

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

)
)
)
)
)
)
)
)
)

Electronically Filed
Feb 08 2017 08:39 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

))))

Respondent.

APPELLANT'S APPENDIX VOLUME IV PAGES 751-922

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STEVE WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

ADAM LAXALT
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

Counsel for Respondent

INDEX
JOHN DEMON MORGAN
Case No. 70424

	<u>PAGE NO.</u>
Amended Information filed 02/23/2016	184-186
Amended Jury List filed 02/24/16	186b
Criminal Complaint filed 11/03/2014.....	001-002
Defense Proposed Jury Instructions filed 02/24/2016	187-199
District Court Minutes from 12/01/2014 through 04/14/2016	229-257
Ex Parte Order for Expedited Transcript filed 08/25/2015	126-127
Ex Parte Order for Expedited Transcript filed 08/25/2015	128-129
Findings of Competency filed 12/18/2015	131A-132
Information filed 11/25/2014.....	036-038
Instructions to the Jury filed 02/24/2016	200-222
Judgment of Conviction filed 04/19/2016	224-225
Jury List filed 02/22/16.....	186a
Justice Court Minutes from 11/04/2014 through 11/18/2014	003-004
Motion for Discovery filed 04/07/2015.....	041-055
Motion for Dismissal[sic] or, in the Alternative, a Bill of Particulars filed 02/05/2016..	150-158
Motion for Own Recognizance Release filed 12/31/2015.....	133-139
Motion in Limine filed 02/09/2016	166-172
Motion to Compel Counts 1 and 2 to be Pled in the Alternative filed 02/05/2016	159-165
Motion to Dismiss filed 07/07/2015	061-112
Notice of Appeal filed 05/17/2016	226-228
Notice of Witnesses filed 04/01/2015	039-040
Order filed 05/06/2015	057
Order filed 08/13/2015	122-125
Order of Commitment filed 05/22/2015	058-060
Order to Transport Defendant from Lake's Crossing filed 12/02/2015	130-131
Reporter's Transcript of Preliminary Hearing heard 11/18/2014.....	005-035

1	Request to File Order Under Seal filed 05/05/2015	056
2	State's Opposition to Defendant's Motion for Discovery filed 01/21/2016	146-149
3	State's Opposition to Defendant's Motion for Dismissal or, in the Alternative, a Bill of Particulars filed 02/16/2016.....	177-179
4	State's Opposition to Defendant's Motion for Own Recognizance Release filed 01/05/2016	140-144
5	State's Opposition to Defendant's Motion in Limine filed 02/11/2016.....	173-176
6	State's Opposition to Defendant's Motion to Compel Counts 1 & 2 to be Pled in the Alternative filed 02/16/2016.....	180-183
7	State's Opposition to Defendant's Motion to Dismiss filed 07/27/2015.....	113-121
8	Verdict filed 02/24/2016.....	223
9		
10		
11		

TRANSCRIPTS

13	Recorder's Rough Draft Transcript of Proceedings, Jury Trial—Day One	
14	Date of Hrg: 02/22/2016.....	384-653
15	Bench Conferences – Jury Trial Day One Vol IV	868-888
16	Recorder's Rough Draft Transcript of Proceedings, Jury Trial—Day Two	
17	Date of Hrg: 02/23/2016.....	654-795
18	Bench Conferences – Jury Trial Day Two Vol IV	887-905
19	Recorder's Rough Draft Transcript of Proceedings, Jury Trial—Day Three	
20	Date of Hrg: 02/24/2016.....	796-859
21	Bench Conferences – Jury Trial Day Three Vol IV	906-922
22	Reporter's Transcript, Defendant's Motion to Dismiss	
23	Date of Hrg: 07/31/2015.....	313-325
24	Recorder's Transcript, Bench Conferences (Jury Trial – Days 1, 2 and 3)	
25	Dates of Hrg: 02/22/16, 02/23/16, 02/24/16.....	868-922
26		
27		
28		

1	Recorder's Transcript, Further Proceedings: Competency	
2	Date of Hrg: 12/26/2014.....	261-262
3	Recorder's Transcript, Further Proceedings: Competency	
4	Date of Hrg: 01/16/2015.....	263-264
5	Recorder's Transcript, Further Proceedings: Competency	
6	Date of Hrg: 05/15/2015.....	311-312
7	Recorder's Transcript, Further Proceedings: Competency; Challenge Hearing	
8	Date of Hrg: 02/06/2015.....	265-296
9	Recorder's Transcript, Further Proceedings: Competency-Return from Lakes Crossing	
10	Date of Hrg: 12/11/2015.....	346-348
11	Recorder's Transcript, Further Proceedings: Competency-Return from Lakes Crossing	
12	Date of Hrg: 12/18/2015.....	349-350
13	Recorder's Transcript of Hearing, Initial Arraignment	
14	Date of Hrg: 12/01/2014.....	258-260
15	Recorder's Transcript of Hearing, Sentencing	
16	Date of Hrg: 04/14/2016.....	860-867
17	Recorder's Transcript of Proceedings, Motion to Dismiss	
18	Date of Hrg: 08/06/2015.....	326-345
19	Rough Draft Recorder's Transcript of Proceedings, Calendar Call and Defendant's Motion for Discovery	
20	Date of Hrg: 04/16/2015.....	306-310
21	Rough Draft Recorder's Transcript of Proceedings, Calendar Call; Defendant's Motion for Dismissal or, in the Alternative, a Bill of Particulars;	
22	Defendant's Motion to Compel Counts 1 and 2 to be Pled in the Alternative; and Defendant's Motion in Limine	
23	Date of Hrg: 02/18/2016.....	373-380
24	Rough Draft Recorder's Transcript of Proceedings, Further Proceedings: Return from Competency	
25	Date of Hrg: 02/12/2015.....	297-305
26	Rough Draft Recorder's Transcript of Proceedings, Further Proceedings: Return from Competency Court and Defendant's Motion for Own	
27	Recognizance Release	
28	Date of Hrg: 01/07/2016.....	351-359

1	Rough Draft Recorder's Transcript of Proceedings, Motion for Discovery	
2	Date of Hrg: 01/21/2016.....	360-372
3	Rough Draft Transcript of Proceedings, Overflow	
4	Date of Hrg: 02/16/2016.....	381-383
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 eventually get to look at that paper?

2 A: Yes, I did.

3 Q: And did that paper have some type written letters on it?

4 A: Yes.

5 Q: And did one of those papers have the Defendant's name on
6 it?

7 A: Yes.

8 Q: A John Morgan?

9 A: Correct.

10 Q: Okay. Did you eventually or later impound that document?

11 A: Yes, ma'am.

12 Q: As evidence?

13 A: Yes.

14 Q: After you did that, did you have an opportunity to watch
15 surveillance?

16 A: I watched briefly the video, yes.

17 Q: Okay. Some time while you were at AMPM, did you learn
18 that a suspect had been taken into custody?

19 A: Yes, ma'am.

20 Q: And do you know whether there was an individual by the
21 name of Mario Gonzalez who had observed the suspect off of the AMPM
22 premises?

23 A: He was one of our witnesses, but I didn't have any
24 contact with him or any -- I didn't ask him any questions.

25 Q: Okay. Would you know how Mario Gonzalez communicated

1 with police that day?

2 MS. HOJJAT: Your Honor, I'm going to object to lack of
3 foundation at this point, Your Honor.

4 THE COURT: She's asking a foundational question. Overruled.

5 BY MS. GRAHAM:

6 Q: Would you know?

7 A: He was another officer --

8 Q: Okay.

9 A: -- who made contact with him.

10 Q: Understand. Fair to say you don't -- you don't know
11 exactly how Mario Gonzalez contacted --

12 A: No, ma'am, I do not.

13 Q: Thank you. At some point did you leave the scene at AMPM
14 and go somewhere else?

15 A: No.

16 Q: At some point did you partner leave the scene and go
17 somewhere else?

18 A: I don't recall if he did or did not. He -- I believe he
19 left to do a one on one show up, but I don't recall.

20 MS. HOJJAT: Yes, I'm going to object to hearsay. Lack of
21 foundation.

22 THE COURT: Overruled.

23 BY MS. GRAHAM:

24 Q: You testified you believed he left to do a one on one?

25 A: Yes. A show up.

1 Q: Is that -- that's a called a show up?
2 A: Yes.
3 Q: Do you know whether show ups were conducted in this case?
4 A: Yes.
5 MS. HOJJAT: Objection, hearsay. Lack of foundation.
6 THE COURT: Overruled.
7 BY MS. GRAHAM:
8 Q: I'm sorry. Did you say yes you do know whether they were
9 conducted?
10 A: They were completed.
11 Q: Okay. Thank you. Do you know who did the show ups as
12 far as your witnesses?
13 A: I don't recall who they were.
14 Q: Okay. If I can switch to the video please.
15 Sir, I'm going to play a portion of State's 19
16 [indecipherable] and then I'm going to ask you a question about it,
17 okay?
18 [Playing State's Exhibit 19]
19 Q: Earlier, sir, this is at 3:30 for the record, you
20 testified that there was some piece of papers or a document that
21 fell out of the Defendant's backpack?
22 A: Yes.
23 Q: Are those pieces of paper or documents depicted in
24 State's 19?
25 A: Yes.

1 Q: Could you please just draw a circle around that? Okay.

2 A: Right in the middle there.

3 Q: And is that the piece of paper that you indicated you
4 impounded?

5 A: Yes.

6 MS. GRAHAM: Pass the witness, Your Honor.

7 THE COURT: Okay. Counsel.

8 CROSS EXAMINATION

9 BY MS. HOJJAT:

10 Q: Good afternoon, Officer Ibarra.

11 A: Hello.

12 Q: Are you today?

13 A: Doing good.

14 Q: You indicated that you were riding that day with an
15 Officer Rivera?

16 A: Correct.

17 Q: And you were kind of, it sounds like, he was talking to
18 witnesses, you were shadowing him in listening to what was being
19 said?

20 A: Correct.

21 Q: So fair to say he was actually the lead investigator in
22 this case, not you?

23 A: Yes.

24 Q: Okay. But you were observing what was going on, you were

25 --

1 A: A lot of it. Yes, I did.

2 Q: -- aware of what was there? Were you present when the
3 witness statement of Ruby Cruz was taken?

4 A: No, I don't recall being there.

5 Q: Did you ever have occasion to view the witness of Ruby
6 Cruz?

7 A: No, I don't think I did. I might have done it, but I
8 don't remember.

9 Q: Would it refresh your recollection to just see the
10 document to see whether you've seen it before or not?

11 A: It will.

12 Q: Okay. Permission to approach, Your Honor.

13 THE COURT: Pardon me.

14 MS. HOJJAT: Permission to approach the witness, Your Honor.

15 THE COURT: Sure.

16 MS. HOJJAT: Thank you.

17 BY MS. HOJJAT:

18 Q: [indecipherable] just let me know.

19 A: It looks familiar.

20 Q: It looks familiar. So this statement does look familiar
21 to you? That did refresh your recollection seeing it?

22 A: Some of it, yes.

23 Q: Okay. So I don't want you to get into what was in the
24 witness statement, but the witness statement of Ruby Cruz is in
25 Spanish, correct?

1 A: Correct.

2 Q: Thank you. You said you were present or a lot of
3 interactions that Officer Rivera had, were you present for a
4 conversation between an Officer Law and an Officer Rivera?

5 A: No.

6 Q: No.

7 A: Not that I recall.

8 Q: Okay. So you never witnessed Officer Law telling Officer
9 Rivera that he found peanuts?

10 A: I don't recall that.

11 Q: Okay. And you never witnessed peanuts being impounded in
12 this case?

13 A: No.

14 Q: Okay. And had you noticed peanuts being impounded in
15 this case, you would have put that in some report somewhere?

16 A: It would have been important too, yes.

17 Q: It was an important fact whether peanuts were found or
18 not, right?

19 A: Right.

20 Q: And it would have been important to document that
21 somewhere?

22 A: Correct.

23 Q: That --

24 A: It did -- it was part of the crime, yes.

25 Q: Okay. And it was part of the crime? It's alleged to

1 have been part of a crime in this case, right?

2 A: Right.

3 Q: So if those had been found, they should have been
4 impounded and put in the evidence vault?

5 A: It's food.

6 Q: Okay.

7 A: So a lot of times we're not allowed to impound food
8 because it was, you know, go bad.

9 Q: Okay. But --

10 A: But at least it's document it, yes.

11 Q: It's documented? It's put in a report somewhere?

12 A: Yes.

13 Q: Maybe it's photographed?

14 A: Yes.

15 Q: And photographs were taken in this case?

16 A: Correct.

17 Q: No photographs of peanuts were taken in this case?

18 A: Not that I'm aware of.

19 THE COURT: We're starting to talk over each other by the way.

20 Both --

21 MS. HOJJAT: I apologize. I'll repeat it.

22 BY MS. HOJJAT:

23 Q: No photographs of peanuts were taken in this case?

24 A: Correct.

25 Q: Okay. And, in fact, no photographs of soup were taken in

1 this case either?

2 A: Not that I'm -- I'm aware of.

3 MS. HOJJAT: I'll pass the witness.

4 THE COURT: Okay. Redirect.

5 REDIRECT EXAMINATION

6 BY MS. GRAHAM:

7 Q: Officer Ibarra, if you know, why would the fact that the
8 peanuts -- why would that not be in a report in this case?

9 MS. HOJJAT: Objection, speculation.

10 THE COURT: Overruled.

11 THE WITNESS: I think it would have been important to put it
12 in there, but the video does show that he made selection of some
13 items inside the store and placed them his person.

14 MS. GRAHAM: Thank you. I have no further redirect.

15 THE COURT: Any cross recross?

16 MS. HOJJAT: No, Your Honor.

17 THE COURT: Okay. Sir, you may step down. Thank you.

18 MS. GRAHAM: Can we approach, Your Honor?

19 THE COURT: Sure.

20 [Bench Conference - not transcribed]

21 THE COURT: Ladies and gentlemen, I need to have a chat with
22 the lawyers outside of your presence for a few minutes. So why
23 don't you -- you might as well take a break as opposed to sitting
24 there and me continuing to converse with them up here.

25 So during this period of time, you are admonished not to

1 talk or converse among yourselves or with anyone else on any
2 subject related to this trial or read, watch or listen to any
3 report of or commentary on the trial by any medium of information
4 including without limitation newspapers, television, the internet
5 and radio or form or express any opinion on any subject related to
6 the trial until the case is finally submitted to you. And we
7 should be back here in a few minutes, okay.

8 [Outside the presence of the jury]

9 THE COURT: Okay. Let the record reflect that the jury has
10 left the courtroom.

11 MS. GRAHAM: Thank you, Your Honor.

12 THE COURT: Okay. Is there anything that we need to deal with
13 before I have a chat with the Defendant?

14 MS. GRAHAM: Not from the State.

15 MS. HOJJAT: Just a couple of things, Your Honor, because
16 we've had some bench conferences and I know those don't always
17 record properly. I think this might be a good time for us to just
18 make a record of the bench conferences we've had.

19 THE COURT: Okay.

20 MS. HOJJAT: Earlier, and I forgot to do this before the last
21 break, I did object during the testimony of Maria Verduzco to Ms.
22 Verduzco kind of narrating for the jury what they were going to see
23 next on the video. I said that while I agree the video should be
24 played to the jury, it is relevant evidence. It should just be
25 played and the jury to make their determination. She can testify

1 to her recollection of what happened. The video can be played, but
2 that she shouldn't be instructing the jury on the video. That
3 objection was overruled and she was allowed to continue with the
4 play by play -- with the video continually being paused for Ruby
5 telling the jury what was coming next.

6 THE COURT: Okay.

7 MS. HOJJAT: I'm sorry. Not Ruby. I keep saying Ruby.
8 Maria. I apologize. Maria Verduzco.

9 THE COURT: Okay. And let me stop you there. I did not view
10 it as being overly intrusive and I think that the parties can
11 produce the evidence that the way that they wish, so -- and I
12 didn't find it intrusive or overly instructing the jury, so I
13 didn't see that at all frankly. But, you know, the record is what
14 it is. Your next point.

15 MS. HOJJAT: Thank you.

16 And then at the bench right before I want to say it was
17 after the testimony of Officer Law before --

18 MS. GRAHAM: Mario.

19 MS. HOJJAT: -- Mario. Was it before Officer Law maybe? I
20 apologize. I can't remember precisely when it was, but we had a
21 bench conference. The State indicated that they wish for us not to
22 be able to inquire of the officers about their perception in terms
23 of what they arrested Mr. Morgan for. What Mr. Morgan was
24 originally taken into custody for; things of that nature.

25 THE COURT: What the charges were.

1 MS. HOJJAT: Right. What the charges were originally. We
2 objected.

3 THE COURT: We were -- we were getting into -- you wanted to
4 get into the issues of the overcharging by the police.

5 MS. HOJJAT: Precisely. And the record that I made at that
6 time was that our theory of the case has been overcharging. We've
7 always since the beginning of voir dire said that we're conceding a
8 battery in this case. Our theory is this case was overcharged.
9 The officers or the individuals who were present at the scene
10 talked to all of the witnesses who saw all the evidence firsthand
11 live the day of the incident that their perception was relevant,
12 that they have field experience, that they have years of experience
13 doing this, that their perception of what happened and their
14 perception of what the charges were at that time was relevant and
15 that we should be able to get into it, but the bar of relevance is
16 very low. The Court did order us that we were not allowed to get
17 into that with those witnesses.

18 THE COURT: Okay. You made your record there.

19 MS. HOJJAT: Thank you.

20 And then -- Court's indulgence because I remember there
21 was one other issue I believe.

22 MS. GRAHAM: You moved for two mistrials, remember?

23 MS. HOJJAT: Yeah. I don't remember the other one.

24 MS. GRAHAM: The mistrial was resisting arrest.

25 MS. HOJJAT: Resisting arrest.

1 THE COURT: Yeah.

2 MS. HOJJAT: The resisting arrest --

3 THE COURT: There was two --

4 MS. HOJJAT: -- we put that on the record.

5 THE COURT: -- motions --

6 MS. HOJJAT: Right.

7 THE COURT: -- for mistrial.

8 MS. HOJJAT: We put the resisting arrest on the record
9 already.

10 The other one was the 911 call of Mario Gonzalez. Mario
11 Gonzalez testified on direct examination that he made a call to
12 911. We asked to approach. We moved for a mistrial because no
13 911 call of Mario Gonzalez had ever been turned over to us. We did
14 file a discovery motion in this case. It was granted by Judge
15 Herndon as to that issue. We requested 311 calls, 911 calls, CADs,
16 all communications in relation to this case. Judge Herndon did
17 grant that specific request.

18 We never received any call from Mario Gonzalez. As a
19 result, he got up there. He said that. We were kind of in a
20 position we couldn't cross examine him at that point 'cause we have
21 no idea what he said in that call. And for us to get up there and
22 now start these open ended questions of well what did you say, what
23 was -- we couldn't do that. This trial is not the time for that.
24 This is not supposed to be trial by surprise. We were supposed to
25 have that call ahead of time and be prepared if we had cross

1 examination. We had no idea what was said in that call. We had no
2 idea what was contained in that call. And so we could not
3 effectively cross examine him as to anything relating to that and
4 other parts of his testimony. It kind of led us blind and so we
5 ended up waiving cross examination of Mario Gonzalez and moving for
6 a mistrial immediately.

7 THE COURT: Okay. What did the State say their response?

8 MS. GRAHAM: Yes. To all the issues or the last one?

9 THE COURT: Well, let's go to the last one.

10 MS. GRAHAM: Okay. The State has and I can approach with,
11 Your Honor, the records that the State did subpoena Metropolitan
12 police department, deuces tecum 911 slash CAD unit log under this
13 event number, 141030087. In response to that subpoena, I got a 911
14 call placed by Maria Verduzco which I provided to counsel in the
15 discovery process. I did not receive pursuant to the subpoena for
16 all calls a 911 call placed by Mario Gonzalez.

17 To be quite frank with Your Honor and the record, I don't
18 believe he actually called 911. I think that perhaps when he said
19 I called 911, perhaps that was that he called police over to where
20 he was. That was the testimony of Officer Law.

21 Secondly, there's no showing as there was no cross
22 examination questions about it that anything on his call would have
23 been inconsistent with how he testified. So there's no prejudice
24 even if a call exists that's been demonstrated.

25 THE COURT: Any further response?

1 MS. HOJJAT: Submit it, Your Honor.

2 THE COURT: Okay.

3 MS. HOJJAT: Oh. Actually the only thing I would inquire is
4 because I -- it seemed like the testimony was elicited. I mean,
5 these witnesses were pretrialed. Did he disclose in pretrial a 911
6 call?

7 MS. GRAHAM: I have to respond to that.

8 THE COURT: Okay.

9 MS. GRAHAM: These witnesses -- it's not as easy as maybe
10 everybody thinks. All of these witnesses were not pretrialed.
11 People don't just at the snap of our fingers come into our office
12 for a pretrial.

13 I had an opportunity to talk with Mario for about two
14 whole minutes before testified. I take issue with the fact that
15 its [sic] appears or sounds as though I knew about some phantom 911
16 call that probably does not exist. And that I would elicit that
17 testimony contrary to my discovery obligations.

18 I did not do that. I told counsel before Mario Gonzalez
19 would be testifying, I'm going to be leading him so that you're
20 satisfied with no bad act resisting arrest which I don't feel that
21 was a bad act any way. So, State feels that it's going over and
22 above its duty to protect the record and to protect counsel's
23 client from any unfair or prejudicial acts or testimony coming in.

24 And so any allegation that I pretrialed a witness, known
25 about a 911 call, not turned over a 911 call, I take issue with.

111

ROUGH DRAFT TRANSCRIPT
State of Nevada v. John Demon Morgan
C-14-302450-1

1 And that's the only record I wanted to make.

2 THE COURT: Anything further?

3 MS. HOJJAT: Submit it, Your Honor.

4 THE COURT: Okay. On that -- on the alleged 911 call, I
5 denied that motion for mistrial as you know at the bench.

6 Anything else that we need to discuss to make sure we got
7 a clear record of?

8 MS. HOJJAT: I think that's everything the major things that
9 we discussed.

10 THE COURT: There was a second motion for mistrial. I can't
11 remember what that one was about.

12 MS. GRAHAM: That was for the 911 call and then the first one
13 was resisting arrest.

14 MS. HOJJAT: That's correct.

15 THE COURT: Okay.

16 MS. HOJJAT: I think the --

17 THE COURT: Well, the allegations of resisting arrest I might
18 know. You call it a prior bad act. It is not a prior bad act.
19 It's just not. I mean --

20 MS. HOJJAT: And I apologize. My wording should have been
21 other bad act rather than prior.

22 THE COURT: Okay. Well, in any event, I denied that motion
23 for mistrial as well.

24 MS. HOJJAT: Yes.

25 THE COURT: Did you want to comment on that?

1 MS. GRAHAM: No. I think Ms. Craggs made proper record when
2 we were on the record earlier.

3 THE COURT: Okay. All right. I'd like to go ahead and talk
4 to the Defendant about any waiver of -- of any right to testify. I
5 know, counsel, you believe that this has to be done after the State
6 completes their case. I think it can be made at any time.

7 MS. HOJJAT: I just -- I mean, at this point, the Defendant
8 and I have not had a chance to sit down and thoroughly discuss
9 whether he's going to testify or not. We haven't -- I've informed
10 him his right to testify. He's aware of all those things, but he
11 and I haven't discussed whether he's going to be testifying or not
12 which is why I believe it's premature to ask him whether he's
13 waiving that right or not.

14 THE COURT: Okay. Well, I'm just going to go ahead and have a
15 chat with him, okay. All right.

16 Sir, Mr. Morgan.

17 THE DEFENDANT: Good afternoon.

18 THE COURT: Why don't we get the microphone close to you so
19 that we can make sure we're all heard, okay?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Sir, Mr. Morgan, you do have the right under the
22 constitution of the United States and of the State of Nevada not to
23 be compelled to testify in this case; do you understand that?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right. That means that no one can make you

1 take the witness stand and make you answer any questions; do you
2 understand that?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: You may if you wish give up this right and you may
5 take the witness stand and testify. If you do, you will be subject
6 to cross examination by the Deputy District Attorneys as well as
7 your own lawyer and anything that you say whether it is an answers
8 to questions put to you by your lawyer or by the Deputy District
9 Attorneys will be a subject of fair comment when the Deputy
10 District Attorney speaks to the jury in final argument; do you
11 understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: If you choose not to testify, the Court will not
14 permit the Deputy District Attorney to make any comment to the jury
15 concerning the fact that you have not testified; do you understand
16 that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: If you elect not to testify, the Court will
19 instruct the jury only if your attorney specifically requests an
20 instruction which reads substantially as follows: the law does not
21 compel a Defendant in a criminal case to take the stand and
22 testify. And no presumption maybe raised and no inference of any
23 kind may be drawn from the failure of a Defendant to testify.

24 Now, counsel may submit a different similar instruction
25 if they prefer. And by the way, the case that I'm going to cite on

1 that is Carter versus Commonwealth, that is 450 US 288, that's the
2 cite, 101 Supreme Court 1112 67 Lawyer's Edition Second 241. And
3 that's a 1981 case. Do you have any questions you'd like to ask me
4 about your constitutional rights?

5 THE DEFENDANT: I don't have any questions, ma'am.

6 THE COURT: Okay. If you choose to testify and you've been
7 convicted of a felony within the past ten years or have been on
8 parole or probation for a felony within the ten years, the Deputy
9 District Attorney will be permitted to ask you one, if you've been
10 convicted of a felony.

11 THE DEFENDANT: Yes.

12 THE COURT: Two, what was that felony. And three, when it
13 happened. No details maybe gone into regarding any prior felony
14 convictions. Do you understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: If you deny a felony conviction, the State may
17 impeach your testimony with certified copies of conviction which
18 may contain more information in -- in them than simply what the
19 felony was and when it occurred; do you understand that?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay. Fair enough. All right. Do we know if any

22 --

23 MS. CRAGGS: I'm not sure at this point, Your Honor. I
24 believe that Elana or Ms. Graham is working on that right now.

25 THE COURT: Okay.

1 MS. CRAGGS: I'll go check if you would like me to.
2 THE COURT: Okay. Is there anything else that we need to
3 discuss?
4 MS. HOJJAT: I just remembered one more issue. The State had
5 a PowerPoint when they opened, if we could just make that a Court's
6 exhibit, a printout of the PowerPoint.
7 THE COURT: A Court's exhibit?
8 MS. HOJJAT: Yes.
9 THE COURT: Why?
10 MS. HOJJAT: To preserve the record.
11 THE COURT: Counsel.
12 MS. GRAHAM: That's fine, Your Honor. I can do that.
13 THE COURT: Okay.
14 MS. GRAHAM: It's not uncommon.
15 THE COURT: Okay. It should be -- it should be the
16 Prosecution's record or your record. Why would it be the Court's
17 record?
18 MS. GRAHAM: Just so that it doesn't go back as a exhibit for
19 the jury to look at.
20 THE COURT: Oh okay. Fair enough.
21 MS. GRAHAM: Just for the record.
22 THE COURT: Okay. Since there's no objection, it will be.
23 Okay. It will be made a Court record. And what's the next exhibit
24 in order?
25 THE CLERK: Eight.

1 THE COURT: It will be Exhibit 8 -- Court's Exhibit 8.
2 MS. GRAHAM: Okay.
3 MS. HOJJAT: Thank you.
4 THE COURT: Okay. Anything else that we need to talk about
5 with the jury out there?
6 MS. GRAHAM: Just scheduling, Your Honor.
7 THE COURT: What's the deal with the witness?
8 MS. GRAHAM: The witness who was supposed to be here was Ruby.
9 Obviously, the jury would like to hear from her based on the
10 questions as would I. But it sounds like she's not going to be
11 here at least today. So what I would ask the Court is either we
12 have until tomorrow to call her. The fact that she's not
13 testifying also the State may call another officer who had contact
14 with her and the State would probably like to call if we can't get
15 her here our investigator to talk about the efforts he's gone to --
16 to find her to testify. And he would be available in about five
17 minutes, that investigator.
18 THE COURT: Okay. And the investigator's name is?
19 MS. GRAHAM: Ed Dougherty.
20 THE COURT: Okay.
21 MS. HOJJAT: I would object to the investigator being allowed
22 to get up there and talk about efforts to find her. It creates an
23 implication about what her testimony was going to be. It creates
24 an inference when we have no opportunity to cross examine her.
25 THE COURT: He's not going to testify about what she's going

1 to say.

2 MS. HOJJAT: I mean, the point is they're -- they want to get
3 him up there to say we tried to find her. So that then in closing
4 they can say, you know, she had something good for -- to say -- we
5 tried. You know what I mean? The point is they're trying to say
6 she was a Prosecution-friendly witness without us having the
7 ability to cross examine. It's basically trying to create an
8 inference that she would have been harmful to the defense.

