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1 caseworker, and I'm just waiting for my -- just the HMO  
2 to switch over so I can be -- get into day treatment  
3 there.

4 Q. You were asked about your religious  
5 experience, and you mentioned, of all -- of all the  
6 chapters of the Bible, you mentioned Psalm 51; didn't  
7 you?

8 A. Yeah.

9 Q. And were you thinking of the language that  
10 says create in me a clean heart, oh, God, and renew a  
11 right spirit in me?

12 A. I was thinking of that and the next one, so I  
13 may teach transgressors your ways.

14 I like the part where he says I have sinned  
15 in your sight and your sight alone, Lord.

16 Q. Do you believe that applies to you?

17 A. Yes, sir, meaning the sins that we commit  
18 against God. Not the sins that we commit against each  
19 other, but the sins that are actual sins against God  
20 himself, and I just really like Psalms 51.

21 Q. It sounds like you've had a religious  
22 awakening that's recommitted you to your -- the faith  
23 of your childhood.

24 Do you -- can you estimate for us about when  
25 that happened?

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1 A. Serving my sentence in 2012, I was placed on  
2 23-and-a-half-hour lockdown; so I wasn't caught up with  
3 the normal activities that occur in jail. I was caught  
4 up with the Bible and improving my life.

5 I also read the Quran at that time. I also  
6 got to study religious studies and come to my own  
7 belief of a higher power, and I loved it. It was the  
8 only thing that made sense at the time. It was the  
9 only thing I would read.

10 And I continue to take, you know, a more  
11 religious stance with my peers and more of a -- I'd say  
12 not a do-gooder but more of someone who would do the  
13 right thing in a certain situation rather than leave  
14 someone and stuff like that. I started to, yeah, live,  
15 what I perceived, not as Jesus did but as a disciple  
16 would in this time period.

17 MR. STRASSBURG: All right. Thank you. I  
18 don't think I have any other questions at this time.

19 MR. ESCHWEILER: Do you want to change the  
20 tape?

21 THE VIDEOGRAPHER: Off the video record at  
22 3:28.

23 (Discussion off the record.)

24 THE VIDEOGRAPHER: This is the beginning of  
25 Videotape No. 5 in the continuing deposition of Jared

1 Awerbach. Back on the video record at 3:32.

2 EXAMINATION

3 BY MR. ESCHWEILER:

4 Q. Mr. Awerbach, you understand that you're  
5 still under oath?

6 A. Yes, sir.

7 Q. Can you pull out Exhibit 7 for me, please.

8 A. Yes, sir.

9 Q. And could you use Mr. Strassburg's pen and  
10 just put an X where the point of impact was on that,  
11 where you think the collision took place. In the road,  
12 not on the vehicle. I'm talking about in the road.

13 MR. STRASSBURG: If it's on -- if it's even  
14 on the picture. It may not show.

15 THE WITNESS: What I'll do is I'll put an X  
16 and an arrow indicating that it's not on the picture  
17 (drawing).

18 BY MR. ESCHWEILER:

19 Q. Okay. So you're -- and what you're saying is  
20 that you're right here where Mr. Strassburg is taking  
21 the picture, correct, and so you're saying that the  
22 point of impact is somewhere off of this picture, and  
23 you were making a left turn?

24 A. Yes, sir.

25 Q. This way (indicating)?

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1 A. Yes, sir.

2 MR. STRASSBURG: And that's -- not really.

3 That's not fair. What he said was --

4 MR. ESCHWEILER: He -- I --

5 MR. STRASSBURG: -- I'm taking the picture --

6 MR. ESCHWEILER: I'm asking him the question,  
7 not you, Roger.

8 MR. STRASSBURG: No, no, no. But you're  
9 miss --

10 MR. ESCHWEILER: I'm not.

11 MR. STRASSBURG: I just want you to  
12 understand.

13 MR. ESCHWEILER: I heard what you said. I'm  
14 asking him the question.

15 MR. STRASSBURG: I think those are the facts.

16 BY MR. ESCHWEILER:

17 Q. So you believe that making a left turn, that  
18 the impact was off of this picture?

19 A. Possibly where the X is.

20 Q. Okay, great.

21 A. I'd like to explain the left turn. What I  
22 was doing was moving to the right so that I could clear  
23 this first lane and begin to move into the second  
24 because the traffic at the time was heavy. So I was  
25 moving -- I was kind of doing a loop kind of thing, and

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1 also I wanted to get into this third lane  
2 appropriately.

3 Q. Oh, okay. So when you came out, you didn't  
4 immediately go to the left? You actually bowed out to  
5 the right?

6 A. Yeah, I'm at the corner at the right with my  
7 nose poking out --

8 Q. Okay.

9 A. -- but I had my turn signal on.

10 Q. Very good. Very good.

11 And if you could pull up Exhibit 10, it's  
12 the --

13 MR. STRASSBURG: Is that the drawing?

14 MR. ESCHWEILER: Yeah.

15 BY MR. ESCHWEILER:

16 Q. You would agree that that's a drawing not  
17 made by you; that was a drawing by Mr. Mazzeo, correct?

18 A. Yes, sir.

19 Q. Okay. Has any doctor ever prescribed  
20 marijuana to you?

21 A. No.

22 Q. And what was your preferred method of taking  
23 meth? How did you take it?

24 A. Smoked it.

25 Q. Did you ever inject it?

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1 A. Never.

2 Q. So smoking meth was your preferred method?

3 A. Yes, sir. I like to smoke, obviously.

4 Q. And you talked about a coercion charge --

5 A. Yes, sir.

6 Q. -- in November?

7 A. Yes, sir.

8 Q. Was that 2013?

9 A. Yeah.

10 Q. Well, what was the coercion charge?

11 A. I got into an altercation with my mom, and I  
12 threw a temper tantrum. I felt like her behavior  
13 indicated that she wanted me in jail; so -- because  
14 jail is one of the safe places for me. I didn't have a  
15 problem with sending myself to jail.

16 So I -- what I did was I -- I threw a temper  
17 tantrum, and I threw a whole bunch of glass on the  
18 floor, broke a whole bunch of her items, punched holes  
19 in the walls, and I received a coercion charge due to  
20 the fact that she could not exit her room.

21 She did at the point exit her room, but she  
22 was scared. There was glass on the floor, and the  
23 glass on the floor warranted -- warranted a coercion  
24 charge.

25 Q. And what's the status of that charge?

1 A. I have to continue paying my fines.

2 Q. So you were convicted?

3 A. Yeah. I took a misdemeanor.

4 Q. And let's look at Exhibit 8.

5 I believe what -- what you told

6 Mr. Strassburg when he was asking you the question is  
7 you paced the distance between Mister -- where

8 Mr. Strassburg's standing and where you were standing  
9 in Exhibit 8, and it was approximately a hundred feet?

10 A. 35 paces.

11 Q. Okay. And you estimated that your -- one of  
12 your paces was three feet?

13 A. Just about.

14 Q. So it was a little over a hundred feet in  
15 distance, correct?

16 A. Yes, sir.

17 Q. And do you have an estimate of a vehicle  
18 traveling at 35 miles an hour, how long it would take  
19 for that to clear where Mr. Strassburg was standing?

20 MR. MAZZEO: Objection, calls for expert  
21 opinion.

22 BY MR. ESCHWEILER:

23 Q. You can answer.

24 MR. STRASSBURG: Yeah, I have to object to  
25 that, too. That's -- lacks foundation.

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1 Go ahead if --

2 BY MR. ESCHWEILER:

3 Q. You can answer.

4 MR. STRASSBURG: -- if you can give such an  
5 opinion.

6 THE WITNESS: In my opinion --

7 MR. MAZZEO: Please don't guess.

8 THE WITNESS: Oh, no, I'm not guessing at  
9 all.

10 In my opinion, she -- I mean, the traffic in  
11 the first lane slowed down for me, stopped. I was  
12 expecting her to slow down and let me make the turn  
13 instead of accelerating.

14 BY MR. ESCHWEILER:

15 Q. Who had the right-of-way?

16 A. I think -- I think it would be the traffic  
17 flowing because I'm trying to make a left into oncoming  
18 traffic.

19 Q. So you making a left turn onto northbound  
20 Rainbow, you had the right-of-way versus cars  
21 traveling -- I guess it would be northbound --

22 A. No.

23 Q. -- on Rainbow?

24 A. No, sir. I believe that traffic flowing  
25 southbound, is the direction of the pictures, would

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1 have the right-of-way --  
 2 Q. Okay.  
 3 A. -- because their traffic is flowing.  
 4 Q. And you -- going back to my original  
 5 question, from the point where you're standing a  
 6 hundred feet from where Mr. Strassburg took the  
 7 picture, what's your estimate of -- your best estimate  
 8 of how long it would take for a car traveling 35 miles  
 9 an hour to clear Mr. Strassburg?  
 10 MR. MAZZEO: Objection, foundation, calls for  
 11 expert opinion.  
 12 BY MR. ESCHWEILER:  
 13 Q. Go ahead.  
 14 MR. STRASSBURG: Objection, contrary to fact.  
 15 Go ahead.  
 16 THE WITNESS: I couldn't give you an estimate  
 17 of that nature.  
 18 BY MR. ESCHWEILER:  
 19 Q. Do you think it's more than five seconds?  
 20 MR. STRASSBURG: Object to the form. He  
 21 already answered that.  
 22 THE WITNESS: I can't give you an estimate of  
 23 that question.  
 24 Like I said previously, I was expecting her  
 25 to slow down and let me have the turn and -- opposed to

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1 her acceleration, but, realistically, I can't give  
 2 you an estimate. I can't --  
 3 Q. Okay.  
 4 A. -- give you an answer for that question.  
 5 MR. ESCHWEILER: I don't have anything  
 6 further.  
 7 MR. MAZZEO: Nothing further.  
 8 MR. STRASSBURG: Read and sign. And you're  
 9 done.  
 10 THE VIDEOGRAPHER: Off the video record at  
 11 3:38.  
 12 (Whereupon, the deposition was concluded at  
 13 3:38 p.m. this date.)  
 14 \* \* \* \* \*  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 CERTIFICATE OF DEPONENT  
 2 PAGE LINE CHANGE REASON  
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 10  
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 12  
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 16  
 17  
 18 DECLARATION OF DEPONENT  
 19 I, JARED EMMANUEL AWERBACH, deponent herein,  
 20 do hereby certify and declare under penalty of perjury  
 21 the within and foregoing transcription to be my  
 22 deposition in said action; that I have read, corrected  
 23 and do hereby affix my signature to said deposition.  
 24  
 25 SIGNATURE \_\_\_\_\_ DATE: \_\_\_\_\_  
 JARED EMMANUEL AWERBACH

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1 CERTIFICATE OF REPORTER  
 2 STATE OF NEVADA )  
 3 ) ss:  
 4 COUNTY OF CLARK )  
 5 I, Peggy S. Elias, a Certified Court Reporter  
 6 licensed by the State of Nevada, do hereby certify:  
 7 That I reported the deposition of JARED EMMANUEL  
 8 AWERBACH, on Thursday, March 27, 2014, at 10:08 a.m.  
 9 That prior to being deposed, the witness was  
 10 duly sworn by me to testify to the truth. That I  
 11 thereafter transcribed my said stenographic notes via  
 12 computer-aided transcription into written form, and  
 13 that the typewritten transcript is a complete, true and  
 14 accurate transcription of my said stenographic notes.  
 15 That review of the transcript was requested.  
 16 I further certify that I am not a relative,  
 17 employee or independent contractor of counsel or of any  
 18 of the parties involved in the proceeding; nor a person  
 19 financially interested in the proceeding; nor do I have  
 20 any other relationship that may reasonably cause my  
 21 impartiality to be questioned.  
 22 IN WITNESS WHEREOF, I have set my hand in my  
 23 office in the County of Clark, State of Nevada, this  
 24 6th day of April, 2014.  
 25 PEGGY S. ELIAS, RPR, CCR NO. 274

EXHIBIT 1-E

EXHIBIT 1-E



1 CASE NO. A-11-637772-C

2 DEPT. NO. 30

3 DOCKET U

4

5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

\* \* \* \* \*

8

9 EMILIA GARCIA, individually, )

10 Plaintiff, )

11 vs. )

12 JARED AWERBACH, individually; )

ANDREA AWERBACH, individually; )

13 DOES I-X, and ROE CORPORATIONS) )

14 I-X, inclusive, )

Defendants. )

15 \_\_\_\_\_ )

16

17

REPORTER'S TRANSCRIPT

18

OF

19

PROCEEDINGS

20

BEFORE THE HONORABLE JERRY A. WIESE, II

21

DEPARTMENT XXX

22

DATED TUESDAY, OCTOBER 13, 2015

23

24 REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,  
CA CSR #13529

25

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1 I can't remember all the charges. So what I did was I  
2 handled the big case first and then later served time  
3 on the lesser charges.  
4 Q. How much time did you serve?  
5 A. A total of eight months.  
6 Q. Eight months?  
7 A. Yeah.  
8 Q. What were the dates of incarceration?  
9 A. January 4th to the 19th. February 4th to  
10 March 10th.  
11 Q. Of 2011?  
12 A. March 7th.  
13 Q. But all in 2011?  
14 A. 2012.  
15 Q. Okay.  
16 A. And March 10th to September 12th.  
17 And I was able to take care of everything,  
18 almost everything.  
19 Q. Prior to March 10th of 2012, had you ever  
20 been arrested for a felony?  
21 A. No, sir.  
22 Oh, just the raid.  
23 Q. But that was March 10th of 2011. I'm sorry.  
24 A. That was March 7th. I apologize.  
25 Q. Prior to that no felony arrests?

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1 A. No, sir.  
2 Q. Has your juvenile record been sealed?  
3 A. No, sir.  
4 Q. Were any of the offenses that you committed  
5 as a juvenile felonies?  
6 A. I think they were.  
7 Q. Do you know which ones?  
8 A. Auto theft.  
9 Q. And you said there was three or four  
10 convictions for auto theft?  
11 A. Yeah.  
12 Q. Were any of the drug offenses felonies?  
13 A. No, sir.  
14 MR. ESCHWEILER: Let's take like a ten-minute  
15 break.  
16 THE VIDEOGRAPHER: Off the video record at  
17 1:03 -- 11:14.  
18 (Recess taken from 11:14 a.m. to 11:25 a.m.)  
19 THE VIDEOGRAPHER: This is the beginning of  
20 Videotape No. 2 in the continuing deposition of Jared  
21 Awerbach. Back on the video record at 11:25.  
22 BY MR. ESCHWEILER:  
23 Q. Mr. Awerbach, you understand that you're  
24 still under oath?  
25 A. Yes, sir.

1 Q. I want to go back to discuss a couple of  
2 things that you had mentioned.  
3 You had said that back when the Gowan  
4 apartment was raided in November of 2010, you were  
5 dealing again?  
6 A. Yes, sir.  
7 Q. When did your dealing start?  
8 A. At thirteen, yes.  
9 Q. I understand, but I thought what you told me  
10 was when you went to Desert Rose Adult School, you  
11 wanted to be serious and that you had stopped dealing  
12 or consuming drugs.  
13 A. I did. I managed to pull together nine  
14 months of sobriety and relapsed.  
15 Q. And when was the relapse?  
16 A. Three months after I was released from the  
17 Odyssey House.  
18 Q. And you don't -- you don't know what the --  
19 A. I don't remember --  
20 Q. -- the date?  
21 A. -- the dates on that one.  
22 Q. And you graduated from Desert Rose in May of  
23 2010?  
24 A. It might have been June or July, but --  
25 Q. Okay.

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1 A. -- upon regular graduation date.  
2 Q. And during June and July of 2010, were you  
3 dealing again?  
4 A. Upon graduation, no, I was not.  
5 Q. So sometime after June or July 2010, you  
6 started dealing again?  
7 A. Yes.  
8 Q. And that was the xstasy, cocaine, marijuana?  
9 A. Yes, sir.  
10 Q. And at that time you were living at the Gowan  
11 Street apartment?  
12 A. Yes, sir.  
13 Q. Well, one follow-up back to the incident from  
14 November of 2005.  
15 You never filed a lawsuit on behalf of  
16 yourself?  
17 A. We sued the school district. We sued the  
18 principal. We sued the dean at the time. That also  
19 has to do with my expulsion, because if we were suing  
20 them, they didn't want me going to school there, and so  
21 I don't think anything ever happened with that, but we  
22 did press charges on the kid.  
23 Q. So -- but you did file a civil lawsuit  
24 against the school, the dean, and who else did you say?  
25 A. The principal.

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1 Q. The principal?  
2 A. My mother did, yes.  
3 Q. But were you a party to the lawsuit; do you  
4 know?  
5 A. I was a victim, the victim.  
6 Q. Okay. But do you know if you were named as a  
7 plaintiff in the lawsuit?  
8 A. I don't think I was.  
9 Q. Okay.  
10 A. I might have -- I mean, I might have been the  
11 plaintiff, but I was a kid; so...  
12 Q. You were a minor?  
13 A. Yeah.  
14 Q. So your mom was actually the one that brought  
15 the lawsuit?  
16 A. Yes, sir.  
17 Q. She hired an attorney for you?  
18 A. Yes, sir. Bill Kapulka.  
19 Q. And your mom was also employed by the school  
20 district, right?  
21 A. Yes, sir.  
22 Q. Did that cause any problems with her  
23 employment?  
24 A. No.  
25 Q. Okay. Do you have any relationship with your

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1 father?  
2 A. No, sir.  
3 Q. Have you ever had a relationship with your  
4 father?  
5 A. Once or twice but no.  
6 Q. No.  
7 When was the last time that you saw him or  
8 talked with him?  
9 A. 2011.  
10 Q. Does he live in Vegas?  
11 A. No. I think Florida.  
12 Q. Do you know what his name is?  
13 A. Canino Romero.  
14 Q. How do you spell it?  
15 A. C-a-n-i-n-o, I think. Romero, I don't know  
16 how to spell.  
17 Q. Before the break we were talking about your  
18 residence at Gowan, the Gowan Street apartments, and  
19 you said that you left there March 10th, 2011; is that  
20 correct?  
21 A. March 7th, 2011.  
22 Q. March 7th?  
23 A. To be correct, yes.  
24 Q. And that was the date of the raid?  
25 A. Yes, sir.

1 Q. And you said that you had lived there for  
2 approximately four years?  
3 A. Yes, sir.  
4 Q. So back to March, spring of 2007?  
5 A. Maybe 2008.  
6 Q. What were your ages at the time you lived at  
7 Gowan?  
8 A. I think it was like from fifteen to  
9 eighteen -- fifteen to nineteen.  
10 Q. When you left the Gowan Street apartment in  
11 March of 2011, where did you go live?  
12 A. With a family member for a brief period of  
13 time, and then I started living with my grandmother.  
14 Q. Who is the family member that you went to  
15 live with?  
16 A. Alex Kopystenski.  
17 Q. You're going to have to help me on the last  
18 name.  
19 A. Alex Kopy, K-o-p-y.  
20 Q. Do you have a contact number for him?  
21 A. 400-7827.  
22 Q. Do you still talk with Alex?  
23 A. Occasionally.  
24 Q. Well, why did you leave living with Alex?  
25 A. Bumping heads with my cousin. He was my

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1 family.  
2 Q. How long did you live with him?  
3 A. Probably like a month or so. I moved in with  
4 my grandmother.  
5 Q. What's your grandma's name?  
6 A. Alma Awerbach.  
7 Q. This is your mom's mom?  
8 A. Yes, sir.  
9 Q. What was the address?  
10 A. 6000 West Harmon, Apartment 203.  
11 Q. Does Alma still live at that address?  
12 A. Yes, sir.  
13 Q. What was the address for Alex; do you recall?  
14 A. 141 Lakewood Garden, Rhodes Ranch.  
15 Q. How long did you live with Alma?  
16 A. A few months.  
17 Then we moved to the Bill Manor projects on  
18 Owens and Sandhill, moved in with my family there.  
19 Then from there I moved in with a friend, and then we  
20 moved to the address that we live in now.  
21 Q. Well, let's back up.  
22 Did you say the Bill Manor apartments?  
23 A. Bill Manor projects.  
24 Q. Okay. What was the address there?  
25 A. I don't remember the address, but that's what

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1 they're called, the Bill Manor projects, on Sandhill  
2 and Owens, referred to as the G homes.  
3 Q. Why's that?  
4 A. It's the name.  
5 Q. And do you -- do you have an approximate time  
6 frame? Was that the end of 2011 that you're living  
7 there?  
8 A. No. Beginning.  
9 Q. Well, beginning of 2012?  
10 A. Like March-April-ish.  
11 Q. Of '12?  
12 A. No, '11.  
13 Q. I thought after you left the Gowan Street  
14 address, you went to live with Alex Kopy?  
15 A. Kopy.  
16 Q. Kopy.  
17 A. Yes.  
18 Q. So if you left -- if you left Gowan in  
19 March of 2011 and lived with him for a month or so,  
20 that would put us into April of 2011.  
21 A. Yeah.  
22 Q. And then you went to live with Alma --  
23 A. Yeah.  
24 Q. -- from April till the fall?  
25 A. Maybe June or something like that.

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1 Q. Okay. So still 2011.  
2 A. Yes, sir.  
3 Q. And then after you left there, so say June or  
4 July, is when you went to Sandhill and Owens?  
5 A. Yeah. Yes.  
6 Q. How long did you live there?  
7 A. A few months.  
8 I moved in with a friend.  
9 Q. Who was the friend?  
10 A. Julio Morales.  
11 Q. Let's go back to Alex.  
12 Did your -- Tikiera and your child live with  
13 you with Alex?  
14 A. No.  
15 Q. Where were they living?  
16 A. At a friend's house named Kiana McNeil.  
17 Q. How about with Alma?  
18 A. No.  
19 Q. Sandhill and Owens?  
20 A. Yeah.  
21 Q. They moved in with you there?  
22 A. Yeah.  
23 Q. And then when you moved to Julio Morales?  
24 A. I was alone.  
25 Q. And so that was late 2011 that you moved in

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1 with Julio?  
2 A. That was from -- that was probably the  
3 summer, like June or July, because I only stayed in the  
4 Bill Manor projects for a month, less than a month, for  
5 a few weeks, and then -- it was probably July to  
6 August, and we moved into my mother's home,  
7 4006 Dripping Springs, in August.  
8 Q. August 2011, 4006 Dripping Springs?  
9 A. Yes, sir.  
10 Q. Is that North Las Vegas?  
11 A. Yes, sir.  
12 Q. Was that you, Tikiera, and your kid?  
13 A. Khaliyah, yeah.  
14 Q. Khaliyah.  
15 And how long were you at the Dripping Springs  
16 residence?  
17 A. Till January 4th, 2012.  
18 Q. Why do you know the date?  
19 A. Because I was incarcerated that day.  
20 Q. Well, what was the reason for incarceration;  
21 bench warrant?  
22 A. Five active bench warrants, yes.  
23 Q. So you weren't running anymore?  
24 A. No, sir.  
25 Q. During the time from August 2011 when you

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1 moved back into your mother's place at Dripping Springs  
2 to January 4th, 2012, when you were incarcerated, did  
3 you continue to deal drugs?  
4 A. Yes, sir.  
5 Q. Were you otherwise employed other than  
6 dealing drugs?  
7 A. No, sir.  
8 Q. Did your mom know that you were dealing drugs  
9 out of the Dripping Springs residence?  
10 A. No, sir.  
11 Q. How do you know that?  
12 A. Because I kept it from her. I started  
13 dealing a different kind of drug.  
14 Q. What do you mean?  
15 A. I wasn't dealing with the same products.  
16 Q. Well, what was your product?  
17 A. Methamphetamine.  
18 Q. When did you start dealing meth?  
19 A. August.  
20 Q. That's when you started?  
21 A. (Witness nods head.)  
22 Q. Had you used methamphetamine before?  
23 A. Yes, sir.  
24 Q. Was your mom aware of your methamphetamine  
25 use in August of 2011?

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1 A. No, sir.  
2 Q. When did she become aware of it?  
3 A. Probably February 2012.  
4 Q. Do you have any methamphetamine-related drug  
5 offenses?  
6 A. No, sir.  
7 Q. Why did you make the switch to meth from the  
8 other drugs?  
9 A. More money.  
10 Q. How much meth were you moving?  
11 A. A quarter.  
12 Q. I don't know what that means. I'm sorry.  
13 A. Seven grams at a time.  
14 Q. Were you storing the drugs at the Dripping  
15 Springs address?  
16 A. Yes, sir.  
17 Q. How long were you incarcerated in January of  
18 2012?  
19 A. 15 days.  
20 Q. And that's when, after you got out, you moved  
21 in with Julio?  
22 A. No. I lived with Julio during the summer,  
23 during June or July, and then returned to my mom's  
24 house and then was arrested from my mom's house.  
25 Q. And where did you go after the incarceration,

1 March 7th, yes, sir.  
2 Q. 2012?  
3 A. Yes, sir.  
4 Q. And that was on the -- was that just on the  
5 DB charge, or was that on a combination of charges?  
6 A. Combination with a new domestic charge.  
7 Q. Okay. You got out March 7th?  
8 A. Yes, sir.  
9 Q. Did you go back to the Dripping Springs  
10 residence?  
11 A. Upon -- I went back March 10th.  
12 Q. Things were good with your mom when you went  
13 back?  
14 A. No. There was a protective order.  
15 Q. So when you went back, that's why you got  
16 arrested --  
17 A. Yes, sir.  
18 Q. -- again?  
19 And after the March 10th arrest, how long  
20 were you incarcerated?  
21 A. From March 10th to September 12th.  
22 Q. And what was the reason for the extended  
23 incarceration?  
24 A. Suspended sentence.  
25 Q. From the prior charges?

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1 then?  
2 A. In January, came back to my mom's house. I  
3 wasn't -- I didn't make it. I was arrested  
4 February 4th for domestic battery and then was released  
5 March 7th, 2012. I made it three days, and I was  
6 arrested for violation of a TPO and began serving a  
7 suspended sentence.  
8 Q. So let's back up.  
9 You got out mid-January -- mid-to-late  
10 January 2012, and then you went back to the Dripping  
11 Springs address?  
12 A. January 19th.  
13 Q. And who was living at the Dripping Springs  
14 address at that time?  
15 A. Just me and my mother.  
16 Q. Who was the domestic violence on?  
17 A. My mother.  
18 I didn't hit her, but I had picked her up  
19 physically to get to a phone, and I had destroyed the  
20 house, the interior of the house; so -- and she told  
21 the police that she wanted me to go to jail; so they  
22 cited me for domestic battery.  
23 Q. And so you were -- you were in jail from  
24 February 4th to March 7th?  
25 A. From February 4th -- from February 4th to

1 A. From all my charges combined, yes.  
2 Q. Did that clear the slate, so to speak, on  
3 what was due and owing as far as time?  
4 A. That cleared everything.  
5 Q. And in September of 2012, where did you go  
6 live when you got out of jail?  
7 A. My grandmother.  
8 Q. Back to Alma?  
9 A. Yes.  
10 Q. How long did you live with Alma?  
11 A. From September through Halloween, October,  
12 and then I moved in with my friends at 2900 East  
13 Charleston, and I lived with them from October 31st to  
14 December like 28th, 29th.  
15 Q. Who was the friend at 2900 East Charleston?  
16 A. Joseph Fuentes and Tanice Dunlap-Smith.  
17 Q. Why did you leave Alma's house?  
18 A. Because she didn't want me there. She wanted  
19 me to get my own space. Her and my mom were willing to  
20 finance me living in my own apartment with my friends.  
21 Q. So they were willing to finance you, but  
22 that's why you moved to East Charleston?  
23 A. Yes, sir.  
24 Q. And then why did you leave the East  
25 Charleston residence?

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1 A. I got into an altercation with the girl I was  
2 involved with at the time.  
3 Q. Who was the girl?  
4 A. Tiyer [phonetic] Watson.  
5 Q. Can you spell "Tiyer"?  
6 A. I don't know how to spell it.  
7 Q. Were you arrested?  
8 A. No.  
9 Q. The authorities were not called?  
10 A. No.  
11 Q. Was she a friend of Tanice or somebody at the  
12 East Charleston residence?  
13 A. Yeah. She was staying with me in the  
14 apartment.  
15 Q. She was your girlfriend?  
16 A. Yeah.  
17 Q. Where did you go after you left the East  
18 Charleston address?  
19 A. Back to Alma's.  
20 Q. And how long were you at Alma's this time?  
21 A. A few months.  
22 And then I went back to my mother's house  
23 and -- excuse me -- and then went back to Alma's.  
24 Q. When were you back at your mother's house?  
25 A. March, I think. I don't -- I'm not sure what

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1 the date is. I don't want to say March.  
2 Q. March of '13?  
3 A. Yeah. I'm not sure on that date, though.  
4 Q. And you -- you were back there for a period  
5 of months?  
6 A. Yeah, like two or three months.  
7 Q. Why did you leave?  
8 A. I had gotten sick at my mom's house, and I  
9 didn't want to stay at that location anymore. I  
10 rotated between my mother's house and my grandmother's  
11 house. My grandmother is ninety-three.  
12 Q. What do you mean, you got sick?  
13 A. I got sick, like I had torn the lining of my  
14 stomach.  
15 Q. How? How did you do that?  
16 A. I'm allergic to aspirin.  
17 Q. Were your mom -- were you and your mom on  
18 good terms when you left?  
19 A. Yeah.  
20 Q. That time?  
21 A. Yeah.  
22 Q. And then you went back to Alma's, you said?  
23 A. Yes, sir.  
24 Q. Have you lived anywhere other than Alma's or  
25 your mom's house since that time?

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1 A. No.  
2 Q. Where are you living currently?  
3 A. 4006 Dripping Springs.  
4 Q. With your mom?  
5 A. Yes, sir.  
6 Q. How long have you been back with her this  
7 time?  
8 A. Since March 18th.  
9 Q. So for the last ten days?  
10 A. Yes, sir.  
11 Q. Is -- who's living with you at this point at  
12 your mom's house?  
13 A. Just me and my mother. I get my kids  
14 occasionally.  
15 Q. Is there a custody arrangement with your  
16 kids?  
17 A. No.  
18 Q. No set time that you get to see them?  
19 A. No.  
20 Q. Why's that?  
21 A. Because me and my mother prefer to deal with  
22 each other directly than get the courts involved kind  
23 of per se.  
24 Q. When was the last time you saw your kids?  
25 A. Two days ago.

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1 Q. And how do you see them?  
2 A. We go --  
3 Q. Do you go pick them up, or does the mother  
4 come and drop them off?  
5 A. We go pick them up, or sometimes she drops  
6 them off.  
7 Q. Does your mom go with you when that happens?  
8 A. She takes me.  
9 Q. Let's go back to the Gowan Street apartment.  
10 How big was the apartment?  
11 A. Two-bedroom, two-bath.  
12 Q. Was it on the first floor or the second floor  
13 of the complex?  
14 A. The first floor.  
15 Q. So you and your mom both had separate  
16 bedrooms?  
17 A. Yes, sir.  
18 Q. And then at some point Tikiera came to live  
19 with you there?  
20 A. Yes, sir.  
21 Q. And what time period?  
22 A. That was March or April of 2010.  
23 Q. And at that point you had not had your first  
24 child, correct?  
25 A. No.



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1 Q. That was December of 2010?  
 2 A. Yes, sir.  
 3 Q. And when she moved in, then she shared your  
 4 bedroom?  
 5 A. Yes.  
 6 Q. Did you and your mom both have your own  
 7 bathrooms, then?  
 8 A. Yes.  
 9 Q. Were they attached to the bedrooms?  
 10 A. No. Hers was. Mine wasn't.  
 11 Q. Yours was in the hallway?  
 12 A. Yes, sir.  
 13 Q. Were there locks on the bedroom doors?  
 14 A. Yeah.  
 15 Q. So you could lock your mom out of your room  
 16 if you wanted?  
 17 A. Often.  
 18 Q. And she could lock you out of her room, as  
 19 well?  
 20 A. Often.  
 21 Q. And she did that?  
 22 A. Yeah.  
 23 Q. She locked you out of her room?  
 24 Well, what would be the circumstances why she  
 25 would lock you out?

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1 A. She was doing something, taking a shower, if  
 2 she was sleeping, she just felt like locking the door.  
 3 Q. And what were the reasons why you would lock  
 4 her out?  
 5 A. If I was doing something I didn't want her to  
 6 see or I didn't want her to come in or it was just time  
 7 to lock the door.  
 8 Q. What kinds of things are you talking about?  
 9 A. Like weighing out drugs, handling drugs,  
 10 discussing something with the mother of my children,  
 11 just business that I didn't want her to know that I was  
 12 involved in, or, you know, trying to have a baby.  
 13 Q. Did -- did she ever catch you weighing out  
 14 drugs at the house?  
 15 A. No.  
 16 Q. And I'm talking about Gowan Street.  
 17 A. Yes, sir. No.  
 18 Q. Where -- where did your mom spend most of her  
 19 time in the apartment?  
 20 A. Her room or the living room.  
 21 Q. And the living room was an open area?  
 22 A. Yes, sir.  
 23 Q. And it was a -- like connected to the dining  
 24 room-kitchen type thing?  
 25 A. Yeah.

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1 Q. Where did you spend most of your time?  
 2 A. Outside.  
 3 Q. Outside?  
 4 A. (Witness nods head.)  
 5 Q. In the -- in the kitchen was there any  
 6 locking cabinets?  
 7 A. No.  
 8 Q. Was there -- was there a safe at the house?  
 9 A. Mom had a lockbox.  
 10 Q. Where was the lockbox?  
 11 A. In her closet.  
 12 Q. Do you know what kind of things she kept in  
 13 the lockbox?  
 14 A. Jewelry, money, papers, and a spare key to  
 15 the Forenza.  
 16 Q. A spare key to the what?  
 17 A. Forenza.  
 18 Q. To the car?  
 19 A. Yes, sir.  
 20 Q. Was there only one car at the household?  
 21 A. Yes, sir.  
 22 Q. And it was the car that was involved in this  
 23 accident?  
 24 A. The Forenza, yes, sir.  
 25 Q. And you said a spare key to the car?

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1 A. Yes, sir.  
 2 Q. There was another set of keys, as well?  
 3 A. Just the spare key.  
 4 Q. There was only one key to the car?  
 5 A. There were two keys to the Forenza. There  
 6 was a spare key which she kept in the lockbox, and  
 7 there were her keys which she kept on her key chain.  
 8 Q. Did you have access to the lockbox?  
 9 A. I knew where it was.  
 10 Q. But could you get inside of it?  
 11 A. If I tried hard enough.  
 12 Q. Have you ever done that?  
 13 A. Yes, sir.  
 14 Q. Did you -- and what was the purpose of  
 15 getting into the lockbox?  
 16 A. To obtain whatever my mind was on at the  
 17 time.  
 18 Q. Okay. Can you --  
 19 A. Money, papers, spare key, whatever.  
 20 Q. So you -- you have taken the key from the  
 21 lockbox before to drive the Forenza?  
 22 A. Yes, sir.  
 23 Q. Does your mom know that you had taken the key  
 24 out of the lockbox?  
 25 A. No, sir.



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1 MR. MAZZEO: Objection, speculation.  
2 BY MR. ESCHWEILER:  
3 Q. Go ahead.  
4 Does your mom know that you had taken the key  
5 out of the lockbox?  
6 THE WITNESS: Roger?  
7 MR. ESCHWEILER: You can -- you can answer.  
8 MR. STRASSBURG: You can answer. Go ahead.  
9 THE WITNESS: Okay. Yeah. She got it back.  
10 BY MR. ESCHWEILER:  
11 Q. How many times have you taken the key out of  
12 the lockbox?  
13 A. Maybe like two or three.  
14 Q. And that was prior to the accident that we're  
15 here talking about today?  
16 A. Yes, sir.  
17 Q. You didn't have your own set of keys for the  
18 vehicle?  
19 A. No.  
20 Q. Was there a garage at the residence?  
21 A. Yes, sir.  
22 Q. Did the garage lock? Could you lock the  
23 garage?  
24 A. Yeah.  
25 Q. Did your mom ever lock the garage?

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1 A. Sometimes.  
2 Q. Well, what instances would she lock the  
3 garage?  
4 A. Whenever she would put the car in the garage  
5 or be dealing with something in the garage.  
6 Q. So when she came home at night from work or  
7 running errands, she would lock the garage?  
8 A. She would use the parking structure that was  
9 provided in front of the apartment.  
10 Q. Well, what do you mean, a "parking  
11 structure"?  
12 A. The overhead.  
13 Q. Oh, so just the covered parking like is out  
14 here?  
15 A. Yes, sir.  
16 Q. But was there a separate garage, as well?  
17 A. Yes, sir.  
18 Q. Okay. And when would she pull into the  
19 garage?  
20 A. Whenever she felt like it.  
21 Q. So was there -- was the normal behavior to  
22 pull in the covered parking?  
23 A. Yes, sir.  
24 Q. How many times in any given month would you  
25 say that she pulled into the garage?

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1 A. I can't estimate that.  
2 Q. Less than five?  
3 A. More, less, depending upon the month. I  
4 can't estimate that.  
5 Q. Did she have a -- did she have any type of  
6 alarm on the car, theft protection?  
7 A. No, sir.  
8 Q. And for part of the time while you worked at  
9 Gowan, you were employed at ABA and then the Cosmo,  
10 correct?  
11 A. Yes, sir.  
12 Q. Did Cosmo ever drug test you?  
13 A. They drug tested me before they hired me.  
14 Q. And did you pass?  
15 A. Yes, sir.  
16 Q. Did you have assistance in passing?  
17 A. Can you repeat the question?  
18 Q. Did -- was it your own urine?  
19 A. No, sir.  
20 Q. So you used somebody else's urine or fake  
21 urine to pass the test?  
22 A. I used synthetic urine.  
23 Q. Other than the Cosmo and ABA, did you have  
24 any other jobs prior to this accident?  
25 A. No, sir.

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1 Q. How about subsequent to the accident, have  
2 you held any employment since the accident?  
3 A. No, sir.  
4 Q. Is it accurate that all of the income that  
5 you've made has been from dealing drugs?  
6 A. No, sir.  
7 MR. STRASSBURG: Since the accident?  
8 BY MR. ESCHWEILER:  
9 Q. Yes, since the accident.  
10 A. No, sir.  
11 Q. Well, what other forms of income have you  
12 received?  
13 A. I've done odd jobs like helping someone in  
14 their house, yard work, and tutoring, things like that,  
15 little knickknack jobs.  
16 Q. Paid cash?  
17 A. Yes, sir, or a check.  
18 Q. Have you filed any tax returns since the  
19 accident?  
20 A. No, sir.  
21 Q. And you're not currently employed, correct?  
22 A. No, sir.  
23 Q. Have we missed anything with regard to your  
24 employment history?  
25 A. No, sir.

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1 Q. Let's talk about the day of the accident.  
2 A. Okay.  
3 Q. January 2nd, 2011.  
4 Do you have a specific recollection of that  
5 day?  
6 A. Yes, sir.  
7 Q. Why -- why is -- why do you have a  
8 recollection?  
9 A. Because I was robbed on New Years for a  
10 substantial amount of marijuana, and I was trying to  
11 make back the money that I had lost.  
12 Q. On New Year's Eve 2010, you were robbed?  
13 A. Yes, sir.  
14 Q. How much marijuana was stolen?  
15 A. They stole the cash that I was going to use  
16 to purchase another package.  
17 Q. How much cash did they steal?  
18 A. \$275.  
19 Q. And so the days following the robbery, you  
20 needed to make more money in order to get a new  
21 package?  
22 A. I was owing a friend. I needed to make my  
23 money back.  
24 Q. To pay back the guy that you had bought the  
25 package from?

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1 A. Yes, sir.  
2 Q. And how were you doing that?  
3 A. Selling the product.  
4 Q. So you had additional -- you had additional  
5 product? They didn't take the weed from you?  
6 A. They took the money that was required to  
7 obtain the weed, but because of -- I was employed  
8 and -- kind of, you know, that was my occupation, was  
9 selling drugs, and I was able to receive a front. I  
10 wouldn't say employed because I wasn't employed, but  
11 that was --  
12 Q. That was your source of income at the time?  
13 A. Yes, sir.  
14 Q. You didn't have any job that you were going  
15 to on a daily basis?  
16 A. Not at all.  
17 Q. So in the morning of January 2nd, 2011, were  
18 you -- were you making deliveries, selling drugs? What  
19 were you doing?  
20 A. I was in the neighborhood selling drugs.  
21 Q. And when you say "in the neighborhood," in  
22 the apartment complex or --  
23 A. Yes, sir.  
24 Q. Okay. And would you need to use your mom's  
25 car for that?

1 A. No, sir.  
2 Q. So you would -- in the morning when you got  
3 up, you sold drugs in the -- in the complex?  
4 A. Yes, sir.  
5 Q. Okay. Do you recall how many sales you made?  
6 A. A lot.  
7 Q. More than ten?  
8 A. Yes, sir.  
9 Q. More than twenty?  
10 A. Yes, sir.  
11 Q. More than thirty?  
12 A. Yes, sir.  
13 Q. Fifty?  
14 A. Some days.  
15 Q. How many apartments are in the complex?  
16 A. A lot.  
17 Q. And these are all regular customers of yours?  
18 A. Yes, sir.  
19 Q. They knew that you were the guy to see --  
20 A. Yes, sir.  
21 Q. -- if they wanted weed?  
22 A. Yes, sir.  
23 Q. And did you make the money back that you  
24 needed to during the morning?  
25 A. No, sir.

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1 Q. So you continued --  
2 A. Oh, yes, sir, I did.  
3 Q. Did --  
4 A. Sorry about that. Yes, sir, I did.  
5 Q. Did you continue with transactions in the  
6 afternoon?  
7 A. Yes, sir.  
8 Q. The same thing, in the complex?  
9 A. Yes, sir.  
10 Q. At any point did you leave the complex?  
11 A. Yes, sir.  
12 Q. And I'm not talking about the time that we're  
13 talking about the -- when the accident happened.  
14 Any time prior to that, did you leave the  
15 complex?  
16 A. No, sir.  
17 Q. And at this point in time, your girlfriend  
18 and your child is living with you, correct?  
19 A. Yes, sir.  
20 Q. Now, is your girlfriend also helping you  
21 deliver drugs?  
22 A. Occasionally.  
23 Q. Who --  
24 A. She didn't -- she didn't like to, though.  
25 Q. Who was watching the kid on that day?

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1 A. She would -- she was.  
2 Q. Okay. And your mom was home?  
3 A. Yes, sir.  
4 Q. I apologize. And this was a Sunday, I  
5 believe, correct?  
6 A. Possibly.  
7 Q. Was your mom home the entire day?  
8 A. No. I think she was tutoring. I think she  
9 went somewhere.  
10 Q. In the morning or afternoon?  
11 A. Early morning.  
12 Q. And then she came back to the residence?  
13 A. Yes, sir.  
14 Q. And then at some point, you left the Gowan  
15 apartment --  
16 A. Yes, sir.  
17 Q. -- later that afternoon?  
18 A. Yes, sir.  
19 Q. Where were you going?  
20 A. To Villa Del Sol.  
21 Q. That's another apartment complex?  
22 A. Yes, sir.  
23 It's the location of the accident.  
24 Q. How far from the Gowan apartment is that?  
25 A. I'd say like a mile maybe, a mile and a half.

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1 Q. Were you also going to make deliveries at  
2 Villa Del Sol?  
3 A. That was the reason I was there.  
4 Q. Okay. Was anybody in the car with you?  
5 A. No, sir.  
6 Q. Your child wasn't in the car?  
7 A. No, sir.  
8 Q. Your girlfriend wasn't in the car?  
9 A. No, sir.  
10 Q. Who were you making a delivery to?  
11 A. A woman named Sheshe Killian, one of my  
12 children's godmother.  
13 Q. And I saw that in the -- in some of the  
14 paperwork.  
15 She was your girlfriend's sister?  
16 A. Yes, sir.  
17 Q. And your girlfriend didn't want to go?  
18 A. She wouldn't go with me on those kind of drug  
19 deals.  
20 Q. Did you talk to your mom before you had left?  
21 A. No, sir.  
22 Q. Where was she in the apartment?  
23 A. In the shower.  
24 Q. She was in -- so she was in her room, and the  
25 door was locked?

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1 A. Yes, sir.  
2 Q. Do you know the door was locked for sure?  
3 A. Yes, sir.  
4 Q. Did you try it?  
5 A. Yes, sir.  
6 Q. You didn't -- did you call out to her and  
7 say, hey, I'm leaving?  
8 A. No, sir.  
9 Q. Okay. Did you tell your girlfriend that you  
10 were leaving?  
11 A. Yes, sir.  
12 Q. Do you know if your girlfriend told your mom  
13 that you were leaving?  
14 A. No, sir.  
15 Q. You never talked to her about it?  
16 A. No, sir.  
17 My mother was under the impression that I was  
18 outside the apartment.  
19 Q. Why was that?  
20 A. Because that's usually where I was.  
21 Q. But you were -- she had seen you in the  
22 apartment that afternoon, correct?  
23 A. Yes, sir.  
24 Q. And when you left the keys were on the  
25 counter?

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1 A. Yes, sir.  
2 Q. So when your mom had gotten home from  
3 tutoring that morning, she had put them on -- she had  
4 put them on the counter?  
5 A. Yes, sir.  
6 Q. And you didn't tell her that you were  
7 leaving, but you told your girlfriend, hey, I'm leaving  
8 to go to Sheshe's house?  
9 A. Watch the door.  
10 Q. Okay. What's that mean?  
11 A. Make sure mom doesn't know I have the car.  
12 Q. At any point after you left the apartment  
13 that day, did your mom call you?  
14 A. No, sir.  
15 Q. She never called you to say bring the car  
16 back?  
17 A. No, sir.  
18 Q. She never called you to say, hey, you're not  
19 supposed to have the car?  
20 A. No, sir.  
21 She has in the past.  
22 Q. She has called you in the past when you've --  
23 A. Yes, sir.  
24 Q. -- taken the car and said bring it back?  
25 A. I've gotten in a lot of trouble.

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1 Q. And what kind of trouble have you gotten in?  
 2 A. Discipline.  
 3 Q. When you say "discipline," what do you mean?  
 4 A. She's aware of the fact that I -- you know, I  
 5 had took the keys without permission and maybe get  
 6 grounded, lack of allowance, loss of some privileges,  
 7 she doesn't want to see my face for a couple days.  
 8 Q. How many times has this happened?  
 9 A. Two or three.  
 10 Q. And this was before the accident?  
 11 A. Yes, sir.  
 12 Q. So two or three times, you've taken the car,  
 13 and she called you and said, hey, bring the car back?  
 14 A. Yes, sir.  
 15 Q. You're in trouble?  
 16 A. Yes, sir.  
 17 Q. You said something about -- did you get an  
 18 allowance from her?  
 19 A. Occasionally.  
 20 Q. How much would -- did you get?  
 21 A. She would give the mother of my children a  
 22 hundred dollars a week to clean the house.  
 23 Q. Did she actually clean the house?  
 24 A. Yes, sir.  
 25 Q. And you also said that sometimes you got

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1 grounded?  
 2 A. Yes, sir.  
 3 Q. Two -- at least two or three times?  
 4 A. Yes, sir.  
 5 Q. How long did you get grounded for?  
 6 A. Like a week or two weeks.  
 7 But at that age, you know, being grounded is  
 8 kind of like just the loss of privileges, like don't  
 9 want to see you in the living room, don't want to see  
 10 you, stay away from me, make your own food, stuff like  
 11 that.  
 12 Q. Were you allowed to leave the house?  
 13 A. Sometimes.  
 14 Q. Otherwise you were in your room?  
 15 A. Yes, sir.  
 16 Q. With the door locked?  
 17 A. Sometimes.  
 18 Q. What other privileges did you lose?  
 19 A. Like eating out, she'd take my phone,  
 20 different things like that.  
 21 Q. If she took your phone, how were you making  
 22 any deliveries?  
 23 A. My friends would knock on my window.  
 24 Q. I forgot. You were on the first floor?  
 25 A. Yes, sir.

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1 Q. So they'd come -- they'd come knock on your  
 2 window, and then you'd go outside to meet them?  
 3 A. Yes, sir.  
 4 Q. How much traffic would you get in any given  
 5 day during the grounding?  
 6 A. A lot.  
 7 Q. Was your mom home at the time?  
 8 A. Sometimes.  
 9 Q. Did she ever ask you what was going on?  
 10 A. No.  
 11 Q. Did she know what was going on?  
 12 A. No.  
 13 Q. How do you know?  
 14 A. Because we made sure, a point to keep her out  
 15 of it.  
 16 Q. Now, prior to January 2nd, 2011, you were  
 17 allowed to use the car at times to go to work, correct?  
 18 A. Occasionally.  
 19 Q. And how often would you use the car to go to  
 20 work?  
 21 A. Not that often.  
 22 Q. Once a week?  
 23 A. Maybe once a week, twice a week.  
 24 Q. And that was the ABA tutoring?  
 25 A. Yes.

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1 Q. When you were driving from the Gowan  
 2 apartment to the actual residence where the child  
 3 lived?  
 4 A. Yes, sir.  
 5 And I was under the impression that I had a  
 6 permit at the time; so she would let me drive with a  
 7 permissible driver, and the mother of my children had a  
 8 license at the time.  
 9 Q. So the mother of your -- Tikiera?  
 10 A. Yes, sir.  
 11 Q. -- would go with you to the actual in-home  
 12 visits with the autistic child?  
 13 A. No.  
 14 Q. She would drop you off?  
 15 A. Yes, sir.  
 16 Q. So you would drive there, and then Tikiera  
 17 would take the car and go do whatever?  
 18 A. Yeah. She'd bring the car back to mom.  
 19 Q. And was this during -- like during the week  
 20 that you would take the car?  
 21 A. Yes, sir.  
 22 Q. How was your mom getting to work during those  
 23 times?  
 24 A. She -- I'd drop her off in the morning, or  
 25 she wasn't working during that time.

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1 Q. And you were using the car for the entire  
2 time that you worked at ABA?  
3 A. When the car wasn't in use. I wasn't driving  
4 the car every time I went, but, yes, we would use the  
5 Forenza to take me to work.  
6 Q. So some days you drove, and some days Tikiera  
7 drove you?  
8 A. Sometimes my mom drove.  
9 Q. And you worked at ABA I think we said for  
10 about a year and a half?  
11 A. Yes, sir.  
12 Q. So is it fair to say that you drove the  
13 Forenza 40 times to go to work, 50 times?  
14 A. Less than that.  
15 Q. Less than that?  
16 A. Yes, sir.  
17 Q. 25 times?  
18 A. Less than that.  
19 Q. 15?  
20 A. Maybe.  
21 Q. Okay.  
22 A. She's very cautious about letting me drive.  
23 Q. Other than you driving to work or Tikiera  
24 driving you or your mom driving you, did you have any  
25 other way to get to work?

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1 A. Sometimes a friend would drive me.  
2 Q. How often did that happen?  
3 A. Every once in awhile when I wasn't able to  
4 take myself to work.  
5 Q. And how did your mom let you know that it was  
6 okay for you to take the car to work? Did she say,  
7 yes, I know you're going to work today, take the car,  
8 or did you just take the keys?  
9 A. I'd ask her.  
10 Q. And she'd say okay?  
11 A. She said yeah.  
12 Q. And once she'd say okay, would she actually  
13 give you the keys, were the keys always on the counter,  
14 or how did it happen?  
15 A. The keys would be on the counter. The  
16 keys --  
17 Q. Every time?  
18 A. The keys would be out in the open, and that  
19 would be what would strike me to ask.  
20 Q. Were the keys ever in your mom's pocket when  
21 you asked, and she handed them to you?  
22 A. No. That was a no-go. That was a definite  
23 no.  
24 Q. When you were taking the keys, did she ever  
25 ask you where you were going?

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1 A. No. I'd have to tell her.  
2 Q. So when you -- let's play this out. So you'd  
3 be in the kitchen or in your bedroom. You'd come out.  
4 You'd have -- the keys would be on the counter. You'd  
5 take them and say, Mom, I'm going to work, I'm going --  
6 A. No. I'd ask.  
7 Q. Okay. You'd say, hey, Mom, can I -- I'm  
8 going to take -- can I take the car to work?  
9 A. Right, can I drive myself to work.  
10 Q. Okay. Then she'd say yes?  
11 A. Yeah.  
12 Q. And she'd always have to be home when you  
13 took the car because you always had one car, right?  
14 A. Yes, sir.  
15 Sometimes her friends would pick her up, and  
16 the car would stay at home.  
17 Q. And you said that this really wasn't an  
18 errand that your mom would allow you to do, but in the  
19 past I think the paperwork said that your mom also  
20 allowed you to run errands, as well, with the car.  
21 A. Occasionally.  
22 Q. And what types of errand would she allow you  
23 to run?  
24 A. To go pay bills.  
25 Q. Grocery store?

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1 A. Occasionally.  
2 Q. Take your kids somewhere?  
3 A. Yeah, like appointments.  
4 Q. Doctor appointments for the kids, did you  
5 ever take them with the car?  
6 A. Sometimes. But, I mean, we didn't have much  
7 doctors' appointments.  
8 Q. Dentist?  
9 A. No.  
10 Q. Any other -- any other kid appointments that  
11 you'd drive them to?  
12 A. No. Just to get the Plan B done.  
13 Q. Okay. And I think what -- you said it was  
14 Sheshe, the godmother?  
15 A. One of them, yes.  
16 Q. Okay. Did you ever drive the kids over to  
17 Sheshe's house maybe to baby-sit or anything?  
18 A. At that -- those would be the times that  
19 their mother would drive.  
20 Q. Okay. Did -- would your mom know that when  
21 you took the car, that the kids were also going to be  
22 in the car?  
23 A. Oh, yeah.  
24 Q. And was there a car seat or something in the  
25 car?



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1 A. Definitely.  
2 Q. Okay. Kids' toys?  
3 A. Definitely.  
4 Q. How -- in any given week, how often were you  
5 running errands?  
6 A. Once or twice.  
7 Q. Once or twice a week?  
8 A. Yeah. Not often.  
9 Q. Okay. And it -- would it work the same as it  
10 would for work; if you were going to run an errand, you  
11 know, the keys would be on the counter, and you'd say,  
12 hey, Mom, I'm -- I've got to run to pay bills at Nevada  
13 Power?  
14 A. I'd always ask.  
15 Q. Okay. And then she said okay?  
16 A. Yeah. Like a teenager would.  
17 Q. And if the keys weren't on the counter, your  
18 mom would know that you had the car, correct?  
19 A. Yeah. I mean, yeah. Sometimes, or sometimes  
20 she wouldn't know if she hadn't left her room.  
21 Q. You -- if you had to put an estimate on it in  
22 percentages, who used the car more, you or your mom?  
23 A. My mom.  
24 Q. Would it be 60/40?  
25 A. It'd be 85/15.

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1 Q. Okay. Explain why you say that.  
2 A. Because we were very cautious about me  
3 driving.  
4 Q. Did it make a difference if it was a weekday  
5 or a weekend, whether she let you drive?  
6 A. Yeah.  
7 Q. And what -- what was the differential?  
8 A. If I didn't have a reason to drive, I  
9 couldn't drive.  
10 Q. So if you weren't going to work or running an  
11 errand for the family, you couldn't drive?  
12 A. Yes, sir.  
13 Q. Did -- was there any ever instances where you  
14 were out running errands and she'd call you and say,  
15 hey, can you pick up a gallon of milk from the grocery  
16 store?  
17 A. Oh, yeah, definitely.  
18 Q. How often do you think that happened?  
19 A. A lot.  
20 Q. Okay.  
21 A. Ho-Hos and Nesquik.  
22 Q. That was her thing?  
23 A. Yes, sir.  
24 Q. Anything else you can remember where she'd  
25 call you and say, hey, can you grab this, besides

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1 Nestle's Quik and --  
2 A. No, just things that were needed, yeah.  
3 She'd never send me out. It would always be if I was  
4 out.  
5 Q. Okay. So you would be -- she'd know that you  
6 had the car, and she'd call you to say --  
7 A. Yeah.  
8 Q. -- pick this up for me?  
9 A. And hurry up.  
10 Q. And hurry?  
11 A. Yes, sir.  
12 Q. Did you ever call your mom while you were  
13 driving to check on your kids or ask your mom if you  
14 needed to bring anything home?  
15 A. Occasionally.  
16 But what I had was a headset. I had ear  
17 phones and a mic like this, and the phone would be in  
18 the console.  
19 Q. Okay. Do you recall were you -- I mean, we  
20 talked about the car seat, and there was some kids'  
21 toys, I think you said.  
22 Did you have any personal belongings in the  
23 car?  
24 A. No.  
25 Q. No clothes or anything?

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1 A. I might have.  
2 Q. CDs?  
3 A. Yeah.  
4 Q. Okay. So your CDs were in the car?  
5 A. Yes, sir.  
6 Q. Do you know what CDs you had in the car?  
7 A. No, I don't remember.  
8 Q. Do you know how many CDs you had?  
9 A. A few. DVDs.  
10 Q. What do you mean, "DVDs"?  
11 A. I think there were two DVDs in the car upon  
12 the accident.  
13 Q. So a couple DVDs and maybe some CDs?  
14 A. Yes.  
15 Q. And was there a CD player that you could play  
16 music out of?  
17 A. Yeah, there was a CD console.  
18 Q. And where were the DV -- there was a DVD  
19 player, also?  
20 A. No, sir.  
21 Q. Why would the DVDs be in the car?  
22 A. Somebody had lent them to me.  
23 Q. Okay. So you had went somewhere and picked  
24 them up and then had just left them in the car?  
25 A. I think we had went somewhere, my family had

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1 went somewhere, and I took the DVDs.  
 2 Q. When you say your family, you, your mom --  
 3 A. All of us took it.  
 4 MS. COMPTON: Do you want to take a break?  
 5 Are you okay?  
 6 THE WITNESS: Yeah, I'm fine. Do you guys  
 7 think I should take a break?  
 8 MS. COMPTON: I don't know. I'm just asking  
 9 you.  
 10 MR. MAZZEO: I have a question.  
 11 MR. ESCHWEILER: Let's go off for a second.  
 12 THE VIDEOGRAPHER: Off the video record at  
 13 12:15.  
 14 (Discussion off the record.)  
 15 THE VIDEOGRAPHER: Back on the video record  
 16 at 12:16.  
 17 BY MR. ESCHWEILER:  
 18 Q. When you took the car on January 2nd, 2011, I  
 19 believe you said there was nobody else in the car,  
 20 correct?  
 21 A. No, sir.  
 22 Q. Prior to taking the car that day, you had  
 23 been making marijuana deliveries throughout the day?  
 24 A. No, sir.  
 25 Q. No?

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1 A. No.  
 2 Q. I thought when we talked about what you had  
 3 done that day, you had needed to make up the \$275; so  
 4 you made 30 to 40 transactions during the day.  
 5 A. Which I sold throughout the community.  
 6 Q. Okay. So -- but that happened on the day of  
 7 the accident, correct?  
 8 A. Yes, sir.  
 9 Q. Had you consumed any marijuana on the day of  
 10 the accident?  
 11 A. No, sir.  
 12 Q. None?  
 13 A. No, sir.  
 14 Q. Had you consumed any other illegal drugs on  
 15 the day of the accident?  
 16 A. No, sir.  
 17 Q. When was the last time you had consumed  
 18 marijuana prior to January 2nd, 2011?  
 19 A. Weeks.  
 20 Q. Weeks?  
 21 A. Yes, sir.  
 22 Q. How often did you smoke marijuana prior to  
 23 January 2nd, 2011?  
 24 A. Often.  
 25 Q. But not in the two to three weeks before the

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1 accident?  
 2 A. No, sir.  
 3 Q. Well, why not?  
 4 A. I was doing different drugs.  
 5 Q. What were you doing?  
 6 A. Xstacy.  
 7 Q. How much xstacy were you doing?  
 8 A. One or two pills.  
 9 Q. A day?  
 10 A. Yeah.  
 11 Some days I wouldn't do them.  
 12 Q. Did you do any xstacy on January 2nd, 2011?  
 13 A. No, sir.  
 14 Q. January 1st, 2011?  
 15 A. No, sir.  
 16 Q. How about New Year's Eve 2010?  
 17 A. No, sir.  
 18 Q. When was the last time prior to the accident  
 19 that you took xstacy?  
 20 A. It was like December 28th.  
 21 Q. Did you have one or two pills?  
 22 A. Two.  
 23 Q. Was it at night?  
 24 A. During the day, twilight.  
 25 Q. Dinnertime?

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1 A. Yes, sir.  
 2 Q. Other than weed and xstacy, what other  
 3 illegal drugs did you do prior to the accident?  
 4 A. Cocaine a couple weeks before.  
 5 Q. How much cocaine did you ingest?  
 6 A. I don't remember.  
 7 Q. How often would you do cocaine?  
 8 A. Occasionally.  
 9 Q. A couple times a month?  
 10 A. Yeah, a couple times a month.  
 11 Q. And how often were you doing the xstacy?  
 12 A. Often.  
 13 Q. Four or five times a week?  
 14 A. Say like three or four.  
 15 Q. Any other drugs besides --  
 16 A. No, sir, not at that time.  
 17 Q. No meth at that point?  
 18 A. No, sir.  
 19 Q. Any prescription drugs?  
 20 A. No, sir.  
 21 Q. Tell me what happened that -- when you left  
 22 the apartment that day to use your mom's car.  
 23 A. So I got a call from Sheshe saying she wanted  
 24 a substantial amount of marijuana and --  
 25 Q. What's a substantial amount?



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1 A. Like a quarter.

2 -- and so that was what I needed, actually,  
3 like a hundred dollars, \$120, and so Mom was in the  
4 shower. I waited till Mom was in the shower, and we  
5 had asked her for a ride to Sheshe's, and she said, no,  
6 she was tired.

7 So I waited till she was in the shower, and  
8 the door was locked, and I noticed the keys were on the  
9 counter; so I grabbed them. Told the children of my  
10 mother [sic] to watch the door.

11 Took Cheyenne straight up to Rainbow, took  
12 Rainbow to Villa Del Sol, went to go see Sheshe, make  
13 the purchase, and leaving, I called the mother of my  
14 children to check to see where we were, if I was in  
15 trouble or not, if I was -- what I was coming home to,  
16 and it was clear.

17 And begin to exit the apartments. Looked to  
18 my left. I saw a bus. I waited for the bus to clear.  
19 Looked to my right, the bus was clear. Looked to my  
20 left. I saw the white vehicle begin to commit to the  
21 turn, and as soon as I pulled into the turn, the woman  
22 sped up.

23 And I tried to turn out of it, but we ended  
24 up colliding, and we collided, and I tried to hit the  
25 accelerator, tried to leave, leave the scene, but the

1 case somebody else wanted some while I was there.

2 Q. And was anybody else at Sheshe's house when  
3 you got there?

4 A. Yes.

5 Q. Who else was there?

6 A. I don't know the kids' names.

7 Q. So there was several people there?

8 A. Yes, sir.

9 Q. And you dropped off 7 grams of marijuana?

10 A. 6, actually.

11 Q. And how much money did you get?

12 A. I got \$120. Then I had \$60 on me already.

13 So I had \$180 on my person.

14 Q. And then how much marijuana did you have left  
15 in your pocket?

16 A. 8 grams.

17 Q. 8 grams?

18 A. Yes, sir.

19 Q. How long were you at Sheshe's house?

20 A. 30, 45 minutes, not long.

21 Q. Did you consume any marijuana while you were  
22 there?

23 A. No, sir.

24 Q. Did you do any illicit drugs while you were  
25 there?

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1 car was immobile. So I got out of the car, ran over to  
2 the white vehicle. I asked if she was okay, if there  
3 was any injuries.

4 She said no. She said go back to your car  
5 and wait till the police get here. And I said you're  
6 calling the police. She said yes. I ran to my car,  
7 hid the marijuana on my person, ditched the scale in  
8 the car, hid the scale in the car, and sat in the car  
9 till the police arrived.

10 Q. That was a lot; so let's go back.

11 You were -- you were leaving Sheshe's house?

12 A. I was leaving Villa Del Sol.

13 Q. So you -- had you already dropped off the  
14 weed?

15 A. Yes, sir.

16 Q. But you still had weed in your pocket?

17 A. Yes, sir. I had 8 grams of marijuana.

18 Q. If you knew you were doing a delivery just to  
19 Sheshe, why did you have extra weed in your pocket?  
20 Were you going to go to somewhere else to make another  
21 delivery?

22 A. She might have wanted more at the time.

23 Q. She didn't tell you when you called her?

24 A. She told me she wanted 7 grams, but I took a  
25 half ounce in case she wanted the whole thing or in

1 A. No, sir.

2 Q. What were you doing for 30 to 45 minutes?

3 A. Weighing out the weed, discussing with her,  
4 you know, what our plan was going to be for the next  
5 package, and then leaving.

6 Q. And you had brought your own scale --

7 A. Yes, sir.

8 Q. -- or did Sheshe have her own?

9 A. I brought my own.

10 Q. Okay. How many times have you been to  
11 Sheshe's house?

12 A. A lot.

13 Q. Had you driven the car there before?

14 A. The children of my mother [sic] has.

15 Q. Pardon?

16 A. I mean the mother of my children has. I'm  
17 sorry.

18 Q. Okay. You never have?

19 A. No, sir.

20 Q. This was the first time you ever drove to the  
21 complex?

22 A. Yes, sir.

23 Q. Did you talk to Tikiera while you were at  
24 Sheshe's house?

25 A. When I left.

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1 Q. Just when you left?  
 2 A. In the parking lot, yeah.  
 3 Q. Well, when you left the apartment, were you  
 4 wearing your glasses?  
 5 A. Yes, sir.  
 6 Q. So you had your glasses on while you were  
 7 driving?  
 8 A. Yes, sir.  
 9 Q. Had your mom called at any point while you  
 10 were at Sheshe's?  
 11 A. No, sir.  
 12 Q. And I think you said when you were pulling  
 13 out of Sheshe's apartment building, which is Villa --  
 14 A. Del Sol.  
 15 Q. -- Del Sol, you saw a bus or a moving truck?  
 16 What was it?  
 17 A. A bus.  
 18 Q. Like a MET bus?  
 19 A. Like a CAT bus.  
 20 Q. Okay.  
 21 A. The older models.  
 22 Q. Was it a one-story or a two-story?  
 23 A. One-story.  
 24 But it was like an extended cab.  
 25 Q. And when -- when you looked to the left, did

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1 you see the white car, or did you just see the bus?  
 2 A. I saw -- I saw the white car.  
 3 Q. Where was the white car?  
 4 A. Maybe like six, seven feet away from the bus  
 5 in the second lane. The bus was in the first lane.  
 6 Q. And was the white car ahead of the bus or  
 7 behind the bus?  
 8 A. Behind the bus.  
 9 Q. So it was six or seven feet behind the bus?  
 10 A. Yes, sir.  
 11 Q. And how far away from the bus were you?  
 12 A. I was relatively close. The bus had to pass  
 13 me.  
 14 Q. The bus wasn't stopped?  
 15 A. No, sir. Getting ready to make a stop.  
 16 Q. Well, was the stop before or after your  
 17 driveway?  
 18 A. After, like directly after.  
 19 Q. So it would have had to cross your path and  
 20 then stop?  
 21 A. It would have crossed Villa Del Sol, turn  
 22 into this lane, and then slow down to make its approach  
 23 at the stop.  
 24 Q. And when you're stopped waiting for the bus  
 25 to clear, that's when you were on the phone?

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1 A. No. I was on the phone before I exited the  
 2 apartments.  
 3 Q. So you weren't on the phone at any time  
 4 before the accident?  
 5 A. Before -- right before the accident.  
 6 Q. Okay. So like --  
 7 A. Before I was getting ready to make a  
 8 left-hand turn into oncoming traffic.  
 9 Q. So you were -- you were stopped at the stop  
 10 sign --  
 11 A. Yes, sir.  
 12 Q. -- getting ready to pull out until --  
 13 A. Well, I was stopped at that -- yeah, the  
 14 entrance of the apartments.  
 15 Q. Villa Del Sol?  
 16 A. Yes. Yes, sir.  
 17 Q. Okay. So you were stopped there waiting to  
 18 pull -- you're waiting for the bus to clear --  
 19 A. Yes, sir.  
 20 Q. -- and then you're going to pull out?  
 21 A. And I put my nose out to signal to the  
 22 traffic that I'm getting ready to make a left-hand  
 23 turn. My turn signal was on, and the bus clears. I  
 24 go and I clear the first lane. The woman speeds up and  
 25 tried to rear [sic] out of it. We collide, and we

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1 both -- we both fishtailed.  
 2 I spin out of control and end up in the  
 3 middle lane, and she ends up in a different lane. I  
 4 run over to her and ask her if she's okay. A patrol  
 5 car was already at the scene a couple -- a couple  
 6 apartments down.  
 7 So the patrol car came and secured the scene  
 8 and called the traffic cop to respond, and we had to  
 9 wait in the car till the traffic cop came. Traffic cop  
 10 said something to the woman and then said something to  
 11 me, could smell the marijuana on my person because it  
 12 was potent and a substantial amount, and asked me if I  
 13 had been smoking.  
 14 I said yes because I wanted to keep the weed  
 15 and the money that I had, and I did not want him to  
 16 find the weed. So I said yes. He pulled me out of the  
 17 car to perform a sobriety test. I failed the sobriety  
 18 test at the time due to being nervous at the time  
 19 because I had marijuana on my person. I didn't want to  
 20 get caught with it.  
 21 And then they put me in cuffs and sat me down  
 22 on the corner. I said do I have to go to jail. He  
 23 said, yes, at this time you're being arrested for DUI,  
 24 chemical solvent. And the woman driving the white car  
 25 was like -- she's like why'd you do that, and I said

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1 it's not what you think, and she's like  
2 (demonstrating).

3 Q. Was that the only communication that you had  
4 with my client?

5 A. Yes, sir. Besides when I ran to the car and  
6 asked her if she was fine.

7 Q. Was the first police officer that showed up  
8 the one that smelled weed?

9 A. No, sir.

10 Q. Okay. So the first patrol officer that  
11 was -- just happened to be driving by, he wanted to  
12 clear the traffic.

13 Did you guys move the cars?

14 A. He wanted to secure the traffic and make sure  
15 there wasn't another accident because that's an  
16 accident-prone area, and so he wanted to make sure it  
17 was secure. And the traffic cop responded, and once he  
18 spoke to her and once he spoke to me, he told her to  
19 pull the car over to the side, in the middle lane, I  
20 think.

21 Q. And did you have to move your car, as well?

22 A. I couldn't move my car.

23 Q. It was --

24 A. Totaled.

25 Q. -- inoperable?

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1 A. Immobile.

2 Q. And you said something there, this was --  
3 this was an accident-prone area?

4 A. Yes, sir.

5 Q. Why do you think that?

6 A. Because it's an accident-prone area.

7 Q. So you've seen many accidents there?

8 A. Yes, sir.

9 Q. And what -- what kind of accidents?

10 A. Pedestrians being hit, people on mopeds being  
11 hit, other car accidents, heavy traffic and narrow  
12 lanes.

13 Q. So you've -- you've been to that intersection  
14 and that driveway before?

15 A. Yeah.

16 Q. Many times?

17 A. I'd been to that area, yes, sir.

18 Q. Do you think when you were on the phone it  
19 was distracting you from concentrating on the road?

20 A. No, sir.

21 Q. How long -- and you said the bus had cleared,  
22 correct?

23 A. Yes, sir.

24 Q. How long after the bus had cleared before  
25 you -- you proceeded into the intersection?

1 A. Immediately.

2 Q. And at the point you started into the  
3 intersection, where was -- where was my client?

4 A. Six or seven feet behind the bus.

5 Q. The bus?

6 A. With enough room for me to make the turn. I  
7 was clear. I wouldn't say six or seven feet. I'd say  
8 maybe a couple car lengths.

9 Q. Had -- had you nosed out while the -- before  
10 the bus was passing?

11 A. Yes, sir, with my turn signal on, with my  
12 left turn signal on.

13 Q. Do you think that my client had an  
14 opportunity to see you pull out if the bus was six or  
15 seven feet ahead of her?

16 A. Definitely. She sped up.

17 Q. Okay. How do you know she sped up?

18 A. I witnessed her speeding up.

19 MR. MAZZEO: It's -- objection, the witness  
20 had corrected his prior statement, the six to seven  
21 feet, by a couple car lengths between the plaintiff's  
22 car and the bus.

23 BY MR. ESCHWEILER:

24 Q. So prior to the time that you had pulled out,  
25 you saw -- you saw my client's car?

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1 A. Yes, sir.

2 Q. And you said that was approximately how far  
3 from the intersection?

4 A. A few car lengths.

5 Q. How far was the bus from you?

6 A. It just cleared.

7 Q. Okay.

8 A. Pretty close.

9 Q. And then you hit my client's car?

10 A. We collided.

11 Q. Okay. Well, why -- is there a distinction  
12 between you hitting and there being a collision?

13 A. Me hitting means I ran into her, and  
14 collision means an accident.

15 Q. You didn't run into her?

16 A. I mean, I ran into her, yeah. Not  
17 deliberately.

18 Q. How fast were you going at the impact, do you  
19 think?

20 A. I accelerated to make that left turn.

21 Q. Do you have an estimate of how fast you were  
22 going?

23 A. Maybe like 20 to 30 miles an hour, for a  
24 short distance.

25 Q. And once you guys hit, you said that you

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1 spun, correct?  
 2 A. Yes, sir.  
 3 Q. And you were -- you were in this -- in the  
 4 middle lane?  
 5 A. I landed in the middle lane, yes.  
 6 Q. And she spun, and was she in oncoming  
 7 traffic?  
 8 A. Yes, sir.  
 9 Q. Okay. So you go over to see if she's okay?  
 10 A. Immediately.  
 11 Q. Okay. And she said, yes, I'm okay; I'm --  
 12 A. She said --  
 13 Q. -- calling the police?  
 14 A. She said I'm okay; I'm fine. Go back to your  
 15 car and stay in your car until the police come.  
 16 Q. Okay.  
 17 A. I said you're calling the police. She said  
 18 yes. I said, oh, and then handled my situation that  
 19 was happening in the car.  
 20 Q. Okay. So you --  
 21 A. Marijuana and the scale and the money.  
 22 Q. When you got back to the car, did you make  
 23 any phone calls?  
 24 A. I called the mother of my children to let her  
 25 know that I was in an accident, upon which time she --

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1 I don't know what the situation was with my mother, but  
 2 upon which time she called Sheshe and had everyone run  
 3 out to make sure I was okay.  
 4 Q. Okay. So Sheshe and whoever was at the  
 5 apartment where you had just sold marijuana came to the  
 6 accident scene?  
 7 A. Yes, sir. It was right outside.  
 8 Q. Did you have a conversation with Sheshe and  
 9 the people?  
 10 A. Yeah, I had a -- I had a conversation with  
 11 the people that were out there.  
 12 Sheshe wasn't out there, but the kids that  
 13 were out there, because they asked me why I didn't run,  
 14 and I had to explain that that was my mom's car, and  
 15 I'm in better shape going to jail than going to home  
 16 with a broken car.  
 17 Q. Other than talking to my client immediately  
 18 after the accident and then the people from Sheshe's  
 19 apartment, did you talk to anybody else?  
 20 A. Just the police officer.  
 21 Q. And you said that when you talked to the  
 22 police officer, you admitted that you smoked marijuana?  
 23 A. He said, oh, God -- he's standing outside the  
 24 car, and he said, oh, God, you smell like a Christmas  
 25 tree. Have you been smoking? I said, yeah, yeah,

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1 because I had the marijuana on my person, and I didn't  
 2 want to be caught with that.  
 3 Because I was already facing two possession  
 4 charges. I already had two possession of marijuana  
 5 charges, and in the state of Nevada, if you get caught  
 6 with three possession of marijuana charges, you do a  
 7 year in county, and that was not an option.  
 8 Q. So your testimony today is that you lied to  
 9 the cop in order to avoid jail?  
 10 A. My testimony has remained the same the whole  
 11 time.  
 12 Q. Okay. And then the reason that you failed a  
 13 sobriety test was not that you were impaired from  
 14 marijuana but that you were nervous about taking the  
 15 test?  
 16 A. I was nervous about being that close to an  
 17 officer with that much weed on me. I was nervous about  
 18 my current situation.  
 19 Q. So it wasn't -- it wasn't any impairment from  
 20 any marijuana?  
 21 A. No, sir.  
 22 Q. Anyone besides what we've talked about, the  
 23 police officer, my client with the two -- I think you  
 24 had two conversations with my client, correct?  
 25 A. Yeah.

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1 Q. Initially and then at some point she -- she  
 2 was out of the car, as well?  
 3 A. Yes. She was standing on the curb trying to  
 4 figure out what was going on with me, looking around,  
 5 trying to say things to my friends. My friends just  
 6 went I don't know. They didn't -- they didn't speak to  
 7 her. They said we're just out here to make sure he's  
 8 okay.  
 9 Q. Okay.  
 10 A. And so she saw that I was placed under arrest  
 11 and sitting on the curb, and she said why would you do  
 12 that, and I said it's not what you think, and she  
 13 said -- she kind of rolled her eyes and waived her hand  
 14 at me.  
 15 Q. Was she upset?  
 16 A. She was crying.  
 17 Q. Okay. Why did you --  
 18 MR. MAZZEO: I'm sorry. She was what?  
 19 THE WITNESS: Crying.  
 20 MR. MAZZEO: Crying?  
 21 THE WITNESS: Yes, sir.  
 22 BY MR. ESCHWEILER:  
 23 Q. Why didn't you call the police?  
 24 A. Because she had already responded [sic] to  
 25 the police, and the police were already at the

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1 location.

2 Q. Well, what were the sobriety tests that they  
3 gave you or that the officer gave you?

4 A. Take a few steps, stand on one foot, touch  
5 your nose. Repeat the same process with the opposite  
6 limbs.

7 Q. That's it --

8 A. Yes, sir.

9 Q. -- those three?

10 A. Yeah. Take a couple paces, stand on one  
11 foot, touch your nose, step down, take a few paces  
12 back, stand on one foot, touch your nose, follow my  
13 eyes -- follow my finger with your eyes.

14 Q. Did the officer say which of the sobriety  
15 tests that you actually failed?

16 A. All of them.

17 Q. Okay.

18 A. I received -- when we got to the jail --

19 MR. MAZZEO: There's no question pending,  
20 objection.

21 BY MR. ESCHWEILER:

22 Q. Go ahead. What were you going to say?

23 MR. STRASSBURG: What's the question?

24 BY MR. ESCHWEILER:

25 Q. All right. What were you going to say?

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1 MR. STRASSBURG: Go ahead.

2 THE WITNESS: I received traffic violations  
3 at the scene. They recovered the marijuana on my  
4 person at the scene. The same cops that came to secure  
5 the scene that were already there were the transport  
6 cops.

7 And when I went to the jail, they searched me  
8 in the jail, and they asked me if I was sure I didn't  
9 have any weed on me before I crossed the red line, and  
10 I said, yeah, man, I've got some weed on me, and they  
11 pulled it out.

12 And the traffic cop came -- came out of the  
13 back making a statement and said where'd this come  
14 from. I said I had it on me the whole time. He said  
15 so you're not as stupid as your face. I said, no, sir.  
16 He said you know I have to charge you for this; so it  
17 was a traffic violation and then the possession charge.

18 BY MR. ESCHWEILER:

19 Q. Did -- when he administered the sobriety  
20 test, did you think that you had passed?

21 A. I was trying to.

22 Q. So you were giving it your best effort?

23 A. At the time, yes, sir.

24 Q. And, ultimately, so you got arrested for  
25 DUI --

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1 A. Chemical solvent.

2 Q. -- and then possession of weed?

3 A. I got arrested at the scene for a DUI,  
4 chemical solvent, a bunch of traffic violations, and  
5 the possession charge was added once I was at the jail.

6 Q. And what were the traffic violations?

7 A. Failure to yield, driving without a license.  
8 I don't know.

9 Q. Do you remember anything else?

10 A. No, sir.

11 MR. ESCHWEILER: Okay. Why don't we take a  
12 ten-minute break.

13 THE VIDEOGRAPHER: Off the video record at  
14 12:37.

15 (Recess taken from 12:37 p.m. to 1:05 p.m.)

16 THE VIDEOGRAPHER: This is the beginning of  
17 Videotape No. 3 in the continued deposition of Jared  
18 Awerbach. Back on the video record at 1:05.

19 BY MR. ESCHWEILER:

20 Q. Mr. Awerbach, you understand you're still  
21 under oath?

22 A. Yes, sir.

23 Q. At the end of the last session, before we  
24 took a break, you were -- you were explaining the  
25 accident.

1 A. Yes, sir.

2 Q. And you said that when you were stopped at  
3 the driveway, that you saw the bus and you saw my  
4 client six or seven feet or perhaps up to two car  
5 lengths behind the bus; is that correct?

6 A. Yes, sir.

7 Q. If you saw her before pulling out, why didn't  
8 you just wait for her to clear the driveway?

9 A. I wasn't -- I hadn't spoken correctly at the  
10 time. I saw her car lengths distance away. I  
11 thought it was -- we were talking about a different  
12 location.

13 Q. Okay. So what -- do you want to revise your  
14 testimony?

15 A. Yes, sir, I would like to do that.

16 Q. Okay. And so when you saw my client when you  
17 were stopped at the driveway, how far behind the bus  
18 was she?

19 A. Three or four car lengths away.

20 Q. Okay. So three or four car lengths?

21 A. Yes, sir.

22 Q. And then you -- you edged out into the  
23 intersection.

24 You waited for the bus to pass, correct?

25 A. Yes, sir.



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1 Q. And why didn't you wait for my client's car  
2 to pass?  
3 A. Because I thought that I had a safe distance  
4 to clear the turn.  
5 Q. How long do you think it would have taken for  
6 my client to clear the driveway?  
7 A. A few moments.  
8 Q. Like less than five seconds?  
9 A. More than that.  
10 Q. Less than ten seconds?  
11 A. Maybe twelve, thirteen.  
12 Q. Okay. And you said that you thought you had  
13 a safe interval to make the turn; is that correct?  
14 A. From what it appeared to be, yes, sir.  
15 Q. Does your eye injury affect, or did it  
16 affect, your peripheral vision in seeing my client on  
17 that day?  
18 A. No, sir.  
19 Q. Okay.  
20 A. She sped up.  
21 Q. You talked about being cited for not having a  
22 license.  
23 A. Yes, sir.  
24 Q. So I wanted to ask you a few questions about  
25 that.

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1 Have you ever had a driver's license?  
2 A. No, sir.  
3 Q. Why not?  
4 A. I never made it to the driving portion of the  
5 driver's test.  
6 Q. Did you take the safety part of the class?  
7 Did you take a class?  
8 A. Yes, sir. I took a permit class.  
9 I was under the impression that I had a  
10 permit, and in the state of Nevada, you have to have a  
11 permit for six months before you can obtain a license.  
12 Q. And where did you take the class at?  
13 A. DMV.  
14 Q. And how long was the class?  
15 A. It's like a -- the permit test is a written  
16 test.  
17 Q. Okay. But prior to taking the written test,  
18 did you -- did you attend a driver's safety course?  
19 A. No, sir.  
20 Q. Okay. What did you do in anticipation of the  
21 test?  
22 A. Studied the driver's handbook.  
23 Q. Okay. So you -- you studied the driver's  
24 handbook and then took the test to obtain a learner's  
25 permit?

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1 A. Yes, sir.  
2 Q. And you passed the testing portion?  
3 A. I passed the testing portion.  
4 But when it came time to go to the clerk and  
5 pay for the ID, I didn't -- I didn't have enough cash  
6 on me; so I walked away without paying for it. The --  
7 they still issued me an ID; so I was under the  
8 impression that my permit was on the ID.  
9 Q. And when did this take place?  
10 A. 2010, early 2010.  
11 Q. So 2010 you took the test, and you were  
12 issued an ID?  
13 A. Yes, sir.  
14 Q. And not a permit?  
15 A. Yes, sir. I was --  
16 Q. They --  
17 A. Excuse me. I was under the impression that I  
18 was issued a permit, as well.  
19 Q. Did you look on the actual license, and it  
20 said identification only?  
21 A. No, it didn't say identification only.  
22 Q. It said that it was a permit?  
23 A. It didn't say permit, either. It just had my  
24 ID number.  
25 Q. Prior to the accident that we're here to talk

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1 about today, had you ever been cited for any other  
2 moving violations?  
3 A. Yes, sir.  
4 Q. Tell me about those.  
5 A. I was cited one night for driving with a  
6 broken headlight, driving without a license, and  
7 something else.  
8 Q. Do you remember when that was?  
9 A. No, I don't have a date for that.  
10 Q. Sometime in 2010?  
11 A. Yes, sir.  
12 Q. November 2010?  
13 A. No, sir. Before that.  
14 Q. Okay. Before that?  
15 A. Yes, sir.  
16 Q. What was the -- what was the resolution of  
17 those tickets?  
18 A. Traffic violations.  
19 Q. Did you pay the fine?  
20 A. I served time.  
21 Q. You served time in jail?  
22 A. Yes, sir.  
23 Q. How much time did you serve?  
24 A. Two and a half weeks.  
25 Q. For those charges only?

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1 A. Well, when I was serving, the judge -- after  
2 the raid the judge -- I had a felony hold on me. So  
3 the judge gave me an option, I could either stay and  
4 plead guilty to the two possession charges, and that's  
5 what I did, and at that time I took care of the traffic  
6 violations, as well.

7 Q. So this was after the -- which raid; the  
8 November 2010 raid?

9 A. This was before. This was when I was in  
10 custody after the March raid.

11 Q. Okay. But I thought you said that these  
12 tickets were from early 2010.

13 A. They were.

14 Q. Okay. So you just never paid them?

15 A. I never went to court. I had a --

16 Q. Bench warrant?

17 A. No, I never was -- received a warrant for  
18 those.

19 Q. Any other traffic violations?

20 A. No, sir.

21 Q. So you have one -- one ticket for broken  
22 headlight and one ticket for driving without a license?

23 A. Yeah. And there might have been more at the  
24 time, but I don't remember. I don't recall.

25 Q. Okay. Any other accidents while you were

1 A. Yes, sir. On Fuselier and Alexander.

2 MR. MAZZEO: What was that? I'm sorry.

3 THE WITNESS: I don't recall the date, but I  
4 was fifteen.

5 BY MR. ESCHWEILER:

6 Q. So you think it was 2008, though?

7 A. Yes, sir.

8 Q. And what was the cross streets, did you say?

9 A. Fuselier and Alexander.

10 Q. Was there any damage to your car?

11 A. Yes, sir.

12 Q. How much?

13 A. Totaled.

14 Q. A total loss?

15 A. (Witness nods head.)

16 Q. How much damage to the other car?

17 A. Substantial.

18 Q. Was it drivable from the scene, or was it  
19 towed?

20 A. I don't remember.

21 Q. Did you have to call your mom?

22 A. Yes.

23 Q. Did she show up --

24 A. Yes.

25 Q. -- at the accident scene?

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1 driving prior to this accident?

