

1 fairly presented to a jury, so the jury can decide the
2 evidence?

3 PROSPECTIVE JUROR NO. 002: I think police officers
4 should probably do their best to gather any potential
5 evidence. I guess it would depend on the situation for them
6 to know whether or not something is potential evidence or not.
7 I'm not a police expert, so I don't know what they would view
8 as evidence, but I would assume that they should do their best
9 to collect anything that could possibly be used as evidence.

10 MR. O'KEEFE: Okay. Let me kind of like rephrase it
11 a little bit more. You did kind of get the gist of what I'm
12 getting at. But as a police officer -- to properly screen the
13 jurors, and to pick jurors that think more like me, is my
14 basis of doing this, do you feel a police officer -- he's not
15 to act as a judge, is what I'm getting at.

16 He's to collect any evidence as possible, and it
17 could be exculpatory or inculpatory, basically, used for both
18 sides. They're not to do -- be a judge. You know what I'm
19 trying to say? It's their -- do you feel they have a
20 responsibility to collect that evidence as part of their job?

21 PROSPECTIVE JUROR NO. 002: I guess it depends on
22 the type of -- I'm assuming a regular officer that would
23 respond to a regular event, they may not be expected to
24 collect as much evidence as maybe a homicide detective, or an
25 arson detective. So, I'm not sure if the expectation is the

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1 same, depending on what type of officer you are.

2 So, I'm -- you know, when an officer responds to a
3 scene, I'm hoping that they would think of any possible
4 evidence. But I would assume that a regular officer who would
5 respond to a 9-11 call, that may not be something that they
6 are expected to do. I don't know if I'm making any sense,
7 but --

8 MR. O'KEEFE: No, you're making perfect sense.
9 Clearly, you --

10 PROSPECTIVE JUROR NO. 002: Okay.

11 MR. O'KEEFE: -- [inaudible]. There is a difference
12 between a regular street officer; a detective, so to speak,
13 for homicide, or for this, that. Can you agree with me -- or
14 would you agree, should I say -- do you feel that just because
15 police come to a -- are called and come to a scene, do you
16 feel that every call, there's got to be a crime committed,
17 just because the police are there?

18 My point being, is, you know how people talk, the
19 community. Wow, the cops are over there at the Joneses. Wow,
20 I wonder what he did, or she did; or do you know what I'm
21 saying? Are you --

22 PROSPECTIVE JUROR NO. 002: Just because an officer
23 is called out doesn't necessarily mean that there has been a
24 crime committed. I'm assuming that the person who has called
25 maybe believes that there is a possible crime taking place, or

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1 has taken place. But that doesn't necessarily mean that just
2 because an officer responds, there is a crime that is in
3 progress, or has taken place.

4 MR. O'KEEFE: Exactly my point. No further
5 questions. Thank you. I'd pass for --

6 THE COURT: Pass for cause, Mr. O'Keefe?

7 MR. O'KEEFE: Yes, sir. I do, Your Honor.

8 THE COURT: Thank you, sir.

9 MR. O'KEEFE: Thank you.

10 THE COURT: Thank you. By the way, anybody wants to
11 use the restroom -- don't go all at once, now. Just go, and
12 come back. Go ahead if you need to use the restroom, all
13 right? Then come right -- one at a time though. You don't go
14 crazy. Yeah, you can go. Yeah, two is all right. Three is
15 all right.

16 Megan -- is it Stutz?

17 PROSPECTIVE JUROR NO. 003: Stutz.

18 THE COURT: What is it?

19 PROSPECTIVE JUROR NO. 003: Stutz.

20 THE COURT: Stutz. All right. How long you been in
21 this area?

22 PROSPECTIVE JUROR NO. 003: Five years.

23 THE COURT: Where did you come from?

24 PROSPECTIVE JUROR NO. 003: California.

25 THE COURT: What did you do in California as far as

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1 work?

2 PROSPECTIVE JUROR NO. 003: I was a medical
3 assistant.

4 THE COURT: And what do you do here?

5 PROSPECTIVE JUROR NO. 003: I'm a medical assistant
6 and a student.

7 THE COURT: Okay. And what type of student?

8 PROSPECTIVE JUROR NO. 003: I'm going for my
9 pre-reqs for nursing.

10 THE COURT: All right. Good. Are you married?

11 PROSPECTIVE JUROR NO. 003: Yes.

12 THE COURT: Does your husband work?

13 PROSPECTIVE JUROR NO. 003: He is currently a
14 full-time student right now, so he's not working.

15 THE COURT: All right. Children?

16 PROSPECTIVE JUROR NO. 003: One.

17 THE COURT: How old?

18 PROSPECTIVE JUROR NO. 003: Seven months.

19 THE COURT: All right. Have you ever been in the
20 military?

21 PROSPECTIVE JUROR NO. 003: No.

22 THE COURT: Are you acquainted with anybody in law
23 enforcement?

24 PROSPECTIVE JUROR NO. 003: No.

25 THE COURT: Have you or anyone closely associated

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1 with you ever been the victim of a crime?

2 PROSPECTIVE JUROR NO. 003: No.

3 THE COURT: Have you or anyone closely associated
4 with you ever been arrested for a crime?

5 PROSPECTIVE JUROR NO. 003: No.

6 THE COURT: Have you ever served on a jury?

7 PROSPECTIVE JUROR NO. 003: No.

8 THE COURT: Are you going to be able to follow my
9 instructions of law?

10 PROSPECTIVE JUROR NO. 003: Yes.

11 THE COURT: And you're going to be fair and
12 impartial, both to the State and to the defense?

13 PROSPECTIVE JUROR NO. 003: Yes.

14 THE COURT: Thank you very much. Questions; pass
15 for cause, Mr. Lalli?

16 MR. LALLI: A few questions, Your Honor. Thank you.
17 Ms. Stutz, can you tell us how frequently or how often you
18 currently are devoted to going to school? Do you -- are you
19 enrolled in classes now?

20 PROSPECTIVE JUROR NO. 003: I am enrolled online
21 right now. Since I had my baby, I haven't been at like
22 regular courses at school.

23 MR. LALLI: And how does online -- how does online
24 work? Do you -- can you study as time permits? Or --

25 PROSPECTIVE JUROR NO. 003: Usually, yeah. There's

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1 tests and quizzes that are that due at like specific times.
2 But they give you a date range, and time to start that and
3 complete it.

4 MR. LALLI: Is -- being a juror on this case, would
5 that interfere with your ability to --

6 PROSPECTIVE JUROR NO. 003: No.

7 MR. LALLI: -- attend your online classes? Okay.
8 And those are nursing type classes?

9 PROSPECTIVE JUROR NO. 003: They just general
10 pre-reqs right now. I have a few before I can apply.

11 MR. LALLI: And you're currently a nursing
12 assistant?

13 PROSPECTIVE JUROR NO. 003: A medical assistant.

14 MR. LALLI: Medical assistant. Can you give us a
15 sense of what's a day in the life of a medical assistant?

16 PROSPECTIVE JUROR NO. 003: I work in the doctor's
17 office. I'm the one that puts you in the room, and talks to
18 you before the doctor sees you.

19 MR. LALLI: What type of doctor?

20 PROSPECTIVE JUROR NO. 003: Orthopedic surgeon.

21 MR. LALLI: How long have you done that?

22 PROSPECTIVE JUROR NO. 003: Five years here, two
23 years in California.

24 MR. LALLI: So, I take it you have some level --
25 some familiarity with medical jargon, vocabulary?

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1 PROSPECTIVE JUROR NO. 003: Yes.

2 MR. LALLI: You have some comfort level with that?

3 PROSPECTIVE JUROR NO. 003: Yes.

4 MR. LALLI: So, if we were to call a forensic
5 pathologist, a person who does autopsies, would you feel
6 comfortable listening to that testimony and understanding it?

7 PROSPECTIVE JUROR NO. 003: The basic stuff, I
8 understand.

9 MR. LALLI: All right.

10 PROSPECTIVE JUROR NO. 003: Yes.

11 MR. LALLI: What is your husband studying? You said
12 he's a full-time student.

13 PROSPECTIVE JUROR NO. 003: He's applying for dental
14 school next year, so a few pre-req's before that.

15 MR. LALLI: Is he studying -- where? Through UNLV,
16 or --

17 PROSPECTIVE JUROR NO. 003: UNLV.

18 MR. LALLI: And would the plan be for him to go to
19 the UNLV --

20 PROSPECTIVE JUROR NO. 003: Yes.

21 MR. LALLI: -- dental school there? Have you -- how
22 do you feel about this idea of domestic violence? Some people
23 think it's a very private matter, and the government --
24 society really has no business in it. It's between two
25 people, it's private, and --

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1 PROSPECTIVE JUROR NO. 003: No.

2 MR. LALLI: -- nobody else should get involved.
3 What do you think about that?

4 PROSPECTIVE JUROR NO. 003: I think that people
5 should be involved if somebody knows somebody's being abused,
6 or what -- they should speak for them. And it's not private.
7 It's something that needs attention.

8 MR. LALLI: Why do you -- why do you believe that?

9 PROSPECTIVE JUROR NO. 003: I was in a verbal
10 abusive relationship, so I can understand where it comes from.

11 MR. LALLI: When was that relationship?

12 PROSPECTIVE JUROR NO. 003: 2003.

13 MR. LALLI: So, I guess -- was it physical at all?

14 PROSPECTIVE JUROR NO. 003: Minor.

15 MR. LALLI: All right. Were the police ever called?

16 PROSPECTIVE JUROR NO. 003: No.

17 MR. LALLI: So, I -- from your question -- and I
18 don't mean to pry. But you seem to have experience in knowing
19 that domestic violence can be psychological abuse, as well as
20 physical abuse?

21 PROSPECTIVE JUROR NO. 003: Yes.

22 MR. LALLI: Do you think one is more serious than
23 the other?

24 PROSPECTIVE JUROR NO. 003: No. Because I think
25 eventually, if it's bad, it will end in one spot.

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1 MR. LALLI: I -- fortunately, you were able to get
2 yourself out of that relationship, it sounds like.

3 PROSPECTIVE JUROR NO. 003: Yes.

4 MR. LALLI: Was that difficult for you?

5 PROSPECTIVE JUROR NO. 003: Yeah.

6 MR. LALLI: Did you -- there's a lot of community
7 resources available; shelters, advocates. And again, I don't
8 want to go too much into your personal life, other than to get
9 some sense of where your head's at. How were you able to get
10 out of the relationship?

11 PROSPECTIVE JUROR NO. 003: My family.

12 MR. LALLI: Does your family -- was that here in Las
13 Vegas?

14 PROSPECTIVE JUROR NO. 003: That was in California.

15 MR. LALLI: In California. Was your family in
16 California with you?

17 PROSPECTIVE JUROR NO. 003: Yes.

18 MR. LALLI: So, you maintained a relationship with
19 your family?

20 PROSPECTIVE JUROR NO. 003: Yes.

21 MR. LALLI: Do you believe that some batterers try
22 to sever the relationship that a victim has with their family,
23 or other support?

24 PROSPECTIVE JUROR NO. 003: Yes.

25 MR. LALLI: Do you think that that happens?

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1 PROSPECTIVE JUROR NO. 003: Um-hum.

2 MR. LALLI: Did you -- as part of getting yourself
3 out of that relationship, did you educate yourself about
4 domestic violence?

5 PROSPECTIVE JUROR NO. 003: No.

6 MR. LALLI: Just your own experience?

7 PROSPECTIVE JUROR NO. 003: Yeah.

8 MR. LALLI: A lot of times, in cases of domestic
9 violence, you have one spousal partner saying something
10 happened, and another spousal partner saying something else
11 happened. It's a he said, she said. What would you think is
12 important to understanding who's telling the truth, or whose
13 credibility are you to give more weight?

14 PROSPECTIVE JUROR NO. 003: It would be hard, unless
15 you had some type of evidence, to see what's going on. It
16 would be hard.

17 MR. LALLI: What would you -- what sorts of other
18 evidence would you think is important?

19 PROSPECTIVE JUROR NO. 003: Like, if they have any
20 witnesses, or anything along those lines. It's always kind of
21 a he said, she said.

22 MR. LALLI: All right. Would you think physical
23 evidence would be important? So, maybe there's a broken
24 chair, or maybe there's redness, evidence of --

25 PROSPECTIVE JUROR NO. 003: Yeah.

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1 MR. LALLI: -- physical injury. Would that be
2 important to you?

3 PROSPECTIVE JUROR NO. 003: Yes.

4 MR. LALLI: What about a history of abuse? Is that
5 important?

6 PROSPECTIVE JUROR NO. 003: Yeah.

7 MR. LALLI: Why do you think a history of abuse
8 would be important?

9 PROSPECTIVE JUROR NO. 003: Because I think some --
10 like, some people don't change to where, if you're in an
11 abusive relationship, and you can end up in another one.

12 MR. LALLI: Do you think that sometimes an abusive
13 history could provide a motivation for committing abuse in the
14 future? So, I've got this history with this person, and this
15 person said things to me, and it made me mad, and I can't get
16 it out of my head. And maybe they called the police, and it's
17 a motivation for me to commit violence in the future. Do you
18 think that happens?

19 PROSPECTIVE JUROR NO. 003: Could be.

20 MR. LALLI: Do you know people with mental illness?

21 PROSPECTIVE JUROR NO. 003: No.

22 MR. LALLI: Have you ever had any experience -- and
23 I know you work for an orthopedic surgeon, so you might have
24 some people with mental illness that happen to come in. But
25 do you have any professional experience as a medical assistant

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1 with mental --

2 PROSPECTIVE JUROR NO. 003: No.

3 MR. LALLI: -- mental illness? Okay. What about
4 the idea that the defendant represents himself? Do you
5 understand that's a constitutional right that we would all
6 have? Do you have a problem with that?

7 PROSPECTIVE JUROR NO. 003: No.

8 MR. LALLI: During the course of a trial, would you
9 have any difficulty assessing the evidence against a person
10 who represents himself?

11 PROSPECTIVE JUROR NO. 003: No.

12 MR. LALLI: Do you believe that you're a fair
13 person?

14 PROSPECTIVE JUROR NO. 003: Yes.

15 MR. LALLI: Do you believe that people ought to be
16 held accountable for their actions?

17 PROSPECTIVE JUROR NO. 003: Yes.

18 MR. LALLI: All right. If we prove to you beyond a
19 reasonable doubt that Mr. O'Keefe is guilty of second degree
20 murder, would you convict him?

21 PROSPECTIVE JUROR NO. 003: Yes.

22 MR. LALLI: Thank you. Your Honor, we'll pass for
23 cause.

24 THE COURT: Thank you, Mr. Lalli. Mr. O'Keefe, do
25 you have any questions; pass for cause?

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1 MR. O'KEEFE: Yes, Your Honor, I have some. Thank
2 you.

3 THE COURT: Thank you.

4 MR. O'KEEFE: It's Pamela?

5 PROSPECTIVE JUROR NO. 003: Megan.

6 MR. O'KEEFE: I apologize. Do you have a family
7 member or anybody that's in NA, or AA? No offense, don't take
8 that wrong. Or basically, are you experienced with anyone
9 that's involved in NA or AA?

10 PROSPECTIVE JUROR NO. 003: No.

11 MR. O'KEEFE: Do you feel that someone is
12 [inaudible] that seeks help for maybe a drinking problem, or
13 NA?

14 PROSPECTIVE JUROR NO. 003: No.

15 MR. O'KEEFE: You wouldn't hold that against anyone?

16 PROSPECTIVE JUROR NO. 003: No.

17 MR. O'KEEFE: Actually, I believe -- tell me if you
18 agree with me. What I'm trying to get at is, do you think
19 that somebody voluntarily seeks help before the court gets
20 them and tells them to, but seeks help on their own, is that a
21 good thing, or bad, or?

22 PROSPECTIVE JUROR NO. 003: Yeah, some people can,
23 and that's good that you're trying.

24 MR. O'KEEFE: Okay. I guess this can kind of --
25 everyone can hear, and I'm sure everyone's listening very

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1 carefully. Do you realize that actually in a trial,
2 sometimes, for reasoning determined by the Court, the Court
3 being the Judge of course, you don't hear all the evidence.

4 MR. LALLI: Objection, Your Honor.

5 THE COURT: Yeah. That's not trying to pick a fair
6 and impartial juror, whether -- the evidence presented is the
7 evidence presented. And we don't want to go into, they don't
8 hear all the evidence. That's not a proper voir dire
9 question. So, I'm going to respectfully sustain the
10 objection. Go on to something else, Mr. --

11 MR. O'KEEFE: Yes, sir, Your Honor. Thank you. I
12 guess I can say, as a regular person, I never knew before the
13 true definition of homicide. And of course the Judge, and I'm
14 sure the State will clearly give that definition of homicide.
15 But do you know yourself, or can you tell me what you feel you
16 think is the true definition of homicide?

17 PROSPECTIVE JUROR NO. 003: I would just -- I guess
18 a murder. Not really sure.

19 MR. O'KEEFE: Okay. Do you know in the State of
20 Nevada, a homicide is actually considered a death, an
21 interaction between two people, and it's actually the opposite
22 of what you just said. It doesn't necessarily mean it's
23 murder.

24 MR. LALLI: Your Honor, I'm sorry. I have to
25 interpose an objection. Under the district court rules, it's

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1 a violation during voir dire to discuss anticipated
2 instructions of law.

3 THE COURT: Yeah. That is true, Mr. O'Keefe. I'm
4 the only one, and I'm going to give instructions to the jury
5 at the particular time. We can't go in now -- I've went into
6 a few instructions, presumption of innocence, guilt beyond a
7 reasonable doubt, the information is a mere charging document;
8 and I don't go into anymore instructions.

9 So, in all due respect, I'm going to sustain the
10 objection. You really can't get into any jury instructions.
11 That will be something that I'll instruct the jury at the
12 appropriate time exactly what the definition of all the legal
13 terms are, all right? Thank you. Go on to something else.

14 MR. O'KEEFE: Thank you, Your Honor. Have you ever
15 experienced -- been around anyone that's been extremely
16 intoxicated? A loud drunk, very loud?

17 PROSPECTIVE JUROR NO. 003: Yes.

18 MR. O'KEEFE: Would you agree that generally -- a
19 drunk person is generally exactly that, a very loud person;
20 obnoxious, loud?

21 PROSPECTIVE JUROR NO. 003: They can be. Not all of
22 them are.

23 MR. O'KEEFE: The majority?

24 PROSPECTIVE JUROR NO. 003: Yeah.

25 MR. O'KEEFE: So, it would be very apparent

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1 generally that -- or it could be easily assessed that somebody
2 was intoxicated by a person's actions, or voice, the smell?

3 PROSPECTIVE JUROR NO. 003: Yeah.

4 MR. O'KEEFE: Easily detectable, you feel?

5 PROSPECTIVE JUROR NO. 003: If you're really drunk,
6 yeah. If it's a drink or two, probably not.

7 MR. O'KEEFE: What if somebody was extremely drunk?

8 PROSPECTIVE JUROR NO. 003: Usually, you can tell.

9 MR. O'KEEFE: Easily recognizable, correct? Would
10 you believe --

11 PROSPECTIVE JUROR NO. 003: Yes.

12 MR. O'KEEFE: Has anybody in your family or yourself
13 ever been blamed for something wrongfully?

14 PROSPECTIVE JUROR NO. 003: No.

15 MR. O'KEEFE: In high school, college, a job?

16 PROSPECTIVE JUROR NO. 003: Not that I can recall.

17 MR. O'KEEFE: Do you have anybody in the family that
18 is an attorney?

19 PROSPECTIVE JUROR NO. 003: No.

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

21 I'll pass for cause.

22 THE COURT: Thank you, Mr. O'Keefe. Pam
23 Guzman- Mollinedo.

24 PROSPECTIVE JUROR NO. 004: Mollinedo.

25 THE COURT: All right. How long you been in this

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1 area?

2 PROSPECTIVE JUROR NO. 004: For ten years.

3 THE COURT: For -- what do you do for a living?

4 PROSPECTIVE JUROR NO. 004: I work at the Wynn.

5 THE COURT: Doing what?

6 PROSPECTIVE JUROR NO. 004: In the bakery.

7 THE COURT: Bakery.

8 PROSPECTIVE JUROR NO. 004: Yeah.

9 THE COURT: That's good. You make [inaudible]?

10 PROSPECTIVE JUROR NO. 004: No.

11 THE COURT: [Inaudible]? Nothing?

12 PROSPECTIVE JUROR NO. 004: No. We make like French

13 sandwich, and --

14 THE COURT: Oh. All right, all right. That's all

15 right. That's good. Are you married?

16 PROSPECTIVE JUROR NO. 004: Yes.

17 THE COURT: What does your husband do?

18 PROSPECTIVE JUROR NO. 004: He works in

19 construction.

20 THE COURT: Children?

21 PROSPECTIVE JUROR NO. 004: Two.

22 THE COURT: Too young to work, right?

23 PROSPECTIVE JUROR NO. 004: Yes.

24 THE COURT: Yeah. Have you ever been in the

25 military?

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1 PROSPECTIVE JUROR NO. 004: No.

2 THE COURT: Are you acquainted with anybody in law
3 enforcement?

4 PROSPECTIVE JUROR NO. 004: No.

5 THE COURT: Have you or anyone close to you ever
6 been the victim of a crime?

7 PROSPECTIVE JUROR NO. 004: No.

8 THE COURT: Have you or anyone close to you ever
9 been arrested for a crime?

10 PROSPECTIVE JUROR NO. 004: No.

11 THE COURT: Have you ever served on a jury before?

12 PROSPECTIVE JUROR NO. 004: No.

13 THE COURT: Are you going to be able to be fair and
14 impartial, both to the State and to the defendant?

15 PROSPECTIVE JUROR NO. 004: Yes.

16 THE COURT: And at the conclusion of this case, if
17 you're picked as a juror, I'm going to instruct you as what
18 the law is. You understand that?

19 PROSPECTIVE JUROR NO. 004: Yeah.

20 THE COURT: It would be a violation of your oath not
21 to follow my instructions. You understand that?

22 PROSPECTIVE JUROR NO. 004: Yes.

23 THE COURT: All right. Well, thank you so much.
24 Questions; pass for cause, Ms. Mercer?

25 MS. MERCER: Thank you, Your Honor. Good morning,

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1 ma'am.

2 PROSPECTIVE JUROR NO. 004: Good morning.

3 MS. MERCER: Do you know anyone that's ever been the
4 victim of domestic violence?

5 PROSPECTIVE JUROR NO. 004: No.

6 MS. MERCER: No, never?

7 PROSPECTIVE JUROR NO. 004: Never.

8 MS. MERCER: Okay. Do you have any strong feelings
9 about domestic violence that would prevent you from being fair
10 and impartial in this case?

11 PROSPECTIVE JUROR NO. 004: No.

12 MS. MERCER: Do you think that it's ever appropriate
13 to use violence to solve a verbal dispute?

14 PROSPECTIVE JUROR NO. 004: No.

15 MS. MERCER: Are you -- do you think that it's
16 something that should be dealt with within a family, or are
17 you okay with the State becoming involved?

18 PROSPECTIVE JUROR NO. 004: Can you repeat the
19 question again?

20 MS. MERCER: Do you think that domestic violence is
21 a private issue that should be dealt with in the home, or are
22 you okay with the fact that the State becomes involved, and
23 prosecutes cases of domestic violence, regardless of what a
24 victim may want?

25 PROSPECTIVE JUROR NO. 004: Like, I don't

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1 understand. I need like translation, or --

2 MS. MERCER: Are you having a hard time --

3 PROSPECTIVE JUROR NO. 004: Yeah.

4 MS. MERCER: Is English not your native language?

5 PROSPECTIVE JUROR NO. 004: No.

6 MS. MERCER: Do you think that that might impede
7 your ability to understand what's going on in this case?

8 PROSPECTIVE JUROR NO. 004: I kind of understand
9 like a little bit.

10 MS. MERCER: You understand a little bit.

11 PROSPECTIVE JUROR NO. 004: Yeah.

12 MS. MERCER: Are you going to be able to understand
13 the witnesses when they testify?

14 PROSPECTIVE JUROR NO. 004: Yeah.

15 MS. MERCER: Do you think you would need the
16 assistance of an interpreter --

17 PROSPECTIVE JUROR NO. 004: Yeah.

18 MS. MERCER: -- to fully understand the proceedings?
19 Court's indulgence.

20 (Pause in the proceedings)

21 MS. MERCER: Have you understood everything that's
22 gone on in the courtroom so far?

23 PROSPECTIVE JUROR NO. 004: Um-hum.

24 MS. MERCER: You have? And you know that the
25 allegation in this case is that the defendant committed the

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1 crime of second degree murder; you understand that?

2 PROSPECTIVE JUROR NO. 004: Yes.

3 MS. MERCER: Do you understand that some of the
4 evidence that may be brought before you will be a little bit
5 difficult to understand? In other words, you'll be hearing
6 from doctors that will use medical terminology, and other
7 experts, DNA analysts, fingerprint experts. Are you going to
8 be comfortable with their testimony? Will you be able to
9 understand it sufficiently?

10 PROSPECTIVE JUROR NO. 004: Yeah, I will understand
11 a little bit.

12 MS. MERCER: How long have you been speaking
13 English?

14 PROSPECTIVE JUROR NO. 004: Like for five years.

15 MS. MERCER: Five years? Is there any reason -- any
16 personal reason that might prevent you from sitting in
17 judgment of the defendant in this case?

18 PROSPECTIVE JUROR NO. 004: No.

19 MS. MERCER: No? If you believe that the State has
20 met it's burden of proof at the end of the case, will you be
21 able to return a verdict of guilty? Do you understand what
22 I'm asking you?

23 PROSPECTIVE JUROR NO. 004: No.

24 MS. MERCER: Well, you understand that after you've
25 heard all the evidence in this case, you're going to be asked

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004370

1 to deliberate, correct?

2 PROSPECTIVE JUROR NO. 004: Okay.

3 MS. MERCER: If you believe that the State has met
4 it's burden of proving the allegation in this case, can you
5 return a verdict of guilty? Or would that be hard for you to
6 do? Are you still not understanding my question?

7 THE COURT: Pardon?

8 MS. MERCER: Your Honor, may we approach, please?

9 (Off-record bench conference)

10 THE COURT: All right. Pamela, you know, we're
11 getting a little impression, you know. And it's not your
12 fault, but you know, maybe you have trouble with some English
13 language, and you might not -- we need a juror to really
14 understand everything that's said. You understand that?

15 PROSPECTIVE JUROR NO. 004: Yes. Yes.

16 THE COURT: Okay. So, I think, with the permission
17 of the State and Mr. O'Keefe, I'm going to excuse you. Maybe
18 -- go back to the jury commissioner. Maybe they have a day or
19 two trial that really won't have this technical testimony that
20 you'd be better at, all right? So, thank you so much, and
21 report back to the jury commissioner. Thank you very much.

22 The clerk will call another prospective juror number
23 4.

24 THE CLERK: Denyce Brown.

25 THE COURT: Denyce?

ROUGH DRAFT TRANSCRIPT

004371

1 PROSPECTIVE JUROR NO. 017: Yes.

2 MR. O'KEEFE: Thank you.

3 THE COURT: How long you been in this area?

4 PROSPECTIVE JUROR NO. 017: Eight years, Your Honor.

5 THE COURT: What do you do for a living?

6 PROSPECTIVE JUROR NO. 017: Retired.

7 THE COURT: What did you do when you worked?

8 PROSPECTIVE JUROR NO. 017: Mostly -- oh, excuse me.

9 Thank you. Administrative. I've worked in retail. I worked
10 on the B-1B when it was operating in California. But the
11 latter part is mostly retail.

12 THE COURT: All right. You look too young to
13 retire, but you're enjoying it?

14 PROSPECTIVE JUROR NO. 017: Oh, thank you.

15 THE COURT: You're enjoying -- how long have you
16 been retired?

17 PROSPECTIVE JUROR NO. 017: It's been about -- since
18 '99.

19 THE COURT: All right.

20 PROSPECTIVE JUROR NO. 017: When I --

21 THE COURT: How's your health, all right?

22 PROSPECTIVE JUROR NO. 017: -- moved here. When I
23 moved here.

24 THE COURT: Your health's all right --

25 PROSPECTIVE JUROR NO. 017: Yes, so far.

ROUGH DRAFT TRANSCRIPT

004372

1 THE COURT: -- as you sit here? Okay, good. Are
2 you married?

3 PROSPECTIVE JUROR NO. 017: No.

4 THE COURT: Children?

5 PROSPECTIVE JUROR NO. 017: Two boys.

6 THE COURT: What do they do for a living?

7 PROSPECTIVE JUROR NO. 017: My son lives here in the
8 area, and he works for Clark County.

9 THE COURT: What does he do in Clark County?

10 PROSPECTIVE JUROR NO. 017: Works for
11 transportation, traffic.

12 THE COURT: Okay. And what about the other child?

13 PROSPECTIVE JUROR NO. 017: He's in Michigan.

14 THE COURT: What does he do?

15 PROSPECTIVE JUROR NO. 017: He's a teacher. High
16 school teacher.

17 THE COURT: Grandchildren, I hope?

18 PROSPECTIVE JUROR NO. 017: One.

19 THE COURT: Okay, good.

20 PROSPECTIVE JUROR NO. 017: A grandson.

21 THE COURT: I don't have any, you see.

22 PROSPECTIVE JUROR NO. 017: He's eight years-old,
23 going on 30.

24 THE COURT: Yeah. I know what you mean. Have you
25 ever been in the military?

ROUGH DRAFT TRANSCRIPT

004373

1 PROSPECTIVE JUROR NO. 017: No.

2 THE COURT: Are you acquainted with anybody in law
3 enforcement?

4 PROSPECTIVE JUROR NO. 017: When I was living in
5 Michigan, where I grew up, we had a family member -- well, a
6 friend of my father's was a police officer.

7 THE COURT: Yeah. A lot of people who have
8 neighbors as a police officer --

9 PROSPECTIVE JUROR NO. 017: Right.

10 THE COURT: -- or go bowling -- maybe go to the same
11 church. But the follow up question is, you understand you're
12 not to give greater weight or lesser weight to a police
13 officer's testimony; give it the weight you deem appropriate.
14 You understand that?

15 PROSPECTIVE JUROR NO. 017: Correct. Yes, I --

16 THE COURT: All right.

17 PROSPECTIVE JUROR NO. 017: -- understand.

18 THE COURT: Have you or anyone closely associated
19 with you ever been the victim of a crime?

20 PROSPECTIVE JUROR NO. 017: Vandalism.

21 THE COURT: Yourself?

22 PROSPECTIVE JUROR NO. 017: Personally, yes.

23 THE COURT: Somebody vandalized you?

24 PROSPECTIVE JUROR NO. 017: My car.

25 THE COURT: Oh, okay. All right. How long ago was

ROUGH DRAFT TRANSCRIPT

004374

1 that?

