

1 regarding that. But my ruling stands on that. I'm going to  
2 sort of let that go now, and the State's not going to be  
3 allowed to ask Cheryl if you were violent towards her. That's  
4 all -- [inaudible] on the record on that, all right?

5 The defendant has timely objected, and he has a  
6 continuing objection. I want to always put that on the record  
7 during the recess, outside the presence of the jury. He's --  
8 as far as this Court is concerned, every objection that he's  
9 made so far is timely, and preserved for the record. And I  
10 don't want any of the record to reflect that, well, he didn't  
11 object in time. No, I'm ruling that it's timely and proper.

12 And one of the objections was that he wanted  
13 redacted from Exhibit number 133, I think the information B, I  
14 believe it is?

15 MR. LALLI: I believe so, yes. It's 133B, Your  
16 Honor.

17 THE COURT: The mention -- because it's battery  
18 domestic violence, third offense. And then, of course, in any  
19 thousands I've seen, you have to list the -- now, Judge  
20 Villani ruled that he didn't want a lot of misdemeanors coming  
21 in. But he found, of course, the felony could come in. And  
22 he said that the admission of facts and circumstances of other  
23 cases cannot be admitted.

24 Now, this is not a fact or circumstances. Facts and  
25 -- it's what the information is. I guess that's what your

ROUGH DRAFT TRANSCRIPT

1 objection -- you asked me to redact that.

2 MR. O'KEEFE: Yes, Your Honor.

3 THE COURT: And Mr. Lalli objected to that. You  
4 want to make a record on that?

5 MR. O'KEEFE: Well, yes, Your Honor. You know,  
6 again -- you know, and I appreciate your patience, and I  
7 appreciate what you're doing. And I understand about being  
8 fair to the State. Yes, Your Honor. I'll be more careful.  
9 I'll promise you that.

10 THE COURT: Thank you. That's all I ask you.

11 MR. O'KEEFE: Okay.

12 THE COURT: That's all I ask.

13 MR. O'KEEFE: I guess I'll handle that. If the  
14 State calls their other witness, I have -- I can bring in --  
15 and prove that she's not -- she's being very untruthful.  
16 I'll --

17 THE COURT: Who?

18 MR. O'KEEFE: Ms. Morris, with that. So, I'll --

19 THE COURT: But as far as the -- violent towards  
20 her, if you bring something like that, it's going to open the  
21 door again. So, he's subject to recalling Cheryl --

22 MR. O'KEEFE: And I realize what you said. I'll  
23 cautiously --

24 THE COURT: He's subject to recalling Cheryl, and  
25 saying, no, no, he was violent. So, it's up to you. You run

ROUGH DRAFT TRANSCRIPT

004151

1 your own case. But --

2 MR. O'KEEFE: Right, Your Honor.

3 THE COURT: -- I like to caution you. Maybe -- and  
4 run it through Mr. Maningo, if you want. That's up --

5 MR. O'KEEFE: Right.

6 THE COURT: -- to you. He's your standby lawyer.  
7 But just don't open the door to that violence. It's going to  
8 hurt you a lot in front of the jury.

9 MR. O'KEEFE: Well, it's pretty clear what it says  
10 right -- but yes, Your Honor. Thank you for that. Okay.  
11 Now, as far as the --

12 THE COURT: If you want to bring it up, and you want  
13 him to -- that's fine. I'm not saying you can't do it, just  
14 be careful.

15 MR. O'KEEFE: Yes, sir, Your Honor. And I  
16 appreciate that. Now, as far as the ruling that Judge Villani  
17 gave -- and I told you I was searched when I went back for  
18 something, I happen to have a copy. The front page is  
19 missing. But it can be --

20 THE COURT: Now, was this relating to the expert  
21 witness? Or --

22 MR. O'KEEFE: Yes, Your Honor, exactly.

23 THE COURT: Well, we're on -- we're not on that yet.

24 MR. O'KEEFE: Oh. I thought you --

25 THE COURT: We're on the mention of the -- you

ROUGH DRAFT TRANSCRIPT

004152

1 wanted to redact that in Exhibit number 33, and I denied that.

2 MR. O'KEEFE: Yes. I'm sorry, Your Honor. I'm  
3 sorry.

4 THE COURT: Let's get one at a time, all right?

5 MR. O'KEEFE: Yes, sir, Your Honor. Right.

6 THE COURT: Then we'll go to that other one. I have  
7 my notes.

8 MR. O'KEEFE: Okay. Thank you. The misdemeanors  
9 clearly -- you know, misdemeanors -- it's very dangerous to  
10 use misdemeanors in a court of law. And Villani clearly --  
11 even though his order was very vague, and he did only refer to  
12 the felony, and he did clearly -- you verified that he said,  
13 you know, the misdemeanors got to stay out. I mean, they  
14 already showed the cover, which that -- I had no problem with  
15 that.

16 But I feel that the second page showing the other  
17 events should be -- you know, it's not necessary. It was  
18 specified it was kind of vague. And again, my standing  
19 objection is, they shouldn't be using any of this evidence,  
20 Your Honor.

21 THE COURT: You have that objection. It's  
22 preserved. Now, Mr. -- you want to just -- the State's  
23 argument regarding that?

24 MR. LALLI: Your Honor, the order that Judge Villani  
25 signed indicates the facts and circumstances of that case are

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004153



1 admissible. And so --

2 THE COURT: Of the felony case?

3 MR. LALLI: Yes.

4 THE COURT: Right.

5 MR. LALLI: And we limited it to that. We did not  
6 go into -- although in our Petrocelli motion, our motion for  
7 bad acts, we sought to go to prove all of those individual  
8 events up. Judge Villani said no, but he did allow us to go  
9 into the facts and circumstances of this case, the one that we  
10 went in. We did not factually elicit that information, but it  
11 was a domestic violence third offense.

12 THE COURT: All right. Well, my ruling stands on  
13 that, but a record is preserved on that. Now, as far as --  
14 the State called an expert witness. What was her name again,  
15 Mr. Lalli?

16 MR. LALLI: Elynne Greene.

17 THE COURT: Ms. Greene. And she just gave general  
18 information. She was -- I mean, I think Ms. Mercer qualified  
19 her as an expert, although we don't say anymore she's a -- we  
20 qualify her as an expert, and we -- you know, we don't do that  
21 anymore. But she had the experience to be qualified as an  
22 expert witness. And she just testified in general about  
23 syndromes, or whatever it is. Now, what's your -- your  
24 objection to that was what, Mr. O'Keefe? And again, you've  
25 preserved the record on that very timely. You approached the

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004154

1 bench.

2 MR. O'KEEFE: Okay.

3 THE COURT: I think you said Judge Villani  
4 specifically ordered the State not to call an expert witness  
5 on domestic violence=. That was your --

6 MR. O'KEEFE: On domestic violence syndrome, but  
7 it's all related, Your Honor.

8 THE COURT: Well, you said you had an order that he  
9 specifically precluded the State from doing that.

10 MR. MANINGO: And Your Honor, Mr. O'Keefe did have  
11 that, and now just with shuffling papers -- if we could just  
12 have a moment.

13 THE COURT: Okay.

14 MR. MANINGO: It was right on top, Your Honor.

15 (Pause in the proceedings)

16 THE COURT: May the record reflect that they called  
17 the witness, and Mr. O'Keefe approached the bench, and he said  
18 that -- he said what he said, that Judge Villani precluded  
19 that. But he doesn't have the order, and he could maybe look  
20 for it tonight. And I had no other choice but to say, well,  
21 I'm going to allow it, because I don't have an order. And Mr.  
22 Lalli indicated, there is no such order. So, I allowed the  
23 testimony, subject perhaps to a motion to strike if I get  
24 further information.

25 MR. LALLI: Right.

ROUGH DRAFT TRANSCRIPT

004155

1 THE COURT: So, that's the status of the record.

2 MR. LALLI: I'm not aware of any such order. But I  
3 can inform the Court that on two occasions leading up to this  
4 trial, we filed an expert notice indicating that we were going  
5 to be calling an expert; specifically, Ms. Greene.

6 In previous trials, we had taken the position -- for  
7 instance, with the bad act motion. We took the position that  
8 we would be limited to prior rulings of the judge, and only  
9 admit the judgment of conviction with respect to Mr. O'Keefe's  
10 prior. In this trial, we've taken different tax. We filed an  
11 extensive Petrocelli motion, a bad act motion. We also twice  
12 noticed an expert.

13 THE COURT: So, you properly, timely notified --

14 MR. LALLI: Yes.

15 THE COURT: -- an expert.

16 MR. LALLI: Correct. There was never --

17 THE COURT: Noticed an expert.

18 MR. LALLI: -- an objection to that. There was  
19 never a motion to strike the notice of experts. There was  
20 never a motion in limine by the defendant to tell the Court,  
21 hey, they're noticing an expert this time, and I think it  
22 violates some prior ruling of the Court; there was none of  
23 that.

24 And so -- and I can tell you, I'm not aware of any  
25 order -- specific order by Judge Villani not allowing us to

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004156

1 call an expert, such as the one that we called.

2 THE COURT: Mr. O'Keefe?

3 MR. O'KEEFE: Okay, Your Honor. I did find it right  
4 here on page 6 of this.

5 THE COURT: Of what?

6 MR. O'KEEFE: Of motion in limine to strike the bad  
7 acts -- the expert for battery domestic violence syndrome, and  
8 the cycle of battery domestic violence. It clearly says on  
9 line 25, page 6 --

10 THE COURT: Is that an order from Judge Villani?

11 MR. O'KEEFE: This is a motion that we argued. And  
12 Ms. Palm, the attorney at that time, she listed relevant facts  
13 and rulings during the motion in limine. And by the way, the  
14 motion in limine was the second Petrocelli hearing on the same  
15 bad acts that they re-litigated, claiming them to be new  
16 evidence, and they (sic) wasn't even new evidence. It was the  
17 same acts. They just --

18 THE COURT: Well, let's stick to the point. Do you  
19 have a motion signed by Judge Villani --

20 MR. O'KEEFE: Yes. Trial --

21 THE COURT: And what's the date, and show -- read  
22 it, and show it to Mr. Lalli.

23 MR. O'KEEFE: Yes. Yes, sir, Your Honor. Right  
24 here, Mr. Lalli. I've got it marked here. Can you see that?

25 MR. LALLI: Yes, sir.

ROUGH DRAFT TRANSCRIPT

004157

1 MR. MANINGO: Let's just look at these two lines  
2 right here, Chris.

3 MR. LALLI: Is this [inaudible]?

4 MR. O'KEEFE: That's Ms. Palm's motion that she  
5 listed, and that -- it was ruled on. That's her motion in  
6 limine to the other bad acts.

7 THE COURT: Motions in limine --

8 MR. MANINGO: But it cites to the trial transcripts.

9 THE COURT: -- are not orders.

10 MR. O'KEEFE: It cites to the transcripts of the --

11 MR. LALLI: Right.

12 MR. O'KEEFE: -- ruling made, Your Honor.

13 MR. LALLI: Can I just maybe enlighten the Court on  
14 this? What this motion says is, during the retrial voir dire,  
15 the Court also stated that the Court could not discuss  
16 battered women's syndrome. That's during the voir dire  
17 process.

18 THE COURT: The voir dire?

19 MR. LALLI: Yes, of the last trial. We had not  
20 noticed an expert witness prior to that trial, like we did at  
21 this trial. Judge Villani never ruled that we could not call  
22 an expert. But -- and I think the Court actually brought up  
23 the fact that -- that fact during this voir dire, when the  
24 Court had asked us to approach. That certainly is not an  
25 order from the Court saying we could not call an expert in

ROUGH DRAFT TRANSCRIPT

004158

1 this case.

2 MR. O'KEEFE: Your Honor, may I rebuttal that (sic)?  
3 It clearly states during the retrial voir dire -- sure, it  
4 does. But it said, the Court, Judge Villani also ruled that  
5 the State, Mr. Lalli, could not discuss battery (sic) women's  
6 syndrome at all. 8/23/2010, trial transcripts, page 13 to 16.

7 THE COURT: In the voir dire. Because he didn't  
8 notice an expert at that time, but now, he noticed an expert.  
9 I -- that's what Mr. Lalli is saying. It's a different  
10 situation now. And if you would have -- what you had to do is  
11 he noticed the expert, and you would have said, I'm going to  
12 make a motion in limine to preclude him from calling that  
13 expert, because whatever reason. You know. And --

14 MR. O'KEEFE: Okay. And then, again --

15 THE COURT: But that's really not an order.

16 MR. O'KEEFE: -- what I brought up to you yesterday,  
17 Your Honor, with all due respect, it is important. When the  
18 State filed their motion for their second bad acts, and they  
19 attached their new witnesses, and they noticed this, that they  
20 may call a witness for expert in the battery domestic violence  
21 syndrome, they noticed and scheduled that second retrial  
22 hearing -- or motion for two days after calendar call.

23 THE COURT: We can argue, and argue, and argue if  
24 it's three trials. But your motion to strike -- to not allow  
25 the expert is denied. I don't see any direct order from Judge

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004159

1 Villani saying that it's ordered by Judge Villani that the  
2 State cannot call in this particular case -- in this  
3 particular retrial, cannot call it. So, but you know, you got  
4 this -- it's appealable: what they call parachutes.

5 MR. O'KEEFE: Yes, sir.

6 THE COURT: You got like parachutes going up there.  
7 And as I said, it's a win-win situation. If -- you know. If  
8 you lose this case, you got these parachutes. You can  
9 litigate this case for 30 years, you know?

10 So, that being said, I think we're done. Let's take  
11 a couple of minutes and come back, and call your next witness.

12 MR. O'KEEFE: Your Honor, could I get one second,  
13 please? It's --

14 (Pause in the proceedings)

15 MR. O'KEEFE: Your Honor, just again, we have  
16 litigated all these acts so many times with Judge Villani.  
17 Please, forgive me. And he's changed -- there's been so many  
18 rulings, so many hearings, changes. And now, he's not here,  
19 Your Honor.

20 THE COURT: Well, no, no. Let me make a  
21 clarification on that. I don't know anything about -- I'm a  
22 senior judge.

23 MR. O'KEEFE: Yes, sir.

24 THE COURT: I work for the Supreme Court of Nevada.  
25 They're in charge of the senior judge program. I was

ROUGH DRAFT TRANSCRIPT

004160

1 appointed by the Supreme Court of Nevada to take Department --  
2 what is it, 17?

3 THE CLERK: 17.

4 THE MARSHAL: You got it.

5 THE COURT: For two weeks. And that was a long time  
6 ago. I heard Judge Villani scheduled a well-deserved vacation  
7 with his family like a year ago. He's one of the few judges  
8 that doesn't -- that doesn't, you know, two weeks from now,  
9 say, we're taking off; we want a senior judge to cover.

10 He replanned his vacation like a long time ago, and  
11 it was noted in the senior judge record that we're to be in  
12 this department. And you know, things happen. I don't know.  
13 He didn't know this was scheduled at the time, perhaps.  
14 Again, this is all hearsay. All I know is he scheduled this  
15 like a year ago.

16 I'm here by way of the Supreme Court. And every  
17 judge deserves a vacation. And if it wasn't your trial, he's  
18 got a big trial next week involving the Mandalay Bay; that's  
19 millions and millions of dollars of money. Not to say it's  
20 more important than your life. I mean, but it's -- he has to  
21 be gone for that, too.

22 So, it's -- you know, it's one of those things. He  
23 didn't plan it this way. There was no intention to dodge  
24 this. In fact, Judge Villani is a judge that is the hardest  
25 -- one of the hardest working judges in this courtroom. He

ROUGH DRAFT TRANSCRIPT

004161



1 goes trial, after trial. He keeps lawyers to their guns. He  
2 doesn't like to continue cases.

3 That's all I can say about that. But you've made  
4 the record that he's not here. We have to live with it.  
5 That's all I have to say.

6 MR. O'KEEFE: And at calendar call though, Your  
7 Honor, that --

8 THE COURT: Well, he scheduled his vacation, you  
9 know --

10 MR. O'KEEFE: And he clearly left all attorneys and  
11 everybody under the impression that -- I let -- his words  
12 verbatim was that, I've scheduled two weeks for this trial.  
13 We're going to go to trial Monday. And he led everyone to  
14 believe.

15 And we showed the order from the Ninth Circuit, and  
16 we just asked, you know, can we just put this off? I'm not  
17 going anywhere. This is the third trial. I'm not -- I'll --  
18 you know, we'll have -- since the Ninth Circuit's ruled  
19 there's a double jeopardy issue, let's let it properly -- no,  
20 no, no, I'm going to hear your trial. Mr. Maningo was there.  
21 The AFPD was there. Mr. Lalli was there. Everyone thought --  
22 everyone was under the assumption.

23 Then I get -- Friday morning, all the sudden, guess  
24 what? You're going to be blessed, you got Senior Judge  
25 Bonaventure, but Judge Villani went on vacation. And we've

ROUGH DRAFT TRANSCRIPT

004162

1 been arguing for three and-a-half years.

2 THE COURT: The whole system -- they say, justice  
3 delayed is justice denied. They don't want to continue these  
4 cases. They want to keep everything preserved.

5 And I hope that I feel capable of being an attorney,  
6 a private practitioner, a law clerk, a bailiff, a DA  
7 investigator, a public defender, a chief public defender for  
8 six years, a justice of the peace for ten years, a district  
9 judge for about 20 years, a senior judge for three. I think I  
10 feel capable of protecting your rights in this case.

11 So -- but again, your record is preserved. You  
12 don't like the fact that Judge Villani didn't continue this  
13 case and he went on vacation. It's a matter of record. It is  
14 what it is. Another parachute. Thank you.

15 MR. O'KEEFE: Thank you, Your Honor.

16 (Court recessed at 2:50 p.m. until 3:01 p.m.)

17 THE MARSHAL: Officers and members of the court,  
18 Department 17 jurors.

19 (Within the presence of the jury panel)

20 THE COURT: All right. Parties, stipulate to the  
21 presence of the jury?

22 MR. LALLI: Yes, Your Honor.

23 MR. O'KEEFE: Yes, Your Honor.

24 THE COURT: All right. Thank you, ladies --  
25 sometimes, we have some evidentiary matters that are not to

ROUGH DRAFT TRANSCRIPT

004163

1 concern you, and you may as well just take a longer break.  
2 But I'm sorry there was a little delay, but we're ready to go  
3 again, all right? The State will call it's next witness,  
4 please.

5 MS. MERCER: State calls Joyce Toliver.

6 THE MARSHAL: Ms. Toliver, if you will remain  
7 standing. Please, ma'am, raise your right hand and face the  
8 clerk.

9 JOYCE TOLIVER, STATE'S WITNESS, SWORN

10 THE MARSHAL: If you would have a seat, please.  
11 Slide up to the microphone.

12 (Pause in the proceedings)

13 THE MARSHAL: If you would, ma'am, please state and  
14 spell your name for the record.

15 THE WITNESS: Joyce, J-o-y-c-e. Benita,  
16 B-e-n-i-t-a. Harris, H-a-r-r-i-s.

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

18 THE COURT: Please.

19 DIRECT EXAMINATION

20 BY MS. MERCER:

21 Q Ma'am, are you married to a Charles Toliver?

22 A Yes, I am.

23 Q And does he have a nickname?

24 A Cookie.

25 Q Cookie?

ROUGH DRAFT TRANSCRIPT

004164

1 A Um-hum.

2 Q Is that what his friends call him?

3 A Yes, it is.

4 Q Okay. Where are you currently residing?

5 A 1013 North Jones Boulevard, Las Vegas, Nevada,

6 89108.

7 Q And back in November of 2008, where were you

8 residing?

9 A 5001 El Parque.

10 Q Do you recall which apartment number it would have

11 been?

12 A 29.

13 Q Okay. Is that --

14 A 14 years.

15 Q I'm sorry, you were there for 14 years?

16 A Yeah.

17 Q Is that here in Clark County, Nevada?

18 A Yes, it is.

19 Q And I take it you lived with your husband?

20 A Yes, I do.

21 Q Were you familiar -- I'm sorry. Is apartment 29 on

22 the bottom floor, or the top floor?

23 A Bottom.

24 Q Okay.

25 MS. MERCER: And Your Honor, may I approach the

ROUGH DRAFT TRANSCRIPT

004165

1 witness?

2 THE COURT: Yes.

3 BY MS. MERCER:

4 Q Ma'am, do you recognize what's already been admitted  
5 as State's Exhibit number 2?

6 A Yes.

7 Q And how do you recognize it?

8 A Like I said, we were there 14 years. We lived  
9 there.

10 Q Okay. Is this a photograph of the apartment complex  
11 that you resided at back in November of 2008?

12 A Yes, it is.

13 Q And it fairly and accurately depicts that apartment  
14 complex?

15 A What did you say?

16 Q Does it fairly and accurately depict the apartment  
17 complex as you remember it?

18 A Yes, it is.

19 MS. MERCER: Permission to publish, Your Honor?

20 THE COURT: Yes.

21 BY MS. MERCER:

22 Q Okay. And when I was handing you the photograph,  
23 you pointed to a specific apartment that was the apartment you  
24 resided in. Can you place an X on it for me? Or is it still  
25 not working?

ROUGH DRAFT TRANSCRIPT

004166

1 A Did the X show up?  
2 Q Hold on one second.  
3 A Okay.  
4 Q Okay. Is it behind the stairwell?  
5 A Yes, it is.  
6 Q And is it the door that appears to have a white  
7 screen over it, or is it the other door?  
8 A It's the door with the white screen.  
9 Q Okay. And that was your apartment?  
10 A Yes, it is.  
11 Q Were you --  
12 A Yes, it was.  
13 Q -- familiar with the people that resided in the  
14 apartment directly above you?  
15 A I've seen them, yes.  
16 Q And when I say resided there, I mean in November of  
17 2008.  
18 A Yeah.  
19 Q And do you see one of the occupants of that  
20 apartment in the courtroom today?  
21 A Yes, I do.  
22 Q Could you please point to him and describe an  
23 article of clothing that he's wearing today?  
24 A The gentleman right here with the brown, yellow tie,  
25 green shirt.

ROUGH DRAFT TRANSCRIPT

004167

1 MS. MERCER: Your Honor, may the record reflect that  
2 she's identified the defendant?

3 THE COURT: Record will so reflect.

4 BY MS. MERCER:

5 Q Ma'am, back in November of 2008, how long had the  
6 defendant resided above you?

7 A Not very long. Probably maybe about 2, 3, 4 months.

8 Q And on November 5th of 2008, do you recall whether  
9 anyone else was residing in the apartment with him?

10 A Yeah, the young lady.

11 Q What did that young lady look like?

12 A Oh, gosh. She was small, frail, about maybe  
13 5-foot, --

14 Q Okay.

15 A -- if she was that tall.

16 Q She was frail; is that how you would describe her?

17 A Yeah, she was small. Small frame.

18 Q Petite?

19 A Yeah. That's a good word, petite.

20 Q What about her hair color? Do you recall what color  
21 her hair was?

22 A I think it was like -- it wasn't blond, blond. But  
23 probably lighter than yours.

24 Q Okay. When he first moved into the apartment, was  
25 the same woman residing with him?

ROUGH DRAFT TRANSCRIPT

004168

1 A No.

2 Q It was a different woman?

3 A Yes.

4 Q And the layout of the apartment that was directly  
5 above you, is that the same --

6 MS. MERCER: Or actually, Your Honor, may I approach  
7 the witness?

8 THE COURT: Yes.

9 BY MS. MERCER:

10 Q I'm showing you what's already been admitted as  
11 State's Exhibit number 1. Do you recognize the layout of that  
12 apartment?

13 A Our apartment.

14 Q That's how your apartment was laid out?

15 A That's our apartment, yes.

16 Q And that would be the apartment at 5001 El Parque?

17 A Yes.

18 MS. MERCER: Permission to publish, Your Honor?

19 THE COURT: Yes.

20 BY MS. MERCER:

21 Q Okay. So, this is how your apartment was laid out?

22 A Yes.

23 Q Now, I want to direct your attention specifically to  
24 November 5th of 2008. At about 9:00 o'clock that evening,  
25 what would you have been doing?

ROUGH DRAFT TRANSCRIPT

004169



1       A     I turned the TV on to watch One Life to Live. I got  
2 off from work, and getting ready to watch One Life to Live. I  
3 couldn't watch them in the day, so I did them at night, the  
4 soap operas.

5       Q     Okay. And I'm sorry, where did you tend to watch  
6 your soap operas?

7       A     In the bedroom.

8       Q     Was your husband in the bedroom with you?

9       A     Yes, he was.

10      Q     What was he doing?

11      A     Asleep.

12      Q     And while you were trying to watch your soap operas,  
13 at about 9:00 p.m. that night, did something unusual happen?

14      A     A lot of ruckus, noise. A lot of noise, which we  
15 didn't have. So, it was like a shock. It was like, what's  
16 going on? Just a lot of ruckus. A lot of noise, and bumping  
17 and stuff.

18      Q     And where was the noise coming from?

19      A     Upstairs. The ceiling.

20      Q     I'm sorry?

21      A     From my ceiling, my bedroom ceiling.

22      Q     Okay. So, directly above your bedroom?

23      A     Correct.

24      Q     So, it would have been the bedroom in the apartment  
25 above you?

ROUGH DRAFT TRANSCRIPT

004170

- 1 A Correct.
- 2 Q When you say it was a lot of noise, can you describe  
3 the noise that you were hearing from that night?
- 4 A Just that.
- 5 Q Okay. So, a lot of bumping and thumping type of  
6 noises?
- 7 A Yes.
- 8 Q When you initially heard that noise, what did you  
9 do?
- 10 A Turned the TV up.
- 11 Q You turned the TV up; tried to ignore it?
- 12 A Trying to watch my stories.
- 13 Q When you turned your television up, were you still  
14 able to hear the noise?
- 15 A Yes. Didn't work.
- 16 Q It didn't work?
- 17 A No.
- 18 Q Did it appear that the noise was getting louder, or  
19 staying about the same?
- 20 A It was getting a little louder.
- 21 Q Were you hearing any screams, or talking, or  
22 anything like that?
- 23 A Crying.
- 24 Q You heard some crying?
- 25 A Yeah.

ROUGH DRAFT TRANSCRIPT

004171

1 Q Could you tell whether it was from a male or a  
2 female?

3 A It was from a woman.

4 Q It was from a woman?

5 A Yeah.

6 Q How long did that noise go on for?

7 A For a while.

8 Q What do you consider a while?

9 A I'll say -- it went on for probably about an hour or  
10 so.

11 Q Were you able to gauge the amount of time that it  
12 went on by the soap opera that you were watching?

13 A Right. That's why I said about an hour or two.

14 Q Okay. What was your habit back then with regards to  
15 watching your soap operas?

16 A Sit there and watch them.

17 Q Was there one that came on at 9:00, and one that  
18 came on at 10:00?

19 A One -- yeah. One Life to Live came on at 9:00, and  
20 General Hospital came on at 10:00. And I watch them back to  
21 back.

22 Q Okay. So, was the noise still going on?

23 A The noise was still going on during General  
24 Hospital. So, I say, it had stopped, quieted down about maybe  
25 10:00 something, or a little after 10:00. Something like

ROUGH DRAFT TRANSCRIPT

004172

1 that.

2 Q Okay. At some point, did the noise awake your  
3 husband?

4 A Yes, it did.

5 Q And how far into the noise going on did that occur?

6 A For -- I said practically the whole -- from 9:00  
7 until at least 9:30, 9:45. Because he was like, damn, they  
8 going to come through the ceiling on us. So, he was awoken by  
9 the noise also.

10 Q And when he woke up because of the noise, what did  
11 the two of you do to try to stop it?

12 A He got a broom, and heisted up into the ceiling, to  
13 hit up there to make them stop.

14 Q Banged on the ceiling with a broom?

15 A Yeah.

16 Q And who did that?

17 A My husband, Cookie.

18 Q Okay. Did the noise stop at that point?

19 A It stopped for a second, or two, or three.

20 Q And then, did it resume?

21 A Yes, it did.

22 Q Was it still the same volume?

23 A At first, it was like a low -- it had died down.

24 But then, it intensely got back kind of loud again.

25 Q And what happened at that point?

ROUGH DRAFT TRANSCRIPT

004173

1           A     My husband was mad. We both had to be at work the  
2 next morning at 5:00. He went up the steps in my house shoes.  
3           Q     So, he put your house shoes on?  
4           A     And went up -- flew up the steps, yeah.  
5           Q     And how long do you think he was out of the  
6 apartment at that point?  
7           A     Maybe 10, 15 minutes, if it was 15.  
8           Q     When he left the apartment, were you still hearing  
9 any noise from upstairs?  
10          A     It had died down. It had died down.  
11          Q     What kind of noise were you hearing at that time --  
12 at the time that he ran out of the apartment?  
13          A     Moaning, a loud moan.  
14          Q     Was it from a woman, or a man?  
15          A     It was from the same person who was up there crying.  
16          Q     Okay. And can you describe the moaning for me a  
17 little bit more?  
18          A     It was like [inaudible]. Then it was like,  
19 [inaudible], nothing.  
20          Q     And how long did that go on?  
21          A     From the time my husband started going up the steps.  
22 And she had stopped -- where it was a stop when he just  
23 started coming down. Because you could see it's not a sturdy  
24 -- the stairwell wasn't sturdy. You could just hear going up  
25 and down, if anybody managed to step on the steps.

ROUGH DRAFT TRANSCRIPT

004174

1 Q Okay. So, you could hear your husband going up and  
2 down the stairs?

3 A Yeah.

4 Q Even from your bedroom?

5 A Yeah.

6 Q The moaning that you heard, was that coming from the  
7 room directly above you?

8 A Yes, it was.

9 Q So, from the bedroom in number 35?

10 A Yes.

11 Q When your husband came back, can you describe for me  
12 his demeanor?

13 A Wow. I wasn't looking at him when he came down, I  
14 just heard his mouth. And he was just like, baby --

15 Q Well, don't tell me what he --

16 A Okay.

17 Q Don't tell me what he said. Just tell me what his  
18 demeanor was.

19 A Wow. He was -- his eyes was big, and he was  
20 [inaudible]. It was like something surprised him.

21 Q He was shocked?

22 A He was shocked. Right. Real shocked.

23 Q Did he actually come into the apartment, or did you  
24 meet him at the door?

25 A He came in.

ROUGH DRAFT TRANSCRIPT

004175

1 Q And did he indicate to you that he'd seen something  
2 that concerned him?

3 A Yes, he did.

4 Q Did he then leave the apartment a second time?

5 A Yeah. Yes, he did.

6 Q And what -- did you stay inside the apartment at  
7 that point?

8 A Yes, I did. I'm not the nosey type.

9 Q You're not the nosey type?

10 A No.

11 Q What's the next thing that happened?

12 A The police. I stood in my doorway of my screen, and  
13 watched what was going on.

14 Q How soon after your husband came back to the  
15 apartment a second time -- or left the apartment a second  
16 time, did the police arrive at your apartment complex?

17 A Oh, pretty quickly. I'd say about maybe 15, 20  
18 minutes.

19 Q Most?

20 A Yeah.

21 Q Okay.

22 MS. MERCER: Court's indulgence, Your Honor. Pass  
23 the witness, Your Honor.

24 THE COURT: All right. Any cross-examination, Mr.  
25 O'Keefe?

ROUGH DRAFT TRANSCRIPT

004176

1 MR. O'KEEFE: Yes, Your Honor. Very briefly, sir.

2 CROSS-EXAMINATION

3 BY MR. O'KEEFE:

4 Q Hello, Ms. Toliver.

5 A Hello.

6 Q Tragic night that night, it was. I'll be very  
7 brief, very simple. Okay. When you were hearing the thumping  
8 and pounding, did you hear any talking, or voices, or  
9 screaming, or yelling?

10 A I didn't hear no screaming or no yelling, just the  
11 crying.

12 Q And you say that Jim -- or Cookie went up, of  
13 course, because you know, he was tired, and it was getting  
14 loud, and he went up. And he ran out, and he came back down  
15 to your apartment right underneath us, first?

16 A Correct.

17 Q And then he left again?

18 A Yes. Just out in the corridor where everybody else  
19 was?

20 Q Okay. When he left, did he go to the office where  
21 Robin and Todd was, at the apartment managers? Do you know?

22 A No. I didn't see him go that far. I know they was  
23 all out there, standing out in the corridor.

24 Q Okay. When the cops did arrive -- and let's face  
25 it; they apprehended me, took me out?

ROUGH DRAFT TRANSCRIPT

004177



1 A Yeah.

2 Q Did you state in prior testimony that you could hear  
3 me quite clearly?

4 A No.

5 Q Anytime?

6 A I didn't hear you at no time.

7 Q You didn't hear me -- any talking with the cops,  
8 being loud, belligerent, or anything like that?

9 A No. But they had a problem with you.

10 Q Did you talk to Jimmy the next day, or a week after,  
11 anytime? Have you talked to Jimmy after the incident?

12 A I probably have. They were neighbors. All of us  
13 was neighbors.

14 Q Right. But see, they don't know that, Ms. Toliver.

15 A Oh. We were neighbors. We were --

16 Q So, I mean, of course, it was --

17 A Like I said, 14 years.

18 Q -- a tragedy; you would talk? Did you ever have a  
19 conversation with Jimmy, my next-door neighbor?

20 A I probably have.

21 Q You have?

22 A Yeah.

23 Q Do you ever -- I'm sure you guys -- a lot of talk  
24 was going on?

25 A Yeah.

ROUGH DRAFT TRANSCRIPT

004178

1 Q It was a tragedy, correct?

2 A Yeah.

3 Q Okay. And saying that then, what I'm getting at is  
4 -- and just tell me if you did, you know, what you know. Did  
5 Jimmy ever share with you that, yeah, he seen me coming up  
6 approximately 15 minutes -- around 15 minutes before the  
7 event?