2 A. There was an accident previously, Saturn Vue.

3 Q. What do you mean?

4 A. The make and model of the car.

5 Q. You were -- you were driving a car that was  
6 involved in an accident?

7 A. Yes, sir.

8 Q. What was the date of the accident?

9 A. I don't recall.

10 Q. In 2010?

11 A. 2008.

12 Q. 2008?

13 A. Possibly.

14 Q. How old were you in 2008?

15 A. Probably fifteen or sixteen. Might have been  
16 seventeen.

17 Q. Whose car were you driving?

18 A. Oh, no. I was fifteen.

19 Mom's.

20 Q. Did your mom know you were driving?

21 A. She had went into her classroom at the school  
22 to go get something and left the keys in her car, and I  
23 decided to go spin around the block.

24 Q. And in that spin around the block, you hit  
25 another vehicle?

1 Was she upset?

2 A. Yes.

3 Q. And were you cited for anything at that  
4 accident?

5 A. No.

6 Q. Were the police called?

7 A. Yes, sir.

8 Q. You didn't have a license, right?

9 A. No, sir.

10 Q. And you weren't cited for driving without a  
11 license?

12 A. No, not at that time. I was a juvenile.

13 Q. And your mom was at the scene?

14 A. Yes, sir.

15 Q. So she is aware that you had taken the car?

16 A. After the collision.

17 Q. She was aware that you were in a collision,  
18 correct?

19 A. Yes, sir.

20 Q. Any other accidents prior to the accident  
21 that we're talking about today?

22 A. No, sir.

23 Q. Did your -- was your mom aware of the  
24 citation for the broken headlight and driving without a  
25 license?



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1 A. No, sir.  
2 Q. You didn't tell her?  
3 A. No, sir.  
4 Q. Did it register against her vehicle?  
5 A. No, sir.  
6 Q. All right. Are you -- are you sure about  
7 that?  
8 A. Positive.  
9 Q. Okay. And you said you've never taken a  
10 driver's safety course, correct?  
11 A. No, sir.  
12 Q. How -- so how did you actually learn to  
13 drive?  
14 A. As a kid my mom's friend had a ranch, and her  
15 friend used to let me drive around the ranch.  
16 Q. You used to drive a car over around on the  
17 ranch?  
18 A. A truck.  
19 Q. A truck? Pickup?  
20 A. A truck with a -- like a back, like a truck  
21 that you load things into.  
22 Q. Did you ever think it was a problem that you  
23 were driving without a license?  
24 A. Not at the time, no.  
25 MR. MAZZEO: On the ranch you're saying?

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1 MR. ESCHWEILER: No.  
2 MR. MAZZEO: Oh.  
3 BY MR. ESCHWEILER:  
4 Q. At any time.  
5 A. No, sir.  
6 Q. You didn't think it was a problem?  
7 A. No, sir.  
8 Q. Do you have any problems with night vision?  
9 A. No, sir.  
10 Q. So seeing at night's not an issue?  
11 A. No, sir.  
12 Q. And the accident we're talking about today  
13 is -- was at night, correct?  
14 A. It was twilight.  
15 Q. Was it dark?  
16 A. Dawn.  
17 Q. Do you have problems seeing at twilight?  
18 A. No, sir.  
19 Q. When did you figure out that you did not have  
20 a permit?  
21 A. I think at the accident.  
22 Q. So the January 2nd, 2011?  
23 A. Yeah.  
24 Q. And how did you come to the realization that  
25 you didn't have a permit?

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1 A. I told the police officer I thought I had a  
2 permit, and he said it's not here.  
3 Q. And I think you previously said that if you  
4 have a permit, you have to have a licensed driver in  
5 the car, correct?  
6 A. Yeah, a permissible driver.  
7 Q. And there wasn't a permissible driver in the  
8 car?  
9 A. No, sir.  
10 Q. Was your mom aware that you didn't have a  
11 permit?  
12 A. No.  
13 Q. She knew that you didn't have a license,  
14 though, correct?  
15 A. Yes, sir.  
16 Q. Do you have a license now?  
17 A. No, sir.  
18 Q. Why not?  
19 A. I haven't taken the time to go to the DMV.  
20 Q. So you haven't tried to get a license?  
21 A. I tried to take the written test, and I  
22 failed, and I never went back.  
23 Q. When did you fail the written test?  
24 A. 2013.  
25 Q. Was that the only time you tried to take the

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1 test?  
2 A. Yes, sir.  
3 Q. After the accident on January 2nd, 2013, did  
4 you continue to drive?  
5 A. No, sir.  
6 Q. You haven't driven since the accident?  
7 A. No, sir.  
8 Q. Not once?  
9 A. Not once.  
10 Q. Not to run errands?  
11 A. Never.  
12 Q. Not to get your mom Ho-Hos?  
13 A. No, sir.  
14 Q. Not to take the kids to any appointments?  
15 A. No, sir.  
16 Q. How do you run errands or take the kids to  
17 appointments if you can't use the car?  
18 A. Mom is the driver, or I leave that to their  
19 mother, or I take the bus.  
20 Q. You were also arrested for DUI, correct?  
21 A. Yes, sir.  
22 Q. And what did you plea with regard to that  
23 charge?  
24 A. They offered me a plea if I pled guilty to  
25 the DUI. They dropped the remaining charges from the

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1 accident and dropped the possession charge. So I pled  
2 guilty to the DUI.  
3 Q. So even though you claim you were not  
4 impaired or under the influence of marijuana, you still  
5 pled guilty?  
6 A. Yes, sir, to avoid a third possession charge  
7 of marijuana.  
8 Q. Were you -- were you aware what the legal  
9 limit of marijuana metabolite is in your blood?  
10 A. No, sir.  
11 Q. Do you know what your marijuana metabolite  
12 was when they took your blood at --  
13 A. No, sir.  
14 Q. -- the jail?  
15 Do you remember them taking your blood at  
16 jail?  
17 A. Yes, sir.  
18 Q. Did you consent to them taking your blood?  
19 A. Yes, sir.  
20 Q. And it's still your position that you had not  
21 smoked any weed the day of the accident?  
22 A. Yes, sir.  
23 Q. Do you think that marijuana impairs your  
24 ability to drive?  
25 MR. STRASSBURG: Object to the form,

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1 foundation.  
2 BY MR. ESCHWEILER:  
3 Q. Go ahead.  
4 MR. STRASSBURG: Do you know? Do you  
5 understand the question?  
6 THE WITNESS: Yes, sir.  
7 MR. STRASSBURG: Then go ahead.  
8 BY MR. ESCHWEILER:  
9 Q. You can answer.  
10 A. Can you repeat the question?  
11 Q. Sure.  
12 Do you think that marijuana impairs your  
13 ability to drive?  
14 A. No, sir.  
15 Q. Why not?  
16 A. Marijuana, I have some focus.  
17 Q. It doesn't slow your reaction time?  
18 A. No, sir. It actually makes you more aware of  
19 your surroundings.  
20 Q. And that's why you smoke it?  
21 A. No, sir.  
22 Q. Why do you smoke it?  
23 A. To self-medicate.  
24 Q. What do you mean by "self-medicate"?  
25 A. To compensate for the damage to my eye and

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1 PTSD and to self-medicate with the issues that I have  
2 going on in my life.  
3 Q. Do you believe that driving while under the  
4 influence of marijuana affects your driving at all?  
5 A. If you're smoking while driving, that can.  
6 Q. Other than smoking while driving, you think  
7 it helps?  
8 A. Driving?  
9 Q. Yes.  
10 A. Depending upon the driver.  
11 Q. What about you?  
12 A. I think I drive the same either way.  
13 Q. How often do you drive after consuming  
14 marijuana?  
15 A. Not often.  
16 Q. But when you do you think that you're  
17 actually better focused?  
18 A. No, sir.  
19 Q. That's not what you said?  
20 A. I mean, it helps you focus.  
21 Q. Does it help you focus when you're driving?  
22 A. I don't believe that marijuana would make a  
23 difference.  
24 Q. Okay. So you don't think it has any impact  
25 on driving?

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1 A. No, sir.  
2 Q. Do you believe that any illegal drugs impair  
3 your ability to drive?  
4 A. Definitely.  
5 Q. What? Which ones?  
6 A. Pills that slow you down -- not pills. Drugs  
7 that may slow you down. Drugs that may accelerate your  
8 heart rate. Drugs that may pupil like -- pupil like --  
9 cause your eyes to -- your pupils to dilate. Excuse  
10 me.  
11 Q. Have you ever consumed those illegal drugs  
12 and driven your mom's car?  
13 A. No, sir.  
14 Q. Did you ever consume marijuana at the Gowan  
15 apartment?  
16 A. Yeah.  
17 Q. Where at?  
18 A. Outside.  
19 Q. Never in your bedroom?  
20 A. Never.  
21 Q. Never close the door?  
22 A. No.  
23 Q. Not in your bathroom?  
24 A. No, sir.  
25 Q. Where at outside?

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1 A. Around the corner from the house in the  
2 apartments.  
3 Q. How often?  
4 A. Often.  
5 Q. Every day?  
6 A. (Witness nods head.)  
7 Q. Yes?  
8 A. Yes, sir.  
9 Q. Did you ever consume other illegal drugs in  
10 the Gowan apartment?  
11 A. Yes, sir.  
12 Q. What -- what drugs?  
13 A. Cocaine, xstacy.  
14 Q. How often?  
15 A. Often.  
16 Q. Where in the apartment would you consume  
17 those drugs?  
18 A. Outside, inside or -- the garage, the office.  
19 Q. Ever in your bedroom?  
20 A. No, sir.  
21 Q. Prior to the accident that we're talking  
22 about today, your mom was aware of your drug use,  
23 correct?  
24 MR. MAZZEO: Objection, speculation.  
25 ///

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1 BY MR. ESCHWEILER:  
2 Q. You can answer.  
3 MR. STRASSBURG: If you understand the  
4 question.  
5 THE WITNESS: Can you repeat the question,  
6 sir?  
7 BY MR. ESCHWEILER:  
8 Q. Sure.  
9 Prior to the accident that we're here to talk  
10 about today, your mom was aware of your drug use?  
11 A. She was aware of my drug problem.  
12 Q. In fact, she saw you using in the house  
13 before, correct?  
14 A. No, sir.  
15 Q. That's not correct?  
16 A. No, sir.  
17 Q. I'm going to read you a line from -- from  
18 your mom's deposition.  
19 A. Oh, yes, sir. One time, yes, sir.  
20 Q. So you --  
21 A. I apologize. It has nothing to do with the  
22 deposition. It has to do with my memory, yes.  
23 Q. Well, go ahead. Tell me about it.  
24 A. One time -- one time -- this isn't funny.  
25 One time I had the radio up real loud, and I was

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1 chilling with my friends.  
2 MR. STRASSBURG: Go on.  
3 THE WITNESS: And I was rolling a --  
4 marijuana, and I looked up, and my mom was standing  
5 right there at the door.  
6 BY MR. ESCHWEILER:  
7 Q. So you were in your bedroom?  
8 A. Yes, in a different location.  
9 Q. At a different apartment where you lived --  
10 A. Yes, sir.  
11 Q. -- with your mom?  
12 A. Yes, sir.  
13 Q. Well, were you rolling a joint or a blunt,  
14 what?  
15 A. Blunt.  
16 Q. Blunt.  
17 How old were you at that time?  
18 A. Fourteen.  
19 Q. What'd your mom say?  
20 A. Get out.  
21 Q. She told you to leave?  
22 A. Yeah.  
23 Q. Did she confiscate the marijuana?  
24 A. No. She didn't know I had that much. She  
25 made me throw away the marijuana that was in my hands

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1 and I think the marijuana that was out.  
2 Q. She didn't actually kick you out of the  
3 apartment for good; she just made you leave that day?  
4 A. Yes, sir.  
5 Q. Okay. Is that the only time your mom has  
6 caught you smoking in the house?  
7 A. That I can recall, yeah.  
8 Q. What was the punishment for catching you with  
9 the weed?  
10 A. I didn't speak to her for a long time.  
11 Q. How long is a long time?  
12 A. Months.  
13 Q. You still lived in the same house, correct?  
14 A. Yes, sir, different hours.  
15 Q. Were -- were you grounded? Did you lose  
16 privileges?  
17 A. I lost contact with my mother.  
18 Q. Well, when your mom caught you with weed, did  
19 she call the cops?  
20 A. No, sir.  
21 Q. Has your mom ever called the cops on you when  
22 she knew you were high or using marijuana or other  
23 illegal drugs?  
24 A. Yes, sir.  
25 Q. Huh?

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1 A. Yes, sir.  
2 Q. When?  
3 A. When -- for the -- a few of the domestic  
4 disturbances that I have.  
5 Q. So in -- that was February of 2012?  
6 A. Yes, sir.  
7 Q. When was that, February 2012?  
8 A. February 4th, yes, sir.  
9 Q. That -- but that wasn't related to your drug  
10 use, correct? That was related to the violence that  
11 you had inflicted upon her?  
12 A. Which was relate -- related to my drug use.  
13 Q. Prior to February 4th, 2012, had she ever  
14 called the police on you for dealing or using drugs?  
15 A. I'm unaware of that.  
16 Q. Does your mom ever smoke weed?  
17 A. No.  
18 Q. Not that you've seen?  
19 A. Never.  
20 Q. And, again, you said the final disposition on  
21 the DUI was a guilty plea?  
22 A. Yes, sir.  
23 Q. Do you recall what the sentence was?  
24 A. Traffic school and a 30-day suspended  
25 sentence and \$707 in fines.

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1 Q. Did you actually serve any jail time?  
2 A. Yes, sir.  
3 Q. Why?  
4 A. Upon my release from being in custody in  
5 North Las Vegas, the City -- the City of Las Vegas, the  
6 city jail wanted me to serve my time and close the DUI  
7 case. So I was transported from North Las Vegas to the  
8 City, which is the same jail.  
9 And the judge said I could either go away for  
10 a year or I can serve my suspended sentence, and I  
11 chose to serve my suspended sentence.  
12 Q. What was the suspended sentence?  
13 A. 30 days.  
14 Q. And that would have cleared the DUI, as well?  
15 A. That would have closed the DUI. It wouldn't  
16 have cleared it.  
17 Q. Did -- did you serve the 30 days at that  
18 time?  
19 A. Yes, sir.  
20 Q. Were -- at any period in time, were you found  
21 in contempt of court for not completing any of the DUI  
22 sentencing?  
23 A. No, sir.  
24 Q. You were also in possession of marijuana at  
25 the time of the accident, correct?

1 A. Yes, sir.  
2 Q. And so, ultimately, that charge gets  
3 dismissed when you pled guilty to the DUI?  
4 A. Yes, sir.  
5 Q. And at the time of the accident, you've  
6 stated earlier that you were just coming back from a  
7 drug transaction, correct?  
8 A. Yes, sir.  
9 Q. Was your mom aware that you were dealing  
10 drugs?  
11 A. No, sir.  
12 Q. How do you know that?  
13 A. Because we made sure to keep her out of it.  
14 Q. Would it surprise you if she said at her  
15 deposition that she was aware that you were a drug  
16 dealer?  
17 A. I wouldn't be aware of that.  
18 Q. For the record, I'm looking at page 17 of  
19 Andrea Awerbach's deposition taken September 9, 2013,  
20 Line 1 through 10.  
21 "Can you describe your relationship with him  
22 on January 2nd, 2011, the day of the accident?  
23 "It was strained. It was suspicious. I was  
24 always on edge. I -- we had the added pressure of his  
25 child; so I was a little trapped in terms of feeling

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1 whether I could tell him to move out. It was scary.  
2 "Why was it scary?  
3 "Answer: Because I was living with an active  
4 drug dealer and an active drug addict."  
5 A. She might have been aware of that due to the  
6 fact that we were raided on -- in November, and now she  
7 knew for sure that I was dealing drugs. Before -- at  
8 the time of the accident, she wouldn't have known.  
9 Q. When you were running errands for your mom or  
10 you were out using the car, did you ever make drug  
11 deliveries during --  
12 A. No, sir.  
13 Q. -- those times?  
14 And I think we talked about this earlier.  
15 You had multiple drug offenses as a juvenile, correct?  
16 A. Yes, sir.  
17 Q. Were any of those offenses related to intent  
18 to distribute marijuana?  
19 A. No, sir.  
20 Q. So they were all possession charges?  
21 A. Yes, sir.  
22 Q. And your mom was aware of those, correct?  
23 A. Yes, sir.  
24 As a juvenile, I received a dual diagnosis.  
25 Q. Did she ever take any disciplinary action

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1 against you when -- when those issues came up?  
 2 A. Quite a lot.  
 3 Q. And what would she do?  
 4 A. Call my probation officer.  
 5 Q. Who was your probation officer?  
 6 A. Scott Walton.  
 7 Q. How long were you on probation?  
 8 A. Two years.  
 9 Q. Was your probation ever revoked?  
 10 A. No, sir.  
 11 Q. Did they drug test you?  
 12 A. Yes, sir.  
 13 I was in the drug court program as a  
 14 juvenile.  
 15 Q. Well, were you clean, or were you using  
 16 synthetic urine?  
 17 A. I was clean.  
 18 Q. So you stayed clean for two years?  
 19 A. I had quite a few relapses, and I failed out.  
 20 I ended up serving time and then returned to the  
 21 juvenile drug court program to complete the program, in  
 22 which I completed it.  
 23 Q. Why did you get transferred to Odyssey, then?  
 24 A. Because I relapsed too many times.  
 25 Q. So at one -- at some point you were kicked

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1 out of the drug program?  
 2 A. Yeah. Not kicked out. You go serve time,  
 3 and you return back to --  
 4 Q. Okay.  
 5 A. That's how the juvenile --  
 6 Q. So --  
 7 A. -- drug court program worked.  
 8 Q. And then when you returned back and relapsed  
 9 again, that's when they sent you to Odyssey?  
 10 A. No. I relapsed, sent me to Odyssey, came  
 11 home, graduated the program.  
 12 Q. Okay. Subsequent to the accident, we talked  
 13 about -- I think it was March 2011 where you were  
 14 raided.  
 15 Other than that have you been arrested for  
 16 felony possession of narcotics subsequent to that?  
 17 A. I have a controlled substance charge. I was  
 18 arrested and cited for possession of spice, and I have  
 19 yet to follow up on that.  
 20 Q. I apologize. What's spice?  
 21 A. Spice is a product that they sell in smoke  
 22 shops. It's an incense, and they have labeled it as a  
 23 controlled substance.  
 24 Q. Was this a felony?  
 25 A. It's a felony conviction, yes. I'm not

1 convicted of it.  
 2 Q. Where does it stand right now?  
 3 A. Waiting on a court date.  
 4 Q. So other than that -- other than that pending  
 5 charge, do you have any other arrests subsequent to  
 6 this accident?  
 7 A. After the accident? Besides the raid in  
 8 March, no.  
 9 Q. I believe we talked -- we talked about the  
 10 raid --  
 11 A. Raid.  
 12 Q. -- the domestic violence, and now the --  
 13 A. No, sir.  
 14 Q. That's it?  
 15 Are you on -- you're not on parole or  
 16 probation right now, correct?  
 17 A. No, sir.  
 18 Q. Do you have an attorney for the felony count  
 19 on the spice?  
 20 A. No, sir.  
 21 Q. Have they actually filed charges against you?  
 22 A. No, sir.  
 23 MR. MAZZEO: Corey, can we turn off the AC,  
 24 want to turn it down a little bit; do you mind?  
 25 MR. ESCHWEILER: Sure.

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1 THE VIDEOGRAPHER: Mic.  
 2 MR. MAZZEO: Thanks.  
 3 BY MR. ESCHWEILER:  
 4 Q. Well, we've talked a little bit about your  
 5 treatment and counseling before the accident. We've  
 6 talked about the drug program, Odyssey.  
 7 Was there any other facilities that you  
 8 utilized prior to this accident for drug treatment or  
 9 rehabilitation?  
 10 A. No, sir.  
 11 Q. And the drug court program and Odyssey, was  
 12 your mom required to be involved in those programs?  
 13 A. She was not required to be involved, but she  
 14 chose to take an active position.  
 15 Q. During any --  
 16 MR. ESCHWEILER: Did I not get it?  
 17 MR. MAZZEO: I think the fan was on. I think  
 18 it's off now. I don't know.  
 19 BY MR. ESCHWEILER:  
 20 Q. Did she actually go to counseling sessions  
 21 with you?  
 22 A. Yes, sir.  
 23 Q. In any of the times when your mom attended  
 24 sessions or therapy with you, did you admit that you  
 25 had been dealing drugs?



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1 A. No, sir.  
 2 Q. Never admitted that --  
 3 A. No, sir.  
 4 Q. -- at counseling or therapy?  
 5 A. No, sir. Not that I recollect.  
 6 Q. And how long were you at Odyssey?  
 7 A. Six months.  
 8 Q. And you said that's in Salt Lake?  
 9 A. Yes, sir.  
 10 Q. Do you know what the time frame was when you  
 11 were there, what year?  
 12 A. I was sixteen. I think 2008.  
 13 Q. 2009?  
 14 A. 2008.  
 15 Q. Okay. What kind of program was Odyssey?  
 16 A. A therapeutic group home.  
 17 Q. Were you also going to class and school  
 18 there?  
 19 A. Yeah. It's -- they have school inside the  
 20 facility.  
 21 Q. Did your mom come visit you there?  
 22 A. Yes, sir.  
 23 Q. How many times in the six months?  
 24 A. Three or four. And I would receive weekend  
 25 visits, and we'd go to a hotel in Salt Lake because we

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1 weren't -- we didn't live there. Excuse me.  
 2 Q. Subsequent to the accident, have you had any  
 3 rehabilitation or drug counseling?  
 4 A. I'm unaware of what "subsequent" means in  
 5 this sentence.  
 6 Q. After the accident.  
 7 A. Yes, sir. I just received treatment from  
 8 February 10th to March 18th.  
 9 Q. And that was related to your use of drugs?  
 10 A. Yes, sir.  
 11 Q. And that was when you were at Rawson?  
 12 A. Yes, sir.  
 13 Q. Did you receive any injuries from the  
 14 accident?  
 15 A. Not that I can remember.  
 16 Q. You don't remember any treatment that you  
 17 received?  
 18 A. No. We saw a chiropractor afterwards.  
 19 Q. How many times?  
 20 A. Two, three times a week.  
 21 Q. For how long?  
 22 A. A few months.  
 23 But a chiropractor, I have been seeing a  
 24 chiropractor since the assault.  
 25 Q. The one where you had the eye injury?

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1 A. Yes, sir.  
 2 Q. How often were you seeing the chiropractor  
 3 after the eye injury?  
 4 A. Two, three times week. Sometimes we'd stop,  
 5 we'd go to another chiropractor, and we'd pick up  
 6 somewhere else.  
 7 Q. After the eye injury, why were you seeing the  
 8 chiropractor?  
 9 A. Due to the damage that might have been  
 10 caused, my spine, my equilibrium, from the fall, damage  
 11 that was caused at the actual assault.  
 12 Q. So you had problems with your equilibrium, as  
 13 well, after the assault in November of 2005?  
 14 A. Yes, sir, as my body was beginning to  
 15 readjust to accommodate the injuries.  
 16 Q. Were you -- did this accident aggravate those  
 17 injuries?  
 18 A. No, sir.  
 19 Q. Why were you seeing the chiropractor after  
 20 this accident, then?  
 21 A. Because the chiropractor was part of our  
 22 lifestyle at the time.  
 23 Q. So you -- you didn't go to see him because of  
 24 anything related to the accident; it was just the  
 25 equilibrium problems and the previous spine problems?

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1 A. No, sir.  
 2 Q. Tell me. I'm confused, then.  
 3 A. No, sir, the chiropractor visits were not  
 4 related to the injury.  
 5 Q. Okay.  
 6 A. Or the chiropractor visits were not related  
 7 to the accident. Excuse me.  
 8 Q. What's the name of your chiropractor?  
 9 A. I was at Active Life.  
 10 Q. Who was the chiro?  
 11 A. I don't remember his name.  
 12 Q. Was there anybody else that you saw over  
 13 there, maybe a physician's assistant?  
 14 A. No.  
 15 Q. What location?  
 16 A. Simmons and Craig. Simmons and La Madre, I  
 17 think the street is called.  
 18 Q. Was your mom treating there, too?  
 19 A. Yes, sir.  
 20 Q. So you would have been treating there since  
 21 2010?  
 22 A. Yes, sir.  
 23 Q. Are you still treating there?  
 24 A. No, sir.  
 25 Q. When was the last time you saw anybody at

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1 Active Life Chiro?  
2 A. 2010.  
3 Q. Did you ever get referred to a specialist for  
4 the equilibrium or spine problems?  
5 A. Just the retina specialist.  
6 And I had -- I would wear protective lenses  
7 when I played sports.  
8 Q. And you said that the car at the accident  
9 scene was undriveable, correct?  
10 A. Totaled.  
11 Q. Ultimately, did they total it out?  
12 A. Yes, sir.  
13 Q. Do you know what the amount of damage was?  
14 A. No, sir.  
15 Q. In social media do you go by the name Young  
16 Glasses?  
17 A. Yes, sir.  
18 Q. Well, what's the significance of that?  
19 A. It's my nickname.  
20 Q. Why?  
21 A. That's the name I was given at 1827 West  
22 Gowan.  
23 Q. Why?  
24 A. That's my name.  
25 Q. But why were you given the name?

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1 A. Because I wear glasses.  
2 Q. Who gave it to you?  
3 A. Some of my friends. That's --  
4 Q. That --  
5 A. That's actually my alias.  
6 Q. And I noticed on -- I don't know if it's  
7 Facebook or what, but I noticed that one of your  
8 favorite books is the Bible.  
9 A. Yes, sir.  
10 Q. Do you have any favorite verses or passages?  
11 A. I like Psalms 51. I'm fond of the Song of  
12 Solomon, as well.  
13 Q. Of the what?  
14 A. Song of Solomon. I'm an Old Testament kind  
15 of guy.  
16 Q. Why's that?  
17 A. The Old Testament is intense.  
18 Q. What do you mean, "intense"?  
19 A. The story of the Jews, the prophets,  
20 how it's -- the story of how Jesus came to be.  
21 Q. Why does that interest you?  
22 A. Because I grew up with -- I grew up in the  
23 church with the knowledge of Jesus and Jesus' stories  
24 and the disciples. I grew up with that. I had  
25 never -- I had never read the Old Testament, and our

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1 laws are from the Old Testament. Basically, the  
2 knowledge of the origin of the Bible is in the Old  
3 Testament.  
4 Q. And what -- what's -- what makes Song of  
5 Solomon your -- one of your favorite books?  
6 A. It's sweet.  
7 Q. What's that?  
8 A. It's sweet.  
9 Q. Why is that? Why is --  
10 A. It's a poem.  
11 Q. That's it?  
12 A. It's the song of songs.  
13 Q. We're going to go through some documents.  
14 I'll try to make this as quick as possible.  
15 MR. ESCHWEILER: Let's mark this as 1.  
16 (Exhibit No. 1 was marked for  
17 identification.)  
18 BY MR. ESCHWEILER:  
19 Q. Mr. Awerbach, I'm showing you what's been  
20 marked as Exhibit 1 to your deposition.  
21 If you could, turn to the page labeled  
22 GJL249. It's four pages in.  
23 A. (Witness complied.)  
24 Q. The number's on the bottom right corner.  
25 A. Got it.

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1 Q. This is a State of Nevada Traffic Accident  
2 Report related to this accident.  
3 A. Yes, sir.  
4 Q. Have you seen this before?  
5 A. No, sir.  
6 Q. I'd like you to take a look at the  
7 description of the accident. It says Vehicle 2 was  
8 traveling southbound Rainbow Boulevard in the left of  
9 two travel lanes approaching Peak Drive. Vehicle 1 was  
10 traveling eastbound in a private drive north of Peak  
11 Drive approaching Rainbow Boulevard.  
12 Vehicle 1 stated that he thought that Rainbow  
13 Boulevard was clear of traffic. Vehicle 1 then  
14 traveled onto Rainbow Boulevard into the path of  
15 Vehicle 2 causing Vehicle 1 front to hit Vehicle 2  
16 right.  
17 Did I read that accurately?  
18 A. Yes, sir.  
19 Q. Do you -- do you disagree with that rendition  
20 of -- from the police officer on how this accident  
21 happened?  
22 MR. MAZZEO: Objection, the document speaks  
23 for itself.  
24 THE WITNESS: She was already on Rainbow.  
25 ///



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1 BY MR. ESCHWEILER:  
2 Q. So you disagree with this?  
3 MR. MAZZEO: I have one other objection. Can  
4 we establish what V1 and V2 is?  
5 MR. ESCHWEILER: Sure.  
6 BY MR. ESCHWEILER:  
7 Q. Do you understand who Vehicle 1 and Vehicle 2  
8 is?  
9 A. Yes, sir.  
10 Q. Pardon?  
11 A. Yes, sir.  
12 Q. Okay.  
13 A. I believe Vehicle 2 was already on Rainbow.  
14 Q. Okay. And doesn't it say Vehicle 2 was  
15 traveling southbound on Rainbow in the left of two  
16 travel lanes?  
17 A. Oh, yes, sir. I confused Vehicle 1 with  
18 Vehicle 2.  
19 Q. So --  
20 A. I apologize.  
21 Q. -- do you have any disagreement with this  
22 Traffic Accident Report?  
23 MR. STRASSBURG: Object to the form,  
24 foundation.  
25 THE WITNESS: No, sir.

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1 BY MR. ESCHWEILER:  
2 Q. And in the -- in the lower right, there's a  
3 box that says failed to yield right-of-way; do you see  
4 that?  
5 A. Yes, sir.  
6 Q. Would you -- do you agree that it was your  
7 obligation to yield the right-of-way to my client?  
8 A. Yes, sir. I felt that I yielded to the bus  
9 at the time.  
10 Q. Okay. If we move over to GJL250, I'm looking  
11 at the box down -- it's the bottom right, where he has  
12 drugs marked. There's an X, and then method of  
13 determination, it says driver admission; do you see  
14 that?  
15 A. Yes, sir.  
16 Q. And then this is consistent with -- with your  
17 testimony today that you admitted that you smoked  
18 marijuana at the scene of the accident, correct?  
19 A. Yes, sir. That is what I had said to the  
20 police officer.  
21 MR. MAZZEO: Well, actually, he admitted at  
22 the scene of the accident that he had smoked marijuana,  
23 not that he had smoked it at the scene of the accident.  
24 THE WITNESS: Yes, sir.  
25 ///

1 BY MR. ESCHWEILER:  
2 Q. If you go to the last page of this exhibit,  
3 GJL255, I'm looking at the inventory of personal  
4 property. We -- over to the right, it says there was  
5 four tapes or CDs, and we had already discussed that  
6 you had a couple CDs and maybe a couple DVDs,  
7 correct --  
8 A. Yes, sir.  
9 Q. -- in the car; so those were yours?  
10 Were the two black phone chargers yours, as  
11 well?  
12 A. Yes, sir.  
13 Q. What about the gray phone charger?  
14 A. Yes, sir.  
15 Q. The black hoodie?  
16 A. Yes, sir.  
17 Q. I assume the car seat was for Khaliyah?  
18 A. Yes, sir.  
19 Q. Sketch book for Khaliyah?  
20 A. Yes, sir.  
21 Q. The menorah box, who was that for?  
22 A. My family is Jewish.  
23 Q. Okay. So was that yours? Was that -- whose  
24 was that?  
25 A. Our family's.

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1 Q. Okay. Brown teddy bear, Khaliyah?  
2 A. Yes, sir.  
3 Q. And miscellaneous clothing items, were those  
4 yours?  
5 A. They probably belonged to all of us.  
6 Q. Okay. And then underneath it says additional  
7 remarks, vehicle damage. Vehicle involved in wreck,  
8 extensive damage to front of vehicle.  
9 Did I read that correct?  
10 A. Yes, sir.  
11 Q. Was that your -- what you witnessed, as well,  
12 at the scene of the accident?  
13 A. Yes, sir.  
14 MR. ESCHWEILER: We'll mark this as 2.  
15 (Exhibit No. 2 was marked for  
16 identification.)  
17 BY MR. ESCHWEILER:  
18 Q. Mr. Awerbach, I'm showing you what's been  
19 marked as Exhibit 2 to your deposition. This is a  
20 printout from the State of Nevada Department of Motor  
21 Vehicle Central Services, Records Division. I want you  
22 to look at the Roman Numeral I where it says license  
23 information.  
24 A. Yes, sir.  
25 Q. Do you -- do you see that -- where it says

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1 original issue date right under driver's license  
2 number?  
3 A. Yes, sir.  
4 Q. There's a date 3/31/2011, correct?  
5 A. Yes, sir.  
6 Q. Well, were you ever issued a license on  
7 3/31/2011?  
8 A. Not that I remember.  
9 Q. Is that when you tried to get your permit?  
10 A. No, sir.  
11 Or wait. Yes, sir.  
12 Q. So the 3/31/2011 is when you tried to get  
13 your permit?  
14 A. Yes, sir. I apologize. I was confusing 2011  
15 with 2012.  
16 Q. So this is the time when you went and took  
17 the test and then didn't have enough money to pay for  
18 the permit?  
19 A. Yes, sir.  
20 Q. And this is approximately two months after  
21 the accident, right?  
22 A. No, sir. No, sir. I apologize. This is  
23 approximately two months after the accident. I'm  
24 confusing 2011 with 2010.  
25 Q. Okay. So you don't believe that you tried to

1 listing. The citation date is November 3rd, 2010.  
2 Do you see that?  
3 A. Yes, sir.  
4 Q. Conviction date, 3/15/2011?  
5 A. Yes, sir.  
6 Q. Is this what you were talking about on the  
7 broken headlight and then driving without a license?  
8 A. Yes, sir.  
9 Q. Do you have any idea how many times you've  
10 been booked on a bench warrant?  
11 A. No, sir.  
12 Q. More than five?  
13 A. Yes, sir.  
14 Q. And what -- typically, why would you get  
15 arrested for a bench warrant?  
16 A. I lived my life on the run.  
17 Q. So --  
18 A. At that time.  
19 Q. So failing to appear for court dates?  
20 A. Yes, sir.  
21 Q. And you don't recall ever being --  
22 A. And --  
23 Q. Pardon me. I'm sorry. Go ahead.  
24 A. At the time I wanted my situation to be that  
25 if I was arrested, only the marshals could pick me up

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1 get your permit on March 31st, 2011?  
2 A. I had went to go get my permit in 2010.  
3 Q. Okay.  
4 A. I apologize.  
5 Q. In going down to the -- to the next ID card  
6 details --  
7 A. Yes, sir.  
8 Q. -- do you see issue date 2/21/13?  
9 A. Yes, sir.  
10 Q. Did you -- did you get a new ID card in 2013?  
11 A. Yes, sir.  
12 Q. So the ID card that you were issued in 2010  
13 expired?  
14 A. Yes, sir.  
15 I had a hole punched in it after the raid.  
16 Q. Well, what's the hole punch mean?  
17 A. It's invalid.  
18 Q. And then if you move down to license detail,  
19 it says type, class, status, and under that it says  
20 revoked; do you see that?  
21 A. Yes, sir.  
22 Q. And do you know what -- why your permit was  
23 revoked?  
24 A. Not following up with the -- six months.  
25 Q. And then at the bottom it says conviction

1 because the marshals are the ones that obtain you  
2 for -- for warrants. That way I could avoid questions  
3 from police officers.  
4 Q. And you -- you said that you didn't believe  
5 that you've ever been jailed for contempt; is that  
6 correct?  
7 A. No, sir, I haven't.  
8 Q. Do you remember being arrested on a bench  
9 warrant in August of 2012?  
10 A. August. Excuse me.  
11 Q. And the judge imposing a sentence of 25 days  
12 for contempt?  
13 A. That was the DUI charge.  
14 Q. So you -- was it because you had failed to  
15 complete part of the sentencing?  
16 A. Because I never followed up with the  
17 consequences to the DUI.  
18 Q. Well, which part of the consequences?  
19 A. Traffic school.  
20 Q. Okay. Mr. Awerbach, I'm going to show you  
21 what's been marked as Exhibit 3 to your deposition.  
22 (Exhibit No. 3 was marked for  
23 identification.)  
24 BY MR. ESCHWEILER:  
25 Q. I'm showing you Exhibit 3. It's a document

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entitled defendant Jared Awerbach's opposition in response to Andrea Awerbach's motion for summary judgment.

I'm going to represent to you that this was a document filed by your attorneys, Resnick & Louis, in this matter. I want you to turn to page 2 to begin. I'm going to read a couple of these statements, and I want you to tell me if they're accurate or not.

Under the section that says argument, the second sentence, it says it is true that on January 2nd, 2011, the day of the motor vehicle accident that gives rise to -- gives rise to plaintiff's amended -- strike that -- gives rise to plaintiff's complaint and amended complaint, that Andrea Awerbach did not give Jared permission to drive her car.

Do you agree with that?

A. Yes, sir.

Q. The next sentence: It is also true that both Jared and Andrea agree that there were times when Jared drove his mother's car without permission.

A. Yes, sir.

Q. Do you agree?

A. Yes, sir.

Q. However, Jared has always said that there

the counter. She usually had them.

Q. Okay.

A. Leaving them out and about wasn't a constant thing that she would do.

Q. She did leave them on the counter, though?

A. She left them on the counter the day of the accident, yes, sir.

Q. Okay. And how much -- and prior to the day of the accident, she had left them on the counter previously, correct?

A. From time to time.

Q. Going to the page 3, to the next page, the second sentence under No. 6: Prior to January 2nd, 2011 -- prior to the January 2nd, 2011, accident, Andrea allowed Jared to drive her car -- drive her vehicle both to run errands and to drive to work.

That was correct, right?

A. Yes, sir.

Q. With respect to the issue of permission to drive Andrea's vehicle, Jared has at all times said that Andrea gave him permission to drive her car in the past, but he did not have permission the day of the accident.

Do you agree with that?

A. Yes, sir.

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were times when he drove Andrea's car with her permission prior to January 2nd, 2011.

Do you agree with that?

A. Yes, sir.

Q. Additionally, from Jared's first very -- very first interview with the insurance company through the present time, Jared has consistently maintained that Andrea usually left her car keys on the counter, and she left them on the counter the day of the accident.

Do you agree with that statement?

A. No, sir.

Q. What don't you agree with?

A. My original statement was given while I was in custody at North Las Vegas. I signed for it on the 14th. It was issued on the 21st. I never got to revise -- I never got to review it.

Q. Well, what do you mean?

A. A man named Lee Grant came to speak to me while I was in custody. He had me sign a piece of paper on the 14th and typed up a report and issued it on the 21st. I never got to review it before signing it.

Q. My question to you is: What don't you agree with in that statement?

A. The fact that she usually leaves her keys on

Q. Did your mom ever lock the keys anywhere?

A. Yes, sir.

Q. Where would she lock them?

A. In a lockbox or she would hide them, or she'd take both sets with her.

Q. What do you mean, "she'd take both sets with her"?

A. She'd take the spare key and the other key with her.

Q. And then leave the house?

A. Yeah. Or she'd keep it in her pocket, or she'd hide them somewhere.

Q. But if the car wasn't there, though, you wouldn't be able to drive it, correct?

A. Yes, sir.

Q. And did you know where her hiding spots were?

A. Not at that time, no.

Q. And you said previously that you -- if you wanted to, you could get into the lockbox, correct?

A. Very previous to the accident, almost years previous to the accident.

Q. I'll show you what's been marked as Exhibit 4.

(Exhibit No. 4 was marked for identification.)

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1 BY MR. ESCHWEILER:

2 Q. I'm handing you Exhibit 4, a document  
3 entitled recorded statement of Jared Awerbach taken  
4 January 6th, 2011.

5 Do you remember giving a recorded statement  
6 to a woman named Teresa Meraz four days after the  
7 accident?

8 A. Yes, sir.

9 Q. And if I can turn your attention to page 7,  
10 Ms. Meraz asked you if the remarks you made in this  
11 recording, your true version of -- to the best of your  
12 knowledge, and you answered yes, ma'am, correct?

13 A. Yes, sir.

14 Q. And you understood all of her questions?

15 A. Yes, sir.

16 Q. And the recording was being made with your  
17 full knowledge and consent?

18 A. Yes, sir.

19 Q. I want you to turn to page 2.

20 A. (Witness complied.)

21 Q. At the bottom you talk about this idea that  
22 you thought you had a permit, but you didn't.

23 A. Yes, sir.

24 Q. So you -- you drove, from the beginning of  
25 2010 when you thought you had a permit until the date

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1 of this accident, with no recognizing documents,  
2 correct?

3 A. Yes, sir.

4 Q. And on the day of the accident, your mom  
5 didn't actually tell you no, you couldn't take the car;  
6 isn't that correct?

7 A. She did.

8 Q. She did?

9 A. Yes, sir.

10 Q. I thought you said that she was in the  
11 shower?

12 A. She was.

13 Q. So did you -- did you ask her if you --

14 A. We asked -- we had -- I had asked her to take  
15 us to the location, and she said no. I said can I take  
16 myself, and she said no.

17 Q. Okay.

18 A. Can I have the mother of my children take me,  
19 and she said no.

20 Q. If you go to page 3, down to your -- to your  
21 explanation of the accident, it says that you were  
22 making a left onto -- into oncoming traffic, and I saw  
23 a bus, and a bus was ahead of me and a bus was stopped  
24 and a bus, or behind the bus it looked clear, so I went  
25 to make my left into oncoming traffic, and then I hit

1 the white vehicle or it was a collision.

2 Do you see that?

3 A. Yes, sir.

4 Q. When you're saying there was a bus stopped,  
5 what did you mean?

6 A. The bus had begin to make its stop for the  
7 bus stop that is at the location.

8 Q. Well, was the bus beginning to make its stop  
9 to the left of the driveway where you were stopped?

10 A. The bus had begin to turn into the first lane  
11 and slow its speed in -- beginning to make its stop,  
12 and when I looked it was on my right. I was more  
13 cautious of the bus than traffic.

14 Q. So you were paying attention to the bus?

15 A. Yes, sir.

16 And it was an extended bus. It's not the  
17 buses that they use now. The state -- the state has  
18 received new buses. It was an older model.

19 Q. Going to page 4, at the bottom Ms. Meraz is  
20 asking you about being under the influence or whether  
21 you had marijuana on me, and your answer is: Correct,  
22 um, does that matter to you guys?

23 Well, why would you ask that?

24 A. Because I wasn't aware of -- at the time I  
25 had a few other legal things going on. I wasn't aware

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1 at the time exactly what -- that this process was going  
2 to take place now.

3 Q. You didn't think that they'd care if you were  
4 under the influence or impairment of marijuana?

5 A. Well, what I was --

6 MR. STRASSBURG: Objection, mischaracterizes.  
7 Go ahead.

8 THE WITNESS: What I was asking was does it  
9 matter if it's a possession charge rather than a DUI,  
10 meaning was it -- does it matter if I was avoiding a  
11 criminal charge.

12 BY MR. ESCHWEILER:

13 Q. Then on page 6, about the middle of the page,  
14 she -- she asks why you were using the vehicle, and you  
15 say, Uh, I went to go see, I just had a child, so I was  
16 getting something from my son -- for my son from her  
17 godmother.

18 But that was inaccurate, correct?

19 A. Yes, sir.

20 I believe that that was a typo. That's not  
21 what I had said. I don't have a son.

22 Q. Okay. Do you recall fabricating what you  
23 told to Ms. Meraz?

24 A. I remember telling her I was going to get  
25 something for my child from her godmother.

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1 Q. You didn't tell her that you were going there  
2 to make a drug transaction?  
3 A. Not at that time, no.  
4 Q. At some other time, did you tell her that?  
5 A. I didn't tell her that, no.  
6 Q. I'm going to show you what's marked -- been  
7 marked as Exhibit 5.  
8 (Exhibit No. 5 was marked for  
9 identification.)  
10 BY MR. ESCHWEILER:  
11 Q. Mr. Awerbach, I'm showing you what's been  
12 marked Exhibit 5. These are defendant Jared Awerbach's  
13 responses to interrogatories.  
14 Have you seen this document before?  
15 A. Yes, sir.  
16 Q. I'm going to ask you -- that you turn to the  
17 second to the last page.  
18 A. (Witness complied.)  
19 Q. It's entitled verification.  
20 A. Yes, sir.  
21 Q. Okay. Can you -- can you read -- I don't  
22 need the verification or the County of Clark, but can  
23 you read into the record what it says underneath that?  
24 A. I have read the foregoing Defendant Jared  
25 Awerbach's responses to interrogatories and know its

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1 contents. I'm a party to this action. The matters  
2 stated in the foregoing document are true to my own  
3 knowledge except as to those matters which are stated  
4 on information and behalf [sic], and as to those  
5 matters I believe them to be true.  
6 Executed on June 14th at North Las Vegas  
7 Detention Center, Clark County, Nevada. I declare  
8 under penalty of perjury under the laws of Clark  
9 County, Nevada, that the foregoing is true and correct.  
10 Q. So is this -- this is what you were talking  
11 about earlier; Mr. Grant came to you at -- when you  
12 were incarcerated, and you guys went over these  
13 questions and responses?  
14 A. Vaguely, that's correct. Some of --  
15 Q. Okay. I'm sorry. Go ahead.  
16 A. Some of these questions and some of my  
17 responses are not accurate.  
18 Q. Is this your signature?  
19 A. This is my signature, yes.  
20 Q. Okay. Well, let's --  
21 (Simultaneous conversation.)  
22 Q. Let's talk about what -- what is not  
23 accurate. So let's go through these, and you tell me  
24 which question you're talking about and what the right  
25 response is.

1 MR. STRASSBURG: Do you want him to read each  
2 one, or do you want to ask him questions?  
3 MR. ESCHWEILER: I want him to read each one.  
4 MR. STRASSBURG: Okay. Why don't we go off  
5 the record, then.  
6 MR. ESCHWEILER: Whatever you want to do.  
7 MR. STRASSBURG: Go through and read each  
8 one.  
9 THE WITNESS: All right.  
10 THE VIDEOGRAPHER: Off the video record at  
11 2:04.  
12 (Recess taken from 2:04 p.m. to 2:10 p.m.)  
13 THE VIDEOGRAPHER: This is the beginning of  
14 Videotape No. 4 in the continuing deposition of Jared  
15 Awerbach. Back on the video record at 2:10.  
16 BY MR. ESCHWEILER:  
17 Q. Jared, you were reviewing Plaintiff's  
18 Exhibit 5, defendant Jared Awerbach's responses to  
19 interrogatories.  
20 I believe you've reviewed through No. 16 --  
21 A. Yes, sir.  
22 Q. -- is that correct?  
23 So in those first 16, let's talk about what  
24 changes you have to these responses.  
25 A. In Interrogatory No. 1, it states that I

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1 stated that I hit the vehicle. It was a collision. I  
2 didn't hit the vehicle. I stated that I hit the  
3 vehicle but an explanation as to actual events that  
4 occurred, not I hit the vehicle.  
5 Q. And your distinction of saying that this was  
6 a collision is that this was unavoidable?  
7 A. Yes, sir.  
8 Q. Well, what could -- what would have my  
9 client -- or what should have my client done to avoid  
10 the accident?  
11 A. Maintained her original speed.  
12 Q. And you don't believe that she was  
13 maintaining her original speed?  
14 A. No, sir.  
15 Q. Do you know how fast she was going?  
16 A. She accelerated.  
17 Q. Do you know if she accelerated beyond the  
18 speed limit?  
19 A. I perceive that she did.  
20 Q. And what's your perception based on?  
21 A. The fact that she sped up.  
22 Q. You don't know how fast she was going when  
23 she was behind the bus, do you?  
24 A. She was moving at 35 miles an hour behind the  
25 bus. When I began to commit to the turn, she



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1 accelerated.

2 Q. So you believe -- do you believe that my  
3 client actually caused the accident?

4 A. I believe that she could have maintained her  
5 speed, but she did not cause the accident purposely.

6 Q. I'm not asking you whether she caused it  
7 purposely.

8 Do you believe it was her fault that there  
9 was an accident?

10 MR. STRASSBURG: Well, objection. You're  
11 asking for a legal conclusion.

12 MR. ESCHWEILER: No, I'm not.  
13 Go ahead.

14 MR. STRASSBURG: Yeah, I think you are.

15 MR. ESCHWEILER: You can answer.

16 MR. STRASSBURG: Fault is a legal term.  
17 That's a legal conclusion. Do you want to rephrase?

18 MR. ESCHWEILER: No.

19 BY MR. ESCHWEILER:

20 Q. You can answer.

21 Do you -- do you understand my question?

22 A. Yes, sir.

23 Q. Okay. You can answer.

24 MR. STRASSBURG: Do you feel comfortable  
25 answering his question?

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1 THE WITNESS: I would not like to point fault  
2 at anyone for the accident, but I believe that her  
3 acceleration definitely influenced the actual  
4 collision.

5 BY MR. ESCHWEILER:

6 Q. And what else influenced the collision?

7 A. Her acceleration.

8 Q. Anything else?

9 A. No, sir.

10 Q. Anything that you did?

11 A. No, sir.

12 MR. MAZZEO: So -- I'm sorry. I didn't get  
13 the answer before, about anything else.

14 MR. STRASSBURG: I'm sorry.

15 MR. MAZZEO: No. Right before that. No?

16 THE WITNESS: I believe her acceleration  
17 influenced the accident.

18 MR. ESCHWEILER: That --

19 MR. MAZZEO: Oh, that was it? Okay.

20 BY MR. ESCHWEILER:

21 Q. And that's the only -- the only thing that  
22 influenced the accident, in your mind?

23 A. Yes, sir.

24 Q. Okay. Anything else on No. 1 or...

25 A. No, sir.

1 Q. Okay. What's the next one?

2 A. On this Interrogatory No. 7, it says please  
3 describe -- please describe all traffic control signs,  
4 signals, or devices that you observed within 500 feet  
5 before the place of impact. I was never asked this  
6 question.

7 Q. Okay.

8 A. It states that I said I stopped at a sign --  
9 a stop sign before turning onto the main road. I never  
10 stated a stop sign.

11 Q. So you didn't stop at a stop sign coming out  
12 of the driveway?

13 A. No, sir.

14 Q. Okay.

15 Okay. What else? Did you mark these changes  
16 on the document, Jared?

17 A. Yes, sir.

18 Q. Okay. Thank you.

19 A. Interrogatory No. 11.

20 Q. Okay.

21 A. What action, if any, did you take in attempt  
22 to avoid collision or to warn the plaintiff that a  
23 collision was about to occur?

24 My response is none. I did not see the white  
25 vehicle until after the collision. That's not an

1 accurate statement that I made.

2 Q. Okay. Did you talk with your attorney about  
3 this at the time that you were incarcerated?

4 A. Did I speak with Lee Grant about --

5 Q. Yes.

6 A. -- regarding these interrogatories?

7 Q. Yes.

8 A. We answered questions, but these were not the  
9 questions that were answered.

10 Q. Okay. What do you think -- what's the  
11 correct response to No. 11?

12 A. I swerved to avoid collision.

13 Q. Okay.

14 A. Tried to turn out of the turn.

15 Q. Anything in the number --

16 A. As well as --

17 Q. Oh, I'm sorry.

18 A. Oh, as well as -- I'm sorry. As well as  
19 response to Interrogatory No. 9. It says I stated I  
20 was talking on my cell phone at the time of the  
21 accident, which I had been talking on my cell phone  
22 previous to the accident.

23 Q. Okay.

24 A. So --

25 Q. But at the time of impact, you were not on



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1 the phone; is that what you're saying?  
 2 A. No, sir.  
 3 Q. Okay. Just prior to that, you were on the  
 4 phone?  
 5 A. Yes, sir.  
 6 Q. Okay.  
 7 A. It says the request -- response to  
 8 Interrogatory No. 10 --  
 9 Q. Yes.  
 10 A. -- if you did not have the plaintiff's  
 11 vehicle in view during the last hundred feet prior to  
 12 the subject accident, please describe what obstructed  
 13 your view during the last hundred feet prior to the  
 14 impact.  
 15 It states that I said a bus blocked the white  
 16 car from my view. I did not state that. I stated that  
 17 she was behind the bus.  
 18 Q. Okay. So you had her in view; it was just  
 19 behind the bus?  
 20 A. Yes, sir.  
 21 And then Interrogatory 11 -- yeah, we already  
 22 went over that.  
 23 And Interrogatory No. 12, the question is  
 24 please describe fully in complete detail each and every  
 25 automobile accident in which you have been involved in

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1 in the last ten years prior to or since the subject  
 2 accident.  
 3 I said I had never been in any accident as a  
 4 driver, and that is not an accurate statement.  
 5 Q. And we talked about the 2008 --  
 6 A. Yes, sir.  
 7 Q. -- accident that you were in in your mom's  
 8 car?  
 9 A. Yes, sir.  
 10 Q. Okay.  
 11 A. And that's the extent of my review of the  
 12 interrogatories.  
 13 Q. So from 13 to 16 you don't have any other  
 14 edits, correct?  
 15 A. No, sir.  
 16 Q. Okay.  
 17 MR. ESCHWEILER: This is going to be No. 6.  
 18 (Exhibit No. 6 was marked for  
 19 identification.)  
 20 BY MR. ESCHWEILER:  
 21 Q. Jared, I'm showing you what's been marked as  
 22 Exhibit 6. This is a Clark County District Court  
 23 action filed by your mom individually and as your  
 24 guardian and as you individually versus Clark County;  
 25 the Clark County School District; Clark County School

1 District Police Department; Ben Montoya, the principal  
 2 of Fremont Middle School; Kalandra Shepphard, assistant  
 3 principal of Fremont Middle School; and Araceli Avila,  
 4 the guardian of Jose Hernandez.  
 5 A. Yes, sir.  
 6 Q. Is this what we talked about earlier, the  
 7 lawsuit that resulted from your November 5th, 2005 --  
 8 I'm sorry; I may have the date -- November 2005  
 9 assault?  
 10 A. Yes, sir.  
 11 Q. And we talked about the injuries.  
 12 Did you have any part in helping your mom  
 13 file the lawsuit?  
 14 MR. STRASSBURG: Object to the form. That's  
 15 vague.  
 16 Answer it if you understand what he's talking  
 17 about.  
 18 THE WITNESS: Can you repeat the question,  
 19 sir?  
 20 BY MR. ESCHWEILER:  
 21 Q. Sure.  
 22 Did you participate in the decision to file a  
 23 lawsuit against these parties?  
 24 A. Yes, sir.  
 25 Q. And why did you believe that the school

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1 district would be liable --  
 2 A. Because the school was aware of the current  
 3 situation that I was in.  
 4 Q. Why would the school district police  
 5 department be liable to you?  
 6 A. Because --  
 7 MR. STRASSBURG: Object to the form. Lawyers  
 8 write complaints.  
 9 You can answer if you have an understanding.  
 10 THE WITNESS: At the time the school chose to  
 11 handle the situation upon themselves, which means place  
 12 hall monitors outside the school where the riot was to  
 13 take place instead of calling the school police and  
 14 notifying them that there was about to be a riot taking  
 15 place.  
 16 BY MR. ESCHWEILER:  
 17 Q. What about the principal; why was Mr. Montoya  
 18 brought into the lawsuit?  
 19 A. It was his decision to have the school handle  
 20 it themselves instead of notify school police. Ben  
 21 Montoya was at the scene.  
 22 Q. What about Kalandra Shepphard?  
 23 A. She was at the scene.  
 24 Q. And then you also sued the guardian of Jose  
 25 Hernandez?

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1 A. Yes.  
2 MR. STRASSBURG: Object to the form.  
3 BY MR. ESCHWEILER:  
4 Q. Is that not accurate?  
5 MR. STRASSBURG: You said -- oh, it does say  
6 Jared Awerbach, individually. Sorry. I thought he was  
7 a minor. Well, he is a minor.  
8 MS. COMPTON: He was a minor.  
9 MR. ESCHWEILER: You --  
10 MR. STRASSBURG: And I'll leave -- I'll  
11 withdraw it.  
12 MR. ESCHWEILER: Okay.  
13 BY MR. ESCHWEILER:  
14 Q. You sued the guardian of Jose Hernandez,  
15 correct?  
16 A. Yes, sir.  
17 Q. Was Jose involved in the fight with you?  
18 A. Jose Hernandez is the boy who struck me.  
19 Q. Okay. And why would you -- why would his mom  
20 be responsible for him striking you?  
21 A. Because Jose was a child. We had already  
22 pressed the charges against Jose, and he was ordered to  
23 pay restitution.  
24 Q. Do you believe the mom could have prevented  
25 your injuries or the fight?

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1 A. No, sir.  
2 Q. What should have Jose's mom done?  
3 MR. STRASSBURG: Object to the form,  
4 foundation, not calculated to lead to anything  
5 discoverable.  
6 BY MR. ESCHWEILER:  
7 Q. You can answer.  
8 MR. STRASSBURG: You can go ahead if you have  
9 an opinion.  
10 MR. MAZZEO: And calls for a legal  
11 conclusion.  
12 THE WITNESS: Can you repeat the question,  
13 sir?  
14 BY MR. ESCHWEILER:  
15 Q. Sure.  
16 What should have Jose's mom done to prevent  
17 the fight or the injuries to you?  
18 MR. STRASSBURG: Same objection.  
19 THE WITNESS: There's nothing she could --  
20 MR. STRASSBURG: Answer if you know.  
21 THE WITNESS: Nothing she could have done.  
22 BY MR. ESCHWEILER:  
23 Q. So you were just suing her because she was  
24 Jose's mom?  
25 MR. STRASSBURG: Object to the form,

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1 foundation, calls for a legal conclusion, invades the  
2 privilege. That's a totally improper question.  
3 MR. ESCHWEILER: Are you instructing him not  
4 to answer?  
5 MR. STRASSBURG: Well, I'm thinking about it,  
6 but I'll let him answer if he understands the question.  
7 THE WITNESS: Because at the time I believe  
8 it was a decision between my attorney and my mom. It  
9 was at counsel of the attorney.  
10 BY MR. ESCHWEILER:  
11 Q. Do you -- do you remember what the outcome of  
12 this lawsuit was?  
13 A. No, sir.  
14 Q. Okay.  
15 MR. ESCHWEILER: If you can give me about a  
16 five-minute break, I may not have any more questions.  
17 THE VIDEOGRAPHER: Off the video record at  
18 2:21.  
19 (Recess taken from 2:21 p.m. to 2:28 p.m.)  
20 THE VIDEOGRAPHER: Back on video record at  
21 2:28.  
22 EXAMINATION  
23 BY MR. MAZZEO:  
24 Q. We're on? All right.  
25 Jared, good afternoon.

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1 A. Good afternoon.  
2 Q. Can I call you by your first name, Jared?  
3 A. Sure.  
4 Q. All right. I have a couple follow-up  
5 questions for you. I know it's getting late in the  
6 afternoon; so...  
7 How are you feeling at this point?  
8 A. Good.  
9 Q. You're okay to proceed?  
10 A. Yes, sir.  
11 Q. All right. You had -- Jared, you had  
12 testified earlier about there being a spare key in the  
13 house and -- earlier this morning, and then after that  
14 you said that your mom knew that on -- I guess on a  
15 prior occasion, prior to the motor vehicle accident,  
16 that you had taken the key two or -- two to three  
17 times.  
18 When you had taken the key two to three times  
19 prior to the accident, I'm assuming that the mom didn't  
20 know about it until after you had driven the car --  
21 A. Yes, sir.  
22 Q. -- is that correct?  
23 A. Yes, sir.  
24 Q. All right. There were times after the -- or  
25 I'm sorry. Strike that.

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1 There were times before the accident when you  
2 had asked your mom for permission to use the car, and  
3 you had testified earlier that your mom indeed gave you  
4 permission to use the car at various times?  
5 A. Occasionally.  
6 Q. Occasionally.  
7 And just so I understand, was that -- were  
8 you given permission to use the car with an adult  
9 licensed driver --  
10 A. Yes, sir.  
11 Q. -- or by yourself?  
12 A. A licensed driver.  
13 Q. Okay. Each and every time that your mom gave  
14 you permission, it was with the understanding that you  
15 were going to use it with a licensed driver?  
16 MR. ESCHWEILER: Object to the form.  
17 BY MR. MAZZEO:  
18 Q. You can answer.  
19 MR. STRASSBURG: Go ahead.  
20 THE WITNESS: Yes, sir. Or she was under the  
21 impression that I would be driving with a licensed  
22 driver.  
23 BY MR. MAZZEO:  
24 Q. And she was under the impression based on the  
25 conversation that you had with her at the time that you

1 Q. Okay. And can you estimate the distance  
2 based on looking at this table, the length of the  
3 table; 10 feet, more or less or something else?  
4 A. Maybe 15. Maybe 15.  
5 Q. Okay. And...  
6 So if this table is 15 -- approximately  
7 15 feet, you say, then, certainly, would it be correct  
8 to say that you didn't attempt to go between the end of  
9 the bus and the front of the plaintiff's car within a  
10 distance of, let's say, 15 feet?  
11 A. Yes, sir.  
12 Q. Okay. And I find from deposing witnesses  
13 that when it comes to measurements, whether it's time  
14 or distance, they all have different -- they all use  
15 different types of measurements; so...  
16 Are you comfortable in using a car length as  
17 a measurement?  
18 A. Yes, sir.  
19 Q. Okay. Or at least the length of this table  
20 as the measurement of what a car length would be?  
21 A. Yes, sir.  
22 Q. All right. I'm going to show you a couple of  
23 photographs.  
24 MR. MAZZEO: We can have these marked. What  
25 number are we at?

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1 had asked for permission?  
2 A. Based on the rules of the household.  
3 Q. Okay. And that was that you were not  
4 permitted to drive a car unless you were driving with a  
5 licensed adult driver?  
6 A. Yeah.  
7 Q. Okay. Listening to the testimony earlier and  
8 I heard you said a couple different things about the  
9 distance between plaintiff's car, which happened to be  
10 a white car, right?  
11 A. Yes, sir.  
12 Q. Okay. And the distance -- the distance  
13 between the plaintiff's white car and the bus as they  
14 were traveling southbound on Rainbow, okay?  
15 A. (Witness nods head.)  
16 Q. At one point you had initially testified that  
17 the white car, plaintiff's car, was approximately six  
18 to seven feet behind the bus. Another time you were --  
19 talked about it in terms of car lengths; so I want to  
20 ask you something.  
21 With you looking at the conference table in  
22 this room between us, would it be fair to say that the  
23 length of this table is about the length of the average  
24 automobile?  
25 A. One, yes.

1 MR. STRASSBURG: 7.  
2 MR. ESCHWEILER: 7, I think.  
3 MR. MAZZEO: So this will be 7. So we'll  
4 have these marked as 7-1, 2, and 3, or A, B, and C?  
5 MR. STRASSBURG: Why don't we mark them  
6 individually, 7, 8, and 9.  
7 MR. MAZZEO: We can do that. That's fine.  
8 MR. ESCHWEILER: Which one's which?  
9 MR. MAZZEO: Okay. So the -- they'll be in  
10 this order: The -- 7 will be the one -- 7 and 8 both  
11 show the -- I guess the north -- the northbound side or  
12 the north side of Rainbow.  
13 No. 7 is the one where the red car that's  
14 traveling southbound appears more in the distance. 8  
15 will be where the red car is closer, and then 9 will  
16 be -- I believe that's a southbound view of Rainbow,  
17 and I'll confirm that with the witness.  
18 BY MR. MAZZEO:  
19 Q. Okay. Jared, if you would, take a look at  
20 each of these photographs.  
21 THE WITNESS: (To the court reporter) Are you  
22 aware of these, ma'am?  
23 MR. STRASSBURG: Do you want them stamped?  
24 BY MR. MAZZEO:  
25 Q. Jared, she has it on the record. I just --

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1 you just need to answer my questions, all right?  
 2 A. Yes, sir.  
 3 Q. Okay. So taking a look at the first one --  
 4 and the first one would be the one that I have on top.  
 5 A. Yes, sir.  
 6 Q. And you can look at all three of them.  
 7 MR. ESCHWEILER: This is Exhibit 7?  
 8 MR. MAZZEO: Yeah.  
 9 And, you know what, just because you might  
 10 change the order of them, I'm going to -- the court  
 11 reporter will mark them afterwards -- I'm going to put  
 12 a number in the bottom right-hand corner, 7, 8, and 9,  
 13 just so that we're talking about the same one.  
 14 (Exhibit Nos. 7, 8, and 9 were marked for  
 15 identification.)  
 16 BY MR. MAZZEO:  
 17 Q. You might have been asking the court reporter  
 18 about that.  
 19 A. Yes, sir.  
 20 Q. Thank you. I'm -- I apologize, then.  
 21 Okay. So looking at the first one and -- at  
 22 this point, just look at all three of them, and let me  
 23 know if you recognize the subject matter, meaning the  
 24 scene that's identified depicted in each of those  
 25 photographs.

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1 A. Yes, sir.  
 2 Q. Okay. What do you recognize it to be?  
 3 A. Location of the white car previous to the  
 4 bus, location of the white car after the bus cleared,  
 5 and location of where I was standing.  
 6 Q. Well, does the -- what does the scene depict,  
 7 though? What are we -- what are we talking about?  
 8 A. The --  
 9 Q. What street are we talking about?  
 10 A. We're talking about Rainbow, traffic moving  
 11 southbound. This red car is in --  
 12 Q. We'll go in -- we'll talk about the car in a  
 13 moment. I just want to -- I just want to ask you about  
 14 the pictures themselves.  
 15 So the scene is Rainbow, and what is the --  
 16 to the left of the photograph, No. 7, what -- there  
 17 appears to be a side street --  
 18 A. Yes, sir.  
 19 Q. -- to the left?  
 20 Do you know what -- does that have a name, or  
 21 is that coming from a development or something else?  
 22 A. This is the entrance to the apartment complex  
 23 named Villa Del Sol.  
 24 Q. Okay. On the left. And -- let me just turn  
 25 it so I can see.

1 And would that have been the street that you  
 2 would have been exiting from onto Rainbow?  
 3 A. From the point where the picture is taken  
 4 would have been my view.  
 5 Q. Okay. And your intended direction was to  
 6 proceed into Rainbow to go northbound; so you would be  
 7 making a left from that direction?  
 8 A. Yes, sir.  
 9 Q. All right. The same thing with photograph  
 10 No. 8.  
 11 A. We were looking at photograph No. 8. This is  
 12 photograph No. 7 (indicating).  
 13 Q. Oh, okay. It's the --  
 14 A. They're the same but --  
 15 Q. The same question, same answers for  
 16 photograph 7 and 8, right?  
 17 A. Yes, sir.  
 18 Q. Okay. And then photograph No. 9, that  
 19 depicts Rainbow, as well?  
 20 A. Yes, sir.  
 21 Q. Southbound or northbound?  
 22 A. Traffic is moving southbound.  
 23 Q. And that would be southbound from your  
 24 position before entering onto Rainbow?  
 25 A. That would be southbound entirely.

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1 Q. Okay. In any event, is this the  
 2 southbound -- this would be southbound on Rainbow from  
 3 approximately where you might have been entering onto  
 4 Rainbow from Villa Del Sol, or is it some other  
 5 location?  
 6 A. This would be southbound given the location  
 7 of the manhole. I think there's a water -- a water  
 8 sewage thing right there.  
 9 Q. Also in the street?  
 10 A. Yes, sir.  
 11 Q. Okay. Got it.  
 12 So now that we've identified the location,  
 13 can you -- do any of the cars that are depicted -- by  
 14 the way, do you know when these photos were taken?  
 15 A. Yes, sir.  
 16 Q. When?  
 17 A. On March 19th.  
 18 Q. So certainly not on the day of the accident?  
 19 A. No, sir.  
 20 Q. Okay.  
 21 MR. ESCHWEILER: 2014?  
 22 THE WITNESS: Yes, sir.  
 23 BY MR. MAZZEO:  
 24 Q. So from looking at photograph No. 7, do any  
 25 of the vehicles in the photograph depict the location

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1 of your vehicle, the bus, or plaintiff's vehicle prior  
2 to or at the time of the accident?  
3 A. This red vehicle here (indicating).  
4 Q. Okay. So, again, we're on photograph 7.  
5 The red vehicle, what lane of travel is it  
6 in?  
7 A. It's in the far lane traveling southbound.  
8 Q. That would be the left -- left through lane?  
9 A. Yes, sir.  
10 Q. Okay. And at what point in time does that  
11 depict the plaintiff's vehicle prior to the accident?  
12 A. In -- in -- in application to the bus.  
13 Q. In relation to the bus?  
14 A. Yes, sir.  
15 Q. And is that -- the position of that red  
16 vehicle proceeding southbound, is that the position  
17 where the plaintiff's vehicle was in at the time you  
18 first saw her vehicle?  
19 A. Previous to clearing the bus.  
20 Q. What do you mean by "previous to clearing the  
21 bus"?  
22 A. Before the bus had passed me.  
23 Q. Okay. But I'm saying you did, then -- yeah,  
24 so you did see the -- you saw the red -- you saw  
25 plaintiff's vehicle in the same position as that red

1 Q. Two car lengths?  
2 A. Yes, sir.  
3 Q. So two lengths of this table?  
4 A. Yes, sir.  
5 Q. When --  
6 A. Two actual cars bumper to bumper.  
7 Q. Okay. And that would have been the  
8 distance --  
9 A. Two lengths of this table.  
10 Q. -- between the front of plaintiff's car and  
11 the back of the bus?  
12 A. Yes, sir.  
13 Q. And you're saying that you attempted to go --  
14 do you understand that -- you attempted to go through  
15 the -- in front of -- or behind the bus but in front of  
16 plaintiff's car approximately 10 to 30 feet?  
17 A. Yes, sir.  
18 Q. Okay. And I -- I understand we're now -- how  
19 long has it been since the accident?  
20 A. Three years.  
21 Q. Okay. Would you agree that your memory was  
22 better at the time of the accident than it is today?  
23 A. No, sir.  
24 I would agree that returning to the scene of  
25 the accident refreshed my memory.

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1 vehicle prior to the accident?  
2 A. Yes, sir.  
3 Q. And that's prior to the bus passing --  
4 A. Right, yes, sir.  
5 Q. -- in front of you?  
6 All right. And when you first saw  
7 plaintiff's vehicle, which is apparently where this red  
8 car is depicted in photograph 7, is it your testimony  
9 that the distance between the front of the red  
10 vehicle -- or the front of plaintiff's vehicle and the  
11 back of the bus was -- I know you used the term earlier  
12 of six to seven feet.  
13 Were you really referring to six to seven car  
14 lengths?  
15 A. No, sir. I was referring to six to seven  
16 feet from the manhole.  
17 Q. Oh, okay.  
18 A. I had been confused.  
19 Q. Understood.  
20 So -- and the distance between the front of  
21 the plaintiff's car and the back of the bus when you  
22 first saw the plaintiff's car, would that have been  
23 also six to seven car lengths or something else?  
24 A. It would have been two cars, two cars'  
25 length.

1 Q. Sure.  
2 But would you agree, though, that immediately  
3 after the accident that your memory would have been  
4 better with regard to certain details concerning the  
5 accident?  
6 MR. ESCHWEILER: Object to the form. He  
7 already answered the question.  
8 BY MR. MAZZEO:  
9 Q. Than it is a year after the accident?  
10 A. Can you repeat the question?  
11 Q. Would you agree that all -- everyone's  
12 memory, we're talking about all people -- memory fades  
13 over time?  
14 A. Yes, sir.  
15 Q. Okay. And that our memory is better closer  
16 to the time of an event than -- and then it fades as we  
17 recede from the event?  
18 A. Yes, sir.  
19 But, truthfully, I remember everything about  
20 this incident. I remember everything about this day.  
21 Q. I understand, and I'm not disputing that.  
22 Okay. Because -- and the reason why I'm  
23 asking is because I'm confused as I sit here now.  
24 A. Yes, sir.  
25 Q. Earlier you said six to seven feet between



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1 the bus and the car, and then I heard you say three to  
2 four car lengths, and now you're saying that it's two  
3 car lengths. So I'm hearing different distances, and  
4 it's okay.

5 You -- I mean, you might have some -- some  
6 difficulty with your recollection or memory, or maybe  
7 it's just that time of day where, you know, you're  
8 feeling like a little drained, and maybe you need a  
9 break. I don't know.

10 But do you understand why I'm hearing --

11 A. Yes.

12 Q. -- different things?

13 A. Yes, sir. Referring to six or seven feet, I  
14 was referring to the manhole viewable in Exhibit 9 in  
15 reference to Exhibit 8, confusing distance -- confusing  
16 the manhole with the bus.

17 Q. Okay. So --

18 A. As you can see, in Exhibit 8 the red car  
19 marking the actual scene of the accident, the actual --  
20 marking the plaintiff is six to seven feet away from  
21 the manhole shown in Exhibit 9.

22 Q. You understand there's a difference between  
23 two car lengths and four car lengths?

24 A. Yes, sir.

25 Q. Okay. Let me see the photographs, please.

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1 When you first saw the bus --

2 A. Yes, sir.

3 Q. Strike that.

4 When you first saw the plaintiff's vehicle,  
5 where was -- what lane of travel was the bus in?

6 A. This lane here (indicating).

7 Q. The right lane southbound?

8 A. Yes, sir, approaching the curb.

9 Q. Okay. Northbound of -- from where you were,  
10 though?

11 A. Yes, sir.

12 Q. When you first saw the plaintiff's car, where  
13 would you say the bus was in relation to where you  
14 were? What was the distance between, let's say, the  
15 front of the bus and where you were in that roadway  
16 entering onto Rainbow?

17 A. In front of me.

18 Q. In front of you?

19 A. Yes, sir.

20 It was a -- it was a different bus at the  
21 time. They've got new buses.

22 Q. Oh, that's fine. That's fine.

23 So you're saying that the bus was in front of  
24 you when you first saw the plaintiff's car --

25 A. Yes, sir.

1 Q. -- right?

2 When you first saw the bus and it's in front  
3 of you, is it directly in front of you, to the left or  
4 to the right or kind of passing in front of you?

5 A. It's in the process of passing me by -- given  
6 my left location.

7 Q. Excuse me.

8 A. Given my left from my location.

9 Q. Yeah, okay.

10 So -- and you said that this was a double  
11 extension bus?

12 A. Yes, sir.

13 Not a double decker.

14 Q. Not a double decker. A double extension.

15 A. Yes, sir. They have a gray area which is  
16 used for turns in the older buses; so it seats more  
17 passengers.

18 Q. Would you agree, then, that as the bus is  
19 passing in front of you, you could not see through the  
20 bus to traffic on the other side of the bus?

21 A. Not at that time, no.

22 Q. Okay. But as the bus was passing in front of  
23 you, would you agree that you could still see  
24 plaintiff's car?

25 A. Yes, sir.

1 Q. Okay. And plaintiff's car was not even in  
2 the -- was not in the far right lane as you're  
3 traveling southbound, right?

4 A. No, sir.

5 Q. It's in the -- it's in the left lane as  
6 you're traveling southbound?

7 A. Yes, sir.

8 Q. So would you agree -- and kind of follow me  
9 on this.

10 Would you agree, then, that plaintiff's car  
11 would have to be -- from your position with the bus  
12 directly in front of you, it would have to be much  
13 further than two car lengths in order for you to  
14 actually see the car as the bus is in front of you?

15 MR. ESCHWEILER: Object to the form.

16 BY MR. MAZZEO:

17 Q. You can answer.

18 MR. ESCHWEILER: He's asked this -- he's  
19 answered it multiple times.

20 BY MR. MAZZEO:

21 Q. And you can answer it.

22 MR. STRASSBURG: Go ahead and answer.

23 THE WITNESS: The bus was a larger bus than  
24 you see on Rainbow today. They were different size  
25 buses.

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1 BY MR. MAZZEO:  
2 Q. I'm not asking about --  
3 A. But what I'm explaining is it's a different  
4 size.  
5 Q. Okay.  
6 A. So two -- two or three car lengths at the  
7 scene at the time could be one -- or could add an extra  
8 car length, could add more distance.  
9 Q. Okay. All right. So --  
10 A. I'm sorry. I had to think about the  
11 relevance to the bus.  
12 Q. No, that's fine. You're doing fine.  
13 I'm going to show you this real quick, a  
14 diagram here and (drawing)...  
15 On Rainbow do we have two lanes in each  
16 direction?  
17 A. Yes, sir.  
18 Q. Directions of travel are separated by --  
19 A. There's a middle lane.  
20 Q. There's a middle lane, right?  
21 A. Yes, sir.  
22 Q. There's also a turning lane; isn't there?  
23 A. No, sir.  
24 Q. Oh, there's just two lanes in each direction  
25 and a middle lane?

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1 A. Yes, sir.  
2 Q. The middle lane happens to be a turning lane  
3 depending on where you are in the street?  
4 A. Yes, sir.  
5 Q. Okay. In looking at this diagram -- this is  
6 like a bird's eye view, and it's just for perspective.  
7 Let's say your vehicle is on the side street over here  
8 (indicating).  
9 A. Okay.  
10 Q. Do you see this?  
11 A. Yes, sir.  
12 Q. And do you see this -- it's a bus, a figure  
13 of a bus, and there's two --  
14 A. Yes, sir.  
15 Q. -- two rectangles?  
16 A. Yes, sir.  
17 Q. And it's kind of passing in front of you at  
18 this point?  
19 A. Yes, sir.  
20 Q. Plaintiff's vehicle, from your testimony,  
21 would have to be -- as you said, is in the left lane,  
22 right?  
23 A. Yes, sir.  
24 Q. And in order for you to view plaintiff's  
25 vehicle, you'd -- you would view it from the -- from

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1 the end of the bus, right?  
2 A. Yes, sir.  
3 Q. Okay.  
4 A. Previous right here --  
5 Q. Yes.  
6 A. -- upon making -- upon letting traffic know  
7 that I'm moving after the bus.  
8 Q. Yeah; so...  
9 So in order for you to view the plaintiff's  
10 vehicle behind the bus, would you agree that you would  
11 have to -- it would most likely be much further than --  
12 it might be several bus lengths where the plaintiff --  
13 front of the plaintiff's vehicle is in relation to the  
14 bus?  
15 MR. ESCHWEILER: Object to the form.  
16 THE WITNESS: It could --  
17 BY MR. MAZZEO:  
18 Q. Do you agree?  
19 A. It could be --  
20 MR. STRASSBURG: Go ahead.  
21 BY MR. MAZZEO:  
22 Q. Go ahead.  
23 MR. STRASSBURG: If you understand.  
24 THE WITNESS: It could be two -- it could be  
25 two bus lengths given -- given the buses that were used

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1 at the time, yes.  
2 BY MR. MAZZEO:  
3 Q. Bus length could be what, 50 to 70 -- when  
4 you're talking about two bus lengths, maybe 50 to  
5 70 feet?  
6 A. Like 80 feet.  
7 Q. 80 feet?  
8 A. It's a big bus.  
9 Q. Okay. Two -- and two lengths of those double  
10 buses might be 160 feet possibly?  
11 A. Possibly, yes, sir.  
12 Q. Okay. Do you understand on -- how difficult  
13 that it could be to estimate distances --  
14 A. Yes, sir.  
15 Q. -- when we're just throwing out numbers of  
16 feet or lengths --  
17 A. Yes, sir.  
18 Q. -- of car, right?  
19 A. Yes, sir.  
20 Q. Does this diagram help --  
21 A. Yes, sir.  
22 Q. -- now give you some perspective as to maybe  
23 how far plaintiff's car was from the bus?  
24 A. Yes, sir.  
25 Q. Okay. Had -- is it possible, Jared, that had

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1 the plaintiff -- you know who she is, Emilia Garcia? I  
2 mean, do you know her name?  
3 A. I'm aware of her name, yes.  
4 Q. Okay. Do you believe that from the time that  
5 you entered into Rainbow that -- and you were going to  
6 cross over the southbound lanes to proceed northbound,  
7 correct?  
8 A. Yes, sir.  
9 Q. Do you believe that, from when you entered  
10 Rainbow, that had the plaintiff not sped up, that you  
11 would have had sufficient time to make it into the  
12 northbound lanes?  
13 A. Yes, sir.  
14 Q. Okay. Can you give an approximation as to --  
15 and you actually observed this -- the car speed up?  
16 A. Yes, sir.  
17 Q. Okay. Did it appear to you as though she was  
18 trying to get past you before you made it to the other  
19 side?  
20 A. It appeared to me as what is referred to as  
21 aggressive driving.  
22 Q. Okay.  
23 A. Maybe a little too aggressive given the  
24 traffic at the time.  
25 Q. What were the points of contact between your

1 would make herself noticeable, yes, sir.  
2 I was not concerned with her at the time. I  
3 was more concerned -- if she was okay, if -- there was  
4 no ambulance. I would have noticed it. But I was more  
5 concerned with what was -- my situation, what was  
6 happening at the time.  
7 Q. No, I understand.  
8 But after the accident that -- you did  
9 observe her -- there wasn't -- there were times when  
10 you did observe her?  
11 A. Yes, sir.  
12 Q. And did you observe her exit her vehicle?  
13 A. No, I never saw her get out of her car. I  
14 saw her out of her car. I never saw her get out.  
15 Q. Do you -- do you -- do you know if she needed  
16 any assistance to exit her vehicle?  
17 A. The traffic officer asked her if she needed  
18 assistance, if she needed anything, and she said fine.  
19 She said she was fine. Excuse me.  
20 Q. Specifically, though, I'm asking you if you  
21 observed her or if you knew -- if you learned that she  
22 needed assistance to exit her vehicle, not if she  
23 needed help for injuries --  
24 A. Oh, no, sir, I didn't observe that.  
25 Q. You didn't observe --

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1 vehicle and plaintiff's vehicle?  
2 A. The whole front end of my vehicle contacted  
3 the back end of her SUV --  
4 Q. Did you have a seat --  
5 A. -- the back seat and the trunk area.  
6 Q. Okay. And did you have a seat belt on at the  
7 time?  
8 A. Yes, sir. Thank God.  
9 Q. Did any portion of your body come into  
10 contact with the interior of your car upon impact?  
11 A. I might have bumped against the steering  
12 wheel. I might have hit the side door.  
13 Q. Where were your hands at the time?  
14 A. On the wheel.  
15 Q. Okay. Both hands?  
16 A. Yes, sir.  
17 Q. After the accident how long were you at the  
18 scene for?  
19 A. 30 to 45 minutes.  
20 Q. And was the plaintiff there the whole time,  
21 Ms. Garcia?  
22 A. Yes, sir.  
23 Q. And were you able to observe her the entire  
24 time that you were at the scene?  
25 A. From when she would be in my view, when she

1 A. I didn't see that. I'm -- there was no one  
2 there to assist her.  
3 Q. Okay. When you went to speak with  
4 Ms. Garcia, was she in or out of her car?  
5 A. In her car.  
6 Q. Okay. And...  
7 At any time did you observe her standing or  
8 walking around at the scene of the accident?  
9 A. Yes, sir.  
10 Q. Okay. And at any time did you notice any  
11 cuts, bruises, or contusions on or about her head,  
12 face, neck, or any other portion of her body?  
13 A. No, sir.  
14 Q. Okay. At any time did you observe her  
15 holding her neck, her head, walking with an irregular  
16 gait, or something else?  
17 A. She had her hand on her hip.  
18 Q. Okay. Did she ever complain to you that she  
19 was injured?  
20 A. No, sir.  
21 Q. As a matter of fact, I think you testified  
22 earlier that you asked her if she was okay?  
23 A. Immediately.  
24 Q. And she said I'm okay, I'm fine? She told  
25 you that?

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1 A. She said I'm good; I'm fine. Go back to  
2 your car until the police come. I said you're calling  
3 the police. She said yes. I said oh and ran back to  
4 my vehicle.  
5 Q. Okay. Did she ever ask you if you were okay?  
6 A. No.  
7 Q. Did it appear that -- did she appear to be  
8 concerned for whether you -- whether or not you were  
9 injured?  
10 A. She more so concerned me -- she more so  
11 appeared to be concerned with what was happening with  
12 me, why I was in cuffs, why I was given a sobriety  
13 test, never about my well-being.  
14 Q. Okay. Prior to the sobriety test, prior to  
15 the police coming, did she ever express any concern for  
16 your well-being after the accident?  
17 A. She had said something to the traffic  
18 officer --  
19 Q. Prior to the officer coming. After the  
20 accident, before the officer came, did she --  
21 A. No.  
22 Q. -- ask you how you were doing --  
23 A. No, sir.  
24 Q. -- yes or no?  
25 A. No, sir.

1 Q. -- right?  
2 Did you receive chiropractic treatment after  
3 the accident?  
4 A. Yes, sir.  
5 Q. Okay.  
6 A. In no relation to the accident, though.  
7 Q. That was in relation to your balance problems  
8 from before?  
9 A. That was in -- the fact that chiropractic --  
10 Active Life was a part of our lifestyle.  
11 Q. Sure. Okay.  
12 So more of a maintenance type of treatment  
13 that you were receiving?  
14 A. Yes, sir, a luxury.  
15 Q. A what?  
16 A. Luxury. A luxury.  
17 Q. A luxury?  
18 A. Yes, sir.  
19 Q. Okay. All right. Is it fair to say, the  
20 very least, at the very least, Jared, that the --  
21 Ms. Garcia's actions of speeding up might have  
22 contributed to the accident; is that fair to say?  
23 A. Definitely.  
24 MR. MAZZEO: I'll pass the witness.  
25 MR. STRASSBURG: I have a couple of

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1 Q. Did she -- did she ever tell anyone that she  
2 needed medical attention that you overheard?  
3 A. Not at the scene, no.  
4 Q. I'm only talking about at the scene.  
5 A. No, sir.  
6 Q. Did you ever see her after the scene?  
7 A. No, sir.  
8 Q. So I'm only talking about at the scene.  
9 You never heard her ask for medical  
10 treatment, correct?  
11 A. No, sir.  
12 Q. Okay. I was sitting at the end of the table  
13 earlier --  
14 A. Yes, sir.  
15 Q. -- so I took some notes down. I'm not -- I  
16 just need some clarification. Maybe I misheard  
17 something. There was -- Mr. Eschweiler had asked you  
18 about whether you had received chiropractic treatment  
19 after the accident.  
20 Was it -- I know you said that you got  
21 chiropractic treatment before the accident following  
22 the 2005 incident with your eye, correct?  
23 A. Yes, sir.  
24 Q. And your balance --  
25 A. Yes, sir.

1 questions.  
2 MR. ESCHWEILER: Oh, I'm sorry. I want your  
3 drawing.  
4 MR. MAZZEO: Okay.  
5 MR. ESCHWEILER: I think we have to mark that  
6 as an exhibit.  
7 MR. MAZZEO: Oh, we do. Okay.  
8 MR. ESCHWEILER: No, your drawing that you  
9 made.  
10 MR. MAZZEO: Oh, my -- oh, my drawing.  
11 MR. ESCHWEILER: Yes.  
12 MR. MAZZEO: I'll have this marked as  
13 Exhibit 10.  
14 (Exhibit No. 10 was marked for  
15 identification.)  
16 MR. ESCHWEILER: You can't use your  
17 microphone?  
18 MR. STRASSBURG: Obviously, I can, but I  
19 just -- I just need to ask a couple here and there, and  
20 then I'll give you your seat back.  
21 MR. ESCHWEILER: Okay.  
22 EXAMINATION  
23 BY MR. STRASSBURG:  
24 Q. Mr. Awerbach, Roger Strassburg here. A  
25 couple questions.

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1 Would you hold up Exhibit 7 so the camera can  
2 see it, please.