2 PROSPECTIVE JUROR NO. 017: Since I've been here.
3 About five years ago.

4 THE COURT: Did they ever catch the individual?

5 PROSPECTIVE JUROR NO. 017: No, we -- the officer
6 said probably it was children, because they --

7 THE COURT: Yeah.

8 PROSPECTIVE JUROR NO. 017: -- cut my top.

9 THE COURT: All right. You did report it, but they
10 never --

11 PROSPECTIVE JUROR NO. 017: Oh, it was reported,
12 yes.

13 THE COURT: That's not going to affect your
14 deliberation here?

15 PROSPECTIVE JUROR NO. 017: Yeah. Insurance took
16 care of it.

17 THE COURT: You don't hold that against the State or
18 the police for not catching the individual, do you?

19 PROSPECTIVE JUROR NO. 017: No.

20 THE COURT: And you certainly don't hold that
21 against the defendant?

22 PROSPECTIVE JUROR NO. 017: Correct, no.

23 THE COURT: Have you or anyone closely associated
24 with you ever been arrested for a crime?

25 PROSPECTIVE JUROR NO. 017: No, I have not.

ROUGH DRAFT TRANSCRIPT

004375

1 THE COURT: Anyone closely associated, like --

2 PROSPECTIVE JUROR NO. 017: No.

3 THE COURT: No. Have you ever served on a jury
4 before?

5 PROSPECTIVE JUROR NO. 017: Not here, but in
6 Connecticut.

7 THE COURT: How many times?

8 PROSPECTIVE JUROR NO. 017: Once.

9 THE COURT: How long ago?

10 PROSPECTIVE JUROR NO. 017: A good 15 years.

11 THE COURT: Was it a criminal case, or a civil case?

12 PROSPECTIVE JUROR NO. 017: Civil.

13 THE COURT: So, somebody wanted money [inaudible] --

14 PROSPECTIVE JUROR NO. 017: Damages.

15 THE COURT: Yeah. Damages, right. And you were
16 picked as a juror?

17 PROSPECTIVE JUROR NO. 017: Yes, I was.

18 THE COURT: Were you picked as foreperson?

19 PROSPECTIVE JUROR NO. 017: No.

20 THE COURT: You did deliberate the case?

21 PROSPECTIVE JUROR NO. 017: Yes, we did.

22 THE COURT: Without telling me what the verdict was,
23 did your jury reach a verdict?

24 PROSPECTIVE JUROR NO. 017: Yes, we did.

25 THE COURT: Different burden of proof between a

ROUGH DRAFT TRANSCRIPT

004376

1 criminal case and a civil case. And again, I don't like
2 people going into instructions. But once in a while, I'll
3 instruct you that in a criminal case, as I indicated, the
4 State -- it's incumbent upon the State to prove the defendant
5 guilty beyond a reasonable doubt. Do you understand that?

6 PROSPECTIVE JUROR NO. 017: Yes, I do.

7 THE COURT: In a civil case, it's what they call a
8 preponderance of the evidence. You have to tip the scale,
9 that the plaintiff -- 51 percent, or whatever it is. It's
10 called a preponderance of the evidence. But I'll instruct you
11 as what the law is, and you have to promise me you'll follow
12 my instructions.

13 PROSPECTIVE JUROR NO. 017: I will. Yes.

14 THE COURT: And you'll be fair and impartial in this
15 case?

16 PROSPECTIVE JUROR NO. 017: Fair and impartial.

17 THE COURT: Thank you so much. State, questions;
18 pass for cause?

19 MR. LALLI: Thank you, Your Honor. Good morning,
20 Ms. Brown.

21 PROSPECTIVE JUROR NO. 017: Hello.

22 MR. LALLI: You indicated that you are now retired.
23 Congratulations on that.

24 PROSPECTIVE JUROR NO. 017: Thank you.

25 MR. LALLI: But you indicated that you had

ROUGH DRAFT TRANSCRIPT

004377

1 experience in administration?

2 PROSPECTIVE JUROR NO. 017: It was like a church
3 organization. Not like; it was a church organization, and I
4 was the office manager for about nine years. And it
5 encompassed a lot of things. So, interaction with the
6 community, and interaction with government. It was a learning
7 experience, yes.

8 MR. LALLI: Where was that?

9 PROSPECTIVE JUROR NO. 017: Hartford, Connecticut.

10 MR. LALLI: Okay. Did you -- did you supervise
11 employees?

12 PROSPECTIVE JUROR NO. 017: Yes. As a matter of
13 fact, four people.

14 MR. LALLI: And what did they do? What were their
15 responsibilities?

16 PROSPECTIVE JUROR NO. 017: Majority was like making
17 sure letters went out properly, mailing. We had different
18 organization came in as meeting rooms. Setting up meetings,
19 make sure that went smoothly. Donations.

20 MR. LALLI: I'm sure because it was a --

21 PROSPECTIVE JUROR NO. 017: Soliciting, rather.

22 MR. LALLI: I'm sure because it was a church, there
23 were never disagreements between anybody?

24 PROSPECTIVE JUROR NO. 017: Oh, sure. No. Not
25 hardly.

ROUGH DRAFT TRANSCRIPT

004378

1 MR. LALLI: Did you feel comfortable sorting through
2 those disagreements that folks that you supervised had, and
3 reaching a resolution on that?

4 PROSPECTIVE JUROR NO. 017: I think I know what you
5 mean. Like listening to everyone's opinion?

6 MR. LALLI: Yes, ma'am.

7 PROSPECTIVE JUROR NO. 017: And -- yes. We sorted
8 it out among ourselves, and it usually turned out for the
9 better when we all talked about whatever the problem was.

10 MR. LALLI: Did I also hear you correctly that you
11 worked for the -- did you say B-1B?

12 PROSPECTIVE JUROR NO. 017: Rockwell --

13 MR. LALLI: Okay.

14 PROSPECTIVE JUROR NO. 017: -- as a matter of fact.

15 MR. LALLI: The B-1 Bomber?

16 PROSPECTIVE JUROR NO. 017: Correct.

17 MR. LALLI: What --

18 PROSPECTIVE JUROR NO. 017: It was in the 80's.

19 MR. LALLI: What was your involvement in that
20 program?

21 PROSPECTIVE JUROR NO. 017: Mostly, working on the
22 computer. Procurement. Putting numbers in, and making sure
23 they were right, regarding the production of the airplane.

24 MR. LALLI: Regarding the production?

25 PROSPECTIVE JUROR NO. 017: Of the airplane, yes.

ROUGH DRAFT TRANSCRIPT

004379

1 MR. LALLI: That was with Rockwell?

2 PROSPECTIVE JUROR NO. 017: Correct.

3 MR. LALLI: Was that in Southern California?

4 PROSPECTIVE JUROR NO. 017: Yes, it was.

5 MR. LALLI: Did you have any specialized training
6 for that position?

7 PROSPECTIVE JUROR NO. 017: As long as I understood
8 computer and knew numbers, I passed the test and got the job.

9 MR. LALLI: Was it mainframe technology; that sort
10 of -- a computer? Or was it special -- I don't want you to --

11 PROSPECTIVE JUROR NO. 017: No, it was mainframe.
12 Yes.

13 MR. LALLI: All right. So, did you work in -- would
14 it be in the accounting department, or --

15 PROSPECTIVE JUROR NO. 017: Avionics.

16 MR. LALLI: Okay. And how long did you do that for?

17 PROSPECTIVE JUROR NO. 017: I think it lasted five
18 and-a-half years, until the last bomber was --.

19 MR. LALLI: You mentioned that you have children.
20 Did -- were you ever -- have you ever been married?

21 PROSPECTIVE JUROR NO. 017: Their father's deceased.

22 MR. LALLI: Okay.

23 PROSPECTIVE JUROR NO. 017: But no, I've never been
24 married.

25 MR. LALLI: Do you ever have any personal or

ROUGH DRAFT TRANSCRIPT

004380

1 firsthand experience with domestic violence?

2 PROSPECTIVE JUROR NO. 017: I've had like -- as a
3 matter of fact, my sister in-law. You know. So --

4 MR. LALLI: Can you tell us about --

5 PROSPECTIVE JUROR NO. 017: She was the aggressor.

6 MR. LALLI: All right.

7 PROSPECTIVE JUROR NO. 017: In my opinion. In
8 everyone's opinion, even the court's. But it was never where
9 anyone went to trial, but police were called in.

10 MR. LALLI: Do you -- you think everybody believed
11 that she was the aggressor, even the court?

12 PROSPECTIVE JUROR NO. 017: Yeah. Yes.

13 MR. LALLI: So, can you give us some sense of the
14 extent to which the authorities were involved with your sister
15 in-law?

16 PROSPECTIVE JUROR NO. 017: She was put into a
17 program for a while, you know, because it had to do with --
18 she was a drug user also. So, that was the decision of the
19 court, rehabilitation, which brought on the domestic part.

20 MR. LALLI: How close were you to her?

21 PROSPECTIVE JUROR NO. 017: I loved her because she
22 loved my brother. But they have been divorced at least 10 to
23 12 years.

24 MR. LALLI: All right. So, it's been quite a while
25 since you've had to deal with --

ROUGH DRAFT TRANSCRIPT

004381

1 PROSPECTIVE JUROR NO. 017: Correct.

2 MR. LALLI: -- an issue like that?

3 PROSPECTIVE JUROR NO. 017: Correct.

4 MR. LALLI: Were you living at the -- in the same
5 city that --

6 PROSPECTIVE JUROR NO. 017: Yes.

7 MR. LALLI: -- your brother was at the time?

8 PROSPECTIVE JUROR NO. 017: Yes. We were living all
9 in the same city.

10 MR. LALLI: Was that Connecticut?

11 PROSPECTIVE JUROR NO. 017: That was Michigan.

12 MR. LALLI: Oh, back in Michigan?

13 PROSPECTIVE JUROR NO. 017: Correct.

14 MR. LALLI: Do you think that a community ought to
15 be involved in domestic violence issues?

16 PROSPECTIVE JUROR NO. 017: Community and family.
17 Yes, I do.

18 MR. LALLI: What do you think the responsibility of
19 the community is? What do you think their responsibility
20 ought to be?

21 PROSPECTIVE JUROR NO. 017: I mean, if you're aware
22 of it, I think that you should try to give them -- or whoever
23 needs the support, to either get out of the situation, or you
24 know -- or see what they can do for the aggressor. Because
25 it's a two-way street. Both of them will need help, the one

ROUGH DRAFT TRANSCRIPT

004382

1 who's initiating it, and the one's that's taking it. So --

2 MR. LALLI: I heard you say something about how your
3 sister in-law, or your former sister in-law had either a drug
4 or an alcohol problem which contributed --

5 PROSPECTIVE JUROR NO. 017: Drug.

6 MR. LALLI: -- to the problem?

7 PROSPECTIVE JUROR NO. 017: Yes.

8 MR. LALLI: To what extent do you think drugs or
9 alcohol ought to mitigate a person's responsibility? Do you
10 understand what I mean by that?

11 PROSPECTIVE JUROR NO. 017: You mean, if it's okay
12 as to --

13 MR. LALLI: Yeah, or we ought to --

14 PROSPECTIVE JUROR NO. 017: -- what they're doing?

15 MR. LALLI: -- we ought to say, well, you know, they
16 don't really deserve to be punished, or they're really not at
17 fault because they were high at the time that these things
18 happened. What do you think about that?

19 PROSPECTIVE JUROR NO. 017: No, I think they'll have
20 responsibility for their actions.

21 MR. LALLI: Do you --

22 PROSPECTIVE JUROR NO. 017: Because it hurts -- not
23 just -- like I will say, my brother. It hurt our whole
24 family, and their children. So, it drew us all in there,
25 trying to, like, better the situation. You know, get her

ROUGH DRAFT TRANSCRIPT

004383

1 rehabilitated, as they said.

2 MR. LALLI: Was she able to get rehabilitated? Was
3 she able to get the problem addressed?

4 PROSPECTIVE JUROR NO. 017: As far as I know, it's
5 still a struggle. I guess it's a daily struggle for her,
6 yeah.

7 MR. LALLI: Did she ever -- was she ever
8 incarcerated for her actions?

9 PROSPECTIVE JUROR NO. 017: I think she was like
10 given, like you say, probation type situations, but I've never
11 heard of her being incarcerated. Yeah.

12 MR. LALLI: Do you know anyone who suffers the
13 effects of mental illness?

14 PROSPECTIVE JUROR NO. 017: Personally, no.

15 MR. LALLI: And mental illness comes in all forms.
16 I mean, there's depression. Somebody talked about I think
17 bipolar.

18 PROSPECTIVE JUROR NO. 017: Right.

19 MR. LALLI: And you don't have any --

20 PROSPECTIVE JUROR NO. 017: Personally --

21 MR. LALLI: -- experience with that?

22 PROSPECTIVE JUROR NO. 017: No. I do not.

23 MR. LALLI: Do you -- what went through your mind
24 when you learned that this was a murder case?

25 PROSPECTIVE JUROR NO. 017: I just said, you know,

ROUGH DRAFT TRANSCRIPT

004384

1 somebody's hurting. You know, other people that are left here
2 are hurting, because a murder does something to everybody. I
3 don't care what anyone says. When you hear about it, you feel
4 like, you know, well, somebody lost someone. A sister, a
5 mother, a brother, or whatever. So.

6 MR. LALLI: Do you think that you can be a fair and
7 impartial juror in a murder case?

8 PROSPECTIVE JUROR NO. 017: I think I can, yes.

9 MR. LALLI: Do you believe in holding people
10 accountable for their actions?

11 PROSPECTIVE JUROR NO. 017: Yes, I do.

12 MR. LALLI: If we convince you beyond a reasonable
13 doubt that Mr. O'Keefe is guilty of second degree murder,
14 would you convict him?

15 PROSPECTIVE JUROR NO. 017: Yes.

16 MR. LALLI: All right. Thank you. Your Honor,
17 we'll pass for cause.

18 THE COURT: All right. Thank you. Mr. O'Keefe,
19 questions; pass for cause?

20 MR. O'KEEFE: Yes, Your Honor. First, can we
21 approach the bench?

22 THE COURT: Yes.

23 (Off-record bench conference)

24 MR. O'KEEFE: And yes, I had a few questions also.

25 THE COURT: Thank you.

ROUGH DRAFT TRANSCRIPT

004385

1 MR. O'KEEFE: If I could continue on now.

2 THE COURT: Sure, absolutely.

3 MR. O'KEEFE: Thank you. It's Denyce, right?

4 PROSPECTIVE JUROR NO. 017: Yes, it is.

5 MR. O'KEEFE: Okay, Denyce. Hi. Bear with me,
6 Denyce, and everybody. Please understand, I'm under extreme
7 stress and very tired, and I'm not polished like Mr. Lalli is.
8 You know, my first time. And hopefully, I'll never have to go
9 through anything like this again. So, again, forgive me
10 jurors. You know, you wouldn't want to be in my shoes.

11 Do you have anybody that works for -- in a law firm,
12 ma'am?

13 PROSPECTIVE JUROR NO. 017: Law firm?

14 MR. O'KEEFE: Yeah. Do you have a family member,
15 anybody in a law firm?

16 PROSPECTIVE JUROR NO. 017: No.

17 MR. O'KEEFE: And did I hear -- nobody in your
18 family works -- or is related to a police officer, are they?

19 PROSPECTIVE JUROR NO. 017: Not related. Was
20 growing up, my father --

21 MR. O'KEEFE: Your father was a police officer?
22 Okay.

23 PROSPECTIVE JUROR NO. 017: No, he had a friend --

24 MR. O'KEEFE: Oh, he had a friend, ma'am.

25 PROSPECTIVE JUROR NO. 017: -- that was a police

ROUGH DRAFT TRANSCRIPT

004386

1 officer.

2 MR. O'KEEFE: Okay.

3 PROSPECTIVE JUROR NO. 017: Family -- I considered a
4 family member, but he was a friend of my father's.

5 MR. O'KEEFE: This is think is a very key question.
6 Do you think it's imperative to know if somebody is diagnosed
7 with a mental illness -- multiple mental illnesses? Do you
8 think that that could add to a case, the facts?

9 PROSPECTIVE JUROR NO. 017: All the facts, and they
10 have mental problems, yes.

11 MR. O'KEEFE: Okay.

12 PROSPECTIVE JUROR NO. 017: Yes.

13 MR. O'KEEFE: Need to be careful, here. I don't
14 want to -- have you been in Vegas long?

15 PROSPECTIVE JUROR NO. 017: Nine years November.

16 MR. O'KEEFE: Nine years. Okay. Do you have a
17 computer?

18 PROSPECTIVE JUROR NO. 017: No.

19 MR. O'KEEFE: No?

20 PROSPECTIVE JUROR NO. 017: I have every other
21 device, but not computer.

22 MR. O'KEEFE: Okay.

23 PROSPECTIVE JUROR NO. 017: But I do use the one at
24 the library.

25 MR. O'KEEFE: You do use the one at the library?

ROUGH DRAFT TRANSCRIPT

004387

1 Okay, so you're familiar with it. Actually, you know, at this
2 time, I have no further questions. I'll pass, Your Honor.

3 THE COURT: Thank you very much, Mr. O'Keefe. You
4 know, it's a good time now to -- we didn't take a break. It's
5 a good time to take our lunch break now, all right, ladies and
6 gentlemen? But when you come back, make sure you take the
7 same seats. See where you're seated, and make sure you take
8 the same seats.

9 And we'll see everybody about -- you know, between --
10 - about a quarter after 1:00. All right? We'll see -- and
11 just wait outside. Don't come in. Just wait outside, and our
12 marshal will bring you in all at once. About ten after 1:00,
13 quarter after 1:00. All right?

14 THE MARSHAL: Hold on just a second, guys. Hold on
15 just a second.

16 (Pause in the proceedings)

17 THE COURT: Thank you very much. We'll be at ease
18 until the jury leaves.

19 (Outside the presence of the prospective jury panel)

20 THE COURT: All right. This is outside the presence
21 of the jury. I just want to make a record on a few things.
22 The -- one of the jurors was sick, Juror number 07-0079,
23 Dudley -- or Dante Dudley. And he wrote a letter saying he's
24 throwing up, and he needs to be excused. And I did circulate
25 this note to the State and Mr. O'Keefe. And it's my

ROUGH DRAFT TRANSCRIPT

004088

1 understanding both of you agreed to excuse; is that correct?

2 MR. LALLI: Yes, Your Honor.

3 MR. O'KEEFE: That is correct, Your Honor.

4 THE COURT: You had no objections to me excusing
5 him. So, we'll make that part of the record. And there's a
6 few things that Mr. -- or there's one thing that Mr. O'Keefe
7 objected to. And the record will reflect that the defendant
8 properly and timely made an objection. So, for the record, he
9 timely did it, but I indicated, let's excuse the jury and make
10 a record on it now.

11 But I did deny his objection at the bench regarding
12 something -- Mr. Lalli using the term "battery domestic
13 violence." I'm not quite sure what it was. But I listened to
14 it, but I felt compelled to deny it. But I am going to allow
15 Mr. O'Keefe to make a record on it, all right?

16 MR. O'KEEFE: Yes, Your Honor. I just -- first of
17 all, again, I apologize, and I really appreciate your patience
18 with me. But I must be adamant in preserving my right in the
19 fact that the law of the case of the first appeal has been set
20 by the Nevada Supreme Court. And they have clearly indicated,
21 and they've read the record, Your Honor, that they were trying
22 to -- they referred in opening statement and closing statement
23 -- argument, excuse me, of the first trial, that the act was
24 in the course of a battery domestic violence.

25 They were quite clear also, because Phillip Smith,

ROUGH DRAFT TRANSCRIPT

004389

1 the prosecutor at that time, litigated at a Petrocelli hearing
2 the history of the domestic violences. The whole issue was
3 the battery domestic violence being brought in. They
4 questioned the jurors about -- basically, they were just
5 referring that it was definitely in the act of a battery
6 domestic violence.

7 Now, Your Honor, with all due respect -- and I'll be
8 brief. My argument again to protect myself is that, as it
9 stands right now, Your Honor, I'm being prosecuted in the
10 sense as -- like George Zimmerman of Florida. He's being
11 prosecuted for the first time, first trial, on the depraved
12 heard, murder theory -- malice theory, which Nevada recognizes
13 as the abandoned and malignant heart theory, which you well
14 know better than me.

15 Again, my point being, is, I've been acquitted of
16 any intentional -- with intent, stabbing. Again, on appeal,
17 not only did the Nevada Supreme Court rule and make law of the
18 case, they ruled that I did no unlawful act. Yes, the jury
19 instruction was wrong.

20 But I also -- after reviewing the record on appeal
21 -- presented on appeal, they decided the issue, too, in my
22 favor, that I absolutely did no unlawful act. Battery. They
23 knew what they were saying. The elements were described.
24 It's merged in for the single alleged act; they acquitted me
25 of it.

ROUGH DRAFT TRANSCRIPT

004390

1 I understand what Mr. Lalli has to do here, and Ms.
2 Mercer. They are leading the jurors into believing -- it's
3 too close to the theory of the case. They're trying again to
4 technically get away orally suggesting that, again, this
5 homicide -- alleged, that I've been acquitted of, I must say
6 for the record, in my opinion -- that this whole event
7 happened in the act of a battery DV.

8 Now, Honor (sic), real quick, and I'll be done.
9 There was only one alleged act. They called it a battery act.
10 But because she allegedly died from the battery act, it became
11 murder. That's -- it's not a battery, on top of a battery, in
12 top of a battery. I mean, how many batteries do I got to get
13 clear of before I get to the act that I've been acquitted of?

14 You will clearly understand what I'm saying. The
15 felony, alleged, murder instruction was the only instruction
16 that they could give to base their theory on conserving the
17 facts of my case. There was no underlining charge. There was
18 no nothing. They prosecuted me simply on a battery act. It's
19 either I did it, or I didn't.

20 Again, to sum up, my whole point is, he's arguing
21 and leading the jury into the thought pattern that a battery
22 act was committed, and I've been acquitted of it. And the law
23 of the case has been established quite clearly. Not only
24 that, he's trying to argue it, and give the idea, and bring
25 evidence in, is what he wants to do.

ROUGH DRAFT TRANSCRIPT

004391

1 But a ruling still hasn't been made, because Judge
2 Villani left this courtroom, and put it all in your hands.
3 Let Judge senior Bonaventure deal with it. And he hasn't
4 properly alleged the amended information on a battery act.
5 There's no theory plausible possible. There's no lawful act,
6 Your Honor, that would constitute second degree murder.

7 THE COURT: All right. Well, you have -- again, you
8 had that on federal appeal, but I wanted you to make a record.
9 Mr. Lalli?

10 MR. LALLI: Your Honor, it's the same record I made
11 earlier. We're proceeding under --

12 THE COURT: Well, make it again, just very briefly.

13 MR. LALLI: Sure. We are proceeding under a theory
14 of malice murder, either expressed or implied malice. What
15 Mr. O'Keefe I think it's struggling with understanding is that
16 the Nevada Supreme Court said there was no evidence of felony
17 second degree murder; an NRS 200.070 type murder. That's not
18 what we're alleging here. That's not our theory of the case.

19 THE COURT: And it was in the first trial?

20 MR. LALLI: Well, I don't know. It was not a theory
21 that was alleged in the charging document. And so, the
22 Supreme Court reversed on that. And I'm happy to --

23 THE COURT: No --

24 MR. LALLI: Well, I'm happy to present the Court
25 with the actual order of reversal.

ROUGH DRAFT TRANSCRIPT

004392

1 THE COURT: Yeah. Just bring that to me and my
2 attention. Just, you know, put it on my desk, and I'll look
3 over it.

4 MR. LALLI: I will do that after lunch. But what
5 they -- the problem was, the theory of 070, the Supreme Court
6 never said this was not a malice murder. They never said that
7 the State could not proceed on a theory of second degree
8 murder, as --

9 THE COURT: Well, again, it is what it is --

10 MR. LALLI: -- we're alleging now.

11 THE COURT: -- what the Supreme Court said. There
12 was a ruling made. Mr. O'Keefe has that on appeal in the
13 federal -- and perhaps, it will be determined to be right in
14 the federal court. But I -- I allow you to make your record,
15 and it seems to me that there was no evidence -- they didn't
16 want the felony -- they didn't want the felony indication; is
17 that correct? The Supreme Court -- that's what the Supreme
18 Court said? No evidence of any felony second degree.

19 MR. LALLI: Correct, Your Honor.

20 THE COURT: And you're not going to present that
21 here now.

22 MR. LALLI: That's correct.

23 THE COURT: You're just going on malice, expressed
24 or implied.

25 MR. LALLI: Correct.

ROUGH DRAFT TRANSCRIPT

004393

1 THE COURT: So, we know what we're doing, and
2 there's a record made on it, and we'll go from there. So, I'm
3 going to deny your objection. And so, we'll see everybody --

4 MR. O'KEEFE: Well, Judge, could I --

5 THE COURT: Sure, go ahead.

6 MR. O'KEEFE: Please forgive me. And it's small, to
7 protect myself. And I'll be real brief. That is not correct.
8 If I may present to the Judge now -- to the Court -- I gave
9 Mr. Lalli a copy of it. This has everything in it that you
10 need. It's per NRS 47.150, subsection 2, which is by the
11 Nevada -- you knew better than me; mandates that if I offer
12 the documents, I'm requesting that you, and it says that you
13 supposedly have to -- forgive me. I'm trying to protect
14 myself.

15 I made a little index. There's 18 exhibits. And I
16 put exactly what they are, and the date. And then, I provided
17 them exhibits, Your Honor, with a cover sheet, nice and clean,
18 what it is, exhibit number, and then the document. It has the
19 initial complaint and information, the first information filed
20 electronically, the amended information that you're going to
21 see -- you're going to be amazed.

22 The amended information that's got the reversal
23 order. You're going to see jury instruction number 18 from
24 the first trial, that the Nevada Supreme Court did the law of
25 the case on. I even got trial transcripts in there of the

ROUGH DRAFT TRANSCRIPT

004394

1 opening statement and the closing statement, I do believe.
2 I've got the Ninth Circuit reversal order in here.

3 He's proceeding on the same charge. Murder is
4 murder. You have to determine first that it was an unlawful
5 -- unlawful; key. Not -- any reasonable self-defense negates
6 malice. Unlawful killing with malice aforethought, either
7 expressed or implied.

8 Expressed is for first degree intentional stabbing.
9 The jury, being of the tier of the fact, acquitted me of the
10 first trial, of intentional -- there's even a section, the
11 motion to settle the record, where Judge Villani himself --
12 you'll find it quite interesting, and the State prosecutor
13 says, you're absolutely right. He has been acquitted of any
14 intent -- criminal intent; a judicial admission by Judge
15 Villani.

16 Now, when the jury returned second degree murder,
17 the subdivision 2 was an instruction on implied malice murder.
18 It doesn't say anything about felony murder; nothing like
19 that. They were just saying, this is how you prove implied
20 malice murder for second degree murder. They give the
21 definition, then, this is how you would prove it, how you
22 would prove the single concept of malice aforethought,
23 implied. You will see it. You'll be amazed.

24 There's nothing in here in the charging document
25 that says anything about a felony. And again, they haven't

ROUGH DRAFT TRANSCRIPT

004395

1 even alleged any unlawful act, because he can't. He's barred.
2 He's --

3 THE COURT: All right.

4 MR. O'KEEFE: -- time-barred.

5 THE COURT: That's the same argument.

6 MR. O'KEEFE: If I can present this as --

7 THE COURT: Made it -- yeah, give it to the clerk,
8 and we'll make that part of the record.

9 MR. O'KEEFE: I guess --

10 THE COURT: And we'll go from there, all right?

11 MR. O'KEEFE: O'Keefe -- or 3A for -- 3 being for
12 third trial, Exhibit A; if that's acceptable, Your Honor?

13 THE COURT: Is that all right, Mr. Lalli?

14 MR. LALLI: Yes.

15 THE COURT: We'll mark it as --

16 MR. LALLI: Sure.

17 THE CLERK: Actually --

18 THE COURT: We don't want -- it's not going to go to
19 the jury. So, it's going to be a --

20 MR. O'KEEFE: No, not for the jury. But for the --

21 MR. LALLI: A court exhibit.

22 THE COURT: -- court exhibit.

23 MR. O'KEEFE: For the record of the trial, right.

24 THE COURT: Court Exhibit 2. Let's make it that.

25 MR. O'KEEFE: Court Exhibit 2?

ROUGH DRAFT TRANSCRIPT

004396

1 THE COURT: What's 1? I'm just curious.

2 THE CLERK: It's the note that you gave me.

3 THE COURT: Oh. The note is -- the excusal. That
4 will be Court Exhibit 1, the note. And this will be Court
5 Exhibit 2.

6 MR. O'KEEFE: And I -- this last time, Your Honor,
7 and I'll get off of it. I promise you, sir. I appreciate
8 your patience. And gosh, you're great. Could you take a look
9 at what I'm saying that I have passed to you? And you'll
10 quite clearly see.

11 THE COURT: I'll look at it. But I don't want to --

12 MR. O'KEEFE: Thank you, Your Honor. That's all I
13 ask.

14 THE COURT: We'll address it one more time at the
15 appropriate time.

16 MR. O'KEEFE: Thank you so much.

17 THE COURT: But we'll go from there. But --

18 MR. O'KEEFE: Thank you, Your Honor. That's all I
19 ask.

20 MR. LALLI: Your Honor, I emailed a copy of that
21 opinion from the Nevada Supreme Court --

22 THE COURT: All right. Good.

23 MR. LALLI: -- to Judge Villani's secretary.

24 THE COURT: I'll get it.

25 MR. LALLI: So -- and I asked her to print that.

ROUGH DRAFT TRANSCRIPT

004397

1 THE COURT: All right. So, we'll finish --
2 hopefully, we'll finish the jury in a few hours, and then
3 we'll -- if we have time, we'll have brief opening statements.
4 If not, we'll do it tomorrow. But --

5 MR. LALLI: Very good, Your Honor.

6 THE COURT: -- no witnesses. I think it's -- we'll
7 hear witnesses tomorrow, all right?

8 MR. LALLI: All right. Thank you. Does the Court
9 -- what time would the Court like to start tomorrow?

10 THE COURT: Well, you know, we have the 8:15 --
11 hopefully I'll be quick, and it will be -- I think 9:30 is
12 fine.

13 MR. LALLI: All right.

14 THE COURT: 9:30.

15 MR. LALLI: Very good.

16 THE COURT: Be careful. You said something on your
17 question to the jury, please bear with me, this is the first
18 time I'm doing this. I'm not sure -- you better be careful of
19 what you say on that, because you don't want to open the door
20 to that you've been in court before. I mean, I just -- just a
21 thought.

