recall where that residence was?

25 A: 1825 East Lewis.

1 Q: When you arrived at the residence, what did you do?
2 A: We responded to the call. We went into the apartment
3 and we interviewed both people who were involved.
4 Q: Do you recall the time of that first call?
5 A: It was like 9 o'clock; some where around there.
6 Q: 9 p.m. or a.m.?
7 A: P.M., ma'am. I work swing shift.
8 Q: And when you responded and made contact with the two
9 individuals, did you ultimately make an arrest at that point?
10 A: No, we did not.
11 Q: The two individuals that you made contact with do you
12 recall their names?
13 A: One was Brian O'Keefe and one was Victoria Whitmarsh.
14 Q: Okay. And do you see Mr. O'Keefe in the courtroom
15 today?
16 A: He's sitting right over there in the blue top with the
17 beard.
18 MS. MERCER: Your Honor, may the record reflect that he's
19 identified the Defendant.
20 THE COURT: Yes, it will.
21 BY MS. MERCER:
22 Q: Okay. The first time you responded you made contact
23 with both individuals and you did not make an arrest is that what
24 you testified too?
25 A: That's correct.

1 Q: Why was that?

2 A: She alleged a battery. We couldn't prove it. There's

3 a difference between reasonable suspicion and probable cause. In

4 order to make an arrest, we need to have probable cause and because

5 of the lack of injuries or any other supporting evidence, we were

6 unable to actually show probable cause that he committed a crime.

7 Q: Okay. So, what did you do at that point?

8 A: At that point, we suggested that they both separate for

9 the night and let cool their heads [indecipherable]. We asked if

10 they had any where to go. Mr. O'Keefe said he had some family over

11 or family or friends at Charleston and Henson, but he had no way to

12 get there.

13 Q: Did you ultimately end up offering him a ride to that

14 location?

15 A: I offered him a ride and, in fact, I drove him to the

16 intersection of Charleston and Henson and dropped him off at the

17 south side.

18 Q: And what was your reason for recommending that the two

19 part ways for the night?

20 A: Because there was a history of domestic violence

21 between the two as well as the fact that she had alleged and quite

22 honestly we believed that there's probably a battery. Just

23 couldn't prove it.

24 Q: Okay. Were you concerned that it might escalate?

25 A: Yes, ma'am.

1 Q: Okay. So did you, in fact, take the Defendant to that
2 location?

3 A: Yes, ma'am.

4 Q: And that -- did he indicate that was a friend's house
5 that he was going to stay the night with?

6 A: It was family or friend. I couldn't tell you which.

7 Q: Okay.

8 A: But he did -- he had -- he knew somebody there who he
9 can stay with for the night.

10 Q: Do you recall about what time you would have dropped
11 him off at that friend's place?

12 A: The original -- after the original call, it was
13 probably around 9:30, 9:45.

14 Q: And then you indicated that you were called to return
15 to the East Lewis address later that night?

16 A: At about 11 p.m., ma'am.

17 Q: And what was the reason for your dispatch at that
18 point?

19 A: The call stated that Mr. O'Keefe had returned and that
20 he had battered Ms. Whitmarsh.

21 Q: Okay. And I believe that you previously testified that
22 when you responded to the first call, you did not observe any
23 injuries on Ms. Whitmarsh?

24 A: She had no injuries at all. No, ma'am.

25 Q: When you responded the second time, did you again make

1 contact with Ms. Whitmarsh?

2 A: Yes, ma'am.

3 Q: When you made contact with her the second time, did you
4 observe any injuries to her person?

5 A: Yes, ma'am. She had some reddening, some puffiness,
6 some scratching up around her eye and then she also had broken
7 glasses.

8 Q: Okay. What was her demeanor when you made contact with
9 her at that point?

10 A: She was upset and crying.

11 Q: What did she relay to you what occurred?

12 A: She stated that --

13 MS. PALM: Objection, hearsay.

14 MS. MERCER: Excited --

15 THE COURT: Overruled.

16 MS. MERCER: Thank you, Judge.

17 THE WITNESS: She stated that Mr. O'Keefe had returned. She
18 stated prior to our arrival, she had placed a chair in front of the
19 door because she was afraid that he would return. When he
20 returned, he pushed and forced the door open which caused a chair
21 to fly in the middle of the room. There was a chair that was
22 toppled in the middle of the room which would support that part of
23 her story that he came in. He grabbed her by the hair and began
24 pulling her hair and slapped her several times in the fact breaking
25 her glasses causing her reddening.

1 BY MS. MERCER:

2 Q: Okay. When you responded to that second time, was Mr.
3 O'Keefe present at the residence?

4 A: No, ma'am.

5 Q: And when you spoke with Ms. Whitmarsh that night and
6 the Defendant that night, they both informed that they had been in
7 a relationship, correct?

8 A: Yes, ma'am.

9 Q: Were the injuries that you observed on Ms. Whitmarsh
10 the second time you responded to the location consistent with her
11 version of events?

12 A: Yes, ma'am.

13 Q: While you were on scene, did you become aware that the
14 Defendant was calling her cellphone?

15 A: Yes, ma'am. I did. In fact, I spoke to him on her
16 cellphone.

17 Q: And when you spoke to him, what occurred?

18 A: He said he was in the area at a bar. I can hear music
19 playing in the background which would be consistent with his story.
20 It also brings some more consistency to her story due to the fact
21 that he's -- he's admitting and claiming that he's back in the area
22 and he didn't stay over in the area of Charleston and Henson.

23 I asked him to come back so he can relay his side of
24 the story to us. He refused. I then offered to go to where he was
25 so that I could speak to him over there and he wouldn't have to

1 return to the apartment and he refused to tell me where he was.

2 Q: Okay. And, Officer, is there a reason this specific
3 event -- event stands out in your memory?

4 A: Yes, ma'am. I -- well there's a couple --

5 MS. PALM: Objection, relevance.

6 THE COURT: Overrule.

7 MS. PALM: I haven't attacked his memory.

8 THE COURT: Well, you just want to -- it goes to his
9 credibility. Overruled.

10 MS. MERCER: Thank you, Judge.

11 THE WITNESS: There's a couple of things. Number one, I
12 don't generally drive people any where. I don't take it upon
13 myself to sit there and give somebody a ride. I'm not a taxi
14 service. But an original call I felt that the need to get them
15 apart was enough that I -- it was worth for me to drive and I
16 actually I had to get permission from my sergeant at the time in
17 order to leave our area to drive him to where he was going.

18 Secondly, I remember speaking to her on the second time
19 and basically explaining that somebody who is going to drive all --
20 take a bus or drive or get all the way back here and can't release
21 anger after a period of time of cooling off and basically do the
22 history that there's going to be future problems and he could end
23 up killing her.

24 MS. MERCER: Okay.

25 MS. PALM: I'm going to object and move to strike that

1 testimony as completely irrelevant to what we're doing today.

2 MS. MERCER: And, Judge, as you indicated previously it goes
3 to his credibility and his ability to recall these events.

4 THE COURT: I'm only receiving it for that purpose -- limited
5 purpose, so I'm going to overrule the objection.

6 MS. MERCER: And, Judge, at this point I'll pass the witness.

7 THE COURT: All right.

8 CROSS EXAMINATION

9 BY MS. PALM:

10 Q: Officer Price, you testified that when you came back
11 the second time she had injuries to her facial area?

12 A: That's correct, ma'am.

13 Q: Okay. And that would be the scratching and bruising?

14 A: Redness, scratching and bruising. Yes, ma'am.

15 Q: Okay. Well, if your report says scratching and
16 bruising and you saw scratching and bruising on her face.

17 A: Correct, ma'am.

18 Q: And that would be on April 2nd?

19 A: Yes, ma'am.

20 Q: You did not take a report from her though until April
21 4th; is that correct?

22 A: That's incorrect, ma'am.

23 Q: Would it help refresh your recollection to look at a
24 copy of her statement?

25 A: I actually know the deal with the statement. I've

1 testified to this prior, ma'am. If you like, I'll explain it to
2 you.

3 Q: Okay.

4 A: I made a mistake on the date -- I originally started
5 with our event number and basically I transposed two numbers. If
6 our event numbers run year, month, date and I originally made a
7 mistake and I carry the mistake down.

8 Unfortunately, sometimes when you get a mistake in your
9 head especially with numbers in transposing them, it just doesn't
10 go away and that's all that was. But it was taken on April 2nd,
11 2004. Not -- at one point I believe I wrote April 4th, 2002 and
12 another point I wrote April 4th, 2004.

13 Q: Okay. So you actually had her write the statement when
14 you were there?

15 A: That's correct, ma'am.

16 Q: Okay. Was she intoxicated when you were talking to
17 her?

18 A: Yes, ma'am.

19 Q: Did you impound her broken glasses or take photographs
20 of them or anything?

21 A: No, ma'am.

22 Q: Did you take any photographs of her injuries?

23 A: No, ma'am.

24 MS. PALM: Court's indulgence.

25 [Defense counsel conferring with the Defendant]

1 BY MS. PALM:
2 Q: What time did you respond, Officer?
3 A: Which time, ma'am?
4 Q: I'm sorry. On the second -- when you came back the
5 second time?
6 A: About 11 p.m., ma'am.
7 Q: Okay. And do you recall what time you took her
8 statement at?
9 A: No, ma'am. It'd be some time when I was on that call.
10 Q: All right. You've got 11:30, would that be about
11 right?
12 A: Sounds about right, ma'am.
13 MS. PALM: No more questions. Thank you.
14 THE COURT: Any redirect?
15 MS. MERCER: No -- no further questions, Judge.
16 THE COURT: All right. Thank you, Officer, for your
17 testimony. You are excused. Next witness?
18 MR. LALLI: Sandra Rumery.
19 THE MARSHAL: Sandra who?
20 MR. LALLI: Rumery.
21 THE MARSHAL: Okay.
22 THE COURT: Which incident does this refer too?
23 MR. LALLI: Your Honor, we're moving onto 040403-1089.
24 MS. PALM: Which is actually the next day --
25 MR. LALLI: Correct.

1 MS. PALM: -- from this incident we just did.

2 THE COURT: April 5th.

3 MS. PALM: Yes.

4 MR. LALLI: That's correct.

5 THE MARSHAL: Head on up, ma'am.

6 THE WITNESS: All right.

7 THE MARSHAL: Remain standing, raise your right hand please.

8 SANDRA RUMERY - SWORN

9 THE CLERK: Please be seated and state, spell your name for
10 the record.

11 THE WITNESS: Okay. My name is Sandra Rumery; S-A-N-D-R-A,
12 R-U-M-E-R-Y.

13 DIRECT EXAMINATION

14 BY MR. LALLI:

15 Q: How are you employed?

16 A: I work with Las Vegas Metropolitan Police Department.

17 Q: What do you do?

18 A: I'm a Downtown patrol officer.

19 Q: Were you working in patrol for Metro back on April 3rd
20 of 2004?

21 A: Yes, I was.

22 Q: Directing your attention to that day. Do you have the
23 occasion to respond to 221 South Bruce, Unit 249?

24 A: Yes, I did.

25 Q: Is that located in County jurisdiction with respect to

1 misdemeanors or City jurisdiction?

2 A: That would be City.

3 Q: Okay. Why did you respond to that location?

4 A: I was called there reference a possible domestic
5 violence and that there was a manager of the apartment complex was
6 calling in on behalf of a victim that was there.

7 Q: Do you recall responding to that location?

8 A: Yes, I did.

9 Q: Okay. Explain for the Court what happened when you
10 arrived there.

11 A: When I arrived at the apartment complex, in the front
12 is where the office is located at, and I came in contact with a
13 Victoria Whitmarsh and the manager. I believe her name was Linda
14 of the apartment complex. And they were both inside the -- the
15 front office.

16 Q: What -- what was in respect to the woman who was
17 identified as Victoria, do you remember -- can you describe her;
18 what she looked like?

19 A: I want to say she was an Asian female approximately
20 about 5'5 maybe, a little bit smaller with dark hair.

21 Q: What was her demeanor?

22 A: She was -- she was afraid. She was -- the manager was
23 also afraid 'cause she had locked the door previously for me before
24 I got there. So they were upset and they were afraid of -- of
25 somebody.

1 Q: Did you -- don't -- don't tell us what she said, but
2 did you talk to Victoria about what had happened?

3 A: Yes, I did.

4 Q: After you spoke to Victoria, what did you do?

5 A: I then proceeded with another officer to the apartment
6 that she was living at 249.

7 Q: And what happened there?

8 A: I came in contact with Brian O'Keefe which was her
9 boyfriend at the time.

10 Q: And what happened when you came into contact with Mr.
11 O'Keefe?

12 A: After like I said -- obviously after talking to
13 Victoria, I placed him under arrest for domestic violence.

14 Q: What happened at that point?

15 A: He was, you know, he went into custody. He didn't
16 fight with us or anything, but he was -- he was a little stand-
17 offish towards us, but we did take him into custody and then
18 transported him to jail.

19 Q: Did he -- as far as you recall, did he make any
20 statements to you about what had happened?

21 A: I don't recall.

22 Q: Okay. And when you -- when you took him to jail, did
23 you take him to County or to City?

24 A: The City of Las Vegas.

25 MR. LALLI: Okay. Your Honor, that concludes my direct

1 examination. I do have a exhibit; it's State's proposed 9. It's a
2 certified copy of Municipal Court records pertaining to Case Number
3 C581783A.

4 Again, these are certified copies and one of the
5 documents contained therein is a criminal complaint alleging
6 battery which occurred against Victoria Whitmarsh by the Defendant
7 striking her about her face with his hands which occurred at
8 actually 1825 Lewis Street on April 3rd of 2004 to which the
9 Defendant entered a plea of guilty.

10 Let me ask you, Officer, are you familiar with this
11 address of 1825 Lewis?

12 THE WITNESS: Yes, I am.

13 BY MR. LALLI:

14 Q: Where is that in relation to 221 South Bruce?

15 A: It's directly behind it. Bruce address is the Maverick
16 Apartments and you can kind of cut through that apartment to get to
17 that next apartment complex. I believe it's managed by the same.

18 Q: Okay.

19 A: It's just it had a separate address 'cause it went down
20 the street. Their address was separate.

21 Q: When you went to make contact with the Defendant, was
22 it at that 1825 Lewis address?

23 A: Two, forty-nine.

24 Q: Okay.

25 MS. PALM: Can I just see those please? Okay.

1 MR. LALLI: That completes direct examination, Your Honor.

2 THE COURT: All right. Any cross?

3 MS. PALM: Yes, Your Honor.

4 I don't have an objection to this either. If I could
5 have a copy I would appreciate it.

6 THE COURT: It will be admitted and copies will be provided.

7 (State's Exhibit 9 - admitted)

8 CROSS EXAMINATION

9 BY MS. PALM:

10 Q: Morning, Officer.

11 A: Good morning.

12 Q: When you came into contact with Victoria Whitmarsh, she
13 didn't have any marks on her face, did she?

14 A: No, ma'am.

15 Q: And when you're filling out these domestic violence
16 reports that's part of your duty to note any marks on her face?

17 A: Yes.

18 Q: Okay. And the time you arrived was April 3rd, 2004 at
19 about 10 o'clock or 11 o'clock?

20 A: No. I think it was around maybe 10:25 or so. It was -

21 -
22 Q: Okay.

23 A: -- shortly after 10 o'clock.

24 Q: Okay. In the morning?

25 A: Yes, ma'am.

1 MS. PALM: No more questions. Thank you.

2 THE COURT: Any redirect?

3 MR. LALLI: Just one thing I forgot to mention.

4 REDIRECT EXAMINATION

5 BY MR. LALLI:

6 Q: You had placed Brian O'Keefe under arrest for a
7 domestic battery or a battery that occurred on the day that you
8 responded?

9 A: The day of I responded and for a battery that was
10 alleged that occurred the night before that I was working.

11 Q: Why did you arrest him for a battery also that occurred
12 the night before?

13 A: Because another officer responded the night before and
14 took a report for a battery domestic violence with the battery
15 occurred and it was still within the 24-hour time frame.

16 Q: Okay. So he was actually arrested on two batteries the
17 night before as well as on the day that you arrived?

18 A: Yes. Two charges.

19 Q: And you arrest him -- they arrested him based upon the
20 information you received from Victoria Whitmarsh?

21 A: That and also from -- possibly from dispatch
22 researching the prior event.

23 Q: Okay. Very well. Thank you.

24 THE COURT: All right. Any recross?

25 MS. PALM: No, Your Honor.

1 THE COURT: All right. Thank you, Officer, for your
2 testimony. You are excused.

3 THE WITNESS: Thank you.

4 THE COURT: Next witness?

5 MR. LALLI: Your Honor, the State calls Detective Tim Moniot.

6 THE MARSHAL: Tim Moniot?

7 MR. LALLI: Yes. And I would just tell the Court for the
8 purposes of this event, we're now moving to the event that occurred
9 on May 29th of 2004. So we'll offer evidence with respect to that
10 event as well as during the course of the investigation, you're
11 going to hear information pertaining to that November 26th of 2003
12 event as well.

13 THE COURT: Okay.

14 THE MARSHAL: Remain standing. Raise your right hand please.

15 MR. LALLI: One other point I would like to make before we
16 move into testimony on this event. This is the event that involved
17 an arrest of the Defendant for sexual assault. You're going to
18 learn that at the time Detective Moniot was a sexual assault
19 detective.

20 And again, I wanted the Court and Ms. Palm to be clear,
21 we're not -- I mean, you may hear bits and pieces about that today
22 because obviously you're a Court and you can eliminate that out
23 from the consideration of -- of this matter.

24 However, we don't intend to go -- that's not part of
25 our bad act motion. We're eliminating that. We are just

1 proceeding on the battery as well as statements that the Defendant
2 made during the course of the investigation.

3 THE COURT: Ma. Palm?

4 MS. PALM: And, you know, we had discussed this previously
5 that we're going to be objecting to any sexual assault evidence
6 coming in under double jeopardy and the policy of double jeopardy.
7 Mr. O'Keefe was -- was acquitted of that. So obviously the jury
8 did not believe Victoria Whitmarsh's testimony as to that.

9 THE COURT: Okay. I'm not considering any evidence of sexual
10 assault.

11 MR. LALLI: Right. He was convicted of just so the -- and
12 I'll move this into evidence. Now, it's a certified copy of a
13 judgment of conviction and as a part of this packet, there is a
14 verdict and an information. He was convicted by the jury of
15 battery and of burglary, so for entering a residence for purpose of
16 committing the battery.