9 MS. GRAHAM: Well, I think it's interesting. This exact issue
10 was litigated and there's a recent decision on it for which counsel
11 and I were in trial. It's Manning verse [sic] State. The State
12 did the same thing. We could not find a witness. We called an
13 investigator to testify about the efforts that we went to to find
14 that witness. The Supreme Court in a published opinion and I can
15 the pin cite or the direct cite said that that's not your calling
16 an investigator to talk about the efforts and the lengths that they
17 have gone to to get a State witness under subpoena to come testify
18 is not error. It shows the effort the State went to to present a
19 case in chief. And it shoes that we're not just being sloppy,
20 willy-nilly, not presented witnesses. But we do what we can and
21 sometimes we can't produce witnesses.

22 So, counsel is very familiar with that case.

23 THE COURT: Okay. I'm going to allow the witness to testify.
24 You can get him here in five minutes?

25 MS. GRAHAM: He indicated he would be here in about five

1 minutes. He just transported another witness across the street,
2 but he should be here very soon.

3 THE COURT: Okay. As soon as he gets here, I'd like to go
4 ahead and get that done.

5 MS. GRAHAM: Great.

6 THE COURT: Do we have another witness after that?

7 MS. GRAHAM: Not after that. I think that would -- what I
8 would like to do is possibly call the witness or the officer who
9 had contact with Ruby Cruz who I was not planning on calling, but
10 based on the fact that Ruby Cruz is not present, we'd like to call
11 him. He would be available. A very short witness tomorrow at 9:30
12 and I don't project it would take more than ten minutes.

13 THE COURT: Yeah. He's not going to say what Ruby Cruz
14 actually said, right?

15 MS. GRAHAM: No.

16 THE COURT: Okay.

17 MS. GRAHAM: I would not be seeking to elicit any hearsay
18 testimony.

19 THE COURT: That's -- I just want to make sure that's clear.

20 MS. GRAHAM: Yes.

21 THE COURT: Just to elicit what she did or what he saw?

22 MS. GRAHAM: Exactly.

23 THE COURT: Okay.

24 MS. GRAHAM: State would rest probably tomorrow morning after
25 that.

1 MS. HOJJAT: I think I've already made my objections as to the
2 State's investigator.

3 As to this officer, I'm -- if we can just get a little
4 bit more insight into what exactly he's planning on saying about
5 Ruby Cruz. I mean, if he's going to talk about her demeanor,
6 that's one thing. But if he's going to start saying things like I
7 talked to her thoroughly and that I made the decision to submit the
8 case, again, that's trying to backdooring testimony. We would have
9 a problem with that line of questioning.

10 Describing her demeanor, that's his observation, that's -
11 - we're not going to object to. But if he's going to start trying
12 to say things like I took what she said into account before I
13 arrested him, I took what she said into account before I submitted
14 charges, that's backdooring testimony.

15 MS. GRAHAM: And that -- that would be improper. That's a
16 objection I made to prevent the defense from doing the same thing.
17 So, he's noticed as a witness. Counsel has all the discovery I
18 have. Counsel's very smart and capable and knows, and I just
19 stated what the basis of his testimony would be and I don't see how
20 -- I don't see a -- the objection for calling a witness.

21 MS. HOJJAT: Okay. I didn't object. I was just trying to
22 clarify. It sounds like the State's saying they're not going to go
23 into that line of questioning.

24 THE COURT: Well, they're going to go into whatever the
25 discovery was that was given to both parties, okay. All right. As

1 soon as that witness gets here, we'll go ahead and put him on the
2 stand.

3 MS. GRAHAM: Thank you, Your Honor.

4 THE COURT: Is there anything else that we need to deal with?
5 We might as well use whatever time we can?

6 MS. HOJJAT: Just in terms of scheduling. So if we're going
7 to bring the jurors back at 9:30 in order to call this last
8 witness, I mean, I don't anticipate -- is the witness going to be
9 more than ten minutes?

10 MS. GRAHAM: I don't -- I don't --

11 THE COURT: Well --

12 MS. GRAHAM: -- I think he'll --

13 THE COURT: -- you guys told you'd be done by today, so I'm
14 not going to like hamper anybody in terms of time.

15 MS. HOJJAT: I guess my only concern would be just in terms of
16 the juror's time. If we bring them at 9:30, have them listen to
17 ten minutes of testimony and then we have to break for jury
18 instructions and things like that --

19 THE COURT: Were you guys are going to take care of that
20 tonight?

21 MS. HOJJAT: Right. But we have to put it all on the record
22 and stuff like that. That'll take --

23 THE COURT: Put what on the record?

24 MS. HOJJAT: The jury instructions.

25 MS. GRAHAM: They're objections.

1 THE COURT: Well, you put in --

2 MS. HOJJAT: Objections and things of that nature.

3 THE COURT: Okay. And we talked about what -- what my
4 procedure is is that I want an undisputed pile which should be the
5 most of them. You know, your stocks and so forth. And there
6 should be just maybe two or three in that other pile, right? So is
7 that what you guys got going right now?

8 MS. HOJJAT: I mean, I can tell the Court that we're planning
9 on submitting somewhere around 15 instructions. I usually get
10 objections to my instructions. We're submitting what we're
11 submitting, but we'll try to work out as much as we can work out.

12 THE COURT: You're going to work out as much as you can.

13 MS. HOJJAT: We absolutely will, but I do think we need to put
14 on the record what we've submitted, what the objections are on both
15 sides, what our objections are to theirs, what their objections are
16 to ours. And my experience that usually takes somewhere around a
17 half an hour to an hour.

18 THE COURT: Well, you guys can get here at nine.

19 MS. HOJJAT: That's completely fine. I just wanted to work
20 out the scheduling on that.

21 MS. GRAHAM: That was going to be my suggestion. Thank you,
22 Your Honor.

23 THE COURT: Let me see. I've got -- let me see what my
24 schedule is tomorrow. But I'm not -- I'm not one of those to sit
25 and hold your hands and go through jury instructions. I'm going to

1 tell you that right now. I expect the lawyers to meet and confer
2 about these jury instructions and I better not see well we have a
3 problem with this one little word. I better not hear that crap.
4 I'm just going to tell you that right now. All right.

5 MS. GRAHAM: Yes, Your Honor.

6 THE COURT: Okay. All right. Let me see what I got tomorrow.
7 I've got six matters I need to deal with and I start at 8:30. So I
8 can take you guys right after that, okay.

9 MS. GRAHAM: Thank you, Your Honor.

10 MS. HOJJAT: So the attorneys should expect to be here at 9
11 o'clock?

12 THE COURT: At least.

13 MS. HOJJAT: Okay.

14 THE COURT: Yeah. Okay. In fact, I can tell you this is
15 going to be short. You might want to even be there -- here before
16 that. But that's the way I do it. And, of course, the most
17 important document is the verdict form.

18 MS. GRAHAM: Yes.

19 THE COURT: You want to make sure that's right. Okay.

20 MS. GRAHAM: Great. And I think that might be disputed as far
21 as what's a lesser included. It's just to put Your Honor on
22 notice.

23 THE COURT: Okay. Well, we can deal with that.

24 MS. GRAHAM: Great.

25 THE COURT: Okay.

1 MS. GRAHAM: My investigator is out -- outside. Can I just
2 talk to him for five minutes and then bring the jury in?

3 THE COURT: Sure.

4 MS. GRAHAM: Thanks.

5 [Pause in the proceedings]

6 MS. GRAHAM: State's ready, Your Honor.

7 THE COURT: You're ready?

8 MS. GRAHAM: Yes.

9 THE COURT: All right. Let's bring that jury in.

10 MS. GRAHAM: And so this will be State's last witness for
11 today.

12 THE COURT: Okay.

13 [In the presence of the jury]

14 THE COURT: Will counsel stipulate to the presence of the
15 jury.

16 MS. GRAHAM: Yes, Your Honor.

17 MS. HOJJAT: The defense does, Your Honor.

18 THE COURT: All right. Thank you. You all may be seated.

19 Next witness.

20 MS. GRAHAM: The State calls Edward Dougherty.

21 THE COURT: Sir, if you would come up to the podium.

22 **EDWARD DOUGHERTY**

23 having been called as a witness and being first duly sworn,
24 testified as follows:

25 THE CLERK: Please state and spell your name for the record.

1 THE WITNESS: Edward, E-D-W-A-R-D. Dougherty, D-O-U-G-H-E-R-
2 T-Y.

3 THE COURT: Have a seat, sir, and be close to that microphone
4 so we can make sure you're heard.

5 MS. GRAHAM: May I proceed, Your Honor?

6 THE COURT: You may.

7 DIRECT EXAMINATION

8 BY MS. GRAHAM:

9 Q: Sir, how are you employed?

10 A: I'm an investigator with the Clark County District
11 Attorney's Office.

12 Q: What are some of your duties as an investigator?

13 A: To locate witnesses, to follow up on investigative
14 detail.

15 Q: Okay. Is it fair to say you don't work for Las Vegas
16 Metropolitan Police Department?

17 A: No.

18 Q: You don't respond to calls for --

19 THE COURT: Well, I got a double negative there.

20 MS. GRAHAM: I'm sorry, Your Honor.

21 BY MS. GRAHAM:

22 Q: Do you work for Las Vegas Metropolitan Police Department?

23 A: No.

24 Q: Do you respond to calls for service from the public?

25 A: No.

1 Q: Are you a Clark County employee?
2 A: Yes.
3 Q: And you referenced that you find witnesses?
4 A: Yes.
5 Q: How is -- is there a process in place at the District
6 Attorney's Office for subpoenas?
7 A: Yes.
8 Q: And subpoenas in reference to trial witnesses?
9 A: Correct.
10 Q: Can you tell the ladies and gentlemen of the jury about
11 the process regarding subpoenas for trial witnesses?
12 A: Subpoenas are produced. The attorneys produce subpoenas.
13 We get those subpoenas and then we work those subpoenas and notify
14 the witnesses that have been subpoenaed.
15 Q: So I want to direct your attention to the case of State
16 of Nevada versus John Morgan. Are you familiar with that case
17 generally?
18 A: Yes.
19 Q: In that did you investigate that case via serving
20 witnesses with subpoenas?
21 A: Yes.
22 Q: Specifically, did you make contact with a number of lay
23 witnesses?
24 A: Yes.
25 Q: And lay witnesses would be different from police

1 officers, right?

2 A: Correct.

3 Q: Okay. The lay witnesses that you made contact with,

4 would that be Maria Verduzco?

5 A: Yes.

6 Q: And Mario Gonzalez?

7 A: Yes.

8 Q: And Ruby Cruz?

9 A: Yes.

10 Q: How specifically was it that you made contact with Ruby

11 Cruz?

12 A: On -- eventually on February 10th at around Noon time I

13 was personally inside the store where she works at the AMPM on

14 Mountain Vista and Flamingo and personally served her.

15 Q: Okay. And when you say you personally served Ruby Cruz,

16 how did that actually occur?

17 A: When I --

18 MS. HOJJAT: I'm sorry. It misstates the testimony. I

19 thought you asked about Maria Verduzco.

20 THE COURT: Wait, wait, wait.

21 MS. HOJJAT: I apologize.

22 THE COURT: We do not do speaking objections in this Court.

23 MS. HOJJAT: I apologize. If we can approach?

24 THE COURT: Okay.

25 [Bench Conference - not transcribed]

1 BY MS. GRAHAM:

2 Q: Sir, did you have contact with a number of lay witnesses
3 in this case?

4 A: Yes.

5 Q: Maria Verduzco?

6 A: Yes.

7 Q: Mario Gonzalez?

8 A: Yes.

9 Q: Ruby Cruz?

10 A: Yes.

11 Q: I want to talk to you specifically about Ruby Cruz.

12 A: Okay.

13 Q: You were testifying about going to AMPM on Mountain
14 Vista?

15 A: Yes.

16 Q: When did you do that did you say?

17 A: Around February 10th. On February 10th.

18 Q: Okay. And you were explaining to the ladies and
19 gentlemen of the jury the process of actually serving Ruby Cruz.

20 A: Right.

21 Q: Can you go ahead and do that please?

22 A: Went to -- back to the AMPM over on Mountain Vista and
23 Flamingo. Spoke to one of the clerks and asked is Ruby working
24 'cause she told me she would be working that day. They got Ruby
25 Cruz from the back. Spoke to Ruby. Is this is the second time

1 I've met Ruby Cruz while serving subpoenas. Spoke to her about the
2 trial coming up. I handed her the subpoena. Told her we would be
3 in touch with her in reference to when we're going to need her to
4 testify.

5 Q: Did she accept that service?

6 A: Yes.

7 Q: Later on did you try to make further contact with her to
8 secure her presence to testify at this trial?

9 A: Yes.

10 Q: During this week?

11 A: Yes.

12 Q: Can you please tell the ladies and gentlemen of the jury
13 the efforts that you undertook to get her present to testify in
14 this trial?

15 A: Yesterday on Monday the 22nd around Noon time --
16 approximately Noon time, 12:30, I went back to the store to find
17 out where Ruby Cruz was if she was working or not. Talked to the
18 assistant manager who said that she was not working. I told her we
19 have a trial. She was aware that we have a trial and that would
20 try to get in touch with her. So while I was at the store I had
21 the assistant manager try and text her or call her. She sent a
22 text message in, left a voicemail to get in touch with her.

23 At that point I said okay I'll go back to my office to
24 see if I could determine the actual physical address that she lives
25 at being that the clerk did not -- the assistant manager did not

1 know that. Went back to the office, verified an address. Called
2 back the -- the assistant manager who said she hasn't heard from
3 her, but yes the address on Bonanza sounds familiar. May I
4 continue?

5 Q: Did you go to the address on Bonanza?

6 A: Yes. Yesterday once again I went over to 4000 -- 4000
7 East Bonanza, Apartment 262 which is her residence -- one of her
8 residence that was listed. Went over there and knocked on the
9 door. No one answered the door. There was two bags of garbage in
10 front of the door. I left a note saying that she needs to be in
11 our office at 12 o'clock this afternoon to testify in our trial.

12 I then went over to the management office and verified
13 that Ruby Cruz still resides in that apartment.

14 Q: Did you go back there later?

15 A: On -- today this morning on Tuesday, I went back around
16 there, left at ten. Knocked on the door. No one answered the
17 door. The two bags garage were no longer there and the note on the
18 door was no longer there.

19 Q: And does that summarize the efforts that you undertook to
20 secure Ruby Cruz to testify at this trial?

21 A: Yes.

22 Q: Did you do anything else?

23 A: Did I do anything else, no.

24 MS. GRAHAM: Thank you. Pass the witness, Your Honor.

25 THE COURT: Counsel.

1 CROSS EXAMINATION

2 BY MS. HOJJAT:

3 Q: Good afternoon.

4 A: Good afternoon.

5 Q: How are you doing today?

6 A: Fine.

7 Q: So you've had an address for Ruby Cruz?

8 A: I've had -- I've had an address for Ruby Cruz, correct.

9 Q: The address on Bonanza?

10 A: Yes.

11 Q: You're aware that your office is supposed to make us
12 aware of contact information for witnesses?

13 MS. GRAHAM: Your Honor, may we approach?

14 THE COURT: Sure.

15 [Bench Conference - not transcribed]

16 BY MS. HOJJAT:

17 Q: You talked about efforts going to her house and things of
18 that nature. How long have you had her home address?

19 A: Just yesterday.

20 Q: Just yesterday. Okay. How did you obtain her home
21 address?

22 A: After she was at the store, I've always went to the
23 store, then I went to different databases to actually go and see if
24 I could find addresses for her. I came up with a couple of
25 different addresses.

1 Q: And those databases those are law enforcement databases
2 like NCIC?

3 A: Databases that we have in our office, yes.

4 Q: Okay. So when did you say you went to her house?

5 A: Yesterday just about ten to four.

6 Q: And you never ran to try to find her address prior to
7 yesterday?

8 A: No. I always had her at the stores.

9 MS. HOJJAT: I'll pass the witness, Your Honor.

10 THE COURT: Redirect.

11 REDIRECT EXAMINATION

12 BY MS. GRAHAM:

13 Q: Did you feel it was a need to go to her home?

14 A: No.

15 Q: When you personally served her with her subpoena, did she
16 say she would comply?

17 A: Yes.

18 MS. GRAHAM: No further redirect, Your Honor.

19 THE COURT: Any recross?

20 MS. HOJJAT: No, Your Honor.

21 THE COURT: Okay. Sir, you may step down. Thank you very
22 much for coming.

23 THE WITNESS: Thank you.

24 MS. GRAHAM: Your Honor, that's all the State would have for -
25 -

1 THE COURT: That's all the State has for today?

2 MS. GRAHAM: Correct, Your Honor.

3 THE COURT: All right. Ladies and gentlemen, I'm going to go
4 ahead and let you go a little bit early. I understand there may or
5 may not be some witnesses tomorrow morning. I will need to have a
6 chat with the lawyers outside of your presence, but we're going to
7 try and get that done before you get here.

8 And then I will be -- well then I understand the
9 Prosecution will rest. Then we'll hear from the defense. And then
10 I will give you instructions on the law and -- and when I say hear
11 from the defense, I don't know what they're putting on if they're
12 putting on anything.

13 As I indicated earlier to you and I will be instructing
14 you, they don't have to do anything, okay. The Prosecution has the
15 burden of proof here.

16 All right. So, I will instruct you on the law and then
17 the parties will have an opportunity to give you closing arguments
18 and then you will be deliberating, okay.

19 So, this period of time, you are admonished not to talk
20 or converse among yourselves or with anyone else on any subject
21 related to this trial or read, watch or listen to any report of or
22 commentary on the trial by any medium of information including
23 without limitation newspapers, television, the internet and radio
24 or form or express any opinion on any subject related to the trial
25 until the case is finally submitted to you. And we'll see you

1 tomorrow at 9:30.

2 [Outside the presence of the jury]

3 THE COURT: Okay. Let the record reflect that the jurors left
4 the courtroom. Anything else that we need to discuss?

5 MS. HOJJAT: Yes, Your Honor. We did have a record to make.
6 At this point, the defense is moving for a mistrial. Over defense
7 objection, the State was allowed to put on their witness -- their
8 investigator to discuss their efforts to search for Ruby Cruz and
9 that they couldn't procure Ruby Cruz' presence.

10 During his testimony, it came out that he has an -- he
11 has contact information for Ruby Cruz. At that point on cross
12 examination, counsel tried to bring about the information that
13 they've had contact information for Ruby Cruz and didn't provide it
14 to the defense. The State objected. We had a bench conference. I
15 said that I believe the State's opened the door to this at this
16 point. If they were going to get to put on evidence that they
17 tried to procure her presence, then we should be able to similarly
18 put on that we didn't have an address to try to procure her
19 presence.

20 It's the same exact type of evidence. We objected. We
21 got overruled on it. So now we want to be able to put in the same
22 type of evidence that they were allowed to put in. The State --
23 the Court sustained the State's objection and prohibited us from
24 putting on the record that -- from inquiring of the investigator as
25 to the fact that he's had an address; that address wasn't provided

1 to us by him.

2 THE COURT: Okay.

3 MS. GRAHAM: The State objected to getting into whether or not
4 the State complied to its -- with its discovery obligation with the
5 investigator in that that wouldn't be relevant for the trier of
6 fact whether or not the Defendant's guilty of robbery and battery
7 with intent to commit robbery.

8 The State's -- one of the State's notice of witnesses
9 filed April 1st, 2015 lists Ruby Cruz as well as Maria Verduzco care
10 of District Attorney's Office. It's a very common practice for the
11 District Attorney's Office to list victims and witnesses in care
12 of. In that regard, we don't have a problem, of course, extending
13 to defense counsel the address we have for these witnesses. In
14 which case we would have told her you could find her at the AMPM.

15 I find it -- I'm not going to -- I find that the record
16 that the defense counsel is making about a new found desire to call
17 Ruby Cruz as a witness in their case in chief to be curious at this
18 point in time. One, if they want to do that, they're free to do
19 that. Nothing about the witness who just testified changes that.
20 They can certainly call their investigator to talk about all the
21 investigative resources they have to find a witness if they want to
22 call a witness to testify.

23 They never wanted to call Ruby Cruz as a witness. I
24 don't believe that for a second. There's no prejudice at all for
25 what just occurred. I don't even know how to respond to the motion

1 for mistrial 'cause I'm not sure what the motion for mistrial is
2 being based upon. Especially considering no prejudice has been
3 shown with what just occurred.

4 The witness clearly testified that he got an address
5 other than the AMPM yesterday. Had counsel asked, the State would
6 have inquired of their investigator, hey, did you track Ruby Cruz
7 down, where is she other than the AMPM? She's not responding there
8 and then provided that address to defense. But they didn't want it
9 because they don't want to call Ruby Cruz in their case in chief.
10 And the State submits.

11 MS. HOJJAT: Given the State's accusations about the defense
12 at this point, I'm assuming the State's going to have no objection
13 to me calling my investigator to put her on to talk about the fact
14 that I did request to try to find Ruby Cruz. Given everything they
15 just said about my intentions and my intent and all that sort of
16 stuff. I'm assuming.

17 THE COURT: Okay. So you're going to be putting on your
18 investigator?

19 MS. HOJJAT: Right.

20 THE COURT: Okay.

21 MS. HOJJAT: I'm assuming there's going to be no objection to
22 me doing that. Quite the opposite, Your Honor. The State often
23 times puts care of District Attorney's Office when they don't have
24 contact information. This idea that they are happy to share it
25 with us, they're required to share addresses with us pursuant to

1 NRS 174.234(1)(a). When they don't, we assume it's 'cause they
2 don't have any. Otherwise, we assume they're complying with their
3 statutory obligations. Had I known that they've got contact
4 information, they're just choosing not to comply, yes, no, I would
5 have sent an email asking about it. But I will be happy to put on
6 my investigator tomorrow to talk about the fact that I did --

7 THE COURT: Okay.

8 MS. HOJJAT: -- request to try to pretrial Ruby Cruz.

9 THE COURT: Okay. I just want to make sure that I understand.
10 Ruby Cruz was identified as a witness for the Prosecution and the
11 address was just given care of District Attorney's Office.

12 MS. HOJJAT: That's correct.

13 THE COURT: I assume you contacted the District Attorney's
14 Office and said I want to contact Ruby Cruz whether just talk to
15 her or call her as a witness, whatever -- whatever you have. Just
16 that, in fact, that you probably just called and said hey, I want
17 to -- I want Ruby Cruz' address --

18 MS. HOJJAT: No, Your Honor.

19 THE COURT: -- did you do that?

20 MS. HOJJAT: No. Because it's not my obligation. It's their
21 obligation to provide it. And when we see care of District
22 Attorney's Office, it's generally because they don't have an
23 address. Their obligation is as soon as they get an address, they
24 can put care of if they don't have an address. And as soon as they
25 get an address, they need to update us and notify us of it.

1 So when I saw care of District Attorney's Office, I
2 logically inferred that they didn't have an address for her.
3 That's -- no. It's not my job to reach out to them and beg for
4 information. I filed a discovery motion in which I asked for all
5 updated contact information and it was granted. That request was
6 granted which means if they found contact information care of
7 indicates to us they don't know where she is. Once they know where
8 she is, they're supposed to let us know.

9 THE COURT: Okay. Well, they -- the District Attorney's
10 Office and their investigator just testified they didn't know until
11 yesterday.

12 MS. HOJJAT: That's accurate. And that was information that I
13 didn't know when I made the original motion at the bench. I still
14 am moving for a mistrial because as of yesterday they've known.
15 They still haven't given us that information.

16 Again, this was a discovery request that was made. It
17 was granted. It's an obligation. It's statutory. And I'll submit
18 it with that.

19 THE COURT: Okay. Well, counsel, I'm just going to tell you
20 that I have been on the bench for over nine years now and I have
21 tried nine month trials, five and a half month trials and I don't
22 think -- I think three request for mistrial in one day is -- is a
23 record for me. It's a little excessive. And frankly I don't see
24 anything improper here. And I appreciate what the DA's Office --
25 their obligation is, but I don't see any prejudice to the defense.

1 And nothing precluded you from making a phone call. So your
2 request for mistrial is denied.

3 All right. So you guys are going to get together
4 tonight, right?

5 MS. GRAHAM: Yes, Your Honor. If I can just inquire the name
6 of the witness they'll be calling. There was no notice filed, but
7 certainly I'd just like to know the name.

8 MS. HOJJAT: Gayland Seaberry, my investigator.

9 THE COURT: I'm sorry.

10 MS. HOJJAT: Gayland Seaberry.

11 THE COURT: Could you spell that name please?

12 MS. HOJJAT: G-A-Y-L-A-N-D; Seaberry, S-E-A-B-E-R-R-Y.

13 THE COURT: Okay.

14 MS. GRAHAM: Thank you.

15 THE COURT: And I'm going to allow that investigator to
16 testify --

17 MS. GRAHAM: Yes, Your Honor.

18 THE COURT: -- if they want to call.

19 MS. GRAHAM: Thank you.

20 THE COURT: Okay. Anything else that we need to deal with?
21 You guys are going to meet in the morning and as I indicated, I do
22 not want to see two big piles of proposed jury instructions.
23 You're going to meet and confer and you're going to agree. I will
24 allow the defense if they elect to too give a Sopranovich
25 [phonetic] type instructions. It's got to be the full one if you

1 elect too. I mean, I -- I'm just going to tell you the State,
2 you're going to lose on that one.

3 MS. GRAHAM: I understand. I -- just so Your Honor knows I'm
4 -- know you're very familiar with that case. That case was wholly
5 circumstantial. This case is wholly direct. So I was going to
6 make an objection based on this is a direct evidence case, so I
7 didn't think that -- that would have applied. But that would have
8 been my objection.

9 THE COURT: Okay. I --

10 MS. GRAHAM: You know, of course, you know that the Bails
11 [phonetic] case says that when the jury is properly instructed on
12 reasonable doubt, the better rule is to not offer it. And I know
13 that Your Honor knows more about that instruction especially given
14 the recent update. But as Your Honor is also very aware, that case
15 was all circumstantial. This case is all direct, so --

16 MS. HOJJAT: And, Your Honor --

17 MS. GRAHAM: -- I see a distinction there. That's my
18 objection was going to be based upon. So I don't know if Your
19 Honor would still consider the objection.

20 THE COURT: Well, you know, I just want to let you know I was
21 just going to tell you that I -- I have not had a problem if the
22 defense wants to offer that. If we want to talk about it tomorrow,
23 at least the defense knows where you're going with that --

24 MS. GRAHAM: Sure.

25 THE COURT: -- that objection. Obviously, I'd like to give

1 the defense the benefit of the doubt sort of speak on that, but I
2 have no problem with that instruction, so --

3 MS. GRAHAM: Understood.

4 THE COURT: -- anyway, I'm just give you my preliminary
5 thoughts on that, okay.

6 MS. GRAHAM: Thank you.

7 THE COURT: But I -- I just -- I see it in the civil realm and
8 I don't allow it there and I'm not going to allow it in the
9 criminal realm where we've got stock instructions and then suddenly
10 people want to have a pile because they disagree about a particular
11 word or something. I don't want to see that. You guys are going
12 to sit down and you're going to agree, okay.

13 MS. GRAHAM: I'd like that.

14 THE COURT: Two or three instructions I get it, you know.
15 You're always going to have a problem with a few, but you guys are
16 going to sit down and confer. Okay.

17 MS. GRAHAM: Thank you, Your Honor.

18 THE COURT: All right. I'll see you tomorrow probably around
19 nine then.

20 [Evening recess taken at 4:48 p.m.]

21

22 * * * * *


23

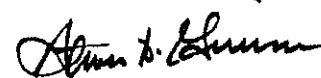
24

25

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

3 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
4 Procedure, I acknowledge that this is a rough draft transcript,
expeditiously prepared, not proofread, corrected or certified to be
5 an accurate transcript.

6 
Michelle Ramsey
7 Court Recorder/Transcriber



CLERK OF THE COURT

1 RTRAN

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 JOHN DEMON MORGAN,

11 Defendant.
12

CASE NO. C-14-302450-1

DEPT. XXII

TRANSCRIPT OF PROCEEDINGS

13 BEFORE THE HONORABLE SUSAN JOHNSON, DISTRICT COURT JUDGE
14 WEDNESDAY, FEBRUARY 24, 2016

15 **JURY TRIAL - DAY 3**
16

17 APPEARANCES:

18 For the State:

ELANA L. GRAHAM, ESQ.
GENEVIEVE C. CRAGGS, ESQ.
Deputy District Attorneys

21 For the Defendant:

NADIA HOJJAT, ESQ.
ARLENE HESHMATI, ESQ.
Deputy Public Defenders

24
25 RECORDED BY: NORMA RAMIREZ, COURT RECORDER

EXHIBITS

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

Defense Exhibits
Defense Exhibit F

23

State Exhibits
[None presented]

1 LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 24, 2016, AT 9:19 A.M.

2 * * * * *

3 [Outside the presence of the Jury]

4 THE COURT: Okay, good morning, Counsel.

5 MS. GRAHAM: Good morning, Your Honor.

6 MS. NOJJAT: Good morning, Your Honor.

7 THE COURT: All right, where are we on the jury instructions?

8 MS. GRAHAM: We had a lot of progress, Your Honor. We really did.

9 THE COURT: Good.

10 MS. GRAHAM: There is a few that the -- I don't know if counsel -- if the
11 Defense is objecting to any of the instructions.