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

23 THE COURT: Okay. Thank you.

24 MR. O'KEEFE: Okay.

25 MR. LALLI: Thank you, Your Honor.

ROUGH DRAFT TRANSCRIPT

004398

1 MR. MANINGO: Thank you, sir.

2 THE MARSHAL: All right. We're in recess.

3 (Court recessed at 12:05 p.m. until 1:26 p.m.)

4 (Within the presence of the prospective jury panel)

5 THE COURT: All right. Let's proceed with the
6 selection of the jury. I think we were on Kerri Macqueen; is
7 that correct?

8 PROSPECTIVE JUROR NO. 005: Yes.

9 THE COURT: How long you been in this area?

10 PROSPECTIVE JUROR NO. 005: 16 years.

11 THE COURT: What do you do for a living?

12 PROSPECTIVE JUROR NO. 005: I'm a waitress.

13 THE COURT: Where?

14 PROSPECTIVE JUROR NO. 005: At Suncoast.

15 THE COURT: All right. Are you married?

16 PROSPECTIVE JUROR NO. 005: No, single.

17 THE COURT: Children?

18 PROSPECTIVE JUROR NO. 005: One.

19 THE COURT: Old enough to work?

20 PROSPECTIVE JUROR NO. 005: Yeah.

21 THE COURT: What do they do?

22 PROSPECTIVE JUROR NO. 005: Just graduated college.

23 THE COURT: Don't have a job yet?

24 PROSPECTIVE JUROR NO. 005: He just got one with SKG
25 Marketing.

ROUGH DRAFT TRANSCRIPT

004399

1 THE COURT: Okay.

2 MR. LALLI: If there is an objection that the
3 defendant has, he's required to make it. Blanket objections
4 are not allowed in our State jurisprudence, and then the Court
5 is required to rule on that.

6 THE COURT: Okay. Go ahead.

7 MR. O'KEEFE: Well, as the time -- you know, it
8 would cause me to have to hold up, cite some state law; this
9 and that, and this and this. You know. I just don't see
10 what's the harm. It's a simple procedure. I mean, why not
11 just grant that? And I'll let you decide on that.

12 But I want to move on to the other issue, Your
13 Honor, and let you have -- okay. In his argument, he said
14 that it was the felony murder theory. Your Honor, who are we
15 kidding here? It doesn't matter whether it was felony murder,
16 malice murder, whatever. Murder is murder. The means, that
17 has -- that doesn't matter. It's still -- murder is murder,
18 for double jeopardy purposes. Okay?

19 The issue on the felony murder instruction. Again,
20 the State themselves in the fast track response, which Mr.
21 Lalli doesn't want to recognize -- Steven Owens; when he
22 answered that issue that the Supreme Court decided in my
23 favor, he said, what are you guys talking about? And it's in
24 the copies that I'm having copied. I gave a copy of the fast
25 track response.

ROUGH DRAFT TRANSCRIPT

004300

1 Issue 2. He says, that's nothing more than implied
2 malice murder. We have a right to show how second degree
3 murder can be found, by malice implied. And then, they even
4 state that -- instruction 13 states, you must remember the
5 rule. Murder was by malice aforethought, either expressed or
6 implied. First degree was expressed malice murder. Second
7 degree was by implied.

8 Again, my whole point is, the State admits in the
9 fast track response, we don't know what you guys are talking
10 about; that instruction was nothing but implied malice murder.
11 Okay. How ironic again, nowadays, Your Honor, he's on the
12 fast track to answer the federal public defender. He's got to
13 do the appeal again for the State of Nevada. And he's already
14 addressed it.

15 How ironic; it's come full-circle. Over three years
16 ago, he did the fast track response. Now, he's got to answer
17 that issue again, and he's already made a judicial admission.
18 It's just going to be something to see.

19 Also, what I'm getting at is jury instruction 18,
20 which -- that's why I wanted a copy, I wanted to show you. If
21 you could just look at it. Theory 1 that Mr. Lalli is trying
22 to proceed on is malice murder. Second degree murder is
23 murder is malice aforethought, without premeditation and
24 deliberation. That's just the statutory definition of malice
25 murder.

ROUGH DRAFT TRANSCRIPT

004301

1 Okay. Then, on the first trial theory number 2 was,
2 an involuntary killing that happens in the commission of an
3 unlawful act; blah, blah, blah, blah. The Nevada Supreme
4 Court said, the evidence didn't support in theory number 2
5 what you were addressing. Your Honor, please hear this. You
6 are a senior judge.

7 The law says -- Kmaxt vs. Washington. Any remaining
8 theory left on that charge, if the evidence would have
9 supported it, the appellate court was bound to say, well,
10 okay, it didn't support number 2, but we're going to say it
11 supports the statutory definition of second degree murder.

12 He's proceeding right now the same as the second
13 trial. He has not noticed me with an unlawful act. I don't
14 even know how to do my jury instructions. He's -- I'm
15 acquitted of --

16 THE COURT: You're repeating yourself now, Mr.
17 O'Keefe.

18 MR. O'KEEFE: Okay.

19 THE COURT: You've made your record. I can't be
20 here all day with this.

21 MR. O'KEEFE: Right.

22 THE COURT: I mean, I try --

23 MR. O'KEEFE: Well, I have to make this, Your Honor.

24 THE COURT: Well, you did. But you're repeating --

25 MR. O'KEEFE: Okay.

ROUGH DRAFT TRANSCRIPT

004302

1 THE COURT: -- and repeating the same thing. I
2 don't see a -- if I federal (sic), you still have a right to
3 give your reasoning for either -- is there going to be a
4 problem with the State to do that?

5 MR. O'KEEFE: Gees, work with me.

6 THE COURT: Mr. Lalli?

7 MR. LALLI: Your Honor, we -- it is, in effect, a
8 blanket objection.

9 THE COURT: All right.

10 MR. LALLI: If he has an objection to --

11 THE COURT: All right.

12 MR. LALLI: -- something, he's got to make it.

13 THE COURT: The federalization is denied, and we
14 have to make a record on that. You know, we can go on all day
15 on this. I heard what you had to say. I'm going to allow you
16 to make your exhibits part of the record. I guess we'll style
17 it a motion to dismiss because it's double jeopardy.

18 This was ruled on before by Judge Villani. It's in
19 the federal system. You have your remedy, no matter what
20 happens here. Nobody can take away your federal remedy, your
21 fast track remedy. But I'm going to -- in all due respect,
22 have to deny it here.

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

24 THE COURT: Now, the question here was this battery,
25 which Judge Villani already ruled on. You want to say

ROUGH DRAFT TRANSCRIPT

004303

1 anything regarding that, the prior --

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

3 THE COURT: Well, do it.

4 MR. O'KEEFE: Thank you. I was going to -- okay, I
5 was waiting for you patiently to --

6 THE COURT: I made the ruling.

7 MR. O'KEEFE: Okay. As far as the battery, Your
8 Honor -- God bless her soul; she's not here. She's dead. I
9 have the right to confront her about it, because she was very
10 mentally ill. The testimony given -- nobody knew at the time
11 when she made it, it wasn't -- it was basically -- she was
12 mentally ill. Again, I'm --

13 THE COURT: I don't think that addresses that issue.
14 Again, the issue is --

15 MR. O'KEEFE: You said the battery.

16 THE COURT: -- the prior --

17 MR. O'KEEFE: Battery domestic violence.

18 THE COURT: Judge Villani ruled on that you're
19 allowed to bring into the jury the prior felony conviction for
20 battery domestic violence, third offense.

21 MR. LALLI: That's correct, as well as the facts --

22 THE COURT: As well as the facts.

23 MR. LALLI: -- supporting that conviction.

24 THE COURT: So, Judge Villani already ruled on it.
25 He has a record on it. If Judge Villani is wrong, he's wrong.

ROUGH DRAFT TRANSCRIPT

004304

1 It will be appealed, and it will be reversed. But I don't
2 want to revisit Judge Villani's decision on that, but do you
3 want to say anything regarding just that one narrow issue,
4 that they're not allowed to bring in to the front of the jury
5 this --

6 MR. O'KEEFE: Okay. Believe me, I'm under the gun
7 in this, and I understand I chose this, Your Honor. Okay.
8 Dealing with that particular felony battery domestic violence,
9 C-207835, the State of Nevada, on February 10th, 2009, held a
10 Petrocelli hearing, and they listed all of my battery domestic
11 violences, and the one felony battery domestic violence.

12 They litigated the death out of it, and it was
13 finally resolved day one of trial, March 16th, 2009. Judge
14 Villani, since it was -- they were proceeding on first degree
15 intentional murder -- and Mr. Lalli is well aware of this. He
16 wasn't the prosecutor at that time. It was Mr. Smith, who is
17 now over at the federal court.

18 Judge Villani says, I'm going to allow that federal
19 battery domestic violence in for the purpose of motive and
20 intent.

21 THE COURT: Um-hum.

22 MR. O'KEEFE: And I took the stand.

23 THE COURT: I don't know if he said --

24 MR. O'KEEFE: But somehow, they brought it in.

25 THE COURT: He didn't say if you took the stand. He

ROUGH DRAFT TRANSCRIPT

004305

1 didn't say that. But I mean, he mentioned --

2 MR. O'KEEFE: They allowed --

3 THE COURT: -- that also about --

4 MR. O'KEEFE: I wasn't -- Your Honor --

5 THE COURT: -- also for self-defense.

6 MR. O'KEEFE: Yes, Your Honor. And I don't mean --
7 I wasn't finished. They end up bringing it in their case in
8 chief. Okay.

9 Now, my point is, that issue was decided on, I did
10 no battery. I did no battery act. Ashe vs. Swenson. They
11 cannot [inaudible] anything to do with battery, Your Honor.
12 The Nevada Supreme Court is going to say, what did you guys
13 do? Mr. O'Keefe repeatedly brought this up --

14 THE COURT: All right, well --

15 MR. O'KEEFE: But we should stop it now. But
16 anyway, then, the second trial proceeds. He brings all the
17 stuff in; gets away with it. I'm telling him -- what are you
18 doing? But he got away with it. Well, we went to a -- they
19 scheduled a third trial, because of the mistrial. Of course,
20 a nugatory proceeding. It's like it never happened.

21 Ms. Mercer, schedule was late. Two days after
22 calendar call, another Petrocelli hearing on the exact same
23 acts, which again are in the motion I'm asking to get copied.
24 They re-litigated two days late. After the original calendar
25 call had been set for six months, seven months, they scheduled

ROUGH DRAFT TRANSCRIPT

004306

1 a hearing on Petrocelli to try to scare me. Who are we
2 kidding? Stop it. That's -- it's the truth.

3 They're going to bring all this stuff -- all this
4 stuff [inaudible]. It's the same evidence they already
5 re-litigated. Issue of preclusion, claim for preclusion.
6 Five Star vs. Nevada (phonetic). Oh my God, they have done
7 everything wrong. They were trying to scare me. And I
8 brought up per EDCR rule 3.28, any motion has to be scheduled
9 at least by calendar call. Come on, Your Honor. That's --
10 they --

11 THE COURT: Judge Villani ruled on it, though. I
12 don't know what to tell you. I'm not going to reverse Judge
13 Villani right now. He ruled on it. You made that same
14 argument, I guess, and he made a ruling.

15 MR. O'KEEFE: And --

16 THE COURT: So, that's the law of the case, as far
17 as I'm concerned.

18 MR. O'KEEFE: The trial court decisions do not
19 constitute the law of the case, is what I'm trying to say.

20 THE COURT: Well, you object to that, but I'm going
21 to allow you to do that. All right, Mr. -- because that's
22 what Judge --

23 MR. O'KEEFE: I'm going to object heavily, Your
24 Honor.

25 THE COURT: That's what Judge -- well, you did. You

ROUGH DRAFT TRANSCRIPT

004307

1 made it part of the record. You objected. And you could --

2 MR. O'KEEFE: And I'm being forthright --

3 THE COURT: So, I don't know what to tell you.

4 MR. O'KEEFE: -- with you, Your Honor. With all due
5 respect, he tries to bring in any evidence with battery -- I'm
6 going to object during the trial.

7 THE COURT: I don't care if you object.

8 MR. O'KEEFE: I'm going to object until I'm blue in
9 the face to everything. It's the same standard of proof.
10 It's the same level.

11 THE COURT: Thank you very much. You can't --

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

13 THE COURT: -- object until you're blue in the face.

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

15 THE COURT: You make an objection, Mr. Lalli
16 responds, and I make a ruling. There's no objection until
17 you're blue in the face, because then that's a disruption of
18 the courtroom. And I can't allow in my court a disruption of
19 the courtroom. I can't allow that. I can't allow you to run
20 this trial.

21 I could give you a fair trial, give the State a fair
22 trial, allow you to object, make a record. But I can't allow
23 you to go blue in the face, because that would be a farce
24 then, and I won't allow that. So, anything else, Mr. Lalli?

25 MR. LALLI: Not on behalf of the State, Your Honor.

ROUGH DRAFT TRANSCRIPT

004308

1 THE COURT: All right. So, we're all set to bring
2 in the jury now; is that correct, Mr. Lalli?

3 THE MARSHAL: Mr. Lalli.

4 THE COURT: We're all set to bring in the jury?

5 MR. LALLI: Yes, Your Honor. Yes.

6 THE COURT: And you will give me that limiting
7 instruction when you --

8 MR. LALLI: Your Honor, I can email it to -- I have
9 it here. I can email it to --

10 THE COURT: Yeah. All right, [inaudible].

11 MR. LALLI: And should I copy Mr. Maningo on that?

12 THE COURT: Yeah, please.

13 MR. LALLI: It's the same instruction that --

14 THE COURT: Fine. All right. So, we're going to
15 bring in the jury now; is that correct? All right. We'll
16 bring in the jury. Put -- you know, 1 through 7.

17 THE MARSHAL: 1 through 12. Judge, on the second
18 page of your juror sheet, at the very bottom, 0060, I believe
19 it is, Carmen Romero, she's the only one that's not present.

20 THE COURT: Okay.

21 THE MARSHAL: Everybody else is present.

22 THE COURT: All right.

23 THE MARSHAL: All right.

24 THE COURT: Thank you.

25 THE MARSHAL: All right. Here we go.

ROUGH DRAFT TRANSCRIPT

004309

1 (Pause in the proceedings)

2 THE MARSHAL: Officers and members of the court,
3 Department 17 potential jurors.

4 (Within the presence of the prospective jury panel)

5 (Pause in the proceedings)

6 THE MARSHAL: Okay. Did you guys stay in sequence?
7 Something didn't go right. Somebody got out of sequence.
8 Carol, give me the first 12.

9 THE CLERK: Mr. Swift.

10 PROSPECTIVE JUROR NO. 001: Here.

11 THE CLERK: Collins, Stutz, Guzman-Mollinedo,
12 MacQueen, Andrade, Roche, Hulbert, Hagl, Humphries, Patton.

13 THE MARSHAL: Patton. What's the last name; Patton?

14 PROSPECTIVE JUROR NO. 013: Patton.

15 THE CLERK: P-a-t-t-o-n.

16 THE MARSHAL: Patton.

17 (Pause in the proceedings)

18 THE CLERK: We need 12.

19 THE MARSHAL: 8, 10, 11 --

20 THE CLERK: We need --

21 THE MARSHAL: -- and [inaudible].

22 THE CLERK: We need 12.

23 THE MARSHAL: And what's your last name?

24 PROSPECTIVE JUROR NO. 014: Leming.

25 THE MARSHAL: Is Leming the next person?

ROUGH DRAFT TRANSCRIPT

04210

1 THE CLERK: Yes.
2 THE MARSHAL: All right.
3 (Pause in the proceedings)
4 THE MARSHAL: All right. You may be seated, ladies
5 and gentlemen. Carol, can you do a roll call?
6 (Roll of jury called by clerk)
7 (Pause in the proceedings)
8 THE MARSHAL: Okay. Is there anybody that had --
9 needs hearing assist? Huh?
10 UNKNOWN MALE SPEAKER: I believe I do.
11 THE MARSHAL: Yeah. Need hearing -- hearing assist.
12 Was there somebody else over here? Okay. When they approach
13 the bench -- when you see the attorneys go up to the bench,
14 then I need you to pull them off, okay?
15 UNKNOWN MALE SPEAKER: Pull them off?
16 THE MARSHAL: Yeah, take them off your ears.
17 (Pause in the proceedings)
18 THE MARSHAL: Okay. I think we're ready. Are you
19 ready? Defense, you ready?
20 MR. O'KEEFE: Yes, Marshal.
21 THE MARSHAL: State?
22 MR. LALLI: Yes.
23 (Pause in the proceedings)
24 THE MARSHAL: All rise and come to order.
25 Department 17 of the Eighth Judicial District is now in

ROUGH DRAFT TRANSCRIPT

04211

1 session. The Honorable Judge Joseph Bonaventure is presiding.
2 You may be seated. Remain in order. Please make sure your
3 cell phones are all off.

4 THE COURT: All right. This is the time set for
5 trial in case number C-250630, State of Nevada vs. Brian Kerry
6 O'Keefe. Introduce yourselves, State, for the record, to the
7 jury.

8 MS. MERCER: Your Honor, do you want me to --

9 THE COURT: Just introduce yourself.

10 MS. MERCER: -- do the whole introduction? Okay.

11 I'm Deputy District Attorney Liz Mercer, and I'm
12 prosecuting the case with Chief Deputy District Attorney
13 Christopher Lalli.

14 THE COURT: Thank you. And also, we have the
15 defendant, Mr. Brian Kerry O'Keefe. And he's here, and he's
16 representing himself. We do have a standby attorney, and
17 introduce yourself, sir.

18 MR. MANINGO: My name is Lance Maningo, and I'm
19 serving as standby counsel for Mr. O'Keefe.

20 THE COURT: Thank you, Mr. Maningo.

21 MR. MANINGO: Thank you, sir.

22 THE COURT: So, State's ready to proceed.
23 Defendant, we're ready to proceed?

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

25 THE COURT: The clerk will call the roll of the jury

ROUGH DRAFT TRANSCRIPT

004312

1 panel members. When your name is called, please state "here"
2 or "present" so we know you're here.

3 (Pause in the proceedings)

4 THE COURT: All right. Apparently, the clerk has
5 already called the roll. Do we need to do it again, Mr.
6 Lalli?

7 MR. LALLI: No, Your Honor. I'll accept the
8 bailiff's --

9 THE COURT: Okay. Do we need to do it again, Mr.
10 O'Keefe? She already called the roll of the jury.

11 MR. O'KEEFE: No, Your Honor. That's okay. We can
12 move along, sir.

13 THE COURT: All right. Thank you very much.

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

15 THE COURT: I appreciate it. I'm going to ask the
16 clerk to swear -- we have the prospective jurors behind the
17 railing, and we have the prospective jurors -- excuse me. In
18 the jury box, and behind the railing. Everybody, please stand
19 up, raise your right hand, and be sworn.

20 PROSPECTIVE JURY PANEL SWORN

21 THE COURT: Thank you very much. You can be seated.
22 I'm going to ask the -- I'm going to ask the district attorney
23 to briefly state the nature of this case, and indicate the
24 possible witnesses that you might call in this case. They
25 might not call everybody, but they're going to indicate some

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1 possible witnesses. So, I'd like the jury to be cognizant of
2 the witnesses, because I'm going to ask if any of the jurors
3 know these witnesses. Ms. Mercer?

4 MS. MERCER: Thank you, Your Honor.

5 Ladies and gentlemen, the specific allegation in
6 this case is that on November 5th of 2008 at 5001 El Parque
7 Avenue, apartment 35, the defendant committed the crime of
8 second degree murder with use of a deadly weapon, when he
9 stabbed Victoria Whitmarsh with a knife.

10 The witnesses that the State intends to call at this
11 point to prove that allegation include Cheryl Morris, Joyce
12 Toliver, Charles Toliver, also known as "Cookie;" Jimmy
13 Hathcox.

14 Officer Christopher Hutcherson of the Las Vegas
15 Metropolitan Police Department, Detective Todd Conn of the Las
16 Vegas Metropolitan Police Department, Sergeant Dan Newberry of
17 the Las Vegas Metropolitan Police Department, Detective
18 Jeremiah Ballejos with the Las Vegas Metropolitan Police
19 Department.

20 Crime Scene Analyst Jocelyn Maldonado with the Las
21 Vegas Metropolitan Police Department, Crime Scene Analyst
22 Daniel Ford with the Las Vegas Metropolitan Police Department,
23 Crime Scene Analyst Robbie Dahn with the Las Vegas
24 Metropolitan Police Department.

25 Dr. Timothy Dutra, a medical examination with the

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1 Clark County Coroner's Officer. Edward Guenther, a latent
2 print examiner with Metro's forensic lab. Jennifer Bas, a DNA
3 analyst with the forensic lab. Detective Marty Wildemann, a
4 homicide detective with Las Vegas Metropolitan Police
5 Department. Elynne Wornicov (phonetic) Greene; she's a
6 victim's advocate at Metro. And Lieutenant Roger Price.

7 Additional witnesses that may be called include
8 Detective Sean Taylor with Las Vegas Metropolitan Police
9 Department, Detective Christopher Bunn, another homicide
10 detective; and Crime Scene Analyst Chelsea Collins.

11 THE COURT: Thank you, Ms. Mercer. Now, Mr.
12 O'Keefe, you want to stand up, introduce yourself, and say hi
13 to the --

14 MR. O'KEEFE: Yes.

15 THE COURT: -- prospective jurors, and indicate --
16 you know, this is not an opening statement. Just a --

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

18 THE COURT: So, if you want to introduce yourself,
19 that's fine.

20 MR. O'KEEFE: Thank you. Hi, folks. My name is
21 Brian O'Keefe. A tragedy happened on November 5th. You're
22 here to be selected to hear the case. It's going to be a
23 brief case, folks. The only witnesses I may call would be a
24 Dorothy Robe (phonetic), a Robert Pizzano (phonetic), a Lou
25 Desalvio (phonetic), and Tracy Burger (phonetic). If anybody

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1 knows those people, please let us know. Other than that, I
2 thank you.

3 THE COURT: Thank you, Mr. O'Keefe. I appreciate
4 it. I'm going to read this to you before, because you know --
5 I usually don't do this. But -- and I'll probably state this
6 again when we get the initial 12 people, or the final 12.

7 Understand that an information or an indictment is
8 simply a charge, and that it is not in any sense evidence of
9 allegations it contains. The defendant has plead not guilty
10 -- there's an information? I guess there's an information,
11 right?

12 THE CLERK: Second amended information.

13 THE COURT: Yeah. All right. So, the information -
14 - the State therefore has the burden of proving each of the
15 essential elements of the information beyond a reasonable
16 doubt. As the defendant sits there right now, he's not
17 guilty. The purpose of this trial is to determine whether the
18 State will meet that burden.

19 It is your primary responsibility as jurors to find
20 and determine the facts. Under our system of criminal
21 procedure, you are the sole judge of the facts. You are to
22 determine the facts from the evidence you hear, and other
23 evidence, including exhibits introduced in court. It is up to
24 you to determine the inferences which you feel may be properly
25 drawn from the evidence.

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1 Parties may sometimes present objections to some of
2 the testimony or other evidence. It is the duty of each party
3 to object to evidence which he or she believes may not
4 properly be offered, and you should not be prejudiced in any
5 way against anybody -- any of the parties who make objections
6 on behalf of themselves.

7 At times, I may sustain objections, or direct that
8 you disregard certain testimony or exhibits. You must not
9 consider any evidence to which an objection has been
10 sustained, or which I have instructed you to disregard.

11 In considering the weight and value of the testimony
12 of any witness, you may take into consideration the
13 appearance, attitude, and behavior of the witness, the
14 interest of the witness in the outcome of the case, if any,
15 the relationship of the witnesses to the defendant or the
16 State, the inclination of the witness to speak truthfully or
17 not, and the probability or improbability of the witness's
18 statements, and all of the facts and circumstances in
19 evidence.

20 Thus, you may give the testimony of any witness such
21 weight and value as you believe the testimony of the witness
22 is entitled to receive. It is for you to decide how much
23 weight to give to any evidence.

24 After the jury selection, we'll have an opening
25 statement by the State; perhaps by the defense. State's

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1 evidence; possibly defense evidence. Jury instructions, and
2 closing arguments.

3 Until this case is submitted to you, you must not
4 discuss it with anyone, even with your fellow jurors. After
5 it is submitted to you, you must discuss it only in the jury
6 room with your fellow jurors. It is important that you keep
7 an open mind, and not decide any issue in this case until the
8 entire case has been submitted to you under instruction from
9 me.

10 If you can't hear a witness, raise your hand. And
11 that goes for voir dire. Please keep your voice up, because
12 everything that's said is made part of the record. And that's
13 about what I want to say here.

14 Now, I'm going to ask a few questions to the entire
15 panel. Are any of you acquainted with the defendant in this
16 case, Mr. O'Keefe? Negative. Or Mr. Maningo, standby
17 counsel? Negative. Or Mr. Christopher Lalli or Ms. Mercer
18 from the district attorney's office? All negative.

19 Any of the -- acquainted with any of the witnesses
20 that Ms. Mercer mentioned she might call? Negative. Any of
21 you acquainted -- again, the defense doesn't have any burden
22 of proof in this case. They don't have to call any witnesses.
23 Mr. O'Keefe doesn't have to take the stand, but I'll get into
24 that with instructions. But he did mention a few witnesses.
25 Any of you acquainted with the witnesses that Mr. O'Keefe

ROUGH DRAFT TRANSCRIPT

004318

1 mentioned? All negative. Somebody --

2 THE MARSHAL: We got one hand.

3 THE COURT: One hand. Please stand up. State your
4 name and your jury ID number.

5 PROSPECTIVE JUROR NO. 055: Krista Frandsen, 0055.

6 THE COURT: And who do you think you know?

7 PROSPECTIVE JUROR NO. 055: Lou Desalvio (phonetic).

8 THE COURT: How do you know --

9 PROSPECTIVE JUROR NO. 055: My fiancé knows him.

10 THE COURT: What?

11 PROSPECTIVE JUROR NO. 055: My fiancé knows him.

12 THE COURT: All right. If you're brought up here,
13 I'm sure they'll discuss that with you. Thank you. Anybody
14 else? No? All right.

15 Again, it's hard to determine how long a jury trial
16 is going to last. But probably it will be -- I mean, we have
17 -- I'll give you a schedule when we do pick the final jury.
18 But probably Thursday, Friday, maybe goes into Monday; I don't
19 know. But that's about the length of the case, hopefully. We
20 can't give an entire case until we go into it a little
21 further.

22 Again, I'm Judge Joe Bonaventure. I'm here to
23 preside over this case. And what we're going to do now is
24 we're going to try to pick a completely fair and impartial
25 jury, both to the State and to the defense. And we do that by

ROUGH DRAFT TRANSCRIPT

004319

1 asking some questions. I'll ask most of the questions. The
2 State and Mr. O'Keefe have a right to follow up with
3 questions. But all -- and we're not trying to pry into your
4 personal affairs. We're just trying to get a completely fair
5 and impartial jury. So, just bear in mind that.

6 I'm just going to -- I guess I'll start with -- is
7 it Quinn Swift? Quinn is your first name?

8 PROSPECTIVE JUROR NO. 001: Correct.

9 THE COURT: All right. How long you been in this
10 area, sir?

11 PROSPECTIVE JUROR NO. 001: Six years.

12 THE COURT: And what do you do for a living?

13 PROSPECTIVE JUROR NO. 001: I work for Allegient
14 Air.

15 THE COURT: For what?

16 PROSPECTIVE JUROR NO. 001: Allegient Air.

17 THE COURT: Okay. I don't quite understand
18 Allegient Air. What does that mean?

19 PROSPECTIVE JUROR NO. 001: Airline out of Las
20 Vegas, Nevada.

21 THE COURT: Okay, you work for an airlines.

22 PROSPECTIVE JUROR NO. 001: I work for an airline.

23 THE COURT: And what do you do for the airline?

24 PROSPECTIVE JUROR NO. 001: I'm a pilot.

25 THE COURT: All right. Are you married?

ROUGH DRAFT TRANSCRIPT

004320

1 PROSPECTIVE JUROR NO. 001: I'm married.
2 THE COURT: Does your wife work?
3 PROSPECTIVE JUROR NO. 001: She does.
4 THE COURT: What does she do?
5 PROSPECTIVE JUROR NO. 001: She works at the Cosmo.
6 The Cosmopolitan.
7 THE COURT: The hotel?
8 PROSPECTIVE JUROR NO. 001: Yeah.
9 THE COURT: What does she do there?
10 PROSPECTIVE JUROR NO. 001: Reservations.
11 THE COURT: Okay. Try to keep that up to your
12 mouth.
13 PROSPECTIVE JUROR NO. 001: Sorry.
14 THE COURT: All right. Do you have any children?
15 PROSPECTIVE JUROR NO. 001: No.
16 THE COURT: All right. Are you acquainted with
17 anybody in law enforcement?
18 PROSPECTIVE JUROR NO. 001: No, I'm not.
19 THE COURT: Have you ever been in the military?
20 PROSPECTIVE JUROR NO. 001: Yes.
21 THE COURT: What branch, what year, and what did you
22 do?
23 PROSPECTIVE JUROR NO. 001: I was in the National
24 Guard. I was a prop and rotor mechanic from 1990 to '94.
25 THE COURT: All right. Nothing to do with military

ROUGH DRAFT TRANSCRIPT

004321

1 police or anything?

2 PROSPECTIVE JUROR NO. 001: Negative.

3 THE COURT: All right. Okay. Have you or anyone
4 closely associated with you ever been the victim of a crime?

5 PROSPECTIVE JUROR NO. 001: I guess so. I've been
6 pick-pocketed --

7 THE COURT: Yeah.

8 PROSPECTIVE JUROR NO. 001: -- in another country,
9 yeah. So.

10 THE COURT: All right. In another country?

11 PROSPECTIVE JUROR NO. 001: Yeah.

12 THE COURT: Okay. Did they catch the individual?

13 PROSPECTIVE JUROR NO. 001: No.

14 THE COURT: All right. You reported it, but nothing
15 happened; is that right?

16 PROSPECTIVE JUROR NO. 001: Correct.

17 THE COURT: All right. That's not going to affect
18 your deliberation --

19 PROSPECTIVE JUROR NO. 001: No.

20 THE COURT: -- in this case?

21 PROSPECTIVE JUROR NO. 001: No.

22 THE COURT: Have you or anyone closely associated
23 with you ever been arrested for a crime?

24 PROSPECTIVE JUROR NO. 001: No.

25 THE COURT: Have you ever served on a jury before?

ROUGH DRAFT TRANSCRIPT

004322

1 PROSPECTIVE JUROR NO. 001: I have not.

2 THE COURT: If --

3 PROSPECTIVE JUROR NO. 001: I do have a quick
4 question, by the way.

5 THE COURT: Yeah.

6 PROSPECTIVE JUROR NO. 001: Due to a recent short
7 sale approval, I'm not going to be a Nevada resident next
8 week. So, that sort of happened last-minute, and I wanted to
9 ask that before we ask a whole bunch of other questions. If
10 that disqualifies me or not, I don't know.