3 A. (Witness complied.)

4 Q. All right. And to summarize the testimony  
5 you previously gave, the red car, the red Jeep,  
6 indicates the position of Ms. Garcia's vehicle when you  
7 first laid eyes on it --

8 A. Yes, sir.

9 Q. -- is that true?

10 A. Yes, sir.

11 Q. And the view -- the vantage point -- and  
12 there's no mystery here.

13 You and I went out to the scene so you could  
14 show me what happened, right, and you've testified,  
15 right?

16 A. Yes, sir.

17 Q. And that was March 19th of this year?

18 A. Possibly the 20th, yes, sir.

19 Q. About that time, correct?

20 A. Yes, sir.

21 Q. And you told me where to stand, right, when I  
22 took the picture?

23 A. Yes, sir.

24 Q. And the location you told me to stand was  
25 where your car was before you pulled out?

1 red vehicle.

2 Q. When she speeded up --

3 A. Yes, sir.

4 Q. -- that you observed her?

5 A. Yes, sir.

6 Q. And do you recall whether -- remember when I  
7 had you pace off that distance between where you're  
8 standing in the picture on Exhibit 8 and where I'm  
9 standing with the camera? Do you remember pacing that  
10 off?

11 A. Yes, sir.

12 Q. And do you remember about how many paces you  
13 counted when you paced that off?

14 A. 35.

15 Q. And a pace for you is about three feet?

16 A. Yes, sir.

17 Q. All right. So the distance, then, that the  
18 camera is showing to you in Exhibit 8 is over a hundred  
19 feet?

20 A. Yes, sir.

21 Q. Thank you. I'll come back around to you.

22 MR. ESCHWEILER: I just have a couple of  
23 questions --

24 MR. STRASSBURG: Oh, I --

25 MR. ESCHWEILER: Oh, I'm sorry.

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1 A. Yes, sir.

2 Q. And if I could direct your attention to  
3 Exhibit 8, could you hold that up for the camera and  
4 the jury.

5 A. (Witness complied.)

6 Q. Thank you, sir. And -- oh, keep it up. Do  
7 you mind? Can you hold it a little longer?

8 And the red vehicle shown in Exhibit 8, that  
9 is the location that you observed the plaintiff's  
10 vehicle when you committed to your turn, when you first  
11 pulled out?

12 A. After the bus was clear --

13 Q. Yes.

14 A. -- I was getting ready to commit to my turn,  
15 yes, sir.

16 Q. All right. And the -- you indicated there is  
17 a manhole cover, and is the manhole cover shown on  
18 Exhibit 8 just behind the rear wheel of the red Jeep?

19 A. Yes, sir.

20 Q. All right. Now, you're standing on the  
21 sidewalk in Exhibit 8, and is that the location  
22 immediately across from the place where you observed  
23 Ms. Garcia's vehicle when she speeded up?

24 A. That's the location of -- excuse me. It's at  
25 a location in -- parallel to the front bumper of the

1 MR. STRASSBURG: Just let me get my mic on.  
2 I'll just ask a couple more.

3 MR. ESCHWEILER: All right. I'm sorry.

4 MR. STRASSBURG: I... Can we mark -- what  
5 are we up to? Are we up to 9?

6 THE WITNESS: No, 11.

7 MR. ESCHWEILER: 11.

8 MR. STRASSBURG: 11? 11, oh, that -- all  
9 right. Let me mark these here. Let's say we'll mark  
10 these 12, 13, and 14 in -- in this order.

11 THE REPORTER: Isn't it 11, 12, and 13?

12 MR. STRASSBURG: Well, 11 is the hand -- I'm  
13 sorry. It looks like this says 10, but there's -- 7,  
14 8, and 9 are the photos we've talked about. Then this  
15 is --

16 THE WITNESS: 10.

17 MR. STRASSBURG: -- 10?

18 All right. So we're going to start with 11.  
19 Exhibit 11, Exhibit 12, and Exhibit 13, okay. Here's  
20 what they are.

21 MR. ESCHWEILER: Are these mine, my copy?

22 MR. STRASSBURG: Yes, I can give them to you.  
23 Just show me 11 again. Okay.

24 (Exhibit Nos. 11, 12, and 13 were marked for  
25 identification.)



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1 BY MR. STRASSBURG:  
2 Q. All right. Now, can I -- let me direct your  
3 attention to Exhibit 11. Could you hold that up for  
4 the camera to see.  
5 A. (Witness complied.)  
6 Q. All right. And can you identify that for us?  
7 A. This is the plaintiff's vehicle.  
8 Q. And can you identify where the damage was  
9 from the accident on the plaintiff's vehicle?  
10 A. It looks like the passenger's side door is  
11 clear, and the damage is mostly to the passenger back  
12 side.  
13 Q. Would you circle it, please, the part that  
14 you observed, the damage at the scene of the accident.  
15 A. (Witness complied.)  
16 Q. All right. Would you show the camera the  
17 part that you've circled.  
18 A. (Witness complied.)  
19 Q. All right. Now, would you put your initials  
20 there and our date, 3/27/14.  
21 A. (Witness complied.)  
22 Q. Now, from the front of Ms. Garcia's vehicle  
23 to the area that you've circled, was there any damage  
24 that you observed in the accident?  
25 A. Can you repeat the question, sir?

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1 Q. Sure.  
2 From the -- her front bumper to the back  
3 quarter panel, was all of this part of the vehicle  
4 undamaged?  
5 A. Yes, sir.  
6 Q. Now, you've indicated that you adopted an  
7 evasion avoidance technique to try to prevent the  
8 accident by swerving?  
9 A. Yes, sir.  
10 Q. Do you remember that?  
11 A. Yes.  
12 Q. Now, which way did you swerve? Was it to the  
13 left or the right?  
14 A. When I saw her speed up, I moved to the  
15 right.  
16 Q. Okay. And how did you move the steering  
17 wheel? Did you pull it down like this (demonstrating)  
18 or the other way?  
19 A. Tried to turn out of it this way  
20 (demonstrating). There was more traffic flowing to the  
21 right; so I had to go back to the turn.  
22 Q. All right. So even under those  
23 circumstances, you had the presence of mind to try to  
24 take evasive actions with the steering wheel to avoid  
25 her vehicle, right?

1 A. Yes, sir.  
2 Q. And you almost succeeded because almost  
3 two-thirds of the vehicle got past you, right?  
4 A. Yes, sir.  
5 Q. Now, again, Exhibit 12, could you show that  
6 to the camera, please.  
7 A. (Witness complied.)  
8 Q. And just for the record, you can identify  
9 that as her -- the damage to her vehicle from -- viewed  
10 from a different direction, can you; yes or no?  
11 A. Yes, sir.  
12 Q. And directing your attention to Exhibit 13, a  
13 close-up, can you identify that for us as a close-up of  
14 the damage to her vehicle?  
15 A. (No audible response.)  
16 Q. Is that an answer?  
17 A. Yes, sir.  
18 MR. MAZZEO: I didn't get the answer.  
19 BY MR. STRASSBURG:  
20 Q. Can you identify that as a close-up of the  
21 damage to the vehicle, sir?  
22 A. Yes, sir.  
23 Q. All right. Now, you talked about the -- you  
24 can put that down. Thank you.  
25 We talked about the trauma that you

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1 experienced in November of 2005 when you were set upon  
2 by nine bullies in a gang, and you were injured?  
3 A. Yes, sir.  
4 Q. Did you break any bones at that event?  
5 A. My cheekbone was broken in this area, as well  
6 as my eyebrow bone (indicating).  
7 Q. And did you receive any medical treatment for  
8 the breaking of the bones around your eye, your right  
9 eye and your skull?  
10 A. There was nothing -- there's no way to fix  
11 broken bones in your face; so...  
12 Q. Was the breaking of the bones surrounding  
13 your right eye and your skull, was that a painful  
14 experience, or was there no pain that you remember?  
15 A. It knocked me unconscious immediately. My  
16 knees didn't even buckle. I fell back.  
17 Q. When you came to, did you experience any  
18 pain?  
19 A. When I woke up, yeah. Yeah.  
20 Q. All right. Now, do you recollect, what was  
21 used to strike you? Did you see it coming or --  
22 A. I didn't even see the boy. I was --  
23 Q. Did you see --  
24 A. I was --  
25 Q. -- what was used to hit you?

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1 A. No, I didn't see what was used -- at the  
2 time, what was used to hit me. There was a shovel at  
3 the riot. There was a skateboard at the riot, and  
4 there was something else at the riot; so nobody really  
5 knew what I was struck with.

6 The boy admitted to using the brass knuckles  
7 upon his interview with Sergeant Bonatti [phonetic] of  
8 school police because he wanted to specify that he did  
9 not use a skateboard, he did not use a shovel, that he  
10 was using brass knuckles.

11 Q. All right. Now, other than the pain, have  
12 you experienced any headaches or migraines or blurring  
13 of vision in the sequence after -- of your healing  
14 after that trauma?

15 A. What happens is is -- I refer to as an ocular  
16 migraine, which is -- it takes away my vision and still  
17 has the same characteristics as a migraine, just  
18 visually my eyes are impaired.

19 Q. And how long have you been experiencing  
20 ocular migraines? Is it ever since you were -- your  
21 skull was fractured, or did they start shortly  
22 thereafter?

23 A. Shortly after.

24 Q. How long have they lasted?

25 A. Continuous.

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1 Q. To this day?

2 A. Yes, sir.

3 Q. And what's the frequency of these ocular  
4 migraines that you experience, typically?

5 A. They come and go. I try to avoid them. You  
6 know, try to avoid sunlight. My glasses are transition  
7 glasses, and so -- I haven't had one for some months,  
8 actually, and I try to treat them as soon as they come.

9 Q. All right. And what -- when the migraines  
10 come with some frequency, about how often a week do you  
11 experience them?

12 A. One comes for like two or three days a week.

13 Q. And when the migraine comes, how long does it  
14 last?

15 A. Two, three, four days a week, sometimes a  
16 week at a time, depending upon how the migraine feels.

17 Q. Now, does your usage of marijuana have any  
18 therapeutic benefits to you for these migraines?

19 A. Yes, sir.

20 Q. And would you describe it for us, please.

21 A. I self-medicate.

22 Q. And how does the use of marijuana make you  
23 feel when you have the migraines; better, worse, no  
24 change, what?

25 A. It's easier to lay down and relax and close

1 my eyes and be still and be content with the fact that  
2 I have to wait for an ocular migraine to pass than it  
3 is to go through it.

4 Q. Does it help with the --

5 (Reporter clarified.)

6 THE WITNESS: It's easy --

7 BY MR. STRASSBURG:

8 Q. That's no problem. Let me ask a better  
9 question.

10 Does the usage of marijuana help with the  
11 pain and discomfort from the migraine?

12 A. Yes, sir.

13 Q. Now, does your -- these ocular migraines,  
14 would you -- if you looked at yourself kind of coldly  
15 and critically, would those ocular migraines have  
16 anything to do with your drug usage?

17 A. No.

18 Q. Would your attempt to medicate and deal with  
19 the pain from those ocular migraines, that pain, would  
20 that have anything to do with your drug usage?

21 A. Definitely.

22 Q. In what way?

23 A. It's easier to lay down and relax and keep my  
24 eyes closed and be content with the fact that I'm  
25 having an ocular migraine under the influence of

1 marijuana rather than under the influence of anything  
2 else.

3 Q. Will ocular migraines allow you to sleep, or  
4 is the pain just too intense?

5 A. Sometimes it's hard to sleep. Sometimes it's  
6 hard to relax.

7 Q. And does the marijuana help you sleep when  
8 you have one of these several-day-long episodes of  
9 ocular migraine?

10 A. It helps me relax, yes, sir. It helps me be  
11 calm. It helps stabilize the effects of the ocular  
12 migraine.

13 Q. Does it help you to sleep?

14 A. No.

15 Q. Okay. Does it help you to endure your  
16 situation with these migraine headaches?

17 A. Yes, sir.

18 Q. Now -- sorry.

19 MS. COMPTON: That's okay.

20 BY MR. STRASSBURG:

21 Q. Now, we've had some discussion here about the  
22 cell phone.

23 Do you remember that?

24 A. Yes, sir.

25 Q. And you -- I just want to make sure that

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1 we're all clear on this.  
2 You said that you had used your cell phone  
3 prior to the accident, right?  
4 A. Yes, sir. Moments prior.  
5 Q. Sorry?  
6 A. Moments prior.  
7 Q. Okay. And before you stopped your vehicle to  
8 look both ways, as you've testified to, before you  
9 stopped at the entrance to the highway here --  
10 A. Yeah.  
11 Q. -- had you stopped using your cell phone?  
12 A. Yes, sir.  
13 Q. And when you stopped using your cell phone,  
14 where -- what did you do with it? Did you keep it in  
15 your hand, or did you put it on the seat or the floor  
16 or somewhere else?  
17 A. Just dropped it.  
18 Q. All right. Did your usage of the cell phone,  
19 before you first saw the plaintiff's vehicle in the  
20 location of this red Jeep in Exhibit 7, have anything  
21 to do with this accident?  
22 A. No.  
23 Q. Do you have any plans -- let me ask you this:  
24 You've testified that you are a buyer and dealer of  
25 marijuana and other drugs on a regular basis; at least

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1 you were at the time of the accident?  
2 A. Yes, sir.  
3 Q. And you've testified that you are and were  
4 back then a steady user of --  
5 A. Yes, sir.  
6 Q. -- some of your products, right?  
7 A. Yes, sir.  
8 Q. And you -- now you've testified that at  
9 the -- at the time of the accident, that you were not  
10 under the influence of any of these drugs, marijuana or  
11 otherwise, and so your driving ability was unimpaired?  
12 A. Yes, sir.  
13 Q. Now, but let me ask you this: Why should  
14 anybody believe that?  
15 A. Because you've got to make money first before  
16 you can get high. You've got to make what's called --  
17 what's referred to as the rib. You have to cover the  
18 quota before you get high, or you're going to lose  
19 money. You're not going to make it. You're not going  
20 to be able to sell drugs and supply a habit at the same  
21 time.  
22 Q. Well, now, you've testified -- that makes me  
23 think that -- I recollect you testifying that in the  
24 morning of the day of the accident, that you were at  
25 home, it sounds like in your bedroom engaged in

1 business, the drug business.  
2 A. Outside, yeah.  
3 Q. And you had a scale there?  
4 A. Yes, sir.  
5 Q. And what were you using the scale for?  
6 A. To weigh out the marijuana.  
7 Q. All right. And when you -- when you weigh  
8 out marijuana on a scale, is that -- is there a  
9 necessity of -- to do that in a fairly precise way so  
10 you don't get the weights wrong, or can you just slop  
11 it in there any old way?  
12 A. Some people slop it in there any old way,  
13 and -- but what I was doing at the time was my going  
14 rate for a gram was \$20. So I would do the math. I  
15 would apply the math to get a profit and break down  
16 what's known as a gram and an ounce individually, and  
17 that was important. The scale is used to calculate  
18 profit.  
19 Q. Well, is it a good business practice in that  
20 line of work, as you conducted it, to get high with  
21 marijuana when you're doing the business production  
22 side of weighing it out and bagging it up for delivery?  
23 A. No.  
24 Q. Why not?  
25 A. Because you'll mess up your calculations.

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1 You want to know how much you have to sell and how much  
2 you have to make, how much you can smoke.  
3 Q. Now, when you went over to this apartment at  
4 the Villa Del Sol, and you said you spent 30 minutes, I  
5 think, making this delivery?  
6 A. Yes, sir.  
7 Q. And when you did the delivery for this 30 to  
8 45 minutes, were there business negotiations, or did  
9 you have to do a business process of cutting up the  
10 marijuana into smaller segments, or was it just  
11 chitchat?  
12 A. I had to weigh out the weed. I had to  
13 discuss with her the next order of business, which is  
14 the next package, what we were going to do, fronts,  
15 anything like that, if she wanted to give me a loan.  
16 I had to sell some weed to some kids that  
17 were already there; so I needed a scale, and I needed  
18 to weigh out the work. I didn't have time to smoke.  
19 Q. And did you need your wits about you for that  
20 kind of commercial activity?  
21 A. Definitely. Especially going by yourself,  
22 definitely. Because --  
23 Q. So it's risky by yourself?  
24 A. Although it's family you never know who's  
25 going to be there. You never know what's going to

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1 happen. Family isn't always solid. Sometimes family  
2 may not be there.  
3 Q. So it sounds like that, in this business, you  
4 perceive a risk that when you're making a delivery, you  
5 could get jumped, right?  
6 A. It's happened.  
7 Q. And to defend yourself you want to have your  
8 wits about you, right?  
9 A. Yes, sir.  
10 Q. And are you better able to defend yourself  
11 high on dope or with all your faculties ready to go in  
12 a sober condition?  
13 A. Sober.  
14 Q. Now, does your mother have any addictive  
15 problems that you're aware of?  
16 A. Not currently but --  
17 MR. MAZZEO: Objection, relevance.  
18 BY MR. STRASSBURG:  
19 Q. Go ahead. Go ahead.  
20 A. Not currently. She's been abstinent from  
21 gambling for 12 years, but at one point of our life,  
22 she was -- at one point of our life, she was addicted  
23 to gambling.  
24 Q. During what ages -- what years of your  
25 childhood was she afflicted with that addiction?

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1 A. Elementary school.  
2 MR. STRASSBURG: I'm sorry. Excuse me for a  
3 moment.  
4 MR. ESCHWEILER: Sure.  
5 MR. STRASSBURG: I don't want to screw up.  
6 MR. ESCHWEILER: Take your time.  
7 BY MR. STRASSBURG:  
8 Q. Do you -- were you present in the household  
9 so that you could describe why your mom quit gambling?  
10 A. Yeah, yeah. I called her one night. I woke  
11 up in the house alone. It's like 2:00, 3:00 in the  
12 morning. I called her because, for some reason, I  
13 always had a fear that I would be abandoned or that she  
14 was going to kill herself or something. Our living  
15 conditions weren't that good.  
16 (Reporter interrupted.)  
17 THE WITNESS: Or she was going to kill  
18 herself in response to -- it was very tense. It was  
19 very tense, and she was always worried about money. So  
20 I called her, and I said where are you. She said I'm  
21 at the casino. I said, oh, I thought you killed  
22 yourself.  
23 She said, no, honey, I'm just gambling, and  
24 she said I'm on my way home, and since that day she  
25 hasn't placed a bet. That's how I remember it.

1 BY MR. STRASSBURG:  
2 Q. That had to be a very difficult childhood.  
3 A. It was what it was at the time, and then as  
4 you're older -- as you get older, you realize, you  
5 know -- you know, it's not really fair, but it is the  
6 living conditions that we had, but she's definitely  
7 improved her life.  
8 Q. Now, I wanted to ask you what part -- what  
9 neighborhood in the city of Vegas did you grow up in?  
10 A. Maryland and Karen.  
11 Q. And what's that called?  
12 A. That's called Naked City.  
13 Q. Growing up in Naked City, if you were to be  
14 asked why did you turn to drugs and -- traffic and sale  
15 and possession and use of drugs growing up in Naked  
16 City, what would your answer be?  
17 A. It was the culture at the time. It was what  
18 the youth were expected to do. The older gang members,  
19 the older people carrying drugs used us, would use the  
20 kids.  
21 Q. For what?  
22 A. Transport, things that would give an adult  
23 prison time, the things a juvenile could get away with.  
24 Q. You, too?  
25 A. Yeah. Yes.

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1 Q. And could you estimate for us whether you  
2 were -- I mean, did you keep track of the money you  
3 were making selling marijuana and other drugs, or did  
4 you just -- in and out, didn't pay attention?  
5 A. I didn't pay attention at the time.  
6 Q. Can you give us an estimate as to whether you  
7 made more money dealing drugs than you did working  
8 construction?  
9 A. Working construction I made more money day to  
10 day, but, overall, I made more money selling drugs, but  
11 the construction was good money.  
12 Q. Now, you put -- your college plans, you  
13 shelved those.  
14 A. Yes.  
15 Q. Because you wanted to support your child and  
16 your family?  
17 A. Yes, I wanted to begin having a family of my  
18 own.  
19 Q. And did the need to support that family  
20 encourage you to engage in selling drugs?  
21 A. Yeah, something I had known.  
22 Q. The money you made selling drugs, did you put  
23 that all at the disposal of your family, or did you  
24 blow it on yourself?  
25 A. Both. Both.

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1 Q. Thank you for your honesty.

2 A. Yes, sir.

3 Q. Now, you've indicated that you made some  
4 efforts lately to try and turn your life around, and I  
5 wanted to inquire about that.

6 Whose idea was it for you to present yourself  
7 to the psychiatric -- the state psychiatric hospital,  
8 Rawson-Neal on Charleston? Was it your idea, or did  
9 the authorities force you to do that or something else?

10 A. It's my own.

11 Q. And what brought that about?

12 A. While incarcerated I had requested to see a  
13 psychiatrist. There was no response. So I notified --  
14 notified a CO that I wanted to go on suicide watch. I  
15 was feeling suicidal at the time, a little suicidal,  
16 but I knew that while on suicide watch, the  
17 psychiatrist has to speak to you.

18 I knew that the damage from my meth addiction  
19 required medication, and I was seeking help for that.  
20 The jail released me to the hospital, and the hospital  
21 released me to 6161 West Charleston, which is  
22 Rawson-Neal.

23 And I went and I talked to a nurse about what  
24 was happening. A nurse then placed me on legal hold at  
25 Summerlin until a bed was available at Rawson-Neal. At

1 time to --

2 Q. All because of meth?

3 A. All because of my behavior but, yeah, with  
4 meth.

5 Q. They say that meth is a soul killer.  
6 What's your view?

7 A. Meth is the most addictive drug that there  
8 is. It's more addictive than crack, more addictive  
9 than heroin. It's addictive psychologically,  
10 neurologically, and physically. Some bad -- it's bad.  
11 It's bad.

12 Q. And you could not get away from it on your  
13 own?

14 A. I couldn't shake it. I didn't have any place  
15 to withdraw. I didn't have any place to get away from  
16 where I was. I mean, it would take a strong decision  
17 to do that, and I wasn't capable of making that  
18 decision.

19 Q. At Rawson-Neal, Dr. Bhushan, the  
20 psychiatrist, was able to wean you from the grips of  
21 methamphetamine, right?

22 A. Well, I was able -- I was -- I had served  
23 time in January. I had served a 30-day sentence -- a  
24 20-day sentence, a violation of a TPO; so I was able to  
25 obtain sobriety that way, but the damage of the

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1 Rawson-Neal I received antidepressants, sleep  
2 medication, and an antipsychotic drug.

3 I discontinued the antipsychotic when I  
4 started to get a grip on my reality, when I started to  
5 come back, and I continued taking the antidepressant  
6 and the sleeping pill.

7 Q. So when you appeared and presented yourself  
8 to Rawson-Neal, you were later informed you were  
9 displaying psychotic symptomatology?

10 A. What's it's called is -- it's not a  
11 meth-induced psychosis. It's a meth-induced mania,  
12 which is confusion, distortion, hallucinations, voices,  
13 and that's what had occurred to me.

14 That has never happened to me ever before in  
15 my -- in my long time of using drugs, it never  
16 happened, but this time it happened, and that scared  
17 me. That shook me.

18 Q. It sounds like this time what was different  
19 was the grinding effects of long-time meth usage --

20 A. Yeah.

21 Q. -- is that true?

22 A. Yeah. I lost myself this time. I mean, you  
23 lose yourself every time, but this time there was no  
24 contact with my children, no contact with my mother, no  
25 contact with my family, no family support. So it was

1 methamphetamine was still affecting me.

2 Q. And that was the TPO that your mother asked  
3 for to protect her from you?

4 A. After a coercion charge in November.

5 Q. And has your mother told you whether or not  
6 she intends for that TPO to be lifted or remain in  
7 place?

8 A. She has placed it on calendar to have it  
9 lifted.

10 Q. And you're living with your -- you're back  
11 with your mother now?

12 A. Yes, right now.

13 Q. And your -- you keep your children with you  
14 from time to time, right?

15 A. Yes.

16 Q. And are you currently enrolled in any kind of  
17 psychiatric program to continue your improvement?

18 A. What I'm doing is I'm attending NA regularly  
19 every day, enjoying that, and I'm enrolled in Mojave  
20 Mental Health Clinic, the day program, waiting for my  
21 insurance to switch, my HMO, because right now I'm  
22 covered under Medicaid, and I need -- I'm covered under  
23 Amerigroup, and I guess Mojave receives a different  
24 one.

25 So they have an open case for me. I have a



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1 came?

2 A. I was not home. I was at dinner with a  
3 friend and the police called me to come home. They  
4 had already been through the apartment.

5 Q. What did they tell you when they called  
6 you?

7 A. To come home, that they had been to the  
8 house and that I might want to come home.

9 Q. What happened when you got there?

10 A. Jared was in cuffs sitting outside on a  
11 chair that I had, and the police had him in cuffs.  
12 And that's really all remember.

13 Q. Do you know when that was?

14 A. I believe that it was March or April.

15 Q. What year?

16 A. It was the same year as -- I think it was  
17 the same year as the accident. I think it was 2011.

18 Q. So two or three months after the accident?

19 A. Yes.

20 Q. Have you ever feared for your safety  
21 because Jared was selling drugs?

22 A. I have feared for my safety because of  
23 Jared's involvement with drugs. I don't know if I  
24 would say necessarily because of selling.

25 Q. Why is it that you feared for your safety?

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1 A. Because Jared can be erratic, because of  
2 the people you're involved with when you're using  
3 drugs, because I was always worried that his  
4 behavior would lead to loss of my job and that's my  
5 income.

6 Q. So in terms of fear for your safety, you've  
7 been more afraid of how drugs affect him?

8 A. Yes.

9 MR. MAZZEO: Objection as to time frame.

10 THE WITNESS: Sorry. I have to answer  
11 slower.

12 BY MR. SMITH:

13 Q. How long has that been going on?

14 MR. MAZZEO: Objection as to time frame.

15 MR. SMITH: That's the question I just  
16 asked, Pete.

17 THE WITNESS: How long has it been going on  
18 that I've been afraid for my safety?

19 BY MR. SMITH:

20 Q. Right.

21 A. Not continuously, but off and on for the  
22 last -- since Jared is 17.

23 Q. And in particular during the times that  
24 he's lived with you since he was 17; right?

25 A. Yes. And for a slight time, long enough --

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1 that's not what you asked me. Excuse me.

2 Q. What are you going to say? Go ahead.

3 A. Safety in general after he was hurt, I was  
4 in -- you know, my kid was just hurt.

5 Q. What do you mean by that?

6 A. The safety of my family, and if my family's  
7 not safe, I don't feel safe.

8 Q. You were afraid that there was going to be  
9 some retaliation or something?

10 A. I was afraid of that. I was afraid of what  
11 was coming. My kid was just blinded in one eye.  
12 You know, I became unsettled, anxious.

13 Q. Your mother knows about Jared's drug use;  
14 right?

15 A. I can't tell you what my mother knows or  
16 doesn't know, what she'll admit or what she won't  
17 admit.

18 Q. Have you ever talked about it with her?

19 A. We've argued.

20 Q. And what have those arguments been about?

21 A. That it's not as bad as I think. That he  
22 needs help. As I said before, that I need to fix  
23 it. That he needs a place to live.

24 Q. How many times has he gone to live with  
25 her?

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1 A. I don't know.

2 Q. How many times do you know about?

3 A. I'm guessing at three.

4 Q. When was the first time?

5 A. I don't know.

6 Q. Did he ever go to live with her before he  
7 was 18?

8 A. Not that I recall, no.

9 Q. You're the only person he lived with until  
10 he turned 18?

11 A. He stayed at my sister's, but he did not  
12 have permission.

13 Q. How long was he at your sister's for?

14 A. I'm guessing. I'm not remembering  
15 accurately. A few months.

16 Q. How old was he when that happened?

17 A. Again, I'm guessing. Between 16 and 17.

18 Q. Were Alex and Edward living at your  
19 sister's when he stayed there, when Jared stayed  
20 there?

21 A. I don't know about Edward. Alex would have  
22 been.

23 Q. Alex was there?

24 A. As far as I know.

25 Q. After the 2005 fight, you hired an

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1 attorney; right?  
 2 A. Yes.  
 3 Q. You hired an attorney within a month of the  
 4 fight; right?  
 5 A. Yes.  
 6 Q. Why?  
 7 A. Because I was afraid for Jared at school.  
 8 Rather than his being protected as a victim, I  
 9 remember he was stopped and frisked. Someone was  
 10 following him. He asked for assistance. They  
 11 interrogated him instead of helping him.  
 12 He also needed help with school in terms of  
 13 a 504 Plan and what he was going to need when he was  
 14 absent. They didn't know what the laws were. I was  
 15 an employee of the Clark County School District,  
 16 which in some ways I felt limited me. So I hired  
 17 that attorney for Jared's protection.  
 18 Q. Was Jared ultimately expelled after that  
 19 fight?  
 20 A. Jared's been expelled, yes.  
 21 Q. What for?  
 22 A. Drugs.  
 23 Q. Drug use, drug sales, something else?  
 24 A. I believe both -- not sales. I believe  
 25 possession and being high.

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1 Q. And that was after the 2005 fight?  
 2 A. Yes.  
 3 Q. What did you mean by the 504 Plan?  
 4 A. A 504 Plan is when a child has special  
 5 needs but does not rise to the eligibility of  
 6 special education and we get individualized  
 7 education plans. So a 504 Plan lists accommodations  
 8 and needs that a student with a medical condition  
 9 would have.  
 10 Q. What were the accommodations that you asked  
 11 for for Jared?  
 12 A. I'm not remembering all of them, but he  
 13 needed, when he felt nervous, would be eligible for  
 14 an escort. I think there were some things about the  
 15 layout of assignments because of his vision.  
 16 He was entitled to compensatory education.  
 17 For every two days in a row that he missed, he got  
 18 an hour of tutoring.  
 19 Q. You said when he got nervous.  
 20 What would he be nervous about?  
 21 A. Someone following him. For a time he was  
 22 at the same school as friends of the boy who had hit  
 23 him.  
 24 Q. He did not get expelled because of the  
 25 fight?

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1 A. No.  
 2 Q. And you said if he missed two days in a --  
 3 more than two days in a row.  
 4 Is there some reason he was missing school?  
 5 A. He was not sleeping. He was having pain.  
 6 He also had a very extensive surgery where he was  
 7 out of school quite some time.  
 8 Q. Are there any other reasons that you hired  
 9 a lawyer after that 2005 fight?  
 10 A. The lawyer filed suit on our behalf to get  
 11 medical bills and future medical needs, but my  
 12 primary reason for calling him was that I was  
 13 scared.  
 14 Q. Did the lawsuit also ask for pain and  
 15 suffering?  
 16 A. I don't recall what the lawsuit asked for.  
 17 Q. Who did you sue?  
 18 A. Clark County School District as far as I  
 19 know.  
 20 Q. Who else?  
 21 A. And I believe that we sued the young man.  
 22 And I'm not remembering his name.  
 23 Q. You believe that the Clark County School  
 24 District was responsible for Jared's injury in 2005?  
 25 A. "Responsible" would be -- I'm not sure if

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1 it's the right use of the term. I believe that they  
 2 didn't do all they could to protect their students  
 3 involved that day.  
 4 Q. And because they didn't do all they could,  
 5 you believe that they should compensate Jared?  
 6 A. Yes.  
 7 MR. MAZZEO: Objection as to relevance.  
 8 BY MR. SMITH:  
 9 Q. You believe that the boy that hit him was  
 10 responsible?  
 11 MR. MAZZEO: Objection to the whole line of  
 12 questioning about responsibility.  
 13 MS. COMPTON: Foundation.  
 14 THE WITNESS: Yes.  
 15 BY MR. SMITH:  
 16 Q. And you believe that being responsible  
 17 means the boy should compensate Jared for his  
 18 injuries; correct?  
 19 A. No. I believe that the boy should have  
 20 been involved in some kind of rehabilitation and  
 21 serve a sentence, which he did.  
 22 Q. Suing him would not get him to serve a  
 23 sentence or rehabilitation; correct?  
 24 You sued him for money?  
 25 THE WITNESS: Right. There

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1 was absolutely --

2 MS. COMPTON: Form.

3 THE WITNESS: There was absolutely no  
4 chance we were going to get money. That was a part  
5 of suing. Whatever legal strategy the attorney  
6 involved told us to do, that's what we did.

7 And if I can clarify, I also believe that  
8 the Clark County School District was responsible to  
9 the boy who hit Jared to do a better job of being  
10 aware he was in trouble and protecting him.

11 BY MR. SMITH:

12 Q. You sued the boy after he had already been  
13 sentenced, so how was he going to be held  
14 responsible criminally by filing a lawsuit?

15 A. Again, those were my beliefs. I hired an  
16 attorney. The attorney told us what we needed to do  
17 and who needed to be named, but the principal that I  
18 believe was the Clark County School District.

19 Q. They were the ones who were primarily  
20 responsible?

21 MS. COMPTON: Form.

22 MR. MAZZEO: Objection, speculation,  
23 foundation, relevance.

24 MS. COMPTON: Join.

25 THE WITNESS: Again, I went to my attorney

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1 and I said, Here's where we are: They're not taking  
2 care of Jared. And I'm an employee of the District,  
3 I need to protect myself as well. I live and work  
4 in the same neighborhood where my son was hurt. I'm  
5 active in the union. And now my kid is hurt and  
6 they're not doing what they need to do. And he's  
7 going to be hurt for a long time, and I don't trust  
8 that they're going to do what he needs.

9 If they're not doing what he needs to do  
10 ten days after the accident, how are they going to  
11 do something two years after?

12 I hired an attorney. The attorney said  
13 this is what we're going to do.

14 BY MR. SMITH:

15 Q. You also sued for emotional injuries that  
16 you suffered; right?

17 A. Yes.

18 Q. And you believe that you should be  
19 compensated for those emotional injuries; correct?

20 MR. MAZZEO: Objection, relevance.

21 THE WITNESS: Again, not to be vague, I  
22 wanted my family protected.

23 I'm going to be very candid. I never  
24 believed we were going to get money from the Clark  
25 County School District.

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1 BY MR. SMITH:

2 Q. You read the lawsuit before it was filed,  
3 didn't you?

4 A. Yes. And followed the advice of my  
5 attorney.

6 Q. And you actually signed the complaint;  
7 right?

8 A. Yes.

9 MR. MAZZEO: Objection to the whole line of  
10 questioning based on relevance.

11 BY MR. SMITH:

12 Q. And if the complaint said something that  
13 wasn't true, you would have asked the attorney to  
14 change it; correct?

15 THE WITNESS: Yes.

16 MS. COMPTON: Form.

17 BY MR. SMITH:

18 Q. Why did you sue the principal of the  
19 school?

20 A. Because the principal made the decision not  
21 to call the police. Because the principal made the  
22 decision not to attend any meeting about Jared's  
23 welfare after he was hurt. Because the principal  
24 did a terrible job.

25 Q. Why did you sue the assistant principal?

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1 A. Same thing: She's an administrator at the  
2 school. She was aware of what was happening. She  
3 did nothing to protect the children involved. She  
4 did nothing to protect them afterwards.

5 Q. Why did you sue the mother of the boy that  
6 hit Jared?

7 A. Because my attorney said that's who we have  
8 to sue. He was a minor.

9 Q. You thought that she should be held  
10 responsible for his actions?

11 A. I didn't have a feeling about that. Again,  
12 I did what my attorney said to do.

13 I was in court with her and I -- during her  
14 testimony, I felt that she had no sense of the  
15 trouble that her son was in or at least said that in  
16 court. I don't know what she believed or didn't  
17 believe.

18 Q. You believe that she could have done things  
19 before that fight to help prevent it; right?

20 A. I don't know that I believe that. I don't  
21 know what her life circumstance was.

22 Q. You don't know if she could have done  
23 anything to help keep her son out of that trouble?

24 A. No, I don't. I don't know what she tried  
25 to do. I don't know what her situation was.

<p style="text-align: right;">Page 78</p> <p>1 MS. COMPTON: Can I -- can we take a break</p> <p>2 really quick?</p> <p>3 MR. SMITH: Sure.</p> <p>4 THE VIDEOGRAPHER: The time is</p> <p>5 approximately 3:04 p.m. We're going off the record.</p> <p>6 (Thereupon, a break was taken.)</p> <p>7 THE VIDEOGRAPHER: The time is</p> <p>8 approximately 3:14 p.m. We're going back on the</p> <p>9 record.</p> <p>10 BY MR. SMITH:</p> <p>11 Q. Before we took a break, I was asking you</p> <p>12 whether --</p> <p>13 MS. COMPTON: Oh. They moved it.</p> <p>14 BY MR. SMITH:</p> <p>15 Q. Before we took a break, I was asking you</p> <p>16 whether you thought the mother of the boy that hit</p> <p>17 Jared held any responsibility for Jared getting hit;</p> <p>18 right?</p> <p>19 A. Yes. She --</p> <p>20 MR. MAZZEO: Wait for a question.</p> <p>21 MR. SMITH: That was a question. She</p> <p>22 answered yes.</p> <p>23 MR. MAZZEO: Oh. I didn't know it was a</p> <p>24 question.</p> <p>25 THE WITNESS: You asked me if I thought</p>	<p style="text-align: right;">Page 80</p> <p>1 appointments, those kinds of things.</p> <p>2 Q. You don't think you hold any blame for the</p> <p>3 January 2011 accident?</p> <p>4 MR. MAZZEO: Objection, form.</p> <p>5 THE WITNESS: I don't think so.</p> <p>6 BY MR. SMITH:</p> <p>7 Q. Is there anything that you could have done</p> <p>8 to prevent the January 2011 accident?</p> <p>9 MR. MAZZEO: Objection, form.</p> <p>10 THE WITNESS: I'm hesitating because in a</p> <p>11 perfect world of hindsight could I have completely</p> <p>12 left the country or left the state and lived</p> <p>13 elsewhere with no contact with Jared and no access</p> <p>14 to the things I had? Sure.</p> <p>15 Was it a possibility? No.</p> <p>16 He had a child. I was doing the best I</p> <p>17 could. He is my child. The mother of my</p> <p>18 grandchildren is like a child to me. I was</p> <p>19 providing for my family until I knew what else to</p> <p>20 do.</p> <p>21 BY MR. SMITH:</p> <p>22 Q. There isn't anything else you think you</p> <p>23 could have done to prevent that accident?</p> <p>24 MR. MAZZEO: Objection, asked and answered,</p> <p>25 form.</p>
<p style="text-align: right;">Page 79</p> <p>1 there was anything she could do.</p> <p>2 BY MR. SMITH:</p> <p>3 Q. Okay. Do you think she held any</p> <p>4 responsibility for Jared having gotten punched?</p> <p>5 MR. MAZZEO: Continuing objection to this</p> <p>6 line of questioning.</p> <p>7 MS. COMPTON: Foundation.</p> <p>8 THE WITNESS: Again, not -- legally, when</p> <p>9 your child is a minor, any time they're involved in</p> <p>10 anything, you're involved as a parent. When Jared</p> <p>11 was in drug court, I had to go to everything.</p> <p>12 Morally, emotionally, I don't know what she did or</p> <p>13 didn't do.</p> <p>14 BY MR. SMITH:</p> <p>15 Q. Do you think that you have any</p> <p>16 responsibility for Jared causing the accident in</p> <p>17 January 2011?</p> <p>18 A. Responsibility as in blame? No.</p> <p>19 Responsibility as do I need to show up and</p> <p>20 make sure Jared, to the extent that I can, that he</p> <p>21 does what he needs to do? Yes.</p> <p>22 Q. What do you mean he does what he needs to</p> <p>23 do?</p> <p>24 A. Get to lawyers. When I have access to him</p> <p>25 in that way, you know, do I need to show up for</p>	<p style="text-align: right;">Page 81</p> <p>1 MS. COMPTON: Join.</p> <p>2 MR. MAZZEO: Calls for a legal conclusion,</p> <p>3 speculation.</p> <p>4 THE WITNESS: I don't know what I could</p> <p>5 have done.</p> <p>6 BY MR. SMITH:</p> <p>7 Q. Could you have hidden the keys better?</p> <p>8 MR. MAZZEO: Objection, speculation.</p> <p>9 THE WITNESS: I don't know. I'm going to</p> <p>10 use what's going to sound like a bizarre example</p> <p>11 because it's going to be from movies. It's kind of</p> <p>12 like zombie movies where the families are hiding the</p> <p>13 best they can and the zombies still get them.</p> <p>14 To live with an addict is relentless. I</p> <p>15 would have to think like he thinks to know</p> <p>16 everything that he thought and knew, and he has so</p> <p>17 much more energy for this.</p> <p>18 I mean, I'm trying to maintain a family and</p> <p>19 a job and set appropriate limits with my son</p> <p>20 and live a, you know --</p> <p>21 BY MR. SMITH:</p> <p>22 Q. Keep going.</p> <p>23 A. I don't want to say live life like a</p> <p>24 socialite, but get up, go to work, cook meals.</p> <p>25 So if I could have, I would have. In</p>

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1 hindsight, did they need to be hidden better? Yes.  
2 It doesn't mean I didn't hide them well.

3 Q. You could have kept the keys with you?

4 A. In the shower or wherever I went? If I had  
5 thought to do that and not believe Jared would come  
6 in. I mean, mostly they were with me. If they  
7 weren't with me, it was because for that moment I  
8 thought they were safe or for that moment I had to  
9 do something where I couldn't take the keys.

10 Or, again, I'm a human being. I had  
11 forgotten for the 30 seconds that it took.

12 Q. And you were in the practice of hiding the  
13 keys because you knew there was a risk he would take  
14 the keys and take the car; right?

15 A. I was in the practice of hiding the keys  
16 because I kept track of everything that was  
17 important to me. I hid the keys. I hid my wallet.  
18 I kept track of any school things I needed.

19 I knew that I was living in a precarious  
20 situation, and I was also hypervigilant because I  
21 was under so much stress. So it wasn't just the  
22 keys.

23 Q. About the keys though, you hid the keys  
24 because you knew there was a risk that Jared would  
25 take the keys and take your car; correct?

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1 A. Yes. Or he would go into the car for  
2 something sometimes. If I had my wallet in the car,  
3 I kept the keys so he couldn't get to my wallet.

4 Q. Do you believe if you could have gotten  
5 Jared some additional drug counseling before the  
6 January 11, 2011, accident, that may have helped  
7 prevent it?

8 MR. MAZZEO: Objection, speculation,  
9 foundation.

10 THE WITNESS: No. There was no additional  
11 drug counseling to get him.

12 I tried to get him everything that I could.  
13 I was turned down multiple times by the insurance  
14 company.

15 I cannot force him to go to NA. I did  
16 everything that I could. At that time he was an  
17 adult.

18 Can I add something?

19 BY MR. SMITH:

20 Q. Go ahead.

21 A. The police came to my home and raided my  
22 home and took him outside and didn't arrest him. I  
23 couldn't get people to do the job I thought they  
24 should be doing. I did everything they told me to  
25 do.

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1 Q. Did you think it would be better if the  
2 police had arrested him?

3 MR. MAZZEO: Objection, time frame.  
4 What are we talking about here?

5 MR. SMITH: The first time the police came  
6 to her house and didn't arrest him, exactly what she  
7 was talking about.

8 BY MR. SMITH:

9 Q. Do you think it would have been better if  
10 the police had arrested him?

11 A. Yes.

12 Q. Why?

13 A. Because it would have sent a clear message.  
14 In my head -- again, I'm a layman. If you  
15 have enough to raid my home, especially my home in  
16 the neighborhood where I teach, why do you not have  
17 enough to arrest him?

18 MR. MAZZEO: Move to strike. Speculation,  
19 foundation.

20 BY MR. SMITH:

21 Q. What message would that have sent?

22 MR. MAZZEO: Objection, speculation,  
23 foundation.

24 THE WITNESS: Whatever it was that they  
25 were coming there to find that we found that this is

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1 illegal, that your behavior makes you not safe.

2 BY MR. SMITH:

3 Q. You thought that Jared needed a message to  
4 stop what he was doing?

5 A. I don't understand.

6 Q. Well, who would the message have been sent  
7 to?

8 A. Well, to Jared. There's a lack of  
9 consistency in my head. And, again, I'm not a  
10 police officer. I'm not an attorney.

11 But you raid a home. You take him out in  
12 cuffs. You don't arrest him. It serves your  
13 purposes, not the law, not this family's purposes.

14 And so as a parent if I'm saying, Don't do  
15 this, and they don't arrest him, his answer was, I  
16 didn't get arrested, it must not be so bad.

17 Q. So you think the police sent the wrong  
18 message --

19 MR. MAZZEO: Objection.

20 BY MR. SMITH:

21 Q. -- by not arresting him that first time  
22 they came over to your house?

23 MR. MAZZEO: Speculation, foundation.

24 THE WITNESS: I think they sent a different  
25 message than, You're breaking the law.



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1 BY MR. SMITH:

2 Q. You felt that let Jared think he could get  
3 away with it?

4 MR. MAZZEO: Objection.

5 MS. COMPTON: Form.

6 MR. MAZZEO: Speculation.

7 THE WITNESS: I think based on the  
8 questions you asked me earlier about the detective  
9 using him as an informant, it served their purposes.  
10 It kept him active.

11 BY MR. SMITH:

12 Q. What treatment has Jared received for his  
13 drug use?

14 A. In his whole life?

15 Q. Yes. Starting with the first time you can  
16 remember.

17 A. He went to counseling. He had probation.  
18 He had a specialized program at the school where he  
19 had to sign in and sign out. He had -- he was in a  
20 few residential facilities. He was in, you know,  
21 group homes. He was in Utah in a rehab. He had  
22 juvenile court involvement. He had Narcotics  
23 Anonymous. He came to Gamblers Anonymous meetings  
24 with me. He had medications. He had a  
25 psychiatrist. He's had rehab.

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1 Q. Do you presently go to Gamblers Anonymous?

2 A. Yes, I do.

3 Q. That's important to continue in your  
4 recovery; correct?

5 A. Yes.

6 Q. When was the first time Jared went to  
7 counseling?

8 A. I believe he started right after the 2005  
9 accident.

10 Q. What was the purpose of that counseling?

11 A. Because he had had a traumatic event, so I  
12 was concerned about post-traumatic stress disorder,  
13 acting out. Maybe he couldn't tell me things.

14 Q. Did you ever go to his counseling sessions  
15 that he went to right after the 2005 fight?

16 A. Primarily, it was Jared. I don't think I  
17 sat with the counselor at all, that counselor.

18 Q. How long did he go to counseling for after  
19 the 2005 fight?

20 A. I would be estimating. He was with one  
21 counselor, and then we switched to one that had been  
22 recommended by my therapist and I think it was a  
23 couple of months before Jared went into a  
24 residential facility. Excuse me.

25 Q. When did he go into a residential facility?

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1 A. I think it was freshman year of high  
2 school.

3 Q. Why did he do that?

4 A. Because he was acting out at home. Because  
5 he was getting in continual trouble and the facility  
6 offered for him to go in. It was a contact through  
7 my therapist and they offered to let him.

8 Q. What was he doing to act out at home?

9 A. He was cutting classes. He was not home  
10 when he was supposed to be. There was marijuana in  
11 the house. I could smell it. He would be out -- he  
12 would go out through his bedroom window and he was  
13 fighting.

14 Q. What do you mean he was fighting?

15 A. Physically fighting. I never caught him  
16 fighting, but he told me about it after.

17 And he had much older friends.

18 Q. By fighting, you mean like fist-fights?

19 A. Yes.

20 Q. So he went to counseling from the time of  
21 the 2005 accident through his freshman year of high  
22 school when he went to the residential facility?

23 A. Yes.

24 Q. Did you take him to the counseling  
25 sessions? In other words -- so, let me ask you a

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1 better question.

2 Did you drive him back and forth?

3 A. Not to all of them, not when he was in the  
4 residential facility, but yes.

5 Q. How many counseling sessions did you go to  
6 with him before he went to the residential facility?

7 A. To -- where I drove or where I sat in?

8 Q. Where you were actually in the counseling  
9 session with him and listened to what was being  
10 talked about.

11 A. I don't know. I would say maybe between  
12 five and ten, but that's -- I could be way off  
13 because, again, different styles. Sometimes she  
14 would talk to me for a few minutes and then talk to  
15 him, sometimes we would have together. But it was  
16 primarily him. She was not my therapist.

17 Q. How much did he go to counseling before he  
18 started at the residential facility?

19 A. Sometimes twice a week. Sometimes once a  
20 week. He was involved in a group there, so that  
21 would be individual and group twice a week.

22 Q. Did you believe at the time that the  
23 counseling was helpful?

24 A. For a season, for a time I thought it was.

25 Q. But he continued acting out; right?

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1 A. Yes.  
2 Q. I mean, he continued acting out so bad that  
3 you had to send him to a residential facility;  
4 right?  
5 A. I don't know that his acting out increased  
6 or that that opportunity presented itself and I felt  
7 that he would do better.  
8 Q. His acting out didn't decrease; right?  
9 A. There were times it decreased, but not at  
10 that time.  
11 Q. What's the name of the residential facility  
12 that he went to his freshman year?  
13 A. Eagle Quest.  
14 Q. Where is that at?  
15 A. I don't know where. They have homes in the  
16 neighborhood. I don't even know if they're still  
17 here.  
18 Q. Is it in Las Vegas?  
19 A. I don't know where the corporate is, but  
20 the homes were here in Vegas, yes.  
21 Q. The one he was in, was it in Las Vegas?  
22 A. Yes.  
23 Q. How long was he there for?  
24 A. I believe about six months. It might have  
25 been three months.

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1 Q. Did you visit him there?  
2 A. Yes. I didn't visit him in the home. I  
3 would pick him up.  
4 Q. You'd pick him up and take him somewhere?  
5 A. Take him for the day and then he got like a  
6 night pass.  
7 Q. How often did you do that?  
8 A. I don't know the number. You know, it  
9 builds up to when you're allowed to do that. So in  
10 a three-month time, maybe ten times. Again, I'm  
11 guessing.  
12 Q. Did the treatment at Eagle Quest help him?  
13 A. For a time I thought so.  
14 Q. How did it help him?  
15 A. He was more structured. He was happy to be  
16 home, so he was more willing to listen. He had  
17 worked out some of his goals and some of  
18 his priorities. He had been attending school again.  
19 Q. And how long did that structured  
20 improvement last for?  
21 A. We went from his being released from Eagle  
22 Quest on a cross-country trip for about six weeks,  
23 and then he went home and went to school, I would  
24 say probably about two, three months.  
25 Q. Was he in counseling during those two or

Page 92

1 three months?  
2 A. Part of that time.  
3 Q. What do you mean by part of that time?  
4 A. Well, part of that time we were on a  
5 six-week cross-country trip.  
6 Q. Oh. So the two or three months, you're  
7 including the six-week cross-country trip?  
8 A. Yes.  
9 Q. Okay. And then what happened that he was  
10 no longer in the improved state?  
11 A. He was using again. He was involved with  
12 older people, people I thought were dangerous.  
13 Q. That's when he was in eighth grade then?  
14 A. No. That was after freshman year.  
15 Q. Oh. I mixed that up. I apologize.  
16 That was his sophomore year?  
17 A. Freshman and sophomore year.  
18 Q. What other counseling has Jared gone to?  
19 A. Other than outpatient and inpatient, group  
20 home.  
21 Q. Well, we talked about prior to his freshman  
22 year, and then I would assume he was in counseling  
23 at the residential facility; right?  
24 A. Yes.  
25 Q. Since that time, what other counseling has

Page 93

1 he had?  
2 A. Same: Inpatient, rehab, outpatient, NA  
3 meetings.  
4 Q. How -- what are the other places that you  
5 can think of that he's been to for counseling?  
6 A. Odyssey House in Utah, Bridge Counseling.  
7 This is not in the order that he attended, but he  
8 had unofficial services from Mojave Mental Health,  
9 Choices, juvenile drug court. He had a probation  
10 officer through them. Let me see. And NA.  
11 Q. And the counselor that he went to before he  
12 was in the residential facility, you said there were  
13 two; right?  
14 A. Um-hmm.  
15 Q. What were their names?  
16 A. I don't recall.  
17 Q. Did any of those places help?  
18 A. For a time.  
19 Q. They would all help for a little bit and  
20 then he'd relapse?  
21 MS. COMPTON: Form.  
22 THE WITNESS: Well, they -- relapse  
23 isn't -- some of them helped to teach me what I  
24 needed to know to make things clear -- clearer.  
25 Some things helped him to deal with -- and may be

Page 94

1 he relapsed, but he dealt with some of his anger.  
 2 So, again, they all helped.  
 3 BY MR. SMITH:  
 4 Q. What are the things that you were taught to  
 5 do?  
 6 A. Counseling helped lower my anxiety,  
 7 clarified that there was in fact a problem because I  
 8 had been getting mixed messages from authorities.  
 9 You know, I heard "boys will be boys" and I knew he  
 10 was in more trouble than that. So clarified that  
 11 there was a problem, taught me how to set even  
 12 clearer limits, talk less, handle being manipulated  
 13 by not talking as much, not to hold investigations  
 14 as parents will, take care of myself physically.  
 15 Q. What place taught you those things?  
 16 A. Somewhat Choices. Somewhat the second  
 17 counseling that he went to, and I'm blanking on her  
 18 name. I thought that she did a slightly better job  
 19 with me than with Jared. And then my own therapist.  
 20 Q. When was Jared at Choices?  
 21 A. When he was in juvenile court, which I  
 22 think was his sophomore and junior year of high  
 23 school.  
 24 Q. What was he in juvenile court for?  
 25 A. Drugs.

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1 Q. Did he ever go to juvenile detention?  
 2 A. Yes.  
 3 Q. When was that?  
 4 A. Multiple times.  
 5 Q. How many?  
 6 A. I don't know. I would be guessing.  
 7 Q. More than three?  
 8 A. Yes.  
 9 Q. More than five?  
 10 A. Well, again --  
 11 MR. MAZZEO: I'm sorry. Objection,  
 12 relevance.  
 13 Go ahead.  
 14 THE WITNESS: There's juvenile detention  
 15 where you're not actually staying where you're in  
 16 the back room and they call you to pick him up, and  
 17 that's double digit times.  
 18 And then there's where he was actually  
 19 housed in juvenile detention for a number of weeks,  
 20 and then some times that he had to go back for the  
 21 weekend.  
 22 BY MR. SMITH:  
 23 Q. So more than ten times he was arrested for  
 24 drugs as a juvenile?  
 25 A. I can't say that because once you're in

Page 96

1 juvenile drug court, they can pull you back in  
 2 without arresting you.  
 3 Q. Okay. So he was brought to juvenile  
 4 court --  
 5 A. At least ten.  
 6 Q. -- drug court more than ten times?  
 7 A. Yes.  
 8 Q. You said also he could have been housed  
 9 there for weeks at a time.  
 10 How many times did that happen?  
 11 A. I believe twice, but, again I'm not  
 12 remembering accurately. And, again, you go to  
 13 juvenile detention sometimes just to meet with your  
 14 probation officer, not necessarily because you were  
 15 arrested.  
 16 Q. How long was he on probation?  
 17 A. I'm guessing nine months --  
 18 MR. MAZZEO: Objection, speculation.  
 19 BY MR. SMITH:  
 20 Q. Was it -- how many times was he on  
 21 probation?  
 22 A. I believe once. It was -- you know, you're  
 23 not off and on. It's a progression. You start out  
 24 informal supervision and then move up.  
 25 Q. Move up to what?

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1 A. Different levels of -- you know, he went  
 2 from just having to report some documents that he  
 3 took some classes to having an ankle bracelet.  
 4 Q. Because he violated his probation?  
 5 A. Because -- I don't -- sometimes violations.  
 6 Sometimes because he had gotten in trouble again and  
 7 they kind of keep a cumulative record like  
 8 progressive discipline.  
 9 Q. Every time he went to juvenile court, did  
 10 you have to go with him?  
 11 MR. MAZZEO: Objection to the whole line of  
 12 questioning regarding Jared Awerbach's -- regarding  
 13 Andrea Awerbach's knowledge about Jared Awerbach's  
 14 juvenile history, juvenile court probation.  
 15 MR. SMITH: Your objection is noted.  
 16 MR. MAZZEO: Okay.  
 17 THE WITNESS: There were when he was in  
 18 juvenile court -- when he was in drug court, when he  
 19 was in Judge Voy's drug court, there were one or two  
 20 Thursdays that I was able to miss because I was  
 21 tutoring and I would send a letter. But, yes, when  
 22 there were charges.  
 23 BY MR. SMITH:  
 24 Q. Every time he was charged and he had to go  
 25 to drug court, you went with; correct?

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1 A. There were one or two times that I refused  
2 to go.  
3 Q. Why did you refuse to go?  
4 A. Because I felt that my presence kept him  
5 from getting the services that he needed because  
6 they saw an active parent, and so I took the risk of  
7 their arresting me and didn't show because I wanted  
8 them to detain him.  
9 Q. You thought if you didn't go, they would  
10 be -- well, strike that.  
11 What did you think would happen if you  
12 didn't go?  
13 A. That they would detain him. Because I  
14 would go with him to juvenile court. He would get  
15 arrested. They would take us in the back room to  
16 talk to an in-service worker, who would ask me, Is  
17 he in counseling? Are you putting him on  
18 restriction? Does he have electronic toys?  
19 When I would answer that, the worker would  
20 say, Well, it looks like you're doing everything you  
21 need to do, so we're sending him home. So my  
22 strategy then became let me not do everything I need  
23 to so you do your job because he needs more  
24 leverage.  
25 Q. You felt if they -- strike that.

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1 You felt if you didn't show up, they would  
2 be harder on him?  
3 A. Yes.  
4 Q. And you needed them to be harder on him  
5 because the things that you were doing at home  
6 weren't working?  
7 A. Yes.  
8 As a parent -- if I can add this: As a  
9 parent, there's only so much leverage you have.  
10 Q. Did you ever ask Jared to move out before  
11 he turned 18?  
12 A. Yes.  
13 Q. How many times?  
14 A. At least once.  
15 Q. When was that?  
16 A. When he relapsed after his stay in Utah at  
17 Odyssey House.  
18 Q. How old was he when that happened?  
19 A. I believe 17.  
20 Q. Seventeen when he went to Odyssey House or  
21 when he relapsed or both?  
22 A. When he relapsed.  
23 Q. When did he go to Odyssey House?  
24 A. I think he was 16. He turned 17 just when  
25 he came home.

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1 Q. What happened when he relapsed when he was  
2 17?  
3 A. I don't understand the question.  
4 Q. How did you know he relapsed?  
5 A. I saw it on his phone.  
6 Q. I didn't hear you.  
7 A. I checked his phone.  
8 Q. And what did you find on his phone?  
9 A. Conversations about getting high.  
10 Q. Have there been other times that you've  
11 checked his phone and found conversations about  
12 drugs?  
13 A. Yes.  
14 Q. How many times has that happened?  
15 A. I have no idea.  
16 Q. More than ten?  
17 A. I don't know.  
18 Q. When he lived with you prior to the  
19 January 2011 accident, how often did you check his  
20 phone?  
21 A. When he was working a program, when he was  
22 meeting with his sponsor and going to meetings,  
23 maybe every two weeks. When he was active, as often  
24 as I could get his phone.  
25 Q. How often was that?

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1 A. If I'm averaging, three or four times a  
2 week. He was careful to keep his phone with him.  
3 Q. After he turned 18, did you still check his  
4 phone?  
5 A. Periodically. He didn't always live with  
6 me after he turned 18.  
7 Q. During the times that he lived with you,  
8 did you ever check his phone after he turned 18?  
9 A. Yes.  
10 Q. How often when he was living with you?  
11 A. Again, not as often because he lived with  
12 me until -- while he was clean, and then once I knew  
13 he wasn't clean, I was better able at getting him  
14 out of the house. So maybe once every two weeks.  
15 Q. You said that you asked him to move out  
16 when he was 17?  
17 A. Yes.  
18 Q. Did he?  
19 A. Yes.  
20 Q. Where did he go?  
21 A. As far as I know, to my sister's.  
22 Q. That was the time we talked about earlier  
23 where he went to live at your sister's for a few  
24 months?  
25 A. Yes.

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1 Q. Why did you let him back in?

2 A. Because my hope in having him move out was  
3 that he would say, Okay, I'm ready to go back into  
4 treatment, I'll go to meetings, I want to come home.

5 And, instead, he went to my sister's, where  
6 I felt it to be a very active criminal place, and I  
7 took him home to get him back into treatment.

8 Q. Did you get him back into treatment when he  
9 came back?

10 A. I got him back into NA meetings.

11 Q. How often did he go to NA meetings when he  
12 came back from your sister's?

13 A. I don't remember.

14 Q. Did you go with him?

15 A. Not always. Sometimes he had a sponsor who  
16 would pick him up and he would go. And then other  
17 times I would --

18 Q. How many times have you been to NA meetings  
19 with him?

20 A. With him?

21 Q. With Jared.

22 A. Maybe five because I typically wait in the  
23 parking lot so he can go into the meeting himself.

24 Q. You've been in there approximately five  
25 times to listen to what's being said?

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1 A. With him. I've gone to many more on my  
2 own.

3 Q. And why have you gone on your own?

4 A. To learn, to be supportive, to stand  
5 strong.

6 Q. When did you start going on your own?

7 A. To NA meetings?

8 Q. Yes.

9 A. Jared's freshman year of high school.

10 Q. How often have you gone to NA meetings on  
11 your own since Jared's freshman year of high school?

12 A. Probably about 15 times.

13 Q. On the times that you've gone with Jared,  
14 what has he talked about in terms of his drug use?

15 A. I don't know that I can answer that. It's  
16 an anonymous program. It's --

17 MR. MAZZEO: Objection, privacy.

18 MR. SMITH: Well, I'm not asking what  
19 anybody else talked about. I'm asking what Jared  
20 has said.

21 MS. COMPTON: I object to that question.  
22 If you want to call the discovery commissioner and  
23 see what she says, you can.

24 MR. MAZZEO: Confidentiality.

25 THE WITNESS: I don't know that I can

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1 answer that.

2 BY MR. SMITH:

3 Q. Is there more that you think you could have  
4 done before the accident to help Jared get off of  
5 drugs?

6 MR. MAZZEO: Objection, speculation,  
7 foundation.

8 THE WITNESS: I'm sorry. I'm going to  
9 get --

10 MR. MAZZEO: Assumes facts not in evidence.

11 THE WITNESS: I'm going to get emotional.

12 I'm his mother. That's a question I ask  
13 myself 900 times a day every day. I did everything  
14 I knew to do at the time. There are things I know  
15 now that I didn't know before. Hopefully, there  
16 will be even more things that I learn. I did  
17 everything I knew to do.

18 BY MR. SMITH:

19 Q. Did you go to counseling sessions with him  
20 at Odyssey House?

21 A. Odyssey House is in Utah. He lived there.  
22 So when I was there, sometimes we went to family  
23 sessions, but not on a regular basis.

24 Q. How often did you visit him at Odyssey  
25 House?

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1 A. I think he was there six months. Between  
2 eight to 12 times I think. It might have been. It  
3 might have been less.

4 Q. During any of the counseling sessions that  
5 you've been to with him, has he blamed you for any  
6 of his problems?

7 A. Sure.

8 Q. What has he said?

9 A. He has accused -- when he was much  
10 younger -- he doesn't any more -- he accused me of  
11 knowing. He accused me of gambling when I wasn't.  
12 That's a recent distortion. He has talked about in  
13 sessions the impact of the gambling.

14 He's talked about being angry about not  
15 having contact with his father, how I could help  
16 him, how I could set up boundaries for him, what he  
17 needed.

18 For instance, when he was in Utah and he  
19 needed money for a haircut and he had asked for \$25,  
20 he said to me, Give me 25, not 50. Give me exactly  
21 what I ask for.

22 We talked about ways for him to stay clean.  
23 We talked about house rules. He apologized for  
24 things he had done.

25 Q. What other ways did he say that you could



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1 have helped him?

2 A. Not could have. Help him once he comes  
3 home, how could I help. We discussed how I could  
4 help him once he's clean.

5 Q. Okay. And what are the other ways that he  
6 told you about?

7 A. Being consistent. He asked to have some  
8 similar structure to Odyssey House where we did  
9 things in the house together. Having family meals.  
10 If I could, to work less or to be involved. Working  
11 more to be really strict with him.

12 Q. At that time period did you work a lot?

13 A. I was a school teacher.

14 Q. Well, what kind of hours were you working?

15 A. I worked 8:00 to sometimes 4:00 or 5:00.  
16 Sometimes I tutored. So, you know, defining "a  
17 lot," I would bring home work. I wasn't gone, you  
18 know, 12 to 16 hours a day. Jared was often with me  
19 at school.

20 Q. You said he accused you of knowing.

21 What did you mean by that?

22 A. Oh, you knew I was using or you knew I was  
23 taking money. Addicts say that.

24 Q. Why was that important to him?

25 MR. MAZZEO: Objection, speculation.

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1 THE WITNESS: It made it okay. Made it  
2 okay to use. Made it okay to take money.

3 BY MR. SMITH:

4 Q. He told you he felt it was okay if he used  
5 drugs if you knew he was doing it?

6 A. No. It minimized the pain that he caused  
7 me. It minimized lying to me. Oh, I didn't lie;  
8 you knew.

9 Q. Do you think Jared has PTSD?

10 MS. COMPTON: Foundation.

11 THE WITNESS: I don't know whether the  
12 medical definition. I think that he has, if not  
13 PTSD, then anxiety.

14 BY MR. SMITH:

15 Q. And what does he do that leads you to  
16 believe that he has PTSD or anxiety?

17 A. He is hypervigilant.

18 Q. What does that mean?

19 A. When you overreact to stimuli. When  
20 something falls on the ground and you shake. You  
21 have a very anxious reaction. He is constantly  
22 checking a room. He is very suspicious of people.  
23 He does not sleep even when he's not using.

24 He will put himself in positions where he  
25 will be hyperanxious, you know, whether it's a love

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1 of scary movies -- and I don't know that he loves  
2 them. But just things that, you know, take things  
3 to the edge because he's most comfortable when he's  
4 anxious.

5 Q. Any other ways that he demonstrates PTSD or  
6 anxiety?

7 A. He replays events.

8 MR. MAZZEO: Objection, foundation.

9 THE WITNESS: He replays events. He tells  
10 the same stories over and over and over again.

11 BY MR. SMITH:

12 Q. Has he been on medication at any point for  
13 PTSD, anxiety, or any other psychiatric issues?

14 A. Yes, he's been on medication.

15 Q. And when did he first start?

16 A. When he was -- before Utah he was on  
17 medication. I think about 15.

18 Q. Has he been on medication for psychiatric  
19 issues since?

20 A. He's been on medication. I don't know if  
21 you would define them as psychiatric or emotional,  
22 but he's been on medication, yes.

23 Q. Does he take it regularly as prescribed?

24 A. When he is doing well, when he's working  
25 his program.

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1 MR. MAZZEO: Speculation.

2 Sorry. Go ahead.

3 THE WITNESS: When he is clean and working  
4 a program, yes.

5 BY MR. SMITH:

6 Q. Can you tell if Jared is taking his  
7 medication?

8 MR. MAZZEO: Objection, foundation,  
9 speculation.

10 THE WITNESS: Not always.

11 BY MR. SMITH:

12 Q. Does the medication calm him down?

13 MR. MAZZEO: Objection, speculation,  
14 foundation.

15 THE WITNESS: Certain medications I can  
16 tell. I thought I could tell when he was not taking  
17 trazodone because he wasn't sleeping, but he may in  
18 fact have been taking trazodone and getting high. I  
19 don't know.

20 BY MR. SMITH:

21 Q. Getting high on something that would stop  
22 him from sleeping?

23 A. Yes.

24 Q. What are the medications that he's  
25 taking -- or that he has taken for psychiatric

Page 110

1 issues?

2 A. Again, I don't know if they're psychiatric,  
3 how you would define them. But the medication he's  
4 taking is Seroquel, Abilify, trazodone, Zoloft. And  
5 those are the ones I know of. There may be others.

6 Q. He's currently taking all of those, or he  
7 has been prescribed those over time?

8 A. He has been prescribed those over time. I  
9 don't know what he's taking now.

10 Q. Earlier this year, he was at Southern  
11 Nevada Adult Mental Health Services; right?

12 A. Is that Rawson? Then yes.

13 Q. Rawson Neal is what you're saying?

14 A. Yes.

15 Q. Do you know if Jared was prescribed  
16 medication after he left there?

17 A. Yes.

18 Q. Did he take it?

19 A. For a time.

20 Q. And then he stopped?

21 A. I don't know if he stopped completely or  
22 what.

23 Q. Why do you think he stopped?

24 A. Because of the number of the pills that  
25 were left when he left the house. And also because

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1 the control of the pills moved from me to him.

2 Q. What do you mean by that?

3 A. When he first came home, he asked me to  
4 give him the medication.

5 Q. And then he said he could handle it?

6 A. Yes.

7 Q. And you think when he said he could handle  
8 it, he stopped taking it?

9 MR. MAZZEO: Objection, speculation.

10 BY MR. SMITH:

11 Q. Or didn't taking it regularly?

12 MR. MAZZEO: Speculation.

13 THE WITNESS: Not initially, no.

14 BY MR. SMITH:

15 Q. What do you mean not initially?

16 A. Initially, he was taking it. When I  
17 thought he wasn't using it, I took them back into my  
18 room, but then he was going into my room and taking  
19 them. I let it be.

20 Q. When Jared was abusing drugs when he was  
21 under 18, was he staying out all night?

22 A. There were times. Not always.

23 Q. There were times where he didn't come home?

24 A. Yes.

25 Q. There were times when he came home very

Page 112

1 late?

2 MS. COMPTON: Foundation -- form.

3 THE WITNESS: Yes.

4 BY MR. SMITH:

5 Q. And what do you mean by very late?

6 A. 2:00, 3:00, 4:00, 5:00 in the morning.

7 Q. Has Jared ever been hospitalized for drug  
8 problems?

9 A. Yes. I don't know what diagnosis they gave  
10 him, but he's been hospitalized.

11 Q. Where at?

12 A. Summerlin. I think Summerlin twice.

13 Q. When were those?

14 A. Most recently in September. I believe back  
15 in January, whatever led to his being in Rawson.

16 Q. Earlier this year?

17 A. Yes. He was placed on a hold at -- I think  
18 it was Spring Valley, but wasn't admitted.  
19 Insurance wouldn't admit him.

20 Q. Was there a place he was hospitalized at  
21 called Montevista Psychiatric Hospital?

22 A. Yes. As a juvenile. I forgot about that.

23 Q. When was that?

24 A. When he was in drug court.

25 Q. Why was he hospitalized at Montevista

Page 113

1 Psychiatric Hospital?

2 MR. MAZZEO: Foundation.

3 THE WITNESS: There's a question of dual  
4 diagnosis, whether he was -- it was drug addiction  
5 and bipolar, drug addiction and PTSD, and so Judge  
6 Voy ordered him into treatment.

7 BY MR. SMITH:

8 Q. What did he do that led to that?

9 I mean, did he get arrested for something  
10 that led to him getting put into Montevista

11 Psychiatric Hospital?

12 A. No. He was already in drug court. I guess  
13 he had come up dirty or he wasn't doing as well, and  
14 there was this question about the assault and its  
15 impact, and so Judge Voy made a decision.

16 Q. Did Jared have anger management problems  
17 before the November 2005 fight?

18 A. No, not that I know of.

19 Q. If he said that, would you disagree with  
20 him?

21 A. No. He knows what he had and didn't have.  
22 I didn't see signs of it.

23 Q. When you smelled marijuana in the house,  
24 what did you do to discipline him?

25 A. Well, I would search his room. It was very

Page 114

1 limited what I could take away because mostly  
2 everything was gone. I would turn off his phone. I  
3 would make him come with me wherever I was going.

4 Q. What other types of discipline did you  
5 impose when you thought he was using drugs?

6 A. Other than withdrawal of any kind of  
7 privileges or access to money and kind of putting  
8 him on house arrest and keeping him with me and,  
9 like I said, taking away things, I don't know what  
10 else there was.

11 Q. Did you provide incentives when he was off  
12 drugs?

13 A. Yes. And I also --

14 Q. Like what?

15 A. I provided incentives for him to get off  
16 drugs. Even when he was dirty, I would say, Listen,  
17 if you can get the next drug test clean, we will go  
18 here, I will buy these sneakers, I will let this  
19 friend come over.

20 Q. You said before that he was in fights as a  
21 juvenile.

22 Was he in fights before that November 2005  
23 fight?

24 A. Not that I knew of.

25 Q. Did he ever come home with any bruises or a

Page 115

1 black eye before that fight?

2 A. Not that I know of.

3 Q. What happened the second time the police  
4 came to your apartment?

5 A. I don't understand the question.

6 Q. You said there were two times, and the  
7 second time you said was March or April of 2011.

8 A. I thought I had already answered that, but  
9 I'll answer again. They called me. I was with a  
10 friend for dinner.

11 Q. Oh, you did answer this. I apologize.

12 A. That's all right.

13 Q. And he was arrested as a result of that;  
14 right?

15 A. I'm not remembering, but I believe so.

16 Q. If Jared says he told you after the first  
17 time the police came to your house that he was  
18 selling marijuana, would you dispute that?

19 A. After when?

20 Q. You said that there were two times the  
21 police came to your house for his drug problems;  
22 right?

23 A. But I mean, are you saying that he said it  
24 as he was being arrested, or he said it since, like  
25 he said it last week?

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1 Q. No. He said it as he was being arrested or  
2 in the aftermath -- well, he wasn't arrested.

3 But he said it as they were at your  
4 apartment or in the aftermath of the police leaving  
5 that day?

6 MR. MAZZEO: Can I have a time frame for  
7 when we were talking about?

8 Is this after the subject accident or  
9 before?

10 BY MR. SMITH:

11 Q. The first time the police came to your  
12 house for his drug problems.

13 MR. MAZZEO: Well, objection to the extent  
14 that it was -- objection, whether it's before or  
15 after the accident.

16 Go ahead.

17 THE WITNESS: If he said that as the police  
18 were dealing with him then that he said something to  
19 me, then he's mistaken.

20 BY MR. SMITH:

21 Q. If he said it to you within the days  
22 following that event -- well, strike that.

23 If he said that he told you within the days  
24 following the police having come to your house that  
25 first time for drugs, that he told you he was

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1 selling marijuana, would he be mistaken about that?

2 MR. MAZZEO: Objection, relevance.

3 THE WITNESS: Then, yes, he would have been  
4 mistaken.

5 BY MR. SMITH:

6 Q. He didn't tell you after that first --

7 A. Not that I recall.

8 Q. -- time that he was on marijuana?

9 MR. MAZZEO: Asked and answered.

10 THE WITNESS: Jared and Tikira moved out  
11 right after that. We had limited contact.

12 BY MR. SMITH:

13 Q. They moved out right after the first time  
14 the police came and Jared wasn't arrested?

15 A. Within that time frame. And it's possible  
16 I'm misremembering, but they moved out.

17 Q. Did they ever move back in?

18 A. Yes.

19 Q. How long after that did they move back in?

20 A. I don't remember.

21 Q. You don't remember how long they were gone  
22 for?

23 A. No. Because they had moved to someone  
24 else's apartment in the complex, so it was kind of  
25 fluid.

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1 Q. Can you estimate how many times Jared's  
2 been arrested?  
3 A. No.  
4 Q. Besides drugs, what has he been arrested  
5 for?  
6 A. I don't know.  
7 Q. How many times have you called the police  
8 to come to your house for Jared?  
9 A. I don't know. Numerous times.  
10 Q. More than five?  
11 A. Yes.  
12 Q. More than ten?  
13 A. Yes.  
14 Q. More than 15?  
15 A. Perhaps. It's possible.  
16 Q. What are the reasons that you've called the  
17 police to come to your house for Jared?  
18 MR. MAZZEO: Objection, relevance.  
19 THE WITNESS: Because he was agitated.  
20 Because I was sure that he was high or -- and a few  
21 times I wasn't sure if he was having a psychotic  
22 break or he was high. Because I needed medical  
23 attention for him and the police come with the  
24 medical attention. Because he had violated  
25 restraining orders.

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1 BY MR. SMITH:  
2 Q. What's the time period where you called the  
3 police to come to your house for Jared?  
4 In other words, what ages was he?  
5 A. From his teenage years until he left in  
6 September.  
7 Q. What do you mean by teenage years?  
8 A. Thirteen, 14. He would run away or he  
9 would -- you know, I called the police for numerous  
10 things.  
11 Q. Do you know if Jared has ever had a gun?  
12 A. I believe there were weapons charges. I've  
13 never seen him with a gun.  
14 Q. Other than the police bringing charges, did  
15 you ever have knowledge that he had a gun in your  
16 house?  
17 A. After.  
18 Q. Only after he was charged?  
19 A. Yes.  
20 Q. Has Jared ever hit you?  
21 A. No. He lifted me once. I just want to  
22 clarify because I don't know the -- he put his hands  
23 on to lift me once to get keys, but he has never  
24 struck me.  
25 Q. He wasn't violently trying to attack you;

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1 he was trying to move you to get to something?  
2 A. He was agitated and I was saying no to  
3 keys. He wanted me to drive him, and he lifted me  
4 up to see if they were underneath me.  
5 Q. Have you ever feared for your safety from  
6 Jared?  
7 A. Yes.  
8 Q. How many times?  
9 A. I have no idea how many times. Maybe eight  
10 to ten.  
11 Q. Have you ever done anything that provoked  
12 his anger?  
13 A. From whose point of view, his or mine?  
14 MR. MAZZEO: Objection, foundation,  
15 speculation, relevance --  
16 BY MR. SMITH:  
17 Q. Start with yours.  
18 MR. MAZZEO: Objection, foundation,  
19 relevance --  
20 THE WITNESS: From my --  
21 MR. MAZZEO: -- speculation.  
22 THE WITNESS: I'm sorry.  
23 MR. MAZZEO: Sorry.  
24 THE WITNESS: From my point of view, I have  
25 never deliberately agitated him.

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1 BY MR. SMITH:  
2 Q. What about not deliberately?  
3 MR. MAZZEO: Objection, form.  
4 THE WITNESS: There have been times that he  
5 has become agitated and I have no idea what I did.  
6 So provoking, to me, means deliberate.  
7 BY MR. SMITH:  
8 Q. Do you think that you can be an intense  
9 person to deal with?  
10 MR. MAZZEO: Objection, foundation,  
11 speculation, incomplete hypothetical.  
12 THE WITNESS: I think I can be intense. I  
13 think I can also be very understanding and flexible.  
14 BY MR. SMITH:  
15 Q. From Jared's point of view, have you ever  
16 provoked him?  
17 A. Yes.  
18 Q. Do you think Jared loves you?  
19 A. Yes.  
20 Q. Do you think Jared would subject you to  
21 financial risk if he could avoid it?  
22 A. If he could avoid it? No.  
23 Q. Has Jared ever been shot that you know of?  
24 MR. MAZZEO: Shot or shocked?  
25 MR. SMITH: Shot.

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1 MR. MAZZEO: Shot?

2 MR. SMITH: With a gun.

3 THE WITNESS: Has Jared ever been what?

4 BY MR. SMITH:

5 Q. Shot.

6 A. I don't know.

7 Q. Other than the 2011 accident, what motor

8 vehicle accidents are you aware of that Jared has

9 been in?

10 A. 2008.

11 Q. Okay. What happened in 2008?

12 A. We were at my school. He went out to -- he

13 had my school and car keys to go get something out

14 of the car or throw some garbage out. And then I

15 got a call from police that he had been in an

16 accident at Fuselier near my school.

17 Q. He was driving your car; right?

18 A. Yes.

19 Q. You went out to that accident scene; right?

20 A. Yes.

21 Q. Was anyone injured?

22 A. I don't know.

23 Q. Was Jared?

24 A. I believe so.

25 Q. And what was Jared -- what of Jared was

Page 123

1 injured?

2 A. His back --

3 MR. MAZZEO: And before you answer, just a

4 standing objection to this line of questioning

5 regarding the 2008 accident.

6 THE WITNESS: His back and neck I think. I

7 don't know if I'm remembering.

8 BY MR. SMITH:

9 Q. Was it a big accident?

10 MR. MAZZEO: Objection, form.

11 THE WITNESS: In terms of damage, yes.

12 BY MR. SMITH:

13 Q. And your car was totalled; right?

14 A. Yes.

15 Q. The other car was totalled?

16 A. I don't know.

17 Q. It looked like a lot of damage to both

18 vehicles; right?

19 A. Yes.

20 Q. And how did Jared get your keys?

21 A. We were at school and Jared's always helped

22 me at school. I've always given him the keys to go

23 take things out or go get things from the car. I

24 gave him the keys for that purpose or to dump some

25 garbage. I'm remembering garbage, but I'm not sure.

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1 But to move things back and forth from my classroom

2 and --

3 Q. What kind of discipline did you impose

4 after that?

5 A. I, again, set some limits. But Jared was

6 involved with juvenile court at the time, so they

7 extended his -- whatever he was on restriction from,

8 and then I did the same thing that I was doing.

9 That's when I also was much more deliberate in

10 hiding the keys and hiding my wallet. That's when I

11 realized he's going to just take whatever he wants.

12 Q. Was he charged with stealing your car at

13 that time?

14 A. I don't know what he was charged with.

15 Q. Did you tell the police that he stole it?

16 A. Yes. That he was driving without

17 permission.

18 If I can backtrack for a moment, you didn't

19 ask me, but I also told them that in 2011 and they

20 wouldn't arrest him for it.

21 Q. In 2011 you told the officer that Jared

22 stole a car?

23 A. Yes. That Jared had the car without

24 owner's permission.

25 Q. When did you tell them that?

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1 A. When the officer called me from the scene.

2 Q. What did the officer say when you told him

3 that?

4 A. He said that he couldn't arrest him for it

5 because there was no report.

6 Q. You -- it's your testimony that you told

7 the officer Jared took your car without permission

8 and he said he would not arrest him for it?

9 A. Um-hmm, yes.

10 Q. Yes?

11 A. I'm sorry. Yes.

12 Q. If the officer said that you never told him

13 that, are you saying he's lying?

14 MR. MAZZEO: Objection, argumentative.

15 THE WITNESS: No. I'm saying it was 2011

16 and he may not remember. I remember the

17 conversation with the officer because it's one

18 conversation I've had.

19 How many conversations did the officer have

20 that day or in his whole career?

21 BY MR. SMITH:

22 Q. What else did you talk -- well, how many

23 conversations have you had with police about Jared?

24 MR. MAZZEO: Objection, form.

25 THE WITNESS: I've had quite a few, but I'm



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1 still always Jared's mother.  
2 BY MR. SMITH:  
3 Q. What else did you and the officer talk  
4 about when he called you from the scene of the  
5 accident?  
6 A. He told me he was arresting Jared for DUI.  
7 I asked him, Is Jared high or drunk? The officer  
8 got a little agitated with me and thought -- he was,  
9 Look, lady, I don't need to do this. I said, Wait,  
10 let's hold up. I didn't mean for you to take -- I'm  
11 not trying to cover for Jared. I'm trying to  
12 understand where we are because Jared is going to  
13 tell me that wasn't. So can you help me here? Can  
14 you tell me?  
15 Q. Were you trying to get the officer to  
16 arrest Jared for stealing your car?  
17 A. I don't know if I was trying. I think I  
18 asked him.  
19 Q. You asked him to arrest Jared for stealing  
20 your car?  
21 A. I don't think I said, Will you arrest  
22 Jared? I said, He does not have permission to have  
23 that car. Can we not do something about that?  
24 Q. And what did he say?  
25 A. He said, I'm doing this. I have to arrest

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1 him for DUI. I have to arrest him for this.  
2 Q. Besides the 2008 accident, has Jared been  
3 in any other accidents?  
4 A. Not that I recall.  
5 Q. Who was your automobile insurer at the time  
6 of the 2008 accident?  
7 A. I don't remember. It was either Liberty  
8 Mutual or California Casualty.  
9 Q. Did you make a claim?  
10 A. Yes.  
11 Q. And what -- it was a claim for the property  
12 damage or something else?  
13 A. I don't recall, but they paid for the car  
14 so --  
15 Q. Your insurance company paid for the car?  
16 A. I believe it was my insurance company.  
17 Q. Did anyone else make a claim as a result of  
18 that accident?  
19 A. I believe the other party.  
20 Q. And what was their claim for?  
21 A. I don't know. I'm assuming their damage.  
22 Q. Was there a lawsuit as a result of that  
23 accident?  
24 A. No, I don't think so.  
25 Q. Did you tell your insurance company that

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1 Jared used the car without your permission in the  
2 2008 accident?  
3 A. Yes.  
4 Q. Do you know if your insurance company made  
5 a decision of whether Jared's use of your car in the  
6 2008 accident was permissive?  
7 A. No.  
8 Q. Let's talk about the 2005 fight a little  
9 bit and specifically Jared's injuries.  
10 What did he hurt in that fight? What  
11 was -- oh, strike that. Let me ask you a better  
12 question.  
13 What was injured in that fight?  
14 A. Both eyes. He had some other lacerations,  
15 but we mostly concentrated on the eyes.  
16 Q. Any injuries besides his eyes?  
17 MR. MAZZEO: I'd just object to the extent  
18 it calls for medical expert opinion.  
19 THE WITNESS: I believe some soft tissue.  
20 BY MR. SMITH:  
21 Q. What do you mean by that?  
22 A. Neck, back.  
23 Q. Anything else?  
24 A. Not that I recall, but, again, my focus has  
25 always been on his eyes.