8 MS. MERCER: Objection, Your Honor.

9 THE WITNESS: No.

10 MS. MERCER: Calls for hearsay.

11 THE COURT: Wait just a minute. She said no, but  
12 there's an objection?

13 MS. MERCER: Hearsay.

14 THE COURT: Yeah, it is hearsay what Jimmy said,  
15 because it's not a court declaration used to prove the truth  
16 of the matter asserted. But she doesn't know, so you have to  
17 move on from that.

18 MR. O'KEEFE: Okay.

19 BY MR. O'KEEFE:

20 Q So, just to clarify again. At no time -- you never  
21 heard any breaking glasses, yelling, screaming, or anything  
22 like that? Just --

23 A No breaking glasses. No --

24 Q No, you know, fighting; nobody running around, or  
25 anything --

ROUGH DRAFT TRANSCRIPT

004179

1 A No.

2 Q -- like that at all?

3 A No.

4 MR. O'KEEFE: No further questions, Your Honor.

5 THE COURT: All right. Anything else Ms. Mercer?

6 MS. MERCER: No, Your Honor.

7 THE COURT: Thank you for testifying. You're  
8 excused. Next witness?

9 MS. MERCER: Your Honor, may I go check the hall and  
10 make sure he came back from moving his vehicle real quick?  
11 Your Honor, the State's next witness is Charles Toliver.

12 THE COURT: All right.

13 THE MARSHAL: Mr. Toliver, remain standing. Please,  
14 sir, raise your right hand and face the clerk.

15 CHARLES TOLIVER, STATE'S WITNESS, SWORN

16 THE MARSHAL: If you would have a seat, sir. Slide  
17 up to the microphone. And if you would, please state and  
18 spell your name for the record.

19 THE WITNESS: My name is Charles Edward Toliver.  
20 T-o-l-i-v-e-r.

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

22 DIRECT EXAMINATION

23 BY MS. MERCER:

24 Q Sir, was that your wife that just left the  
25 courtroom?

ROUGH DRAFT TRANSCRIPT

004180

1 A Yes, ma'am.

2 Q Okay. And you all lived -- back in November of  
3 2008, you lived at 5001 El Parque?

4 A Yes, ma'am.

5 Q How long did you live there?

6 A About 13 years.

7 Q And in November of 2008, were you familiar with the  
8 people that resided directly above you?

9 A Yes, ma'am.

10 Q Do you see one of those people in the courtroom  
11 today?

12 A Yes, ma'am.

13 Q Could you please point to that individual, and  
14 describe an article of clothing that he's wearing?

15 A The gray suit.

16 Q Well -- okay.

17 A Or whatever color it is.

18 Q I'm sorry?

19 A I think it's the gray suit.

20 Q Okay. Can you tell me what color tie he's wearing?

21 A Yellow.

22 THE COURT: All right. The record reflect the  
23 identification of the defendant, Mr. O'Keefe.

24 MS. MERCER: Thank you, Your Honor.

25 BY MS. MERCER:

ROUGH DRAFT TRANSCRIPT

004181

1 Q On November 5th of 2008 at -- around 9:30, 10:00  
2 o'clock in the evening, what were you doing?

3 A Asleep.

4 Q Were you awoken from your sleep that night?

5 A Yes, ma'am.

6 Q And were you woken up by an unusual noise?

7 A Noise. Yes, ma'am.

8 Q Can you describe for me what that noise was?

9 A It was like a --

10 Q What is sounded like?

11 A It was like a banging on the ceiling.

12 Q And was it coming directly --

13 A Above my bedroom.

14 Q Okay. And that would have been the bedroom in the  
15 apartment above you?

16 A Yes, ma'am.

17 Q When you heard the noise, what did you do?

18 A I asked my wife, how long has this been going on?  
19 She said, for a while. So, I got up, went to the kitchen, and  
20 took my broom handle and hit the ceiling to make them stop.

21 Q Did it stop?

22 A For a minute.

23 Q And then what happened?

24 A Heard it again. So, I got up, and went upstairs.

25 Q When you went upstairs, was the door -- did you go

ROUGH DRAFT TRANSCRIPT

004182

1 upstairs to the apartment where the noise was coming from?

2 A Yes, ma'am.

3 Q Was the door open or closed?

4 A It was open.

5 Q And when you saw the door was open, did you shout  
6 from outside the door, or what did you do?

7 A I hollered inside, and asked them could they please  
8 keep the noise down, and you all woke me up.

9 Q And what was the response that you received?

10 A Cookie, Cookie, come in here. Come in the bedroom.  
11 So, I went in there. And he said, she won't wake up.

12 Q Whose voice was it?

13 A His.

14 Q The defendant's?

15 A Yes.

16 Q So, he told you, come in here, come in here?

17 A Yes.

18 Q And when you went into the apartment, where did you  
19 go to the --

20 A I went --

21 Q -- inside?

22 A I went through the living room, and I stopped at the  
23 bedroom door. And when I seen the blood on the bed, I asked  
24 him, what happened? He said, she just won't wake up. I said,  
25 man, let me get the hell out of here. Excuse my language.

ROUGH DRAFT TRANSCRIPT

004183

1 THE COURT: It's all right.

2 BY MS. MERCER:

3 Q When you -- you saw blood on the bed. Did you see  
4 anything else?

5 A A handle. Looked like a knife.

6 Q Were you able to see anyone other than the defendant  
7 inside the bedroom?

8 A Her legs.

9 Q Okay.

10 MS. MERCER: Your Honor, may I approach the witness?

11 THE COURT: Yeah.

12 BY MS. MERCER:

13 Q Sir, I'm handing you what's been marked for  
14 identification purposes as State's proposed Exhibit 22. Can  
15 you look at that, and tell me whether you recognize what's  
16 depicted in that photograph?

17 A Yes. That's what I seen. That's what I just told  
18 you I seen. Her legs, and the --

19 Q Okay. So, you do recognize the photograph?

20 A Yeah.

21 Q And this is what you just described seeing when you  
22 walked into Mr. O'Keefe's bedroom?

23 A Yes, ma'am.

24 Q And is this a fair and accurate picture of how it  
25 appeared to you on November 5th of 2008?

ROUGH DRAFT TRANSCRIPT

004184

1 A Yes, ma'am.

2 MS. MERCER: Your Honor, move for the admission of  
3 State's proposed Exhibit 22.

4 THE COURT: Any objection?

5 MR. O'KEEFE: No, Your Honor.

6 THE COURT: 22 will be admitted.

7 (Exhibit 22 is admitted)

8 MS. MERCER: May I publish, Your Honor?

9 THE COURT: Yes.

10 BY MS. MERCER:

11 Q Mr. Toliver, can you describe fro me -- and the  
12 screen's not working right now, so you won't be able to mark  
13 for me. But can you describe for me the location of the  
14 handle that you observed when you entered the bedroom?

15 A Right there.

16 Q Okay. Is it close to the pillow?

17 A Yes.

18 Q And when you saw that --

19 A Well, see, because I -- since I --

20 Q Sure.

21 A I just caught a glance of it. When I seen that,

22 I --

23 Q You bolted out?

24 A -- disappeared.

25 Q What did you do when you left?

ROUGH DRAFT TRANSCRIPT

004185



1 A I ran downstairs and hollered for some help. You  
2 know, I just got to hollering. Yeah, I was scared.

3 Q Were you just hollering outside? Were you hollering  
4 --

5 A Outside, telling somebody to call the police,  
6 something that happened up here.

7 Q Okay.

8 A So, people started coming out of their apartments.

9 Q So, nobody was outside when you were screaming for  
10 help?

11 A No.

12 Q You were just being loud enough that it --

13 A Being loud --

14 Q -- drew people outside?

15 A I hollered loud enough to where they came out.

16 Q And who came out?

17 A Well, Todd, I went and got him. Todd.

18 Q Do you know Todd's last name?

19 A No. I don't know his last name. But anyway, he  
20 came out, and I told him what was going on, so we both went  
21 back up there. And I was showing him what was going on, and  
22 he told him to get out of his house.

23 Q Okay.

24 A So, we both left back out.

25 Q Let me back up a little bit.

ROUGH DRAFT TRANSCRIPT

004186

1 A Go ahead.

2 Q Okay. So, you get Todd?

3 A Uh-huh.

4 Q Who is Todd?

5 A He's --

6 Q He's the maintenance man?

7 A He was like the maintenance man there at the

8 apartments.

9 Q Okay. And you tell -- what do you tell him?

10 A Man, something happened up here. You know. So, we

11 kind of like went back up there, and looked.

12 Q You take him back upstairs to number 35?

13 A Yeah.

14 Q And when you go back up the second time, is the door

15 still open?

16 A Yeah.

17 Q Do you guys just walk in? Do you say something?

18 A Yeah.

19 Q What happened?

20 A I just walked in, and -- because it was still open.

21 See, I left out of there so quick, I don't even think he knew

22 I was gone.

23 Q Okay. So, when you go back in, do you go all the

24 way to the bedroom?

25 A No. Yeah, we went to the bedroom door, and stopped

ROUGH DRAFT TRANSCRIPT

004187

1 right there. We didn't have to go no further.

2 Q You went up to the bedroom door, but didn't go  
3 inside the bedroom?

4 A I didn't go in the bedroom.

5 Q How far did Todd go into the apartment?

6 A He was standing next to me. He didn't go in.

7 Q Okay. And did the defendant see you all standing  
8 there?

9 A Yeah.

10 Q Did you guys say anything to the defendant?

11 A He told Todd to get the hell out of his house.

12 Excuse me again, Your Honor.

13 Q When you say "he," are you referring to the  
14 defendant?

15 A Yes.

16 Q He told Todd to get the hell out?

17 A Get the hell out of my house.

18 Q Do you recall the defendant becoming physically  
19 aggressive with Todd?

20 A No, not really.

21 MS. MERCER: Court's indulgence.

22 BY MS. MERCER:

23 Q When you went back up there with Todd, where was the  
24 defendant?

25 A He was sitting on the floor. He was on the floor.

ROUGH DRAFT TRANSCRIPT

004188

- 1 Q Where on the floor was he?
- 2 A Holding her in his -- you know, holding her, on the  
3 floor.
- 4 Q Okay. Was she still at the foot of the bed?
- 5 A Yeah.
- 6 Q And was he sitting next to her? Was he sitting --
- 7 A Yeah.
- 8 Q -- behind her?
- 9 A He was next to her.
- 10 Q And what was he doing?
- 11 A He was rocking her like -- you know, he was holding  
12 her, like, she won't wake up, she won't wake up.
- 13 Q That's what he was saying to you?
- 14 A Yeah.
- 15 Q Do you recall -- do you recall him saying, "Wake up,  
16 wake up, don't do me like this?"
- 17 A Yeah. That's -- yeah. Those are the exact words.
- 18 Q Those were his exact words?
- 19 A Yes.
- 20 Q Did Todd say anything to the defendant?
- 21 A After he seen what was going on, we was kind of like  
22 fitting to go to get the police. You know, we was going to  
23 get some help.
- 24 Q Did the defendant ever ask you to go call the  
25 police?

ROUGH DRAFT TRANSCRIPT

004189

1 A No.

2 Q Did he ever ask you to get her some help?

3 A No.

4 Q Did -- what was the look on the defendant's face

5 when you walked in there?

6 A Man, scary look.

7 Q Scared you?

8 A A scary look, yeah.

9 Q Did he ever say anything about her being dead or

10 alive while you were up there?

11 A No.

12 Q Do you recall giving a taped statement to the police

13 on the night of this incident?

14 A No, I don't remember. They just asked me a few

15 questions.

16 Q You spoke with the police that night, correct?

17 A Yeah. They asked me a few questions. I told them

18 what I just told you. I went up there, and came back down,

19 and [inaudible].

20 Q Do you recall telling the police that you heard him

21 say, she's dead?

22 A No, I didn't -- I didn't --

23 Q If I showed you a copy of your statement, would that

24 refresh your memory perhaps?

25 A Yeah.

ROUGH DRAFT TRANSCRIPT

004190

1 MS. MERCER: Your Honor, may I approach? And Brian,  
2 it's page 6.

3 BY MS. MERCER:

4 Q Just read it to yourself, and then tell me when  
5 you're done.

6 THE COURT: Make a foundation; is that his  
7 handwriting, is that his statement. Is that his statement,  
8 or?

9 MS. MERCER: It's a taped statement.

10 THE COURT: Taped, oh.

11 THE WITNESS: You're talking about right here?

12 BY MS. MERCER:

13 Q Yes. Just read it to yourself. Don't read it out  
14 loud, please. Does that refresh your memory?

15 A No. It's been like four years. I can't remember  
16 back that far, not like that.

17 Q Okay. Do you recall telling the police that, when  
18 you and Todd went into the apartment, the defendant drew back  
19 on Todd?

20 A No. He didn't -- he told them to get the hell out  
21 of his house. That's all I remember him telling him.

22 Q Okay.

23 MS. MERCER: Your Honor, may I approach the witness  
24 again?

25 BY MS. MERCER:

ROUGH DRAFT TRANSCRIPT

004191

1 Q Or, would it refresh your memory if I showed you a  
2 copy of your taped statement?

3 A Yeah.

4 Q It's page 17.

5 THE COURT: There's another taped statement, or the  
6 same one?

7 MS. MERCER: It's the same taped statement.

8 BY MS. MERCER:

9 Q This is the statement that you provided to the  
10 police that night?

11 A Um-hum.

12 Q And for the record, I'm showing you page 17 of that  
13 statement.

14 MS. MERCER: Mr. O'Keefe.

15 BY MS. MERCER:

16 Q If you could just read from the very top, and read  
17 it to yourself, please.

18 A Yes.

19 Q Does that refresh your memory?

20 A Yes, yes.

21 Q And again, your memory would have been fresher back  
22 then, correct?

23 A Yes.

24 Q It's been four years?

25 A But it's been four years. Yeah.

ROUGH DRAFT TRANSCRIPT

004192

1 Q And you told the police that the defendant drew back  
2 on Todd?

3 A Yes.

4 Q As if he was going to hit him?

5 A Yes.

6 Q When you were in the apartment for a minute, I know  
7 it was only a brief time, did he ever indicate any fear of  
8 Victoria to you?

9 A Not to me.

10 Q Did he ever try to tell you that she stabbed  
11 herself?

12 A No.

13 Q And again, he never asked you to go get assistance  
14 for her?

15 Q No.

16 A Never said, call the doctor, or call the ambulance,  
17 call 9-11?

18 A I was the one that said, I'm fitting to get out of  
19 here and go call the police.

20 MS. MERCER: Pass the witness, Your Honor.

21 THE COURT: Thank you. Cross-examination, Mr.  
22 O'Keefe?

23 MR. O'KEEFE: Yes, Your Honor. Court's indulgence.

24 CROSS-EXAMINATION

25 BY MR. O'KEEFE:

ROUGH DRAFT TRANSCRIPT

004193



1 Q Hello, Mr. Toliver.  
2 A How are you doing?  
3 Q Okay. This night -- may I call you Cookie?  
4 A Yeah.  
5 Q You go by Cookie?  
6 A Yeah, yeah.  
7 Q On this night -- I want to keep this real simple,  
8 okay? When you heard the noise and you came up, and you said  
9 you called in -- I'm going to ask that you reread a statement  
10 -- a recorded statement that you gave to the police to refresh  
11 your memory, if that's okay. I'll have Mr. Maningo approach  
12 you.  
13 THE COURT: That's good. Thank you. Thank you.  
14 MR. O'KEEFE: Page 7, if the State doesn't mind.  
15 BY MR. O'KEEFE:  
16 Q And don't read it out loud, Cookie. Just --  
17 A I got you.  
18 Q Take a moment.  
19 A You want me to read this whole thing?  
20 Q About halfway down.  
21 A All right.  
22 Q Halfway -- that's page 7.  
23 THE COURT: What is the question? I mean, in order  
24 to refresh his memory --  
25 MR. O'KEEFE: I wanted to just --

ROUGH DRAFT TRANSCRIPT

004194

1 THE COURT: -- he needs something to refresh his  
2 memory. Just ask him the question.

3 MR. O'KEEFE: Okay, Your Honor.

4 THE COURT: And if he doesn't remember, then we can  
5 refresh his memory.

6 MR. O'KEEFE: Right, okay.

7 THE WITNESS: Yeah, [inaudible] do that.

8 BY MR. O'KEEFE:

9 Q When you called, they came down, and you said you  
10 came in. And I called you. I said, Cookie, come in here and  
11 get her. Do you remember making that -- I said, come in  
12 here --

13 A Yeah.

14 Q -- help me get her?

15 A She won't wake up.

16 Q Okay. So, you do remember that I was saying, come  
17 in here, get her?

18 A Yeah.

19 Q Come help me, come get her?

20 A Yeah.

21 Q Okay. Your apartment, you would agree, Cookie --  
22 you were there longer than me, of course, is exactly like my  
23 room?

24 A Yes.

25 Q And there's no light, right?

ROUGH DRAFT TRANSCRIPT

004195

1 A Right.

2 Q No light fixture?

3 A Well, yeah. In mine, I had one put up in my

4 bedroom, because you didn't have one. I had a hanging lamp.

5 Q But I have no light in mine?

6 A No.

7 Q Would you agree with that, the light was off? The

8 only light was coming from the --

9 A Living room.

10 Q -- the bathroom, living room, whatever.

11 A Bathroom, whatever.

12 Q There was no light, basically? Okay. At any time

13 though, when I said, come help me, and you seen -- I don't

14 know, there was a lot going on. You ran out and left me. I

15 mean, you ran out, understandably.

16 A Yeah.

17 Q But you ran out, right?

18 A Yes, sir. Yeah.

19 Q Do you remember what I was doing or saying?

20 A No.

21 Q Do you remember prior testimony that you said I was

22 picking her up and trying to hold her, and I was saying --

23 A No. You had her in your -- you had her laying in

24 your lap, saying, wake up, wake up, she won't wake up. Then I

25 asked you -- I said, what have you done? What happened? You

ROUGH DRAFT TRANSCRIPT

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1 just said, she won't wake up, and I left out. I left out of  
2 there.

3 MR. O'KEEFE: No further questions, Your Honor.

4 THE COURT: All right. Anything else?

5 MS. MERCER: No, Your Honor.

6 THE COURT: Thank you very much for testifying.

7 THE MARSHAL: Your Honor -- Your Honor, we have --

8 THE COURT: Go about your --

9 THE MARSHAL: I think we have a question from the  
10 jury.

11 THE COURT: Oh, I'm sorry.

12 MR. MANINGO: Your Honor, may I approach just for  
13 the statement?

14 THE COURT: Pardon?

15 MR. MANINGO: May I approach just [inaudible] --

16 THE COURT: Oh, absolutely. Thank you, Mr. Maningo,  
17 for helping. Just a minute, Mr. Toliver.

18 (Off-record bench conference)

19 THE COURT: One of the jurors wants to know,  
20 "Cookie" --

21 THE WITNESS: Yeah.

22 THE COURT: Must be getting pretty familiar with  
23 you. "Cookie" --

24 THE WITNESS: Yeah, I'm very known here.

25 THE COURT: -- "when entering the defendant's room,

ROUGH DRAFT TRANSCRIPT

004197

1 could you tell if he was intoxicated, drunk?"

2 THE WITNESS: No.

3 THE COURT: No.

4 THE WITNESS: I didn't pay no attention on that, no.

5 THE COURT: Okay. All right. Does that elicit  
6 anything else? We'll make this part of the record with no  
7 objection. All right. Thank you very much.

8 THE WITNESS: Thank you.

9 THE COURT: Next witness, please?

10 MR. LALLI: Your Honor, the State calls Jimmy  
11 Hathcox.

12 THE MARSHAL: Mr. Hathcox, if you will remain  
13 standing. Please, sir, raise your right hand and face the  
14 clerk.

15 JIMMY HATHCOX, STATE'S WITNESS, SWORN

16 THE MARSHAL: Please have a seat, sir. Slide up to  
17 the microphone. If you would, please state and spell your  
18 name for the record.

19 THE WITNESS: Jimmy Hathcox. J-i-m-m-y,  
20 H-a-t-h-c-o-x.

21 DIRECT EXAMINATION

22 BY MR. LALLI:

23 Q Mr. Hathcox, I want to direct your attention back to  
24 November of 2008. Were you living in an apartment complex at  
25 501 (sic) El Parque?

ROUGH DRAFT TRANSCRIPT

004198

1 A Yes.

2 Q Did you live in an upstairs unit, or a downstairs  
3 unit?

4 A Upstairs.

5 Q I'm going to show you State's Exhibit number 2. Do  
6 you see the apartment complex that you lived in back then?

7 A Yes.

8 Q And do you see your specific unit --

9 A Yes.

10 Q -- that you lived in?

11 A Yes.

12 Q What unit number was it?

13 A 35, I think. 36. 36.

14 Q All right. So, are we zooming-in to 36 now?

15 A Yes, the one on the left.

16 Q And there appears to be something right in front of  
17 your door there. What is that?

18 A A rail. A metal rail.

19 Q All right. Now, did you work in the complex?

20 A Yes.

21 Q What did you do there?

22 A Maintenance.

23 Q So, what sort of things would you work on?

24 A Getting apartments ready to re-rent, toilets,  
25 [inaudible].

ROUGH DRAFT TRANSCRIPT

004199

1 or family in the area of Charleston and Hinson. And he stated  
2 he would go there; however, he had no way to get to that  
3 location.

4 Q Okay. And when he advised you that he had no means  
5 of getting to the address off of Hinson and Charleston, what  
6 did you do at that point?

7 A I offered to take him, and I eventually took him to  
8 that location.

9 Q And is that something that you typically do when you  
10 respond to a domestic violence call?

11 A No, ma'am. I'm pretty sure it's the only time I've  
12 ever done it in my career.

13 Q In your 15 years with Metro, that's the one and only  
14 time you've ever done that?

15 A Yes, ma'am.

16 Q Why did you do that?

17 A Basically, when we evaluate the call, we evaluate  
18 prior history --

19 THE COURT: Well, maybe -- I mean, do you --  
20 approach the bench a minute.

21 (Off-record bench conference)

22 THE COURT: All right. Proceed.

23 BY MS. MERCER:

24 Q Do you remember my question?

25 A You asked why I suggested he leaves, correct?

ROUGH DRAFT TRANSCRIPT

004100

1 Q Why you went out of your way --

2 A Why I went out of my way? Basically, we evaluate  
3 it, prior history. We believed that a battery had occurred.  
4 The problem is, while we believe that it had occurred, we  
5 couldn't prove that it had occurred to the point of having  
6 probable cause to make the arrest. And based upon prior  
7 history, what was going on at that time, we feared that if we  
8 left the two in the same apartment, that Ms. Whitmarsh would  
9 be -- would actually be the victim of a battery.

10 Q Okay.

11 A So, we thought it was best to get him out of there,  
12 and that way, hopefully prevent a future crime.

13 Q And did you in fact get him out of there?

14 A Yes, ma'am. I contact my sergeant, got permission  
15 to leave my area. I drove him, and dropped him off at the  
16 south side of Charleston at the intersection of Charleston and  
17 Hinson.

18 Q Okay. And when you dropped him off at Charleston  
19 and Hinson, how far from the 1825 Lewis address would that  
20 have been?

21 A I'd like to say it's about three and-a-half, four  
22 miles. It's on the other side of I15, and what would now be  
23 considered Bolden area command.

24 Q Okay. And shortly after dropping him off, were you  
25 then dispatched again to the address at 1825 Lewis Avenue?

ROUGH DRAFT TRANSCRIPT

004101



1 A Somewhere around an hour and 15 minutes, to an hour  
2 and-a-half after I dropped him off, we were dispatched back to  
3 that location.

4 Q And again, was it in reference to a Victoria  
5 Whitmarsh and the defendant?

6 A Yes, ma'am.

7 Q When you responded the second time, did you make  
8 contact with Victoria?

9 A Yes, ma'am, I did.

10 Q What was her demeanor when you made contact with  
11 her?

12 A Victoria was crying and upset. She had some  
13 injuries on her at this point, and stated that she was again  
14 the victim of a battery.

15 Q At the hands of the defendant?

16 A Yes, ma'am.

17 Q Okay. And I'm sorry, I might have missed this part.  
18 Did you indicate whether you observed any injuries on her  
19 person?

20 A Yes, ma'am. When we entered the apartment, there as  
21 a chair laying in the middle of the room. She stated that  
22 she'd used that chair to block the door, to prevent the  
23 defendant from coming back inside of the residence.

24 Q Well, without telling me what she said, did you  
25 observe any injuries on her physically?

ROUGH DRAFT TRANSCRIPT

004102

1           A    Oh. Yes, ma'am. We observed some scratches, some  
2 reddening, and some puffiness around her eye, and she also had  
3 broken glasses.

4           Q    Okay. What did you do at that point?

5           A    At that point, we began to take a report for the  
6 domestic battery that had occurred. And --

7           Q    Did you make any attempts to contact the defendant?

8           A    I didn't attempt to contact the defendant. The  
9 defendant contacted Ms. Whitmarsh on her cell phone, and I  
10 spoke to him on her cell phone.

11          Q    Okay. So, while you were still on scene, the  
12 defendant starts calling Victoria Whitmarsh's cell phone?

13          A    Yes, ma'am.

14          Q    And at some point, you get on the phone with him?

15          A    Yes, ma'am.

16          Q    Did he request to speak to you, or did you request  
17 to speak to him?

18          A    I probably requested to speak to him, but I can't  
19 tell you for sure.

20          Q    And the voice that you spoke to on the phone, was it  
21 the same voice that you heard in person when you had spoken to  
22 him earlier?

23          A    Yes, ma'am, just about an hour and-a-half earlier.

24          Q    And what did you say to him once you got on the  
25 phone with him?

ROUGH DRAFT TRANSCRIPT

004103

1           A     When I began to speak to him, you could hear  
2 basically music in the background. He stated that he had  
3 returned to the area. He stated that he was in a bar  
4 somewhere close.

5                     And I asked him first if he would come back to the  
6 apartment and speak to us about the incident, so he can give  
7 his side of the story. He refused to do that. So, then I  
8 offered to come to his location to speak to him, so again we  
9 can get his side of the story and see what happened, and he  
10 refused to tell us where he was.

11           Q     Okay. So, ultimately, you were not able to make  
12 personal contact with him that evening?

13           A     No, ma'am, we only took the report.

14           Q     And when you take a report, but you're unable to  
15 make arrest, what happens with it at that point?

16           A     The reports are -- either one to things can happen.  
17 If he's contacted within the next 24 hours, then the arrest  
18 can be made. If that case doesn't happen, then the case goes  
19 forward to the domestic violence detectives. The detectives  
20 can submit on the case, and they can submit for a warrant, or  
21 a summons, or some other way to get him into court to have the  
22 charges heard.

23           Q     Okay. And you are aware that after you submitted  
24 your report, the defendant ended up being charged with, and  
25 convicted of battery constituting domestic violence, a felony,

ROUGH DRAFT TRANSCRIPT

004104

1 correct?

2 A Yes, ma'am. I testified in that case also.

3 Q And that would have been case number C-207835?

4 A That I couldn't tell you for certain. I'm sorry.

5 Q If I showed you a copy of the information, would  
6 that refresh your memory?

7 A That would.

8 MS. MERCER: Your Honor, may I approach the witness?

9 THE COURT: Yes. Is there an exhibit here?

10 MS. MERCER: Yes, Your Honor. Exhibit.

11 BY MS. MERCER:

12 Q And for the record, I'm handing you what have been  
13 marked as State's proposed Exhibits 133, 133A, and 133B.

14 A Okay.

15 Q If you could take a look at those.

16 A Okay.

17 Q And that's case number C-207835, correct?

18 A Yes, ma'am.

19 MS. MERCER: And Your Honor, at this point, I would  
20 move for the admission of these certified documents.

21 THE COURT: Any objection, Mr. O'Keefe, other than  
22 your previous objection?

23 MR. O'KEEFE: Yes, Your Honor. May we approach the  
24 bench a second?

25 (Off-record bench conference)

ROUGH DRAFT TRANSCRIPT

0041^5

1 THE COURT: All right. 133, 133A, and 133B will be  
2 admitted over objection by the defendant.

3 (Exhibits 133, 133A and 133B are admitted)

4 MS. MERCER: Thank you, Your Honor. Court's  
5 indulgence. Oh. Okay.

6 BY MS. MERCER:

7 Q Lieutenant, you indicated that you testified in that  
8 matter?

9 A Yes, ma'am.

10 Q So, you were aware that it went to a jury trial?

11 A Yes, ma'am.

12 MS. MERCER: And Your Honor, for the record -- or  
13 permission to publish, Your Honor?

14 THE COURT: Yes.

15 MS. MERCER: And publishing State's Exhibit 133A.

16 BY MS. MERCER:

17 Q This is a copy of the verdict form from that case,  
18 correct?

19 A I can't see that. I'm sorry. Oh, it's over here.  
20 Yes, it is.

21 Q Okay. Sorry.

22 A Sorry about that.

23 Q And this is a copy of the charging document, the  
24 information in that case, correct?

25 A Yes, ma'am.

ROUGH DRAFT TRANSCRIPT

004106

1 Q And a copy of the judgment of conviction from that  
2 case as well?

3 A Yes, ma'am.

4 MS. MERCER: Pass the witness, Your Honor.

5 THE COURT: All right. Do you have any  
6 cross-examination of this witness, Mr. O'Keefe?

7 MR. O'KEEFE: I have no cross for this witness, Your  
8 Honor.

9 THE COURT: Thank you very much, sir. You're  
10 excused. Officer, thank you --

11 THE WITNESS: Thank you, sir.

12 THE COURT: -- very much for testifying. The State  
13 will call it's next witness.

14 MS. MERCER: The State calls Elynn Warnicko  
15 (phonetic) Greene.

16 THE MARSHAL: Greene?

17 MS. MERCER: Greene.

18 THE COURT: And again, after their testimony, you  
19 have just heard evidence of other crimes, wrongs, or acts, and  
20 it's not admissible to prove the character of a person in  
21 order to show that he acted in conformity therewith. It may,  
22 however, be admissible as proof of motive, intent, or absence  
23 of mistake or accident.

24 THE MARSHAL: Ms. Green, if you will remain  
25 standing. Please raise your right hand, and face the clerk.

ROUGH DRAFT TRANSCRIPT

004107

1 ELYNNE GREENE, STATE'S WITNESS, SWORN

2 THE MARSHAL: If you would have a seat and slide up  
3 to the microphone, please. Ma'am, if you would, please state  
4 and spell your name for the record.

5 THE WITNESS: My name is Elynn Greene.  
6 E-l-y-n-n-e. Greene, G-r-e-e-n-e.

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

8 THE COURT: Yes.

9 DIRECT EXAMINATION

10 BY MS. MERCER:

11 Q Ma'am, where are you currently employed?

12 A The Las Vegas Metropolitan Police Department.

13 Q In what capacity are you employed with them?

14 A I'm supervisor of victim's services.

15 Q And as supervisor of victim's services, what kinds  
16 of activities are you involved in?

17 A I provide direct service to victims of all crime  
18 categories, as well as supervise a staff of four full-time,  
19 and two part-time, and volunteers that provide direct service  
20 to victims of crime.

21 Q Okay. And is a lot of your work dedicated to  
22 working with victims of domestic violence?

23 A Yes. That's about 90 percent of my work load.

24 Q What kind of educational background do you have that  
25 enables you to deal with victims of domestic violence, and

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cc4108

1 other victims?

2 A I have a bachelor's in psychology, and a master's in  
3 counseling. And I worked as a therapist for probably about 15  
4 years, and during that time, had trained as a volunteer in  
5 domestic violence services, working on a crisis hotline. And  
6 since then, have run a shelter, and worked in various  
7 positions before coming to the Las Vegas Metropolitan Police  
8 Department.

9 Q Okay. You indicated that you became a volunteer  
10 while you were still working as a therapist?

11 A Yes.

12 Q And you worked a crisis hotline?

13 A Yes, I did.

14 Q What kind of work -- what did you do when you were  
15 working on the hotlines?

16 A Working the hotlines was providing resources and  
17 telephone crisis intervention to those that were calling a  
18 24-hour hotline through a domestic violence shelter program.