12 MS. HESHMATI: There are some objections.

13 MS. NOJJAT: We are objecting to a couple.

14 THE COURT: Okay, show -- like I said, I want to see an undisputed pile and
15 a very few in the disputed pile that we need to -- so, do you have that for me?

16 MS. GRAHAM: We are almost there.

17 Do we have an undisputed pile?

18 [Colloquy between counsel]

19 MS. NOJJAT: And, Your Honor, while we're waiting, I always file just a
20 complete copy of everything I've proposed, whether granted or not granted, just so
21 the record is clear on everything the Defense had proposed, so I did bring a copy of
22 that to file. We'll be presenting the Court with a pile of disputed and undisputed and
23 everything like that, but this way I find it's easier for the Nevada Supreme Court to
24 just keep track of what the Defense was proposing --

25 THE COURT: Okay, --

1 MS. NOJJAT: -- if we just file them all.
2 THE COURT: -- it's your record.
3 MS. NOJJAT: Thank you very much. I appreciate it.
4 MS. GRAHAM: Okay, Your Honor, I have a pile of --
5 [Colloquy between counsel]
6 MS. NOJJAT: And if I may approach the clerk to file?
7 THE COURT: Sure.
8 MS. NOJJAT: Thank you.
9 MS. GRAHAM: Your Honor, can I approach with the piles?
10 THE COURT: Sure.
11 MS. GRAHAM: So, this is undisputed --
12 THE COURT: Okay.
13 MS. GRAHAM: -- and the ones horizontal are Defense; vertical are State.
14 THE COURT: Okay.
15 MS. GRAHAM: Okay? And, these are disputed.
16 THE COURT: Okay.
17 MS. GRAHAM: The ones vertical are the State's which are disputed by the
18 Defense.
19 THE COURT: Okay.
20 MS. GRAHAM: The horizontal are disputed by the State which are the
21 Defense --
22 THE COURT: Okay.
23 MS. GRAHAM: -- instructions.
24 THE COURT: Well, there's a lot of instructions. Okay.
25 MS. NOJJAT: And, Your Honor, the reason for that is we are asking for a

1 lesser on the robbery so there's a pile of them that go together on that. When the
2 Court rules on the issue of the lesser on the robbery, it'll either knock out or put in
3 three or four instructions at once --

4 THE COURT: Okay.

5 MS. NOJJAT: -- 'cause they just go together.

6 THE COURT: This first -- okay, anything wrong with the verdict form?

7 MS. NOJJAT: The only dispute -- yes, Your Honor, the Defense asks that
8 "not guilty" be on top. The Defendant is presumed innocent and so not guilty should
9 be the first option available to the --

10 THE COURT: Any problem --

11 MS. NOJJAT: -- jurors.

12 THE COURT: -- with that?

13 MS. GRAHAM: Yes. In fact, the -- one on the verdict form is larceny from a
14 person is not a lesser included of robbery. I can go into my argument on why that is
15 --

16 THE COURT: Well, no, she's talking about putting the not guilty on top.

17 MS. GRAHAM: Yeah. The case Green that is cited on lesser included -- and I
18 have a case -- or a copy for Your Honor if you want to take a look, it talks about
19 transitional instructions where you start with the most severe offense working your
20 way down to the, what's called the most severe offense. In Green it's called the
21 primary offense which is the offense charged. Then you work your way down to
22 lesser and then in turn you would of course end with not guilty.

23 So, the State's position is that as the fact that they're instructed to
24 consider battery with intent to commit a crime, then only after they consider that may
25 they consider battery. That's how the jury -- that's how the verdict form should read

1 as well to match that language of the lesser included.

2 THE COURT: Okay, so otherwise we'd have to completely, like on Count 2,
3 completely flip the other starting with not guilty, guilty of battery, and guilty of battery
4 with intent to commit a crime, I mean if we were to flip them?

5 MS. GRAHAM: Are you flipping from how the Defense has them?

6 THE COURT: No, the Defense wants to put "not guilty" on top --

7 MS. GRAHAM: Right.

8 THE COURT: -- in the verdict form, so on Count 2, given what you're telling
9 me that you go from worst to best, so to speak --

10 MS. GRAHAM: Correct.

11 THE COURT: -- that if we're going from best to worst we'd have to do a
12 complete flip, meaning the guilty of battery with intent to commit a crime would be at
13 the very bottom with not guilty on the top.

14 MS. GRAHAM: It would be the opposite is what I'm saying.

15 THE COURT: Well, yeah, I know you want the opposite --

16 MS. GRAHAM: Oh, yeah.

17 THE COURT: -- or you want how it reads now and they want the opposite.

18 MS. GRAHAM: Right, and if you're saying how it reads now what it state's,
19 then yes, if that's the States, in that it's the most severe to the lesser included to the
20 not guilty.

21 THE COURT: Okay.

22 MS. GRAHAM: And that's based on Green talking about, it's called the
23 transitional instruction of lesser includeds where in the instructions that you'll see
24 eventually the jury's instructed to consider the most severe, then the secondary or
25 uncharged act.

1 THE COURT: Oh, I get it. All right.

2 MS. GRAHAM: So, that just mirrors the instruction that they got in the verdict
3 form.

4 THE COURT: Okay.

5 MS. GRAHAM: And I have the case Green if you want to take a look it.

6 THE COURT: That's all right.

7 Counsel, I'm going to go ahead and leave the verdict form as it is. If we
8 were just talking about, like the top one, guilty of robbery, not guilty, and the second
9 was just two, I'd be inclined to go with the not guilty. But we got to do the -- they've
10 got to consider the worst before they go down. So, I'm going to leave it as it is.

11 Okay, all right, let's talk about: It is unnecessary to prove both violence
12 and intimidation. If the fact the attended with circumstances of threatening word or
13 gesture as in common experience; what's wrong with this one?

14 MS. HESHMATI: And, Your Honor, our objection to that one is that it's not
15 relevant to the case. In this case there is violence being conceded. It's specifically
16 alleged within the Information. And so, the indication that it is unnecessary to prove
17 both violence and intimidation is simply not relevant because violence is being
18 indicated in this case. And based on the testimony that was provided, there is no
19 indication that there were threatening things. The issue is violence. It's not
20 necessary to have a instruction on this issue because it's simply not relevant to this
21 case.

22 THE COURT: Okay.

23 MS. GRAHAM: It's wholly relevant and its -- within -- that's a misstatement.
24 That's a proper statement of the law. In robbery the State doesn't need to prove
25 violence. The -- we need to prove violence or fear of injury. That is when the

1 Defendant told the victim to shut the fuck up and then approached her and got in her
2 face; that's the fear of injury. We're not required to show violence, an act of violence
3 in the robbery. Certainly for the battery I think everybody knows where everybody's
4 going with that battery with intent to commit. Robbery is where he struck her. So,
5 that is a very important instruction to further explain the robbery instruction, that
6 look, it's very clear. We do not need to show violence. We don't need to show
7 intimidation. And then that second and third --

8 THE COURT: Okay.

9 MS. GRAHAM: -- further, and then of course the case law that the State cited
10 supports giving that instruction in a robbery case.

11 THE COURT: Okay. I'm going to allow it.

12 All right, let's go with Defense instructions: Mere presence at the scene
13 of the alleged crime is not sufficient to establish that the Defendant is guilty. What's
14 wrong with this one?

15 MS. GRAHAM: Your Honor, the Brooks verse State in every mere presence
16 instruction case is a case where there's multiple people involved and where
17 basically you're not guilty by association. This would be really confusing to show that
18 somehow he's involved but he's not guilty. I think that this isn't appropriate for the
19 facts of this case in that there's no conspiracy alleged or anything like that. He's not
20 merely guilty by association.

21 THE COURT: Yeah -- I mean I think I have to agree with the State on this. I
22 mean the --

23 MS. HESHMATI: Your Honor, if --

24 THE COURT: -- crime -- listen to me a minute, all right? Don't interrupt.

25 There's no crime if Defendant not there; right?

1 MS. HESHMATI: Your Honor, and our position is that in this case simply
2 because he's present doesn't mean he is guilty of everything that they're accusing
3 him of. In this case we are obviously conceding the battery, but his presence
4 doesn't mean that he is therefore guilty of the other accusations that are being made
5 in this case. It is an accurate statement of the law. It is relevant to our theory of the
6 defense. And I don't think it confuses the issue any more than the prior instruction
7 about violence and you know intimidation not being necessary in a robbery case
8 when we are talking about violence all together.

9 THE COURT: Well, no, no, no, --

10 MS. HESHMATI: I don't think this confuses --

11 THE COURT: -- no, no, no, --

12 MS. HESHMATI: -- the issue any more.

13 THE COURT: -- no, I've already made my ruling on the other one.

14 MS. HESHMATI: I understand.

15 THE COURT: I want to --

16 MS. HESHMATI: All I'm saying --

17 THE COURT: -- talk about --

18 MS. HESHMATI: -- is that --

19 THE COURT: Counsel, please.

20 MS. HESHMATI: I apologize.

21 THE COURT: All right. I've got a great court recorder here and I keep saying
22 it; she's great but she can't take two people down at the same time, okay? And I get
23 to talk first. I want to talk about this instruction: mere presence at the scene.

24 MS. HESHMATI: And, Your Honor, as I've indicated we are conceding the
25 battery but mere presence doesn't mean that he's guilty of the other accusations in

1 this case. And it is relevant to the case. It is relevant to our theory of the Defense.
2 And I believe that it's an accurate statement of the law. So, it is something that's
3 appropriate.

4 THE COURT: Okay. I'm not going to give that instruction.

5 Okay, next one: If the State failed to prove beyond a reasonable doubt
6 that the Defendant hit Maria Verduzco for the purpose of taking merchandise, you
7 must find him not guilty of robbery. That's not a correct statement of the law.

8 MS. HESHMATI: Your Honor, it goes with the theory of the case in this
9 matter.

10 THE COURT: What's the theory? Did I miss something? I've been sitting
11 here --

12 MS. HESHMATI: And, Your Honor, there's -- a way that the State is going to
13 be arguing, I'm sure, that there's guilt in this case is because he hit her with the
14 purpose of taking merchandise, then he is guilty of robbery. All we're saying is that
15 if that is not shown then he has to be found not guilty. It is a Crawford. We are
16 entitled to it. It is an accurate statement of the law and it goes with the theory of the
17 case.

18 THE COURT: Okay, I disagree. I'm not giving that one.

19 All right, next one: Before you may rely on circumstantial evidence to
20 conclude -- all right, this is -- is this the full Supranovich one?

21 MS. HESHMATI: Yes.

22 MS. GRAHAM: It is, and just a brief objection.

23 I know Your Honor kind of indicated -- the only last pitch I wanted to
24 make and it will be brief is that this case is pretty much all direct evidence. So I
25 know in many cases where the presentation of evidence, and the State argues a

1 whole body of circumstantial evidence, I think that of course respectfully that can be
2 given. But I think in this case, in particular under these sets of facts, if Your Honor
3 would consider not giving it considering we have the reasonable doubt instruction
4 and I think that could be given that instruction on a case by case, and considering
5 this is direct evidence, that's the objection I would want, Your Honor, to consider.

6 THE COURT: I'm going to go ahead and give this one.

7 Okay: In order to find Defendant guilty of the crime charged, you must
8 reach a subjective state of near certitude on the facts in issue. Why do we need to
9 put this one in?

10 MS. HESHMATI: Your Honor, it is, again, an accurate statement of the law.
11 There is case law that indicates that giving this instruction is not error. It is
12 consistent with the law and it's not error to give this instruction.

13 THE COURT: Okay, you say it's not error to give this instruction.

14 MS. HESHMATI: Correct.

15 MS. GRAHAM: Your Honor, I --

16 THE COURT: Is it error not to give it?

17 MS. GRAHAM: May I be heard?

18 THE COURT: Yes.

19 MS. GRAHAM: The Supreme Court has stated over and over again in an
20 abundance of case law and in their CLE's that they present and all the case law
21 says there's only one definition of reasonable doubt that should ever be given and
22 that should be the statutory definition. This instruction -- and I only say this to give
23 context in about the 20 jury trials I've done has never, ever been given, and that is
24 because the Supreme Court has consistently held there is only one instruction that
25 should be given and it should not be waived from and that is the instruction that is

1 stated in the statute which is the one that the State provided which was not objected
2 to. This is expanding on the definition of reasonable doubt. That is not to be -- it's
3 simply not to be done and it should not be given.

4 THE COURT: Okay. So, I take it it's not error not to give it?

5 MS. GRAHAM: I don't -- I think that it -- say that again?

6 THE COURT: It would be erroneous to -- what she says is it's not error to
7 give it.

8 MS. GRAHAM: Correct.

9 THE COURT: And I haven't -- I don't have any case law on that, but is it
10 erroneous not to give it?

11 MS. GRAHAM: No, it is absolutely not error to give it and it is -- it has been
12 advised repeatedly to not give it, to not expand upon the definition of reasonable
13 doubt given in the statute --

14 THE COURT: Okay.

15 MS. GRAHAM: -- which is a direct quote from the statute.

16 THE COURT: Okay. By the way, I'm kind of a one-horse, one-rider kind of
17 gal --

18 MS. NOJJAT: I wasn't intending to argue at all. I just realized I think Your
19 Honor got a clean copy of our instructions and the States instructions with cites for
20 some reason. We have cites on all of these instructions with --

21 THE COURT: Okay, what's the cite on this one?

22 MS. NOJJAT: If I can approach? I've got it right here.

23 THE COURT: Okay.

24 MS. NOJJAT: I didn't realize, Your Honor, for some reason got a clean copy
25 of ours without the cites.

1 THE COURT: Okay.

2 MS. NOJJAT: I can give you cites on all -- on everything.

3 THE COURT: We've already got the other instruction. I'm not going to give
4 this one; okay?

5 All right, let's go: When a person is accused of committing a particular
6 crime -- what's wrong with this one?

7 MS. GRAHAM: Your Honor, its -- well, its -- sorry, there's a few things. The
8 third -- and the most egregious as far as what's wrong with it is the third paragraph,
9 lines 10 through 13 is just absolutely a misstatement of directing the jury about the
10 benefit of the doubt, if you can't agree to one go ahead and convict him of the other.
11 That's not correct. The State offered a lesser/included that conforms with Green,
12 that's the case on transitional instructions. The first paragraph the State does not
13 have an objection to. The --

14 THE COURT: So if we take out the last paragraph you're okay with it?

15 MS. GRAHAM: May I just read it --

16 THE COURT: Sure.

17 MS. GRAHAM: -- real quick and compare [indiscernible], please? Thank you.

18 [Pause in proceeding]

19 MS. GRAHAM: That's fine, Your Honor. If we could just add -- I don't know if
20 Your Honor wants to look at the State's in comparison or if counsel wants to do that
21 too.

22 THE COURT: Okay, I can do that.

23 MS. GRAHAM: Okay.

24 THE COURT: Hold on.

25 MS. GRAHAM: Okay.

1 THE COURT: Let me get -- where is it generally in the pile? Is it --

2 MS. GRAHAM: It's towards the back.

3 THE COURT: By the way, we've got some instructions in here that have got
4 the authority.

5 MS. GRAHAM: Yes, Your Honor. I will remove those. I can approach with
6 this -- with one.

7 THE COURT: That's all right, battery means [indiscernible] --

8 MS. GRAHAM: It's right before a constitutional right of a Defendant to not
9 testify.

10 THE COURT: Oh, right before?

11 MS. GRAHAM: Correct.

12 THE COURT: Okay. I see it. So, it's any person who commits a battery
13 upon another with specific intent to commit a robbery is guilty of the battery with
14 intent --

15 MS. GRAHAM: No.

16 THE COURT: -- to commit a robbery?

17 MS. GRAHAM: No.

18 THE COURT: I don't have --

19 MS. HESHMATI: I don't see it.

20 MS. GRAHAM: It's in -- may I approach?

21 THE COURT: Sure, because I don't see it in here.

22 MS. HESHMATI: Which one is it 'cause I don't think I have it either?

23 THE COURT: Well, I don't see this one in here.

24 MS. GRAHAM: Is it not in there?

25 MS. HESHMATI: I don't think I have it in here.

1 MS. GRAHAM: Here.

2 I apologize.

3 THE COURT: Oh, I actually like the State's better --

4 MS. GRAHAM: And, Your Honor --

5 THE COURT: -- but it's not in here.

6 MS. GRAHAM: I'm sorry, and I provided it to counsel this morning. That's one
7 that I give or that is offered and that has been given and usually agreed to by the
8 parties.

9 THE COURT: Okay. I'm okay with this one. And I would put it actually just
10 before battery means any willful and unlawful use of force.

11 MS. GRAHAM: If we could -- I don't know if counsel agrees, if we put it after
12 the instruction on battery and battery with intent?

13 THE COURT: Okay. I don't care. That's fine. Okay, I like that one better so
14 I'm not going to give the Defense one. Okay.

15 MS. HESHMATI: And that was number H?

16 THE COURT: Pardon me?

17 MS. GRAHAM: Yes.

18 MS. HESHMATI: That's proposed H; right?

19 THE COURT: I don't know. It doesn't say H. It just -- when a person is
20 accused of committing a particular crime. It's a clean copy. Okay.

21 MS. NOJJAT: Would the Court like me to bring the copy with all the cites and
22 letterings and things up there?

23 THE COURT: Well, we can deal with it right here.

24 Okay, next one: If you are not satisfied beyond a reasonable doubt that
25 the Defendant is guilty of robbery -- this gets into the lesser/included offense but the

1 jury instruct -- the verdict form does not have a lesser/included offense on robbery.

2 MS. GRAHAM: That's correct, Your Honor. That's because larceny from a
3 person is not a lesser/included of robbery.

4 The case of Rosas, which I have a copy of if Your Honor wants to take
5 a look, explains what a lesser/included offense is. A lesser/included offense is
6 committed at the same time by the same conduct when it's possible to commit the
7 greater offense. An individual can commit a larceny from a person without
8 committing a robbery, therefore larceny from a person is not a lesser/included of
9 robbery. That's why the State is objecting to this instruction and to the verdict form.

10 And I can give an example of how one can commit a larceny but not
11 commit a robbery. The battery is of course a lesser/included a battery with intent
12 'cause you can't commit a battery with intent to commit a crime without committing a
13 battery. The way you can commit a robbery without committing a larceny from a
14 person is you can commit a robbery by taking something in somebody's presence.
15 You can't -- and that's -- you can do that without committing a larceny at all from a
16 person. Larceny from a person requires taking from somebody's person. And so
17 you cannot commit -- you can commit a robbery without committing a larceny.
18 That's the test for lesser/included. So, larceny from a person is not a
19 lesser/included of robbery.

20 THE COURT: Okay.

21 Counsel?

22 MS. HESHMATI: And, Your Honor, I think the question is the other way
23 around, whether a larceny can -- whether a larceny from a person can -- I'm sorry --

24 [Colloquy between counsel]

25 MS. HESHMATI: -- whether a robbery can be committed without committing

1 the larceny from a person. I believe that's a more accurate question. And I think the
2 definition for larceny from a person lends itself to the position that it is a
3 lesser/included of robbery. The definition for larceny from a person is the intentional
4 taking of property from another person without consent under circumstances not
5 amounting to robbery. That's the specific definition for larceny from a person. So,
6 the statute itself indicates that it essentially involves the same course of conduct
7 potentially so long as it doesn't amount to robbery, and at that point it is upgraded to
8 a robbery, hence, why the larceny from a person is a lesser/included of robbery.

9 THE COURT: Okay. I think I have to agree with the State on this one so I'm
10 not giving those instructions and not then obviously going to consider the verdict
11 form from the Defense.

12 Okay, let's go ahead and put these in the order that they need to be in.

13 MS. GRAHAM: Oh, and after we put them in the order, if I could just get one
14 copy so that I can make sure I take all my cites out?

15 THE COURT: Okay.

16 MS. GRAHAM: Thank you.

17 Oh, I'm so sorry, Your Honor, I had one -- I apologize, I gave it to -- I
18 had a colleague run it up this morning because I e-mailed it to myself.

19 [Colloquy between counsel]

20 MS. GRAHAM: Your Honor, I have one more instruction here in my pile. All it
21 -- what it says is the State's not required to recover or produce the proceeds of a
22 robbery at trial.

23 THE COURT: Oh, okay. I'm okay with that one.

24 MS. GRAHAM: Okay.

25 MS. HESHMATI: Your Honor, and I don't have a copy of it yet but --

1 MS. GRAHAM: Here it is. I apologize.

2 THE COURT: Okay, I've got two of these. Okay, you got playbacks and read
3 backs. I think playbacks would be the most appropriate. If during your deliberation
4 you should desire to be further informed on any point --

5 MS. HESHMATI: And, Your Honor, just --

6 THE COURT: -- it'd be playbacks.

7 MS. HESHMATI: Sorry, I apologize. Just going back to the one that the State
8 just produced to us, I just got a copy of it right now. I did want to raise an objection
9 with respect to that. I believe it amounts to burden shifting. Constitutionally, I don't
10 believe it's appropriate to give this instruction. I am objecting --

11 THE COURT: Well, I haven't --

12 MS. HESHMATI: -- to it.

13 THE COURT: -- seen it, so.

14 MS. HESHMATI: Oh, okay.

15 [Colloquy between counsel]

16 THE COURT: And what are these? Well, there is hand writing on some of
17 these.

18 MS. GRAHAM: Those, I think --

19 THE COURT: Okay, I don't know what those -- these are, but --

20 MS. GRAHAM: May I approach?

21 THE COURT: Okay. Here you go. All it says is the State is not required to
22 recover or produce the proceeds of a robbery at trial. What's wrong with this one?

23 MS. HESHMATI: And as I indicated, I believe it amounts to burden shifting. I
24 don't think constitutionally it can be provided. I don't --

25 THE COURT: Why -- how's that --

1 MS. HESHMATI: -- believe it's supported by any case --

2 THE COURT: How is it shifting the burden?

3 MS. HESHMATI: Well, it's essentially saying that they don't have to produce
4 evidence of a crime is what it amounts to and I don't believe that's appropriate.

5 THE COURT: It says -- no, it says the State is not required --

6 MS. HESHMATI: I -- sorry.

7 THE COURT: Wait, listen to me -- is not required to recover or produce the
8 proceeds of a robbery. Nothing -- it doesn't have the word evidence in there at all.

9 MS. HESHMATI: And I don't have the copy right in front of me to specify
10 exactly what it was that I had an issue with, but I do believe that it amounts to
11 burden shifting. I don't believe that's an accurate statement of the law. I don't think
12 there's anything indicating -- supporting that that's an appropriate jury instruction.

13 THE COURT: Hold on. I'm looking at the statute that they've used.

14 MS. GRAHAM: It's a robbery statute, so you can refer to it if you don't want to
15 look it up on the instruction.

16 [Colloquy between counsel]

17 THE COURT: The statute doesn't say this but I don't know that I have a
18 problem, though, with -- hold on. Ms. Graham, I don't see where it says in the
19 statute --

20 MS. GRAHAM: Your Honor, if I can make an analogy. It doesn't say it in the
21 statute. I merely cited the robbery statute. There's a similar instruction for deadly
22 weapon. If there's a battery with use of a deadly weapon charge and there's
23 evidence that somebody was struck over the head with a hammer, there's an
24 instruction that is offered and given that the State's not required to produce the
25 deadly weapon --

1 THE COURT: Right.

2 MS. GRAHAM: -- at trial. So, this would be the same type of instruction in
3 that there's absolutely no requirement that the proceeds actually need to be found or
4 produced at trial. And so, that would be the State's argument for why it should be
5 allowed.

6 MS. HESHMATI: And, Your Honor, I don't believe that there's any case law
7 to support that being an appropriate jury instruction.

8 THE COURT: Okay. I'm going to go ahead and allow it. By the way, it was
9 in this pile.

10 MS. GRAHAM: Okay.

11 THE COURT: Okay. Look through these, get the authority off.

12 Do we have a witness?

13 MS. GRAHAM: The State's going to rest.

14 THE COURT: Okay.

15 [Colloquy between counsel]

16 THE COURT: Okay, Ms. Graham, here's those and here's the ones I've
17 rejected and I think both Prosecution and Defense ones are in there.

18 MS. GRAHAM: Okay.

19 THE COURT: Okay, we've got to a) get them numbered. We've got to make
20 copies for all of them so we've got to move very quickly and we've already had them
21 wait 20 minutes.

22 MS. GRAHAM: Okay, so may I go back and make a copy and then --

23 MS. NOJJAT: And I'll go with you just to make sure --

24 MS. GRAHAM: Yeah.

25 MS. NOJJAT: -- we got everything we need.

1 THE COURT: Okay, so what are you going to do?

2 MS. GRAHAM: I'm going to make a copy so that I have one to work off of and
3 then get an electronic version, a clean copy, because I have theirs electronically so
4 that we can print out one clean copy and then print it and then make copies off of
5 that for the jury.

6 THE COURT: Okay, so what are we doing -- do we have any witnesses on
7 your side?

8 MS. NOJJAT: We're just going to be playing the 9-1-1 call. The State has
9 stipulated to the foundation so we don't --

10 THE COURT: Okay, so we --

11 MS. NOJJAT: -- need to call a custodian or records.

12 THE COURT: So we got stuff to do is what I'm --

13 MS. NOJJAT: Just the 9-1-1 call. It's one minute.

14 THE COURT: That's all?

15 MS. GRAHAM: Yeah. So if you would give us maybe ten minutes or less to
16 get the jury instructions and then I think we can roll right into it.

17 THE COURT: Okay.

18 [Colloquy between counsel]

19 [Recess taken at 9:48:07 a.m.]

20 [Trial resumed at 10:06:05 a.m.]

21 [Outside the presence of the jury]

22 MS. GRAHAM: Your Honor, will we break before we make copies? I have
23 the verdict form here we just realized.

24 THE COURT: What?

25 MS. CRAGGS: [Indiscernible] that to us.

1 MS. GRAHAM: Oh, okay, you guys have the verdict form too?
2 THE COURT: Right.
3 MS. GRAHAM: Okay, cool. We just realized it wasn't with the instructions.
4 THE COURT: Right. No, we've -- I figured you guys might need the
5 instructions to the jury as well as the verdict forms for your closing argument, so.
6 MS. GRAHAM: Thank you.
7 MS. NOJJAT: Thank you.
8 MS. GRAHAM: Okay.
9 MS. NOJJAT: Thank you, Judge.
10 THE COURT: Did we tell the jury that the State had rested?
11 MS. GRAHAM: I don't believe we --
12 THE COURT: I don't think --
13 MS. GRAHAM: -- rested on the record.
14 THE COURT: -- we did because we anticipated --
15 MS. GRAHAM: Another possible --
16 THE COURT: -- Ruby --
17 MS. GRAHAM: -- witness.
18 THE COURT: -- testifying?
19 [Colloquy between counsel]
20 THE MARSHAL: Please rise for the jury.
21 [Inside the presence of the jury]
22 THE COURT: Okay, will counsel please stipulate to the presence of the jury?
23 MS. GRAHAM: Yes, Your Honor.
24 MS. NOJJAT: The Defense does, Your Honor.
25 THE COURT: Okay.

1 Good morning, ladies and gentlemen, and I apologize for the delay but I
2 had to have a meeting with the lawyers. We did plan to meet a lot earlier but it's just
3 the meeting went a lot longer than we thought it would go. With that said, I think that
4 that time spent outside of your presence did resolve some things and we're making
5 things a lot more efficient for you.

6 So with that said, Counsel?

7 MS. GRAHAM: Your Honor, the State at this time would rest.

8 THE COURT: Okay.

9 MS. NOJJAT: And, Your Honor, the Defense would ask to approach the clerk
10 to mark the 9-1-1 call and then play it for the jury.

11 THE COURT: Okay.

12 MS. NOJJAT: Thank you.

13 And, Your Honor, at this time the Defense is moving to admit the 9-1-1
14 call. The State is stipulating.

15 MS. GRAHAM: Stipulate to its admission, Your Honor.

16 THE COURT: Okay; and what's the number of it?

17 MS. GRAHAM: It's number 20

18 MS. NOJJAT: Defense Exhibit F.

19 MS. GRAHAM: Oh, I'm sorry.

20 MS. NOJJAT: Defense Exhibit F.

21 THE COURT: Defense F?

22 MS. NOJJAT: Yes, Your Honor.

23 THE COURT: Defense F is admitted.

24 **[Defense Exhibit F admitted]**

25 **[9-1-1 call played for the jury]**

1 THE COURT: Okay.

2 MS. NOJJAT: And, Your Honor, with that, the Defense rests.

3 THE COURT: Okay.

4 Okay, ladies and gentlemen, at this time I'm going to instruct you on the
5 law as it applies to this case.

6 [The Court read the instructions to the jury]

7 THE COURT: Counsel, would you approach?

8 [Bench conference - not transcribed]

9 THE COURT: Ladies and gentlemen, I'm going to reread instruction number
10 5. I has come to my attention I may have misread it; okay? And as I've indicated
11 earlier, you will be given copies of these instructions so that if I did misread or
12 something you will have these instructions with you in the jury deliberation room;
13 okay?