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1 Q. And what were the injuries to his eyes?  
2 MR. MAZZEO: The same foundation,  
3 question -- objection.  
4 THE WITNESS: He had a traumatic macular  
5 hole in one eye, a scratch on the other that was  
6 repaired by laser.  
7 BY MR. SMITH:  
8 Q. Which eye is the traumatic macular hole?  
9 A. I believe the left.  
10 Q. What is his vision like now in the left  
11 eye?  
12 A. I don't know.  
13 MR. MAZZEO: Objection, foundation.  
14 BY MR. SMITH:  
15 Q. Do you know what it's been like at any  
16 point since the November 2005 fight?  
17 MR. MAZZEO: Objection, speculation.  
18 THE WITNESS: That he doesn't have vision  
19 in that eye. He sees what he describes it as as a  
20 black box.  
21 BY MR. SMITH:  
22 Q. What's his vision been like in his right  
23 eye since the accident -- or strike that, since the  
24 2005 fight?  
25 A. I believe it's been strong, but there are

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1 times that it's strained.  
 2 Q. Does he have depth perception in one of his  
 3 eyes?  
 4 MR. MAZZEO: Objection.  
 5 BY MR. SMITH:  
 6 Q. Depth perception problems in one of his  
 7 eyes?  
 8 MR. MAZZEO: Foundation.  
 9 THE WITNESS: I don't know. I believe so.  
 10 BY MR. SMITH:  
 11 Q. You went to his doctor's appointment with  
 12 him for his eyes; right?  
 13 A. Yes.  
 14 Q. Many of them; right?  
 15 A. All of them.  
 16 Q. Was Jared limited in any activities because  
 17 of his eyes after the fight?  
 18 MR. MAZZEO: Speculation.  
 19 THE WITNESS: Yes. He cannot play sports  
 20 because he cannot damage that other eye. He was at  
 21 that time looking to play basketball. Can't play  
 22 basketball.  
 23 There are certain jobs I guess that require  
 24 close-up work or any kind of welding or anything  
 25 like that where he has to -- he has to protect the

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1 other eye.  
 2 In addition, he gets -- there were times he  
 3 would get what's called an ocular migraine where he  
 4 would lose vision in both eyes for upwards of  
 5 20 minutes.  
 6 BY MR. SMITH:  
 7 Q. Do you think that Jared can see well enough  
 8 to drive?  
 9 MR. MAZZEO: Objection, calls for medical  
 10 expert opinion, speculation, foundation.  
 11 MS. COMPTON: Join the foundation.  
 12 THE WITNESS: Yeah. I don't think he's  
 13 been declared blind in both eyes.  
 14 BY MR. SMITH:  
 15 Q. Has he been declared blind in one eye?  
 16 A. It has changed. There have been times that  
 17 he was considered blind and we had to have like  
 18 the -- and his vision varies, but it never gets to  
 19 full function. There's a line between blind and  
 20 nearly blind.  
 21 Q. Do you think it would be safe for Jared to  
 22 drive with his eye conditions?  
 23 MR. MAZZEO: Foundation.  
 24 MS. COMPTON: Join.  
 25 THE WITNESS: I think he has to go to the

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1 doctor and get checked, but as far as I know, yes.  
 2 BY MR. SMITH:  
 3 Q. Are there any other issues that Jared has  
 4 that you think would make it unsafe for him to  
 5 drive?  
 6 A. Other than drug use?  
 7 Q. Well, you think the drug use would make it  
 8 unsafe for him to drive; right?  
 9 MS. COMPTON: Form, foundation.  
 10 THE WITNESS: Yes. If he's an addict in  
 11 recovery and he has clean time, he can certainly  
 12 drive. If he's an addict who's using, no, he  
 13 shouldn't drive.  
 14 BY MR. SMITH:  
 15 Q. Any other issues that you think would make  
 16 it unsafe for Jared to drive a vehicle?  
 17 A. Not based on the information that I have  
 18 now.  
 19 Q. Do you think Jared had any brain damage  
 20 from the 2005 fight?  
 21 MR. MAZZEO: Foundation.  
 22 THE WITNESS: I have always --  
 23 MS. COMPTON: Join.  
 24 THE WITNESS: -- suspected traumatic brain  
 25 injury.

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1 BY MR. SMITH:  
 2 Q. Have any doctors told you that he had a  
 3 traumatic brain injury?  
 4 A. Doctors told me there's a possibility. My  
 5 insurance did not cover his --  
 6 Q. And what doctor told you there was a  
 7 possibility?  
 8 A. I don't remember --  
 9 Q. When was that?  
 10 A. -- the name?  
 11 From -- the first time I heard it clearly  
 12 was when he was at Cheyenne High School. The school  
 13 counselor brought it up. A family physician whose  
 14 name I don't remember said it's a possibility, but  
 15 we couldn't get testing for him.  
 16 Q. And what leads he you to think he has a  
 17 traumatic brain injury?  
 18 A. His acting out and the nature of the  
 19 injury. It was a traumatic hit. Some of his  
 20 speech. Some of the acting out. What I know from  
 21 being a special ed teacher working with students  
 22 with TBI and from colleagues who brought it up.  
 23 One -- again, when I was teaching and one of the  
 24 speech therapists said to me, I want you to consider  
 25 TBI.

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1 Q. How do you distinguish his acting out  
2 between drugs and potentially having a traumatic  
3 brain injury?  
4 A. I don't.  
5 MS. COMPTON: Foundation.  
6 THE WITNESS: I need a doctor to tell me  
7 that.  
8 BY MR. SMITH:  
9 Q. Jared also has migraines?  
10 MS. COMPTON: Form.  
11 THE WITNESS: I don't know if he currently  
12 has them, but yes.  
13 BY MR. SMITH:  
14 Q. He has had them?  
15 A. Yes.  
16 Q. When he has a migraine, he can't see?  
17 A. Now --  
18 MS. COMPTON: Form.  
19 THE WITNESS: When he was younger he just  
20 would get migraines. But the ocular comes from,  
21 yes, he will lose his vision.  
22 BY MR. SMITH:  
23 Q. What do you mean when he was younger he  
24 would get them?  
25 A. In third grade. He outgrew them for a

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1 time.  
2 Q. So before the fight he had migraines?  
3 A. Occasionally.  
4 Q. After the fight he got migraines that were  
5 worse?  
6 A. Yes.  
7 Q. And the ones after the fight have caused  
8 him to lose vision; right?  
9 A. The ocular migraines, yes.  
10 Q. Anything -- well, strike that.  
11 Did he get treatment for anything other  
12 than his eyes after the 2005 fight?  
13 A. He's had glasses. He's had dentistry.  
14 He's had headaches. He's had colds.  
15 Q. Well, medical treatment for any conditions  
16 related to the 2005 fight?  
17 A. Other than, you know, the medication he was  
18 put on for PTSD or bipolar, yes.  
19 Q. Just counseling and treatment for his eyes;  
20 right?  
21 A. Counseling and medication and group homes.  
22 Q. What jobs has Jared held?  
23 A. For a time he worked for something called  
24 Bartech (phonetic). And it wasn't an official job,  
25 but he helped me with tutoring. We did that

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1 together.  
2 Q. Anything else?  
3 A. I don't know.  
4 Q. How long did he tutor with you?  
5 A. Off and on for a few years.  
6 Q. What does off and on mean?  
7 A. Well, we didn't always tutor. There are  
8 different seasons to tutoring. There were  
9 different -- you know, there were times that he  
10 wasn't in the home.  
11 Q. What did -- and what did he do with the  
12 tutoring?  
13 What was his job?  
14 A. He helped me manage groups. He helped  
15 tutor math, especially some of the older students.  
16 Helped me gather materials.  
17 Q. Did he get paid for tutoring?  
18 A. From me, not from the company.  
19 Q. How much did you pay him?  
20 A. Depends how much I was getting paid and how  
21 many groups, you know, he was running.  
22 Q. How old was Jared when he was tutoring with  
23 you?  
24 A. The first time he helped me with a student,  
25 he was in middle school himself. I used to do

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1 respite care for a student and Jared would come with  
2 me and play with the boy and take him. The last  
3 time he tutored, I think he was 16 or 17. Might  
4 have been 18.  
5 Q. How long did he work at Bartech for?  
6 A. A couple months. I don't know.  
7 Q. How old was he when he did that?  
8 A. Seventeen or 18. Might have been 18.  
9 Q. How he get to and from work at Bartech?  
10 A. I drove him.  
11 Q. Every day?  
12 A. He didn't work every day.  
13 Q. How many days a week did he work?  
14 A. Sometimes three. Sometimes seven days  
15 straight. It was, you know -- and then sometimes he  
16 would have a ride from a co-worker.  
17 Q. What were his hours?  
18 A. They varied. Sometimes he would leave at  
19 5:00 in the morning and come back -- you know, I  
20 think they were putting something into the Cosmo.  
21 Q. Did he have a job at the time of this  
22 accident in January 2011?  
23 A. I don't think so.  
24 Q. Has he ever been able to support himself  
25 with a legitimate job?

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1 MR. MAZZEO: Objection, form.  
2 THE WITNESS: He seemed to be making good  
3 money at Bartech. He paid part for he and Tikira to  
4 live in the house and then they had money for other  
5 things.  
6 BY MR. SMITH:  
7 Q. When he was working at Bartech, he was  
8 living with you?  
9 A. For part of the time.  
10 Q. And where was he living the other part of  
11 the time?  
12 A. I think it might have been the whole time.  
13 Q. Why hasn't he had any steady job at least  
14 since he finished school?  
15 MR. MAZZEO: Objection, speculation.  
16 THE WITNESS: You're asking my opinion?  
17 BY MR. SMITH:  
18 Q. Yes.  
19 A. Because he suffers from a drug addiction.  
20 Because there's a lifestyle that goes with that drug  
21 addiction, and I think he thought that would  
22 entertain him because he's made himself a little bit  
23 helpless.  
24 Q. What's he been doing for money since he  
25 turned 18?

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1 MR. MAZZEO: Objection, foundation.  
2 THE WITNESS: There was a time that he  
3 worked. There was a time that he was stealing from  
4 me. There was a time that he said he worked in the  
5 grow house. I don't know. There's a lot of time  
6 since he's been 18 that he's not been home.  
7 BY MR. SMITH:  
8 Q. Does he pay child support?  
9 A. I don't think so.  
10 Q. Do you know if he's ever paid child  
11 support?  
12 MR. MAZZEO: Objection, relevance.  
13 THE WITNESS: I don't think so.  
14 BY MR. SMITH:  
15 Q. Have you paid child support for him?  
16 A. No.  
17 Q. Did Jared ever drive your car before the  
18 2011 accident?  
19 A. With permission or without?  
20 MR. MAZZEO: Well, other than the 2008  
21 accident we talked about?  
22 MR. SMITH: Including that. I'm just --  
23 let me ask the questions.  
24 MR. MAZZEO: Okay.  
25 MR. SMITH: If you want to ask questions

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1 when I'm done, you're free to ask questions when I'm  
2 done.  
3 MR. MAZZEO: Okay. And I will. I will.  
4 MR. SMITH: Stop giving her the answers and  
5 also let her answer the questions.  
6 MR. MAZZEO: Well, we've already gone over  
7 an area where she's already talked about him driving  
8 a car prior to the subject accident, so I want  
9 clarification.  
10 MR. SMITH: Okay. If you have an  
11 objection, lodge your objection.  
12 MR. MAZZEO: All right. Objection  
13 clarification of the question.  
14 BY MR. SMITH:  
15 Q. Did Jared ever drive your car before the  
16 2011 accident?  
17 MR. MAZZEO: Asked and answered.  
18 THE WITNESS: Yes.  
19 BY MR. SMITH:  
20 Q. How many occasions?  
21 A. I have no idea.  
22 Q. How many do you know about?  
23 MR. MAZZEO: Objection, speculation.  
24 MR. SMITH: It's not speculation if I ask  
25 her what she knows, Pete.

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1 THE WITNESS: I know that when I thought he  
2 had a permit, I took him driving a handful of times.  
3 I know that, you know, he told me after the fact  
4 that he had taken the car without permission.  
5 So if you're counting without permission or  
6 times that I thought Tikira, who was a licensed  
7 driver and the mother of my grandchildren, had the  
8 car and it turned out Jared was driving, maybe ten  
9 to 20 times. I'm solely guessing.  
10 Q. How many times do you know of he drove your  
11 car without permission before January 2nd, 2011?  
12 THE WITNESS: I don't know.  
13 BY MR. SMITH:  
14 Q. Well, how many times do you know about?  
15 I know you know about one for sure, right,  
16 in 2008?  
17 A. Right. And I know about 2011.  
18 Q. Besides those two, how many do you know  
19 about?  
20 A. That he's told me outright? Four, maybe  
21 four or five.  
22 Q. Four before the January 2011 accident?  
23 A. Um-hmm.  
24 Q. Yes?  
25 A. Yes. I'm sorry. Yes. I'm getting tired.

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1 Q. How did he get the keys --

2 MS. COMPTON: Do you want to take a break?

3 THE WITNESS: No.

4 BY MR. SMITH:

5 Q. How did he get the keys those other four or

6 five times?

7 A. He found them or he took them. There was a

8 time that I believed I had the keys, came out and

9 saw my car gone. That's one of the times I knew to

10 start hiding the keys.

11 He told me he didn't drive, a neighbor had

12 driven. And then when I threatened to call the

13 police, he confessed he did it. So that was one

14 time that I knew about.

15 Then there have been times since then that

16 he said, you know, I've taken the car more, I took

17 the car more times than that.

18 Q. Where did he find the keys those times?

19 A. I don't know.

20 Q. You said he drove with you a handful of

21 times.

22 How many times was that?

23 A. Five, ten.

24 Q. How many times did you let him drive when

25 Tikira was in the car?

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1 A. I don't know. I let Tikira drive about ten

2 or 15 times because I took her for her accident -- I

3 mean, for her driver's license.

4 Q. Did you ever let Jared and Tikira take the

5 car where you knew Jared would be driving?

6 A. I don't think so. I don't know.

7 Q. Did you ever let Jared drive your car with

8 any other adult besides you?

9 A. Not that I remember. It's possible because

10 he had his permit and had to get hours, but I'm not

11 remembering any specifics.

12 Q. Those few times that Jared told you he took

13 the car without permission, besides the 2008 and

14 2011 accident, did you ever report the car stolen?

15 A. Not after the fact, no.

16 I believe I called once and they said, Is

17 the car there now? Do you know when?

18 They don't take reports so easily.

19 Q. Do you remember last time I asked you if

20 Jared had ever driven the car with your permission

21 and you said no?

22 A. If he had ever driven the car with my

23 permission? I don't remember.

24 Q. I'm going to read you the question and the

25 answer.

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1 A. Okay.

2 Q. This is on page 17, line 18 because your

3 counsel is looking at the transcript.

4 Question: Before January 2nd, 2011, had

5 you ever let Jared drive your car?

6 Answer: No.

7 That's not true; right?

8 A. I'm sorry. You're confusing me.

9 Q. Well, you remember coming to my office in

10 September 2013; right?

11 Yes?

12 A. Yes, I'm sorry.

13 Q. You remember sitting here with the court

14 reporter; right?

15 A. Yes.

16 Q. You remember the court reporter placing you

17 under oath; right?

18 A. Yes.

19 Q. You remember me asking questions and you

20 answering those questions; correct?

21 A. Yes.

22 Q. And you answered my question: Before

23 January 2nd, 2011, had you ever let Jared drive your

24 car? And you said: No.

25 A. That's not the part that's confusing me.

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1 Q. What's confusing you?

2 A. I think I was confused by: Did I let him

3 drive by himself? Did I let him drive without a

4 license? And that answer is no.

5 Did I let him go with Tikira? Because

6 since that time, Jared has said that he had that and

7 he -- and I may be mistaken, but I never handed

8 Jared the car and said, Go take the car.

9 Q. Why didn't you tell me at that time that

10 you had driven with Jared driving?

11 MR. MAZZEO: Objection, argumentative.

12 THE WITNESS: I don't believe you asked me.

13 I don't know how much I remembered or what the time

14 frame was.

15 Have I ever? He was learning how to drive.

16 Have I ever driven with him? Yes. I don't know

17 what you asked me.

18 Also, I need to clarify that an awful lot

19 has happened in a very short period of time. I --

20 well, let me not say that part.

21 It's exhausting, this whole thing. So are

22 there things sometimes that I need prompted to

23 remember? Yes.

24 BY MR. SMITH:

25 Q. Do you know Jared was pulled over in your



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1 car in November 2010?  
2 A. No.  
3 Q. You're not -- are you aware that he got a  
4 ticket for a broken headlight in your car at some  
5 point?  
6 A. No.  
7 Q. Did you ever fix the headlight in the car  
8 that he was in an accident in on January 2nd, 2011?  
9 A. I don't remember, but I don't think so.  
10 Q. Do you know about any other traffic tickets  
11 Jared has gotten?  
12 A. No.  
13 Q. Do you know that he's been cited for  
14 driving without a license in your vehicle?  
15 A. No.  
16 Q. Did Jared ever drive you to work?  
17 A. No.  
18 Q. Why would he say that?  
19 A. I can't answer.  
20 MS. COMPTON: Foundation --  
21 MR. MAZZEO: Objection, yeah, assumes facts  
22 not in evidence.  
23 THE WITNESS: I would assume he's either  
24 mistaken or is giving a reason why he wasn't driving  
25 without permission. He's, again, a kid in trouble,

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1 who thinks that I'm going to get him out of trouble.  
2 BY MR. SMITH:  
3 Q. Do you think that he would place you in  
4 trouble in order to get himself out of trouble?  
5 MR. MAZZEO: Objection, speculation.  
6 MS. COMPTON: Foundation.  
7 THE WITNESS: I don't think he would  
8 realize he's putting me in trouble. I think he  
9 would think that I can fix that or that I can -- or  
10 I wouldn't be in trouble if he said that because  
11 what trouble could I be in.  
12 Do I think Jared wants to hurt me? No.  
13 But do I think Jared has hurt me? Sure.  
14 BY MR. SMITH:  
15 Q. If he says that he drove you to work, he  
16 would be lying?  
17 MR. MAZZEO: Objection,  
18 mischaracterization.  
19 THE WITNESS: I think he would be --  
20 MS. COMPTON: Form.  
21 THE WITNESS: I'm sorry.  
22 I think he would be mistaken. I think he  
23 also might be missing information.  
24 Did he and Tikira take me to work when  
25 Tikira -- yes.

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1 BY MR. SMITH:  
2 Q. But you're saying he wasn't driving?  
3 A. I'm saying he wasn't driving.  
4 Q. What did you do to teach Jared how to  
5 drive?  
6 A. I drove with him, and then when that didn't  
7 work as well, friends of mine drove with him.  
8 Q. What do you mean when that didn't work as  
9 well?  
10 A. We're mother and son. We would argue.  
11 Q. What friends did you have drive with Jared?  
12 A. I would be guessing, but I think I remember  
13 my friend Bonnie took him once or twice. And it  
14 didn't -- we didn't do it very often.  
15 Q. Was that before or after the January 2011  
16 accident?  
17 A. It would have been before.  
18 Q. Do you know if Jared ever took a driver's  
19 education class?  
20 A. I thought that he did in school.  
21 Q. Why do you think that?  
22 A. Because I thought -- he told me that and I  
23 thought it was a part of school.  
24 Q. Did you ever send Jared to run errands in  
25 your car?

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1 A. No.  
2 Q. So if he said that, he's lying?  
3 MR. MAZZEO: Objection.  
4 THE WITNESS: Again, I'm --  
5 MR. MAZZEO: Foundation, form.  
6 THE WITNESS: I don't know if he's lying or  
7 if he's mistaken or if he's saying he and Tikira  
8 went or he went and did errands. I don't know what  
9 his rationale is.  
10 BY MR. SMITH:  
11 Q. If you said -- strike that.  
12 If he said that you sent him to run errands  
13 alone in your car, he would be lying?  
14 MR. MAZZEO: Objection, form.  
15 THE WITNESS: He would be wrong.  
16 MR. MAZZEO: Incomplete hypothetical.  
17 THE WITNESS: He would be wrong.  
18 BY MR. SMITH:  
19 Q. You never sent him to get Ho-Hos for you?  
20 A. Was I in the car and I asked him to go  
21 inside? Yes. Do I eat Ho-Hos? Yes.  
22 Again, this is a kid who has distorted  
23 memories now, but also has an -- is entitled, and so  
24 this is how that conversation could go: Gee, I wish  
25 I had some Ho-Hos. We don't have any in the house.

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1 Jared's thinking: I'm going to take mom's  
2 car. I'll bring her back some Ho-Hos. It'll be  
3 fine.  
4 Put those two together, Jared gets: She  
5 sent me for Ho-Hos.  
6 I can't tell you how a 21-year-old -- what  
7 rationalizations and distortions he has. But did I  
8 say to him: Please, go to the store and get me  
9 Ho-Hos? No.  
10 Q. Do you like Nesquik?  
11 A. No.  
12 MS. COMPTON: I'm just wondering where that  
13 came from.  
14 THE WITNESS: Because Jared probably said  
15 he went to go get Nesquik.  
16 MS. COMPTON: I don't think he said that.  
17 BY MR. SMITH:  
18 Q. If Jared said he drove your car once or  
19 twice a week before the accident, would he be lying?  
20 A. Would he be mistaken? Yes.  
21 Q. You never let Jared take your car to pay  
22 bills?  
23 A. No.  
24 Q. You never let Jared take your car to go to  
25 the grocery store?

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1 A. No.  
2 Q. Do you let Jared drive his kids places in  
3 your car?  
4 MS. COMPTON: Can we take a break?  
5 MR. SMITH: Let me finish this part.  
6 MS. COMPTON: Can I talk to you?  
7 MR. MAZZEO: Yeah.  
8 She has a question.  
9 What was the question?  
10 THE WITNESS: Do I let him drive his kids  
11 places.  
12 BY MR. SMITH:  
13 Q. Yes.  
14 A. No.  
15 Q. Have you ever asked him to pick things up  
16 on his way home when he's out in your car?  
17 A. No.  
18 Q. Have you ever called him and asked him to  
19 bring your car back?  
20 A. Yes.  
21 Q. When did that happen?  
22 A. Years before, like years ago.  
23 Q. Years before the 2011 accident?  
24 A. No. Years ago. Years before this -- we  
25 got to this point. Once -- when I started hiding

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1 the keys.  
2 Q. So it was before the 2011 accident?  
3 A. Right.  
4 If you reference, I said there was a time  
5 that I went outside and found my car missing and he  
6 said the neighbor was driving. I called him and  
7 said bring the car back.  
8 Q. What did he do?  
9 A. Brought the car back.  
10 Q. That's only happened one time?  
11 A. I don't remember. I think it was only  
12 once.  
13 Q. You've only -- in the last 15 years, you've  
14 only owned one car at a time; right?  
15 A. One car at a time? Yes.  
16 Q. Jared has never owned a car?  
17 A. I don't know.  
18 Q. When he lived with you, he never owned a  
19 car?  
20 MS. COMPTON: Form.  
21 THE WITNESS: He bought a car. I don't  
22 know if he did what you need to do to own it, but he  
23 bought a car with his Bartech money.  
24 BY MR. SMITH:  
25 Q. Did he own his own -- well, strike that.

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1 Did he ever drive the car that he bought  
2 with the Bartech money?  
3 A. I don't know. I think it was a damaged  
4 car. I don't know.  
5 Q. You don't know if it worked?  
6 A. I don't know if it worked. I don't know if  
7 he drove it. I didn't know about the deal.  
8 Q. Did you ever see that car?  
9 A. Yes.  
10 Q. Did you ever see someone driving it?  
11 A. No.  
12 Q. Did Tikira own a car when she lived with  
13 you?  
14 A. No.  
15 MR. SMITH: All right. Go ahead and take a  
16 break.  
17 THE VIDEOGRAPHER: The time is  
18 approximately 4:26 p.m. We're going off the record.  
19 (Thereupon, a break was taken.)  
20 THE VIDEOGRAPHER: The time is  
21 approximately 4:39 p.m. We're back on the record.  
22 BY MR. SMITH:  
23 Q. In the last ten years has your mother owned  
24 a car?  
25 A. Yes.

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1 Q. Has Jared ever driven her car?

2 A. I don't know.

3 Q. Do you know if Jared ever took that car

4 when he was living there?

5 A. I don't know.

6 Q. Besides your car, do you know any other

7 vehicles that Jared has driven?

8 A. I don't know.

9 Q. On the day of the January 2011 accident,

10 before the accident, did he ask to use your car?

11 A. No.

12 Q. If he said he asked to use your car, would

13 he be lying?

14 A. He'd be mistaken.

15 Q. At the Gowan apartment you had a garage;

16 right?

17 A. Yes.

18 MS. COMPTON: Form.

19 MR. SMITH: What's the form problem with

20 that question?

21 MS. COMPTON: You said you had a garage.

22 MR. SMITH: What -- do you want to get a

23 dictionary and look up the term "garage?"

24 MS. COMPTON: No, no. I was saying you

25 were telling her that. You weren't asking a

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1 question. You were telling her the answer.

2 BY MR. SMITH:

3 Q. There was a garage at your apartment at the

4 Gowan apartment; right?

5 A. Yes.

6 Q. You could lock the car in the garage;

7 correct?

8 A. Yes.

9 Q. How often did you park in the garage around

10 that time period of December 2010 and January 2011?

11 A. I don't remember.

12 Q. Why would you not park in the garage?

13 A. Because I always had school stuff or

14 groceries and where we parked was right by the

15 apartment.

16 Q. The garage was further away than the

17 parking spot you normally parked in?

18 A. Yes. And I had to deal with the garage

19 door. It didn't always work. Maintenance was not

20 always great about fixing that door. It became a

21 hassle to use it.

22 Q. When did that start?

23 A. I don't remember.

24 Q. You could ask maintenance to fix it if it

25 was broken; correct?

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1 A. I did ask maintenance and it took them

2 forever to fix it.

3 Q. How did the garage lock?

4 A. I believe there was a remote.

5 Q. It was an --

6 A. Clicker.

7 Q. -- electronic clicker?

8 A. Yes.

9 Q. So you could have put the car in the

10 garage, closed it with the electronic clicker, and

11 without that clicker, Jared could not have gotten

12 into the garage?

13 MR. MAZZEO: Objection, incomplete

14 hypothetical.

15 MS. COMPTON: Form.

16 THE WITNESS: No. I believe you can open

17 the door without the -- you could just manually open

18 the door.

19 BY MR. SMITH:

20 Q. You could just lift it up?

21 A. I believe so. And if I can add, you can do

22 that in my house. The house I rent now, you can do

23 that.

24 Q. Anybody can go open the door and get into

25 your garage?

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1 A. I believe so.

2 Q. In the apartment that you described earlier

3 the Gowan apartment, did the master bedroom have its

4 own bathroom?

5 A. Yes.

6 Q. Did that bathroom have a lock on it?

7 A. I don't remember.

8 Q. Where were you when Jared took the keys in

9 January 2011?

10 MR. MAZZEO: Objection, assumes facts not

11 in evidence.

12 THE WITNESS: I don't know because I don't

13 know when he took the keys.

14 BY MR. SMITH:

15 Q. Did you have a safe in the Gowan apartment

16 in January 2011 at the time of the accident?

17 A. I don't know if we had it in 2011. I had

18 one at one point.

19 Q. What kind of safe was it?

20 A. If I recall correctly, and I may be

21 mistaken, I've had two different: One with a key

22 and one with a combination.

23 Q. If you had put the keys to the car in the

24 safe, could Jared have gotten them?

25 MR. MAZZEO: Objection, foundation,

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1 speculation, incomplete hypothetical.

2 THE WITNESS: I believe so. They were more  
3 like lock boxes than safes.

4 BY MR. SMITH:

5 Q. You believe he could have gotten into it?

6 A. I do.

7 Q. How?

8 A. Again, Jared is very resourceful. So the  
9 one with the key you can jimmy. Or if he had -- if  
10 there are two keys, it's possible you take them --  
11 I'm really, really guessing on that one.

12 The combination one, if he had seen me do  
13 it and I didn't realize. But also most lock boxes,  
14 if you manipulate them enough, if you bang them, if  
15 use a tool, you can open them. I would have bought  
16 them at Walmart.

17 Q. Did you have a spare key to the car that he  
18 was in January 2nd, 2011?

19 A. I don't recall.

20 Q. Did you ever have a spare key to one of  
21 your cars in your apartment at the Gowan apartment?

22 A. I don't recall.

23 Q. What were the hiding places that you used  
24 for your keys around the time of the January 2011  
25 accident?

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1 A. Under the bed. In the -- in his section of  
2 the bathroom like way behind in the cabinet under  
3 the sink while I was in the shower. In the closet  
4 in different purses. In the closet underneath  
5 things. In a briefcase and then I would hide the  
6 briefcase under the bed. In dresser drawers.  
7 Inside things. Inside garbage cans. Inside garbage  
8 I thought he wouldn't go through. In -- while I was  
9 cooking, in various drawers in the kitchen.  
10 Sometimes underneath several cushions on the couch,  
11 like underneath the couch. Under the recliner,  
12 under the recliner, so I'd have to get up and he'd  
13 have to lift the couch to find it. Any place that I  
14 could think of.

15 Q. You hid your car keys in all of those  
16 places?

17 A. Yes.

18 Q. Where were they hidden the day that he took  
19 them on January 2nd, 2011?

20 A. I don't recall because, again, I don't know  
21 when he took them.

22 Q. Were they hidden inside or outside your  
23 bedroom?

24 A. I don't recall.

25 Q. If you were in the bedroom, why wouldn't

Page 160

1 you bring the keys in there and lock the door?

2 A. Because I may have been in the bedroom only  
3 for a few minutes because that's where the bathroom  
4 was. I didn't have a TV in the room.

5 If he were home and I were going in the  
6 room, he'd have to see where I took the keys from if  
7 I took them out of the living room. I might have  
8 thought they were safer where I had hidden them  
9 while I went to the bedroom to go to the bathroom.

10 Q. Do you think you could have gotten a safe  
11 to keep the keys in so he couldn't have taken your  
12 car?

13 MR. MAZZEO: Objection, incomplete  
14 hypothetical, speculation.

15 THE WITNESS: Not to -- not to the -- I  
16 mean, it would have been a very big safe and super  
17 expensive to keep and still he would have figured  
18 out the combination or seen me do the combination.

19 BY MR. SMITH:

20 Q. You think that he's crafty enough that he  
21 could have cracked any safe you could have bought?

22 MR. MAZZEO: Objection, speculation,  
23 incomplete hypothetical.

24 THE WITNESS: I would not use the word  
25 "crafty." I think he was relentless. I think he is

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1 clever. I think that I'm not as relentless and  
2 clever.

3 I think that it is to his advantage to be  
4 able to take what he needs to take, and when you are  
5 an addict who is craving, whether it's gambling or  
6 drugs, you do things that people who are not craving  
7 don't know you're going to do.

8 BY MR. SMITH:

9 Q. You know Jared says that he took the keys  
10 off the counter; correct?

11 A. I have read that.

12 Q. Why would he lie about that?

13 MR. MAZZEO: Objection, mischaracterizes --  
14 (Multiple parties speaking.)

15 MR. SMITH: Well, wait a minute. Let me  
16 ask you the question first.

17 BY MR. SMITH:

18 Q. Do you think he's lying about that?

19 A. I think he's mistaken. I think he may have  
20 seen them there earlier. I also don't think it  
21 matters.

22 Q. Why don't you think it matters?

23 A. Because you -- because I leave keys on the  
24 counter does not mean you have permission to take  
25 the car.

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1 The ten thousand times that I said, "Don't  
2 take the car. It is the only way we get to work.  
3 It is the only way I can pay bills," why would that  
4 not matter more than them being on the mantel? So I  
5 think it's a ridiculous point.

6 But could he have seen them there earlier  
7 in the day or a different day or a day when I was  
8 standing right by them or when I put down groceries?  
9 Sure.

10 Q. Is there a chance that the keys were on the  
11 counter when he took them?

12 MR. MAZZEO: Speculation.

13 THE WITNESS: There's a chance.

14 BY MR. SMITH:

15 Q. You said before you told him 10,000 times,  
16 and I know you're exaggerating, but -- well, you are  
17 exaggerating; right?

18 A. Yes, I am exaggerating.

19 Q. Can you estimate how many times you  
20 actually told him not to take the car?

21 A. No.

22 Q. Why would you be telling him not to take  
23 the car?

24 A. Because he had taken the car. Because  
25 there was an accident in 2008. Because maybe he

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1 begged, Hey, mom, can I drive? Or if I -- he was  
2 always negotiating: If I get a license, if I do my  
3 homework.

4 And the conversation wouldn't always be:  
5 Jared, you can't take the car. Sometimes the  
6 conversation would be: Jared, that car is our  
7 life's blood. I go to work. I work multiple jobs.  
8 With the baby -- we need that car.

9 Q. Did you ever tell Jared if he got a license  
10 he could drive your car?

11 A. I don't know.

12 Q. You let Tikira drive the car after she got  
13 a license; right?

14 A. Yes.

15 Q. And you let Tikira drive the car after she  
16 got a license when you were not in the car; right?

17 A. Yes.

18 Q. Do you know whether your insurance company  
19 in this case made a determination of whether Jared's  
20 use of the car was permissive?

21 MR. MAZZEO: Objection, relevance.

22 THE WITNESS: I do not.

23 BY MR. SMITH:

24 Q. At the time of the accident, Jared's CDs  
25 were in the car; right?

Page 164

1 A. I don't know.

2 Q. Do you know if he had any DVDs in the car?

3 A. I don't know.

4 Q. Do you know if he had a hoodie in the car?

5 A. I don't know.

6 Q. You know what a hoodie is; right?

7 A. Yes. A jacket with a -- a shirt with a  
8 hood.

9 Q. Do you know if he had any cell phone  
10 chargers in the car?

11 A. I don't know what he had in the car.

12 Q. Well, why would he have things in the car  
13 if he wasn't allowed to drive the car?

14 A. Because he went places in the car. He's my  
15 son. He got cold, so he had a hoodie, or I played  
16 his CDs. He's my son. It's a family car.

17 Q. Well, what of your stuff was in the car at  
18 the time of the accident?

19 A. I don't recall. I would be guessing. But  
20 I'm assuming that I also had CDs, that I probably  
21 had a jacket, that I had some school things. I know  
22 when the car got totalled, I had to go and clean it  
23 out.

24 I am also -- sorry to sound sexist but -- a  
25 woman. My car is like a third -- a second purse. I

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1 have stuff in the car.

2 Q. Has Jared ever had a driver's license?

3 A. Not that I know, no.

4 Q. Has it ever been legal for him to drive a  
5 car without another adult in the car?

6 MR. MAZZEO: Objection, calls for a legal  
7 conclusion.

8 THE WITNESS: Not that I know of.

9 BY MR. SMITH:

10 Q. Has Jared ever had a driving permit?

11 A. I thought he did.

12 Q. Has he ever actually had one?

13 A. I don't know.

14 Q. When did you think he had one?

15 A. Just before his 18th birthday. In fact, I  
16 took his 18th birthday off from work to take him to  
17 the DMV to go for his driver's license. He turned  
18 me down.

19 The times that I paid for it online. The  
20 times that his grandmother paid for it. The times  
21 that I went online to sign him up.

22 Q. How many times did you actually go to the  
23 DMV with him?

24 A. I don't recall.

25 Q. More than once?



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1 A. I believe so.  
2 Q. More than five times?  
3 A. I don't think so.  
4 Q. What happened when you went to the DMV?  
5 A. I don't recall. I thought that he got a  
6 permit one time. It was to get an ID when -- at  
7 least twice it was to take Tikira for her test. I  
8 don't remember each time.  
9 Q. And what was it that you paid for online?  
10 A. His permit.  
11 Q. And how did you pay for it online?  
12 A. You go online to the DMV. You use your  
13 credit card or debit card and you pay whatever the  
14 fee is.  
15 Q. When did you do that?  
16 A. I don't recall exact dates, but before his  
17 18th birthday once he came home from Utah.  
18 Q. In between the time he came home from  
19 Odyssey House and the time that he turned 18?  
20 A. Yes.  
21 Q. What type of credit card did you use?  
22 A. My debit card.  
23 Q. What bank is that from?  
24 A. I don't know where it was from at the time.  
25 It would either have been Silver State Schools,

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1 Nevada State Bank, or Chase. I don't remember who I  
2 had at the time.  
3 Q. How much did you have to pay for the  
4 permit?  
5 A. I believe I paid between 20 and 40.  
6 Q. Did you ever see Jared take the driving  
7 test at the DMV?  
8 A. No.  
9 Q. Did you ever see Jared take a written test  
10 at the DMV?  
11 A. Yes.  
12 Q. When was that?  
13 A. I don't remember.  
14 Q. Was it before or after the 2011 accident?  
15 A. Before.  
16 Q. Did he pass?  
17 A. I thought he had.  
18 Q. Did you pay for a permit that time?  
19 A. I remember being at the DMV and paying  
20 his -- and waiting. And perhaps I have it confused  
21 with Tikira, but I remember waiting while someone  
22 went and took a test, and then we went and paid.  
23 That's when I thought he had a permit.  
24 I remember one of them taking their  
25 picture. I thought it was Jared.

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1 Q. Well, that's a big distinction on whether  
2 it's Jared or Tikira.  
3 So do you remember Jared take a written  
4 test at the DMV?  
5 A. I do remember. I'm concerned that I'm  
6 mis-remembering, but I do remember. I remember  
7 being there with him.  
8 Q. And your bank records would show that you  
9 paid the DMV for him to get a permit?  
10 A. I believe so.  
11 Q. Did you ever ask to see his permit?  
12 A. No.  
13 Q. Why not?  
14 A. I didn't feel there was a reason. I was  
15 with him when he got it. There was no reason to ask  
16 for it. I was waiting for him to get his -- to  
17 either get the number of hours you need for the  
18 permit or to turn 18 so he could take the test.  
19 Q. You didn't want to see your son's picture  
20 on the permit?  
21 A. No. I --  
22 MR. MAZZEO: Objection, argumentative.  
23 THE WITNESS: I remember being at the DMV  
24 and his getting his picture taken and his showing me  
25 something. So I thought I had seen it.

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1 BY MR. SMITH:  
2 Q. By that point, Jared had lied to you a  
3 number of times; correct?  
4 A. At this point when we went, he might have  
5 been doing well. I don't remember specific dates.  
6 Q. But you would agree before his 18th  
7 birthday he had lied to you many times; correct?  
8 MR. MAZZEO: Objection. That's misstating  
9 her testimony.  
10 THE WITNESS: If I -- I would agree to  
11 that, but I would also agree that during that time  
12 before he turned 18 there were times that he was  
13 dedicated to doing well and telling me the truth and  
14 that I could believe him.  
15 BY MR. SMITH:  
16 Q. He had stolen from you before his 18th  
17 birthday?  
18 A. Yes.  
19 Q. You testified last time that you were  
20 suspicious of Jared surrounding that January 2011  
21 accident; right?  
22 A. Things had changed then.  
23 Q. When did they change?  
24 A. I don't recall. Around the time that Kalia  
25 (phonetic) was born.

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1 Q. Things got worse after Kalia was born?

2 A. Things got more strained, yes.

3 Q. When was Kalia born?

4 A. December -- December 6, 2010.

5 Q. Why did things get more strained at that

6 point?

7 A. Again, I would be speculating. One,

8 because I felt trapped. They had a baby. Where

9 were they going to go? Where was the baby going to

10 go? Tikira began to act out as well, very entitled.

11 They were very rude and demanding during

12 the last days of the pregnancy and when she was in

13 the hospital. They were increasing having people

14 there. They were increasing in demands. They had

15 nothing for the baby.

16 I had to watch my boundaries because I'm a

17 first-time grandma and I wanted to give that baby

18 everything, but I've got two adult children acting

19 out. So it was very stressful. Work was very

20 stressful. It was just a very stressful time.

21 Q. How long before his 18th birthday did you

22 think Jared got his permit?

23 A. I don't remember.

24 Q. Do you remember when it was that you went

25 with him to the DMV?

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1 A. No. But, again, I know that I took his

2 18th birthday off from work to take him to the DMV.

3 Q. Is that the day that you think you went and

4 got his permit, his 18th birthday?

5 A. No. That was for his license. He turned

6 me down. He said, I don't need to go. That

7 probably increased my suspicion of him.

8 Q. Why did he say he didn't -- strike that.

9 Why did say that you didn't need to go?

10 MR. MAZZEO: Objection, speculation.

11 THE WITNESS: I'm hanging with friends.

12 It's my birthday. I'm good. I'll get it another

13 time.

14 BY MR. SMITH:

15 Q. And what did that make you suspicious of?

16 A. That he either didn't want to get his

17 license or that there was something I didn't know.

18 Q. What was the date of his 18th birthday?

19 A. February 11th.

20 Q. 2010?

21 A. Yes. Wait. Let me do the math now in my

22 head. 1992, yes. Wait. I'm sorry.

23 Can I have a piece of paper? I don't know

24 if it was 2009 or 2010. Yeah, no, it wasn't. Yes,

25 2010.

Page 172

1 Q. 2010?

2 A. Um-hmm.

3 Q. Yes?

4 A. Yes. I'm sorry. Yes.

5 Q. Do you have your bank records from the time

6 period where you believe you paid for Jared's

7 permit?

8 A. No.

9 Q. What did you do with them?

10 A. Most of my records are electronic, so I

11 wouldn't have printed them out unless I needed them.

12 Too, we've moved. The police were there multiple

13 times. There's a lot of records that I don't have

14 or didn't keep.

15 Q. By electronic, you mean you get them in an

16 e-mail?

17 A. You get an electronic statement. So I knew

18 if I needed them, at that time I could go onto my

19 bank's website and pull them up.

20 Q. You actually have to go onto the website or

21 you get them e-mailed to you?

22 A. Onto the website. I get an e-mail that my

23 statement is ready. And if they were paper, it's

24 now 2014, I'm sure I didn't keep any of that.

25 Q. Are you aware that Jared said he paid for

Page 173

1 his ID card?

2 A. No.

3 Q. Would he be lying about that?

4 MR. MAZZEO: Objection, speculation, form.

5 THE WITNESS: No. He's had -- he's had

6 multiple cards. He loses them.

7 BY MR. SMITH:

8 Q. How many ID cards has he had?

9 A. I don't know. But I know he's lost things

10 and had to -- or said that he's lost them and had to

11 pay for them again.

12 Q. If the DMV records show that he never took

13 a driving test or a written test until after the

14 January 2011 accident, are you going to dispute

15 that?

16 A. Not if the DMV records say that. I will

17 say I was mistaken.

18 Q. Do you have any evidence to show that Jared

19 took a written test at the DMV prior to January

20 2011?

21 A. No.

22 Q. Do you have any records to show that you

23 ever paid for Jared to obtain a permit?

24 A. No.

25 MR. SMITH: Let's go off the record for a

Page 174

1 minute.

2 THE VIDEOGRAPHER: The time is  
3 approximately 4:59 p.m. We're going off the record.  
4 (Thereupon, a break was taken.)

5 THE VIDEOGRAPHER: The time is  
6 approximately 5:28 p.m. We're going back on the  
7 record.

8 BY MR. SMITH:

9 Q. Let's talk about -- a little bit about the  
10 January 2011 accident.

11 Has Jared ever told you what happened?

12 A. Not start to finish.

13 Q. What has he told you?

14 A. That he was pulling out, that he swears the  
15 other lady sped up, that he felt she wasn't hurt,  
16 and something about a truck or a bus that I'm not  
17 completely clear on.

18 Q. Did he say she sped up or she was speeding?

19 A. I think he said she he sped up, but I'm not  
20 sure.

21 Q. Did he say anything about why he believes  
22 she's not hurt?

23 A. Because she got up and walked around and  
24 there was no ambulance at the scene.

25 Q. Anything else you remember him telling you

Page 175

1 about the accident?

2 A. I just need clarification of a time. From  
3 when it happened or just --

4 Q. At any point in time.

5 A. He has said that he was not under the  
6 influence, that he had marijuana on him and didn't  
7 want to get arrested for that.

8 Q. Did tell you that he told police that he  
9 had been smoking?

10 A. I've heard him say that.

11 Q. Did tell you why he told the police he had  
12 been smoking if he hadn't been?

13 A. Because he had marijuana on him and I guess  
14 it was a certain weight that you're not supposed to  
15 have or something.

16 Q. Did he tell you why he thought telling the  
17 police that he had been smoking would avoid them  
18 finding the marijuana that was on him?

19 A. No. This would be an example of Jared's  
20 either drug logic or kid logic or where he thinks  
21 certain things that -- that's why I say sometimes  
22 that he wasn't lying, he was mistaken because he  
23 puts two and two together and gets six.

24 Q. Anything else he told you about the  
25 accident?

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1 A. He has said to me that he knows he didn't  
2 have permission to take the car.

3 Q. When did he tell you that?

4 A. He's told me that numerous times,  
5 especially since he came home from Rawson and we  
6 started to do the case more.

7 Q. Has he told you where he got the keys from?

8 A. No.

9 Q. Have you asked him?

10 A. I don't recall.

11 Q. Other than him telling you he didn't have  
12 permission to take the car, did you have any other  
13 conversations with him about permission to take the  
14 car on that day?

15 A. I don't understand what other conversations  
16 we would have had, what you mean.

17 Q. Is there anything you talked about with him  
18 regarding him having permission to take the car  
19 other than him just telling you he realizes he  
20 didn't have permission?

21 A. No. Other than that was why I'm being  
22 sued. I think he asked me -- and, again, I may be  
23 mis-remembering, but I think he asked me, Why are  
24 they suing you? And I said, Because they're saying  
25 I gave you permission to drive the car. And he

Page 177

1 said, But you didn't.

2 Q. Did you ever see your car after the  
3 accident?

4 A. Yes.

5 Q. You went to go get things out of it, right?

6 A. Right.

7 Q. What was it you got out of the car?

8 A. I don't recall. I think some things for  
9 school, maybe a CD, maybe a jacket. I don't recall.

10 Q. What did the damage to the car look like?

11 A. It was extensive. Had it been a newer car  
12 worth more money, they would have fixed it. So it  
13 wasn't totalled, but it was enough damage that it  
14 was worth more than whatever the formula is for the  
15 percentage of the car.

16 Q. Did anyone -- well, strike that.

17 Did anyone tell you what the cost to repair  
18 the car would be?

19 A. I think they told me that it was  
20 prohibitive. They may have told me an amount, but I  
21 don't remember. But it was more than whatever their  
22 formula is.

23 Q. How much money did you get for the car?

24 A. I still owed on the car, so I didn't get  
25 anything for the car.

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1 Q. How much did you owe?  
2 A. I mean, whatever they paid towards it, but  
3 I still owed on the car.  
4 Q. How much did you owe?  
5 A. I don't recall.  
6 Q. Did you owe in addition after they paid?  
7 A. Yes.  
8 Q. Did you pay that back?  
9 A. Drive Time, where I got the car, rolled  
10 that over. They had their own form of gap insurance  
11 because I didn't. They said, If you buy your next  
12 car with us and pay that off, we'll waive this. It  
13 might have been upwards of three to five thousand  
14 dollars but, again, I'm not exactly sure. It was a  
15 lot of money.  
16 Q. The gap or the amount you owed on the car?  
17 A. The difference between what the insurance  
18 paid and what I owed.  
19 Q. Where was your loan through on the car that  
20 was in the 2011 accident?  
21 A. Drive Time.  
22 Q. They were the actual bank?  
23 A. I believe so. I don't know how it works.  
24 I paid them.  
25 Q. That's where your make your payments was to

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1 Drive Time?  
2 A. Yes.  
3 Q. And that's who got paid off after the car  
4 was totalled?  
5 A. Yes.  
6 Q. Do you know whether the car had to be towed  
7 from the accident scene?  
8 A. I believe it was.  
9 Q. Do you know if it was drivable after the  
10 accident?  
11 A. I don't know.  
12 Q. What did the damage look like?  
13 A. I don't remember.  
14 Q. You don't remember what your car looked  
15 like when you went to go see it?  
16 A. No, I don't. It was -- we're going on  
17 almost four years and an awful lot has happened. I  
18 just know it was a lot of damage.  
19 Q. Let's talk about that day before the  
20 accident.  
21 I know you remember the police officer  
22 calling you; right?  
23 A. The day before or the day --  
24 Q. No, the day of the accident but before the  
25 accident happened.

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1 You remember the police officer -- let  
2 me --  
3 A. Yes.  
4 Q. -- just start over.  
5 You remember the police officer calling you  
6 on the day of the accident; right?  
7 A. Yes.  
8 Q. What do you remember about that day before  
9 the police officer called you?  
10 A. It was winter break from school. The baby  
11 was home. Was the baby home? Excuse me. I can't  
12 remember if Kalia was home or not?  
13 I was -- I remember being agitated with  
14 both Jared and Tikira. I may have talked to my  
15 NAR-ANON sponsor. I can't remember. I was watching  
16 television. I knew I had to go back to school soon.  
17 It was a tense day at home.  
18 Q. Do you remember anything you did that day?  
19 A. I remember working -- and, again, it might  
20 not have been that day. But I know during vacation  
21 I worked on schoolwork and watching television.  
22 Q. Did you leave the house that day?  
23 A. I don't remember.  
24 Q. Do you know anything Jared did that day  
25 before the accident?

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1 A. No. I think that I worked on schoolwork  
2 because I think I remember his grabbing something  
3 out of the car for me. But, again, I may have the  
4 wrong day.  
5 Q. You think he grabbed something out of the  
6 car for you that day --  
7 A. Yeah, my school books.  
8 Q. -- to help you with schoolwork?  
9 A. Yeah.  
10 Q. That's yes?  
11 A. I'm sorry. Yes. I think so.  
12 Q. Anything else you remember about that day  
13 before the officer called you?  
14 A. No, not offhand. If I looked at a  
15 calendar, I could be clear. If I knew it was a  
16 Sunday and I was going back to school, I could kind  
17 of piece together more, Oh, here's what I was  
18 probably doing. But I don't remember what day it  
19 was.  
20 Q. Let's look. So it was -- if I told you it  
21 was a Sunday, would that assist you in remembering?  
22 A. Yeah. I thought I had remembered it was a  
23 Sunday. I'm pretty sure earlier in the day I worked  
24 on lesson plans, got together whatever books I  
25 needed. I may have had an IEP, an Individualized

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1 Education Plan, coming up. I'm not sure if I'm  
2 remembering correctly.  
3 And when I got the call, I was watching  
4 television and winding down because I had to go to  
5 the work the next day.  
6 Q. The new school year started -- or the new  
7 school semester started the next day?  
8 A. I don't know if it was the semester we were  
9 coming back. I'm an elementary -- I was an  
10 elementary school teacher, so I was coming back from  
11 winter break.  
12 Q. Your break ended the next day?  
13 A. Yes, if I'm recalling correctly.  
14 Q. Now that you know it was a Sunday, can you  
15 recall whether you left the house that day?  
16 A. I'm not sure if it was Saturday or Sunday.  
17 I know that at some point after New Year I went  
18 grocery shopping to have food for, you know, to take  
19 to school, but I can't remember hard and fast if it  
20 was Sunday. I think that I went out.  
21 Q. What happened that day after you received  
22 the phone call from the officer?  
23 A. I spoke to the officer. I had to now call  
24 someone to pick me up for work. And I don't  
25 remember who it was, but I called someone to take me

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1 to work and to take me home. And I may have made  
2 some other phone calls to people I was involved with  
3 in Nar-Anon.  
4 Do you need me to explain Nar-Anon?  
5 Q. Well, I'm going to ask you that, but you  
6 can finish this answer first.  
7 A. And I tried to get some rest. And I'm sure  
8 Tikira and I argued. And that's all I remember.  
9 Q. Was Tikira home when the officer called  
10 you?  
11 A. I don't remember if she was home when the  
12 officer called, but she was home at some point.  
13 Q. At some point that night she was home?  
14 A. I believe so. Again, I'm trying to  
15 remember something that happened many years ago, but  
16 I believe she was.  
17 Q. Okay. What's NAR-ANON.  
18 A. NAR-ANON is a 12-step program that is the  
19 companion to Narcotics Anonymous. So it's for  
20 family and friends of the addict to help you deal  
21 with your own boundaries and issues.  
22 Q. How long have you been going to NAR-ANON  
23 meetings?  
24 A. For years. Since Jared was 15 or 16.  
25 Q. How often do you go?

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1 A. It varies. I have not gone in a few years.  
2 Right now, I'm concentrating on my GA program, but  
3 there was a time I was going two, three times a  
4 week.  
5 Q. At the time of the January 2011 accident,  
6 were you going to Nar-Anon?  
7 A. Yes.  
8 Q. How often?  
9 A. Probably two or three times a week.  
10 Q. What do you mean by GA?  
11 A. Gamblers Anonymous.  
12 Q. Okay. Why would there be a time when  
13 you're going to NAR-ANON more often?  
14 A. Depending on how I'm feeling. Whichever  
15 program's going to give me the most strength.  
16 Whichever one -- GA has many, many more meetings.  
17 NAR-ANON at one time had four meetings a week.  
18 Gamblers Anonymous has over a hundred so --  
19 And depending on what I'm working on. Am I  
20 working on my response to Jared? Am I working on my  
21 own boundaries? Depends what I need. Depends which  
22 one gives me more strength at the time.  
23 Q. Have you ever talked to your mother about  
24 the 2011 accident?  
25 A. I don't recall.

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1 Q. Have you ever talked to her about the 2008  
2 accident?  
3 A. I'm sure I did.  
4 Q. What do you remember talking to her about  
5 the 2008 accident?  
6 A. Well, I believe she lent me her car until  
7 the insurance company came and -- whether Jared was  
8 hurt, whether he was going to be in trouble, how did  
9 he get the keys.  
10 Q. Has she been a good role model to Jared?  
11 A. Difficult question.  
12 Is she a good role model in that she lives  
13 her life responsibly for her family? Yeah. Has she  
14 been a terrible enabler? Yeah. So I don't know how  
15 to answer that question.  
16 Q. What does she do to enable him?  
17 A. She gives him money. She blames me instead  
18 of holding him accountable. She invites family  
19 members who are dangerous to him because she doesn't  
20 know what to do. She will not take my counsel or I  
21 believe my brother has also told her, Let him go.  
22 She won't follow anything that we do.  
23 She has some magical thinking that Dr. Phil  
24 is going to fix this. She's told me that. So there  
25 are many ways that she enables. She didn't -- when



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1 Jared was living with her, she didn't hide her pills  
2 or the alcohol.

3 Q. What do you mean by let him go?

4 A. Let him suffer the consequences of what  
5 he -- let him -- if Jared needs to -- whatever his  
6 bottom is, he needs get there so that he's ready.

7 Q. And you think once he finds his bottom, he  
8 can start recovering and actually stay clean?

9 A. I think he's already started recovery.

10 THE WITNESS: I'm sorry?

11 MR. MAZZEO: No, go ahead.

12 THE WITNESS: There are multiple levels and  
13 there are some people that say relapse is a part of  
14 recovery.

15 I don't think he gets serious about  
16 recovery or maintains any recovery until he hits  
17 whatever his bottom is. Everybody's bottom is  
18 different.

19 Q. Do you think he's hit his yet?

20 THE WITNESS: I don't --

21 MR. MAZZEO: Speculation, foundation.

22 THE WITNESS: I don't know. I also don't  
23 know if it's necessary.

24 BY MR. SMITH:

25 Q. Do you think driving without a driver's

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1 license can cause safety problems in the community?

2 MS. COMPTON: Foundation.

3 THE WITNESS: I have -- I never thought  
4 about that.

5 BY MR. SMITH:

6 Q. Do you think Jared driving without a  
7 driver's license is a safety problem?

8 MR. MAZZEO: Speculation, foundation.

9 THE WITNESS: I think Jared driving is  
10 showing bad judgement.

11 Is it a safety problem? I don't know how  
12 to answer that.

13 BY MR. SMITH:

14 Q. Do you think Jared driving at the time of  
15 the 2011 accident endangers people around him?

16 MR. MAZZEO: Speculation, foundation,  
17 incomplete hypothetical.

18 THE WITNESS: I don't know.

19 BY MR. SMITH:

20 Q. Do you think that Jared's drug use has  
21 endangered community safety?

22 MR. MAZZEO: Objection, incomplete  
23 hypothetical, speculation, foundation, form.

24 THE WITNESS: I don't know about community  
25 safety.

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1 BY MR. SMITH:

2 Q. You don't know if his drug use creates a  
3 safety risk for the community?

4 A. I don't know --

5 MR. MAZZEO: Objection, asked and answered.

6 THE WITNESS: When he was younger and  
7 involved in those activities, it was for the  
8 community. The last few years, it's mostly been  
9 family. That's my opinion. I could be wrong.

10 BY MR. SMITH:

11 Q. Do you think his drug dealing endangered  
12 community safety?

13 MR. MAZZEO: Objection, foundation, form.

14 MS. COMPTON: Join.

15 THE WITNESS: I think drug dealing does,  
16 yes.

17 BY MR. SMITH:

18 Q. Do you believe that the problems Jared  
19 suffered from the 2005 fight give him the right to  
20 smoke marijuana and drive a car?

21 MR. MAZZEO: Objection, foundation,  
22 speculation, incomplete hypothetical, form.

23 MS. COMPTON: Join.

24 THE WITNESS: Nothing gives -- gives him  
25 the right? I don't know how to answer that.

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1 I mean, it's an illegal act. Nothing can  
2 give you the right to do that.

3 BY MR. SMITH:

4 Q. Do you think the problems that Jared has  
5 had from the 2005 fight -- well, strike that.

6 If you knew Jared was driving your car, do  
7 you feel that as a parent you would have  
8 responsibility to ensure he's qualified to drive?

9 MR. MAZZEO: Objection, speculation,  
10 foundation, form.

11 THE WITNESS: Yes.

12 BY MR. SMITH:

13 Q. If you knew Jared was driving your car, do  
14 you feel as a parent it was your responsibility to  
15 ensure he was legally allowed to drive?

16 MR. MAZZEO: Objection, foundation, form.

17 MS. COMPTON: Join, foundation.

18 THE WITNESS: Ask me again, please.

19 MR. SMITH: Can you read it back?

20 (Thereupon, the requested portion was read back.)

21 THE WITNESS: If I knew he was driving,  
22 yes.

23 BY MR. SMITH:

24 Q. If you knew Jared was driving, do you feel  
25 as a parent it was your responsibility to ensure he

Page 190

1 was a safe driver?

2 MR. MAZZEO: Objection, form, foundation.

3 THE WITNESS: If I knew he were driving,  
4 yes.

5 BY MR. SMITH:

6 Q. Given your knowledge of the 2008 accident,  
7 did you feel that it was your responsibility to make  
8 sure Jared learned driving safety?

9 MR. MAZZEO: Objection, speculation,  
10 foundation, form, incomplete hypothetical.

11 THE WITNESS: Yes. And I need to qualify  
12 that. Based on the 2008 accident, I thought that  
13 Jared needed more intervention. I sought to get it.  
14 There was a lot more intervention after that.

15 His driving was not as -- getting him a --  
16 let me re-word that. His driving was his privilege  
17 that he needed to take of. Not that I wasn't  
18 teaching him, but it wasn't up the foremost of my --  
19 I wanted him clean. I wanted him graduating high  
20 school. I wanted him working. I wanted him clean,  
21 and to be a good father.

22 BY MR. SMITH:

23 Q. So based on you knowing that he took your  
24 car multiple times before the January 2011 accident,  
25 did you feel that it was your responsibility to

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1 teach him how to safely drive a vehicle?

2 MR. MAZZEO: Objection, misstates prior  
3 testimony, speculation, foundation.

4 THE WITNESS: No. I felt it was my  
5 responsibility to keep him out of the car and hide  
6 the car. I thought teaching him how to drive safely  
7 was a mixed message.

8 BY MR. SMITH:

9 Q. Your counsel lodged an objection about  
10 misstates testimony, so let me make sure that I  
11 understood your testimony correctly.

12 You knew prior to January 2011 that Jared  
13 had driven your car; correct?

14 A. He had been in an accident in 2008 so of  
15 course I knew.

16 Q. And you knew he had taken it other times in  
17 addition to the 2008 accident; correct?

18 MR. MAZZEO: Objection, misstates prior  
19 testimony.

20 MR. SMITH: Well, that's what I'm asking.

21 THE WITNESS: After the fact. As it was  
22 happening, no.

23 BY MR. SMITH:

24 Q. But prior to January 2011, you knew that it  
25 had happened more than just the 2008 accident;

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1 correct?

2 A. Yes.

3 Q. Do you believe Jared's vision problems  
4 create any safety issues when he's driving a  
5 vehicle?

6 MR. MAZZEO: Objection, foundation,  
7 speculation.

8 THE WITNESS: Based on doctors' reports,  
9 no.

10 BY MR. SMITH:

11 Q. Do you believe Jared's vision problems  
12 could endanger the safety of over drivers if Jared's  
13 driving?

14 MR. MAZZEO: Foundation, speculation.

15 THE WITNESS: Based on what I knew from  
16 doctors, no.

17 BY MR. SMITH:

18 Q. Do you believe Jared's driving without a  
19 valid permit or license created safety issues in the  
20 community?

21 MR. MAZZEO: Speculation, foundation.

22 THE WITNESS: In and of itself, no.

23 BY MR. SMITH:

24 Q. What are you qualifying that with?

25 A. I would be more concerned about his ability

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1 to drive -- did he know how to drive? Was he  
2 sober? -- than whether -- whether you have -- I  
3 don't know how to word this.

4 At the time of the accident, it was my  
5 understanding he had a permit. So the belief that  
6 he had a permit isn't the same as believing -- I'm  
7 not wording this well. That is less of a concern to  
8 me than someone's ability to drive.

9 Q. In the times that you had driven with him,  
10 was he an able driver?

11 A. Yes.

12 Q. You thought he was a good enough driver  
13 that he could drive on his own?

14 A. I don't know if I would say that.

15 Q. What would you say?

16 A. I would say that like any young driver he  
17 needed to be watched. He needed to be counseled. I  
18 have friends whose kids get their license and they  
19 still -- their parents still watch them drive  
20 because when you're young, you think you're  
21 immortal. You think you know everything. You don't  
22 know what not to know.

23 Q. Do you think Jared has difficulty managing  
24 his anger?

25 A. I think Jared manages a lot of intense

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1 emotions. I think when Jared is using, the  
2 particular substance that he uses, they make him  
3 more agitated. But I think that Jared carries a  
4 tremendous burden and tries very hard to deal with  
5 them.

6 Q. What's the tremendous burden he carries?

7 A. He's a 21-year-old father of two who  
8 doesn't have custody of his children. He has not  
9 lived the life that he thought growing up as Jared  
10 Awerbach, straight-A student, mom a teacher, close  
11 family that he may have thought that he was going to  
12 have.

13 He has a father who has let him down. He  
14 has a strained relationship with his mother. He has  
15 a taste for drugs and will have to fight that for  
16 his whole life. He has an eye that he can't see out  
17 of. He has a family that in one part is close and  
18 in another part has this drug and criminal history.  
19 He knows that his grandmother is about to be 93 and  
20 could pass while he's not straight.

21 He carries a lot of burden. He's done  
22 things that's he's not proud of.

23 Q. Has Jared ever spoken to his father?

24 A. Yes.

25 Q. When was the last time?

Page 195

1 A. I don't know.

2 Q. And when was the last time that you know  
3 of?

4 A. When Jared was 18.

5 Q. Was that the first time they'd spoken or  
6 they'd spoken before that?

7 A. Not the first time they had spoken. They  
8 did not speak on a regular basis.

9 Q. In his youth, how often did they speak  
10 until the time he was 18?

11 A. I believe that Jared was in third grade  
12 when his father was here and they met for dinner.  
13 They may have talked once or twice on the phone.  
14 And then his father left without any notice, and  
15 they did not have contact again until Jared was  
16 about 18.

17 Q. Do you believe that the way Jared deals  
18 with the tremendous burden that he carries  
19 creates -- well, strike that.

20 Do you believe the way that Jared deals  
21 with the tremendous burden that he carries endangers  
22 the safety of others?

23 MR. MAZZEO: Speculation, foundation, calls  
24 for expert opinion.

25 THE WITNESS: At times.

Page 196

1 BY MR. SMITH:

2 Q. How?

3 A. When he takes things into his own hands and  
4 doesn't check on his facts. When he uses drugs.  
5 When he gets involved with people who use and sell  
6 drugs. When he invites these people near or in the  
7 house. When he doesn't stand up to his daughter's  
8 mother for things that she's doing or not doing.  
9 When he does damage to his relationship with me.

10 Q. Do you believe that carrying an  
11 unregistered weapon endangers the safety of others?

12 MR. MAZZEO: Objection, incomplete  
13 hypothetical, form.

14 THE WITNESS: Yes.

15 MR. SMITH: No. 1.

16 (Exhibit 1 Facebook Printout marked.)

17 BY MR. SMITH:

18 Q. The court reporter has handed you what's  
19 been marked as Exhibit 1.

20 I just want you to take a look at it to let  
21 me know if that is a true and correct copy of the  
22 posts on your Facebook page.

23 A. Yes.

24 Q. I just want to make sure you look through  
25 the whole thing.

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1 Yes?

2 A. Yes.

3 Q. And these are all public posts; right?

4 I don't need to be your friend on Facebook  
5 to get these?

6 A. I don't think that's accurate. I think  
7 some of these were you had to be my friend until --  
8 some of the posts I changed because I was selling  
9 items online.

10 Q. Well, as of today when these were printed,  
11 I wouldn't have to be your friend to get to these  
12 posts; correct?

13 A. Again, I don't know that I changed the  
14 whole profile, just the things I was selling, but  
15 I'm not a Facebook expert.

16 Q. You can see in the middle of the first page  
17 where it says Add Friend; right?

18 A. Yes.

19 Q. That, based on your experience with  
20 Facebook, would show you that the person who printed  
21 this was not your Facebook friend; right?

22 A. I've never printed off of Facebook, so I  
23 would guess, but I don't know.

24 MR. SMITH: Let's go off the record for a  
25 minute.

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1 THE VIDEOGRAPHER: The time is  
2 approximately 5:55 p.m. We're going off the record.  
3 (Thereupon, a break was taken.)  
4 (Exhibit 2 Documents from District Court Case No.  
5 A-551677 marked.)  
6 THE VIDEOGRAPHER: The time is  
7 approximately 5:59 p.m. We're going back on the  
8 record.  
9 BY MR. SMITH:  
10 Q. The court reporter has handed you what's  
11 been marked as Exhibit 2.  
12 Do you recognize the first document in  
13 Exhibit 2?  
14 A. Yes.  
15 Q. What is it?  
16 A. It is the paperwork from the case against  
17 the school district for Jared's assault.  
18 Q. It's the lawsuit that you filed related to  
19 Jared's assault; right?  
20 A. Yes.  
21 Q. Can I have you turn to page eight of that  
22 first document?  
23 A. Okay.  
24 Q. Is that your signature?  
25 A. Yes.

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1 Q. And reviewed that complaint before you  
2 signed page eight; correct?  
3 A. I'm sure I did. I don't remember.  
4 Q. You wouldn't have signed it unless you  
5 reviewed the document you were verifying; correct?  
6 MR. MAZZEO: Objection, speculation.  
7 THE WITNESS: There's a possibility I  
8 trusted my attorney.  
9 BY MR. SMITH:  
10 Q. Well, page eight says: Andrea Awerbach,  
11 being first duly sworn on oath, according to law,  
12 deposes and says: That I am the plaintiff in the  
13 above-entitled action; that I have read the  
14 foregoing complaint for damages and know the  
15 contents thereof; that the same is true of my own  
16 knowledge, except for those matters therein  
17 contained stated upon information and belief and, as  
18 to those matters, I believe them to be true.  
19 Did I read that right?  
20 A. Yes, you did.  
21 Q. Would you have signed this verification  
22 that you reviewed -- or that you read the complaint,  
23 you know the contents, and that the contents are  
24 true unless those statements were accurate?  
25 A. The only possibility would be, you know, in

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1 a case you'd sign a lot of documents and, if my  
2 attorney said, I only changed the line on page two  
3 or whatever, it's the same thing. I would have  
4 taken him at his word and signed it. But, yes, I  
5 would have trusted my attorney with these.  
6 Q. Well, yes, you would have reviewed the  
7 complaint at some point before it was filed; right?  
8 A. Yes, yes.  
9 MR. SMITH: Exhibit 3.  
10 (Exhibit 3 Document Bates No. GJL 255 marked.)  
11 BY MR. SMITH:  
12 Q. The court reporter has handed you what's  
13 been marked as Exhibit 3.  
14 Do you recognize that document?  
15 A. No.  
16 Q. This is a Las Vegas Metropolitan Police  
17 Department Impound Report.  
18 Do you see the middle of the page where it  
19 says: Inventory of Personal Property?  
20 A. Yes.  
21 Q. Do you see that it says certain things that  
22 were in the vehicle on January 2nd, 2011?  
23 A. Yes.  
24 Q. Whose phone chargers were in the vehicle?  
25 A. I don't know. I don't know if they were

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1 mine or Jared's or Tikira's.  
2 Q. The car seat was obviously for?  
3 A. Kalia.  
4 Q. Kalia? Okay.  
5 Whose sketch book was in the vehicle?  
6 A. I'm guessing it was mine for school, but I  
7 don't know. I don't remember.  
8 Q. Whose black hoodie was in the vehicle?  
9 A. Either Jared or Tikira's. Again, I'm  
10 guessing. I don't typically wear hoodies.  
11 Q. Whose menorah box was in the vehicle?  
12 A. Again, probably mine. But, again, I'm, you  
13 know, trying to remember.  
14 Q. And whose brown Teddy bear was in the  
15 vehicle?  
16 A. That could have either been Kalia's or mine  
17 for my classroom.  
18 Q. Whose gray phone charger was in the  
19 vehicle?  
20 A. Again, I don't know if it was mine or  
21 Tikira or Jared's.  
22 Q. Do you see below that it says: Additional  
23 Remarks/Vehicle Damage?  
24 A. Yes.  
25 Q. Can you read what it says in that box?

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1 A. Vehicle involved in wreck. Extensive -- I  
2 think that's what it says -- damage by front of --  
3 and I'm guessing that last word is vehicle.

4 Q. Do you dispute that there was extensive  
5 damage to the front of your vehicle from the  
6 January 2nd, 2011, accident?

7 A. No.  
8 MR. MAZZEO: Objection, form.  
9 THE WITNESS: No.

10 BY MR. SMITH:

11 Q. You would agree with that; right?

12 MR. MAZZEO: Objection, form.

13 MR. SMITH: I don't have any further  
14 questions.

15 MR. MAZZEO: Oh, you're not done yet.

16 THE WITNESS: Oh.

17 MR. MAZZEO: I have two questions for you.

18 EXAMINATION

19 BY MR. MAZZEO:

20 Q. On January 2nd, 2011, did you have any  
21 reason to believe that Jared would take your car  
22 that day?

23 A. No.

24 Q. At any time on January 2nd, 2011, did you  
25 have any reason to believe that Jared would take

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1 your keys to your car that day?

2 A. No.

3 MR. MAZZEO: No further questions.

4 MS. COMPTON: I just have a couple of  
5 really quick ones.

6 THE VIDEOGRAPHER: Your mic.

7 MS. COMPTON: Oh.

8 EXAMINATION

9 BY MS. COMPTON:

10 Q. How many years have you been going to  
11 Gamblers Anonymous?

12 MR. MAZZEO: Relevancy.

13 THE WITNESS: I believe about seven.

14 BY MS. COMPTON:

15 Q. Seven?

16 And how many years --

17 A. I'm sorry. Can I qualify?

18 Q. Oh, yeah.

19 A. My last bet was 12 years ago. I spent five  
20 years without gambling without Gamblers Anonymous.

21 Have been about seven years I've been attending.

22 Q. And then how many years would you say  
23 you've attended some sort of treatment program for  
24 addiction related to Jared's addiction issues?

25 MR. SMITH: Object to the form.

Page 204

1 BY MS. COMPTON:

2 Q. Approximately?

3 A. About ten.

4 Q. About ten?

5 A. Eight and ten.

6 Q. Are the programs similar in their  
7 methodology with respect to treatment?

8 MR. SMITH: Object to the form, vague.

9 BY MS. COMPTON:

10 Q. Are the -- is Gamblers Anonymous, Al-Anon  
11 and -- or what are the names of the --

12 A. There are multiple 12-step programs. The  
13 12-step programs with which I've been involved in  
14 are Gamblers Anonymous, Narcotics Anonymous,  
15 Al-Anon, which is the sister to Alcoholics  
16 Anonymous, and Nar-Anon.

17 What is similar is that all of those  
18 programs work on 12 steps. There are various kinds  
19 of meetings, open meetings, book studies. Each  
20 program has a sponsor -- I mean, offers you --  
21 encourages you to get a sponsor.

22 Q. What's the first step in all those  
23 programs?

24 A. To admit that you're helpless over your  
25 addiction.

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1 MS. COMPTON: Okay. That's all.

2 FURTHER EXAMINATION

3 BY MR. SMITH:

4 Q. Why were you going to Al-Anon?

5 A. Because there were between two and four  
6 Nar-Anon meetings a week, so you go where the help  
7 is. There's not many Nar-Anon.

8 Q. And I guess what I was trying to get at is  
9 were you going for something other than Jared's  
10 addiction?

11 A. No.

12 Q. So there isn't some other alcoholic that  
13 you were going -- that's in your life that made you  
14 go to Al-Anon?

15 A. I come from a family of addicts and  
16 alcoholics. I started because of Jared.

17 Q. What do you mean you come from a family of  
18 addicts and alcoholics?

19 A. I don't know how to explain. My father was  
20 a compulsive gambler. We weren't as knowledgeable  
21 at the time. I can't tell people that they're  
22 addicts, but I believe I have multiple family  
23 members who have addictions.

24 And I'm an addict. I'm an addict in  
25 recovery, but I'm an addict. It did not start with



1 me.  
2 MR. SMITH: I don't have any further  
3 questions.  
4 MR. MAZZEO: We're done.  
5 THE VIDEOGRAPHER: This concludes the  
6 videotaped deposition of Andrea Awerbach on Friday,  
7 October 24, 2014.  
8 The time is approximately 6:07 p.m. We're  
9 now off the record.

10 - - - - -

11  
12 (Proceedings concluded at 6:07 p.m.)  
13  
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CERTIFICATE OF DEPONENT

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17 \* \* \* \* \*

18 I, ANDREA AWERBACH, deponent herein, do  
19 hereby certify and declare the within and foregoing  
20 transcription to be my deposition in said action;  
21 under penalty of perjury; that I have read,  
22 corrected and do hereby affix my signature to said  
23 deposition.  
24  
25

ANDREA AWERBACH, Deponent

CERTIFICATE OF REPORTER

1 STATE OF NEVADA )  
2 ) SS:  
3 COUNTY OF CLARK )

4 I, Jackie Jennelle, a duly commissioned  
5 Notary Public, Clark County, State of Nevada, do  
6 hereby certify: That I reported the video  
7 deposition of ANDREA AWERBACH, commencing on FRIDAY,  
8 OCTOBER 24, 2014, at 1:30 p.m.

9 That prior to being deposed, the witness  
10 was duly sworn by me to testify to the truth. That  
11 I thereafter transcribed my said shorthand notes  
12 into typewriting and that the typewritten transcript  
13 is a complete, true and accurate transcription of my  
14 said shorthand notes.

15 I further certify that I am not a relative  
16 or employee of counsel, of any of the parties, nor a  
17 relative or employee of the parties involved in said  
18 action, nor a person financially interested in the  
19 action.

20 IN WITNESS WHEREOF, I have set my hand in my  
21 office in the County of Clark, State of Nevada, this  
22 3rd day of November, 2014.

23   
24 JACKIE JENNELLE, RPR, CCR #809  
25

**EXHIBIT 1-D**

**EXHIBIT 1-D**

DISTRICT COURT  
CLARK COUNTY, NEVADA

EMILIA GARCIA, individually, )

Plaintiff, )

vs. )

CASE NO. A637772

DEPT. NO.: XXVII

JARED AWERBACH, individually; )

ANDREA AWERBACH, individually; )

DOES I - X, and ROE )

CORPORATIONS I - X, inclusive, )

Defendants. )

VIDEOTAPED DEPOSITION OF JARED EMMANUEL AWERBACH

Las Vegas, Nevada

Thursday, March 27, 2014

REPORTED BY: PEGGY S. ELIAS, RPR  
Nevada CCR No. 274 - California CSR No. 8671  
JOB NO.: 206073

1 Videotaped deposition of JARED EMMANUEL AWERBACH  
 2 taken at Glen Lerner Injury Attorneys, 4795 South  
 3 Durango Drive, Las Vegas, Nevada, on Thursday,  
 4 March 27, 2014, at 10:08 a.m., before Peggy S. Elias,  
 5 Certified Court Reporter in and for the State of  
 6 Nevada.

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23 Also Present:

24 TERRELL HOLLOWAY, VIDEOGRAPHER

#### 1 INDEX OF EXAMINATION

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12 Exhibit 2 Drivers License Data Three Year 173

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14 Andrea Awerbach's Motion for

Summary Judgment

15 Exhibit 4 Recorded Statement of 181

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17 Exhibit 6 Complaint for Damages, A551677 195

18 Exhibit 7 Xerox Copy of Photograph 206

19 Exhibit 8 Xerox Copy of Photograph 206

20 Exhibit 9 Xerox Copy of Photograph 206

21 Exhibit 10 Drawing 229

22 Exhibit 11 Xerox Copy of Photograph 233

#### 1 INDEX TO EXHIBITS (Cont'd.)

2 EXHIBIT DESCRIPTION PAGE

3 Exhibit 12 Xerox Copy of Photograph 234

4 Exhibit 13 Xerox Copy of Photograph 234

#### 1 VIDEOTAPED DEPOSITION OF JARED EMMANUEL AWERBACH

2 Thursday, March 27, 2014, 10:08 a.m.

3 -oOo-

4 THE VIDEOGRAPHER: This is the beginning of

5 Videotape No. 1 in the deposition of Jared Awerbach in

6 the matter of Garcia versus Awerbach held at Glen

7 Lerner at 4795 South Durango Drive, Las Vegas, Nevada

8 89147, on March 27th, 2014, at 10:08 a.m.

9 The court reporter is Peggy S. Elias. I am

10 Terrell Holloway, the videographer, an employee of

11 Litigation Services, located at 3770 Howard Hughes

12 Parkway, Suite 300, Las Vegas, Nevada 89169. This

13 deposition is being videotaped at all times unless

14 specified to go off the video record.

15 Would all present please identify themselves,

16 beginning with the witness.

17 THE WITNESS: I'm Jared Awerbach.

18 MR. STRASSBURG: Roger Strassburg. I'll be

19 speaking for Mr. Awerbach as his lawyer.

20 MS. COMPTON: Lilly Compton. I'm

21 Mr. Strassburg's paralegal.

22 MR. MAZZEO: Peter Mazzeo for Andrea

23 Awerbach.

24 MR. ESCHWEILER: Corey Eschweiler on behalf

25 of the plaintiff.

Page 6

1 THE VIDEOGRAPHER: Will the court reporter  
2 please swear in the witness.

3 Whereupon,

4 JARED EMMANUEL AWERBACH,  
5 having been first duly sworn to testify to the truth,  
6 the whole truth, and nothing but the truth, was  
7 examined and testified as follows:

8 EXAMINATION

9 BY MR. ESCHWEILER:

10 Q. Can you state your name, and spell it for the  
11 record, please.

12 A. My name is Jared Awerbach, J-a-r-e-d,  
13 A-w-e-r-b-a-c-h.

14 Q. Do you have a middle name?

15 A. Yeah. My name is Jared Emmanuel Awerbach.

16 Q. How do you spell the middle name?

17 A. E-m-m-a-n-u-e-l.

18 Q. Have you ever had your deposition taken  
19 before?

20 A. No, sir.

21 Q. Have you ever been a party to a lawsuit other  
22 than this one?

23 A. No, sir.

24 Q. Have you ever been a witness in a lawsuit?

25 A. No, sir.

Page 7

1 Q. Have you ever been placed under oath and  
2 required to testify before?

3 A. No, sir.

4 Q. Let's go through some of the ground rules,  
5 then, so we can all be on the same page moving forward  
6 today. The oath that you just took is the same oath  
7 that would be given in a court of law. Obviously,  
8 we're not in a court of law, but we're in the informal  
9 setting in my office. The oath, however, still carries  
10 with it the penalty of perjury.

11 Do you understand that?

12 A. Yes, sir.

13 Q. The court reporter is -- is taking down my  
14 questions. She's also going to be taking down your  
15 answers. At the end of the deposition, she's going to  
16 transcribe those into a booklet, and you'll be allowed  
17 to review the booklet prior to trial.

18 I want to caution you, however, if you make  
19 any changes to your responses in that booklet, I will  
20 be able to comment on those changes at the time of  
21 trial, and it may impact your credibility.

22 Do you understand that?

23 A. Yes, sir.

24 Q. Also, in normal conversation we may use  
25 nonverbal signals or nods of the heads or uh-huhs. The

Page 8

1 court reporter can't really take those down; so I'm  
2 going to ask you to verbally respond to each of my  
3 questions.

4 Is that fair?

5 A. Understood.

6 Q. Also, in order to make sure the record is  
7 clear, I'm going to ask that you allow me to finish my  
8 question before you begin your answer, and I'll allow  
9 you the same courtesy to finish your answer before I  
10 start by saying -- start my next question so that we're  
11 not talking over each other to maintain the consistency  
12 of the record.

13 A. Sounds good.

14 Q. Today is not an endurance contest. I don't  
15 imagine that this will take more than two or three  
16 hours, but if you need to take a break for any reason,  
17 please let me know, and we can take a five- or  
18 ten-minute break; bathroom, drink, whatever you need.  
19 I would ask, though, that if there's a question  
20 pending, you respond to the question before we break.

21 Is that fair?

22 A. Yes, sir.

23 Q. Last, if you don't understand any of my  
24 questions, I'm going to ask that you tell me what you  
25 don't understand. Otherwise I'm going to assume that

Page 9

1 you understood all of the questions that I'm asking you  
2 today if you respond.

3 Is that fair?

4 A. Yes, sir. Thank you.

5 Q. Do you have any questions about the process?

6 A. Not at this moment.

7 Q. Do you understand the ground rules?

8 A. Yes, sir.

9 Q. Is there any reason why we can't go forward  
10 today?

11 A. No, sir.

12 Q. Is there any reason that you cannot provide  
13 true and honest answers today?

14 A. No, sir.

15 Q. Are you on any medication that would prevent  
16 you from responding truthfully to any questions?

17 A. Not -- no, sir. I'm on two medications but  
18 not any medications that would alter my conscious.

19 Q. And not your ability to tell the truth?

20 A. No, sir.

21 Q. Does it -- does the medication you're on  
22 affect your memory or your recall?

23 A. No, sir.

24 Q. Okay. Have you consumed any alcohol in the  
25 last 24 hours that would impede your ability to tell



Page 10

1 the truth?  
 2 A. No, sir.  
 3 Q. Any illicit drugs that would impede your  
 4 ability to tell the truth?  
 5 A. No, sir.  
 6 Q. Thank you.  
 7 What did you do to prepare for the deposition  
 8 today?  
 9 A. Reviewed the interrogatories. Reviewed the  
 10 paperwork that my attorney sent to me.  
 11 Q. Well, besides the interrogatories do you have  
 12 a specific recollection of any -- reviewing any other  
 13 documents?  
 14 A. No, sir.  
 15 Q. Did you speak with anybody about the  
 16 deposition today?  
 17 A. Just my attorneys.  
 18 Q. And when did you meet with them?  
 19 A. Yesterday.  
 20 Q. How long was the meeting?  
 21 A. An hour and a half.  
 22 Q. Where did you meet at?  
 23 A. My house.  
 24 Q. They came to your house?  
 25 A. Yes, sir.

Page 11

1 Q. Was anybody else present besides your  
 2 attorneys?  
 3 A. My mother was.  
 4 Q. Your mother was present?  
 5 A. She was in the home.  
 6 Q. Well, was she participating in the meeting?  
 7 A. No, sir.  
 8 Q. Well, where was she?  
 9 A. In her room.  
 10 Q. Was the door closed?  
 11 A. No, sir.  
 12 Q. Could she hear what you guys were talking  
 13 about?  
 14 A. No, sir.  
 15 Q. How do you know?  
 16 A. She was occupied.  
 17 MR. MAZZEO: Speculation.  
 18 THE WITNESS: Huh?  
 19 BY MR. ESCHWEILER:  
 20 Q. You can answer.  
 21 A. She was occupied.  
 22 Q. Well, do you know what she was doing?  
 23 A. Playing with her tablet.  
 24 Q. Okay. Well, one other thing I didn't  
 25 mention, there may be objections interposed by your

Page 12

1 attorney or your mother's attorney throughout the  
 2 process. Unless they instruct you not to answer, you  
 3 will be required to answer the question.  
 4 A. Understood.  
 5 Q. Okay. Thank you.  
 6 Did you review any of your mom's responses to  
 7 any documents that she's filed in this case?  
 8 A. No, sir.  
 9 Q. So the interrogatory responses that you  
 10 completed and signed were the only thing that you  
 11 reviewed in preparation for the deposition?  
 12 A. Yes, sir.  
 13 MR. STRASSBURG: He reviewed his statement.  
 14 MR. ESCHWEILER: His recorded statement?  
 15 MR. STRASSBURG: The transcript.  
 16 MR. ESCHWEILER: Of the recorded statement?  
 17 MR. STRASSBURG: Yes, sir.  
 18 THE VIDEOGRAPHER: His mic is...  
 19 MR. ESCHWEILER: Can we stop it? We'll go  
 20 off for a second.  
 21 THE VIDEOGRAPHER: Off the record at 10:15.  
 22 (Discussion off the record.)  
 23 THE VIDEOGRAPHER: Back on the video record  
 24 at 10:18.  
 25 ///

Page 13

1 BY MR. ESCHWEILER:  
 2 Q. Prior to the break, you were talking about  
 3 documents that you had reviewed in preparation for the  
 4 deposition, one of which was your interrogatory  
 5 responses, and your attorney indicated that you had  
 6 also reviewed the transcript of your recorded  
 7 statement.  
 8 A. Yes, sir.  
 9 Q. Did that refresh your recollection about the  
 10 events that transpired on January 2, 2011?  
 11 A. Yes, sir.  
 12 Q. Any other documents that you recall?  
 13 A. Should I tell him about going back to the  
 14 scene or...  
 15 Q. I'm just asking about documents right now.  
 16 A. We -- no. No, sir.  
 17 Q. Did you do anything else to prepare for the  
 18 deposition?  
 19 A. Well, what my attorney did was take me back  
 20 to the scene and kind of played out for him step by  
 21 step.  
 22 Q. How long were you at the scene of the  
 23 accident?  
 24 A. 30 minutes.  
 25 Q. Okay. And what exactly did you do to play it

Page 14

1 out step by step?  
 2 A. We took --  
 3 MR. MAZZEO: Objection, attorney/client  
 4 privilege.  
 5 MR. STRASSBURG: You can answer.  
 6 BY MR. ESCHWEILER:  
 7 Q. Go ahead.  
 8 A. We took pictures of -- reviewing the traffic  
 9 in the area and reviewing the -- where the plaintiff  
 10 was and where I was, the distance, and the -- pretty  
 11 much how the accident happened.  
 12 Q. Based upon your review of the recorded  
 13 statement or your visit to the site within the last  
 14 week, did it change your recollection of the events  
 15 that transpired on January 2nd, 2011?  
 16 A. No, sir.  
 17 Q. Did you talk to your mom about the deposition  
 18 today?  
 19 A. Just the fact that we had a deposition.  
 20 Q. You didn't talk to her about the deposition  
 21 that she gave in this matter?  
 22 A. No, sir.  
 23 Q. Did you review the transcript of the  
 24 deposition she gave in this matter?  
 25 A. No, sir.

Page 15

1 Q. You had no discussion with her about the  
 2 substance of your testimony today?  
 3 A. No, sir.  
 4 Q. When was the last time you talked to your  
 5 mom?  
 6 MR. STRASSBURG: Objection. About the case?  
 7 MR. ESCHWEILER: No, at any time.  
 8 THE WITNESS: Upon being dropped off at this  
 9 location.  
 10 BY MR. ESCHWEILER:  
 11 Q. She drove you here today?  
 12 A. Yes, sir.  
 13 Q. Did your mom tell you anything about the  
 14 questions that she was asked?  
 15 A. No, sir.  
 16 Q. I want to talk a little bit about your  
 17 background --  
 18 A. Yes, sir.  
 19 Q. -- before we get into the substance of the  
 20 questions.  
 21 Did you graduate from high school?  
 22 A. Yes, sir.  
 23 Q. What school?  
 24 A. Desert Rose Adult High School.  
 25 Q. Where's that located?