19 Q Okay. And after you quit working as a therapist,  
20 what was your next employment?

21 A My next employment was in Southern California,  
22 working with victims of domestic violence and sexual assault  
23 and sexual abuse. I was the director of a crisis response  
24 team. They actually physically went out with law enforcement  
25 officers, as did I. And then, I also ran a shelter for

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004109



1 domestic violence.

2 Q And when you responded as part of the crisis  
3 response team, what were your activities directed at?

4 A The activities were specifically to assess the  
5 situation, to assess the needs of the victim at that immediate  
6 time in terms of safety. And to provide resources, either for  
7 that exact period of time, or for the future. And also, to  
8 let them know about how the criminal justice system would  
9 operate, since we were responding with law enforcement.

10 Q Okay. When you speak about providing them  
11 resources, what kind of resources are we talking about?

12 A Resources, basically safety planning, helping them  
13 to identify lethality risks. And also, shelter, support  
14 groups, protection order information. Whatever it is that  
15 they might need in order to be safe. Advising them about  
16 advocacy services for their legal needs. We do not provide  
17 legal services.

18 Q Okay. With respect to lethality assessment, what  
19 are you talking about when you use that term?

20 A There's actually a standardized form. It's a  
21 13-question form. And then, there's also an additional  
22 three-question form that's used nationally. And at the Las  
23 Vegas Metropolitan Police Department, we currently use the  
24 13-question form.

25 The top three questions, through more than 20 years

ROUGH DRAFT TRANSCRIPT

004110

1 of research, have been determined that they will essentially  
2 identify those victims at the greatest risk for lethality, or  
3 increasing significant violence. The additional 11 questions  
4 at the bottom of the questionnaire, when put together, also  
5 increase risks for lethality. And when we use that, we can  
6 help victims to identify the risk factors.

7 Q Okay. When you talk about increased risk for  
8 lethality, you mean at the hands of an abuser, correct?

9 A Yes. Correct.

10 Q Okay. And then, when you were running the shelter,  
11 how long did you do that?

12 A I was at the shelter for approximately six years  
13 while I was with the agency.

14 Q Okay. And what did you do after that?

15 A After that, I was in -- let me see. I went from  
16 California to Indiana. And while I was in Indiana, I was  
17 working as a therapist. I did some training. I had a private  
18 practice there. I was also working with the Crisis  
19 Intervention Center, and I also worked with offenders for a  
20 brief period of time.

21 Q Okay. And when you were working as a therapist,  
22 what kinds of patients were you seeing?

23 A I was mostly seeing victims of domestic violence, as  
24 well as children that were exposed to violence. Part of my  
25 practice was devoted to adolescents.

ROUGH DRAFT TRANSCRIPT

004111

1 Q Okay. And when you were working as a therapist in  
2 Indiana, how long did you do that?

3 A I was in Indiana for -- I'm sorry, Indiana came  
4 before California. I apologize. I was in Cincinnati after  
5 California --

6 Q Okay.

7 A -- doing similar work. In Indiana, I was there for  
8 approximately two years. And in Cincinnati, for just under  
9 two years.

10 Q Okay. And then, at what point did you come out to  
11 Las Vegas?

12 A I came out to Las Vegas 20 years ago, and joined the  
13 Las Vegas Metropolitan Police Department.

14 Q So, you've been working in the victim services  
15 department for 20 years?

16 A Yes, I have.

17 Q At this point in your career, how many victims of  
18 domestic violence would you say that you've worked with?

19 A I average approximately 100 a month. We do a month  
20 report sheet. So, approximately 100 per month.

21 Q And in your work with victims of domestic violence,  
22 have you testified in court as an expert on domestic violence  
23 previously?

24 A Yes, I have.

25 Q Approximately how many times?

ROUGH DRAFT TRANSCRIPT

004112

1           A     In Clark County, Nevada, approximately 18 to 20  
2 times.

3           Q     Okay. And have you testified elsewhere?

4           A     Yes. In Southern California in San Diego County,  
5 approximately ten times.

6           Q     Okay. With regards to your work with domestic  
7 violence, are you familiar with the term, cycle of abuse?

8           A     Yes, I am.

9           Q     What does that term mean?

10          A     The cycle of abuse was actually developed back in  
11 the late 1970's. And what that basically does is describe the  
12 relationship between the victim and the abuser. And in  
13 describing that relationship between the victim and the  
14 abuser, it starts off with a tension building phase. It can  
15 either be something that's very overt, or it can be something  
16 that is less obvious. And it could be emotional. It could be  
17 an escalating of the physical violence.

18               And during that time, victims will often describe  
19 feeling as if they're walking on eggshells. And in many  
20 cases, it finally escalates to a point where the tension  
21 building becomes the explosive, which is the next part of the  
22 phase. And that's where there's the violence.

23               And then, the last part is often described as the  
24 honeymoon phase. And the reason for that is because that's  
25 the time the abuser might express guilt or shame, become

ROUGH DRAFT TRANSCRIPT

004113

1 apologetic. And many people describe that as being one of the  
2 best times in the relationship. And it's often the time when  
3 there's forgiveness, and a sense of, we're going to make this  
4 work.

5 During that tension building phase, however, it's  
6 not uncommon for victims to --

7 MR. O'KEEFE: Your Honor, I object to this. Can we  
8 approach the bench?

9 (Off-record bench conference)

10 THE COURT: All right. Mr. O'Keefe, has an  
11 objection, and a continuing objection on this. But I'm going  
12 to hold that in abeyance, subject to any motion to strike, or  
13 something. Go ahead. Proceed.

14 MS. MERCER: Thank you, Your Honor.

15 BY MS. MERCER:

16 Q I'm sorry. You were trying to explain what -- how  
17 victims will behave during the tension building phase.

18 A Right. During the tension building phase, victims  
19 can either -- as I said earlier -- used that term, walking on  
20 eggshells. They do everything they can to avoid that  
21 explosion.

22 Or the other thing is, they often -- knowing what's  
23 coming, if there has been a repeated pattern, which there  
24 often is in that cyclical type of relationship, they will do  
25 something to just get it over with. So, those are the two

ROUGH DRAFT TRANSCRIPT

004114

1 things that often lead into that acute explosion. And that's  
2 part of a safety mechanism for victims, because it becomes  
3 more predictable during that tension building phase.

4 Q Okay. So, am I understanding you to say that often  
5 times, they will provoke their abuser to go ahead and abuse  
6 them, and get it over with?

7 A Right. To get it over with, yes.

8 Q And what kinds of provocation have you seen or heard  
9 about in your work with victims of domestic violence? Like,  
10 what kinds of things will they do to provoke them?

11 A It can be as simple as -- we've seen everything from  
12 not cooking the proper dinner, to more graphic things that --  
13 or more distasteful things in relationships, such as going out  
14 with friends after they have already been told not to, not  
15 returning phone calls, not responding to pages, or text  
16 messages. So, it could be a variety of things. It could be  
17 anything from something very subtle, again, to something  
18 that's much more obvious.

19 Q Have you seen them lash out physically?

20 A I have on occasion, yes. And -- yes, I have.

21 Q And when a victim of domestic violence becomes  
22 physical with their abuser, is their intent the same?

23 A No. Their intent is often defensive. Many times,  
24 what we see is victims lashing out -- well, first of all, it's  
25 a tension building for them, too, while they're "walking on

ROUGH DRAFT TRANSCRIPT

004115

1 eggshells." And I use that term, because it really kind of  
2 describes the mental state. But I think that for the victims  
3 that lash out, it's often either the built up frustration, or  
4 the fear; and sometimes, it is defensive.

5 Q And with regards to the abuse at the hands of the  
6 abuser, what is their intent?

7 A The abuser, it's generally about power and control.

8 Q Can you explain that a little bit --

9 A Yes.

10 Q -- for me?

11 A One person in a relationship can have more power.  
12 And that power -- again, looking at the spectrum, it can be  
13 subtle. It can be the emotional connection that someone has,  
14 or it can be more overt. It can be the more obvious things,  
15 where that power and control is, you will do what I say, or  
16 else.

17 Q Okay. So, when an abuser uses physical violence,  
18 it's aimed at controlling -- dominating the other party?

19 A Generally, yes.

20 Q What other types of behavior do abusers often use to  
21 control their victims?

22 A Coercive. They will often use verbal intimidation.  
23 They will use threats. And something that can seem very, very  
24 innocent, such as, you know, if you don't do this, nobody's  
25 ever going to want you, may not seem as strong to a lot of

ROUGH DRAFT TRANSCRIPT

004116

1 people. But to victims of domestic violence who already are  
2 impacted by self-esteem issues, possibly depression, that can  
3 be very, very powerful.

4 Q Okay. And has it been your experience that  
5 relationships start out violent at the very beginning?

6 A No. Very, very, very few people -- in fact, I don't  
7 think I've ever in my entire career worked with someone that  
8 thought, gee, I'm going to fall in love with this person, and  
9 I just hope they beat me and make my life miserable.

10 Q How do these relationships typically start out?

11 A They typically start out very similar to the  
12 honeymoon phase that I described earlier, where there is an  
13 incredible amount of attention. And in retrospect, victims  
14 will often look back and think, you know, I was very flattered  
15 by the fact that he was texting me every 20 minutes saying, I  
16 love you, I care about you, where are you. I was -- I thought  
17 it was just great.

18 Now, they start to recognize it as being controlling  
19 and manipulative later down the road when the abuse enters  
20 into it. So, it's a very, very -- often starts off in a very  
21 positive, very attentive note.

22 Q And leading up to the physical abuse, would you say  
23 that there's a great deal of mental abuse that precedes that  
24 usually?

25 A There can be. And sometimes, not -- there is no

ROUGH DRAFT TRANSCRIPT

004117



1 course that you can say that the cycle is a day-long, or that  
2 the escalation to violence is six months. It can be -- it can  
3 be a day, it could be an hour, it could be a year in between  
4 physical abuse.

5 Q Okay. And is there typically some sort of process  
6 of tearing the victim down mentally that --

7 A Yes.

8 Q -- goes with the physical abuse?

9 A Yes. It -- and the term that's often used is  
10 grooming. And we hear that a lot of times where offenders  
11 sort of prepare their victim by convincing them, you're fat,  
12 you're stupid, you're ugly, you're worthless, nobody's going  
13 to want you; you have this disability or this challenge, so  
14 who's going to want you but me? And it really does kind of  
15 start to ring true. They start to understand and get it that  
16 they are unlovable, and that they are lucky to have this  
17 person.

18 Q In your experience with working with victims of  
19 domestic violence, have you often seen that victims will be  
20 the ones -- if there is a separation period, victims will be  
21 the ones to reach out and try to reestablish a relationship  
22 with their abuser?

23 A Yes, that is not uncommon.

24 Q And why is that?

25 A The reason is -- again, going back to something I

ROUGH DRAFT TRANSCRIPT

004118

1 said earlier, people start relationships very hopeful, very  
2 positive. They don't start hoping to be abused. So, during  
3 that time, thinking that if one thing changes -- I've lost 20  
4 pounds, or now he might understand why I need to have this  
5 job; or if one thing changes, we're going to be okay. So,  
6 they often reach back out with that hope.

7 Q And what kinds of things make a victim stay in an  
8 abusive relationship.

9 A There's multiple factors. There's not one factor  
10 that you can pinpoint. It can be emotional. It can be that  
11 connection, that I just described, to the victim. It can be  
12 financial. It can be a dependence, because that person meets  
13 a certain need, whether they're driving them around.

14 It could be a security issue. Quite often, victims  
15 feel more comfortable and feel safer knowing where their  
16 abuser is, and being in that relationship as opposed to not  
17 knowing. And that's where we start to see stalking behavior.  
18 So, the number of reasons -- and love -- really truly loving  
19 that person, despite the fact that that person has been  
20 dangerous for them, is the number one reason.

21 Q Is there also sometimes embarrassment that goes  
22 along with being a victim of domestic violence?

23 A There's embarrassment, especially when you're  
24 looking at religious and cultural values. You're looking at  
25 how people perceive you. Fear of being judged; why did you

ROUGH DRAFT TRANSCRIPT

004119

1 stay in that relationship, or maybe it was your fault. And  
2 that's something that victims are often convinced of.

3 Q Okay. With respect to power and control dynamics,  
4 what you were talking about earlier, what typically happens  
5 when an abuser feels like they're losing control?

6 A They will often escalate. They will become more  
7 manipulative in order to retain control, and that's when we  
8 start seeing the increase in violence. And those are some of  
9 the things that we look at in the lethality assessment.

10 Q Thank you.

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

12 THE COURT: All right. Thank you. Any  
13 cross-examination, Mr. O'Keefe?

14 MR. O'KEEFE: I have no cross for this witness.

15 THE COURT: Thank you, Mr. O'Keefe. All right.  
16 You're excused. Thank you very much.

17 MR. LALLI: Your Honor, the State calls Cheryl  
18 Morris.

19 THE MARSHAL: Ms. Morris, if you will remain  
20 standing. Please raise your right hand and face the clerk.

21 CHERYL MORRIS, STATE'S WITNESS, SWORN

22 THE MARSHAL: Just have a seat. Slide up to the  
23 microphone. And if you would, please state and spell your  
24 name for the record.

25 THE WITNESS: My name is Cheryl Morris. That's

ROUGH DRAFT TRANSCRIPT

004120

1 C-h-e-r-y-l. Last name is Morris, M-o-r-r-i-s.

2 DIRECT EXAMINATION

3 BY MR. LALLI:

4 Q Ms. Morris, do you know an individual by the name of  
5 Brian O'Keefe?

6 A Yes, I do.

7 Q How do you know Mr. O'Keefe?

8 A I dated him.

9 Q When?

10 A Between January of '08 to September of '08.

11 Q All right. Can you explain for us how you met him?

12 A I originally met him at Arizona Charlie's, where I  
13 was in a little café, eating. And he and his friend showed  
14 up.

15 Q So, it was just a matter of circumstance that the  
16 two of you happened to meet up?

17 A Yes.

18 Q Did the two of you develop a relationship?

19 A Yes.

20 Q Can you explain for the jury how that occurred; the  
21 nature of your relationship?

22 A Prior to actually meeting Brian, I was leaving to go  
23 on a trip, and I was gone approximately 3, 4 weeks. I came  
24 back, and we actually started seeing one another in January,  
25 but we did a lot of conversing on the phone.

ROUGH DRAFT TRANSCRIPT

004121

1 Q So, you would exchange phone calls?

2 A Yes.

3 Q And at some point, did the relationship turn to more  
4 than just phone calls?

5 A Yes.

6 Q Can you explain that to the jury?

7 A I would spend some nights or weekends with him at  
8 his dwelling.

9 Q Where were you staying at this time?

10 A I was staying with a friend of mine. Her name is  
11 Dorothy Robe.

12 Q R-o-b-e?

13 A Yes, sir.

14 Q And who is Dorothy Robe?

15 A She's a very good friend of mine. I used to live  
16 next-door to her. And she befriended myself and my daughter.

17 Q And so, you and your daughter began to live with  
18 Dorothy?

19 A Yes.

20 Q And you indicated for us that the defendant, Mr.  
21 O'Keefe, lived somewhere else?

22 A Yes, he did. He lived in a trailer that was on a  
23 friend's property.

24 Q Who is the friend?

25 A Troy. I can't remember what his last name is.

ROUGH DRAFT TRANSCRIPT

004122

1 Q You don't remember Troy's last name?

2 A No.

3 Q Let me ask you this. Do you see Brian O'Keefe in  
4 the courtroom?

5 A Yes, I do.

6 Q Can you please point to him, and tell us what he's  
7 wearing today?

8 A He's wearing a brownish-colored suit with what looks  
9 like a green shirt, and a yellow speckled tie.

10 MR. LALLI: Your Honor, may the record reflect the  
11 witness has identified the defendant?

12 THE COURT: Record will so reflect.

13 BY MR. LALLI:

14 Q So, you're living with Dorothy Robe, and the  
15 defendant is living in a trailer, basically?

16 A Yes.

17 Q And if I understand the relationship, there are  
18 times when you spend the night with him?

19 A Yes.

20 Q Do you have a romantic relationship with the  
21 defendant?

22 A We did, yes.

23 Q All right. Now, I want to direct your attention to  
24 Father's Day of 2008, so, June of 2008. Did you learn that  
25 Victoria Whitmarsh had called the defendant?

ROUGH DRAFT TRANSCRIPT

004123

1 A I did after he had spoken to be about it. Yes.

2 Q All right. Do you know who Victoria Whitmarsh is?

3 A Yes.

4 Q Who is Victoria Whitmarsh?

5 A Victoria Whitmarsh was his former lover. They met  
6 each other back in 2001, I believe.

7 Q Okay. So, it was your understanding that the  
8 defendant had a relationship with Victoria?

9 A Yes.

10 Q How is it that you learned that Victoria had called  
11 him?

12 A He returned from the -- returned to the trailer.  
13 And he originally was telling me that he had a phone call from  
14 his daughter. And after some time, he turned around and said  
15 that it wasn't actually his daughter; it was Victoria.

16 Q The -- so, where were you when -- were you aware  
17 that this phone call had occurred at the time the phone call  
18 occurred?

19 A Yes. I knew that the phone call had occurred,  
20 because he was in the trailer. His best friend came out and  
21 said, you have a phone call.

22 Q So, you and the defendant are in the trailer  
23 together?

24 A Yes.

25 Q And a friend comes and says, hey, Brian, you have a

ROUGH DRAFT TRANSCRIPT

004124

1 phone call?

2 A Yes.

3 Q And he leaves the trailer?

4 A Yes.

5 Q And he returns at some point?

6 A Yes.

7 Q And what did he tell you with respect to the phone  
8 call initially?

9 A He said that it was his daughter that was calling to  
10 wish him a Happy Father's Day.

11 Q All right. And then, later on, he told you who in  
12 fact called?

13 A He told me then it was Victoria Whitmarsh, and that  
14 she was calling to clear her conscience.

15 Q All right. Don't tell me anything that Victoria  
16 might have said to the defendant. But the defendant had told  
17 you that it was Victoria that had called?

18 A Yes.

19 Q With respect to the relationship that you had with  
20 him, was that the first you had heard of Victoria actually  
21 presenting herself into your relationship with the defendant?  
22 Do you understand that question? It's not a great -- not a  
23 great one.

24 A No.

25 Q Is this the first time you became aware that

ROUGH DRAFT TRANSCRIPT

004125



1 Victoria was still in the picture, if you will?

2 A Yes.

3 Q All right. Now, at some point, do you and Brian  
4 live together -- or under the same roof, I should say?

5 A We resided at my friend's house together.

6 Q Dorothy's house?

7 A Dorothy's house, yes.

8 Q How -- explain for the jury how that came about.

9 A There was a scene shortly after the phone call from  
10 Victoria, where his best friend got upset and --

11 Q Okay. Well, something happened between the  
12 defendant and his friend?

13 A Yes.

14 Q And after that, the defendant moved in with Dorothy?

15 A Yes.

16 Q And you were also there with your daughter?

17 A Yes.

18 Q Now, during this period of time, I take it you spent  
19 more time with him than you previously had when the two of you  
20 lived apart?

21 A Yes.

22 Q All right. Would you -- at times when he lived with  
23 you and Dorothy, would the defendant consume alcohol?

24 A Yes.

25 Q Would you -- give us some sense of the amount of

ROUGH DRAFT TRANSCRIPT

004126

1 alcohol he would drink.

2 A Everyday after work, he would have a few of those  
3 large cans. And then he'd stop off -- or he'd go to the  
4 store, and get another six-pack or so.

5 Q Would he drink to the point where physically, you  
6 could tell he's intoxicated?

7 A Yes.

8 Q Things like slurred speech, maybe wasn't walking  
9 steady?

10 A Yes.

11 Q Maybe the manner in which he spoke; things of that  
12 nature?

13 A Yes.

14 Q During the period that he lived with Dorothy, would  
15 he talk to you about Victoria Whitmarsh?

16 A Yes.

17 Q What would he say?

18 A He would talk about how angry he was. And --

19 Q About what?

20 A The fact that Victoria put him in prison.

21 Q How did she put him in prison?

22 A There was a previous altercation, or a case that she  
23 had testified that he hurt her.

24 Q All right. And so, based upon -- this is what the  
25 defendant is telling you?

ROUGH DRAFT TRANSCRIPT

004127

1 A Yes.

2 Q Based upon Victoria testifying against him in a case  
3 and sending him to prison, he harbored some anger against her?

4 A Yes.

5 Q Would he ever talk about how he felt about her?

6 A Yes.

7 Q What would he say?

8 A He said that he wanted to kill the bitch because he  
9 took away three years of his life.

10 Q So, he had gone to prison for three years?

11 A Yes.

12 Q And he said that, because of that, he wanted to kill  
13 the bitch?

14 A Yes.

15 Q Would he -- would he -- when you would have these  
16 sorts of conversations with him, was this a single  
17 conversation? Was it multiple conversations?

18 A They were multiple conversations.

19 Q And what -- when he would tell you this, would he  
20 become animated? Would he become loud? Can you describe his  
21 demeanor; his affect when he would talk about Victoria?

22 A When he talked about Victoria, he first started out  
23 as being sad. Then he would start to become upset. And then  
24 from there, he would just start drinking more, and he would,  
25 at one point in time, become outraged.

ROUGH DRAFT TRANSCRIPT

004128

1 Q During these conversations that you had with him,  
2 would he ever talk about his military background?

3 A Yes. He stated that he was in Grenada, and that the  
4 government had taught him how to kill people.

5 Q Would he ever act out situations, or do  
6 demonstrations for you?

7 A Yes, he did.

8 Q Can you describe that for us?

9 A At one point in time, Mr. O'Keefe would demonstrate  
10 to me how he would take a knife and thrust it up through the  
11 sternum, and pull up. And then, he would say, that's how you  
12 would kill a person.

13 A I'm talking about the middle part of the chest area.

14 Q And for the record, your just pointing to yourself,  
15 right in the middle of your chest; is that true?

16 A Yes.

17 Q Okay. When he talked about killing people, would he  
18 ever talk about using a gun?

19 A No, sir.

20 Q Would he ever talk about strangulation?

21 A No, sir.

22 Q It was always in terms of a knife?

23 A Yes.

24 Q When he would talk about Victoria, would he describe  
25 for you the things that he liked about her when they were

ROUGH DRAFT TRANSCRIPT

004109

1 together?

2 A He did mention that he liked Victoria because she  
3 was submissive.

4 Q Do you remember testifying in a prior hearing that  
5 he portrayed her as kind of a meek person as well?

6 A Yes.

7 Q Did he ever tell you that he was afraid of her?

8 A No.

9 Q Did he ever tell you that he was concerned about  
10 her?

11 A No.

12 Q Did he ever tell you that she had threatened his  
13 life in any way?

14 A No.

15 Q During the time that you had a relationship with  
16 Brian, did he exhibit any controlling behavior with you, with  
17 respect to going to sleep at night?

18 A Brian would always want me to go to sleep,  
19 regardless of whether or not I was tired.

20 Q With him, or alone, or how would that work?

21 A With him. When he went to sleep, I would have to go  
22 to sleep with him.

23 Q And would he ever describe to you his relationship  
24 with Victoria in that regard?

25 A He said that Victoria would go to sleep with him.

ROUGH DRAFT TRANSCRIPT

004130

1 And then, after a while, I guess when he fell asleep, she  
2 would slip away.

3 Q Toward the end of your relationship with the  
4 defendant, did you believe the relationship was deteriorating?

5 A I'm sorry?

6 Q Toward the end of your relationship, did it become  
7 rocky between you and the defendant?

8 A Yes.

9 Q Can you describe that for us?

10 A I was beginning to be concerned, because the fact  
11 that Brian displayed inconsistency with coming home. And  
12 there was an incident where he had left for about a week, I  
13 believe, and then returned, and asked me whether or not we  
14 could continue the relationship, but I told him I wasn't  
15 certain. And at that point, I had spoken with Dorothy Robe,  
16 and I --

17 Q Okay. Well, don't --

18 A -- confided in her.

19 Q Okay. Don't tell us what Dorothy might have said.  
20 Did you learn where Brian had been during that week's time?

21 A Yes. He was with Victoria. I believe that he said  
22 he stayed in a condominium with her.

23 Q All right. If you're trying to have a relationship  
24 with him, and he is with an old girlfriend, I would assume  
25 that that upset you? Was it troubling to you?

ROUGH DRAFT TRANSCRIPT

004131

1           A     It was a little upsetting at first, yes.

2           Q     Okay. Was it your desire to remain in the

3 relationship with Brian?

4           A     No.

5           Q     At some point, do you move out of -- well, do you

6 start looking for another apartment somewhere?

7           A     Brian suggested to look for an apartment, yes.

8           Q     Okay. So, what do you do?

9           A     We go and look for an apartment. We find one.

10 He --

11          Q     So, you're doing this with Brian?

12          A     Yes.

13          Q     In spite of the fact that he's having this -- what

14 appears to be the beginning of a relationship with Victoria?

15          A     Yes.

16          Q     Okay. Why is that? Why would you do that?

17          A     Because we were living with my friend, and I did not

18 want him to stay in the resident, and me leave. I didn't want

19 to put her in a position where she may not feel comfortable

20 with him there.

21          Q     Couldn't she just kick him out?

22          A     Yes, she could. But she's 70-something years-old.

23          Q     All right. So, you wanted to establish a residence

24 for yourself and Brian somewhere else?

25          A     Only until I was able to get out, yes.

ROUGH DRAFT TRANSCRIPT

004132

1 Q Okay. So, where do you establish that residence?  
2 Do you? Do you find an apartment? What happens?

3 A We find an apartment, and it's located on 5100 --  
4 no, I'm sorry. It was 5001 El Parque Avenue, and it was a  
5 two-bedroom apartment.

6 Q Where is that, roughly, just generally  
7 geographically in Las Vegas?

8 A Near -- let's see. I think it's just off of Decatur  
9 and Oakey.

10 Q All right. So, what happens as you find this new  
11 apartment?

12 A We move all of our items in there, but I didn't want  
13 to sign the lease, because I knew I wasn't going to be there.  
14 But I had to sign it anyway. And shortly after we move in, I  
15 was only there for four days, and I had already told him that  
16 I wanted to break it off and that I was going to find myself a  
17 place.

18 Q During the period of time that you're living at the  
19 El Parque apartment, did -- was the defendant staying with you  
20 the entire time?

21 A He stayed there off and on. As I said, we were only  
22 there for four days. And I believe it was a Wednesday or a  
23 Thursday that he went to work, and never came back home.

24 Q Did he call you sometime after that?

25 A Yes. I'm not sure how many days after. But he did

ROUGH DRAFT TRANSCRIPT

004133



1 say that -- he called, and said that he was going to -- he  
2 wanted to come home, and that he wanted to bring Victoria  
3 home.

4 Q He wanted to bring Victoria back to --

5 A The apartment.

6 Q -- the apartment that you shared with the defendant,  
7 at least for that short period of time?

8 A Yes.

9 Q And what was your response to him?

10 A I told him that I didn't think it was a good idea,  
11 and since they had been out all this time, I'm sure they had a  
12 place to go. Or he could come back home, and she could be  
13 dropped off at wherever it was that she was staying.

14 Q So, you didn't want Victoria coming over there?

15 A No.

16 Q What do you do after the call is terminated?

17 A I call a friend, and I ask this person to come and  
18 pick me up, and I left right away.

19 Q Was that the last time that you lived with the  
20 defendant?

21 A Yes.

22 Q And that was in September of 2008?

23 A Yes.

24 MR. LALLI: Your Honor, may I approach the witness?

25 THE COURT: Yes.

ROUGH DRAFT TRANSCRIPT

004134

1 BY MR. LALLI:

2 Q Ms. Morris, I'm going to show you what we've marked  
3 as State's proposed 2 for identification. Do you recognize  
4 that?

5 A Yes, I do.

6 Q What is it?

7 A It's the apartment where we lived at.

8 Q Is that a fair and accurate depiction of the rooms  
9 of the apartment complex?

10 A Yes.

11 MR. LALLI: Your Honor, I'd move for the admission  
12 of State's proposed 2.

13 THE COURT: Any objections, Mr. O'Keefe?

14 MR. O'KEEFE: No, Your Honor.

15 THE COURT: 2 will be admitted in evidence.

16 (Exhibit 2 is admitted)

17 BY MR. LALLI:

18 Q I'm going to show you what we've marked as State's  
19 proposed 1 for identification purposes. Do you know what that  
20 is?

21 A It looks like it's a layout of the apartment.

22 Q All right. Does that -- the apartment that you  
23 shared with Brian O'Keefe for that very short period of time?

24 A Yes.

25 Q Does that appear to be a fair and accurate depiction

ROUGH DRAFT TRANSCRIPT

004135

1 of the layout of the apartment?

2 A Yes.

3 MR. LALLI: Your Honor, move for the admission of  
4 State's proposed 1.

5 THE COURT: Any objection, Mr. O'Keefe?

6 MR. O'KEEFE: No, Your Honor.

7 THE COURT: 1 will be admitted.

8 (Exhibit 1 is admitted)

9 BY MR. LALLI:

10 Q Now, Ms. Morris, I'd like to put State's Exhibit 2  
11 up here for the jury. Do you see the unit in which you and  
12 Brian O'Keefe stayed?

13 A Yes.

14 Q Can you just take your finger, and circle it on the  
15 monitor?

16 A This one.

17 Q Can you -- are you -- is it -- I'm not sure if  
18 it's --

19 A I don't think it's working.

20 Q -- drawing a mark.

21 A No.

22 UNKNOWN MALE SPEAKER: We can see it over here.

23 THE MARSHAL: If she touch it, it will mark.

24 MR. LALLI: Oh, you can't see the -- you can't see  
25 the --

ROUGH DRAFT TRANSCRIPT

004136

1 THE WITNESS: No, we [inaudible] see her movements  
2 on the screen.

3 MR. LALLI: Well, it's not showing up.

4 THE MARSHAL: Touch -- touch the screen.

5 THE WITNESS: There's nothing.

6 MR. LALLI: Okay. Let's do it another way. We'll  
7 get it working at some point.

8 BY MR. LALLI:

9 Q Do you see an open door in State's Exhibit number 2?

10 A Yes.

11 Q What is the open door?

12 A That's the door to my apartment.

13 Q All right. So, it looks like -- I'll zoom-in here  
14 really close. As we zoom-in, we can see what looks like a  
15 number 36 on the door to the left of that.

16 A Yes.

17 Q Is that correct? And then, just to the right of it,  
18 we see -- it looks like it's blocked out there, but we can  
19 kind of make out a 35?

20 A Yes.

21 Q Now, did you become aware that Brian O'Keefe was  
22 arrested in connection with the murder of Victoria Whitmarsh  
23 on November 6th, 2008?

24 A Yes.

25 Q I want to back up, and talk about just about a week

ROUGH DRAFT TRANSCRIPT

004137

1 before then. Did you receive a phone call from the defendant?

2 A Yes.

3 Q Where were you when you received the phone call?

4 A I was shopping in a Walmart.

5 Q And can you tell us what the defendant had to say to  
6 you?

7 A Mr. O'Keefe had asked me to come over, and --  
8 because he wanted to see me.

9 Q Just to see you, or was he interested in more than  
10 that?

11 A Well, throughout the conversation, I kept asking  
12 him, where was Victoria, and you know, why isn't Victoria with  
13 you; why don't you talk to Victoria? And he said, well,  
14 Victoria wouldn't mind you coming over and spending time.

15 Q Did you believe that it wasn't just a platonic  
16 relationship that he wanted to see you, that he was interested  
17 in rekindling the relationship with you?

18 A I'm not sure.

19 Q But it wasn't just a -- he didn't want you just to  
20 pay a visit? Give us some sense of what he was --

21 A No.

22 Q -- asking you to come over for.

23 A He has had in the past in our --

24 Q Well, just in that -- just in that phone call,

25 What --

ROUGH DRAFT TRANSCRIPT

004128

1           A     In that phone call, he had suggested having a  
2 threesome.

3           Q     With you and Victoria?

4           A     Yes.

5           Q     All right.

6           MR. LALLI: Your Honor, that concludes direct  
7 examination.

8           THE COURT: All right. Cross-examination, Mr.  
9 O'Keefe?

10          MR. O'KEEFE: Yes, Your Honor. Just a couple of  
11 questions.

12          THE COURT: Sure.

13                   CROSS-EXAMINATION

14 BY MR. O'KEEFE:

15          Q     Cheryl -- boy, I don't know where to start with all  
16 that.

17          MR. LALLI: Your Honor, I'm going to object as to  
18 the defendant's comments --

19          THE COURT: Yeah. It's not proper --

20          MR. LALLI: -- about the evidence. It's improper.

21          THE COURT: -- to comment like that. If you're --

22          MR. O'KEEFE: Yeah, Your Honor.

23          THE COURT: -- representing yourself, you just have  
24 to ask questions, and elicit answers. And then, you could --  
25 at your closing argument, you could --

ROUGH DRAFT TRANSCRIPT

004139

1 MR. O'KEEFE: Okay.

2 THE COURT: -- you could argue.

3 MR. O'KEEFE: Yes, sir, Your Honor.

4 THE COURT: But we can't have you asking questions  
5 and arguing at the same time. They have to be proper  
6 questions, and you take notes. And then, you could certainly  
7 argue to the jury what you want at the conclusion of this  
8 case.