11 THE COURT: No, that doesn't disqualify you, sir.
12 As of right now, you are --

13 PROSPECTIVE JUROR NO. 001: Correct.

14 THE COURT: That's fine. So, as far as -- you know,
15 I don't like going into jury, you know, instructions. I'll
16 instruct you as what the law is on this particular case at the
17 right time if you're picked as a juror; you understand that?

18 PROSPECTIVE JUROR NO. 001: Yeah.

19 THE COURT: But you understand that if you're picked
20 as a juror, the clerk will read to you the information in this
21 case against Mr. O'Keefe. And you understand, that's just a
22 mere charging document, and not evidence; you understand that?

23 PROSPECTIVE JUROR NO. 001: Correct.

24 THE COURT: And in fact, you'll hear that, to which,
25 Mr. O'Keefe plead not guilty. So, it's just a charging

ROUGH DRAFT TRANSCRIPT

004323

1 document and not evidence.

2 PROSPECTIVE JUROR NO. 001: Understood.

3 THE COURT: Really, the rule is in 50 states that
4 it's incumbent upon the State of Nevada to prove the defendant
5 guilty beyond a reasonable doubt. You understand that?

6 PROSPECTIVE JUROR NO. 001: Yes.

7 THE COURT: You know, Mr. O'Keefe sits here cloaked
8 with the presumption of innocence. He's innocent. And in
9 fact, he has no burden. He doesn't have to call witnesses, he
10 doesn't have to take the stand. That's the law in 50 states,
11 all of the United States. And you'll abide by that law?

12 PROSPECTIVE JUROR NO. 001: Yes.

13 THE COURT: And so, if you're picked as a juror,
14 you'll follow my instructions of court; is that correct?

15 PROSPECTIVE JUROR NO. 001: Correct.

16 THE COURT: Instructions of law.

17 PROSPECTIVE JUROR NO. 001: Correct.

18 THE COURT: You could be fair in this case?

19 PROSPECTIVE JUROR NO. 001: I guess so, yes. I
20 don't have any reason not to be, yes.

21 THE COURT: All right. Well, that's all we care
22 about. Mr. Lalli, questions, pass for cause?

23 MR. LALLI: Just a few questions, Your Honor. Thank
24 you. Good morning, Mr. Swift. You -- can you explain for us
25 the extent of your education?

ROUGH DRAFT TRANSCRIPT

004324

1 PROSPECTIVE JUROR NO. 001: A bachelor's degree in
2 aviation technology, and flight training for becoming a pilot,

3 MR. LALLI: I'm sorry, the last part?

4 PROSPECTIVE JUROR NO. 001: And flight training for
5 becoming a pilot.

6 MR. LALLI: Where did you -- where did you learn to
7 fly?

8 PROSPECTIVE JUROR NO. 001: Metropolitan State
9 College of Denver.

10 MR. LALLI: And Allegiant Air is a passenger
11 carrier, correct?

12 PROSPECTIVE JUROR NO. 001: Correct.

13 MR. LALLI: And so, do you -- you pilot planes with
14 passengers on board?

15 PROSPECTIVE JUROR NO. 001: Correct. Yes.

16 MR. LALLI: How long have you done that?

17 PROSPECTIVE JUROR NO. 001: I've been working for
18 Allegiant for six years, and before that, it was another
19 carrier out in Hawaii. So, probably been doing it since about
20 2001.

21 MR. LALLI: During the course of your studies, did
22 you study psychology, sociology, any of those sciences?

23 PROSPECTIVE JUROR NO. 001: Only a little bit. Not
24 much.

25 MR. LALLI: Just a little bit, just the required

ROUGH DRAFT TRANSCRIPT

004325

1 courses; things of --

2 PROSPECTIVE JUROR NO. 001: The requisites.

3 MR. LALLI: -- that nature?

4 PROSPECTIVE JUROR NO. 001: Yeah.

5 MR. LALLI: Okay. You heard that Mr. O'Keefe is
6 charged with murder. When you learned that, what went through
7 your mind?

8 PROSPECTIVE JUROR NO. 001: The first thing that
9 went through my mind is I thought that might take an extra
10 long time for the jury.

11 MR. LALLI: I don't know if you've ever heard of
12 Judge Bonaventure.

13 PROSPECTIVE JUROR NO. 001: I have not.

14 MR. LALLI: The truth takes few words. That's one
15 of his mottos. He likes to keep things moving, so you're
16 fortunate in that regard.

17 PROSPECTIVE JUROR NO. 001: Well, that's good.

18 MR. LALLI: Is there a lot going on in your life
19 that might distract from your ability to be a juror?

20 PROSPECTIVE JUROR NO. 001: Well, I have to make
21 sure I have a move taken care of, and maintaining two
22 residence, and everything else. A lot going on in these next
23 couple of weeks. So, yes.

24 MR. LALLI: When -- tell us about the move. When
25 are you required to move?

ROUGH DRAFT TRANSCRIPT

004326

1 PROSPECTIVE JUROR NO. 001: It's so recent, I don't
2 have a firm closing date. It should be on the 25th. It's
3 tentative. And I have to be moved out by -- starting next
4 Tuesday, I need to start the move.

5 MR. LALLI: Okay. Judge Bonaventure indicated that
6 this trial would last a week, maybe a little bit into next
7 week. It seems like that's going to --

8 PROSPECTIVE JUROR NO. 001: It is a problem, but
9 yeah.

10 MR. LALLI: Well, it seems like it won't overlap
11 with the time that you have to move.

12 PROSPECTIVE JUROR NO. 001: May or may not. I don't
13 know. But there's preparations before the actual moving day.
14 I have to get back to Arizona to pick up my truck and my
15 trailer to get my stuff moved. I have two residences, and the
16 one here is the one that's getting sold, so.

17 MR. LALLI: So, you live in Nevada, and you also
18 have a --

19 PROSPECTIVE JUROR NO. 001: I work in Phoenix, and
20 I've been maintaining my residence in Las Vegas. But I've
21 been working in Phoenix for the last year and-a-half.

22 MR. LALLI: Okay. If I -- and this is for
23 everybody's benefit as well. Although there's no court
24 reporter here --

25 PROSPECTIVE JUROR NO. 001: Right.

ROUGH DRAFT TRANSCRIPT

004327

1 MR. LALLI: -- everything that you and I said to
2 each other is being recorded.

3 PROSPECTIVE JUROR NO. 001: Correct.

4 MR. LALLI: And ultimately, a transcript is going to
5 be made.

6 PROSPECTIVE JUROR NO. 001: Yes.

7 MR. LALLI: So, for everybody's benefit, if you
8 would wait until I finish my question before you answer, just
9 so we're not both talking over each other. It's unlike any
10 other scenario that you've been involved in, but it will make
11 a clear record, okay?

12 PROSPECTIVE JUROR NO. 001: Okay.

13 MR. LALLI: Do you have any difficulty with the
14 nature of the charge, the fact that it's a murder case?

15 PROSPECTIVE JUROR NO. 001: No. It just seems to
16 make it more important.

17 MR. LALLI: All right. And do you understand that
18 the State has the burden of proof in this case, just like
19 Judge Bonaventure indicated?

20 PROSPECTIVE JUROR NO. 001: Yes.

21 MR. LALLI: It's our responsibility to prove Mr.
22 O'Keefe's guilty beyond a reasonable doubt. Will you hold us
23 to that standard?

24 PROSPECTIVE JUROR NO. 001: Yes.

25 MR. LALLI: Because it's our burden of proof, if we

ROUGH DRAFT TRANSCRIPT

004328

1 fail in that, you are required to return a verdict of not
2 guilty. Can you do that?

3 PROSPECTIVE JUROR NO. 001: I believe so.

4 MR. LALLI: Okay. If we don't do what we're
5 supposed to do, are you going to have any problem returning a
6 verdict of not guilty?

7 PROSPECTIVE JUROR NO. 001: I don't believe -- no.

8 MR. LALLI: Do you understand that just because it's
9 a murder case, the State's burden of proof isn't any higher
10 than any other criminal case?

11 So, in other words, proof beyond a reasonable doubt
12 is our burden. And I'm sure you've heard that, and Judge
13 Bonaventure will instruct you as to what that means. But it's
14 the same burden, regardless of whether it's a murder case, or
15 a stolen vehicle case, or a speeding case. Do you understand
16 what I'm saying?

17 PROSPECTIVE JUROR NO. 001: Yeah, I understand that.

18 MR. LALLI: Will you hold us to that burden?

19 PROSPECTIVE JUROR NO. 001: Yes. It -- yes.

20 MR. LALLI: During the course of this trial, you are
21 going to hear evidence of spousal abuse. Have you ever heard
22 of the term domestic violence?

23 PROSPECTIVE JUROR NO. 001: Yes.

24 MR. LALLI: What does that mean to you?

25 PROSPECTIVE JUROR NO. 001: Potentially, where one

ROUGH DRAFT TRANSCRIPT

004329

1 of the spouses is abusing the other.

2 MR. LALLI: And it might be that the woman is
3 abusing the man, or the ma is abusing the woman; would you
4 agree with that?

5 PROSPECTIVE JUROR NO. 001: Either one I guess is
6 possible.

7 MR. LALLI: All right. Some people have the idea
8 that domestic violence is a private issue between a man and a
9 woman. What do you think about that?

10 PROSPECTIVE JUROR NO. 001: Beating somebody up is
11 beating somebody up. So, it's not necessarily a private issue
12 anymore.

13 MR. LALLI: So, do you think that the government,
14 the State, law enforcement, has some responsibility to
15 intervene when that happens?

16 PROSPECTIVE JUROR NO. 001: Yes.

17 MR. LALLI: Do you believe that?

18 PROSPECTIVE JUROR NO. 001: As long as they don't
19 abuse their authority, yes.

20 MR. LALLI: Understood. That's always -- that's
21 always the case. Do you think that they do abuse their
22 authority?

23 PROSPECTIVE JUROR NO. 001: I can't say that I
24 haven't -- I believe they probably do sometimes, but I don't
25 have any examples.

ROUGH DRAFT TRANSCRIPT

004330

1 MR. LALLI: Okay. And that kind of segways into
2 another area that I wanted to talk to you about. During the
3 course of this case, you're going to hear from police
4 officers, members of the Las Vegas Metropolitan Police
5 Department.

6 Is there anything about the testimony of a police
7 officer that would cause you some concern; either you're going
8 to give them more weight, or maybe you're going to give them
9 less weight because they're a police officer?

10 PROSPECTIVE JUROR NO. 001: That's hard to tell. It
11 could go either way. Because I mean, I've had -- I guess as a
12 kid, I had more interactions with police officers than as an
13 adult. So, but I have -- back when I was much younger, some
14 traffic violations. I've read police reports. Sometimes
15 they're accurate, and sometimes, they are completely wrong.
16 So --

17 MR. LALLI: All right.

18 PROSPECTIVE JUROR NO. 001: They're people, too.

19 MR. LALLI: Okay. So, you're going to be given an
20 instruction on how you evaluate witnesses. I mean -- and you
21 kind of took the words out of my mouth in some sense. There
22 are some good police officers, and there are some bad police
23 officers. Would you have any problem evaluating the
24 credibility of a police officer?

25 PROSPECTIVE JUROR NO. 001: I guess not. It's a

ROUGH DRAFT TRANSCRIPT

004331

1 judgment call, so.

2 MR. LALLI: Right.

3 PROSPECTIVE JUROR NO. 001: Yeah.

4 MR. LALLI: Right. You're not going to give him any
5 more -- their testimony any more weight because they're a
6 police officer? Or would you automatically give them less
7 credibility just because they're a police officer?

8 PROSPECTIVE JUROR NO. 001: I think --

9 MR. LALLI: Where are you at?

10 PROSPECTIVE JUROR NO. 001: -- I'd treat them just
11 like any other human being. So, they would be no more or less
12 just because they have credentials, in my opinion.

13 MR. LALLI: Okay.

14 PROSPECTIVE JUROR NO. 001: They have some extra
15 training.

16 MR. LALLI: I wanted to talk to you a little more
17 about this idea of domestic violence.

18 MR. O'KEEFE: Objection, Your Honor. May I approach
19 the bench, please?

20 THE COURT: Sure. You going to put the conference
21 thing on? Somebody does that?

22 THE COURT RECORDER: Yeah.

23 THE COURT: All right.

24 (Off-record bench conference)

25 THE COURT: All right. Proceed, Mr. Lalli.

ROUGH DRAFT TRANSCRIPT

004332

1 MR. LALLI: Thank you. We were talking about
2 domestic violence. And I mean, Mr. Swift, you already
3 indicated you believe that law enforcement -- the government
4 has a right to get involved in that.

5 Do you think the community has responsibility in
6 that? Friends, neighbors? Do you think it's incumbent upon
7 friends and neighbors to maybe -- if they know the situation,
8 to intervene?

9 PROSPECTIVE JUROR NO. 001: Yes.

10 MR. LALLI: Why?

11 PROSPECTIVE JUROR NO. 001: Because people that
12 can't defend themselves need to be able -- need to have
13 someone else step in for them sometimes.

14 MR. LALLI: Do you think you can be fair to both the
15 State and the defense in this case?

16 PROSPECTIVE JUROR NO. 001: I believe so.

17 MR. LALLI: All right.

18 PROSPECTIVE JUROR NO. 001: Without knowing the
19 facts, it's --

20 MR. LALLI: Understood. And I'm not really talking
21 about facts. I mean, you're going to hear the facts, and then
22 ultimately, you would make a decision as to guilt or
23 innocence. But you don't come into this courtroom with any
24 life experience or life history that's going to make you
25 unfair to one side or the other? Do you think you're a fair

ROUGH DRAFT TRANSCRIPT

004333

1 person?

2 PROSPECTIVE JUROR NO. 001: Yes.

3 MR. LALLI: All right. Mr. O'Keefe is representing
4 himself. He has a constitutional right to do that. Do you
5 have any problem with him representing himself?

6 PROSPECTIVE JUROR NO. 001: No.

7 MR. LALLI: Okay. If we prove to you beyond a
8 reasonable doubt that he's guilty of second degree murder,
9 will you convict him?

10 PROSPECTIVE JUROR NO. 001: Yes.

11 MR. LALLI: Thank you. Your Honor, that -- we would
12 pass for cause.

13 THE COURT: All right. Questions; pass for cause,
14 Mr. O'Keefe?

15 MR. O'KEEFE: Yes. I have some questions, Your
16 Honor. It's Mr. Swift, correct?

17 PROSPECTIVE JUROR NO. 001: Yes.

18 MR. O'KEEFE: Okay. How are you, Mr. Swift?

19 PROSPECTIVE JUROR NO. 001: I'm all right.

20 MR. O'KEEFE: I'm going to be quick with all you
21 jurors, in actuality. I'm going to try to be very expeditious
22 in this matter, get a jury picked, and get everybody out of
23 here. I want to ask you first of all -- Mr. Lalli just
24 touched on it. Can you honestly say without a doubt that
25 you're not prejudiced against me, or biased against me for

ROUGH DRAFT TRANSCRIPT

004334

1 representing myself in this case, sir?

2 PROSPECTIVE JUROR NO. 001: No. I don't understand
3 why representing yourself or not makes a difference either
4 way, but.

5 MR. O'KEEFE: Some jurors feel that the defendant
6 thinks he's a hotshot, or something like that. If you folks
7 only know the passion that I have about this case. You
8 answered the question.

9 Now, I got to ask, does my hair make you prejudiced
10 or biased? This is not me -- this is for personal reasons,
11 sir. But it matters. Would you be biased or prejudiced
12 against me because of this? This is not what's in here. I
13 need to ask that.

14 PROSPECTIVE JUROR NO. 001: I don't believe it would
15 affect me in any way. I did notice it. It doesn't always
16 match the suit.

17 MR. O'KEEFE: Thank you for your honesty. You said
18 you were in the military?

19 PROSPECTIVE JUROR NO. 001: In the National Guard,
20 actually. Yes.

21 MR. O'KEEFE: Are you still in the military?

22 PROSPECTIVE JUROR NO. 001: No. Something I did not
23 cover, though, I'm also FFDO as a pilot. So, technically, I
24 guess that makes me a law enforcement officer, but not the
25 same as another law enforcement officer. I just get to carry

ROUGH DRAFT TRANSCRIPT

004335

1 a firearm in the flight deck.

2 MR. O'KEEFE: Okay. Do you have any family member,
3 Mr. Swift, a relative, a coworker, that's been diagnosed with
4 mental illnesses?

5 PROSPECTIVE JUROR NO. 001: No.

6 MR. O'KEEFE: Do you have a family member or a
7 friend, or anybody that had chronic cirrhosis of the liver,
8 and hep C, and depression problems?

9 PROSPECTIVE JUROR NO. 001: No, I don't.

10 MR. O'KEEFE: Have you ever had a family member or a
11 friend that was admitted to a psychiatric hospital?

12 PROSPECTIVE JUROR NO. 001: I had a friend in high
13 school that I believe was, but I don't know too much about it.

14 MR. O'KEEFE: That's all I'm going to ask at this
15 point, because there's going to be a lot more questions, and
16 let me re-compose. Thank you, sir.

17 THE COURT: All right. You pass for cause, Mr.
18 O'Keefe?

19 MR. O'KEEFE: Yes, sir.

20 THE COURT: Thank you. Victoria Collins?

21 PROSPECTIVE JUROR NO. 002: Yes.

22 THE COURT: How long have you been in this area?

23 PROSPECTIVE JUROR NO. 002: Going on ten years.

24 THE COURT: And what do you do for a living?

25 PROSPECTIVE JUROR NO. 002: I'm a school teacher.

ROUGH DRAFT TRANSCRIPT

004336

1 THE COURT: What grade?
2 PROSPECTIVE JUROR NO. 002: Seventh grade US
3 history.
4 THE COURT: All right. Are you married?
5 PROSPECTIVE JUROR NO. 002: No, I'm single.
6 THE COURT: Children?
7 PROSPECTIVE JUROR NO. 002: No.
8 THE COURT: Have you ever been in the military?
9 PROSPECTIVE JUROR NO. 002: No.
10 THE COURT: Are you -- you, or anyone closely
11 associated with you acquainted with anybody in law
12 enforcement?
13 PROSPECTIVE JUROR NO. 002: No.
14 THE COURT: Have you or anyone closely associated
15 with you ever been the victim of a crime?
16 PROSPECTIVE JUROR NO. 002: Yeah. Yes.
17 THE COURT: What was that?
18 PROSPECTIVE JUROR NO. 002: Most recently, I've --
19 an ex-husband of my cousin was murdered.
20 THE COURT: Ex-husband of your --
21 PROSPECTIVE JUROR NO. 002: Yeah, my first cousin,
22 her ex-husband, who I --
23 THE COURT: Oh. How long ago was that?
24 PROSPECTIVE JUROR NO. 002: He was actually killed
25 in February.

ROUGH DRAFT TRANSCRIPT

004337

1 THE COURT: Here in town, or another --

2 PROSPECTIVE JUROR NO. 002: No, it was in the State
3 of Oregon.

4 THE COURT: Did they catch any individual?

5 PROSPECTIVE JUROR NO. 002: Someone was arrested,
6 yes. His girlfriend.

7 THE COURT: Do you know any results of that?

8 PROSPECTIVE JUROR NO. 002: She's -- I think her
9 trial's going to begin soon.

10 THE COURT: Again, that's not going to affect your
11 deliberation in this case?

12 PROSPECTIVE JUROR NO. 002: No.

13 THE COURT: Okay. Have you or anyone closely
14 associated with you ever been arrested for a crime?

15 PROSPECTIVE JUROR NO. 002: Yes.

16 THE COURT: Who's that?

17 PROSPECTIVE JUROR NO. 002: Where do I begin?
18 Unfortunately --

19 THE COURT: Well, let's start with you. Have you
20 ever been arrested for --

21 PROSPECTIVE JUROR NO. 002: No.

22 THE COURT: Any close relatives?

23 PROSPECTIVE JUROR NO. 002: Yes. My father, and
24 most recently, my brother.

25 THE COURT: All right, father and brother. Anybody

ROUGH DRAFT TRANSCRIPT

004338

1 else?

2 PROSPECTIVE JUROR NO. 002: Cousins.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 002: Classmates. Former
5 classmates.

6 THE COURT: All right. Well, again, your father.
7 [Inaudible] classmate. Your father, what was he arrested for?

8 PROSPECTIVE JUROR NO. 002: My father was charged
9 with murder, and later convicted of manslaughter.

10 THE COURT: Okay. And who was the victim of that?

11 PROSPECTIVE JUROR NO. 002: I believe it was an
12 ex-girlfriend and an associate of hers.

13 THE COURT: All right. So, when was that?

14 PROSPECTIVE JUROR NO. 002: This was in the 1970's,
15 before I was born.

16 THE COURT: Oh.

17 PROSPECTIVE JUROR NO. 002: So, sometime in the
18 70's.

19 THE COURT: Was it in Las Vegas?

20 PROSPECTIVE JUROR NO. 002: No, it was in the State
21 of Oregon.

22 THE COURT: He was convicted of that?

23 PROSPECTIVE JUROR NO. 002: Yeah. And he served a
24 few years, and --

25 THE COURT: Is he out now?

ROUGH DRAFT TRANSCRIPT

004339

1 PROSPECTIVE JUROR NO. 002: Oh, yeah. He's been out
2 since like 1977.

3 THE COURT: That's not going to affect your
4 deliberation in this case?

5 PROSPECTIVE JUROR NO. 002: No, sir.

6 THE COURT: Your brother. What about your brother?

7 PROSPECTIVE JUROR NO. 002: Well, most recently, he
8 was arrested, and he's being charged with aggravated assault.

9 THE COURT: On who?

10 PROSPECTIVE JUROR NO. 002: His wife.

11 THE COURT: Is it here in town?

12 PROSPECTIVE JUROR NO. 002: No, it's in
13 Pennsylvania.

14 THE COURT: All right. All right. Is there any
15 result of that?

16 PROSPECTIVE JUROR NO. 002: No, he goes back to
17 court later this month.

18 THE COURT: Okay. And is that going to affect your
19 deliberation in this case?

20 PROSPECTIVE JUROR NO. 002: No, sir.

21 THE COURT: All right. Cousins?

22 PROSPECTIVE JUROR NO. 002: I've had cousins
23 arrested for check -- like check fraud type of situations.
24 Mostly, it's like fraud, like --

25 THE COURT: Yeah.

ROUGH DRAFT TRANSCRIPT

004340

1 PROSPECTIVE JUROR NO. 002: -- Katrina fraud, and --

2 THE COURT: Here in town, or is it in --

3 PROSPECTIVE JUROR NO. 002: No. State of Oregon.

4 THE COURT: What were the results of those;
5 convictions, some convictions?

6 PROSPECTIVE JUROR NO. 002: I'm not exactly sure in
7 all of them. I know one case for sure was a -- well,
8 actually, a couple of cases were convictions.

9 THE COURT: All right. Again, you've got some
10 family. But that's --

11 PROSPECTIVE JUROR NO. 002: Yeah.

12 THE COURT: That's fine. I mean, we all have some
13 family problems at times, but we just don't want it to spill
14 into this trial. You could sort of set aside what your
15 father, and brother, and cousins, the trouble they had, and
16 you're not going to -- you don't hold any animosity towards
17 the State, do you, because of their trouble?

18 PROSPECTIVE JUROR NO. 002: No. Sometimes, people
19 are guilty.

20 THE COURT: Yeah. And you don't hold that against
21 the defendant, right?

22 PROSPECTIVE JUROR NO. 002: No. No, sir.

23 THE COURT: He had nothing to do with anything.

24 PROSPECTIVE JUROR NO. 002: No.

25 THE COURT: So, you could set that aside, and just

ROUGH DRAFT TRANSCRIPT

004341

1 judge this case solely upon what you hear on that witness
2 stand?

3 PROSPECTIVE JUROR NO. 002: Absolutely.

4 THE COURT: As I said, you're the trier of fact, and
5 you determine the facts. I'll supply the instructions of law,
6 and you go and deliberate. You understand that?

7 PROSPECTIVE JUROR NO. 002: Yes.

8 THE COURT: And you understand what I said -- I'm
9 not going to repeat this all the time. Just once -- maybe
10 once or twice more, that you'll follow my instructions of law;
11 is that correct? It would be a violation not to follow my
12 instructions. So, you'll follow my instructions?

13 PROSPECTIVE JUROR NO. 002: Yes, sir.

14 THE COURT: And you understand, under our system,
15 certain principles of law apply in every criminal trial; that
16 the charging document, if you're picked as a juror, you'll --
17 it will be read to you, that it's a mere accusation, and not
18 evidence of guilt. Do you understand that?

19 PROSPECTIVE JUROR NO. 002: I do understand.

20 THE COURT: And that any defendant in any criminal
21 case is presumed innocent. You understand that?

22 PROSPECTIVE JUROR NO. 002: Yes.

23 THE COURT: He has no burden of proof. The burden
24 -- the State must prove this defendant is guilty beyond a
25 reasonable doubt. Do you understand those basic precepts of

ROUGH DRAFT TRANSCRIPT

004342

1 American justice?

2 PROSPECTIVE JUROR NO. 002: Absolutely.

3 THE COURT: And you have no problems with it?

4 PROSPECTIVE JUROR NO. 002: No.

5 THE COURT: All right. And you could be fair in
6 this case?

7 PROSPECTIVE JUROR NO. 002: Yes.

8 THE COURT: Thank you very much. Questions; pass
9 for cause, State?

10 MS. MERCER: Thank you, Your Honor. Ma'am, you
11 indicated that you teach seventh grade; is that correct?

12 PROSPECTIVE JUROR NO. 002: Yes. Yes, ma'am.

13 MS. MERCER: Have you ever had an experience where a
14 student reported domestic violence going on in their home to
15 you?

16 PROSPECTIVE JUROR NO. 002: No.

17 MS. MERCER: Okay. So, you've never had the
18 opportunity to observe the effects of domestic violence on
19 children?

20 PROSPECTIVE JUROR NO. 002: Well, I mean, I may have
21 had students who were in domestic violence situations, but I
22 don't know of any personally. Like, no one ever came to me
23 and said that they had domestic violence in their home.

24 MS. MERCER: Okay. And how long have you been a
25 teacher?

ROUGH DRAFT TRANSCRIPT

004243

1 PROSPECTIVE JUROR NO. 002: This will be my tenth
2 school year.

3 MS. MERCER: Tenth school year?

4 PROSPECTIVE JUROR NO. 002: Yeah.

5 MS. MERCER: Have you always taught seventh grade?

6 PROSPECTIVE JUROR NO. 002: No. I taught fourth
7 grade for three years.

8 MS. MERCER: Okay. Now, you indicated that before
9 you were even born, your father went to prison?

10 PROSPECTIVE JUROR NO. 002: Yes.

11 MS. MERCER: And do you believe that he was treated
12 fairly, based on what you've heard from other family members
13 that were alive at the time?

14 PROSPECTIVE JUROR NO. 002: Coming from him, yes.

15 MS. MERCER: Okay. He believes he was treated
16 fairly?

17 PROSPECTIVE JUROR NO. 002: Yes.

18 MS. MERCER: Okay. Have you ever been a witness to
19 an incident of domestic violence?

20 PROSPECTIVE JUROR NO. 002: Domestic violence, no.

21 MS. MERCER: Do you have any close friends or family
22 members that have been victims of domestic violence?

23 PROSPECTIVE JUROR NO. 002: Well, I mean, my -- like
24 I said, my brother is currently -- I guess he's going to be
25 facing trial, which is interesting, because he was the one

ROUGH DRAFT TRANSCRIPT

004244

1 abused in that situation, so I don't know why he was arrested.
2 But yeah, he was hit in the head with a statuette by his wife,
3 and he was arrested. So, I don't know why. But --

4 MS. MERCER: Was that an ongoing problem in their
5 relationship?

6 PROSPECTIVE JUROR NO. 002: They -- he's been
7 assaulted by his wife before.

8 MS. MERCER: Okay. And to your knowledge, has he
9 ever assaulted her?

10 PROSPECTIVE JUROR NO. 002: Not to my knowledge, no.

11 MS. MERCER: Do you believe that it's ever
12 appropriate to use violence to solve a verbal argument?

13 PROSPECTIVE JUROR NO. 002: A verbal argument, no.

14 MS. MERCER: Do you think that there are sometimes
15 when, based on the victim's behavior, it's okay to lash out?
16 In other words, if she provokes -- he or she provokes, they
17 deserve it?

18 PROSPECTIVE JUROR NO. 002: Like, lash out
19 physically? Or like --

20 MS. MERCER: Verbally.

21 PROSPECTIVE JUROR NO. 002: Verbally. Like -- I
22 guess it would depend on the situation. If you would, you
23 know, scream or yell at someone, and they yelled, you know, in
24 return, for them yelling at you or something, I guess. I
25 don't --

ROUGH DRAFT TRANSCRIPT

004345

1 MS. MERCER: That was a poorly constructed question.
2 Let me rephrase it. Do you think that it's ever okay to
3 respond to some sort of a verbal assault with physical
4 violence?

5 PROSPECTIVE JUROR NO. 002: No.

6 MS. MERCER: Okay. Even if they say some
7 horrifically offensive things?

8 PROSPECTIVE JUROR NO. 002: I guess you could
9 retaliate verbally if you're going to retaliate, but you don't
10 need to use violence.

11 MS. MERCER: You're aware that the allegation in
12 this case is a second degree murder allegation. Does that
13 cause you any concern?

14 PROSPECTIVE JUROR NO. 002: No.

15 MS. MERCER: Do you -- will you have any difficulty
16 in convicting the defendant, if you believe that we've met our
17 burden?

18 PROSPECTIVE JUROR NO. 002: No.

19 MS. MERCER: If we don't meet our burden, are you
20 going to be able to return a verdict of not guilty?

21 PROSPECTIVE JUROR NO. 002: Yes.

22 MS. MERCER: Okay. Are there any moral,
23 philosophical, or religious reasons that give you pause with
24 regard to sitting in judgment of another person?