14 [The Court resumes reading the instructions to the jury]

15 MS. GRAHAM: And, Your Honor, we did -- parties wanted to inform the jury
16 that the parties entered into a stipulation that the documents that fell out of the
17 Defendant's bag were type written. It had the Defendant's name on them and no
18 other information regarding the contents of the document can be given.

19 THE COURT: Is that right, Counsel?

20 MS. NOJJAT: If we can approach, Your Honor?

21 [Bench conference - not transcribed]

22 THE COURT: Counsel?

23 MS. NOJJAT: Yes, Your Honor, the Defense is stipulating that a piece of
24 paper was found with Mr. Morgan's name on it.

25 THE COURT: All right. All right.

1 Counsel?

2 MS. CRAGGS: Madame Clerk, if we could have the PowerPoint up on the
3 monitor. Thank you.

4 THE COURT: And make sure your mic -- yeah, --

5 MS. CRAGGS: Yes, Your Honor.

6 THE COURT: -- thank you.

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

8 THE COURT: Yes.

9 MS. CRAGGS: On October 30th of 2014, Maria Verduzco's day started like
10 any other. She got up, she got ready for work, and she got in her car and she drove
11 to 4605 East Flamingo Road, here in Clark County. She was driving to the AM/PM
12 where she worked for six years. And during her time there as both a cashier and a
13 manager, she had various people steal things, try to shoplift from her. And she
14 would just go up to them and she would say, can you please give me the property
15 back? And these people typically did one of two things. They would either give her
16 the property or they would run.

17 But on October 30th, 2014 something happened that had never
18 happened to Maria before. Her day started the way that so many other days in the
19 six years she'd worked at the AM/PM had but it ended like this. And it ended like
20 this because the Defendant made Maria a victim, a victim of the crime of robbery
21 and the crime of battery with intent to commit robbery.

22 Now, the Defendant has -- I'm sorry, the State has charged the
23 Defendant, John Demon Morgan, with two crimes, robbery and battery with the
24 intent to commit robbery. And in order to prove to you beyond a reasonable doubt
25 that he is in fact guilty of these crimes, we first have to, of course, prove to you that

1 he is the one who committed them. So, we'll start with identity.

2 How has the State proven to you beyond a reasonable doubt that it was
3 John Demon Morgan who committed these crimes? Well first, yesterday Maria sat
4 on the witness stand and she told you that the Defendant was the one who was in
5 the AM/PM on October 30th of 2014, that he was the one who took the property and
6 he was the one that hit her.

7 Additionally, the Defendant fled the scene and is found minutes later in
8 a nearby neighborhood. You heard yesterday from Sergeant Law. He talked about
9 how he was able to find Defendant just a few miles away from the area.

10 Additionally, the Defendant dropped official documents outside the
11 AM/PM with his name on them, John Demon Morgan. We know this because this is
12 on video that you have been able to watch.

13 Now, this is a still from the surveillance video from camera angle 1,
14 minute 3:26. And just as an aside as I go through my argument I'm going to try to
15 put up the various camera angles that I think will be helpful for you when you go
16 back into the deliberation room. So, this is camera angle 1 and as you can see
17 there's the red arrow pointing to the documents that have fallen from the
18 Defendant's backpack with the name John Demon Morgan. Thus, the State has
19 proven to you beyond a reasonable doubt that it was in fact the Defendant who was
20 in the AM/PM on October 30th.

21 Now, to get to the meat of the matter. The Defendant's charged with
22 two crimes as we've talked about. The first crime that he's charged with is robbery
23 and that's instruction number 12 that the Judge just gave you. And as she told you,
24 you're going to be able to take that back with you and take a look at it. It's very
25 lengthy. What I've tried to do here is break it down to just the very basic elements

1 and then I'm going to talk to you about how, through the evidence we've presented,
2 the State has proven each of those elements to you beyond a reasonable doubt.

3 So, the elements of robbery are broken down in instruction number 12.
4 Somebody has to take property in the presence of another by force or fear of force.
5 Now, how do we know that the Defendant actually took property? This is the AM/PM
6 at 4506 East Flamingo Drive that you've been hearing so much about for the last
7 couple of days. Here's the Defendant walking into the AM/PM. Now, I'm going to
8 go through piece by piece what exactly the Defendant does, and like I said, you'll
9 have the surveillance video with you in the back so you can take a look at it for
10 yourselves. But when the Defendant initially enters the AM/PM, he walks to the
11 back, as Maria told you, and he's looking at the soups. This is camera angle number
12 3 at minute 1:12. He picks up a red container of soup and he puts it in his bag.
13 Then, he takes that container of soup out of his bag, he places it back on the shelf,
14 picks up another red container of soup and then conceals that in his bag. And you
15 can see that in the second frame here. He's actually taking the container of soup
16 and he's putting it in his bag. And what's important about that at camera angle
17 number 3 at minute 1:44 is that that red container of soup stays in his bag. If you go
18 to this part of the surveillance you'll be able to see him put it in his bag and then he
19 takes the flap of the bag and he actually puts it over the soup so it is concealed.

20 Next, the Defendant picks up one yellow soup container and continues
21 to carry it through the store. But as he's continuing to carry that yellow soup
22 container through the store, the red soup container we just discussed is still
23 concealed within the bag; that's camera angle number 3 at minute 2:19.

24 The Defendant also conceals mixed nuts which you've also heard a lot
25 about in the last couple of days. This is the Defendant walking -- he walks from

1 where we just saw him around and he starts rifling through the various mixed nuts,
2 the Frito Lay area as I believe Maria called it, and he places those nuts in his pocket
3 at camera angle number 3; 2:38. And if you go to this part of the surveillance you
4 can actually see him take those nuts and place them inside of his pocket. And this
5 is also where Maria told you she first noticed on the surveillance video that the
6 Defendant was actually taking something and this is what prompts her -- and I'm
7 sorry, right there you can see him put it in his pocket -- this is what prompts her to
8 walk out of her office where she's watching the surveillance and coming back to the
9 front of the store so that she can talk to the Defendant about the fact that he's
10 concealing property.

11 So, what happens next? Well, just to go over what we have with
12 robbery again to make it clear, what we have to show you is that the Defendant's
13 taking property and that means that he's obtaining it so he's picking it up and
14 keeping it or he's trying to retain the property that he already has on his person.
15 He's taking that property from the AM/PM and thus Maria, as the manager of that
16 store, in the presence of Maria by force or by fear of force.

17 So, what happens next? Maria walks up to the front of the store where
18 the Defendant is. And the Defendant hands Ruby one yellow container of soup.
19 He's at the register -- and this is camera angle number 4 at 2:57. You can see the
20 yellow container on the counter right there. And I apologize, the surveillance isn't
21 too clear on the video. Now, Defendant kind of walks out of the camera for a
22 minute; Ruby picks up that yellow container of soup. Now, Defendant gets his wallet
23 out with the one yellow container on the counter as we can see. But what's still
24 happening is important. There's still one red soup container in his bag that is still
25 concealed. The package of mixed nuts is still in his pocket. That is still concealed.

1 And he makes no move to take either of these items out and place them on the
2 counter, though, as you can see, he has his wallet out and he has the one yellow
3 soup container on the counter.

4 Now at this point, Maria walks up to the counter and she gestures to her
5 pocket. And you can see this in the surveillance video as well. She actually goes
6 like this. She gestures to her pocket and she asks the Defendant to give back the
7 items that at this point she knows are concealed. And this is what the Defendant
8 does next which is really important. The Defendant doesn't say, okay, I'm gonna
9 give you back what I have in my pocket.

10 MS. NOJJAT: Objection, Your Honor. If we can approach?

11 THE COURT: Okay.

12 [Bench conference - not transcribed]

13 MS. CRAGGS: May I continue, Your Honor?

14 THE COURT: Yes.

15 MS. CRAGGS: The Defendant doesn't say, you're right, here's the property
16 back. The Defendant doesn't run around Maria to get out of the store. No, the
17 Defendant instead walks over to her, multiple steps, and you can see that in the
18 surveillance video, and he says, excuse my language, get the fuck out of my face.
19 Now, he's 6'1", 185 pounds. And you saw Maria. She's not that big. She requested
20 he give back the property. He walks up. He advances on her. He threatens her.
21 What is this, ladies and gentlemen? This is fear of force or violence used to retain
22 the stolen property. He is using fear to retain the property that is on his person.
23 This is camera angle number 4 at minute 3:16.

24 Now, the Defendant doesn't leave at this point. Instead, he advances
25 on her, walks over to her and then he punches her. And you heard her testimony.

1 She said she flew across the room. He didn't just tap her. He smacked her in the
2 chest and she flew across the room and in that second still you can see her laying
3 on the floor. This is use of force or violence to retain the property. Again, she says,
4 give me the property back. He advances on her. He threatens her. He punches
5 her.

6 So, the elements of robbery: the Defendant took property from the
7 AM/PM. He took that one red concealed soup in his bag. He took those mixed
8 nuts. And he took that from the AM/PM, and thus, Maria as the manager, in the
9 presence of Maria -- and he used force or fear of force because he was trying to
10 retain that property.

11 And that's why, ladies and gentlemen, at the end of the proceedings
12 we're going to request that you find John Demon Morgan guilty of robbery. You're
13 going to have a verdict form just like this.

14 Now, Count 2 is battery with intent to commit a crime and that's
15 instruction numbers 8 and 9. Now, in order to prove to you that John Morgan is
16 guilty of Count 2 we have to show -- bless you [juror sneezed], we have to show use
17 of force or violence upon Maria Verduzco as well as the intent to commit robbery.
18 So, we've already discussed the use of force or violence. You've seen the pictures
19 of the injuries. You heard Maria talk about what happened and we've already
20 discussed the elements of robbery. So, this is really about what his intent was when
21 he hit her, what was he trying to do.

22 Why does the Defendant punch Maria? We have camera angle 2 at
23 minute 3:08 and camera angle 2 at minute 3:18. Camera angle 2, the first still here,
24 shows you this when Maria initially walks up to Defendant from the back. She walks
25 up, she puts her hands behind her back and she starts talking to him. Ten seconds

1 later she's getting punched.

2 Now, what does this tell us? Instruction number 4 talks about intent,
3 and there's more to it than what I have up here but I wanted to just give you at least
4 a little bit. You consider the facts and the circumstances surrounding what occurred.
5 What occurred in this case is that Maria said give me back the property and ten
6 seconds later she's being punched and she's flying across the room onto the floor.
7 This tells us the Defendant wanted to exit the store with that property. The fact that
8 he was asked for it back and his immediate reaction was to violently batter her tells
9 us Maria is on the ground and Defendant he's out of there. He's heading towards
10 the exit with the property. The Defendant battered Maria to retain the property that
11 he stole which means that Defendant battered Maria with the intent to complete the
12 robbery.

13 Now, after Defendant exits the store we heard where he went. Now, up
14 here is the AM/PM -- and these are the same maps that you guys saw yesterday.
15 We heard from Sergeant Law that the Defendant ran out of the AM/PM and that he
16 ran down behind the CVS, ran through these neighborhoods, and eventually he was
17 caught by Sergeant Law with the help of Mario who you also heard from. He's
18 caught at 4261 Elmore Way. What does all this tell us about the Defendant's intent,
19 the facts and circumstances surrounding why he punched Maria, the ten seconds
20 between when she requested him to hand her back that property and he hit her so
21 hard she flew across the room? It tells us he's guilty of battery with intent to commit
22 a crime.

23 Now finally, ladies and gentlemen, I just want to go back to your
24 robbery instruction, instruction number 12. And it says that the value of property or
25 money taken is not an element of the crime of robbery and it's only necessary that

1 the State prove the taking of some property or money. So, what does that mean?
2 That means that a Defendant could steal a million dollars. A Defendant could steal
3 a diamond ring, a stick of gum, or a bag of mixed nuts and a container of soup and it
4 would still be considered robbery if the Defendant took that property unlawfully from
5 the presence of another person and used force to do it and that's what we have in
6 this case. You may have been sitting here thinking we're talking about peanuts.
7 And we are, but under the law, under the oath that you took to follow that law, the
8 State doesn't have to prove any specific value to show that the Defendant
9 committed the crime of robbery beyond a reasonable doubt.

10 And why is this? Well, the law applies to everyone and equally
11 everybody should be protected under the law, including Maria Verduzco. Maria's a
12 clerk at an AM/PM. It's a store that sells gum, soda, peanuts, and soup. She
13 doesn't sell anything of high value there. But she is still protected under the law.
14 She can still not be a victim of robbery.

15 MS. NOJJAT: If we can approach?

16 THE COURT: Pardon me?

17 MS. NOJJAT: If we can approach? I'm objecting.

18 THE COURT: Okay.

19 [Bench conference - not transcribed]

20 MS. CRAGGS: And, ladies and gentlemen, I also want to --

21 THE COURT: [Indiscernible] microphones -- okay.

22 MS. CRAGGS: Oh, thank you, Your Honor.

23 Ladies and gentlemen, I also want to turn your attention to instruction
24 number 10 before we're done here and that talks about how the State does not have
25 to basically show you the proceeds of the robbery. So, the fact that the State had

1 Sergeant Law come and testify and tell you that there were mixed nuts found at the
2 time that the Defendant was apprehended, or the fact that the State has shown you
3 the surveillance where the Defendant is leaving with that property concealed, that is
4 enough to show you that John Demon Morgan took property and concealed those
5 items. We do not have to actually show you the property itself, and that's instruction
6 number 10.

7 Ladies and gentlemen, at the end of today, we're going to ask that you
8 find John Demon Morgan guilty on all counts because the State has proven to you
9 beyond a reasonable doubt each and every element of the crimes that he's charged
10 with.

11 Thank you.

12 THE COURT: Counsel?

13 MS. NOJJAT: Thank you, Your Honor.

14 [Colloquy between counsel]

15 THE RECORDER: Microphone.

16 THE COURT: Make sure your microphone is on, Counsel.

17 THE RECORDER: Thank you.

18 MS. NOJJAT: Could we switch over to my laptop, please?

19 THE RECORDER: Okay.

20 MS. NOJJAT: Thank you very much.

21 Well, ladies and gentlemen, I agree with one thing the State said in their
22 closing: the surveillance in this video isn't too clear. You've all had a chance at this
23 point to sit through having it played for you. And you've all noticed, 1) there's a lot of
24 blind spots in that surveillance video; and 2) that surveillance video isn't very clear;
25 and 3) that John had a lot of difficulty deciding what he wanted in the AM/PM that

1 day. You all got to see the video. How many times did he pick stuff up, change his
2 mind, put it down, decide he wanted another flavor, pick it up, put it down? You all
3 saw that. So I ask you as I speak, keep in mind what the State said, the
4 surveillance in this video isn't too clear.

5 Ladies and gentlemen, this is a case about jumping to conclusions and
6 that's what we see from the very beginning when John walks into the AM/PM. What
7 did Maria Verduzco admit on cross examination that she said about John? She
8 admitted that she told Officer Rivera that she saw a suspicious male when he
9 walked into the store.

10 MS. GRAHAM: And I would object; misstates the testimony.

11 THE COURT: Approach.

12 [Bench conference - not transcribed]

13 THE COURT: Sustained. Hold on just a second. And is your microphone on?

14 MS. NOJJAT: It's on.

15 THE COURT: Okay. The white noise. Okay.

16 MS. NOJJAT: And, ladies and gentlemen, I'm going to ask you to use your
17 recollection --

18 THE COURT: Okay, Counsel, take that down.

19 MS. NOJJAT: I did. It's down.

20 THE COURT: Okay, the -- ladies and gentlemen, -- well, I'll let you use your
21 own recollection but -- anyway, I sustained the objection made by counsel. Okay, go
22 ahead.

23 MS. NOJJAT: Ladies and gentlemen, use your own recollection of what I
24 asked her during cross examination, what I specifically asked her she said to Officer
25 Rivera and her description of John Morgan when he walked into the store.

1 You'll also recall that I cross examined her because her testimony
2 yesterday was, I didn't notice him until he was in the back of the store. And then I
3 got up there with her preliminary hearing transcript and her voluntary statement and
4 I said, you actually testified that you saw him when he walked into the store. And
5 she said, okay. And I said, and you actually said that you were looking and looking
6 at him as he was walking throughout the store. And she said, okay. So, let's look at
7 what he looked like when he walked into the store.

8 That's what he looked like. He's not wearing a hat with a baseball bill to
9 obstruct his face. He doesn't have a hoodie with a hood up to cover him so that you
10 can't see what he looks like. He doesn't have dark glasses on to obstruct the top
11 half of his face. He doesn't have a ski mask on to hide his whole face. He's not
12 carrying weapons, not doing anything to obstruct himself. He's not even wearing
13 clothing that you might consider gangster or suspicious, or hmm, that person kind of
14 looks like a hoodlum. None of those things. That's what he looks like. He's wearing
15 a sweater and a pair of jeans. But he walks into the store and Maria Verduzco's
16 eyes are on him.

17 And then what does John do? He walks around a convenience store
18 looking for items trying to decide what he wants to purchase. He grabs items, he
19 puts them down. He's changing his mind. Does he at some point put an item in the
20 bag? Well, ladies and gentlemen, this isn't a Smith's grocery store. He doesn't
21 have a cart that he can put all his things in. And I invite you, go back and watch the
22 whole video 'cause you'll have it back there. Don't take my word for any of this. Go
23 back and watch the whole video. At some point you'll see he's got multiple items in
24 his hand, he's trying to balance them, he's trying to grab something else, he's trying
25 to figure out what to put where. He's having difficulty 'cause he's juggling multiple

1 items. There's no cart here. It's an AM/PM. And he walks back and forth multiple
2 times and you'll see him take the item out of his bag again. Go watch the video. He
3 takes the item out again. And then what does he do? He walks to the cashier and
4 he tries to pay. There he is walking to the cash register. He sees her in the corner
5 and he stands in front of the cash register waiting, waiting for her to be ready to
6 come and check him out. The actions of a thief? The actions of a robber? Or, the
7 actions of someone who went to the AM/PM to buy some stuff, chose his stuff, and
8 then goes to the checkout counter?

9 The State, in their opening, told you that Maria stopped John at the
10 front area, the cashier area. What they didn't tell you was he had money out and he
11 was paying. No surprise why they didn't tell you that 'cause we've told you since
12 day one this is a battery, not a robbery. He was there to buy items. He was there to
13 pay for the items. He, in fact, waited for the cashier to be ready to check him out.
14 Not sure how much clearer you need to make it that you're not stealing things.

15 And you'll see in that video, that back video, you'll notice Ruby Cruz is
16 standing behind the counter and the path between John and the exit is wide open.
17 There's no other clerks in the store and Maria testified to that too when she got on
18 the stand and talked to you. There was nobody else. It was just Ruby Cruz with a
19 counter between her and John and nobody between him and the exit. She's
20 distracted. She's not even paying attention to what's going on when he first walks up
21 to the counter. If John was there to steal it would have been easy to run. Let's look
22 at it again. She's in the corner, distracted. He walks up, sees she's distracted.
23 Goes back, waiting for her. Look at that clear path to the exit. Look at the fact that
24 she has no way of stopping him from exiting. The actions of a thief? The actions of
25 a robber? Or, the actions of someone who's there to pay for the items they picked

1 up?

2 Let's talk about some other things that John doesn't do during this
3 robbery. We already talked about the fact he doesn't run for the exit, the wide open
4 exit that he could have gone for easily. He doesn't pull out a gun and demand that
5 Ruby give him money. He doesn't pull out a knife or any other kind of weapon and
6 try to get money from Ruby, even though at this point he thinks she's alone in this
7 convenience store. He doesn't know Maria's in the back. It's him and one clerk and
8 he does absolutely nothing threatening. He doesn't jump over the counter and grab
9 the cash box. He doesn't have a weapon. He doesn't do anything. What does he
10 do? He pulls out his payment and he tries to pay for the items that he selected
11 because he's at the AM/PM to buy things. And there he is trying to pay, trying to
12 pay, even while Maria is talking to him he's still trying to pay.

13 So let's talk about the things that Maria Verduzco couldn't tell you while
14 she was on the stand. I asked her, you didn't know what John tried to pay Ruby?
15 No. You don't know how much he tried to pay Ruby? No. You don't know what he
16 said to Ruby when he approached the counter? No. She had no idea what
17 transaction he was trying to engage in at that counter. From the second he walked
18 in to that store she was following him despite the fact there was nothing suspicious
19 about him. When he's walking up to a counter to pay she assumes he's stealing and
20 she walks up and she interrupts a transaction where he's trying to give money to the
21 cashier to accuse him of stealing. I'm not sure what could possibly be more bizarre
22 than that. You're standing at a cash register trying to pay a cashier and somebody
23 walks up to you and says you're a thief as you actively have your payment out in
24 your hand and are trying to make it.

25 Now, let's talk about Maria Verduzco. She jumped to conclusions,

1 which is what this case has been about since day one, jumping to conclusions.
2 Jumping to conclusions that he was there to steal, jumping to conclusions that he
3 took things. She wasn't there to figure out what transaction John was having at the
4 cash register. She didn't ask Ruby. You heard it from her. She didn't ask Ruby
5 what's going on. She walked up to him and said you're stealing with zero attempt to
6 figure out whether, no, he in fact was paying for everything he had. Look at her
7 body language on this, ladies and gentlemen. And I'm going to replay it so you can
8 take a look at her body language when she's talking to John 'cause it's important.
9 It's a big deal.

10 Let's take -- this time I don't want you guys to look at John trying to pay
11 which I'm sure is the thing that we've all been focusing on. Let's look at just Maria's
12 body language towards John from the second she approaches him while she's
13 talking to him. That's not, I think I saw you put something in your pocket, can we
14 clarify this. That's not what this body language is. That's, you're a thief. I know
15 you're a thief. I caught you stealing. Give me the stuff. It doesn't make what John
16 did right. I've never once in this trial said that what John did was right. Just putting it
17 in context. And I'm going to ask you to find him guilty of the battery that he
18 committed 'cause it's not right what he did. But keep in mind that body language
19 when we're talking about why did he hit her. Was it to take items or was it 'cause he
20 was angry at her 'cause that's what this case comes down to; right? That's the crux
21 of this case why did he hit her.

22 And let's talk about Maria Verduzco's testimony because I think she
23 jumps to conclusions a lot and in the way that many of us have when we have a
24 story in our heads. Her facts start aligning with the conclusions she's jumped to and
25 the story she's telling; right? Yesterday it was, I didn't notice him until he was in the

1 back of the store. I wasn't watching him. I wasn't watching him at all. Turns into,
2 well, actually I was watching him from when he first walked in. She said yesterday it
3 was a punch. Turns out that's the first time she's ever said that two years into this
4 case. You heard the 9-1-1 call. She called it a hit. I impeached her with her
5 voluntary statement; she called it a hit. Impeached her with her preliminary hearing
6 transcript; she called it a hit. Now, I'm sure you guys [indiscernible] a hit.
7 [Indiscernible] --

8 THE COURT: Okay, something's happening there.

9 MS. NOJJAT: I'm sorry. It's my hair.

10 I'm sure you're thinking hit, punch, who cares. I agree with you. She
11 shouldn't have been hit. Absolutely not. I'm not saying that makes it okay it was a hit
12 rather than a punch; absolutely not. But Maria Verduzco is upping the story and the
13 story is changing. It's getting more serious and more serious every time she tells it.
14 For example, yesterday multiple soups. We all remember hearing that, multiple
15 soups. And then on cross examination, oh yeah, two years ago it was one soup. It
16 wasn't multiple soups. And that's why I played that 9-1-1 call for you. And I can
17 play it again if you guys want to hear it but you'll have it in the back, so in fact please
18 go back and play it. Did anybody hear any mention of a soup in that 9-1-1 call?
19 She was specifically asked not 30 seconds after this whole thing happened what
20 was taken. No mention of a soup that she now claims she saw him take and she
21 saw in his backpack when he was leaving the store. But ten seconds later when
22 she's on the phone with 9-1-1 and they ask her, what did you see him take, not a
23 soup and not even peanuts; seeds. Her story is changing and it's getting more
24 serious and more -- I don't like to use the word dramatic but it's escalating and it's
25 escalating because she's always jumped to conclusions about John. And she has

1 this story in her head about what happened about what he was doing. And as time
2 has gone on the story has built. Listen to the 9-1-1 call again and see what she
3 actually says she saw the day of the incident.

4 And how does John react to having someone come and tell him you're
5 a thief, I know you did this? Badly, very badly. He hit her. Was it wrong?
6 Absolutely, ladies and gentlemen. Nobody is condoning his behavior. We never
7 have. I stood up on the very first day when I introduced myself, Ms. Heshmati, and
8 John, and I said we don't condone his behavior. We're going to ask you find him
9 guilty of battery 'cause that's what he did. But was it robbery? Is this case robbery?
10 No. It never has been. It's not a robbery, it's a battery. I said it on day one of trial
11 and every piece of evidence that's come out since then has supported that.

12 So then what does John do? He leaves in a hurry because he did a
13 bad thing, he hit someone. You don't do that. That's a crime. It's called battery. He
14 knows he's going to get in trouble for it and he gets out of there. You guys are going
15 to hear the flight instruction. Flight can be used to determine consciousness of guilt.
16 He was guilty of battery and that's why he fled. And he's eventually stopped by
17 police and that's where things get interesting because Officer Ibarra was on the
18 stand and I cross examined him about this. You guys have found peanuts, evidence
19 of a crime. That would be important to document; right? Yes, absolutely important
20 to document. You guys didn't document any peanuts being found? You guys didn't
21 take any pictures of any peanuts being found? You guys have, in fact, no evidence
22 at all that he had peanuts after he exited the store. And the State tried to redirect
23 him on it, you know, can you give me some reasons why maybe peanuts were found
24 and they weren't documented? And his response, no, if they were found they
25 should be documented. Evidence, even if you don't put it in the evidence vault, you

1 document that you found it. You put it in a report somewhere. You take a picture of
2 it. Have you guys seen any pictures of recovered peanuts in this case? No,
3 because there were no peanuts recovered in this case.

4 Same with the soup. If evidence had been found it would have been
5 documented. These things that he supposedly stole when he went to the checkout
6 counter to pay, not a single report that says they were found. Not a single
7 photograph documenting that it was found. No evidence at all, at all that he had it
8 when he entered the store -- exited the store, I'm sorry. This is what we're talking
9 about when we were voir diring. I talked about their burden. That they have to bring
10 the evidence. They have to prove to you that something was stolen. Where's the
11 evidence in this case, ladies and gentlemen? It doesn't exist 'cause this wasn't a
12 robbery. It was a battery. That's why you've been presented with nothing to show
13 theft. They haven't -- had the evidence because it's not what was going on here.
14 John made a terrible, terrible decision that day. He hit someone. He needs to be
15 held accountable for it. But they are trying to turn a battery into a robbery. This case
16 is incredibly overcharged. It has escalated far beyond what occurred that day.

17 Speaking of evidence, Ruby Cruz, that would have been some
18 interesting evidence to hear about, wouldn't it? We're talking about what did John
19 do at the counter, the things that Maria got up here and admitted she can't tell you
20 about. That interaction happened with Ruby Cruz. Ruby Cruz could have told us all
21 whether John paid for every item he had. Ruby Cruz didn't come. And what's really
22 interesting is what the District Attorney's investigator told us about Ruby Cruz 'cause
23 Ruby Cruz isn't gone in the wind. Ruby Cruz still works at the AM/PM; that's what
24 he said. I saw her last week, February 10th, at the AM/PM. I served her a
25 subpoena. She knew the day and time she had to be here to testify. Ruby Cruz

1 didn't show up.

2 What else did we hear during this trial? Maria Verduzco is still a
3 manager at the AM/PM. Ruby Cruz, her employee, her -- she is the direct superior
4 or Ruby Cruz.

5 MS. GRAHAM: Your Honor, I'm going to object. May we approach?

6 THE COURT: Sure.

7 [Bench conference - not transcribed]

8 THE COURT: Sustained -- and turn on your microphone.

9 MS. NOJJAT: Oh, thank you.

10 I'm sorry, ladies and gentlemen, --

11 THE COURT: Mic.

12 MS. NOJJAT: Is it not on?

13 THE COURT: Now it is.

14 MS. NOJJAT: There we go.

15 And I'm sorry, ladies and gentlemen, the evidence was Maria Verduzco
16 was a manager at AM/PM. I misspoke.

17 THE COURT: And the rest.

18 MS. NOJJAT: Was a manager at AM/PM.

19 THE COURT: And she is not -- there's no evidence that she is currently the
20 manager.

21 MS. NOJJAT: There was no testimony, no evidence that she is currently the
22 manager. Ruby Cruz is an employee at AM/PM. We all heard that.