17 THE COURT: Is that misdemeanor battery?

18 MR. LALLI: Yes.

19 THE COURT: Okay.

20 MR. LALLI: It was a misdemeanor battery and a felony
21 burglary.

22 THE COURT: Okay. Thank you.

23 MR. LALLI: So I would move for the admission. This is
24 marked as State's proposed 10. It's -- it is -- they are certified
25 documents.

1 MS. PALM: And I don't object to that for this hearing and I
2 would like a copy of the --

3 THE COURT: All right.

4 MS. PALM: -- entire thing though.

5 THE COURT: It'll be admitted.

6 [State's Exhibit 10 - admitted]

7 MR. LALLI: I think we can get to your name now.

8 TIMOTHY MONIOT - SWORN

9 THE CLERK: Please be seated and state, spell your name for
10 the record.

11 THE WITNESS: My name is Timothy Moniot. My last name is
12 spelled M as in Mary; O; N as in Nancy; I-O-T.

13 DIRECT EXAMINATION

14 BY MR. LALLI:

15 Q: How are you currently employed?

16 A: As a detective with the Las Vegas Metropolitan Police
17 Department.

18 Q: What's your current assignment?

19 A: I work in the Crimes Against Youth and Family Bureau.
20 I'm currently assigned to the computer forensic lab.

21 Q: Were you employed as a detective back on May 29th of
22 2004?

23 A: Yes.

24 Q: Did you respond to a call for service on that day with
25 respect to a victim identified to you as Victoria Whitmarsh?

1 A: I did.

2 Q: Where -- did you respond to the scene of the crime or
3 did you respond to some other location?

4 A: I responded to another location.

5 Q: Where did you go?

6 A: University Medical Center.

7 Q: Once you entered there, did you come into contact with
8 Victoria Whitmarsh?

9 A: I did.

10 Q: Can you describe your observations of her; what did she
11 look like?

12 A: Yes. She was wearing street clothes at the time and
13 when I first encountered her, she was exiting the triage area of
14 the emergency room. And when I saw her I made some observations as
15 to her current state. I've observed that she was crying. She was
16 holding herself around the mid section around her tummy and waist
17 area.

18 As I said, she was crying. She was shedding tears.
19 And she was walking very gingerly.

20 Q: Did you -- well, you prepared a report in conjunction
21 with this investigation?

22 A: Yes, I did. Several.

23 Q: Did you prepare a declaration of arrest?

24 A: Yes, I did.

25 Q: And in the declaration of arrest, do you recall how you

1 described the crime?

2 A: Yes. She was crying. In the report I believe the
3 descriptive word I used was vigorously. It was kind of excessive
4 type of crime. It wasn't just a tear or two coming down her cheek.
5 She was actually in the process of crying and -- yes.

6 Q: Did you observe evidence of injury on her person?

7 A: I did.

8 Q: Describe what you saw.

9 A: I saw that she had some sort of her injury above her
10 right eye. I would describe it more as -- as an abrasion as
11 opposed to -- it appeared to me at least to be an abrasion. Not a
12 late open laceration.

13 On her lip, her upper lip, towards the right side of
14 her mouth she did have what appeared to be a laceration there. It
15 was swollen. It was red and like I said it actually looked like it
16 was laid open a little bit and there was evidence that it had been
17 bleeding.

18 Q: Did you notice anything with respect to her hair?

19 A: Yes, I did.

20 Q: Describe to the Court what you observed with respect to
21 her hair.

22 A: Yes. One of the things that stood out to me was that
23 she had clumps of hair falling out of her head and actually on her
24 -- her upper garment that she was wearing had been falling out of
25 her head and it was just kind of clinging to her -- to her shirt

1 attire.

2 Q: Now, do you talk to her in this state wherein she was
3 vigorously crying?

4 A: Not at that time, no. I escorted her to a quiet room
5 which is a room that's set aside for our -- our -- I'm sorry, our
6 investigations. And that's where I spoke with her.

7 Q: And what was -- what was her demeanor like in that
8 room?

9 A: It was the exact same. When she was in the room, she
10 was -- she was seated a couple of chairs away from me. She had her
11 body canted away -- kind of away from me. She was guarding herself
12 around her mid section. And like I said she had been crying. She
13 was still crying then. She was, how I would describe it is, that
14 she was traumatized. That was just the whole package was -- it was
15 how she displayed herself with the crying. The holding herself
16 around the midsection. Not wanting to make eye contact with me.
17 Canting, having her body kind of turned away from the side and kind
18 of holding herself around the midsection. Bent over a little bit.

19 Q: Did she appear to be in pain?

20 A: Yes, she did.

21 Q: Now, do you have a conversation with her about how she
22 suffered those injuries?

23 A: I did.

24 Q: Now, I don't want to go into that for the purposes of
25 this hearing. Did she tell you during the course of that

1 conversation who it was who injured her?
2 A: Yes, she did.
3 MS. PALM: Objection, hearsay.
4 MR. LALLI: Your Honor, its an excited utterance.
5 MS. PALM: And I don't have a foundation for excited
6 utterances as far as time.
7 BY MR. LALLI:
8 Q: The injuries that you observed on her, did they appear
9 to be fresh?
10 A: I can answer that?
11 THE COURT: Yes.
12 THE WITNESS: Yes, they did.
13 MS. PALM: Well, Your Honor, she's already at the hospital,
14 so I don't have -- you know, the foundation requires a time frame
15 when the injuries occurred.
16 THE COURT: Well, she's still under the effect of the event,
17 so I'm going to overrule the objection.
18 MR. LALLI: Thank you.
19 BY MR. LALLI:
20 Q: Did she tell you who caused those injuries to her?
21 A: Yes, she did.
22 Q: Who was that?
23 A: Brian O'Keefe.
24 MR. LALLI: Court's indulgence, Your Honor.
25 BY MR. LALLI:

1 Q: You indicated that you had prepared a declaration of
2 arrest for Brian O'Keefe?

3 A: Yes, I did.

4 Q: And did the charges with which you obtained the
5 declaration of arrest and eventually the arrest warrant include a
6 charge of battery domestic violence?

7 A: Yes, I believe that was one of the related charges,
8 yes.

9 Q: Okay. While you were at the hospital working with
10 Victoria and -- and finding out what occurred, were other officers
11 actually responding to the scene?

12 A: Yes.

13 Q: Was the scene located at 2219 North Rancho?

14 A: Yes, the Budget Suites.

15 Q: Okay. Was one of the officers who responded to that
16 location Officer Morganstern?

17 A: Yes. Detective Morganstern.

18 Q: Detective --

19 A: Yes.

20 Q: Thank you. Your Honor, that concludes direct
21 examination.

22 THE COURT: Cross?

23 MS. PALM: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MS. PALM:

1 Q: Detective, is it true that the incident was alleged to
2 have occurred some five or six hours before you spoke to Victoria?

3 A: Yeah, I believe it was approximately around that time
4 frame. I talked to her around -- it was probably maybe -- it was
5 after 6 p.m. It had been taken place earlier in the later morning
6 hours, so I would say that's pretty -- pretty close.

7 Q: Thank you. No further questions.

8 THE COURT: All right.

9 MR. LALLI: No further questions of this witness.

10 THE COURT: Thank you, Officer, for your testimony. You are
11 excused.

12 Why don't we stop now 'cause I've got a -- no reason to
13 call a witness for five minutes.

14 MR. LALLI: Understood.

15 THE COURT: All right. We'll be back at 1:15.

16 MR. LALLI: 1:15?

17 THE COURT: Yes.

18 MR. LALLI: Okay. Thank you, Your Honor.

19 MS. MERCER: Thank you, Judge.

20 THE COURT: Thank you.

21 [Recess taken from 11:53 p.m. to 1:23 p.m.]

22 THE COURT: All right. Let's have our --

23 MR. LALLI: We've got one more witness, Your Honor. It's
24 Kevin Morganstern.

25 THE MARSHAL: Kevin Morganstern?

1 MR. LALLI: Who after we recessed I learned was a graveyard
2 officer and worked last night.

3 THE COURT: And which incident -- alleged incident is this?

4 MR. LALLI: Your Honor, this is with respect to the incident
5 that occurred on May 29th of '04. However, you will also hear
6 evidence regarding the November 26th, 2003 event.

7 THE COURT: Okay.

8 THE MARSHAL: Head on up, Morganstern. Face toward the Clerk
9 please, raise your right hand.

10 KEVIN MORGANSTERN - SWORN

11 THE CLERK: Please be seated and state and spell your name
12 for the record.

13 THE WITNESS: My name is Kevin, K-E-V-I-N. Last name is
14 Morganstern, M-O-R-G-A-N-S-T-E-R-N.

15 DIRECT EXAMINATION

16 BY MR. LALLI:

17 Q: How are you employed?

18 A: I'm currently employed as a police officer with the Las
19 Vegas Metropolitan Police Department.

20 Q: What is your present assignment?

21 A: I'm in the patrol division.

22 Q: I want to direct your attention back to May of 2004.
23 Were you assigned to the detective bureau at that point?

24 A: Yes, I was.

25 Q: Specifically on May 29th, 2004 were you dispatched to

1 2219 North Rancho Drive?

2 A: Yes, sir.

3 Q: Why were you dispatched to that location?

4 A: There was a call out there where a young lady, Victoria

5 Whitmarsh, was reporting that she had a domestic disturbance with

6 her boyfriend, Brian O'Keefe. She had went to the office there,

7 the Budget Suites, reported it to management there who got security

8 involved. And security went over to the room and detained Mr.

9 O'Keefe.

10 Q: And you eventually arrived there?

11 A: Yes, sir.

12 Q: When you arrived there, do you come into contact with

13 Brian O'Keefe?

14 A: Yes, sir.

15 Q: Had -- do you eventually take him from that location to

16 the detective's office to be interviewed?

17 A: Yes. Yes, I did.

18 Q: Now, prior to the Defendant being transferred from the

19 scene to the detective bureau, had he been advised by Officer Kelly

20 of his rights pursuant to Miranda versus Arizona?

21 A: Yes, sir, that's what was related to me.

22 Q: Okay. And when you interviewed the Defendant, was that

23 interview recorded?

24 A: Yes, it was.

25 Q: Was a transcript made of that?

1 A: Yes, sir.

2 Q: During the course of your interview, did you remind the
3 Defendant of his rights with respect to being so advised by Officer
4 Kelly?

5 A: Yes, I did.

6 Q: And did the Defendant say words to the effect of I
7 understand my rights?

8 A: Yes, sir.

9 Q: And did he proceed to talk to you about the incident
10 you were investigating?

11 A: Yes, he did.

12 Q: Okay. Now, did you ask him whether or not he had been
13 responsible for causing the injuries to Victoria Whitmarsh?

14 A: Yes. What we were investigating presently --

15 Q: Yes.

16 A: -- yes.

17 Q: Yes. And what was his response and how did that go?

18 A: Frankly, he was -- he was a little bit all over the
19 place. He kind of changed the story around a couple of times. I
20 think initially as I recall he told me that they had had an
21 argument the night before at the Texas. They had both proceeded I
22 guess back to the Budget Suites where Victoria had security meet
23 her. The police were called. He was asked to leave. He was
24 trespass from there not being on the lease and causing a problem.

25 On the 29th he came back to the room. Tried to get in

1 with his card that he still had in his possession, but he had been
2 locked out by management. They kind of voided out his key card.
3 She saw him I guess through the window. Opened the door for him.
4 Presume invited him in.

5 The first statement that I believe he gave that once he
6 was inside they had had words.

7 Q: Okay.

8 A: And at some point he decided to call a friend to pick
9 him up because he didn't want to stay there. He said that she got
10 upset that he was going to leave and decided that she wanted to
11 have sex with him, is what he said.

12 Q: Okay. And I don't want to go too much into the -- the
13 sexual part of the investigation. I understand that kind of what
14 the focus was, but I want to focus more on the injuries that
15 Victoria Whitmarsh suffered and the extent to which the Defendant
16 admitted or acknowledged responsibility for those.

17 A: Okay.

18 Q: Do you recall what he said about that, just in general
19 terms?

20 A: In general initially he said that -- I think at
21 different points he said that he wasn't even aware she had any
22 injuries.

23 Q: Did he repeatedly say to you for instance that he did
24 not know how those injuries occurred?

25 A: Yes. Yes. As far as her injuries, yes through the

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1 LAS VEGAS, NEVADA; WEDNESDAY, APRIL 27, 2011

2 [Proceeding commenced at 9:52 a.m.]

3
4 THE COURT: All right. State of Nevada versus Brian O'Keefe.
5 Mr. O'Keefe is present with counsel. This is a Petrocelli hearing.
6 State, call your first -- well actually, let's deal with this issue
7 on the expert, Ms. Palm.

8 MS. PALM: Okay.

9 MR. LALLI: Your Honor, I'm not prepared to argue that. I
10 didn't know that issue was going to be addressed by the Court today
11 and so I'm not --

12 THE COURT: All right. We'll set another time on that.
13 We'll do it short. I mean, it'll probably be next week.

14 MS. PALM: Next week I'm protemming all week, so --

15 THE COURT: I'm sorry.

16 MS. PALM: I'm protemming as a Judge.

17 THE COURT: Are you? All right.

18 MS. PALM: So I'm unavailable all of next week.

19 THE COURT: All of next week you will not be available?

20 MS. PALM: Well, every morning I'm going to be in Court and
21 half the afternoons.

22 THE COURT: All right. We'll set a time. We'll find some
23 time for it.

24 MR. LALLI: Thank you, Your Honor.

25 THE COURT: All right. For the week after.

1 All right. State, call your first witness.

2 MR. LALLI: Your Honor, the State calls David Whitmarsh.

3 THE MARSHAL: Step up, Mr. Whitmarsh. Come up, remain
4 standing and raise your right hand please.

5 DAVID WHITMARSH - SWORN

6 THE CLERK: Please be seated and state and spell your name
7 for the record.

8 THE WITNESS: David Whitmarsh.

9 THE COURT RECORDER: Can you spell your last name please?

10 THE WITNESS: W-H-I-T-M-A-R-S-H.

11 THE COURT RECORDER: Thank you.

12 THE COURT: Go ahead, counsel.

13 MR. LALLI: Thank you.

14 DIRECT EXAMINATION

15 BY MR. LALLI:

16 Q: Mr. Whitmarsh, did you know an individual by the name
17 of Victoria Whitmarsh?

18 A: Yes.

19 Q: How did you know her?

20 A: She was my wife.

21 Q: When were you married?

22 A: In October of '82.

23 Q: And where did that marriage occur?

24 A: New York City.

25 Q: At some point do you and Victoria have a child

1 together?
2 A: Yes.
3 Q: One child or multiple children?
4 A: One child.
5 Q: Was that child male or female?
6 A: Female.
7 Q: And what is her name?
8 A: Alexandria.
9 Q: Alexandria Whitmarsh?
10 A: Correct.
11 Q: And how old is Alexandria Whitmarsh today?
12 A: She's 25.
13 Q: At some point during your marriage, do you move to Las
14 Vegas?
15 A: Correct.
16 Q: Yes?
17 MS. PALM: Your Honor --
18 THE WITNESS: Yes. .
19 MS. PALM: -- I'm sorry to interrupt. I want to invoke the
20 exclusionary rule as I see people are coming in.
21 THE COURT: All right.
22 MR. LALLI: They're not witnesses in this hearing, Your
23 Honor.
24 THE COURT: Okay. All right. Exclusionary rule --
25 exclusionary rule has been invoked, so any witnesses that are going

1 to be called in this matter are not allowed until they're summoned
2 in by the Marshal.

3 MS. PALM: Thank you.

4 BY MR. LALLI:

5 Q: At some point do you move to Las Vegas?

6 A: Yes.

7 Q: Approximately when was that?

8 A: That was in 2001.

9 Q: At some point after moving to Las Vegas, do you --

10 [Off road discussions]

11 Q: -- at some point after you move to Las Vegas, do you
12 and Victoria separate?

13 A: Yes.

14 Q: When approximately did that occur?

15 A: That was off and on for until -- well she lived with me
16 right up 'til 2000 -- 2004 or 5.

17 Q: Okay. After -- after the split occurred, did she enter
18 into a relationship with an individual by the name of Brian
19 O'Keefe?

20 A: I believe so, yes. We were unsure just what the
21 relationship was, but the -- there was some type of relationship.

22 Q: As -- as you sit here today, have you become aware of a
23 relationship between Victoria and Brian O'Keefe?

24 A: Yes.

25 Q: I'd like you to look around and tell me if you see

1 Brian O'Keefe in the courtroom.

2 A: Yeah. I believe that's him with the glasses.

3 MR. LALLI: Your Honor, may the record reflect that the

4 witness has identified the Defendant.

5 THE COURT: Yes, it will.

6 BY MR. LALLI:

7 Q: Mr. Whitmarsh, I would like to direct your attention to

8 January 7th of 2003. Did you have a room at 7320 Las Vegas

9 Boulevard a location near the Belz Mall?

10 A: Yes.

11 Q: Were you living there at the time?

12 A: Yes. Part-time.

13 Q: At some point during that day, did you have the

14 occasion to call the Las Vegas Metropolitan Police Department?

15 A: Yes.

16 Q: Why did you call them?

17 A: Because Victoria came running to my door -- my room

18 crying, saying that he was attacking --

19 MS. PALM: Objection, hearsay.

20 MR. LALLI: Okay. What --

21 THE COURT: Sustained.

22 MR. LALLI: -- what I'd like -- I'll kind of curtail this.

23 THE COURT: All right.

24 BY MR. LALLI:

25 Q: At some point, Victoria came to your room?

1 A: Correct.

2 Q: How did you know she was there? Did she knock at the

3 door? Did -- how did that occur?