25 PROSPECTIVE JUROR NO. 002: No.

ROUGH DRAFT TRANSCRIPT

004346

1 MS. MERCER: Can you think of any reasons why a
2 victim of domestic violence may stay in an abusive
3 relationship?

4 PROSPECTIVE JUROR NO. 002: Sometimes, people stay
5 in those relationships for financial reasons, like they feel
6 as if they can't support themselves maybe financially, and so
7 they kind of deal with the abuse. Sometimes people will --
8 you know, I've heard of people saying, it's not that bad, you
9 know, it's going to get better.

10 MS. MERCER: Do you -- what about if there's
11 children involved? Do you think that might come into factor?

12 PROSPECTIVE JUROR NO. 002: I've heard of situations
13 where people stay because of the children.

14 MS. MERCER: And do you think it's possible that
15 they might actually just love their abuser, as contradictory
16 as that might seem to some of us?

17 PROSPECTIVE JUROR NO. 002: Yeah, it is possible, I
18 guess, for someone to stay in a relationship and be in love
19 with someone who was abusing them.

20 MS. MERCER: Do you think it's the victim's fault if
21 she's abused later because she stayed in the relationship?

22 PROSPECTIVE JUROR NO. 002: I guess no, if she is --
23 I don't want to say conditioned. But if someone honestly
24 believes in their heart that things will get better, that
25 doesn't give someone the okay to abuse them later.

ROUGH DRAFT TRANSCRIPT

004347

1 MS. MERCER: Court's indulgence. Pass for cause,
2 Your Honor.

3 THE COURT: Thank you, Ms. Mercer. Mr. O'Keefe,
4 questions; pass for cause?

5 MR. O'KEEFE: Yeah, I'll be brief, Your Honor.
6 Thank you, sir.

7 THE COURT: Thank you.

8 MR. O'KEEFE: Ms. Victoria Collins, correct?

9 PROSPECTIVE JUROR NO. 002: Yes.

10 MR. O'KEEFE: I don't have my glasses. I can see,
11 but not clearly though. So -- but they bother me if I keep
12 them on. So, bear with me as I find my glasses.

13 Since the State keeps referring to battery domestic
14 violence's, do you believe that a woman can be an aggressor
15 then, since they brought it up?

16 PROSPECTIVE JUROR NO. 002: Yes.

17 MR. O'KEEFE: In fact, would you agree that women
18 can tend to be pretty nasty, pretty aggressive?

19 PROSPECTIVE JUROR NO. 002: I think they can be just
20 as aggressive at times as men, as --

21 MR. O'KEEFE: Okay. So -- okay. Have you ever
22 dealt with anyone with a combination of mental illnesses, and
23 as a medical issue, compounded also as a cutter?

24 PROSPECTIVE JUROR NO. 002: Not in a combination. I
25 know of -- I know someone who is suffering from, I guess,

ROUGH DRAFT TRANSCRIPT

004348

1 mental illness. But I don't know anyone with a combination of
2 like physical, or any other type of issues compounding that.

3 MR. O'KEEFE: Do you know specifically what type of
4 mental illness this person --

5 PROSPECTIVE JUROR NO. 002: Bipolar.

6 MR. O'KEEFE: Bipolar?

7 PROSPECTIVE JUROR NO. 002: Yes.

8 MR. O'KEEFE: Is that bipolar 1 or 2; do you know?

9 PROSPECTIVE JUROR NO. 002: That I don't know.

10 MR. O'KEEFE: There is a difference. Okay. Have
11 you ever been closely related to a family member -- anybody
12 that's OD'ed?

13 PROSPECTIVE JUROR NO. 002: No.

14 MR. O'KEEFE: Do you have a computer?

15 PROSPECTIVE JUROR NO. 002: Yes.

16 MR. O'KEEFE: Do you use it a lot?

17 PROSPECTIVE JUROR NO. 002: Yes.

18 MR. O'KEEFE: Used to be -- in the days of old, we
19 used to say, you know, who was fortunate enough to have one.
20 Now the question is, who doesn't have one, you know? It kind
21 of flips.

22 Do you feel the police have a -- should be held
23 to a higher standard when they are called to a scene, that
24 they should be responsible collecting all possible evidence in
25 the event of a so-called crime being charged, so it can be

ROUGH DRAFT TRANSCRIPT

004349

1 Q You just don't remember specifically what those
2 commands were?

3 A I do not.

4 Q Did the individual in the room, the male individual,
5 did he obey any of those commands?

6 A No, he did not.

7 Q What happened when you and officers entered the
8 room? Did he say anything?

9 A I do not recall.

10 Q All right. Do you recall whether he was concerned
11 about -- well, let me ask you this. What was the condition
12 about -- of the individual that's depicted in the diagram as
13 lying on the floor?

14 A The female victim was nude or naked from the waist
15 down. She did have on a black tank-top, and it looked like
16 she had something tied around one of her arms.

17 Q Did the individual say anything referenced to her
18 partially clothed condition?

19 A I remember seeing his hands move rapidly. And the
20 only thing that I do remember being said was along the lines
21 of, do not look at her. But his hands were moving around her
22 chest, waist, up to her face, as we rolled into the room.

23 Q All right. What happened when you entered the
24 room --

25 A For me, I --

ROUGH DRAFT TRANSCRIPT

004250

1 Q -- after that?

2 A When I entered the room, I rolled into the bathroom,
3 cleared the bathroom, came back out. And over where the
4 suspect was, the taser was already being operated. I
5 maintained the suspect's feet, and kept him in position while
6 they tried to get his hands in the handcuffs.

7 Q Was there any struggling going on?

8 A There was a brief struggle over trying to get his
9 right arm out to get him in the handcuffs. It looked like he
10 was trying to fight through the ECD, and through the officers.
11 So, a second cycle of the ECD was delivered. A cycle was
12 about five seconds. So, one five-second cycle; pull the
13 trigger of the ECD, and a second one -- a second five-second
14 cycle.

15 Q So, when you say cycle, it basically means shocking
16 the individual?

17 A Yes.

18 Q Okay. So, he's shocked the first time, he begins to
19 struggle after that, he's shocked a second time?

20 A Yes.

21 Q And then what happens?

22 A He's quite -- he's eventually taken into handcuffs
23 during the second cycle. Once that is done, Officer Taylor,
24 Officer Ballejos, and Officer Conn pick him up, and carry him
25 out of the room into the living room.

ROUGH DRAFT TRANSCRIPT

004251

1 Q Okay. Now, on this diagram, there's like a dotted
2 line that leads through the living room. Do you have any idea
3 what that is?

4 A This one here, sir?

5 Q Yes, sir.

6 A Yes.

7 Q What is that?

8 A That is the taser wires, or the ECD wires. When the
9 taser is deployed, it fires a set of probes that have a bar
10 code on the end. They are attached to the taser itself via
11 little thin copper wires, that are approximately 21 feet-long.
12 And that is the taser wire with cartridge being thread along
13 right there.

14 Q All right. So, the individual who is removed from
15 the back bedroom, do you see him in the courtroom?

16 A Yes, I do.

17 Q Can you please point to him, and identify what he's
18 wearing?

19 A He's this gentleman right here. He's wearing kind
20 of a light green shirt, brown suit, and yellow tie.

21 MR. LALLI: Your Honor, may the record reflect the
22 witness has identified --

23 THE COURT: Yes.

24 MR. LALLI: -- the defendant?

25 THE COURT: Yes.

ROUGH DRAFT TRANSCRIPT

004252

1 BY MR. LALLI:

2 Q Sergeant, you can return to the witness stand. What
3 did you do after the defendant was removed from the room?

4 A I have training as an EMT. I immediately dropped
5 down to try to administer some aid to the victim. I checked
6 for a pulse on the carotid artery on the right side of her
7 neck. I then used a flashlight to check for pupil dilation,
8 and also looked for respirations on the female victim.

9 Q Can you describe what you saw of the female victim
10 as you were in the room with her? What did she look like?

11 A She didn't appear to be alive. She appeared to be
12 deceased.

13 MR. LALLI: May I approach the witness?

14 THE COURT: Yes.

15 THE WITNESS: She had blood on her. Like I had
16 mentioned before, she had something tied around her arm, and
17 just a tank top on.

18 BY MR. LALLI:

19 Q Sergeant, I'm going to show you what we've marked as
20 State's proposed Exhibit number 23. Do you recognize what's
21 depicted in that photograph?

22 A That is the female victim.

23 Q Is that a fair and accurate depiction of what she
24 looked like when you saw her?

25 A Yes, sir.

ROUGH DRAFT TRANSCRIPT

004253

1 MR. LALLI: Your Honor, move for the admission of
2 State's proposed 23.

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

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

5 THE COURT: 23 will be admitted.

6 (Exhibit 23 is admitted)

7 BY MR. LALLI:

8 Q So, Sergeant, when you walked -- or went up to her,
9 can you show us where it is that you placed your hand on her?

10 A I placed it on the right side of her neck, where her
11 carotid pulse would be.

12 Q What did you feel?

13 A I felt no pulse.

14 Q Do you have any training -- any medical training?

15 A Yes. I've been trained as an EMT intermediate, and
16 I've worked as an EMT intermediate for several years at that
17 point.

18 Q Did any other medical personnel come into the room
19 to attempt to render aid, or evaluation of this female?

20 A Due to my observations, not being able to find a
21 pulse, no breathing, and fixed and dilated pupils, I asked for
22 one paramedic to come in to start a medical evaluation, and
23 one paramedic did enter the room.

24 Q Did you see what the medical -- the paramedic did?

25 A Yes. He checked for a carotid pulse on the exact

ROUGH DRAFT TRANSCRIPT

004254

1 same side and spot that I did on the right side of the neck.

2 Q Now, at some point, did you pick something up in the
3 living room or in the bedroom area, and move it to a table?

4 A I picked it up on the floor, between like the
5 hallway and the living room area, and moved it to a table in
6 the living room. It was a taser probe.

7 Q All right. There we go. Okay. If we look at
8 State's Exhibit number 1 here, does it appear to be a round
9 table near the door? There's a number 2 on that.

10 A Yes.

11 Q Is that approximately where you put the taser probe?

12 A Yes, it is.

13 MR. LALLI: May I approach the witness?

14 THE COURT: Yes.

15 BY MR. LALLI:

16 Q I'm going to show you what we've marked as State's
17 proposed 9 for identification purposes. Is that a fair and
18 accurate depiction of the table, on which is the laser probe
19 that you placed there?

20 A It is a taser probe, not a laser probe.

21 Q I'm sorry.

22 A But yes, it is.

23 Q Taser probe. Thank you. Metro's not using lasers
24 for this sort of thing?

25 A No.

ROUGH DRAFT TRANSCRIPT

004255

1 MR. LALLI: Your Honor, move for the admission of
2 State's proposed 9.

3 THE COURT: Did you show that to Mr. O'Keefe?

4 MR. LALLI: I did.

5 THE COURT: All right. Any objection?

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

7 THE COURT: All right. It will be admitted.

8 (Exhibit 9 is admitted)

9 BY MR. LALLI:

10 Q So, is that the taser probe that you placed on the
11 table by the door?

12 A Yes, it is.

13 Q And where -- going back to State's Exhibit number 1,
14 what room was that found in?

15 A I believe it was found somewhere near where number 1
16 is depicted, in the hallway to the living room area.

17 Q So, number 1 is the beginning of the taser wire --

18 A Yes.

19 Q -- the probe wire? All right. Now, do you have
20 further contact with the defendant?

21 A I return back outside to speak with him. It is our
22 job as the supervisors to investigate all use of force, such
23 as when we use a taser, an ECD; any other tools. I wanted to
24 speak with him, and make sure that medical was rendered to him
25 for the taser usage.

ROUGH DRAFT TRANSCRIPT

004256

1 Q Why would you request medical for taser usage?

2 A Number one, it's department policy that whenever an
3 ECD, or a taser is used on someone, that they must have
4 medical called to check them out physically to make sure
5 they're okay. Second, he had blood on him. We wanted to make
6 sure he didn't have any injuries from whatever incident he had
7 been involved in.

8 Q Did you notice any marks on the defendant's head?
9 On his forehead?

10 A He did. He had a small injury to his forehead. It
11 appeared to me to be some type of a -- like an abrasion, from
12 like a carpet burn, or being drug on a surface.

13 Q Was the defendant ever drug anywhere that you
14 observed?

15 A I do not know.

16 Q Okay. Where was the defendant when you encountered
17 him with respect to getting medical aid for him?

18 A When I encountered him for medical aid, he was
19 outside of the apartment. There's a little walkway there; it
20 is a second-story apartment. And he was seated on that
21 walkway, next to the stairs.

22 Q Were you present when paramedics came to evaluate
23 him?

24 A Yes, I was.

25 Q Describe what you observed when that happened.

ROUGH DRAFT TRANSCRIPT

004257

1 A Well, they were talking with him. I don't recall
2 large amounts of the conversation. I do remember him being
3 belligerent and uncooperative.

4 Q What did he say to them?

5 A One of the things I do remember was he said,
6 essentially, "Fuck you."

7 Q To the paramedics who were trying to help him?

8 A Yes.

9 Q Thank you.

10 MR. LALLI: Nothing else, Your Honor.

11 THE COURT: All right. Cross-examination, Mr.
12 O'Keefe?

13 MR. O'KEEFE: Yeah. Brief, Your Honor.

14 THE COURT: Thank you.

15 CROSS-EXAMINATION

16 BY MR. O'KEEFE:

17 Q That's Sergeant Newberry, right?

18 A That is correct, sir.

19 Q How are you, sir?

20 A Fine, sir.

21 Q I'm going to be real brief, Sergeant Newberry.

22 Let's get this -- I just want to state, at any time, did you
23 feel I was under the influence, Sergeant?

24 A When I spoke with you, you appeared to be
25 intoxicated.

ROUGH DRAFT TRANSCRIPT

004258

1 Q Okay.

2 A I believe I described it in my use of force report,
3 "He was extremely intoxicated."

4 Q Okay. Yes, you did. And do you know that at the
5 time of the call -- the 9-11 call was made, immediately two
6 minutes after the call was made, they announced, communication
7 center, to everyone that the defendant was extremely 408.
8 What does that mean, Sergeant?

9 A It means -- a 408 person is somebody that's an
10 intoxicated person.

11 Q So --

12 A So, it would mean that you're extremely 408.

13 Q Meaning, extremely intoxicated. So, you had a
14 pretty good idea at the beginning; yes or no?

15 A From --

16 Q Yes or no, Sergeant?

17 A From my time and experience as a police officer --

18 THE COURT: You know, sometimes you can't answer --
19 could you answer that yes or no? I don't know. He wanted a
20 yes or no answer on that.

21 MR. O'KEEFE: I just asked --

22 BY MR. O'KEEFE:

23 Q So, extremely 408 means extremely intoxicated? Yes
24 or no.

25 A I --

ROUGH DRAFT TRANSCRIPT

004259

1 THE COURT: Could you -- if you can't answer --

2 THE WITNESS: I can't answer that one yes or no.

3 THE COURT: All right.

4 BY MR. O'KEEFE:

5 Q Okay. That's fair. Okay. Go ahead, then.

6 A I was going to say, from my experience and tenure as
7 a police officer, usually the first story, which is the
8 dispatch story, is not always entirely accurate. So, I try to
9 give everybody the benefit of the doubt.

10 Q Okay. Did they take my blood or breath?

11 A I do not know.

12 Q Okay. You said commands were moving fast and all
13 that. But knowing that I'm extremely intoxicated -- you know
14 that I have the call center here, too. From the time it
15 started, until the time I was placed in handcuffs, it was
16 minutes?

17 A Yes, sir.

18 Q Just minutes? Okay. I know it seemed like a
19 lifetime, Sergeant. And you know, I do agree with you there.
20 I does. But it was just mere minutes. At any time, did I
21 ever say, get out, or get the F out? Excuse me, Officer.

22 A I do not recall, sir.

23 Q But clearly, I did say at times, get in here, come
24 in here; and then at times, I started saying, get the F in
25 here? Absolutely, I was saying, get the F in here, correct?

ROUGH DRAFT TRANSCRIPT

004260

1 A I -- if I were to say that those were the words,
2 that would be pure speculation on my part. I don't recall --
3 like I said, I don't recall much of the conversation that was
4 said between Officer Conn and you. I just remember that it
5 did not seem like it was fruitful, like it was going to
6 progress to any type of surrender.

7 Q Okay. Someone, you know, without a guilty mind, in
8 your experience through the years, would act that way, would
9 say, get in here? They don't understand if they're --

10 MR. LALLI: I'm going to object, Your Honor. Calls
11 for speculation.

12 THE COURT: Yeah. That's a vague --

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

14 THE COURT: -- question.

15 MR. O'KEEFE: I'll move on, Your Honor. Yes, sir.

16 THE COURT: All right. Thank you --

17 MR. O'KEEFE: To help out.

18 THE COURT: -- very much.

19 MR. O'KEEFE: It's late. Everyone's tired, I
20 understand. Okay.

21 THE COURT: Yeah. Thank you, Mr. O'Keefe. No, if
22 it was a legitimate question, I'd allow you to ask it. But I
23 think --

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

25 THE COURT: That's an argumentative thing for the

ROUGH DRAFT TRANSCRIPT

004261

1 jury. You say, you know, ladies and gentlemen of the jury,
2 let me argue this to you, and then --

3 MR. O'KEEFE: Okay.

4 THE COURT: -- you could argue that in front of the
5 jury.

6 BY MR. O'KEEFE:

7 Q I understand you guys -- you know, safety for the
8 community and all that. And it was stated repeatedly through
9 many prior testimonies that of course, you felt that the
10 defendant may be baiting you, correct, Sergeant? The overall,
11 defendant could be baiting us; you said yourself, setting up
12 -- could have had a trap set?

13 A That is always a possibility. We have to be
14 concerned about that.

15 Q Okay. Now, yes or no answer, if you can.

16 THE COURT: Yeah. If you can't answer yes or no,
17 say --

18 MR. O'KEEFE: We'll just --

19 THE COURT: -- I can't answer that yes or no.

20 MR. O'KEEFE: We'll save it. Right.

21 BY MR. O'KEEFE:

22 Q Yes or no, if you can.

23 A Okay.

24 Q Ultimately though, at the conclusion of the whole
25 event, I wasn't baiting you though? It ended up --

ROUGH DRAFT TRANSCRIPT

004262

1 A I don't --

2 Q -- I wasn't baiting you?

3 A I don't know. I can't answer that with a yes or no.
4 Sorry.

5 Q Okay. That's fair enough, Sergeant. Okay. You --
6 I'm ex-military, and I understand how you guys do your stack
7 in, it's crisis intervention team, and you go in, and we're
8 all taught, you know, you got to be careful when you enter a
9 scene, and there's maybe somebody with a weapon, trying to
10 bait you.

11 When you guys decide it's code, the call's made to
12 go ahead and enter in, and you go in, would you agree,
13 Sergeant, that you all don't stay right behind each other?
14 You kind of fan out a little bit, correct? I mean, you go in,
15 and -- you know. Would you agree with that, Sergeant?

16 A No, I would not.

17 Q So then, you're saying that you guys entered the
18 room all right behind each other?

19 A Yes, I would.

20 Q Okay. Where did all five of you go? There was only
21 -- I'm curious. You said you --

22 A There was not five, there was four of us.

23 Q Four?

24 A There was Officer Conn, Officer Jeremiah Ballejos,
25 Officer Sean Taylor, and myself.

ROUGH DRAFT TRANSCRIPT

004263

1 Q Would you disagree with there's prior testimony
2 there was time that there was four guys stated, there was five
3 officers, and even up to six one time?

4 A I wasn't here for prior testimony, so I could not.

5 Q Okay. Fair enough. Is there any policy that you're
6 aware of, being a sergeant and you've got a lot of experience
7 in it, that they possibly -- after -- since the medical team
8 was there to check out my tasing situation, did anybody
9 attempt to take my blood draw or breath, that you're aware of?

10 A No.

11 Q Okay. This use of force form, is this always filled
12 out, Officer, by the police when any type of use of force by a
13 weapon is used; pulled, drawn, shot, discharged?

14 A Use of force reports are completed when there is an
15 injury or suspected injury, or over a certain level of force.
16 With a taser, it's an automatic completion of the report.

17 Q And that's a policy -- Sergeant, it's no trick about
18 it. And I'll speed it up here. I mean, it's -- there's no
19 trick. And it's filled out any time a taser is utilized, or a
20 gun is discharged, or any time, correct?

21 A Yes, sir.

22 Q Okay. And without having to go through, and enter
23 an exhibit and all that, to speed things up, let me just ask
24 you straight off if you remember. It was quite clearly filled
25 out that the officer's assessment of the citizen was he was

ROUGH DRAFT TRANSCRIPT

004264

1 mentally ill, or slash -- or, slash, under the influence; is
2 that correct? Do you remember that, or do you need to see it?

3 A Is that under my portion, or under Officer Ballejos'
4 portion?

5 Q Well, you -- it's all five pages, and you approved
6 it at the end. So, surely you would have read that?

7 A Yes.

8 Q Okay. So, you agree with that, it does say -- it
9 says it right here. I mean, if you need me to have it
10 approached --

11 A I would have to look at it to agree, but.

12 MR. O'KEEFE: Mr. Maningo, will you approach the
13 witness and --

14 MR. MANINGO: Sure.

15 MR. O'KEEFE: -- let him refresh his memory? And
16 also, here, let him read it, please. And number one,

17 MR. MANINGO: May I, Your Honor?

18 MR. O'KEEFE: Court's indulgence.

19 THE COURT: Please. Thank you very much.

20 MR. O'KEEFE: Oh, I'm sorry. Did the State see it?
21 They need to --

22 MR. LALLI: I have it. Thank you.

23 MR. O'KEEFE: Okay. Sorry, Mr. Lalli.

24 BY MR. O'KEEFE:

25 Q Would you just read the highlighted on 1; and then

ROUGH DRAFT TRANSCRIPT

004265

1 on the fourth or fifth page, the highlight? Let me know when
2 you're done, Sergeant, please. Okay. So, now after -- you've
3 read it, correct, Sergeant?

4 A Yes, sir.

5 Q Okay. So, it does say on page 1 that clearly, the
6 assessment's made that mentally ill, and -- slash under the
7 influence?

8 A Yes, that does.

9 Q Okay. And then, on the fourth page, after you
10 reviewed your lower ranking officer and you approved it, it
11 says that O'Keefe appeared extremely intoxicated, and
12 continued to be erratic and emotional in his behavior;
13 correct, Officer?

14 A Yes, it does.

15 Q Okay. Thank you. Again, just to clarify real
16 quick, you seen no weapons in my hand or anything, correct,
17 Sergeant?

18 A I never saw a weapon in your hand, no.

19 Q And I wasn't on top of the victim; I was beside her?

20 A From the vantage point that I saw, you were laying
21 on her left side. It could have been on that portion of her
22 left body; it could have been on the floor.

23 Q And you could clearly see in from your standing
24 point, all the way into the dark bedroom, over and beyond the
25 bed and see?

ROUGH DRAFT TRANSCRIPT

004266

1 A It was not a dark bedroom. There was light.

2 Q If we have photographs showing that the light was
3 off -- you must remember, when these photographs were taken,
4 your team came in and brought lights in, and turned it on.
5 But if I were to have a picture shown that clearly shows at
6 the time that they took the photographs, the picture (sic) was
7 off. And then, they went in and turned whatever they could,
8 and they took more pictures.

9 Are you saying that you're disputing that the -- it
10 was -- there was no light on?

11 A When we entered the bedroom, the bathroom light that
12 is attached to that bedroom was on, providing light into that
13 room.

14 Q Key, providing light into that room. But there was
15 no light fixture -- there was no light on in the bedroom.
16 Clearly, that's all I'm stating. Is that correct? The light
17 was coming from --

18 A I remember light coming into that room from the
19 bathroom.

20 Q From the bathroom. Thank you, sir. And that's fair
21 enough.

22 MR. O'KEEFE: You know, Your Honor, no further
23 questions.

24 THE COURT: Thank you so much, Mr. O'Keefe.

25 MR. O'KEEFE: Thank you.

ROUGH DRAFT TRANSCRIPT

004267

1 THE COURT: Let's -- are we going to recess, or you
2 got one or two questions?

3 MR. LALLI: I have no other questions, Your Honor.

4 THE COURT: Thank you so much for testifying and
5 waiting this long. We appreciate it.

6 All right. It's a good time to take our evening
7 recess. I think we have accomplished a lot, ladies and
8 gentlemen. I commend Mr. Lalli, and I commend Mr. O'Keefe for
9 moving this along.

10 And we're going to resume our testimony tomorrow
11 morning at 9:30, so everybody be outside at 9:30. I have a
12 motion calendar, and it's a civil calendar. So, these civil
13 lawyers are pretty wordy. So -- but I'm going to try to get
14 through with it before 9:00 o'clock -- 9:30, excuse me. But
15 if I'm a little late, I'm a little late.

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

23 So, with that admonishment, we'll see everybody back
24 at 9:30. Mr. Roche, did you write this thing for me? Did
25 somebody write --

ROUGH DRAFT TRANSCRIPT

004268

1 THE MARSHAL: That's number 7, Your Honor.

2 THE COURT: Oh. Who's 7?

3 THE MARSHAL: 7 or 8.

4 UNKNOWN MALE SPEAKER: The question?

5 THE COURT: No. It's a -- who -- this, "I have a
6 neighbor."

7 UNKNOWN MALE SPEAKER: That's me.

8 THE COURT: Yeah. Would you wait in the courtroom,
9 please?

10 UNKNOWN MALE SPEAKER: Sure.

11 THE COURT: And the rest of you, we'll be at ease
12 until the jury leaves.

13 (Outside the presence of the jury panel)

14 THE COURT: All right. You know, we appreciate -- I
15 just have to -- everything that comes, I have to make a record
16 on. You wrote some sort of a note. And I put in Juror number
17 8, because you're Juror number 8.

18 JUROR NO. 8: Yeah.

19 THE COURT: "I have a neighbor down the street named
20 Daniel. I don't remember his last name, but works either as a
21 CSI person, or the coroner. I do not socialize with him. He
22 is a neighbor, acquaintance. I do not know if this is one of
23 your witnesses."

24 So, I don't think -- that was the only Daniel, I
25 think. He had -- that was Daniel, wasn't his name?

ROUGH DRAFT TRANSCRIPT

004269

1 MR. LALLI: It was, Your Honor.

2 THE COURT: Is there any Daniel that works with the
3 CSI or coroner that you expect to call?

4 MR. LALLI: Yes. There is a retired crime scene
5 analyst by the name of Dan Ford. I know that analyst Ford is
6 now retired from Metro, and it's my belief that he lives
7 somewhere in Henderson.

8 JUROR NO. 8: I don't think that's the same
9 individual.

10 THE COURT: And he's an older gentleman? How old is
11 he about?

12 MR. LALLI: He's really old. He's probably -- I
13 don't know, 50-something.

14 THE COURT: So, my age?

15 (Pause in the proceedings)

16 MR. LALLI: He's -- I would say he's middle-aged.

17 THE COURT: Middle-aged? And what does he look
18 like?

19 MR. LALLI: He's a tall gentleman. He has kind of
20 brownish-reddish hair, kind of curly.

21 THE COURT: All right. Probably not the person,
22 right?

23 JUROR NO. 8: I don't think that's the same
24 individual.

25 THE COURT: All right. Well, if -- but I feel --

ROUGH DRAFT TRANSCRIPT

004070

1 thank you very much for bringing it to my attention. Always
2 good to be cautious. So, we'll just make this part of the
3 record that probably, the neighbor you mentioned is not going
4 to be called. But if something happens --

5 JUROR NO. 8: No.

6 THE COURT: -- you'll let me --

7 JUROR NO. 8: This person's younger.

8 THE COURT: -- write another note, all right?

9 JUROR NO. 8: This person's younger than me, very
10 heavyset.

11 THE COURT: Okay.

12 JUROR NO. 8: Yeah.

13 THE COURT: So, I'm sure it's not.

14 JUROR NO. 8: Different person.

15 THE COURT: Thank you so much. Have a nice evening.

16 All right. This is outside the presence of the
17 jury. So, what are we looking at? We're going to have a full
18 day tomorrow, because I've resolved the settlement conference.
19 So, we'll have a full day tomorrow, from 9:30 to 5:00. And
20 you'll have the witnesses here, right, Mr. --

21 MR. LALLI: We will, Your Honor. There are some
22 scheduling issues that we have in every trial, and we'll work
23 around those. We might have to call a few witnesses out of
24 order. I can tell the Court that we have one witness who
25 suffered a death in his family, and is out of town for that.

ROUGH DRAFT TRANSCRIPT

004271

1 But he will be back on Thursday, so we'll have at least one
2 witness on Thursday. We may be able to get through the
3 majority of the other witnesses tomorrow.

4 THE COURT: Okay. Perhaps -- so, Thursday -- now,
5 Mr. O'Keefe, you mentioned you have some witness under
6 subpoena; is that correct?

7 MR. O'KEEFE: I'm going to call nobody, Your Honor.

8 THE COURT: Okay. It's up to you, all right?

9 MR. O'KEEFE: I want to just -- let's just move this
10 show along.

11 THE COURT: Yeah, I -- you know, it's up to you. I
12 mean, again, I accommodate anything you need. Let me give you
13 the admonishment while I'm thinking about it, so I don't
14 forget. You know, I have to give you the -- you've heard this
15 before. It's the waiver of right against self-incrimination.

16 Before a defendant takes or refuses to take the
17 stand, the following statutes have to be read to the defendant
18 outside the presence of the jury, and I have to advise him to
19 confer with maybe your standby counsel, with [inaudible]
20 having the defendant voluntarily make a knowing and
21 understanding waiver of the right against self-incrimination
22 by testifying if you so desire. But you may refuse to waive
23 your constitutional right, and not take the stand.

24 Now, NRS 175.171, "No special instructions to be
25 given relating exclusively to the defendant's testimony. In

ROUGH DRAFT TRANSCRIPT

004272

1 the trial of all indictments, complaints, and other
2 proceedings against persons charged with the commission of
3 crimes or offenses, the person so charged shall at his own
4 request, but not otherwise, be deemed a competent witness, the
5 credit to be given his testimony being left solely to the jury
6 under the instructions of the Court. But no special
7 instructions shall be given relating exclusively to the
8 testimony of the defendant."