23 What do we know in this case? Ruby Cruz is the key to whether Maria
24 Verduzco was right or wrong when she accused John Morgan of stealing; right?
25 She's the only witness who can actually tell us what John did at that checkout

1 counter, what he paid for, what happened. And Maria Verduzco was her boss and
2 she's still an employee of that AM/PM where all of this happened. And when she is
3 given a subpoena with a court date and told to come and told that she's going to be
4 put under oath and finally, finally, finally we're going to need to get her story, we're
5 going to need to hear the truth out of her mouth, she doesn't show up.

6 This is the part we know she testified to: he tried to pay. He put items
7 on the counter. The video is not great. What he put on the counter, what he paid
8 for, what he had, when it's time for her to tell did he pay for everything she didn't
9 show up. It's because Ruby Cruz is the only witness who could say this was never a
10 robbery.

11 There he is paying. This was never a robbery. The only person who
12 said over and over again that it is is Maria Verduzco. The only person who said he
13 took the soup and the nuts is Maria Verduzco and even she hasn't been saying that
14 since the beginning. In the beginning it was seeds. Go listen to the 9-1-1 call again.
15 Then it turned into nuts that he was stealing. Then it turned into nuts and a soup.
16 Then it turned into nuts and multiple soups. None of these things have ever been
17 found or shown to have ever been on him when he exited that store. Not seeds, not
18 nuts, not soup, nothing. No evidence of theft.

19 So what was that battery about? If it wasn't about stealing, what was
20 that battery about? Anger. John didn't control his emotions. She called him a thief.
21 He acted out. Inappropriate? Yes. Wrong? Absolutely. Should you find him guilty
22 of it? Definitely; please do. We're not here to not take responsibility for what he did.
23 We're just here to ask for some perspective on what really happened here.

24 What this battery was not about: a cup of soup. He did not hit her over
25 a cup of soup. He had a clear path to exit the store. If this was about stealing soup

1 he would have exited that store before Maria Verduzco ever came out of the back if
2 that was the plan here. What this battery was not about: a pack of peanuts. Again, if
3 this was a theft, he'd have been long gone before she got out of there. He wouldn't
4 be waiting for Ruby Cruz to finish whatever she was doing so he could pay. Never
5 been what this case was about. The case has never been about stealing. The
6 problem is from the jump there was an assumption, there was a conclusion, jump to
7 the conclusion that John Morgan is a theft, that John Morgan was stealing, and that
8 assumption and that conclusion has led us here today with no evidence to back it
9 up. What that battery was not about was robbery or the intention to commit a crime.
10 The crime itself was battery.

11 And so, we're going to ask you to find him guilty of battery. Don't do the
12 same thing that Maria Verduzco did. Don't jump to conclusions 'cause somebody
13 said he stole something then he definitely stole something. Look for the evidence.
14 Demand the evidence. Demand to see some shred of proof that something was
15 taken from that store that wasn't paid for.

16 MS. GRAHAM: Your Honor, I have an objection. May we approach?

17 THE COURT: Sure.

18 [Bench conference - not transcribed]

19 THE COURT: All right, sustained. Hold on before you start. Counsel, make
20 sure your microphone is on.

21 MS. NOJJAT: Thank you.

22 THE COURT: And you're taking down that, right?

23 MS. NOJJAT: Yes, Your Honor.

24 THE COURT: Well, it's still up there.

25 MS. NOJJAT: I'm trying. There we go. If I can have the Elmo up for one

1 minute, Your Honor.

2 [Colloquy between Court, counsel, and marshal]

3 THE COURT: And, ladies and gentlemen, on that last screen there was
4 something on there that wasn't correct so I sustained the objection, so; okay?

5 MS. NOJJAT: This is the instruction, ladies and gentlemen, instruction
6 number 16. I urge you to look at it when you go in the back and you're looking at
7 instructions. If you can draw two or more reasonable conclusions from the
8 circumstantial evidence and one of those reasonable conclusions points to the
9 Defendant being not guilty and another to the Defendant's guilt, you must accept
10 the one that points to the Defendant being not guilty. That is the law that you are
11 instructed on. Two reasonable interpretations of this circumstantial evidence; you
12 have to adopt the one that points to not guilty if it's reasonable and it is in this case,
13 ladies and gentlemen. When a person goes to a checkout counter and tenders
14 money it's reasonable to assume they haven't stolen. When the State can't produce
15 a single shred of physical anything to show you that something was stolen, it's
16 reasonable to assume nothing was stolen.

17 And following up on that, instruction number 20; if the State failed to
18 prove beyond a reasonable doubt that John Morgan took merchandise from the
19 AM/PM without paying for it, you must find him not guilty of robbery beyond a
20 reasonable doubt. That is the standard. Not just we provided some bits of evidence;
21 did they prove it beyond a reasonable doubt?

22 And this one: If the State failed to prove beyond a reasonable doubt
23 that John Morgan hit Maria Verduzco for the specific intent of committing robbery,
24 you must find him not guilty of battery with intent to commit robbery. Now, ladies and
25 gentlemen, on that one we're actually asking you to find him guilty of battery, not

1 battery with intent to commit a crime. And I'm going to show you the verdict form
2 that you're going to have in the back. This is it. This is actually going to be your
3 verdict form. What we're asking, not guilty of robbery, and this middle selection
4 here, guilty of battery 'cause John did it and we want you to find him guilty of what
5 he did, but we want you to find him not guilty of what he didn't do and he didn't rob
6 anybody. This case was never a robbery.

7 Ladies and gentlemen, I'm going to have to sit down in a minute and
8 when I do that I can't get up here again and I can't talk to you again so this is the
9 end for me. But then the case is in your hands. And upholding the Constitution and
10 the idea of holding the State to their burden of proof beyond a reasonable doubt is in
11 your hands. Upholding the idea that John Morgan is presumed innocent unless they
12 can prove to you otherwise is in your hands. Holding them to showing evidence is
13 going to be in your hands. I ask you all to follow the oath that you made, to follow
14 the law, to hold them to their burden, to find John not guilty of robbery and guilty of
15 battery.

16 Thank you.

17 THE COURT: Ladies and gentlemen, at this point the deputy DA has an
18 opportunity to give a rebuttal and that will be the last item that we will be dealing with
19 prior to your deliberation. But you've been sitting there for an hour and a half. You
20 want to take about a ten minute break? Okay, I'm seeing some nods so we're going
21 to go ahead and take a break.

22 During this period of time you are admonished not to talk or converse
23 among yourselves or with anyone else on any subject related to the trial, or read,
24 watch, or listen to any report of or commentary on the trial by any medium of
25 information, including without limitation newspapers, television, the internet, and

1 radio, or form or express any opinion on any subject related to the trial until the case
2 is finally submitted to you. And I was trying to say it fast because I know you guys
3 got to take a break. All right, we'll see you back here in about fifteen minutes.

4 [Outside the presence of the jury]

5 THE COURT: Let the record reflect that the jury has left the courtroom. Is
6 there anything that we need to discuss?

7 MS. NOJJAT: Yes, Your Honor. I am making a motion for a mistrial at this
8 time.

9 During my closing statement, I did make the statement that Maria
10 Verduzco worked -- works at the AM/PM currently. State objected. We went to the
11 bench. The State then volunteered personal information that was never introduced
12 in the trial that Maria Verduzco no longer works at the AM/PM. Both myself and co-
13 defense counsel put on the record at the bench conference that is not our
14 recollection of the testimony that that ever came out, that in fact our recollection of
15 testimony it was presented as she if still worked at the AM/PM. The State then said
16 that either Defense counsel had to tell the jury that I was wrong --

17 THE COURT: Whoa, whoa, whoa, whoa, whoa, whoa, whoa. You are
18 making total misrepresentations about what happened up here. Number one, what
19 the evidence was there was no evidence presented that she was still the manager
20 and that's what you told the jury. And I gave you an opportunity to say that there
21 was -- that you misspoke, there was no evidence that she is not currently the
22 manager but she was the manager at the time of the incident. I gave you an
23 opportunity to say that and I had to correct the jury. Now, the Defense never asked
24 for that. I told you that was the way it was going to be. All they relayed to me was
25 that there was no evidence that she was currently the manager and you misstated it

1 and that was true.

2 MS. NOJJAT: And, Your Honor, that's not my recollection of the testimony.
3 That's not Ms. Heshmati's recollection of the testimony. And I asked the --

4 THE COURT: I'm going to suggest you take a memory course then, Counsel.

5 MS. NOJJAT: And I asked the Court to admonish the jury that they should go
6 off of their recollection of the testimony which is the appropriate instruction in such a
7 situation when there's a disagreement between the parties or the parties and the
8 court about what the testimony was. I asked the Court to admonish them of that.
9 Instead, the Court said that I needed to tell the jury essentially that I was wrong and
10 that Ms. Verduzco no longer worked at the AM/PM. I then went up there. I -- it was
11 a stressful situation at that point. I did not correctly say what the Court said for me to
12 say. I frankly don't remember precisely verbatim what the Court had told me to say.
13 And then the Court admonished me in front of the jury and instructed the jury that
14 Ms. Verduzco -- there was no evidence that she worked at the AM/PM any longer.

15 THE COURT: Oh, I didn't say that in -- I said that she is not currently the
16 manager. Again, I'm going to suggest you take a memory course.

17 MS. NOJJAT: And, Your Honor, again, the point --

18 THE COURT: I am -- we're done. Your motion for mistrial is denied.

19 All right, is there anything else that we need to deal with?

20 MS. GRAHAM: Not from the State.

21 THE COURT: Enjoy your break.

22 [Recess taken at 11:36 a.m.]

23 [Trial resumed at 11:47 a.m.]

24 [Outside the presence of the jury]

25 THE MARSHAL: Come to order. The Court is back in session.

1 THE COURT: Okay, is there anything else that we need to address outside
2 the presence of the jury?

3 MS. GRAHAM: No, Your Honor.

4 THE COURT: Okay. All right, let's bring the Defendant in.

5 [Colloquy]

6 [Inside the presence of the jury]

7 THE COURT: Will counsel please stipulate to the presence of the jury.

8 MS. GRAHAM: Yes, Your Honor.

9 MS. NOJJAT: The Defense does, Your Honor.

10 THE COURT: Okay, everyone may be seated.

11 Okay, Counsel.

12 MS. GRAHAM: Thank you, Your Honor.

13 Can we switch over, please? Thank you.

14 There were a lot of suggestions made about Maria in the Defense
15 close, suggestions that she's blowing this up -- blowing it out of proportion. I think I'll
16 leave you all to consider Maria for how she testified and whether she thinks getting
17 knocked around, whether she's blowing that up out of proportion.

18 But there's one thing I do want to comment on. She never once
19 testified in this trial that the Defendant looked suspicious as he entered the store.
20 She never once said that. Nothing is suspicious looking about the Defendant as he
21 entered the store. Counsel is making a suggestion that Maria is judging the
22 Defendant based on how he looks. She even brought up the word gangster; okay?
23 Maria testified nothing to the sort.

24 At the time, Maria had been a clerk, and a manager currently, in 2014,
25 for AM/PM for six years. That's -- I don't even know how many days she showed up

1 to work or how many times she experienced people stealing things. The reason the
2 Defendant drew Maria's attention is because he went to the back of the store and he
3 spent like a couple of minutes just wandering back and forth. That's conduct of
4 somebody who might be shoplifting so who Maria's going to go ahead and pay
5 attention to. And she testified, at the time I did not know he stole the soup and when
6 I testified two years ago I hadn't even watched the surveillance. I only saw him in
7 the Frito Lay section. She called 9-1-1 and she said he took seeds. Later, the
8 Defendant had a bag of mixed nuts on him. He took something from the Frito Lay
9 section.

10 There was a lot about -- may I use the Elmo?

11 THE RECORDER: [Indiscernible].

12 MS. GRAHAM: -- no single shred of physical evidence regarding the robbery
13 -- or regarding stealing property. There's a reason for jury instruction number 10.
14 It's actually an instruction that tells you the State is not required to produce proceeds
15 of a robbery at trial. Why not? Well, these things happen. People steal from people.
16 It appears that he stole a cup of soup, and then he stole some peanuts. The State's
17 not required to produce proceeds of a robbery because we don't always recover
18 them. People ditch property. And in this case, we're not hiding the ball from you.
19 Officer -- Sergeant Law now, officer at the time, sergeant now, told you, yes, that
20 probably should have been documented in some way. But what did he say? He
21 said they were mixed nuts. This is Defense Exhibit B. This is not a State's exhibit.
22 This is a Defense exhibit that Officer Law never saw. This is the area where the
23 Defendant was in when Maria saw him steal something. These are all Frito Lay
24 items. What do you see over here? Two different products of mixed nuts. Officer
25 Law would have no way of knowing specifically what item the Defendant took from

1 that store. He didn't go to the store. He didn't watch surveillance. He wasn't that
2 part of the investigation. He never saw this photo before he testified.

3 MS. NOJJAT: Objection; misstates the evidence. If we can approach?

4 THE COURT: Okay. Make sure microphones are off.

5 [Bench conference - not transcribed]

6 MS. GRAHAM: He never went to the scene. He never looked at surveillance.
7 He would have no way of knowing what item the Defendant concealed. The only
8 way he would know that is what he found on the Defendant. This is the Defense
9 exhibit; a bag of mixed nuts. What do you know? He has a bag of mixed nuts on
10 him and Maria sees him in the Frito Lay section. She thought maybe he had took
11 seeds. He's got a bag of mixed nuts. So, he stole the nuts; okay? Mystery solved.
12 He stole the nuts. It appears he also took a cup of soup. That soup was not
13 recovered or encountered by anybody but that doesn't matter. Even if Officer Law
14 said he didn't have anything on his person, we don't have to show you and we don't
15 have to bring the proceeds of the robbery, and I would submit to you we didn't do
16 that.

17 This case is not a real sexy, back alley robbery; it's not. So when you
18 heard the charge of robbery, if that's what you were expecting, sorry to let you down
19 but it is a robbery. You do equal and exact justice between the parties by applying
20 the -- by applying the facts to the law. And when you do that, there's no way around
21 it that the Defendant is guilty of robbery. And there's no way around it that the
22 Defendant is guilty of battery with intent to commit robbery.

23 Robbery is jury instruction number 12. I'm highlighting -- going to
24 highlight and talk to you about the important parts that pertain to this case 'cause
25 there's a lot of different ways robbery can be committed. It's the unlawful taking of

1 personal property from the person of another or in his or her presence against her
2 will. The Defendant took peanuts. He took a bag -- or a cup of soup. He took it in
3 Maria's presence against her will because she asked for it back -- by means of force
4 or violence or fear of injury to his person or property. The Defendant took personal
5 property in Maria's presence by means of fear of injury to his person or property,
6 and specifically it was to her person. And I'll show you how he instilled that fear in
7 her after she said, with her hands behind her back, with about 3 feet of distance
8 between the Defendant and herself, please just take the nuts or whatever's in your
9 pocket out.

10 If I could switch over, please.

11 She's pointing out to the Defendant, I saw you take what you took. She
12 motions to her pocket. In response, the Defendant tells her, get the fuck out of my
13 face. He's a 6'1", about 180 pound, early 30's male. And you saw Maria -- get the
14 fuck out of my face. And then he approaches her. Right before he approaches her
15 and after he says get the fuck out of my face, immediately Maria steps back. Why is
16 she stepping back away from the Defendant after he says get the fuck out of my
17 face and starts to approach her? That's fear. That is fear. Why does she, when you
18 continue, kind of cock her head to the side and away from the Defendant as he
19 continues to close the distance and get in her personal space after being confronted
20 with the fact that, hey, guy, I know you have the stuff in your pocket, just go ahead
21 and put it back? Get the fuck out of my face -- approaching her. She's already
22 stepped back. She's starting to look away. Again, she motions even further away
23 as the Defendant closes the space. That is conduct which is inducing fear in Maria
24 regarding taking the property when confronted with, give it back. That's taking
25 property from her person or in her presence by means of producing fear. There's a

1 reason she continues to get -- to try to create more distance when the Defendant
2 closes the distance. It's because she's afraid.

3 I submit to you, before he even knocks the heck out of her, the
4 robbery's complete. The State does not need to show actual violence for a robbery.
5 The robbery is taking the property in her presence by means of fear. That whole
6 four, five seconds demonstrates the fear that this man instilled in Maria to try to get
7 away with that property.

8 Can I switch over, please?

9 It's not some back alley robbery where somebody was hit over the head
10 with a pipe and a wedding ring was stolen; okay? It's an unlawful taking of personal
11 property in Maria's presence against her will by fear of injury.

12 And instruction number 11 goes into a little more detail regarding that
13 requirement. And Maria testified -- I said, how did that make you feel? She said, I
14 don't even know. I just didn't think he was going to hit me. Sometimes actions
15 speak louder than words: I don't even know how that made me feel. Well, you can
16 look at that surveillance and see what was going through her mind after he cusses
17 her out, gets in her face, and she's trying to get away from him. That's fear. And
18 even though she didn't say that, this instruction tells you it's not necessary to prove
19 actual fear, as the law will presume in such a case. If the fact be attended with
20 circumstances of threatening word -- get the fuck out of my face -- or gesture -- this
21 guy's 6'1", about 185 pounds into -- getting into the face of little Maria -- and is likely
22 to create an apprehension of danger and induce a man to part with his property for
23 the safety of his person. The robbery in this case was complete as soon as he took
24 that property which he was never going to pay for and got in her face, telling her to
25 get the fuck out of my face before he even struck her. That's a robbery. And then he

1 did strike her. Of course, you could find that striking her is the force that he used to
2 commit the robbery. I'm just submitting to you that there's multiple different ways
3 that he committed robbery by instilling fear in her and by then knocking her to the
4 ground.

5 Here's the thing about the Defendant stealing something. We've
6 already went through what Sergeant Law testified to. He saw the mixed nuts. Lo
7 and behold, the section contains mixed nuts. He would have no way of knowing that
8 unless he was telling the truth. And there's a credibility instruction in here. Judge
9 his credibility for how he testified. If he wasn't credible he probably would have said
10 something like, Oh, no, that's not an important detail. It doesn't need to go in the
11 report, to try to cover up the fact that he wasn't in the report. It didn't make it into the
12 report, but what about his testimony was not credible that he found mixed nuts,
13 supported by the fact that where the Defendant was standing is a couple of different
14 products of mixed nuts? He was not going to pay for the peanuts. He was not going
15 to pay for the cup of soup that was in his bag that fell out. Because people who go
16 to pay for items -- again, this man is big enough to hold a cup of soup and peanuts
17 in his hand. He doesn't need to conceal it in his pocket because there's no shopping
18 cart. I submit to you if he wanted to pay for all those items he could have had the
19 ability to carry everything. There's no need to conceal the soup in the bag or the
20 peanuts in his pocket. The reason he did that is because he was planning on
21 stealing those things. And nobody's hiding the ball about the fact that he was going
22 to pay for a cup of soup. He was going to pay for some items and steal some other
23 items. And if he wasn't going to steal, what is the conduct of somebody who's
24 confronted after you've concealed merchandise in your bag or your pocket when
25 asked to return it? I'm not planning on stealing this. I just needed a shopping cart so

1 I put it in my pocket. So here, I'm just going to put this stuff out here and I'm going
2 to pay. You're totally mistaken. That's not conduct of somebody who's not stealing.
3 Conduct of somebody who's stealing is get the fuck out of my face, approach that
4 person, and when they don't get the fuck out of your face you knock them down.

5 So, for that reason, ladies and gentlemen, the Defendant's guilty of
6 robbery. That's why he's guilty of robbery. He took property. He instilled fear in
7 Maria to try to get that property instead of just simply giving it back. We would not
8 be here if he just turned the property over and probably not even here if he just ran
9 out of the store.

10 There's a lot about Ruby Cruz not testifying. Clearly, the State wanted
11 her to testify but she wasn't here to testify. There's one thing we know about Ruby;
12 we learned it through Maria and you can watch the video as this happens. When we
13 asked -- when I asked Maria to describe how Ruby was without telling me she's
14 nervous -- telling me how she was nervous, she held her hand up to her head and
15 went like this. Ruby was freaking out, whatever that means, scared, nervous. Ruby
16 was probably pretty spooked by what had occurred. There's nothing to suggest that
17 Ruby could somehow prove that the Defendant was going to take the peanuts out of
18 his pocket. You know why? Maria was there for pretty much the whole encounter
19 between Ruby and the Defendant. I mean you don't really need to hear from Ruby
20 to know that the Defendant stole from the store and then he used force to retain that
21 property.

22 And then the next charge to consider is battery with intent to commit a
23 crime. So of course parties agree that there was a battery here. It's pretty clear. It
24 couldn't be more clear on the video. I find the video to be clear. Counsel finds the
25 video to be clear when the Defendant is paying but unclear for everything else.

1 You'll watch the video. You can see whatever you see. There was a battery that
2 occurred in this case. The question is why. Why did the Defendant strike Maria?
3 And it's a fair question, a question anybody would want. And when Maria first calls
4 9-1-1, the operator is kind of perplexed as to why some guy would go into AM/PM
5 and hit Maria.

6 [Excerpt of 9-1-1 call played for the jury]

7 MS. NOJJAT: I'm going to object; if we can approach?

8 THE COURT: Okay. Make sure all microphones are off.

9 [Bench conference - not transcribed]

10 MS. GRAHAM: The 9-1-1 operator says, where did he hit you? And you
11 heard from Maria. English isn't her first language and there was an issue when she
12 said, oh, Ruby didn't know what to call. The 9-1-1 operator says, where did he hit
13 you? And she tells the 9-1-1 operator why he hit her.

14 [Excerpt of 9-1-1 call played to the jury]

15 MS. GRAHAM: He hit me because he was stealing something. I'll play it for
16 you just one more time. You'll have it in the back.

17 [Excerpt of 9-1-1 call played to the jury]

18 MS. GRAHAM: So, I mean take Maria's testimony for what it is as to why she
19 got hit. But it's not just for some random unknown reason. He hit her because he
20 had taken some property and then she confronted him. And I showed you in the
21 video, I won't show you again, he warns her to get the fuck out of his face. She's
22 got her hands behind her back. All she does to really get the hell out of his face is
23 step back and put her arms behind her back and kind of brace for what's happening.
24 She's standing between him and the exit. He's got property that he's stealing. The
25 only reason he hit her is to get away with that property. She was in his way. She did

1 not move out of his way. The battery with intent to commit a crime, the battery with
2 intent to commit robbery; if not to commit robbery then what other reason? It's
3 certainly not because you weren't stealing because somebody who wasn't stealing
4 doesn't react that way. There's one reason he hit her. It was to complete the
5 robbery.

6 So, ladies and gentlemen, as I told you, this case is not some back
7 alley mugging with a pipe and valuable jewelry and the value of the items isn't an
8 issue for you. There's an instruction on that. This is just everyday life. This is just
9 an AM/PM clerk who can be robbed just like anybody else. The facts in this case
10 support the charges, certainly nothing more than the charges of robbery and battery
11 with intent to commit robbery, but absolutely not something less. And so, what
12 we're simply asking you to do is apply the facts to the law. And when you do that,
13 the appropriate verdict in this case is guilty.

14 Thank you.

15 THE COURT: Okay.

16 All right, ladies and gentlemen, this is the time where I let you guys all
17 know who the alternate juror is. And let me tell you what it's like being an alternate
18 juror if you have never served as one. It's like getting all dressed up and you can't
19 go to the party; all right? That person will not be able to go into the deliberation
20 room and deliberate with the other jurors. But what's even worse is I can't excuse
21 them. I can let them go home but I can't excuse or discharge their jury service
22 because what happens if somebody gets sick or something while you're
23 deliberating? I need to call that alternate back to go into the deliberation room at
24 that point. And the alternate cannot talk about this case or anything until she gets a
25 call from Officer --

1 THE MARSHAL: Black.

2 THE COURT: -- Black -- sorry, they all look alike, you know? What can I say,
3 they're all in uniform -- until they get a call from Officer Black saying that the jury has
4 rendered a verdict; okay?

5 So, at this time, the alternate is Juror number 13. And, ma'am, again,
6 I've got to give you the same admonition as I've done before. You can't talk about
7 the case but you can go home or you can -- you know, you can do whatever you
8 need to do and then as soon as you get a call from Officer Black then you would be
9 discharged from your service; okay?

10 So, at this time we need to swear in Officer Black.

11 [Clerk swore in officer to take charge of the jury]

12 THE COURT: Okay, we are going to be having sandwiches or something for
13 lunch for you all. I think that -- did Laura order from Capriotti's? Isn't that what
14 she --

15 THE MARSHAL: I do believe she did.

16 THE COURT: Okay, so if you've had Capriotti's the last couple of days I
17 apologize to you. You know that's the only battle we ever have in this department is
18 what's for lunch whenever the jury comes in, so we're very lucky that way.

19 So in any event, Juror number 13, you are admonished not to talk or
20 converse among yourselves or with anyone else on any subject related to the trial or
21 read, watch, or listen to any report of or commentary on the trial by any medium of
22 information, including without limitation newspapers, television, the internet, and
23 radio, or form or express any opinion on any subject related to the trial until the jury
24 has reached a verdict; okay?

25 All right, Officer Black.

1 [The jury retired to deliberate at 12:17 p.m.]

2 THE COURT: Okay, let the record reflect that the jury has left the courtroom.
3 Counsel, I want to thank you very much for allowing me to preside over this case.
4 And I need you to get cell numbers and numbers where you will be to the court clerk
5 so that she can give you a call. And the reason I ask for cell phones and where you
6 will be is that sometimes cell phones don't pick up and I have had situations where
7 somebody went across the street, the cell didn't pick up and we had trouble finding
8 him, so.

9 MS. GRAHAM: Yes, Your Honor.

10 THE COURT: Okay? So with that said, thank you again very much and we'll
11 give you a call as soon as the verdict's read; okay?

12 MS. GRAHAM: Thank you, Your Honor.

13 MS. NOJJAT: Thank you, Your Honor.

14 [The trial recessed at 12:19 p.m.]

15 [The trial resumed at 2:45 p.m.]

16 [Outside the presence of the jury]

17 THE MARSHAL: Come to order. The Court is back in session.

18 THE COURT: All right, Counsel, you may be seated.

19 I understand that the jury has rendered a verdict. So, are you ready to
20 call the jury in?

21 MS. GRAHAM: Yes, Your Honor.

22 MS. NOJJAT: Yes, Your Honor.

23 THE COURT: Okay, let's go get them.

24 [Inside the presence of the jury]

25 THE COURT: Okay, will counsel please stipulate to the presence of the jury?

1 MS. GRAHAM: Yes, Your Honor.
2 MS. NOJJAT: And the Defense does, Your Honor.
3 THE COURT: Okay. You all may be seated.
4 Okay, ladies and gentlemen, it has come to my attention that the jury
5 has reached a verdict.
6 THE JURORS: Yes. Yes, Your Honor.
7 THE COURT: Okay. And okay, the jury foreman is Juror number 12.
8 JUROR #12: Yes, Your Honor.
9 THE COURT: Okay, would you hand that verdict form over to Officer Black,
10 please?
11 THE MARSHAL: Thank you.
12 THE COURT: Okay.
13 Ms. Clerk, would you please read the verdict? And will the Defendant
14 please stand.
15 THE CLERK: District Court, Clark County, Nevada. The State of Nevada,
16 Plaintiff, versus John Demon Morgan, aka, John Morgan, Defendant, Case number
17 C-14-302450-1.
18 Verdict: We, the Jury, in the above entitled case find the Defendant,
19 John Demon Morgan, aka, John Morgan, as follows:
20 Count 1, robbery; guilty of robbery.
21 We, the Jury, in the above entitled case find the Defendant, John
22 Demon Morgan, aka, John Morgan, as follows:
23 Count 2, battery with intent to commit a crime; guilty of battery.
24 Dated this 24th day of February, 2016.
25 Neal -- Son Neal, Foreperson.