9 MR. O'KEEFE: Okay.

10 BY MR. O'KEEFE:

11 Q Let's back up to Father's Day, 2008. Okay. You  
12 testified that I received a phone call and went to the house,  
13 correct?

14 A Yes.

15 Q And that I came back and told you my daughter called  
16 me; it was Father's Day, correct?

17 A Yes.

18 Q Okay. And you testified that, shortly thereafter,  
19 whatever, I told you that I got to be honest with you, it was  
20 Victoria?

21 A Yes.

22 Q I was honest with you though, however? Yes or no.

23 A Yes.

24 Q Okay. And yes or no. Did I say I didn't think it  
25 was right to lie to you?

ROUGH DRAFT TRANSCRIPT

004140

1 A Yes.

2 Q Thank you. Now, when we met in Arizona Charlie's,  
3 and we exchanged phone numbers, if I remember correctly, we  
4 met at a coffee shop, correct? Yes or no.

5 A Yes.

6 Q And the purpose of that, if I may ask -- answer yes  
7 or no; was I shared with you that I was on parole?

8 A No.

9 Q That I had gone to prison?

10 A No.

11 Q That's no?

12 A No.

13 Q Do you remember me telling you that I wanted to come  
14 forward and let you know that, you know, I had gone to prison  
15 on a domestic violence?

16 A Not when we met at Arizona Charlie's.

17 Q Okay. Let me rephrase the question. I didn't mean  
18 at Arizona Charlie's. I said, we exchanged phone numbers, and  
19 we called later in the beginning. And one time, we called --  
20 I called you, and we had coffee --

21 A Yes.

22 Q -- at some place? That's what I meant.

23 A Yes.

24 Q Okay. And the sole purpose of that was, it was hard  
25 for me at my age, in my 40's, and to -- you know, I wanted to

ROUGH DRAFT TRANSCRIPT

004141



1 come clean; yes or no?

2 A Yes.

3 MR. LALLI: I'm going to object. It calls for  
4 speculation as to what the defendant's motivation was at the  
5 time.

6 THE COURT: I'll overrule the objection. I'll give  
7 some leeway here. But --

8 MR. O'KEEFE: Thank you, Your Honor.

9 THE COURT: -- it's cross-examination. And I give  
10 some leeway, but --

11 MR. O'KEEFE: Right.

12 THE COURT: Overruled.

13 BY MR. O'KEEFE:

14 Q But when we did meet for that cup of coffee, I was  
15 straightforward, for the last time, that -- what had happened  
16 in the past; yes or no?

17 A Yes.

18 Q Okay. I was being honest with you; yes or no?

19 A Yes.

20 Q Okay. Now, did I ever mention to you that Victoria  
21 testified against me in the battery domestic violence case?

22 A Yes.

23 Q Okay. Did I state whether she was cruel, and  
24 exaggerated her stories when she testified against me? Yes or  
25 no.

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1 A I'm sorry, I don't understand that part.

2 Q Did I say she testified against me? Yes or no.

3 A Yes.

4 Q If I have proof right here that I can prove that  
5 clearly as an untruth, and that Victoria testified for me,  
6 would you believe me? Yes or no.

7 MR. LALLI: I'm going to object to the form of the  
8 question, Your Honor.

9 THE COURT: Well, maybe rephrase it. I'm not really  
10 too sure where you're going with it.

11 MR. O'KEEFE: Okay.

12 THE COURT: But you know, you could rephrase it and  
13 see where it is, all right?

14 BY MR. O'KEEFE:

15 Q Did you get confused -- did you just assume -- yes  
16 or no -- this is yes or no questions. Okay, so you're clear  
17 there. Did you just assume that --

18 THE COURT: And I mean, if you can't answer yes or  
19 no, just say I can't answer yes or no, all right?

20 THE WITNESS: Thank you.

21 THE COURT: All right.

22 MR. O'KEEFE: Thank you, Your Honor.

23 BY MR. O'KEEFE:

24 Q Since she did come to the trial, and I said, you  
25 know, she testified, it was never clearly stated whether she

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1 -- let's be totally honest; whether she testified for or  
2 against me? That was never talked about, correct? Yes or no.

3 A I can't answer that question.

4 Q May I ask why you can't answer that question? You  
5 don't remember, or --

6 A No, because it's vague.

7 Q Okay. Did I ever tell you distinctly that Victoria  
8 testified against me at that trial?

9 A Yes.

10 Q Don't you think that would be unusual or stupid,  
11 when she testified for me, and I have the transcripts, court  
12 documents? Doesn't make sense to me. I mean, wouldn't it be  
13 foolish of me to say one thing, and it's the other?

14 MR. LALLI: I'm going to object, Your Honor. This  
15 is argumentative.

16 THE COURT: Sustained.

17 MR. O'KEEFE: I'll move on, Your Honor.

18 THE COURT: Thank you, Mr. O'Keefe.

19 BY MR. O'KEEFE:

20 Q Did I ever brag or boast that I killed people? Yes  
21 or no.

22 A Yes.

23 Q Did we buy a car together, Cheryl? Yes or no.

24 A I cosigned for you, yes.

25 Q We did it together?

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1 A Yes.

2 Q And when this tragedy happened, who did that fall  
3 on?

4 A Me.

5 Q So, I'm sure you were a little angry at that?

6 A No.

7 Q Did we have a bank account together?

8 A Yes.

9 Q And we went in, and basically, you took yourself  
10 off, one time or another?

11 A Yes, I did.

12 Q And did you ever tell the neighbors after this  
13 tragedy that you were a little bit surprised at this whole  
14 event, that I had never done any violent act toward you at  
15 all, to -- particular (sic), Robin Kolacz, the manager?

16 A Not that I can recall.

17 MR. LALLI: Your Honor, can we approach?

18 THE COURT: Yes.

19 MR. LALLI: I apologize.

20 (Off-record bench conference)

21 MR. LALLI: Your Honor, based upon our discussion at  
22 the bench, I would move that the last question and answer be  
23 stricken, and the jury be admonished to disregard it,  
24 pertaining to whether this witness told someone else that the  
25 defendant was ever violent with her.

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1 THE COURT: Yes. That question will be stricken,  
2 and you're to disregard it. All right? Proceed then, Mr.  
3 O'Keefe. Thank you.

4 MR. O'KEEFE: Okay. Thank you, Your Honor. Okay.  
5 I'll be this much quicker. Just close this out.

6 BY MR. O'KEEFE:

7 Q Just -- after this tragedy happened, Ms. Morris, did  
8 you go to the -- back to the apartment the following day, or  
9 two days later? Yes or no.

10 A No.

11 Q After this tragedy happened, you were not at the  
12 apartment the next day?

13 A I'm sorry, what tragedy? The tragedy between you  
14 and Victoria?

15 Q Yes, ma'am. Did you have a discussion with Jimmy  
16 Hathcox and them? I mean, everybody was there. I'm just  
17 asking yes or no.

18 A Not that I can recall.

19 Q Would you dispute about 6, 7 different people stated  
20 that you were there? Everybody was there, it was such a  
21 tragedy. People were there, and a lot of discussion, notes --  
22 investigators came and took notes from people. And you're  
23 saying that you don't remember? Is that what you're saying,  
24 you don't remember?

25 A What I don't remember is going back there a few days

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1 after your tragedy had happened.

2 Q Okay. Did you go -- do you remember going back the  
3 next day then?

4 A No, I do not.

5 MR. O'KEEFE: I have no more questions for this  
6 witness, Your Honor.

7 THE COURT: Thank you very much, Mr. O'Keefe.  
8 Anything else, Mr. Lalli?

9 MR. LALLI: May I have the Court's indulgence? Your  
10 Honor, I have no redirect.

11 THE COURT: Thank you so much for testifying.  
12 You're excused.

13 THE WITNESS: Thank you.

14 THE COURT: Ladies and gentlemen, we're going to  
15 take a recess.

16 It is your duty not to converse among yourselves, or  
17 anyone else on any subject connected with the trial; read,  
18 watch, or listen to any report or commentary on the trial, by  
19 any person connected with the trial, or by any medium of  
20 information, including, without limitation, newspapers,  
21 television, radio. And you are not to form or express any  
22 opinion on any subject connected with the trial until the  
23 cause is finally submitted to you.

24 We'll take about 15 minutes. I got a little  
25 something to do here. And we'll be at ease until the jury

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1 leaves.

2 (Outside the presence of the jury panel)

3 THE COURT: All right. This is outside the presence  
4 of the jury. I just want to make a record on the reason why  
5 we had the jury disregard the question. Mr. Lalli, the  
6 question was posed to -- was her name Cheryl?

7 MR. LALLI: Yes, Cheryl Morris, Your Honor. The  
8 defendant had asked a question regarding whether Cheryl had  
9 ever told another witness that the defendant had never been  
10 violent toward her. The fact of the matter is, Cheryl  
11 described for me during the course of pretrials several times  
12 when the defendant had been violent with her.

13 One of those incidents was in his trailer. She had  
14 just finished coming home to visit him. He had been drinking.  
15 He grabbed her by the neck, and pinned her against the wall.  
16 She -- he ultimately let her go.

17 There was another incident in a car where he had  
18 been drinking vodka. He was obnoxious, pounding the  
19 dashboard, pulling at the steering wheel. And then, he had --  
20 he had made threatening gestures toward her. I don't know  
21 that he had actually ever struck her. But he had made  
22 threatening gestures toward her.

23 So, there is this history of violence between the  
24 two of them. I believe that he opened the door to that, and I  
25 asked the Court to allow me to go into it. And I'm not

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1 quibbling with the Court's ruling. The Court thought that  
2 that would not be appropriate. And I then asked the Court to  
3 ask the jury to disregard the question and answer, which the  
4 Court did instruct the jury to do.

5 THE COURT: Well, the reason I bring it up, I wanted  
6 to, you know, make a record on why we did that. And Mr.  
7 O'Keefe, you've got to be careful now. I -- you know. I'm  
8 going to give you a lot of leeway. I mean, you know, I want  
9 you to get a fair trial. I mean, but I have to be fair to the  
10 State, too. I mean, I -- it's not a one-way street. It's  
11 like a tightrope here.

12 But I think my job is to give you a fair trial, give  
13 the State a fair trial. So, you got to be careful now. Even  
14 if you disagree with that you were violent towards her, I  
15 could have very easily said, if I -- you opened the door, Mr.  
16 -- now the jury's going to hear that. And I don't want to do  
17 that. I want to try, most of the way, this case on the merits  
18 of this case, and not go to other things.

19 Now, Judge Villani ruled that the other -- the --  
20 your felony could be admitted, and gave the limiting  
21 instruction. Or I would caution you, be careful if -- I don't  
22 want you to keep opening the door. That wouldn't be fair to  
23 the State. But --

24 MR. O'KEEFE: All right.

25 THE COURT: I don't know if you want to say anything

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## JURY SWORN

THE COURT: All right. You can sit down. I'll say a few words, as -- I like to say a few words. You know, just basically, ladies and gentlemen, you are admonished that no juror may declare to a fellow juror any fact relating to this case as of his own knowledge.

And if any juror discovers during the trial, or after the jury has retired, that he or any other juror has personal knowledge of any fact in controversy in this case, please disclose the situation to me in the abstains of the other jurors.

This admonition means that if you learn during the course of this trial that you are acquainted with the facts of this case, or the witnesses, and you have not previously told me this relationship, you must disclose this fact to me. And you communicate to the Court by way of a marshal.

A few words about your conduct as jurors. First, don't talk to each other about this case, or about anyone who has anything to do with it, until the end of the case, when you go to the jury room to decide on your verdict.

Second, do not talk to anyone else about this case, or about anyone who has anything to do with it, until the trial has ended, and you've been discharged as jurors. Anyone else includes members of your family and your friends. You may tell them that you are a juror, but don't tell them

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1 anything about the case until after you have been discharged  
2 by me.

3 Third, do not let anyone talk to you about this  
4 case, or about anyone who has anything to do with it. If  
5 someone should try to talk to you, report it immediately to me  
6 by way of our marshal.

7 Fourth, during the course of the trial, any parties,  
8 attorneys, or whatever, or court personnel, other than our  
9 marshal, are really not permitted to converse with members of  
10 the jury. These individuals are not being antisocial, but  
11 they are bound by ethics and the law not to talk to you,  
12 because it might contaminate the jury.

13 So, if any of the parties don't say hello to you, or  
14 good morning, don't take that as an affront. They're just  
15 trying to be professional people, and they don't want to be  
16 accused of currying favor.

17 Fifth, do not read any news stories or articles, or  
18 listen to any radio reports, or anything on the internet about  
19 this case, or about anyone who has anything to do with it.

20 Sixth, please do not do any research, such as  
21 consulting dictionaries, computers, internet, or other  
22 reference material. And do not make any investigation about  
23 this case on your own. You can individually take notes, but  
24 don't let that distract you from what you hear on the witness  
25 stand.

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1 Seventh, if you need to communicate with me, simply  
2 give a signed note to our bailiff, and he'll give it to me.

3 Next, this new one -- this new rule, jurors are  
4 allowed to ask questions. The procedure requires that you  
5 write your juror number and question on a sheet of paper, give  
6 it to the marshal while the witness is still in the courtroom  
7 on the witness stand. If it's a proper question under the  
8 court rules, I'll ask it. If not, I'll keep it, and explain  
9 after the trial the purpose of the rule that precluded me from  
10 asking it.

11 And basically, the last thing I want to say is, keep  
12 an open mind about what the verdict should be until after you  
13 have gone to the jury room to decide this case, and you and  
14 your fellow jurors have discussed the evidence. So, I'd  
15 really like you to keep an open mind until then.

16 I'm going to ask the clerk to read aloud the  
17 information and the plea that was made thereto by the  
18 defendant.

19 (Information read by clerk)

20 THE COURT: Thank you, Ms. Clerk. That's the  
21 reading of the information, the charging document that I  
22 indicated is not evidence. It's just a means of getting the  
23 defendant here to court.

24 So, what we're going to do now is take a brief  
25 recess. And then, we're going to come back and hear opening

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1 statements. And then probably take a lunch break, and then  
2 hear witnesses after the lunch break. So, I want to thank you  
3 very much. As I said, it's a very important case, both to the  
4 State, and to Mr. O'Keefe. So, you want to keep an open mind.

5 And I'm going to -- before every recess, I have to  
6 admonish you. And I'm going to say it a lot of times fast,  
7 but it's very important that -- during this recess, it is your  
8 duty not to converse among yourselves, or with anyone else, on  
9 any subject connected with the trial, or read, watch, or  
10 listen to any report of, or commentary on the trial, by any  
11 person connected with the trial, or by any medium of  
12 information, including, without limitation, newspapers,  
13 television, radio. You are not to form or express any opinion  
14 on any subject connected with the trial until the cause is  
15 finally submitted to you.

16 You want to go out there, you can talk about how the  
17 Kings won the Stanley Cup, or the [inaudible] --

18 MR. LALLI: Heat.

19 THE COURT: The heat, right? Or whatever. I mean,  
20 but don't talk about this case. And don't tell anybody you've  
21 formed or expressed any opinion. You resolve that in the jury  
22 deliberation room. All right. Thank you very much. And  
23 we're going to take a 15 minute recess, and then be back at  
24 about 11:00 o'clock. We'll be at ease until the jury leaves.

25 (Outside the presence of the jury panel)

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1 THE COURT: All right. This is outside the presence  
2 of the jury. All right. So, you're going to -- who's going  
3 to give the opening statement of the --

4 MR. LALLI: I will, Your Honor?

5 THE COURT: All right. And do you need any -- are  
6 you going to set up, or do you need anything?

7 MR. LALLI: Yes.

8 THE COURT: You got your --

9 MR. LALLI: I do need a moment to set up. So, I  
10 thank the Court for giving us the opportunity to do that.

11 THE COURT: All right. And then, are you going to  
12 give an opening statement right after, or not?

13 MR. O'KEEFE: Yes, I will, Your Honor. I will after  
14 the State, yes.

15 THE COURT: Okay. All right. Is there anything  
16 else to come before the Court then before we take a recess?

17 MR. LALLI: Yes. I wanted to make a request of the  
18 Court, Your Honor. Mr. O'Keefe has had the ability to walk  
19 around the court freely, walk into the well, and he has acted  
20 like a perfect gentleman throughout the proceedings thus far.

21 When the State begins to call witnesses, however, I  
22 think the dynamic of the trial changes somewhat, and he is  
23 actually being faced by his accusers. We will be calling a  
24 witness by the name of Cheryl Morris, for example, who was  
25 once the defendant's girlfriend, and she is afraid of him. We

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1 will be calling neighbors who lived in the area. They are  
2 afraid of the defendant.

3 When the defendant was convicted, while he was in  
4 the Nevada Department of Corrections, he sent letters to them  
5 that they deemed to be of a threatening manner. I've not  
6 actually had the opportunity to see those letters, but a  
7 series of witnesses have told me that that is in fact the  
8 case.

9 And so, my concern is that if Mr. O'Keefe would need  
10 to refresh a witness with a prior transcript, or show a  
11 witness up at the witness stand a photograph, that will have a  
12 chilling affect on that witness's ability to testify, and it  
13 will negatively impact the State.

14 And so, what we are requesting is that if Mr.  
15 O'Keefe wants to stand at counsel table, he be allowed to do  
16 so. If he wants to use the podium as is my practice, that he  
17 be allowed to do so. If he needs to actually approach a  
18 witness, it would be our request that either Mr. Maningo do  
19 that, or his investigator, Ms. Brown.

20 MS. CAMPBELL: Campbell,

21 MR. LALLI: Campbell. That's our request, Your  
22 Honor,

23 THE COURT: Mr. O'Keefe -- where is the podium that  
24 you're talking about?

25 MR. LALLI: It's right there --

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1 THE COURT: Oh, right here.

2 MR. LALLI: -- in the center of the courtroom.

3 THE COURT: I'm sorry. Right in front of me. So,  
4 you're basically going to stand near the podium most of the  
5 time, or at counsel table?

6 MR. LALLI: Yes, that's correct.

7 THE COURT: And Mr. O'Keefe, could -- do you like to  
8 use the podium, Mr. O'Keefe, or question at the table? You  
9 can do either one, I don't care.

10 MR. O'KEEFE: Your Honor, I intend to act like a  
11 perfect gentleman.

12 THE COURT: I know. I mean, I --

13 MR. O'KEEFE: And I will have no problem with that.  
14 But this allegation of letters threatening, that don't cut it,  
15 Your Honor. There was no threatening letters -- threatening  
16 letters, plural, for the record, Your Honor.

17 THE COURT: Right.

18 MR. O'KEEFE: Okay?

19 THE COURT: The record will show that Mr. Lalli said  
20 he didn't see them, but apparently some witnesses said. But  
21 that's neither here, nor there. That's not part of what the  
22 jury hears. But I think it would be good. I mean, I want you  
23 to -- if Mr. Lalli's going to stay here at the table, or Ms.  
24 Mercer, or go to the podium, you could stay at the table or go  
25 to the podium. And --

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1 MR. O'KEEFE: I'll go no further than that podium.  
2 Your Honor. That's --

3 THE COURT: great. That's great.

4 MR. O'KEEFE: I have no problem with that.

5 THE COURT: And if you have something you want to  
6 show the witness, which will be here -- Mr. Maningo, do you  
7 want to do this, or do you want the marshal to do this?

8 MR. MANINGO: I'm happy to help Mr. O'Keefe however  
9 he wants me to.

10 THE COURT: All right. So, in other words, you will  
11 just go -- say, you know, go right there and show it, then  
12 take it back, and -- okay.

13 MR. O'KEEFE: Okay.

14 THE COURT: Everything's good on that. All right.

15 MR. O'KEEFE: Just now --

16 THE COURT: Well, we'll --

17 MR. O'KEEFE: -- I have this one last matter.

18 THE COURT: Sure.

19 MR. O'KEEFE: Just -- because you're going to love  
20 me today, Your Honor. I'm going to be a gentleman, and we're  
21 going to move this thing right along. So, after having saying  
22 that, just for protection of myself, preservation of the  
23 record, okay, I just want to declare that I feel now that the  
24 panel has been sworn in that I do believe that this is still  
25 again a true double-jeopardy violation, and violation of the

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1 laws and treaties of the United States of America, double  
2 jeopardy, and due process and collateral estoppel is implied,  
3 too, okay? I just want to state that, that I feel this is --

4 THE COURT: Yeah.

5 MR. O'KEEFE: -- absolutely wrong.

6 THE COURT: And I want to state that you certainly  
7 have a continuing objection for that. And this is about the  
8 fourth, and you can do it four more times. I don't care. But  
9 the record is preserved.

10 You're objecting for this trial. You think it  
11 should be dismissed, double jeopardy, whatever other reasons.  
12 And that's part of the record. The minutes will reflect that.  
13 The court records will reflect all of that, that you've made  
14 more than ample objections. You'll have continuing  
15 objections. And but that's about all I can say. But --

16 MR. O'KEEFE: Right.

17 THE COURT: -- you've probably got a win-win  
18 situation here. Because no matter what happens, you can maybe  
19 convince the jury -- you don't have the burden of proof. But  
20 maybe the jury won't be convinced, and maybe you'll be  
21 acquitted. Or, if they do, you still have your rights to  
22 appeal in federal court. So, it might be a win-win situation,  
23 all right?

24 MR. O'KEEFE: Okay. And Your Honor -- and then,  
25 just one last --

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1 THE COURT: Yeah.

2 MR. O'KEEFE: -- matter, I promise. And just,  
3 again, you know law better than me, but it's just to protect  
4 myself, preservation.

5 Again, at proper times, not in front of the jury --  
6 I'm not going to -- I may object to some of the evidence based  
7 on the law of the case again. It's not a lesser standard of  
8 proof. It's inadequate. He's rehashing for the record  
9 preservation the same evidence of the first and second trial.  
10 It should have never even come in the second.

11 With all due respect, I don't care how Judge Villani  
12 ruled. His opinion was just his opinion. He's just a general  
13 court of limited jurisdiction. His decisions are for  
14 appellate review always. We know that. You know that better  
15 than anybody, okay?

16 So, again, for protection, if any evidence is  
17 presented that crosses that line of battery domestic violence,  
18 I'm going to object. And then, properly in between breaks, if  
19 that's more adequate for you, I'll make something for the  
20 record.

21 THE COURT: Good. All right.

22 MR. O'KEEFE: And after saying that -- because,  
23 again, clearly, one last time, I promise you, all this  
24 evidence -- the majority of this evidence, he's rehashing to  
25 save evidence. And the Ninth Circuit strictly forbids

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1 rehashing the same evidence --

2 THE COURT: All right.

3 MR. O'KEEFE: -- from the first trial.

4 THE COURT: I for the record disagree with you, and  
5 I'm going to allow Mr. Lalli and Ms. Mercer to bring that  
6 evidence in. But it's absolutely clear that it's over your  
7 objections, and you have a continuing objection.

8 MR. O'KEEFE: Thank you.

9 THE COURT: All right.

10 MR. O'KEEFE: And again, one last thing though, Your  
11 Honor, what I'm trying to get at is it's necessarily sometimes  
12 not so much the evidence. It's the conduct that they're  
13 trying to change, trying to disprove the conduct that's  
14 already acquitted of, the battery domestic violence act.

15 THE COURT: All right.

16 MR. O'KEEFE: They can bring all the evidence  
17 sometimes necessarily in. But it's actually the conduct,  
18 versus Grady and Dixon (phonetic). That's what they're trying  
19 to re-change. And that's already been said.

20 THE COURT: You have an objection, but I disagree  
21 with you, so I'm going to allow them to do that. All right?

22 MR. O'KEEFE: Thank you, Your Honor, for your time.

23 THE COURT: All right.

24 MR. O'KEEFE: Thank you.

25 THE COURT: We're going to be back in about 10

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1 minutes, and start the opening.

2 MR. LALLI: Thank you.

3 (Court recessed at 10:56 a.m. until 11:08 a.m.)

4 (Within the presence of the jury panel)

5 THE MARSHAL: Officers and members of the court,  
6 Department 17 jurors. All right. You may be seated, ladies  
7 and gentlemen. Let's make sure all cell phones are turned  
8 off, please.

9 THE COURT: All right. Counsel, stipulate to the  
10 presence of the jury?

11 MR. LALLI: Yes, Your Honor.

12 THE COURT: Mr. O'Keefe, do you stipulate to the  
13 presence of the jury?

14 MR. O'KEEFE: Yes, I do, Your Honor.

15 THE COURT: All right. We're going to proceed with  
16 opening statements now. Mr. Lalli, opening statement on  
17 behalf of the State of Nevada?

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

19 STATE'S OPENING STATEMENT

20 MR. LALLI: May it please the Court. Good morning,  
21 ladies and gentlemen. Brian O'Keefe was found guilty by a  
22 jury of the felony offense of battery constituting domestic  
23 violence. That occurred in 2006.

24 The victim in that case was Victoria Whitmarsh, the  
25 same woman he murdered on November 5th of 2008. The evidence

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1 will show that Victoria was stabbed just under her arm. The  
2 mechanism of death was something called exsanguination, which  
3 means that she bled out over a period of time. Upon being --

4 THE COURT: Ladies and gentlemen, before we  
5 continue, evidence of other crimes, wrongs, or acts is not  
6 admissible to prove the character of a person in order to show  
7 that he acted in conformity therewith. It may however be  
8 admissible as proof of motive, intent, or absence of mistake  
9 or accident.

10 That's an instruction I'm going to give a couple of  
11 times, but I just want you to keep that in mind. I'm sorry to  
12 interrupt you, Mr. Lalli.

13 MR. LALLI: Thank you, Your Honor.

14 It really came as no surprise that the defendant had  
15 murdered Victoria. He never got over the fact that she was  
16 responsible for sending him to prison when she testified  
17 against him. In fact, he told other people that he wanted to  
18 "kill the bitch."

19 After the defendant went to prison, his relationship  
20 for -- with Victoria had come to an end, and he struck up a  
21 relationship with another woman by the name of Cheryl Morris,  
22 and you will hear from Cheryl Morris during the course of this  
23 trial. What you will notice is that Cheryl has a strikingly  
24 eerie and similar look to her, the same one that Victoria has.  
25 Both are very small Asian women.

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1 Cheryl and the defendant spent a great deal of time  
2 together. And it was in the context of their relationship  
3 that the defendant would make statements to her. He would  
4 brag, for instance, about being in the military, and tell her  
5 how he was trained to kill. And in all of these  
6 circumstances, he would always talk about killing, and doing  
7 so with a knife.

8 During the time that his relationship with Cheryl  
9 was ongoing, he again rekindled his relationship with Victoria  
10 Whitmarsh. At first, this was done secretly; and then, it was  
11 more out in the open. And at one point, he was even so bold  
12 about this relationship that he told Cheryl Morris that he was  
13 going to bring Victoria back into the apartment where the two  
14 were staying. And Cheryl of course would have nothing to do  
15 with this.

16 And so, eventually, Cheryl moved out, and Victoria  
17 moved in. And both Victoria and the defendant lived together  
18 in an apartment complex at 5001 El Parque here in Clark  
19 County, Nevada.

20 In many ways, Victoria led a very tortured life.  
21 She suffered from depression. At times, as many people do who  
22 suffer from this disease, she would cut herself. The  
23 serotonin that would be released would bring her emotional  
24 comfort. She took medication for her mental illness. In  
25 fact, at the time of her death, a drug called Effexor was in

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1 her blood, and it was a drug that she took for her depression.

2 Victoria suffered from the disease of hepatitis.  
3 She had hepatitis C. She was also alienated from her husband  
4 and her daughter. The evidence will show that Victoria was  
5 vulnerable, and even pathetic. She weighed just 108 pounds,  
6 was just 5 feet, 5 inches tall. Just the sort of woman that  
7 the defendant could control.

8 The apartment at 5001 El Parque is where the murder  
9 occurred. And you will learn that many of the residents who  
10 lived in this complex were very close. They knew each other,  
11 they were friends, they communicated with one another. The  
12 defendant's apartment was number 35. It was upstairs.

13 The Tolivers lived just below them. And you will  
14 hear from Joyce and Charles Toliver. Back on November 5th of  
15 2008, in the evening hours, they were both in their bedroom.  
16 And you will learn that their bedroom is directly below the  
17 bedroom that was above it. And they hear a disturbance, a  
18 banging. And the banging -- the disturbance goes on for the  
19 better part of 30 minutes, 40 minutes. By some accounts,  
20 maybe even as long as an hour.

21 Charles Toliver, who was known by his friends as  
22 Cookie, he has to work early in the morning, he's annoyed that  
23 there's so much noise coming from upstairs. And at one point,  
24 he gets up, and walks up the staircase to see what's happening  
25 up in the upstairs bedroom. As he's doing that, Joyce

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004064



1 Toliver, who is downstairs, hears a woman upstairs. At first,  
2 she hears crying, and then moaning, and ultimately, silence.

3 Charles Toliver walks up the stairs, and enters the  
4 back bedroom. And this is what he sees. He sees Victoria  
5 laying on the ground. He can only see her legs. There is  
6 blood all over the room. He sees the defendant over her. And  
7 he says, what have you done? What did you do to her? Mr.  
8 Toliver -- Toliver is very frightened. He turns around, and  
9 he runs out.

10 He goes to get a friend, another individual who  
11 lives in the complex, a man by the name of Todd Armbrooster.  
12 And both Todd and Charles return to the defendant's apartment,  
13 and they see Victoria's body again. The defendant is over  
14 her, talking to her, telling her to, come on, come on, baby;  
15 words to that effect.

16 At one point, the defendant, who was obviously  
17 intoxicated at the time, stands up. And while this woman is  
18 literally dying in his arms, wants to fight with Todd  
19 Armbrooster. He kind of squares up with him as though he  
20 wants to fight with him. The evidence will show that he never  
21 asked anyone for help. He never called the police. He never  
22 called the paramedics. He never asked for an ambulance. He  
23 never did anything, except watch this woman die at his feet.

24 Fortunately, the police are called. And members of  
25 law enforcement respond to the apartment complex. And they're

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004065



1 not sure what they're dealing with at first. The calls are in  
2 the order of, there's a woman down, she's bleeding, there's a  
3 man with a knife. And so, they're certainly not just going to  
4 traipse into a bedroom, and risk being attacked themselves.

5         You will learn that they take a position out in the  
6 living room area. And they attempt to ask the defendant to  
7 come out of the room so that they can go in and render  
8 assistance to Victoria, and he refuses. The defendant refuses  
9 to come out.

10         The Las Vegas Metropolitan Police Department has a  
11 program in place called the CIT program; the crisis  
12 intervention team. They are specially trained officers who go  
13 out to situations like this. And their job is to de-escalate;  
14 to bring the crisis down.

15         A CIT officer responds, and strikes up a  
16 conversation with the defendant, who was still in the back  
17 bedroom, trying to get him out, explaining to the defendant  
18 that he needs to come out before the officers go in. And it  
19 becomes apparent to Metro that they are engaged in a  
20 cat-and-mouse game, where at one point, the defendant is  
21 saying, she's dead; and another point, he's saying, she's  
22 alive, come in and help her.

23         It's clear that they do not know what it is that  
24 they're dealing with. And they make the decision to enter the  
25 back bedroom, to try to get the defendant out, and so that

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004066

1 they can render Victoria aid. And they do it in a very  
2 tactical manner. They go into the back bedroom. And just as  
3 he did with Mr. Armbrooster, the defendant engaged law  
4 enforcement in a scuffle. He begins to fight with those  
5 officers.

6 At one point, they deploy a taser in an effort to  
7 bring him under control. They eventually are successful in  
8 doing that, and are able to remove him from the room.

9 You will learn that there was a police sergeant by  
10 the name of Dan Newberry, who was present. And Sergeant  
11 Newberry has training in the medical field as a paramedic. He  
12 immediately went over to Victoria's body, who was on the  
13 ground, lying naked from the waist-down. He feels for a  
14 pulse. There is none. They quickly bring in medical, who  
15 tries to revive her, but they are unsuccessful in doing that.  
16 And unfortunately, Victoria Whitmarsh died.

17 The defendant is placed in the back seat of a police  
18 car. He is going to be transported over to the homicide  
19 office for an interview with the homicide detectives. While  
20 he is in the back of that police car, he begins to make  
21 statements. Not in response to any specific questions that he  
22 was asked, but he just begins to talk.

23 And there was an officer who was responsible for  
24 keeping an eye on him, by the name of Christopher Hutcherson,  
25 and you will hear from that police officer. He was very young

ROUGH DRAFT TRANSCRIPT

004067

1 at the time, but very wisely wrote everything down that the  
2 defendant said. These are some of the things that he wrote  
3 down. "I swear to God, V, I didn't mean to hurt you." And  
4 "V" is how the defendant would refer to Victoria. He would  
5 call her, V. "I swear to God, V, I didn't mean to hurt you.  
6 What did I do wrong? Let's go do the ten years;" an obvious  
7 reference to prison.