4 A: She came knocking at the door frantic.

5 Q: Did you open the door?

6 A: Yes.

7 Q: Was anyone else present besides yourself?

8 A: Yes. My daughter.

9 Q: Alexandria?

10 A: Correct.

11 Q: You described Victoria's demeanor or at least you

12 started too. Can you describe what you observed? What did you see

13 of Victoria? Don't tell me what she said, at least not yet --

14 A: Yes.

15 Q: -- but tell me what you -- what you saw --

16 A: She was --

17 Q: -- with respect to her demeanor.

18 A: -- she was very frantic. Crying and she was -- she had

19 bruises on her and she was saying she --

20 Q: Well, don't tell me what she said. Just --

21 A: -- she --

22 Q: -- I want you to do is --

23 A: -- she was in --

24 Q: -- describe for his Honor what she you saw.

25 A: -- she was in desperation and help at that point.

1 Q: You said that she was crying?
2 A: Correct.
3 Q: Was -- did you see any other movements about her body
4 that would lead you to believe that she was upset at the time?
5 A: Yes. She could barely move.
6 Q: Did you -- you mentioned that she -- something like
7 bruises?
8 A: Correct.
9 Q: Describe what you saw.
10 A: Well, she had her face was all puffed and she was --
11 she had marks on her arm.
12 Q: Okay. At some point, do you allow Victoria into your
13 room?
14 A: Yes.
15 Q: At some point after she comes into your room, is there
16 a disturbance or something you hear at the door?
17 A: Yes.
18 Q: Tell the Court about that. What do you hear?
19 A: There was a gentleman, Brian O'Keefe, which was banging
20 at the door trying to get in and get Victoria, threatening us.
21 Q: How do you know it was Brian O'Keefe?
22 A: 'Cause I looked outside the window.
23 Q: And you saw him?
24 A: Yes.
25 Q: You said that he was threatening you?

1 A: Correct.

2 Q: What did he say?

3 A: He just said that he was telling her to get out and he
4 wants to come in and he's threatening to beat us up and attack us
5 and the whole crew.

6 Q: Did you eventually call the Las Vegas Metropolitan
7 Police Department?

8 A: Yes.

9 Q: In the mist of -- of while he was trying to get in the
10 room?

11 A: Yes.

12 Q: Have you heard that call?

13 A: Have I --

14 Q: Have you heard the call that you made to the police?

15 A: -- have I heard --

16 Q: Yeah.

17 A: -- the 9 --

18 Q: Have you heard it?

19 A: Yes.

20 Q: You and I met --

21 A: Oh, yes, yes.

22 Q: -- a couple of weeks ago perhaps and -- and did I play
23 that call for you?

24 A: Yes, you did.

25 Q: Did that sound -- that call appear to be a fair and

1 accurate depiction or representation of that phone call?

2 A: Yes.

3 Q: Okay.

4 MR. LALLI: May I approach your Clerk, Your Honor?

5 THE COURT: Yes.

6 MR. LALLI: Got a number of things marked as exhibits.

7 THE COURT: Has Ms. Palm seen the proposed exhibits?

8 MR. LALLI: They're just -- she has not seen them although --

9 MS. PALM: It's the 9-1-1?

10 MR. LALLI: Yes. From this event.

11 [Colloquy between counsel]

12 MR. LALLI: What I would like to do, Your Honor, is play the
13 call for the witness. My computer is being really belligerent at
14 the moment.

15 [Off road discussions]

16 BY MR. LALLI:

17 Q: Let's -- I'll play the -- the call in a moment. At
18 some point, is the call with the -- with the 9-1-1 operator
19 concluded?

20 A: Well, I called up and spoke to a woman in dispatch and
21 told them to come down because there's somebody attacking my wife.

22 Q: Okay. Let me ask you this. In -- in the call, there
23 are other voices that you can hear in the background. Do you know
24 who those voices are?

25 A: Was my wife, my daughter and Brian and -- outside and

1 myself.

2 Q: Okay.

3 [Pause in the proceedings]

4 Q: At some point the call was concluded and do you tell
5 the 9-1-1 operator that you are going to leave the room to meet
6 police officers who were arriving?

7 A: Yes.

8 Q: Tell the Court what happens as after the call. We'll
9 come back to the call once -- once this is ready, but after the
10 call, can you explain to the Court what happens?

11 A: Well after the call, the police had showed up. And at
12 that point --

13 Q: Did you leave the room that you were in?

14 A: Yes, I did after they took Brian O'Keefe down to the
15 car.

16 Q: Okay. When you first see the police, what do you
17 recall them doing?

18 A: They were outside conversing with Brian O'Keefe and
19 they took him down to the car. I don't know what was said.

20 Q: All right. And then what do you see at that point?

21 A: I saw Brian O'Keefe lying on the ground and crying and
22 making some -- some type of noise.

23 Q: Okay.

24 [Off road discussions]

25 MR. LALLI: May I approach the witness, Your Honor?

1 THE COURT: Yes.

2 BY MR. LALLI:

3 Q: At some point after this incident, did you take
4 photographs of Victoria?

5 A: Yes, I did.

6 MR. LALLI: May I approach the witness, Your Honor?

7 THE COURT: Yes.

8 BY MR. LALLI:

9 Q: Mr. Whitmarsh, I'm going to show you what we've marked
10 as State's proposed 3. For identification purposes, do you
11 recognize that?

12 A: Yes.

13 Q: What is it?

14 A: It's bruises on Victoria.

15 Q: Are there -- is that a 2-page exhibit? Are there two
16 pages to this document?

17 A: Yes. Two pages.

18 Q: And the first page contains four photographs and the
19 second page contains a single photograph?

20 A: Correct. Total of five.

21 Q: Okay. Are those all pictures of Victoria Whitmarsh?

22 A: Yes.

23 Q: As she appeared shortly after this incident?

24 A: Correct.

25 Q: Are those fair and accurate depictions of how she

1 looked here?

2 A: Yes.

3 MR. LALLI: Your Honor, I'd move for the admission of State's
4 proposed 3.

5 THE COURT: Ms. Palm?

6 MS. PALM: For the purposes of this hearing, I don't object.

7 THE COURT: Right. All exhibits here are just for the
8 purpose of this particular hearing, so it'll be admitted.

9 [Plaintiff's Exhibit 3 - admitted]

10 [Pause in the proceedings]

11 BY MR. LALLI:

12 Q: I want to jump away from this event and talk about
13 another incident that occurred on November 26th of 2003.

14 A: All right.

15 Q: Did you call -- did you call the Las Vegas Metropolitan
16 Police Department with respect to them conducting a welfare check -

17 -

18 A: Yes.

19 Q: -- on Victoria?

20 A: Yes.

21 Q: What was occurring that prompted you to call the police
22 on that day?

23 A: We didn't know where Victoria was and based on the past
24 history, we thought she could be in danger and I believe we had
25 received a phone call prior to that incident and we never got a

1 returned phone call, so we were just wondering what's going on.

2 Q: Okay. Had -- at this point in time in Victoria's life
3 had she moved her property -- various items of her personal
4 property back in with you?

5 MS. PALM: Objection, leading.

6 THE COURT: Sustained.

7 MR. LALLI: Well, it's just foundational, Your Honor, as to
8 what -- what occurred thereafter and -- and -- and to explain why
9 the Defendant was calling, so just --

10 THE COURT: You know, I'm going to change my decision. It'll
11 be overruled, but just don't have leading when you get to the --

12 MR. LALLI: Understood.

13 THE COURT: -- heart of the matter here.

14 MR. LALLI: Sure.

15 BY MR. LALLI:

16 Q: At some point, did -- did Victoria bring a number of
17 items of her personal property to -- to your residence of where you
18 were staying?

19 A: Yes.

20 Q: How did that come about? Why -- why did she bring her
21 stuff to you?

22 A: Because she wanted to get out of the situation she was
23 in and she needed --

24 MS. PALM: Objection. You're relying on hearsay.

25 MR. LALLI: Well, was -- okay.

1 THE COURT: Okay. I'm going to sustain the objection.
2 MR. LALLI: Very well.
3 BY MR. LALLI:
4 Q: But at some point she -- she brings a number of items
5 of her property to where --
6 A: Her personal belongings. Yes.
7 Q: -- to where you are. Does she also stay with you for -
8 - for a day or two?
9 A: Yes.
10 Q: Now you mentioned that at some point she had gone
11 missing?
12 A: Right. Several times.
13 Q: I'm just talking about --
14 A: That period.
15 Q: -- this period of time on November, I believe it's
16 we're talking about 26th of 2003.
17 A: All right.
18 Q: Describe for us -- I mean, what happened? How did you
19 realize that she was missing?
20 A: When she was staying with us for a period of time and
21 then she went downstairs to get some belongings and get the keys to
22 her car from Brian O'Keefe and she had then just had a shirt on her
23 back. It was cool out. She went down supposedly for five minutes
24 and she took off. Took off with him and --
25 Q: And she never returned?

1 A: No. And the maintenance and the --
2 Q: Well, don't tell us what anybody else --
3 A: All right.
4 Q: -- may have told you or what anybody else may have
5 seen, but she's with you, she goes down to meet with the Defendant
6 and she never returns?
7 A: Correct.
8 Q: At some point thereafter, does the Defendant call you?
9 A: Yes.
10 Q: Tell us about that. Why does he call you?
11 A: He was threatening to get her belongings from us.
12 Q: He was demanding to get them back?
13 A: Correct.
14 Q: What do you remember him saying to you?
15 A: He was just stating that he wants to get her things
16 back and we can't keep them and he's going to call the police.
17 Q: So what do you do as a result of receiving the phone
18 call?
19 A: Well, I just called the police and told them what was
20 going on, but I said that I was going to put the things in a
21 storage unit and have them pick them up from the storage unit and I
22 would notify the police and have a record of that transaction.
23 Q: Do you tell the police that you have concerns about
24 Victoria's well being?
25 MS. PALM: Objection, hearsay.

1 THE COURT: Sustained.
2 THE WITNESS: Yes.
3 MR. LALLI: Okay. What do you tell them in that regard?
4 THE COURT: Re-ask the question.
5 THE WITNESS: What do -- excuse me?
6 BY MR. LALLI:
7 Q: What do you tell them with respect to your concerns
8 about Victoria?
9 A: I just told them that this happened several times where
10 she'd gone missing and call up in desperation and get -- gotten
11 beaten and I'm -- I'm in fear that this is happening once again and
12 I had asked them to find out where she was at if they would.
13 Q: Okay. At some point, do you learn or do you go some
14 where later that day to see Victoria?
15 A: Yes, I --
16 Q: Where do you go?
17 A: -- I went to the hospital.
18 Q: Okay. Do you recall which hospital?
19 A: No. Not off hand, no.
20 Q: Okay. Is Victoria there?
21 A: Yes.
22 Q: All right. Do you see her?
23 A: Yes.
24 Q: Describe how she looked when you saw her.
25 A: She -- she was all black and blue from her head to her

1 toes.

2 Q: Did she look --

3 A: All swollen.

4 Q: -- that way when she left you?

5 A: No.

6 Q: How long was she gone for? Do you recall that?

7 A: I don't recall the number of days, but --

8 Q: Do you remember how long she was in the hospital for?

9 A: Few days.

10 Q: At some point, is she released from the hospital?

11 A: Yes.

12 Q: Do you photograph her injuries?

13 A: Yes. After we got back to the house I did.

14 Q: Okay. All right. My computer is cooperating, so --

15 THE COURT: All right.

16 MR. LALLI: I'm going to continue on here for just a moment
17 and then we'll go back, Your Honor. May I approach the witness?

18 THE COURT: Yes.

19 MS. PALM: Can I see the second page?

20 BY MR. LALLI:

21 Q: Mr. Whitmarsh, I'm going to show you what we've marked
22 as State's proposed 6 for identification purposes. You recognize
23 those photographs?

24 A: Yes, I do.

25 Q: Are those the photographs that you took of Victoria

1 Whitmarsh after she had been released from the hospital in November
2 of 2003?

3 A: Yes, they are.

4 Q: Do those photographs fairly and accurately depict the
5 injuries that she had on her body?

6 A: Yes.

7 MR. LALLI: Your Honor, I move for the admission of State's
8 proposed 6 for identification?

9 MS. PALM: No objection for this hearing.

10 THE COURT: All right. Six will be admitted.

11 [Plaintiff's Exhibit 6 - admitted]

12 MR. LALLI: Did you --

13 THE COURT: I haven't seen.

14 BY MR. LALLI:

15 Q: Now, Mr. Whitmarsh, when you see Victoria in the
16 hospital in November of 2003, can you describe her demeanor when
17 you see her?

18 A: Yes, she was very distraught and barely talk. She
19 could barely move.

20 Q: Was she emotional at all?

21 MS. PALM: Objection, leading.

22 MR. LALLI: Well, I mean --

23 THE WITNESS: Extremely.

24 THE COURT: Okay. Well --

25 MR. LALLI: I can -- did you see anything else?

1 THE COURT: Right.

2 MR. LALLI: Did you see anything else? Did you see anything
3 else? Did you see anything else?

4 THE COURT: Right.

5 MR. LALLI: I mean, we could be here for three days or I can
6 point him to where --

7 MS. PALM: I'm sorry. He just described her demeanor and
8 he's asking leading questions because he didn't say something.

9 MR. LALLI: No. I'm trying to -- I'm specifically asking
10 about emotion. He might say she -- I didn't observe any emotion.

11 THE COURT: I'm going to overrule the objection.

12 THE WITNESS: Yeah, she was above and beyond. She was very
13 emotional.

14 BY MR. LALLI:

15 Q: Describe what you saw.

16 A: Well, she was beaten to such a degree that I was breath
17 taken and she was just -- couldn't really talk. She was just --
18 almost look like she was ready to die.

19 Q: Okay. What I'd like to do is go back to the January 7th
20 incident and at this point, we -- we kind of talked about the phone
21 call that you made to Metro. I'd like to play that now. So
22 hopefully we'll -- we'll have sound. I think I'd move for the
23 admission of State's proposed 1.

24 MS. PALM: No objection.

25 THE COURT: All right. One will be admitted.

1 [Plaintiff's Exhibit 1 - admitted]
2 [Playing recorded 9-1-1 call from 10:17:04 a.m. - 10:23:11 a.m.]
3 BY MR. LALLY:
4 Q: Now, Mr. Whitmarsh, kind of the high pitched voice that
5 we heard in the background, who is that?
6 A: That's my daughter --
7 Q: Okay.
8 A: -- and my wife.
9 Q: At some point, we heard and certainly the Court's
10 recollection will control not my own, but something like my f-ing
11 nose is broken.
12 A: Yeah.
13 Q: Who was that?
14 A: That's Victoria.
15 Q: Victoria was saying that?
16 A: Correct.
17 Q: Was -- when she first came to your apartment, did she
18 have the same level of emotion that we hear in the 9-1-1 call?
19 A: No. At that point, she'd calmed down quite a lot.
20 Q: On the call or when she first came over?
21 A: On that call she had calmed down from comparison to
22 when she first came over.
23 Q: So she was more emotional when she first came over?
24 A: Correct.
25 Q: Had -- with respect to what was causing her to be

1 emotional, had that just happened?

2 MS. PALM: Objection. Relies on hearsay. He didn't see it
3 happen.

4 THE COURT: Can you restate the question?

5 MR. LALLI: Sure.

6 THE COURT: I missed it.

7 BY MR. LALLI:

8 Q: Did -- was what was causing her to be upset, did that
9 just happen?

10 A: Yes.

11 Q: Okay.

12 A: The blood was fresh.

13 Q: Tell us -- tell us --

14 THE COURT: Do you have an objection?

15 MS. PALM: My objection is that relies on his speculation and
16 hearsay. He didn't see it happen.

17 MR. LALLI: Not true, Your Honor, because we know that
18 immediately after she comes to the room, the Defendant is there
19 knocking at the door trying to get in. You just heard on the call
20 him saying -- Mr. Whitmarsh saying, do not answer the door; do not
21 answer the door. He's telling the 9-1-1 operator it's Brian
22 O'Keefe who's at the door. I don't think it takes a genius to
23 figure out that what ever happened had just happened.

24 THE COURT: Well, this Court can draw any reasonable
25 inferences, but it does call for speculation, so I'm going to

1 sustain the objection.

2 MR. LALLI: Thank you.

3 BY MR. LALLI:

4 Q: Okay. Tell us what -- what you heard? What did
5 Victoria tell you?

6 A: She was concerned about her nose being --

7 MS. PALM: Objection, hearsay.

8 MR. LALLI: Your Honor, it's an excited utterance.

9 THE COURT: Overruled.

10 MR. LALLI: So --

11 THE WITNESS: She was concerned about her nose being broken
12 at that point. It was bleeding.

13 BY MR. LALLI:

14 Q: What did she tell you happened to her when she first
15 came to the -- to your apartment?

16 A: She told me that Brian O'Keefe had once again attacked
17 her and beat her.

18 MR. LALLI: Your Honor, I want to move for the admission of
19 what we had marked as State's proposed exhibit number 2. It is a
20 certified copy of a Las Vegas Justice Court record search
21 information with respect to an arrest of Mr. O'Keefe that occurred
22 on January 7th of 2003. It just indicates a disposition for this
23 charge.

24 MS. PALM: And I don't object to the admission for this, but
25 I would like copies of the records that they're admitting 'cause I

1 haven't seen this before today.

2 THE COURT: All right. And what charges is identified?

3 MR. LALLI: The original charge is battery domestic violence,
4 a misdemeanor which was dismissed on the State's motion and a
5 resisting of public officer, no weapon, a misdemeanor to which the
6 Defendant pled guilty.

7 THE COURT: All right.

8 THE CLERK: It's admitted, Judge?

9 THE COURT: Yes.

10 [Plaintiff's Exhibit 2 - admitted]

11 [Pause in the proceedings]

12 BY MR. LALLI:

13 Q: Now, I want to go back to the November 26th of 2003
14 event. When you go to the hospital to see Victoria, who was
15 present besides Victoria?

16 A: Her sister.

17 Q: What's her sister's name?

18 A: Nomatinio.

19 Q: Is Tinio spelled T-E-N-I-O?

20 A: T-I-N --

21 Q: T-I-N-I-O?

22 A: Right.

23 Q: Thank you. So her sister's there. Does anybody
24 accompany you to the hospital? Does anybody go with you to the
25 hospital?