1 Ladies and gentlemen of the Jury, is this your verdict as read, so say
2 you once so say you all?

3 THE JURORS: Yes.

4 THE COURT: Okay. Would the parties like me to have the jurors individually
5 polled?

6 MS. GRAHAM: The State would not, Your Honor.

7 MS. NOJJAT: Defense would, Your Honor.

8 THE COURT: Okay.

9 Juror #1, is this your verdict as read?

10 JUROR #1: Yes, ma'am.

11 THE COURT: Juror #2, is this your verdict as read?

12 JUROR # 2: Yes, ma'am.

13 THE COURT: Juror #3, is this your verdict as read?

14 JUROR # 3: Yes.

15 THE COURT: Juror #4, is this your verdict as read?

16 JUROR # 4: Yes, Your Honor.

17 THE COURT: Juror #5, is this your verdict as read?

18 JUROR # 5: Yes, Your Honor.

19 THE COURT: Juror #6, is this your verdict as read?

20 JUROR # 6: Yes, Your Honor.

21 THE COURT: Juror #7, is this your verdict as read?

22 JUROR # 7: Yes, Your Honor.

23 THE COURT: Juror #8, is this your verdict as read?

24 JUROR # 8: Yes, Your Honor.

25 THE COURT: Juror #9, is this your verdict as read?

1 JUROR # 9: Yes, ma'am.

2 THE COURT: Juror #10, is this your verdict as read?

3 JUROR # 10: Yes.

4 THE COURT: Juror #11, is this your verdict as read?

5 JUROR # 11: Yes, Your Honor.

6 THE COURT: And Juror #12, is this your verdict as read?

7 JUROR # 12: Yes, Your Honor.

8 THE COURT: Okay. The polling indicates that the verdict is unanimous.

9 Okay, ladies and gentlemen, at this time I want to thank you very much
10 for your time during the past three days. I know we took time out of your lives, you
11 know, away from your families, away from your work and things of that nature and I
12 don't minimize that at all and I want to thank you very much for your time and you
13 were very attentive and you were on time and I certainly do appreciate that.

14 The next question you may have is whether or not you can talk about
15 your experience as a juror, and obviously now, yes, you can. You can talk about
16 what the case is about with your family and your friends. In fact, you may even be
17 asked questions by the lawyers and you can talk to the lawyers if you would like to.
18 In fact, I would encourage you to if they want to talk to you because I know that
19 whenever I was sitting in their shoes I learned a lot from jurors whenever I talked to
20 them. So, I would encourage you to do that.

21 But at this point I'm going to go ahead and discharge you and excuse
22 you with my thanks, all right? And if you will take the direction of Officer Black.

23 [Jury is excused at 2:51 p.m.]

24 THE COURT: Okay, let the record reflect that the jury has left the courtroom.

25 What else do we need to deal with at this point?

1 MS. GRAHAM: Your Honor, the State, besides getting a sentencing date for
2 your calendar, would like to make a motion on bail. The bail I believe is currently set
3 at \$50,000.00; it could be, however, \$75,000.00. That was set by Judge Herndon
4 after just a hearing on an O.R. motion. Considering the presumption of innocence is
5 no longer -- the Defendant no longer has that. He's a prior felon and he does have
6 a number of battery/domestic violence convictions. The conviction for which he
7 was -- well, the robbery that he was convicted of is a violent offense, so I would ask
8 either that Your Honor remand without bail until sentencing or to increase the bail.

9 MS. NOJJAT: And, Your Honor, he hasn't been able to afford the \$50,000.00
10 that it's set at. At this point he's not going to be getting out of custody between now
11 and sentencing. We'd just ask for bail [indiscernible] and where its at.

12 THE COURT: Okay, I'm going to deny the State's motion. I'm just going to
13 keep bail where it is. I certainly don't see that -- the Defendant hasn't made bail yet
14 so I think it's just six of one, half a dozen of the other in my view. So, --

15 MS. GRAHAM: Thank you, Your Honor.

16 THE COURT: Okay.

17 MS. GRAHAM: The only additional point that the State would make is risk of
18 flight is now higher considering he has been convicted, but I respect Your Honor's
19 ruling.

20 THE COURT: Okay. All right, then we need to set a sentencing date.

21 MS. NOJJAT: We'd ask for an in custody sentencing date, Your Honor.

22 MS. GRAHAM: Which is about 45 or 60 days?

23 MS. NOJJAT: I think its 60 usually.

24 THE COURT: It's sooner than that, isn't it?

25 MS. GRAHAM: Forty-five.

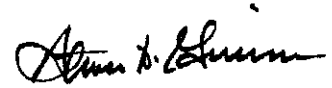
1 THE CLERK: We're looking at April 14th.
2 MS. GRAHAM: Thank you.
3 MS. NOJJAT: I am -- actually, I'll be here April 14th, yeah.
4 THE CLERK: That will be --
5 THE COURT: Is that okay?
6 MS. NOJJAT: Yes, thank you.
7 THE COURT: Okay.
8 THE CLERK: -- 9:00 a.m.
9 THE COURT: Okay.
10 MS. GRAHAM: Thank you, Your Honor.
11 THE COURT: April 14th, 9:00 a.m. All right.
12 MS. NOJJAT: Thank you, Your Honor.
13 THE COURT: Thank you.

14 [Proceedings concluded at p.m. 2:53 p.m.]

15 * * * * *

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

18 Cynthia Georgilas
19 CYNTHIA GEORGILAS
20 Court Recorder/Transcriber
21 District Court Dept. XVIII
22
23
24
25



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JOHN DEMON MORGAN,

Defendant.

CASE NO. C-302450-1

DEPT. XXII

BEFORE THE HONORABLE SUSAN H. JOHNSON, DISTRICT COURT JUDGE
APRIL 14, 2016

**RECORDER'S TRANSCRIPT OF HEARING RE
SENTENCING**

APPEARANCES:

For the Plaintiff:

CARA L. CAMPBELL, ESQ.
Deputy District Attorney

For the Defendant:

NADIA HOJJAT, ESQ.
ARLENE HESHMATI, ESQ.
Deputy Public Defenders

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 THURSDAY, APRIL 14, 2016 AT 9:50:54 A.M.

2
3 THE COURT: Okay. Let's go with State of Nevada versus John Demon
4 Morgan, and that is case number C-302450-1.

5 MS. HOJJAT: Good morning, Your Honor. Nadia Hojjat and Arlene Heshmati
6 on behalf of Mr. Morgan who is present in custody.

7 MS. CAMPBELL: Cara Campbell – Cara Campbell on behalf of the State.

8 THE COURT: Okay. And this is time set for sentencing and we did have a
9 guilty verdict. Given the guilty verdicts I am adjudging the Defendant guilty of Count
10 1, Robbery. It is a Category B Felony in violation of NRS 200.380 and Count 2, and
11 that is Battery. I'm adjudging you guilty of Battery With Intent to Commit a Crime
12 and –

13 MR. HOJJAT: I'm sorry, Your Honor, he was not convicted of Battery With
14 Intent to Commit a Crime only a Misdemeanor Battery.

15 THE COURT: Oh, excuse – well, he was just – you're right, it was just guilty of
16 Battery. Okay. And unfortunately the PSI does not identify this in any way so I'm
17 not sure which statute it is that – do you know what category felony it is?

18 MS. HOJJAT: It's a misdemeanor.

19 MS. CAMPBELL: It's a simple misdemeanor battery, Your Honor.

20 THE COURT: Okay. It's a misdemeanor?

21 MS. CAMPBELL: Correct.

22 THE COURT: Okay. Do you know what statutes it's in violation of?

23 MS. CAMPBELL: It should be 200.4 –

24 MS. HOJJAT: 81.

25 MS. CAMPBELL: -- 81.

1 THE COURT: 200. -

2 MS. CAMPBELL: Ms. Di -

3 THE COURT: -- 481? Thank you. I just want to make sure that the record is
4 clear. Okay.

5 All right. With that I'd like to hear from the Defense. Or wait a minute,
6 do you - I probably should hear from the State first. Sorry.

7 MS. CAMPBELL: Yes, Judge. I was hoping that one of the trial deputies
8 would appear today because clearly they know more about the facts of the matter
9 than I do. Fortunately the Court knows about the underlying facts of the case
10 because you heard the trial. Your Honor, the jury convicted this Defendant of
11 robbery after he was in a mini mart, decided to steal some snacks and rather than
12 relinquish them to the clerk when he was asked to do so because they knew that he
13 stole them instead he chose to punch and/or strike the female clerk knocking her
14 down and run off with the property. While he may not have used a weapon it's still
15 violence and his record shows that he has a propensity for violence.

16 Judge, his prior criminal history shows that he has three prior
17 convictions for battery domestic violence and/or assault, he also has several
18 misdemeanor convictions for petty larceny and/or theft. He's gone to jail several
19 times on those misdemeanor offenses and clearly he's refused to learn anything
20 from those mistakes and has refused to deter his actions despite being sent to jail
21 on those prior events. He's continued on his criminal path, the State has no reason
22 to believe that should he be released on this case that he would change his ways
23 and therefore, Judge, we ask that you follow the recommendation of the division
24 which was for Count 1, 26 to 120 months and we would ask for the mandatory
25 maximum of 6 months on the Count 2 which is the battery. With that we would

1 submit it.

2 THE COURT: Counsel.

3 MS. HOJJAT: And, Your Honor, I would ask the Court to consider in this case
4 probation with mental health court as a condition of probation, or in the alternative if
5 the Court is not inclined to give Mr. Morgan mental health court then 24 to 60
6 months in the Nevada Department of Corrections.

7 Your Honor, what the PSI doesn't really show but which the record in
8 this case gives insight to is that Mr. Morgan has mental health issues. Mr. Morgan
9 actually went to Lakes Crossing in this case, he was found incompetent to proceed
10 to trial. He was sent to Lakes Crossing, he received rehabilitation at Lakes Crossing
11 which included medication and then he was sent back down much more competent
12 and capable of proceeding to trial. His level of mental health prior to the medication
13 was such that he could not aid and assist us in his case.

14 He's engaged in some strange behaviors throughout the case. At one
15 point he didn't understand that he had to plead not guilty, he kept refusing to plead
16 not guilty in lower level arraignment because he didn't understand why he need to
17 plead not guilty if he was saying he didn't do it. There's a long history of mental
18 health here. Mr. Morgan – I think the PSI actually does reflect that mental health if
19 we look at the dates of the crime. He doesn't report it to the PSI writer but if we look
20 at the criminal history there's one crime from 2001 and then we see a gap from 2001
21 to 2005, one misdemeanor and then a four year gap. And then again we see a
22 cluster of crimes. From 2005 to 2007 he has this cluster while he's obviously not
23 medicated and then after 2007 nothing until 2014. That's a seven year gap between
24 2007 and 2014. What we're seeing here, Your Honor, is an individual who does well
25 when he's on his medications and stays out of the criminal justice system. And

1 individual who does poorly when he's off his medication and ends up picking up
2 these crimes.

3 Your Honor had the chance to sit through this trial; Your Honor saw
4 what this was. This was not your typical robbery. I mean, we saw a robbery
5 sentencing earlier today where a firearm was involved. I mean, we're talking about
6 the things we think about when we think about robbery. This case was a cup of
7 soup and a bag of peanuts. It was an individual who went into a market because he
8 was hungry and he took a cup of soup and a bag of peanuts and when the clerk
9 tried to stop him on the way out one hit and he ran out the door. This is a mentally ill
10 individual who at the time was hungry, off his medications, behaving erratically. This
11 is an individual who his history shows, yes, when he's off his medications he does
12 commit a crime but when he's on his medications he manageable.

13 I have submitted a mental court application in this case. I've talked to
14 my social worker; he is eligible for mental health court. We're waiting to hear back
15 from them right now. Mental Health court often defers to the sentencing court and
16 things like this which is why I wanted to do the sentencing before he goes to mental
17 health court. If the Court is inclined to give him probation with mental health court I
18 do believe that they will defer to Your Honor if Your Honor is inclined to give him
19 mental health court. So, I wanted them to know that if that's what the Court inclined
20 to do.

21 So, I would ask the Court to seriously consider that because this is an
22 individual who is by no means gone. This isn't a person who can't be helped, can't
23 be fixed. His record shows that. He has periods of lucidity, stability, being a
24 productive member of society. I'd ask the Court to consider probation with mental
25 health court, but if not to take into account his mental health issues, to take into

1 account the fact that he only has one felony conviction up to this point, to take into
2 account the facts of this case that Your Honor saw at trial. And even his
3 appearance today in court – John, can you just turn around for a second so the
4 Judge can just – just turn around for a second. Thank you. Even his appearance
5 here today in court. I would ask the Court to take all those things into consideration
6 and if you're not inclined to give him probation with mental health court then a
7 minimum sentence of 24 to 60 months in the Nevada Department of Corrections.
8 And I'll submit it with that.

9 THE COURT: Sir, I'd like to hear from you and I need you by a microphone.

10 THE DEFENDANT: Good morning. Yeah, I'm very apologetic to Maria
11 [Indecipherable]. I want to apologize to her, the clerk at the gas station. I would like
12 to let her know that I'm very apologetic, that I'm sorry for hitting her that day. And I
13 have my – I got family support, like they've been sending money. Like, I get – like,
14 they've been giving me commissary money. Like, I got all my commissary receipts
15 so like, it all adds up to like \$800.00. And I got like \$30.00 on my books and like I
16 still got money to pay for the, like, [Indecipherable] the peanuts, if I could still pay for
17 it. And I got the receipt right here. I got the last receipt right here. If you could look
18 at it. I don't know if you could see it. What I got is \$29.77 on my papers.

19 MS. HOJJATT: You could just hold it up. That's fine.

20 THE DEFENDANT: I'd like to still pay for it. And I just wanted to apologize
21 and just – I know I wrote like – I have, like, so much to say, I wrote a letter to you
22 and I just wanted to let you know that I could still pay for it if I can or maybe pay
23 some type of fine or whatever. That if the Court would allow me – if the Court allows
24 me to pay for a fine – if the Court allows me to pay for a fine or something like that.
25 and, like, I'm real sorry. I came from another state and I'm like very sorry. Like, I

1 love Las Vegas, it's a nice, pretty state so I don't want to go back home, like I want
2 to get myself like back to work because I was working – I was working as a
3 dishwasher at Applebee's and Outback Steakhouse not Chile's. And like the
4 robbery it'll like probably like hinder me from getting like – like some jobs.

5 So, I would like – I would like to be in some type of program so I could
6 maybe like get the felony removed off of my record or maybe like I could get some
7 help to where – to where I would be able to get better jobs to like where it won't be
8 like where they won't look at – where they won't look at the felony on my record.
9 Like maybe I could get it like dropped down to like some type of – like some type of
10 gross misdemeanor or something like that.

11 MR. HOJJAT: And, Your Honor, I have explained to him that because it's a
12 trial verdict that there's no drop downs in this case.

13 THE COURT: Okay. By the way, this was the second felony, right?

14 MR. HOJJAT: This is – yes, has one prior felony. This is the second.

15 THE COURT: Okay. Well, you said one felony, I didn't know if you meant just
16 this one or –

17 MS. HOJJAT: I apologize, I meant prior.

18 THE COURT: That's okay.

19 MS. HOJJAT: And the other thing I forgot to ask is I am asking the counts to
20 run concurrent obviously. I'm asking for –

21 THE COURT: Okay. Well, this is what I'm seeing. And I – don't get me
22 wrong, I appreciate the mental health issues but we've got quite a history here which
23 tells me either he's committing crimes while on meds or he's not taking his meds
24 and committing crimes. And he's been given a lot of slack in the past, I mean, he's
25 been charged with a few felonies in the past and they've dropped them down to

1 There were – I've got 533 days credit for time served. Is that what you have?

2 MS. HOJJAT: That's correct. Yes, Your Honor.

3 THE COURT: Is that what you have, Ms. Campbell?

4 MS. CAMPBELL: Yes, Your Honor.

5 THE COURT: Okay. Sir, good luck.

6 THE DEFENDANT: Okay.

7 THE COURT: You gotta stay on your meds.

8 THE DEFENDANT: Thank you.

9 THE COURT: Okay.

10 [Proceedings concluded at 10:03:54 a.m.]

11 * * * * *

12

13

14

15

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

18

19

20

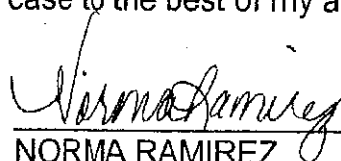
21

22

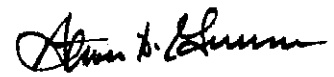
23

24

25



NORMA RAMIREZ
Court Recorder
District Court Dept. XXII
702 671-0572


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JOHN DEMON MORGAN,

Defendant.

CASE NO. C-302450

DEPT. XXII

BEFORE THE HONORABLE SUSAN H. JOHNSON, DISTRICT COURT JUDGE

FEBRUARY 22, 2016

RECORDER'S TRANSCRIPT OF HEARING RE

JURY TRIAL – DAY 1
[BENCH CONFERENCES]

APPEARANCES:

For the Plaintiff:

ELANA GRAHAM, ESQ.
GENEVIEVE CRAGGS, ESQ.
Deputy District Attorneys

For the Defendant:

NADIA HOJJAT, ESQ.
ARLENE, HESHMATI, ESQ.
Deputy Public Defenders

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 FEBRUARY 22, 2016 AT 9:40:00 A.M.

2 [Bench conference at 9:40:00 a.m. – page 23 transcribed below]

3 MS HOJJAT: I'm sorry, I didn't want to interrupt. I wasn't sure when to do
4 this. The Defendant is challenging the panel at this point. Looking at the panel
5 there is 45 individuals, only 3 of them are African American. That is not a
6 representative sample of our community, our community is I believe twelve percent
7 African American, 3 out of 45 would be six percent. So, at this point the Defense is
8 lodging a challenge to the panel and we would ask for a hearing.

9 MS GRAHAM: I think it's a fair cross [indecipherable] community as they sit
10 here, so [indecipherable]

11 THE COURT: Okay. I think that they were all chosen at random, counsel, so
12 I'm denying your request at this time, okay?

13 MS. HOJJAT: Thank you.

14 THE COURT: Thank you.

15 [Bench conference at 11:27:44 a.m. – page 93 transcribed below]

16 THE COURT: As he does not know, I think we gotta let him go.

17 MS. GRAHAM: Yes. The State would move to let him go.

18 THE COURT: Okay. If –

19 MS. HOJJAT: I'll submit it.

20 THE COURT: Okay. All right. Thank you.

21 [Bench conference at 1:39:58 p.m. – page 141 transcribed below]

22 MS. GRAHAM: I object to any further into the line of inquiry as to why he
23 wouldn't testify. It could be a number of reasons including how it's a felony
24 conviction or any other reason. So, I think beyond what Your Honor has already
25 instructed and the questions I would object.

1 THE COURT: Okay. I am having trouble with you going further --

2 MS. HOJJAT: Okay.

3 THE COURT: -- than I'd like, okay?

4 MS. HOJJAT: Okay.

5 THE COURT: So, let's go ahead and move on.

6 MS. HOJJAT: Okay.

7 THE COURT: All right. Thank you.

8 [Bench conference at 1:51:01 p.m. -- page 149 transcribed below]

9 MS. GRAHAM: I'm gonna object to this line of questioning regarding
10 overcharging in a general sense, people's feelings on prosecuting agencies and the
11 term overcharging especially --

12 THE COURT: I'm having trouble with that.

13 MS. HOJJAT: And, Your Honor -- I mean, our theory of the case here is that
14 sometimes a person can be guilty of one thing and not of something else and --

15 MS. GRAHAM: [indecipherable]

16 MS. HOJJAT: Our theory of the case here is that sometimes a person can be
17 guilty of one part of the crime but not another part of the crime, and the question
18 here is if you're charged with five things then that means you must be either guilty of
19 none of them or all five things. Is it possible there's sometimes [indecipherable]

20 THE COURT: Well, you can --

21 MS. HOJJAT: -- but not --

22 THE COURT: -- you can get there making that accusation but they both are
23 charged.

24 MS. HOJJAT: Okay. So, if I phrase it the way I just phrased it would that be
25 okay?

1 THE COURT: Well, do you have a problem --

2 MS. GRAHAM: Well, it sounds like touching on a hypothetical verdict --

3 THE COURT: Yeah. That is --

4 MS. GRAHAM: -- which they cannot do.

5 THE COURT: That is true. They're -- do you have a problem with her asking
6 the question the fact that my client had pled guilty to this charge does -- do you
7 agree that they are automatically guilty of this one?

8 MS. GRAHAM: Well, the problem that I have with that is it's getting really
9 confusing because he's not charged with battery.

10 THE COURT: Okay.

11 MS. GRAHAM: The State has not charged him with battery so there's gonna
12 be an option that you're going to offer as a lesser included. So, the State -- I know
13 what the State has brought forward do not include battery so I'm a little nervous
14 about where that's going --

15 THE COURT: Okay.

16 MS. GRAHAM: -- regarding that. So, that's my concern.

17 THE COURT: Okay. We're gonna move on. I -- we're gonna move on. Don't
18 touch upon that; just ask your next question.

19 MS. HOJJAT: So, is the Court -- just to clarify, can I ask about, you know, if
20 there's five charges brought and is he either guilty of all five or --

21 THE COURT: No --

22 MS HOJJAT: -- one or --

23 THE COURT: -- we're not gonna go there. Okay. Let's go to the next one.
24 Next question.

25 [Bench conference at 2:02:09 p.m. -- page 154 transcribed below]

1 MS. GRAHAM: I apologize for that. That was asked and answered by Your
2 Honor already --

3 THE COURT: Yeah.

4 MS GRAHAM: -- during the group questioning.

5 THE COURT: We are touching on things I've asked, like you've asked about
6 race. I already asked about this.

7 MS. HOJJAT: And Your Honor did and I know Your Honor asked certain
8 jurors about whether they would feel comfortable with having themselves in --

9 THE COURT: I didn't ask certain jurors I asked them all.

10 MS. GRAHAM: That's the State's memory.

11 MS. HOJJAT: And I don't believe as to specifically the violence issue, Your
12 Honor addressed it with his juror.

13 THE COURT: Okay.

14 MS. HOJJAT: I mean, sometimes --

15 THE COURT: You -- let me tell you something. You're asking and asking and
16 asking and you're having trouble with this juror. Unless you can show me cause,
17 you know, you're gonna have pre-empt her if you don't like her, okay?

18 MS. HOJJAT: I understand, Your Honor.

19 THE COURT: Okay.

20 MS. GRAHAM: Thank you. Sorry about that.

21 THE COURT: All right. That's all right.

22 [Bench conference at 2:13:27 p.m. -- page 161 transcribed below]

23 MS GRAHAM: I want some clarification. She told this guy who was robbed at
24 knife point that that's a robbery. That's not a robbery; it's robbery with use of a
25 deadly weapon. Considering [indecipherable] I think that needs to be corrected.

1 MS. HOJJAT: Your Honor, I used his own terminology. He said he was
2 robbed I said was robbed. I didn't instruct him on the law. The Courts cannot
3 instruct them on the law.

4 MS. GRAHAM: She said that's a robbery. The Defendant in this case is
5 charged with robbery. That is not a use of a deadly weapon. I think that needs to
6 be clarified.

7 MS. HOJJAT: Your Honor already clarified it in the instructions. To have
8 Your Honor right now instruct him that yours is a deadly weapon and this one is -- is
9 so prejudicial to Mr. Morgan. I used her own terminology. If you said you were
10 robbed and this is a robbery, do you think it's gonna affect you? I mean, it'll be so
11 prejudicial for --

12 THE COURT: You know, I think she -- I will be instructing. I think it's gonna
13 be okay, but we are getting really close to it.

14 MS. HOJJAT: I'm just about done.

15 THE COURT: Okay. All right. I'm not gonna --

16 MS. GRAHAM: That's fine.

17 THE COURT: -- instruct. Okay.

18 MS. GRAHAM: All right.

19 THE COURT: Overruled.

20 [Bench conference at 2:15:21 p.m. -- page 162 transcribed below]

21 THE COURT: Okay. Pass for cause. I am having trouble with number eight.

22 MS. HOJJAT: Pettis. Yeah, we're moving to strike Mr. Pettis, the one who
23 said he --

24 THE COURT: Okay.

25 MS. HOJJAT: -- can't be fair.

1 MS. GRAHAM: Is that 019?

2 MS. HOJJAT: Yes.

3 THE COURT: Yeah.

4 MS. GRAHAM: Oh sorry. Yeah, seat number eight. I'll submit.

5 THE COURT: Okay. All right. Any others that you think need to -- I'm gonna
6 start with the prosecution.

7 MS. GRAHAM: None for us.

8 MS. HOJJAT: The only other one I'd say is 022, seat number 10. She just
9 can't say she'd be fair. She keeps saying maybe, depending on the facts, possibly.
10 She never just said yes, I'll be fair. She couldn't --

11 THE COURT: You know -- but I have no trouble with that -- I -- with her. She
12 also said she could be fair, she's gotta hear what the evidence is and you kept
13 asking possible, possible, but anything is possible. The sky could fall in here right
14 now. I mean --

15 MS. HOJJAT: Well, possible was her words but I was parroting. And that's
16 why -- that's where my concern comes from that she never actually said, yes, I can
17 be fair. She kept saying possible which is why I kept saying, well okay, so possibly
18 yes, possibly no, like I was using her language.

19 UNIDENTIFIED COUNSEL: [indecipherable]

20 MS. HOJJAT: Yeah.

21 THE COURT: Well --

22 MS. HOJJAT: Every time she had a disclaimer, she never just said she would
23 --

24 THE COURT: She's gotta -- she's gotta hear the evidence first. Okay. So, I'm
25 not gonna strike her for cause. The only one I see right now is number eight, okay?

1 All right. So, I'll strike number eight and put somebody else in. And Commissioner
2 Witt can come down here at 4:30.

3 MS. HOJJAT: Perfect.

4 MS. GRAHAM: Great.

5 MS. HOJJAT: Thank you.

6 MS. GRAHAM: And then can we bring in the next one –

7 THE COURT: Yup.

8 MS. GRAHAM: -- I'd just go with one at a time unless it opens back up --

9 THE COURT: Well –

10 MS. GRAHAM: -- for some reason.

11 THE COURT: -- and you – if there's a question you forgot to ask –

12 MS. GRAHAM: Okay.

13 THE COURT: -- of him –

14 MS. GRAHAM: Great.

15 THE COURT: -- I don't have a problem, and that's both sides –

16 MS. GRAHAM: Understood.

17 THE COURT: -- okay?

18 MS. HOJJAT: Okay.

19 THE COURT: All right.

20 MS GRAHAM: Thanks.

21 THE COURT: Okay. Good.

22 [Bench conference at 2:22:40 p.m. – page 166 transcribed below]

23 MS. HOJJAT: At this time I'm gonna reiterate my objection to the advantage –
24 disadvantage. The State is the sole purpose – person with the burden of proof, in
25 this case this idea of people starting equal or anything like that it's not an accurate

1 statement of the law. We don't start equal; they have a burden, we don't. We have
2 a presumption of innocence.

3 THE COURT: Okay. Well, maybe –

4 MS. HOJJAT: And so –

5 THE COURT: -- I guess –

6 MS. HOJJAT: -- I object to the question.

7 THE COURT: -- there's been a misunderstanding. Maybe – I guess, I'm not
8 being artful about this. I just want to make sure that they're not immediately thinking
9 the Defendant is guilty, the State is already behind. You know what I mean?

10 MS. HOJJAT: Correct.

11 THE COURT: They got –

12 MS. HOJJAT: The state is behind.

13 THE COURT: -- burden. I understand. I understand.

14 MS. GRAHAM: Right. We're also entitled to fairness.

15 THE COURT: I understand.

16 MS. HOJJAT: They're entitled to fairness, but the idea that we start on the
17 same playing field is not accurate.

18 THE COURT: Okay.

19 MS. HOJJAT: They – they have – and so I'm objecting to the question that –

20 THE COURT: I understand. But that works in every case whether it's civil or
21 criminal. In civil the plaintiff obviously has the burden of proof, it's just it's a much
22 lower burden than what the State has, okay? So, overruled.

23 [Bench conference at 2:33:21 p.m. – page 173 transcribed below]

24 MS. GRAHAM: There's no facts charged in this case.

25 MS HOJJAT: It's a robbery, there's a theft plus force. That's what they're

1 gonna --

2 THE COURT: Okay.

3 MS. GRAHAM: And then it's touching on a potential verdict.

4 THE COURT: Yeah, we're getting a little close. She's already said, yeah, she
5 can --

6 MS. HOJJAT: Okay.

7 THE COURT: -- make her decision --

8 MS. HOJJAT: Okay.

9 THE COURT: -- okay? We're just getting really close --

10 MS. HOJJAT: Okay.

11 THE COURT: -- to that line, okay? All right.

12 [Bench conference at 2:36:15 p.m. -- page 175 transcribed below]

13 THE COURT: Pass for cause.

14 MS. GRAHAM: Pass for cause. The State would.

15 THE COURT: Make sure your mic is off.

16 MS. HOJJAT: My mic is off. And -- but for the request we had made as to
17 juror number 10 we'll pass.

18 THE COURT: Okay. I think I already made a ruling on number 10 so -- okay.
19 You're up, preemptory.

20 MS. GRAHAM: The State would -- may I use my first preempt -- may we --

21 THE COURT: Yes.

22 MS. GRAHAM: We'd strike seated in number one, 002.

23 THE COURT: Xanthopoulos.

24 MS. GRAHAM: Yeah.

25 THE COURT: Okay. The first one --

1 MS. GRAHAM: Correct.
2 THE COURT: -- juror number 2 -- well, number 2. Okay.
3 MS. GRAHAM: 002 --
4 THE COURT: Got it.
5 MS. GRAHAM: -- seated in --
6 THE COURT: Okay.
7 MS. GRAHAM: You know what I mean.
8 THE COURT: Okay. All right. Thank you.
9 [Bench conference at 2:46:54 p.m. -- page 184 transcribed below]
10 THE COURT: Pass for cause.
11 MS. GRAHAM: The State would.
12 THE COURT: Pass for cause.
13 MS. HOJJAT: Yes, Your Honor.
14 THE COURT: Okay. You're up.
15 MS. HOJJAT: Seat number 10, Ms. Sung.
16 THE COURT: Okay. Thank you.
17 MS. HOJJAT: Thank you.
18 [Bench conference at 3:00:50 p.m. -- page 193 transcribed below]
19 THE COURT: Pass for cause.
20 MS. HOJJAT: Yes, Your Honor.
21 MS. GRAHAM: Yes.
22 THE COURT: Okay.
23 MS. GRAHAM: The State wants to use their second preempt on seat number
24 12, juror number 024.
25 THE COURT: 24, Olsen.