8 While he is in that patrol car, members of law  
9 enforcement begin to respond to the scene. As I indicated  
10 before, homicide detectives show up. Crime scene analysts  
11 show up. They begin to process the scene. They photograph  
12 the scene. They take photographs of Mr. O'Keefe, who's being  
13 very belligerent with them at the time; so much so that one of  
14 the homicide detectives actually has to take his head and hold  
15 it up to the police camera so that he can be photographed.

16 They notice that he has a cut on his hand, on two  
17 fingers. And you will hear from Detective Marty Wildemann,  
18 who is an extremely experienced homicide detective who has  
19 investigated many stabbing murders and crimes involving  
20 knives. And he will tell you that it is not at all uncommon  
21 for someone who was utilizing a knife in a violent way to  
22 actually suffer cuts on their hands and on their fingers while  
23 doing so. But you will see photographs of those cuts on his  
24 finger.

25 The knife that officers recovered from the scene was

ROUGH DRAFT TRANSCRIPT

004068

1 analyzed by forensic professionals. You will hear from Ed  
2 Guenther, who is a latent print examiner. He is an expert in  
3 fingerprints. And you will learn of the various techniques  
4 that he employed to try to find fingerprints on the knife.  
5 And unfortunately, he was not able to do so. He was not able  
6 find any prints that were of sufficient detail to make a  
7 comparison.

8           You can see from the knife, there was blood on it.  
9 And the knife was submitted for DNA testing. You will hear  
10 from Analyst Jen Bas, who was a DNA scientist with the Las  
11 Vegas Metropolitan Police Department laboratory. She analyzed  
12 the knife, and she found just what we would all expect. There  
13 was blood on the handle of the knife. And that blood, without  
14 any question, was identified to the defendant.

15           There was blood just to the left of the handle, or  
16 to the -- above the handle. Again, that was the defendant's  
17 blood. There was also blood on the tip of the knife. And  
18 without any question at all, that blood was identified to  
19 Victoria Whitmarsh. You will learn that beyond any doubt,  
20 this was the murder weapon that killed her.

21           The following day, an autopsy was conducted on  
22 Victoria's body, and it was determined that she died as a  
23 result of the stab wound to the side of her body. As part of  
24 an autopsy, the blood of the decedent is collected and  
25 analyzed. In addition to the Effexor that she had on board,

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004069

1 you will learn that she had a great deal of alcohol in her  
2 blood. Her blood alcohol level was .24, well over the legal  
3 limit.

4 You will also learn that, in addition to the stab  
5 wound, Victoria Whitmarsh had a great deal of blunt force  
6 trauma on her body, which is just a fancy way of saying she  
7 had been struck, or her body had been thrown against a hard  
8 object, which landed many places on her body. There was a  
9 great deal of bruising on her body.

10 And you will learn that although she suffered from  
11 hepatitis C, and hepatitis C has the affect of making a bruise  
12 appear more profound, each and every bruise that she had on  
13 her body represented a different area of blunt force trauma.  
14 And you will learn that many of those bruises were what  
15 forensic experts call acute, or recent; meaning at or near the  
16 time of her death.

17 But you will learn that she had blunt force trauma  
18 on her head; on the top of her head, and on the back of her  
19 head. She had blunt force trauma on her chest, on her back,  
20 on her buttocks, on her left arm, on her right arm, on her  
21 left leg, on her right leg. She had so much trauma on her  
22 body that the amount of bruising actually was a contributing  
23 factor in her death.

24 An anonymous domestic violence survivor once said  
25 that, if you can't be thankful for what you have, be thankful

ROUGH DRAFT TRANSCRIPT

004070

1 for what you have escaped. Well, unfortunately for Victoria  
2 Whitmarsh, she was not able to escape what ultimately came to  
3 her as a result of her relationship with the defendant.

4 At the conclusion of this trial, we will ask you to  
5 return a verdict of guilty to murder of the second degree with  
6 use of a deadly weapon. Thank you.

7 THE COURT: Thank you, Mr. Lalli. That completes  
8 the State's opening. Mr. O'Keefe, do you want to give an  
9 opening statement now?

10 MR. O'KEEFE: Yes, Your Honor.

11 THE COURT: Thank you, sir.

12 DEFENSE'S OPENING STATEMENT

13 MR. O'KEEFE: Without a doubt, on November 5th of  
14 2008, a tragedy happened, folks. The State's presenting the  
15 story, their side, with what evidence that they have. But  
16 without a doubt, the evidence is going to show that on  
17 November 5th of 2008, prospects of a new job came about. I  
18 made a lot of phone calls. Talked to an old superintendent.  
19 Possible, going back to work the following week at the Hard  
20 Rock.

21 It was just my fiance's birthday two days ago,  
22 before that. She was under a lot of stress, depression, just  
23 turned down a job. Unemployment left only one week. No  
24 money. Medically ill. Host of problems, mental. She was a  
25 good person though. I loved her for the way she was.

ROUGH DRAFT TRANSCRIPT

004071

1 MR. LALLI: Your Honor, I'm sorry. I'm going to  
2 interpose an objection. This is an opening statement. The  
3 defendant is now allowed to testify to the jury now, or  
4 express his feelings now.

5 THE COURT: You can just say, the evidence will  
6 show.

7 MR. O'KEEFE: Yeah. You're right, Your Honor.  
8 Okay.

9 THE COURT: Thank you.

10 MR. O'KEEFE: There's a lot of accusations, and a  
11 lot of inconsistencies being made throughout this, folks. The  
12 evidence is going to show that we went out to Paris Hotel. We  
13 celebrated. Extremely, extremely -- drank a lot of alcohol.  
14 The evidence is going to show that, without a doubt, we ended  
15 up leaving ultimately. I made V drive. She was upset with  
16 that. She wanted to go to dinner.

17 We were parked at valet at Vons. Told the  
18 detectives over and over, check it out. Here's where we was,  
19 here's what we did, here's the time frame.

20 The evidence is going to show, as a matter of fact,  
21 before we left the apartment, I said, you know, with the new  
22 job, fantastic. I said, you know, maybe I might be going back  
23 next week, Hard Rock, 12, 14 hours a day. Let's get this  
24 vacuum cleaned, and get it fixed. I broke the belt  
25 [inaudible]. The evidence will show that. It was dropped off

ROUGH DRAFT TRANSCRIPT

004072



1 at the vacuum cleaner store en route to Paris Hotel, to go out  
2 for the night to celebrate her birthday and the job.

3 They didn't want to talk about that. They wanted to  
4 kind of like, hide that. But the evidence will show, because  
5 they made that part of their discovery. So, you have the  
6 right to show (sic), because they're trying to state that I  
7 supposedly wanted to kill this woman. Pay back. Well, why  
8 would I want to fix the vacuum cleaner? Why would I spend all  
9 day on the phone?

10 MR. LALLI: I'm going to object, Your Honor. I'm  
11 sorry, this is argument now.

12 MR. O'KEEFE: I'm saying --

13 MR. LALLI: It's not an opening statement (sic).

14 THE COURT: All right.

15 MR. O'KEEFE: I'm saying the evidence will show --

16 THE COURT: The evidence will show. All right.

17 That's --

18 MR. O'KEEFE: The evidence will show this --

19 THE COURT: Be a little careful, but --

20 MR. O'KEEFE: Yes, Your Honor.

21 THE COURT: You have a right to -- at the end, to  
22 make your summary, and argue all you want. But just as an  
23 opening statement, the evidence will show this.

24 MR. O'KEEFE: Mr. Lalli greatly out-stepped his  
25 line, Your Honor, during his opening. So, I'm just --

ROUGH DRAFT TRANSCRIPT

004073



1 THE COURT: Well, I --

2 MR. O'KEEFE: Yes, sir, Your Honor, with all due  
3 respect.

4 THE COURT: All right.

5 MR. O'KEEFE: Folks, we went out and celebrated.

6 Let's just get right to the facts. Got extremely drunk, won a  
7 bunch of money. V's like, baby, let's stop, let's get out of  
8 here. Cash out, let's go. I want to go eat. I want to go  
9 eat now. And I'm like, baby, let me catch up with you.

10 I had just completed a sobriety program, the  
11 evidence will show. They know this. And because of the new  
12 job, and she was down -- it was her birthday November 2nd.  
13 This happened -- tragedy happened November 5th. I was looking  
14 for an excuse. I admitted it. I told them. I was looking  
15 for an excuse to drink. I'm a recovering alcoholic.

16 With the new job prospect, you know, okay, maybe  
17 start next week. Let's go out and have some fun. Your  
18 birthday; celebrate. Don't worry about anything. And again,  
19 she just got the night. She only had one week left of  
20 unemployment. She had no money. She was medically ill.

21 She had to claim a claim in to SSI that got denied  
22 for the third time. Her sister called, and said she had to  
23 re-appeal it again. Years, years, years. It takes years with  
24 the government.

25 She finally convinced me -- I made a last-minute

ROUGH DRAFT TRANSCRIPT

004074

1 bet. She didn't want me to do that. She cashed out all the  
2 money, had it all. We got up, and we got one more drink.  
3 Drank 20 to 30 double shots of Absolut. I'm not proud of it.  
4 I'm an alcoholic, and I had just completed a program. And  
5 I'll tell you what, it hit me. I've been drinking for years,  
6 but after that little break in time, I was extremely  
7 intoxicated.

8 And I had extremely -- folks, the evidence will  
9 show, that's what they're hiding. And they have destroyed  
10 that evidence for life. We'll never know -- nobody will ever  
11 know. That was wrong.

12 However, let's eat dinner. Come on, baby, take me  
13 to dinner. No, baby, let me get one more drink. Let me bet  
14 one more bet. Come on, we're doing good, look at all these  
15 chips. Hundreds and hundreds of dollars. And I started with  
16 just 60. I was happy. Everything was rolling good. Things  
17 were turning around.

18 Let's go eat right now. No, let me make one more  
19 bet. She got angry. She was in anger management classes..  
20 Bipolar. Boy, like that, she could go from one end to the  
21 other. The evidence will show that.

22 Finally, okay, baby, let's just leave. Let's go.  
23 Got plenty of money. Whatever you want to do. You know what,  
24 but you want to leave, whatever. I'm pretty intoxicated, the  
25 evidence will clearly show. Let's just go, stop wherever you

ROUGH DRAFT TRANSCRIPT

n04075

1 want. You're driving now. Oh, boy. That made her mad. Got  
2 the car from valet, but the seat back. Go wherever you want,  
3 get whatever you want, do whatever you want.

4 Well, we pull up to the apartment, the evidence will  
5 show, parked the car. Seat's back; I'm passed out. Hat falls  
6 off from the seat. The evidence will show it, hat's laying  
7 right there in the front seat. She gets up. Statement,  
8 [inaudible] we're here. Slams -- goes up to the apartment.

9 Folks, an hour later -- I don't even know exactly  
10 what time. I don't want to say -- don't hold me to that. I  
11 don't even know. I didn't have a watch on. I didn't have  
12 keys. She had everything in her purse. She carried  
13 everything for me. Women normally do that. She had my  
14 wallet, cigarettes. She had the keys to the apartment. She  
15 goes upstairs.

16 I drank my butt off, and it hit me hard all the  
17 sudden. I mean, I was spinning. I had just completed a  
18 sobriety program, voluntarily.

19 Well, the neighbors testified that they hear 20  
20 minutes, 40 minutes -- they've changed their testimony. Said  
21 many times, an hour, two hours, they heard the biggest  
22 commotion going on upstairs right above them. Right above  
23 them. And the neighbors next-door, the testimony will show,  
24 through all this banging and commotion -- and I always left my  
25 window open on the second floor, as Mr. Lalli showed you.

ROUGH DRAFT TRANSCRIPT

n04076

1           They never heard one male voice. They never heard  
2 any talking. There was not even a TV on, the evidence will  
3 show. There was not even a radio on. It was at night in this  
4 apartment complex. And folks, I'll tell you what, at night  
5 time, sound travels. Let's be honest. I'm telling you, I  
6 know. You can hear the neighbor across the street talking. I  
7 mean, across the side -- across the pool, on the inside of the  
8 complex, especially at night.

9           You can hear everybody talking, or everyone's  
10 business. Yet, the evidence will show, they heard not one  
11 male voice -- they did not hear me. They did not even hear  
12 Victoria talking. All they heard was thumping, thumping,  
13 pounding, [inaudible], doors slamming, boom. Folks, I can't  
14 dispute what they heard. I was in the car. The evidence will  
15 show, they admit to this.

16           My next-door neighbor shows me -- testified in prior  
17 hearings that approximately 15 minutes, my next-door neighbor  
18 saw me coming up the stairs. Bang. Hears me hit the rail.  
19 The evidence will show this. Well, you know what? I realized  
20 getting upstairs, I'm drunk, I'm feeling good, I got money.  
21 Hey, I'm home. I don't even realize -- I didn't even know  
22 she's angry. I didn't even know. Didn't care. I was drunk.  
23 We're home. Hey, we're here. Let's go up to the place.

24           But I do remember getting up there, I was asked -- I  
25 was like, man, oh my God, I forgot the vacuum in the back of

ROUGH DRAFT TRANSCRIPT

004077

1 the car, and I locked the door. Electronic -- a new little  
2 car. The evidence will show this. The receipt shows that I  
3 fixed it on the way to Paris. Went in, put a new belt on it.  
4 I broke the belt cleaning up her room, vacuuming up some  
5 screws. They fixed it. Charged me right there, receipt. Put  
6 it in the back of the car, shut the hatch, locked it. Got in  
7 the car; we went to Paris Hotel. They won't talk about that.

8 But I had this theory I wanted to kill her. Boy,  
9 why go fix the vacuum? Doesn't make sense. Why take her out?  
10 Why spend all day on the phone making calls, looking for a  
11 job? In 2008, it was hurting.

12 The evidence will show -- hopefully Mr. Lalli  
13 brought them. He had them on his witness list. Let's see how  
14 honest they are. The evidence will show the next-door  
15 neighbor will say he saw me -- again, folks, this is critical.

16 Not even 15 minutes before, the downstairs neighbor  
17 ran upstairs, was screaming, and went running out of my place  
18 after he seen me. And the evidence will show, he will testify  
19 he seen me picking her up, saying, V, quote, verbatim, "Don't  
20 do me like this. Baby, baby, don't do me like this. Get up."

21 Now, see, what they don't know -- I knew she was a  
22 cutter. I walked in on her when she was in the bathroom. She  
23 was up to no good; mad at the world, slamming drawers. She  
24 changed her clothes. She had different clothes on. She had  
25 taken her makeup off, apparently. She did the female things

ROUGH DRAFT TRANSCRIPT

004078

1 she needed to do. They can't dispute this.

2 But when I walk up, and when the neighbor sees me,  
3 he says he pops out, and he seen me hit the rail. And he seen  
4 me there, and he said I had a look on my face, I was all -- I  
5 was wasted, folks. I had no sleep for about 30 hours. We  
6 stayed up all night watching the Obama election. I went to  
7 bed about 4:00 in the morning. I told them this.

8 That's why the couch -- you'll see -- the evidence  
9 will show that it was made up -- there was a blanket on the  
10 couch. We sat out -- she got all drunk. She drank wine all  
11 night. I was still sober at the time. I just finished the  
12 program that week. I was still sober, and we watched the --  
13 Obama get elected, win it. Yeah, yeah, yeah.

14 She went to bed about 1:30 in the morning. I stayed  
15 up until about 4:00 watching it. She got intoxicated. I  
16 said, baby, go to bed. This -- she went in, and went to bed.  
17 I stayed on the couch and I watched the rest of the election.  
18 I fell asleep.

19 I get up early in the morning. Construction was  
20 what I was doing. Start making calls. She comes out in the  
21 morning, the evidence will show. They can't dispute this,  
22 that, you know, she verified the election was won and all  
23 this. That's when I made the calls, got the job, said don't  
24 worry about anything. She found out again her sister called,  
25 or that she was denied again on SSI, because she was in debt

ROUGH DRAFT TRANSCRIPT

004079

1 to her sister.

2 And she used her sister's address for the government  
3 to send a check to. Her sister was lending her money. She  
4 got the two to three-year backup for the SSI for having the  
5 hepatitis C and her illnesses, all that for unemployment. She  
6 was supposed to get a backup check, and all this. That was  
7 between them. I didn't care.

8 But she was depressed. She got a phone call that  
9 day when I was making my calls, after November 5th, when Obama  
10 had already won. And that's when I said again, let's go out.  
11 Celebrate, forget about it. Let's take the vacuum and go,  
12 okay? I know I kind of jump, folks, but you've got to bear  
13 with me.

14 So, again, like I said, when we did go out and we  
15 come back, when my neighbor's seen me 15 minutes before the  
16 calls and screams went on, oh my God, somebody help me. I go  
17 to my apartment door. Makes common sense. The door is open,  
18 it's unlocked. But the door's shut.

19 So, again, let me re-verify, the evidence will show,  
20 I get up, I go upstairs. V's already upstairs. They're  
21 hearing all this thumping and pounding. I can't dispute it.  
22 How do you dispute? I don't know what they heard. I don't  
23 know what she was doing. Simple as that. I walk up. The  
24 neighbor testifies he sees me not even 15 minutes again before  
25 the fatal scream for help.

ROUGH DRAFT TRANSCRIPT

004080



1 He looks at me, shuts his door, goes inside. Okay,  
2 [inaudible]. We admit, nothing was exchanged. We looked,  
3 that's it. I go to my door and open it, and it's unlocked. I  
4 walk in, I shut the door. I had to pee bad. I'm telling you,  
5 I was going pee in the parking lot. I had just been drinking.  
6 I was sweating. I was hot. Had my big old union jacket on.  
7 I was proud of it. I just got it, because I was helping the  
8 union get elected -- the presidency of the United States. You  
9 know that. Local Laborers 872 (phonetic).

10 Well, when I go in -- the door's unlocked, folks,  
11 when I walk up, which simply just proves she was already up  
12 there. She had the keys. She had everything. Everything was  
13 in the purse. Wallets, everything. When I walk in, I shut  
14 the door. I go straight to the bathroom, the spare bathroom I  
15 use. I took a pee. Simple as that. It's the truth.

16 After I got done, stuck my head -- looked in the  
17 bedroom, the evidence is going to show, and I seen that the  
18 light was on. She was in the bathroom, doing whatever. I  
19 didn't care. I walked directly to the kitchen, got a  
20 cigarette, went out on the porch.

21 At this time -- this is critical, folks. And this  
22 didn't even take two minutes. Walk in. I went in to pee.  
23 After I got done, left the seat up. Men do that. I stuck my  
24 head in the -- the light was on in the bathroom in the master  
25 bedroom. The door was cracked, but you could see the light.

ROUGH DRAFT TRANSCRIPT

004081



1 There's no night light. The evidence is going to show this.  
2 There's no light -- there's no fixture above. You've got to  
3 have a lamp in the room somewhere. I just see that she's in  
4 there, hear she's doing something. No words were ever  
5 exchanged between us. Not one word.

6 I go in the kitchen to get a cigarette, and I go out  
7 on the porch. When I go out on the porch, I open the door all  
8 the way up, like I always do, because I didn't smoke in the  
9 apartment because of her health. I at least respected -- I  
10 smoked out on the porch. The evidence is going to show --  
11 there's a picture, two little chairs set out there. Everybody  
12 -- all the neighbors say I always sat out there and drank in  
13 the past, and smoked my cigarettes. Nobody disputes that.

14 So, when I walk out and I open up the door  
15 completely wide open, and I go out there and I smoke my  
16 cigarette, folks, you got to remember, I'm extremely  
17 intoxicated. The evidence will show that. I forgot I had my  
18 jacket on. Smoked a cigarette, finished it.

19 I had a little steel container there that I put them  
20 in, threw it in. I got an oxygen tube, [inaudible]. I filled  
21 it with sand and set it in the corner in the second apartment.  
22 I threw [inaudible] -- to keep it clean, you know, at least.  
23 Finished my cigarettes. Man, I got to get this jacket off.  
24 What am I doing? Man, no wonder why I'm so -- my God.

25 Now, from the time of me waking up and going

ROUGH DRAFT TRANSCRIPT

004082

1 upstairs -- folks, you know, I'm going on, and on, and on, but  
2 I hope you can relate what I'm saying. It only took a matter  
3 of minutes. I woke up. I finally had to pee. I go upstairs.  
4 My neighbor sees me. You know, finished a cigarette,  
5 Remember, I had partial cigarettes. [Inaudible] save them. I  
6 mean, they're expensive now.

7 But [inaudible] me, threw it away. Go into the  
8 apartment. I go right to the spare bedroom. Pee. I come  
9 out, I look, and see that she's in the bathroom. I walk in --  
10 my cigarette drawer, the evidence will show this -- show you  
11 where it's at. I go out on the balcony. Finish a cigarette,  
12 smoke another cigarette, wondering what I'm going to do now.  
13 I wanted to drink some more, even though I was drunk. You  
14 know, when I start, I don't want to stop.

15 But all of the sudden, I started getting hot. It  
16 makes sense, folks, the evidence -- it makes total sense.  
17 You'll see this jacket. I'm like, man, I got to take this  
18 jacket off, man. I take this jacket off.

19 I walk into my bedroom, the evidence will show.  
20 Once I go into the bedroom, walk around the bed, she hears me.  
21 I don't even know this. But all the sudden, light comes in.  
22 And she flies out of the bathroom, and she's got a knife. An  
23 accident happened, folks. I was trapped, and I kept trying to  
24 grab the knife. They want to say I stabbed her. I can't sit  
25 here and tell you how many times I deflected, or what I did.

ROUGH DRAFT TRANSCRIPT

004083

1 But the evidence will show my hand got cut up trying to take  
2 it.

3 Now, of course, in a drunken statement, I said,  
4 yeah, I grabbed the knife from her, and I took it, is what  
5 they keep trying to beat down. I grabbed the knife, but I  
6 never took it from her. She yanked it back out of my hand. I  
7 never had the knife.

8 What they don't want to admit is -- folks, have you  
9 watched me? I'm right-handed. Key. Hello. The evidence  
10 will show, I'm right-handed right now. The wound's on the  
11 opposite side. And it's been determined as possibly  
12 accidental also, possibly suicidal. Not necessarily a stab,  
13 possibly a puncture. The evidence will show that.

14 But when she flies out at me, I already had my  
15 jacket in my hand. When the door opens up, there's mirrors.  
16 You'll see. The evidence will show this. I see her. The  
17 light -- it was like E.T. The light comes in, and I see her.  
18 I'm swinging my jacket.

19 I swing my jacket at her. I let it go. It hits the  
20 blinds, the little louvers from the glass sliding window.  
21 Some of them fall off. This big jacket's landed right there.  
22 They can't dispute it. You can't make that up. You can't  
23 make it up, being -- make this up. The physical evidence is  
24 right there.

25 So, after I swing the jacket, I'm trying to grab it.

ROUGH DRAFT TRANSCRIPT

004084

1 I finally get a hold of her, folks, and I push her back on the  
2 bed. And when I pushed her back, it went in the side. She's  
3 right-handed. There was no light on in the room. I was so  
4 drunk. She was so drunk. She was on determined medically --  
5 they don't want to admit it, O.D. level of medication, her  
6 SSR's. Her liver could not process them.

7           You know, I said some things. When you're extremely  
8 drunk and they're trying to interrogate -- no, this -- tell us  
9 this, you know, they try to hold you to everything. But yet,  
10 they've made statements, and they don't want to be held to  
11 them. And they're police, and they're trained, and they're  
12 not drunk, but their statements are everywhere.

13           When I pushed her back, there was no intent. It was  
14 natural self-defense. My motor skills were so slow. Common  
15 sense, folks. They don't want to admit the sharpness of the  
16 blade is facing back toward her back. They don't want to  
17 admit that they have already determined the wound is from  
18 front to back, so it makes sense that I had a hold of her,  
19 front to back. So, we were facing each other. And they were  
20 admitting that it was from out to in, from the front to back.

21           Now, I don't care. Common sense, folks. The  
22 evidence shows that. So, you go home tonight, and you try to  
23 figure out a way -- when the evidence will show the diagram,  
24 there's no way if she's laying on the bed that I could stab  
25 her in any way that would have that angle. It's impossible.

ROUGH DRAFT TRANSCRIPT

004085

1 It's a physical impossibility. I'm right-handed. If I  
2 stabbed her first of all -- and they have already determined  
3 it was from front -- we were facing each other. It's on the  
4 wrong side of the body.

5 She's right-handed. She had it in her hand. I had  
6 my hand on her. If I would have stabbed her, it would have  
7 been on the other side. They don't want to talk about that.  
8 They call it a stabbing. There's only one wound. It is  
9 consistent with a puncture, and it's only four and-a-quarter  
10 inches, they determined, yet the knife was eight inches.

11 And if I wanted to stab her out of vengeance, as the  
12 State claims, that knife would have gone all the way in,  
13 because they've already determined it didn't hit any bone,  
14 cartilage. And without a doubt, it would have gone all the  
15 way in if it was intentional. The evidence won't dispute  
16 that. It can't. The physical evidence disputes that it's an  
17 intentional stabbing, but they don't want to admit it.

18 All I know, in my dumb drunkenness, and in a dark  
19 room, that the evidence will show there was no light, except  
20 coming from the bathroom, I freaked out. You want to talk  
21 about PTSD. I noticed something started to get wet. I didn't  
22 know. And I don't even still remember when I realized it was  
23 blood. And she kind of stopped moving, and she dropped the  
24 knife. It fell out of her hand. And they -- the knife was  
25 never hid. It never left the spot where it fell from, her

ROUGH DRAFT TRANSCRIPT

004086

1 hand.

2 And the evidence will show that the knife, by their  
3 own expert for the State, police department, that the knife  
4 was not wiped off, and there was no fingerprints. But yet, I  
5 stabbed her. I didn't need to stab her, if I wanted to hurt  
6 her. I freak out, folks, without a doubt. I used bad  
7 judgment. But this is a big difference here, folks. Here, I  
8 mean, they're claiming murder. Man.

9 I start picking her up, folks. I don't know how  
10 many times I grabbed her. And this is all within a ten-minute  
11 period from once I used the bathroom, and I went out, and I  
12 went back in to hang up my jacket. The neighbor already said,  
13 he seen me 15 minutes before.

14 But I'm saying, the whole situation didn't even take  
15 60 seconds. It happened so fast, I don't even -- but I know I  
16 kept trying to pick her up, folks. I was trying to grab her  
17 from the bed, and I dropped her on the floor several times.  
18 And that's when I was saying, I didn't mean to hurt you. I  
19 dropped her one time. She hit her head so hard. She slipped  
20 -- she kept slipping.

21 And I feel like not a man, because I was drunk, and  
22 she -- I kept dropping her. That's what Cookie said he heard.  
23 I'm sure the testimony will show, and the evidence already has  
24 shown, he says all the sudden, he heard a big thud -- bang.  
25 Cookie runs up. The door's still wide open, folks. Because I

ROUGH DRAFT TRANSCRIPT

004087

1 -- when I went back out to smoke the cigarette, I left it wide  
2 open. I had nothing to hide. Who would do that if you're  
3 going to hurt somebody? The window's always open.

4 Cookie comes up because he hears this big thud. He  
5 says he's mad, he's angry, he's got to go to work. I would  
6 be, too. But they all testify that there was no arguing, no  
7 fighting, no shouting, no nothing. But I'm loud, believe me.  
8 You think I'm loud now? Imagine me drunk if I'm mad. But  
9 they can't dispute they never heard no dispute. There was no  
10 battery domestic violence going on.

11 Cookie says he comes in. He hears me say, help.  
12 Boy, that's a far cry from, I want to hurt her. I'm saying,  
13 help me. Cookie runs in and sees me. He gets scared, and he  
14 runs out, and he leaves me. And he runs out, and he starts  
15 screaming, oh, man, [inaudible]. I don't know this has  
16 happened. But now, the testimony will show that's what was  
17 stated. I don't care. Let it be shown.

18 There are so many discrepancies to where they're  
19 changing, now, oh, yeah, maybe it was only an hour. Maybe it  
20 was only 20 minutes. Yeah, now, I was watching this show; I  
21 was watching that. There's going to be great discrepancies  
22 into when they called the police. You're going to hear  
23 evidence of the 9-11 call, where when Cookie runs out, he says  
24 he goes into his place, and he makes a phone call. I ask him  
25 for help, and he takes off.

ROUGH DRAFT TRANSCRIPT

004088



1 I didn't have time to go find the telephone. I  
2 don't even know where the cell phone's at. I don't even know  
3 where it's at. But yet, they expect me to just drop -- stop  
4 what I'm doing; sorry, baby, let me make a call. I need some  
5 help.

6 MR. LALLI: I'm sorry, Your Honor, I'm going to  
7 object again. This is now turning to argument, Your Honor, as  
8 opposed to an opening statement.

9 THE COURT: Yeah. The fact that -- you know. It's  
10 a fine line here. You know, you've been at this a long time,  
11 and you're repeating yourself. But move on and try to  
12 conclude this, all right?

13 MR. O'KEEFE: Yes, Your Honor.

14 This is my life, folks. And a tragedy has truly  
15 happened. The evidence is going to show, there are so many  
16 discrepancies. He runs out, he asks for help. He says he  
17 goes to Todd, he goes here, he goes to the apartment manager.  
18 He does this, he does that.

19 They make a call to the police. You'll hear -- the  
20 evidence will show, Robin, the manager of the apartment  
21 complex. They say, call 9-11. Someone's up there stabbed.  
22 Someone won't let someone in. They won't let anybody in. He  
23 won't let anybody in to help. You'll hear it.

24 She says, nobody's fighting. She's the apartment  
25 manager. She knows the place; she's been there for years.

ROUGH DRAFT TRANSCRIPT

004089



1 She's -- nobody's fighting, I would know. I'm -- you know,  
2 it's not that far. Nobody's fighting here. Who are you  
3 talking about? Nobody is fighting. You'll hear it on the 9-  
4 11 call. Nobody's fight -- there's no fighting.

5 He said, yeah, there's somebody up there in the  
6 thing, and he won't let anybody in. So, then, Todd, the  
7 second 9-11 call, you hear this guy said, yeah, he's -- the  
8 neighbor says that there's a beating going on, he hears all  
9 kinds of fighting. See, those were the inconsistencies that  
10 gets relayed to the police, so the police come -- now, they  
11 want to come to hard charging.

12 Todd doesn't say on the 9-11 call, or tell anyone  
13 that I already asked Cookie, who first came in and I said,  
14 help me, I was asking for help. But he makes a 9-11 call, and  
15 says I won't let anybody in and help. You're telling two  
16 stories. They don't tell the cops that I was asking Cookie to  
17 help me. Help me get her in the living room in the light.

18 There's no disputing, folks, the cops come. They  
19 come in force. A lot of stories. A lot of different stories.  
20 Their stories are so twisted, they don't even know anymore.  
21 Their excuse now, I'm sure you'll probably hear the evidence,  
22 I can't remember, will probably be the story.

23 They say that they could see me in on the bed,  
24 talking to her or petting her. The evidence is going to show  
25 where I quite clearly was saying, please come in here and help

ROUGH DRAFT TRANSCRIPT

004090

1 me. And I even resolved to a lot of profanity, and don't hold  
2 that against me.

3 But I wanted to kill her? And I'm saying, get the  
4 fuck in here and help me. Oh, we feel he was baiting us.  
5 Ultimately, though, was I? Was I baiting anyone? They  
6 clearly said they didn't see any weapons in my hand. They  
7 didn't see nothing. I was beside her, and I was talking to  
8 her, V.

9 They had me on the porch for an hour, hour  
10 and-a-half. Inconsistency. I'll prove that the evidence will  
11 show that there was another lie by the police. It's an  
12 untruth. Let's clean it up, an untruth. He says, all the  
13 sudden, miraculously, in this prior proceeding, that he  
14 presents evidence that I made these statements in the car.  
15 Boy, that's unbelievable.

16 I never made any statements to police, or comments,  
17 or anything. And he doesn't know my girl's sick. And I  
18 always used to tell her, quit telling me. Their own evidence  
19 will show that they know that she was scheduled years ago to  
20 have five years to live, if she was lucky, with her continued  
21 conduct of over-excessive drinking and medication. She abused  
22 it. Anger management problems, bipolar; you name the  
23 problems. But didn't mean she was a bad person though. I  
24 will say that.

25 The evidence will show quite clearly that the cops

ROUGH DRAFT TRANSCRIPT

004091

1 ultimately came in. When they came in, they came in 5, 6  
2 deep. And there was no room for them to stand. When they  
3 came in, they came flying over that bed, a couple of them did.  
4 And they landed on her, landed on me. Kicks.

5 They can say whatever they want, but now, they don't  
6 want to. Well, I'm not sure. He was here, and all this.  
7 Yet, they tased me, and they admit that they were fighting me,  
8 trying to get my arm. And I'm trying to protect her, don't  
9 look at her.