1 A: I don't recall.
2 Q: Okay.
3 A: It was so hectic.
4 Q: And you described her -- Victoria's demeanor as kind of
5 subdued?
6 A: Right.
7 Q: Is there anything else that you observed with respect
8 to her demeanor?
9 A: No. She was just -- just down and out. And I think
10 they had medicated her at that point when I got there because she
11 was beaten so badly.
12 Q: Okay. And with respect -- Your Honor, may I see the --
13 the exhibit --
14 THE COURT: My Clerk has that.
15 MR. LALLI: Thank you.
16 BY MR. LALLI:
17 Q: Mr. Whitmarsh, with respect to State's Exhibit Number
18 6, how many days or how long after Victoria's release from the
19 hospital were these photographs taken?
20 A: That's about three days, so it's a total of maybe six
21 days after the incident.
22 Q: Okay. But -- so it was -- it was about three days
23 after she was released from the hospital?
24 A: Approximately, yes.
25 Q: Okay.

1 A: I had to get the film.

2 Q: Now, there is -- there appears to be some dates on the
3 side of these photographs. It looks like March 11th -- I'm sorry.
4 November 25th of 2003; how accurate is that date?

5 A: Well, I have never adjusted the date on the camera. I
6 don't even know how.

7 Q: Okay.

8 Your Honor, that concludes direct examination.

9 THE COURT: All right. Any cross examination?

10 MS. PALM: Thank you.

11 CROSS EXAMINATION

12 BY MS. PALM:

13 Q: So, those -- those -- the photographs in State's
14 Exhibit 3 were taken three days post being hospitalized?

15 A: Correct.

16 Q: And she was hospitalized on the 26th?

17 A: I don't recall the day.

18 Q: Or --

19 A: The dates on that -- those photos are not accurate by
20 any means.

21 Q: Okay.

22 A: There's many leap years that went by before that --
23 that was actually reality.

24 Q: So the dates on the photographs though it shown
25 November 25th and November 26th?

1 A: Yeah. They're not accurate.

2 Q: So the only way we have to verify when those

3 photographs were taken was your testimony that they were taken

4 three days after the hospital?

5 A: Correct.

6 Q: When did you give those to the police?

7 A: I don't know if I did.

8 Q: When did you give them to the DA?

9 A: I gave them to Philip when this all began back in

10 November of '08.

11 Q: Okay. Let's go back to the January 7th, 2003 incident.

12 Those photographs, was your camera working then as far as the date

13 goes?

14 A: I have never touched the date period, so --

15 Q: So whatever dates on them isn't necessarily reliable?

16 A: Yeah. I'm not even sure if it's the same camera --

17 camera because I'm a photographer and I got plenty of cameras.

18 Q: Okay. So the date on those photographs accurately show

19 the 7th, then that date would be wrong though?

20 A: I have no idea. I've never even looked at the dates.

21 Q: When did you give those photographs to the DA?

22 A: November of '08.

23 Q: At the time of the January 7th incident, Victoria had

24 been drinking hadn't she?

25 A: I don't know.

1 Q: Well, had you seen her drinking before?
2 A: She's not a drinker.
3 Q: If you said in her -- in your 9-1-1 calls that she was
4 a drinker, would that be inaccurate?
5 A: Say that again please.
6 Q: Have you ever said that she was a drinker before?
7 A: No. I may have said they've been drinking.
8 Q: But by they, you include Victoria?
9 A: Right. Because I know that he encouraged her to drink.
10 Q: Would you be surprised if the police reports only show
11 an injury to her nose after the January 7th incident?
12 A: Say that again please.
13 Q: The January 7th incident, what you claimed those
14 pictures are from?
15 A: Right.
16 Q: Would you be surprised if the police reports only show
17 an injury to her nose?
18 A: Comparison to what?
19 Q: Well, what's in the photographs. Would you like to
20 look at them again?
21 A: Yes.
22 MS. PALM: May I approach, Your Honor?
23 THE COURT: Yes.
24 MS. PALM: I don't have that exhibit.
25 THE WITNESS: And you said the question was what?

1 BY MS. PALM:

2 Q: My question is would you be surprised that the police
3 reports only indicate that she had an injury to her nose?

4 A: My -- I would be surprised based on -- on what reality
5 is yes.

6 Q: So the police reports would be inaccurate?

7 A: I don't know what the police report and I don't know
8 what she said, so I can't comment on that.

9 Q: You did not see any battery yourself did you?

10 A: No.

11 Q: Are you -- were you a New York City police officer?

12 A: Yes. I was affiliated with the police.

13 Q: What exactly were -- how exactly were you affiliated?

14 A: Narcotics.

15 Q: Doing what?

16 A: Undercover.

17 Q: Does that mean you were employed by the New York City?

18 A: Correct.

19 Q: By the City of New York you were employed as an
20 undercover officer?

21 A: Right.

22 Q: How can I verify that?

23 A: I have no idea.

24 MR. LALLI: I would object, Your Honor. This is not a
25 deposition.

1 THE COURT: I'm going to sustain the objection.
2 BY MS. PALM:
3 Q: Were you arrested or charged with impersonating an
4 officer that day?
5 A: Not that I recall.
6 Q: So if records show otherwise that you were arrested
7 from impersonating an officer, would those be wrong?
8 A: I have no idea.
9 Q: Did the police accuse you of impersonating an officer?
10 A: No, they accused me of taking some personal belongings.
11 Q: Did they arrest you?
12 A: I believe so.
13 Q: So you were arrested on January 7th?
14 A: I don't recall the date, but I -- on that incident,
15 yes.
16 Q: You were aware that Victoria had mental health
17 problems?
18 A: When you say mental health, what are you referring to?
19 Q: Problems with -- well let's talk about truthfulness.
20 Did you she have a problem with truthfulness?
21 A: That's so vague. I don't know what you're referring
22 to.
23 Q: Do you -- do you have an opinion whether Victoria often
24 lied?
25 A: No. She's not a liar.

1 Q: Okay. If she told the doctors that you had sexually
2 and physically abused her for 18 years, would that be true?

3 MR. LALLI: Objection, relevance.

4 THE COURT: Ms. Palm?

5 MS. PALM: Well, he's indicating that everything that she
6 says is truthful and she said things about him too, so I want to
7 know the basis of his opinion that she doesn't lie.

8 MR. LALLI: Why is Victoria's truthfulness relevant here?

9 THE COURT: Yeah. The issue is whether or not these events
10 took place --

11 MS. PALM: Well --

12 THE COURT: -- by clear and convincing evidence and --

13 MS. PALM: -- we're letting in excited utterances because
14 they're supposed to be truthful.

15 THE COURT: And also the photographs showing bruises about
16 her body, so I'm going to sustain the objection.

17 BY MS. PALM:

18 Q: Going to the November 26th incident, when was Victoria
19 with you prior to the call on November 26th that week?

20 A: Say that --

21 Q: Let me rephrase that. I was a little bit confused by
22 your testimony. She was with you a few days before you called the
23 police on the 26th?

24 A: And refresh me on the 26th, what is the incident you're
25 referring to?

1 Q: The 26th is the second incident for which you took the
2 photographs.

3 A: Second incident or first according to this pictures?

4 Q: The November 26th, 2003 incident; do you not remember
5 it?

6 A: Yeah, I remember. I'm just asking which one are you
7 referring too.

8 Q: The November 26th, 2003.

9 A: When she came knocking -- she came in the door and he
10 was knocking at the door?

11 Q: Do you not recall the dates of the incidents?

12 A: I don't know the exact dates. No, I don't. What is
13 your question?

14 Q: Do you recall testifying that you went to see her at
15 the hospital?

16 A: Yes.

17 Q: Okay. And when had you last seen her prior to the
18 visit to the hospital?

19 A: I don't recall.

20 Q: Was it a number of days or was it a week or --

21 A: I saw her off and on all the time, so I do --

22 Q: Okay.

23 A: -- keep records of that.

24 Q: Well, if I understood your testimony, she had been
25 missing. So I'm wondering when you saw her during that period that

1 she was missing.

2 A: I don't get where you're coming from with this and I
3 don't recall exactly what days I saw her, which days I didn't.

4 Q: Okay. So you don't know how long she was missing?

5 A: Yes. The day that he picked her up from the gate at my
6 apartment complex, I do know how long she was missing.

7 Q: Okay. And how long was that?

8 A: That was a few days.

9 Q: Okay. So it was a few days from the time that you last
10 saw her until you saw her in the hospital?

11 A: Correct.

12 Q: Like two or three days?

13 A: Correct.

14 Q: And you didn't see any -- any physical abuse going on
15 yourself in that incident did you?

16 A: What incident?

17 Q: The one --

18 A: When she --

19 Q: -- when she was in the hospital.

20 A: Yeah, she was in the hospital. You saw the pictures.
21 She was beaten.

22 Q: You didn't see her being beaten by anybody, didn't you?

23 A: No, I didn't.

24 Q: And she actually been with you two or three days prior
25 to that; is that correct?

1 A: Correct.

2 Q: And she has accused you of beating her before hasn't

3 she?

4 A: No.

5 Q: She never has?

6 A: Not that I'm aware of.

7 Q: To the police?

8 A: I have no idea.

9 Q: Are you aware that she has accused you of --

10 MR. LALLI: Objection, relevance.

11 THE WITNESS: No.

12 THE COURT: Sustained.

13 MS. PALM: Court's indulgence.

14 [Defense attorney conferring with Defendant]

15 MS. PALM: No more questions.

16 THE COURT: Any redirect?

17 MR. LALLI: No, Your Honor.

18 THE COURT: All right. Thank you, sir, for your testimony.

19 You are excused.

20 THE WITNESS: All right.

21 MR. LALLI: Your Honor, we would call Officer Pointon.

22 THE COURT: Sir, do you need assistance getting down?

23 THE WITNESS: No. I'm all set.

24 MR. LALLI: Your Honor, is it permissible now that Mr.

25 Whitmarsh has testified that he remain in the courtroom?

1 THE COURT: Are you going to recall him, Ms. Palm?

2 MS. PALM: I may.

3 THE COURT: I doubt you will, but since you -- the
4 exclusionary rule has been invoked. You need to sit outside, sir.

5 MR. LALLI: You have to wait outside. I'm sorry.

6 THE WITNESS: All right.

7 CHARLES POINTON - SWORN

8 THE CLERK: Please be seated. State and spell your name for
9 the record.

10 THE WITNESS: Charles Pointon, C-H-A-R-L-E-S. Last name P-O-
11 I-N-T-O-N.

12 DIRECT EXAMINATION

13 BY MR. LALLI:

14 Q: How are you employed?

15 A: I'm a police officer with the Las Vegas Metropolitan
16 Police Department.

17 Q: What's your current assignment?

18 A: I'm currently assigned to the range staff as a
19 firearm's instructor.

20 Q: Were you employed by Metro back in January of 2003?

21 A: Yes, I was.

22 Q: What was your assignment at --

23 A: I was --

24 Q: -- that time?

25 A: -- I was a patrol officer at South Central Area

1 Command.

2 Q: Specifically, were you working at -- on January 7th of
3 2003 at approximately 1:15 in the morning?

4 A: Yes, I was. Patrolling Ida [phonetic] area.

5 Q: What's Ida area?

6 A: It's the South Central portion of the valley where I
7 was assigned.

8 Q: On that day, were you dispatched to 7230 Las Vegas
9 Boulevard?

10 A: Yes, I was.

11 Q: Is that near the Belz Mall?

12 A: Yes, sir, it is.

13 Q: Why were you called out to that location?

14 A: I believe it was a 9-1-1 call that was domestic
15 violence related at the -- it's Manor Suites or something -- it's a
16 daily/weekly hotel at the intersection of Warm Springs and the
17 Boulevard.

18 Q: Can you explain for the Court what happened when you
19 arrived?

20 A: Best as I remember, myself and Officer Duncan responded
21 to the call. Officer Duncan was ahead of me. When we arrived,
22 there was a female either on the second or third floor pointing
23 down and when --

24 Q: She was pointing down?

25 A: Yeah. Like going like this [indicating with his

1 finger] like as if to indicate that the problem was below her.

2 Q: Can you describe what that woman looked like?

3 A: No. To the best of my knowledge I just remembered it
4 was a female. She wasn't as important as to why she was pointing
5 down I guess.

6 Q: Okay. What was she pointing at?

7 A: I believe it was Mr. O'Keefe because when we exited our
8 vehicles we can hear some screaming. Not screaming, yelling. And
9 Mr. O'Keefe was in the breezeway of the hotel.

10 Q: And was she saying anything as she was pointing?

11 A: That I honestly don't remember. I think it was
12 something to the effect of that's him or there he is; something to
13 that effect.

14 Q: So what did you do upon seeing this?

15 A: Myself and Officer Duncan approached him and Officer
16 Duncan, because there was a little bit of chaos at the scene,
17 multiple people, we didn't know exactly was going on. Officer
18 Duncan placed Mr. O'Keefe in custody.

19 Q: Did you eventually make contact with the woman who was
20 pointing at Mr. O'Keefe?

21 A: I don't remember if it was myself or Officer Duncan
22 that actually took a voluntary statement from her. I do remember
23 seeing that she was bleeding from the nose and crying. I mean, I
24 don't remember much else about it.

25 Q: With respect to the woman, did you fill out a domestic

1 violence report?

2 A: Yes.

3 Q: And on that -- do you remember the woman's name?

4 A: I actually just saw it in there. It was Whitmarsh I
5 believe.

6 Q: As part of that report, do you list out a description
7 of the individual?

8 A: Yes, sir.

9 Q: Okay. Would it refresh your recollection as to her
10 appearance, what she looked like; height, weight, race that sort of
11 stuff if you looked at that report?

12 A: It would help. Yes, sir.

13 MR. LALLI: May I approach the witness, Your Honor?

14 THE COURT: Yes.

15 BY MR. LALLI:

16 Q: Is that the report that you wrote?

17 A: Yes, sir. It is.

18 Q: Okay. And how do you describe her?

19 A: As Asian female, 5 foot 4, about a hundred and five
20 pounds with black hair, brown eyes.

21 Q: And you -- as part of this report, you also indicate
22 injuries --

23 A: Yes, sir. I did.

24 Q: -- as you observed? Are these injuries you yourself
25 observe or are they injuries that are reported -- in this case

1 reported to you by your partner or by another officer at the scene
2 or do you recall?

3 A: These are -- in this incident I actually observed the
4 bloody nose. If I remember correctly, she had a towel with some
5 ice that had already been applied to the site before we had
6 arrived.

7 Q: What was her demeanor when -- when you saw her?

8 A: She was crying. You could tell she was upset.

9 Q: In this upset condition she was in, did she indicate to
10 you who had caused the injuries?

11 MS. PALM: Objection, hearsay.

12 THE COURT: Excited utterance?

13 MR. LALLI: Yes, Your Honor.

14 THE COURT: Overrule.

15 MS. PALM: And, Your Honor, he's just testified that she had
16 already applied ice to her nose and that the blood was dried from I
17 understand, so --

18 THE WITNESS: No, ma'am. I didn't say it was dried.

19 MS. PALM: Okay.

20 THE WITNESS: There was ice applied to it, but it had active
21 bleeding.

22 THE COURT: Overrule the objection. Excited utterance
23 exception.

24 BY MR. LALLI:

25 Q: Describe -- before we get to the statement, describe

1 the active bleeding that you observed?

2 A: There was blood on her upper lip I believe from her
3 nose injury and the towel that was applied to the area also had
4 blood on it or what appeared to be blood.

5 Q: Okay. So what does she tell you with respect to who
6 had caused those injuries to her?

7 A: Mr. O'Keefe; she said that her and her boyfriend had
8 been arguing something about him being jealous as I indicated in
9 the report. They'd both been drinking and that he had smacked her
10 in the face.

11 Q: Based upon the information that she provided to you,
12 was Mr. O'Keefe placed under arrest?

13 A: Yes, he was.

14 Q: Was that done by you or by Officer Duncan?

15 A: Officer Duncan.

16 Q: Did you observe the Defendant being placed under
17 arrest? Did you see that happening?

18 A: Yes, I did.

19 Q: Describe what you saw.

20 A: Officer Duncan originally had put Mr. O'Keefe in
21 handcuffs and patted him down for weapons, placed him in the
22 backseat of the patrol vehicle. Later on after we had calmed the
23 scene down and found out what had happened, Officer Duncan decided
24 to Mirandize Mr. O'Keefe, so he opened the back door of the patrol
25 vehicle to Mirandize him.

1 Mr. O'Keefe -- the point where Officer Duncan told him
2 that he was under arrest and Mirandizing him, he became a little
3 bit aggravated, agitated and tried to get out of the patrol
4 vehicle. Officer Duncan tried -- attempted to keep him in the car,
5 but Mr. O'Keefe pushed passed him. The two of them wound up going
6 to the ground.

7 Q: Okay.

8 A: The two of them being Mr. O'Keefe and Officer Duncan.
9 Officer Duncan called for my assistance at that point to help with
10 Mr. O'Keefe.

11 MR. LALLI: Your Honor, that concludes direct examination.

12 THE COURT: All right. Cross examination.

13 MS. PALM: Thank you.

14 CROSS EXAMINATION

15 BY MS. PALM:

16 Q: Officer Pointon, do you recall testifying that the
17 blood had not dried when you saw Ms. Whitmarsh?

18 A: Yes.

19 Q: Okay. Did you fill out a form where you indicated you
20 were interview with my client?

21 A: I'd have to see the report. I don't remember
22 interviewing Mr. O'Keefe.

23 Q: Did you fill out a declaration of misdemeanor domestic
24 violence arrest?

25 A: Yes, I did.

1 Q: Would it refresh your recollection to look at that
2 document to see whether the blood had dried by the time you spoke
3 to Ms. Whitmarsh?

4 A: Yes.

5 MS. PALM: May I approach?

6 THE COURT: Yes.

7 THE WITNESS: I see what you're saying; had dried, but
8 appeared -- applied ice to her.

9 BY MS. PALM:

10 Q: Yes.

11 A: Yes.

12 Q: So, by the time that you spoke to Ms. Whitmarsh you
13 applied ice and the blood had dried?

14 A: Yes. To the best -- yes.

15 Q: Okay. Thank you. And Ms. Whitmarsh had been drinking
16 that day, hadn't she?

17 A: Yes. I believe both of them had been drinking.

18 Q: Okay. And -- and the only -- the only abuse that she
19 told you about was being hit in the face?

20 A: Yes. If I remember correctly, it was slapped in the
21 face.

22 Q: Okay. And that's the only injuries that you noted that
23 day was the injury to the nose?

24 A: Yes.

25 Q: And when you arrived my client was -- was actually

1 downstairs in a breezeway; is that what your testimony?