1 MS. GRAHAM: Correct.

2 THE COURT: Okay. I just want to make sure. Okay. Thank you.

3 [Bench conference at 3:01:46 p.m. – page 194 transcribed below]

4 MS. HOJJAT: I'm sorry. Before he gets released we wanted to read the

5 Batson challenge on Mr. Olsen. So, if we could keep him from being released we

6 do have a Batson challenge to make.

7 THE COURT: Okay. What's the Batson challenge?

8 MS. HOJJAT: Based on sexual orientation.

9 MS. GRAHAM: Can we do that at the bench right here or no?

10 MS. HOJJAT: We can but –

11 MS. GRAHAM: Are you okay –

12 MS. HOJJAT: -- it's just –

13 MS. GRAHAM: -- with that?

14 MS. HOJJAT: -- he can't be released. I don't want him to be released, then

15 he's gone and then we do the Batson challenge.

16 THE COURT: Well –

17 MS. GRAHAM: There's no pattern.

18 MS. HOJJAT: [indecipherable]

19 THE COURT: I – I mean, nobody is of orientation.

20 MS. HOJJAT: The State actually specifically asked him his orientation during

21 the –

22 MS. GRAHAM: No –

23 MS. HOJJAT: -- her questioning.

24 MS. GRAHAM: -- I did not ask him his orientation, I asked him what his

25 partner did.

1 MS. HOJJAT: You asked him [indecipherable]
2 THE COURT: Well, his partner could be anybody.
3 MS. HOJJAT: She asked him do you have a boyfriend or a girlfriend
4 specifically.
5 THE COURT: Well –
6 MS GRAHAM: Or whatever. He's a homosexual, it was out there. I struck
7 him based on his responses to the [indecipherable]. There must be a pattern
8 established first before I make up my sexual orientation which [indecipherable].
9 There's been no pattern. So, would Your Honor like to – for me to move on to the
10 next step nonetheless.
11 THE COURT: Go ahead.
12 MS. GRAHAM: I struck him based on his – that the criticism released in the
13 media is correct. It's been a long time overdue. There's [indecipherable] the
14 prosecuting entity who is presenting the case who would be presenting police
15 officers as witnesses.
16 THE COURT: Okay. Well, first of all I see no reason why we – I mean, I don't
17 see a pattern and I think that the prosecution had a reason to strike him. In fact, I'm
18 just surprised that you've made this Batson challenge. But in any event, your
19 objection is denied.
20 MS. HOJJAT: Okay. When the State makes their race neutral reason we
21 actually have the right to respond and explain why that's – it's pre-textual. Would
22 the Court allow me to – would the Court allow me to respond?
23 THE COURT: Okay. By the way, we're spending an awful lot of time up here
24 with these bench conferences, okay?
25 MS. HOJJAT: Okay.

1 THE COURT: So, we're gonna keep them down to a minimum. All right. Go
2 ahead.

3 MS. HOJJAT: Okay. And if the Court's already ruled that the Court doesn't
4 want to hear me --

5 THE COURT: No --

6 MS. HOJJAT: -- the explanation --

7 THE COURT: -- I'll hear it.

8 MS. HOJJAT: -- for either --

9 THE COURT: I'll hear it.

10 MS. HOJJAT: Okay. Mr. Camuso who is in seat number one, badge number
11 027, is a similarly situated juror. Mr. Camuso specifically said he thinks it's a good
12 thing that lights being shed on these incidents which is very similar to what Mr.
13 Olsen, badge number 024, in seat number 12 said. They did not strike Mr. Camuso
14 but they struck Mr. Olsen after specifically eliciting from him -- they asked him -- he
15 said "my partner" and they said "boyfriend or girlfriend." And now two jurors, their
16 answers are almost identical in terms of what they think about, an answer to my
17 question. The individual who is openly homosexual has been struck; Mr. Camuso
18 has not been struck.

19 THE COURT: Okay. I didn't realize juror number 1 was homosexual either.

20 MS. HOJJAT: He's is not, that's the point. The response that I get to give --
21 when the States gives their neutral reason is if I can point out a similarly situated
22 juror who is not of that class, the class being homosexuals in this case who gave
23 similar responses. That is our response to the State's pre-textual reason. So, that
24 is my response.

25 THE COURT: Okay. I don't see it. But anyway, your objection is noted but

1 denied, okay?

2 MS. HOJJAT: Thank you.

3 THE COURT: Okay.

4 [Bench conference at 3:36:15 p.m. – page 208 transcribed below]

5 THE COURT: Okay. Pass for cause.

6 MS. GRAHAM: The State would.

7 MS. HOJJAT: Yes, Your Honor.

8 THE COURT: Okay. You're up.

9 MS. HOJJAT: The juror in seat number 2, Mr. Werts, badge number 004.

10 THE COURT: Got it. All right.

11 MS. HOJJAT: Thank you.

12 THE COURT: Thank you.

13 [Bench conference at 3:48:08 – page 217 transcribed below]

14 THE COURT: Okay.

15 MS. GRAHAM: The State would challenge juror 036 for cause. I can state the
16 reasons –

17 THE COURT: Well, go ahead because I'm concerned that – I think she has
18 rehabilitated her.

19 MS GRAHAM: Okay. I feel like based on the totality of what was asked, not
20 just her most recent questions, is that she wasn't rehabilitated from that. It was very
21 equivocal – or it was more than equivocal, she said she couldn't be fair. Merely
22 asking [indecipherable] is different than having a negative bias. [indecipherable] So,
23 the State [indecipherable] that she was rehabbed somewhat and that's why I think
24 she should be struck for cause.

25 THE COURT: Okay.

1 MS. HOJJAT: If the Court thinks she was rehabbed I'll submit it otherwise I do
2 have argument.

3 THE COURT: Okay. I think she's rehabbed her enough so I'm gonna deny
4 the challenge.

5 MR. HOJJAT: Okay.

6 THE COURT: Okay. And it looks like you're up.

7 MS. GRAHAM: The State's gonna waive.

8 THE COURT: Waive?

9 MS. GRAHAM: Correct.

10 THE COURT: Okay. You're up.

11 MS. HOJJAT: Oh. Court's indulgence. We weren't – juror in seat number 9,
12 Ms. Coleman, 021.

13 THE COURT: Okay. Thank you.

14 MS. HOJJAT: Thank you.

15 THE COURT: Okay.

16 [Bench conference at 3:59:48 p.m. – page 223 transcribed below]

17 THE COURT: Pass for cause.

18 MS. GRAHAM: Yes.

19 MS. HOJJAT: Yes.

20 THE COURT: Okay. You're up.

21 MS. GRAHAM: The State would move to – or the preemptory, 036.

22 THE COURT: Okay.

23 MS. GRAHAM: -- seat number 2.

24 THE COURT: Shocking. Okay. Thank you.

25 MS. GRAHAM: I mean, she could be good, who knows.

1 [Bench conference at 4:11:57 p.m. – page 232 transcribed below]
2 THE COURT: Okay. All right. Pass for cause.
3 MS. GRAHAM: Yes.
4 MS. HOJJAT: Yes, Your Honor.
5 THE COURT: Okay. You're up.
6 MS. HOJJAT: Is this our last one?
7 THE COURT: Yup.
8 MS. HOJJAT: Okay. Your Honor, the person in seat number 8, badge
9 number 026.
10 THE COURT: Curry?
11 MS. HOJJAT: Yes.
12 THE COURT: Okay.
13 MS. HOJJAT: Thank you.
14 THE COURT: Got it. Okay.
15 MS. GRAHAM: I'm sorry. On the alternate – I'm sorry; I just want to be clear.
16 Could it just be used on that alternate seat, correct?
17 THE COURT: The alternate – yeah. The only – the alternate – it can only be
18 used on the alternate seat.
19 MS. GRAHAM: Okay.
20 THE COURT: All right.
21 MS. GRAHAM: And so [indecipherable] alternate – just so that everybody is
22 on the same page. I apologize. Is that person – and so if I waive –
23 THE COURT: Then she's – then you're done.
24 MS. GRAHAM: Right.
25 THE COURT: And then --

1 MS. GRAHAM: So [indecipherable]
2 THE COURT: Then she gets a chance.
3 MS. GRAHAM: She might kick --
4 THE COURT: And then question that one.
5 MS. GRAHAM: Of course I can only strike for cause at that point --
6 THE COURT: Right.
7 MS. GRAHAM: -- because -- okay. Perfect.
8 THE COURT: When we're looking at cause.
9 MS. GRAHAM: Great. Thank you.
10 THE COURT: Okay. All right.
11 MS. HOJJAT: Thank you.
12 THE COURT: Okay.
13 [Bench conference at 4:19:40 p.m. -- page 237 transcribed below]
14 THE COURT: Pass for cause.
15 MS. GRAHAM: Yes, Your Honor.
16 MS. HOJJAT: Yes, Your Honor.
17 THE COURT: Okay. First preempt -- or only preempt on number 13.
18 MS. GRAHAM: We waive the challenge to the --
19 THE COURT: Okay.
20 MS. GRAHAM: -- alternate.
21 MS. HOJJAT: We'll waive too.
22 * * * * *
23 * * * * *
24 * * * * *
25 * * * * *

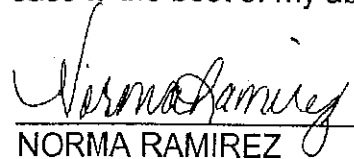
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Okay. All right. Thank you.

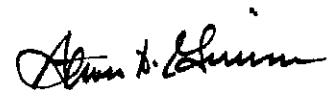
[Bench conferences concluded at 4:20:48 p.m.]

* * * * *

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



NORMA RAMIREZ
Court Recorder
District Court Dept. XXII
702 671-0572



CLERK OF THE COURT

1 TRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6
7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 JOHN DEMON MORGAN,

11 Defendant.

CASE NO. C-302450

DEPT. XXII

12
13 BEFORE THE HONORABLE SUSAN H. JOHNSON, DISTRICT COURT JUDGE
14 FEBRUARY 23, 2016

15 RECORDER'S TRANSCRIPT OF HEARING RE

16 JURY TRIAL - DAY 2
17 [BENCH CONFERENCES]
18

19 APPEARANCES:

20 For the Plaintiff:

ELANA GRAHAM, ESQ.
GENEVIEVE CRAGGS, ESQ.
Deputy District Attorneys

21
22 For the Defendant:

NADIA HOJJAT, ESQ.
ARLENE HESHMATI, ESQ.
Deputy Public Defenders

23
24
25 RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 FEBRUARY 23, 2016 AT 1:43:33 P.M.

2 [Bench conference at 1:43:33 p.m. – page 28 transcribed below]

3 MS. HOJJAT: Judge, we have no objection to the video being played but
4 narrations – step-by-step narrations. Let's just play the video for the jury, let the jury
5 draw their own conclusions about what they're seeing in the video. It's not
6 appropriate for her to tell them what they should be seeing in the video.

7 THE COURT: Overruled.

8 [Bench conference at 2:07:07 p.m. – page 46 transcribed below]

9 MS. GRAHAM: I have a problem with the way counsel is characterizing her
10 testimony which is not according to what the transcript says. So, if she's going
11 impeach I would ask if she's going to quote from the transcript that it'd be the exact
12 words of the transcript.

13 MS. HOJJAT: At this point she hasn't disagreed with anything in terms of –
14 she said: "This guy walking in and caught my attention. I kept looking and looking."
15 These are the exact words that I'm using.

16 THE COURT: Well, one thing, she – all she's saying is okay. She's not
17 exactly answering the question. You saying "and is this okay."

18 MS. HOJJAT: Okay. I can read directly read directly out of transcript --

19 THE COURT: Okay.

20 MS. HOJJAT: -- if that would make [indecipherable]

21 THE COURT: But, I mean --

22 MS. GRAHAM: I would object to reading directly out of the transcript because
23 that's improper impeachment. You can't read from a transcript.

24 MS. HOJJAT: She just objected to me paraphrasing, you said
25 [indecipherable]. So, now I'm offering to read directly and now she's objecting to

1 that. I do get to impeach. It's a prior [indecipherable]

2 THE COURT: I was gonna say. And she can impeach pretty much with a
3 ham sandwich but –

4 MS. GRAHAM: No, I understand that. But as far as reading directly from
5 what's in a transcript, if she's – she should have an opportunity to either accept it or
6 reject it. And if she's going to – my issue is if she's going to read it that then it
7 should be exactly what it is. And I understand the miscommunication so to speak.
8 So, if there's gonna be impeachment in your – her referring to the transcript I think it
9 should be exactly what's in the transcript.

10 THE COURT: Well, she can impeach her in any way she wants –

11 MS. GRAHAM: Sure. That's fine.

12 THE COURT: -- if she shows her the transcript then obviously it's gotta be
13 read. Well, I mean, she reads it verbatim and then if she's using it obviously to
14 refresh her recollection it's just, like okay, and then she can answer.

15 MS. GRAHAM: Got it.

16 THE COURT: If it is – well, anyway, I think what you're gonna have to do is –

17 MS. GRAHAM: Is redirect.

18 THE COURT: -- is you're gonna – redirect -- do it –

19 MS. GRAHAM: No problem.

20 THE COURT: -- on redirect.

21 MS. GRAHAM: Okay. Thank you.

22 THE COURT: Okay.

23 MS. HOJJAT: Thank you.

24 [Bench conference at 2:33:27 p.m. – page 65 transcribed below]

25 MS. CRAGGS: Your Honor –

1 THE COURT: Wait, wait, wait. Yes.

2 MS. CRAGGS: I'm not offering it for the truth of the matter asserted, it's
3 simply to show --

4 THE COURT: Shhh. It's just --

5 MS. CRAGGS: I apologize. It's simply to show the effect about what this man
6 told the officer and then what the officer did. It's not for the truth of what -- that this
7 man actually told him, it's just to show what direction he ended up going in.

8 MS. HOJJAT: Your Honor, but he can talk about what he did without getting
9 into what was specifically said. But based -- he [indecipherable] based on whatever
10 representations he conducted or whatever, other follow up investigations.

11 THE COURT: I could just instruct the jury that it's not being offered for the
12 truth of the matter asserted.

13 MS. CRAGGS: I'm [indecipherable]

14 MS. HOJJAT: Is he testifying? Is the person who told him that
15 [indecipherable] gonna be testifying?

16 THE COURT: I mean --

17 MS. GRAHAM: Hopefully.

18 MS. HOJJAT: [Indecipherable].

19 THE COURT: -- is it really prejudicial? I mean --

20 MS. CRAGGS: I mean, obviously if someone else makes the representations.
21 So, I think [indecipherable] to hearsay.

22 THE COURT: What I'm gonna do is I'm just gonna give an instruction that
23 what -- that I'm gonna allow the officer to say -- okay. We have some questions and
24 we'll talk about them in a minute. But, well, I'll just tell the jury that what -- that it's
25 not being offered for the truth of the matter asserted but merely to show why the

1 officer did what he did, okay? All right. Now, why don't – before we get into that.
2 We probably – okay. Was there a record of the transaction in the point of sale
3 terminal? If so, what was rung up by Ruby Cruz in terms of items? I don't know if
4 the – you got a witness to testify about any of this now.

5 MS. GRAHAM: Well, mine is no longer here, so I don't know if she – Maria
6 would know that.

7 THE COURT: Okay.

8 MS. HOJJAT: Yeah, Maria said she didn't know any of that. She already
9 testified to that.

10 THE COURT: Well, I understand but are you gonna have another witness
11 testify?

12 MS. GRAHAM: Probably not about that.

13 THE COURT: Okay. Well, all right. The next one is: "Does AM/PM have an
14 inventory system? "If yes, did they reconcile inventory to see if the store was short
15 on the items in question?" "Do you have any witness?" Okay. That's too bad they
16 didn't ask these before. Okay. "Couldn't tell if injury on pictures were right on – right
17 or left elbow, indicated right on stand." "Was not determined what Maria would do if
18 items were not put back, what she believed they were stealing." These are
19 questions really for her. Okay. So – okay, the next one is: "Does the quantity of
20 items stolen change the description of the crime?" "What constitutes a robbery?"
21 So, I –

22 MS. GRAHAM: That's a question of law.

23 THE COURT: Huh?

24 MS. GRAHAM: That's a question of law.

25 MS. HOJJAT: Yeah.

1 THE COURT: Right. Right. We'll mark those Court's exhibits 1 through 4 I
2 think. But I don't think any of them can be asked.
3 MS. GRAHAM: Right.
4 MS. HOJJAT: I would agree.
5 MS. GRAHAM: So, what are you gonna tell the jury [indecipherable].
6 THE COURT: Well, right now I'm not gonna tell them anything.
7 MS. GRAHAM: Great. Thank you.
8 THE COURT: Okay.
9 MS. GRAHAM: Okay.
10 THE COURT: Okay.
11 MS. HOJJAT: Thank you.
12 [Bench conference at 2:49:59 p.m. -- page 77 transcribed below]
13 MS. GRAHAM: The State's pretty confident there's -- we only have two more
14 witnesses but I don't know who's here so if we could take a bathroom break.
15 THE COURT: Yeah, I was gonna take one --
16 MS. GRAHAM: Great.
17 THE COURT: -- at 3:00 anyway.
18 MS. HOJJAT: Okay.
19 THE COURT: Okay. All right.
20 [Bench conference at 3:19:02 p.m. -- page 85 transcribed below]
21 THE COURT: Okay. The question is: "How -- why evolve from petty larceny
22 to robbery?" "What defines -- constitutes petty larceny and robbery?" I could just
23 tell the jury, now just to alleviate that, that I'm gonna be instructing. That it's --
24 they're asking a legal question --
25 MS. GRAHAM: Sure.

1 THE COURT: -- and I will be instructing them on that --

2 MS. GRAHAM: Sure.

3 THE COURT: -- okay?

4 MS. HOJJAT: Sure.

5 THE COURT: Okay.

6 MS. GRAHAM: Oh. And, Your Honor -- sorry. I wanted to -- I neglected to
7 bring this up. I don't know whether counsel is planning on asking any other
8 questions of the officers regarding submitting charges and that specific charges
9 were submitted. And so without forcing them to tell me we are going to go there I
10 was going to object as to relevance because I think that opens the door to
11 prosecuting decisions within our office which is not gonna be relevant to this case.

12 MS. HOJJAT: And, Judge, our theory of the case is overcharging and it's
13 always been overcharging that's why we wanted [indecipherable]. I think that the
14 decision that an [indecipherable] officer on the ground made is absolutely relevant to
15 what was done.

16 THE COURT: I don't see it's relevant. I don't see that that's relevant. He's
17 being prosecuted for these crimes. So, I just don't see the relevance.

18 MS. HOJJAT: And, Judge, the officers are the ones who were at the scene,
19 the officers are the ones who interviewed everybody at the time of the incident. The
20 witness information [indecipherable] from the witness is now -- I mean, it would be --
21 they are --

22 THE COURT: Well --

23 MS. HOJJAT: -- the people with a ton of experience on the --

24 THE COURT: -- but --

25 MS. HOJJAT: -- ground --

1 THE COURT: -- they're not lawyers.

2 MS. HOJJAT: -- they were the ones who were there.

3 THE COURT: They're not lawyers.

4 MS. HOJJAT: So, the Court is prohibiting me from asking them?

5 THE COURT: Right.

6 MS. HOJJAT: Okay.

7 THE COURT: Okay. Okay.

8 MS. GRAHAM: Thank you.

9 [Bench conference at 3:28:11 p.m. -- page 88 transcribed below]

10 MS. HESHMATI: Okay. My objection -- and I think I had time just because I
11 know Spanish so I know what he's gonna say. So, my objection was going to be to
12 his characterization as to what he saw as a fight. And so I don't know if you want to
13 be wait from him to say it. Obviously I want to be proactive because, you know, I do
14 believe it's a fair objection but I don't know in terms of -- obviously with the
15 interpreter it may be a little bit harder to make objections in a time that I would
16 normally make them.

17 MS. GRAHAM: I don't think --

18 MS. HESHMATI: And essentially he -- he -- when he's -- he's like -- he's
19 indicated that he -- as he entered the store he observed a fight between -- and now
20 [indecipherable]. So, my objection as to his characterization of [indecipherable]. I
21 mean, it's prejudicial to have that characterization and make that assessment
22 basically a conclusion.

23 THE COURT: Okay. I'm gonna overrule. You can question him about that
24 and ask him exactly what he saw, okay? All right.

25 [Bench conference at 3:36:29 p.m. -- page 92 transcribed below]

1 MS. HOJJAT: Your Honor, he just testified that he called 9-1-1. We never
2 received a 9-1-1 call for that witness.

3 THE COURT: Well, you should have crossed him on that.

4 MS. HOJJAT: I think that's a discovery issue for the State not necessarily for
5 him. I think that's a --

6 MS. GRAHAM: I don't have --

7 MS. HOJJAT: -- it's a Brady issue.

8 MS. GRAHAM: -- his 9-1-1 call. I don't have that. They could have
9 subpoenaed the 9-1-1 call as well.

10 MS. HOJJAT: We requested it and we were granted it in our discovery motion
11 in front of Judge Herndon. We specifically requested all three 9-1-1 calls, 9-1-1 calls
12 and catalogs and they were granted. They were ordered that they had to turn
13 everything over to us which means they have to subpoena everything and turn them
14 over to us and they did not do that.

15 THE COURT: It's --

16 MS. HOJJAT: It sounds like from him -- his testimony.

17 MS. GRAHAM: I subpoenaed all records, 3-1-1, 9-1-1 and dispatch for this
18 event. I did not receive a 9-1-1 call for this man. And I think it could have been
19 clarified. I don't -- I don't believe he called 9-1-1, I believe he called --

20 MS. HOJJAT: [indecipherable]

21 THE COURT: Wait, wait, wait, wait.

22 MS. GRAHAM: If I can finish.

23 THE COURT: One at a time.

24 MS. GRAHAM: I believe when -- I believe when he said he called the police I
25 don't know that that's to get them to calm down and (1) more just probably having

1 contact with the police. I didn't want to go into that further because of the resisting
2 arrest. That certainly could have been inquired into on cross examination. I don't
3 believe he called the police and I don't have that 9-1-1 call. In my subpoena for all
4 records under this event number for 9-1-1 calls I received negative results for that
5 man calling 9-1-1.

6 THE COURT: Okay. Anything else?

7 MS. HOJJAT: At this point we're moving for a mistrial and I'll submit on that.

8 MS. GRAHAM: The only thing about moving for a mistrial is there's been no
9 prejudice demonstrated about whether a 9-1-1 call exists or whether that'd be
10 prejudicial and that they're at a disadvantage from not having it. That's the --

11 THE COURT: Okay.

12 MS. GRAHAM: -- argument that I would make.

13 THE COURT: Well, with respect to your motion for a mistrial is denied --

14 MS HOJJAT: Okay.

15 THE COURT: -- okay?

16 MS. HOJJAT: Thank you.

17 THE COURT: All right. Thank you.

18 [Bench conference at 3:41:48 p.m. -- page 94 transcribed below]

19 THE COURT: Okay. "How did the officer communicate with Mario G?" Did
20 Mario come to identify Defendant as a show up?" "Is there any record of what was
21 spilled and what was picked by Mario G. on surveillance video?"

22 MS. GRAHAM: That's sounds like -- was that a question for Mario? It seems
23 like they're giving questions right after they're excused.

24 THE COURT: I know. Okay. I don't know that this is something that you
25 could ask this guy.

1 MS. GRAHAM: Sure. I'll try to -- that'll be fine.

2 THE COURT: I don't know that I have -- this -- "Is there any record for what
3 was found, what was picked by surveillance video?" I don't know that this witness
4 can answer that.

5 MS. GRAHAM: I don't believe so.

6 THE COURT: Buy he can answer --

7 MS. GRAHAM: I'll try to get to those two.

8 THE COURT: Okay. I don't have a problem with those two.

9 MS. HOJJAT: Only if there's foundation -- only if he's the witness who actually
10 did the show up.

11 MS. GRAHAM: Or if --

12 THE COURT: Sure.

13 MS. GRAHAM: -- he knows.

14 MS. HOJJAT: Yeah. Yeah.

15 THE COURT: Yeah. If he can't --

16 MS. HOJJAT: Yeah.

17 THE COURT: Okay. If they -- they can't lay the foundation for it I get it, okay,
18 but if he's there.

19 MS. HOJJAT: Okay.

20 THE COURT: Okay. The next question: "Why was Ruby Cruz not called as a
21 witness?" I -- obviously we can't answer that.

22 MS. GRAHAM: We'll probably be addressing that.

23 THE COURT: Okay. Well, anyway. Those are the two. You'll get copies.

24 MS. HOJJAT: Okay.

25 THE COURT: Okay. Do you want this after we mark it so you can ask it

1 exactly? If –

2 MS. GRAHAM: I think I can remember how Mario communicated to the
3 officer [indecipherable], whether there was a show up connected with Mario. I think
4 I can remember that.

5 THE COURT: Okay. Well, if not I was gonna say you can come up and get it.

6 MS. GRAHAM: Okay. Thanks.

7 THE COURT: Okay.

8 [Bench conference at 3:55:28 p.m. – page 105 transcribed below]

9 MS. GRAHAM: So, the State's probably last witness, we're having some
10 scheduling issues with that person. I don't know if they're outside or not. So,
11 without wasting much more of the jury's – much of the jury's time I'd ask that we
12 recess today.

13 THE COURT: Do you want to see if they're out there?

14 MS. GRAHAM: Yeah. I think --

15 THE COURT: Well, I was gonna say, ask Officer Black if they're out there.

16 MS. GRAHAM: I can go out there.

17 THE COURT: Okay. Why –

18 MS. GRAHAM: There's actually –

19 THE COURT: -- don't you go check.

20 MS. GRAHAM: -- there's actually two. One that I know is not here today but
21 is under subpoena. Then -- I'll go check.

22 THE COURT: Yeah, why don't you go check –

23 MS. GRAHAM: Okay.

24 THE COURT: -- because I'd like to get as much done as we can.

25 MS. GRAHAM: Of course.

1 THE COURT: Okay.

2 MS. GRAHAM: Nobody is out there.

3 THE COURT: Okay. When were they scheduled? Were they –

4 MR. GRAHAM: Today.

5 THE COURT: And they just didn't show up or what?

6 MS. GRAHAM: Well, they made contact with our office earlier, said they were

7 gonna be here. So, if anything I'd to reach out.

8 THE COURT: Okay. Why don't we make a call or something? I could have

9 the jury take a break.

10 MS. GRAHAM: Okay. Yeah, I will try that --

11 THE COURT: Okay.

12 MS. GRAHAM: -- first.

13 THE COURT: All right. So, I should tell the jury we have one more witness

14 today and then --

15 MS. GRAHAM: Well, I don't -- what I don't want -- if say I get a hold of this

16 person and they can be here tomorrow instead of today there's a chance, I guess,

17 that they don't come today.

18 THE COURT: Okay. Well, I could say that I need to have a chat with you

19 guys for a few minutes and we --

20 MS. GRAHAM: That'll be great.

21 THE COURT: -- could at least take -- discuss what the Defendant's gonna do

22 in terms of testifying.