9 NRS 175.181, "Instruction not to be given relative
10 to failure of the defendant to testify." One, "No instruction
11 shall be given relative to the failure of the person charged
12 with the commission of crime or offense to testify, except,
13 upon the request of the person so charged, the Court shall
14 instruct the jury that in accordance with a right guaranteed
15 by the Constitution, no person can be compelled in a criminal
16 action to be a witness against himself, and nothing herein
17 contained shall be construed as compelling any such person to
18 testify."

19 So, basically -- you know this probably. Under the
20 Constitution of the United States, under the Constitution of
21 the State of Nevada, you cannot be compelled to testify in
22 this case. You understand that?

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

24 THE COURT: And you may though, at your own request,
25 give up this right, and take the witness stand and testify.

ROUGH DRAFT TRANSCRIPT

004273

1 If you do, you will be subject to cross-examination by the
2 district attorney, and anything you may say, be it on direct
3 or cross, will be subject to fair comment when the district
4 attorney speaks to the jury in their final argument. Do you
5 understand that?

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

7 THE COURT: And if choose not to testify, the Court
8 will not permit the district attorney to make any comments to
9 the jury because you have not testified. Do you understand
10 that?

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

12 THE COURT: If you elect not to testify, the Court
13 will instruct the jury, but only if you request --
14 specifically request, as follows: "The law does not compel a
15 defendant in a criminal case to take the stand and testify,
16 and no presumption may be raised, and no inference of any kind
17 may be drawn from the failure of the defendant to testify."
18 Do you understand that?

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

20 THE COURT: If you have felony convictions, of
21 course they'll be brought out, and you have not sought to
22 preclude them. They'll be brought out. But that's already
23 brought out, so that's not really a matter here.

24 So, that being said, at least you know your rights.
25 And you don't have to tell me now whether you're going to

ROUGH DRAFT TRANSCRIPT

004274

1 testify or not. That's up to you. And we'll reserve that at
2 the appropriate time, all right?

3 Is there anything else to come before the Court
4 before we take our evening recess?

5 MR. LALLI: Not on behalf of the State, Your Honor.

6 THE COURT: Mr. O'Keefe, anything else?

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

8 THE COURT: All right.

9 MR. O'KEEFE: Thank you.

10 THE COURT: Thank you so much. I appreciate
11 everybody being professional, and we'll see everybody tomorrow
12 at 9:30.

13 MR. MANINGO: Thank you, sir.

14 (Proceeding concluded at 5:04 p.m., until Wednesday,

15 June 13, 2012, at 9:53 a.m.)
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25

ROUGH DRAFT TRANSCRIPT

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WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>STATE'S WITNESSES:</u>				
Roger Price	96			
Elynn Greene	108			
Cheryl Morris	121	139		
Joyce Toliver	164	177		
Charles Toliver	180	193		
Jimmy Hathcox	198	205		
Todd Conn	212	233	240	
Dan Newberry	242	258		

* * *

EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
<u>STATE'S EXHIBITS:</u>	
Exhibit 1	136
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ROUGH DRAFT TRANSCRIPT

004276

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

004277

ORIGINAL

FILED

SEP 4 10 55 AM '12

Ann L. Johnson
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 1

MONDAY, JUNE 11, 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
produced by transcription service.

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CLERK OF THE COURT

DCC260630
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Transcript of Proceedings
1850014



345
004278

1 LAS VEGAS, NEVADA, MONDAY, JUNE 11, 2012, 9:44 A.M.

2 (Outside the presence of the prospective jury panel)

3 THE COURT: All right. This is the time set for
4 trial in case number C-2503 -- excuse me, 250630, State vs.
5 Brian Kerry O'Keefe. Who's here for the record, please?

6 MR. LALLI: Your Honor, Christopher Lalli and Liz
7 Mercer on behalf of the State.

8 THE COURT: Okay.

9 MR. MANINGO: And Your Honor, Lance Maningo, standby
10 counsel for Mr. O'Keefe. And Mr. O'Keefe is entering the
11 courtroom now.

12 THE COURT: All right.

13 (Pause in the proceedings)

14 THE COURT: All right. This is -- as I said, this
15 is outside the presence of the jury. This is time set for
16 this trial. Is the State ready to proceed?

17 MR. LALLI: We are, Your Honor.

18 THE COURT: Defense, ready to proceed? Mr. O'Keefe?

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

20 THE COURT: All right.

21 MR. O'KEEFE: I'm sorry, Your Honor.

22 THE COURT: All right. No problem. Does the State
23 want to put anything on the record outside the presence --
24 then I'm going to ask Mr. O'Keefe if you want to put anything
25 on the record, because I always like everything to be

ROUGH DRAFT TRANSCRIPT

004279

1 preserved. I mean, whether rulings are for or against you, I
2 think it's incumbent upon me to -- for you to make a record,
3 whatever you want to make a record on, all right?

4 Does the State want to say anything?

5 MR. LALLI: Well, Your Honor, with -- just a couple
6 of things. With respect to exhibits, we're using the same
7 exhibits that were used in the previous trial. I've asked
8 your clerk to bring those exhibits to the courtroom, and it's
9 my understanding they are here. They're back in a secure
10 area. So, just in terms of that issue.

11 THE COURT: You understand that, Mr. O'Keefe?
12 They're going to use the same exhibits.

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

14 THE COURT: Whether they're admitted or not, that's
15 up to me.

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

17 THE COURT: Okay.

18 MR. LALLI: Your Honor, with respect to -- as the
19 Court well knows, this would be the third trial on this matter
20 for Mr. O'Keefe. During the first two trials, there have been
21 numerous rulings, evidentiary rulings --

22 THE COURT: Let me stop you there. By the way, this
23 is -- Mr. O'Keefe, of course you know this more than anybody
24 else. I'm just -- we should not have any mention to the jury
25 that this is a retrial, or another trial. You understand

ROUGH DRAFT TRANSCRIPT

004280

1 that? I mean, [inaudible]. I don't think the State will
2 mention it.

3 MR. LALLI: No, Your Honor. We'll refer to prior
4 testimony as --

5 THE COURT: Prior testimony.

6 MR. LALLI: -- prior hearings, prior proceedings;
7 things of that nature. We will not refer to a prior trial.
8 We've also admonished our witnesses not to refer to a prior
9 trial.

10 THE COURT: Do you want to say anything regarding
11 that, Mr. O'Keefe?

12 MR. O'KEEFE: I'll wait until you give me the chance
13 to speak, Your Honor. I'll let --

14 THE COURT: Well, I'm going to take issue at-a-time.

15 MR. O'KEEFE: Okay.

16 THE COURT: So, this issue right now --

17 MR. O'KEEFE: I agree with that, Your Honor.

18 THE COURT: What?

19 MR. O'KEEFE: If the trial proceeds, Your Honor,
20 absolutely, I agree with that. Yes, sir, Your Honor.

21 THE COURT: Okay. That's all I wanted to know.

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

23 THE COURT: You have a right to, you know, request
24 another continuance, and I'll hear the argument on that.

25 MR. O'KEEFE: Yes, sir. Thank you, Your Honor.

ROUGH DRAFT TRANSCRIPT

004281

1 THE COURT: But I'm just going to get the ground
2 rules. All right. What else?

3 MR. LALLI: Your Honor, Judge Villani had granted
4 a --

5 THE COURT: By the way, now, Mr. Maningo, you're
6 here as a standby counsel; is that correct?

7 MR. MANINGO: That's correct, sir.

8 THE COURT: And I -- there's nothing -- I'm just
9 going to introduce -- when the jury comes in, I'm going to
10 say, Mr. Christopher Lalli, Ms. Liz Mercer on behalf of the
11 State, Mr. O'Keefe representing himself, and standby counsel,
12 Mr. Maningo. Is there any problem with that, State?

13 MR. LALLI: Not on behalf of the State.

14 THE COURT: Do you have any problem with that, Mr.
15 O'Keefe?

16 MR. O'KEEFE: No, Your Honor. Thank you.

17 THE COURT: All right. Next? I'm sorry, I keep on
18 interrupting you. But I just wanted to --

19 MR. LALLI: No, no. That's all right, Your Honor.
20 Judge Villani had granted in part a bad act motion that the
21 State proffered. And one of those incidents was a conviction
22 that Mr. O'Keefe suffered for domestic violence, third
23 offense.

24 In previous trials, the State was content with just
25 informing the jury that there had been a previous trial, Mr.

ROUGH DRAFT TRANSCRIPT

004282

1 O'Keefe was convicted, and that that is a felony conviction
2 involving Victoria Whitmarsh. Prior to this trial, we brought
3 a bad act motion, and we wanted to prove up as many events as
4 the court would allow us to do. The court allowed us to prove
5 up that one event, the prior domestic violence. And the
6 court, Judge Villani, had prepared a written order addressing
7 that.

8 What was unclear is to what extent we are allowed to
9 prove up the facts of that case. In his order, he says, all
10 of the facts and circumstances of that case and conviction.
11 It's my understanding, or my belief that the order allowed us
12 to indicate that Mr. O'Keefe was tried on a charge of battery
13 constituting domestic violence, third offense, and that the
14 information, in addition to the judgment of conviction, which
15 was previously admitted, would be allowed.

16 The officer, now Lieutenant Price, who will be a
17 fact witness that we call in proving up that charge, will
18 testify that he was aware of Mr. O'Keefe's record, which is
19 one of the reasons, or the primary reason that he actually
20 removed Mr. O'Keefe from the -- from the scene, after being
21 called there, and determining that there wasn't enough
22 evidence to make an arrest.

23 What this officer did was he actually put Mr.
24 O'Keefe in the car, and drove him somewhere else. It was the
25 only time the officer had ever done that, but he did that

ROUGH DRAFT TRANSCRIPT

004283

1 because of Mr. O'Keefe's -- knowing his record.

2 And so, I understand that Judge Villani said we
3 can't go into the facts of the prior offenses, which we don't
4 intend to do. But we think that it is important for the jury
5 to understand he was tried and convicted of a battery
6 constituting domestic violence, third offense.

7 It's my belief, although Judge Villani never
8 addressed it, that we would be allowed to do that, and I just
9 want to confirm that with the Court before we march into that
10 area.

11 THE COURT: Okay. Mr. O'Keefe?

12 MR. O'KEEFE: Okay, Your Honor. Thank you, Your
13 Honor, by the way. I want to say briefly, with all sincerity,
14 it's a pleasure to meet you. I've heard about you, sir. And
15 I'm not brown-nosing or anything. It's a shame that I have to
16 meet you under these circumstances. I know about you, your
17 history and everything. It's a pleasure to meet you, Your
18 Honor.

19 And I also want to state for the record, I will be
20 very brief and quick. I will treat you with upmost respect,
21 Your Honor, and also the State. I will not speak out of turn.
22 I will patiently wait my turn. I only ask that since I have
23 been properly [inaudible] canvassed, I do get the right to
24 argue my case for appellate purposes, if needed.

25 You know how important -- better than anybody, Your

ROUGH DRAFT TRANSCRIPT

004284

1 Honor, how important that is. Because they will come back and
2 say, well, you took on your own case, you should have argued
3 or objected that. So, please, you know, per Haines vs.
4 Kerner, give me a little liberal construction, and any motions
5 or any argument, Your Honor.

6 Okay. Now, as far as this here. We have a big
7 problem, Your Honor. This is so tantamount -- this is so
8 huge, okay? Please bear with me. And I have brought the
9 documents per NRS 47.150. I have created an exhibit under
10 subdivision 2 that says I'm asking -- mandating that you take
11 judicial notice of the facts of this case, and these
12 standings.

13 Judge Villani, shame on him. Almost four years of
14 litigation, Your Honor. Two trials. I've been in this
15 courtroom 168 times. He denied my right to delay this trial
16 on calendar call, and personally said in front of Mr. Maningo,
17 Mr. Lalli, the assistant federal public defender, the attorney
18 general, everybody, that oh no, we are going to trial on
19 Monday.

20 I reserved -- he said on the record, I reserved two
21 weeks for you, because you wanted to go. Then, on Thursday
22 night, Friday morning, I'm told that he goes on vacation.
23 They just ran a big ad in the paper about Judge Vega. I'm
24 going to pursue that if I have to, that's down the road.

25 But what I'm getting at is, Your Honor, first of

ROUGH DRAFT TRANSCRIPT

004285

1 all, the State of Nevada in 2008 wrongfully charged me with
2 malice murder by -- based on a battery act of the intentional
3 stabbing. I was forced to take the stand in that trial
4 because Judge Villani's ruling would not let in any evidence.
5 The scales of justice we like this.

6 He didn't allow in any suicides; so much evidence --
7 the Nevada Supreme Court has already reviewed it, and they
8 seen what happened. I had to take the stand and tell my story
9 a little bit, Your Honor. And I'm moving along fast. I'm
10 going to move real quick. Okay.

11 Luckily, after taking the stand and telling my
12 story, God help me, and the jury picked in the middle. They
13 had nine selections to choose from. It was an open murder
14 charging amended information. But they were -- charged me
15 with first degree malice murder, based on the battery act of
16 unlawfully stabbing. They returned a second degree murder
17 with a deadly weapon.

18 The Nevada Supreme Court reversed the case based on
19 an erroneous jury instruction on second degree murder, based
20 -- being prejudicial. Now, the only reason why that jury
21 instruction was prejudicial, Your Honor, is because the
22 evidence didn't support it.

23 And not only that, they said they didn't allege the
24 crime in the amended charging document. They couldn't list
25 the charge of battery in murder. For the single alleged act,

ROUGH DRAFT TRANSCRIPT

004286

1 it was described by the elements in the body of the
2 information.

3 Also, once they charge malice aforethought and
4 premeditated, they didn't have to list battery; they couldn't.
5 It's duplicity. They got away with a crime, and they know it.
6 The trickery by the deceit of the jury instruction 18.

7 Jury instruction 18, which I brought a copy, didn't
8 have a chance. Because you being appointed a new judge, I had
9 to pull something together; spend my whole weekend to get this
10 for the judicial notice that I want you to look at. And I
11 want to make it as an exhibit for the record for appeal, if
12 needed, also, by the way.

13 Getting back to the point, the fact of the matter
14 is, they said that the evidence didn't support that Mr.
15 O'Keefe did any unlawful act. And the evidence presented at
16 trial did not support that theory of second degree malice
17 murder -- implied malice murder. The evidence didn't support
18 it. They're stuck with that language, Your Honor. They're
19 held to it.

20 The addressed an issue, presented issue, too, which
21 they reversed it on direct appeal. And it was adversely
22 against the State, and they ruled on it in my favor.
23 Constitutional collateral estoppel applies. They said I did
24 no unlawful act, no battery.

25 I come back from prison. I didn't know. I'm going

ROUGH DRAFT TRANSCRIPT

004287

1 to be honest. Like a fool, let's go to trial. Paid thousands
2 of dollars for a paid attorney. They assume, well, he's an
3 idiot, evidently. He doesn't know it's acquittal. Like a --
4 I was so angry and mad at the whole system.

5 Anyway, we go to a second trial. Mr. Lalli
6 recharges me with the same offenses, same crime, after an
7 acquittal; only second degree murder. The remaining theory
8 was the same theory already on the original instruction for
9 second degree murder.

10 My whole point is, the jury acquitted me, Your
11 Honor, of intentional stabbing first degree murder, with
12 intent. You either did it, Your Honor, or you didn't. Right
13 now, we are proceeding on an unintentional murder, based on
14 what? There was no unlawful act Mr. Lalli can charge me with,
15 Your Honor. Hear me. Those who have ears hear me, the Bible
16 says.

17 THE COURT: You have this in the federal system,
18 right? You have this issue in the federal system; is that
19 correct?

20 MR. O'KEEFE: Right now, it's in the Ninth Circuit.
21 I'm building up to that, Your Honor, and I'll speed it up.
22 Give me five minutes. You need to hear this.

23 He recharges the same offense, regardless that the
24 acquittal wasn't officially entered; US vs. Green (phonetic)
25 says it doesn't have to be. It's always good. Double

ROUGH DRAFT TRANSCRIPT

004288

1 jeopardy applies. Even if the language used in the reversal
2 order was egregious or wrong, the Nevada Supreme Court is held
3 to it.

4 The law of the first appeal is the law of the case
5 of all subsequent appeals. Any issue decided is no longer
6 open to consideration. It's over. Honor stare decisis. I'm
7 claiming res judicata form of jeopardy on the same offense.

8 However they proceed on the second trial -- Mr.
9 Lalli presents the same evidence, rehashes the same evidence,
10 after the reversal order said I did not battery act. He's
11 precluded from any battery -- anything with the word
12 "battery." In actuality, he's precluded from all the evidence
13 from both trials, Your Honor. He should not have been able to
14 use in the second trial the evidence from the first trial. He
15 did it anyway.

16 He's got to do what he's got to do. He's got no
17 evidence. It's the same standard of proof. It's not a lesser
18 standard of charge. If it was manslaughter or something like
19 that, he could use some of the evidence. But he's barred.
20 He's barred because it's the same standard of proof, Your
21 Honor. Constitutional collateral estoppel applies. The issue
22 was decided in my favor.

23 The Supreme Court has mandated the law of the case.
24 The trial court decisions, Your Honor, by Judge Villani, don't
25 hold water. Mr. Lalli should know that better than anybody.

ROUGH DRAFT TRANSCRIPT

004289

1 In 2000, he was the DA on Byford vs. Nevada, 994 P.2d, page
2 700. Head note 25 --

3 THE COURT: I think I was the judge on that, too,
4 wasn't I?

5 MR. LALLI: I think you were, Your Honor.

6 THE COURT: Byford?

7 MR. O'KEEFE: Head note 25, trial court decisions
8 are not -- do not constitute the law of the case. Only the
9 Nevada Supreme Court can constitute the law of the case on
10 direct appeal. I was acquitted by the jury of first degree
11 intentional stabbing, criminal intent.

12 Then, Nevada Supreme Court on top of it, they
13 acquitted me of any unlawful act. Unlawful means criminal.
14 You face punishment. They had acquitted me of the -- also,
15 the actus reus. There's no actus reus; there's no criminal
16 intent. There is no evidence -- there's no charge, Your
17 Honor, for murder. There's no evidence.

18 The law -- now, the jury even hung on the wrong
19 evidence used, Your Honor. At the end of the second trial,
20 hashing out jury instructions, I have certified court
21 documents where Mr. Lalli makes a judicial admission. And
22 he's not going to deny it. They were going to let you try to
23 give the involuntary manslaughter instruction at the end of
24 the second trial, and he objected to it highly, and created a
25 whole couple-page debate.

ROUGH DRAFT TRANSCRIPT

004290

1 And I got streamlined just two pages of it for you
2 to review. He admits the Nevada Supreme Court well is aware
3 of how involuntary manslaughter would become second degree
4 murder, by the unlawful act for implied malice murder. He
5 admits in the record that the Nevada Supreme Court is well
6 aware of this, how it works -- how second degree murder works
7 with involuntary manslaughter, how it would become second
8 degree murder.

9 However, the Nevada Supreme Court ruled the evidence
10 didn't support it. Absolutely right. The second trial proved
11 it again. The jury couldn't convict again. They wrongfully
12 used it. He admits in the judicial admission -- because he's
13 bound by it, because jeopardy still applies. If you want to
14 go that way, he's forbidden from presenting any more evidence.
15 He used evidence he can't use.

16 He admitted at the end of the trial that the Nevada
17 Supreme Court admitted that the evidence didn't support it,
18 and that I did any unlawful act. And at the end of it -- I
19 couldn't believe it. I about fell down in my cell. He said,
20 and thus, as far as we've seen it, again, the evidence still
21 doesn't support it.

22 Well, what the heck are we doing? He's stuck. He's
23 time-barred, Your Honor. I'm not a fool. I'm not a fool.

24 THE COURT: So, this is a motion to, what, dismiss?
25 Or what --

ROUGH DRAFT TRANSCRIPT

004291

1 MR. O'KEEFE: Yes. I'm going to lead to a motion to
2 dismiss.

3 THE COURT: All right. You've got five minutes, if
4 you're going to.

5 MR. O'KEEFE: Okay. He can't proceed. He has no
6 evidence. It should not have even been sent to -- submitted
7 to the jury. That's another reason why Judge Villani knows, I
8 submitted a motion in March for a motion to dismiss,
9 collateral estoppel.

10 He can't even proceed on the theory of intentional
11 stabbing. I've been acquitted of it. By first degree by the
12 jury of the tier and facts, they acquitted me of first degree
13 intentional stabbing. They returned -- they thought maybe a
14 battery happened. But the Nevada Supreme Court said, no way.
15 Doesn't support it. After review of the record, even though
16 we're looking at your error, it doesn't support it.

17 So, when I came back for the second trial, that's
18 the trial I was claiming that it's forbidden for the same
19 offense. Second trial proceeded. A mistrial. He keeps
20 trying to switch it to, oh, everybody knows after a mistrial,
21 you can proceed with another trial. But he's not telling them
22 it's a third trial. He makes a judicial admission.

23 Okay. Quickly moving on. I have to take over the
24 case because, you know, I can say things, with no disrespect,
25 that normally, attorneys won't bring up. I can just attack

ROUGH DRAFT TRANSCRIPT

004292

1 the case with a lot of passion. Anyway, I would leave Mr.
2 Maningo no offense. I wanted to take over the case, because I
3 do nothing but pushups, and I just -- I had to do something.
4 I'm so passionate about I didn't do this, and I've been
5 acquitted.

6 So, I file pretrial 2241, claiming a true double
7 jeopardy violation. And I can do that, by the law, because
8 I've had two trials. I'm a pretrial detainee. I'm under no
9 state court judgment. To make a long story short, Judge
10 Navarro -- I even put the order in there. She agrees,
11 absolutely, somewhat, there's a doubt jeopardy problem.
12 There's something here.

13 And on ground 2 that I filed -- I filed three
14 grounds; double jeopardy, collateral estoppel, ineffective
15 counsel. They admitted -- she even puts in there, absolutely
16 appears to be -- exact words; collateral estoppel issues. But
17 because I was trying to claim a third -- ineffective counsel,
18 she says, no, {inaudible} -- it kind of scared me.

19 She sent me an order back. She says, I'll give you
20 30 days to do a show cause response. I did a show cause
21 response. She responded to that. She denied the petition.
22 When I did the show cause response in the amended petition, I
23 dropped ground 2, collateral estoppel, and ground 3, and I
24 proceeded going on the double jeopardy. She denied it.

25 I appealed it to the Ninth Circuit. The Ninth

ROUGH DRAFT TRANSCRIPT

004293

1 Circuit said, what the heck is going on? They named it. I
2 got it right here, the order. We're going to name it. We
3 know what you did, Judge Navarro. You denied it on procedural
4 grounds, without addressing the true double jeopardy
5 violation, so we're going to handle it for you.

6 After review of the petition, we're concluding that
7 it states at least -- at least one federal constitutional
8 claim, debatable to name judges of reason. Namely, a double
9 jeopardy violation. They can go from claim, to violation.
10 Therefore, we grant Mr. O'Keefe COA on these issues. They
11 went on the procedural [inaudible], because they have already
12 admitted there's a double jeopardy violation.

13 To save face of a colleague, they're going to make
14 her address -- the easy way out, the procedural [inaudible]
15 2241, does he have to? They even said -- the State case law
16 that I cited under White vs. Lambert, 2004, Judge Paez on the
17 Ninth Circuit, stated that, if you are a pretrial detainee and
18 if you file 2241, as long as the threshold -- as long as
19 you're -- at the time of filing, you're not under State court
20 judgment, and we have a true double jeopardy violation.

21 I sent amended in formations, the judgment of
22 conviction, the reversal order, second amended information. I
23 sent this and that. They were blown away, I heard. They
24 couldn't believe it. They reverse it. They send it back,
25 full briefing, and appointed me counsel. Sir, we're going to

ROUGH DRAFT TRANSCRIPT

004294

1 help you out. Full briefing schedule, Your Honor, in less
2 than two months. Full briefing.

3 And then, I find -- Judge Navarro sends me an order
4 two weeks ago; she recuses herself. Now, Villani recuses
5 himself. And then, I found out she's married to a top DA in
6 the State, in the criminal division. Mr. Rutledge is her
7 husband. Yeah, that's really fair. That's really fair.

8 THE COURT: All right. Mr. -- I gave you -- I
9 understand there's a motion to, I guess dismiss.

10 MR. O'KEEFE: I'm asking a motion to dismiss.

11 THE COURT: All right. Now, get all of those
12 documents you have together --

13 MR. O'KEEFE: I asked him to make a copy so I could
14 present --

15 THE COURT: Well, yeah. When you get them -- Ms.
16 Clerk, when he gets these documents, mark them as a court
17 exhibit.

18 MR. O'KEEFE: May I --

19 THE COURT: Motion -- Mr. O'Keefe's motion to
20 dismiss prior to getting a jury, all right?

21 MR. O'KEEFE: 3A -- O'Keefe Exhibit 3A -- may I,
22 Your Honor? For -- 3 being for third trial, Exhibit A,
23 defendant's.

24 THE COURT: All right. Just get it together, and
25 we'll mark them.

ROUGH DRAFT TRANSCRIPT

004295

1 MR. O'KEEFE: I got it together. It just means to
2 be copied. It's good.

3 THE COURT: All right. Well, go ahead. Mr. -- you
4 want to help him out, Mr. Maningo?

5 MR. MANINGO: I -- he -- Mr. O'Keefe brought them in
6 this morning. We met last night. He told me about them.

7 THE COURT: All right. Well --

8 MR. MANINGO: And so --

9 MR. O'KEEFE: I [inaudible] all weekend.

10 MR. MANINGO: -- we're in the process of --

11 THE COURT: I just want to have them marked.

12 MR. MANINGO: Absolutely, Your Honor. We're in the
13 process of getting those copied now.

14 THE COURT: Oh, you're getting them copied. All
15 right.

16 MR. MANINGO: Yes.

17 MR. O'KEEFE: Okay.

18 MS. MERCER: It's already gone --

19 THE COURT: Well, you want to respond Mr. Lalli?

20 MR. MANINGO: -- out the door.

21 THE COURT: -- Mr. Lalli?

22 MR. LALLI: Yes, Your Honor. During the course of
23 the first trial, the defendant was charged with open murder,
24 which, as the Court knows, includes the charge of first degree
25 murder and second degree murder. The Court gave an

ROUGH DRAFT TRANSCRIPT

004296

1 instruction on second degree felony murder, which is a
2 different theory of second degree murder. The jury also
3 returned a verdict of second degree murder.

4 When that case was appealed to the Nevada Supreme
5 Court, the Nevada Supreme Court said that there was no
6 evidence of felony second degree murder in the record. And
7 because they could not ascertain which theory of second degree
8 murder the jury relied upon, they reversed the conviction.

9 Mr. O'Keefe believes mistakenly that the Nevada
10 Supreme Court in their order of reversal said that the State
11 was precluded from proceeding on any theory of second degree
12 murder, which is simply not the case. We still have available
13 to us a theory of second degree malice murder, and that is the
14 theory upon which we are proceeding.

15 Mr. O'Keefe brought the same motion that he's making
16 to Your Honor before Judge Villani. That motion was denied.
17 There's nothing that precludes us from proceeding on a second
18 degree malice murder theory, which is what we're proceeding
19 on.

20 THE COURT: And what about this federal -- he still
21 has that availability, no --

22 MR. LALLI: That's available --

23 THE COURT: -- matter if we go forward or not today.

24 MR. LALLI: That is available to him. The defendant
25 filed in front of Judge Navarro a petition, raising the same

ROUGH DRAFT TRANSCRIPT

004297

1 issues. He believes -- Judge Navarro believed it had merit.
2 She was so impressed by the petition that she didn't even
3 order the government to respond. She summarily denied it.

4 The Supreme -- the Ninth Circuit thereafter found an
5 issue of an appealability. So, they allowed the defendant to
6 appeal. However, they apparently are not all that impressed
7 by it either, because they are aware that this trial is
8 proceeding, and they elected twice not to stay it. So what it
9 does --

10 THE COURT: So, the federal -- federal did not stay
11 this proceeding. They could have. They could have stayed it,
12 if they were impressed, as you say.

13 MR. LALLI: That's correct. But he still does have
14 the ability to fully litigate that issue in the Ninth Circuit.
15 He was appointed a federal defender to do that, to represent
16 him in the Ninth Circuit. So, that is an issue that's running
17 it's course.

18 THE COURT: So, irregardless of what the jury's
19 decision -- if we go to trial; guilty, not guilty, he still
20 has a -- if it's guilty, he still has the right to get that
21 reversed on the federal, if they want to do it?

22 MR. LALLI: Yes, sir.

23 THE COURT: So, we're not hurting his rights in any
24 way regarding that.

25 MR. LALLI: Correct.

ROUGH DRAFT TRANSCRIPT

004298

1 THE COURT: And Judge Villani did deny this motion
2 twice?

3 MR. LALLI: He did.

4 THE COURT: All right.

5 MR. LALLI: He denied this particular motion once.

6 THE COURT: Once. All right.

7 MR. O'KEEFE: Your Honor, if I may have one quick,
8 small rebuttal to that.

9 THE COURT: Yeah.

10 MR. O'KEEFE: Okay. Firstly, I'm going to request
11 -- and I don't claim to be some mastermind attorney, or
12 nothing like that. I'm fighting for my life. I'm trying my
13 best. I'm not trying to say -- out-know you in the law, or
14 Mr. Lalli, or anything like that. So, please understand that.
15 I'm just really trying to fight.

16 I'm going to ask that all objections during the
17 court, if it proceeds, be federalized by Your Honor. What
18 harm would it be, since I'm in the Ninth Circuit already, and
19 it's going to be -- everything's being addressed.

20 THE COURT: I don't know. Just -- do you have any
21 objection to that?

22 MR. LALLI: I do, Your Honor. That's contrary to
23 established State law. In death penalty litigation,
24 defendants always file a motion to federalize all objections,
25 and the Court's routinely deny them.

ROUGH DRAFT TRANSCRIPT

004299

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

2
3 BRIAN K. O'KEEFE,
4 Appellant,
5 vs.
6 THE STATE OF NEVADA
7 Respondent.