2 A: To the best I recall, yes.

3 Q: Okay. And the apartment that the alleged victim was in
4 was upstairs?

5 A: Yes.

6 Q: Okay. How far away was my client when you got there?

7 A: From what?

8 Q: From the upstairs apartment?

9 A: I don't remember if it was the second or the third
10 floor, so I can't give you an exact -- he was in the lower area.
11 She was on a balcony.

12 MS. PALM: Okay. No more questions. Thank you.

13 THE COURT: Any redirect?

14 MR. LALLI: No, Your Honor.

15 THE COURT: Thank you, Officer, for your testimony. You are
16 excused.

17 Next witness for the State.

18 MR. LALLI: Your Honor, we're going to be leaving this event
19 now that occurred on January 7th of 2003. We're going to be moving
20 to an event that occurred on November 14th of 2003.

21 THE COURT: All right.

22 MR. LALLI: So that -- that concludes the evidence that we
23 have with respect to the January 7th of '03 event.

24 THE COURT: Okay.

25 MS. MERCER: And, Your Honor, the State's first witness will

1 be Officer Radmanovich.

2 THE COURT: All right.

3 THE MARSHAL: Remain standing and raise your right hand

4 please, sir.

5 STEVEN RADMANOVICH - SWORN

6 THE CLERK: Please be seated.

7 THE WITNESS: Thank you.

8 THE CLERK: State and spell your name for the record.

9 THE WITNESS: Steven Radmanovich; it's R-A-D-M-A-N-O-V-I-C-H.

10 MS. MERCER: May I proceed, Your Honor?

11 THE COURT: Actually, a housekeeping matter. Without saying

12 forth the specifics, I'm looking at your motion to admit -- motion

13 in limine here, at page 3. Does everyone found [sic] that?

14 MS. MERCER: Yes, Your Honor.

15 THE COURT: You look at line 12, there's a date.

16 MS. MERCER: Yes.

17 THE COURT: I'm not going to say what it is. And if you look

18 at line 21, it says three months.

19 MS. MERCER: Correct.

20 MR. LALLI: Yeah.

21 THE COURT: Is that a typo?

22 MS. MERCER: No.

23 MR. LALLI: Go ahead.

24 MS. MERCER: Judge, at this point the State's not going to

25 seek to admit evidence in regards to the August 4th incident. We

1 decided to abandon that one, so we're just moving onto the -- the
2 November 14th.

3 THE COURT: Okay. Well -- but is it -- look at the year,
4 that's my concern. It says three months later.

5 MR. LALLI: That is a typo, Your Honor.

6 THE COURT: So it should be '03?

7 MR. LALLI: Yes. At line 21 --

8 MS. MERCER: Oh, yeah.

9 MR. LALLI: -- it should be November 14th --

10 MS. MERCER: I see.

11 MR. LALLI: -- 2003.

12 THE COURT: Okay.

13 MS. MERCER: Correct. Sorry, Judge.

14 THE COURT: Okay. Okay. Thank you. Go ahead.

15 MS. MERCER: May I proceed, Judge?

16 THE COURT: Yes.

17 DIRECT EXAMINATION

18 BY MS. MERCER:

19 Q: Sir, where are you currently employed?

20 A: Metropolitan Police Department Northwest Area Command.

21 Q: Are you patrol officer?

22 A: Yes, I am.

23 Q: And how long have you been employed with Metro?

24 A: Approximately 12 years.

25 Q: I want to direct your attention back to November of

1 2003. Where were you assigned at that time?
2 A: South Central Area Command.
3 Q: And on November 14th of 2003, were you working with an
4 officer by the name of Wong.
5 A: Yes, I was.
6 Q: And that's W-O-N-G?
7 A: That's correct.
8 Q: Were the two of you riding in the same vehicle or
9 separate vehicle?
10 A: We were in separate patrol vehicles.
11 Q: Okay. Do you recall responding to an incident that
12 occurred at 1500 Stardust Road?
13 A: Yes.
14 Q: And what time were you responding to the original
15 incident that lead you to that location?
16 A: I would have to say it was some time in the early
17 morning, 5 o'clock, 4 o'clock, 5 o'clock in the morning I think.
18 Q: Okay. And do you recall the type of incident that you
19 originally responded to?
20 A: It was a disturbance call. I don't remember directly
21 what it was. No, I do not.
22 Q: While you were finishing up responding to that call,
23 did something in the area grab your attention?
24 A: Yes.
25 Q: What was it?

1 A: Turning our patrol vehicles, we heard some screaming
2 and we heard some glass breaking in the area at which point we
3 directed our attention over there and we made contact with dispatch
4 to let them know we had some type of disturbance going on and we
5 advised that later when we got there.

6 Q: Okay. So, were you able to actually locate the -- the
7 location of the disturbance?

8 A: Yes, ma'am.

9 Q: Was it an apartment?

10 A: It was like -- I think -- I believe it was a Budget
11 Suites daily/weekly community.

12 Q: Okay. And you were -- you located the specific room,
13 correct?

14 A: Yes.

15 Q: Do you recall that room number?

16 A: I do not.

17 Q: Would it refresh your memory if I showed you a copy of
18 your reports?

19 A: Yes, ma'am.

20 MS. MERCER: Your Honor, may I approach the witness?

21 THE COURT: Yes.

22 BY MS. MERCER:

23 Q: If you could just take a look at these and hand them
24 back to me when your memories refreshed.

25 A: Okay. Apartment 2016.

1 Q: Is your memory refreshed now?
2 A: Yes, it is.
3 Q: Okay. And what was the apartment number?
4 A: Twenty-sixteen.
5 Q: When you responded to the number twenty-sixteen, what
6 did you observe?
7 A: The first thing we observed was broken glass on the
8 sidewalk area and also we could hear screaming between a male and a
9 female in an adjacent apartment.
10 Q: Okay. How did you proceed at that point?
11 A: At that point, Officer Wong knocked on the -- the door
12 and we announced as Metro Police. At which time a few moments
13 later a female answered the door. I believe her last name to be
14 Mott.
15 Q: Is that M-O-T-T?
16 A: Yes. And we further observed a male and a female back
17 in the apartment engaged in an argument and at which time we placed
18 the male half into custody and brought and separated the two so we
19 could do an investigation on what was going on.
20 Q: Okay.
21 A: The male was further observed to be bleeding which
22 appear to maybe broken glass at that point.
23 Q: It appeared to you the injuries to the male may have
24 been caused by the broken glass?
25 A: Correct.

1 Q: Okay. I want to back up for a second.
2 A: Okay.
3 Q: You indicated that once the female opened the door, the
4 woman by the name -- last name of Mott, M-O-T-T, there were two
5 other individuals located inside the apartment?
6 A: Correct.
7 Q: Do you recall where they were located inside the
8 apartment?
9 A: If I remember, there's like a studio apartment. So
10 it's basically just one room and they were further back into the --
11 like there's like a little small bedroom area back in between
12 there.
13 Q: Okay.
14 A: If I can recall correctly.
15 Q: And what was taking place between these two
16 individuals?
17 A: I'm sorry.
18 Q: What was taking place between these two individuals?
19 A: Argument. Argument. Fighting.
20 Q: Okay. Do you -- did you some point learn those two
21 individuals names?
22 A: Yes.
23 Q: What were their names?
24 A: Whitmarsh and O'Keefe.
25 Q: Okay. And Whitmarsh would be the female?

1 A: That's correct.

2 Q: Once you separated the parties, did you have the
3 opportunity to speak with Ms. Whitmarsh and Ms. Mott?

4 A: Yes.

5 Q: Do you recall what Ms. Whitmarsh's demeanor was?

6 A: She was upset, crying. She complained of pain to her
7 head and to her neck area.

8 Q: And did you observe any injuries to her?

9 A: I didn't -- I observed a lump and felt a lump in the
10 back of her head area. Further, there was some reddening to her --
11 around her chest and lower neck area as well. And there appeared
12 to be some bruising to an arm. If I remember correctly, that may
13 have been during this incident or an incident within I'd say
14 probably 24 hours.

15 MS. PALM: I'm going to object as to speculation, Your Honor.

16 THE COURT: Sustained.

17 BY MS. MERCER:

18 Q: When you spoke to Ms. Whitmarsh, what did she relay had
19 occurred?

20 MS. PALM: Objection, hearsay.

21 MS. MERCER: And, Your Honor, she's -- he's already testified
22 that Ms. Whitmarsh was crying and very upset and hysterical.

23 THE COURT: I'm going to allow the testimony. Go ahead.

24 THE WITNESS: There was an argument over money purposes and
25 that Mr. O'Keefe had come to her apartment upset and had grabbed

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

2
3 **BRIAN K. O'KEEFE,**
4 Appellant,
5 vs.
6 **THE STATE OF NEVADA**
7 Respondent.

Supreme Court No.:

District Court Case No.: 08C250630

Electronically Filed
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Clerk of Supreme Court

8 **APPELLANT'S APPENDIX – VOLUME XVI – PAGES 3000-3199**

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5	Order Authorizing Contact Visit filed on 03/04/09	0219-0220
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7	Order Denying Defendant's Ex Parte Motion to Extend Prison Copywork Limit filed on 08/13/15	5486-5488
8	Order Denying Defendant's Ex-Parte Motion for Reimbursement of Incidental Costs Declaring Defendant Ingigent and Granting Forma pauperis filed on 03/11/14	4840-4842
9	Order Denying Defendant's Motion for Relief From Judgment Based on Lack of Jurisdiction for U.S. Court of Appeals had not Issues any Remand, Mandare or Remittature filed on 09/04/14	4927-4929
10	Order Denying Defendant's Motion to Dismiss filed on 04/11/12	3434-3435
11	Order Denying Defendant's Motion to Seal Records and Defendant's Motion to Admit Evidence of Plygraph Examination filed on 05/24/12	3448-3449
12	Order Denying Defendant's Petition for Writ of Mandamus or in the Alternative Writ of Coram Nobis; Order Denying Defendant's Motion to Waive Filing Fees for Petition for Writ of Mandamus; Order Denying Defendant's Motion to Appoint Counsel filed on 01/28/14	4761-4763
13	Order Denying Defendant's Pro Per Motion for Judicial Notice- The State's Failure to File and Serve Response in Opposition filed on 04/01/14	4855-4857
14	Order Denying Defendant's Pro Per Motion for Leave to File Supplemental Petition Addressing all Claims in the First Instance Required by Statute for Judicial Economy with Affidavit filed on 07/15/15	5464-5466
15	Order Denying Defendant's Pro Per Motion to Modify and/or Correct Illegal Sentence filed on 03/25/14	4852-4854
16	Order Denying Defendant's Pro Per Motion to Withdraw Counsel for Conflict and Failure to Present Claims When I.A.C. Claims Must be Raised Per Statute in the First Petition Pursuant to Chapter 34 filed on 07/15/15	5461-5463
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9	Order Granting, in Part, and Denying, in Part, Motion by Defendant O'Keefe to Preclude the State from Introducing at Trial Other Act or Character Evidence and Other Evidence Which is Unfairly Prejudicial or Would Violate his Constitutional Rights filed on 09/09/10	1427-1429
10	Order Granting, in Part, the State's Motion to Admit Evidence of Other Bad Acts filed on 03/13/12	3199-3200
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14	Petition for a Writ of Mandamus or in the Alternative Writ of Coram Nobis filed on 12/06/13	4663-4694
15	Petition for Writ of Habeas Corpus or in the Alternative Motion to Preclude Prosecution from Seeking First Degree Murder Conviction Based Upon the Failure to Collect Evidence filed on 01/26/09	0125-0133
16	Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 Exclusive 1 Based On Subject-Matter of Amended Information Vested in Ninth Circuit by notice of Appeal Then "COA" Granted on a Double Jeopardy Violation with No Remand Issued Since filed on 09/15/14	4940-4949
17	Petitioner's Supplement with Exhibit of Oral Argument Scheduled by the Ninth Circuit Court of Appeals for November 17, 2014, Courtroom #1 filed on 10/01/14	4984-4988
18	Pro Se "Reply to State's Opposition to Defendant's Pro Se Motion to Modify and/or Correct Illegal Sentence filed on 03/04/14	4821-4832
19	ProSe "Reply" to State's Opposition to Defendant's (Ex-Parte) "Motion for Reimbursement of Incidental Costs Subsequent the Courts Declaring Defendant Indigent and Granting Forma Pauperis" filed on 02/24/14	4792-4799
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28	State's Opposition to Defendant's Motion to Dismiss filed on 03/21/12	3407-3411
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3	State's Opposition to Defendant's Pro Per Motion to Chief Judge to Reassign Case to Jurist of Reason Based on Pending Suit Against Judge Michael Villani for Proceeding in Clear "Want of Jurisdiction" Thereby Losing Immunity, Absolutely filed on 09/12/14	4930-4934
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10	State's Response and Motion to Dismiss Defendant's Motion for Relief from Judgment Based on Lack of Jurisdiction for U.S. Court of Appeals had not Issued any Remand, Mandate or Remittature of filed on 08/07/14	4891-4902
11	State's Response and Motion to Dismiss to Defendant's Pro Per Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 Exclusive based on Subject-Matter of Amended Information Vested in Ninth Circuit by Notice of Appeal Then "COA" Granted on a Double Jeopardy Violation with No Remand Issued Since (Post Conviction), Amended Petition and Accompany Exhibits, Opposition to Request for Evidentiary Hearing, and Opposition to Pro Per Motion to Appoint Counsel filed on 10/10/14	5041-5050
12	State's Response to Defendant's Motion to Preclude the State from Introducing at Trial Other Bad Acts or Character Evidence and Other Evidence that is Unfairly Prejudicial or Would Violate his Constitutional Rights filed on 08/16/10	1268-1276
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5	Habeas Corpus," and "Supplement with Notice Pursuant NRS 47.150(2);	
6	NRS 47.140(1), that the United States Supreme Court has Docketed (#14-	
7	10093) the Pretrial Habeas Corpus Matter Pursuant 28 USC 2241(c)(3)	
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9	Judgment Obtained in Want of Jurisdiction While Appeal Pending" filed	
10	on 07/09/15	5455-5458
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1 Okay. I think, Your Honor, the last trial the State
2 introduced not only other bad acts that hadn't been noticed before,
3 but it also repeatedly tried to introduce this evidence of domestic
4 violence and the cause of domestic violence and made an argument
5 about domestic violence; and the Court had ruled that they should
6 not do that and they did it any way, but they were limited on their
7 felony that was admissible for motive and intent, but they kept
8 trying to rely in propensity by their argument and it was improper
9 argument and it became clear after the fact when they've now -- now
10 they're seeking to remedy what they couldn't do before.

11 Last time they couldn't have called an expert. They
12 didn't notice one. They couldn't have introduced bad acts. They
13 didn't notice it. So, by their -- by their now recent trying to do
14 all this stuff, it's very evident that they were risking a mistrial
15 and a hung jury. They didn't have -- they weren't prepared to do
16 what they were supposed to do.

17 The case laws very clear on that they don't get to have
18 a -- a free ride trial risking a mistrial. They go to me into
19 asking for a mistrial; that was denied, but there is case law on it
20 that when I move for a mistrial and it's denied and there's still a
21 hung jury, when they did that conduct, it's still a basis to
22 preclude a new trial for double jeopardy.

23 And we're not doing expert -- we're not talking about
24 their expert notice now. Just the double jeopardy aspect of it?

25 THE COURT: No. One at a time --

1 MS. PALM: Okay.

2 THE COURT: -- that was your --

3 MS. PALM: Okay.

4 THE COURT: -- first item. And I just want to hear your
5 argument, then I'll hear the States, then I'll make the ruling on
6 that item.

7 MS. PALM: Okay. Well, so my argument is that the Supreme
8 Court has been very clear on the State has not allowed to put on a
9 trial as a practice run. They're not allowed to use a -- a trial
10 to improve their case.

11 And with every single case, every single time this case
12 is tried, the evidence comes out a little stronger, but gives Mr.
13 O'Keefe and that's what happens when you have multiple trials. The
14 testimony has subtle changes in it. I save the case law for that
15 if they're talking about that; that's what happens each time it
16 gets a little stronger.

17 Now, here they want to make it way stronger, but it was
18 evident that they were -- they were purposely causing misconduct in
19 that trial. We move for a mistrial and they should not be able to
20 try this case again and remedy the defects in the last trial.

21 THE COURT: Thank you. Who's handling that for the State?

22 MR. LALLI: I am, Your Honor.

23 The -- a mistrial resulted in the previous trial
24 because of a hung jury. Not because of any misconduct. There was
25 no misconduct on the part of the State and I think -- you know,

1 it's when there are personal attacks, you know, levied against you
2 there's always that -- that inclination to kind of jump down in --
3 into that realm and go tit for tat. I'm just not going to do it.

4 There was no misconduct. The record will bare that
5 out. Hopefully the Court's memory and recollection will bare that
6 out.

7 What keeps being cited by the defense are the use of
8 quotations that I recited in my closing argument and in my opening
9 statement. All of which are proper and I cited -- I cited
10 treatises that stand for the proposition. It's good -- good and
11 appropriate to do that. It is being an effective advocate. I
12 cited to a Supreme Court case from another jurisdiction that said
13 that's argument from the Court's own experience. I know the Court;
14 it has been a practitioner in this jurisdiction for many years.

15 When you look at the great trial lawyers of Clark
16 County, when you look at people like Nell Harmon or Bill Coot
17 [phonetic] or David Schwartz or Dan Seaton; they were masters in
18 this art. And certainly as -- as much as was hurled at them in the
19 Supreme Court, the Supreme Court has never said you cannot be an
20 effective advocate in the courtroom which is what I did.

21 The other issue with respect to double jeopardy is that
22 some how to -- to adopt what the defense is saying some how we the
23 State tried a case that we knew would result in a hung jury so that
24 we could have this third opportunity to -- to try Mr. O'Keefe which
25 doesn't even pass the straight face test. I mean, nothing could be

1 further than the truth.

2 And so what you're left with is there was a hung jury
3 here. Can a person be retried or does double jeopardy bar a
4 retrial under the circumstances? I've cited a plethora of Nevada
5 Supreme Court cases that obviously stand for the proposition that a
6 person can be retried after a hung jury.

7 THE COURT: I don't -- I don't agree, Ms. Palm, that there
8 was any misconduct in this case. And if there was misconduct, I
9 rarely don't see that it was intentional with the go-in mind to
10 create a mistrial, so the State can have a do over and perhaps
11 strengthen their case.