10 And this clothes thing. They tried to create some  
11 perverted thing, or whatever. I don't know where they're  
12 going with that. But the whole bottom line is, folks, when  
13 the blood was coming down her, and I was trying to get her on  
14 the floor, I was trying to figure out how to stop the  
15 bleeding.

16 I didn't know. I was so confused. It was dark. I  
17 was freaking out. Blood was everywhere, and it kept coming  
18 down. And her pants, and I pull them off, I'm running, I'm  
19 trying help. I'm thinking Cookie's coming. I don't know  
20 what's going on. I messed up. But I didn't kill her.

21 Cops tase me repeatedly. This extremely experienced  
22 homicide detective, the evidence will show that he says his  
23 opinion on these hand wounds. But yet, the evidence is going  
24 to show, he didn't take pictures of my thumb. Evidence  
25 destroyed again. Only my finger. He doesn't want to admit

ROUGH DRAFT TRANSCRIPT

004092

1 that I'm right-handed.

2 The evidence is going to show he's made statements  
3 over and over that, yeah, my experience, from my opinion as a  
4 [inaudible], I know what I'm doing. It's commonly that a --  
5 when your hand's all bloody -- so, wait a minute. The  
6 evidence is going to show, is I didn't even have the knife.  
7 There ain't no fingerprints. It's in the wrong hand, wrong  
8 location.

9 And there wasn't any blood for the knife to slip out  
10 of my hand to cut myself. And the cuts -- the location -- I  
11 claimed, the evidence is going to show, it was an intentional  
12 act. That's up for you to decide. They know the cuts. They  
13 know my extreme intoxication. The evidence is going to show  
14 they didn't want to collect that evidence.

15 They didn't want to go to Paris Hotel to collect  
16 that we were there, yet I repeatedly asked them over and over.  
17 They didn't want to go to Vons, where she went earlier in the  
18 day and got wine. They didn't want to do anything. They just  
19 wanted to get the case over with. You killed her, because  
20 your neighbor said so. Wow. Great job.

21 There's a lot of reasons, folks, why I'm trying to  
22 do this. Please don't hold it against me. There's a lot of  
23 things I left out. The evidence is going to show, there's  
24 going to be time for this. Folks, the evidence is quite  
25 clearly going to show there was no murder. There was no

ROUGH DRAFT TRANSCRIPT

004093

1 intentional stabbing. There was no stab at all. There was no  
2 intent. Thank you for your time.

3 THE COURT: Thank you very much, Mr. O'Keefe. That  
4 completes the opening statements on behalf of the State and  
5 the defense. What we're going to do is take our noon recess.  
6 And then, we're going to come back at 1:15, and we're going to  
7 hear -- start the State's case in chief. All right? So,  
8 thank you very much.

9 And please, during this recess, it your duty not to  
10 converse among yourselves, or with anyone else, on any subject  
11 connected with the trial, or read, watch, or listen to any  
12 report or commentary on the trial by any person connected with  
13 the trial, or by any medium of information, including, without  
14 limitation, newspapers, television, or radio. And you are not  
15 to form or express any opinion on any subject connected with  
16 the trial until the cause is finally submitted to you.

17 So, we'll be back about 1:15. Just wait outside,  
18 and our marshal will bring you in all at one time. All right?  
19 [Inaudible].

20 (Court recessed at 12:02 p.m. until 1:21 p.m.)

21 (Within the presence of the jury panel)

22 (Pause in the proceedings)

23 THE MARSHAL: All right. Please remain seated.  
24 Let's come to order, please. Make sure all cell phones are  
25 turned off. We're back in session.

ROUGH DRAFT TRANSCRIPT

004094

1 THE COURT: All right. Parties, stipulate to the  
2 presence of the jury?

3 MR. LALLI: Yes, Your Honor.

4 MR. O'KEEFE: Yes, Your Honor.

5 THE COURT: All right. We of course picked a jury.  
6 We had opening statements. And now, we're going to proceed on  
7 the plaintiff's case -- excuse me, the State's case in chief.  
8 So, the State will call it's first witness, please.

9 MR. O'KEEFE: Your Honor, with all due respect,  
10 could we approach the bench before we call this witness, and  
11 clarify a matter quickly? Thank you.

12 (Off-record bench conference)

13 THE COURT: All right. Who's your first witness?

14 MS. MERCER: Lieutenant Price, Your Honor.

15 THE COURT: Lieutenant Price?

16 MS. MERCER: Yes.

17 THE MARSHAL: And Lieutenant Price, if you will  
18 remain standing. Please, sir, raise your right hand and face  
19 the clerk.

20 ROGER PRICE, STATE'S WITNESS, SWORN

21 THE MARSHAL: If you would have a seat, sir. Slide  
22 up to the microphone. And if you would, for the record,  
23 please state and spell your name.

24 THE WITNESS: Thank you. My name is Roger Price.  
25 That's R-o-g-e-r, P-r-i-c-e.

ROUGH DRAFT TRANSCRIPT

004095

1 THE COURT: All right. Before we proceed, ladies  
2 and gentlemen, I again limit -- or give you a limiting  
3 instruction. You're about to hear evidence of other crimes,  
4 wrongs, or acts. And they're not admissible to prove the  
5 character of a person in order to show that he acted in  
6 conformity therewith. It may, however, be admissible as proof  
7 of motive, intent, or absence of mistake or accident.

8 With that instruction, proceed now.

9 MS. MERCER: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. MERCER:

12 Q Sir, where are you currently employed?

13 A I'm the graveyard lieutenant at the Enterprise area  
14 command with LVMPD.

15 Q Is that Las Vegas Metropolitan Police Department?

16 A Yes, ma'am.

17 Q And how long have you been employed with Metro?

18 A 15 years.

19 Q Back in April of 2004, what was your position with  
20 Metro?

21 A I was a swing shift police officer at the downtown  
22 area command, assigned to downtown 32.

23 Q Okay. So, you were on patrol?

24 A Yes, ma'am.

25 Q And on April 2nd, 2004 at about 9:00 p.m., were you

ROUGH DRAFT TRANSCRIPT

004096

1 dispatched to an incident that took place at 1825 Lewis?

2 A Yes, ma'am.

3 Q When you arrived at that -- well, did you arrive at  
4 that location?

5 A Yes, ma'am.

6 Q And what information did you have in regards to why  
7 you were being dispatched there?

8 A We were dispatched to a domestic disturbance, where  
9 the female half, Victoria Whitmarsh, had alleged that her  
10 boyfriend, Brian O'Keefe, had battered her.

11 Q Okay. And when you arrived at 1825 Lewis, did you  
12 in fact make contact with Victoria Whitmarsh and Brian  
13 O'Keefe?

14 A Yes, ma'am, we did.

15 Q Do you see Brian O'Keefe in the courtroom today?

16 A Yes, ma'am.

17 Q Could you please point to him, and identify an  
18 article of clothing that he's wearing?

19 A Right over there. A yellow tie.

20 MS. MERCER: Your Honor, may the record reflect that  
21 he's identified the defendant?

22 THE COURT: The record will so reflect.

23 BY MS. MERCER:

24 Q When you respond to a domestic violence incident,  
25 how do you typically proceed with your investigation?

ROUGH DRAFT TRANSCRIPT

004097



1           A     We separate both parties involved. We interview  
2 both parties to get basically their side of the story. You  
3 get what each of them say. Then, you evaluate the evidence at  
4 the scene, and see if the evidence corroborates one story or  
5 the other, or if the two stories corroborate each other.

6           Q     Okay. And when you say evidence at the scene, can  
7 you give me some examples of what you look for?

8           A     If there's an allegation that there was some  
9 physical damage in the residence, you look for that. You look  
10 for bruising, reddening, scratches, cuts; any marks that would  
11 confirm the battery had occurred.

12          Q     Okay. Now, you indicated that at 9:00 p.m., when  
13 you were dispatched to that address, Victoria Whitmarsh had  
14 alleged that she was battered by the defendant, Brian O'Keefe?

15          A     That's correct, ma'am.

16          Q     Were you -- did you speak with both parties?

17          A     Yes, ma'am.

18          Q     And does the law require that you make an arrest in  
19 certain situations when you respond to a domestic violence  
20 call?

21          A     If there is probable cause that a battery had  
22 occurred within the last 24 hours, and a domestic relationship  
23 can be established, then the law requires an arrest be made.

24          Q     And do you know why that is?

25          A     Basically, for the protection of the victims of the

ROUGH DRAFT TRANSCRIPT

004098

1 domestic battery. And a lot of times, we get a case where we  
2 go, and there was a battery that occurred, and the victim does  
3 not want to press charges at that point. And it's basically  
4 to protect the victim from some of their own decisions,  
5 basically is the best way to put it.

6 Q Okay. And is it to prevent something more serious  
7 from happening?

8 A Yes, ma'am.

9 Q Were you able to confirm that a battery did in fact  
10 occur at the -- when you first responded to that address?

11 A Not on that call. There wasn't enough physical  
12 evidence to support the allegation of battery.

13 Q When you made contact with Victoria Whitmarsh  
14 initially, did she have any visible injuries?

15 A No, ma'am, she did not.

16 Q How did you proceed at that point?

17 A At that point, we spoke to both halves. And based  
18 upon the totality of the circumstances, we thought it would be  
19 best that the two separate for the night, and basically allow  
20 cooler heads to prevail. So, we suggested that one of them  
21 leave the apartment.

22 Q Okay. And do you recall which party you recommended  
23 leave the apartment?

24 A Initially, we just asked -- we recommended that one  
25 of them leave. Mr. O'Keefe stated that he had either friends

ROUGH DRAFT TRANSCRIPT

004009

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**  
                  Respondent.

**Supreme Court No.:**

District Court Case No.: 08C250630

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7                   **APPELLANT'S APPENDIX – VOLUME XXI – PAGES 4000-4199**

8  
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"Evidentiary Hearing Request" (Amended 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 10/03/14	4995-5007
"Reply" to State's Response and Motion to Dismiss to Defendant's Pro Per Petition for Writ of Habeas Corpus Prsuant to NRS 34.360 filed on 10/27/14	5052-5061
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Case Appeal Statement filed on 05/21/09	0334-0336
Case Appeal Statement filed on 08/04/15	5476-5477
Case Appeal Statement filed on 08/12/15	5484-5485
Case Appeal Statement filed on 09/02/14	4925-4926
Case Appeal Statement filed on 09/04/12	3536-3537
Case Appeal Statement filed on 09/24/12	4625-4628
Case Appeal Statement filed on 10/20/15	5547-5548
Case Appeal Statement filed on 10/21/15	5554-5556
Case Appeal Statement filed on 11/04/15	5572-5573
Case Appeal Statement filed on 11/24/14	5070-5071
Certificate of Mailing filed on 05/03/11	3048

1	Certificate of Service filed on 06/29/15	5454
2	Clerks Certificate Judgment Reversed and Remanded filed on 05/06/10	1023-1027
3	Criminal Bindover filed on 12/26/08	0004-0020
4	Criminal Order to Statistically Close Case filed on 07/31/13	4662
5	Defendant O'Keefe's Opposition to Motion in Limine to Admit Evidence of Other Bad Acts Pursuant to NRS 48.045 and Evidence of Domestic Violence Pursuant to 48.061 filed on 01/18/11	2877-2907
6	Defendant's Brief on Admissibility of Evidence of Alleged Victim's History of Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation (With Knives and Scissors), and Erratic Behavior filed on 03/20/09	0293-0301
8	Defendant's Motion to Require Court to Advise the Prospective Jurors as to the Mandatory Sentences Required if the Defendant is Convicted of Second Degree Murder filed on 03/04/09	0196-0218
9	Defendant's Motion to Settle Record filed on 03/24/09	0317-0322
10	Defendant's Proposed Jury Instructions filed on 03/20/09	0302-0316
11	Defendant's Proposed Jury Instructions filed on 08/23/10	1335-1393
12	Defendant's Submission to Clark County District Attorney's Death Review Committee filed on 12/31/08	0021-0027
13	Defendant's Supplemental Proposed Jury Instructions filed on 03/20/09	0290-0292
14	Defendant's Supplemental Notice of Witnesses filed on 08/16/10	1294-1296
14	District Court Amended Jury List filed on 03/19/09	0245
15	District Court Jury List filed on 03/16/09	0239
16	Ex Parte and/or Notice of Motion and Motion to Chief Judge to Reassign Case to Jurist of Reason Based on Pending Suit 3:14-CV-00385-R CJ-WGC Against Judge Michael Villani for proceeding in Clear "Want of Jurisdiction" Thereby Losing Immunity, Absolutely filed on 08/28/14	4903-4912
17	Ex Parte and/or Notice of Motion filed on 08/28/14	4913
18	Ex Parte Application for Order Requiring Material Witness to Post Bail filed on 03/10/09	0232-0236
19	Ex Parte Motion for an Order Shortening Time filed on 08/16/10	1292-1293
20	Ex Parte Motion for Appointment of Counsel Pursuant to NRS 34.750 filed on 09/15/14	4950-4952
21	Ex Parte Motion for Defense Costs filed on 06/30/10	1037-1043
22	Ex Parte Motion for Production of Documents (Specific) Papers, Pleadings and Tangible Property of Defendant filed on 01/13/14	4714-4720
23	Ex Parte Motion for Reimbursement of Legal Cost of Faretta Canvasea Defendant to Above Instant Case filed on 12/13/13	4701-4707
24	Ex Parte Motion for Release of Medical Records filed on 04/08/11	3041-3042
25	Ex Parte Motion to Extend Prison Copywork Limit filed on 06/24/15	5438-5441
26	Exhibits to Petition for Writ of Habeas Corpus by a True Pretrial Detainee filed on 09/15/14	4954-4980
27	Ex-Parte Motion for Reimbursement of Incidental Costs Subsequent the Court Declaring Defendant Indigent and Granting Forma Pauperis filed on 01/21/14	4722-4747
28		



1	Ex-Parte Motion to Extend Prison Copywork Limit filed on 01/28/14	4764-4767
2	Filing in Support of Motion to Seal Records as Ordered by Judge filed on 04/19/12	3438-3441
3	Findings of Fact, Conclusion of Law and Order filed on 10/02/15	5528-5536
4	Information filed on 12/19/08	0001-0003
5	Instructions to the Jury (Instruction No. 1) filed on 09/02/10	1399-1426
6	Instructions to the Jury filed on 03/20/09	0246-0288
7	Judgment of Conviction (Jury Trial) filed on 09/05/12	4623-4624
8	Judgment of Conviction filed on 05/08/09	0327-0328
9	Judicial Notice Pursuant NRS 47.140(1)-NRS 47.150(2) Supporting Pro-Se Petition Pursuant NRS 34.360 filed on 03/12/15	5082-5088
10	Jury List filed on 06/12/12	3456
11	Jury List filed on 08/25/10	1396
12	Letters in Aid of Sentencing filed on 05/04/09	0324-0326
13	Motion by Defendant O'Keefe filed on 08/19/10	1329-1334
14	Motion for Complete Rough Draft Transcript filed on 04/03/12	3430
15	Motion for Judicial Notice the State's Failure to File and Serve Response in Opposition filed on 02/24/14	4800-4809
16	Motion for Judicial Ruling filed on 05/24/10	1028-1030
17	Motion for Leave to File Supplemental Petition Addressing All Claims in the First Instance Required by Statute for Judicial Economy with Affidavit filed on 06/15/15	5420-5422
18	Motion for Relief from Judgment Based on Lack of Jurisdiction for U.S. Court of Appeals has not Issued any Remand, Mandate, or Remittitur filed on 07/23/14	4871-4889
19	Motion to Continue Trial filed on 06/01/12	3450-3455
20	Motion to Dismiss Counsel filed on 10/03/11	3164-3168
21	Motion to Modify and/or Correct Illegal Sentence filed on 01/27/14	4749-4759
22	Motion to Place on Calendar filed on 10/26/11	3169-3182
23	Motion to Place on Calendar filed on 11/28/11	3184-3192
24	Motion to Withdraw as Counsel filed on 04/29/11	3044-3047
25	Motion to Withdraw Counsel filed on 11/28/11	3193-3198
26	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 Chapter 34 filed on 06/08/15	5148-5153
27	Motion to Withdraw filed on 09/14/10	1434-1437
28	Notice of Appeal filed on 03/13/14	4843-4849
	Notice of Appeal filed on 04/11/14	4858-4861
	Notice of Appeal filed on 05/21/09	0332-0333
	Notice of Appeal filed on 07/31/15	5467-5472
	Notice of Appeal filed on 08/11/15	5478-5483
	Notice of Appeal filed on 08/29/14	4923-4924
	Notice of Appeal filed on 10/21/15	5552-5553
	Notice of Appeal filed on 11/03/15	5569-5571

1	Notice of Appeal filed on 11/21/14	5067-5069
2	Notice of Change of Address filed on 06/06/14	4864-4865
3	Notice of Defendant's Expert Witness filed on 02/20/09	0180-0195
4	Notice of Defendant's Witnesses filed on 03/06/09	0224-0227
5	Notice of Entry of Findings of Fact, Conclusion of Law and Order filed on 10/06/15	5537-5546
6	Notice of Expert Witnesses filed on 03/05/09	0222-0223
7	Notice of Motion and Motion by Defendant O'Keefe for a Reasonable Bail filed on 09/24/10	1441-1451
8	Notice of Motion and Motion by Defendant O'Keefe for Discovery filed on 08/02/10	1211-1219
9	Notice of Motion and Motion by Defendant O'Keefe for Evidentiary Hearing on Whether the State and CCDC have Complied with Their Obligations with Respect to the Recording of a Jail Visit Between O'Keefe and State Witness Cheryl Morris filed on 08/02/10	1220-1239
10	Notice of Motion and Motion by Defendant O'Keefe to Admit Evidence Pertaining to the Alleged Victim's Mental Health Condition and History, Including Prior Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation and Erratic Behavior filed on 07/21/10	1064-1081
11	Notice of Motion and Motion by Defendant O'Keefe to Admit Evidence Pertaining to the Alleged Victim's Mental Health Condition and History, Including Prior Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation and Erratic Behavior filed on 07/21/10	1099-1116
12	Notice of Motion and Motion by Defendant O'Keefe to Admit Evidence Showing LVMPD Homicide Detectives Have Preserved Blood/Breath Alcohol Evidence in Another Recent Case filed on 08/02/10	1199-1210
13	Notice of Motion and Motion by Defendant O'Keefe to Dismiss on Grounds of Double Jeopardy Bar and Speedy Trial Violation and, Alternatively, to Preclude State's New Expert Witness, Evidence and Argument Relating to the Dynamics or Effects of Domestic Violence and Abuse filed on 01/07/11	2785-2811
14	Notice of Motion and Motion by Defendant O'Keefe to Preclude Expert Testimony filed on 08/16/10	1284-1291
15	Notice of Motion and 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 07/21/10	1047-1063
16	Notice of Motion and 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 07/21/10	1082-1098
17	Notice of Motion and Motion by defendant O'Keefe to Preclude the State from Introducing at Trial Improper Evidence and Argument filed on 01/03/11	1682-2755
18	Notice of Motion and motion by Defendant O'Keefe to Suppress his	

1	Statements to Police, or, Alternatively, to Preclude the State from	
2	Introducing Portions of his Interrogation filed on 08/02/10	1152-1198
3	Notice of Motion and Motion for Leave of Court to File Motion for	
4	Rehearing - Pursuant to EDCR, Rule 2.24 filed on 08/29/14	4914-4921
5	Notice of Motion and Motion in Limine to Admit Evidence of Other Bad	
6	Acts Pursuant to NRS 48.045 and Evidence of Domestic Violence	
7	Pursuant to 48.061 filed on 01/06/11	2762-2784
8	Notice of Motion and Motion to Admit Evidence of Other Crimes filed on	
9	02/02/09	0150-0165
10	Notice of Motion and Motion to Admit Evidence of Polygraph	
11	Examination Results filed on 03/29/12	3412-3415
12	Notice of Motion and Motion to Dismiss based Upon Violation(s) of the	
13	Fifth Amendment Component of the Double Jeopardy Clause,	
14	Constitutional Collateral Estoppel and, Alternatively, Claiming Res	
15	Judicata, Enforceable by the Fourteenth Amendment Upon the States	
16	Precluding State's Theory of Prosecution by Unlawful Intentional	
17	Stabbing with Knife, the Alleged Battery Act Described in the Amended	
18	Information filed on 03/16/12	3201-3224
19	Notice of Motion and Motion to Seal Records filed on 03/22/12	3416-3429
20	Notice of Motion and Motion to Waive Filing Fees for Petition for Writ of	
21	Mandamus filed on 12/06/13	4695-4697
22	Notice of Motion and Motion to Withdraw as Attorney of Record filed on	
23	09/23/15	5517-5519
24	Notice of Motion and Motion to Withdraw as Attorney of Record filed on	
25	09/29/15	5525-5527
26	Notice of Motion filed on 01/13/14	4721
27	Notice of Motion filed on 01/21/14	4748
28	Notice of Motion filed on 01/27/14	4760
	Notice of Motion filed on 02/24/14	4810
	Notice of Motion filed on 03/04/14	4833
	Notice of Motion filed on 06/08/15	5154-5160
	Notice of Motion filed on 07/23/14	4890
	Notice of Motion filed on 08/29/14	4922
	Notice of Motion filed on 09/15/14	4953
	Notice of Witness and/or Expert Witnesses filed on 02/03/09	0166-0167
	Notice of Witnesses and/or Expert Witnesses filed on 02/17/09	0178-0179
	NV Supreme Court Clerks Certificate/ Judgment Affirmed filed on	
	02/06/15	5072-5081
	NV Supreme Court Clerks Certificate/Judgment Affirmed filed on	
	07/26/13	4653-4661
	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on	
	06/18/14	4866-4870
	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on	
	03/12/15	5089-5093
	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on	



1	09/28/15	5520-5524
2	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on 10/29/14	5062-5066
3	O'Keefe's Reply to State's Opposition to Motion to Admit Evidence Showing LVMPD Homicide Detectives have Preserved Blood/Breath Alcohol Evidence in Another Recent Case filed on 08/13/10	1256-1265
4	Opposition to State's Motion to Admit Evidence of Other Bad Acts filed on 02/06/09	0169-0172
5	Order Authorizing Contact Visit filed on 03/04/09	0219-0220
6	Order Authorizing Contact Visit filed on 08/12/10	1253-1254
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 Recoreds 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
17	Order Denying Matthew D. Carling's Motion to Withdraw as Attorney of Record for Defendant filed on 11/19/15	5574-5575
18	Order Denying Motion to Disqualify filed on 10/06/14	5037-5040
19	Order filed on 01/30/09	0149
20	Order filed on 11/06/10	1462-1463
21	Order for Petition for Writ of Habeas Corpus filed on 10/15/14	5051
22	Order for Production of Inmate Brian O'Keefe filed on 05/26/10	1032-1033
23	Order for Return of Fees filed on 11/10/11	3183

1	Order for Transcripts filed on 04/30/12	3442
2	Order Granting and Denying in Part Defendant's Ex-Parte Motion for Production of Documents (Specific) Papers, Pleadings, and Tangible Property of Defendant filed on 02/28/14	4818-4820
3	Order Granting Ex parte Motion for Defense Costs filed on 07/01/10	1044-1045
4	Order Granting Request for Transcripts filed on 01/20/11	2966-2967
5	Order Granting Request for Transcripts filed on 04/27/11	3043
6	Order Granting Request for Transcripts filed on 09/14/10	1430-1431
7	Order Granting Request for Transcripts filed on 09/16/10	1438-1439
8	Order Granting, in Part, and Denying, in Part, Motion by Defendant O'Keefe for Discovery filed on 08/23/10	1394-1395
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
11	Order Releasing Medical Records filed on 04/08/11	3039-3040
12	Order Requiring Material Witness to Post Bail or be Committed to Custody filed on 03/10/09	0230-0231
13	Order Shortening Time filed on 08/16/10	1283
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
20	Receipt of Copy filed on 01/03/11	2761
21	Receipt of Copy filed on 01/12/11	2812
22	Receipt of Copy filed on 01/12/11	2813
23	Receipt of Copy filed on 01/18/11	2876
24	Receipt of Copy filed on 01/27/09	0134
25	Receipt of Copy filed on 01/30/09	0146
26	Receipt of Copy filed on 02/06/09	0168

1	Receipt of Copy filed on 03/04/09	0221
2	Receipt of Copy filed on 03/24/09	0323
	Receipt of Copy filed on 05/24/10	1031
3	Receipt of Copy filed on 06/13/11	3163
	Receipt of Copy filed on 06/30/10	1036
4	Receipt of Copy filed on 08/02/10	1240
	Receipt of Copy filed on 08/02/10	1241
5	Receipt of Copy filed on 08/02/10	1242
	Receipt of Copy filed on 08/02/10	1243
6	Receipt of copy filed on 08/13/10	1255
7	Receipt of Copy filed on 09/14/10	1432
8	Receipt of Copy filed on 09/17/10	1433
	Receipt of Copy filed on 09/21/10	1440
9	Receipt of File filed on 07/01/10	1046
10	Reply in Support of Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) filed on 08/25/15	5500-5510
11	Reply to State's Response to Defendant's Pro Per Post-Conviction Petition for Habeas Corpus filed on 06/16/15	5423-5432
12	Reply to State's Response to Defendant's Supplemental Petition for Writ of Habeas Corpus filed on 08/24/15	5489-5499
13	Request for Rough Draft Transcripts filed on 10/21/15	5549-5551
14	Request for Rough Draft Transcripts filed on 07/17/12	3458-3460
	Request for Certified Transcript of Proceeding filed on 09/09/09	0772-0723
15	Request for Rough Draft Transcript filed on 05/21/09	0329-0331
16	Request for Rough Draft Transcripts filed on 11/20/12	4629-4631
	Return to Writ of Habeas Corpus filed on 01/29/09	0135-0145
17	Second Amended Information filed on 08/19/10	1326-1328
18	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 02/07/14	4768-4791
19	State's Opposition to Defendant's Motion for a Reasonable Bail filed on 09/27/10	1452-1461
20	State's Opposition to Defendant's Motion for Judicial Notice - The State's Failure to File and Serve the Response in Opposition filed on 03/10/14	4834-4839
21	State's Opposition to Defendant's Motion to Dismiss filed on 03/21/12	3407-3411
22	State's Opposition to Defendant's Motion to Preclude the State from Introducing at Trial Improper Evidence and Argument filed on 01/12/11	2814-2871
23	State's Opposition to Defendant's Motion to Seal Records filed on 04/05/12	3431-3433
24	State's Opposition to Defendant's Motion to Suppress his Statements to Police, or, Alternatively, to Preclude the State from Introducing Portions of his Interrogation filed on 08/17/10	1306-1319
25	State's Opposition to Defendant's Motion to Withdraw Counsel for Conflict and Failure to Present Claims When I.A.C. Claims Must be	
26		
27		
28		

1	Raised Per Statute in the First Petition Pursuant to Chapter 34 filed on 06/25/15	5442-5446
2	State's Opposition to Defendant's Pro Per Motion for Leave of Court to File Motion. . Rule 2.4 filed on 09/12/14	4935-4939
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
4	State's Opposition to Defendant's Pro Per Motion to Modify and/or Correct Illegal Sentence filed on 02/24/14	4811-4817
5	State's Opposition to Motion for Evidentiary Hearing on Whether the State and CCDC have Complied with their Obligations with Respect to the Recording of a Jail Visit Between O'Keefe and State Witness Cheryl Morris filed on 08/10/10	1244-1247
6	State's Opposition to Motion to Admit Evidence Pertaining to the Alleged Victim's Mental Health Condition and History, Including Prior Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation and Erratic Behavior filed on 08/16/10	1277-1282
7	State's Opposition to Motion to Admit Evidence Showing LVMPD Homicide Detectives Have Preserved Blood/Breath Alcohol Evidence in Another Recent Case filed on 08/10/10	1248-1252
8	State's Opposition to Motion to Dismiss and, Alternatively, to Preclude Expert and Argument Regarding Domestic Violence filed on 01/18/11	2908-2965
9	State's Opposition to Motion to Preclude Expert Testimony filed on 08/18/10	1320-1325
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
13	State's Response to Defendant's Petition for a Writ of Mandamus or in the Alternative Writ of Coram and Response to Motion to Appoint Counsel filed on 12/31/13	4708-4713
14	State's Response to Defendant's Pro Per Post-Conviction Petition for Writ of Habeas Corpus filed on 06/02/15	5145-5147
15	State's Response to Defendant's Pro Per Supplemental Petition for Writ	



1	of Habeas Corpus and Evidentiary Hearing Request, "Motion for Leave to	
2	File Supplemental Petition Addressing all Claims in the First Instance	
3	Required by Statute for Judicial Economy with Affidavit," "Reply to	
4	State's Response to Defendant's Pro Per Post Conviction Petition for	
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)	
8	from the Mooting of Petitioner's Section 2241 Based on a Subsequent	
9	Judgment Obtained in Want of Jurisdiction While Appeal Pending" filed	
10	on 07/09/15	5455-5458
11	State's Response to Defendant's Reply in Support of Supplemental Post-	
12	Conviction Petition for Writ of Habeas Corpus filed on 09/03/15	5511-5516
13	State's Response to Defendant's Supplement to Supplemental Petition for	
14	Writ of Habeas Corpus (Post-Conviction) filed on 07/31/15	5473-5475
15	State's Supplemental Opposition to Motion to Seal Records filed on	
16	04/17/12	3436-3437
17	Stipulation and Order filed on 02/10/09	0173-0174
18	Substitution of Attorney filed on 06/29/10	1034-1035
19	Supplement to Supplemental Petition for Writ of Habeas Corpus (Post-	
20	Conviction) filed on 07/13/15	5459-5460
21	Supplement with Notice Pursuant NRS 47.150 (2); NRS 47.140 (1), That	
22	the United State's Supreme Court has Docketed (#14-10093) The Pretrial	
23	Habeas Corpus Matter Pursuant 28 U.S.C. § 2241 ©(3) From the Mooting	
24	of Petitioner's Section 2241 Based on a Subsequent Judgment Obtained in	
25	Want of Jurisdiction While Appeal Pending filed on 06/17/15	5433-5437
26	Supplemental Appendix of Exhibits to Petition for a Writ of Habeas	
27	Corpus Exhibits One (1) Through Twenty Five (25) filed on 06/12/15	5161-5363
28	Supplemental Notice of Defendant's Expert Witnesses filed on 07/29/10	1117-1151
	Supplemental Notice of Expert Witness filed on 05/17/12	3443-3447
	Supplemental Notice of Expert Witnesses filed on 01/03/11	2756-2760
	Supplemental Notice of Expert Witnesses filed on 08/13/10	1266-1267
	Supplemental Notice of Expert Witnesses filed on 08/16/10	1297-1305
	Supplemental Notice of Witnesses filed on 01/14/11	2872-2875
	Supplemental Notice of Witnesses filed on 03/10/09	0228-0229
	Supplemental Notice of Witnesses filed on 03/11/09	0237-0238
	Supplemental Petition for Writ of Habeas Corpus (Post Conviction) filed	
	on 04/08/15	5094-5144
	Supplemental Petition for Writ of Habeas Corpus filed on 06/15/15	5364-5419
	Verdict filed on 03/20/09	0289
	Verdict filed on 06/15/12	3457
	Verdict Submitted to the Jury but Returned Unsigned filed on 09/02/10	1397-1398
	Writ of Habeas Corpus filed on 01/30/09	0147-0148

## TRANSCRIPTS

Document	Page No.
Transcript - All Pending Motions and Calendar Call filed on 02/04/11	2996-3038
Transcript - All Pending Motions filed on 07/10/09	0351-0355
Transcript - All Pending Motions filed on 08/30/12	3461-3482
Transcript - All Pending Motions filed on 11/23/10	1464-1468
Transcript - All Pending Motions on 07/10/09	0348-0350
Transcript - Calendar Call filed on 02/04/11	2968-2973
Transcript - Calendar Call filed on 08/30/12	3520-3535
Transcript - Continued Hearing: Motion in Limine to Present Evidence of Other Bad Acts filed on 08/30/12	3483-3509
Transcript - Defendant's Petition for Writ of Habeas Corpus (Post Conviction) filed on 10/29/15	5560-5564
Transcript - Defendant's Pro Per Motion to Dismiss Based Upon Violation(s) filed on 08/30/12	3510-3519
Transcript - Defendant's Motion to Settle Record filed on 07/10/09	0342-0345
Transcript - Entry of Plea/Trial Setting filed on 07/10/09	0356-0358
Transcript - Jury Trial - Day 1 filed on 10/14/09	0724-1022
Transcript - Jury Trial - Day 1 filed on 07/10/09	0582-0651
Transcript - Jury Trial - Day 1 filed on 07/10/09	0652-0721
Transcript - Jury Trial - Day 1 filed on 09/04/12	4278-4622
Transcript - Jury Trial - Day 1 filed on 11/23/10	1579-1602
Transcript - Jury Trial - Day 2 filed on 07/10/09	0515-0581
Transcript - Jury Trial - Day 2 filed on 11/23/10	1603-1615
Transcript - Jury Trial - Day 2 on 09/04/12	4001-4227
Transcript - Jury Trial - Day 3 filed on 07/10/09	0462-0514
Transcript - Jury Trial - Day 3 filed on 11/23/10	1616-1738
Transcript - Jury Trial - Day 3 on 09/04/12	3779-4000
Transcript - Jury Trial - Day 4 filed on 07/10/09	0408-0461
Transcript - Jury Trial - Day 4 filed on 11/23/10	1739-2032
Transcript - Jury Trial - Day 4 on 09/04/12	3600-3778
Transcript - Jury Trial - Day 5 filed on 07/10/09	0359-0407
Transcript - Jury Trial - Day 5 filed on 09/04/12	3538-3599
Transcript - Jury Trial - Day 5 filed on 11/23/10	2033-2281
Transcript - Jury Trial - Day 6 filed on 11/23/10	2282-2507
Transcript - Jury Trial - Day 7 filed on 11/23/10	2508-2681
Transcript - Jury Trial - Day 8 filed on 11/23/10	1469-1470
Transcript - Jury Trial - Day 9 filed on 11/23/10	1471-1478
Transcript - Matthew D. Carling's Motion to Withdraw as Attorney of Record for Defendant filed on 10/29/15	5557-5559
Transcript - Motions Hearing - August 17, 2010 filed on 11/23/10	1479-1499
Transcript - Motions Hearing - August 19, 2010 filed on 11/23/10	1500-1536
Transcript - Motions Hearing - August 20, 2010 filed on 11/23/10	1537-1578

1	Transcript – Notice of Motion and Motion by Defendant O’Keefe to	
2	Preclude the State from Introducing at Trial Improper Evidence and	
3	Argument filed on 02/04/11	2974-2989
4	Transcript – Partial Transcript of the Jury Trial - Day 2 filed on 03/18/09	0240-0244
5	Transcript – Petrocelli Hearing filed on 05/19/11	3049-3162
6	Transcript – Proceedings filed on 01/02/09	0028-0124
7	Transcript – Sentencing August 16, 2012 filed on 12/03/12	4632-4635
8	Transcript – Sentencing August 28, 2012 filed on 12/03/12	4636-4652
9	Transcript – Sentencing filed on 07/10/09	0337-0341
10	Transcript – Status Check: Availability of Dr. Benjamin for Trial filed on	
11	02/04/11	2990-2995

ACKNOWLEDGMENT

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

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*Julie Lord*

JULIE LORD, TRANSCRIBER

*8/24/12*

DATE

ROUGH DRAFT TRANSCRIPT

004000



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CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

BRIAN KERRY O'KEEFE,

Defendant.