Page 16

1 A. On Brooks Street.  
 2 Q. What's the cross street?  
 3 A. Brooks and Revere.  
 4 Q. And you said it's an adult high school?  
 5 A. Yes, sir.  
 6 Q. Well, what's that mean?  
 7 A. Adult education, like credit retrieval.  
 8 Q. Well, why did you go to that specific high  
 9 school?  
 10 A. I had had problems at other schools as a  
 11 juvenile, and I didn't want to return to a normal  
 12 school, in a normal school environment, meaning peer  
 13 pressure, being influenced by my peers and negative  
 14 behavior. I kind of wanted to be serious about school.  
 15 Q. Well, what problems?  
 16 A. Just delinquent behavior.  
 17 Q. Well, what do you mean by "delinquent  
 18 behavior"?  
 19 A. Like -- say like running around and smoking  
 20 weed, ditching class, not taking school serious.  
 21 Q. Was that a problem for you when you were a  
 22 juvenile?  
 23 A. Yes, sir.  
 24 Q. What age did you start smoking weed?  
 25 A. Like twelve.

Page 17

1 Q. Twelve?  
 2 A. Yes, sir.  
 3 Q. Would you smoke weed at the house where you  
 4 lived with your mom?  
 5 A. No, sir.  
 6 Q. Where would you smoke weed?  
 7 A. Outside.  
 8 Q. Outside the house where you lived?  
 9 A. Outside the house or at -- when I was  
 10 supposed to be at school.  
 11 Q. Did you do any other drugs besides weed?  
 12 A. At that time, no.  
 13 Q. And you said you had a problem with missing  
 14 school, as well?  
 15 A. Yes, sir.  
 16 Q. Were you ever suspended or expelled from --  
 17 from any school for missing class?  
 18 A. Not for missing class, no.  
 19 Q. Were you ever suspended or expelled from  
 20 school for any reason?  
 21 A. Yes, sir.  
 22 Q. What school?  
 23 A. Green Valley High School.  
 24 Q. What was the reason for the expulsion?  
 25 A. Possession of marijuana.

Page 18

Page 20

1 Q. What year was that?  
2 A. I don't remember.  
3 Q. Do you know what year of school you were?  
4 A. Ninth grade.  
5 Q. Ninth grade.  
6 When you were expelled for possession of  
7 marijuana, did they hold a hearing or any type of  
8 proceeding before they expelled you?  
9 A. No, sir.  
10 Q. Did they tell your mom?  
11 A. Yes, sir.  
12 Q. So your mom knew that you had possession of  
13 marijuana at Green Valley High School?  
14 A. Yes, sir.  
15 Q. Did your mom know that you were smoking weed  
16 since you were twelve?  
17 A. Yes, sir.  
18 Q. How did she know that?  
19 A. From the multiple times that she caught me.  
20 Q. How would she catch you?  
21 A. She searched my room, drug tests.  
22 Q. Where would you hide your weed?  
23 A. Different places in the house.  
24 Q. And your mom drug tested you or a drug test  
25 at school or what?

Page 19

1 A. My mother drug tested me.  
2 Q. How often did your mom drug test you in the  
3 ninth grade?  
4 A. Pretty often.  
5 Q. Well, once a week, once a month?  
6 A. Yeah, it was like a once-a-week thing.  
7 Q. How often did you fail those tests?  
8 A. I don't know. A lot.  
9 Q. A lot?  
10 A. Yes, sir.  
11 Q. More than 50 percent of the time?  
12 MR. MAZZEO: I'm going to object to this  
13 whole line of questioning. It's not -- will not  
14 reasonably lead to the admissibility of evidence.  
15 BY MR. ESCHWEILER:  
16 Q. You can answer.  
17 A. (No audible response.)  
18 MR. STRASSBURG: You can go ahead.  
19 BY MR. ESCHWEILER:  
20 Q. You can answer.  
21 A. Yes, sir.  
22 Q. More than 50 percent of the time you failed?  
23 A. Yes, sir.  
24 Q. More than 75 percent of the time?  
25 A. Yes, sir.

1 Q. Was it after that expulsion that you ended up  
2 going to Desert Rose Adult High School?  
3 A. No, sir.  
4 Q. Well, where did you go after -- after you  
5 were expelled from Green Valley?  
6 A. I was in the juvenile drug court program, and  
7 I relapsed and I failed, and I was sent to Salt Lake  
8 City, Utah, and to a therapy group home called Odyssey  
9 House, and I was able to get myself together there.  
10 And it was upon return to Las Vegas that I  
11 decided I did not want to go back to the normal school  
12 environment. So I waited until I was seventeen and  
13 enrolled myself in Desert Rose.  
14 Q. Well, let's back up.  
15 When were you placed in the juvenile drug  
16 court system?  
17 A. In January.  
18 Q. Do you know of what year?  
19 A. No, sir, I don't. I don't remember what  
20 year. Maybe it was --  
21 Q. Was it --  
22 A. -- in 2008 or 2009.  
23 Q. I apologize for interrupting you.  
24 A. 2007 maybe. That's all right.  
25 Q. Well, was your placement in the juvenile drug

Page 21

1 court system as a result of your expulsion from Green  
2 Valley High School?  
3 A. No, sir.  
4 Q. Okay. What was the reason for the placement  
5 in the juvenile drug court system?  
6 A. Auto theft and possession of marijuana  
7 repeatedly.  
8 Q. What do you mean, "repeatedly"? You were  
9 busted more than once for auto theft?  
10 A. Yes, sir.  
11 Q. How many times?  
12 A. Three or four.  
13 Q. In Las Vegas?  
14 A. Yes, sir.  
15 MR. STRASSBURG: As a juvenile?  
16 THE WITNESS: As a juvenile, yes, sir.  
17 BY MR. ESCHWEILER:  
18 Q. Were you convicted of those offenses?  
19 A. Yes, sir.  
20 Q. No, sir; is that what you said?  
21 A. Yes, sir.  
22 Q. Yes, okay.  
23 Yes, you were convicted?  
24 A. Yes, sir.  
25 And part of the reason they placed me in the

Page 22

Page 24

1 juvenile drug court program was because Judge Roy asked  
2 me -- because I had marijuana on my person every time I  
3 was arrested for auto theft, and Judge Roy asked me if  
4 I was stealing any cars or just breaking into cars and  
5 getting what I could to scavage to supply my habit, and  
6 I told him it was to supply my habit, and he was kind  
7 enough to place me in the drug court program.

8 Q. And when you say supply your habit, your  
9 habit at that time was marijuana?

10 A. Yes, sir.

11 Q. Is it fair to say you've been addicted to  
12 marijuana since you were twelve years old?

13 A. No, sir.

14 MR. STRASSBURG: Object to the form.

15 BY MR. ESCHWEILER:

16 Q. Well, what age would you say that you became  
17 addicted to marijuana?

18 MR. STRASSBURG: Object to the form,  
19 misconstrues his testimony.

20 Go ahead. Put it in your own words.

21 THE WITNESS: I'm not addicted to marijuana,  
22 sir.

23 BY MR. ESCHWEILER:

24 Q. You're not?

25 A. No, sir.

Page 23

1 Q. You just had an admitted problem with  
2 marijuana?

3 A. Yes, sir.

4 Q. And what was your problem with marijuana if  
5 you weren't addicted?

6 A. I was attracted to the lifestyle that it  
7 brought.

8 Q. Well, what do you mean, "the lifestyle"?

9 A. Girls like you, everybody wants to be your  
10 friend, a little bit of extra cash circulates through  
11 your hands.

12 Q. Well, were you also selling weed back then?

13 A. Yes, sir.

14 Q. Is that what you mean by the extra cash?

15 A. Yes, sir.

16 Q. At what age did you start selling marijuana?

17 A. Thirteen.

18 Q. Thirteen?

19 A. Yes, sir.

20 Q. Were you selling marijuana at school?

21 A. No, sir.

22 Q. Where were you selling it?

23 A. Outside of school.

24 Q. Were you selling it at the house where you  
25 lived with your mom?

1 A. No, sir.

2 Q. When you say "outside of school," what do you  
3 mean?

4 A. Before school and after school.

5 Q. So on the school premises, just not in  
6 school?

7 A. No, sir.

8 Q. Well, where?

9 A. Maybe across the street from the school.

10 Q. Okay. Did you ever have friends over to the  
11 house where you sold them weed?

12 A. I had friends at the house, but I never sold  
13 weed from my house at that time.

14 Q. Does your mom know that you've been dealing  
15 weed since you were thirteen?

16 MR. MAZZEO: Objection, speculation, as to  
17 what the mom -- what he knows the mom knows.

18 BY MR. ESCHWEILER:

19 Q. You can answer.

20 MR. STRASSBURG: If you know what's in her  
21 mind.

22 THE WITNESS: Yes, sir.

23 BY MR. ESCHWEILER:

24 Q. What's that?

25 A. Yes, sir.

Page 25

1 Q. And how do you know your mom knows that  
2 you've been selling weed since you were thirteen?

3 A. My juvenile record.

4 Q. Did your mom ever attend any of the court  
5 proceedings with you?

6 A. Yes, sir.

7 Q. So she understood the charges that were  
8 against you --

9 MR. MAZZEO: Objection -- sorry.

10 BY MR. ESCHWEILER:

11 Q. -- back when you were thirteen?

12 MR. MAZZEO: Objection, speculation.

13 BY MR. ESCHWEILER:

14 Q. You can answer.

15 MR. STRASSBURG: If you understand and know  
16 what's in her mind.

17 BY MR. ESCHWEILER:

18 Q. That's not what I asked. I asked you if she  
19 attended with you.

20 A. Yes, sir.

21 Q. And were the charges against you discussed at  
22 those proceedings?

23 A. Yes, sir.

24 And on November 10th, 2005, I was struck with  
25 brass knuckles at my middle school, and since then it

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1 was kind of a wild ride; so my mother was very involved  
2 with my life and what was going on.

3 Q. Well, let's talk about the November 10th,  
4 2005, event. Tell me what happened.

5 A. It happened after school. There was a gang  
6 riot, and some Reptables assaulted me.

7 Q. Some what?

8 A. Reptables.

9 Q. Well, what's that?

10 A. Opposite gang members.

11 Q. Did you have any involvement with these  
12 individuals prior to the disturbance?

13 A. No, sir.

14 Q. And where did -- where did the fight take  
15 place?

16 A. Sahara and Maryland in the A-Mall.

17 Q. Villa Pizza?

18 A. Yes, sir.

19 Q. Well, what led to the fight in the parking  
20 lot? Was it in the parking lot? I'm sorry.

21 A. Yeah. Yes, sir. The day before I was at  
22 orchestra practice, and my friends had got into an  
23 altercation with these boys, and school police stopped  
24 it, and the school police found weapons on the -- on  
25 the guys, and so they all faced expulsion, they all

1 Q. And what was the course of treatment for that  
2 injury?

3 A. I saw Dr. Yepremyan, and we did a sutureless  
4 procedure, placing a gas bubble in my eye, and I had to  
5 sit at a 90-degree angle for 23 and a half hours that  
6 day so that gas bubble could put the pressure on the  
7 wound and close the wound. We weren't able to save my  
8 sight; so I lost sight in my right eye.

9 Q. So you had a permanent injury from --

10 A. Yes.

11 Q. -- from the assault?

12 A. Yes, sir.

13 I'm diagnosed post-traumatic stress syndrome,  
14 in remission, since then.

15 Q. That's the emotional injury that you've been  
16 diagnosed with from that incident?

17 A. Yes, sir.

18 Q. Do you -- did you -- well, strike that.

19 When did you see the eye specialist after the  
20 assault?

21 A. Immediately.

22 MR. STRASSBURG: You mean Yepremyan?

23 MR. ESCHWEILER: Yes. I couldn't pronounce  
24 his name; so...

25 MR. STRASSBURG: Okay. That was the eye

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Page 29

1 faced charges, and they weren't so happy about that; so  
2 they were waiting for us after school the next day.

3 Q. And how many of them were there?

4 A. Nine.

5 Q. How many of you and your friends were there?

6 A. I was -- I was alone at the time of the  
7 assault.

8 Q. You were by yourself?

9 A. Yes, sir.

10 Q. And all -- all nine of them participated  
11 in --

12 A. Yes, sir.

13 Q. -- the assault?

14 A. Yes, sir.

15 Q. Did the police come?

16 A. Yes, sir.

17 I was taken in an ambulance to the hospital.

18 Q. Well, what injuries did you suffer as a  
19 result of the assault?

20 A. Traumatic macular hole in my retina.

21 Q. So you had a bad eye injury?

22 A. Yes, sir.

23 Q. What did they do or what did they diagnose at  
24 the emergency room?

25 A. Traumatic macular hole in my retina.

1 specialist?

2 THE WITNESS: Yes, sir.

3 MR. STRASSBURG: Thank you.

4 BY MR. ESCHWEILER:

5 Q. Yepremyan?

6 A. Yes, sir.

7 Q. Where is he located?

8 A. I don't -- I don't know. I don't remember.

9 Q. You don't remember where his office is?

10 A. No, sir.

11 Q. And was the surgery that he performed  
12 immediate?

13 A. I would say yes. We had time to contemplate  
14 the surgery and see if it was what we wanted to do and  
15 get my eyes checked out to figure out, you know, what  
16 the damage was done because we pressed charges on the  
17 boy who assaulted me; so it was needed in the case.

18 Q. What were the options if you didn't have  
19 surgery?

20 A. Either close the hole or don't close the  
21 hole.

22 Q. And what were the possible consequences of  
23 that?

24 A. If I didn't close the hole, retina  
25 detachment. If I closed the hole, I got to keep my



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1 retina.  
2 Q. And if the retina detached, possible  
3 blindness in that eye?  
4 A. Complete blindness.  
5 Q. And is it your left or right eye?  
6 A. My right eye, sir.  
7 Q. Was the procedure by Yepremyan successful?  
8 A. Very.  
9 Q. And did it -- did it allow -- did it restore  
10 your vision?  
11 A. Partially. I'm still -- I still have  
12 distorted vision in my eye.  
13 Q. Is it just distorted vision in the right eye?  
14 A. Yes, sir.  
15 Q. Are you still treating for that -- for that  
16 injury?  
17 A. Constantly.  
18 Q. And what's the course of treatment since the  
19 time of the first surgery with Yepremyan?  
20 A. I go to an optometrist, and I go through a  
21 procedure where they look at my retina, and they assess  
22 my eyes in an eye exam, and I wear glasses.  
23 Q. When you say your vision is impaired or you  
24 have a permanent injury, what exactly is the injury?  
25 A. A scar on my retina.

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1 Q. And how does that affect your vision?  
2 A. No peripheral vision in my right eye,  
3 complete peripheral vision, and my left eye has to  
4 compensate for what my right eye lacks.  
5 Q. Any other effects physically of the permanent  
6 right eye injury?  
7 A. No, sir.  
8 Q. Do you have -- I know you've talked about the  
9 peripheral vision.  
10 Do you have problems seeing near -- near or  
11 far --  
12 A. Not at all.  
13 Q. -- in that eye?  
14 A. Not at all.  
15 Q. So it's just the peripheral vision that's  
16 affected?  
17 A. Yeah, partial peripheral vision. It makes  
18 your eyes work together; so, as a team, you're --  
19 they're actually a unit. So what my right eye lacks,  
20 my left eye compensates. They balance each other out.  
21 Q. And does the -- the corrective eyewear that  
22 you wear, does that help with the peripheral vision, or  
23 is that intended to help with just your normal vision?  
24 A. It's intended to help with all my vision, and  
25 it also protects my eyes.

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1 Q. Do you have a deficiency rating in your right  
2 eye as far as sight?  
3 A. No, sir.  
4 Q. So you're at 20/20 in your right eye?  
5 A. I think it's -- I don't know my last eye  
6 score, but with the glasses I'm able to see. Without  
7 them it's blurry.  
8 Q. In both eyes or just your right eye?  
9 A. Both.  
10 Q. Both eyes.  
11 So your lenses are protective, but they also  
12 are corrective, as well?  
13 A. Yes, sir.  
14 Q. Did you wear corrective glasses before the  
15 injury?  
16 A. No, sir.  
17 Q. And when was the last time you saw the  
18 optometrist?  
19 A. Two or three years ago.  
20 Q. What did he do for you at that visit?  
21 A. Provided a new prescription.  
22 Q. Do you recall what the prescription was?  
23 A. No, sir.  
24 Q. Was your mom aware of the permanent injury to  
25 your right eye?

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1 A. Yes, sir.  
2 Q. And how do you know that?  
3 A. It was a family event.  
4 Q. But did she go with you to, let's say, the  
5 emergency room the day that --  
6 A. Yes, sir.  
7 Q. -- you were injured?  
8 A. Yes, sir.  
9 Q. So she heard the diagnosis from the -- from  
10 the doctor at the emergency room?  
11 A. She made sure to get the diagnosis.  
12 Q. And --  
13 (Reporter interrupted.)  
14 THE WITNESS: Yes, sir.  
15 BY MR. ESCHWEILER:  
16 Q. She made sure to get the diagnosis, is that  
17 what you said?  
18 A. Yes, sir.  
19 Q. And did she also go with you with your -- on  
20 your visits to Yepremyan?  
21 A. Yes, sir.  
22 Q. So she knew about the significance of the eye  
23 injury?  
24 A. Yes, sir.  
25 MR. MAZZEO: Objection, speculation.

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Page 36

1 BY MR. ESCHWEILER:

2 Q. Did she participate with you in the decision  
3 on whether or not to get that surgery?

4 A. Yes, sir.

5 Q. Did she also go with you to follow-ups after  
6 the surgery?

7 A. Yes, sir.

8 Q. Do you -- do you wear your glasses around the  
9 house? Do you need them to, say, watch TV?

10 A. Yes, sir.

11 Q. And if you weren't wearing your glasses, how  
12 far -- what would be the range of your sight?

13 A. Pretty much the same.

14 Q. What do you mean, "the same"?

15 A. I'd still be able to see everything that I  
16 see with my glasses on. It just would be blurry.

17 Q. It would be blurry?

18 A. Yes, sir.

19 Q. Okay. So, in other words, if -- let's say  
20 we're sitting on the couch watching a game. The --  
21 maybe the ticker on the bottom would be blurry that you  
22 wouldn't be able to see, but you'd be able to see the  
23 guys playing basketball or something like that?

24 A. Yes, sir. I'd have to squint.

25 Q. Okay. Have you ever been told that you're

1 Q. Did you participate in the investigation?

2 A. No, sir.

3 Q. Were you allowed to give a statement about  
4 what happened to your school?

5 A. No, sir.

6 Q. So this was just the school investigated and  
7 came to the conclusion that you were involved with  
8 the --

9 A. Based on the statements given by my peers at  
10 the scene.

11 Q. Okay. What school were you at at the time?

12 A. John C. Fremont Middle School.

13 Q. What grade was that?

14 A. Eighth.

15 Q. Other than the eye injury, did you suffer any  
16 other physical injuries?

17 A. No. No, sir.

18 Q. And I believe you said that you suffered  
19 emotional injury in the form of PTSD?

20 A. Yes, sir.

21 Q. That's now resolved?

22 A. It's in remission.

23 Q. In remission?

24 A. Yes, sir.

25 Q. Did you treat for PTSD after the incident?

Page 35

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1 nearsighted?

2 A. No, sir.

3 Q. Farsighted?

4 A. No, sir.

5 Q. What happened at school as a result of this  
6 incident?

7 A. A police investigation and was -- faced  
8 expulsion for gang enhancement.

9 Q. The individuals who assaulted you were  
10 expelled?

11 A. We all were.

12 Q. You were -- you were expelled, as well?

13 A. Yes, sir.

14 Q. And the reason for expulsion was gang  
15 involvement?

16 A. Gang -- gang enhancement.

17 Q. And what does that mean?

18 A. It's a -- it's a charge.

19 Q. Were you charged criminally with the police  
20 as a result of this accident?

21 A. No, sir. They just found me guilty of gang  
22 enhancement and faced expulsion.

23 Q. And what was the basis for you being charged  
24 in -- of gang enhancement?

25 A. The conclusion to the investigation.

1 A. Constantly.

2 Q. Who did you treat with?

3 A. Pam Goldberg, Bridge Counseling, different  
4 counselors, different therapists, different  
5 psychiatrists.

6 Q. How long did you treat for the PTSD?

7 A. For years.

8 Q. Years?

9 A. Yes, sir.

10 Q. Are you still treating?

11 A. Yes, sir.

12 Q. When was the last time you saw anybody  
13 regarding the PTSD?

14 A. March 18th.

15 Q. So two weeks, ten days ago.

16 A. Yes, sir.

17 Q. Who did you see?

18 A. Dr. Bhushan.

19 Q. Bhushan?

20 A. Yes, sir.

21 Q. How do you spell that?

22 A. I don't know. Sorry.

23 Q. Well, do you know where he's located?

24 A. At Rawson-Neal Psychiatric Hospital.

25 Q. When you were expelled from John Fremont

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1 Middle School, what happened next? Where did you go to  
2 school?

3 A. Jerome D. Mack.

4 MR. STRASSBURG: I'm sorry. I couldn't  
5 hear -- say again.

6 THE WITNESS: Jerome D. Mack.

7 MR. STRASSBURG: Thank you.

8 BY MR. ESCHWEILER:

9 Q. Well, were you out of school for a period of  
10 time because of the expulsion, or how -- how did that  
11 work?

12 A. Upon the healing of the surgery and the  
13 healing of my eye, the doctor said that he didn't want  
14 me in school if there was retaliation because my eye  
15 was fragile. If there was retaliation, the surgery  
16 would have been ineffective. I was out of school for  
17 the conclusion of the investigation, as well.

18 Q. How long was the surgery and the recuperation  
19 period after the surgery?

20 A. Two, three months.

21 Q. And this happened in November?

22 A. November 10th, 2005.

23 Q. So you were basically out of school until  
24 after the Christmas break?

25 A. Yes, sir.

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1 Q. And then was the investigation by the school  
2 completed by the time that you had recuperated from  
3 your surgery?

4 A. No, sir.

5 Q. When was the investigation completed?

6 A. A few weeks after.

7 Q. And at that point you were expelled?

8 A. Yes, sir.

9 Q. Well, was there any gap in time before you  
10 enrolled at Jerome D. Mack?

11 A. No, sir.

12 Q. Did Jerome D. Mack have to make any special  
13 accommodations for you because of your eye injury?

14 A. I received an IEP.

15 Q. What's that?

16 A. It's for special education, for children with  
17 needs. I'm not sure what IEP stands for, but it's an  
18 education plan and accommodations like Jared needs to  
19 sit in the front of the room, I can use magnifying  
20 glasses to read, and just my teachers were aware of my  
21 condition. Like schoolwork, homework I would get  
22 longer days and stuff to complete. It's an education  
23 program.

24 Q. And does this -- was this based on like a  
25 meeting you had with the school prior to enrollment?

1 A. My mother is an autism teacher.

2 Q. Okay.

3 A. So she knew I needed it.

4 Q. But is the accommodation and the plan for  
5 your accommodation completed with a meeting with the  
6 school so that --

7 A. Oh, yes. Yes, sir.

8 Q. And did you participate in that meeting?

9 A. I was there, yeah.

10 Q. Well, was your mom there, too?

11 A. Yes, sir.

12 Q. So you -- you had accommodations for  
13 basically your vision. You needed to sit at the front  
14 of the class. You needed a magnifying glass to do work  
15 that was at your desk.

16 A. Yeah.

17 Q. Any other accommodations?

18 A. I can -- I can take a couple extra days on my  
19 homework. I would get extra work if I missed school.  
20 It's an education -- it's an educational program.

21 Q. Was it -- was it helpful in completing your  
22 schoolwork?

23 A. Yes, sir.

24 Q. When you went to Desert Rose Adult High  
25 School, did they make similar accommodations for you?

1 A. No, sir.

2 Q. Well, why not?

3 A. That was years after the assault. I had  
4 already trained myself academically and had already  
5 become accustomed to the damage that was done.

6 Q. Well, what do you mean by the phrase trained  
7 yourself academically?

8 A. Like I got used to my eye being messed up and  
9 being serious about school at that time, and so things  
10 that were in the IEP were no longer needed, such as a  
11 magnifying glass, sitting at the front of the room,  
12 extra time on my homework, things like that.

13 Q. And you said this -- when you got to Desert  
14 Rose Adult High School, you were serious about school?

15 A. Yes, sir.

16 Q. Does that mean that you were no longer  
17 smoking weed?

18 A. Yes, sir.

19 Q. Not dealing weed anymore?

20 A. Yes, sir.

21 Q. And what year did you graduate?

22 A. 2010.

23 Q. What was your GPA when you graduated?

24 A. I think it was a 3.4.

25 Q. Did you take the SIT or the SAT?

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1 A. I took the proficiencies twice. I passed  
2 them on my first time both times. I took them once in  
3 Utah, passed them, and I took them once when I returned  
4 here and passed them.

5 Q. And what's the proficiency exam?

6 A. The -- like the SATs for high schoolers.  
7 The -- basically, where every student, in order to  
8 graduate, needs to pass their proficiencies to receive  
9 a diploma.

10 Q. Did you want to go to college?

11 A. Yes, sir.

12 Q. Okay. And did you actually go to college?

13 A. No, sir.

14 Q. Why not?

15 A. I had a baby.

16 Q. What year did you have your baby?

17 A. 2010.

18 Q. What's your baby's name?

19 A. Khaliyah Maii.

20 Q. How do you spell "Khaliyah"?

21 A. K-h-a-l-i-y-a-h, M-a-i-i. I have two  
22 children.

23 Q. What's your other child's name?

24 A. Mecca.

25 Q. How do you spell that?

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1 A. M-e-c-c-a.

2 Q. Last name Awerbach?

3 A. Howard-Reed.

4 Q. Howard-Reed?

5 A. Yes, sir.

6 Khaliyah has my last name.

7 Q. How do you spell "Howard-Reed"?

8 A. H-o-w-a-r-d hyphen R-e-e-d.

9 Q. Same moms?

10 A. Yes, sir.

11 Q. And what's the mother's name?

12 A. Tikiera Howard.

13 Q. How do you spell "Tikiera"?

14 A. Tikiera Howard-Reed or -- she's married  
15 now -- Tikiera White. T-i-k-i-e-r-a Howard-Reed.

16 Q. Do you have contact information for her?

17 A. No, sir.

18 Q. You don't have her phone number?

19 A. I don't. It's not in my mind.

20 Q. Do you have it in a phone?

21 A. Yes, sir, in my mother's phone.

22 I try to limit my contact with her.

23 Q. Well, why is that?

24 A. Given our history.

25 Q. What do you mean, your history?

1 A. We have two children together, and we're not  
2 always good for each other, and she's married now.

3 Q. When you say "we're not always good for each  
4 other," what do you mean?

5 A. We get consumed with each other.

6 Q. You -- pardon?

7 A. We get consumed with each other. She's  
8 married and has a life; so sexual involvement is  
9 infidelity, and it hinders her, it hinders me, hinders  
10 both of us.

11 Q. Was Tikiera someone that you consumed  
12 marijuana with?

13 A. No.

14 Q. You never smoked weed with her?

15 A. No. She doesn't smoke.

16 Q. How do you communicate with regard to your  
17 children?

18 A. Through my mom's phone. My mom is the third  
19 party.

20 Q. So your mom texts to her?

21 A. No, I text her.

22 Q. Just from her phone?

23 A. Yeah.

24 We're very cautious of our conversation  
25 because her husband has caught us together before, and

1 my mom's not always happy with her indulging in me  
2 while she's married. I've known her since I was  
3 fourteen.

4 Q. Well, what do you mean the husband's caught  
5 you guys together before? So you -- she's had an  
6 affair, while married, with you?

7 A. With him.

8 Q. Right, but the affair was with you?

9 A. Yes. I mean, engaged in sexual activity.

10 MR. MAZZEO: Objection to this whole line of  
11 questioning. It won't reasonably lead to the discovery  
12 of admissible evidence.

13 MR. ESCHWEILER: Objection noted.

14 BY MR. ESCHWEILER:

15 Q. When you were at Desert Rose Adult School,  
16 did they have outside activities that you could  
17 participate in?

18 A. No, sir.

19 Q. And you said the birth of the child was the  
20 reason while -- why you couldn't go to college?

21 A. Yes, sir.

22 Q. And why did that prevent you from going to  
23 college?

24 A. I decided to begin a career as an ABA tutor,  
25 applied behavior analysis. I decided to get a job

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1 instead of going to college and provide for my family.  
 2 Q. Were you and Tikiera together at the time?  
 3 A. Yes, sir.  
 4 Q. How long were you together?  
 5 A. Two years.  
 6 Q. So from 2010 to, say, 2012?  
 7 A. Say 2010 to, yeah, 2012.  
 8 Q. I apologize if I asked.  
 9 When was Mecca born?  
 10 A. February 21st, 2012.  
 11 Q. So that was at kind of the tail end of the  
 12 relationship?  
 13 A. We had already separated before she was born.  
 14 Q. And you talked about getting a job as an ABA  
 15 tutor?  
 16 A. Yes, sir.  
 17 Q. Where was the job at?  
 18 A. In-home tutoring, different locations,  
 19 applied behavior analysis for autistic children,  
 20 one-on-one trials, and I also worked at -- for a  
 21 company called Bartech.  
 22 Q. How do you spell that?  
 23 A. B-a-r-t-e-c-h.  
 24 Q. And what did they do?  
 25 A. Installation and modification of the mini

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1 bars in the Cosmopolitan Casino.  
 2 Q. So construction?  
 3 A. Yes, sir.  
 4 Q. Let's start with the in-home tutoring for  
 5 autistic children.  
 6 Did you have to have any specialized training  
 7 to do that?  
 8 A. The companies that provide the funding for  
 9 the children hire tutors, and they train you, but  
 10 because my mother was an autism teacher for so long, I  
 11 kind of grew up with the training.  
 12 Q. Did you have to pass a test or get certified  
 13 or anything to be -- before --  
 14 A. No, sir.  
 15 Q. -- you started?  
 16 A. No, sir.  
 17 What happens is you come in the home, receive  
 18 an interview, and then they give you different tasks to  
 19 perform with the child, and if they like the technique,  
 20 if they like your communication with the child, they  
 21 hire you. I also had a little cousin who was autistic.  
 22 Q. How many -- how many children would you see  
 23 in any given week during the time period that you  
 24 worked here?  
 25 A. Say four.

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1 Q. Four kids?  
 2 A. Yes, sir.  
 3 Q. Would that be one kid on separate days of  
 4 four different days or...  
 5 A. Depending on the schedule that the parent is  
 6 comfortable with.  
 7 Q. How many kids total would you be seeing like  
 8 in any given week?  
 9 A. Four.  
 10 Q. Okay. And was it the same four kids every  
 11 week that you would see, or did they place you with  
 12 different kids?  
 13 A. They placed me with different kids, but it --  
 14 it would be the same four kids.  
 15 Q. Do you recall what days you were working?  
 16 A. No, sir.  
 17 Q. Do you recall the hours? Like how long were  
 18 you in the house?  
 19 A. Three-hour sessions.  
 20 Q. Did you have to do a report or anything after  
 21 each of the sessions?  
 22 A. Yes, sir.  
 23 Q. And where would you do the report at?  
 24 A. In the report book that is provided by the  
 25 company.

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1 Q. Well, was there a -- was there like a  
 2 headquarters, though, that you would go back to or  
 3 check in at?  
 4 A. No, sir.  
 5 What it is is the family receives funding for  
 6 the autistic child and refers them to different  
 7 companies that provide this service, and the companies  
 8 provide a liaison or a director, something like that,  
 9 and educational directors.  
 10 So the educational director would come to the  
 11 family's house, and we'd have a team meeting and go  
 12 over the score that the child would get, the scores,  
 13 the academic scores that the child was getting, and  
 14 discuss what was appropriate for the child, what the  
 15 child needed to be working on, and that would happen  
 16 once a month.  
 17 Q. And that would be based upon the reports that  
 18 you submitted after each three-hour session?  
 19 A. Yes, sir.  
 20 Q. So you -- you would basically work out of  
 21 your own home and then travel to the house, wherever  
 22 the autistic child was?  
 23 A. I would work in their home.  
 24 Q. Right. But you would travel from your home  
 25 to their home?



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1 A. Yeah.  
2 Q. And I apologize. Did you say that it was  
3 four days a week or four kids a week on separate days?  
4 A. Yes, sir.  
5 Q. What were your dates of employment with ABA?  
6 A. I don't remember.  
7 Q. Did it start in 2010?  
8 Let me ask it to you this way. I apologize.  
9 Was it before the accident that we're here to talk  
10 about today?  
11 A. Oh, yes, sir.  
12 Q. And the accident happened on January 2nd,  
13 2011.  
14 A. Yes, sir.  
15 Q. So were you still working with ABA at the  
16 time of the accident?  
17 A. No, sir.  
18 Q. When did you complete your work with ABA?  
19 A. September 2010. Maybe August.  
20 Q. And do you recall when you began work there?  
21 Sometime in 2010?  
22 A. I think early 2009.  
23 Q. So you worked there for approximately a year  
24 and a half?  
25 A. Yes, sir.

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1 Q. What was the reason for your termination?  
2 A. I received a job at Bartech.  
3 Q. Okay. So you stopped working to work at the  
4 Cosmo?  
5 A. Yes, sir.  
6 Q. Was it more money? What was the reason --  
7 A. Yes, sir.  
8 Q. -- why you left?  
9 A. More money, more hours.  
10 Q. So when did you start with the Cosmo?  
11 A. September.  
12 Q. 2010?  
13 A. Yes, sir.  
14 Q. When you said "more hours," were you working  
15 full-time?  
16 A. Yes, sir.  
17 Q. Pardon?  
18 A. Yes, sir.  
19 Q. So 40 hours a week?  
20 A. Sometimes more.  
21 Q. Sometimes overtime?  
22 A. Yes, sir.  
23 Q. What was your rate of pay?  
24 A. \$15 an hour.  
25 Q. Was it Monday through Friday, or what were

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1 the days that you were working?  
2 A. It was Monday through Friday.  
3 Q. 9:00 to 5:00 or 7:00 to 3:00?  
4 A. 6:00 to 5:00, I think.  
5 Q. Going back to ABA for a second, did you ever  
6 get any performance evaluations?  
7 A. I got statements from the parents, letters  
8 and stuff like that, given to the company that was  
9 hired to perform the ABA tutoring.  
10 Q. Who was your supervisor at ABA?  
11 A. Whoever the lead ABA tutor was.  
12 You work for different companies with that  
13 kind of work. You work for Autism Partnership, Lovaas,  
14 Autism Care West, different companies that are provided  
15 through the funding that the child receives.  
16 Q. So you didn't have a direct report as far as  
17 a supervisor?  
18 A. Whoever -- like I said previously, whoever  
19 the lead teacher was, the lead tutor was, is where my  
20 reports would go and would document everything in --  
21 Q. How would you figure out what the schedule  
22 was or how -- where you were supposed to go?  
23 A. You received the schedule from the parents.  
24 Q. At Bartech did you have a supervisor?  
25 A. Yes, sir.

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1 Q. And what was his -- his or her name?  
2 A. Terry.  
3 Q. Do you know what his last name is?  
4 A. No, sir, I don't remember.  
5 Terry Campbell.  
6 Q. Campbell?  
7 A. Yes, sir.  
8 Q. How'd you get the job at Bartech?  
9 A. A friend.  
10 Q. Somebody that was already working with the  
11 firm?  
12 A. No, sir.  
13 Q. How long did you work at Bartech?  
14 A. Two months.  
15 Q. Two months?  
16 A. Yeah. It was only a three-month gig.  
17 Q. What happened after the two months?  
18 A. My water broke.  
19 Q. What do you mean?  
20 A. I had a baby.  
21 Q. Oh. So November of 2010 you had Khaliyah?  
22 A. I had Khaliyah December 6th, 2010.  
23 Q. And then you stopped work?  
24 A. Yes, sir.  
25 Q. Well, what were you doing to support Khaliyah



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1 if you didn't have a job after December 6th, 2010?  
 2 A. Began selling drugs.  
 3 Q. December 6th, 2010, were you living at the  
 4 Gowan Street apartment --  
 5 A. Yes, sir.  
 6 Q. -- with your mom?  
 7 A. Yes, sir.  
 8 Q. How long did you live at the Gowan Street  
 9 apartment?  
 10 A. Four years.  
 11 Q. Now, that was a bad question. Let's start  
 12 when you left the Gowan Street apartment.  
 13 A. March 10th, 2011.  
 14 Q. It seems like you have a pretty good recall  
 15 of the exact date.  
 16 A. Yes, sir.  
 17 Q. Did something happen on that date that caused  
 18 you to leave the house with your mom?  
 19 A. I was raided.  
 20 Q. You were what?  
 21 A. Raided.  
 22 Q. Raided?  
 23 A. Yes, sir.  
 24 Q. What does that mean?  
 25 A. A SWAT team came into the house.

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1 Q. The Gowan Street address?  
 2 A. Yes, sir.  
 3 They came twice. They came the day before  
 4 Thanksgiving in 2010 and renewed the search warrant in  
 5 March and came again.  
 6 Q. So in November of 2010, you were living at  
 7 the Gowan Street apartment, and you were raided by  
 8 SWAT?  
 9 A. Yes, sir.  
 10 Q. Metro?  
 11 A. North Las Vegas.  
 12 Q. Did they find anything in November of 2010?  
 13 A. No.  
 14 Q. You weren't arrested or anything based upon  
 15 that raid?  
 16 A. No, sir.  
 17 Q. Were you dealing drugs at that point in time?  
 18 A. Yes, sir.  
 19 Q. What drugs were you dealing?  
 20 A. Marijuana, cocaine, and xstasy.  
 21 Q. Was your hiding spot somewhere else other  
 22 than the apartment?  
 23 A. In November we knew they were coming; so we  
 24 moved everything and kept very little at the house. So  
 25 when they came they didn't find enough to arrest me, or

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1 they would lose their investigation.  
 2 Q. When you say "we," who are you talking about?  
 3 A. Me and my baby's momma. Me and the children  
 4 of my mother [sic].  
 5 Q. You and Tikiera?  
 6 A. Yes, sir.  
 7 Q. Did Tikiera live at the Gowan Street  
 8 apartment with you --  
 9 A. Yes, sir.  
 10 Q. -- and your mom?  
 11 A. Yes, sir.  
 12 Q. So Tikiera was also involved in your drug  
 13 dealing?  
 14 A. Yes, sir.  
 15 Q. And when you say they wouldn't have found  
 16 enough to continue the investigation, what do you mean?  
 17 A. Meaning if I was booked on the marijuana that  
 18 they found at the time, the officer was going to -- it  
 19 didn't -- what they found in the house did not warrant  
 20 a warrant.  
 21 Q. So in the November 2010 raid, they did find  
 22 marijuana?  
 23 A. Yes, sir.  
 24 Q. Did they find anything -- any other drugs?  
 25 A. No, sir.

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1 Q. How much marijuana did they find?  
 2 A. Just less than an eighth.  
 3 Q. Less than an eighth of an ounce?  
 4 A. Yes, sir.  
 5 Q. Did they confiscate that?  
 6 A. Yes, sir.  
 7 Q. Was your mom home at the time?  
 8 A. Yes, sir.  
 9 Q. Was your mom aware that you were dealing  
 10 drugs out of the Gowan Street apartment?  
 11 A. No, sir.  
 12 Q. Was she aware of it after the raid?  
 13 A. Yes, sir.  
 14 But the police were very careful not to tell  
 15 her what was happening.  
 16 Q. Did you have a conversation with your mom  
 17 about what was happening?  
 18 A. A brief conversation.  
 19 Q. Well, what was the substance of the  
 20 conversation?  
 21 A. My mom asked the police officer what was  
 22 going on and what they were doing there, and the police  
 23 officer said ask Jared what we're doing here, and I  
 24 said I've been selling weed. That's pretty much it.  
 25 Q. And then you said the second raid was

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1 March 10th, 2011?  
 2 A. Yes, sir.  
 3 Q. North Las Vegas SWAT?  
 4 A. Yes, sir.  
 5 Q. And what did they find on that raid?  
 6 A. They found a gun, cocaine, marijuana, a  
 7 scale.  
 8 Q. What kind of gun did they find?  
 9 A. 357 magnum Ruger GP100.  
 10 Q. How long have you -- did you -- had you had  
 11 the gun at the Gowan Street apartment?  
 12 A. A week.  
 13 Q. Did your mom know the gun was there?  
 14 A. No, sir.  
 15 Q. How much cocaine did they find?  
 16 A. .8.  
 17 Q. .8 ounces?  
 18 A. No, .8, .8, less than a gram.  
 19 Q. How much marijuana?  
 20 A. 32 grams.  
 21 Q. My math is terrible.  
 22 Is that less than an ounce?  
 23 A. It's over an ounce. It's 4 grams over an  
 24 ounce.  
 25 Q. Were you arrested?

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1 A. Yes, sir.  
 2 Q. Well, what were -- what were the charges?  
 3 A. Possession of a controlled substance;  
 4 possession of marijuana, intent to sell; possession of  
 5 an unregistered firearm. I had four felony charges and  
 6 a bunch of misdemeanors.  
 7 And they gave me a wobbler, and I didn't  
 8 receive any cases between the raid and the court date;  
 9 so I was able to take a plea for a gross misdemeanor,  
 10 which is possession of drugs not to be introduced into  
 11 interstate commerce, and I had to forfeit the weapon.  
 12 Q. So you went from intent to sell to a,  
 13 basically, possession charge?  
 14 A. Yes, sir.  
 15 Q. And then -- and that was on the marijuana?  
 16 A. The marijuana and the cocaine, the gun, the  
 17 scale, the extent of their investigation.  
 18 Q. Okay. But did they -- they dropped the  
 19 cocaine possession charges?  
 20 A. Yes, sir.  
 21 Q. And then you forfeited the gun, and they  
 22 dropped the gun charge?  
 23 A. Yes, sir.  
 24 Well, they dropped the felony gun charge, and  
 25 they gave me possession of an unregistered firearm,

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1 which is a misdemeanor because in North Las Vegas it's  
 2 not illegal to own a gun in your household. It has to  
 3 be registered, and they retrieved the gun from the  
 4 household, from inside the home.  
 5 Q. So your gun -- the gun was unregistered?  
 6 A. Yes, sir.  
 7 It was a clean gun.  
 8 Q. Did you buy it?  
 9 A. Yes, sir.  
 10 Q. From a store?  
 11 A. No, sir.  
 12 MR. ESCHWEILER: Do you guys need to take a  
 13 break?  
 14 MR. MAZZEO: No, we're good.  
 15 BY MR. ESCHWEILER:  
 16 Q. And you mentioned a word that I'm not  
 17 familiar with.  
 18 What's a wobbler?  
 19 A. It's a -- it's a -- like a court date, a  
 20 court thing. It's a court term, and it's like when  
 21 you're facing that many charges, a wobbler is, you  
 22 know, if you do good, you get this deal, or if you  
 23 plead probation [sic] or something like that, you get  
 24 this deal, and if you screw up, you get another deal.  
 25 It's a wobbler.

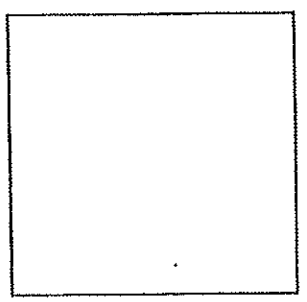
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1 Q. So if you stay clean, you're going to get the  
 2 better deal?  
 3 A. Yes, sir, if I stayed out of trouble.  
 4 Q. And you stayed out of trouble?  
 5 A. Yes, sir.  
 6 Q. Were you drug tested during that time?  
 7 A. No, sir.  
 8 Q. Were you still smoking weed during that time?  
 9 A. Yes, sir.  
 10 I was on the run during that time.  
 11 Q. Well, what do you mean, you were on the run?  
 12 A. I mean, I had warrants, misdemeanor  
 13 warrant -- not misdemeanor warrants -- warrants for  
 14 North Las Vegas, but the possession of drugs, the -- a  
 15 case was held in North Las Vegas Justice Center, which  
 16 is felony court; so I was able to manage not to pick up  
 17 any charges at all. So I had warrants for the lesser  
 18 charges but was able to get the felonies dropped.  
 19 Q. Wait. If the felonies -- I'm confused.  
 20 Why were you running if all you had was  
 21 misdemeanor charges?  
 22 A. Because I didn't have enough money for the  
 23 attorney and to pay the fines that I received for the  
 24 gun charge and the fines that I received at the time,  
 25 obstructing an officer and different things like that.

Event Number: 110102-3282		<b>STATE OF NEVADA TRAFFIC ACCIDENT REPORT SCENE INFORMATION SHEET</b> <small>Revised 5/21/03</small>			Ident Number: LVMPD-110102-3282		
Code Revision: 01/14/2004					<input checked="" type="checkbox"/> Property <input type="checkbox"/> Injury <input type="checkbox"/> Fatal		
<input checked="" type="checkbox"/> 1) Urban <input type="checkbox"/> 2) Rural	<input type="checkbox"/> 1) Emergency Use <input type="checkbox"/> 2) Office Report	<input type="checkbox"/> 1) Preliminary Report <input checked="" type="checkbox"/> 2) Initial Report	<input type="checkbox"/> 3) Resubmission <input type="checkbox"/> 4) Supplement Report	<input type="checkbox"/> 1) Hit and Run <input type="checkbox"/> 2) Private Property	Agency Name: LAS VEGAS METROPOLITAN PD		
Collision Date 1/2/2011	Time 17:57	Day SUNDAY	Beat / Sector V6	<input type="checkbox"/> County <input checked="" type="checkbox"/> City LAS VEGAS	Surface <input checked="" type="checkbox"/> 1) Asphalt <input type="checkbox"/> 2) Concrete <input type="checkbox"/> 3) Gravel <input type="checkbox"/> 4) Dirt <input type="checkbox"/> 5) Other	Intersection <input type="checkbox"/> 1) Four Way <input type="checkbox"/> 2) > Four Way <input type="checkbox"/> 3) T <input type="checkbox"/> 4) Y <input type="checkbox"/> 5) Roundabout <input type="checkbox"/> 6) Other	
Mile Marker	# Vehicles 2	# Non Motorists 0	# Occupants 2	# Fatalities 0	# Injured 0	# Restrained 1	
Occurred On: (Highway # or Street Name) <input type="checkbox"/> 1) Parking Lot    RAINBOW BLVD					Paddle Markers <input checked="" type="checkbox"/> 1) None <input type="checkbox"/> 2) Left Side <input type="checkbox"/> 3) Right Side <input type="checkbox"/> 4) Both Side <input type="checkbox"/> 5) Unknown		
Occurred At: (Intersection With: NORTH <input type="checkbox"/> 1) At Intersection With:    Or (Cross Street)    PEAK DR. <input checked="" type="checkbox"/> 2) Or 100 <input checked="" type="checkbox"/> 3) Feet <input type="checkbox"/> 4) Miles <input checked="" type="checkbox"/> 5) Approximate					Access Control <input checked="" type="checkbox"/> 1) None <input type="checkbox"/> 2) Full <input type="checkbox"/> 3) Partial		
Roadway Character <input type="checkbox"/> 1) Curve & Grade <input type="checkbox"/> 2) Curve & Hillcrest <input type="checkbox"/> 3) Curve & Level <input type="checkbox"/> 4) Straight & Grade <input type="checkbox"/> 5) Straight & Hillcrest <input checked="" type="checkbox"/> 6) Straight & Level <input type="checkbox"/> 7) Unknown <input type="checkbox"/> 8) Other		Roadway Conditions <input checked="" type="checkbox"/> 1) Dry <input type="checkbox"/> 7) Slush <input type="checkbox"/> 2) Dry <input type="checkbox"/> 8) Standing Water <input type="checkbox"/> 3) Wet <input type="checkbox"/> 9) Moving Water <input type="checkbox"/> 4) Snow <input type="checkbox"/> 10) Unknown <input type="checkbox"/> 5) Sand / Mud / Oil / Dirt / Gravel <input type="checkbox"/> 6) Other		Total Thru Lanes Main Road <input type="checkbox"/> 1) One <input type="checkbox"/> 2) Two <input type="checkbox"/> 3) Three <input checked="" type="checkbox"/> 4) Four <input type="checkbox"/> 5) Five <input type="checkbox"/> 6) > 5 Total All Lanes: 5		Average Roadway Widths Travel Lane    12 Ft Storage / Turn Lane    0 Ft Median    0 Ft Paved Shoulder Inside    0    Outside    0	
Roadway Grade <input type="checkbox"/> 1) Not Determined <input checked="" type="checkbox"/> 2) Relatively Level Roadway <input type="checkbox"/> 3) Up Slope (+) <input type="checkbox"/> 4) Down Slope (-)		Relative To Grade %					
Pavement Markings and Type 1) Centerline, Broken Yellow    6) No Paving, Either Direction <input type="checkbox"/> 12) None 2) Centerline, Solid Yellow    7) Turn Arrow Symbols <input type="checkbox"/> 13) Unknown 3) Centerline, Double Yellow    8) Center Turn Lane Line 4) Lane Line, Broken White    9) Edge Line, Left, Yellow 5) Lane Line, Solid White    10) Edge Line, Right, White 11) Other				Highway Description <input checked="" type="checkbox"/> 1) Two-Way, Not Divided <input type="checkbox"/> 2) Two-Way, Div., Unpro. Median <input type="checkbox"/> 3) Two-Way, Div., Median Barrier <input type="checkbox"/> 4) One-Way, Not Div. <input type="checkbox"/> 5) Unknown <input type="checkbox"/> 6) Off Road			
Light Conditions <input type="checkbox"/> 1) Dusk <input type="checkbox"/> 6) Dark - No Roadway Lighting <input type="checkbox"/> 2) Dawn <input type="checkbox"/> 7) Dark - Spot Roadway Lighting <input type="checkbox"/> 3) Daylight <input checked="" type="checkbox"/> 8) Dark - Continuous Roadway Lighting <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 9) Dark - Unknown Roadway Lighting <input type="checkbox"/> 5) Other		Vehicle Collision Type <input type="checkbox"/> 1) Head On <input type="checkbox"/> 5) Rear to Rear <input type="checkbox"/> 2) Rear End <input type="checkbox"/> 6) Sideswipe - Meeting <input type="checkbox"/> 3) Backing <input type="checkbox"/> 7) Sideswipe - Overtaking <input checked="" type="checkbox"/> 4) Angle <input type="checkbox"/> 8) Non - Collision <input type="checkbox"/> 9) Unknown		Location of First Event <input checked="" type="checkbox"/> 1) Travel Lane 1 <input type="checkbox"/> 6) Outside Shoulder <input type="checkbox"/> 11) Ramp <input type="checkbox"/> 2) Turn Lane <input type="checkbox"/> 7) Intersection <input type="checkbox"/> 12) Unknown <input type="checkbox"/> 3) Gore <input type="checkbox"/> 8) Private Property <input type="checkbox"/> 4) Median <input type="checkbox"/> 9) Roadside <input type="checkbox"/> 5) Inside Shoulder <input type="checkbox"/> 10) Other			
Highway / Environment Factors <input checked="" type="checkbox"/> 1) None <input type="checkbox"/> 7) Shoulders <input type="checkbox"/> 11) Ruts, Holes, Bumps <input type="checkbox"/> 2) Weather <input type="checkbox"/> 8) Road Obstruction <input type="checkbox"/> 12) Active Work Zone <input type="checkbox"/> 3) Debris <input type="checkbox"/> 9) Worn Traffic Surface <input type="checkbox"/> 13) Inactive Work Zone <input type="checkbox"/> 4) Glare <input type="checkbox"/> 10) Wet, Icy, Snow, Slush <input type="checkbox"/> 14) Animal In Roadway <input type="checkbox"/> 5) Other Highway <input type="checkbox"/> 15) Unknown <input type="checkbox"/> 6) Other Environmental				Property Damage To Other Than Vehicle Describe Property Damage Owner's Name: <input type="checkbox"/> Owner Notified Owner's Address: (Street Address    City, State    Zip)			
First Harmful Event Code #: 214    Description: 214 MOTOR VEHICLE IN TRANSPORT							
Description of Accident / Narrative V2 WAS TRAVELING S/B RAINBOW BLVD IN THE LEFT OF TWO TRAVEL LANES APPROACHING PEAK DR. V1 WAS TRAVELING E/B IN A PRIVATE DRIVE NORTH OF PEAK DR APPROACHING RAINBOW BLVD. V1 STATED THAT HE THOUGHT THAT RAINBOW BLVD WAS CLEAR OF TRAFFIC. V1 THEN TRAVELED ONTO RAINBOW BLVD INTO THE PATH OF V2 CAUSING V1 FRONT TO HIT V2 RIGHT. XX XXX XXXXXXXX XXX XXXX							
<input type="checkbox"/> 1) Continued On Back of Scene Information Sheet							
Investigation Complete <input checked="" type="checkbox"/> 1) Yes <input type="checkbox"/> 2) No	Photos Taken <input type="checkbox"/> 1) Yes <input checked="" type="checkbox"/> 2) No	Scene Diagram <input type="checkbox"/> 1) Yes <input checked="" type="checkbox"/> 2) No	Statements <input type="checkbox"/> 1) Yes <input checked="" type="checkbox"/> 2) No    #	Date Notified 1/2/2011	Time Notified 17:59	Arrival Date 1/2/2011	
Investigator(s) 9693 D. FIGUEROA	ID Number 9693	Date 1/2/2011	Reviewed By 6796 ROBERT GIBBS	Date Reviewed 1/9/2011	Page 1 of 6		

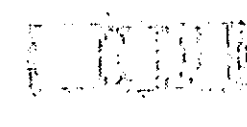
Event Number:  110102-3282	<b>STATE OF NEVADA</b> <b>TRAFFIC ACCIDENT REPORT</b> SCENE INFORMATION SHEET <small>Revised 5/21/03</small>	Accident Number: LVMPD-110102-3282  Agency Name: LAS VEGAS METROPOLITAN PD
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Description of Accident / Narrative Continuation



Indicate North

A.I.C.: 100N/S-27W/E

Event Number: 110102-3282		<b>STATE OF NEVADA TRAFFIC ACCIDENT REPORT VEHICLE INFORMATION SHEET</b> <small>Revised 5/2/03</small>		Ident Number: LVMPD-110102-3282																									
Vehicle # 1	# Occupants 1	<input checked="" type="checkbox"/> 1) At Fault <input type="checkbox"/> 2) Non Contact Vehicle		Agency Name: LAS VEGAS METROPOLITAN PD																									
Direction of Travel: <input type="checkbox"/> 1) North <input checked="" type="checkbox"/> 3) East <input type="checkbox"/> 5) Unknown <input type="checkbox"/> 2) South <input type="checkbox"/> 4) West		Highway / Street Name: RAINBOW BLVD			Travel Lane #: 1																								
Vehicle Action: <input type="checkbox"/> 1) Straight <input checked="" type="checkbox"/> 3) Left Turn <input type="checkbox"/> 5) U-Turn <input type="checkbox"/> 7) Wrong Way <input type="checkbox"/> 9) Passing <input type="checkbox"/> 11) Leaving Parked <input type="checkbox"/> 13) Leaving Lane <input type="checkbox"/> 15) Enter Parked (E) <input type="checkbox"/> 17) Lane Change <input type="checkbox"/> 19) Unknown <input type="checkbox"/> 2) Backing <input type="checkbox"/> 4) Right Turn <input type="checkbox"/> 6) Parked <input type="checkbox"/> 8) Stopped (S) <input type="checkbox"/> 10) Backing <input type="checkbox"/> 12) Entering Lane <input type="checkbox"/> 14) Other Turning <input type="checkbox"/> 16) Driverless Vehicle <input type="checkbox"/> 18) Other																													
Driver: LAST Name, First Name, Middle Name (Suff) AWERBACH JARED			Transported By: <input checked="" type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other																										
Street Address: 1827 W GOWAN RD #1114			Transported To:																										
City: NORTH LAS VEGAS		State / Country: <input checked="" type="checkbox"/> 1) NV	Zip Code: 89032	Person Type: 1	Seating Position: 1																								
<input checked="" type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female DOB: 2/11/1992		Phone Number: (702) 0		Injury Severity: N	Injury Location: 0																								
OLN:		State: <input checked="" type="checkbox"/> 1) NV	<input type="checkbox"/> 1) DPL <input type="checkbox"/> 2) DL	License Status: 6	Airbags: 2    Airbag Switch: 4    Ejected: 0    Trapped: 0																								
Compliance: <input type="checkbox"/> 1) Restrict <input type="checkbox"/> 2) Endorse Alcohol/Drug Involvement: <input type="checkbox"/> 1) Not involved <input type="checkbox"/> 2) Suspected Impairment <input type="checkbox"/> 3) Alcohol <input checked="" type="checkbox"/> 4) Drug <input type="checkbox"/> 5) Unknown		Endorsements:    Restrictions:    Method of Determination (check up to 2): <input type="checkbox"/> 1) Field Sobriety Test <input type="checkbox"/> 4) Urine Test <input type="checkbox"/> 2) Evidentiary Breath <input type="checkbox"/> 5) Blood Test <input checked="" type="checkbox"/> 3) Driver Admission <input type="checkbox"/> 6) Preliminary Breath Test		Driver Factors: <input type="checkbox"/> 1) Apparently Normal <input type="checkbox"/> 6) Driver II Injured <input type="checkbox"/> 2) Had Been Drinking <input type="checkbox"/> 7) Other Improper Driving <input checked="" type="checkbox"/> 3) Drug Involvement <input type="checkbox"/> 8) Driver Inattention / Distracted <input type="checkbox"/> 4) Apparently Fatigued / Asleep <input type="checkbox"/> 9) Physical Impairment <input type="checkbox"/> 5) Constructed View <input type="checkbox"/> 10) Unknown																									
Vehicle Year: 2007	Vehicle Make: SUZUKI	Vehicle Model: FORENZA	Vehicle Type: P4	Vehicle Factors:																									
Plate / Permit No.: 687VGK	State: <input checked="" type="checkbox"/> 1) NV	Expiration Date: 05/24/2011	Vehicle Color: SILVER	<input checked="" type="checkbox"/> 1) Failed To Yield Right Of Way <input type="checkbox"/> 9) Failed To Maintain Lane <input type="checkbox"/> 16) Driverless Vehicle <input type="checkbox"/> 2) Firearm Control Device <input type="checkbox"/> 10) Following Too Close <input type="checkbox"/> 17) Unsafe Backing <input type="checkbox"/> 3) Too Fast For Conditions <input type="checkbox"/> 11) Unsafe Lane Change <input type="checkbox"/> 18) Ran Off Road <input type="checkbox"/> 4) Exceeding Speed Limit <input type="checkbox"/> 12) Made Improper Turn <input type="checkbox"/> 19) Hit and Run <input type="checkbox"/> 5) Wrong Way / Direction <input type="checkbox"/> 13) Over Corrected Steering <input type="checkbox"/> 20) Road Depart (C) <input type="checkbox"/> 6) Mechanical Defects <input type="checkbox"/> 14) Other Improper Driving <input type="checkbox"/> 21) Object Avoidance <input type="checkbox"/> 7) Drove Left Of Center <input type="checkbox"/> 15) Aggressive / Reckless / Careless <input type="checkbox"/> 8) Other <input type="checkbox"/> 22) Unknown (E)																									
Vehicle Identification Number: KL5JD56Z27K593232				1st Contact: <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 1 —  — <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 1) Override <input type="checkbox"/> 2) Under Ride																									
Registered Owner Name: AWERBACH ANDREA MERRY <input type="checkbox"/> 1) Same As Driver Registered Owner Address: 1827 W GOWAN RD APT 1114 NORTH LAS VEGAS NV 89032 Insurance Company Name: LIBERTY MUTUAL <input checked="" type="checkbox"/> 1) Injured Policy Number: A02268633569409    Effective: 10/7/2010    To: 10/7/2011 Insurance Company Address or Phone Number: 800-225-CLAIMS <input checked="" type="checkbox"/> 1) Vehicle Towed    Towed By: EWING BROTHERS TOWING Removed To: IMPOUND				Damaged Areas: <input checked="" type="checkbox"/> 1) Front <input type="checkbox"/> 2) Right Side <input type="checkbox"/> 3) Left Side <input type="checkbox"/> 4) Rear <input type="checkbox"/> 5) Right Front <input type="checkbox"/> 6) Right Rear <input type="checkbox"/> 7) Top <input type="checkbox"/> 8) Under Carriage <input type="checkbox"/> 9) Left Front <input type="checkbox"/> 10) Left Rear <input type="checkbox"/> 11) Unknown <input type="checkbox"/> 12) Other																									
<b>Traffic Control</b> F 1) Speed Zone 11) Stop Sign 2) Signal Light 12) Yield Sign 3) Flashing Light 13) R. R. Sign 4) School Zone 14) R. R. Gates 5) Ped. Signal 15) R. R. Signal (E) 6) No Passing F 16) Marked Lanes 7) No Controls 17) Tire Chains/Snow Req. 8) Warning Sign 18) Penalties Green 9) Turn Signal <input type="checkbox"/> 19) Unknown 10) Other		Distance Traveled After Impact: ( ) 7-MOVED	<b>Speed Estimate</b> From To Limit 35		<b>Extent Of Damage</b> <input type="checkbox"/> 1) Minor <input type="checkbox"/> 4) Total <input checked="" type="checkbox"/> 2) Moderate <input type="checkbox"/> 5) None <input type="checkbox"/> 3) Major <input type="checkbox"/> 6) Unknown																								
<b>Sequence Of Events</b> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Code #</th> <th>Description</th> <th>Collision With Fixed Object</th> <th>Most Harmful Event</th> </tr> </thead> <tbody> <tr> <td>1st 214</td> <td>214 MOTOR VEHICLE IN TRANSPORT</td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>2nd 214</td> <td>214 MOTOR VEHICLE IN TRANSPORT</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>3rd</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>4th</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>5th</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </tbody> </table>						Code #	Description	Collision With Fixed Object	Most Harmful Event	1st 214	214 MOTOR VEHICLE IN TRANSPORT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	2nd 214	214 MOTOR VEHICLE IN TRANSPORT	<input type="checkbox"/>	<input type="checkbox"/>	3rd		<input type="checkbox"/>	<input type="checkbox"/>	4th		<input type="checkbox"/>	<input type="checkbox"/>	5th		<input type="checkbox"/>	<input type="checkbox"/>
Code #	Description	Collision With Fixed Object	Most Harmful Event																										
1st 214	214 MOTOR VEHICLE IN TRANSPORT	<input type="checkbox"/>	<input checked="" type="checkbox"/>																										
2nd 214	214 MOTOR VEHICLE IN TRANSPORT	<input type="checkbox"/>	<input type="checkbox"/>																										
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4th		<input type="checkbox"/>	<input type="checkbox"/>																										
5th		<input type="checkbox"/>	<input type="checkbox"/>																										
<input type="checkbox"/> 1) HRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC / MC <input type="checkbox"/> 4) Pending (1)		Violation		NOC	Citation Number																								
<input type="checkbox"/> 1) HRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC / MC <input type="checkbox"/> 4) Pending (2)		Violation		NOC	Citation Number																								
Investigator(s): 9693 D. FIGUEROA		ID Number: 9693	Date: 1/2/2011	Reviewed By: 6796 Robert Gibbs	Date Reviewed: 1/9/2011																								
				Date Reviewed:	Page 3 of 6																								



Event Number: 110102-3282		<b>STATE OF NEVADA</b> <b>TRAFFIC ACCIDENT REPORT</b> <b>VEHICLE INFORMATION SHEET</b> <small>Revised 5/2/03</small>			Ident Number: LVMPD-110102-3282 Agency Name: LAS VEGAS METROPOLITAN PD	
Name: (Last Name, First Name, Middle Name Suffix)				Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other		
Street Address:				Transported To:		
City:	State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:	
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female	DOB:	Phone Number:	Injury Severity:	Injury Location:		
			Airbags:	Airbag Switch:	Ejected:	Trapped:
Name: (Last Name, First Name, Middle Name Suffix)				Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other		
Street Address:				Transported To:		
City:	State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:	
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female	DOB:	Phone Number:	Injury Severity:	Injury Location:		
			Airbags:	Airbag Switch:	Ejected:	Trapped:
Name: (Last Name, First Name, Middle Name Suffix)				Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other		
Street Address:				Transported To:		
City:	State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:	
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female	DOB:	Phone Number:	Injury Severity:	Injury Location:		
			Airbags:	Airbag Switch:	Ejected:	Trapped:
<input type="checkbox"/> 1) Trailing Unit 1 VIN:		Plate:	State: <input type="checkbox"/> 1) NV	Type:		
<input type="checkbox"/> 1) Trailing Unit 2 VIN:		Plate:	State: <input type="checkbox"/> 1) NV	Type:		
<input type="checkbox"/> 1) Trailing Unit 3 VIN:		Plate:	State: <input type="checkbox"/> 1) NV	Type:		
<b>Commercial Vehicle Configuration</b> <div style="display: flex; justify-content: space-between;"> <span><input type="checkbox"/> 1) Commercial Vehicle</span> <span><input type="checkbox"/> 2) School Bus</span> </div>						
<input type="checkbox"/> 1) Bus, 9 - 15 Occupants <input type="checkbox"/> 2) Bus, > 15 Occupants <input type="checkbox"/> 3) Single 2 Axle and 6 Tire <input type="checkbox"/> 4) Single > 3 Axle <input type="checkbox"/> 5) Any 4 Tire Vehicle		<input type="checkbox"/> 6) Tractor Only <input type="checkbox"/> 7) Tractor / Trailer <input type="checkbox"/> 8) Tractor / Double <input type="checkbox"/> 9) Tractor / Triple <input type="checkbox"/> 10) Tractor with Trailer		<input type="checkbox"/> 11) Tractor / Semi Trailer <input type="checkbox"/> 12) Passenger Vehicle, (Haz-Mat) <input type="checkbox"/> 13) Light Truck, (Haz-Mat) <input type="checkbox"/> 14) Other Heavy Vehicle		
		Source <input type="checkbox"/> 1) Driver <input type="checkbox"/> 2) Log Book <input type="checkbox"/> 3) Shipping Papers / Trip Manifest			<input type="checkbox"/> 4) State Reg. <input type="checkbox"/> 5) Title of Vehicle <input type="checkbox"/> 6) Other	
Carrier Name:		Power Unit GVWR <input type="checkbox"/> 1) ≤ 10,000 Lbs <input type="checkbox"/> 2) 10,000 - 20,000 Lbs <input type="checkbox"/> 3) ≥ 20,000 Lbs			<input type="checkbox"/> 1) Haz-Mat <input type="checkbox"/> 2) Released	
Carrier Street Address:		City:		State: <input type="checkbox"/> 1) NV	Zip:	
<b>Cargo Body Type</b> <input type="checkbox"/> 1) Box <input type="checkbox"/> 2) Tank <input type="checkbox"/> 3) Flatbed <input type="checkbox"/> 4) Dump <input type="checkbox"/> 5) Unknown <input type="checkbox"/> 6) Van / Box <input type="checkbox"/> 7) Concrete Mixer <input type="checkbox"/> 8) Auto Carrier <input type="checkbox"/> 9) Garbage/Refuse <input type="checkbox"/> 10) Not Applicable <input type="checkbox"/> 11) Grain, Gravel Chpts <input type="checkbox"/> 12) Bus, 9 - 15 Occupants <input type="checkbox"/> 13) Bus, > 15 Occupants <input type="checkbox"/> 14) Other		Haz-Mat ID #:		Type of Carrier <input type="checkbox"/> 1) Single State <input type="checkbox"/> 2) US DOT <input type="checkbox"/> 3) Canada <input type="checkbox"/> 4) Mexico <input type="checkbox"/> 5) Other		
		Hazard Classification #:		NAS Safety Report #: Carrier Number:		
				Page 4 of 6		



Event Number: 110102-3282		<b>STATE OF NEVADA</b> <b>TRAFFIC ACCIDENT REPORT</b> VEHICLE INFORMATION SHEET <small>Revised 5/2/03</small>		Ident Number: LVMPD-110102-3282																									
Vehicle # 2	#Occupants 1	<input type="checkbox"/> 1) At Fault <input type="checkbox"/> 2) Non-Contact Vehicle		Agency Name: LAS VEGAS METROPOLITAN PD																									
Direction of Travel: <input type="checkbox"/> 1) North <input type="checkbox"/> 3) East <input type="checkbox"/> 5) Unknown <input checked="" type="checkbox"/> 2) South <input type="checkbox"/> 4) West		Highway / Street Name: RAINBOW BLVD			Travel Lane #: 1																								
Vehicle Action: <input checked="" type="checkbox"/> 1) Straight <input type="checkbox"/> 3) Left Turn <input type="checkbox"/> 5) U-Turn <input type="checkbox"/> 7) Wrong Way <input type="checkbox"/> 9) Parking <input type="checkbox"/> 11) Leaving Parked <input type="checkbox"/> 13) Leaving Lane <input type="checkbox"/> 15) Enter Parked (2) <input type="checkbox"/> 17) Lane Change <input type="checkbox"/> 19) Unknown <input type="checkbox"/> 2) Swerving <input type="checkbox"/> 4) Right Turn <input type="checkbox"/> 6) Parked <input type="checkbox"/> 8) Stopped (2) <input type="checkbox"/> 10) Backing <input type="checkbox"/> 12) Entering Lane <input type="checkbox"/> 14) Other Turning <input type="checkbox"/> 16) Driverless Vehicle <input type="checkbox"/> 18) Other																													
Driver: Last Name, First Name, Middle Name (Initial) GARCIA EMILIA AURORA			Transported By: <input checked="" type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other																										
Street Address: 3189 N MICHAEL WAY APT D			Transported To:																										
City: LAS VEGAS	State / Country: <input checked="" type="checkbox"/> 1) NV	Zip Code: 89108	Person Type: 1	Seating Position: 1	Occupant Restraints: 7																								
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input checked="" type="checkbox"/> 2) Female	DOB: 1/14/1979	Phone Number: (702) 0	Injury Severity: N	Injury Location:																									
OLN:	State: <input checked="" type="checkbox"/> 1) NV	<input type="checkbox"/> 1) CDL <input checked="" type="checkbox"/> 2) DL	License Status: 0	Airbags: 2	Airbag Switch: 4																								
				Ejected: 0	Trapped: 0																								
Compliance: <input type="checkbox"/> 1) Exempt <input type="checkbox"/> 2) Exempt Alcohol/Drug Involvement: <input checked="" type="checkbox"/> 1) Not Involved <input type="checkbox"/> 2) Suspected Impairment <input type="checkbox"/> 3) Alcohol <input type="checkbox"/> 4) Drug <input type="checkbox"/> 5) Unknown		Endorsements: Restrictions: A		Driver Factors: <input checked="" type="checkbox"/> 1) Apparently Normal <input type="checkbox"/> 6) Driver Not Injured <input type="checkbox"/> 2) Had Been Drinking <input type="checkbox"/> 7) Other Improper Driving <input type="checkbox"/> 3) Drug Involvement <input type="checkbox"/> 8) Driver Inattention / Distracted <input type="checkbox"/> 4) Apparently Fatigued / Asleep <input type="checkbox"/> 9) Physical Impairment <input type="checkbox"/> 5) Constructed View <input type="checkbox"/> 10) Unknown																									
Vehicle Year: 2001	Vehicle Make: HYUN	Vehicle Model: SANTA FE GLS	Vehicle Type: LL - SUV	Vehicle Factors: <input type="checkbox"/> 1) Failed To Yield Right Of Way <input type="checkbox"/> 9) Failed To Maintain Lane <input type="checkbox"/> 16) Driverless Vehicle <input type="checkbox"/> 2) Careless Control Device <input type="checkbox"/> 10) Following Too Close <input type="checkbox"/> 17) Unsafe Backing <input type="checkbox"/> 3) Too Fast For Conditions <input type="checkbox"/> 11) Unsafe Lane Change <input type="checkbox"/> 18) Ran Off Road <input type="checkbox"/> 4) Exceeding Speed Limit <input type="checkbox"/> 12) Made Improper Turn <input type="checkbox"/> 19) Hit and Run <input type="checkbox"/> 5) Wrong Way / Direction <input type="checkbox"/> 13) Over Correct Steering <input type="checkbox"/> 20) Road Defect (2) <input type="checkbox"/> 6) Mechanical Defect <input type="checkbox"/> 14) Other Improper Driving <input type="checkbox"/> 21) Object Avoidance <input type="checkbox"/> 7) Cross Left Of Center <input type="checkbox"/> 15) Aggressive / Reckless / Careless <input type="checkbox"/> 22) Unknown (2)																									
Plate / Permit No.: 684VFS	State: <input checked="" type="checkbox"/> 1) NV	Expiration Date: 04/11/2011	Vehicle Color: WHITE																										
Vehicle Identification Number: KM8SC83D81U053810																													
Registered Owner Name: LAS VEGAS NV B310A-4115 AURORA																													
<input type="checkbox"/> 1) Same As Driver																													
Registered Owner Address: 3189 N MICHAEL WAY APT D LAS VEGAS NV 89108																													
Insurance Company Name: FARMERS																													
<input checked="" type="checkbox"/> 1) Insured																													
Policy Number: 185582528		Effective: 8/31/2010	To: 2/28/2011																										
Insurance Company Address or Phone Number: 249-3305																													
<input checked="" type="checkbox"/> 1) Vehicle Towed Towed By: EWING BROTHERS TOWING																													
Removed To: TOW YARD																													
<b>Traffic Control</b> F 1) Speed Zone 11) Stop Sign 2) Signal Light 12) Yield Sign 3) Flashing Light 13) R. R. Sign 4) School Zone 14) R. R. Gates 5) Exd. Signal 15) R. R. Signal (2) 6) No Parking F 16) Marked Lanes 7) No Control 17) Tire Chains/Snow Req. 8) Warning Sign 18) Penalties Green 9) Turn Signal <input type="checkbox"/> 19) Unknown 10) Other		Distance Traveled After Impact 7-MOVED	<b>Speed Estimate</b> From To Limit 35	<b>Extent Of Damage</b> <input type="checkbox"/> 1) Minor <input type="checkbox"/> 4) Total <input checked="" type="checkbox"/> 2) Moderate <input type="checkbox"/> 5) None <input type="checkbox"/> 3) Major <input type="checkbox"/> 6) Unknown																									
<b>Sequence Of Events</b> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Code #</th> <th>Description</th> <th>Collision With Fixed Object</th> <th>Most Harmful Event</th> </tr> </thead> <tbody> <tr> <td>1st 214</td> <td>214 MOTOR VEHICLE IN TRANSPORT</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>2nd 214</td> <td>214 MOTOR VEHICLE IN TRANSPORT</td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>3rd</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>4th</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>5th</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </tbody> </table>						Code #	Description	Collision With Fixed Object	Most Harmful Event	1st 214	214 MOTOR VEHICLE IN TRANSPORT	<input type="checkbox"/>	<input type="checkbox"/>	2nd 214	214 MOTOR VEHICLE IN TRANSPORT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	3rd		<input type="checkbox"/>	<input type="checkbox"/>	4th		<input type="checkbox"/>	<input type="checkbox"/>	5th		<input type="checkbox"/>	<input type="checkbox"/>
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1st 214	214 MOTOR VEHICLE IN TRANSPORT	<input type="checkbox"/>	<input type="checkbox"/>																										
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4th		<input type="checkbox"/>	<input type="checkbox"/>																										
5th		<input type="checkbox"/>	<input type="checkbox"/>																										
<input type="checkbox"/> 1) HRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC/MC <input type="checkbox"/> 4) Pending (1)		Violation	NOC	Citation Number																									
<input type="checkbox"/> 1) HRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC/MC <input type="checkbox"/> 4) Pending (2)		Violation	NOC	Citation Number																									
Investigator(s) 9693 D. FIGUEROA		ID Number 9693	Date 1/2/2011	Reviewed By 6796 Robert Gibbs	Date Reviewed 1/9/2011 Page 5 of 6																								

Event Number: 110102-3282		<b>STATE OF NEVADA</b> <b>TRAFFIC ACCIDENT REPORT</b> <b>VEHICLE INFORMATION SHEET</b> <small>Revised 5/2/03</small>		Ident Number: LVMPD-110102-3282 Agency Name: LAS VEGAS METROPOLITAN PD	
Name: (Last Name, First Name, Middle Name Suffix)			Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other		
Street Address:			Transported To:		
City:	State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female	DOB:	Phone Number:	Injury Severity:	Injury Location:	
			Airbags:	Airbag Switch:	Ejected: Trapped:
Name: (Last Name, First Name, Middle Name Suffix)			Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other		
Street Address:			Transported To:		
City:	State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female	DOB:	Phone Number:	Injury Severity:	Injury Location:	
			Airbags:	Airbag Switch:	Ejected: Trapped:
Name: (Last Name, First Name, Middle Name Suffix)			Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other		
Street Address:			Transported To:		
City:	State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female	DOB:	Phone Number:	Injury Severity:	Injury Location:	
			Airbags:	Airbag Switch:	Ejected: Trapped:
<input type="checkbox"/> 1) Trailing Unit 1 VIN:			Plate:	State: <input type="checkbox"/> 1) NV	Type:
<input type="checkbox"/> 1) Trailing Unit 2 VIN:			Plate:	State: <input type="checkbox"/> 1) NV	Type:
<input type="checkbox"/> 1) Trailing Unit 3 VIN:			Plate:	State: <input type="checkbox"/> 1) NV	Type:
<b>Commercial Vehicle Configuration</b> <input type="checkbox"/> 1) Commercial Vehicle <input type="checkbox"/> 2) School Bus					
<input type="checkbox"/> 1) Bus, 9 - 15 Occupants <input type="checkbox"/> 2) Bus, > 15 Occupants <input type="checkbox"/> 3) Single 2 Axle and 6 Tire <input type="checkbox"/> 4) Single > 3 Axle <input type="checkbox"/> 5) Any 4 Tire Vehicle		<input type="checkbox"/> 6) Tractor Only <input type="checkbox"/> 7) Tractor / Trailer <input type="checkbox"/> 8) Tractor / Double <input type="checkbox"/> 9) Tractor / Triple <input type="checkbox"/> 10) Truck with Trailer		<input type="checkbox"/> 11) Tractor / Semi Trailer <input type="checkbox"/> 12) Passenger Vehicle, (Haz-Mat) <input type="checkbox"/> 13) Light Truck, (Haz-Mat) <input type="checkbox"/> 14) Other Heavy Vehicle	
Carrier Name:		Source <input type="checkbox"/> 1) Driver <input type="checkbox"/> 4) State Reg. <input type="checkbox"/> 2) Log Book <input type="checkbox"/> 5) Side of Vehicle <input type="checkbox"/> 3) Shipping Papers / Trip Manifest <input type="checkbox"/> 6) Other		Power Unit GVWR <input type="checkbox"/> 1) ≤ 10,000 Lbs <input type="checkbox"/> 2) 10,000 - 20,000 Lbs <input type="checkbox"/> 3) ≥ 20,000 Lbs <input type="checkbox"/> 1) Haz-Mat <input type="checkbox"/> 2) Related	
Carrier Street Address:		City:	State: <input type="checkbox"/> 1) NV	Zip:	
<b>Cargo Body Type</b> <input type="checkbox"/> 1) Pole <input type="checkbox"/> 6) Van / Box <input type="checkbox"/> 11) Grain, Gravel Chpts <input type="checkbox"/> 2) Tank <input type="checkbox"/> 7) Concrete Mixer <input type="checkbox"/> 12) Bus, 9 - 15 Occupants <input type="checkbox"/> 3) Flatbed <input type="checkbox"/> 8) Auto Carrier <input type="checkbox"/> 13) Bus, > 15 Occupants <input type="checkbox"/> 4) Dump <input type="checkbox"/> 9) Garbage/Refuse <input type="checkbox"/> 14) Other <input type="checkbox"/> 5) Unknown <input type="checkbox"/> 10) Not Applicable		Haz-Mat ID #: Hazard Classification #:		Type of Carrier <input type="checkbox"/> 1) Single State <input type="checkbox"/> 2) US DOT <input type="checkbox"/> 3) Canada <input type="checkbox"/> 4) Mexico <input type="checkbox"/> 5) None	
		NAS Safety Report #:		Carrier Number:	
				Page 6 of 6	

# Exhibit C.

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3  
4 EMILIA GARCIA, individually, )

5 Plaintiff, )

6 vs. )

CASE NO. A637772

DEPT. NO.: XXVII

7 JARED AWERBACH, individually; )

ANDREA AWERBACH, individually; )

8 DOES I - X, and ROE )

CORPORATIONS I - X, inclusive, )

9 Defendants. )

10 \_\_\_\_\_ )

11  
12  
13  
14  
15  
16 DEPOSITION OF OFFICER DAVID FIGUEROA

17 North Las Vegas, Nevada

18 Friday, September 19, 2014

19  
20  
21  
22  
23  
24 REPORTED BY: PEGGY S. ELIAS, RPR  
Nevada CCR No. 274 - California CSR No. 8671  
25 JOB NO.: 217677

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1 it up is it's a big picture in terms of what took place  
2 in the accident and exchange of information; so there's  
3 a lot of detailed information so both parties can have  
4 on our report saying that the police did come out, and  
5 this was our findings.

6 Q. Including the date, location, the time of the  
7 accident?

8 A. Yes, sir.

9 Q. Including the determination as to whether  
10 there were any fatalities, the number of occupants,  
11 number of vehicles, and number of individuals injured?

12 A. That is correct.

13 Q. And there were -- the number of individuals  
14 involved in this motor vehicle accident would be in  
15 that box number of occupants?

16 A. Yes, sir.

17 Q. So there's a total number of two individuals  
18 involved in this particular accident, right?

19 A. Yes, sir.

20 Q. And those individuals are named on the  
21 Vehicle Information Sheet for the respective vehicles,  
22 correct?

23 A. Yes, sir.

24 Q. All right. And in the box near the top of  
25 the page entitled -- has a number symbol and then

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1 injured next to it, you have a zero in that.

2 What is that based on?

3 A. Can you give me the heading of the box?

4 Q. Oh, sure. It has a number sign and then  
5 injured.

6 A. Oh, zero injured. That means that at the  
7 time of the accident, no injuries were visible to me,  
8 and no injuries were reported to me, reference the  
9 parties involved.

10 Q. Is it correct to say, as an investigating  
11 officer, you are required to ask two questions  
12 regardless of the answer; more specifically, the  
13 question you're required to ask the parties involved in  
14 the accident: Are you injured, number one question?

15 A. Yes, sir.

16 Q. And regardless of the answer, are you still  
17 required to ask whether or not they might need medical  
18 attention?

19 A. Yes, sir.

20 Q. And so -- and then directing your attention  
21 down to the bottom of the page under description of  
22 accident narrative, what's the -- what's the purpose  
23 for this section?

24 A. The purpose of this is to explain to those  
25 who are going to read this accident report or weren't

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1 at the scene to get a visual, I guess, picture of what  
2 took place.

3 Q. And so is it fair to say that this  
4 description of accident narrative contains a  
5 restatement of conversations you might have had with  
6 the motorists?

7 A. Yes.

8 Q. And as well as a determination that you've  
9 made as to maybe a finding of fault or a statement as  
10 to your best understanding as to how the accident  
11 occurred?

12 A. Yes, sir.

13 Q. Do you have -- strike that.

14 Can you tell me what your observations were  
15 when you arrived on the scene at the location of this  
16 accident? What were your initial observations?

17 A. I don't recall, but based on the report, two  
18 vehicles on the roadway facing different directions.  
19 Motorist in Vehicle 1, which is the male, sitting  
20 behind the wheel, and the vehicle was on, running. The  
21 lights were on. The subject -- the male subject was  
22 sitting behind the steering wheel, driver's seat, and  
23 keys were in the ignition.

24 Q. And referring to the occupant in Vehicle 1,  
25 that was --

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1 A. Awerbach.

2 Q. -- Jared Awerbach?

3 A. Yes, sir.

4 Q. And according to the narrative description,  
5 he apparently -- he stated that he thought that Rainbow  
6 Boulevard was clear of traffic?

7 A. Yes, sir.

8 Q. And which was the reason why he had entered  
9 onto Rainbow at the time that he did?

10 A. Yes.

11 Q. And then does the description of the accident  
12 contain any statements that the occupant of Vehicle 2,  
13 Emilia Garcia, had provided to you?

14 A. Give me a second.

15 Q. Sure.

16 A. She provided statements because, naturally, I  
17 would have to speak with her, but I didn't include them  
18 into the narrative because I didn't think that they  
19 was pertinent to the cause of the accident.

20 Q. And --

21 A. And --

22 Q. Did you -- let me --

23 A. No, no.

24 Q. Go ahead.

25 A. I just wanted to add the portion that states

6

6



  
CLERK OF THE COURT

**OPPS**  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

EMILIA GARCIA, individually,	)	CASE NO. A637772
	)	DEPT. NO. 30
Plaintiff,	)	
	)	<b>OPPOSITION TO DEFENDANT</b>
v.	)	<b>ANDREA AWERBACH'S MOTION</b>
JARED AWERBACH, individually; ANDREA	)	<b>FOR SUMMARY JUDGMENT ON</b>
AWERBACH, individually; DOES I - X, and ROE	)	<b>PUNITIVE DAMAGES PURSUANT</b>
CORPORATIONS I - X, inclusive,	)	<b>TO NRS 42.005 ON OST</b>
	)	
Defendants.	)	
	)	<b>Date of hearing: Jan. 14, 2016</b>
	)	<b>Time of hearing: 9:00 a.m.</b>
	)	
	)	

Plaintiff Emilia Garcia files this Opposition to Defendant Andrea Awerbach's Motion for Summary Judgment On Punitive Damages Pursuant to NRS 42.005 on OST. Notably, NRCP 56(c) requires that a dispositive motion "shall be served at least 10 days before the time fixed for the hearing." Andrea, in contrast, served Emilia with the motion on January 11, 2016, three days before the January 14, 2016, hearing. As explained in more detail below, this "deprives the court of authority to grant summary judgment." *Cheek v. Fnf Constr.*, 112 Nev. 1249, 924 P.2d 1347 (1996).

///

///

1 This opposition is based upon the following memorandum of points and authorities and  
2 exhibits attached thereto, the papers and pleadings on file with this Court, and the oral argument of  
3 the parties.

4  
5 GLEN J. LERNER & ASSOCIATES

6 By: /s/ Craig A. Henderson

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17  
18  
19  
20  
21  
22  
23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24  
25  
26  
27  
28 **I. INTRODUCTION**

17 In this personal injury action, Defendant Andrea Awerbach, again, seeks summary judgment  
18 on Emilia's claim for punitive damages. Not only is Andrea's motion procedurally deficient  
19 because it failed to provide Emilia with at least 10 days' notice of the hearing and it was filed one  
20 year after the deadline for dispositive motions, the motion is based on Nevada Supreme Court  
21 caselaw that was overruled nearly ten years ago. Specifically, while Andrea claims Emilia may not  
22 use "conscious disregard" as basis to seek punitive damages against Andrea, the Nevada Supreme  
23 Court disagrees: "Under NRS 42.001, implied malice is a discrete basis for assessing punitive  
24 damages where conscious disregard can be demonstrated." The definition Andrea purports to rely  
25 has been overruled: "we overrule *Granite Construction v. Rhyne* as a guide to determining the  
26 showing required to demonstrate conscious disregard under NRS 42.001(1)." In other words,  
27 Andrea comes before this Court, one year after the dispositive motion deadline, and seeks summary  
28 judgment on Emilia's punitive damage claim based on caselaw that was overruled nearly a decade

1 ago. All without giving Emilia proper notice of the motion.