Supreme Court No.:
District Court Case No.: 08C250630

Electronically Filed
Dec 01 2015 10:59 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

8 **APPELLANT'S APPENDIX – VOLUME XXII – PAGES 4200-4399**

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O'Keefe, Brian

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(Ex Parte) Motion to Appoint Counsel filed on 12/06/13	4698-4700
"Amended" Exhibits to "Amended Petition for Writ of Habeas Corpus by a True Pretrial Detainee filed on 10/03/14	5008-5036
"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
"True Pretrial Detainee's" Reply to State's Opposition(s) Admitting the State has a Jurisdictional Defect by the Aung of a Notice of Appeal Which Diveste Jurisdiction of the Matter Appealed; i.e., O'Keefe's Pretrial Habeas Matter Appealed to the 9 th Circuit on the Subject Matter of the Amended Information Already Named a Double Jeopardy Violation filed on 10/01/14	4989-4994
Affidavit of Matthew D. Carling, Esq. filed on 06/29/15	5447-5453
Affidavit of the Honorable Michael P. Villani filed on 09/24/14	4981-4983
Amended Information filed on 02/10/09	0175-0177
Amended Notice of Appeal filed on 10/29/15	5565-5568
Appendix of Exhibits for: Motion to Dismiss based Upon Violation(s) of the Fifth Amendment Component of the Double Jeopardy Clause, Constitutional Collateral Estoppel and, Alternatively, Claiming Res Judicata, Enforceable by the Fourteenth Amendment Upon the States Precluding State's Theory of Prosecution by Unlawful Intentional Stabbing with Knife, the Alleged Battery Act Described in the Amended Information filed on 03/16/12	3225-3406
Case Appeal Statement filed on 03/14/14	4850-4851
Case Appeal Statement filed on 04/11/14	4862-4863
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
	Criminal Bindover filed on 12/26/08	0004-0020
3	Criminal Order to Statistically Close Case filed on 07/31/13	4662
4	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
5	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
6	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
7	Defendant's Motion to Settle Record filed on 03/24/09	0317-0322
8	Defendant's Proposed Jury Instructions filed on 03/20/09	0302-0316
9	Defendant's Proposed Jury Instructions filed on 08/23/10	1335-1393
10	Defendant's Submission to Clark County District Attorney's Death Review Committee filed on 12/31/08	0021-0027
11	Defendant's Supplemental Proposed Jury Instructions filed on 03/20/09	0290-0292
12	Defendant's Supplemental Notice of Witnesses filed on 08/16/10	1294-1296
13	District Court Amended Jury List filed on 03/19/09	0245
14	District Court Jury List filed on 03/16/09	0239
15	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-RCJ-WGC Against Judge Michael Villani for proceeding in Clear "Want of Jurisdiction" Thereby Losing Immunity, Absolutely filed on 08/28/14	4903-4912
16	Ex Parte and/or Notice of Motion filed on 08/28/14	4913
17	Ex Parte Application for Order Requiring Material Witness to Post Bail filed on 03/10/09	0232-0236
18	Ex Parte Motion for an Order Shortening Time filed on 08/16/10	1292-1293
19	Ex Parte Motion for Appointment of Counsel Pursuant to NRS 34.750 filed on 09/15/14	4950-4952
20	Ex Parte Motion for Defense Costs filed on 06/30/10	1037-1043
21	Ex Parte Motion for Production of Documents (Specific) Papers, Pleadings and Tangible Property of Defendant filed on 01/13/14	4714-4720
22	Ex Parte Motion for Reimbursement of Legal Cost of Faretta Canvassea Defendant to Above Instant Case filed on 12/13/13	4701-4707
23	Ex Parte Motion for Release of Medical Records filed on 04/08/11	3041-3042
24	Ex Parte Motion to Extend Prison Copywork Limit filed on 06/24/15	5438-5441
25	Exhibits to Petition for Writ of Habeas Corpus by a True Pretrial Detainee filed on 09/15/14	4954-4980
26	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
27		
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
29	Notice of Motion filed on 02/24/14	4810
30	Notice of Motion filed on 03/04/14	4833
31	Notice of Motion filed on 06/08/15	5154-5160
32	Notice of Motion filed on 07/23/14	4890
33	Notice of Motion filed on 08/29/14	4922
34	Notice of Motion filed on 09/15/14	4953
35	Notice of Witness and/or Expert Witnesses filed on 02/03/09	0166-0167
36	Notice of Witnesses and/or Expert Witnesses filed on 02/17/09	0178-0179
37	NV Supreme Court Clerks Certificate/ Judgment Affirmed filed on	
38	02/06/15	5072-5081
39	NV Supreme Court Clerks Certificate/Judgment Affirmed filed on	
40	07/26/13	4653-4661
41	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on	
42	06/18/14	4866-4870
43	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on	
44	03/12/15	5089-5093
45	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 Records and Defendant's Motion to Admit Evidence of Plygraph Examination filed on 05/24/12	3448-3449
12	Order Denying Defendant's Petition for Writ of Mandamus or in the Alternative Writ of Coram Nobis; Order Denying Defendant's Motion to Waive Filing Fees for Petition for Writ of Mandamus; Order Denying Defendant's Motion to Appoint Counsel filed on 01/28/14	4761-4763
13	Order Denying Defendant's Pro Per Motion for Judicial Notice- The State's Failure to File and Serve Response in Opposition filed on 04/01/14	4855-4857
14	Order Denying Defendant's Pro Per Motion for Leave to File Supplemental Petition Addressing all Claims in the First Instance Required by Statute for Judicial Economy with Affidavit filed on 07/15/15	5464-5466
15	Order Denying Defendant's Pro Per Motion to Modify and/or Correct Illegal Sentence filed on 03/25/14	4852-4854
16	Order Denying Defendant's Pro Per Motion to Withdraw Counsel for Conflict and Failure to Present Claims When I.A.C. Claims Must be Raised Per Statute in the First Petition Pursuant to Chapter 34 filed on 07/15/15	5461-5463
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
3	Receipt of Copy filed on 05/24/10	1031
4	Receipt of Copy filed on 06/13/11	3163
5	Receipt of Copy filed on 06/30/10	1036
6	Receipt of Copy filed on 08/02/10	1240
7	Receipt of Copy filed on 08/02/10	1241
8	Receipt of Copy filed on 08/02/10	1242
9	Receipt of Copy filed on 08/02/10	1243
10	Receipt of copy filed on 08/13/10	1255
11	Receipt of Copy filed on 09/14/10	1432
12	Receipt of Copy filed on 09/17/10	1433
13	Receipt of Copy filed on 09/21/10	1440
14	Receipt of File filed on 07/01/10	1046
15	Reply in Support of Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) filed on 08/25/15	5500-5510
16	Reply to State's Response to Defendant's Pro Per Post-Conviction Petition for Habeas Corpus filed on 06/16/15	5423-5432
17	Reply to State's Response to Defendant's Supplemental Petition for Writ of Habeas Corpus filed on 08/24/15	5489-5499
18	Request for Rough Draft Transcripts filed on 10/21/15	5549-5551
19	Request for Rough Draft Transcripts filed on 07/17/12	3458-3460
20	Request for Certified Transcript of Proceeding filed on 09/09/09	0772-0723
21	Request for Rough Draft Transcript filed on 05/21/09	0329-0331
22	Request for Rough Draft Transcripts filed on 11/20/12	4629-4631
23	Return to Writ of Habeas Corpus filed on 01/29/09	0135-0145
24	Second Amended Information filed on 08/19/10	1326-1328
25	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
26	State's Opposition to Defendant's Motion for a Reasonable Bail filed on 09/27/10	1452-1461
27	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
28	State's Opposition to Defendant's Motion to Dismiss filed on 03/21/12	3407-3411
29	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
30	State's Opposition to Defendant's Motion to Seal Records filed on 04/05/12	3431-3433
31	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
32	State's Opposition to Defendant's Motion to Withdraw Counsel for Conflict and Failure to Present Claims When I.A.C. Claims Must be	

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
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1 Q Anything basically --

2 A Anything that went wrong, yeah.

3 Q -- that needed to be done? With respect to your
4 unit number 36, were you aware of, or did you know the
5 individual who lived next to you in the open-door room there?

6 A Yes.

7 Q Who was that?

8 A Brian O'Keefe.

9 Q Okay. I'd like you to look around the courtroom;
10 tell me if you see Brian O'Keefe in the courtroom.

11 A Yes.

12 Q Can you please point to him, and identify something
13 he's wearing today?

14 A A suit.

15 Q Is he wearing a tie?

16 A Yellow tie.

17 Q All right.

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

20 THE COURT: Yes.

21 BY MR. LALLI:

22 Q Would you at times see the defendant outside his
23 apartment?

24 A Yes.

25 Q What would you see him do?

ROUGH DRAFT TRANSCRIPT

n04200

1 A Sometimes, he was just hanging out. Sometimes, he's
2 sitting out there drinking, you know.

3 Q All right. Was -- him outside drinking, was that
4 something fairly frequent, or you know, maybe once in a blue
5 moon you'd see him? Can you give us --

6 A I'd see him out there a couple times a week, maybe a
7 few more.

8 Q All right. Now, I want to direct your attention
9 specifically to November 5th, 2008. Were you living in that
10 same unit, number 36?

11 A Yes.

12 Q Had you -- were you recovering from some surgery at
13 that time?

14 A Yes, sir. I just had surgery on my foot like three
15 days prior.

16 Q What kind of surgery did you have?

17 A A major surgery where they cut a big -- cut down the
18 length of my foot, and up my leg, a big flap. I had like
19 100-and-something staples in it. And it was a pretty major
20 surgery.

21 Q All right. And at this period of time, were you
22 taking medication that assisted you in dealing with the pain?

23 A Yes.

24 Q What kind of medication were you taking?

25 A I believe it was Lortab.

ROUGH DRAFT TRANSCRIPT

004001

1 Q Did you hear something going on outside of your room
2 in the evening hours? Did you hear something outside, outside
3 the confined of your apartment?

4 A I heard a bang on the rail that night.

5 Q All right. Let's talk about the Percocet. Or did
6 you say Percocet --

7 A Lortab.

8 Q -- or Lortab? I'm sorry, Lortab. Were you so under
9 the influence of Lortab that you couldn't tell what was going
10 on around you?

11 A No.

12 Q All right. So, you could hear some sort of a
13 banging?

14 A Right.

15 Q What -- was it one bang? Was it multiple bangs?
16 Give us some sense of what it was.

17 A Just one bang.

18 Q Where did it sound like the noise was coming from?

19 A It sounded like it was right there on that rail,
20 right outside the door.

21 Q Could you tell, was it in front of your apartment?
22 Was it in front of --

23 A Well, they're so close together, they could --
24 probably right there in front of his, I'm thinking.

25 Q Right there in front of the apartment with the open

ROUGH DRAFT TRANSCRIPT

004202

1 door?

2 A Yeah, right there in the middle of the two, or
3 somewhere in that area.

4 Q All right. What did you do when you heard that
5 noise?

6 A I opened the door, and looked out.

7 Q What did you see?

8 A Saw Brian going into his apartment. He was like --
9 opened my door; he was going in.

10 Q And did you see his face?

11 A Yeah. He had a different look on his face, you
12 know.

13 Q Describe it for us.

14 A It was kind of a -- kind of a mean look on his face,
15 or a different look, you know, that I didn't normally see on
16 his face. And I was like, whoa. So.

17 Q So, then what happened?

18 A I closed the door.

19 Q Okay.

20 A Went back in my apartment.

21 Q And did you hear anything else?

22 A I heard a little bit of noise going on over there, a
23 little -- you know.

24 Q Over where?

25 A Through the wall.

ROUGH DRAFT TRANSCRIPT

004203

1 Q Over in Brian's apartment?

2 A Yeah.

3 Q What did you hear?

4 A Heard some thumping, noises. Heard some, you know,
5 talking. I couldn't really tell if it was a man or a woman,
6 but just noises going on over there.

7 Q Were you concerned, or did you -- based upon seeing
8 the defendant's face in that manner in which you did, and then
9 hearing the banging next-door, did some -- did a concern hit
10 you?

11 A At one point, I thought to myself, I wonder if he's
12 over there beating her up or something, you know.

13 Q Beating who up?

14 A His girlfriend.

15 Q You had a concern about that based upon seeing his
16 face, and hearing the noises next-door?

17 A Yes.

18 Q How long did the noise continue?

19 A 45 minutes, maybe.

20 Q I'm sorry?

21 A 45 minutes, maybe.

22 Q About 45 minutes? Did you -- what happened after
23 that?

24 A I didn't hear any -- well, I heard Cookie from down
25 below come up. And he knocked on the door or something, and

ROUGH DRAFT TRANSCRIPT

004204

1 started yelling, he stabbed her, he killed her, you know, or
2 something. And I went out and looked, and Cookie and another
3 guy there, Todd, was up there. And I looked in, and I didn't
4 -- I didn't -- I went back in my apartment.

5 Q Did the police eventually arrive?

6 A They arrived real quick after that. Five minutes or
7 something, you know.

8 Q You eventually give the police a statement?

9 A Yes.

10 Q You basically tell the police what you have told us
11 today?

12 A Right.

13 Q All right. Thank you so much.

14 MR. LALLI: Your Honor, that concludes direct
15 examination.

16 THE COURT: Okay. Any cross-examination, Mr.
17 O'Keefe?

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

19 CROSS-EXAMINATION

20 BY MR. O'KEEFE:

21 Q Hello, Jimmy.

22 A What's up, man?

23 Q That night, Jimmy, you testified priorly (phonetic)
24 that you seen me approximately straight out, about 15 minutes
25 before it all happened. Do you remember that?

ROUGH DRAFT TRANSCRIPT

004205

1 A Yeah.

2 Q So, it was 15 minutes before the first time?

3 A It was 30 minutes, something like that, before I
4 heard Cookie and them come up, and the commotion going on.

5 Q Would you agree though, Jimmy, that repeatedly, you
6 had testified that it was 15 minutes?

7 A I don't remember saying 15 minutes. I think it was
8 a little longer than that.

9 Q Okay. Well, we'll find that for you in just -- for
10 a moment, so you could refresh your memory [inaudible].

11 MR. O'KEEFE: Court's indulgence. Okay.

12 BY MR. O'KEEFE:

13 Q So, now you're stating that you're not sure what you
14 thought -- a moment ago, you said 15 minutes, but then you
15 said you wasn't sure, maybe 30. So, I mean --

16 MR. LALLI: Your Honor, I object. That
17 mischaracterizes his testimony. That's not what he said.

18 THE COURT: He didn't say 15. He said about 30, I
19 thought. And you said, didn't you testify prior it was 15
20 minutes.

21 MR. O'KEEFE: Okay.

22 THE COURT: But whatever it is, I mean, rephrase the
23 question. I don't think he said that.

24 BY MR. O'KEEFE:

25 Q There was testimony given that you stated

ROUGH DRAFT TRANSCRIPT

004206

1 approximately 15 minutes before Cookie started yelling, you
2 seen Mr. O'Keefe outside the door? Do you --

3 A I said, when I opened the door --

4 Q And you see me out there.

5 A -- and you was going in your apartment, we made eye
6 contact. You went in. I closed my door. That was it.

7 Q Okay. Did you hear me on the balcony porch when I
8 came back out?

9 A All I remember hearing was when I heard that bang, I
10 opened the door. Right when I did, I saw you. You looked at
11 me, I looked at you. I closed my door, you went in your
12 apartment, and that was it.

13 Q You heard like a bang on the rail?

14 A Bang on the rail. That's why I opened the door.

15 Q Okay. Was it real loud, or just --

16 A Yeah, it was loud enough. Yeah.

17 Q Okay. Because I mean, you're right there beside me,
18 as the picture --

19 A That's right. When you opened your door, which was
20 right beside mine --

21 Q Okay.

22 A -- I looked at mine -- I opened my door. You looked
23 at me; I looked at you. And I closed my door, and I guess you
24 went into the apartment.

25 Q Do you remember giving testimony that you seen me

ROUGH DRAFT TRANSCRIPT

00427

1 clearly; I had nothing in my hands, I had -- there was no
2 blood on me, I had no weapons?

3 A I didn't see any of that, no.

4 Q Okay. Real important, Cookie. You're right there
5 next-door to me. You testified before, but would you
6 re-testify; did you hear any yelling, any shouting, screaming,
7 or anything?

8 A That night?

9 Q Yeah. Did you hear any -- you --

10 A I heard noises. I don't -- I couldn't tell you --

11 Q Banging, thumping?

12 A I heard some thumping noises, yeah. Little banging
13 noises.

14 Q But at any time, you heard no shouting, no fighting,
15 no throwing -- none of that?

16 A No, I don't really -- I --

17 Q [Inaudible].

18 A I heard noises. I heard noises over there. But I
19 --

20 Q Okay. But no shouting, yelling, fighting? And
21 you're right there.

22 A I don't believe I ever said that, no.

23 Q Do you remember testifying the walls were paper
24 thin?

25 A Yeah. I didn't say that, no.

ROUGH DRAFT TRANSCRIPT

004208

1 Q And my door was wide open?

2 A I don't know. The only time I came out was after
3 Cookie had came up there, and went in your apartment, and said
4 what he said. And that's the only time I came out of my
5 apartment and seen your door open. Otherwise, I don't know.

6 Q Okay. But clearly, again, for the last time though,
7 do you think -- or did you -- if there was any fighting -- a
8 big fight going on, you would have heard it?

9 A I remember just hearing a ruckus over there, and
10 thinking to myself, man, I wonder what's going on; I wonder if
11 he's beating her up or something.

12 Q You think if somebody --

13 A I just remember thinking that, because that night
14 when I saw you, you had a very strange look on your face, one
15 that I had never seen.

16 Q Oh, is that so?

17 A And that concerned me.

18 Q Okay. Did you know I was extremely intoxicated?
19 Testimony was given by the police.

20 A I thought you were, yeah.

21 Q Okay. Did the police set me on the porch outside my
22 door, after they brought me out? Do you remember seeing I was
23 out there for a while?

24 A Yeah.

25 Q I was out there for quite a long time, wasn't I?

ROUGH DRAFT TRANSCRIPT

004209

1 A I believe so.

2 Q Handcuffed, sitting down?

3 A I believe so.

4 Q At times, I was getting pretty loud, wasn't I, with

5 the police?

6 A Yes.

7 Q And I'm -- when I'm loud, I'm loud, right? I mean,

8 it's kind of hard if someone's really drunk, and loud, and

9 belligerent, to be quiet; wouldn't you say so? It's just not

10 common.

11 A Yeah, you were pretty loud out there.

12 Q I was really loud, is what testimony was given. So,

13 if I was that way, and then something was going on, don't you

14 think you would have heard? Wouldn't you have heard, you

15 think -- do you think?

16 A Oh, you mean over there --

17 Q Yeah. Did you know -- okay.

18 A I don't know what was going on over there. I don't

19 know.

20 Q Did you know that I was in the car, passed out?

21 A No.

22 Q Okay. No one told you any of that testimony, that I

23 was passed out in the seat?

24 A No.

25 Q Okay.

ROUGH DRAFT TRANSCRIPT

004210

1 A This is the first time I've heard it.

2 Q Okay. And would you testify now, I normally always
3 left my window open; you know that -- or my door, correct,
4 Jimmy, from what you've noticed or observed? Or did you ever
5 notice or observe?

6 A I really can't remember, man.

7 Q Okay. But I would always go out and smoke on the
8 porch. You'd see me out there and all that; I smoked outside?
9 Okay. Would you always see a lot of plants and flowers out
10 there now and then outside the door? I'd set it out in the
11 sun?

12 A I believe you had a couple plants out there. I
13 really can't remember.

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

15 THE COURT: All right. Anything else?

16 MR. LALLI: No, Your Honor.

17 THE COURT: Thank you for testifying. You can go
18 about your business now, all right?

19 THE WITNESS: Thank you, sir.

20 THE COURT: Next witness?

21 MR. LALLI: Your Honor, the State calls Todd Conn.

22 THE MARSHAL: Officer Conn, if you will remain
23 standing. Please, sir, raise your right hand and face the
24 clerk.

25 TODD CONN, STATE'S WITNESS, SWORN

ROUGH DRAFT TRANSCRIPT

004211

1 THE MARSHAL: If you would, sir, please have a seat,
2 and slide up to the microphone. Please state and spell your
3 name for the record.

4 THE WITNESS: My name is Todd, T-o-d-d. Conn,
5 C-o-n-n.

6 DIRECT EXAMINATION

7 BY MR. LALLI:

8 Q Sir, how are you employed?

9 A I'm employed with the Las Vegas Metropolitan Police
10 Department.

11 Q What do you do for Metro?

12 A Currently, I'm assigned to the traffic bureau with
13 accident investigation.

14 Q In the -- do you drive a motorcycle?

15 A Currently, yes.

16 Q All right. Back in November of 2008, what was your
17 assignment?

18 A I was assigned to Bolden area command as a patrol
19 officer.

20 Q Where is the Bolden area command?

21 A It's located --

22 Q Not the actual streets, but just the area of Las
23 Vegas.

24 A That would be Lake Meade and Martin Luther King.

25 Q And you said that you were assigned to the patrol

ROUGH DRAFT TRANSCRIPT

004212

1 division?

2 A Yes, sir.

3 Q Can you explain for our jury what the patrol
4 division is?

5 A Patrol divisions are set up by area command. And an
6 area command is a specific area in which officers are assigned
7 to conduct patrol activities, and it's where we're also
8 dispatched to receive calls for service. Bolden area command
9 incorporates 15 as our east border. Jones is our west border.
10 Would it be -- Carrie (phonetic) as our north, and Desert Inn
11 as our south border.

12 Q When you are a member of the patrol division at
13 Metro, are those the types of police officers who drive the
14 police cars, wear the police uniforms, and respond to 9-11
15 calls?

16 A Yes, sir.

17 Q You're a first responder?

18 A Yes, sir.

19 Q Are you familiar with the CIT program?

20 A Yes, sir. It's crisis intervention team.

21 Q Can you explain to our jury what that is? Tell us a
22 little bit about that program.

23 A Crisis intervention team was developed to deal with
24 subjects who may be suffering in mental crisis, or sometimes
25 mental illness. But others, sometimes drug-induced states in

ROUGH DRAFT TRANSCRIPT

004213

1 which you need somebody that has specialized training to deal
2 with individuals of both drug-induced, and mental disorders,
3 if you may.

4 Q Back in November of 2008, were you a CIT officer?

5 A Yes, sir. I was.

6 Q Can you explain for the jury what sort of training
7 -- what sort of particular specialized training you have for
8 that?

9 A I went through a 40-hour class. During that class,
10 we actually were assigned to go to the Southern Nevada Mental
11 Health Institute, where we would speak with people who were
12 bipolar, schizophrenic, to get an idea of some of their
13 concerns when dealing with police officers, how they'd like to
14 be treated. It also gives us the ability to recognize
15 symptoms that subjects may be suffering from.

16 We also do multiple roleplaying assignments, in
17 which our job is to specifically react to the scenario that
18 they give us, and to try to de-escalate a situation, and bring
19 it down so that both officers, and the person that we're in
20 contact with are safe.

21 Q All right. Now, I want to direct your attention
22 specifically to November 5th of 2008. Did you respond to 5001
23 El Parque, unit number 35?

24 A Yes, sir, I did.

25 Q What caused you to go to that location?

ROUGH DRAFT TRANSCRIPT

004214

1 A At the time, I was actually getting gas. I heard a
2 broadcast over our radio stating that there was an unknown
3 trouble call, and that there is a door -- an apartment that
4 had the door open. They could see large amounts of blood, and
5 there was possibly a female down inside.

6 Q Did you hear anything with respect to a weapon?

7 A I did not at the time, no.

8 Q All right. So, the information that you had is
9 blood at the scene, and possibly a woman down?

10 A Yes, sir.

11 Q What do you do upon receiving that information?

12 A I immediately sent a text message via our computer
13 in our vehicle to dispatch, advising her that I would be en
14 route code to the location.

15 Q What does being "en route code" mean?

16 A Code means that we would be activating our lights
17 and sirens, so that we can get there in a little expedited
18 manner, where we're going to actually break some traffic
19 rules, go through red lights, et cetera, in order to get to a
20 scene faster so that we can provide our services to possibly
21 save a life.

22 Q All right. Can you tell us what you did after you
23 sent that transmission?

24 A I immediately went to the location at 5001 E1
25 Parque. I parked on the -- it's actually the southeast

ROUGH DRAFT TRANSCRIPT

004215

1 parking lot. When I pulled in, I noticed there was two other
2 patrol vehicles that already arrived before me. I immediately
3 ran to the west through the complex, and went upstairs to the
4 second floor, where I saw the apartment had it's door open.

5 Q Okay. I'm going to show you what we've marked as
6 State's Exhibit number 2 for identification purposes. You
7 don't know what that is, I take it?

8 A That's the stairway.

9 Q Okay. Let me zoom-out a little bit. What are we
10 looking at there?

11 A We are actually looking at the stairway that I ran
12 up to go to the apartment, and immediately then made a right.
13 It's the door that's open in the picture.

14 Q Can you describe what that apartment looks like on
15 the inside?

16 A Immediately as you go into the doorway, there's a
17 living room area. Off to my far right would have been a small
18 kitchen area. Directly ahead of me, there was actually an
19 open doorway, with one door that you could see facing me, and
20 it was flat to me, and that was a bathroom. Off to the right,
21 there was an open door. And then, off to the left -- and it's
22 kind of like a -- just like a little T; was another bedroom.

23 Q All right.

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

25 THE COURT: Yes.

ROUGH DRAFT TRANSCRIPT

1 BY MR. LALLI:

2 Q Show you some photographs. We've marked them as
3 State's proposed 3, 4, 5, and 6. Officer, can you take a
4 moment and have a look at those?

5 A Yes, sir.

6 Q Do you recognize what's depicted in those
7 photographs?

8 A Yes, sir, I do.

9 Q Do those photographs fairly and accurately depict
10 the inside of unit 35 to which you responded?

11 A Yes, sir, they do.

12 MR. LALLI: Your Honor, I'd move for the admission
13 of State's proposed 3 through 6.

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

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

16 THE COURT: 3 through 6 will be admitted.

17 (Exhibits 3 through 6 are admitted)

18 BY MR. LALLI:

19 Q Officer, I'm going to show you State's Exhibit
20 number 3. What is this?

21 A That is a view looking through the doorway, in which
22 you see the living room area. And then, that is the beginning
23 of that T-shaped hallway that houses both bedrooms and the
24 bathroom.

25 Q Is State's Exhibit number 4 another view of the

ROUGH DRAFT TRANSCRIPT

004217

1 front room of that apartment?

2 A Yes, sir. It's just inside the doorway, slightly
3 looking off to the right.

4 Q And if we zoom-in closely here to the doorway, what
5 are we looking at?

6 A You're actually looking at the bedroom in which this
7 tragic accident took place.

8 Q I want to show you State's Exhibit number 1. The
9 doorway that was depicted in the previous exhibit, are we
10 seeing that in a crime scene diagram, and is the doorway --
11 I'll zoom-in here. Is it very close to that number 7?

12 A Yes, sir.

13 Q That's the doorway that we were looking in back in
14 State's Exhibit number 4?

15 A Yes, sir.

16 Q All right. Does this appear to be a layout of the
17 apartment?

18 A Yes, sir, it is.

19 Q So, you said that the door was opened?

20 A Yes.

21 Q What do you do upon seeing the open door?

22 A I immediately look inside. When I do, I can see
23 that I have two other officers that are already in the kitchen
24 area, Officer Santarossa is there, along with Officer
25 Fonbuena. Both of them are in the kitchen with their guns

ROUGH DRAFT TRANSCRIPT

004218

1 drawn, and they are facing the southwest bedroom on this
2 diagram. They are looking through that hallway, and they are
3 looking directly at that southwest bedroom.

4 MR. LALLI: Your Honor, because this equipment isn't
5 working properly today, is it okay if I have the officer step
6 down --

7 THE COURT: Yes.

8 MR. LALLI: -- and maybe indicate on this diagram?

9 THE COURT: Yeah. Just keep your voice up, all
10 right?

11 THE WITNESS: Yes, sir.

12 BY MR. LALLI:

13 Q So, if you could come down here. And just make sure
14 you keep your voice up so you can be picked up on the
15 recordings here. Try not to block anybody's view. Why don't
16 you explain for us where you were, and where the other
17 officers were.

18 A I immediately come in the front door here. And when
19 I'm looking, I can see that Officer Fonbuena and Santarossa
20 are both here, with their firearms drawn.

21 Q And you're indicating the kitchen area for the
22 record, correct?

23 A Correct. And they are looking directly into this
24 opening of the hallway, towards the door of the southwest
25 bedroom. I then immediately realize that we have an open door

ROUGH DRAFT TRANSCRIPT

004219

1 here, that isn't being covered by them.

2 Q What do you mean, covered?

3 A Well, their firearms and their eyes are only able to
4 see this portion of this doorway. They can see some of this
5 door, but they can see nothing of this. So, I immediately run
6 over to this wall, at which time I draw my firearm, so that I
7 can cover this portion that they can't see.

8 Q And this portion is the bedroom that has the figure
9 of the individual on the ground on State's Exhibit number 1,
10 correct?

11 A Yes, sir.

12 Q All right. What do you do when you go to that
13 location?

14 A Upon standing here, I can hear -- I can hear
15 yelling. It's not very distinct. It's kind of mumbled;
16 muffled. It's not very coherent at the time. I tell Officer
17 Fonbuena that I'll do the talking, that I have a lot of blood;
18 that I can see in my doorway that there's somebody in there.
19 Being that I was the CIT officer, I let him know that I'm
20 going to give the verbal commands.

21 Q Why is it important -- and I think you can probably
22 return to your seat now, Officer. Thank you. Why is it
23 important for you to instruct the other officers that you're
24 going to be the one who's giving the verbal commands?

25 A Sometimes, if we have too many people giving verbal

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004220

1 commands, we can cause individuals to become confused. You
2 can have contradicting orders given, and it basically isn't
3 good for communication purposes.

4 Q So, just to make sure that Metro or law enforcement
5 is speaking in one voice, if you will, you assume that
6 responsibility?

7 A Yes, sir.

8 Q Tell us what you do at that point.

9 A At that time, I call into the room that, whoever's
10 in there, I need you to come out with your hands up. I don't
11 get any response. I have to say it a few times.

12 Q You said that you had heard some sort of noise
13 coming from the room?

14 A Correct.

15 Q Can you describe that noise for us?

16 A It's basically mumbled talking, is what I'm hearing
17 at first. Sometimes, it's agitated, loud. And then other
18 times, it's not necessarily directed, and it's not coherent.
19 These weren't full sentences that I was hearing. Just
20 individual words, along with mumbling, then yelling. That's
21 what I'm hearing. So, I just know that I have a male voice
22 that I can hear coming from that room.

23 Q Do you hear any female voice coming out of that
24 room?

25 A No, sir, I do not.

ROUGH DRAFT TRANSCRIPT

004221

1 Q All right. So, tell us what happened.

2 A So, I give my verbal commands, tell the individual
3 that I can hear to come out with his hands up. I get no
4 response. I have to repeat it multiple times.

5 Q Do you eventually get a response?

6 A I do. And --

7 Q What response do you get?

8 A The first response I get is that she stabbed
9 herself.

10 Q She stabbed herself?

11 A Yes.

12 Q Okay.

13 A So, it's at this time that I tell him, okay, I need
14 you to come out with your hands up. We can give her help, but
15 I need you to come out of the room. The voice becomes highly
16 agitated, and says, "Just get the fuck in here, get the fuck
17 in here."