CASE NO. C-250630

DEPT. NO. XVII

TRANSCRIPT OF  
PROCEEDINGS

BEFORE THE HONORABLE SENIOR JUDGE JOSEPH BONAVENTURE

ROUGH DRAFT TRANSCRIPT OF  
JURY TRIAL - DAY 2

TUESDAY, JUNE 12, 2012

APPEARANCES:

FOR THE PLAINTIFF:

CHRISTOPHER LALLI, ESQ.  
ELIZABETH A. MERCER, ESQ.  
Chief Deputy District Attorneys

FOR THE DEFENDANT:

BRIAN KERRY O'KEEFE  
Pro Per

LANCE MANINGO, ESQ.  
Stand by counsel for defendant

COURT RECORDER:

MICHELLE RAMSEY  
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC  
Englewood, CO 80110

Proceedings recorded by audio-visual recording, transcript  
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CLERK OF THE COURT

C-250630  
TRANS  
Transcript of Proceedings  
1850013



004001  
277

1 LAS VEGAS, NEVADA, TUESDAY, JUNE 12, 2012, 9:52 A.M.

2 (Outside the presence of the prospective jury panel)

3 THE MARSHAL: All rise and come to order.

4 Department 17 of the Eighth Judicial District is now in  
5 session. The Honorable Judge Joseph Bonaventure presiding.  
6 You may be seated. Remain in order. Make sure your cell  
7 phones are turned off, please.

8 THE COURT: All right. This is outside the presence  
9 of the jury. Did somebody want to put something on the  
10 record?

11 MR. O'KEEFE: Yes, Your Honor. With all due  
12 respect, I just wanted to ensure here real quickly that my  
13 standing is -- I'm going to ask for a standing objection where  
14 we left off yesterday, so I don't have to interrupt this  
15 honorable Court, to try to save time. And I'm going to --  
16 you're going to be very happy. We're going to move this case  
17 along. We're going to get this show on the road.

18 But just to protect myself, preserve myself, again,  
19 for the reason, I just want to clearly state for the record  
20 that I feel that Mr. Lalli is trumping all over my presumption  
21 of innocence. The due process; you're entitled to innocence  
22 beyond a reasonable doubt, until proven guilty. He is  
23 negatively giving an inference to the jury that a battery  
24 domestic violence has been committed.

25 And the law of the case of the first appeal has

ROUGH DRAFT TRANSCRIPT

004002

1 clearly been established, and I'm just establishing it for the  
2 record, Your Honor. You know, again, I want to reiterate that  
3 -- Byford vs. State, the case that Mr. Lalli prosecuted, and I  
4 thought I heard you say you were on --

5 THE COURT: Yeah, that was my case.

6 MR. O'KEEFE: Yes, sir. So, you know; you're very  
7 well aware, and I'll be real brief.

8 The law of the case of the first appeal can only be  
9 set by the Supreme Court of Nevada. They adjudicated this  
10 issue, Your Honor, with all due respect. Your ruling, no  
11 offense -- Judge Villani's prior ruling on the battery  
12 domestic violence, that they're trying to refer to the jury  
13 that happened, they've ruled it didn't happen. The evidence  
14 didn't support it beyond a reasonable doubt.

15 Not only that, this is the same standard of proof.  
16 It's the same level of charge.

17 THE COURT: Well, what didn't happen?

18 MR. O'KEEFE: They ruled that no unlawful act was  
19 committed, Your Honor.

20 THE COURT: No, I think they said --

21 MR. O'KEEFE: Even if the charging --

22 THE COURT: They said --

23 MR. O'KEEFE: The charging document did not charge,  
24 and the evidence presented that Mr. O'Keefe committed any  
25 unlawful act, and the evidence presented at trial did not

ROUGH DRAFT TRANSCRIPT

004003

1 support this theory of second degree murder, verbatim.

2 THE COURT: "This theory" means the felony. The  
3 felony. This is this theory. That's what I thought it said.

4 MR. O'KEEFE: No. And in the fast-track response  
5 that I put in the judicial --

6 THE COURT: Well, I don't care what you put in. I'm  
7 looking at the Supreme Court order and reversal. "The  
8 charging document did not allege this alternative theory,"  
9 which, the instruction regarding the felony. Is that right,  
10 Mr. Lalli?

11 MR. LALLI: Yes, Your Honor.

12 THE COURT: And it doesn't say -- it does not allege  
13 any -- it just says, no evidence supported this theory. And  
14 then, the Supreme Court said here, the district court abuses  
15 discretion when instructed the jury that second degree murder  
16 includes involuntary killing that occurs in the commission of  
17 an unlawful act, because the State's charging document did not  
18 allege that O'Keefe killed the victim while he was committing  
19 an unlawful act. And the evidence presented at trial did not  
20 support this theory of second degree murder."

21 MR. O'KEEFE: And --

22 THE COURT: That's all it says, this theory about  
23 the unlawful act, and that's why they reversed it. Am I  
24 correct, or not correct?

25 MR. LALLI: You are correct, Your Honor.

ROUGH DRAFT TRANSCRIPT

004004

1 THE COURT: So, it's not -- it doesn't say the  
2 evidence didn't support any theory. It just says, "this  
3 theory." And that's why the -- pursuant to the instruction,  
4 they said, we're going to give you a second chance.

5 MR. O'KEEFE: And Your Honor, again, very quickly,  
6 just for preservation of the record again. If you go to  
7 instruction 2, it says, "this theory," then, quickly, Your  
8 Honor. "This theory." This theory, if you look at  
9 instruction 18, number 2, has intent, act, unlawful,  
10 knowledge. It's all the elements involved.

11 And in the opening statement, and during the trial,  
12 and in closing argument, the State stated it was a battery  
13 act. The law states -- and the charging document doesn't have  
14 to allege any act.

15 They -- what I'm trying to say, Your Honor, just for  
16 the record preservation also, trying to make sure you're  
17 advised, even the State of Nevada that did the fast-track  
18 response on the pill, said, we don't know what you're talking  
19 about. We're not even talking about no felony (sic). We're  
20 saying that we have the right to show implied malice, and  
21 that's how it would be proved, by an unlawful act.

22 Unlawful was the first requirement you've got to  
23 find before you even find if anybody was killed. You have to  
24 find first that it was unlawful; second, that a killing  
25 happened; and then, it happened with malice, aforethought; and

ROUGH DRAFT TRANSCRIPT

004095

1 then, how.

2           Number two, when it says, "that theory," Your Honor,  
3 that theory it's -- it's equivalent to theory -- they're equal  
4 in culpability. It doesn't matter whether it's this theory,  
5 or that theory. It would equate to second degree murder in  
6 the State of Nevada.

7           THE COURT: So, what -- to clarify in summary, your  
8 objecting --

9           MR. O'KEEFE: Okay.

10          THE COURT: -- to Mr. Lalli doing what?

11          MR. O'KEEFE: Okay. He keeps giving inferences to  
12 the jury that this homicide was committed during a battery. A  
13 battery -- the battery act of intentional stabbing. The jury  
14 at the first trial, when Mr. Lalli wasn't here -- it wasn't  
15 his problem. He wasn't around. It was Mr. Smith at that  
16 time.

17               He in opening statement stated, the act was an  
18 intentional stabbing. You either did, or you didn't. The  
19 jury of the [inaudible] at that time acquitted me of  
20 intentional stabbing with intent. They said, he didn't do it.  
21 We don't feel that you proved beyond a reasonable doubt, at  
22 least, Your Honor. This is just for preservation of the  
23 record.

24               I want you to -- they returned a second degree based  
25 on implied malice; murder. In Nevada, that is by an unlawful

ROUGH DRAFT TRANSCRIPT

004006

1 act. Okay. The Supreme Court is wise. They realize what the  
2 fast-track statement was saying, and what the fast-track  
3 response was saying.

4 And they looked at both arguments, and they looked  
5 at the record on appeal. And they said, okay. We understand  
6 what you're saying here; we understand what you're saying  
7 here. But our job is, after reviewing the record presented at  
8 trial -- and it says explicitly in the reversal order, the  
9 evidence presented at trial did not support that theory.

10 So, you have to go to theory [inaudible] and look at  
11 it. Then, you have to look at the facts and circumstances  
12 based on this individual case. This was nothing but a battery  
13 alleged murder. It was a single alleged battery act of the  
14 stabbing. She died, God bless her soul. They turned it into  
15 a murder. It's not a battery, on top of a battery, on top of  
16 a battery.

17 THE COURT: All right. Well, that's you're  
18 repeating -- but you have a continuing --

19 MR. O'KEEFE: So --

20 THE COURT: -- objection for that. And Mr. Lalli,  
21 do you want to respond to this? I can't go on and on.

22 MR. LALLI: I understand, Your Honor. The only  
23 thing I want to point out, too, and another thing that Mr.  
24 O'Keefe has not quite right, the jury never acquitted him of  
25 an intentional killing. They acquitted him of a wilful,

ROUGH DRAFT TRANSCRIPT

004007

1 deliberate, and premeditated killing, which obviously is first  
2 degree murder. Second degree murder, implied malice or  
3 expressed malice. Expressed malice specifically includes an  
4 intentional killing, which is one of the theories that's  
5 alleged in the open murder. But other than that, we've  
6 already made our record on that.

7 THE COURT: All right. So, I think the record is  
8 clear. Mr. O'Keefe has a continuing objection. But I'm going  
9 to allow Mr. Lalli to go into that, because I think that's the  
10 state of the law right now. All right?

11 MR. O'KEEFE: And for the record, thank you, Your  
12 Honor, for allowing me --

13 THE COURT: Thank you.

14 MR. O'KEEFE: -- to make that preservation.

15 THE COURT: No problem. I'll allow you to --

16 MR. O'KEEFE: Thank you, Your Honor.

17 THE COURT: -- make a record any time. You want to  
18 bring the jury in?

19 THE MARSHAL: Officers and members of the court,  
20 Department 17 potential jurors.

21 (Within the presence of the prospective jury panel)

22 THE COURT: Everybody can sit down. All right.  
23 This is the continuation of trial C-250630, State of Nevada  
24 vs. Brian O'Keefe. Good morning, everybody, and thank you  
25 very much for your indulgence here.

ROUGH DRAFT TRANSCRIPT

004008



1 We're still in the process of selecting a jury. And  
2 once we get the jury selected, we're going to -- we're going  
3 to have to select the 12. And then, we're going to select two  
4 alternate jurors, in case we have some problems down the road.  
5 And then, the rest of you will be excused once we do that.  
6 And then, we'll begin opening statements and testimony.

7 Again, thank you very much. I appreciate it. So, I  
8 think what we have to do now is the clerk will call another  
9 prospective juror to fill seat number 5.

10 THE CLERK: That will be Deborah Leonard.

11 THE COURT: All right. Deborah, is she here?

12 THE MARSHAL: She's here.

13 PROSPECTIVE JUROR NO. 044: I'm coming.

14 THE COURT: All right. How long have you been in  
15 this area?

16 PROSPECTIVE JUROR NO. 044: Five and-a-half years.

17 THE COURT: And where did you come from?

18 PROSPECTIVE JUROR NO. 044: Ohio.

19 THE COURT: And what did you do as far as work is  
20 concerned in Ohio?

21 PROSPECTIVE JUROR NO. 044: Mostly homemaker, and I  
22 had a screen printing business.

23 THE COURT: What do you do here?

24 PROSPECTIVE JUROR NO. 044: Homemaker.

25 THE COURT: Okay. Are you married then?

ROUGH DRAFT TRANSCRIPT

004009

1 PROSPECTIVE JUROR NO. 044: Yes.  
2 THE COURT: What does your husband do?  
3 PROSPECTIVE JUROR NO. 044: He's a sheet metal  
4 worker.  
5 THE COURT: Children?  
6 PROSPECTIVE JUROR NO. 044: Three.  
7 THE COURT: Too young to work?  
8 PROSPECTIVE JUROR NO. 044: No.  
9 THE COURT: Okay.  
10 PROSPECTIVE JUROR NO. 044: They work.  
11 THE COURT: What do they do?  
12 PROSPECTIVE JUROR NO. 044: One is -- she just  
13 graduated from Le Cordon Bleu. So, she's going to try to be a  
14 chef.  
15 THE COURT: Great.  
16 PROSPECTIVE JUROR NO. 044: And another just  
17 graduated from cosmetology school. And my son is working, and  
18 he's going to go back to graphic art school.  
19 THE COURT: Have you ever been in the military?  
20 PROSPECTIVE JUROR NO. 044: No.  
21 THE COURT: Are you acquainted with anybody in law  
22 enforcement?  
23 PROSPECTIVE JUROR NO. 044: My father. My step-dad.  
24 THE COURT: What does your father do?  
25 PROSPECTIVE JUROR NO. 044: He was -- he's a retired

ROUGH DRAFT TRANSCRIPT

004010

1 deputy sheriff.

2 THE COURT: Where?

3 PROSPECTIVE JUROR NO. 044: In Ohio.

4 THE COURT: All right. And again, that follow up

5 question. The fact that somebody -- you know somebody, your

6 relative; you're not to give greater weight to police

7 officers' testimony, simply because they're a police officer.

8 You give it the weight you deem appropriate. Do you

9 understand that?

10 PROSPECTIVE JUROR NO. 044: Yes.

11 THE COURT: And have you or anyone closely

12 associated with you ever been the victim of a crime?

13 PROSPECTIVE JUROR NO. 044: We had -- in our

14 business, we had fraud. Just --

15 THE COURT: Yeah.

16 PROSPECTIVE JUROR NO. 044: -- a bad check. Someone

17 tried to steal from us.

18 THE COURT: Was it here in Las Vegas, or Ohio?

19 PROSPECTIVE JUROR NO. 044: In Ohio.

20 THE COURT: Did they ever prosecute the person?

21 PROSPECTIVE JUROR NO. 044: Well, the bank actually

22 found the person --

23 THE COURT: All right.

24 PROSPECTIVE JUROR NO. 044: -- and settled it

25 before.

ROUGH DRAFT TRANSCRIPT

004011

1 THE COURT: All right. That's not going to affect  
2 your deliberation?

3 PROSPECTIVE JUROR NO. 044: No.

4 THE COURT: And have you or anyone closely  
5 associated with you ever been arrested for a crime?

6 PROSPECTIVE JUROR NO. 044: My son.

7 THE COURT: How old was he when he was arrested?

8 PROSPECTIVE JUROR NO. 044: He was 18, for stealing.

9 THE COURT: Here in town?

10 PROSPECTIVE JUROR NO. 044: Yes.

11 THE COURT: And what were the results of that?

12 PROSPECTIVE JUROR NO. 044: It was a misdemeanor  
13 charge. It was just a --

14 THE COURT: Was it an adult -- it was an adult? I  
15 guess 18 --

16 PROSPECTIVE JUROR NO. 044: Well, he -- you know, he  
17 might have been 17.

18 THE COURT: Well, did he go to juvenile court, or  
19 the regular court? Do you remember at all?

20 PROSPECTIVE JUROR NO. 044: I was in Ohio. My  
21 husband was here with him.

22 THE COURT: All right. All right. Well, again, it  
23 was resolved, and you think he was treated fairly?

24 PROSPECTIVE JUROR NO. 044: Yes.

25 THE COURT: So, that's not going to affect your

ROUGH DRAFT TRANSCRIPT

004012

1 deliberation?

2 PROSPECTIVE JUROR NO. 044: No.

3 THE COURT: And if you're picked as a juror, you can  
4 follow my instructions of law?

5 PROSPECTIVE JUROR NO. 044: Yes.

6 THE COURT: And could you be fair in this case?

7 PROSPECTIVE JUROR NO. 044: Yes, sir.

8 THE COURT: All right. Thank you, ma'am. State,  
9 questions; pass for cause?

10 MS. MERCER: Thank you, Your Honor. Ma'am, have you  
11 ever witnessed an incident of domestic violence?

12 PROSPECTIVE JUROR NO. 044: I have not seen. My  
13 sister is a victim.

14 MS. MERCER: Your sister is a victim of domestic  
15 violence?

16 PROSPECTIVE JUROR NO. 044: She also was an abuser.

17 MS. MERCER: I'm sorry, she's also what?

18 PROSPECTIVE JUROR NO. 044: She also did some  
19 abusing.

20 MS. MERCER: Okay.

21 PROSPECTIVE JUROR NO. 044: It was --

22 MS. MERCER: And was she a victim at the hands of  
23 the same person?

24 PROSPECTIVE JUROR NO. 044: Yes.

25 MS. MERCER: Is it an ongoing relationship?

ROUGH DRAFT TRANSCRIPT

004013

1 PROSPECTIVE JUROR NO. 044: No. It's over.

2 MS. MERCER: How long did the relationship last?

3 PROSPECTIVE JUROR NO. 044: About two and-a-half to  
4 three years.

5 MS. MERCER: And was it abusive during the entire  
6 course of the relationship?

7 PROSPECTIVE JUROR NO. 044: No. Mostly like the  
8 middle of the relationship, and near the end.

9 MS. MERCER: Did you -- how closely -- were you  
10 living here at the time, or were you living in Ohio?

11 PROSPECTIVE JUROR NO. 044: I was in Ohio. So, this  
12 was probably ten years ago.

13 MS. MERCER: Okay. And were you closely involved in  
14 it -- with your sister's life at the time?

15 PROSPECTIVE JUROR NO. 044: She would confide in me.

16 MS. MERCER: Based on what you knew, was he the one  
17 that typically initiated the violence, or was it her?

18 PROSPECTIVE JUROR NO. 044: She would say things to  
19 set him off.

20 MS. MERCER: Do you think that that's a legitimate  
21 excuse for becoming violent?

22 PROSPECTIVE JUROR NO. 044: No.

23 MS. MERCER: When did she finally leave the  
24 relationship?

25 PROSPECTIVE JUROR NO. 044: Well --

ROUGH DRAFT TRANSCRIPT

004014

1 MS. MERCER: In other words, what did it take to  
2 finally make her leave?

3 PROSPECTIVE JUROR NO. 044: I think she just got --  
4 they just both decided it was time to leave.

5 MS. MERCER: Do you know whether she went through  
6 any counseling as she going through that domestic violence?

7 PROSPECTIVE JUROR NO. 044: No, she did not.

8 MS. MERCER: Is there anything about that experience  
9 that would make you biased against either side in this case?

10 PROSPECTIVE JUROR NO. 044: No.

11 MS. MERCER: What -- who violent was the abuse?

12 PROSPECTIVE JUROR NO. 044: Mostly, it was a lot of  
13 verbal, some pushing. He choked her once.

14 MS. MERCER: Okay. Did you ever observe any  
15 injuries on her, anything like that?

16 PROSPECTIVE JUROR NO. 044: No. She would only tell  
17 me.

18 MS. MERCER: Pass for cause, Your Honor.

19 THE COURT: All right. Questions; pass for cause,  
20 Mr. O'Keefe?

21 MR. O'KEEFE: Yes, Your Honor. Just real brief,  
22 Your Honor. [Inaudible]. [inaudible]. Do you think that  
23 somebody drunk could be easily confused?

24 PROSPECTIVE JUROR NO. 044: I'm sorry, somebody  
25 what?

ROUGH DRAFT TRANSCRIPT

004015

1 MR. O'KEEFE: Somebody drunk could be easily  
2 confused?

3 PROSPECTIVE JUROR NO. 044: Yes.

4 MR. O'KEEFE: Okay. So then, by that answer, I  
5 understand that if somebody was extremely drunk, that would  
6 greater it?

7 PROSPECTIVE JUROR NO. 044: Well, usually when  
8 they're extremely drunk, they really seem to not know what  
9 they're doing at times.

10 MR. O'KEEFE: So, then --

11 PROSPECTIVE JUROR NO. 044: Or remember.

12 MR. O'KEEFE: -- that would be relevant, then, to  
13 know if someone was truly proven -- the state -- the level of  
14 intoxication they may possibly be under. Do you feel that's  
15 correct?

16 PROSPECTIVE JUROR NO. 044: Yes.

17 MR. O'KEEFE: Okay. Thank you. Do you feel  
18 detectives learn to possibly manipulate people when they do an  
19 interrogation?

20 PROSPECTIVE JUROR NO. 044: No. I think people  
21 might be intimidated.

22 MR. O'KEEFE: Okay. Could you explain on that a  
23 little bit more, expand?

24 PROSPECTIVE JUROR NO. 044: Like, this is a little  
25 intimidating to me, so.

ROUGH DRAFT TRANSCRIPT

004016



1 MR. O'KEEFE: Okay.

2 PROSPECTIVE JUROR NO. 044: It's just, you know,  
3 some people might say things that maybe they think later on,  
4 well, that's not really what I meant to say, or something.

5 MR. O'KEEFE: So, human error. Sometimes, someone  
6 extremely drunk may say something right off the bat, but not,  
7 wait a minute, you didn't get that right; no, that's what you  
8 said, too late. You know what I mean?

9 PROSPECTIVE JUROR NO. 044: Yes.

10 MR. O'KEEFE: Especially under the condition of  
11 extremely drunk. Okay, great. Do you think though -- I  
12 understand detectives have a job to do, especially in a  
13 homicide situation. Let's be honest about that. But do you  
14 think that maybe they become a little more skilled and  
15 trained, and may intentionally sometimes try to trip people  
16 up? Do you just think it's possible?

17 PROSPECTIVE JUROR NO. 044: You mean, like ask them  
18 a trick question?

19 MR. O'KEEFE: Yeah, try to set -- you know, hey,  
20 part of a -- you know, hey, part of a -- you know.

21 PROSPECTIVE JUROR NO. 044: Try and get different  
22 answers from them at different times?

23 MR. O'KEEFE: Yeah, exactly.

24 PROSPECTIVE JUROR NO. 044: That's possible. I  
25 don't think they're trying to do it intentionally, just to

ROUGH DRAFT TRANSCRIPT

004017

1 maybe see --

2 MR. O'KEEFE: But could they possibly -- some maybe  
3 -- some often, you know, [inaudible].

4 PROSPECTIVE JUROR NO. 044: I suppose, yes.

5 MR. O'KEEFE: And that's -- I appreciate your  
6 honesty on that. It's just a possibility.

7 During an interrogation by detectives, if they admit  
8 by their own paperwork or words that someone is extremely,  
9 extremely, possibly mentally distressed, extremely  
10 intoxicated, no sleep; they pass out during an interrogation,  
11 and then they come in and they wake this individual up; start  
12 answering me right now, [inaudible], do you think that's  
13 appropriate?

14 Or do you think that maybe they should be re-advised  
15 of what's going on? Or do you think that the police are bound  
16 by any certain conduct that they should -- hey, you're here,  
17 you know, let me read you your Miranda Rights again; do you  
18 understand what's going on? Or do you think it's fair that  
19 they can just instantly in a matter of seconds, say, answer me  
20 now, tell me. Do you think that's inappropriate for the  
21 police to do?

22 PROSPECTIVE JUROR NO. 044: I guess it would depend  
23 on the situation.

24 MR. O'KEEFE: Okay. That's a fair enough answer.  
25 Thank you for that. Do you feel -- last question, that

ROUGH DRAFT TRANSCRIPT

004018

1 detectives may learn through experience in years that, man, I  
2 know this guy -- hypothetical situation. He's extremely  
3 intoxicated, he's out of his mind. And I know, man, the law.  
4 Man, if I take a test, and it shows he's .3, .4; whatever.  
5 Man, I know this whole questioning is worthless. So, if I  
6 don't do this test, we don't know affirmatively forever --  
7 that's destroyed. We never know what his true level of  
8 intoxication was.

9 My point being -- the question is now -- I'll  
10 clarify. Do you think maybe if they know, and if it's policy,  
11 that they should take that type of evidence and let it been  
12 seen for both sides? Yes or no? Simple answer. Should they  
13 take that evidence?

14 MR. LALLI: Your Honor, I don't think the --

15 PROSPECTIVE JUROR NO. 044: Yes.

16 MR. LALLI: -- juror can answer that yes or no.

17 THE COURT: Well --

18 MR. LALLI: Many compound components to it.

19 MR. O'KEEFE: Yes, okay.

20 THE COURT: Yeah, it is a compound.

21 PROSPECTIVE JUROR NO. 044: Yeah, that is a big,  
22 long question.

23 MR. O'KEEFE: Okay. What I'm trying to say is --  
24 it's simple. If the police know -- ma'am, simple. If the  
25 police know you're extremely intoxicated, you know, don't you

ROUGH DRAFT TRANSCRIPT

004019

1 think you'd want to say, well, let's take a blood -- breath  
2 test, and let's see. As they say, is he under any drugs or  
3 drinking? We already admit that he's so drunk, let's find out  
4 how drunk he is, and let it be seen. Let's share that  
5 information. Let's be fair about it. If you're in handcuffs,  
6 do you think they should do that? They have a duty.

7 PROSPECTIVE JUROR NO. 044: It's fair to do that,  
8 yes.

9 MR. O'KEEFE: Thank you very much. No further  
10 questions, Your Honor. I'll pass for cause.

11 THE COURT: All right. Now, the State can exercise  
12 it's fourth and final peremptory challenge.

13 MR. LALLI: Your Honor, the State would waive it's  
14 fourth peremptory challenge.

15 THE COURT: Thank you, Mr. Lalli. The -- Mr.  
16 O'Keefe, you can exercise your fourth, and this is the final  
17 peremptory challenge. Of course, we're going to have two  
18 alternate jurors. You'll have one preempt on that.

19 MR. O'KEEFE: Okay, Your Honor. Just 30 seconds,  
20 sir, please.

21 THE COURT: Well, take your time. I'm not rushing  
22 you.

23 (Pause in the proceedings)

24 MR. O'KEEFE: Yes, Your Honor. Thank you for your  
25 patience. Juror number 13 in seat 11, I'd like to thank and

ROUGH DRAFT TRANSCRIPT

004020

1 excuse Mr. David Patton, I do believe.

2 THE COURT: All right. Mr. Patton, please report  
3 back to the jury commissioner. Clerk, call another  
4 prospective juror.

5 THE CLERK: Joseph McCrink.

6 PROSPECTIVE JUROR NO. 045: Here.

7 THE COURT: All right. Mr. McCrink, how long have  
8 you been in the Las Vegas area?

9 PROSPECTIVE JUROR NO. 045: Almost two years.

10 THE COURT: And where did you come from?

11 PROSPECTIVE JUROR NO. 045: San Diego. We were  
12 there for five years.

13 THE COURT: And --

14 PROSPECTIVE JUROR NO. 045: Originally, New Jersey.

15 THE COURT: Did you work in San Diego?

16 PROSPECTIVE JUROR NO. 045: I did. I have a  
17 home-based promotional items business.

18 THE COURT: And then, you moved here two years ago?

19 PROSPECTIVE JUROR NO. 045: Correct, almost two  
20 years ago.

21 THE COURT: And what do you do? Do you still work,  
22 or not?

23 PROSPECTIVE JUROR NO. 045: I do. I have the same  
24 business.

25 THE COURT: And what is it exactly, the business?

ROUGH DRAFT TRANSCRIPT

004021

1 PROSPECTIVE JUROR NO. 045: It's promotional items.  
2 It's imprinted calendars, imprinted --

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 045: -- pens, that sort of  
5 stuff.

6 THE COURT: All right. Are you married?

7 PROSPECTIVE JUROR NO. 045: I am.

8 THE COURT: Does your wife work, or she works with  
9 you?

10 PROSPECTIVE JUROR NO. 045: Yes. She works  
11 separate. And she works -- she's a director of treasury for  
12 one of the major casinos here.

13 THE COURT: Do you have children?

14 PROSPECTIVE JUROR NO. 045: We don't.

15 THE COURT: Have you ever been in the military?

16 PROSPECTIVE JUROR NO. 045: I haven't.

17 THE COURT: Are you acquainted with anybody in law  
18 enforcement?

19 PROSPECTIVE JUROR NO. 045: No, no.

20 THE COURT: Have you or anyone closely associated  
21 with you ever been the victim of a crime?

22 PROSPECTIVE JUROR NO. 045: Many, many years ago, my  
23 sister -- it's probably close to 30 years ago. She was  
24 waiting tables down in the Virgin Islands, and a couple of  
25 guys were holding up the case register, and she was stabbed.

ROUGH DRAFT TRANSCRIPT

004002

1 And it was a small knife, so fortunately, she wasn't hurt.  
2 But that was the end of it. I don't know -- I don't think  
3 they ever caught the guys, but --

4 THE COURT: That was about 30 years ago?

5 PROSPECTIVE JUROR NO. 045: That was probably about  
6 30 years --

7 THE COURT: And your sister's all right now?  
8 She's --

9 PROSPECTIVE JUROR NO. 045: She was even fine --

10 THE COURT: Because it's very traumatic, I'm sure.  
11 All right.

12 PROSPECTIVE JUROR NO. 045: Right.

13 THE COURT: Well, that's not going to affect your  
14 deliberation in this case, is it?

15 PROSPECTIVE JUROR NO. 045: Not at all.

16 THE COURT: Have you or anyone closely associated  
17 with you ever been arrested for a crime?

18 PROSPECTIVE JUROR NO. 045: No.

19 THE COURT: Have you ever served on a jury before?

20 PROSPECTIVE JUROR NO. 045: No.

21 THE COURT: Are you going to be able to listen to my  
22 instructions of law, and follow my instructions of law?

23 PROSPECTIVE JUROR NO. 045: Yes.

24 THE COURT: And you could be fair and impartial in  
25 this case as to both sides?

ROUGH DRAFT TRANSCRIPT

004023

1 PROSPECTIVE JUROR NO. 045: I believe so. I have  
2 one -- one slight reservation, and that would just be -- and I  
3 will certainly follow your directions, and I know the  
4 defendant has a cloak of innocence on him. But I feel as  
5 though it makes it a little hazier when he's defending  
6 himself, as opposed to having a professional counsel do it for  
7 him, because I know he's very emotionally tied to it.

8 And even picking the jury, he has displayed some  
9 emotion, which I understand. But it can make it a little  
10 hazier I think, just in deciphering the facts.

11 THE COURT: All right. Well, I mean, Mr. Lalli  
12 mentioned about, it's a constitutional right. But Mr. Lalli,  
13 proceed.