2       Regardless, this Court already addressed this issue when it denied Andrea's earlier summary  
3 judgment motion seeking the same relief when it specifically allowed Emilia to demonstrate fraud,  
4 oppression, malice, or conscious disregard: "I made it pretty clear...I think I'm going to allow them  
5 to argue fraud, oppression, or malice." Nothing has changed since October, 2015, when the motion  
6 was heard. Here, Andrea was well aware prior to January 2, 2011, that Jared: (i) never had a  
7 drivers' license; (ii) had caused a car accident in 2008 while driving her car; and (iii) and was a user  
8 of illegal drugs. Despite having this knowledge, Andrea allowed Jared to drive her car on January  
9 2, 2011. Most egregiously, Andrea was so in tune with her son's drug addiction her first question  
10 when the police called her after the January 2, 2011, accident was "Is he high? Is he drunk?"  
11 Simply put, Andrea absolutely knew the probable consequences of allowing Jared to drive her car  
12 on January 2, 2011, and this entitles Emilia to seek punitive damages under NRS 42.005.

## 13                               **II.       RESPONSE TO STATEMENT OF UNDISPUTED FACTS**

### 14               **A.       Jared admits the purpose of his trip on January 2, 2011, was to sell a** 15               **"substantial amount of marijuana."**

16       On January 2, 2011, Jared, while driving an automobile owned by his mother, Andrea,  
17 negligently caused a motor vehicle accident with a vehicle being driven by Emilia. Andrea  
18 Awerbach's Resp. to Plaintiff's Interrog., at No. 7, attached hereto as Ex. 1-A. In particular, on  
19 January 2, 2011, Jared received a phone call from the godmother of his child, Cherise Killian, who  
20 wanted "a substantial amount of marijuana." See Mar. 27, 2014, Jared Awerbach Trans., at 113,  
21 attached to Plaintiff's Mot. for Part. Summ. Judg. as Ex. 1-A, on file with this Court. Jared used his  
22 mother's car to drive to Cherise's apartment to sell her marijuana. *Id.*, at 113-115. Cherise lived in  
23 the Villa del Sol apartment complex on Rainbow Boulevard just north of Peak Drive in Las Vegas.  
24 *Id.* Cherise confirmed she "saw Jared smoking marijuana outside my apartment" before the January  
25 2, 2011 accident. See Ex. 1-B to Plaintiff's Mot. for Part. Summ. Judg.

26       In order to return Andrea's car after completing the marijuana sale and after smoking  
27 marijuana, Jared got back into Andrea's car and proceeded to the driveway that exited the Villa del  
28 Sol apartment complex onto Rainbow Boulevard at 5:57 p.m. Plaintiff's Mot. for Part. Summ.

1 Judg., at Ex. 1-A, at 113-115; *see also* Traffic Accident Report, attached to Plaintiff's Mot. for Part.  
2 Summ. Judg. as Ex. 1-C; audio recording of Emilia's 311 call, attached to Plaintiff's Mot. for Part.  
3 Summ. Judg. as Ex. 1-D. Jared intended to make a left turn from the driveway onto Rainbow.  
4 Plaintiff's Mot. for Part. Summ. Judg., at Ex. 1-A, at 113-115. As Jared was looking toward his left,  
5 he saw a city bus approaching in the right lane of the two southbound Rainbow travel lanes, and he  
6 saw Emilia's white car behind the bus. *Id.* After the bus passed in front of Jared, he initiated his  
7 left turn and crashed the front of his mother's car into the rear passenger quarter panel of Emilia's  
8 car. *Id.*, at 113-115; 166. Emilia's car spun 180 degrees into oncoming traffic. Plaintiff's Mot. for  
9 Part. Summ. Judg., at, Ex. 1-E, at 23. Jared attempted to flee the scene of the accident but was  
10 unable to do so because his mother's car was rendered undriveable as a result of the accident.  
11 Plaintiff's Mot. for Part. Summ. Judg., Ex. 1-A, at 114-115. Ultimately, Emilia sued Andrea for  
12 joint liability under NRS 41.440 and negligent entrustment. *See* Amend. Comp., on file with this  
13 Court. Emilia sued Jared for negligence and also asserted a claim for punitive damages against  
14 Defendants. *Id.*

15 **B. Jared admits he was in possession of marijuana at the time of the accident.**

16 The police were dispatched to the scene of the accident, and Officer Figueroa of the Las  
17 Vegas Metropolitan Police Department generated a Traffic Accident Report detailing his  
18 observations and conclusions regarding the accident. Plaintiff's Mot. for Part. Summ. Judg., at Ex.  
19 1-C. Officer Figueroa smelled a strong odor of marijuana on Jared's breath. Plaintiff's Mot. for  
20 Part. Summ. Judg., at Ex. 1-F, at 39. Jared admits he possessed marijuana at the time of the  
21 accident, and that he told Officer Figueroa he had smoked marijuana before the accident. Plaintiff's  
22 Mot. for Part. Summ. Judg., at Ex. 1-A, at 120-121. Officer Figueroa testified Jared admitted  
23 smoking marijuana. Plaintiff's Mot. for Part. Summ. Judg., at Ex. 1-F, at 124. Jared was  
24 administered several field sobriety tests at the accident scene. *Id.* Jared failed all of them. *Id.*

25 **C. Jared had illegal levels of marijuana in his blood following the accident.**

26 Following the accident, Officer Figueroa arrested Jared, and George Ubina, a registered  
27 nurse, took a blood sample from Jared on January 2, 2011, at 7:36 p.m. Plaintiff's Mot. for Part.  
28 Summ. Judg., at Ex. 1-C. Jared consented to the blood draw. Plaintiff's Mot. for Part. Summ.

1 Judg., at Ex. 1-A, at 146. Mr. Ubina gave Jared's blood sample to Officer Figueroa, who then  
2 caused the blood sample to be sent to the Las Vegas Metropolitan Police Department Forensics  
3 Laboratory for testing. Plaintiff's Mot. for Part. Summ. Judg., at Ex. 1-C. The LVMPD forensics  
4 laboratory chemist, then, removed the "unsealed" sample from the secure refrigerator in the  
5 laboratory, tested the sample, and determined Jared had 47 nanograms of marijuana metabolite per  
6 milliliter of blood, nearly ten times the legal limit of 5 ng/mL proscribed by NRS 484C.110(3)(h).  
7 *Id.* The tests also revealed Jared had 3.3 nanograms of THC – the active ingredient in marijuana –  
8 in his blood system, also in excess of the legal limit of 2 ng/mL of blood proscribed by NRS  
9 484C.110(3)(g). *Id.*

10 **D. Jared pleaded guilty to driving with illegal levels of marijuana in his blood**  
11 **system.**

12 On May 12, 2011, Jared withdrew his plea of not guilty to driving under the influence of  
13 marijuana arising out of the January 2, 2011, accident, changed his plea to guilty, and was found  
14 guilty of driving on January 2, 2011, with illegal levels of marijuana in his blood system. *See also*  
15 Plaintiff's Mot. Part. Summ. Judg., at Ex. 1-A, at 145:20-146:2. As a result of Jared's conviction,  
16 he served time in jail.

17 **E. Andrea knew Jared did not have a driver's license and used her car many times**  
18 **prior to January 2, 2011, including a prior accident driving Andrea's car.**

19 Prior to the January 2, 2011, accident Andrea knew Jared was an incompetent, inexperienced  
20 driver who did not have a driver's license, never had a driver's license, and had been involved in a  
21 prior car accident while driving Andrea's car three years earlier in 2008:

22 Q. Other than the 2011 accident, what motor vehicle accidents are you aware of  
23 that Jared has been in?

24 A. 2008.

25 Q. Okay. What happened in 2008?

26 A. We were at my school. He went out to – he had my school and car keys to go  
27 get something out of the car or throw some garbage out. And then I got a call  
28 from police that he had been in an accident at Fuselier near my school.

Q. He was driving your car; right?

A. Yes.

1           \*\*\*

2           BY MR. SMITH:

3           Q. Was it a big accident?

4           MR. MAZZEO: Objection, form.

5           THE WITNESS: In terms of damage, yes.

6           BY MR. SMITH:

7           Q. And your car was totaled; right?

8           A. Yes.

9           *See* October 24, 2014, Andrea Awerbach Trans., at 122-24, attached hereto as Ex. 1-B. In addition

10          to the 2008 accident, Andrea knew Jared had taken her keys and used her car on other occasions

11          prior to January 2, 2011:

12          Q. Did Jared ever drive your car before the 2011 accident?

13          MR. MAZZEO: Asked and answered.

14          THE WITNESS: Yes.

15          BY MR. SMITH:

16          Q. How many occasions?

17          A. I have no idea.

18          Q. How many do you know about?

19          MR. MAZZEO: Objection, speculation.

20          MR. SMITH: It's not speculation if I ask her what she knows, Pete.

21          THE WITNESS: I know that when I thought he had a permit, I took him driving a

22          handful of times. I know that, you know, he told me after the fact that he had

23          taken the car without permission. So if you're counting without permission or

24          times that I thought Tikira, who was a licensed driver and the mother of my

25          grandchildren, had the car and it turned out Jared was driving, maybe ten to 20

26          times. I'm solely guessing.

27          Q. How many times do you know of he drove your car without permission before

28          January 2nd, 2011?

            THE WITNESS: I don't know.

            BY MR. SMITH: Q. Well, how many times do you know about? I know you

            know about one for sure, right, in 2008?



1 A. Right. And I know about 2011.

2 Q. Besides those two, how many do you know about?

3 A. That he's told me outright? Four, maybe four or five.

4 Q. Four before the January 2011 accident?

5 A. Um-hmm.

6 Q. Yes?

7 A. Yes...

8 Q. How did he get the keys --

9 MS. COMPTON: Do you want to take a break?

10 THE WITNESS: No.

11 BY MR. SMITH:

12 Q. How did he get the keys those other four or five times?

13 A. He found them or he took them. There was a time that I believed I had the

14 keys, came out and saw my car gone. That's one of the times I knew to start

15 hiding the keys. He told me he didn't drive, a neighbor had driven. And then

16 when I threatened to call the police, he confessed he did it. So that was one time

17 that I knew about. Then there have been times since then that he said, you know,

18 I've taken the car more, I took the car more times than that.

19 *Id.*, at 139-142. Andrea also knew that as of January 2, 2011, Jared did not have a driver's license

20 and had never had a driver's license:

21 Q. Has Jared ever had a driver's license?

22 A. Not that I know, no.

23 *Id.*, at 165.

24 **F. Andrea knew about Jared's drug use and drug dealing before the accident.**

25 Andrea was also aware of Jared's use and sale of illegal drugs prior to the accident on

26 January 2, 2011:

27 Q. Prior to the accident that we're here to talk about today, your mom was aware of your

28 drug use?

A. She was aware of my drug problem.

Q. In fact, she saw you using in the house before, correct?

A. No, sir.

1 Q. That's not correct?

2 A. No, sir.

3 Q. I'm going to read you a line from -- from your mom's deposition.

4 A. Oh, yes, sir. One time, yes, sir.

5 Q. So you --

6 A. I apologize. It has nothing to do with the deposition. It has to do with my memory, yes.

7 Q. Well, go ahead. Tell me about it.

8 A. One time -- one time -- this isn't funny. One time I had the radio up real loud, and I was

9 chilling with my friends.

10 MR. STRASSBURG: Go on.

11 THE WITNESS: And I was rolling a -- marijuana, and I looked up, and my mom was

12 standing right there at the door.

13 BY MR. ESCHWEILER:

14 Q. So you were in your bedroom?

15 A. Yes, in a different location.

16 Q. At a different apartment where you lived --

17 A. Yes, sir.

18 Q. -- with your mom?

19 A. Yes, sir.

20 Q. Well, were you rolling a joint or a blunt, what?

21 A. Blunt.

22 Q. Blunt. How old were you at that time?

23 A. Fourteen.

24 Q. What'd your mom say?

25 A. Get out.

26 Q. She told you to leave?

27 A. Yeah.

28 See Mar. 27, 2014 Jared Awerbach Trans., at 151-152, attached as Ex. 1-D. In fact, Andrea caught

Jared using drugs on other occasions prior to January 2, 2011:

1 Q. Were you ever suspended or expelled from school for any reason?  
2 A. Yes, sir.  
3 Q. What school?  
4 A. Green Valley High School.  
5 Q. What was the reason for the expulsion?  
6 A. Possession of marijuana.  
7 Q. What year was that?  
8 A. I don't remember.  
9 Q. Do you know what year of school you were?  
10 A. Ninth grade.  
11 Q. Ninth grade. When you were expelled for possession of marijuana, did they  
12 hold a hearing or any type of proceeding before they expelled you?  
13 A. No, sir.  
14 Q. Did they tell your mom?  
15 A. Yes, sir.  
16 Q. So your mom knew that you had possession of marijuana at Green Valley High  
17 School?  
18 A. Yes, sir.  
19 Q. Did your mom know that you were smoking weed since you were twelve?  
20 A. Yes, sir.  
21 Q. How did she know that?  
22 A. From the multiple times that she caught me.  
23 Q. How would she catch you?  
24 A. She searched my room, drug tests.  
25 *See Mar. 27, 2014 Jared Awerbach Trans., at 17-18, attached as Ex. 1-D. In fact, Andrea knew*  
26 *about Jared's drug use because she was home when the Las Vegas Metropolitan Police Department*  
27 *raided Jared and Andrea's apartment in November, 2010, looking for drugs:*  
28 Q. So in the November 2010 raid, they did find marijuana?  
A. Yes, sir.

1 Q. Did they find anything -- any other drugs?  
2 A. No, sir.  
3 Q. How much marijuana did they find?  
4 A. Just less than an eighth.  
5 Q. Less than an eighth of an ounce?  
6 A. Yes, sir.  
7 Q. Did they confiscate that?  
8 A. Yes, sir.  
9 Q. Was your mom home at the time?  
10 A. Yes, sir.  
11 Q. Was your mom aware that you were dealing drugs out of the Gowan Street  
12 apartment?  
13 A. No, sir.  
14 Q. Was she aware of it after the raid?  
15 A. Yes, sir....  
16 Q. Did you have a conversation with your mom about what was happening?  
17 A. A brief conversation.  
18 Q. Well, what was the substance of the conversation?  
19 A. My mom asked the police officer what was going on and what they were doing  
20 there, and the police officer said ask Jared what we're doing here, and I said I've  
21 been selling weed. That's pretty much it.  
22 *Id.*, at 56-57. In truth, Andrea admits knowing about Jared's drug use and drug dealing:  
23 Q. What's your relationship like with Jared?  
24 A. Can you explain, you know, what's my relationship like.  
25 Q. Do you have a close relationship?  
26 MR. PITEGOFF: Objection. Form.  
27 THE WITNESS: We have -- we have a relationship that is impeded by his drug  
28 addiction. So I have a relationship with my son and I have a relationship with his  
addiction.  
BY MR. SMITH:

1 Q. Can you describe your relationship with him on January 2, 2011.

2 A. It was strained. It was suspicious. I was always on edge. I -- we had the added  
3 pressure of his child, so I was a little trapped in terms of feeling whether I could  
4 tell him to move out. It was scary.

4 Q. Why was it scary?

5 A. Because I was living with an active drug dealer and an active drug addict. And,  
6 so, I never knew what was going to happen. I don't know what of mine was going  
7 to come up missing.

7 Ex. 1-B, at 16-17. In fact, when the police called Andrea following the January 2, 2011, accident  
8 her first thought was that Jared had been drinking or using drugs:

9 Q. Let's talk about the day of the accident.

10 A. (Nodded head.)

11 Q. Do you remember that day?

12 A. Not much of it.

13 Q. What is it that you do remember about that day?

14 A. I remember getting the phone call from the police.

15 Q. Okay. So your first knowledge of the accident came from police?

16 A. Uh-huh.

17 Q. What did they tell you?

18 MR. PITEGOFF: Was that a "yes"?

19 THE WITNESS: I'm sorry. Yes.

20 MR. SMITH: Thank you for clarifying.

21 THE WITNESS: Yes.

22 MR. SMITH: I appreciate it.

23 BY MR. SMITH:

24 Q. What did the police tell you?

25 A. That Jared had been in an accident. I'm trying to remember if they told me he  
26 was being arrested. **And I had a discussion with the officer about whether he  
was under the influence. I asked, "Is he high? Is he drunk?"**

27 Ex. 1-C, at 19-20 (emphasis added). In other words, Andrea knew of Jared's extensive involvement  
28 with illegal drugs to such an extent that her first thought after the January 2, 2011, crash was that he

1 was under the influence of drugs. Andrea also knew Jared never had a driver's license, routinely  
2 took her keys and her car, and caused a prior car accident years earlier. Despite all of this, Andrea  
3 gave Jared the keys to her car on January 2, 2011, and routinely made the keys available to him by  
4 leaving them out in the open on the mantle of their home.

5 **G. Jared violated NRS 484C.110(3)(h) and is deemed per se impaired.**

6 On May 19, 2014, this Court issued a Scheduling Order making clear dispositive motions  
7 were due for filing no later than January 9, 2015. *See* Scheduling Order and Order Re-Setting Civil  
8 Jury Trial and Calendar Call. On January 15, 2015, this Court entered partial summary judgment  
9 finding Jared violated NRS 484C.110(3)(h) by driving with illegal levels of marijuana metabolite in  
10 his blood system at the time of the crash. *See* Order Granting In Part and Denying In Part,  
11 Plaintiff's Motion for Partial Summary Judgment Defendant Jared Awerbach Was Impaired, on file  
12 with this Court. The Court's order also deems Jared "per se impaired" as a matter of law based upon  
13 the undisputed level of marijuana metabolite in his blood at the time of the accident." *Id.* (emphasis  
14 added). One month later, the Court entered another order finding Jared used Andrea's car on  
15 January 2, 2011, with her permission. *See* Feb. 25, 2015, Decision and Order Denying Plaintiff's  
16 Motion to Strike Andrea's Answer, on file with this Court.

17 **H. Andrea's first summary judgment motion on punitive damages.**

18 On August 18, 2015, Andrea filed a Motion for Summary Judgment Regarding Punitive  
19 Damages on OST. Emilia opposed the motion, and the Court held a hearing. During the hearing,  
20 the Court made clear:

21 All right. Here's what we're going to do, guys: I'm going grant it as it relates to  
22 42.010 and as it relates to 41.440. If the plaintiff can prove fraud, oppression, or  
23 malice, and I think the oppression is where the -- the reckless disregard comes in,  
24 if you can prove it under that statute, I -- I don't think I can dismiss the claim as it  
25 relates to that. But I think under 42.010, I don't think that the mother can be held  
26 liable for punitive damages. Under 41.440, I think the Allen case eliminates the  
27 punitive damages under that statute. So I think the only thing left for you is the  
28 fraud, oppression, or malice statute.

*See* Oct. 13, 2015, Hearing Trans., at 23:15-2, attached as Ex. 1-E. Later, the Court reaffirmed its  
ruling:

I made it pretty clear. It's granted as to 42.010 and 41.440. I think I'm going to  
allow them to argue fraud, oppression, or malice.



1 *Id.*, at 27:6-9. In other words, the Court twice explained its ruling and has made clear Emilia is  
2 entitled to pursue Andrea for punitive damages under NRS 42.005.

3 **I. Andrea seeks summary judgment, again, on the same issue.**

4 On January 11, 2016, Emilia was served with Defendant Andrea Awerbach's Motion for  
5 Summary Judgment on Punitive Damages Pursuant to NRS 42.005 on OST. This, three days before  
6 the hearing, two months after the Court ruled on the same motion, and one year after the court-  
7 ordered dispositive motion deadline. Andrea did not personally serve Emilia's counsel with the  
8 motion, but relied exclusively on electronic service three days before the hearing. Even more  
9 egregious, Andrea's most recent motion for summary judgment is virtually identical to Andrea's  
10 August 18, 2015, summary judgment motion and even contains the same typographical errors.  
11 More importantly, Andrea's motion is based on the same flawed argument this Court rejected on  
12 October 13, 2015, when the Court denied the same request to preclude Emilia from seeking punitive  
13 damages against Andrea.

14 **III. ARGUMENT**

15 **A. The court cannot hear Andrea's untimely and improperly served motion.**

16 Pursuant to the Court's scheduling order, dispositive motions were due no later than January  
17 9, 2015, and were to be heard by January 29, 2015. Plaintiff has not recently amended her  
18 complaint, and Andrea has long known of Emilia's claims against her. In addition, Defendants have  
19 obtained numerous discovery extensions and trial continuances, and there is no justification for  
20 Andrea's untimely dispositive motion filed one year after the Court's deadline and three weeks  
21 before trial. This, alone, requires denial of Andrea's motion.

22 More importantly, Andrea's motion fails to comply with the mandatory timing and service  
23 rules for summary judgment motions. That is, NRCP 56(c) provides that summary judgment  
24 motions "shall be served at least 10 days before the time fixed for the hearing." Further, EDCR  
25 provides that "[a]n order which shortens the notice of a hearing to less than 10 days may not be  
26 served by mail." The Nevada Supreme Court has made clear that "NRCP 56(c) provides that 'the  
27 motion [for summary judgment] shall be served at least 10 days before the time fixed for the  
28 hearing,'" and "noncompliance with the time provisions of the rule 'deprives the court of authority

1 to grant summary judgment.’’ *Cheek v. Fnf Constr.*, 112 Nev. 1249, 1251, 924 P.2d 1347, 1349  
2 (1996). As the court explained:

3 the 10-day time period for service of the motion is especially important in the  
4 Rule 56 context because it provides an opportunity for the opposing party to  
5 prepare himself as well as he can with regard to whether summary judgment  
6 should be entered. In theory, the additional time ought to produce a well-prepared  
7 and complete presentation . . . . In addition, since opposition to a summary  
judgment motion often is a difficult task, usually involving preparation of both  
legal and factual arguments as well as affidavits, and since the results of failure  
are drastic, it is felt that the additional time is needed to assure that the summary  
judgment proceeding is fair.

8 *Cheek v. Fnf Constr.*, 112 Nev. 1249, 1251, 924 P.2d 1347, 1349 (1996). Indeed, “The fact that the  
9 renewed motion for summary judgment did not raise any new issues is not dispositive. Under  
10 *Osbakken* and *Soebbing*, the Cheeks were entitled to ten days’ notice regardless of the merits.” *Id.*  
11 This case is no different. In fact, Emilia received only three days’ notice of Andrea’s summary  
12 judgment motion, having been electronically served with the motion on January 11, 2016, prior to  
13 the January 14, 2016, hearing. This is insufficient time for Emilia to prepare a response and  
14 deprives the Court of authority to rule on Andrea’s motion. This is especially true when the motion  
15 was filed a year after the dispositive motion deadline and weeks before the February 8, 2016, trial.

16 Along the same lines, this Court’s rules mandate that “[a]n order which shortens the notice  
17 of hearing to less than 10 days may not be served by mail.” EDCR 2.26; *Cheek v. Fnf Constr.*, 112  
18 Nev. 1249, 1253, 924 P.2d 1347, 1350 (1996). As the Court also explained in *Cheek*:

19 [T]he district court judge should have required ten days’ notice under both the  
20 local rules and the Nevada Rules of Civil Procedure. Since the Cheeks were only  
afforded seven days’ notice, service by mail was improper. Thus, the December  
26 mailing would not constitute legally sufficient notice.

21 *Cheek v. Fnf Constr.*, 112 Nev. 1249, 1254, 924 P.2d 1347, 1351 (1996). The same reasoning is  
22 applicable here. The Court signed the order shortening time on January 8, 2016, setting the hearing  
23 for January 14, 2016, or four judicial days later. Andrea was, therefore, required by this Court’s  
24 rules to personally serve Emilia’s counsel with a copy of the order. Andrea did not and only served  
25 Emilia with the order electronically. Emilia, therefore, did not receive legally sufficient notice of  
26 Andrea’s motion. This also mandates denial of Andrea’s motion as this Court cannot grant an  
27 improperly noticed motion, let alone an improperly noticed dispositive motion.  
28

1           **B.       Andrea’s motion is legally flawed.**

2           Aside from the procedural defects plaguing Andrea’s motion, the motion is also fatally  
3 flawed from a legal standpoint. Like her prior dispositive motion on punitive damages, the premise  
4 of Andrea’s most recent summary judgment motion is that she did not cause injuries while driving a  
5 car, or cause injuries while driving a car after using marijuana. Consequently, according to Andrea,  
6 she cannot be held liable for punitive damages under NRS 42.005. NRS 42.005 provides in  
7 relevant part:

8           Except as otherwise provided in NRS 42.007, in an action for the breach of an  
9 obligation not arising from contract, where it is proven by clear and convincing  
10 evidence that the defendant has been guilty of oppression, fraud or malice,  
express or implied, the plaintiff, in addition to the compensatory damages, may  
recover damages for the sake of example and by way of punishing the defendant.

11 NRS 42.005(1). The crux of Andrea’s argument is that while NRS 42.001(1) provides a definition  
12 for “conscious disregard,” the actual substantive statute, NRS 42.005(1), never references the term  
13 “conscious disregard” such that Emilia cannot recover punitive damages against Andrea based only  
14 on a showing of conscious disregard. Andrea’s novel interpretation is contradicted by the plain  
15 language of the statute and Nevada Supreme Court jurisprudence. As the Nevada Supreme Court  
16 explained in *Countrywide Home Loans, Inc. v. Thitchener*:

17           Under NRS 42.001, “[m]alice, express or implied’ means conduct which is  
18 intended to injure a person or despicable conduct which is engaged in with a  
conscious disregard of the rights or safety of others.” Similarly, “[o]ppression’  
19 means despicable conduct that subjects a person to cruel and unjust hardship with  
conscious disregard of the rights of the person.” Both definitions utilize  
20 conscious disregard of a person’s rights as a common mental element, which in  
turn is defined as “the knowledge of the probable harmful consequences of a  
21 wrongful act and a willful and deliberate failure to act to avoid those  
consequences.”

22 *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 739, 192 P.3d 243, 252 (2008). As the  
23 Court further clarified in *Countrywide*:

24           In light of the discord noted above and given NRS 42.001(1)’s clear definition,  
25 we conclude that neither *Granite* nor the *Craig* concurrence remain appropriate  
26 guides to analyzing conscious disregard for purposes of implied malice or  
oppression. In short, the enactment of NRS 42.001 has retired the malice debate  
27 and clarified the proper role of a defendant’s conscious disregard in our law of  
punitive damages. Under NRS 42.001, implied malice is a discrete basis for  
28 assessing punitive damages where conscious disregard can be demonstrated. To  
eliminate confusion regarding this mental element, the Legislature defined  
conscious disregard under NRS 42.001(1) in plain and unambiguous terms.

1 Rather than rely on past cases that pre-dated NRS 42.001(1), in defining what  
2 conduct would amount to conscious disregard, we look no further than the  
statute's language.

3 *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 742-43, 192 P.3d 243, 254-55 (2008)  
4 (emphasis added). In other words, Andrea's reliance on *Granite Construction Company v. Rhyne* to  
5 define conscious disregard is misplaced as the Nevada Supreme Court overruled *Granite* seventeen  
6 years later in *Countrywide*. *Id.* ("we overrule *Granite Construction v. Rhyne* as a guide to  
7 determining the showing required to demonstrate conscious disregard under NRS 42.001(1)").<sup>1</sup> In  
8 doing so, the Court made clear "[u]nder NRS 42.001, implied malice is a discrete basis for  
9 assessing punitive damages where conscious disregard can be demonstrated." *Id.* (emphasis  
10 added). This case is no different.

11 **C. Andrea consciously disregarded Emilia's safety when she permitted Jared to**  
12 **drive Andrea's car.**

13 There is simply no need to look past the statute's plain and unambiguous terms in defining  
14 conscious disregard: "the knowledge of the probable harmful consequences of a wrongful act and a  
15 willful and deliberate failure to act to avoid those consequences." Similarly, Andrea is liable for  
16 punitive damages because her conduct was oppressive and subjected Emilia to "cruel and unjust  
17 hardship with conscious disregard of [Emilia's] rights." NRS 42.001(4). In doing so, it is patently  
18 obvious Emilia is entitled to seek punitive damages against Andrea for permitting Jared to drive her  
19 car on January 2, 2011. Andrea knew full well the probable harmful consequences of allowing  
20 Jared to drive her car, and, yet, Andrea did nothing to stop him from driving. Specifically, Andrea  
21 admits knowing Jared had never had a driver's license prior to January 2, 2011. In fact, Andrea not  
22 only knew Jared never had a driver's license, she knew he was an incompetent driver who had  
23 already been in a major car accident three years earlier in 2008 –using her vehicle. Andrea cannot  
24 claim she did not know that if Jared drove, he would probably cause another collision.

25 In addition to taking her keys and her car in 2008, Andrea admits she knew Jared took her  
26 car on many other occasions before 2011. In fact, Andrea's own evidence reveals that on January  
27 2, 2011, Andrea "let [Jared] have the keys earlier that day," and Andrea "usually keeps the car keys

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28 <sup>1</sup> Andrea's reliance on *Wallace v. USAA* is also inapposite as *Wallace* is based on the outdated *Granite* decision.

1 on the mantle.” Consequently, Andrea cannot claim she actively hid the keys from Jared when she  
2 routinely made them available to him by leaving them in the open at their home. Andrea was also  
3 well aware Jared used illegal drugs to the point where the Las Vegas Metropolitan Police raided her  
4 home on at least one occasion prior to January 2, 2011. Notwithstanding all of this, however,  
5 Andrea allowed Jared to use her car on January 2, 2011, where he caused a major car accident with  
6 Emilia. **In fact, Andrea was so in tune with Jared’s alcohol and drug abuse that her first**  
7 **though when the police called her following the January 2, 2011, accident, was that Jared was**  
8 **drunk or high.** This, alone, is sufficient to support a finding by clear and convincing evidence that  
9 Andrea knew the probable harmful consequences of allowing Jared to drive and, yet, took no action  
10 to stop him from driving. This is also a sufficient basis to allow a jury to award Emilia punitive  
11 damages.

#### 12 IV. CONCLUSION

13 For the reasons set forth above, Andrea Awerbach’s Motion for Summary Judgment must be  
14 denied in its entirety and Emilia’s punitive damage claim allowed to proceed to trial.

15 GLEN J. LERNER & ASSOCIATES

16 By: /s/ Craig A. Henderson

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**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(a) and EDCR 7.26(a), I hereby certify that I am an employee of GLEN J. LERNER & ASSOCIATES, and on the 12th day of January, 2016, the foregoing **OPPOSITION TO DEFENDANT ANDREA AWERBACH’S MOTION FOR SUMMARY JUDGMENT ON PUNITIVE DAMAGES PURSUANT TO NRS 42.005 ON OST** was served by depositing a true and correct copy in the United States Mail, postage prepaid, addressed as follows, to the following counsel of record:

Peter Mazzeo, Esq.  
MAZZEO LAW  
631 S. 10<sup>th</sup> Street \_\_\_\_\_  
Las Vegas, Nevada 89101  
*Attorneys for Defendant Andrea Awerbach*

Roger Strasburg, Esq.  
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Las Vegas, NV 89146  
*Attorney for Defendant Jared Awerbach*

\_\_\_\_\_  
*An Employee of Glen J. Lerner & Associates*



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**DECLARATION OF CRAIG A. HENDERSON**

I, Craig A. Henderson, hereby declare the following under penalty of perjury of the laws of the State of Nevada:

1. I am an attorney at Glen J. Lerner & Associates, and counsel of record for Plaintiff in the above captioned action. I have personal knowledge of the matters set forth herein and I am competent to testify thereto.

2. Attached hereto as Exhibit 1-A is a true and accurate copy of Andrea Awerbach’s interrogatory responses.

3. Attached hereto as Exhibit 1-B is a true and accurate copy of Andrea Awerbach’s October 24, 2014, deposition transcript.

4. Attached hereto as Exhibit 1-C is a true and accurate copy of Andrea Awerbach’s September 12, 2013, deposition transcript.

5. Attached hereto as Exhibit 1-D is a true and accurate copy of Jared Awerbach’s March 27, 2014, deposition transcript.

6. Attached hereto as Exhibit 1-E is a true and accurate copy of the October 13, 2015, hearing transcript.

I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct and that this declaration was executed this 12th day of January, 2016, in Las Vegas, Nevada.

/s/ Craig A. Henderson  
CRAIG A. HENDERSON

**EXHIBIT 1-A**

**EXHIBIT 1-A**

1 Alexandra B. McLeod  
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5  
6 Attorneys for Defendants, Jared Awerbach and  
Andrea Awerbach

7  
8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10  
11 EMILIA GARCIA,

12 Plaintiff,

13 v.

14 JARED AWERBACH, individually,  
ANDREA AWERBACH, individually, DOES  
15 I-X, and ROE CORPORATIONS I-X,  
inclusive,

16 Defendants.  
17

Case No.: A-11-637772-C  
Dept. No.: XXVII

**DEFENDANT ANDREA AWERBACH'S  
RESPONSES TO INTERROGATORIES**

18  
19 COMES NOW Defendant, ANDREA AWERBACH, by and through his counsel of record,  
20 ALEXANDRA B. MCLEOD, ESQ., of the law firm of BRADY, VORWERCK, RYDER &  
21 CASPINO, and hereby responds to Plaintiffs' Interrogatories.

22 **PRELIMINARY STATEMENT**

23 It should be noted that this responding party has not fully completed its investigation of the  
24 facts relating to this case, has not fully completed discovery in this action, and has not completed  
25 preparation for trial. All of the responses contained herein are based only upon such information and  
26 documents which are presently available to and specifically known to this responding party and  
27 disclose only those contentions which presently occur to such responding party. It is anticipated that  
28 further discovery, independent investigation, legal research and analysis will supply additional facts,

1 add meaning to known facts, as well as establish entirely new factual conclusions, and legal  
2 contentions, all of which may lead to substantial additions to, changes in, and variations from, the  
3 responses herein set forth. The following responses are without prejudice to responding party's right  
4 to produce evidence of any subsequently discovered fact or facts which this responding party may  
5 later recall or discover. Responding party accordingly reserves its right to change any and all  
6 responses herein as investigation is conducted, additional facts are ascertained, analyses are made,  
7 legal research is concluded and contentions are made. The responses contained herein are made in a  
8 good faith effort to supply as much factual information as is presently known but should in no way be  
9 to the prejudice of this responding party in relation to further discovery, research or analysis. These  
10 responses are made solely for the purpose of this action.

#### 11 GENERAL OBJECTIONS

12 1. This responding party objects to the Definitions and Instructions contained in  
13 Plaintiff's First Set of Interrogatories to the extent they are inconsistent with or purport to impose  
14 requirements for discovery that exceed the requirements of the *Nevada Rules of Civil Procedure* and  
15 to the extent that such Definitions and Instructions are unduly vague and indefinite.

16 2. This responding party objects to each Interrogatory to the extent it calls for the  
17 production for privileged information, including information protected by the attorney-client privilege,  
18 investigative privilege, consulting expert exemption, documents containing work product and  
19 documents prepared in anticipation of litigation or trial, as well as information contained within  
20 documents covered by the joint defense privilege. This responding party further objects to each  
21 interrogatory to the extent it seeks the disclosure of the identities of, or any work generated by non-  
22 testifying consulting experts retained by or at the direction of this responding party's attorneys in  
23 anticipation of preparation for this and/or other threatened or pending litigation arising out of the  
24 subject property, or in connection with the rendering of legal advice to this responding party. The  
25 restatement of any specific objection in the context of these responses shall not be construed to imply  
26 waiver of any unstated privilege objections addressed by this General Objection, or any other  
27 applicable privilege or exemption from discovery and the counterparts under the laws of any other  
28 jurisdiction that may be applicable.

1           3.       This responding party objects to each Interrogatory to the extent that it seeks to impose  
2 a burden upon this responding party to search for documents or information in the possession, custody  
3 or control of entities other than this responding party for the reason that such is overly broad and  
4 beyond the scope of discovery allowed by the *Nevada Rules of Civil Procedure*. This responding  
5 party also objects to any effort to require it to search for documents or information in the possession,  
6 custody or control of unnamed entities other than this responding party, including but not limited to  
7 information in the possession, custody or control of public entities, for the reason that such is unduly  
8 burdensome, expensive, harassing and beyond the obligations imposed by the *Nevada Rules of Civil*  
9 *Procedure*.

10           4.       This responding party objects to each Interrogatory to the extent it is overly broad,  
11 burdensome and oppressive, and seeks information neither relevant to the subject matter of this action  
12 nor reasonably calculated to lead to the discovery of admissible evidence. This responding party has  
13 performed a reasonable inquiry in search of information as required by the *Nevada Rules of Civil*  
14 *Procedure* and had made every reasonable effort to locate the information described herein, which  
15 effort has been made in good faith. This responding party cannot affirm, however, that all such  
16 information has been supplied. Although this responding party believes that all such information has  
17 been produced that is within this responding party possession and/or control, this responding party  
18 will supplement its responses in accordance with the applicable discovery rules in the event that this  
19 responding party discovers that it has inadvertently failed to provide information within its responses  
20 to these Interrogatories.

21           5.       This responding party objects to each Interrogatory that uses language such as "each  
22 and every" or similar broad language. Such Interrogatories are onerous, burdensome, harassing,  
23 prejudicial and overly broad. Each Interrogatory asking "any" and "all" or "each and every" is  
24 objectionable and such an inquiry is, in essence, a request for evidence, and not discoverable  
25 information. Moreover, this responding party has no possible means of making all-encompassing  
26 identifications that such a broadly worded request requires.

27           6.       This responding party is conducting a thorough and reasonable search of its records for  
28 information that may be responsive to Plaintiff's Interrogatories and is also contacting those persons

1 who have knowledge of the location and/or existence of information that may be responsive. To the  
2 extent that Plaintiffs' Interrogatories or any portion thereof seek to require this responding party to  
3 take any actions other than those enumerated above, this responding party objects to said request on  
4 the grounds that it is unduly burdensome and oppressive and imposes obligations upon this responding  
5 party beyond those imposed by the *Nevada Rules of Civil Procedure*.

6 7. Answers made herein are made solely for the purposes of this responding party's  
7 responses to Plaintiff's First Set of Interrogatories. Each answer is subject to all objections as to  
8 competence, relevance, materiality, propriety, admissibility, and all other objections and ground to  
9 which the same statement would be subject if delivered through live testimony in court. All such  
10 objections and grounds are expressly reserved by this responding party and may be interposed at the  
11 time of trial or in conjunction with other uses of these responses or the material produced, except as  
12 explicitly stated.

13 8. For any inspection and production that occurs in this case, this responding party  
14 specifically reserves the right to certain maintained privilege objections as to any privileged  
15 information that may be inadvertently produced in response to Plaintiff's Interrogatories. Further, this  
16 responding party expects that Plaintiff and Plaintiff's counsel will return any inadvertently produced  
17 document containing attorney-client communications, attorney work product, or otherwise privileged  
18 information immediately.

### 19 **RESPONSES TO INTERROGATORIES**

#### 20 **INTERROGATORY NO. 1:**

21 Do you dispute that the Driver, Jared Awerbach (hereinafter "the Driver"), was a permissible  
22 driver of your vehicle on January 2, 2011? If so, state all facts upon which you base your answer that  
23 the Driver was not a permissible driver.

#### 24 **RESPONSE TO INTERROGATORY NO. 1:**

25 **OBJECTION:** This request calls for a legal conclusion. **FURTHER OBJECTION:** This request  
26 is irrelevant and not designed to lead to the discovery of any admissible evidence. Subject to and  
27 without waiving said objections, Defendant answers:

28 Jared did not have my permission to drive the vehicle.



1 **INTERROGATORY NO. 2:**

2 Please outline what steps you took to ensure that the Driver was competent enough to drive  
3 your vehicle, on January 2, 2011.

4 **RESPONSE TO INTERROGATORY NO. 2:**

5 OBJECTION: This request calls for speculation as to "competent enough to drive."  
6 "Competent enough" is ambiguous, vague, overbroad, and not a recognized standard for judging a  
7 person's ability to any task. Furthermore, Plaintiff's interrogatory is irrelevant as to Defendant's  
8 judgment of another's competence to drive and not designed to lead to the discovery of admissible  
9 evidence. Subject to and without waiving said objection, Defendant responds as follows:

10 None, as he did not have permission to drive the vehicle.

11 **INTERROGATORY NO. 3:**

12 Describe in detail your understanding of how the crash occurred.

13 **RESPONSE TO INTERROGATORY NO. 3:**

14 OBJECTION: This request calls for speculation as to Defendant's "understanding of how the  
15 crash occurred." Defendant was not present at the scene of the crash and any information regarding  
16 her understanding of the crash is hearsay. Furthermore, Plaintiff's request is irrelevant and not  
17 designed to lead to the discovery of admissible evidence. Subject to and without waiving said  
18 objection, Defendant responds as follows:

19 I was not there, and do not know.

20 **INTERROGATORY NO. 4:**

21 If you conducted any type of post-crash investigation related to this crash, describe in detail  
22 the investigation and all results of that investigation, to include the names of any and all documents  
23 generated as a result of the crash.

24 **RESPONSE TO INTERROGATORY NO. 4:**

25 OBJECTION. This request is vague, ambiguous, and calls for speculation as to any "post-crash  
26 investigation" Defendant "conducted." Furthermore, it is irrelevant and is not likely to lead to any  
27 admissible evidence. Subject to, and without waiving said objection, Defendant responds:

28 I did not do any "post-crash investigation."

1 **INTERROGATORY NO. 5:**

2 Please describe, in detail, the damage sustained by the Defendant's vehicle as a direct result of  
3 the accident, which is the subject of Plaintiff's Complaint on file herein.

4 **RESPONSE TO INTERROGATORY NO. 5:**

5 My vehicle was totaled.

6 **INTERROGATORY NO. 6:**

7 Do you contend that Plaintiff exaggerated any complaint, symptom or impairment in  
8 connection with the injuries sustained in the crash? If so, specifically describe the basis of your  
9 contention.

10 **RESPONSE TO INTERROGATORY NO. 6:**

11 OBJECTION: The question calls for an expert opinion. Furthermore, Defendant has not yet  
12 had a chance to depose Plaintiff, or obtain complete records as to all complaints, symptoms, or  
13 impairments she contends resulted from the accident, and the interrogatory therefore calls for  
14 speculation. Without waiving such objections, the answer to this question depends on an expert  
15 analysis of all of the available data which has not yet been fully compiled, and thus, it is impossible to  
16 answer at this time.

17 ///

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1 **INTERROGATORY NO. 7:**


2 Identify the nature of your relationship to Defendant Jared Awerbach.

3 **RESPONSE TO INTERROGATORY NO. 7:**

4 He is my son.

5  
6 DATED: June 21, 2012

BRADY, VORWERCK, RYDER & CASPINO  
A Law Corporation

7  
8  
9 By   
10 ALEXANDRA B. MCLEOD  
11 Nevada Bar No. 8185  
2795 East Desert Inn Road, Suite 200  
Las Vegas, Nevada 89121

12 Attorneys for Defendants, Jared Awerbach and  
13 Andrea Awerbach

VERIFICATION

**COUNTY OF CLARK, NEVADA**

I have read the foregoing DEFENDANT ANDREA AWERBACH'S RESPONSES TO INTERROGATORIES and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on June 15, 2012, at Brady, Vorwerck, Ryder & Caspino, Clark County, Nevada.

I declare under penalty of perjury under the laws of the Clark County, Nevada that the foregoing is true and correct.

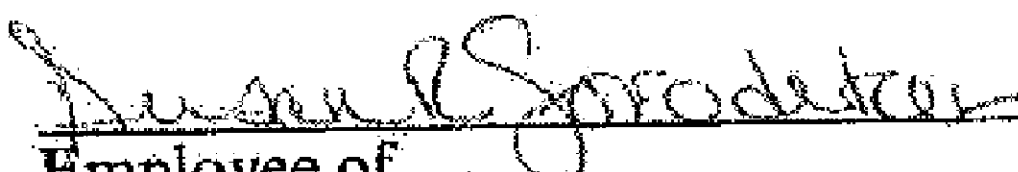
Andrea Awerbach  
ANDREA AWERBACH

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21 day of June, 2012, I forwarded a copy of the above and foregoing **DEFENDANT ANDREA AWERBACH'S RESPONSES TO INTERROGATORIES** as follows:

- X by depositing in the United States mail, first-class postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope, pursuant to NRCP 5(b)(2)(B) and EDCR 7.26(a)(1); and/or
- \_\_\_\_\_ by facsimile transmission pursuant to NRCP 5(b)(2)(D) and EDCR 7.26(a)(3); as indicated below; and/or
- \_\_\_\_\_ by electronic transmission [via CM/ECF], pursuant to NRCP 5(b)(2)(D) and EDCR 7.26(a)(4); and/or
- \_\_\_\_\_ by email as indicated below pursuant to NRCP 5(b)(2)(D); TO:

Adam D. Smith, Esq.  
Glen J. Lerner & Associates  
4795 South Durango Drive  
Las Vegas, Nevada 89147  
(702) 877-1500  
(702) 933-7043 - Fax  
*Attorneys for Plaintiff*

  
\_\_\_\_\_  
Employee of  
BRADY, VORWERCK, RYDER & CASPINO

**EXHIBIT 1-B**

**EXHIBIT 1-B**



DISTRICT COURT  
CLARK COUNTY, NEVADA

EMILIA GARCIA,

Plaintiff,

vs.

JARED AWERBACH, individually,  
ANDREA AWERBACH, individually,  
DOES I-X, and ROE CORPORATIONS  
I-X, inclusive,

Defendants.

Case No.: A-11-637772-C  
Dept. No.: XXVII

DEPOSITION OF ANDREA AWERBACH  
LAS VEGAS, NEVADA  
THURSDAY, SEPTEMBER 12, 2013

REPORTED BY: GINA DILUZIO, RPR, CCR #833  
JOB NO.: 186406

Page 2

1 DEPOSITION OF ANDREA AWERBACH, taken at Glen Lerner  
2 Injury Attorneys, 4795 South Durango Drive, Las Vegas,  
3 Nevada, on Thursday, September 12, 2013, at 4:21 p.m.,  
4 before Gina DiLuzio, Certified Court Reporter, in and for  
5 the State of Nevada.

## APPEARANCES:

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22  
23  
24  
25

Page 4

1 LAS VEGAS, NEVADA, THURSDAY, SEPTEMBER 12, 2013

2 4:21 P.M.

3 -oOo-

4 Thereupon--

5 ANDREA AWERBACH,

6 was called as a witness, and having been first duly

7 sworn, was examined and testified as follows:

8

## 9 EXAMINATION

10 BY MR. SMITH:

11 Q. Can you please state and spell your name for  
12 the record.

13 A. Andrea, A-n-d-r-e-a, Awerbach, A-w-e-r-b-a-c-h.

14 Q. Ms. Awerbach, have you ever had your deposition  
15 taken before?

16 A. Yes.

17 Q. Do you know how many occasions?

18 A. No.

19 Q. When was the last time?

20 A. I don't remember.

21 Q. Was it within the last year?

22 A. No.

23 Q. Well, since it's been a little bit of time

24 since you've had your deposition taken, let me go over some

25 of the ground rules with you.

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## 1 INDEX

2 WITNESS: Andrea Awerbach

3 EXAMINATION

4 By Mr. Smith

PAGE

4

## 6 EXHIBITS

7 NUMBER

MARKED

(None marked.)

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Page 5

1 A. Sure.

2 Q. It's generally designed to assist the court  
3 reporter in making a good record. But some of them are  
4 designed to explain the process to you. Okay?

5 A. Uh-huh.

6 Q. The first is that it's important for us to wait  
7 for each other to finish our sentences. So I will do my  
8 best to wait for you to finish your answer, if you do your  
9 best to wait for me to finish my questions. Okay?

10 A. Sure.

11 Q. The second is that you use words to answer my  
12 questions. So, earlier, you said, "Uh-huh." Things like  
13 mm-hmm, uh-huh, ya-huh, those all look the same when the  
14 court reporter types into the transcript.15 So if you use words, we won't have any trouble  
16 understanding what your answer was. And, if, at some point,  
17 I ask you, for example, was that a yes or a no, I'm not  
18 trying to be rude or badger you. I just want to make sure  
19 we have a clear record. Okay?

20 A. Okay. I understand.

21 Q. This is not an endurance contest. So if you  
22 need to take a break, at some point, let me know. We can  
23 always take a break.24 I don't expect this to take a very long time,  
25 but there's certainly no trouble if you want to get up and

Page 6

Page 8

1 use the restroom, get another glass of water, something like  
2 that.

3 A. Okay.

4 Q. I'm not here to trick you into saying  
5 anything. So if you don't understand one of my questions,  
6 please, let me know. If you do answer my questions, I'm  
7 going to assume you did understand them. Okay?

8 A. Okay.

9 Q. At the end of this process, the court  
10 reporter's going to take everything that we say and anybody  
11 in the room says and place it into booklet form. You're  
12 going to have an opportunity to review that booklet and make  
13 any changes that you think are necessary.

14 I'll tell you, right now, on the record, if you  
15 do make any substantive changes, we can comment upon those  
16 at trial and they may affect your credibility. Okay?

17 A. Okay.

18 Q. I'm not asking you to guess at anything. So if  
19 you don't know the answer to one of my questions, you can  
20 tell me that you don't know.

21 I may -- because this is a car accident case, I  
22 may ask you to estimate something. The difference a lot of  
23 lawyers give for the difference between an estimate and a  
24 guess is you could estimate the size of the table in this  
25 room, because you can look at it, but you couldn't estimate

1 to you?

2 A. Yes.

3 Q. Did you review Jared's responses also?

4 A. No.

5 Q. Did you review any documents other than your  
6 interrogatory responses?

7 A. No.

8 Q. Did you speak with anyone in order to prepare  
9 for your deposition?

10 A. Yes.

11 Q. Who did you speak with?

12 A. My attorney. (Indicated.)

13 Q. And that was yesterday?

14 A. Yes.

15 Q. Anybody else?

16 A. No.

17 Q. Did you review any photographs to prepare for  
18 your deposition?

19 A. No.

20 Q. Have you ever seen any photographs of the  
21 accident?

22 A. No.

23 Q. I want to talk briefly about the other  
24 depositions that you've given. What types of cases were  
25 those?

Page 7

Page 9

1 the size of the desk in my office, because you've never been  
2 in my office.

3 Do you understand that difference between an  
4 estimate and a guess?

5 A. Yes.

6 Q. At the beginning of this, the court reporter  
7 placed you under oath. That's the same oath that you'd take  
8 in a court of law. It carries with it the same penalties  
9 for perjury. Do you understand that?

10 A. Yes.

11 Q. Is there any reason you cannot give your best  
12 testimony today, such as you're on medication that would  
13 affect your memory?

14 A. No.

15 Q. Do you understand all of the ground rules that  
16 I told you?

17 A. Yes.

18 Q. And you're ready to proceed?

19 A. Yes.

20 Q. Did you review any documents to prepare for  
21 your deposition?

22 A. Yes.

23 Q. What did you review?

24 A. Interrogatories.

25 Q. Your responses to the interrogatories we sent

1 A. I believe -- if I'm -- it was a car accident  
2 where someone drove into me.

3 Q. Okay. And you were injured in the accident?

4 A. Yes.

5 Q. And you were suing somebody for damages for  
6 your injuries?

7 A. Yes.

8 Q. Is that the only time you've given a  
9 deposition?

10 A. I don't remember.

11 Q. When was that case?

12 A. About 15 or 16 years ago.

13 Q. Was it here in Clark County?

14 A. Yes.

15 Q. What was the outcome of that case?

16 A. There was a settlement.

17 Q. Let me get some just general background about  
18 you. What's your current address?

19 A. 4006 Dripping Springs Avenue, North Las Vegas,  
20 Nevada 89031.

21 Q. Is there an apartment number?

22 A. No. It's a house.

23 Q. How long have you lived at that address?

24 A. I -- approximately, two and a half, three  
25 years.

Page 10

1 Q. What was your address before that?  
 2 A. It was on Gowan. I don't remember the street.  
 3 I want to say 1827, but I'm not sure that's correct.  
 4 Q. Do you remember your apartment number on Gowan?  
 5 A. No.  
 6 Q. At the time of the accident, you were living at  
 7 the Gowan address?  
 8 A. Yes.  
 9 Q. Is it 1827 West Gowan, North Las Vegas, Nevada  
 10 89032?  
 11 A. Yes.  
 12 Q. How soon after the accident did you move to  
 13 your present address?  
 14 A. I think -- I'm not sure. I think about four  
 15 months.  
 16 Q. What's the highest level of education you've  
 17 achieved?  
 18 A. I have national board certification.  
 19 Q. In what?  
 20 A. Education. I have a master's degree plus 32  
 21 credits and national board certification.  
 22 Q. Where did you receive your college degree from?  
 23 A. Upsala College.  
 24 Q. Where's that?  
 25 A. It was in East Orange, New Jersey. It doesn't

Page 11

1 exist anymore.  
 2 Q. Where did you receive your master's degree  
 3 from?  
 4 A. UNLV.  
 5 Q. Do you hold any other certifications?  
 6 A. National board certification.  
 7 Q. Besides that?  
 8 A. Teaching license.  
 9 Q. Where do you work presently?  
 10 A. Clark County School District.  
 11 Q. How long have you worked there?  
 12 A. I worked -- I've worked there since 1997 to  
 13 take -- a brief explanation. I took a year-and-a-half leave  
 14 of absence for a charter school, but it was under Clark  
 15 County, so I don't know whether that's -- but I've been  
 16 there since '97.  
 17 Q. What do you do for --  
 18 A. I'm a special education teacher.  
 19 Q. How long have you been a special education  
 20 teacher?  
 21 A. Since 1997.  
 22 Q. Are you married?  
 23 A. No.  
 24 Q. Have you previously been married?  
 25 A. No.

Page 12

1 Q. How many children do you have?  
 2 A. One.  
 3 Q. What's his name?  
 4 A. Jared Awerbach.  
 5 Q. And Jared Awerbach is the same Jared Awerbach  
 6 that was in the accident we're here to talk about, correct?  
 7 A. Yes.  
 8 Q. Do you have any grandchildren?  
 9 A. Yes.  
 10 Q. How many?  
 11 A. Two.  
 12 Q. I take it those are both Jared's children?  
 13 A. I don't know that for sure.  
 14 Q. Okay. How old are they?  
 15 A. Kahlia (phonetic) is going to be three in  
 16 December. Mecca is about a year and a half. She'll be two  
 17 in February.  
 18 Q. Have you ever been convicted of a crime?  
 19 A. No.  
 20 Q. To your knowledge, has Jared?  
 21 A. I believe so.  
 22 Q. What do you believe he's been convicted of?  
 23 A. I think drug charges.  
 24 Q. When was that?  
 25 A. I have --

Page 13

1 MR. PITEGOFF: I just want to lodge an  
 2 objection that anything in regard to juvenile records is  
 3 sealed. And I would object on the grounds that if you ask  
 4 any questions that elicit information for sealed records,  
 5 it's considered privileged.  
 6 I can't instruct this witness not to answer,  
 7 because she's not my client, but I just want that objection  
 8 on the record.  
 9 MR. SMITH: Well, let's let her answer when it  
 10 was and I think I can --  
 11 MR. PITEGOFF: Fine.  
 12 MR. SMITH: -- lead us down the right path.  
 13 THE WITNESS: I don't know Jared's record. I  
 14 don't know when he was arrested and what he went to jail for  
 15 and I don't remember dates.  
 16 BY MR. SMITH:  
 17 Q. Do you know when he was in jail?  
 18 A. I know that September 12 is -- he's been out a  
 19 year. This is his release date anniversary.  
 20 Q. September '12 -- well, strike that. So it's  
 21 your understanding he was released from jail September 12,  
 22 2012?  
 23 A. That's what he told me.  
 24 Q. To your knowledge, does Jared use illegal  
 25 drugs?

Page 14

Page 16

1 MS. McLEOD: Objection. Relevance. You can  
2 answer.  
3 THE WITNESS: Yes.  
4 BY MR. SMITH:  
5 Q. What's your understanding of what illegal drugs  
6 he uses?  
7 MS. McLEOD: Same objection.  
8 THE WITNESS: Depends. I don't know if he's  
9 currently using. In the past, he has used marijuana. He's  
10 used meth. I don't know what other substances.  
11 BY MR. SMITH:  
12 Q. Do you know the date of the accident we're here  
13 to talk about?  
14 A. I don't recall the date, no.  
15 Q. If I told you it was January 2, 2011, does that  
16 refresh your recollection?  
17 A. It sounds accurate, but I don't remember.  
18 Q. Prior to January 2, 2011, were you aware that  
19 Jared was using illegal drugs?  
20 A. Yes.  
21 Q. And prior to January 2, 2011, what illegal  
22 drugs were you aware that Jared was using?  
23 MR. PITEGOFF: Objection. Foundation.  
24 THE WITNESS: Do I answer?  
25 MS. McLEOD: Yes.

Page 15

1 THE WITNESS: Meth, weed. I suspected cocaine,  
2 but I didn't know for sure.  
3 BY MR. SMITH:  
4 Q. At the time of January 2, 2011, was it your  
5 understanding that he was currently using illegal drugs?  
6 MS. McLEOD: Objection. Calls for speculation.  
7 MR. PITEGOFF: Same objection.  
8 THE WITNESS: I don't -- I -- I don't  
9 remember.  
10 BY MR. SMITH:  
11 Q. Where did your understanding that he had used  
12 illegal drugs, prior to January 2, 2011, come from?  
13 MR. PITEGOFF: Same objection.  
14 THE WITNESS: Living with him, being his  
15 mother.  
16 BY MR. SMITH:  
17 Q. What do you mean by that?  
18 A. Watching him, taking him to drug counseling  
19 over the years. Police involvement. You know, people in  
20 the house that I had to then kick out of the house.  
21 Q. By watching him, do you mean you could see his  
22 behavior indicated to you that he was on illegal drugs?  
23 A. Yes. And if I could add. Jared has been in  
24 and out of treatment. So we've gone to therapy together.  
25 We've gone to NA meetings together.

1 Q. When did he first go to treatment?  
2 A. I don't recall the dates, but it started when  
3 he was a juvenile.  
4 Q. Did you and Jared live together on January 2,  
5 2011?  
6 A. Yes, I think so.  
7 Q. And, at that point, being January 2, 2011, how  
8 long had he lived with you?  
9 A. I don't recall the time, because he's come in  
10 and out of the house.  
11 Q. Was there a point when he stopped living with  
12 you permanently?  
13 A. There had been multiple times that he stopped  
14 living with me.  
15 Q. Does he live with you now?  
16 A. Yes.  
17 Q. What's your relationship like with Jared?  
18 A. Can you explain, you know, what's my  
19 relationship like.  
20 Q. Do you have a close relationship?  
21 MR. PITEGOFF: Objection. Form.  
22 THE WITNESS: We have -- we have a relationship  
23 that is impeded by his drug addiction. So I have a  
24 relationship with my son and I have a relationship with his  
25 addiction.

Page 17

1 BY MR. SMITH:  
2 Q. Can you describe your relationship with him on  
3 January 2, 2011.  
4 A. It was strained. It was suspicious. I was  
5 always on edge. I -- we had the added pressure of his  
6 child, so I was a little trapped in terms of feeling whether  
7 I could tell him to move out. It was scary.  
8 Q. Why was it scary?  
9 A. Because I was living with an active drug dealer  
10 and an active drug addict. And, so, I never knew what was  
11 going to happen. I don't know what of mine was going to  
12 come up missing.  
13 I never knew what ridiculous request there was  
14 going to be or what argument we were going to have. I was  
15 not at peace in my home. I didn't know the condition of the  
16 house when I came home. And, now, we had the added -- a  
17 baby.  
18 Q. Before January 2, 2011, had you ever let Jared  
19 drive your car?  
20 A. No.  
21 Q. Before -- well, as of January 2, 2011, were you  
22 aware that he had previously driven your car without your  
23 permission?  
24 A. Yes.  
25 Q. Do you know on how many occasions?

Page 18

Page 20

1 A. No.

2 Q. Prior to January 2, 2011, had he ever asked for  
3 permission to use your car?

4 A. No, I don't think so.

5 Q. Do you know the car that he was driving at the  
6 time of the accident?

7 A. Yes.

8 Q. What kind of car was it?

9 A. Suzuki Forenza.

10 Q. On January 2, 2011, prior to the accident, were  
11 there any mechanical problems with the car?

12 A. I don't remember.

13 Q. Had that car ever been in an accident prior to  
14 January 2, 2011?

15 A. I'm not -- I don't -- I think it got hit at  
16 school. I'm trying to remember. I think someone hit my  
17 car, like a minor hit at school. I'd have to check  
18 insurance records.

19 Q. Was it repaired after that?

20 A. I don't know if that one -- again, I'd have to  
21 check. It's not something I remember offhand.

22 Q. Did you buy that car new?

23 A. No.

24 Q. Do you know how old it was when you bought it?

25 A. I'd have to look. I am not remembering.

Page 19

1 Q. Do you know how long you had had it as of  
2 January 2, 2011?

3 A. I'd be guessing. Or estimating, like three  
4 years. I'd have to look. Again, I'd have to look at  
5 records.

6 Q. Three years is your best estimate?

7 A. I don't know if it's my best estimate, so I'm  
8 guessing.

9 Q. As of January 2, 2011, had you had that car, at  
10 least, a year?

11 A. Yes.

12 Q. Let's talk about the day of the accident.

13 A. (Nodded head.)

14 Q. Do you remember that day?

15 A. Not much of it.

16 Q. What is it that you do remember about that day?

17 A. I remember getting the phone call from the  
18 police.

19 Q. Okay. So your first knowledge of the accident  
20 came from police?

21 A. Uh-huh.

22 Q. What did they tell you?

23 MR. PITEGOFF: Was that a "yes"?

24 THE WITNESS: I'm sorry. Yes.

25 MR. SMITH: Thank you for clarifying.

1 THE WITNESS: Yes.

2 MR. SMITH: I appreciate it.

3 BY MR. SMITH:

4 Q. What did the police tell you?

5 A. That Jared had been in an accident. I'm trying  
6 to remember if they told me he was being arrested. And I  
7 had a discussion with the officer about whether he was under  
8 the influence. I asked, "Is he high? Is he drunk?"

9 Q. What did the officer tell you?

10 A. He did not want to answer me at first. I  
11 think -- again, I think he thought I was trying to get Jared  
12 off the hook, quote, unquote.

13 And I remember saying to the officer, "He's  
14 going to lie to me and say that he was clean. Can you tell  
15 me anything?" And he said, "I'm trying to be cooperative,  
16 but he's being arrested under DUI."

17 Q. Do you remember anything else the officer told  
18 you?

19 A. No.

20 Q. Did he tell you at all how the accident  
21 happened?

22 A. No.

23 Q. You understand that Jared was driving your car  
24 in the accident on January 2, 2011, correct?

25 A. Yes.

Page 21

1 Q. Did he ask for permission to drive your car  
2 that day?

3 A. No.

4 Q. How did he get the keys?

5 A. I don't know.

6 Q. Where were the keys when he took the car?

7 A. I don't know, because I don't know when he took  
8 them.

9 Q. Do you know where you were when he took your  
10 car?

11 A. No.

12 Q. Would you have been home when he took your car?

13 A. Yeah, I'd have to be.

14 Q. Is there a regular place that you leave the  
15 keys in your house?

16 A. No.

17 Q. And that's poor question. At the time, on  
18 January 2, 2011, was there a regular place where you kept  
19 your car keys in your house?

20 A. I think I was answering based on January 2.  
21 No. I constantly hid the keys.

22 Q. You didn't hide them that day, did you?

23 A. Yes.

24 Q. Now, Jared said the keys were left out on the  
25 counter. Is he not telling the truth?



Page 22

Page 24

1 A. I doubt they were left out on the counter.  
 2 Q. You're not sure, correct?  
 3 A. I'm sure. I never left the keys out on the  
 4 counter.  
 5 Q. Why would he say they were left out on the  
 6 counter?  
 7 MR. PITEGOFF: Objection. Speculation,  
 8 foundation.  
 9 MS. McLEOD: Join.  
 10 THE WITNESS: Why would my son who took a car  
 11 without permission lie? Because he's lying.  
 12 I think -- if I'm speculating, as his mother,  
 13 he's probably scared about taking the car without  
 14 permission. He's probably scared about his relationship  
 15 me. So I'm guessing.  
 16 BY MR. SMITH:  
 17 Q. Do you know where you hid the keys that day?  
 18 A. No.  
 19 Q. Did Jared have a driver's license on January 2,  
 20 2011?  
 21 A. No.  
 22 Q. Has he ever had a driver's license?  
 23 A. Not that I know of.  
 24 Q. Does Jared wear glasses?  
 25 A. Yes.

Page 23

Page 25

1 Q. Did he have a prescription for glasses on  
 2 January 2, 2011?  
 3 A. Yes.  
 4 Q. Do you know where Jared was going to on January  
 5 2, 2011?  
 6 A. No.  
 7 Q. Do you know where that accident happened?  
 8 A. No.  
 9 (Pause in the proceedings.)  
 10 BY MR. SMITH:  
 11 Q. Do you know where the intersection of Rainbow  
 12 and Peak Drive is?  
 13 A. No.  
 14 Q. Do you know if Jared knows anybody that lives  
 15 in an apartment near that intersection?  
 16 A. No.  
 17 Q. Do you know if he did as of January 2, 2011?  
 18 A. No. I don't know where Peak is.  
 19 THE WITNESS: Can we stop for just one  
 20 moment --  
 21 MR. SMITH: Absolutely.  
 22 THE WITNESS: -- so I can answer this?  
 23 MR. SMITH: Please. Go ahead.  
 24 THE WITNESS: I don't have it off.  
 25 MR. SMITH: We can go off the record.

1 (Pause in the proceedings.)  
 2 BY MR. SMITH:  
 3 Q. Do you have an understanding of how the  
 4 accident happened?  
 5 A. No.  
 6 Q. Have you ever discussed the accident with  
 7 Jared?  
 8 A. No. Excuse me. I've never discussed what  
 9 happened. I discussed he needed to go to the attorney and  
 10 things like that.  
 11 Q. Tell me about those discussions.  
 12 A. "Jared, you need to call your attorney. I'm  
 13 going to drive you."  
 14 Q. In other words, you wanted to make sure he was  
 15 following through with his lawyer?  
 16 A. He -- when he got the last call, he was very  
 17 agitated, he was very upset. I did not feel it was safe for  
 18 him to go by himself.  
 19 Q. What call are you talking about? I'm sorry.  
 20 A. This last week, when he went in.  
 21 Q. Okay. To come to his deposition you mean?  
 22 A. Uh-huh.  
 23 MS. McLEOD: Is that a "yes"?  
 24 THE WITNESS: I'm sorry. Yes. Sorry.  
 25 BY MR. SMITH:

1 Q. When you meant -- when you said his lawyer  
 2 earlier, do you mean his lawyer for this case or his lawyer  
 3 for his DUI?  
 4 A. His lawyer for this case.  
 5 Q. Have you ever talked about the DUI aspect of  
 6 the accident with Jared?  
 7 A. I've listened briefly, but we've not talked in  
 8 depth about it.  
 9 Q. What has he told you?  
 10 A. That he wasn't high. That he had marijuana on  
 11 him and that's why he got arrested.  
 12 Q. So you have no understanding at all of how the  
 13 accident happened?  
 14 A. No.  
 15 MS. McLEOD: Clarification. He said, you do  
 16 not have an understanding, and you said, no, which means you  
 17 disagree with him.  
 18 THE WITNESS: Oh, I do not have an  
 19 understanding. I don't know what happened.  
 20 MS. McLEOD: Thank you.  
 21 BY MR. SMITH:  
 22 Q. Have you seen your vehicle since the accident?  
 23 A. Yes.  
 24 Q. Can you describe what the damage looked like  
 25 from the accident.

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Page 28

1 A. I don't remember. It was quite some time ago.  
 2 Q. It was totaled, correct?  
 3 A. Yes.  
 4 Q. Do you know if Jared was talking on the phone  
 5 at the time of the accident?  
 6 A. No.  
 7 Q. Do you know if he got injured in the accident?  
 8 A. I don't know.  
 9 Q. Do you know if he got any treatment as a result  
 10 of the accident?  
 11 A. I don't know.  
 12 Q. Have you ever given a statement to your  
 13 insurance company about the accident?  
 14 A. Yes.  
 15 Q. When was that?  
 16 A. I'm sure days following the accident. I don't  
 17 remember the dates.  
 18 Q. Do you know if they recorded that statement?  
 19 A. I don't know.  
 20 Q. You know, sometimes they tell you, at the  
 21 beginning of the call, we're going to be recording this.  
 22 A. Uh-huh.  
 23 Q. Do you recall if that happened?  
 24 A. Assuming that it happened.  
 25 MR. SMITH: Can I have you check into that,

1 A. No, I don't know.  
 2 (Pause in the proceedings.)  
 3 BY MR. SMITH:  
 4 Q. Prior to January 2, 2011, had you ever told  
 5 Jared he wasn't allowed to use your car?  
 6 A. Yeah.  
 7 Q. And after you told him that, you were still  
 8 aware that he used it without your permission, right?  
 9 A. Yes.  
 10 (Pause in the proceedings.)  
 11 BY MR. SMITH:  
 12 Q. Do you know if Jared was wearing his glasses at  
 13 the time of the accident?  
 14 A. No.  
 15 Q. On January 2, 2011, did he need his glasses to  
 16 drive?  
 17 A. He needs glasses for everything.  
 18 MR. PITEGOFF: Objection. Form, foundation.  
 19 BY MR. SMITH:  
 20 Q. And what I'm getting at, is it your  
 21 understanding that he has a strong enough prescription that  
 22 he should not be driving without glasses?  
 23 MR. PITEGOFF: Same objection.  
 24 THE WITNESS: I don't know.  
 25 BY MR. SMITH:

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Page 29

1 because I don't think we received a recorded statement from  
 2 her.  
 3 MS. McLEOD: I'll be happy to recheck. But  
 4 I'll tell you, for purposes of the record, that we've  
 5 produced all recorded statements that were provided in the  
 6 claims file. But I have no problem double-checking for you.  
 7 MR. SMITH: Thank you.  
 8 BY MR. SMITH:  
 9 Q. Did you ever give a statement to the police?  
 10 A. I don't think so.  
 11 Q. Other than your initial conversation with the  
 12 police, have you ever talked to the police about the  
 13 accident or Jared's DUI?  
 14 A. I don't think so, no.  
 15 Q. Other than your attorney, the initial  
 16 conversation with the police, and the conversation you  
 17 related that you had with Jared, have you talked to anyone  
 18 else about the accident or Jared's DUI?  
 19 A. I don't know if this falls in this category. I  
 20 talked to my therapist about the stress of it, but not the  
 21 details of the accident.  
 22 Q. Do you know what the outcome of Jared's DUI  
 23 was?  
 24 A. That he was arrested.  
 25 Q. Do you know if he was convicted?

1 Q. Do you know what his prescription is?  
 2 A. No.  
 3 Q. Does he wear glasses or contacts?  
 4 A. Glasses.  
 5 MR. SMITH: I don't have any other questions.  
 6 MR. PITEGOFF: You did great. You got us out  
 7 before your 5:30 deadline. I don't have any questions.  
 8 MS. McLEOD: I don't have any questions  
 9 either. We will waive review and signature. I do want a  
 10 copy.  
 11 (Whereupon, the deposition was concluded at  
 12 4:49 p.m.)  
 13 (Signature waived.)  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 REPORTER'S CERTIFICATE  
2 STATE OF NEVADA )

) ss:

3 COUNTY OF CLARK )

4 I, Gina DiLuzio, a duly commissioned Notary  
5 Public, Clark County, State of Nevada, do hereby certify:  
6 That I reported the deposition of ANDREA AWERBACH,  
7 commencing on Thursday, September 12, 2013, at 4:21 p.m.

8 That prior to being deposed, the deponent was duly  
9 sworn by me to testify to the truth. That I thereafter  
10 transcribed my said shorthand notes into typewriting and  
11 that the typewritten transcript is a complete, true and  
12 accurate transcription of my said shorthand notes, and that  
13 deponent waived the opportunity to review and correct  
14 transcript.

15 I further certify that I am not a relative,  
16 employee of counsel of any of the parties, nor a relative or  
17 employee of the parties involved in said action, nor a  
18 person financially interested in the action.

19 IN WITNESS WHEREOF, I have set my hand in my  
20 office in the County of Clark, State of Nevada, this 24th  
21 day of September, 2013.  
22  
23

24 \_\_\_\_\_  
GINA DILUZIO, RPR, CCR #833  
25

EXHIBIT 1-C

EXHIBIT 1-C

DISTRICT COURT  
CLARK COUNTY, NEVADA

EMILIA GARCIA, individually,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO.: A637772
	)	DEPT. NO.: XXVII
JARED AWERBACH, individually;	)	
ANDREA AWERBACH, individually;	)	
DOES I-X, and ROE CORPORATIONS	)	
I-X, inclusive,	)	
	)	
Defendants.	)	
	)	

VIDEO DEPOSITION OF ANDREA AWERBACH  
LAS VEGAS, NEVADA  
FRIDAY, OCTOBER 24, 2014

REPORTED BY: JACKIE JENNELLE, RPR, CCR #809  
JOB NO.: 224205

1 VIDEO DEPOSITION OF ANDREA AWERBACH, taken  
2 at 4795 South Durango Drive, Las Vegas, Nevada on  
3 FRIDAY, OCTOBER 24, 2014, at 1:30 p.m., before  
4 Jackie Jennelle, Certified Court Reporter, in and  
5 for the State of Nevada.

6  
7 APPEARANCES:

8 For the Plaintiff:

9 GLEN LERNER INJURY ATTORNEYS  
10 BY: ADAM SMITH, ESQ.  
11 4795 South Durango Drive  
12 Las Vegas, Nevada 89147  
13 (702) 877-1500

14 For the Defendant, JARED AWERBACH:

15 RESNICK & LOUIS, PC  
16 BY: LILY COMPTON, ESQ.  
17 6600 West Charleston Boulevard, Suite 117A  
18 Las Vegas, Nevada 89146  
19 (702) 997-3800

20 For the Defendant, ANDREA AWERBACH:

21 BARRON & PRUITT, LLP  
22 BY: PETER MAZZEO, ESQ.  
23 3890 West Ann Road  
24 North Las Vegas, Nevada 89031  
25 (702) 870-3940

The Videographer:

MONICA HAYWORTH

1 LAS VEGAS, NEVADA

2 FRIDAY, OCTOBER 24, 2014; 1:30 p.m.

3 -000-

4 THE VIDEOGRAPHER: Today is Friday,  
5 October 24, 2014. The time is approximately  
6 1:45 p.m. The location is Glen Lerner Injury  
7 Attorneys at 4795 South Durango Drive, Las Vegas,  
8 Nevada 89147.

9 My name is Monica Hayworth, court  
10 videographer for Litigation Services.

11 This is District Court Clark County Nevada  
12 case No. A-11-63772-B entitled Amelia Garcia,  
13 plaintiff, versus Jared Awerbach, et al.,  
14 defendants. The deponent is Andrea Awerbach.

15 This video deposition is requested by the  
16 attorneys for the plaintiff.

17 The court reporter is Jackie Jennelle of  
18 Litigation Services.

19 Counsel and all present, will you please  
20 identify yourselves for the record.

21 MR. SMITH: Adam Smith on behalf of the  
22 plaintiff, Amelia Garcia.

23 MR. MAZZEO: Peter Mazzeo on behalf of the  
24 defendant, Andrea Awerbach.

25 MS. COMPTON: Lily Compton on behalf of the

1 I N D E X

2 WITNESS: ANDREA AWERBACH

3 EXAMINATION

4 BY MR. SMITH 5  
5 BY MR. MAZZEO 202  
6 BY MS. COMPTON 203  
7 BY MR. SMITH 205

8 EXHIBITS MARKED

9 EXHIBIT PAGE  
10 Exhibit 1 Facebook Printout 196  
11 Exhibit 2 Documents from District Court 198  
12 Case No. A-551677  
13 Exhibit 3 Document Bates No. GJL 255 200  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 defendant, Jared Awerbach.

2 THE VIDEOGRAPHER: The deponent will now be  
3 sworn in.

4 Thereupon --

5 ANDREA AWERBACH,  
6 was called as a witness, and having been first duly  
7 sworn, was examined and testified as follows:

8 EXAMINATION

9 BY MR. SMITH:

10 Q. Can you please state your name and spell  
11 your last name for the record.

12 A. Andrea Awerbach, A-W-E-R-B-A-C-H.

13 Q. Do you remember coming to my office last  
14 year and having your deposition taken?

15 A. Yes.

16 Q. Have you had your deposition taken since  
17 that time?

18 A. No.

19 Q. Have you been a party to any lawsuits since  
20 the last time you had your deposition taken at my  
21 office?

22 A. No.

23 Q. It's been a while since you were here  
24 before, so I'm going to go over the ground rules  
25 again for you so that I can refresh your memory on



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1 them. Okay?

2 There's a court reporter taking down  
3 everything that we say. She can't take down what  
4 more than one person says at the same time. So if  
5 you would please wait for me to finish my questions,  
6 I will do my best to wait for you to finish your  
7 answers. Okay?

8 A. Yes.

9 Q. And if I don't let you finish one of your  
10 answers, it's not intentional; I may have thought  
11 you were done speaking. So if you have more to say,  
12 please let me know and I will certainly let you  
13 finish. Okay?

14 A. Yes.

15 Q. The court reporter can only take down  
16 words. She can't take down nodding or shaking of  
17 the head. And while that stuff may show up on the  
18 video, we also want to have a clear transcript.

19 So if you say, for example, uh-huh or  
20 huh-uh, I may ask you was that a yes or no or one of  
21 the other attorneys may also ask you that. Nobody's  
22 trying to be rude to you. We just want to make sure  
23 we have a clear written record. Okay?

24 A. Yes.

25 Q. This is not an endurance contest. If you

Page 7

1 want to take a break at any point, you can let me  
2 know and we will take a break.

3 The only thing I'll tell you is if there's  
4 a question pending, I may ask you to answer. And if  
5 you don't, any conversations you have with your  
6 attorney at that point might not be privileged.  
7 Okay?

8 A. Okay.

9 Q. At the end of this process, the court  
10 reporter is take everything, she's going to put it  
11 into a booklet form. You're going to have an  
12 opportunity to review that and make any changes that  
13 you deem appropriate.

14 If you do make changes, I'm entitled to  
15 comment upon those at trial, and depending on the  
16 change that you make, that may affect your  
17 credibility in front of a jury.

18 Do you understand that?

19 A. Yes.

20 Q. I'm not here to trick you into saying  
21 anything. So if you don't understand one of my  
22 questions, please let me know. I'll do my best to  
23 rephrase it.

24 But if you do answer my questions, I'm  
25 going to assume you understood them. Okay?

Page 8

1 A. Yes.

2 Q. I'm also not asking you to guess at  
3 anything. So if you don't know the answer to a  
4 question, you can tell me that or you can tell me it  
5 requires you to guess. Okay?

6 A. Yes.

7 Q. At the beginning of this, the court  
8 reporter placed you under oath. That's the same  
9 oath you'd take in a court of law and carries with  
10 it the same penalties of perjury.

11 Do you understand that?

12 A. Yes.

13 Q. Do you have any questions about any of  
14 those ground rules?

15 A. No.

16 Q. Is there any reason you cannot give your  
17 best testimony today, such as you're on medication  
18 that would affect your memory or ability to testify?

19 A. No.

20 Q. Did you review any documents to prepare for  
21 your deposition?

22 A. Yes.

23 Q. What did you review?

24 A. The papers that my attorney gave me, a  
25 deposition, interrogatories. I don't remember the

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1 names of everything we looked at.

2 Q. What deposition?

3 A. From the last time I was here.

4 Q. You read your testimony from the last time?

5 A. Yes.

6 Q. Is there anything in there that you read  
7 that you would like to change?

8 A. No.

9 Q. Okay. Interrogatories, you mean that you  
10 reviewed your responses to interrogatories that we  
11 sent to you?

12 A. Yes.

13 Q. Anything in those interrogatory responses  
14 that you would like to change?

15 A. No.

16 Q. In addition to your deposition and your  
17 interrogatories, did you review any other documents  
18 to prepare for your deposition?

19 A. I'm thinking. Just multiple sets of, you  
20 know, responses to interrogatories.

21 Q. Did you speak with anyone to prepare for  
22 your deposition?

23 A. My attorney.

24 Q. Anyone else?

25 A. No.

Page 10

1 Q. Did you speak with anyone about your  
2 deposition besides your attorney?  
3 A. No.  
4 Q. Do you have a boyfriend?  
5 A. Yes.  
6 Q. You didn't talk to him about it?  
7 A. Other than to say I have one.  
8 Is that -- I'm sorry. Is that what you  
9 meant?  
10 Q. You didn't talk to him about the substance?  
11 A. No.  
12 Q. Have you talked to Jared about this  
13 deposition?  
14 A. No.  
15 Q. Have you seen the transcript of Jared's  
16 deposition?  
17 A. No.  
18 Q. Do you have an understanding of anything  
19 that Jared said during his deposition?  
20 MR. MAZZEO: Objection, vague, form.  
21 (Deposition Interruption)  
22 BY MR. SMITH:  
23 Q. You can go ahead and answer.  
24 A. Just what was discussed on the ride home,  
25 that there was some talk about his juvenile record,

Page 11

1 but there's not too much else that I recall I think  
2 we talked about.  
3 Q. You and him -- you drove him to his  
4 deposition; right?  
5 A. I drove him and his attorneys.  
6 Q. Okay. And on the way home from that, he  
7 talked to you about --  
8 A. He talked to his attorneys, and I was in  
9 the car.  
10 Q. Okay. Have you discussed this case at all  
11 with Jared since his last deposition?  
12 A. I think we've had conversations.  
13 Q. What do you recall talking about with him?  
14 A. Just if he needed to meet with Lily and  
15 Roger or that he was going to California for  
16 testing. Mostly about upcoming events related to  
17 the business of this case.  
18 Q. What did he tell you about going to  
19 California?  
20 A. That there was some kind of testing he  
21 needed to have.  
22 Q. When did he -- when did you have that  
23 conversation?  
24 A. We've had it a few times. When they first  
25 brought it up, when he first went for a meeting

Page 12

1 with, I think it was a neuropsychologist, but I'm  
2 not sure. They mentioned -- he mentioned he wanted  
3 him to be tested when it was coming closer, when he  
4 needed a cell phone to go.  
5 Q. When were those conversations?  
6 A. Spanning over some time. I think the first  
7 were in the summer and -- or, I'm sorry, the spring  
8 when he went for that appointment and a few times in  
9 the summer.  
10 Q. And he did go to California?  
11 A. I don't know that for sure.  
12 Q. What do you mean needed a cell phone to go?  
13 A. I had -- he needed a cell phone in order to  
14 communicate with the driver, whoever was taking him  
15 to the airport.  
16 Q. He needed to borrow your phone to make a  
17 phone call; is that what you're saying?  
18 A. He needed his phone back turned on. I  
19 had -- his phone was under my account. I had turned  
20 it off.  
21 Q. Why did you turn it off?  
22 A. Because I was concerned about his behavior.  
23 Q. What do you mean you were concerned about  
24 his behavior?  
25 A. I was concerning that he was using.

Page 13

1 Q. When did you -- and I'm sure there's times  
2 in the past that you became concerned that he was  
3 using, but this specific time that you became  
4 concerned he was using, when was that?  
5 MR. MAZZEO: And I'm just -- hold on.  
6 I'm going to object to this whole line of  
7 questioning with regard to questions about Jared  
8 using substances at any time after the subject  
9 incident as not being reasonably calculated to lead  
10 to the discovery of admissible evidence.  
11 MR. SMITH: Well, as we discussed, there  
12 are 18 expert reports, quite a few of them produced  
13 by Jared's attorney, place his condition both before  
14 and after the accident at issue, discuss his drug  
15 use both before and after the accident.  
16 It also relates to his testimony and his  
17 credibility.  
18 So I'm going to continue to ask the  
19 questions.  
20 MR. MAZZEO: And I'm not telling you not to  
21 answer them, but I stated my objection and I stand  
22 by it.  
23 MR. SMITH: Can you read back the question,  
24 please.  
25 (Thereupon, the requested portion was read back.)

Page 14

1 BY MR. SMITH:

2 Q. So this specific time that you were talking  
3 about that you were concerned that he was using,  
4 when was that?

5 A. I don't remember the exact date. It was  
6 over the course of the summer, at the beginning of  
7 summer I believe.

8 Q. Can you estimate the month that it was in?

9 A. It would be an estimate. I think it was in  
10 June.

11 Q. And what was he doing that made you  
12 concerned he was using?

13 A. He was not always coherent. He had stopped  
14 doing some of the things in the house that he had  
15 been doing. Wasn't as attentive to his daughters.  
16 Some money was missing. And I think that's it.

17 Q. What do you mean he was not always  
18 coherent?

19 A. There were times that he will say things  
20 that don't make sense. Some of those times I know  
21 it's because of things that he's gone through in the  
22 past and he's not always clear on those things.

23 But there's just a sense of having been  
24 around him when he's not tracking, when his focus is  
25 off. I don't know if that explained that well

Page 15

1 enough.

2 Q. He doesn't -- strike that.

3 Are you saying that he doesn't have a clear  
4 thought process when he's speaking if he's using?

5 MR. MAZZEO: Objection, goes to state of  
6 mind, calls for expert testimony.

7 MS. COMPTON: Join.

8 THE WITNESS: Can I answer?

9 MR. MAZZEO: Yeah, if you can.

10 THE WITNESS: He -- he's not clear. He's  
11 not based in the reality that the rest of us have.  
12 He's confused.

13 (Thereupon, an off-the-video record discussion was  
14 had.)

15 THE VIDEOGRAPHER: The time is  
16 approximately 1:55 p.m. We're going off the record.  
17 (Off the record.)

18 THE VIDEOGRAPHER: The time is  
19 approximately 1:58 p.m. We're going back on the  
20 record.

21 MR. SMITH: Can you just read back the last  
22 question and answer, please.

23 (Thereupon, the requested portion was read back.)

24 BY MR. SMITH:

25 Q. What are the things in the house that

Page 16

1 you're saying he wasn't doing?

2 A. House chores, cleaning up after himself,  
3 taking out trash.

4 Q. Jared was -- go ahead. I'm sorry.

5 A. Just cleaning, you know, normal house --

6 Q. He was living with you at the time?

7 A. Yes.

8 Q. Is he still living with you?

9 A. No.

10 Q. When did he stop living with you?

11 A. I believe it was early September.

12 Q. Where did he go in early September?

13 A. He went into the hospital and then he went  
14 to Las Vegas Recovery Center.

15 Q. Do you know where he is now?

16 A. Well, just from the e-mail, yeah, it's my  
17 understanding, you know. I think he's at Las Vegas  
18 Rescue Mission, but I only know that from what I  
19 just read.

20 Q. Okay. Do you know how long he was at Las  
21 Vegas Recovery Center?

22 A. No.

23 Q. When was the last time you spoke with  
24 Jared?

25 A. Early September.

Page 17

1 Q. Prior to him leaving your house in early  
2 September, how long had he been living with you?

3 A. I believe -- I'd have to check, but I  
4 believe he was released from Rawson Neal in  
5 February, either February or March and until  
6 September. So February, March I think he came home.