12 And so, I'm not granting the motion based upon double
13 jeopardy argument. I don't find intentional misconduct on behalf
14 of the State. And there isn't any persuasive case law that says if
15 there's a hung jury and I believe it was ten/two for guilt that
16 that precludes the State from retrying a particular Defendant, so
17 on that issue I'm going to deny the Defendant's motion.

18 The issue of the State filing the notice of the expert
19 timely for the third trial did not file a notice of expert for the
20 first or second trial. I think that was your second issue, Ms.
21 Palm. Go ahead.

22 MS. PALM: It was, Your Honor. Thank you.

23 Because of the same double jeopardy concerns, the State
24 should not be allowed now to correct what they didn't do right the
25 last time what they clearly wanted to do by their arguments. The

1 double jeopardy, the reason that a hung jury would not prevent a
2 retrial in this case is because it's considered a continuation of
3 the trial from the last jury that was impaneled. It's a
4 continuation from that, so their notice period ended twenty-one
5 days before the last retrial.

6 Now, I know that they've said we have changed, you
7 know, what we're doing notice wise, but that was after a reversal
8 and it came back for different charges and there's case law and I
9 cited in my brief that the Defendant can change courses to remedy
10 things that weren't remedied with an order of reversal.

11 We raised several issues in the first appeal. The
12 Supreme Court chose not to address those because it was sending it
13 back; that's our opportunity to address them with this Court which
14 we did. I have litigated everything and that was appropriate.
15 It's appropriate for us to attempt to change the things that we
16 thought were erroneous the first time.

17 Now, if the State had changed course, I'm not saying
18 that they could have, but if they did their opportunity to change
19 course ended with twenty-one days before the last trial. The
20 retrials a continuation of that. And so we didn't have a timely
21 notice on the expert.

22 THE COURT: It was timely for the third trial. It's not
23 timely if we start the clock at the second trial.

24 MS. PALM: That's correct.

25 And also their expert is prohibited by NRS 48.061

1 subsection 2 of that statute says expert testimony concerning the
2 effect of domestic violence may not be offered against the
3 Defendant pursuant to subsection 1 to prove the occurrence of an
4 act which forms the basis of the criminal charge against the
5 Defendant. And we addressed this also in our bad acts motion, but
6 the legislative intent which is more comprehensively addressed from
7 the subsequent motion is clear that this sort of evidence was not
8 to be used against a criminal Defendant.

9 So, the expert in this case is inappropriate; that the
10 intent of that subsection that adding language to that subsection
11 to allow the State to bring in experts on the issue of domestic
12 violence was for when they had this situation of a recanting victim
13 and that's quoted at length in my other -- in my other opposition.
14 That's not the situation here. They want to use it as evidence of
15 guilty. They want to use it as propensity. There's no reason to
16 have an expert in here otherwise. And it's inappropriate under the
17 statute. It's not allowed.

18 And aside from that, the last time we were not allowed
19 to have an expert testify about Ms. Whitmarsh's diagnosis. And I
20 quoted in my -- in my brief the little discussion on that and it
21 was Mr. Lalli saying so now that after the fact we're supposed to
22 come in here and, you know, examine this dead woman and the Court
23 said not at this time you're not. So we were precluded from doing
24 a similar thing. What they want to do now after a hung jury which,
25 you know, that's just completely unfair they're allowed to do that,

1 if they're allowed to bring in expert now.

2 Plus, this expert never diagnosed Ms. Whitmarsh. She
3 never talked to Ms. Whitmarsh and Ms. Whitmarsh had a whole host of
4 psychiatric disorders which, you know, we submitted the exhibit to
5 the motion which was under seal; that just confused the heck out of
6 what would have been going on with this woman when it comes to
7 domestic batteries or violence syndrome or battered woman syndrome.

8 She had all kinds of problems. She was bipolar. She
9 had panic disorder. Major depressive episodes. Multiple suicide
10 attempts. Impulse control. Anger problems. She also reported
11 long term abuse by her own husband, eighteen years of abuse. So to
12 have this woman come in here and say now this is what was going on
13 in this case or talk about the syndrome at all is extremely
14 prejudicial to Mr. O'Keefe. Entirely inappropriate under the
15 statute and so we would ask to preclude their expert. Also their
16 late notice expert.

17 THE COURT: Mr. Lalli?

18 MR. LALLI: Your Honor, counsel said a couple of times
19 mention the words changing course. And I just wanted to be very
20 clear, we're not changing course. Our theories of guilt haven't
21 changed. The theories of what was happening in this relationship
22 haven't changed. It's all the same.

23 I think I would not be a good lawyer and I would not be
24 fulfilling my obligations to this community if when I got a case
25 every time I worked on that case, I didn't do something to make it

1 better. I think that is my responsibility and my obligation as an
2 attorney. And I think it is ludicrous to suggest that if the case
3 is going to be retried, everybody's hands are tied and we're just
4 stuck by what happened before. I mean, we could call amount of
5 lawyers into a courtroom and simply read a prior transcript and
6 give it back to the jury if that were the case.

7 And I illustrated one example. There are many others
8 of how the defense is not lived by this theory with respect to
9 their experts. The Court may recall on the second trial they
10 relitigated a number of issues. The bad act issues. The Defendant
11 statement was substantially redacted from the first trial, and good
12 for them.

13 I mean, Ms. Palm's doing her very best to be a good and
14 effective advocate as she should. While we're certainly going to
15 do the same thing on the State's end.

16 With respect to this -- some how we're bound to notice
17 an expert from the very beginning or we're forever damned if you
18 will throughout the life of the case. There's just absolutely no
19 legal support for that premise. There's no -- there's no support
20 for whatsoever. If we choose to call an expert witness; that is
21 our right subject to the Court telling us that we can't.

22 The statute is very clear and Ms. Mercer's really an
23 expert in this area, but the statute on domestic violence, we have
24 a statute on it. And we're not allowed. I would agree with Ms.
25 Palm, we're not allowed to bring in an expert in and to talk about

1 propensity that that man is a wife beater and a woman beater and so
2 he beat this woman too.

3 If the Court will recall the defense theory here is
4 that, and I don't want to -- I don't want to speak for what their
5 theory is going to be in the case, but I think a reasonable
6 observer would take their position to be that things were just fine
7 in their relationship. Sure, they had their issues in the past,
8 but those had kind of resolved themselves and sure enough Victoria
9 Whitmarsh was back with him because she loved him. And that's just
10 not the case. That is just not the case.

11 And we're entitled subject to the Court limiting us.
12 Subject to the Court reeling us in. If the Court believes we're
13 getting too far field, then I'm going to submit to the Court we're
14 not going too far field, but we have the right to explain why is
15 that she might have stuck around with this guy or come back to him.

16 And specifically with regard to the statute 48.061,
17 we've cited the Court with the legislative history of that. And if
18 you read it and even if you look at the history cited by Ms. Palm,
19 and I apologize, Your Honor, it's just occurring to me, you didn't
20 read our -- you haven't read our motion -- our bad act motion and
21 that's the motion that kind of deals with this in Ms. Palm's
22 opposition to it.

23 But both of us cite to you legislative history on that
24 -- on that and perhaps maybe -- if the Court get's beyond the
25 procedural issue and then wants to kind of jump into the substance

1 of it, maybe addressing that a later time is appropriate, but I can
2 tell the Court why it was that this section was enacted. And it's
3 borne out in both of the legislative history cited by the defense
4 and by the State.

5 The Nevada District Attorney's Association went to the
6 Legislature and said hey, Defendants are able to come in and
7 they're able to call experts as to why they do the things that they
8 do. We don't have the similar opportunity to do that with respect
9 to our victims and why they do the things that they do. Why it is
10 that they recant when they testify; and it's certainly is Ms.
11 Palm's position that Victoria Whitmarsh had recanted in her
12 allegations against the Defendant in the past. She cited
13 transcripts and argued up and down that, in fact, was the case.

14 We're certainly able to -- well, so the Nevada District
15 Attorney's Association went to the Legislature and specifically
16 asked them to change this statute to allow for the State to do what
17 we are doing in this very case; that's what the history of the
18 statute says. And so it is appropriate. We're entitled as good
19 lawyers to make our cases as good as we can within the bounds of --
20 of ethics. And certainly our notice was timely filed in this case.

21 THE COURT: Anything further, Ms. Palm?

22 MS. PALM: Well, in response to that. We've never been able
23 to put on evidence that Victoria Whitmarsh recanted. So the fact
24 that we may talk about that whether things are admissible or not
25 admissible, we've never put on evidence about that. Last time we

1 took our lumps, he's got a felony conviction for domestic battery.
2 The Court did the balancing already on that and we weren't allowed
3 to come forward with -- but yeah, she recanted in that case.

4 And we're not asking to now, so there's no reason to
5 bring on this expert who's going to talk about her state of mind
6 which is entirely ambiguous given her mental health history. And
7 it's not timely.

8 THE COURT: Well, he's not going to -- the expert's not going
9 to say her -- her particular state of mind is generally this is
10 what the dynamics of this -- of a domestic violence relationship
11 entails. So he can't -- is not going to be allowed to say this is
12 what she was thinking in this case.

13 MS. PALM: Well, then I'm not sure how it's relevant.

14 THE COURT: Well, we're going to deal with that at 1:30
15 'cause that's part and parcel of the motion for 1:30. But the
16 issue of the timeliness that there's absolutely no case law,
17 statutory law, that provides that on a second trial, third trial,
18 fourth trial that the State can't -- State or defense can't notice
19 new witnesses, can't notice new experts as long as they're noticed
20 timely.

21 So on item 2 as far as the timeliness of the notice I
22 find that it was timely and we'll deal with the issue of substant
23 area of that at 1:30.

24 The last item of the first part of the motion, Ms.
25 Palm, is that your client's speedy trial rights have been violated.

1 MS. PALM: That's correct, Your Honor. Mr. O'Keefe has at
2 all times prior to this asserted his speedy trial rights. The last
3 time the case presented -- this case was presented, the State
4 wasn't prepared to present this evidence. They didn't give notice
5 for this evidence. It's lack of preparedness directly implicates
6 his speedy trial right. Again it's a whole double jeopardy speedy
7 trial kind of mix as their remedying what they didn't do last time
8 although we think that they're responsible for the hung jury last
9 time.

10 So -- and also allowing this late notice expert is
11 going to cause even further delay because we haven't had the
12 opportunity to go get a battered woman's expert to talk about. I
13 don't know what their expert's going to say either. We haven't had
14 -- at this point, not only was there notice just for this person,
15 we don't have a report. We don't know what they're going to talk
16 about. I can't go get somebody to tell me how to counter what the
17 evidence is when they haven't given me notice of what the evidence
18 is. There's no report. This is going to cause further delay
19 because I'm going to have to look into battered woman syndrome and
20 whether their opinions are accurate. I don't know what the
21 opinions are.

22 THE COURT: I haven't seem to notice, but I'm assuming the
23 notice identifies a brief statement as to the area they're going to
24 testify too and their CV needed to be attached to the notice. I'm
25 assuming that was done in this case?

1 MR. LALLI: Yes, Your Honor. It was.

2 THE COURT: And it has a list of publications and other cases
3 they testified in?

4 MR. LALLI: It's a -- it's a curriculum vitae, Your Honor. I
5 guess here's what I can tell the Court on this. With respect to --
6 let's just -- without trying to morph everything back into one big
7 issue. With respect to the speedy trial issue, I understand that
8 the Defendant has been invoking his right to speedy trial and he
9 has that right. We're not suggesting he doesn't after a retrial.

10 But I do want to point out that the Court has really
11 bent over backwards to accommodate his speedy trial right. The
12 Court may recall that initially after the verdict or the -- the non
13 verdict in this case, the Court wanted to put this case on the very
14 next day to set it for retrial. The very next day. And it was at
15 Ms. Palm's request and the State's acquiescence. I don't want to
16 suggest that we didn't join in the request or agree to the request,
17 but in -- in opposition to this -- to the Court's desire to set it
18 the very next day, it was asked to be passed for a time. A short
19 period of time, but it was asked to be passed for a time, so that
20 the -- the parties could explore whatever they were going to
21 explore.

22 And then the Court certainly that has a lot of trials
23 on it's calendar and does a lot of trials, set this really almost
24 out of desperation for the date that we're now set because the
25 Court may recall there was a -- a very lengthy case involving UMC,

1 a fraud case, that had previously started and couldn't finish, just
2 a monster of a case and as I recall there's also a capital case
3 that was at this area of time, but the Court was so determined to
4 give and to honor Mr. O'Keefe's right to speedy trial that it set
5 this trial now.

6 And as things would have it, the storm clouds have
7 cleared if you will and the Court now does have an opportunity to -
8 - to hear the trial now. It was a time that worked for my schedule
9 and it was a time that worked for Ms. Palm's schedule.

10 When you look at the cases that we've cited, the Manley
11 case that talks about delays by conflicts. In the Court's
12 schedule, that does not in and of itself amount to a speedy trial
13 violation. A crowded docket or crowded calendar as we we're
14 experiencing in the Eighth Judicial District Court does not result
15 in a speedy trial violation and that's under Bailey versus State,
16 the 1978 case that we cited, B-A-I-L-E-Y.

17 So with respect to just mere timing issues, there is no
18 issue here. There's none whatsoever. With respect to the notice,
19 the Legislature and the Supreme Court has adopted this idea of
20 twenty-one days whether I agree that that's sufficient time or not
21 is really irrelevant, but that's what our Legislature has said is
22 sufficient time to notice the defense of an expert so that they can
23 call the expert if they want too. They can reach out to the
24 expert. We've never said hey you can't talk to this person. They
25 can do their investigation. They could have sought immediately to

1 retain an expert upon receiving our notice. Or start exploring
2 that opportunity. Or reaching out to the office of appointed
3 counsel for that purpose.

4 So these -- if there is a delay that Ms. Palm believes
5 she needs based upon our right and our willingness to endorse and
6 call an expert in domestic violence, that's not our issue. That's
7 not our fault. That's not something that can be blamed upon the
8 State because we have complied with our -- our statutory duty. If
9 she needs more time to prepare because of that, that's a separate
10 issue, but that's not something that you can say the State did or
11 the Court did to infringe upon that man's speedy trial rights.

12 THE COURT: Frankly, I don't recall stating that we could
13 start the trial the next day or the next week, but it seems like
14 Ms. Palm isn't objecting to that --

15 MS. PALM: No.

16 THE COURT: -- so apparently I did say that.

17 MR. LALLI: It's in the record. I cited the --

18 THE COURT: Okay.

19 MR. LALLI: -- transcripts where that occurred in the --

20 THE COURT: But no. The point is --

21 MS. PALM: Well, you --

22 THE COURT: -- Ms. Palm, that --

23 MS. PALM: -- well --

24 THE COURT: -- this Court attempted to give you the earliest
25 trial date possible after the hung jury or the mistrial was

1 declared and assuming the transcript is accurate that I was willing
2 to give you a trial the next week or the next day. Also I tried to
3 squeeze this case in as best I could. As for the record, I have a
4 split calendar which gives me five weeks of civil trials and five
5 weeks of criminal trials.

6 So, I did what I could to fit this case in as soon as
7 possible. And I recall now that at the time the trial was set for
8 January which was done in 2010 that I had I believe twelve to
9 fourteen murder trials set for 2011. And each one of those -- I
10 think there was eight death penalty cases out of those and as we
11 know it takes two to three weeks. So, this was the earliest case I
12 can give and, in fact, it was trailing and two other cases or
13 another death penalty case I think it was Schneider I think we
14 talked about and also Lacy Thomas case.

15 So, I don't find any violation of speedy trial rights
16 in this case, so I'm denying your motion in that regard.

17 If counsel can come back at 1:30 we could resolve the -
18 - the other motion.

19 MS. PALM: Your Honor, I would just like to clear up the
20 record a little bit. When we ended the trial last time, part of
21 the reason is we had to find out who was going to be new counsel.
22 Whether the -- whether I was going to be reappointed counsel or
23 not, so I think that that was the hesitation about whether -- what
24 we had to take care of because I was removed from the case after
25 the trial and then Drew had to reappoint me, so --

1 MR. LALLI: Your Honor, that's -- and I don't mean to quivel
2 about this; that's simply not my recollection and if the Court were
3 to look at the -- at the transcript --

4 MS. PALM: What date is that?

5 MR. LALLI: It's September 2, 2010 at page 5.

6 MS. PALM: And I will tell you the Court minutes of the
7 September 15th reflect that I was just being appointed as his new
8 counsel, so --

9 MR. LALLI: And that could very well have been. I think the
10 point of it is and it's very clear from the transcript, the Court
11 wanted to put it on the very next day to reset the trial. And it
12 was Ms. Palm who requested additional time from that. I'm not
13 saying that waives the Defendant's speedy trial rights. I'm not
14 suggesting that her saying hey I need a week or two weeks or
15 whatever it was to look at some things, but I just -- I just -- I
16 want to point out the Court's willingness to accommodate this
17 Defendant because certainly that has been the case.

18 THE COURT: I think the record will bare that out as far as
19 what I attempted to do to schedule this again with my split
20 calendar.

21 So I'm going to deny that portion of your motion on
22 violation of Defendant's speedy trial rights.

23 And if you can come back at 1:30. Again, I apologize
24 to counsel. There's a confusion. I will have those motions
25 reviewed and we can argue them at 1:30 this afternoon.

1 MS. PALM: And, Your Honor, just so that the Court remembers,
2 we had left an issue number four in my previous motion from the 13th
3 to deal with today too. It's all the same domestic violence
4 matters, but the Court will need to make a ruling on that still
5 when we come back.

6 THE COURT: All right. See you back at 1:30.

7 MR. LALLI: Your Honor, I -- I don't want to be fly in the
8 ointment here, but I've got a preliminary hearing tomorrow and I've
9 got a witness, an important one, who's going to be here at 1:30.
10 Is it possible to do this at 1?

11 THE COURT: That'll be fine. Are you available, Ms. Palm?

12 MS. PALM: Yes.

13 THE COURT: All right.

14 MR. LALLI: Thank you.

15 [Matter trailed]

16 [Matter recalled at 1:07 p.m.]