18 Due to the amount of blood that I see, and the
19 overall demeanor of the voice that I'm hearing, I'm feeling
20 that the subject inside the room wants to bait us into coming
21 into the room.

22 Q Why? Why did you get that impression?

23 A It's agitated. It's not like they were looking out
24 for the welfare of the individual; that wasn't what I was
25 getting. Help, she needs -- please, come help her. I wasn't

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004222

1 getting anything like that. It was, "get the fuck in here."

2 It was highly --

3 Q Almost him giving you an order?

4 A Correct. Yeah. This wasn't pleading for me to come
5 in and save somebody. This was -- I was thinking that there
6 is somebody hiding behind the corner with a shotgun, getting
7 ready to kill me as soon as I come around that corner.

8 Q So, I was going to ask you, well, why don't you just
9 go in? I mean, are you concerned for your own safety?

10 A Yeah, I'm concerned for everybody.

11 Q All right. So, what happens?

12 A I continue my verbal commands. I tell him, listen,
13 we want to help her. You need to come out, you need to put
14 your hands up. But we can't go in there, and we can't give
15 her the assistance that she needs until you come out.

16 Q Is there any question in your mind you spelled that
17 out clearly for the defendant?

18 A Absolutely.

19 Q All right.

20 A Then, next thing you know, he goes, "She's dead."

21 And I said, well, listen, we still need you to come out of the
22 room. You have to come out of the room with your hands up.
23 And it's -- again, it's -- he goes back to mumbled talking,
24 agitated, yelling.

25 Never -- I ask him for his name multiple times; I

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004223

1 never get his name. I ask him what her name is. At one point
2 in time, he states Veronica is the name that I gave during my
3 reports. It's what I remember hearing.

4 Q Veronica?

5 A Correct.

6 Q Okay.

7 A So, I keep up the verbal commands, keep them up.
8 I'm trying to get him to come out of there. He says, she's
9 dead. Then, he switches and says, "She's alive." About that
10 time, Sergeant Newberry, along with his officers, comes into
11 the room.

12 Q Who's Sergeant Newberry?

13 A Sergeant Newberry at the time was the problem
14 solving unit sergeant. They were a plain-clothed unit that
15 does basic investigations for patrol bureaus.

16 Q All right.

17 A And --

18 Q So, it's a separate squad of police officers?

19 A Correct. And they tend to work plain-clothed
20 operations. They do actual investigations into burglaries,
21 robberies, drug buys; that sort of thing.

22 Q So, Sergeant Newberry shows up. Do you know why?

23 A He was there just to give us a hand. And none of us
24 have -- we've put what we call a code red on the channel,
25 which means nobody's allowed to talk until everybody is safe

ROUGH DRAFT TRANSCRIPT

004004

1 and accounted for. So, nobody's allowed to get on the radio,
2 so he knows it's still an active scene when he shows up.

3 His officers, because they are plain clothes,
4 they're wearing tactical vests that say "Police" across them.
5 But they don't necessarily carry the amount of tools that we
6 carry as patrol officers. They don't have a big belt like we
7 do.

8 Q When you say tools, you're talking about things like
9 guns, pepper spray, batons; things of that nature?

10 A Yes, sir.

11 Q All right.

12 A So, it was at this time that I realized that one of
13 his officers probably should be on taser, that we need a less
14 than lethal option. And so, I hand my taser off to Officer
15 Ballejos, who works for Sergeant Newberry.

16 Q What's a taser? I mean, we've all probably -- most
17 of us have heard about it on television. Can you just explain
18 to the jury what a taser is, how it works?

19 A A taser is an electronic control device. It's
20 capable of firing two probes at -- 21 feet is the maximum
21 distance, at which time, both of those probes, when they
22 strike an individual, it delivers an electronic current.

23 That electronic current actually interrupts the
24 electrical currents that your brain makes to control body
25 function. That's why people tend to go rigid; they fall over.

ROUGH DRAFT TRANSCRIPT

004225

1 And that allows officers to be able to place them into
2 custody, because the subject can no longer resist you.

3 Q So, if you shoot somebody with a taser, these two
4 prongs fire into the individual being shot?

5 A Correct.

6 Q They're given one heck of a jolt of electricity,
7 that basically puts them on the ground?

8 A Yes, sir.

9 Q Doesn't kill them?

10 A No, sir.

11 Q All right. And so, when you talk about less than
12 lethal options, that's as opposed to going in with a gun,
13 where somebody might end up getting shot and killed?

14 A Correct.

15 Q All right. So, you thought that it was important
16 that somebody utilized a taser, as opposed to just everybody
17 going in with guns?

18 A Correct.

19 Q Okay. So, what happened?

20 A Me and Sergeant Newberry started talking. He states
21 that he's going to do what we call a quick peek, which means
22 he's going to try to be as tactical as he can, look into the
23 room, and get us more observation. The only thing that I can
24 see from my angle is basically a bloody bed, and a little bit
25 of a wall. That's all that my view allows me. So, I don't

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004226

1 know what's hiding behind that wall.

2 Q All right.

3 A So, Sergeant Newberry tells me, listen, I'm going to
4 peek my head in. If anybody tries to kill me, drag me out,
5 save me, whatever you got to do.

6 Q All right.

7 A So, he peeks, he looks in. He comes back. He goes,
8 listen, I can see the subject. He's laying on top of the
9 female. The knife is on the bed. Let's go. We all had
10 formed up basically an arrest team. Everybody stacked up
11 behind me, and put their hand on my shoulder. When I start to
12 move that way, everybody knows that we're moving as a cohesive
13 unit.

14 We immediately go into the room, at which time I'm
15 giving verbal commands to Mr. O'Keefe. He is actually laying
16 on the ground next to the deceased. He has his right hand
17 kind of cradling her head. His left hand is over the top
18 portion of her torso. She is naked from the waist down.
19 There is a lot of blood.

20 Q Can I ask you this? You said Mr. O'Keefe -- and you
21 referred -- you kind of looked over to my right. Do you see
22 the individual who you saw in the bedroom here in the
23 courtroom?

24 A Yes, sir. He's --

25 Q Can you please point to him, and tell us what he's

ROUGH DRAFT TRANSCRIPT

004227

1 wearing today?

2 A He's wearing a yellow tie, kind of a green shirt,
3 brown sports coat. Has his hair back in a ponytail.

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

6 THE COURT: Yes.

7 BY MR. LALLI:

8 Q So, the defendant is on the ground. He has this
9 woman where?

10 A He is laying on his right side. His head is
11 parallel to hers. They're laying parallel together. His
12 right hand is up underneath the back of her head. His left
13 hand is over the top portion of her torso.

14 Q And --

15 A We give him verbal commands, get up, get up.

16 Q You said that she was partially dressed?

17 A Yes, sir. There's -- I can remember just a bloody
18 t-shirt. And then, I clearly remember that the lower
19 extremities of her were completely nude.

20 Q Completely naked?

21 A Yes.

22 Q Does the defendant say anything to you when officers
23 come into the room?

24 A As soon as we're giving the verbal commands, he
25 ignores all the verbal commands we're giving him. He becomes

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004298

1 agitated, and he starts waving his left hand that's over her
2 torso, screaming, don't look at her, don't look at her.

3 Q Don't look at her?

4 A Yes, sir.

5 Q Is this -- can you describe the speed with which you
6 and other officers are coming into that room? Do you do it
7 kind of slowly and methodically; or is it like, hey, let's get
8 in there as quickly as we can? Or --

9 A It's --

10 Q -- give us a sense of that.

11 A It's very fast. We're not running. This is very
12 controlled. We have to still clear the room, but this is by
13 no means a slow walk. This is, I walk in at -- basically, if
14 you've ever seen a speed walker, that's about the pace I'm
15 going. I'm moving as fast as I can go, without it being a
16 jog. Still a walk so that my firearm is steady. And I need
17 to clear the portions of the room that I see immediately as I
18 come in.

19 Q How many officers go into that back bedroom?

20 A I believe there's four total.

21 Q And you're dressed either as a police officer, or
22 those problem solving officers have --

23 A Tac. vests.

24 Q Tac. vests on?

25 A Yes, sir.

ROUGH DRAFT TRANSCRIPT

004229

1 Q And the defendant is concerned with you looking at
2 his naked girlfriend?

3 A Yes, sir.

4 Q What happens next?

5 A At this time, we continue the verbal commands.
6 We've ensured the room's clear. We give him the verbal
7 commands; he refuses to get off of her. He is becoming highly
8 agitated.

9 Q When you say highly agitated, what's he doing?

10 A He's yelling at us, and not --

11 Q Saying what?

12 A That's when he -- it's just continuing with the,
13 don't look at her, don't look at her.

14 Q All right.

15 A There was nothing beyond that. Officer Ballejos
16 then fires his taser, striking Mr. O'Keefe. It incapacitates
17 him, at which time, I go to grab hands-on. I realize that Mr.
18 O'Keefe has a lot of blood on him, and I'm concerned about
19 contamination. I can't remember where we got the initial
20 information, but there was some sort of possibility for a
21 communicable disease when we were entering.

22 Q All right.

23 A So, I immediately go to get gloves out of a back
24 pouch that I keep on my belt, and I also hand them over to
25 Sean -- I'm trying to think of Sean's last name. I --

ROUGH DRAFT TRANSCRIPT

004230

1 Q Another -- Sean is another police officer?

2 A Yes, sir.

3 Q All right.

4 A I believe it's Officer Thomas. Sean Thomas
5 (phonetic) --

6 Q Okay.

7 A -- if I'm not mistaken. I go to give him a pair of
8 gloves so that we can get the handcuffs on Mr. O'Keefe.

9 Q What's Mr. O'Keefe doing as you're trying to put him
10 in the handcuffs?

11 A Unfortunately, a taser operates on a five-second
12 cycle. At the end of that five-second cycle, the electricity
13 is no longer being provided to the subject. So, Mr. O'Keefe
14 has the ability to regain a little bit of control after those
15 five seconds. His muscles go back to working just like they
16 did before.

17 So, that five seconds elapses during the time where
18 I'm trying to get gloves on, and so is Sean. So, Mr. O'Keefe
19 begins to struggle, at which time, we bring his hands
20 together. We get our gloves on; we get the handcuffs on him.
21 I put one arm underneath Mr. O'Keefe's armpit. Sean does the
22 same, and we immediately escort him out into the living room.

23 Q All right. And there was a woman in that room.
24 Were you at all involved in rendering her any assistance?

25 A Once we got Mr. O'Keefe into the living room, we

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004231

1 immediately asked for the fire department -- medical personnel
2 that we had on scene, had already arrived. We tried to clear
3 our as many people as we could immediately from -- my first
4 observations, she did not appear to be alive at the time. We
5 still require medical personnel to make that call. So, I
6 immediately brought them in, at which time, they announced to
7 us that she was deceased.

8 Q Okay. What happens to the defendant once he's in
9 the living room?

10 A I know that he was escorted out of there, but not by
11 me.

12 Q Someone else did that?

13 A Yes, sir. Because once he goes into the living
14 room, my goal was to -- basically, I was already convinced
15 that we had somebody that was deceased in there, and now it
16 was time to preserve evidence. I wanted to get everybody out
17 there that I could, so that we wouldn't contaminate our scene.

18 Get one medical personnel staff to come in there,
19 check if she needed assistance; at which time, he said that
20 she was not, and that she was deceased. And so, now, it was
21 time to get everybody out so that we wouldn't contaminate it.

22 Q When you went into the back bedroom to remove Mr.
23 O'Keefe, did you ever step on the woman's body?

24 A I do not believe I ever stepped on her, no.

25 Q Okay. Did you step on her head, or on her face?

ROUGH DRAFT TRANSCRIPT

004232

1 A No, sir.

2 Q Is that something you would have remembered?

3 A Absolutely.

4 MR. LALLI: Thank you, Your Honor. That concludes
5 direct examination.

6 THE COURT: All right. Cross-examination, Mr.
7 O'Keefe?

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

9 CROSS-EXAMINATION

10 BY MR. O'KEEFE:

11 Q It's Mr. -- Officer Conn?

12 A Conn. Yes, sir.

13 Q Officer Conn, I want to be real brief. Okay, sir?
14 When you did enter the apartment, and you were calling to me,
15 did I at any time tell you to get out; get the F out?

16 A No, sir, you did not.

17 Q Thank you, sir. Did you guys realize that I was
18 extremely intoxicated?

19 A No, sir.

20 Q Okay. What is a 408, Officer, please?

21 A If you're referring to our codes that we use --

22 Q Yes, sir.

23 A -- that would be a drunk, sir.

24 Q Okay. What if the 9-11 call immediately at the
25 beginning of the call -- if I could -- I'll produce it if I

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004233

1 have to. But if I say that it says exactly --

2 MR. O'KEEFE: Mr. Maningo.

3 BY MR. O'KEEFE:

4 Q The 9-11 LVPD Communication Center states that, "At
5 23:06, this person advised, subject who lives in apartment is
6 Brian. Extremely 408." Not even three and-a-half minutes
7 after the call was made. Would you agree with that?

8 A If that's in the details of the call, that's what
9 they received. Yes, sir.

10 Q Okay. Now, so, didn't you say a code red, when
11 that's called, you guys clearly are listening, correct, sir?

12 A Sir, there would be no other traffic provided by
13 dispatchers over the air --

14 Q Yes, sir.

15 A -- because we call the code red. So, there's no
16 further communications over that radio.

17 Q Yes, sir. So, my point being is, when that
18 extremely -- defendant was extremely 408, you guys all heard
19 it, without a doubt? That's what the --

20 A No, sir. I did not.

21 Q Okay. How long did this event -- stand-off, as you
22 call it, or whatever, take, Your Honor -- I mean, Officer,
23 please?

24 A Unfortunately, time seems like it takes a very long
25 time when you're there. In reality, it was mere minutes.

ROUGH DRAFT TRANSCRIPT

004234

1 Q Thank you.

2 A Four to five minutes.

3 Q Thank you, Officer. I understand your position.

4 When a call is made, you're concerned for everyone. That's

5 the goal of a police officer. But you guys keep beating down

6 in prior testimonies that, we felt that the defendant -- and I

7 understand that, was baiting us, setting you up. I understand

8 that. You're in a lot of situations sometimes. But

9 ultimately, was I baiting you? Yes or no.

10 A At the time --

11 Q Yes or no, Officer.

12 A -- I didn't know.

13 MR. O'KEEFE: Please, Your Honor.

14 THE COURT: If you can't answer yes or no, you can

15 say, I can't answer yes or no. So --

16 THE WITNESS: I can't --

17 THE COURT: I mean, I can't force the --

18 THE WITNESS: I can't state what your mind set was

19 at that time. I'm sorry, I can't answer that.

20 BY MR. O'KEEFE:

21 Q Okay. But there has been plenty of prior testimony,

22 you all felt that the defendant possibly, or could have been

23 baiting us. You stated that, correct, Officer?

24 A Yes, sir.

25 Q Okay. Now, ultimately though, at the conclusion of

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004225

1 everything when you apprehended me, ultimately though, was I
2 baiting you? It's simple; yes or no?

3 A When you came in, you were not waiting for us, no.

4 MR. O'KEEFE: Let me re-ask one more time, Your
5 Honor.

6 BY MR. O'KEEFE:

7 Q Ultimately at the conclusion, after you apprehended
8 me and put me in handcuffs, you guys made a determination, the
9 guy wasn't baiting me; he didn't have a gun, he wasn't trying
10 to kill me or anything. So, answer the question yes or no,
11 Ultimately, was I baiting you?

12 A I can't honestly answer that, sir. I'm sorry.

13 Q So, during this time, you're stating that you had no
14 clue I was intoxicated?

15 A I had no idea at all.

16 Q If there was prior testimony many times given that
17 you stormed a room, up to five officers in the same area, and
18 you stormed in fast -- there was prior -- if there was prior
19 testimony given that someone went over the bed, would you
20 disagree with that?

21 MR. LALLI: I object, Your Honor. That assumes
22 facts not in evidence.

23 THE COURT: Well, you can ask him, did you see
24 someone go over the bed? Ask him.

25 THE WITNESS: I did not see anyone going over the

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004236

1 bed. I was focused directly on you, and I was not looking
2 over my shoulder at what --

3 BY MR. O'KEEFE:

4 Q Okay.

5 A -- my officers were doing.

6 Q Would you agree that it was maybe very small spot,
7 from the end of the bed, to the closet, to the wall? It --

8 A Yes, it's a relatively small space.

9 Q Relatively understates it, I do believe, Officer.
10 But however, with the alleged victim on the ground with me
11 beside her, and with four or five officers all around, you
12 could say without a doubt, nobody kicked us, stepped on us,
13 with all that going on? Being re -- tased, and trying to
14 handcuff, and all that? You can say absolutely --

15 A I did not step on you, or her. That I can say.

16 Q You did not?

17 A That's all I can attest to, sir, is what I did.

18 Q And at any time, she was never bumped, even though
19 there's been prior testimony given that it possibly --
20 absolutely could have happened.

21 A I don't know if she was or not.

22 MR. LALLI: Your Honor, I object to references to
23 prior testimony. The question is, did this officer see it.
24 That misstates any evidence in the record. That evidence is
25 not in the record. And I think as the Court correctly pointed

ROUGH DRAFT TRANSCRIPT

004237

1 out before, he should just ask this officer what he saw, or
2 what he didn't see.

3 THE COURT: Prior testimony -- if they're like --
4 you're alluding to two or three other witnesses, he doesn't
5 know what prior testimony -- he's testifying as to what he
6 knows. So, you just have to limit it to him.

7 MR. O'KEEFE: Okay.

8 THE COURT: You know, he doesn't know what other
9 officers or other witnesses testified to, even if it's prior
10 testimony.

11 MR. O'KEEFE: Yes, sir, Your Honor. And I'm --

12 THE COURT: If it's his prior testimony, then you
13 could show him his prior testimony, and impeach him on it.
14 But --

15 MR. O'KEEFE: I'm going to just make it easy and
16 pass -- go -- move on for Your Honor, for everybody.

17 BY MR. O'KEEFE:

18 Q Officer, could you step up to the diagram a minute,
19 please?

20 A Sure.

21 Q Thank you, sir. Can you point to the jurors where
22 you were standing as a team when it was stated that you were
23 stacked along the wall?

24 A I would be the first position here. And then, the
25 rest of the officers --

ROUGH DRAFT TRANSCRIPT

004208

1 Q So --

2 A -- were directly behind me.

3 Q -- how many officers were there? Is it true there
4 was four, or there was five, sir, standing --

5 A I believe that there was four, that actually
6 entered. We had Sergeant Newberry here. This is -- he's
7 standing on this corner when he tells me that he's going to
8 peek into the room. And then, I believe that I have Officer
9 Thomas and Officer Ballejos directly on my back as we're
10 getting ready to make our arrest.

11 Q And you're all against the wall, getting ready to do
12 your stack if the code's clear to go?

13 A Not actually against the wall. We would be at an
14 angle. This table here would prevent us from being up
15 directly against the wall.

16 Q Okay. Do you realize that we have a -- there's a
17 photograph here where there's a table all the way to the end
18 of the wall? That diagram's misprinted. See where the line
19 goes along the wall, where you put your red light?

20 A Right here?

21 Q There's no section there. That's -- see where the
22 table's at? Can you point it along the wall, the first table?

23 A Correct.

24 Q Move that table all the way to the end of the wall,
25 would you; with your red light, will you move it back? That's

ROUGH DRAFT TRANSCRIPT

004239

1 where the table's actually at in the photograph.

2 A Correct.

3 Q So, how could five officers be along the wall there?

4 A Well, that's what I'm saying. There's three.

5 There's one here. There's me, directly on the corner. And we
6 are not on the wall. They are stacked against me at an angle.
7 Our eyesight is just trying to continue this view into the
8 room.

9 Q Okay, Officer. You can take your seat. Thank you,
10 sir. But you clearly said that -- you didn't see any weapon
11 in my hands?

12 A No, I did not.

13 Q And I was laying beside her, is what I was gathering
14 from your testimony that was given. She was on her back, and
15 I was on my side, cradling her head, and --

16 A Correct.

17 Q Okay. I wasn't on top of her?

18 A No, sir.

19 Q Okay.

20 MR. O'KEEFE: No more questions, Your Honor.

21 THE COURT: Thank you, Mr. O'Keefe. Anything else,
22 Mr. --

23 MR. LALLI: Just very briefly.

24 REDIRECT EXAMINATION

25 BY MR. LALLI:

ROUGH DRAFT TRANSCRIPT

004240

1 Q With respect to the baiting that you had testified
2 to on direct examination, you said that you clearly gave the
3 defendant directions to come out, and he didn't even respond
4 at first?

5 A Correct.

6 Q And then, he told you to come in there?

7 A "Get the fuck in there," is exactly what he said.

8 Q And it was an order?

9 A Yes, sir.

10 Q He told you at one point that Victoria was alive, or
11 the woman was alive, correct?

12 A Correct.

13 Q And at another time, he told you she was dead?

14 A Correct.

15 Q Seemed to you he might have been playing games with
16 you?

17 A It was not consistent, no.

18 Q Thank you.

19 MR. LALLI: Nothing else.

20 THE COURT: All right. That completes the testimony
21 then?

22 MR. O'KEEFE: Yes, sir. No further questions.

23 THE COURT: Thank you, sir.

24 THE WITNESS: Thank you.

25 THE COURT: Who else do you have, Mr. Lalli?

ROUGH DRAFT TRANSCRIPT

004241

1 MR. LALLI: Your Honor, Dan Newberry.

2 THE MARSHAL: Officer Newberry, if you will remain
3 standing. Please, sir, raise your right hand and face the
4 clerk.

5 DAN NEWBERRY, STATE'S WITNESS, SWORN

6 THE MARSHAL: Please have a seat, sir. And if you
7 would, please state and spell your name for the record.

8 THE WITNESS: My name is Dan Newberry. D-a-n,
9 N-e-w-b-e-r-r-y.

10 DIRECT EXAMINATION

11 BY MR. LALLI:

12 Q Sir, how are you employed?

13 A I'm employed with the Las Vegas Metropolitan Police
14 Department as a sergeant in the K-9 section.

15 Q What is K-9?

16 A K-9 as in dog partners.

17 Q All right.

18 A I would go out and use dogs to search for suspects.

19 Q How long have you been a K-9 sergeant?

20 A I'm just two months shy of two years.

21 Q How long have you been with Metro in total?

22 A June 29th, it will be 17 years.

23 Q And I want to direct your attention back to November
24 5th of 2008. What was your assignment back then?

25 A On that night, I was designated as a sergeant with a

ROUGH DRAFT TRANSCRIPT

004242

1 problem solving unit, also referred to as a PSU unit.

2 Q PSU standing for problem solving unit?

3 A Yes, sir.

4 Q And we've had some testimony already as to what a
5 problem solving unit does. But on that particular night, at
6 approximately 11:00 o'clock in the evening, were you working?

7 A Yes, we were. We were operating as a plain-clothes,
8 unmarked car, robbery suppression in the robbery corridors.

9 Q And as a sergeant, do you have supervisory
10 responsibilities?

11 A Yes, I do.

12 Q What are those?

13 A At that time, they were to supervise a group of
14 police officers that were designated as problem solving
15 officers; essentially detectives that work out of an area
16 command. And we would focus on street-level robberies,
17 narcotics transactions; little problem areas that would occur
18 within area commands.

19 Q You -- as -- are those -- is that cluster, or group
20 of officers referred to as a squad?

21 A Yes, sir, it is.

22 Q And then, you are the sergeant, or the supervisor of
23 that squad of officers?

24 A Yes, sir.

25 Q You said that you were doing robbery suppression.

ROUGH DRAFT TRANSCRIPT

004243

1 What is that?

2 A We would -- we would look at crime trends, crime
3 statistics, look for where robberies or crimes are occurring.
4 We would try to flood that area with officers, both plain cars
5 and uniformed officers that would work in the areas. And from
6 there, hopefully be present to witness, and then stop
7 robberies, or to be near locations that did get robbed, to be
8 like a quick reaction force in order to get people in custody.

9 Q All right. And depending on what Metro's priorities
10 are in any given month, you might do robbery suppression; you
11 might do some other sort of project as a problem solving unit;
12 is that true?

13 A That is correct.

14 Q Okay. So, on this particular evening, you and your
15 squad are in the process of robbery suppression. Does a call
16 come over the radio that you feel the need to respond to?

17 A Yes, there is.

18 Q Can you tell us about that?

19 A There was a call that came out. It was initially
20 started as a domestic dispute. It was over off of El Parque.
21 Described a female that was bleeding heavily, with a male in
22 her room.

23 Q So, what happens upon getting that call?

24 A We respond to the area. We knew it was right along
25 the Decatur robbery corridor that we had just been working.

ROUGH DRAFT TRANSCRIPT

004244

1 We knew it was domestic related, but there could have been a
2 possibility of it being other crime related.

3 Q And how serious of a call is this in the types of
4 crimes that you -- or calls that you get during the course of
5 a day?

6 A Domestic disturbances are routine, but they can be
7 very serious. Especially when you hear a term of, with a
8 female down and bleeding heavily, you know it's not exactly a
9 good call to go to.

10 Q You had referred to "we" a number of times in your
11 testimony. What other officers were you working with?

12 A That evening, we were working as a team. I had two
13 officers with me in one car. That was Officer Sean Taylor and
14 Officer Jeremiah Ballejos.

15 Q So, what do you do upon receiving this call?

16 A We respond right to the apartment, and attempt to
17 help.

18 Q Do you actually make way to unit number 35?

19 A Yes, we do.

20 Q Up on the diagram there in front of you for the jury
21 to see is State's Exhibit number 1. Does that appear to be a
22 diagram of Unit 35?

23 A Yes, it is.

24 Q All right. The monitor is not working. So, is
25 there a laser pointer there in front of you? If you could

ROUGH DRAFT TRANSCRIPT

004245

1 just --

2 MR. LALLI: Is it okay if he comes down, and just
3 kind of describes what he did in the apartment, Your Honor?

4 THE COURT: Yes, please.

5 MR. LALLI: Okay.

6 THE COURT: Is that the laser?

7 MR. LALLI: Yes.

8 THE COURT: No, over here [inaudible].

9 THE WITNESS: Oh, just come over here?

10 BY MR. LALLI:

11 Q Yes. So, if you could just come down, and just
12 describe for the jury -- be cognizant not to turn your back on
13 folks on this end. Just -- this end over here.

14 A This end over there? Okay.

15 Q I mean -- yeah. If you could just explain for us,
16 Sergeant, what you did when you arrived in that apartment.

17 A When we entered the apartment, Officer Todd Conn,
18 who was a uniformed officer that night, was positioned here,
19 trying to negotiate or converse with the male suspect, Mr.
20 O'Keefe, in the room. There were several uniformed officers
21 in the kitchen and the living room area right here. I came
22 in, and stood next to Officer Conn, spoke with him for a few
23 minutes, where -- and listened to the conversation that was
24 going on.

25 Q What did you hear?

ROUGH DRAFT TRANSCRIPT

004246

1 A I don't recall much of the conversation that was
2 said. But it was fruitless. There was no -- it wasn't
3 proceeding. There was going to be no end to it any time soon
4 to where we could render aid to the female.

5 Q Did you have concern -- any officer safety concerns
6 with respect to how the conversation was progressing?

7 A I had concerns that Mr. O'Keefe could be essentially
8 establishing, or had established an ambush for officers that
9 entered the room. We wanted Mr. O'Keefe to come out to us,
10 and bring him out of his environment to us, where we could
11 take him into custody. He kept refusing, and would not come
12 out.

13 Q All right. So, what happened?

14 A I moved from next to Officer Conn up to this wall.
15 At that wall, I did what they call a quick peek, which is
16 essentially a quick head movement, head and shoulders, where
17 you peek around the wall, and get an observation, and come
18 back. When I looked into the room, I could see our female
19 victim, and I could see Mr. O'Keefe laying on her left side.

20 Q So, you're indicating -- on our diagram, you're
21 indicating to the -- to an area above where the figurine would
22 be in the diagram there?

23 A Yes, sir.

24 Q Okay.

25 A I could see him. There was light in the room. When

ROUGH DRAFT TRANSCRIPT

004247

1 I panned back, I could see large amounts of blood. There was
2 blood on both our victim, on Mr. O'Keefe, and there was a
3 large amount of blood on the bed, and some on the floor. I
4 also saw what I thought was the handle of a knife on the bed.

5 Q Does that pose any particular concern for you, the
6 knife?

7 A It does. Large amount of blood and a knife lets me
8 know that there could be some serious injuries, so we need to
9 get medical rapidly to her. And waiting a long time in order
10 to negotiate a surrender by Mr. O'Keefe would not be
11 productive for our female victim.

12 Q So, do you formulate a plan?

13 A From the wall, I formulate what we call an arrest
14 team, an entry team. I turned back around to Officer Conn,
15 and I asked him to be lethal cover as we enter the room.

16 Q What's lethal cover?

17 A Lethal cover would be deadly force, if deadly force
18 is needed due to some type of weapon, or our lives become in
19 jeopardy, or we need to defend somebody else's.

20 Q Is that a gun?

21 A It would be a gun, yes.

22 Q All right.

23 A Mr. Conn was armed with his sidearm, his pistol. I
24 turned to my officer, Jeremiah Ballejos, asked him to be less
25 than lethal cover, which would be a designated weapon; a

ROUGH DRAFT TRANSCRIPT

004248

1 baton, taser. In this case, it was an ECD or a taser, to be
2 used as a less lethal device in case we needed to use it to
3 arrest the suspect. And then, I asked Officer Sean Taylor to
4 roll in with me as the arrest team.

5 Q All right. So, what happens?

6 A We roll right into the room, straight down the
7 hallway. There are orders and commands that are given. Mr.
8 O'Keefe does not obey. The taser is deployed onto Mr.
9 O'Keefe.

10 Q Do you recall what those orders and commands were?

11 A I do not. It would be speculation on my part. I
12 just know --

13 Q Okay.

14 A -- what I would yell.

15 Q What would you typically yell in that scenario?

16 A In that case --

17 Q What sort of instructions would be given to an
18 individual that you wanted to remove and secure?

19 A I would want him to slide away from her, put his
20 hands where we could see them, put his hands out to his sides
21 where we could easily take and handcuff him; maybe cross his
22 feet and pull him up to his butt, kind of like a felony
23 handcuffing position.

24 Q Were commands given?

25 A Commands were given. I remember that.

ROUGH DRAFT TRANSCRIPT

004249