7 Q. Fair to say he moved in with you when he  
8 was released from Rawson Neal?

9 A. Yes.

10 Q. And he lived with you constantly until he  
11 left in early September?

12 A. Yes.

13 Q. What's your current address?

14 A. 4006 Dripping Springs Avenue, North Las  
15 Vegas, Nevada 89031.

16 Q. Do you have any plans to move?

17 A. Not concrete plans.

18 Q. Are you planning on moving?

19 A. I have to clarify that. My -- I rent my  
20 home and it's up for sale, so it could happen.

21 Q. You rent it and the owner is attempting to  
22 sell it?

23 A. Yes.

24 Q. And if they sell it, you're going to have  
25 to move out?

Page 18

1 A. Again, I don't know. If it's sold as a  
2 rental property and I can stay, then I'll stay.  
3 Q. Who lives with you presently?  
4 A. Raymond Duarte. He's a housemate.  
5 Q. That's not your boyfriend?  
6 A. No.  
7 Q. What's your boyfriend's name?  
8 A. Carl Foerst (phonetic).  
9 Q. How long has Mr. Duarte lived with you?  
10 A. Since April I believe.  
11 Q. How long have you known him?  
12 A. Since April.  
13 Q. Do you know who paid for Jared to go to Las  
14 Vegas Recovery Center?  
15 A. No.  
16 Q. Do you believe that he had the financial  
17 ability to pay to go to Las Vegas Recovery Center?  
18 MR. MAZZEO: Objection as to form.  
19 THE WITNESS: I don't know what his  
20 insurance covers, but, no, he wouldn't have the  
21 money.  
22 BY MR. SMITH:  
23 Q. If he didn't have insurance for Las Vegas  
24 Recovery Center, he would not have been able to pay  
25 for it out of his pocket; is that what you're

Page 19

1 saying?  
2 A. Yes.  
3 Q. When was the last time that you saw Jared's  
4 kids?  
5 A. Just after he went in -- I'm sorry. That's  
6 a mistake. I believe early to mid September.  
7 Q. How often do you see them?  
8 A. I've not seen them since then.  
9 Q. Before that, how often were you seeing  
10 them?  
11 A. At that point daily. They were staying  
12 with me.  
13 Q. What period of time were they staying with  
14 you?  
15 MR. MAZZEO: Objection -- hold on.  
16 Objection to this whole line of questioning  
17 with regards to the kids as it will not reasonably  
18 lead to the discovery of admissible evidence.  
19 Go ahead.  
20 MS. COMPTON: Join.  
21 MR. SMITH: That's not a proper deposition  
22 objection.  
23 (Multiple parties speaking.)  
24 MR. MAZZEO: That's my objection.  
25 MR. SMITH: If you want to do a form and

Page 20

1 foundation objection, you can. But reasonably  
2 calculated to lead to the discovery of admissible  
3 evidence, unless you're going to instruct her not to  
4 answer, is not at proper deposition objection.  
5 MR. MAZZEO: Okay. All right.  
6 Go ahead.  
7 THE WITNESS: I'm trying to remember. They  
8 moved in sometime during the summer to stay. It was  
9 never formal. I think it was about two months that  
10 they were living with me full time.  
11 BY MR. SMITH:  
12 Q. Why was it that they moved in with you?  
13 A. Their mother asked me to keep them.  
14 Q. Was something going on with her that she  
15 asked you to keep them?  
16 A. I don't know clearly. I think she was  
17 having trouble finding a place to stay.  
18 Q. They were living with you at the same time  
19 that Jared was?  
20 A. Yes.  
21 Q. When did they move out?  
22 A. I believe it was early to mid September,  
23 around the same time as Jared.  
24 Q. Prior to the moving in, how often did you  
25 see his kids?

Page 21

1 A. Just prior? I would say average weekly.  
2 Sometimes more, sometimes less.  
3 Q. Prior to the kids moving in, how often  
4 would Jared see them?  
5 A. I don't know.  
6 Q. Did you see Jared around his kids at any  
7 point when you thought that he was high?  
8 A. I think so.  
9 Q. What's the mother of his children's name?  
10 A. Tikira (phonetic) White.  
11 Q. Do you have her phone number?  
12 A. I do not.  
13 Q. Do you have it somewhere that you could  
14 contact her?  
15 A. I -- clarify: I have a number for her. I  
16 tried to contact her earlier in the week, and the  
17 message came back that the phone was not on. So I  
18 do not have a working number for her.  
19 Q. Can you provide us with the one that  
20 doesn't work?  
21 A. I can.  
22 Q. Okay.  
23 A. Right now?  
24 Q. Please.  
25 A. I had turned my phone off.

Page 22

1 Q. That's okay.  
2 A. Can I clarify something?  
3 Q. Go ahead.  
4 A. You asked me if I had seen Jared high  
5 around his children. I need to clarify that I don't  
6 know if he was high or coming down or in withdrawal,  
7 but impaired by it I guess is how I would answer  
8 this. What I was answering was impacted or impaired  
9 by drugs. High is a little different.  
10 Q. You've seen him around his children when he  
11 was impaired by drugs?  
12 A. Yes.  
13 Q. Okay.  
14 A. The last number that I had was  
15 (702) 845-2360.  
16 Q. Thank you.  
17 A. I'm -- there's another number. I thought I  
18 only had one. (702) 245-1807.  
19 Q. Thank you.  
20 A. I'm sorry. Once I turned on the phone, I'm  
21 getting this.  
22 Q. You're popular today?  
23 A. You assume it's just today? I'm just  
24 kidding.  
25 Q. Since the last time you were at my office

Page 23

1 you stopped working; right?  
2 A. Yes.  
3 Q. What are you doing now?  
4 A. I'm retired, disability.  
5 Q. Why did you retire?  
6 A. Because the stress, work, and family  
7 situation was becoming intense that I felt it was  
8 impairing my performance.  
9 I'm a teacher. I can't be impaired. And I  
10 went to the doctor and we agreed. So I was able to  
11 retire on disability.  
12 Q. What's the specific disability that you  
13 retired with?  
14 A. Generalized anxiety disorder with some  
15 depression.  
16 Q. And you said your family situation.  
17 What did you mean by that?  
18 A. Jared's use, not having access to the  
19 girls, a strained relationship with my mother over  
20 Jared's use.  
21 Q. Why -- can you explain how the relationship  
22 with your mother is strained over Jared's use?  
23 A. She takes a different position on what I  
24 should do, and there was a time he was living with  
25 her.

Page 24

1 Q. What's her position on what you should do?  
2 A. You'd have to ask her. I'm going to give  
3 you a paraphrase is that I --  
4 MS. COMPTON: Objection, foundation.  
5 THE WITNESS: -- that I should do more,  
6 that I should fix it somehow, that I should allow  
7 him to live with me.  
8 BY MR. SMITH:  
9 Q. What has she told you specifically that you  
10 should do?  
11 A. That I should fix it.  
12 Q. Has she told you how you should fix it?  
13 A. No.  
14 Q. Has she told you that she thinks you should  
15 allow him to live with you?  
16 A. She has told me that, that he can't be  
17 homeless. Those were her words.  
18 Q. Have you had multiple disagreements with  
19 her about how to handle Jared?  
20 A. Yes.  
21 Q. What other things has she told you during  
22 those disagreements?  
23 MS. COMPTON: Form, foundation.  
24 THE WITNESS: She has not told me things.  
25 It's based on things that she has done.

Page 25

1 BY MR. SMITH:  
2 Q. What are the things that she's done?  
3 A. Given him money, allowed him to live in her  
4 adult complex putting herself at risk, calling  
5 family members I know who aren't safe for him,  
6 refusing to go to therapy.  
7 Granted, my mother is about to be 93 in  
8 March. She's doing the best she can.  
9 Q. Why does Jared living there put her at  
10 risk?  
11 A. Because it's a senior complex. Because my  
12 understanding is that Jared was either using or his  
13 thinking was disordered so he made some problems  
14 there.  
15 I don't know that from them. I know that  
16 from reports from Jared and from my mother. She had  
17 to call the police.  
18 Q. What was he doing that she called the  
19 police?  
20 A. I don't know.  
21 Q. What did Jared tell you that he did to  
22 cause a disturbance?  
23 A. I don't know that he was clear. I think he  
24 thinks it was exaggerated.  
25 Q. Well, what did he tell you?

Page 26

1 A. That it was exaggerated.

2 Q. What did he tell you that they said was  
3 exaggerated?

4 A. That he hadn't done anything. That -- you  
5 know, he sticks by his perceptions.

6 He had a perception that something happened  
7 to a neighbor of my mother's. He swears something  
8 happened to her and everyone else says no.

9 Q. Well, what did he tell you he was accused  
10 of?

11 A. He didn't.

12 Q. You've had your driver's license suspended  
13 before?

14 A. I'm not sure if it was suspended. I had  
15 driving privileges in New Jersey suspended over a  
16 ticket that I did not pay because I had moved here.

17 I paid that ticket. Then found out years  
18 ago that the court and the DMV didn't communicate.  
19 I called and they moved it over. But not --

20 Q. When was it that you didn't pay the ticket?

21 MR. MAZZEO: Objection to this whole line  
22 of questioning. I'm going to direct my client not  
23 to answer this question. It's not related to this  
24 case.

25 MR. SMITH: It's related to her knowledge

Page 27

1 of the DMV and is relevant to some of the questions  
2 that I'm going to ask her later.

3 MR. MAZZEO: Not going to happen.

4 BY MR. SMITH:

5 Q. Did you get any mail from the DMV about  
6 your license in New Jersey?

7 MR. MAZZEO: Don't answer.

8 MR. SMITH: You're really not going to  
9 instruct her not to answer?

10 MR. MAZZEO: Oh, yeah.

11 If you want to get the commissioner on the  
12 phone, we can do that.

13 MR. SMITH: Well, you're the one telling me  
14 we don't have time to do that and you're not going  
15 to let her answer a question about whether she got  
16 mail from the DMV?

17 MR. MAZZEO: Not at all. It has nothing to  
18 do with this case.

19 MR. SMITH: We will call her at the end of  
20 this if we have time. If we do not, I reserve the  
21 right to file a motion.

22 BY MR. SMITH:

23 Q. Do you have a gambling problem?

24 MR. MAZZEO: Objection.

25 Don't answer.

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1 MR. SMITH: There are multiple doctors that  
2 have claimed that her gambling problem relates to  
3 Jared's mental health, so I'm entitled to inquire  
4 into it.

5 MR. MAZZEO: I'm -- what do you mean  
6 multiple doctors? I'm not -- Adam, I'm not aware of  
7 this.

8 MR. SMITH: Well, because you haven't read  
9 the 18 expert reports that were disclosed to us,  
10 so -- which I tried to talk to you about before the  
11 deposition and you weren't prepared to talk about  
12 either, but I'm entitled to ask about what's in  
13 those expert reports.

14 Some of those expert reports talk about her  
15 having a gambling problem and some of the other  
16 things I'm going to ask her about with respect to  
17 it, and I'm entitled to ask if what he's talking  
18 about is accurate.

19 MR. MAZZEO: Okay. I need a moment.

20 (Thereupon, an off-the-record discussion was had  
21 between defense counsel.)

22 MR. MAZZEO: I think it's a stretch, but  
23 I'll allow it.

24 THE WITNESS: I'm a compulsive gambler in  
25 recovery. It has been 12 years since my last bet.

Page 29

1 BY MR. SMITH:

2 Q. What did you do when you were a compulsive  
3 gambler before you stopped?

4 In other words, what were you playing?

5 A. I primarily bet video poker, sometimes  
6 slots.

7 Q. Were there times when you left Jared alone  
8 at night because you were gambling late?

9 A. No.

10 Q. That never happened?

11 A. No. I think the last night that I gambled  
12 he was home alone, but it was -- that was the last  
13 night that I gambled.

14 Q. And that's the only time that ever  
15 happened?

16 A. I don't think there were many other times.  
17 It was not something that I did. He came -- if I  
18 can clarify. They have Kids Quest and he stayed  
19 with my mother or he was with a friend.

20 Q. Was there one time where you left him alone  
21 at night?

22 A. I know that there was a time the last night  
23 that I gambled.

24 Q. You've been involved in lawsuits besides  
25 this one; correct?



Page 30

1 A. Yes.

2 Q. You sued your insurance company before

3 related to an accident?

4 A. Yes.

5 Q. What was that case about?

6 A. It was many years ago. I got --

7 MR. MAZZEO: Just the objection as to

8 relevance, form.

9 Go ahead.

10 THE WITNESS: I was hit in a parking lot by

11 a driver who took off. My insurance company did not

12 want to pay, so my attorney sued my insurance

13 company.

14 BY MR. SMITH:

15 Q. And your insurance company also sued you?

16 A. I don't know all the details.

17 Q. What was the outcome of that?

18 A. I received a settlement.

19 Q. For the -- what was the settlement for?

20 A. I just know that I picked up a check from

21 my attorney.

22 Q. Was it for injuries or property damage or

23 both or something else?

24 A. I don't know if I'm remembering correctly,

25 but I believe it was for both. I'm not sure. It

Page 31

1 was many years ago.

2 Q. You were injured in that accident?

3 A. Yes.

4 Q. And you did ask for payment for your

5 injuries; correct?

6 A. Yes.

7 Q. And you believe that you were entitled to

8 be paid for having been injured in an accident;

9 correct?

10 A. Yes.

11 Q. When did you first become aware at any

12 point that Jared was using drugs?

13 A. I suspected when he was in eighth grade.

14 Q. How old was he at that point?

15 A. Twelve or 13.

16 Q. What was he doing that you suspected he was

17 using drugs?

18 A. His grades were dropping. He had a lot of

19 friends in and out of the house. He was not as

20 compliant. Our relationship was strained.

21 Q. What drugs did you suspect him of using in

22 eighth grade?

23 A. I didn't know enough about grades at the

24 time to suspect a particular drug.

25 Q. Do you know -- well, strike that.

Page 32

1 At this point, based upon all of the

2 knowledge that you have had, conversations with him,

3 counseling you've gone to, et cetera, do you know

4 when he started using drugs?

5 A. No. He has said different things. I

6 believe that it's around that time around 12.

7 Q. How did he get into using drugs?

8 A. I'm not completely sure. One story that he

9 has told me is that he used marijuana for the first

10 time with a member of our church youth group, but I

11 don't know if he started with marijuana.

12 Q. Do you know who first introduced him to

13 meth?

14 A. No.

15 Q. Do you know why Jared started using drugs?

16 A. No. There's no way that I can.

17 Q. You would agree that he started using drugs

18 before he had the fight that he had in

19 November 2005; correct?

20 A. I don't know that. I don't know that.

21 Q. What has he told you?

22 A. He has not told me whether it started

23 before. I knew he was acting out. I knew he was in

24 trouble.

25 Q. He was getting in trouble before that

Page 33

1 fight?

2 A. To a lesser degree. To me, the fight was

3 trouble. So I guess the answer would be yes.

4 Q. Before the fight, what was he doing to act

5 out?

6 A. Again, his grades were dropping. He had

7 been in honors classes and he wasn't keeping up in

8 those classes. He would come home before me. He

9 was in middle school and I was an elementary school

10 teacher. There would be kids in the house when I

11 called. He wasn't attending to his household

12 chores.

13 Q. And that was all before November 2005?

14 A. Yes.

15 Q. Has Jared ever told you that he likes the

16 lifestyle of using and selling drugs?

17 A. Yeah, I think he has.

18 Q. Has he told you that using and selling

19 drugs has helped him make friends?

20 A. No.

21 Q. Has he told you that using and selling

22 drugs helped him meet girls?

23 A. No, I don't think he has.

24 Q. Jared has said that he was using meth as

25 early as ten.

Page 34

1 Do you know whether that's true or not?  
 2 A. I have heard him say that in meetings like  
 3 with doctors. I don't believe that's true.  
 4 Q. You think he's lying about that?  
 5 A. I think he's mistaken.  
 6 Q. Why do you say that?  
 7 A. Because I think his memory is distorted. I  
 8 think also there's a certain -- in 12-step programs  
 9 we call them glory days or war stories, and I think  
 10 that he has extended those. And the limited  
 11 knowledge that I have, and I don't know if I -- is  
 12 that had he started using it -- meth at ten, he  
 13 would have been much more out of control much  
 14 sooner, from my experience with meth.  
 15 Q. What do you mean by his memory's distorted?  
 16 MR. MAZZEO: Foundation, calls for medical  
 17 expert testimony.  
 18 THE WITNESS: There are things that he  
 19 remembers as fact that did not happen the way the  
 20 rest of us remember them.  
 21 BY MR. SMITH:  
 22 Q. What do you think that's from?  
 23 MR. MAZZEO: Objection, foundation.  
 24 MS. COMPTON: Form.  
 25 THE WITNESS: As his mother, I think it's

Page 35

1 from a mixture of experiences he's been through. I  
 2 think he's been through a frightening time. I think  
 3 it's -- the drugs do something to your thinking and  
 4 your delusion -- your, your -- not your delusions,  
 5 your basis in reality.  
 6 I think he's mixed up things that happened  
 7 with things he's remembered, things he's been told.  
 8 And I think there's a certain logic that he's put  
 9 together, a certain story that's not clear.  
 10 BY MR. SMITH:  
 11 Q. You think his recollection of the last ten  
 12 years is not very clear?  
 13 MR. MAZZEO: Objection, form.  
 14 THE WITNESS: I think parts of it, yes. I  
 15 think there are things he doesn't remember.  
 16 Also, a part of his use and a part of use  
 17 from what I know is kind of delusions of grandeur,  
 18 and he has built up things to mean more or something  
 19 different than what they mean.  
 20 BY MR. SMITH:  
 21 Q. You would agree you have a lot of  
 22 experience living with someone who has a drug  
 23 addiction; correct?  
 24 A. Yes.  
 25 Q. You've seen a lot of counselors with Jared

Page 36

1 because of his drug addiction?  
 2 A. You'd have to clarify "a lot." And I've  
 3 taken Jared to counselors. I haven't necessarily  
 4 been in the counseling with them.  
 5 Q. At any point were there any males in your  
 6 household besides Jared that were using drugs?  
 7 A. In my household?  
 8 Q. Yes.  
 9 MR. MAZZEO: Objection, time frame.  
 10 MS. COMPTON: Foundation.  
 11 BY MR. SMITH:  
 12 Q. Well, since he was eight years old let's  
 13 say.  
 14 A. No. Let me clarify. Jared had a friend  
 15 living with us for a time that I asked to move out.  
 16 I don't know if his friend used drugs. I know that  
 17 he was drunk one night and I said he had to leave.  
 18 But no men connected to me.  
 19 Q. Is there some family connection with a  
 20 Mexican drug dealer?  
 21 A. Not that I know of.  
 22 Q. One of the doctors has said that Jared,  
 23 quote, reportedly began using methamphetamine at age  
 24 ten after his family inadvertently got involved with  
 25 drug dealers.

Page 37

1 Can you explain that?  
 2 A. This is difficult because I'm going off of  
 3 what Jared is saying. The only thing that I can  
 4 connect it to is that we had a neighbor, a young man  
 5 close to Jared's age, who came in the house and had  
 6 a bag of something that looked like drugs.  
 7 I took that bag and flushed it. And his  
 8 uncle came to the house and approached me, thinking  
 9 that I was a rival. And I just said, I know nothing  
 10 about this. I'm a teacher.  
 11 That man said, Oh, you're a teacher? I'm  
 12 so sorry. I apologize. And we had no further  
 13 dealings other than his being very respectful in the  
 14 neighborhood.  
 15 Jared tells that story often because  
 16 there's a spiritual aspect to it about how strong I  
 17 am, but we had no dealings with him. It didn't  
 18 impact our life.  
 19 Q. What do you mean he thought were a rival?  
 20 A. Well, it's not that I took the drugs to  
 21 sell. Those are my words. He didn't say that. I  
 22 know nothing about drug dealing. He said, Are you  
 23 trying to sell that? Are you trying to make money?  
 24 I was a teacher in a neighborhood. I  
 25 looked out for as many kids as I could.

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1 Q. When did that happen with the neighbor?  
2 A. I would be guessing, but somewhere in  
3 Jared's elementary school age, somewhere between  
4 eight and ten. I don't remember the exact.  
5 I had forgotten the story until a few  
6 months ago when Jared reminded me.  
7 Q. Jared told another doctor that his primary  
8 two role models used meth.  
9 Do you know who he was talking about?  
10 A. No.  
11 Q. Is there anyone you can think of in Jared's  
12 youth who was a role model to him that also used  
13 meth?  
14 A. I don't know if they used meth, but I am  
15 not close to my biological family, my sister's sons,  
16 because of their lifestyle. And so it may be her  
17 two sons, who are adults. And so he may be  
18 referencing them, but I don't know.  
19 MR. MAZZEO: Speculation.  
20 THE WITNESS: And I don't know what drugs  
21 they used.  
22 BY MR. SMITH:  
23 Q. How old are your sister's two sons?  
24 A. One son is 49, and the other is -- I'm  
25 doing the math -- about 38.

Page 39

1 Q. What are their names?  
2 A. Alex Kopystenski.  
3 Q. Can you spell that?  
4 A. K-O-P-Y-S-T-E-N-S-K-I. And Edward Gould.  
5 Q. Were they a part of Jared's life when he  
6 was between nine and 12?  
7 A. They came in and out of his life. I did my  
8 best to keep us away from them. As I got stronger  
9 and more aware, I stayed away from them more.  
10 Q. Why did you want to keep you and Jared away  
11 from them?  
12 A. Because of their lifestyle, because of the  
13 way they saw things, because of how they were with  
14 Jared.  
15 Q. You're aware that Jared -- well, strike  
16 that.  
17 Do you know when Jared first used cocaine?  
18 A. No.  
19 Q. Other than cocaine, marijuana, and meth,  
20 are you aware of any other drug that he's used?  
21 A. I know what he's reported, and I know that  
22 I once found a bottle of -- an empty bottle of  
23 Quaaludes of someone else's prescription, but I  
24 don't know if he used those or sold those or why it  
25 was in his room.

Page 40

1 Q. What else has he told you he's used?  
2 A. Spice. And I suspect bath salts, but I  
3 don't know that for sure.  
4 Q. Ecstasy?  
5 A. I don't know.  
6 Q. And as you told me last time, you know that  
7 he was using -- or strike that.  
8 You know that he had used cocaine,  
9 methamphetamine, and marijuana before the  
10 January 2011 accident; correct?  
11 A. I know that he told me and I know the meth  
12 came up in drug testing. So yes.  
13 Q. It came up in drug testing prior to  
14 January 2011; correct?  
15 A. Meth did.  
16 Q. Not marijuana?  
17 A. Meth -- I don't know. You jumped before I  
18 could -- meth and marijuana. I don't know if  
19 cocaine did.  
20 Q. Okay. When was it that he was drug tested  
21 well -- strike that.  
22 Who was drug testing him that it came up?  
23 A. Juvenile court and a place called Choices  
24 when he was in the drug program.  
25 Q. Have you ever drug tested him?

Page 41

1 MR. MAZZEO: What's the question?  
2 MR. SMITH: Have you ever drug tested him?  
3 THE WITNESS: Yes.  
4 BY MR. SMITH:  
5 Q. When was the first time?  
6 A. Oh, I don't remember.  
7 Q. Can you estimate how old he was?  
8 A. I think he was 14 or 15.  
9 Q. And what led you to drug test him?  
10 A. His behavior. There were times that I  
11 thought I smelled marijuana. That's also something  
12 when you have a teenager. We all -- in my group of  
13 friends I think we've all tested our kids to be  
14 sure, teenagers, when you have any suspicions at  
15 all.  
16 Q. How many times did you drug test him?  
17 A. Oh, I have no idea.  
18 Q. Can you estimate?  
19 A. It would be more of a guess than an  
20 estimate. Maybe ten times, maybe more. I truly  
21 don't remember.  
22 Q. Less than 20?  
23 A. I don't -- again, I'm guessing.  
24 Q. Has Jared ever smoked marijuana in your  
25 home?

Page 42

1 A. I've not witnessed it, but I've smelled it.  
 2 Q. He has said that you let him smoke  
 3 marijuana in the home prior to the November 2005  
 4 fight.  
 5 Is that correct?  
 6 A. No.  
 7 Q. He's lying about that?  
 8 A. He is mistaken.  
 9 Q. Has he ever grown marijuana in your home?  
 10 A. No.  
 11 Q. Do you know if he's ever grown marijuana  
 12 anywhere?  
 13 A. He's referenced a grow house. So from his  
 14 reports, yes.  
 15 Q. He's told you that he was growing  
 16 marijuana?  
 17 A. Yes.  
 18 Q. When was that?  
 19 A. When did he tell me or when was he doing  
 20 it?  
 21 Q. Both. Thank you for clarifying.  
 22 A. He -- this last time that he came home, he  
 23 referenced working in a grow house, and I believe it  
 24 was a year or two ago, when he wasn't living with  
 25 me.

Page 43

1 Q. So this past summer he told that he was  
 2 working in a grow house about a year or two ago?  
 3 A. He -- I don't think he said, "A year ago I  
 4 worked in a grow house." He would talk about  
 5 working in this grow house and I had the time frame  
 6 as about then.  
 7 Q. He told you that over this past summer?  
 8 A. Um-hmm.  
 9 Q. You said before you caught with him  
 10 Quaaludes.  
 11 What other drugs have you found him with?  
 12 A. I haven't. Just alcohol.  
 13 Q. You've never found any other drugs in his  
 14 room or on his person?  
 15 A. Not when he was living there. After he's  
 16 moved out, I've seen baggies, not knowing what was  
 17 in them.  
 18 Q. You mean he left them behind when he moved  
 19 out?  
 20 A. Um-hmm, yes.  
 21 Q. When was that?  
 22 A. There were baggies this time in September.  
 23 There was not drugs in it. There was like residual  
 24 powder in it. And that could be a drug, it could be  
 25 residual. I don't know enough.

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1 And when I lived on Gowan, I moved out, I  
 2 found at least paraphernalia.  
 3 Q. Utensils to help him use the drugs; is that  
 4 what you mean?  
 5 A. Baggies, things like that.  
 6 Q. Did Jared -- strike that.  
 7 Had Jared used methamphetamine prior to the  
 8 November 2005 fight?  
 9 A. I don't know.  
 10 Q. Let's go back to when you tested him for  
 11 drugs.  
 12 Did he ever fail one of those tests?  
 13 A. At home nothing came up failing, but I had  
 14 suspicions.  
 15 Q. What do you mean by that?  
 16 A. The -- he would go into the bathroom  
 17 himself and he'd come back clean when I was sure he  
 18 was using, and the test itself would smell like  
 19 rubbing alcohol. That's one of the reasons I  
 20 stopped testing him.  
 21 Q. So you think he was pouring something else  
 22 in there to taint the test?  
 23 A. Yes.  
 24 Q. And, I'm sorry, I know it's only been a few  
 25 minutes, but I forgot what the names of the places

Page 45

1 you said tested him that he had failed?  
 2 A. Choices and wherever else the drug court  
 3 sent him. Choices is where I remember primarily.  
 4 Q. How do you know that he failed?  
 5 A. Because they would call me in after.  
 6 Q. You had to go to the location and get the  
 7 drug results?  
 8 A. No. I would drop him off or I would wait  
 9 for him. You weren't allowed to wait inside. He  
 10 would come out. And in a couple days, if something  
 11 was wrong, we'd get a call, "I need to see you."  
 12 Or at one time Jared had to go into  
 13 juvenile court, juvenile hall, for a weekend because  
 14 some score, his creatinine level or something was  
 15 low.  
 16 So I would know based on what the Court  
 17 would tell me.  
 18 Q. These times that you were told he failed  
 19 drug tests, they were before he was 18?  
 20 A. Yes.  
 21 Q. And you were being told because you were  
 22 his mother and he was a minor; correct?  
 23 MR. MAZZEO: Objection, speculation.  
 24 THE WITNESS: Yes. Or because I had to  
 25 take him to juvenile hall.

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1 BY MR. SMITH:  
2 Q. Can you tell when Jared is high on  
3 marijuana?  
4 A. I don't know I --  
5 MR. MAZZEO: Objection.  
6 Sorry. I was delayed.  
7 Objection, foundation, speculation.  
8 THE WITNESS: I don't know if I can tell if  
9 it's marijuana specifically, and I can't always tell  
10 if he's high at the moment or coming down or  
11 withdrawal, but I can tell when he's -- I use the  
12 word impaired.  
13 BY MR. SMITH:  
14 Q. Anything other than his speaking isn't  
15 clear that leads you to believe he's impaired?  
16 A. Are you asking now specifically about  
17 marijuana or all drugs?  
18 Q. Can you tell the difference?  
19 A. The only thing that indicates marijuana is  
20 that he's less agitated when it's spice and his eyes  
21 are very red.  
22 Q. He's less agitated on spice or he's less  
23 agitated on marijuana than spice?  
24 A. Less agitated on marijuana.  
25 Q. Okay. And his eyes get red when he smokes

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1 marijuana?  
2 A. Yes. And he usually smells of it.  
3 Q. With respect to other drugs, what does he  
4 look like when he's on other drugs?  
5 A. I don't know what drugs they are. I just  
6 can tell when he's very agitated, when what he is  
7 talking about -- it's not his speech. It's the  
8 content of what he's talking about -- does not make  
9 sense.  
10 He can get very -- what's the word? -- very  
11 agitated, delusional, believes people are out to get  
12 him.  
13 Q. Do you believe marijuana would impair  
14 Jared's ability to drive?  
15 MR. MAZZEO: Objection, foundation,  
16 speculation.  
17 THE WITNESS: I don't know.  
18 BY MR. SMITH:  
19 Q. Do you believe when you've seen Jared and  
20 you've thought he's on drugs he would be a safe  
21 driver?  
22 A. Again, drugs or marijuana?  
23 Q. Well, let me ask you drugs in general.  
24 MR. MAZZEO: Objection, foundation,  
25 speculation.

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1 THE WITNESS: Drugs in general? No,  
2 because he's very agitated.  
3 BY MR. SMITH:  
4 Q. Do you believe when you've seen  
5 jarijuana --  
6 MS. COMPTON: Jarijuana.  
7 BY MR. SMITH:  
8 Q. Do you believe when you've seen Jared and  
9 you've thought he was high on marijuana he would be  
10 a safe driver?  
11 MR. MAZZEO: Objection, foundation,  
12 speculation.  
13 THE WITNESS: I'm hesitating because I  
14 have -- I'm a 51-year-old grandma and teacher. I  
15 try not to even have one drink and drive, but I know  
16 people who have three or four and say that they're  
17 not impaired.  
18 Would I let Jared drive? No.  
19 Can I make that decision from a legal or  
20 medical standpoint? No.  
21 BY MR. SMITH:  
22 Q. Do you believe if someone has a medical  
23 prescription for marijuana, it would still be  
24 acceptable for them to drive after smoking it?  
25 MS. COMPTON: Foundation.

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1 MR. MAZZEO: Join.  
2 THE WITNESS: I don't have a belief of  
3 that. I would trust that it would be between that  
4 person and their doctor about what -- how much they  
5 could use before they can operate a car.  
6 Because, again, I'm going to qualify it: I  
7 don't take Nyquil and drive. Some people do and  
8 they're fine.  
9 BY MR. SMITH:  
10 Q. What you're saying is you wouldn't drive  
11 after smoking marijuana?  
12 MS. COMPTON: Foundation, form.  
13 MR. MAZZEO: Relevance.  
14 THE WITNESS: No. But, again, I don't use  
15 marijuana, so it would have a very different impact  
16 on me.  
17 BY MR. SMITH:  
18 Q. Is it your understanding that Jared's use  
19 of marijuana is as a medicine?  
20 A. I firmly believe Jared --  
21 MS. COMPTON: Foundation.  
22 THE WITNESS: I'm sorry. I firmly believe  
23 Jared self-medicates.  
24 BY MR. SMITH:  
25 Q. For what reason?

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1 A. Anxiety, sadness, guilt, not having a  
2 father in his life, whatever pain that, you know,  
3 whatever pain he's feeling, whatever psychic pain  
4 he's feeling. And then he does have pain from his  
5 eye that he reports. He doesn't sleep well. He  
6 doesn't have his children.

7 Q. What's the anxiety from?

8 MR. MAZZEO: Objection, speculation,  
9 foundation.

10 MS. COMPTON: Foundation, join.

11 THE WITNESS: Anxiety would be, again, from  
12 his mom, from the injury to his eye, from the  
13 trouble that he's been in, from trying to build a  
14 life that he wants, not knowing if he can do it, not  
15 being happy with being 22 and not in school and not  
16 providing and disappointing family members, the  
17 things that he's experienced, the things that he's  
18 done that are out of the character that he had when  
19 he wasn't using.

20 BY MR. SMITH:

21 Q. Those are the same things that lead to the  
22 sadness and the guilt you mentioned?

23 A. I think --

24 MS. COMPTON: Foundation.

25 THE WITNESS: I think that the anxiety is

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1 slightly more. I mean, Jared physically sees things  
2 differently. He's blind in one eye.

3 BY MR. SMITH:

4 Q. Do you believe that he uses marijuana  
5 solely as a medicine and not to get high?

6 MR. MAZZEO: Speculation, foundation.

7 MS. COMPTON: Join.

8 THE WITNESS: I actually can't answer that  
9 because if you're self-medicating, the point of  
10 self-medicating is getting high. I don't know how  
11 to differentiate that.

12 BY MR. SMITH:

13 Q. But is all of his drug use self-medicating?

14 MS. COMPTON: Foundation.

15 THE WITNESS: It would be like you asking  
16 me when I gambled, did I gamble because I liked  
17 gambling or did I gamble because I was a compulsive  
18 gambler and I was self-medicating. I don't know how  
19 to differentiate those two. Addicts are in pain.

20 BY MR. SMITH:

21 Q. Do you blame the 2005 fight for Jared's  
22 drug use and addiction?

23 MR. MAZZEO: Foundation, speculation.

24 MS. COMPTON: Join.

25 THE WITNESS: No. I don't blame any one

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1 thing. I think it was a contributing factor, but I  
2 don't blame.

3 BY MR. SMITH:

4 Q. It's not the sole factor as to why he's a  
5 drug addict and a drug user; correct?

6 MR. MAZZEO: Speculation, foundation.

7 THE WITNESS: No.

8 MS. COMPTON: Join.

9 THE WITNESS: No.

10 BY MR. SMITH:

11 Q. You would agree Jared has to take some  
12 responsibility for the choices that he's made;  
13 correct?

14 MR. MAZZEO: Objection, form.

15 MS. COMPTON: Foundation.

16 THE WITNESS: Yes, I would agree. Maybe  
17 for different reasons than you're asking me.

18 BY MR. SMITH:

19 Q. What are the reasons that you would say?

20 MR. MAZZEO: Objection, speculation,  
21 foundation.

22 THE WITNESS: The --

23 MS. COMPTON: Join.

24 THE WITNESS: The only way that you recover  
25 from an addiction or are in recovery is if you take

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1 responsibility.

2 BY MR. SMITH:

3 Q. Do you believe that Jared could recover  
4 from his addiction?

5 MR. MAZZEO: Objection, foundation.

6 MS. COMPTON: Join.

7 MR. MAZZEO: Speculation.

8 THE WITNESS: I have to believe that.

9 BY MR. SMITH:

10 Q. Well, you've seen him get clean for periods  
11 of time; correct?

12 A. I have to believe that, again, not exactly  
13 for the reasons you're asking me. I'm an addict in  
14 recovery. I have to believe in recovery. It's the  
15 way I live.

16 But, yes, I think Jared wants it. I  
17 think he's -- I have to hope.

18 Q. And you've seen him get clean before;  
19 correct?

20 A. Yes.

21 Q. He just hasn't stuck with it for -- well,  
22 he just hasn't stuck with it; right?

23 A. You say stuck with it like it's a diet.

24 Q. Well, he's relapsed every time?

25 A. Yes, he's relapsed.



<p style="text-align: right;">Page 54</p> <p>1 Q. You're aware that Jared has been in a gang</p> <p>2 before?</p> <p>3 A. Yes.</p> <p>4 Q. When was that?</p> <p>5 A. From Jared's report, during high school and</p> <p>6 his later adult and possibly -- I'm not clear on</p> <p>7 middle school, whether that was a gang, whether it's</p> <p>8 a clique. There are different terms.</p> <p>9 Q. What are the names of the gangs that he's</p> <p>10 been in?</p> <p>11 A. I don't know.</p> <p>12 MR. MAZZEO: Objection, relevance.</p> <p>13 MS. COMPTON: Form.</p> <p>14 MR. SMITH: What's the form objection to</p> <p>15 "What are the names of the gangs that he's been in?"</p> <p>16 MS. COMPTON: It was, "What are the names</p> <p>17 of the gangs that he's been in?" She doesn't -- you</p> <p>18 didn't say if it was one gang, if it was multiple</p> <p>19 gangs. She doesn't know what time period you're</p> <p>20 referring to. She doesn't even know if he was</p> <p>21 actually in a gang or in a clique.</p> <p>22 I mean, what --</p> <p>23 (Multiple parties speaking.)</p> <p>24 MR. SMITH: Those are not form objections.</p> <p>25 So if you have a form objection, state a form</p>	<p style="text-align: right;">Page 56</p> <p>1 right?</p> <p>2 MR. MAZZEO: Objection, form.</p> <p>3 THE WITNESS: I need you to clarify "act</p> <p>4 tough."</p> <p>5 BY MR. SMITH:</p> <p>6 Q. He likes to act like a tough gangster?</p> <p>7 MR. MAZZEO: Objection, speculation.</p> <p>8 MS. COMPTON: Join.</p> <p>9 MR. MAZZEO: Foundation.</p> <p>10 MS. COMPTON: Join.</p> <p>11 THE WITNESS: I've not seen -- to me, tough</p> <p>12 is physically aggressive. I've not seen that. I</p> <p>13 feel he likes to act powerful like he understands</p> <p>14 more than he does, he has more influence than he</p> <p>15 has.</p> <p>16 BY MR. SMITH:</p> <p>17 Q. He likes to act like a big shot?</p> <p>18 A. Again --</p> <p>19 MS. COMPTON: Form.</p> <p>20 THE WITNESS: Like he's a part of making</p> <p>21 things happen, but I don't know that I would clarify</p> <p>22 that as a big shot.</p> <p>23 BY MR. SMITH:</p> <p>24 Q. Jared was in gang before the 2005 fight;</p> <p>25 correct?</p>
<p style="text-align: right;">Page 55</p> <p>1 objection.</p> <p>2 MS. COMPTON: Okay. Foundation.</p> <p>3 BY MR. SMITH:</p> <p>4 Q. You would agree from what you've seen that</p> <p>5 Jared likes the drug and gang lifestyle; correct?</p> <p>6 MR. MAZZEO: Objection, speculation.</p> <p>7 MS. COMPTON: Foundation.</p> <p>8 THE WITNESS: I would not agree that he</p> <p>9 likes it. I believe that it meets a need.</p> <p>10 BY MR. SMITH:</p> <p>11 Q. What's the need that it meets?</p> <p>12 MR. MAZZEO: Speculation.</p> <p>13 MS. COMPTON: Join, foundation.</p> <p>14 THE WITNESS: Feeling powerful, feeling</p> <p>15 that he's creating another family because he may be</p> <p>16 worried about the damage he's done to his existing</p> <p>17 family, belonging.</p> <p>18 BY MR. SMITH:</p> <p>19 Q. Being in gang provides him with a sense of</p> <p>20 belonging?</p> <p>21 A. It may.</p> <p>22 MR. MAZZEO: Foundation, speculation.</p> <p>23 MS. COMPTON: Join.</p> <p>24 BY MR. SMITH:</p> <p>25 Q. You've seen that he likes to act tough;</p>	<p style="text-align: right;">Page 57</p> <p>1 A. I don't know that.</p> <p>2 Q. And if I say 2005 fight, you know that I'm</p> <p>3 talking about when he was punched in November 2005;</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 I can answer that I asked that question of</p> <p>7 the school. The school's answer was no.</p> <p>8 Q. The school answered that he was not in a</p> <p>9 gang?</p> <p>10 A. Yeah, that they investigated him and he was</p> <p>11 not.</p> <p>12 Q. Have you asked Jared?</p> <p>13 A. And Jared's answer has varied: That it was</p> <p>14 a clique, that it was pre-gang, that they were up</p> <p>15 against a gang.</p> <p>16 Q. At the -- well, strike that.</p> <p>17 Do you know what led up to that fight in</p> <p>18 November 2005?</p> <p>19 A. I know from the reports of Jared and some</p> <p>20 of the boys who were involved that there was some</p> <p>21 kind of rivalry on campus about who was sitting</p> <p>22 where.</p> <p>23 I have my own beliefs about what happened.</p> <p>24 Q. What are your beliefs?</p> <p>25 A. It was a gang called SOM. They were moving</p>

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1 into the area. They needed a big show. They took  
2 on this -- Jared had about 30 friends who used to  
3 sit together at lunch. They went for who was going  
4 to be -- make the most noise and most popular.  
5 Because they were -- my understanding was that they  
6 were adults that had come in for that fight and that  
7 the school could have prevented it and didn't.

8 Q. What could the school have done to prevent  
9 it?

10 A. My understanding is that the school knew  
11 about it hours before. Could have called Metro and  
12 asked for a Metro presence, could have alerted me to  
13 pick Jared up.

14 Q. Was there a fight before that that  
15 predicated this fight?

16 A. Not that I know of.

17 Q. Who was at fault for that 2005 fight?

18 A. The young man who hit Jared was arrested  
19 and sentenced. So that would be how I would answer  
20 that.

21 I don't know who was at fault. I know who  
22 was held responsible.

23 Q. Did Jared carry any blame for being in that  
24 situation?

25 A. Legal blame or emotional blame?

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1 Q. Either one.

2 A. Legal blame, no. Emotionally, does he have  
3 regrets about where he was? According to what he's  
4 told me, yes.

5 Q. What has he told you?

6 A. That had he done things differently, he  
7 wouldn't have gotten hit, he wouldn't have been  
8 there.

9 Q. Did he know that fight was coming?

10 A. I don't know.

11 Q. What could he have done differently?

12 A. He --

13 MS. COMPTON: Foundation.

14 THE WITNESS: He could have had --

15 MR. MAZZEO: Join.

16 BY MR. SMITH:

17 Q. Well, I'm asking --

18 A. He could have had different friends. He  
19 could have stayed in honors classes. He could have  
20 told me he was having trouble at school and we  
21 needed to move.

22 I mean, I'm a mom. I'm going to give you  
23 10,000 things he could have done.

24 Q. And I'm asking what he told you that he  
25 could have done differently.

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1 A. That he could have backed down, that he  
2 could not have fought with them, that he could have  
3 walked with other people.

4 I mean, I've heard different -- he was  
5 alone when he got hit. He was separated from his  
6 friends. If he had stayed with those friends.

7 Q. When did you first become aware that he was  
8 in a gang?

9 A. I became aware after the fact when he told  
10 me as an adult, Hey, I've been in a gang. I was  
11 never aware that he was actively in a gang as it was  
12 happening.

13 Q. When did you first become aware he was  
14 selling drugs?

15 A. I believe, if I'm remembering correctly,  
16 around the time that he turned 18 and the police  
17 showed up at the house.

18 Q. That was a couple months before the  
19 January 2011 accident?

20 A. It may have been closer to a year, but I'm  
21 not remembering dates.

22 Q. How many times have the police shown up at  
23 your house because of his drug activity?

24 A. That I was aware of, twice.

25 MR. MAZZEO: Objection, relevance.

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1 BY MR. SMITH:

2 Q. The first time that the police came to your  
3 house because of his drug activity, that was the  
4 first time you became aware that he was selling  
5 drugs?

6 A. Yes.

7 MR. MAZZEO: Relevance.

8 BY MR. SMITH:

9 Q. And what happened during that --

10 MS. COMPTON: Form.

11 BY MR. SMITH:

12 Q. -- time the police came to your house that  
13 you became aware he was selling drugs?

14 A. The police officer told me, but they did  
15 not arrest Jared.

16 Q. Why didn't they arrest him?

17 A. You would have to ask the officer involved.

18 Q. But you knew at that point he was selling  
19 drugs?

20 A. Yes.

21 Q. Did you know at that point he was selling  
22 drugs from your house?

23 A. No. He swore that it wasn't from the  
24 house. I was careful about who came, but I assume  
25 they came to the house.

<p style="text-align: right;">Page 62</p> <p>1 Q. You and Jared would have talked about his 2 drug selling after that first time the police came 3 to your house; right? 4 MR. MAZZEO: Objection, speculation. 5 THE WITNESS: No. 6 MS. COMPTON: Form. 7 THE WITNESS: I would have said, What are 8 they doing here? Here's what they have. 9 And he would have told me, I'm not doing 10 it. He would have tried to cover it. 11 BY MR. SMITH: 12 Q. Did you confront him about why the police 13 were there? 14 A. Yes. 15 Q. And what did he tell you? 16 A. He told me that he was selling, but not out 17 of the house. He told me that he was -- I don't 18 know if it was at that time or right after because 19 they didn't arrest him. He said, See, they didn't 20 have enough to arrest me, it's not true. Then after 21 that, he told me he was a confidential informant. 22 Q. Did you believe that? 23 A. The confidential informant? 24 Q. Yes. 25 A. Yes. Because they didn't arrest him.</p>	<p style="text-align: right;">Page 64</p> <p>1 A. Well, let me clarify. I don't know that he 2 told me he sold it. He told me he worked in a grow 3 house. I might have put those two together and 4 assumed if you're growing it, you're selling it. 5 Q. Well, that first time that the police came 6 to your house, what did he tell you he was selling? 7 A. He denied he was selling. 8 Q. Let's talk about your apartment on Gowan. 9 That's where you were living at the time of 10 the January 2011 accident; right? 11 A. Yes. 12 Q. That's where you were living when the 13 police came to your house that first time? 14 A. Yes. 15 Q. Is that where you were living when the 16 police came to your house the second time? 17 A. Yes. 18 Q. How many bedrooms was that apartment? 19 A. Two. 20 Q. And what floor was it on? 21 A. First. 22 Q. Can you describe the layout of the 23 apartment? 24 A. When you walked in the door, there was a 25 bedroom to the right. The living room was to the</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. Do you think that's true now? 2 A. Yes. 3 Q. That he was a confidential informant? 4 A. For a time. 5 Q. What drugs do you know that he has sold? 6 A. I don't. 7 MR. MAZZEO: Hold on. 8 Objection to the whole line of questioning 9 regarding Jared Awerbach's selling drugs to prior to 10 the incident. It's not relevant to this case. 11 Go ahead. 12 MS. COMPTON: And I also want to reserve 13 the right to strike any information regarding being 14 a confidential informant in the event that it puts 15 him in some sort of danger. 16 MR. SMITH: Can you read back the question, 17 please. 18 (Thereupon, the requested portion was read back.) 19 BY MR. SMITH: 20 Q. Go ahead. 21 A. Oh, I'm sorry. I thought I answered that. 22 I don't know what he's sold. 23 Q. What has he told you that he's sold? 24 A. Marijuana. 25 Q. When did he tell you that?</p>	<p style="text-align: right;">Page 65</p> <p>1 left and the kitchen. There was a long hallway with 2 a bathroom and then the master bedroom, which had 3 its own bathroom and a walk-in closet at the back of 4 the house. 5 Q. Was the master bedroom on the right or the 6 left to get into it? 7 A. It was at the center of the hallway. The 8 hallway led right into it, so there was no right or 9 left. 10 Q. Did it share a wall with the other bedroom? 11 A. No. 12 Q. What room did it share a wall with? 13 A. The bathroom. 14 Q. Okay. So it was -- if you went down the 15 right side of the apartment, it was bedroom, 16 bathroom, and then -- 17 A. Um-hmm. 18 Q. -- the master bedroom? 19 A. And then on the left side was hallway, 20 washer/dryer. I forgot that part. Washer/dryer, 21 then my room. 22 Q. Did your bedroom door lock at that 23 apartment? 24 A. Yes. 25 Q. What happened the second time the police</p>

Case No. 71348

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**In the Supreme Court of Nevada**

EMILIA GARCIA,  
Appellant,  
  
*vs.*  
ANDREA AWERBACH,  
Respondent.

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Mar 04 2019 11:06 a.m.  
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**RESPONDENT'S APPENDIX  
VOLUME 1  
PAGES 1-250**

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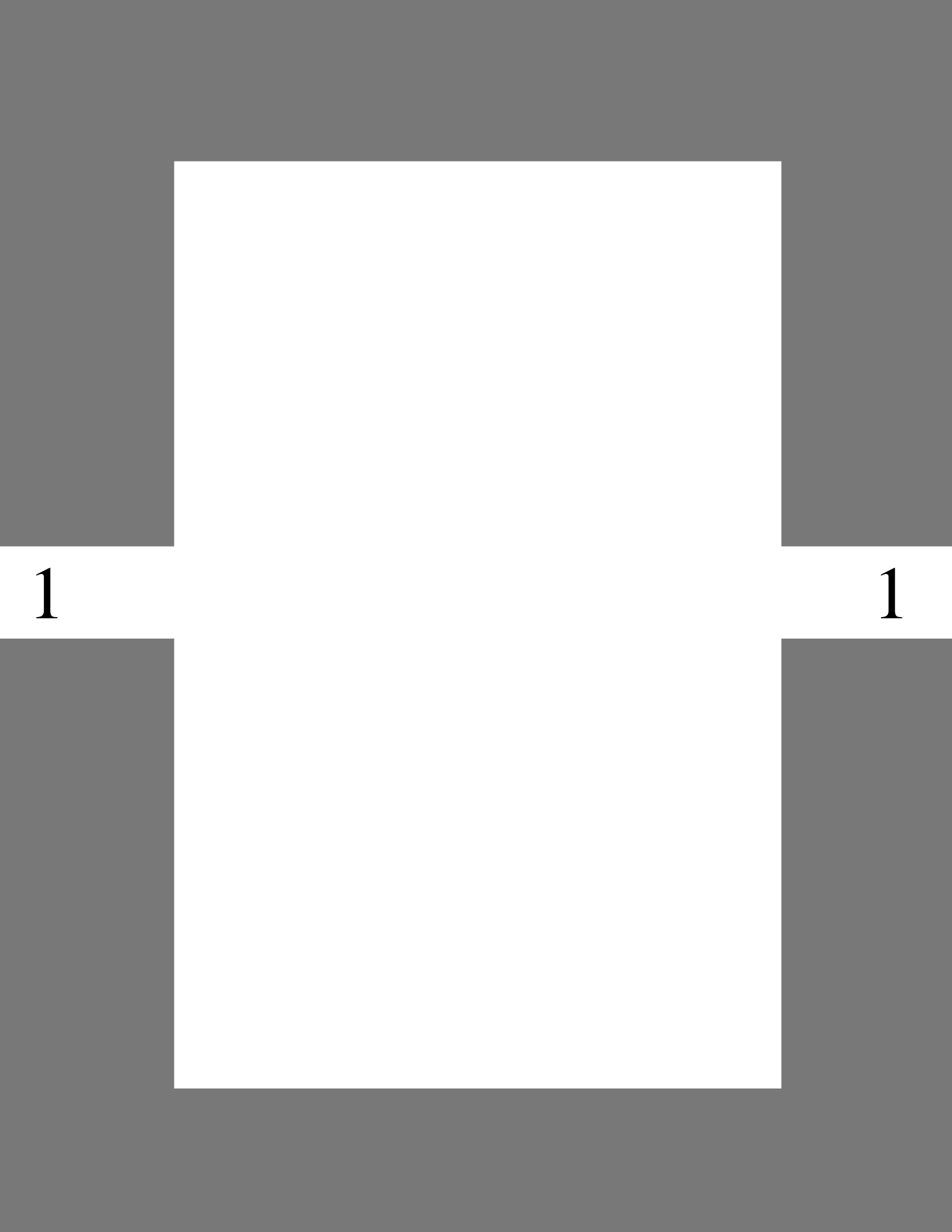
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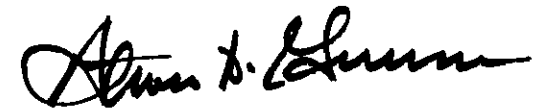
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8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

11 EMILIA GARCIA,

12 Plaintiff,

13 v.

14 JARED AWERBACH, individually,  
ANDREA AWERBACH, individually, DOES  
15 I-X, and ROE CORPORATIONS I-X,  
inclusive,

16 Defendants.

Case No.: A-11-637772-C

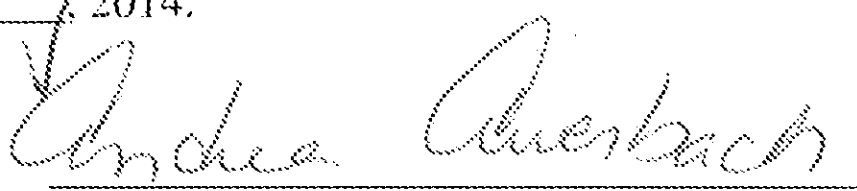
Dept. No.: XXVII

SUBSTITUTION OF ATTORNEYS

18 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN

19 Please take notice that Defendant, ANDREA AWERBACH, hereby substitutes PETER A.  
20 MAZZEO, ESQ., of the law firm of BARRON & PRUITT LLP, 3890 W. Ann Road, North Las  
21 Vegas, Nevada, 89031; telephone (702) 870-3940; facsimile (702) 870-3950, as its attorneys of record  
22 in place and stead of ALEXANDRA B. McLEOD, of the law firm of BRADY, VORWERCK,  
23 RYDER & CASPINO.

24 DATED this 18 day of February, 2014.

26   
27 ANDREA AWERBACH

28 ///

1 The above substitution accepted:

2 DATED this 16 day of Feb., 2014.

3 **BARRON & FRUITT LLP**

4  
5 BY

6 PETER A. MAZZEO, ESQ.  
7 Nevada Bar No. 9387  
8 3890 W. Ann Road  
9 North Las Vegas, NV 89031

9 The above substitution approved:

10 DATED this 12 day of Feb., 2014.

11 **BRADY, VORWERCK, RYDER & CASPINO**

12  
13 BY

14 LEE J. GRANT II, ESQ.  
15 Nevada Bar No. 11808  
16 2795 E. Desert Inn Road, Suite 200  
17 Las Vegas, Nevada 89121

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18<sup>th</sup> day of February, 2014, I served the foregoing documents described as **SUBSTITUTION OF ATTORNEYS**, on the parties set forth below by:

☒ **VIA U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada.

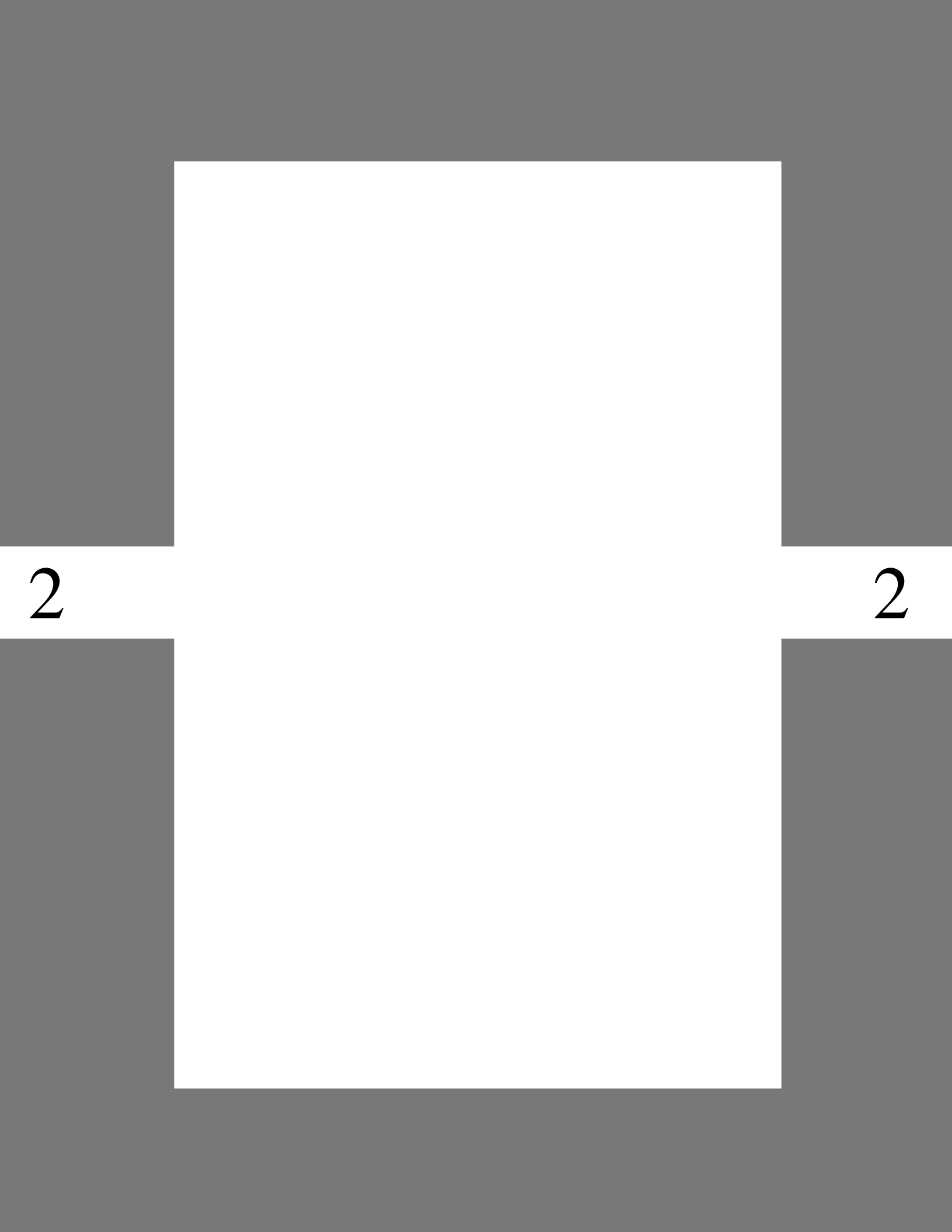
☐ **VIA FACSIMILE:** pursuant to E.D.C.R. Rule 7.26, by sending a true and correct copy to counsel on the attached service list at the facsimile numbers specified.

☐ **VIA PERSONAL OR HAND DELIVERY:**

**SERVICE LIST**  
**Garcia v. Awerbach**  
**Case No. A-11-637772-C**

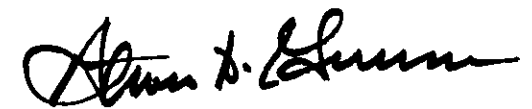
Party	Phone/Fax/E-Mail	Description
Corey M. Eschweiler Adam D. Smith GLEN LERNER INJURY ATTORNEYS 4795 South Durango Drive Las Vegas, NV 89147	(702) 877-1500 Fax (702) 933-7043	<i>Attorneys for Plaintiff</i>
Mitchell J. Resnick Jeff Pitegoff RESNICK & LOUIS, P.C. 6600 W. Charleston Blvd, Suite 117A Las Vegas, NV 89146	(702) 997-3800 Fax (702) 997-3800	<i>Attorney for Defendant, Jared Awerbach</i>

  
An employee of  
BARRON & PRUITT LLP



2

2



CLERK OF THE COURT

1 **OPP**  
2 **PETER MAZZEO, ESQ.**  
3 Nevada Bar No. 9387  
4 **DANIELLE KOLKOWSKI, ESQ.**  
5 Nevada Bar No. 8506  
6 **MAZZEO LAW, LLC**  
7 528 S. Casino Center Blvd. Suite 305  
8 Las Vegas, Nevada 89101  
9 Phone: (702) 776-6768  
10 Fax: (702) 776-8089  
11 Email: pmazzeo@mazzeolawfirm.com  
12 *Attorney for Defendant Andrea Awerbach*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 EMILIA GARCIA, Individually,  
16 Plaintiff,

17 vs.

18 ANDREA AWERBACH, Individually;  
19 JARED AWERBACH,  
20 Defendants.

Case No: A-11-637772-C

Dept No: XXVII

**DEFENDANT ANDREA AWERBACH'S**  
**OPPOSITION TO PLAINTIFF'S**  
**MOTION TO STRIKE ANSWER**

Date of Hearing: January 15, 2015

Time of Hearing: 9:30 a.m

21 Defendant ANDREA AWERBACH, by and through her attorney of record, PETER  
22 MAZZEO, ESQ. of the law firm of MAZZEO LAW, LLC hereby submits her Opposition to Emilia  
23 Garcia's ("Plaintiff") Motion to Strike Andrea Awerbach's (hereinafter "Andrea") Answer.

24 This Opposition is made and based upon the papers and pleadings on file herein, the  
25 Memorandum of Points and Authorities submitted herewith, such other documentary evidence as

26 ///

27 ///

28 ///

///

///

///

///

MAZZEO LAW, LLC  
INJURY TRIAL ATTORNEYS  
528 S. Casino Center Blvd. Suite 305  
Las Vegas, Nevada 89101



maybe presented and any oral arguments at the time of the hearing of this matter.

DATED this 18<sup>th</sup> day of December 2014.

MAZZEO LAW, LLC

PETER MAZZEO, ESQ.

Nevada Bar No. 009387

528 S. Casino Center Blvd. Suite 305

Las Vegas, Nevada 89101

Attorney for Defendant Andrea Awerbach

## MEMORANDUM OF POINTS AND AUTHORITIES

### 1. Summary of Argument

The sole issue for the Court to decide is whether the January 17, 2011 claim note (hereinafter "Claim Note") establishes that Andrea gave Jared Awerbach (hereinafter "Jared") permission to use her car on January 2, 2011, the day of the subject accident. Plaintiff's Motion to Strike Andrea Awerbach's Answer (hereinafter "Motion") is nothing but another attempt to misstate and misconstrue the facts. The plain reading of the Claim Note does not establish permissive use, either express or implied, in accordance with Nevada Revised Statute ("NRS") 41.440. Specifically, the Claim Note states: (1) Andrea did not know Jared was going to driver her car and (2) Andrea did not give Jared permission to use her vehicle. Therefore, Andrea respectfully request he Court deny the instant Motion.

### 2. The Claim Note Does Not Establish Permissive Use

When analyzing the Claim Note in comparison with the NRS 41.440, the Claim Note does not establish permissive use, either express or implied. NRS 41.440 states:

Any liability imposed upon a wife, husband, son, daughter, father, mother, brother, sister or other immediate member of a family arising out of his or her driving and operating a motor vehicle with **the permission, express or implied**, of such owner is hereby imposed upon the owner of the motor vehicle, and such owner shall be jointly and severally liable with his or her wife, husband, son, daughter, father, mother, brother, sister or other immediate member of a family for any damages proximately resulting from such negligence or willful misconduct, and such negligent or willful misconduct shall be imputed to the owner of the motor vehicle for all purposes of civil damages.

In summary, the plain reading of the Claim Note states the following: (1) Jared had previous access to Andrea to drive her car to practice to get his permit; (2) Andrea was home the day of the accident; (3) Andrea gave Jared the keys earlier in the day to get something out of the car; (4) Andrea usually keeps the keys on the mantel; (5) Jared does not have his own set of keys; and (5) **Andrea did not know Jared was going to drive her and did not give Jared permission to drive her car.**

As a matter of law, Plaintiff cannot establish permissive use, either express or implied, in accordance with NRS 41.440, solely based upon the Claim Note. While Andrea stated in the Claim Note she gave Jared her keys to get something out of her car, this does not constitute permissive use, let alone implied permissive use. The Claim Note expressly states that Andrea did not know Jared was going to drive her car and did not give Jared permission to drive her care on the day of the subject accident. If anything, the Claim Note, in addition to the other alleged facts in Plaintiff's 24 page Motion, is another disputed fact regarding permissive use. The Claim Note does not establish permissive use in accordance with NRS. 41.440.<sup>1</sup> Therefore, Andrea respectfully requests the Court deny Plaintiff's Motion.

Plaintiff's own Motion contains the following disputed facts regarding permissive use:

Plaintiff's Alleged Undisputed Facts Regarding Permissive Use	Disputed Facts Regarding Permissive Use	Evidence Supporting Disputed Facts Regarding Permission Use
Andrea gave Jared permission to use the car on the day of the subject accident	Andrea did not give Jared permission to use the car on the day of the subject accident	<ol style="list-style-type: none"> <li>1. Claim Note dated 1/17/11 at 4:44 p.m. bate-stamped Liberty Mutual 001 at Motion at Exhibit 1-K.</li> <li>2. Recorded Statement of Jared at Motion at Exhibit 1-F at pgs. 2, 3, and 6.</li> <li>3. Deposition of Jared Awerbach dated March 27, 2014 at Motion at Exhibit 1-A at 177:25-178:1-8 and 180:19-25</li> <li>4. Deposition of Andrea dated September 12, 2013 at 21:1-3 at Motion at Exhibit 1-I.</li> <li>5. Deposition of Andrea dated October 24, 2014 at 124:15-25, 126:19-23;</li> </ol>

<sup>1</sup> Additionally, Plaintiff's motion raises an issue of fact, not an issue of law, and therefore it is for the jury to decide.

**A. Andrea's Placement of Her Keys On The Day of the Subject Accident is Irrelevant to the Analysis of Permissive Use In Accordance With NRS 41.440**

Plaintiff provides no binding authority that the location of a family member's keys constitutes permissive use, let alone implied permissive use. The place of Andrea's keys on the day of the accident is immaterial to the analysis of permissive use. In fact, the location of Andrea's keys on the day of the accident, or any other day for that matter, is nothing but a red herring to distract the Court analysis regarding permissive use in accordance with NRS. 41.440. The sole analysis regarding permissive use is whether Andrea gave Jared permission to drive her car on the day of the accident.

**3. Andrea Engage In No Discovery Abuse**

Plaintiff disingenuously claims Andrea concealed information during discovery. Andrea cannot account for the acts of prior counsel but merely explain to the Court the exhibits attached in Plaintiff's Motion. On July 22, 2013, Andrea disclosed her Second Supplement to List of Witness and Documents (hereinafter "Second Supplement"). Motion at Exhibit 1-G. The Second Supplement identifies withheld claim notes and a Privileged Log. The Privilege Log was also disclosed on July 22, 2012. Plaintiff failed to timely object to the claim notes withheld in the Privilege Log that would have identified the Claim Note Plaintiff alleges Andrea "concealed." Andrea properly identified withheld claim notes and Plaintiff took no action for nearly 26 months, yet now claims information was "concealed" during discovery and yet seeks the severe sanction of striking Andrea's answer.

The controlling Nevada case law that provides this Court guidance regarding sanctions resulting from a discovery abuse is *Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 787 P.2d 777 (1990). The facts of this case are distinct from *Young* such that striking Andrea's Answer is not warranted, let alone any sanction. In *Young*, a plaintiff testified in deposition that notes made in his diary were contemporaneous to conversation with the defendant although the entries looked suspicious. The plaintiff eventually admitted he may have added some notations of the conversations with the defendant up to a year after the conversations, but denied adding any entries during discovery. The trial court conducted an evidentiary hearing and determined the plaintiff willfully fabricated diary entries. As a sanction to the plaintiff, the trial court dismissed the plaintiff's complaint with prejudice.

1           Importantly, in *Young*, the Nevada Supreme Court stated its policy is to adjudicate cases on  
2 the merits. *Id.* at 93, 787 P.2d at 780. The *Young* Court enumerated the following factors in  
3 considering dismissal with prejudice regarding willful fabrication of evidence: (1) degree of  
4 willfulness; (2) non-offending party prejudice by a lesser sanction; (3) severity of sanction of dismissal  
5 relative to the discovery abuse; (4) whether the evidence has been irreparably lost; and (5) the  
feasibility and fairness of an alternative less severe sanction.

6           In this case, there is no willful fabrication of evidence. On July 22, 2012, Andrea properly  
7 identified withheld claim notes and concurrently produced a Privilege Log explaining the basis for  
8 withholding the claim notes. Motion at Exhibit 1-G. Plaintiff failed to timely take action regarding  
9 the withheld claim notes identified in the Privilege Log. In fact, Plaintiff admits she subpoenaed  
10 Liberty Mutual's claims notes in October 2014, nearly 26 months after the Privilege Log was  
11 produced. Motion at 11:9-12. In November 2014, Liberty Mutual produced all claim notes that were  
12 withheld in the Privilege Log, including the Claim Note Plaintiff claims Andrea allegedly tried to  
13 "conceal." Motion at 12:15-25. The Claim Note that is the basis for this instant Motion was not  
14 irreparably lost and eventually obtained by Plaintiff.

15           Andrea did not engage in any discovery abuse because she properly identified withheld claim  
16 notes in a Privilege Log. Importantly, Plaintiff waited 26 months to take action regarding the withheld  
17 claim notes identified in the Privilege Log. Because the withheld claim notes were properly identified  
18 in a Privilege Log, striking Andrea's Answer is not warranted, including any lesser sanction. Unlike  
19 the *Young* case, Plaintiff fails to provide the Court substantial evidence that any discovery abuse  
20 occurred, let alone willful fabrication of evidence. Therefore, Andrea respectfully requests the Court  
deny the instant Motion.

21   ///

22   ///

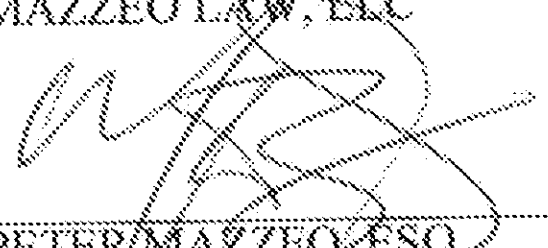
23   ///

1 **4. Conclusion**

2 Andrea properly identified withheld claim notes in her Second Supplement and disclosed a  
3 Privileged Log. Motion at Exhibit 1-G. Plaintiff waited nearly 26 months to take action and now  
4 disingenuously claims Andrea "concealed" information. The plain reading of the Claim Note subject  
5 of the instant Motion does not in and of itself establish permissive use, either express or implied, in  
6 accordance with NRS. 41.440. Rather, the Claim Note expressly states **Andrea did not know Jared**  
7 **was going to drive her and did not give Jared permission to drive her car.** Andrea did not engage  
8 in any discovery abuse and any sanction, including striking her Answer, is not warranted pursuant to  
9 Nevada Law. Therefore, Andrea respectfully request the Court deny Plaintiff's Motion.

10 DATED this 18<sup>th</sup> day of December 2014.

MAZZEO LAW, LLC

  
PETER MAZZEO, ESQ.

Nevada Bar No. 009387

528 S. Casino Center Blvd. Suite 305

Las Vegas, Nevada 89101

*Attorney for Defendant Andrea Awerbach*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18<sup>th</sup> day of December 2014, I served the foregoing  
DEFENDANT ANDREA AWERBACH'S OPPOSITION TO PLAINTIFF'S MOTION TO  
STRIKE ANSWER as follows:

☐ US MAIL: by placing the document(s) listed above in a sealed envelope, postage  
prepaid, in the United States Mail at Las Vegas, Nevada, addressed to the following:

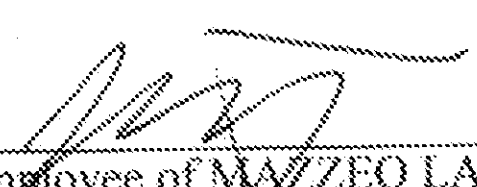
☐ BY FAX: by transmitting the document(s) listed above via facsimile transmission to  
the fax number(s) set forth below.

☒ BY ELECTRONIC SERVICE: by electronically filing and serving the document(s)  
listed above with the Eighth Judicial District Court's WizNet system

MAZZEO LAW, LLC  
INJURY TRIAL ATTORNEYS  
528 S. Casino Center Blvd., Suite 305  
Las Vegas, Nevada 89101

COREY M. ESCHWEILER, ESQ.  
ADAM SMITH, ESQ.  
Glen Lerner & Associates  
4795 S. Durango Dr.  
Las Vegas, Nevada 89147  
Facsimile: (702) 877-0110  
*Attorney for Plaintiff Emilia Garcia*

ROGER STRASSBURG, ESQ.  
LILY COMPTON, ESQ.  
Resnick & Louis, P.C.  
6600 W. Charleston Blvd., #117A  
Las Vegas, NV 89146  
Facsimile: (702) 997-3800  
E-Mail: [mresnick@rlattorneys.com](mailto:mresnick@rlattorneys.com)  
*Attorney for Defendant Jared Awerbach*

  
An Employee of MAZZEO LAW, LLC

# Exhibit A



DISTRICT COURT  
CLARK COUNTY, NEVADA

EMILIA GARCIA, individually,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO.: A637772
	)	DEPT. NO.: XXVII
JARED AWERBACH, individually;	)	
ANDREA AWERBACH, individually;	)	
DOES I-X, and ROE CORPORATIONS	)	
I-X, inclusive,	)	
	)	
Defendants.	)	
	)	

VIDEO DEPOSITION OF ANDREA AWERBACH  
LAS VEGAS, NEVADA  
FRIDAY, OCTOBER 24, 2014

REPORTED BY: JACKIE JENNELLE, RFR, CCE #809  
JOB NO.: 224205

VIDEO DEPOSITION OF ANDREA AWERBACH, taken  
at 4795 South Durango Drive, Las Vegas, Nevada on  
FRIDAY, OCTOBER 24, 2014, at 1:30 p.m., before  
Jackie Jennelle, Certified Court Reporter, in and  
for the State of Nevada.

APPEARANCES:

For the Plaintiff:

GLEN LERNER INJURY ATTORNEYS  
BY: ADAM SMITH, ESQ.  
4795 South Durango Drive  
Las Vegas, Nevada 89147  
(702) 877-1500

For the Defendant, JARED AWERBACH:

KERNICK & LOUIS, PC  
BY: LILY COMPTON, ESQ.  
6600 West Charleston Boulevard, Suite 227A  
Las Vegas, Nevada 89146  
(702) 997-2800

For the Defendant, ANDREA AWERBACH:

BARKIN & FRUTTI, LLP  
BY: PETER MAZZEO, ESQ.  
3890 West Ann Road  
North Las Vegas, Nevada 89018  
(702) 870-3540

The Videographer:

MONICA HAYWORTH

LAS VEGAS, NEVADA

FRIDAY, OCTOBER 24, 2014; 1:30 p.m.

-000-

THE VIDEOGRAPHER: Today is Friday,  
October 24, 2014. The time is approximately  
1:45 p.m. The location is Glen Lerner Injury  
Attorneys at 4795 South Durango Drive, Las Vegas,  
Nevada 89147.

My name is Monica Hayworth, court  
videographer for Litigation Services.

This is District Court Clark County Nevada  
case No. A-11-63772-E entitled Amelia Garcia,  
plaintiff, versus Jared Awerbach, et al.,  
defendants. The deponent is Andrea Awerbach.

This video deposition is requested by the  
attorneys for the plaintiff.

The court reporter is Jackie Jennelle of  
Litigation Services.

Counsel and all present, will you please  
identify yourselves for the record.

MR. SMITH: Adam Smith on behalf of the  
plaintiff, Amelia Garcia.

MR. MAZZEO: Peter Mazzeo on behalf of the  
defendant, Andrea Awerbach.

MS. COMPTON: Lily Compton on behalf of the

I N D E X

WITNESS: ANDREA AWERBACH

EXAMINATION

	PAGE
BY MR. SMITH	9
BY MR. MAZZEO	202
BY MS. COMPTON	203
BY MR. SMITH	205

EXHIBITS MARKED

EXHIBIT	PAGE
Exhibit 1 Facebook Printout	196
Exhibit 2 Documents from District Court Case No. A-551677	198
Exhibit 3 Document Bates No. GJL 255	200

defendant, Jared Awerbach.

THE VIDEOGRAPHER: The deponent will now be  
sworn in.

Thereupon --

ANDREA AWERBACH,

was called as a witness, and having been first duly  
sworn, was examined and testified as follows:

EXAMINATION

BY MR. SMITH:

Q. Can you please state your name and spell  
your last name for the record.

A. Andrea Awerbach, A-W-E-R-B-A-C-H.

Q. Do you remember coming to my office last  
year and having your deposition taken?

A. Yes.

Q. Have you had your deposition taken since  
that time?

A. No.

Q. Have you been a party to any lawsuits since  
the last time you had your deposition taken at my  
office?

A. No.

Q. It's been a while since you were here  
before, so I'm going to go over the ground rules  
again for you so that I can refresh your memory on

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Page 124

1 MR. MAZZEO: Shot?  
2 MR. SMITH: With a gun.  
3 THE WITNESS: Has Jared ever been what?  
4 BY MR. SMITH:  
5 Q. Shot.  
6 A. I don't know.  
7 Q. Other than the 2011 accident, what motor  
8 vehicle accidents are you aware of that Jared has  
9 been in?  
10 A. 2008.  
11 Q. Okay. What happened in 2008?  
12 A. We were at my school. He went out to -- he  
13 had my school and car keys to go get something out  
14 of the car or throw some garbage out. And then I  
15 got a call from police that he had been in an  
16 accident at Fuseller near my school.  
17 Q. He was driving your car, right?  
18 A. Yes.  
19 Q. You went out to that accident scene, right?  
20 A. Yes.  
21 Q. Was anyone injured?  
22 A. I don't know.  
23 Q. Was Jared?  
24 A. I believe so.  
25 Q. And what was Jared -- what of Jared was

1 But to move things back and forth from my classroom  
2 and --  
3 Q. What kind of discipline did you impose  
4 after that?  
5 A. I, again, set some limits. But Jared was  
6 involved with juvenile court at the time, so they  
7 extended his -- whatever he was on restriction from,  
8 and then I did the same thing that I was doing.  
9 That's when I also was much more deliberate in  
10 hiding the keys and hiding my wallet. That's when I  
11 realized he's going to just take whatever he wants.  
12 Q. Was he charged with stealing your car at  
13 that time?  
14 A. I don't know what he was charged with.  
15 Q. Did you tell the police that he stole it?  
16 A. Yes. That he was driving without  
17 permission.  
18 If I can backtrack for a moment, you didn't  
19 ask me, but I also told them that in 2011 and they  
20 wouldn't arrest him for it.  
21 Q. In 2011 you told the officer that Jared  
22 stole a car?  
23 A. Yes. That Jared had the car without  
24 owner's permission.  
25 Q. When did you tell them that?

Page 123

Page 125

1 injured?  
2 A. His back --  
3 MR. MAZZEO: And before you answer, just a  
4 standing objection to this line of questioning  
5 regarding the 2008 accident.  
6 THE WITNESS: His back and neck I think. I  
7 don't know if I'm remembering.  
8 BY MR. SMITH:  
9 Q. Was it a big accident?  
10 MR. MAZZEO: Objection, form.  
11 THE WITNESS: In terms of damage, yes.  
12 BY MR. SMITH:  
13 Q. And your car was totalled, right?  
14 A. Yes.  
15 Q. The other car was totalled?  
16 A. I don't know.  
17 Q. It looked like a lot of damage to both  
18 vehicles, right?  
19 A. Yes.  
20 Q. And how did Jared get your keys?  
21 A. We were at school and Jared's always helped  
22 me at school. I've always given him the keys to go  
23 take things out or go get things from the car. I  
24 gave him the keys for that purpose or to dump some  
25 garbage. I'm remembering garbage, but I'm not sure.

1 A. When the officer called me from the scene.  
2 Q. What did the officer say when you told him  
3 that?  
4 A. He said that he couldn't arrest him for it  
5 because there was no report.  
6 Q. You -- it's your testimony that you told  
7 the officer Jared took your car without permission  
8 and he said he would not arrest him for it?  
9 A. Um-hmm, yes.  
10 Q. Yes?  
11 A. I'm sorry. Yes.  
12 Q. If the officer said that you never told him  
13 that, are you saying he's lying?  
14 MR. MAZZEO: Objection, argumentative.  
15 THE WITNESS: No. I'm saying it was 2011  
16 and he may not remember. I remember the  
17 conversation with the officer because it's one  
18 conversation I've had.  
19 How many conversations did the officer have  
20 that day or in his whole career?  
21 BY MR. SMITH:  
22 Q. What else did you talk -- well, how many  
23 conversations have you had with police about Jared?  
24 MR. MAZZEO: Objection, form.  
25 THE WITNESS: I've had quite a few, but I'm

Page 126

Page 128

1 still always Jared's mother.

2 BY MR. SMITH:

3 Q. What else did you and the officer talk  
4 about when he called you from the scene of the  
5 accident?

6 A. He told me he was arresting Jared for DUI.  
7 I asked him, Is Jared high or drunk? The officer  
8 got a little agitated with me and thought -- he was,  
9 look, lady, I don't need to do this. I said, Wait,  
10 let's hold up. I didn't mean for you to take -- I'm  
11 not trying to cover for Jared. I'm trying to  
12 understand where we are because Jared is going to  
13 tell me that wasn't. So can you help me here? Can  
14 you tell me?

15 Q. Were you trying to get the officer to  
16 arrest Jared for stealing your car?

17 A. I don't know if I was trying. I think I  
18 asked him.

19 Q. You asked him to arrest Jared for stealing  
20 your car?

21 A. I don't think I said, Will you arrest  
22 Jared? I said, He does not have permission to have  
23 that car. Can we not do something about that?

24 Q. And what did he say?

25 A. He said, I'm doing this. I have to arrest

Page 127

1 him for DUI. I have to arrest him for this.

2 Q. Besides the 2008 accident, has Jared been  
3 in any other accidents?

4 A. Not that I recall.

5 Q. Who was your automobile insurer at the time  
6 of the 2008 accident?

7 A. I don't remember. It was either Liberty  
8 Mutual or California Casualty.

9 Q. Did you make a claim?

10 A. Yes.

11 Q. And what -- it was a claim for the property  
12 damage or something else?

13 A. I don't recall, but they paid for the car  
14 so --

15 Q. Your insurance company paid for the car?

16 A. I believe it was my insurance company.

17 Q. Did anyone else make a claim as a result of  
18 that accident?

19 A. I believe the other party.

20 Q. And what was their claim for?

21 A. I don't know. I'm assuming their damage.

22 Q. Was there a lawsuit as a result of that  
23 accident?

24 A. No, I don't think so.

25 Q. Did you tell your insurance company that

1 Jared used the car without your permission in the  
2 2008 accident?

3 A. Yes.

4 Q. Do you know if your insurance company made  
5 a decision of whether Jared's use of your car in the  
6 2008 accident was permissive?

7 A. No.

8 Q. Let's talk about the 2005 fight a little  
9 bit and specifically Jared's injuries.

10 What did he hurt in that fight? What  
11 was -- oh, strike that. Let me ask you a better  
12 question.

13 What was injured in that fight?

14 A. Both eyes. He had some other lacerations,  
15 but we mostly concentrated on the eyes.

16 Q. Any injuries besides his eyes?

17 MR. MAZZEO: I'd just object to the extent  
18 it calls for medical expert opinion.

19 THE WITNESS: I believe some soft tissue.

20 BY MR. SMITH:

21 Q. What do you mean by that?

22 A. Neck, back.

23 Q. Anything else?

24 A. Not that I recall, but, again, my focus has  
25 always been on his eyes.

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1 Q. And what were the injuries to his eyes?

2 MR. MAZZEO: The same foundation,  
3 question -- objection.

4 THE WITNESS: He had a traumatic macular  
5 hole in one eye, a scratch on the other that was  
6 repaired by laser.

7 BY MR. SMITH:

8 Q. Which eye is the traumatic macular hole?

9 A. I believe the left.

10 Q. What is his vision like now in the left  
11 eye?

12 A. I don't know.

13 MR. MAZZEO: Objection, foundation.

14 BY MR. SMITH:

15 Q. Do you know what it's been like at any  
16 point since the November 2005 fight?

17 MR. MAZZEO: Objection, speculation.

18 THE WITNESS: That he doesn't have vision  
19 in that eye. He sees what he describes it as as a  
20 black box.

21 BY MR. SMITH:

22 Q. What's his vision been like in his right  
23 eye since the accident -- or strike that, since the  
24 2005 fight?

25 A. I believe it's been strong, but there are

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1 minute.

2 THE VIDEOGRAPHER: The time is  
3 approximately 4:59 p.m. We're going off the record.  
4 (Thereupon, a break was taken.)

5 THE VIDEOGRAPHER: The time is  
6 approximately 5:28 p.m. We're going back on the  
7 record.

8 BY MR. SMITH:

9 Q. Let's talk about -- a little bit about the  
10 January 2011 accident.

11 Has Jared ever told you what happened?

12 A. Not start to finish.

13 Q. What has he told you?

14 A. That he was pulling out, that he swears the  
15 other lady sped up, that he felt she wasn't hurt,  
16 and something about a truck or a bus that I'm not  
17 completely clear on.

18 Q. Did he say she sped up or she was speeding?

19 A. I think he said she he sped up, but I'm not  
20 sure.

21 Q. Did he say anything about why he believes  
22 she's not hurt?

23 A. Because she got up and walked around and  
24 there was no ambulance at the scene.

25 Q. Anything else you remember him telling you

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1 about the accident?

2 A. I just need clarification of a time. From  
3 when it happened or just --

4 Q. At any point in time.

5 A. He has said that he was not under the  
6 influence, that he had marijuana on him and didn't  
7 want to get arrested for that.

8 Q. Did tell you that he told police that he  
9 had been smoking?

10 A. I've heard him say that.

11 Q. Did tell you why he told the police he had  
12 been smoking if he hadn't been?

13 A. Because he had marijuana on him and I guess  
14 it was a certain weight that you're not supposed to  
15 have or something.

16 Q. Did he tell you why he thought telling the  
17 police that he had been smoking would avoid them  
18 finding the marijuana that was on him?

19 A. No. This would be an example of Jared's  
20 either drug logic or kid logic or where he thinks  
21 certain things that -- that's why I say sometimes  
22 that he wasn't lying, he was mistaken because he  
23 puts two and two together and gets six.

24 Q. Anything else he told you about the  
25 accident?

1 A. He has said to me that he knows he didn't  
2 have permission to take the car.

3 Q. When did he tell you that?

4 A. He's told me that numerous times,  
5 especially since he came home from Rawson and we  
6 started to do the case more.

7 Q. Has he told you where he got the keys from?

8 A. No.

9 Q. Have you asked him?

10 A. I don't recall.

11 Q. Other than him telling you he didn't have  
12 permission to take the car, did you have any other  
13 conversations with him about permission to take the  
14 car on that day?

15 A. I don't understand what other conversations  
16 we would have had, what you mean.

17 Q. Is there anything you talked about with him  
18 regarding him having permission to take the car  
19 other than him just telling you he realizes he  
20 didn't have permission?

21 A. No. Other than that was why I'm being  
22 sued. I think he asked me -- and, again, I may be  
23 mis-remembering, but I think he asked me, Why are  
24 they suing you? And I said, Because they're saying  
25 I gave you permission to drive the car. And he

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1 said, But you didn't.

2 Q. Did you ever see your car after the  
3 accident?

4 A. Yes.

5 Q. You went to go get things out of it, right?

6 A. Right.

7 Q. What was it you got out of the car?

8 A. I don't recall. I think some things for  
9 school, maybe a CD, maybe a jacket. I don't recall.

10 Q. What did the damage to the car look like?

11 A. It was extensive. Had it been a newer car  
12 worth more money, they would have fixed it. So it  
13 wasn't totalled, but it was enough damage that it  
14 was worth more than whatever the formula is for the  
15 percentage of the car.