17 THE COURT: The first item -- this is our -- this is the
18 State's motion in limine to admit evidence of other bad acts
19 pursuant to 48.045. The first item, Mr. Lalli or Ms. -- who's
20 handling this? Do you have it, Ms. Mercer?

21 MS. MERCER: It's mostly me, Your Honor.

22 THE COURT: Which is the January 7th '03 incident?

23 MS. MERCER: Yes.

24 THE COURT: He was -- the Defendant pled guilty to
25 obstructing a police officer, not a domestic violence and Ms. Palm

1 said she did not get -- did not receive the full packet of reports
2 that may relate to this incident.

3 MS. MERCER: Judge, I think Mr. Lalli's going to be
4 addressing the discovery issues.

5 MR. LALLI: Yes.

6 MS. MERCER: So --

7 MR. LALLI: If I can just address --

8 THE COURT: Sure.

9 MR. LALLI: -- the discovery -- just the overall discovery
10 issue. I can tell the Court I had presumed that Ms. Palm had all
11 of the discovery for all of these events and I'll tell the Court
12 why.

13 I came in last minute before the last trial. And based
14 upon the -- the condition of my file and file reviews, Ms. Palm had
15 done a file review prior to that. I certainly believed that she
16 had everything that I had at certainly at that time, but I believe
17 she had more for a couple of reasons.

18 One, during -- during the trial I was -- I had
19 requested discovery from her things that I certainly should have
20 had, but I didn't have and an example would have been all of the
21 victims psychiatric records. So I believe that that was missing,
22 but Ms. Palm was good enough to give it to me. I presumed that we
23 had provided that to her at some point.

24 Another example is in our most recent round of motions,
25 she had actually attached some trial testimony to one of our

1 motions that I've never seen before and it is from one of these
2 cases in question. And I do know from her file review that at
3 least on a limited basis, she had reviewed my file and it had some
4 of the discovery on these events that I did.

5 Another example is prior to Mr. O'Keefe testifying in
6 the first trial, he was warned about opening the door to the priors
7 that he had had if he said something that would open the door to
8 something that would be fair game. So, I realize that I was
9 lacking some of the discovery and resubpoenaed, rerequested all of
10 the discovery for all of the event numbers.

11 Now, I think that somewhat there is maybe some
12 positioning going on by the defense. Our motion was filed on
13 January 6th of 2011. It was filed on January 6th of this year. In
14 the opposition that we received, there's this indication well I
15 have this report which makes reference to other reports. And so,
16 first when that -- if there is no discovery and I don't doubt it.
17 Ms. Palm said she didn't have discovery I believe she doesn't have
18 the discovery, but why if -- if this discovery references other
19 reports which I know that she's had because she reviewed it in a
20 previous file review, why wasn't there a request for it at that
21 point. Why after we filed our motion wasn't there a request back
22 on January 6th or 7th or 8th?

23 We had a calendar call and Ms. Palm did not mention
24 anything about not having discovery. It wasn't until the moment
25 that I received that motion and as soon as I got the motion, I

1 picked up the phone and I called her and I said didn't realize you
2 did not have these things. I've recopied everything. Scanned it
3 on a disc. I have it for you. Here you go.

4 So, I -- she said she doesn't have it. I'm not going
5 to question that. However, I don't know why I'm learning that for
6 the first time in an opposition that's filed after -- after our
7 calendar call was held.

8 THE COURT: Okay.

9 MR. LALLI: And it very well might be that she doesn't have
10 it, so that is the discovery piece, Your Honor. Ms. Mercer's going
11 to talk about the actual merits of these things.

12 MS. PALM: Would you like me to address the discovery, Your
13 Honor, or respond to that?

14 THE COURT: Just very briefly because we're going to get into
15 each one.

16 MS. PALM: On the discovery, we had done file reviews the
17 first trial. There was an exchange of discovery. The only thing
18 we ever got were incident reports and we didn't think ever that
19 this would be coming in because we had an agreement with the D.A.
20 who was very upfront. I'm not going to bring any of this into my
21 case in chief. There's no reason to do a whole bunch of
22 investigations. Mr. O'Keefe had invoked. We had to get ready for
23 trial. We were not going to open the door to this and we made it
24 very clear that we were not going to open the door and we discussed
25 it with the Court what would open the door, what would not open the

1 door.

2 So, there was no reason to go investigate all of these.
3 We did get some things like Ms. Whitmarsh's testimony, but we
4 didn't -- we don't have everything. We never did. We never got
5 more than an incident reports from the D.A.'s office.

6 Then I did the file reviews. I did two file reviews.
7 One with Ms. Graham and one with Mr. Lalli. I got what they had
8 which was just incident reports and then I remember the day it went
9 during trial, he gave me a folder, here's some additional discovery
10 and in that it was more copies of the same incident reports. So,
11 he was trying to give me what he had, but that's all he had that
12 I'm aware of that's all I've ever had from the D.A.'s Office.

13 I did do a discovery motion before this Court which
14 asked for discovery of everything that they intended to introduce
15 in their case in chief. I've done everything I could to get this
16 discovery. Why didn't I jump up and down, am I going to get
17 discovery when I finally get their notice that they're intending to
18 put this in on January 7th; that's not going to give me enough time
19 to do anything any way. We're already well into trial preparation
20 and -- and exchanging motions and as you know I've been litigating
21 the heck out of this case and filing every motion that I could and
22 responding to every motion that they did.

23 So, giving me discovery, you know, two weeks out would
24 not have helped me. And the fact is that I did get three hundred
25 pages of discovery yesterday afternoon from Mr. Lalli on a disc and

1 some of them on paper and most of it I have never seen before. So
2 that's the discovery.

3 THE COURT: All right, Ms. Mercer, let's talk about the first
4 incident of January 7th '03.

5 MS. MERCER: Uh-huh. What specifically do you want to talk
6 about, Judge?

7 THE COURT: So the reports that you have provided identify
8 that on or about January 7th Defendant had -- they were drinking I
9 guess. Defendant slapped her and she had a nose bleed.

10 MS. MERCER: Correct. And that when the police arrived they
11 saw that she was -- that her nose was still bleeding.

12 THE COURT: Then she pled -- he pled to obstructing a police
13 officer?

14 MS. MERCER: Correct, Your Honor.

15 THE COURT: Was he charged with battery domestic violence, do
16 you know?

17 MS. MERCER: Yes.

18 THE COURT: On the -- the merits of that first item, Ms.
19 Palm, what's your objection 'cause I've read your opposition and
20 the main part of that at least on this one was your I only have
21 three pages. I don't have photos. I don't have, you know, all of
22 the documentation.

23 MS. PALM: Okay.

24 THE COURT: I don't know if the Court has all the
25 documentation, but --

1 MS. PALM: Well, if the Court would allow me to I can have a
2 general objection to all of them and I can go through it on the
3 first one because all of it will apply to all of them.

4 But first of all there's -- there is unfairness in
5 letting this in because we weren't allowed -- maybe I'll save some
6 of this for the expert's testimony or did you just want to hear it
7 now 'cause it kind of all goes together?

8 THE COURT: Is sort of does. Go ahead.

9 MS. PALM: Okay. As far as allowing evidence of other
10 evidence domestic violence and the expert diagnosis, we were
11 precluded from introducing evidence of her actual diagnosis during
12 the last trial and I believe the quote was we're not going to do
13 that now at this time. We were too close to trial.

14 It also has -- Mr. Lalli said this evidence is relevant
15 because it shows why she went back to him. We're not challenging
16 anything about her going back to him. We're not challenging her
17 recanting testimony. There's not reason to -- to show why she
18 would go back to him. It doesn't have any relevance to any
19 material fact.

20 The only fact and issue is that there's malice and
21 intent to cause her death. The felony battery that you let in
22 already weighs heavily towards that along with Ms. Morris'
23 statements; that balance was already made by this Court. So this
24 is just tipping the scales further prejudicially. What's in is
25 already extremely prejudicial to him.

1 We were also denied the opinion testimony about a
2 loving relationship without opening the door to other bad acts.
3 The last trial we had a big discussion. Mr. Lalli didn't want us
4 to be able to say they had a loving relationship even though we had
5 neighbors and friends and other people who would say that at the
6 time that they had reestablished their relationship out of prison.
7 And the discussion was we went there, we were going to open the
8 door to this stuff, so we didn't go there.

9 So, it's not fair to do it now. I think it's going to
10 be a due process problem.

11 THE COURT: Well, if I recall I allowed the witnesses in your
12 examination to include what did you observe --

13 MS. PALM: That's correct.

14 THE COURT: -- if they were kissing, etcetera, but as far as
15 reputation, well then if they're coming in -- if they -- their
16 reputation merit they were very loving couple, that he was very
17 peaceful with her or loving with her, then the State could come in
18 and say well will your opinion change for --

19 MS. PALM: Right.

20 THE COURT: -- various reasons, so --

21 MS. PALM: But here what --

22 THE COURT: Well you were not precluded from saying they were
23 holding hands, doing kissy face, whatever else, so you weren't
24 precluded.

25 MS. PALM: Right. And I'm not saying that we were. I'm just

1 saying that they want to do the reverse now. They want to have
2 this hole that they, you know, this is a domestic violence
3 relationship and it's not fair at this point in the game I don't
4 think.

5 There's a due process problem with notice. This case
6 came back after the reversal because they hadn't notice an unlawful
7 act theory. I think trying to do this through showing battered
8 woman syndrome and the repeat domestic violence incidents is just
9 trying to prove the case through it occurred during an unlawful act
10 being a battery which they haven't noticed. And it's
11 inappropriate. The notice is just for a second degree murder. Not
12 a domestic violence battery murder. So I think it creates some due
13 process issues.

14 As far as NRS 48.045, I think that showing any more
15 than the felony battery which encompasses three of the acts that
16 are in there, is just tipping the scale way too far. It's
17 overwhelmingly prejudicial. The State has grossly misstated the
18 strength of their case in their motion. One of the things they
19 were saying this should be in because this is a good case for us
20 any ways, so it's not going to do us any harm; that is just not
21 true.

22 The Supreme Court says there's not overwhelming
23 evidence of a second degree murder. The jury hung the last time.
24 The experts who testified can't rule out accident or suicide based
25 on the body. Their AME testified there was -- they were all

1 injuries that she identified as acute and everybody said they
2 couldn't -- those injuries were not inconsistent with an accident.
3 They were not inconsistent with happening during the arrest or
4 rescue. I mean, we had -- not that the expert testified about it
5 exactly, but the evidence I think we had good evidence that
6 supported those theories.

7 The older injuries could have been caused by innocent
8 accidental means, bumping into things with her cirrhosis and her
9 alcohol abuse. We had innocent explanations for those. The
10 neighbors heard no yelling and no screaming during this incident.
11 The neighbor testified that they were very quiet. They never heard
12 any noise coming from there until this incident.

13 So, this whole ongoing abuse theory that's happening at
14 the time that's not -- there's no evidence to support it. Mr.
15 O'Keefe had defensive cuts. His next door neighbor saw him enter
16 an apartment just fifteen minutes before this happened supported
17 that she would have been alone in there.

18 We were allowed to let in a limited amount of her
19 history just so innocent reasons for the noises the neighbors heard
20 the reason for the knife in the bedroom a potential innocent cause
21 of death being suicide or accident. We didn't get to put in all of
22 her suicide attempts. We didn't get to put in her drug problems.
23 We didn't get to put in a lot of evidence that we otherwise would
24 have wanted to put in.

25 But the Court struck the balance and we think that's

1 where it should stay. And aside from that Mr. O'Keefe was
2 extremely intoxicated, so they just don't have a strong case by any
3 -- by any measure.

4 The whole late discovery thing, they've always
5 indicated it was never their intent to introduce any of this other
6 evidence. We've built our case theory. Our entire case theory is
7 built around this is the evidence that we're dealing with. This is
8 how we're going to go with our investigation. Letting anything
9 else in at this point would cause me to have to go out and
10 investigate all of this.

11 I would have to go look for impeachment evidence. I
12 probably have to subpoena her other counseling that she had. I
13 probably have to subpoena the safe house that she was living in
14 'cause I think she was in when Mr. O'Keefe was incarcerated. I
15 have to interview the witnesses and character witnesses. Good
16 character witnesses for Mr. O'Keefe potentially out of state
17 because he grew up in Ohio and that's where his family is. And
18 that's where his ex-wife is.

19 And it's three hundred pages of new discovery for me to
20 have to deal with. It's not a simple thing to deal with right
21 before trial.

22 It's also not permitted by the statute, NRS 48.061 they
23 want to say that there's a different standard to NRS 48.045 when it
24 comes to this kind of propensity evidence that our Legislature has
25 determined that it's no -- it's not to be treated as propensity

1 evidence somehow. And that's just not the case.

2 Under our case law, bad acts are disfavored. They're
3 disfavored. They're supposed to be, you know, scrutinizing and
4 carefully let in because of there -- there's a realization they're
5 so prejudicial. The legislative history of NRS 48.061 shows that
6 our Legislature had a law in front of it that would have done that.
7 It didn't get out of committee, so we did not become like those
8 other States that wanted -- let in this kind of evidence to show
9 the entire context of the relationship; that's not Nevada. Nevada
10 disfavors bad acts. These are bad acts subject to the regular
11 Nevada test for it. This Court has struck that balance and it
12 shouldn't change now.

13 And then I don't know how the heck they're going to
14 prove any of these because I want a Petrocelli hearing on every
15 single one of them. If they're saying they can prove them because
16 they're all based on Ms. Whitmarsh's statements and they're all
17 hearsay. It's a violation of the confrontation clause. I don't
18 know how they are going to prove any of these beyond clear and
19 convincing evidence without going to hearsay and violating his
20 confrontation rights.

21 And they have not noticed that they want to use any
22 prior testimony. They haven't timely noticed it. They shouldn't
23 be able to do it. And if this Court grants their -- their request
24 to admit these it should be from today and they shouldn't get to
25 cure that because then we would have to have time to investigate

1 'cause it's a problem they caused. So, they should be excluded
2 from using her -- her transcripts for anything.

3 And even under the case law, none of these are
4 relevant. There was no knife involved in them. They cite a case
5 for, you know, the Johnson case where they let in attempt killing
6 or whatever it was involving a weapon 'cause it was just like the
7 one they had. None of these prior incidents involve a knife at
8 all.

9 And as far as this first obstructing this one, I don't,
10 you know, I don't know what else to say about it. I haven't had
11 any more on it until yesterday and I don't think still I have
12 everything. I would have to go get the Court records and, you
13 know, to be able to challenge it I just don't know, but I don't
14 think, you know, an obstructing is relevant. It's not a domestic
15 violence offense. Other than that I don't know anything about it.

16 THE COURT: On the November 14th '03, I don't know if IT'S a
17 typo. Was is it supposed to be '04, '03? One of the statements
18 says a few months later, it looked like -- maybe I misread it, but
19 it said the last four numbers of the event number is 0539 which I
20 think is the third item brought up in the State's motion. Didn't
21 your client plead guilty to battery domestic violence and by that
22 plea of guilty doesn't it establish by clear and convincing
23 evidence?

24 MS. PALM: He pled guilty to a first offense, but if the
25 Court's going to say you can tell the jury he pled guilty to a

1 first offense that's one thing. If you're going to say he can put
2 it -- they can put in hearsay evidence relating to that that's
3 another thing. I think that violates his confrontation rights plus
4 I haven't had a chance to look at how to challenge it.

5 THE COURT: And then the felony conviction, he went to trial
6 and he was guilty of battery DVA third.

7 MS. PALM: Which one are you talking about, Your Honor?

8 THE COURT: This is April 2nd '04. One he had a felony and
9 went to prison.

10 MS. PALM: Oh, okay.

11 THE COURT: And then on was it April 3rd, which is the very
12 incident, he pled guilty to battery DV.

13 MS. PALM: Yes.

14 THE COURT: So we have at least two guilty pleas and one jury
15 verdict of guilt.

16 MS. PALM: And, Your Honor, what those are the three domestic
17 batteries that resulted in a felony. And we're not saying that he
18 is not guilty of those, but what they can put into prove those up
19 is another question and -- and if they're just saying they want to
20 put in the fact that he was convicted of those three incidents like
21 we did last time with their putting in the facts he was convicted
22 of a felony domestic battery. And then they -- to say they're
23 supported by these three incidents, they could probably prove that,
24 but the underlying facts of it, the other things that they haven't
25 properly noticed that I haven't been given before, you know, I

1 think that it's just too late in the day to start noticing a whole
2 bunch of other things. And they haven't yet said how they're
3 proving anything.

4 THE COURT: Just so I'm clear from the second trial, it
5 appeared to the Court that there was some argument or perhaps part
6 of your client's statement to the police officers that there was
7 self defense, perhaps some attempt suicide, perhaps an accident,
8 they were wrestling around and she got stabbed with a knife. So
9 aren't some of these incidents relevant to the issue of lack of
10 mistake, intent or motive?

11 MS. PALM: Well, Your Honor --

12 THE COURT: Those are your three defenses it sounds like if I
13 recall from the trial.

14 MS. PALM: -- our defenses are that she either stabbed
15 herself or in the struggle over the knife, she was accidentally
16 stabbed. Those are defenses and I would say that there's a
17 question of relevance, yes. Some of those things are relevant.
18 The Court considered that when you said the felony domestic
19 violence conviction is going to come in.

20 But when you start talking about what's coming in to
21 actually show this again beyond the fact of conviction, that's when
22 we're getting into the real prejudice. And I don't know how
23 they're going to do that. And I haven't, you know, I don't have a
24 full discovery on this, so I don't know how to challenge it at this
25 point.

1 THE COURT: 'Cause typically I see a lot of these with, you
2 know, where someone's a serial burglar. I had one in particular
3 where they go on the roof of the business and break a hole in; sort
4 of like the hole in the wall game, but I think they're hitting some
5 fast food stores. So they can go into the facts saying that -- I
6 think it was like a Burger King they broke a hole in the roof at
7 the Burger King; and they went to a McDonald's and they went to a
8 Wendy's and under this they just don't bring in that they were
9 charged with these crimes. Can't they bring in the facts of
10 breaking in the roofs, jimmying the cash register?

11 MS. PALM: Who are they going to bring in to testify to that?

12 THE COURT: Well, if we have a guilty plea or a conviction
13 and isn't the allegation is to prove -- prove -- proved by clear
14 and convincing evidence?