14 MR. LALLI: Thank you, Your Honor. Good morning,  
15 Mr. McCrink.

16 PROSPECTIVE JUROR NO. 045: Good morning.

17 MR. LALLI: How are you?

18 PROSPECTIVE JUROR NO. 045: Good. Thank you.

19 MR. LALLI: I guess when we see jury trials on  
20 television or in the news, there's usually lawyers on both  
21 sides of the courtroom. And your -- seems like you're more  
22 comfortable in that sort of a situation?

23 PROSPECTIVE JUROR NO. 045: I believe I would be.  
24 Yes.

25 MR. LALLI: Okay. Maybe if you were charged with a

ROUGH DRAFT TRANSCRIPT

004024



1 crime, you would want a lawyer to represent you, as opposed to  
2 representing yourself?

3 PROSPECTIVE JUROR NO. 045: I would definitely have  
4 done that, yes --

5 MR. LALLI: All right.

6 PROSPECTIVE JUROR NO. 045: -- for myself.

7 MR. LALLI: As Judge Bonaventure indicated, and I  
8 mentioned a time or two yesterday, one of the rights that the  
9 constitution allows is, if we want to represent our self, we  
10 can do that. And the defendant, for whatever reason, has  
11 exercised that right. Will you hold that against him in any  
12 way?

13 PROSPECTIVE JUROR NO. 045: No, no. I won't hold it  
14 against him. I -- I think -- the best way to explain it is, I  
15 just think, you know, I know he wants the facts displayed, and  
16 you want the facts displayed. And I think if they were done  
17 in a non-emotional way, it would be a little bit, you know,  
18 clearer. But, you know, it's just a little extra work to  
19 decipher through it. That's the best way I can explain it.

20 MR. LALLI: Sure. And do you think you can do that?  
21 Do you think you have the ability to decipher -- you mentioned  
22 emotion. And --

23 PROSPECTIVE JUROR NO. 045: Um-hum.

24 MR. LALLI: -- maybe emotion's sincere; maybe it's  
25 not sincere. People have all kinds of motivations in acting

ROUGH DRAFT TRANSCRIPT

04025

1 how they do in front of others. Do you think you've got the  
2 ability to weed through the evidence, and kind of sort out the  
3 nonsense?

4 PROSPECTIVE JUROR NO. 045: Um-hum. I believe so.  
5 I guess it's to be seen, but I believe so.

6 MR. LALLI: Okay. So, having said all that, do you  
7 think you can still be a fair juror in this case, knowing that  
8 the defendant's representing himself?

9 PROSPECTIVE JUROR NO. 045: I believe so.

10 MR. LALLI: Okay.

11 PROSPECTIVE JUROR NO. 045: I believe so.

12 MR. LALLI: You'll do the best that you can?

13 PROSPECTIVE JUROR NO. 045: I'll do the best I can.

14 MR. LALLI: All right.

15 PROSPECTIVE JUROR NO. 045: Yes.

16 MR. LALLI: Fair enough. I wanted to ask you about  
17 your job. And I understand that you -- either you work for a  
18 company that makes promotional items, or is it your company?

19 PROSPECTIVE JUROR NO. 045: Oh, it's my company,  
20 actually.

21 MR. LALLI: All right.

22 PROSPECTIVE JUROR NO. 045: And you know, they don't  
23 -- I don't make the promotional items. I'm more like a vendor  
24 for many different manufacturers throughout the country.

25 MR. LALLI: Understood.

ROUGH DRAFT TRANSCRIPT

004026

1 PROSPECTIVE JUROR NO. 045: And the -- kind of a  
2 middle man. And so, it gave me a lot of flexibility, for  
3 instance, when we were in San Diego, since I work out of the  
4 home. And my wife's job was winding down there. You know,  
5 nice way of saying she was being laid off. She at the same  
6 time got a nice offer out here. And being the way the economy  
7 was back a few years ago, I said, well, it might be a good  
8 idea if we take it. And I'm glad we did.

9 MR. LALLI: All right. Do you -- you work out of  
10 the home. Do you supervise employees? Do you have employees?

11 PROSPECTIVE JUROR NO. 045: No, just myself.

12 MR. LALLI: Have you ever had employees?

13 PROSPECTIVE JUROR NO. 045: Maybe once or twice, but  
14 it was -- they were kind of like an independent contractor. I  
15 wasn't -- and they were just making a commission.

16 MR. LALLI: Do you -- do you engage of the process  
17 of sales? So, do you go visit clients, or is your work done  
18 online? How is it that you interact with customers?

19 PROSPECTIVE JUROR NO. 045: A little of each. Over  
20 the years, it's progressively gotten less personal because of  
21 the internet, and people are just busier. So, it's -- you  
22 know, occasionally if I have to go see somebody, I'll do it,  
23 but it's very rare. Years ago, I would do a lot more of that.

24 MR. LALLI: Can you explain for us your educational  
25 background?

ROUGH DRAFT TRANSCRIPT

004027

1 PROSPECTIVE JUROR NO. 045: I have a bachelor's  
2 degree in business.

3 MR. LALLI: Was that back in New Jersey somewhere?

4 PROSPECTIVE JUROR NO. 045: That's correct. It was  
5 Mont Claire State College (phonetic).

6 MR. LALLI: How long have you been employed for  
7 yourself? How long have you been doing that?

8 PROSPECTIVE JUROR NO. 045: Probably since college.  
9 My father was a fire captain, and he did this business on the  
10 side, and he passed away when I was 17. And I kind of just  
11 fell into it that way.

12 MR. LALLI: All right. And your wife is -- she does  
13 accounting work, I take it?

14 PROSPECTIVE JUROR NO. 045: Well, treasury is  
15 similar to accounting. It's in --

16 MR. LALLI: What's the difference?

17 PROSPECTIVE JUROR NO. 045: -- finance. It's a  
18 little different. They kind of take the money from the  
19 casino, and invest it in different --

20 MR. LALLI: Okay.

21 PROSPECTIVE JUROR NO. 045: -- ways. And so, a  
22 little more interesting than accounting, but it's a finance  
23 department.

24 MR. LALLI: Okay. All right. What did you -- what  
25 went through your mind when you learned that this was a murder

ROUGH DRAFT TRANSCRIPT

AC 4028

1 case?

2 PROSPECTIVE JUROR NO. 045: Serious. That -- you  
3 know, serious about -- you know, I -- it's -- it's something  
4 you take a lot more serious than, say something -- a robbery  
5 or something, obviously. And that's the first word I can  
6 think of, I felt this was serious.

7 MR. LALLI: You heard Bonaventure -- or Judge  
8 Bonaventure yesterday say that it's the State's burden to  
9 prove the defendant's guilt beyond a reasonable doubt. If we  
10 don't do that, he's legally, ethically, morally entitled to a  
11 verdict of not guilty. If we fail to prove his guilt beyond a  
12 reasonable doubt, could you return a verdict of not guilty?

13 PROSPECTIVE JUROR NO. 045: Absolutely.

14 MR. LALLI: And conversely, if we were to prove to  
15 you beyond a reasonable doubt that he was guilty of murder,  
16 would you convict him?

17 PROSPECTIVE JUROR NO. 045: Yes, I would.

18 MR. LALLI: Do you understand that the burden of  
19 proof beyond a reasonable doubt -- and Judge Bonaventure will  
20 instruct you if you're selected on the jury as to what that  
21 is.

22 PROSPECTIVE JUROR NO. 045: Um-hum.

23 MR. LALLI: But that burden, beyond a reasonable  
24 doubt, is the same burden in every criminal trial. Regardless  
25 if it's a murder or robbery, a burglary, a fraud case, the

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604079

1 quantum of proof is the same. Do you understand that?

2 PROSPECTIVE JUROR NO. 045: I do now. I've never  
3 been on a jury. I didn't know if there was -- the definition  
4 would be a little slightly different --

5 MR. LALLI: Okay.

6 PROSPECTIVE JUROR NO. 045: -- for a murder case.  
7 But I was waiting for the Judge, if I --

8 MR. LALLI: All right.

9 PROSPECTIVE JUROR NO. 045: -- got that far, to tell  
10 me.

11 MR. LALLI: So, just because it's a murder case  
12 doesn't mean the burden of proof is any higher; it's the same?

13 PROSPECTIVE JUROR NO. 045: I comprehend, yes.

14 MR. LALLI: Okay. Now, do you -- do you have any  
15 personal experience with domestic violence?

16 PROSPECTIVE JUROR NO. 045: None.

17 MR. LALLI: Do you believe that domestic violence is  
18 an important issue in our community?

19 PROSPECTIVE JUROR NO. 045: Yes.

20 MR. LALLI: Why?

21 PROSPECTIVE JUROR NO. 045: Well, I -- I don't like  
22 anybody to be abused in any way. So, I think it's very  
23 important, yes.

24 MR. LALLI: Do you -- some people believe -- and  
25 again, I apologize for repeating this kind of from yesterday.

ROUGH DRAFT TRANSCRIPT

004030

1 Some people have the opinion that what happens between a man  
2 and a woman, or domestic partners, whatever it is, in the  
3 home, is a private matter, and ought to stay there. The  
4 government shouldn't involve itself in that. Do you believe  
5 that, or do you think there are times when the government  
6 needs to get involved with what happens in the home?

7 PROSPECTIVE JUROR NO. 045: The latter. I think  
8 they definitely should get involved. I think sometimes people  
9 are emotionally beaten down, where, you know, they don't even  
10 know how to defend themselves anymore. So, I would be all for  
11 them getting involved.

12 MR. LALLI: Do you have any experience in dealing  
13 with people who are mentally ill, or do you have any  
14 experience in knowing people who are mentally ill?

15 PROSPECTIVE JUROR NO. 045: Well, my mother, who  
16 died last November, had Alzheimer's disease. And you know,  
17 obviously, she was fine before she had the disease. So, but  
18 it's certainly a mental illness, and a very serious one that  
19 she died from.

20 MR. LALLI: Sure. Sure.

21 PROSPECTIVE JUROR NO. 045: Besides that, my wife,  
22 maybe many, many years ago had a little bout of depression,  
23 and got over it. And you know, I think it was just a down  
24 point in her life.

25 MR. LALLI: Understood.

ROUGH DRAFT TRANSCRIPT

004031

1 PROSPECTIVE JUROR NO. 045: You know, but I think  
2 that would be about it.

3 MR. LALLI: Did she seek professional help for that?

4 PROSPECTIVE JUROR NO. 045: I think just a regular  
5 doctor, and she might have just temporarily taken an  
6 antidepressant. And you know, I think it was just a low  
7 point, and she got off them. And it was -- that was quite a  
8 few years ago, too.

9 MR. LALLI: All right. She was able to see a  
10 doctor, get some medication, and that medication helped kind  
11 of bring her back to where she should be?

12 PROSPECTIVE JUROR NO. 045: I think it did help,  
13 yes.

14 MR. LALLI: All right.

15 PROSPECTIVE JUROR NO. 045: Yes.

16 MR. LALLI: During that period of time when she was  
17 suffering from depression, would you classify her as maybe  
18 being vulnerable in some respects?

19 PROSPECTIVE JUROR NO. 045: Yes.

20 MR. LALLI: How so?

21 PROSPECTIVE JUROR NO. 045: Just -- I would say more  
22 sensitive. And just -- at that time, I would also say just  
23 harder for her to cope with things in general, because she was  
24 feeling low.

25 MR. LALLI: All right. Do you think you can be fair

ROUGH DRAFT TRANSCRIPT

004032



1 to Mr. O'Keefe and to the State?

2 PROSPECTIVE JUROR NO. 045: I'll do my best. I  
3 believe I can, yes.

4 MR. LALLI: Great. Thank you. Your Honor, we'll  
5 pass for cause.

6 THE COURT: Mr. O'Keefe, questions; pass for cause?

7 MR. O'KEEFE: I like him. No questions, Your Honor.

8 THE COURT: Pass for cause?

9 MR. O'KEEFE: Pass for cause.

10 THE COURT: All right. All right. Let's call two  
11 potential alternate jurors. And the first juror that's  
12 called, go on the top seat, right next to Mr. Derfelt, right?  
13 Yeah. And then, the second one, sit at the bottom there. All  
14 right. Alternate Juror number 1?

15 THE CLERK: Manhas Madan.

16 THE COURT: And Alternate Juror number 2 on the  
17 bottom? And they're going to stay, alternate 1 and 2, in that  
18 respect, all right?

19 THE CLERK: Justin Johnson.

20 THE COURT: All right. Mr. Madan, how long have you  
21 been in this area?

22 PROSPECTIVE JUROR NO. 047: One and-a-half years.

23 THE COURT: And where did you come from?

24 PROSPECTIVE JUROR NO. 047: India.

25 THE COURT: Okay. Did you come right from India a

ROUGH DRAFT TRANSCRIPT

004033

1 year and-a-half ago, or did you live in another state?

2 PROSPECTIVE JUROR NO. 047: I come from India. I  
3 don't -- what did you say?

4 THE COURT: Who? I'm sorry.

5 UNKNOWN MALE SPEAKER: He doesn't speak very --  
6 English very well.

7 THE COURT: Okay. You should have heard my father.  
8 Right from Sicily. Well, any objection -- perhaps if he's --  
9 you know, in another --

10 MR. LALLI: No, Your Honor.

11 THE COURT: -- area, he's --

12 MR. LALLI: No objection.

13 THE COURT: Any objection, Mr. O'Keefe, if we excuse  
14 him?

15 MR. O'KEEFE: No, Your Honor.

16 THE COURT: All right. Then why don't you go back  
17 to the jury commissioner, and tell them I excused you. And  
18 this is still Alternate Juror number 1. We'll call another  
19 prospective Alternate Juror number 1.

20 THE CLERK: Alexis Byrd.

21 THE COURT: All right. Ms. Byrd, how long have you  
22 been in this area?

23 PROSPECTIVE JUROR NO. 052: For about like five or  
24 six years.

25 THE COURT: What do you do for a living?

ROUGH DRAFT TRANSCRIPT

004034

1 PROSPECTIVE JUROR NO. 052: I play basketball at a  
2 university.

3 THE COURT: You go to a university?

4 PROSPECTIVE JUROR NO. 052: Yeah.

5 THE COURT: And you're a student at the university?

6 PROSPECTIVE JUROR NO. 052: Yeah. And with that, I  
7 start summer school like next week, but I'm supposed to be  
8 going out of town this week.

9 THE COURT: Well, I'm very --

10 PROSPECTIVE JUROR NO. 052: So, I'm just letting you  
11 know up front.

12 THE COURT: I'm very soft-hearted for students,  
13 because I like education and everything. So, any objection if  
14 we excuse her?

15 MR. LALLI: No, Your Honor.

16 THE COURT: Mr. --

17 MR. O'KEEFE: No, Your Honor.

18 THE COURT: All right. Go tell the jury  
19 commissioner I excused you.

20 PROSPECTIVE JUROR NO. 052: Okay.

21 THE COURT: We'll call another potential Alternate  
22 Juror number 1.

23 THE CLERK: Eric Mikuski.

24 THE COURT: Eric, how long you been in this area?

25 PROSPECTIVE JUROR NO. 053: About 13 years.

ROUGH DRAFT TRANSCRIPT

004035

1 THE COURT: What do you do for a living?

2 PROSPECTIVE JUROR NO. 053: I am a student at the  
3 University of Wisconsin, Medicine.

4 THE COURT: So, you're on summer break?

5 PROSPECTIVE JUROR NO. 053: Yes.

6 THE COURT: So, you could -- you're all right. And  
7 you just -- your parents live here, or?

8 PROSPECTIVE JUROR NO. 053: Yes.

9 THE COURT: And what do they do for a living?

10 PROSPECTIVE JUROR NO. 053: My mother's a secretary  
11 at Nellis Air Force Base. And -- well, my father lives in  
12 Tennessee.

13 THE COURT: Okay. All right. Are you married at  
14 all?

15 PROSPECTIVE JUROR NO. 053: No.

16 THE COURT: Children?

17 PROSPECTIVE JUROR NO. 053: No.

18 THE COURT: Never been in the military?

19 PROSPECTIVE JUROR NO. 053: No.

20 THE COURT: And are you acquainted with anybody in  
21 law enforcement?

22 PROSPECTIVE JUROR NO. 053: No.

23 THE COURT: And have you ever -- you or anyone  
24 closely associated ever been a victim of a crime?

25 PROSPECTIVE JUROR NO. 053: My house was broken into

ROUGH DRAFT TRANSCRIPT

004036

1 a couple of years ago, but --

2 THE COURT: Here in town, or in --

3 PROSPECTIVE JUROR NO. 053: In Las Vegas.

4 THE COURT: Did they catch the individual?

5 PROSPECTIVE JUROR NO. 053: No.

6 THE COURT: All right. That's not going to affect

7 your deliberation here, right?

8 PROSPECTIVE JUROR NO. 053: No.

9 THE COURT: Okay. What about, you or anyone closely

10 associated been arrested for a crime?

11 PROSPECTIVE JUROR NO. 053: No.

12 THE COURT: You ever served on a jury before?

13 PROSPECTIVE JUROR NO. 053: No.

14 THE COURT: Do you think you can be fair in this

15 case?

16 PROSPECTIVE JUROR NO. 053: Yes.

17 THE COURT: All right. Thank you.

18 MS. MERCER: Thank you, Your Honor. What are you

19 studying in school?

20 PROSPECTIVE JUROR NO. 053: I'm studying journalism,

21 with an emphasis in public relations.

22 MS. MERCER: And what year are you?

23 PROSPECTIVE JUROR NO. 053: I just finished my

24 freshman year.

25 MS. MERCER: So, you'll be a sophomore next year?

ROUGH DRAFT TRANSCRIPT

004037

1 PROSPECTIVE JUROR NO. 053: Yes.

2 MS. MERCER: And you said your father lives in  
3 Tennessee. What does he do for a living?

4 PROSPECTIVE JUROR NO. 053: He works as security on  
5 merchant ships fighting, you know, pirates.

6 MS. MERCER: Okay. So, he doesn't -- he's out at  
7 sea most of the time?

8 PROSPECTIVE JUROR NO. 053: He's out at sea -- right  
9 now, he's in the States. But yes, he works out in sea.

10 MS. MERCER: Okay. Have you ever witnessed an  
11 incident of domestic violence?

12 PROSPECTIVE JUROR NO. 053: No.

13 MS. MERCER: Do you know anybody close to you that's  
14 been a victim of domestic violence?

15 PROSPECTIVE JUROR NO. 053: No.

16 MS. MERCER: Do you have any strong feelings about  
17 it, one way or another?

18 PROSPECTIVE JUROR NO. 053: Not particularly.

19 MS. MERCER: Is there anything that would prevent  
20 you from being fair and impartial to both sides in this case?

21 PROSPECTIVE JUROR NO. 053: No.

22 MS. MERCER: Pass for cause, Your Honor.

23 THE COURT: Mr. O'Keefe, questions; pass for cause?

24 MR. O'KEEFE: No questions, Your Honor. Pass for  
25 cause.

ROUGH DRAFT TRANSCRIPT

004028

1 THE COURT: Pass for -- and is it Justin?

2 PROSPECTIVE JUROR NO. 048: Yes, sir.

3 THE COURT: How long have you been in this area?

4 PROSPECTIVE JUROR NO. 048: 16 years.

5 THE COURT: What do you do for a living?

6 PROSPECTIVE JUROR NO. 048: I'm an assistant dairy  
7 manager at Smith's.

8 THE COURT: All right. Are you married?

9 PROSPECTIVE JUROR NO. 048: No.

10 THE COURT: Children? Why does everybody --

11 PROSPECTIVE JUROR NO. 048: Oh, no.

12 THE COURT: -- say no?

13 PROSPECTIVE JUROR NO. 048: Because I'm young. Why  
14 else?

15 THE COURT: That's fine. I mean, I -- you should  
16 sew your wild oats, I guess. You don't have any children?  
17 Never been in the military?

18 PROSPECTIVE JUROR NO. 048: No, sir.

19 THE COURT: And have you or -- are you acquainted  
20 with anybody in law enforcement?

21 PROSPECTIVE JUROR NO. 048: No, sir.

22 THE COURT: And have you or anyone closely  
23 associated with you ever been a victim of a crime?

24 PROSPECTIVE JUROR NO. 048: No, sir. I've gotten  
25 speeding tickets though.

ROUGH DRAFT TRANSCRIPT

004029

1 THE COURT: Well, so, were you ever arrested for  
2 that? Or you just got a ticket, and you --

3 PROSPECTIVE JUROR NO. 048: No, just got a ticket.

4 THE COURT: And that's not going to affect --

5 PROSPECTIVE JUROR NO. 048: Almost got arrested,  
6 but.

7 THE COURT: That's not going to affect your  
8 deliberation?

9 PROSPECTIVE JUROR NO. 048: No.

10 THE COURT: You think you were treated fairly by the  
11 police because you got a ticket, right?

12 PROSPECTIVE JUROR NO. 048: I'm sorry?

13 THE COURT: Do you think you were treated fairly by  
14 the police?

15 PROSPECTIVE JUROR NO. 048: Yeah, I was going way  
16 too fast.

17 THE COURT: Have you ever served on a jury before?

18 PROSPECTIVE JUROR NO. 048: No, sir.

19 THE COURT: Could you be fair in this case?

20 PROSPECTIVE JUROR NO. 048: Try my best.

21 THE COURT: All right. Mr. Lalli?

22 MR. LALLI: Thank you. Mr. Johnson, do you  
23 supervise other employees as an assistant dairy manager?

24 PROSPECTIVE JUROR NO. 048: No. I'm sorry. I  
25 forgot. When I said my occupation, I'm also a full-time

ROUGH DRAFT TRANSCRIPT

n04040



1 student. Sorry, I forgot to add that in. No, I do not.

2 MR. LALLI: Where do you attend school?

3 PROSPECTIVE JUROR NO. 048: Nevada State College.

4 MR. LALLI: Are you enrolled in the summer term?

5 PROSPECTIVE JUROR NO. 048: No. Currently I'm on  
6 summer vacation.

7 MR. LALLI: Okay. And I take it being on this jury  
8 for the rest of the week, maybe into the Monday of next week,  
9 wouldn't interfere with any of your school work?

10 PROSPECTIVE JUROR NO. 048: Well, right now, I'm  
11 preparing for the summer term. Also during the summer, I  
12 really work hard to raise funds for my college sessions in  
13 spring and fall. And you know, so this is right now -- as far  
14 as sitting on this trial yesterday and today, it's hurting me  
15 financially for school, along with my single mother, who I  
16 live with; along with my 69 year-old grandmother, so.

17 THE COURT: All right. Any objection we let him go  
18 do his school work, Mr. O'Keefe? Do you have any objection?

19 MR. O'KEEFE: No, Your Honor. No objection.

20 THE COURT: Mr. Lalli?

21 MR. LALLI: I don't object, Your Honor.

22 THE COURT: All right. Report back to the jury  
23 commissioner.

24 PROSPECTIVE JUROR NO. 048: Thank you, sir.

25 THE COURT: The clerk will call another prospective

ROUGH DRAFT TRANSCRIPT

004041

1 Alternate Juror number 2.

2 THE CLERK: Krista Frandsen.

3 THE COURT: All right. How long have you been in  
4 this area?

5 PROSPECTIVE JUROR NO. 055: About three years.

6 THE COURT: Where did you come from?

7 PROSPECTIVE JUROR NO. 055: Kentucky, for about 15  
8 years there.

9 THE COURT: Did you go to school there? Did you  
10 work?

11 PROSPECTIVE JUROR NO. 055: Yeah, I'm a full-time  
12 student here in Nevada, and I work as a CNA at a hospital.

13 THE COURT: You're off from school right now?

14 PROSPECTIVE JUROR NO. 055: Yeah, just working  
15 overtime at work to help pay for my next year's -- next  
16 semester's tuition.

17 THE COURT: You must have heard what he had to say,  
18 huh?

19 PROSPECTIVE JUROR NO. 055: It's not a pretty --  
20 it's basically a pretty penny.

21 THE COURT: What?

22 PROSPECTIVE JUROR NO. 055: It's a pretty penny  
23 trying to pay for nursing school, with the tuition and the  
24 books.

25 THE COURT: So, you want to be excused because of --

ROUGH DRAFT TRANSCRIPT

004042

1 you need that money for school?

2 PROSPECTIVE JUROR NO. 055: Well, yeah. I'm

3 scheduled to work the rest of this week, so I kind of --

4 THE COURT: All right. Any objection?

5 MR. LALLI: No, Your Honor.

6 THE COURT: Any objection?

7 MR. O'KEEFE: No, Your Honor.

8 THE COURT: All right. Report back to the jury

9 commissioner. Clerk, call another prospective juror number 2.

10 THE CLERK: Gilbert Pacheco -- Pacheco.

11 PROSPECTIVE JUROR NO. 057: Pacheco.

12 THE COURT: Do you go to college or high school, or

13 anything?

14 PROSPECTIVE JUROR NO. 057: What's that?

15 THE COURT: Do you go to college or high school?

16 PROSPECTIVE JUROR NO. 057: No, sir.

17 THE COURT: How long have you been in this area?

18 What do you got these micro things on for?

19 PROSPECTIVE JUROR NO. 057: I'm kind of hard at

20 hearing.

21 THE COURT: Could you hear what's being said? I

22 mean, do you --

23 PROSPECTIVE JUROR NO. 057: Well, these helped a

24 little bit. But they start to hurt my ears after having them

25 on so long.

ROUGH DRAFT TRANSCRIPT

1 THE COURT: I think we need somebody to hear. Any  
2 objection we excuse him?

3 MR. LALLI: I'm sorry? No. Yes.

4 PROSPECTIVE JUROR NO. 057: What's that?

5 MR. LALLI: No objection, Your Honor.

6 THE COURT: Mr. O'Keefe -- he's a little hard at  
7 hearing, Mr. O'Keefe. Any objection we excuse him?

8 MR. O'KEEFE: No, Your Honor.

9 THE COURT: All right. Report back to the jury  
10 commissioner.

11 PROSPECTIVE JUROR NO. 057: Thank you.

12 THE COURT: Okay. Another prospective juror number  
13 2 -- or alternate number 2?

14 THE CLERK: Patricia Stewart.

15 THE COURT: What are those things on your ears?

16 PROSPECTIVE JUROR NO. 058: Because I have a cold,  
17 and my ears are clogged.

18 THE COURT: What?

19 PROSPECTIVE JUROR NO. 058: I have a cold, and my  
20 ears --

21 THE COURT: All right. Any objection we excuse her  
22 to get rid of her cold?

23 MR. LALLI: No, Your Honor.

24 MR. O'KEEFE: No, Your Honor.

25 THE COURT: All right. Go ahead. That's it. My

ROUGH DRAFT TRANSCRIPT

004044

1 indulgence is gone now. That's the end of it. Next alternate  
2 juror number 2?

3 THE CLERK: Beverly Billich.

4 THE COURT: Ma'am, how long have you been in this  
5 area, please?

6 PROSPECTIVE JUROR NO. 062: Since '74.

7 THE COURT: And what did you do for a living?

8 PROSPECTIVE JUROR NO. 062: I'm retired.

9 THE COURT: What did you do when you worked?

10 PROSPECTIVE JUROR NO. 062: I worked for JC Penney.

11 THE COURT: Okay. All right. My wife calls it JC  
12 Penney.

13 PROSPECTIVE JUROR NO. 062: Yeah, well --

14 THE COURT: It's the french way.

15 PROSPECTIVE JUROR NO. 062: Yes. It's changed a  
16 lot, too.

17 THE COURT: Are you married, ma'am?

18 PROSPECTIVE JUROR NO. 062: Yes.

19 THE COURT: Is your husband retired?

20 PROSPECTIVE JUROR NO. 062: No. He owns his own  
21 business.

22 THE COURT: What type of business?

23 PROSPECTIVE JUROR NO. 062: It's a truck accessory  
24 business.

25 THE COURT: All right. Do you have any children?

ROUGH DRAFT TRANSCRIPT

004045

1 PROSPECTIVE JUROR NO. 062: No.

2 THE COURT: Have you ever been in the military?

3 PROSPECTIVE JUROR NO. 062: No.

4 THE COURT: Are you acquainted with anybody in law  
5 enforcement?

6 PROSPECTIVE JUROR NO. 062: Yes.

7 THE COURT: Who's that?

8 PROSPECTIVE JUROR NO. 062: I have a niece and her  
9 husband, who are state [inaudible].

10 THE COURT: Here in town?

11 PROSPECTIVE JUROR NO. 062: Yes.

12 THE COURT: The fact that you have some relatives in  
13 law enforcement, that's not going to affect your deliberation,  
14 is it?

15 PROSPECTIVE JUROR NO. 062: No.

16 THE COURT: And you understand you're not to give  
17 greater weight or lesser weight to a police officer's  
18 testimony, simply because they're a police officer. You give  
19 it the weight you deem necessary, you understand?

20 PROSPECTIVE JUROR NO. 062: Yes.

21 THE COURT: Have you ever been in the military? I  
22 think I --

23 PROSPECTIVE JUROR NO. 062: No.

24 THE COURT: Have you or anyone closely associated  
25 with you ever been the victim of a crime?

ROUGH DRAFT TRANSCRIPT

004046

1 PROSPECTIVE JUROR NO. 062: No.  
2 THE COURT: Or arrested for a crime?  
3 PROSPECTIVE JUROR NO. 062: No.  
4 THE COURT: You ever serve on a jury?  
5 PROSPECTIVE JUROR NO. 062: Yes.  
6 THE COURT: How many times?  
7 PROSPECTIVE JUROR NO. 062: Once.  
8 THE COURT: How long ago?  
9 PROSPECTIVE JUROR NO. 062: At least ten years ago.  
10 THE COURT: Here in town?  
11 PROSPECTIVE JUROR NO. 062: Yes.  
12 THE COURT: Was it a criminal, or civil case?  
13 PROSPECTIVE JUROR NO. 062: Civil.  
14 THE COURT: You were picked as a juror?  
15 PROSPECTIVE JUROR NO. 062: Yes.  
16 THE COURT: Did you deliberate the case?  
17 PROSPECTIVE JUROR NO. 062: Yes.  
18 THE COURT: Were you picked -- sometimes, you don't  
19 deliberate it. It goes away without deliberation.  
20 PROSPECTIVE JUROR NO. 062: No, we had to  
21 deliberate.  
22 THE COURT: And were you picked as foreperson?  
23 PROSPECTIVE JUROR NO. 062: No.  
24 THE COURT: Without telling me what the verdict was,  
25 did you reach a verdict?

ROUGH DRAFT TRANSCRIPT

004047

1 PROSPECTIVE JUROR NO. 062: Yes.

2 THE COURT: And could you be fair in this case?

3 PROSPECTIVE JUROR NO. 062: Yes.

4 THE COURT: All right. Thank you.

5 PROSPECTIVE JUROR NO. 062: You're welcome.

6 THE COURT: Questions, pass for cause?

7 MR. LALLI: We're fighting over who gets to take  
8 you, Ms. Billich. How are you this morning?

9 PROSPECTIVE JUROR NO. 062: I'm good.

10 MR. LALLI: As an alternate, you're in the  
11 unfortunate position of maybe not actually deliberating with  
12 the rest of the jury if that happens. And the temptation is  
13 maybe to say, well, I don't have to pay as -- I'm not saying  
14 you would do this. But some people would say, hey, I don't  
15 have to pay as close of attention because I'm not really in  
16 the game here. Do you understand what I'm saying?

17 PROSPECTIVE JUROR NO. 062: Yes.

18 MR. LALLI: Is that a concern that we should have  
19 with you?

20 PROSPECTIVE JUROR NO. 062: No.

21 MR. LALLI: All right. Do you have any experience  
22 with domestic violence?

23 PROSPECTIVE JUROR NO. 062: None.

24 MR. LALLI: All right. Have you ever encountered  
25 anyone who's suffered from mental illness?

ROUGH DRAFT TRANSCRIPT

004048



1 PROSPECTIVE JUROR NO. 062: No.

2 MR. LALLI: If we convince you beyond a reasonable  
3 doubt that the defendant is guilty, would you convict him?

4 PROSPECTIVE JUROR NO. 062: Yes.

5 MR. LALLI: Thank you. Your Honor, I'll pass for  
6 cause.

7 THE COURT: All right.

8 MR. O'KEEFE: No questions, Your Honor. I'd pass  
9 for cause.

10 THE COURT: All right. Any preempt on either one of  
11 these alternate jurors?

12 MR. LALLI: No, Your Honor. We'll waive it.

13 THE COURT: You'll waive it? Any preempt?

14 MR. O'KEEFE: I'll waive mine.

15 THE COURT: Thank you, Mr. O'Keefe. Well, that  
16 constitutes the jury now. All right? Before I excuse the  
17 jury, everything's all right? Okay. All right. Behind the  
18 railing, thank you so much. Please report back to the jury  
19 commissioner.

20 I'm going to ask the clerk to swear in the jury. Do  
21 you swear in the alternates separate, or not? All at the same  
22 time?

23 THE CLERK: All at the same time.

24 THE COURT: Please remain -- stand up, raise your  
25 right hand, and be sworn by the clerk.

ROUGH DRAFT TRANSCRIPT

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