16 Q. Did anyone -- well, strike that.

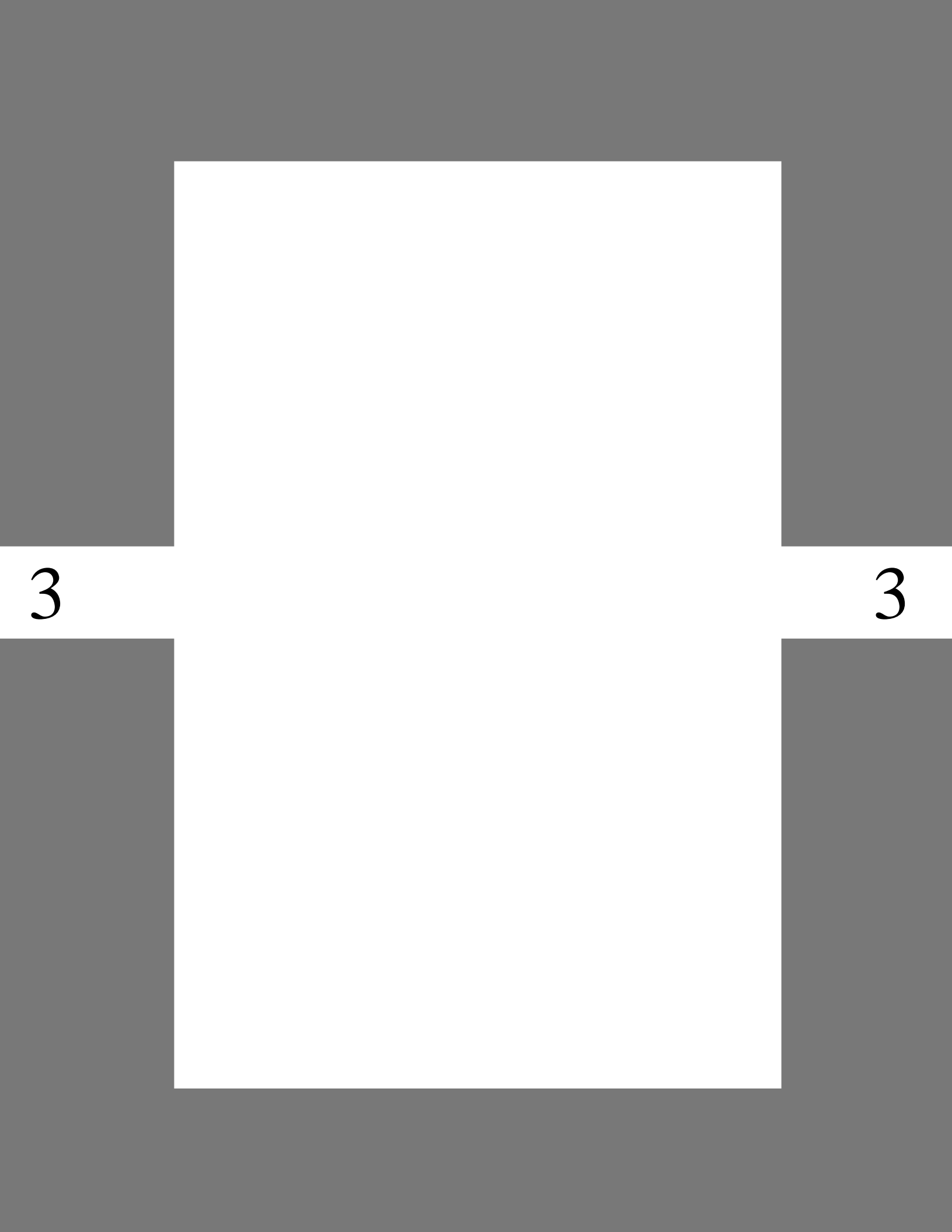
17 Did anyone tell you what the cost to repair  
18 the car would be?

19 A. I think they told me that it was  
20 prohibitive. They may have told me an amount, but I  
21 don't remember. But it was more than whatever their  
22 formula is.

23 Q. How much money did you get for the car?

24 A. I still owed on the car, so I didn't get  
25 anything for the car.

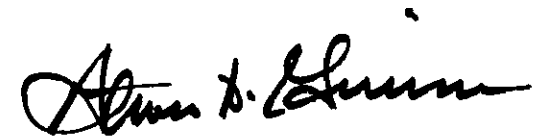




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CLERK OF THE COURT

TRAN

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

EMILIA GARCIA,	)	
	)	
Plaintiff,	)	CASE NO. A-11-637772
VS.	)	DEPT NO. XXVII
	)	
JARED AWERBACH,	)	
	)	
Defendant.	)	<b>TRANSCRIPT OF</b>
	)	<b>PROCEEDINGS</b>

BEFORE THE HONORABLE NANCY ALLE, DISTRICT COURT JUDGE

**MOTIONS**

THURSDAY, JANUARY 15, 2015

TELEPHONIC APPEARANCES:

For Plaintiff Emilia Garcia:	ADAM D. SMITH, ESQ.
For Defendant Jared Awerbach:	ROGER STRASSBURG, ESQ.
	EMILIA RICHARDSON, ESQ.
For Defendant Andrea Awerbach:	PETER MAZZEO, ESQ.
	DANIELLE KOLKOSKI, ESQ.

RECORDED BY TRACI RAWLINSON, COURT RECORDER  
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

1           **LAS VEGAS, NEVADA, THURSDAY, JANUARY 15, 2015, 10:16 A.M.**

2                           **\* \* \* \* \***

3           THE COURT: This is the case of Garcia versus  
4 Awerbach.

5           MR. SMITH: Good morning. Adam Smith on behalf of  
6 the plaintiff, Emilia Garcia.

7           THE COURT: Thank you.

8           MR. MAZZEO: Good morning, Your Honor. Peter Mazzeo  
9 on behalf of Andrea Awerbach.

10          MS. KOLKOSKI: Good morning, Your Honor. Danielle  
11 Kolkoski on behalf of Andrea Awerbach.

12          MR. STRASSBURG: Roger Strassburg on behalf of Jared  
13 Awerbach.

14          MS. RICHARDSON: Emilia Richardson on behalf of Jared  
15 Awerbach.

16          THE COURT: All right. Ms. Richardson, was it your  
17 Pro Hac Vice that is outstanding?

18          MS. RICHARDSON: I filed the order yesterday, I  
19 believe.

20          THE COURT: All right. Is there some reason why that  
21 hadn't been done since April?

22          MS. RICHARDSON: I don't know. I think it must have  
23 been an oversight.

24          THE COURT: All right. Appearing here is a  
25 privilege, which we leniently grant. So I'll have to mention

1 that in the future if you will please make sure that all of  
2 your orders are submitted in compliance with the rules.

3 MS. RICHARDSON: Yes, Your Honor.

4 THE COURT: Thank you. All right. We have a number  
5 of matters on calendar today. First is plaintiff's motion to  
6 strike Andrea Awerbach's answer. Then plaintiff's motion for  
7 an order to show cause by defendant Jared Awerbach should not  
8 be held in contempt for violating the court's protective order  
9 and request for attorney's fees. We have the plaintiff's  
10 motion for summary judgment that defendant Jared Awerbach was  
11 per se impaired. A motion for partial summary judgment by  
12 defendant Awerbach on the claims of punitive damages. And  
13 then we have two motions on each side to continue trial.

14 Next, plaintiff's motion to strike supplemental  
15 reports of four experts. And Jared Awerbach's motion to amend  
16 the court's order delivered in open court on November 18, 2014  
17 as well as a status check on the scans from Dr. Wu. Is that  
18 correct?

19 MR. MAZZEO: I believe you've covered all of them.

20 THE COURT: Is that correct, as far as you know?  
21 What I intend to do is listen to argument on each matter  
22 separately and defer ruling until I've heard all of the  
23 arguments on all of the matters. So let's take first the  
24 plaintiff's motion to strike Defendant Andrea Awerbach's  
25 answer.

1 MR. SMITH: Thank you, Your Honor. I appreciate you  
2 hearing all of these today. Let me give you some brief  
3 background on the issue, because this is an issue about  
4 whether there was permissive use for Jared Awerbach to use  
5 Andrea's car at the time he got in the accident.

6 When Andrea first answered the complaint, she  
7 admitted that there was permission. When we initially sent  
8 discovery, there was also an admission of permission. The  
9 first time that Andrea said he did not have permission was  
10 when we filed an amended complaint, after which we requested  
11 the claims notes. And as you know, those are discoverable in  
12 Nevada. They initially didn't produce the claims notes. We  
13 had to file a motion and ultimately, after the motion was  
14 filed, Andrea agreed to produce the claims notes.

15 What she produced was what we believed was all of the  
16 claims notes through January 17th, 2011, which is the relevant  
17 date. The privilege log that was attached to that says they  
18 are not producing claims notes from January 18th, 2011 through  
19 a later date, I believe it was September.

20 If you look at what was produced, and obviously, we  
21 didn't know this at the time, there's a note that's whited  
22 out. That's the key note that we're here about today on this  
23 motion. And in that note Andrea admits that she gave Jared  
24 the keys the day and that she regularly left them out on the  
25 counter. Not knowing about that note, we conducted

1 significant discovery on this permission issue. In fact, we  
2 deposited her twice.

3 At her deposition, both times, she described these  
4 elaborate stories that she had about where she kept the keys,  
5 under the bed, in garbage, in drawers, in a briefcase she hid  
6 under the bed. And she concocted these elaborate stories that  
7 directly contradict what she told the adjuster two weeks after  
8 the accident.

9 By happenstance, we discovered this whited out claims  
10 note. And the way we discovered it was at these depositions  
11 we found out that Jared had previously driven her car. And we  
12 believe that at the time she was insured by the same company.  
13 So we subpoenaed them in order to obtain information on the  
14 prior use of the vehicle. They produced claims notes from  
15 this use of the vehicle, including the one that way just  
16 whited out with no notice to us.

17 It's clear that the claims note was intentionally  
18 whited out. It is clear that that was hidden from us through  
19 a very misleading privilege log. And it's also clear that  
20 this isn't something that we can just blame on prior counsel,  
21 which is what they're trying to do. Andrea herself gave the  
22 testimony at both of the depositions where she didn't mention  
23 this conversation with the adjuster, even though we asked her  
24 what they talked about, and where she completely contradicted  
25 everything that she had told the adjuster when these issues

1 were certainly more fresh in her mind and when we would have  
2 had a much better opportunity to depose the adjuster and asked  
3 about what happened during this conversation and what do you  
4 remember.

5           During the second of those depositions, current  
6 counsel was sitting right there and they certainly have the  
7 file. I don't think we can just sit here and blame the empty  
8 chair, if you will, which is essentially what the defense to  
9 this is.

10           Where we stand now, as you know, we're a couple weeks  
11 away from trial in this case. Like I said before, we have  
12 engaged in a significant amount of discovery. And Your Honor  
13 has to determine what the appropriate sanction is for  
14 intentionally withholding evidence that we happened to  
15 discover two and a half years later by sheer luck. And one of  
16 the things Your Honor doesn't know is in the last couple of  
17 weeks we were able to depose the adjuster that Ms. Awerbach  
18 spoke to. And as you would expect, now we are years later,  
19 almost four years later, she does not remember the  
20 conversation.

21           Had this been brought to our attention years ago, she  
22 may have had a much better recollection of this claim and of  
23 this particular conversation that is central to the issue, one  
24 of the issues we are trying to decide in this case, and  
25 certainly the issue of permissive use by Mr. Awerbach.

1           There's a few things that Your Honor has to decide.  
2 We are asking for one of the very limited areas of relief that  
3 Your Honor can award, which is striking the complaint. There  
4 are lesser sanctions Your Honor can award, one of which -- and  
5 the only other appropriate one would be making a conclusive  
6 finding that he had permissive use of the vehicle. While Your  
7 Honor could enter that order, that's essentially doing the  
8 same thing as striking the answer. In other words, we are  
9 still going to trial on Ms. Garcia's damages and this issue of  
10 permissive use would be conclusively decided with either of  
11 those sanctions.

12           Also, they put us in this position where not only  
13 have we wasted our time and the Court's time, we're going to  
14 trial without clear information now. We weren't able to  
15 question Ms. Awerbach about this note. Certainly, her memory  
16 about this conversation would also have faded over the last  
17 four years. And obviously, we're not able to question this  
18 adjuster about it because she doesn't remember it either.  
19 There is no ability to enter any sanction that takes us back  
20 in time to years ago when they should have given us this note  
21 and shouldn't have whited it out. And the only sanctions that  
22 would possibly be appropriate are striking the answer or  
23 giving us a conclusive finding of permissive use.

24           The next thing Your Honor can look at is the severity  
25 of the conduct versus the severity of the sanction. And that



1 should be a very easy one for Your Honor to decide. This is  
2 an absolutely discoverable document that they admitted when  
3 they asked us to withdraw our motion to compel and produce the  
4 claims notes and then they just whited it out and made it look  
5 like there wasn't anything there and then told us there wasn't  
6 anything there. And as I said before, that's not just  
7 counsel, that is Mrs. Awerbach who gave two depositions and  
8 stuck to this story that's very different from what the real  
9 truth is.

10 And by the way, what Mrs. Awerbach told the adjuster  
11 two weeks after the accident is the same thing that her son  
12 told the adjuster and that he said at his deposition, that she  
13 usually left the keys out on the counter. This story that she  
14 concocted is not something that we can blame on counsel. And  
15 when you compare the severity of it you have to look at not  
16 only counsel doing it, but also the party engaging in the  
17 conduct.

18 And finally, Your Honor should look at the message  
19 that it's sending. This is a very serious discovery abuse. I  
20 doubt Your Honor sees something like this on a regular basis  
21 and I know we don't see something like this on a regular basis  
22 where there's evidence that's simply whited out and pretending  
23 -- and pretended like it's not there. If Your Honor doesn't  
24 grant a severe sanction, such as striking her answer, then  
25 Your Honor is sending a message to all litigants that they can

1 engage in these tricks in order to hide evidence and if they  
2 happen to get caught then the penalty isn't going to be very  
3 severe.

4           One of the things that they've talked about is  
5 hearing cases on the merits. The problem with that is the  
6 Nevada Supreme Court and the Ninth Circuit have both said that  
7 suppressing evidence like this, hiding evidence does not  
8 further the idea of hearing cases on the merits and a severe  
9 sanction -- in the words of the Ninth Circuit and the Nevada  
10 Supreme Court, outweighs any consideration of hearing cases on  
11 the merits when somebody willfully suppresses evidence like  
12 this.

13           For Your Honor to take the decision on this out of  
14 the province of the jury, when we know all the information  
15 that we know now anyway, is absolutely the proper decision to  
16 make because it's the defendants that made that -- at least  
17 Andrea Awerbach that made that decision for you when she  
18 whited this out and then continued this ruse through her  
19 testimony creating this story that clearly was not an accurate  
20 story. For that, Your Honor, we'd ask that you strike her  
21 answer.

22           THE COURT: Thank you. Mr. Mazzeo.

23           MR. MAZZEO: Thank you, Your Honor. Your Honor, I'd  
24 like to make use of the ELMO if we can turn that on.

25           THE COURT: Certainly.

1           MR. MAZZEO: Thank you. So the plaintiff in this  
2 case argues that the answer must be stricken because allegedly  
3 Andrea Awerbach and her prior counsel had concealed a claim  
4 note that was central to the issue of permissive use. That's  
5 in their motion at page three, line 25. And they allege that  
6 this claim note, this one claim note of 1-17 of 2011, which  
7 was drafted from a conversation that was taken about 15 days  
8 post-accident, specifically at 4:44 p.m., suggested Andrea  
9 Awerbach permitted Jared to use her car on the day of the  
10 incident.

11           The note states, and I'll put that up and I'm going  
12 to put up the -- this is from plaintiff's motion on page 12.  
13 They had copied this from the claim note. So you can see a  
14 line in there, "She had" -- the line that I have highlighted  
15 within that paragraph, "She had let Opac," referring to Jared  
16 Awerbach, "use her keys that day to get something out of her  
17 car." Now retrieving something, an item from the car is not  
18 by definition operating or driving a car. However, this note  
19 is not complete. Now, the plaintiff is presenting a note to  
20 you, this note from -- this claim note from 1-17 of 2011, but  
21 -- and they're claiming even after hat, they say amazingly  
22 this note appears to have been erased from the claim notes  
23 Andrea produced.

24           So they're presenting to the Court what appears to be  
25 the complete claim note, but it is not. They actually left

1 out the last line. So if we look at the last line on this, it  
2 states that, "His girlfriend came home but insured later got  
3 the call that Opac, Jared Awerbach, was in the accident and  
4 was arrested."

5 I'm going to show you the actual claim note from the  
6 file. It has the line in it that plaintiff's counsel  
7 intentionally omitted. And this is a statement from my client  
8 within 15 days after the accident. And it states, "Insured  
9 did not know Jared Awerbach was going to drive her vehicle and  
10 did not give him permission." And then it states redacted, I  
11 guess for information below. So they intentionally left this  
12 out and yet are claiming that Andrea Awerbach and the prior  
13 counsel's hiding [indiscernible]. This actually supports the  
14 claim. This note actually helps Andrea Awerbach in terms of  
15 proving against express or implied permissive use.

16 It doesn't assist plaintiff's claim. It contradicts  
17 the mistake that was made with respect to prior counsel in  
18 their answer to the -- to paragraph -- the allegation in  
19 paragraph 23 of the complaint where they had admitted it. I'm  
20 going to go over that in a moment. So this sentence that  
21 plaintiff intentionally omitted is key to showing that Andrea  
22 wasn't hiding anything and that it actually supports a claim  
23 of no permissive use whatsoever for her car or express.

24 And also in plaintiff's motion they contend that,  
25 "Jared Awerbach admitted to driving Andrea Awerbach's car with

1 permission on January 2nd of 2011." This is on page 11, line  
2 three of their motion. And this, in fact -- and they  
3 reference Jared Awerbach's deposition testimony. I looked it  
4 up. I went to Jared Awerbach's deposition testimony on the  
5 pages that plaintiff had cited. And it states on page 178,  
6 Jared Awerbach is being asked a question. It says, Is it true  
7 that on such and such a date Andrea Awerbach did not give  
8 Jared permission to drive her car. Do you agree with that?  
9 Answer, "Yes, sir."

10 So they're saying that he actually is saying the  
11 opposite, that Andrea had given him permission. That's not  
12 his testimony. His sworn deposition testimony, which  
13 plaintiff's counsel is referring to, is not what they're -- is  
14 not what he's actually saying. He's saying I agree that she  
15 did not give me permission to drive the car on that date.

16 Moving on to page 180, line 19. Question, "With  
17 regard to the issue of permission to drive Andrea's vehicle,  
18 Jared has at all times said that Andrea gave him permission to  
19 drive her car in the past, but he did not have permission the  
20 day of the accident. Do you agree with that?" Answer, "Yes."  
21 How does this testimony support their claim when in their  
22 motion they're saying that she gave -- he's admitting that she  
23 gave him permission. That's not what it says in his  
24 testimony. They either misread it or misleading the Court  
25 into -- or misinterpreting the testimony of this witness.

1 It's not what it says.

2 Now, with respect to Andrea Awerbach, her  
3 recollection as to where she might have left or hid the keys  
4 from Jared on a certain date. It goes to memory. It's not  
5 relevant to the issue of any issue of permissive use or any  
6 material issue in this case. Now historically, we know that  
7 Andrea, from the testimony and evidence in this case, Andrea  
8 Awerbach and Jared Awerbach have had a very tumultuous  
9 relationship with Andrea Awerbach as a single mom. She's  
10 raising a very troublesome teenaged son. He's involved in  
11 drugs, he's involved with incidents with the law. She had  
12 admitted that she had to -- this is in the evidence, that she  
13 had to hide her keys to prevent her son from taking keys and  
14 using her car without permission. She's had to continually  
15 find new hiding places so as to prevent her rebellious son  
16 from taking her car.

17 So it's not surprising when she's asked 15 days after  
18 the accident, on the 17th of January, where she might have  
19 left her keys. If she's been -- if she has a history of  
20 hiding keys from her son, there's no surprise that she's not  
21 going to remember. The day of the accident, where did I leave  
22 the car keys? I know I let him use it to get something out of  
23 the car, not permissive use, he's not operating it, but where  
24 I might have left it, not sure. That goes to memory. That  
25 doesn't go to a material issue in this case. They can

1 certainly try to impeach her with that. But 15 days after the  
2 accident, no surprise. Andrea wasn't involved in the  
3 accident. She wasn't even in the car.

4 So the apparent inconsistencies in her testimony  
5 about where she left the keys is not germane and reflective of  
6 her credibility. She has testified there's a chance -- she  
7 testified there's a chance that the keys were on the counter  
8 when Jared Awerbach took them. In the 1-17 note where she  
9 states she usually keeps the keys on the mantel is not in the  
10 context as to when and where Jared might have been when he  
11 took the keys. So there's a lot of confusion surrounding this  
12 note. Why prior counsel decided to leave it out, I don't  
13 know. But she did, when prior counsel made reference to this  
14 note, she submitted a privilege log.

15 So plaintiff's counsel was aware of this 26 months  
16 ago. Why didn't they do something before, you know, the last  
17 12 months or six months after they received it or a week after  
18 they received that privilege log and say hey, let's take a  
19 look at this. Let's determine whether there is, in fact, a  
20 privilege. And if there isn't, we want to see that note. Why  
21 are they waiting before the eve of trial?

22 The reference to the complaint. Now clearly, and I  
23 would contend that there's a misunderstanding as to the  
24 [indiscernible] in paragraph 23 of the complaint with regard  
25 to entrusting the vehicle which, by the way, and I have a copy



1 of that with me. If we look at this page, third cause of  
2 action, in this third cause of action there is not a single  
3 reference to any date. It's earlier in the complaint, I'll  
4 admit that, but there's no reference to any date in this third  
5 cause of action, paragraphs 21 through 27.

6 Twenty-three is the allegation in question, that  
7 defendant Andrea Awerbach did entrust the vehicle to the  
8 control of defendant Jared Awerbach. And the answer given by  
9 her counsel, she didn't sign the answer to the complaint, but  
10 by counsel there were times when Andrea did entrust her son in  
11 the scope of driving with another adult to learn how to drive  
12 because she thought that he had a permit. But there is no  
13 date within this and it was corrected afterwards. But if you  
14 look at this answer, which was clearly drafted and filed a  
15 long time after that 1-17, 2011 note where Andrea says I did  
16 not give him permission, I did not -- where she says in the  
17 note, I did not give him permission to use the car.

18 Well, I think that preempts and explains why there  
19 was a mistake with the answer given by Andrea Awerbach. And  
20 when the amended answer or when the answer to the amended  
21 complaint was filed, they corrected that. So they corrected  
22 that mistake in the first answer.

23 Also, there's a correction to the response the  
24 plaintiff's first set of request for admission, number two.  
25 She stated she learned after the motor vehicle accident that

1 Jared Awerbach had used the vehicle on 1-2 of 2011, but denies  
2 that she gave him permission. So I think if you look at -- if  
3 we look at all the evidence in this case, it's clearly a  
4 mistake and a misunderstanding as to the [indiscernible] and  
5 what they were referring to, which was answered by prior  
6 counsel.

7 Now also, Andrea Awerbach, again by prior counsel,  
8 had submitted a second supplemental 16.1 disclosure. That was  
9 on 7-22 of 2013. And this was what I was referring to earlier  
10 where they identified that they were withholding the claim  
11 note and submitted a privilege log. And the privilege log was  
12 with regard to response to request for production number  
13 seven. They served that on 7-22 of 2013. They were on  
14 notice. This is litigation. You get something like this, you  
15 get a privilege log, you question it. So why are they  
16 delaying and bringing this up at this point?

17 The claim note is not central to the issue of  
18 permissive use because Andrea Awerbach stated in the claim  
19 note that she did not know that Jared was going to drive her  
20 car and did not give him permission. It does not impede the  
21 plaintiff's ability to prosecute the claim. It rather aids  
22 the defendant in defending against permissive use and  
23 contradicts all other references about whether she permitted  
24 Jared, express or implied permission to use the car at the  
25 time of the accident.

1           There's no concoction of a story, of an elaborate  
2 story. We have -- we're talking about the memory of a mom who  
3 had a long-standing history with Jared Awerbach, a troubled  
4 son and --

5           THE COURT: No. What we're talking about is  
6 withholding of a claim note. That's a different issue, Mr.  
7 Mazzeo.

8           MR. MAZZEO: Fair enough. And with regard to the  
9 withholding of the claim note, it doesn't prejudice the  
10 plaintiff at all in any respect. There's no reason why the --

11          THE COURT: Except they had to go and get the  
12 documents from the insurer.

13          MR. MAZZEO: I'm sorry?

14          THE COURT: They had to go and get the documents from  
15 the insurer directly because it wasn't produced appropriately.

16          MR. MAZZEO: I wasn't, I certainly wasn't aware of  
17 this prior, but they -- but the fact is that Andrea Awerbach  
18 did submit a privilege log. Prior counsel, Alex McCloud  
19 submitted a privilege lot and identified the privilege. So  
20 it's not as though they were withholding it and not even  
21 disclosing the fact that this document existed. They're  
22 saying this document exists and here's our privilege with  
23 respect to this document. What did plaintiff do to ascertain  
24 this document way -- 26 months ago? Nothing. Twelve months  
25 ago, nothing. Six months ago, nothing.

1           And they're saying that it's central -- and their  
2 whole claim here is that sanctions should be issued against my  
3 client because this claim note is central to the issue of  
4 permissive use. And we know from reading it, it's not central  
5 to the issue of permissive use. In terms of proving any claim  
6 against Andrea Awerbach, it should have been. I agree, Your  
7 Honor, it should have been submitted. To the extent it would  
8 be admissible at trial, I don't know. But it goes to  
9 defending against their claim that my client had implied or  
10 expressly permitted Jared Awerbach to use this. Why should  
11 sanctions issue for a document that actually assists my client  
12 rather than hurts her?

13           So based on that, Your Honor, I respectfully request  
14 that you deny plaintiff's requested motion for sanctions of  
15 any sort. Thank you.

16           THE COURT: Thank you. Mr. Smith.

17           MR. SMITH: The first thing I'll say, Your Honor, is  
18 the most obvious thing with respect to this issue. If the  
19 claims note wasn't relevant, then why didn't they produce it  
20 in the first place? If it didn't have any relevance to this  
21 case, they would have just given it to us instead of whited it  
22 out and made it look like nothing was there.

23           We also didn't hear any excuse from Mr. Mazzeo about  
24 why it wasn't produced. It wasn't produced because it is  
25 clearly relevant to this issue. Although Mr. Mazzeo used the

1 word implied permission, everything that he focused on is  
2 express permission. What he focused on is did she expressly  
3 tell Jared that he could drive the car that day. The law that  
4 we are proceeding under, and counsel concedes this, also  
5 allows for permissive use if there is implied permission.

6 In this case she previously gave him access to the  
7 car, she previously allowed him to use the car. And as she  
8 said in this claims note, she typically left the keys out on  
9 the counter and she gave him the keys that day to get  
10 something from her car. That is certainly sufficient for a  
11 jury to determine there was implied permission to use the  
12 vehicle that day.

13 This is not a summary judgment issue where I have to  
14 come before Your Honor and absolutely prove without a doubt  
15 there's no genuine issue of material fact. This is a  
16 sanctions issue. I'm not saying to Your Honor that 100  
17 percent of every juror that walks in your courtroom would read  
18 this claims note and find permissive use. What I'm saying to  
19 Your Honor is that this claims note is clearly relevant to the  
20 matter at hand. And if Your Honor reads the case law that we  
21 provided, that is all that we have to show. They willfully  
22 withheld evidence and the evidence is relevant to the claims  
23 that we are submitting.

24 Now, Mr. Mazzeo says that I incorrectly represented  
25 what Mr. Awerbach said in his deposition. I didn't. I never

1 said that Mr. Awerbach said he had express permission. I said  
2 Mr. Awerbach said the keys were out on the counter. That is  
3 something that his mother denied ad nauseam during two  
4 depositions. In fact, during her first deposition she denied  
5 ever letting him use the car. And only after he was deposed  
6 did she reverse that at her second deposition and say yeah, I  
7 let him use the car before this.

8 Like I said, this isn't summary judgment. What we  
9 have to prove is that they withheld this evidence and that  
10 it's relevant to our claims. And counsel relies upon this  
11 privilege log. First off, Your Honor, just disclosing a  
12 privilege log isn't an excuse for withholding relevant  
13 evidence. And it's not an excuse for making it look like the  
14 evidence never existed in the first place. This is something  
15 that they clearly believed was relevant because they produced  
16 the other factual statements made by Mr. Awerbach. And Your  
17 Honor's well aware and we put this in our motion to compel,  
18 that factual information learned by the adjuster is absolutely  
19 discoverable in Nevada.

20 And if you look at their privilege log, it says  
21 January 18th, 2011. Well, we're not talking about January  
22 18th, 2011, we're talking about the day before that. It also  
23 says the purpose of withholding these documents is handling of  
24 plaintiff's claims and subsequent litigation, determining  
25 liability and damages valuation/reserves for the same. In

1 other words, the adjuster's mental impressions. We reasonably  
2 believed at the time that they produced Mr. Awerbach's  
3 statements, they produced all of the statements that they had.  
4 They intentionally withheld this note.

5 It's very telling how it's produced where they just  
6 made it look like there's nothing before this and this is --  
7 the claims notes go in reverse order. So the last one that  
8 they produced on January 17th is at 4:29 p.m. and they said  
9 there's nothing after that. Of course we didn't go ask for  
10 more information. We trusted in counsel and the party to  
11 provide us with clear and accurate information. And Your  
12 Honor's right, we had to go through a lot of hassle now to not  
13 only find this, but deal with an issue that's irrelevant and  
14 that a party covered up for.

15 As I said before, the only appropriate sanction in  
16 this case is striking her answer. Any other ruling that Your  
17 Honor gives, gives every party that comes before this Court  
18 license to play games in discovery and try and withhold  
19 absolutely relevant evidence.

20 THE COURT: Thank you. The first matter is now  
21 submitted. Feel free to leave your things here, but since  
22 it's 10:45 and this is going to take longer than I had  
23 anticipated, I want to try to work our way through the 10:00  
24 calendar a little bit. So I'll ask counsel for this to step  
25 back so that I can call other cases. But you may leave all of



1 your things on the table.

2 (Court recessed at 10:46 a.m. until 11:57 a.m.)

3 THE COURT: This is Awerbach. And, you know, you  
4 guys, I usually tell you that you shouldn't schedule things  
5 except at the end of the calendar, but I think I scheduled  
6 these motions today, not realizing, so I apologize to all of  
7 you how long it's taking.

8 We have a trial at one. I'm going to try to  
9 streamline this a little bit. The next matter is with regard  
10 -- that I want to take up is going to be with regard to the --  
11 has to do with the summary judgment with regard to the  
12 impairment issue. Let me make sure I have it here.

13 MR. MAZZEO: I'm sorry, Your Honor. Which one is  
14 that?

15 THE COURT: It's the motion for partial summary  
16 judgment on the impairment issue. Rather than requesting  
17 protracted arguments, it's my intention to grant the motion.  
18 So I'll give you a chance to oppose it. Mr. Strassburg.

19 MR. STRASSBURG: Thank you, Judge.

20 THE COURT: That was the per se impairment.

21 MR. STRASSBURG: Judge, we filed a motion for partial  
22 summary judgment on behalf of Jared Awerbach on the punitive  
23 damages issue under all theories of punitive damages. And  
24 this was in an effort to clear up the proceedings to help  
25 simplify the charge.

1           The plaintiff has moved under 42005 and 42010.  
2   Despite our request, the plaintiff has not stipulated 42005  
3   out of the case. So we move for summary judgment on that in  
4   an effort to force that issue, that if the plaintiff really is  
5   going under 42005 as well as 010, we wanted to get that out in  
6   the open and find out. We also filed that motion in the  
7   nature of response to the plaintiff's motion. So that's the  
8   nature of the pleadings before you.

9           There are two issues on 42010. The first one is can  
10  the plaintiff -- is there a reasonable, an issue of fact as to  
11  whether there's a criminal violation here. Because one of the  
12  predicates of being allowed to ask for punitive damages under  
13  42010 is that the plaintiff establish that there was an  
14  offense under the criminal statute 44C110, which is the one  
15  applicable here. In turn, that statute has two subsections,  
16  point two and point three.

17          Point two requires the plaintiff to show that he was  
18  -- the plaintiff to show that Mr. Awerbach was impaired or  
19  substantially unsafe to drive. There is -- as to that  
20  required showing, the plaintiff has not provided you evidence  
21  to take that out of the zone of an issue of fact. And we have  
22  provided the affidavit of Dr. Bearman that the plaintiff --  
23  I'm sorry -- that Mr. Awerbach was not impaired and it sets  
24  forth objective evidence on which that affidavit is based.

25          With respect to the third subsection of the criminal

1 statute, that's the per se limit, the legal limit. And here  
2 there are two legal limits that are arguably implicated.  
3 There's the point two for THC and there's the 5.0 for  
4 metabolite. We believe strongly that there is an issue of  
5 fact raised as to the THC because the evidence that we've  
6 submitted to you, the crime lab determined that the tests they  
7 ran to find the 3.3 nanograms per milliliter of THC couldn't  
8 tell the difference between THC and another constituent of  
9 marijuana called cannabidiol or CBD.

10 That raises the issue of whether those tests really  
11 showed that he was 3.3. There's clearly an issue of fact that  
12 Dr. Bearman, the testimony of Dr. Kelly, Raymond Kelly, he's a  
13 state toxicologist. He testifies for the State mostly. And  
14 he says in his papers that this test doesn't reliably  
15 establish anything because it's blind. It can't tell what's  
16 CBD and what's not. And therefore, there's at least an issue  
17 of fact, Judge, under summary judgment standards that require  
18 that that part be denied.

19 Now, with respect to the 5.0 for metabolite. There  
20 is no evidence in the record as to that one. There is no  
21 basis for there to be an argument that an issue of fact was  
22 raised as to the 5.0 for marijuana metabolite. I would point  
23 out, Judge, that that ingredient of marijuana is  
24 non-psychologically active. It doesn't get you high, it  
25 doesn't impair your driving. However, I mean, that is an

1 issue for mitigation of punitive damages.

2           So in your ruling, Judge, I just ask you to  
3 articulate clearly what particular parts of the various  
4 operable statutes you're ruling upon. And to recap, the  
5 110.2, there is an issue of fact as to whether my guy was  
6 impaired. And that's raised by the doctor, Dr. Bearman, who  
7 says based on all the subjective evidence in my affidavit, no  
8 impairment. That means he was not unsafe to drive and that  
9 means the standard of point two is -- there's an issue of fact  
10 about that.

11           As to point three, I think your order has to be  
12 articulated into two paragraphs on that. The first one, the  
13 THC, the legal limit for THC. There's clearly an issue of  
14 fact about that, Judge. When the crime lab admits that their  
15 own tests that they were running couldn't tell the difference  
16 between the ingredient they were measuring and a different  
17 ingredient for which there is no legal limit for CBD, and  
18 indeed, CBD, according to Bearman, has the contrary  
19 psychoactive effect of THC. It's non-euphoric enhancing,  
20 non-impairing.

21           So based on Bearman's affidavits that is in turn  
22 based upon a qualified toxicologist, there's clearly an issue  
23 of fact, Judge, as to whether that 3.3 is met. And Bearman  
24 testifies that the margin of error is so great in these tests  
25 that for all that you can tell scientifically, he could have

1 been under the 3.3. Judge, that's something for the jury.  
2 That is not the kind of issue that Rule 56 envisioned the  
3 court taking away from the jury. But that is the kind of  
4 issue that witnesses should testify to and the jury should be  
5 given an opportunity to decide as to whether this finding in  
6 the records of 3.3 THC is indeed supported by appropriate  
7 evidence.

8 Then again, as to the 5.0, the metabolite, I agree  
9 that there is not evidence to raise any issue of fact about  
10 that. So with respect to the metabolite, Judge, your ruling  
11 should be that the motion is granted as to that. Otherwise,  
12 it should be denied. If you are going to --

13 THE COURT: Isn't 484C1103 only related to the  
14 metabolite?

15 MR. STRASSBURG: Wait. It has two legal limits.

16 THE COURT: Right.

17 MR. STRASSBURG: And one is for THC and one's for  
18 metabolite.

19 THE COURT: All right. Okay. Thank you. That's not  
20 to cut you off, just wanted to clarify that.

21 MR. STRASSBURG: I understand, Judge. Thank you.

22 THE COURT: Did you have anything further?

23 MR. STRASSBURG: No, Judge.

24 THE COURT: Thank you. Mr. Smith.

25 MR. SMITH: Based on your comments I'll be brief and

1 I won't address the things that are in Jared's brief that  
2 weren't addressed today.

3 There are two parts to 484C that could be implicated  
4 in this case. The first part would require us to prove  
5 impairment. We are not talking about that today. So the  
6 majority of what Mr. Strassburg discussed with you this  
7 morning is completely irrelevant. We are talking about  
8 subsection three, which you brought up. And under subsection  
9 three --

10 THE COURT: That's the metabolite.

11 MR. SMITH: Right. We have to prove either he was  
12 above the THC level or the metabolite level and either one of  
13 them gets us judgment or a conviction under 484C, which he was  
14 convicted of and served time in. That metabolite is  
15 undisputed. So when we talk about summary judgment, Your  
16 Honor has to find whether there is a genuine issue of material  
17 fact.

18 While we certainly disagree with their assessment of  
19 the THC levels and the impairment, those issues are  
20 irrelevant. There is one genuine issue of material fact with  
21 respect to the per se impairment. Was he above the metabolite  
22 level? That issue is undisputed and you just heard Mr.  
23 Strassburg tell you that. Once that issue was undisputed, we  
24 have proved all of the other parts that we need to prove in  
25 order to show impairment.

1           And I did want to read to you from the Nevada Supreme  
2 Court just in case there's any doubt about the impairment  
3 issue. This is from Williams v. State, 118 Nevada 541.50  
4 Pacific 3rd at 1119. "In passing the prohibited substance  
5 statute, the legislature clearly articulated its intent to  
6 follow the lead of nine other states and create a per se drug  
7 violation similar to the alcohol per se statute. The  
8 legislature considered extensive testimony before passing the  
9 law and rejected the concerns expressed by those opposed to  
10 the law who argued it lacked a direct correlation between the  
11 prohibited drugs in a driver's system and impairment."

12           We do not have to prove impairment. So if you allow  
13 them to come before the jury and argue about impairment or  
14 argue about the THC levels and present those irrelevant issues  
15 to a jury, then a jury is going to believe that this is not a  
16 per se state. Instead, all we need in this case is proper  
17 summary judgment, which counsel just admitted to you was  
18 proper on the per se metabolite issue. And all of the other  
19 issues that were discussed are irrelevant to a jury's  
20 determination because there is per se impairment under Nevada  
21 law.

22           THE COURT: Thank you.

23           MR. SMITH: Thank you.

24           THE COURT: All right. And Mr. Strassburg, did you  
25 have anything further in reply on your motion with regard to



1 the punitive damages?

2 MR. STRASSBURG: Judge, only to request that -- I'm  
3 not going to rehash the facts. I'm just going to request that  
4 your ruling be articulated as to the particular aspects of the  
5 statute that you're ruling upon. If you're ruling that  
6 484C110 is satisfied because of the metabolite --

7 THE COURT: It's 110.3.

8 MR. STRASSBURG: Yeah.

9 THE COURT: Right.

10 MR. STRASSBURG: Sorry. What did I say?

11 THE COURT: I just want to be clear on the record.

12 MR. STRASSBURG: Yeah. 110.3 is -- you're granting  
13 on metabolite. We just request that you specify that in the  
14 order. And the reason is because we would argue that then in  
15 mitigation of the punitive damages as to the amount. That the  
16 only reason we're here on punitive damages is because of the  
17 non-psychoactive ingredient.

18 If you believe that there is a finding -- that there  
19 is an issue of fact as to the THC legal limit, we just request  
20 that if indeed that be your conclusion that you spell that out  
21 in the order so that can be made clear to the jury as to the  
22 basis for the Court's ruling.

23 Now as -- if you are going to rule on 110.2, which we  
24 would request you do and find that the plaintiff has not shown  
25 any entitlement under 110.2 because, as you can see on the

1 screen here, it does require a showing of under the influence  
2 or under the combined influence or involved with something  
3 rendering the person incapable. And none of that has been  
4 shown here and all of it is under vigorous contest in the  
5 affidavit of Dr. Bearman.

6 Thank you, Judge.

7 THE COURT: Thank you. Now with regard to the status  
8 check from scans on Dr. Wu, were they provided?

9 MR. STRASSBURG: Yes.

10 THE COURT: Yes?

11 MR. SMITH: I still can't open them.

12 MR. STRASSBURG: Let me say it this way, Judge, they  
13 were delivered. I mean, the viewer that he wanted, I had that  
14 delivered on a disc. And the data that he wanted, I had  
15 delivered to his office within the time required on a zip  
16 drive from the scientist himself. I didn't -- it didn't go  
17 through me.

18 MR. SMITH: And I'll tell you at the end that I think  
19 some of this might end up being irrelevant. But I did get a  
20 CD first and the CD was so scratched. I've never received a  
21 CD like that. It was so scratched on the bottom when I opened  
22 it and I'm the one who opened the mail, that I couldn't open  
23 some of the files. And I did send counsel an e-mail saying  
24 that I couldn't open some of the files and I actually listed  
25 out every single file that I couldn't open. I received a

1 flash drive the next day. It may have included some of those  
2 files. And to be fully honest with the Court and counsel, I  
3 haven't gone through the two to see if everything that I  
4 couldn't open was on the flash drive.

5 The reason I think it may end up being irrelevant, I  
6 would like the Court to maybe revisit this when we talk about  
7 the motion to strike Dr. Wu's supplement, Dr. Brown's  
8 supplement and Dr. Kelly's supplement. Based upon the Court's  
9 ruling with respect to the scope of Dr. Bearman's testimony,  
10 if the Court's ruling is the same with respect to the scope of  
11 Dr. Brown's testimony, in other words, that each of them can  
12 only testify within the scope of their expertise and cannot  
13 repeat the opinions of other experts, with Dr. Wu being  
14 stricken and these two experts not being able to say well,  
15 this is what Dr. Wu's conclusions were or this is what was on  
16 Dr. Wu's scans, because neither Dr. Brown nor Dr. Bearman are  
17 qualified to read those scans, then the Dr. Wu issue may end  
18 up being moot.

19 And as a result of that and as a result of the  
20 Court's ruling on the scope of Dr. Bearman's testimony, we  
21 actually did, even though we're ahead of the time that we had  
22 to do this, we did disclose a rebuttal expert to Dr. Bearman  
23 that addresses some of the things that he arguably could be  
24 qualified to talk about, although we are certainly disputing  
25 his qualifications in a motion in limine. If he's not going

1 -- if Dr. Brown and Dr. Bearman are not going to be able to  
2 repeat the opinions of Dr. Wu or read his reports --

3 THE COURT: I don't really want to go into that so  
4 much today.

5 MR. SMITH: Okay.

6 THE COURT: Am I correct that both sides have  
7 requested a continuance of the trial?

8 MR. SMITH: No, we have not. Both of the defendants  
9 have, the plaintiff has not.

10 THE COURT: All right.

11 MR. SMITH: And we have filed an opposition to their  
12 motion to continue.

13 THE COURT: I'm sorry. We've been in trial until  
14 7:00 every night this week, so I've read everything but I  
15 apologize for not realizing that.

16 MR. SMITH: And I think we all recognize there's a  
17 lot of information and it's a lot, Your Honor.

18 THE COURT: There is a lot here today. The last  
19 thing is that there was a motion to amend the Court's order  
20 delivered in open court to add Dr. Raymond Kelly on order  
21 shortening time. Is there an opposition to that?

22 MR. SMITH: Mr. Mazzeo filed a limited opposition to  
23 one part of it, about Dr. Poindexter. Oh, excuse me.

24 THE COURT: This is --

25 MR. SMITH: I have the wrong one. We did file an

1 opposition to that, Your Honor. I apologize.

2 THE COURT: All right. Good enough. All right. Mr.  
3 Mazzeo, you're standing. Did you have something to add?

4 MR. MAZZEO: Oh, no. When you brought up the issue  
5 of the motion to continue trial I thought I was next up, but I  
6 guess not.

7 THE COURT: No. I'm going to shortcut this for  
8 everybody. Let me indicate to you guys that this case is just  
9 out of hand. I know that it is in part my fault. I was  
10 mindful of what I perceived as errors by the law firm in  
11 defending the Awerbachs, Mr. Awerbach particular, and I gave  
12 you a chance to defend the case under some very, very  
13 strenuous rules. But this case is not any longer about the  
14 merits of the case and it's about other things. I am going to  
15 do something a little bit unusual here, but this is, as -- who  
16 ran for -- H. Ross Perot ran for president, this is the deal.  
17 This is the deal.

18 I'm going to take the motion to strike Andrea  
19 Awerbach's answer under submission. It's my intention that  
20 there's been a case shown for sanctions to find permissive  
21 use. But it's taken under submission and it's only letting  
22 you know what my inclinations are with regard to that.

23 With regard to the plaintiff's motion for partial  
24 summary judgment that Jared Awerbach was per se impaired, I  
25 will now grant that motion under NRS484C1103 with regard to

1 metabolites only.

2           With regard to the Jared Awerbach's claimed --  
3 requested for summary judgment on punitive damages, I can't  
4 determine that. The motion is denied now. The issue may be  
5 subject to directed verdict or instructions after evidence,  
6 but it's premature. I have enough here to keep the punitive  
7 damages cause of action in there.

8           I am going to defer the status check for the scans,  
9 defer the motions to strike the other supplemental reports or  
10 witnesses and defer the order to show cause on the following  
11 condition. Each party will appear for a settlement conference  
12 with a representative present with full authority to the  
13 extent of the policy on February 19, 2015. I will request a  
14 report from the settlement judge that the parties have each  
15 participated in good faith.

16           Should I receive a report that each party has not  
17 participated in good faith, then I will rule on these motions  
18 in the way I've indicated to you that I'm inclined to do so.  
19 The date's not subject to change. I've already arranged that  
20 through the settlement conference for you. And again, if  
21 there's not a participation in good faith, then I intend to  
22 issue minute orders with regard to the pending motions.

23           The motion to continue trial will be continued but  
24 only until the next stack. And should this case not go, you  
25 will go on the next stack. But you will have a shorter trial

1 because a lot of the issues will be resolved. Now, I'm not  
2 sure yet, it will depend on you and how you participate in the  
3 good faith settlement conference, I'm not sure yet what that  
4 will be, but we'll set a status check for the week after  
5 February 19th. Status only on all pending issues, for you to  
6 report back to me whether or not there's a settlement.

7 At that time I'll rule on any pending matters if  
8 there's not a settlement and we will then at that date  
9 schedule a trial and the length in accordance with the issues  
10 that are remaining at that time. I promise all of you that I  
11 will -- should you not settle the case I will re-read all of  
12 the pleadings, oppositions, motions and give you very coherent  
13 and directional rulings on all of the pending matters at that  
14 time.

15 Any questions?

16 MR. MAZZEO: Does that include the hearing that's on  
17 for January 29th for the motions in limine?

18 THE COURT: I'm going to vacate all hearings in the  
19 meantime. Vacate all other pending hearings in the meantime  
20 to be set over for that status conference. I believe those  
21 dates -- I had written them down but now I don't think I have  
22 them. January 21st, 22nd, 29th and we'll do a status check  
23 about a week after February 19th.

24 I do not know who your settlement judge will be but I  
25 did get the date cleared through the program ahead of time.



1 Any other questions?

2 MR. MAZZEO: Yes, Your Honor. Considering that we  
3 have -- we already had 59 motions in limine that had been  
4 scheduled from last year on the 29th and then we have an  
5 additional -- I didn't count them all, but between us three  
6 parties it's probably another 45. So we're over 100 motions  
7 in limine right now.

8 THE COURT: I understand.

9 MR. MAZZEO: It's --

10 THE COURT: If you go to trial we'll schedule two or  
11 three days of pretrial motions to define those issues for you  
12 and I will find the time to do it.

13 MR. MAZZEO: And I would just ask that we do it  
14 sufficiently in advance of trial because in terms of  
15 preparation, it's massive. There's a massive amount of --

16 THE COURT: Well, it is for us too.

17 MR. MAZZEO: I know.

18 THE COURT: So I will give you the time should you go  
19 to trial and you have the right to do that on the remaining  
20 issues, if any, whatever they might be. I will make sure that  
21 you have the time to fully explore all motions in limine.  
22 It's not my intent to cut the defendants off from defending  
23 the case, but I have a real sense that rather than developing  
24 defenses it has been -- the time I gave you was to develop  
25 strategies and that's not what I intended.

1 MR. MAZZEO: Well, I can assure the Court that on  
2 behalf of Andrea Awerbach we have a different defense,  
3 obviously, and it was focused on --

4 THE COURT: I understand.

5 MR. MAZZEO: -- medical --

6 THE COURT: They're very two different defense.

7 MR. MAZZEO: Sure.

8 THE COURT: I understand all of that. But I form  
9 certain impressions, Mr. Mazzeo.

10 MR. MAZZEO: I hope that doesn't skew the Court into  
11 favoring one side over the other.

12 THE COURT: No. Every day's a new day.

13 MR. MAZZEO: Okay.

14 THE COURT: Every day's a new day. No matter what my  
15 impressions are or might be, it doesn't affect how I rule on  
16 any pretrial motion. Does affect any way about how I instruct  
17 the jury. I sit here and listen. I work along with the jury  
18 to make sure that both sides get a fair shake.

19 MR. MAZZEO: Certainly appreciate it, Your Honor.  
20 And when is the next trial stack after the February stack?

21 THE CLERK: The next one would be, pretrial on April  
22 2nd with the trial stack beginning April 6th. Did you want a  
23 status check date?

24 THE COURT: A status check about a week after.

25 THE CLERK: Will be February 26th at 10:30 will be

1 your status check.

2 THE COURT: We're going to sit you at the end of the  
3 calendar. It's status only. I don't intend it to take up  
4 dispositive motions that are pending. But I want to set all  
5 of your matters at the end of the calendar so that you can  
6 always have the time you need. And I again apologize for  
7 today for overloading the calendar and taking up your whole  
8 morning.

9 Mr. Smith, you're standing. You had something to  
10 add?

11 MR. SMITH: I had have -- well, Mr. Mazzeo asked one  
12 of my questions which was about when the next stack was. But  
13 I did have a second question.

14 Your Honor said that you want all parties to go to  
15 the settlement conference, participate in good faith and then  
16 the parties should have authority --

17 THE COURT: With a representative present in person  
18 with authority to the full extent of the policy. And that's a  
19 condition.

20 MR. SMITH: And I just -- I'm going to get in trouble  
21 if I don't go back to the office and have told you that the --  
22 this is a \$50,000 policy, so we're not talking about the  
23 policy.

24 THE COURT: I understand.

25 MR. SMITH: I just wanted to make sure Your Honor

1 understood that.

2 THE COURT: I assumed as much but I do -- I can only  
3 deal with the case that's in front of me.

4 MR. SMITH: Understood. I appreciate it.

5 THE COURT: Okay. All right. So now, for the  
6 purpose of an order from today's hearing, I would suggest that  
7 the minute order would suffice for today's purpose and I will  
8 ask that the court recorder transcribe the new ruling and  
9 we'll have that as a part of the record.

10 MR. MAZZEO: And then we'll expect an order from the  
11 Court with regard to the sanctions on plaintiff's motion to  
12 strike Andrea Awerbach's answer.

13 THE COURT: Well that's only if you don't settle.

14 MR. MAZZEO: Oh, okay. Afterwards.

15 THE COURT: If I find that you don't settle, then I  
16 will then take up the pending matter. The only one that's  
17 been fully argued at this point is the motion to strike the  
18 answer.

19 MR. MAZZEO: And also, I don't think we had discussed  
20 when you had granted us permission to submit the motions in  
21 limine, you gave us I guess an additional week or so to  
22 January 9th to submit the motions in limine. I don't think we  
23 discussed opposition due dates or replies. So if we could  
24 just have an idea as to when we should get those oppositions  
25 and replies in.

1 THE COURT: Just in accordance with the rules.

2 MR. MAZZEO: Okay. In the ordinary course.

3 THE COURT: Or should you stipulate to extend those  
4 until after a settlement conference, you have the right to do  
5 that as well, which I assume you'll want to do, but I'm not  
6 going to tell you how to lawyer your case either.

7 MR. MAZZEO: Certainly. Thank you, Your Honor.

8 THE COURT: Very good. Thank you all.

9 MR. SMITH: Your Honor, what about an order on the --  
10 you did rule on the summary judgment. Did you want us to  
11 submit an order on that?

12 THE COURT: You know, that's correct. There were two  
13 issues I did rule definitively on which is plaintiff's motion  
14 for summary judgment and the defendant's motion for partial  
15 summary judgment. Those orders should also be prepared and  
16 they should be prepared by Mr. Smith with Mr. Strassburg  
17 having the right to sign off on those.

18 MR. SMITH: Thank you.

19 THE COURT: Thank you all.

20 (Proceeding concluded at 12:25 p.m.)  
21  
22  
23  
24  
25

**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

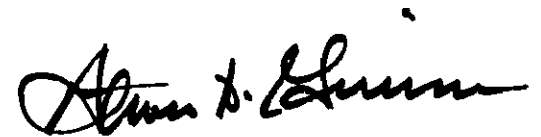
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KIMBERLY LAWSON

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CLERK OF THE COURT

SUPP  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

EMILIA GARCIA, Individually,  
Plaintiff,

vs.

ANDREA AWERBACH, Individually;  
JARED AWERBACH,  
Defendants.

Case No: A-11-637772-C

Dept No: XXVII

**SUPPLEMENTAL BRIEF IN SUPPORT  
OF DEFENDANT ANDREA  
AWERBACH'S OPPOSITION TO  
PLAINTIFF'S MOTION TO STRIKE  
ANSWER**

Date of Hearing: TBD

Time of Hearing:

Defendant ANDREA AWERBACH, by and through her attorney of record, PETER MAZZEO, ESQ. of the law firm of MAZZEO LAW, LLC hereby submits her Supplemental Brief in support Opposition to Emilia Garcia's Motion to Strike Andrea Awerbach's Answer.

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1 This Supplemental Brief is made and based upon the papers and pleadings on file herein, the  
2 Memorandum of Points and Authorities submitted herewith, such other documentary evidence as  
3 maybe presented and any oral arguments at the time of the hearing of this matter.

4 DATED this 20<sup>th</sup> day of February 2015.

5 MAZZEO LAW, LLC

6 /s/ Peter Mazzeo

7 PETER MAZZEO, ESQ.  
8 Nevada Bar No. 009387  
528 S. Casino Center Blvd. Suite 305  
Las Vegas, Nevada 89101  
9 Attorney for Defendant Andrea Awerbach

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. PREFATORY STATEMENT**

12 The sole issue for the Court to decide is what type of sanction, if any, is appropriate for  
13 Andrea's failure to produce the January 17, 2011 claim note prior in the litigation. The fact that  
14 Plaintiff had to obtain the claim notes herself via subpoena duces tecum does not warrant striking  
15 Andrea's answer, let alone any other type of sanction.

16 Furthermore, the delayed discovery of the claim note by Plaintiff did not cause her any  
17 prejudice because it was discovered prior to trial, Plaintiff was afforded an opportunity to examine the  
18 relevance of the claim note, and it simply does not assist Plaintiff in proving any material issue in  
19 dispute. Therefore, Andrea respectfully requests the Court DENY the instant Motion.

20 **II. LEGAL ARGUMENT**

21 **A. A Rebuttable Presumption or Adverse Inference is Not Appropriate in**  
22 **Accordance With Bass v. Davis<sup>1</sup> Because Andrea Did Not Willfully, Intentionally**  
23 **or Negligently Suppress, Spoil, Loose, or Destroy the Subject Claim Note**

24 Nevada law allows for a discovery sanction when evidence is willfully, intentionally or  
25 negligently suppressed, spoiled, lost, or destroyed. Bass v. Davis, 134 P.3d 103,106-107 (2006). In  
26 Bass, a customer of 7-Eleven slipped on a freshly mopped floor. The 7-Eleven failed to post warning  
27 signs. The customer sustained personal injuries. Within a week of the customer's fall, the customer's  
28 sister requested a surveillance tape and incident report. While the franchisee operators stated they had

<sup>1</sup> 134 P.3d 103 (2006).

1 no knowledge of the surveillance tape, the surveillance tape should have been mailed to Southland in  
2 accordance with corporate policy. Southland stated it had received the surveillance tape, forwarded it  
3 to its insurer, and the insurer ultimately lost the surveillance tape.

4 Two types of discovery sanctions exist in Nevada when the evidence is suppressed, spoiled,  
5 lost, or destroyed. *Id.* at 106-107. The severity of the sanction depends upon the spoliator/destroyer's  
6 conduct. When the spoliator/destroyer's conduct is willful and intentional, with a specific intent to  
7 harm another party, a rebuttable presumption in accordance with Nevada Revised Statute ("NRS")  
8 47.250(3)<sup>2</sup> is appropriate. *Id.* at 107. On the other hand, when the spoliator/destroyer's conduct is  
9 negligent, an adverse inference is appropriate. The Nevada Supreme Court specifically stated, "The  
10 adverse inference provides the necessary mechanism for restoring the evidentiary balance." *Id.*

11 This case is completely distinguishable from *Bass* because Andrea and/or Liberty Mutual did  
12 not suppress, spoil, lose, or destroy the subject claim note. Contrary to Plaintiff's accusations, she  
13 failed to demonstrate Andrea willfully and intentionally withheld the subject claim note with a specific  
14 intent to harm Plaintiff. Andrea produced a privilege log identifying the withheld claims notes and  
15 Plaintiff failed to take any action to question the privileged documents. Plaintiff's request to strike  
16 Andrea's Answer or any other request for sanction is nothing but an attempt to escape Plaintiff's  
17 burden of proof regarding permissive use against Andrea and have the Court enter summary judgment.

18 In support of Plaintiff's request for a sanction against Andrea, she misleads the Court and  
19 intentionally omits the most relevant part of the claim note that states, "**Insd did not know opac was**  
20 **going to driver her veh and did not give permission.**" See Motion at 12:20-23. The fact that prior  
21 counsel for Andrea did not produce the claim notes prior in the litigation and Plaintiff had to obtain  
22 the claim notes herself via subpoena duces, does not rise to the level of prejudice. Unlike the *Bass*  
23 case, the claim note was not irreparably lost or destroyed.

24 Should the Court issue a discovery sanction of a rebuttable presumption or adverse inference  
25 in accordance with the *Bass* case, the Court would essentially be issuing Plaintiff a directed verdict in  
26 accordance with Nevada Rule of Civil Procedure 50(a), stripping Andrea of her right to have her day  
27 in court, and preventing the case be heard on the merits. A discovery sanction of a rebuttable

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28 <sup>2</sup> NRS 47.250(3) states: All other presumptions are disputable. The following are of that kind: . . . that evidence willfully  
suppressed would be adverse if produced.

1 presumption or adverse inference in accordance with the Bass case, let alone any other type of  
2 sanction, is not appropriate. Therefore, Andrea respectfully request the Court DENY Plaintiff's  
3 Motion

4 **B. The Content of the Claim Note Does Not Advance Plaintiff's Claim of Permissive Use,  
5 But Plaintiff's Motive is to Impugn Andrea's Character By Arguing She  
"Improperly" Withheld the Claim Note During Discovery.**

6 The only purpose Plaintiff has in seeking to use the subject "claim note" is to impugn the  
7 character of Andrea Awerbach because she redacted the claim note which documents one of her  
8 earliest conversations with the carrier about her recollection of Jared using the vehicle without  
9 permission.

10 Although prior Defense counsel might have believed it was protected by the attorney client  
11 privilege, she prudently simultaneously produced a privilege log identifying the note being excluded.  
12 Arguably, the most Plaintiff can argue is excusable neglect in the manner in which the note was  
13 redacted. However, the content of the claim note is simply not beneficial to Plaintiff's claim of  
14 permissive use and therefore to permit Plaintiff to reference or admit the circumstances for the failure  
15 to previously produce the claims note, is essentially permitting Plaintiff to litigate the merits of a Rule  
16 37 motion for sanctions to the jury at trial. Indeed, Plaintiff is seeking to litigate Andrea's "improper  
17 withholding" of the claims note somehow rises to evidence of wrongdoing which is evidence of an  
18 admission she must have permitted Jared to use the car at the time of the accident.

19 Relevant evidence is evidence having a tendency to make the existence of any fact that is of  
20 consequence to the determination of the action more or less probable than it would be without the  
21 evidence. NRS 48.015. Evidence which is not relevant is not admissible. NRS 48.025(2). NRS  
22 48.035(1) allows for the exclusion of relevant evidence, if its probative value is substantially  
23 outweighed by the danger of unfair prejudice, confusion of the issues, or misleading of the jury. FGA,  
24 Inc. v. Giglio, 128 Nev. Adv. Op. 26, 278 P.3d 490, 498 (June 14, 2012), citing NRS 48.035. Further,  
25 relevant evidence may be excluded when it unfairly prejudices an opponent, typically by appealing to  
26 the emotional and sympathetic tendencies of a jury, rather than to the jury's intellectual ability to  
27 evaluate evidence. Schlotfeldt v. Charter Hosp. of Las Vegas, 112 Nev. 42, 46, 910 P.2d 271, 273  
28 (1996).

1           There is simply nothing in the content of the subject claims note which will assist the jury in  
2 making the existence of any fact that is of consequence to the determination of the action more or less  
3 probable than it would be without the evidence. A fact that is of consequence to the determination of  
4 the action is of course whether Andrea gave Jared express or implied permission to use her car at the  
5 time of the accident. Therefore, Plaintiff may only be permitted to use relevant evidence which  
6 permits a jury to consider facts which bear on Andrea's permissive use. Plaintiff's desperate plea to  
7 the Court to improperly use this claims note is highlighted by her excessive rhetoric in her 19 page  
8 Opposition which fails to identify any content, sentence or statement in the claims note which is  
9 dispositive of Andrea's intent to give Jared permission to use the car. Contrary to Plaintiff's  
10 contention, there is nothing in the claims note which is "critical to the issue of how Jared obtained  
11 access to Andrea's vehicle prior to causing the subject car crash." See Pl. Opp. 18:3. Indeed, Andrea's  
12 statement that the "[Insured] did not know opac [driver] was going to drive her veh and did not  
13 give him permission" is evidence which exculpates the claim of permissive use.

14           Therefore, the only purpose in seeking to use the claims note is to impugn Andrea's character  
15 by arguing that because she (through counsel) withheld this claims note it must have some significance  
16 to proving she gave Jared permission to use the vehicle. This is non sequitur reasoning since the  
17 inference Plaintiff seeks to prove for "permissive use" does not follow from the premise that the mere  
18 withholding of the claim note is equated to permissive use without actual evidence of an admission  
19 that Andrea gave Jared permission to use the vehicle.

20           **C. Plaintiff Did Not Suffer Any Prejudice Because She Merely Had To Obtain The  
21 Claim Notes Herself Via Subpoena Duces Tecum**

22           Plaintiff failed to challenge the nature of the privileged claim notes in a timely manner. The  
23 fact that Plaintiff had to obtain the claim notes via subpoena duces tecum does not rise to a level of  
24 prejudice. The only inconvenience Plaintiff suffered, if any, was monetary in nature for having to  
25 subpoena the claims notes from Liberty Mutual. Plaintiff's contention that the subject claim note  
26 would have been useful to impeach Andrea during deposition is disingenuous because the claim note  
27 specifically states Andrea did not know Jared was going to driver her vehicle and did not give him  
28 permission to do so. Should the Court be compelled to sanction Andrea for the subject claim note, it

1 should only be monetary in nature for Plaintiff's costs incurred in obtaining the claim notes via  
2 subpoena duces tecum. Therefore, Andrea respectfully request the Court DENY Plaintiff's Motion

3 **III. CONCLUSION**

4 Andrea properly identified withheld claim notes in her Second Supplement and disclosed a  
5 Privileged Log. Plaintiff waited nearly 26 months to take action and now disingenuously claims  
6 Andrea "concealed" information. The plain reading of the Claim Note subject of the instant Motion  
7 does not in and of itself establish permissive use, either express or implied, in accordance with NRS.  
8 41.440. Rather, the Claim Note expressly states **Andrea did not know Jared was going to drive**  
9 **her and did not give Jared permission to drive her car.** Andrea did not engage in any discovery  
10 abuse and any sanction, including striking her Answer, is not warranted pursuant to Nevada Law.  
11 Therefore, Andrea respectfully request the Court deny Plaintiff's Motion.

12 DATED this 20<sup>th</sup> day of February 2015.

13 MAZZEO LAW, LLC

14 /s/ Peter Mazzeo

15 \_\_\_\_\_  
16 PETER MAZZEO, ESQ.  
17 Nevada Bar No. 009387  
18 528 S. Casino Center Blvd. Suite 305  
19 Las Vegas, Nevada 89101  
20 Attorney for Defendant Andrea Awerbach  
21  
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28

MAZZEO LAW, LLC  
INJURY TRIAL ATTORNEYS  
528 S. Casino Center Blvd. Suite 305  
Las Vegas, Nevada 89101

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20<sup>th</sup> day of February 2015, I served the foregoing  
**DEFENDANT ANDREA AWERBACH'S SUPPLEMENTAL BRIEF IN OPPOSITION TO  
PLAINTIFF'S MOTION TO STRIKE ANSWER** as follows:

- ☐ US MAIL: by placing the document(s) listed above in a sealed envelope, postage prepaid, in the United States Mail at Las Vegas, Nevada, addressed to the following:
- ☐ BY FAX: by transmitting the document(s) listed above via facsimile transmission to the fax number(s) set forth below.
- ☒ BY ELECTRONIC SERVICE: by electronically filing and serving the document(s) listed above with the Eighth Judicial District Court's WizNet system

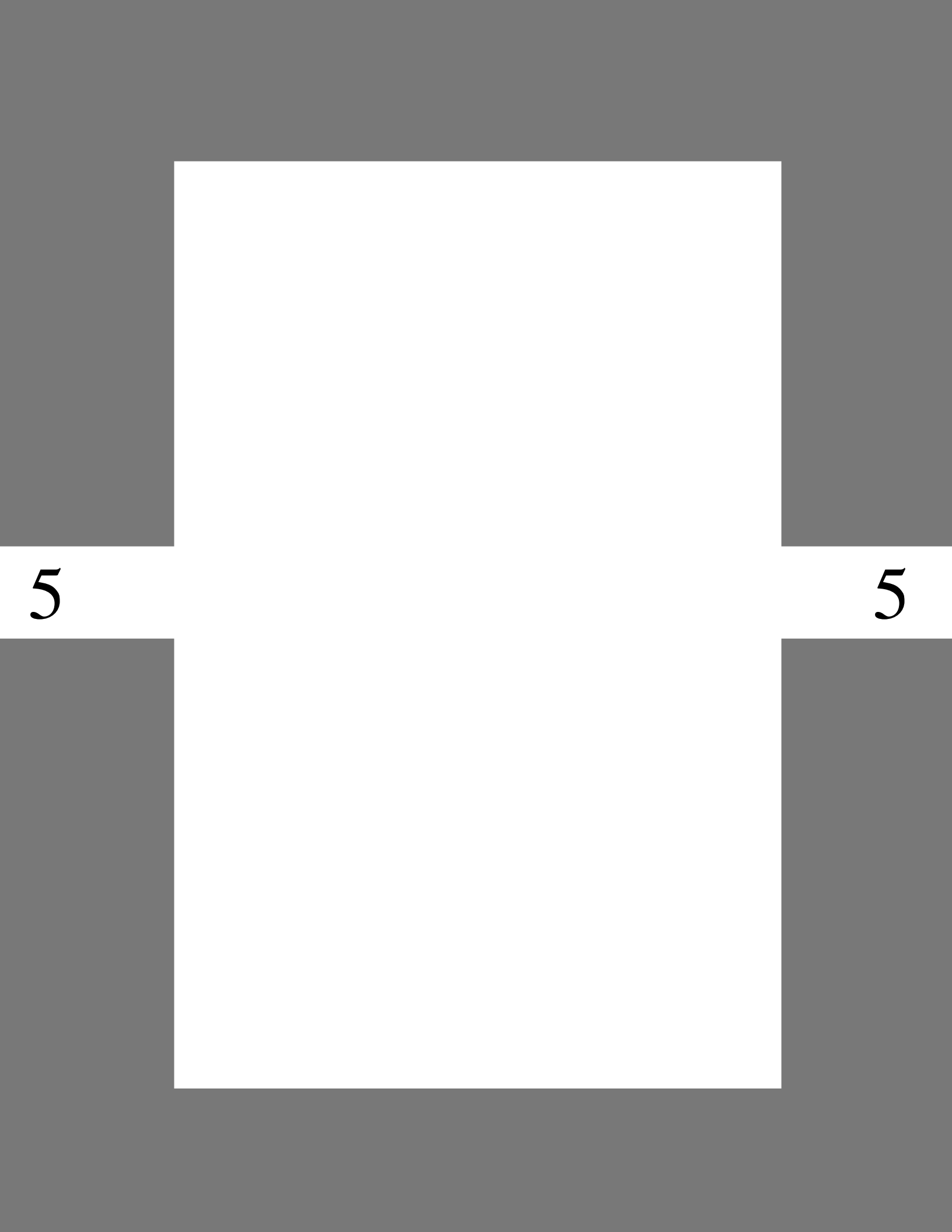
COREY M. ESCHWEILER, ESQ.  
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Attorney for Defendant Jared Awerbach

/s/ Jaklin Guyumjyan

\_\_\_\_\_  
An Employee of MAZZEO LAW, LLC

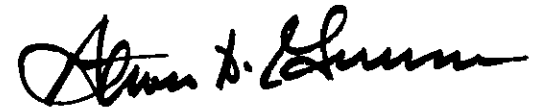




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 ORIGINAL



CLERK OF THE COURT

**MOT**  
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*Attorney for Defendant Andrea Awerbach*

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

EMILIA GARCIA, Individually,  
Plaintiff,

vs.

JARED AWERBACH, Individually;  
ANDREA AWERBACH, Individually; DOES I-  
X, and ROE CORPORATIONS I-X, Inclusive,  
Defendants.

Case No: A-11-637772-C

Dept No: XXX

**DEFENDANT ANDREA AWERBACH'S  
MOTION FOR SUMMARY JUDGMENT  
ON PUNITIVE DAMAGES PURSUANT  
TO NRS 42.005 ON OST**

Date of Hearing:

Time of Hearing:

Defendant ANDREA AWERBACH, by and through her attorney of record, PETER MAZZEO, ESQ. of the law firm of MAZZEO LAW, LLC hereby moves this Court for summary judgment on punitive damages pursuant to NRS 42.005 in favor of Andrea Awebarch and against Plaintiff on Order Shortening Time. Defendant requests that this Motion BE **SCHEDULED FOR HEARING ON JANUARY 14, 2016** which is the same date and time another motion is to be heard in this matter.

This motion is brought on the grounds that, if and to the extent, plaintiff is pursuing a claim for punitive damages against Andrea Awerbach pursuant to NRS 42.005, no genuine issues of material fact exist with respect to allowing Plaintiff to seek punitive damages against her. This Motion is made and based on NRCP 56(c), the following memorandum of points and authorities and any attachments

///

1 thereto, the papers and pleadings on file herein and any oral argument the Court may permit at the  
2 hearing of this matter.

3 DATED this this 8<sup>th</sup> day of January, 2016.

4 MAZZEO LAW, LLC

5   
6 PETER MAZZEO, ESQ.

7 Nevada Bar No. 009387

8 631 South 10<sup>th</sup> Street

9 Las Vegas, Nevada 89101

10 Attorney for Defendant Andrea Awerbach

11 **ORDER SHORTENING TIME**

12 This matter having come before the Court, and good cause appearing therefore, IT IS  
13 HEREBY ORDERED that the time for hearing on **DEFENDANT ANDREA AWERBACH'S**  
14 **MOTION FOR SUMMARY JUDGMENT REGARDING PUNITIVE DAMAGES** and any  
15 documents and testimony related thereto be, and the same is hereby shortened to be heard on the

16 14 day of January, 2016 at the hour of 9 a.m.

17 Dated this 8 day of Jan, 2016.

18   
19 JUDGE JERRY WIESE, II

20 SUBMITTED BY:

21 MAZZEO LAW, LLC

22   
23 PETER MAZZEO, ESQ.

24 Nevada Bar No. 009387

25 631 South 10<sup>th</sup> Street

26 Las Vegas, Nevada 89101

27 Attorney for Defendant Andrea Awerbach

**DECLARATION OF PETER MAZZEO IN SUPPORT OF  
ORDER SHORTENING TIME**

PETER MAZZEO hereby declares as follows:

1. The Affiant is duly licensed to practice law in the County of Clark, State of Nevada, I am a partner in the firm of MAZZEO LAW, LLC, counsel for Defendant Andrea Awerbach and I have personal knowledge of the matters stated herein.
2. In the Amended Complaint, Plaintiff asserted a claim for punitive damages only against Defendant Jared Awerbach pursuant to 42.001 (sic) [this section pertains to definitions] in her fifth cause of action.
3. However, in her pray for relief, Plaintiff asserted multiple boiler plate requests for relief (as opposed to averments) against "all defendants" which included general request for "punitive damages in an amount to be determined at trial."
4. Based on Plaintiff's Complaint, there was no legitimate reason why Andrea Awerbach would think Plaintiff could or would seek punitive damages against her based on the pleadings, the causes of action, or the evidence discovered to date. However, Plaintiff has, for some unknown reason, indicated she is seeking punitive damages against Andrea Awerbach in addition to Jared Awerbach.
5. The undersigned brings this motion prior to trial for a ruling preventing Plaintiff from seeking punitive damages against Andrea Awerbach at trial.
6. The motion must be heard on an order shortening time because trial in the instant matter is set to commence on February 8, 2016 and this motion cannot be heard in the ordinary course.
7. For the reasons set forth above, Defendant respectfully requests this matter be heard on Order Shortening Time.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
PETER MAZZEO

///

///

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. PRELIMINARY STATEMENT

On October 13, 2015, this Court granted Defendant Andrea Awerbach's Motion for Summary Judgment Regarding Punitive Damages finding Plaintiff was not entitled to punitive damages against Andrea Awerbach arising from NRS 42.007 and NRS 42.010. Andrea now moves the Court to find that Plaintiff is not entitled to seek punitive damages against her pursuant to NRS 42.005.

In her Complaint, Plaintiff alleges two causes of action against Andrea Awerbach for negligent entrustment and joint liability pursuant to NRS 41.440. See Complaint, ¶s 21-30, on file herein. In addition, in her claim for relief, Plaintiff "prays judgment against all Defendants, and each of them, as follows: ...3. [f]or punitive damages in an amount to be determined at trial." *Id.* at p.5.

Defendant Andrea Awerbach contends that any claim for punitive damages against her must be dismissed because she is not found in violation of any statute which would otherwise give rise to and authorize recovery for exemplary damages against her. NRS 42.005 permits recovery for punitive and exemplary damages where a defendant is in breach of any obligation, not arising from contract, where she can be found guilty of oppression, fraud or malice. Andrea cannot be liable pursuant to NRS 42.005 since she did not cause injuries to the Plaintiff as a result of a breach of any obligation where she can be found guilty of oppression, fraud or malice.

Therefore, based on both common and statutory law, Plaintiff may only recover punitive damages against Defendant Jared Awerbach with respect to the allegations plead and the evidence presented in this case. Andrea moves this Court to preclude Plaintiff from pursuing punitive damages against her.

### II. STATEMENT OF THE CASE

This case arises from a motor vehicle accident that occurred on January 2, 2011 on Rainbow Boulevard just north of the intersection with Peak Drive in Las Vegas, Nevada. Defendant Jared Awerbach, driving a 2007 Suzuki Forenza, entered Rainbow from a private drive intending to proceed northward when Plaintiff, driving southbound in her 2001 Hyundai Santa Fe, sped up causing Mr. Awerbach to strike the passenger side of her vehicle.

Although the property damage appeared to be minor, Plaintiff's vehicle was ultimately deemed to be unsalvageable likely due to the make, model, age and low market value of her vehicle. Following

the subject accident, Plaintiff Emilia Garcia called 311 on her cell phone and reported the motor vehicle accident. Upon the investigation by police officer Figueroa, Plaintiff denied being injured in the accident and she did not receive any medical treatment at the scene. Also, Defendant Jared Awerbach was cited for being under the influence of marijuana.

### III. STATEMENT OF UNDISPUTED FACTS

1. The subject motor vehicle accident which occurred on January 2, 2011 involved vehicles operated by Plaintiff Emilia Garcia and Defendant Jared Awerbach. See Amended Complaint, ¶ 7,9,11.
2. Andrea Awerbach was not involved in the accident as either a driver or occupant of any vehicle. *Id.* ¶s 1-33.
3. Andrea Awerbach was not the employer of Jared Awerbach at any time pertaining to the subject accident. *Id.* ¶s 1-33.
4. Andrea Awerbach did not give Jared Awerbach permission to drive the subject vehicle and did not know Jared drove her vehicle until after the subject accident. See Claims Notes, **Exhibit A.**
5. Police officer Figueroa investigated the subject accident. See traffic accident report, **Exhibit B.**
6. Officer Figueroa testified Plaintiff did not sustain any injury from the subject accident. See Figueroa Dep. 30:24-31:19, **Exhibit C.**

### IV. LEGAL ARGUMENT

#### A. Summary Judgment Standard

Summary judgment is proper when “there is no genuine issue as to any material fact and...the moving party is entitled to a judgment as a matter of law.” NRCP 56(c). While the court must view the evidence in the light most favorable to the non-moving party, in the absence of any contrary evidence, summary judgment is appropriate. *See Lee v. GNLV Corp.*, 117 Nev. 291, 294, 22 P.3d 209, 211 (2001); *see also Nylund v. Carson City*, 117 Nev. 913, 915, 34 P.3d 578, 580 (2001) (affirming summary judgment in the absence of contrary evidence).

To overcome summary judgment, “[t]he nonmoving party ‘must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial.’” *Wood v. Safeway*, 121

1 Nev. 724, 728, 121 P.3d 1026, 1031 (2005) (*quoting Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105,  
 2 110, 825 P.2d 588, 591 (1992)). The non-moving party “may not rest upon the ‘mere allegations  
 3 [contained in] his pleading’” to satisfy this burden. *See Bird v. Casa Royale West*, 97 Nev. 67, 70,  
 4 624 P.2d 17, 19 (1981). Moreover, the nonmoving party “bears the burden to ‘do more than simply  
 5 show that there is some metaphysical doubt’ as to the operative facts in order to avoid summary  
 6 judgment being entered in the moving party’s favor.” *Safeway*, 121 Nev. at 732 (*quoting Matsushita*  
 7 *Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)).

8 **B. Plaintiff’s Claim for Punitive Damages Fails as a Matter of Law Because**  
 9 **Plaintiff Cannot Satisfy the Elements for Punitive Damages Pursuant to NRS**  
 10 **42.005 or Otherwise.**

11 Plaintiffs’ purported claim for punitive damages against Defendants collectively, which  
 12 theoretically includes Andrea Awerbach, would for all intents and purposes, arise from Jared  
 13 Awerbach’s operation of a motor vehicle while under the influence of alcohol or controlled substances  
 14 pursuant to NRS 42.010. However, this Court has already ruled that Plaintiff would not be able to  
 15 recover against Andrea pursuant to NRS 42.010. Because the Court refused to rule on the applicability  
 16 of NRS 42.005, this Court must now consider whether Plaintiff may seek punitive damages arising  
 17 from oppression, fraud or malice.

18 NRS 42.005 provides, in pertinent part:

19 1. Except as otherwise provided in NRS 42.007, in an action for the breach  
 20 of an obligation not arising from contract, where it is proven by clear and  
 21 convincing evidence that the defendant has been **guilty of oppression, fraud**  
 22 **or malice, express or implied**, the plaintiff, in addition to the compensatory  
 23 damages, may recover damages for the sake of example and by way of  
 24 punishing the defendant.

25 Pursuant to the definitions section, NRS 42.001,

26 2. “Fraud” means an intentional misrepresentation, deception or concealment  
 27 of a material fact known to the person with the intent to deprive another person  
 28 of his or her rights or property or to otherwise injure another person.

3. “Malice, express or implied” means conduct which is intended to injure a  
 person or despicable conduct which is engaged in with a conscious disregard  
 of the rights or safety of others.

4. “Oppression” means despicable conduct that subjects a person to cruel  
 and unjust hardship with conscious disregard of the rights of the person.



Andrea cannot be subject to punitive damages pursuant to NRS 42.005 because by definition, she cannot be found guilty of fraud, malice or oppression with respect to the circumstances surrounding the subject accident. Fraud requires mens rea of a specific intent to misrepresent, deceive or conceal. Since the subject car accident was deemed to be an unintentional act, Andrea's intent is not relevant to this case.

Punitive damages founded upon malice requires either 1) conduct intended to injure a person or 2) despicable conduct which includes the conscious disregard of the rights and safety of others. Malice arising from despicable conduct requires a two-part analysis: both despicable conduct and conscious disregard of the rights and safety of others. In considering the appropriateness of punitive damages for malice pursuant to NRS 42.005, the Supreme Court in *Granite Construction Co. v. Rhyne*, 107 Nev. 651, 817 P.2d 711 (1991), held that there must be deliberate and conscious disregard of the safety of others knowing there is clear risk of harm to a third person. In his concurring opinion in *Granite* Chief Justice Mowbray further defined the scope of malice which rises to "gross and wanton misconduct [that] cries for punitive sanctions." *Id.* 107 Nev. at 714. "Malice refers to conduct which is intended to injure a person or conduct with a conscious or deliberate disregard of the rights or safety of others." See *Wallace v. USAA Life General Agency, Inc.* 962 F. Supp.2d 1062, 1072 (D. Nev. 2011).

Arguably, Andrea did not intend to injure Plaintiff – she did not know of Plaintiff's existence prior to the subject accident. Secondly, malice arising from despicable conduct requires both conduct which is despicable with a conscious disregard for the rights of others. By definition, despicable means "regarded with disgust, distaste or disdain, contemptible."<sup>11</sup> Therefore, Plaintiff must be able to show that Andrea's conduct surrounding the subject accident was despicable. The evidence proves that Andrea did not give Jared permission to use her vehicle for he had taken the vehicle unbeknownst to Andrea and without permission. See Claim Note, attached hereto as **Exhibit A**. However, assuming arguendo, that Andrea permitted Jared to use her vehicle on the day of the subject accident, these actions do not rise to the level of despicable or of having a conscious disregard for the rights of the Plaintiff or anyone else. There is no evidence at all that Andrea expressly gave Jared permission to use the vehicle prior to the accident and, at most, there is contested evidence that she gave Jared

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<sup>11</sup> Random House Dictionary, 2016

1 implied permission to use the vehicle. Evidence rising to the level of both despicable and conscious  
2 disregard would require at the very least direct concrete evidence that Andrea directed Jared to use the  
3 car with the knowledge that he would likely cause an accident. However, in this case there is simply  
4 no evidence whatsoever that shows Andrea was aware of Jared using the car until after the accident  
5 occurred.

6 Moreover, Jared had never used the vehicle previously while impaired or under the influence  
7 of marijuana. Consequently, there is no evidence that Andrea ever knew Jared to drive a vehicle while  
8 under the influence of a controlled substance or that he would operate the vehicle on the day of the  
9 accident or that he would be under the influence of a controlled substance. There are no facts in this  
10 case which would support a finding of despicable conduct by Andrea surrounding the subject accident.

11 Finally, there is no evidence to support punitive damages against Andrea for oppression since  
12 her conduct does not satisfy a finding of oppression as defined by NRS 42.001. To recover for punitive  
13 damages for “oppression” under 42.005, Plaintiff must establish there is “despicable conduct that  
14 subjects a person to cruel and unjust hardship with conscious disregard of the rights of the person.”  
15 See NRS 42.001(4). There is no evidence in this case that Andrea’s alleged permission to allow Jared  
16 to use her vehicle was designed to subject the Plaintiff to “cruel and unjust hardship with the conscious  
17 disregard” of the Plaintiff’s rights. Oppression occurs when the plaintiff is subjected to ‘cruel and  
18 unjust hardship in conscious disregard of his rights.” *Wallace v. USAA Life General Agency, Inc.* 962  
19 F. Supp.2d at 1072 citing *Granite Constructions Co. v. Ryhne*, 817 P.2d. at 713.  
(Emphasis added).

20 Exemplary or punitive damages are only allowed in the State of Nevada pursuant to  
21 legislative enactment of Chapter 42. Since there is no claim nor any evidence that Andrea’s conduct  
22 rises to the level of oppression, fraud or malice, Plaintiff may not seek punitive damages against her  
23 pursuant to NRS 42.005. Since Plaintiff cannot prevail under any of the statutory sections permitting  
24 exemplary or punitive damages, then Plaintiff must be precluded from seeking compensation for  
25 punitive damages against Andrea Awerbach.

26 ///

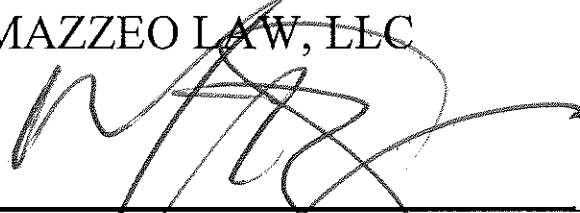
27 ///

28 ///

V. CONCLUSION

Defendant Andrea Awerbach respectfully requests this Court GRANT her Motion for Summary Judgment for any claim Plaintiff is seeking against her for punitive damages.

DATED this this 8<sup>th</sup> day of January, 2016.

MAZZEO LAW, LLC  


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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 8th day of January 2016, I served the foregoing  
**DEFENDANT ANDREA AWERBACH'S MOTION FOR SUMMARY JUDGMENT ON  
PUNITIVE DAMAGES PURSUANT TO NRS 42.005 ON OST** as follows:

☐ US MAIL: by placing the document(s) listed above in a sealed envelope, postage prepaid, in the United States Mail at Las Vegas, Nevada, addressed to the following:

☐ BY FAX: by transmitting the document(s) listed above via facsimile transmission to the fax number(s) set forth below.

☒ BY ELECTRONIC SERVICE: by electronically filing and serving the document(s) listed above with the Eighth Judicial District Court's WizNet system

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*/s/ Abby Prince*

\_\_\_\_\_  
An Employee of MAZZEO LAW, LLC

MAZZEO LAW, LLC

# Exhibit A.

Create Date	Author	Topic	Related To	Subject	Text (2,500)
01/17/2011 04:44 PM	TERESA MERAZ	Coverage	none (Claim-level)	Occurrence	<p>Original 01/17/2011 04:44 PM I called insd and was able to reach her. She states opac and his girlfriend were living w/ her. Opac has used her veh in the past when he was practicing to get his permit. Insd was home the day of ax. She had let opac have the keys earlier that day to get something out of her car. She usually keeps the car keys on the mantle. Opac does not have his own set of car keys. She thought opac had returned the keys but he didn't. Opac and his girlfriend were at a friend's home in same apt complex. His girlfriend came home but insd later got the call that opac was in ax and getting arrested.</p> <div></div>
					<div></div>

# Exhibit B.