23 MS HOJJAT: Right. That'll be great.

24 MS. GRAHAM: That'll be great. We can canvass him or whatever.

25 THE COURT: Yeah.

1 MS. HOJJAT: Who are these witnesses that we're waiting on at this point?
2 MS. GRAHAM: Ruby --
3 MS. HOJJAT: Okay.
4 MS. GRAHAM: -- Cruz. An investigator probably, depending on if Ruby
5 comes or not, from our office.
6 MS. HOJJAT: Okay. So, those are the two witnesses at this point that we're
7 waiting on.
8 MS. GRAHAM: Depending on if Ruby comes. Possibly another officer who
9 made contact with Ruby who is on everybody's notice.
10 MS. HOJJAT: And which officer is that?
11 MS. GRAHAM: Either Moody [phonetic] or Rivera.
12 THE COURT: Okay.
13 MS. HOJJAT: Okay. I do think it may be a little bit premature to canvass the
14 Defendant on his right not to testify. They need to -- the State should close their
15 evidence first I think before we talk to him.
16 THE COURT: We don't -- we can do it at any time.
17 MS. HOJJAT: Okay.
18 THE COURT: Can't we?
19 MS. GRAHAM: Yes.
20 THE COURT: I don't see any --
21 MS. GRAHAM: It's done --
22 THE COURT: -- reason [indecipherable].
23 MS. GRAHAM: That's my chief --
24 THE COURT: Okay. I was gonna say.
25 MS. GRAHAM: So, yeah, if we could just break to discuss some issues.

1 THE COURT: Okay. All right.

2 MS. GRAHAM: Thank you.

3 [Bench conference at 4:26:16 p.m. -- page 127 transcribed below]

4 MS. HOJJAT: I think her question was about Maria Verduzco originally. I
5 think you asked if he served Maria Verduzco and then you asked about Ruby Cruz.

6 MS. GRAHAM: Okay.

7 MS. HOJJAT: So, you --

8 MS. GRAHAM: What's your objection?

9 MS. HOJJAT: -- you said: "Did you serve Maria Verduzco?" He said: "Yes."
10 And then you said: "How did you" -- like, you switched the names.

11 MS. GRAHAM: Okay.

12 MS. HOJJAT: I just -- there wasn't consistency with the two names. I think
13 you switched them.

14 MS. GRAHAM: I don't think I did that but I'll clarify with him --

15 MS. HOJJAT: Okay.

16 MS. GRAHAM: -- for you.

17 MS. HOJJAT: Perfect.

18 THE COURT: Okay.

19 MS. HOJJAT: Thank you.

20 THE COURT: All right. Thank you.

21 [Bench conference at 4:30:41 p.m. -- page 131 transcribed below]

22 MS. HOJJAT: Judge, they've opened the door. They've never gave us --

23 MS. GRAHAM: If I can state my basis for the objection --

24 THE COURT: Okay.

25 MS. GRAHAM: -- which is if counsel really wants to get into discovery we

1 need to have a – it's not relevant for a trier of fact, it's not a legal question. What we
2 should do is have an opportunity for counsel here to cross examine this witness
3 outside the presence of the jury on this issue. So, I would ask that the questions for
4 now to be based on relevant facts for trial, and if counsel has questions about
5 providing addresses to the Defense attorney per the notice of witnesses we could do
6 that outside the presence.

7 MS. HOJJAT: And, Your Honor, if I may. The door has been open to this; it's
8 one of those what's good for the goose is good for the gander. If they get to put on
9 the record about why they didn't obtain her presence here I get to put on the record
10 why I didn't obtain her presence here, i.e., they had an address they never gave me.
11 And I've got the notice right here, they put –

12 THE COURT: So, what does that have to do with them notifying the witness?

13 MS. HOJJAT: The point is –

14 THE COURT: I mean, that gets into the issue of whether or not they didn't
15 give you the information.

16 MS. HOJJAT: I think it's completely relevant to explain why I wasn't able to
17 call – if they get to put on the record why they're not calling Ruby Cruz as a witness
18 –

19 THE COURT: Okay.

20 MS. HOJJAT: -- I think I get to put on the record why I'm not –

21 MS. GRAHAM: [indecipherable]

22 THE COURT: Can I ask you something?

23 MS. HOJJAT: Yes.

24 THE COURT: Were you planning on calling them?

25 MS. HOJJAT: Ruby Cruz as a witness?

1 THE COURT: Yes. Yeah.

2 MS. HOJJAT: I have never had an address to get a hold of her to pretrial her.

3 THE COURT: My question was were you planning to call her.

4 MS. HOJJAT: Your Honor, again, I've never had an address to pretrial her so

5 I can't answer that question because --

6 THE COURT: Okay. So, you weren't planning on calling her, right?

7 MS. HOJJAT: Your Honor --

8 THE COURT: Did you -- did you ask the prosecution, hey, I don't have an

9 address for Ruby Cruz, could you provide me that address --

10 MS. HOJJAT: I don't --

11 THE COURT: -- because I'd like to call her?

12 MS. HOJJAT: Judge, I don't have that burden, they have the burden of

13 providing us the addresses of all the witnesses they wish to call. They didn't provide

14 us this address. They're now being allowed to put on the record why they're not

15 calling her as a witness. I think it's only fair if they get to put on the record that they

16 couldn't procure her attendance I should also be able to put on the record that I

17 couldn't procure her attendance. How is it fair that they get to say --

18 MS. GRAHAM: That would --

19 MS. HOJJAT: -- we --

20 MS. GRAHAM: -- be through --

21 MS. HOJJAT: -- couldn't find her?

22 MS. GRAHAM: -- an investigator. Her investigator would come to us to find

23 out all the efforts that investigator Andrew took and why --

24 MS. HOJJAT: Well, I think --

25 MS. GRAHAM: -- that witness wouldn't be able to testify. I'm just simply

1 asking for – whether or not I provided an address at trial does not go to an issue of
2 fact with this jury, that goes to whether or not I've complied with the discovery
3 obligations which is not proper to do in front of a jury.

4 MS. HOJJAT: It goes to the issue of fact that if the State gets to put on why
5 they're not calling Ruby Cruz the Defense gets to put on that we didn't have access
6 to Ruby Cruz. It's to show that if they're trying to imply she's a good witness for
7 them it's only fair that we show that we didn't have a way of getting a hold of her to
8 pretrial her to know whether she's good witness for us or not.

9 MS. GRAHAM: That would be through –

10 THE COURT: Well, again, that would be through your witness though
11 wouldn't it?

12 MS. HOJJAT: They're the ones who had her contact information and didn't
13 provide it to us. [Indecipherable] going into. I'm not gonna go further than that.
14 They had her contact information; they didn't provide it to us. He never called me;
15 he never gave it to me and I'll leave it at that. [Indecipherable].

16 MS. GRAHAM: That's wholly improper to do it in front of this jury. It's a
17 discovery issue.

18 THE COURT: I have to agree. I don't think it's proper. So, your request is
19 denied and your objection is sustained.

20 MS. HOJJAT: All right.

21 * * * * *

22 * * * * *

23 * * * * *

24 * * * * *

25 * * * * *

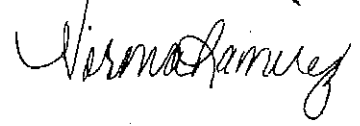
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Okay. Ask your next question, counsel.

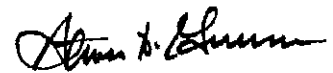
[Proceedings concluded]

* * * * *

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



NORMA RAMIREZ
Court Recorder
District Court Dept. XXII
702 671-0572



CLERK OF THE COURT

1 TRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6
7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 JOHN DEMON MORGAN,

11 Defendant.

CASE NO. C-302450

DEPT. XXII

12
13 BEFORE THE HONORABLE SUSAN H. JOHNSON, DISTRICT COURT JUDGE
14 FEBRUARY 24, 2016

15 RECORDER'S TRANSCRIPT OF HEARING RE

16 JURY TRIAL – DAY 3
17 [BENCH CONFERENCES]

18 APPEARANCES:

19 For the Plaintiff:

20 ELANA GRAHAM, ESQ.
21 GENEVIEVE CRAGGS, ESQ.
Deputy District Attorneys

22 For the Defendant:

23 NADIA HOJJAT, ESQ.
24 ARLENE HESHMATI, ESQ.
Deputy Public Defenders

25 RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 FEBRUARY 24, 2016 AT 10:26:36 A.M.

2 [Bench conference at 10:26:36 a.m. – page 24 transcribed below]

3 THE COURT: There should be one more that says: "Now you will listen to
4 the" – you know, "the closing arguments of counsel."

5 MS. HOJJAT: Is mine up there, Your Honor?

6 THE COURT: Oh. Great. Never mind.

7 MS. HOJJAT: And while we're up here, Your Honor.

8 THE COURT: Okay.

9 MS. HOJJAT: While we're up here there was – I was gonna ask for the
10 reasonable doubt instruction to be read again because the Court said: "The
11 Defendant is presumed innocent until the contrary is proved." The instruction that
12 was submitted as unless the contrary is proved. One is inevitability, one is a –
13 there's a condition precedent --

14 THE COURT: Did I misread?

15 MS. GRAHAM: I don't think --

16 MS. HOJJAT: You said "until."

17 MS. GRAHAM: I didn't hear you misread it, but either way is appropriate to
18 give. I acquiesced --

19 THE COURT: Which one --

20 MS. GRAHAM: -- their request.

21 THE COURT: -- which instruction?

22 MS. HOJJAT: The reasonable doubt instruction.

23 MS. GRAHAM: What number do you know?

24 MS. HOJJAT: I don't have the numbers on this one.

25 MS. GRAHAM: Let me check.

1 THE COURT: Well, you've gotta have the number.

2 MS. HOJJAT: I want to say it was five maybe. Like maybe number five.

3 MS. GRAHAM: Your Honor, I would just if it could be argued. Five.

4 MS. HOJJAT: Well, I just want it to be clear that that Defendant is presumed
5 innocent unless the contrary is proved, not until the contrary.

6 THE COURT: Well, I need a number.

7 MS. GRAHAM: Five.

8 MS. HOJJAT: Five.

9 THE COURT: It is five? Well, I don't think I misread it but I'll be happy to read
10 it again.

11 MS. HOJJAT: Thank you. I appreciate it.

12 THE COURT: Okay. All right.

13 MS. HOJJAT: We have notes?

14 THE COURT: Are we allowed to see the actual police report? Beyond the
15 videotape, what evidence does the State have in its possession that relates to what
16 was stolen from the AM/PM market? Where are the nuts and soup that was
17 allegedly stolen? Can we see the paper that was on the ground with his name on it?
18 If not, can we be told why?

19 MR. GRAHAM: There was a -- well, I don't know if we want to say it was
20 stipulated that his name was on it. Since --

21 MS. HOJJAT: I'm just --

22 MS. GRAHAM: -- it was a stipulation.

23 MS. HOJJAT: -- [indecipherable]

24 MS. GRAHAM: [indecipherable]. I think for that -- I don't know if you would
25 agree that the stipulation is that the Defendant's name was on it, but, you know,

1 what other information can you give them.
2 MS. HOJJAT: Yeah. That' fine. I'll stipulate to that.
3 THE COURT: You want to enter that stipulation now?
4 MS. GRAHAM: Yes.
5 THE COURT: Why don't you go ahead and do that.
6 MS. GRAHAM: Okay.
7 THE COURT: Okay. And you should do that now.
8 MS. HOJJAT: Do you want me to do it? Just the parties have stipulated that if
9 --
10 MS. GRAHAM: I can do it.
11 THE COURT: -- he's --
12 THE COURT: I'm gonna read these two instructions and then you can enter --
13 MS. GRAHAM: Yes --
14 THE COURT: -- your --
15 MS. GRAHAM: -- Your Honor --
16 THE COURT: -- stipulation.
17 MS. GRAHAM: -- I can do that per the stipulation --
18 THE COURT: Is that --
19 MS. GRAHAM: -- per the piece of paper.
20 THE COURT: -- would that be okay?
21 MS. HOJJAT: That would be good.
22 THE COURT: All right.
23 MS. HOJJAT: Thank you, Your Honor.
24 THE COURT: Perfect.
25 MS. GRAHAM: I'm sorry; can I just see those other two notes?

1 THE COURT: Sure.

2 MS. GRAHAM: Thanks.

3 MS. HOJJAT: Are we gonna get copies of those?

4 THE COURT: Well, you're gonna get copies of all of them. You should have
5 gotten copies from the other ones, did you not?

6 MS. HOJJAT: We got the copies of the first set but not the second set that
7 were asked.

8 THE COURT: Okay.

9 MS. HOJJAT: Yeah.

10 THE COURT: No problem.

11 MS. HOJJAT: Thank you.

12 THE COURT: Okay.

13 MS. GRAHAM: I just – okay. Never mind. Thank you.

14 THE COURT: Okay.

15 [Bench conference at 10:31:43 a.m. – page 24 transcribed below]

16 MS. HOJJAT: This is why I asked to get the stipulation. I don't think it's
17 appropriate to tell them we can't tell you anything else. We should have just said we
18 stipulated to his name is on the piece of paper and that's it. That's completely
19 inappropriate to say we're keeping the rest out and away from you. The stipulation
20 was his name is on the document. End of story.

21 MS. GRAHAM: I actually –

22 MS. HOJJAT: And what was the point of that end part other than making them
23 feel like we're hiding evidence from them.

24 MS. GRAHAM: That's exactly what I said up here I was going to say.

25 MS. HOJJAT: No. I –

1 MS. GRAHAM: No, I said that end part. I said that we cannot locate any other
2 information. I said that up here.

3 MS. HOJJAT: You said that to the Judge, you didn't say you were gonna say
4 that to the jury --

5 THE COURT: Well you said that that was what the stipulation was and you
6 said yes.

7 MS. HOJJAT: The stipulation is the piece of paper, his name on it. That's
8 what --

9 THE COURT: Okay. Well --

10 MS. HOJJAT: -- I'm stipulating to not that they can't

11 THE COURT: -- we're going to have to review that fact. But the stipulation
12 was exactly as Ms. Graham said --

13 MS. HOJJAT: Okay.

14 THE COURT: -- and you said okay.

15 MS. HOJJAT: Okay. At this point I'm just gonna say okay to the jury because
16 I don't want to draw any more attention to it. But I think it was completely
17 inappropriate drawing attention to the fact that we're keeping that evidence out.

18 MS. GRAHAM: We are keeping that evidence out.

19 THE COURT: Do you want me to say something to the jury?

20 MS. HOJJAT: No. At this point --

21 THE COURT: No instruction.

22 MS. HOJJAT: At this point I'm just gonna say yes and we're -- I'd ask that we
23 move on and not draw any more attention to it.

24 MR. GRAHAM: Whatever.

25 MS. HOJJAT: Okay.

1 THE COURT: Okay.

2 MS. HOJJAT: Thank you.

3 [Bench conference at 10:41:35 a.m. – page 29 transcribed below]

4 MS. HOJJAT: Your Honor, commentary on statements but failing to state its
5 burden shifting, it's completely improper.

6 MS. GRAHAM: [Indecipherable]

7 MS. HOJJAT: The Defendant has no burden at any point in the case to prove
8 his innocence or establish his innocence. I'm objecting to misconduct. They should
9 not be commenting on whether the Defendant did or didn't say to prove his
10 innocence at any point in this case.

11 MS. GRAHAM: Your Honor, she's commenting on the evidence that was
12 produced regarding the conversation between Maria and the Defendant at the store.
13 It's absolutely –

14 THE COURT: That's what –

15 MS. GRAHAM: -- fair game.

16 THE COURT: -- I'm hearing. Overruled.

17 [Bench conference at 10:48:45 a.m. – page 32 transcribed below]

18 MS. HOJJAT: Judge, I'm objecting –

19 THE COURT: Okay, okay. Wait until – until counsel get up.

20 MS. HOJJAT: I'm objecting (1) it's improper for the State to be instructing the
21 jury on the value of the law around the idea of legislative intent or whatever it is
22 they're going with. It's improper for them to be talking about that. Secondly, it's
23 improper – they're basically implying now that if the jury doesn't convict John
24 Morgan they're not protecting Maria Verduzco, that they need to protect Maria
25 Verduzco. It's improper lines of argument and I'm objecting.

1 MS. CRAGGS: Your Honor, may I respond?

2 THE COURT: Sure.

3 MS. CRAGGS: The value that I – the value instruction that I was discussing is
4 taken directly from the instruction that was given, from the robbery instruction that
5 was given. I was simply telling them that – that we don't need to prove value which
6 is what the instruction says.

7 THE COURT: Okay. But you are going a little over the top when she needs
8 protection just like –

9 MS. CRAGGS: Okay.

10 THE COURT: -- okay.

11 MS. CRAGGS: I understand.

12 THE COURT: So, I'm gonna sustain it for that reason.

13 MS. CRAGGS: Okay. Thank you, Your Honor.

14 THE COURT: Okay.

15 MS. CRAGGS: I appreciate that.

16 THE COURT: All right.

17 [Bench conference at 10:53:30 a.m. – page 34 transcribed below]

18 THE COURT: Was that statement in paper [indecipherable].

19 MS. HOJJAT: I cross examined her on it.

20 MS. GRAHAM: She never once said –

21 MS. HOJJAT: She agreed.

22 MS. GRAHAM: May I? She never once said that there was this suspicious
23 man who came to the store.

24 THE COURT: I was gonna say she didn't say –

25 MS. HOJJAT: Your Honor –

1 THE COURT: Well, wait, wait.
2 MS. HOJJAT: I'm sorry.
3 THE COURT: No, she didn't say it. She didn't say it. The question I have is it
4 in her like, written statement or something like that?
5 MS. HOJJAT: Yes.
6 MS. GRAHAM: No.
7 THE COURT: Okay. Let me see.
8 MS. HOJJAT: Your Honor –
9 THE COURT: Let me see. Where is the evidence of that? I just want to see
10 it.
11 MS. HOJJAT: Okay. It's in the police report. I can bring the police report if
12 the Court –
13 THE COURT: No, no, no, no, no. no, no. No. Is it in evidence?
14 MS. HOJJAT: Your Honor, I crossed her on it. I specifically asked her.
15 THE COURT: She did not say that a suspicious man – in fact, she –
16 MS. HOJJAT: If –
17 THE COURT: No, she didn't.
18 MS. HOJJAT: If I may make a record.
19 THE COURT: Go ahead. Hurry.
20 MS. HOJJAT: I think the instruction to the jury should be that they should use
21 their own recollection of what the evidence was because I know I asked her that –
22 THE COURT: No.
23 MS. HOJJAT: -- question.
24 THE COURT: No. Take that down. Take it down.
25 MS. HOJJAT: Okay.

1 THE COURT: Okay. Sustained.

2 MS. HOJJAT: I'm getting [indecipherable].

3 [Bench conference at 11:14:43 a.m. - page 42 transcribed below]

4 MS. GRAHAM: Now that I know for a fact was never testified to because

5 Maria is not the manager at AM/PM.

6 MS. HOJJAT: They --

7 THE COURT: She isn't.

8 MS. HOJJAT: -- they laid a huge amount of foundation, I objected at one point

9 to the fact that she's the manager because they went through the whole thing at how

10 she worked her way up to -- that was --

11 MS. GRAHAM: She is not the manager, she doesn't even work there. That

12 evidence was not produced at trial that she's still the manager. She doesn't even

13 work there. So, that was not produced at trial --

14 THE COURT: So, what you're objecting to --

15 MS. GRAHAM: My objection is --

16 THE COURT: -- is she --

17 MS. GRAHAM: -- facts not --

18 THE COURT: -- is --

19 MS. GRAHAM: -- in evidence.

20 THE COURT: -- that she is -- she is not a manager.

21 MS. GRAHAM: Correct. Today.

22 MS. HOJJAT: My --

23 MS. GRAHAM: She's --

24 MS. HOJJAT: Sorry. Go ahead.

25 MS. GRAHAM: Because the reason I'm making the argument is she's going

1 to – she's her superior, she could get her here. There's no evidence of that at all.

2 MS. HOJJAT: No, I'm not –

3 MS. GRAHAM: There's –

4 MS. HOJJAT: -- going to say that.

5 MS. GRAHAM: There was – well, my objection is there's no evidence that
6 Maria is still the supervisor and that's the statement counsel made. So, that's facts
7 not in evidence.

8 THE COURT: Okay.

9 MS. GRAHAM: The reason – the reason I know it's not in evidence is
10 because she doesn't work there anymore.

11 THE COURT: Okay. She was a manager though, right?

12 MS. GRAHAM: She was. Back in 2015 –

13 THE COURT: Okay.

14 MS. GRAHAM: -- October 30th. That was the evidence that was –

15 THE COURT: Okay.

16 MS. GRAHAM: -- admitted.

17 THE COURT: I would rather have it corrected by you correcting yourself. Is
18 that –

19 MS. GRAHAM: That's fine.

20 THE COURT: -- okay? Okay.

21 MS. GRAHAM: If she's clear in that note. She never testified she's still the
22 manager.

23 MS. HOJJAT: I am not – I will – I promise I'm not going to go into Ruby –
24 Maria Verduzco could have gotten her here.

25 THE COURT: Okay.

1 MS. HOJJAT: I will just correct myself and I'll say –
2 THE COURT: Okay.
3 MS. HOJJAT: -- you know, we heard Maria Verduzco was Ruby Cruz's
4 manager and I'll leave it at that.
5 THE COURT: Was. And –
6 MS. HOJJAT: Yeah.
7 THE COURT: -- she – but I think we need to make sure it's clear she is not
8 now a manager.
9 MS. HOJJAT: The problem is that's not my recollection of the testimony,
10 Judge. That's just not my recollection of the testimony. And I think again it's one of
11 those things the jury should be instructed to use their own recollection of what the
12 testimony was.
13 THE COURT: Okay. Well, we can't – there's no evidence she is the manager
14 now.
15 MS. HOJJAT: Okay.
16 THE COURT: Okay.
17 MS. HOJJAT: I will not --
18 THE COURT: Now, I would rather you correct it as opposed it coming from the
19 Court, okay?
20 MS. HOJJAT: What would the Court like me to say at this point?
21 THE COURT: Just say that – I'll sustain the objection and just tell them that I
22 misspoke, she is not currently the manager but she was the manager.
23 MS. HOJJAT: And, Your Honor, that's just not what the testimony was.
24 MS. GRAHAM: Yes, it was.
25 MS. HOJJAT: She never said I'm not –

1 THE COURT: Okay. Then I'm gonna go ahead and tell them, okay?

2 MS. HOJJAT: Your Honor, I am happy to say I'm sorry, I misspoke. Maria

3 Verduzco was the manager of the AM/PM. I'm happy to --

4 THE COURT: She is --

5 MS. HOJJAT: -- that.

6 THE COURT: -- not -- there is no evidence that she is the manager now.

7 MS. HOJJAT: The Court is injecting evidence into this --

8 MS. GRAHAM: [indecipherable]

9 THE COURT: There is --

10 MS. HOJJAT: -- trial that did not --

11 THE COURT: -- you did it. Now, I'm gonna allow you to correct it. Now you

12 can correct it or I can correct it for you. You pick.

13 MS. HOJJAT: Okay. I will. The Court would like me to say what?

14 THE COURT: Okay. I'm gonna sustain the objection and you're gonna go

15 ahead and say, ladies and gentlemen, I misspoke; there is no evidence she is

16 currently the manager but she was the manager at the time. And that's fine.

17 MS. HOJJAT: Okay.

18 THE COURT: Okay.

19 MS. HOJJAT: I'll say it that way. Thank you.

20 THE COURT: Okay.

21 MS. HOJJAT: Was there a jury question?

22 THE COURT: All right. Oh, Elana.

23 MS. GRAHAM: Yes.

24 THE COURT: Okay. Is there a list of items that were in the bag?

25 MS. GRAHAM: There were [indecipherable]. There was a lot of jail

1 paperwork in the bag. Paperwork from the jail.

2 THE COURT: No. Is there a list of items –

3 MS. GRAHAM: No.

4 THE COURT: -- that were in the bag?

5 MS. GRAHAM: And the reasons there was a list -- [indecipherable] paperwork
6 including resumes –

7 THE COURT: But –

8 MS. GRAHAM: -- and jail paperwok.

9 THE COURT: -- it's not [indecipherable].

10 MS. GRAHAM: No.

11 MS. HOJJAT: It's not.

12 MS. GRAHAM: It's not.

13 THE COURT: Okay. How do you want me to handle that?

14 MS. HOJJAT: Just ignore the question.

15 MS. GRAHAM: Yeah.

16 THE COURT: Okay.

17 MS. GRAHAM: Thank you.

18 THE COURT: [indecipherable] All right.

19 [Bench conference at 11:25:49 a.m. – page 44 transcribed below]

20 MS. GRAHAM: It's to the second bullet point in the jury instruction – or in
21 parenthesis. [indecipherable] is entitled to the benefit of the doubt. That's a
22 misstatement of that jury instruction.

23 MS. HOJJAT: I'm gonna [indecipherable].

24 MS. GRAHAM: That –

25 THE COURT: Okay. Take it down though.

1 MS. HOJJAT: Okay.

2 MS. GRAHAM: And that's my request.

3 MS. HOJJAT: Okay.

4 THE COURT: Okay.

5 MS. GRAHAM: Thank you.

6 THE COURT: And you can show the instruction on the Elmo --

7 MS. HOJJAT: Right.

8 THE COURT: -- I have no problem with --

9 MS. HOJJAT: Okay.

10 THE COURT: -- you doing that.

11 MS. HOJJAT: That's perfect. That's exactly what I'm gonna do.

12 THE COURT: Okay. All right.

13 MS. HOJJAT: Thank you.

14 MS. GRAHAM: Thank you.

15 [Bench conference at 11:55:58 a.m. -- page 51 transcribed below]

16 MS. HOJJAT: Officer Law didn't testify to any of the things counsel is saying.

17 Now, he didn't say that he never went to the scene, he didn't say that he never

18 reviewed this -- I mean, yes, this picture I agree but the rest of the stuff that counsel

19 is saying about he never did this, he never did that, he never did this, he never

20 testified to any of that. We have no idea where he was or what he's seen.

21 MS. GRAHAM: He testified he was out getting the Defendant in custody. Her

22 last question of Officer Law was, where did you then go? He cleared off the call.

23 MS. HOJJAT: He said specifically that he saw other officers talk to other

24 officers, interacted with other officers because that's where he passed off the nuts.

25 So, he definitely was moving around, there was no testimony that he ever made it to

1 the scene, there was no testimony that he didn't talk to anybody, in fact --

2 THE COURT: I don't --

3 MS. HOJJAT: -- completely opposite.

4 THE COURT: -- recall -- I don't recall him going to the scene.

5 MS. GRAHAM: No.

6 THE COURT: Did I miss --

7 MS. GRAHAM: He never went to the AM/PM, the scene where he took the
8 Defendant into custody.

9 THE COURT: Right.

10 MS. GRAHAM: He never went to the AM/PM and that's what I'm arguing.

11 MS. HOJJAT: And --

12 THE COURT: Okay.

13 MS. HOJJAT: -- [indecipherable] is that he in fact specifically said that he did
14 talk to Officer Rivera about all of this. He specifically said that because he said that
15 he told Officer Rivera about --

16 MS. GRAHAM: Right.

17 MS. HOJJAT: -- him but he and Officer Rivera discussed the [indecipherable].
18 So, it's not accurate to say that he didn't have conversations or interactions --

19 MS. GRAHAM: I didn't say that, I said they never went to the scene at
20 AM/PM.

21 MS. HOJJAT: I don't know that that was testified to. It just wasn't -- It was left
22 vague. It was left unclear.

23 MS. GRAHAM: He --

24 THE COURT: Okay.

25 MS. GRAHAM: -- never testified --

1 THE COURT: I'm gonna overrule.

2 MS. GRAHAM: Thank you.

3 MS. HOJJAT: Okay.

4 [Bench conference at 12:11:25 p.m. -- page 56 transcribed below]

5 THE COURT: Yes.

6 MS. HOJJAT: I'm gonna object to just keep playing the 9-1-1 call -- or one
7 little segment over and over and over and over again.

8 THE COURT: It's in evidence. They can do --

9 MS. GRAHAM: Yeah.

10 THE COURT: -- they could do --

11 MS. GRAHAM: I can play it as many times as I want, however I want to play
12 it, it's in evidence.

13 THE COURT: It's in evidence. Okay. Overruled.

14 MS. HOJJAT: Okay.

15 [Bench conferences concluded at 12:11:43 p.m.]

16 * * * * *

17

18

19

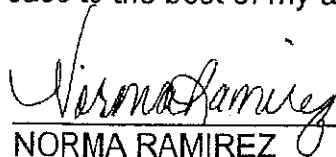
20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio/video recording in the above-entitled case to the best of my ability.

22

23

24

25



NORMA RAMIREZ
Court Recorder
District Court Dept. XXII
702 671-0572

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

JOHN DEMON MORGAN,) No. 70424
)
)
Appellant,)
)
)
v.)
)
)
THE STATE OF NEVADA,)
)
)
Respondent.)

10

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

Attorney for Appellant

STEVE WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

ADAM LAXALT
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

Counsel for Respondent

17

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 7th day of Feb, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT
STEVE WOLFSON

HOWARD S. BROOKS
SHARON G. DICKINSON

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

JOHN DEMON MORGAN
NDOC# 1158013
c/o High Desert State Prison
Indian Springs, NV 89070

BY _____
Employee, Clark County Public Defender's Office