15 MS. PALM: The conviction itself would be clear and
16 convincing evidence, but what's admissible is another question.

17 THE COURT: Ms. Mercer, on that issue.

18 MS. MERCER: Judge, as to a number of these events there were
19 other witnesses involved. People that she ran to for help such as
20 security guards, apartment managers. A neighbor in one of them
21 pulled her out of the apartment. There's 9-1-1 calls. I
22 understand that her position is that Crawford bars us from
23 introducing all hearsay evidence. It hasn't been subjected to
24 prior cross-examination, but it applies to testimonial hearsay and
25 it's the State's opinion that we will be able to present sufficient

1 non-testimonial hearsay to support many of these allegations,
2 Judge.

3 MS. PALM: Well, then I guess we would need a Petrocelli
4 hearing.

5 MS. MERCER: And we agree with that Judge.

6 THE COURT: All right.

7 MS. PALM: And also, you know, I'm going to need some time to
8 look at impeachment.

9 THE COURT: At least at this point from what I have and
10 obviously I need to hear more and I want Ms. Palm to have an
11 opportunity to review all the -- there's always an arrest report,
12 incident report, affidavit. There's like four or five reports
13 generated from each situation, but it does seem here at least with
14 the two guilty pleas and the jury verdict that those items would be
15 coming in.

16 MS. MERCER: Judge, I'm sorry I meant to bring it to your
17 attention. There also actually was another jury verdict of guilt
18 as to the --

19 THE COURT: That was the last one --

20 MS. MERCER: Correct.

21 THE COURT: -- where he was charged with sexual assault,
22 attempt sexual assault, burglary.

23 MS. MERCER: And he was convicted of battery and burglary.

24 THE COURT: Was the battery DV or just --

25 MS. MERCER: I can't recall off the top of my head --

1 MS. PALM: I'm not sure --

2 MS. MERCER: -- Judge. I'll have to look at them again.

3 MS. PALM: -- I'm not sure if there was a conviction of
4 battery. I think the burglary was just based on a battery.

5 MS. MERCER: He was given credit for time served on the
6 battery charge. I do recall that, Judge.

7 {Colloquy between Plaintiff's counsel}

8 MR. LALLI: I believe it was a battery domestic violence
9 conviction --

10 THE COURT: Okay.

11 MR. LALLI: -- 'cause I remember reading the transcript and I
12 believe it was Judge Loehrer who sentenced him --

13 MS. MERCER: Yes.

14 MR. LALLI: -- if I'm not mistaken.

15 MS. MERCER: It was.

16 THE COURT: 'Cause I don't have that information in front of
17 me for -- for me to make a decision on that, but I think we need to
18 get a little bit more factual basis for these, but, you know, I
19 feel the State would meet the burden of clear and convincing
20 evidence on the two misdemeanor battery DV's, the felony battery DV
21 where he went to trial.

22 I'm not sure on the last item which was with the sexual
23 assault, attempt sexual assault when the jury came back with
24 burglary, battery, assuming misdemeanor. I don't know if there's
25 battery DV or not.

1 The -- the first two items where he was charged with
2 obstructing a police officer, you know, the State's going to be
3 able to establish that situation of a -- of a battery and show some
4 further relevance to the Court, I'll entertain that, but I think
5 right now we need to have more evidence than what's been presented.
6 And Ms. Palm needs -- has some challenging opportunity to see all
7 the reports.

8 And so, at this point I'm inclined to grant some of
9 these assuming they pan out, but I think the felony battery DV went
10 to trial and the two guilty pleas would probably be allowed in this
11 case, but I want Ms. Palm to have an opportunity to look at all the
12 reports for those at least those misdemeanor battery DV's as well
13 as the other ones.

14 The other ones I'm not inclined to say -- to say
15 anything one or the other, but at least with the guilty pleas the
16 State will meet their burden of clear and convincing.

17 MS. PALM: And -- and the Court's not ruling that they're
18 admissible because they're clear and convincing at this point; is
19 that correct because we still have --

20 THE COURT: I just need to have more information --

21 MS. PALM: -- the prejudice versus relevance issue?

22 THE COURT: Well, you know, I think they are relevant. I
23 mean, assuming it pans out as set forth, I think they're relevant
24 to motive, lack of mistake in this particular case.

25 MS. MERCER: Correct, Judge.

1 MS. PALM: Well --

2 MR. LALLI: Your Honor, my understanding what the Court's
3 inclined to do at this point, you're -- you're -- you're tending to
4 grant our motion on those items that you suggested. You want to
5 see a Petrocelli hearing or you want to see witness testimony or at
6 least a proffer on each one of those as to what we would prove.

7 THE COURT: Correct.

8 MR. LALLI: Okay.

9 THE COURT: And make sure that Ms. Palm has all the reports
10 relating to those situations.

11 MR. LALLI: She has -- she has everything that I have with
12 respect to reports on a disc that I gave her.

13 MS. PALM: What I got last --

14 MR. LALLI: And I welcome her to come over to my office.

15 MS. PALM: -- what I got last night and their reports will be
16 helpful. I just don't know if there's any impeachment out there
17 because we're on the eve of trial and now how am I supposed to go
18 out and find impeachment evidence.

19 THE COURT: I understand what you're saying. Okay. And so
20 we need to have this hearing and the trial set for Monday and I
21 think by almost default, Ms. Palm, you would be getting your
22 continuance. I think your main concern was to file a Writ which is
23 your right and I respect that, but we do need to hash out some of
24 these factual scenarios before I make a definitive ruling on these.
25 Some of the other ones I'm concerned about.

1 So, you're not going to be ready to go to trial on
2 Monday, correct? Even if the State got you all these -- assuming
3 they gave you everything yesterday, I'm assuming you're not going
4 to go to trial?

5 MS. PALM: No, I would not be ready if these bad acts are
6 admissible.

7 THE COURT: Okay. And so we're going to vacate the trial
8 date and I don't know if -- I know you're busy, Ms. Palm, and so is
9 Ms. Mercer and Mr. Lalli. I have cases with him. It seems like I
10 have to set trials 2013 for him, but does everyone have their
11 calendar with them?

12 MS. MERCER: Yes, Your Honor.

13 MR. LALLI: I do, Your Honor.

14 MS. PALM: I do.

15 THE COURT: You have yours, Ms. Palm?

16 MS. PALM: I do.

17 THE COURT: All right. Actually, it probably might be easier
18 just to come up and look at Carol's calendar and my calendar
19 instead of us throwing all kinds of dates out and Carol can point
20 to you and show you what where we have some openings.

21 [Matter recalled at 1:42 a.m.]

22 THE COURT: Carol, 'cause Michelle's got the recorder going
23 on now; would you put on the record the trial date, calendar call
24 date and Petrocelli -- Petrocelli hearing date.

25 THE CLERK: Okay. Petrocelli hearing May 12th, 10 o'clock.

1 Calendar Call May 30 -- I'm sorry, April -- April 12th at 10 o'clock
2 for the Petrocelli hearing. May 31st Calendar Call, 8:15. Jury
3 Trial June 6th, 1 o'clock.

4 THE COURT: All right. We're good.

5 MS. PALM: Thank you.

6 MS. MERCER: Thank you.

7 MR. LALLI: Thank you, Your Honor.

8 [Proceeding concluded at 1:43 a.m.]

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ATTEST: I hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled case
to the best of my ability.

22

23

24

25



Michelle Ramsey
Court Recorder/Transcriber

ORIGINAL

25

FILED

Apr 8 12 00 PM '11

CLERK OF THE COURT

1 **ORDR**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **CHRISTOPHER J. LALLI**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #005398**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**
10 **Plaintiff,**

11 **-vs-**

12 **BRIAN O'KEEFE, aka**
13 **Brian Kerry O'Keefe, #1447732**
14 **Defendant.**

Case No. 08C250630-1

Dept No. XVII

15 **ORDER RELEASING MEDICAL RECORDS**

16
17 Upon the ex parte application and representation of DAVID ROGER, Clark County
18 District Attorney, by and through CHRISTOPHER J. LALLI, Chief Deputy District
19 Attorney, that certain evidence in Case No.08C250630-1, held in the custody of
20 UNIVERSITY MEDICAL CENTER, needs to be released to a representative of the
21 DISTRICT ATTORNEY'S OFFICE for the purpose of prosecuting the above referenced
22 case.

23 **///**

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28 **///**

CLERK OF THE COURT

APR 08 2011

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APR - 6 2011

08C250630
QRMR
Order to Release Medical Records
1347732



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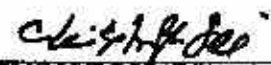
1 IT IS HEREBY ORDERED that the evidence in the custody of the UNIVERSITY
2 MEDICAL CENTER, consisting of medical records for patient: VICTORIA T.
3 WHITMARSH, admitted on or about 11/26/2001, Account No. 00075102020, MR No. 001-
4 214-043 be released to a representative of the DISTRICT ATTORNEY'S OFFICE.

5 DATED this 6 day of April, 2011.

6 
7 DISTRICT JUDGE ~~of~~ st.
8

9 DAVID ROGER
10 DISTRICT ATTORNEY
11 NEVADA BAR #002781

12 BY


13 CHRISTOPHER J. LALLI
14 Chief Deputy District Attorney
15 Nevada Bar #005398
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[Signature]
CLERK COURT

EXPT
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
CHRISTOPHER J. LALLI
Chief Deputy District Attorney
Nevada Bar #005398
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRIAN O'KEEFE, aka
Brian Kerry O'Keefe, #1447732

Defendant.

Case No. 08C250630-1

Dept No. XVII

EX PARTE MOTION FOR RELEASE OF MEDICAL RECORDS

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through CHRISTOPHER J. LALLI, Chief Deputy District Attorney, and moves this Honorable Court for an Order Releasing evidence being held by UNIVERSITY MEDICAL CENTER, consisting of medical records for patient: VICTORIA T. WHITMARSH, admitted on 11/26/2001, Account No. 00075102020, MR No. 001-214-043, to be released to a representative of the DISTRICT ATTORNEY'S OFFICE for the purpose of prosecuting the above referenced case.

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APR 08 2011

CLERK OF THE COURT

08C250630
EXPT
Ex Parte Motion
1347603



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1 Movant represents that the information sought is relevant and material to a legitimate
2 law enforcement inquiry and that the request is specific and limited in scope to the extent
3 reasonably practicable in light of the purpose for which the information is sought.

4 DATED this 5 day of April, 2011.

5 DAVID ROGER
6 Clark County District Attorney
7 Nevada Bar #002781

8 BY

Christopher J. Lalli
9 CHRISTOPHER J. LALLI
10 Chief Deputy District Attorney
11 Nevada Bar #005398
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1 ORDR
2 PALM LAW FIRM, LTD.
3 PATRICIA PALM, ESQ.
4 NEVADA BAR NO. 6009
5 1212 CASINO CENTER BLVD.
6 LAS VEGAS, NV 89104
7 Phone: (702) 388-9113
8 Fax: (702) 386-9114
9 Email: Patricia.palm@palmlaw.com
10 Attorney for Brian O'Keefe

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
APR 27 2011

BY: *Carol Donahoo*
CAROL DONAHOO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

BRIAN K. O'KEEFE,

Defendant.

CASE NO: C250630

DEPT NO. XVII

DATE:

TIME:

ORDER GRANTING REQUEST FOR TRANSCRIPTS

This matter having come at the ex parte request of counsel for the Defendant, Patricia Palm, Esq., of Palm Law Firm, Ltd., the matter having been fully reviewed, and good causa appearing therefor,

IT IS HEREBY ORDERED that the Defendant's request for transcripts is GRANTED. The Court Recorder Michelle Ramsey, shall have fifteen (15) days from the date of this Order in which to prepare, file and serve the parties at State expense with a copy of the transcripts from the following hearing dates in the above-captioned matter:

April 27, 2011 Petrocelli hearing

DATED this 27 day of April, 2011.

[Signature]
DISTRICT COURT JUDGE

Submitted By:

[Signature]
PATRICIA PALM, ESQ.
PALM LAW FIRM, LTD.
1212 Casino Center Blvd.
Las Vegas, NV 89104
Attorney for Defendant



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FILED

APR 29 2011

CLERK OF COURT

001
PALM LAW FIRM, LTD.
PATRICIA PALM, ESQ.
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LAS VEGAS, NV 89104
Phone: (702) 386-9113
Fax: (702) 386-9114
Email: Patricia.palmlaw@gmail.com
Attorney for Brian O'Keefe

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

BRIAN K. O'KEEFE,

Defendant.

CASE NO: C250630

DEPT. NO: XVII

DATE:

TIME:

08C250630
NWCH
Motion to Withdraw As Counsel
1382432



MOTION TO WITHDRAW AS COUNSEL

COMES NOW Patricia A. Palm, Esq., of PALM LAW FIRM, LTD., court-appointed counsel of record for the above-named Defendant, BRIAN O'KEEFE, and moves the court for an Order allowing her to withdraw as counsel of record.

This motion is made and based upon the attached Points and Authorities, the affidavit of Patricia A. Palm, Esq., the papers and pleadings on file herein, together with the arguments of counsel to be heard at the time of the hearing on this matter.

DATED: April 29, 2011

PALM LAW FIRM, LTD.

By:

Patricia A. Palm
Patricia A. Palm, Esq. (SBN 6009)
Attorney for Defendant

RECEIVED
APR 29 2011
CLERK OF THE COURT

003044

1 **NOTICE OF MOTION**

2 TO: THE STATE OF NEVADA, Plaintiff, and

3 TO: DAVID J. ROGER, Clark County District Attorney

4 YOU AND EACH OF YOU will please take notice that a **MOTION TO**
5 **WITHDRAW AS COUNSEL** will come on for hearing before the above-entitled Court on
6 the 12 day of MAY, 2011, at the hour of 8:15 a.m. in the
7 above-referenced court.

8 **DATED:** April 29, 2011

9 **PALM LAW FIRM, LTD.**

10 By: 

11 Patricia A. Palm, Esq. (SBN 6009)
12 Attorney for Defendant
13

14 **POINTS AND AUTHORITIES**

15 Eighth Judicial District Court Rule 7.40 provides that counsel may be changed
16 only by order of the court upon written motion. Counsel for the Defendant hereby seeks
17 an order allowing her to withdraw from representing the Defendant in the instant case
18 based upon the fact that there has been an irremediable breakdown in the attorney-
19 client relationship which prevents current Counsel from providing effective assistance in
20 this matter.

21 Based on the foregoing, counsel respectfully requests that this Court allow her to
22 withdraw from representing the defendant in the instant case.
23

24 **DATED:** April 29, 2011

25 **PALM LAW FIRM, LTD.**

26 By: _____

27 Patricia A. Palm, Esq.
28 Attorney for Defendant

1 AFFIDAVIT OF PATRICIA A. PALM, ESQ.

2 STATE OF NEVADA }
3 } ss:
4 COUNTY OF CLARK }

5 PATRICIA A. PALM, ESQ., being first duly sworn, deposes and says:

6 1. That I am a licensed attorney practicing law in the State of Nevada and
7 that I am court-appointed to represent the Defendant, BRIAN O'KEEFE, in the above-
8 entitled matter.

9 2. That I have personal knowledge of the facts contained in this Affidavit and
10 am competent to testify as to those facts.

11 3. That good cause exists to withdraw in this matter as there has developed
12 an irremediable breakdown in the attorney-client relationship as of this date, which will
13 prevent me from providing effective assistance in this matter.

14 4. That Brian O'Keefe is in custody at the Clark County Detention Center,
15 330 S. Casino Center, Las Vegas, Nevada, 89101.

16 5. That should any further representations be needed to support this request
17 to withdraw, it is appropriate to make such representations in an *ex parte in camera*
18 hearing.

19 EXECUTED: April 29, 2011.

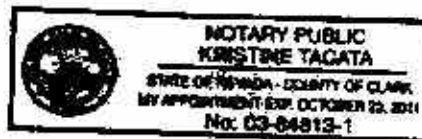
20 By:

PATRICIA A. PALM, ESQ.

21 SUBSCRIBED AND SWORN to before me

22 this 29 day of APRIL, 2011.

23 NOTARY PUBLIC



003046

RECEIPT OF COPY

RECEIPT OF COPY of the Motion to Withdraw as Counsel is hereby received
and acknowledged this _____ day of _____, 2011.

Clark County District Attorney's Office

By: _____

003047

ORIGINAL

5

001
PALM LAW FIRM, LTD.
PATRICIA PALM, ESQ.
NEVADA BAR NO. 6009
1212 CASINO CENTER BLVD.
LAS VEGAS, NV 89104
Phone: (702) 386-9113
Fax: (702) 386-9114
Email: Patricia.palmlaw@gmail.com
Attorney for Brian O'Keefe

FILED

MAY 3 1 30 PM '11

Shirley L. Schuman
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

BRIAN K. O'KEEFE,

Defendant.

CASE NO: C250630

DEPT. NO: XVII

DATE:

TIME:

CERTIFICATE OF MAILING

The undersigned hereby declares that she is an assistant of the PALM LAW FIRM, LTD. and that on the 29th day of April, 2011, she deposited a true and correct copy of the foregoing **MOTION TO WITHDRAW AS COUNSEL** in the United States Mail, postage fully prepaid, addressed to the following:

BRIAN O'KEEFE
INMATE NO. 1447732
CLARK COUNTY DETENTION CENTER
330 S. CASINO CENTER BLVD.
LAS VEGAS, NV 89101

[Signature]

08C250630
CERT
Certificate of Mailing
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RECEIVED
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CLERK OF THE COURT

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1 TRAN

2 ORIGINAL

3 FILED
4 May 19 10 44 AM '11

5 *Debra J. Schuman*
6 CLERK OF THE COURT

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 BRIAN KERRY O'KEEFE,

13 Defendant.

CASE NO. C250630

DEPT. XVII

08C250630
RTRAN
Recorder's Transcript of Hearing
1424247



14 BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

15 WEDNESDAY, APRIL 27, 2011

16 RECORDER'S TRANSCRIPT OF HEARING RE:

17 PETROCELLI HEARING

18 APPEARANCES:

19 For the State:

20 CHRISTOPHER LALLI, ESQ.,
21 Chief Deputy District Attorney
22 ELIZABETH A. MERCER, ESQ.,
23 Deputy District Attorney

For the Defendant:

PATRICIA PALM, ESQ.,

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

CLERK OF THE COURT

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