

1 the way, just FYI, is when each side had access and/or
2 knowledge of the police, whether you want to call it Exhibit K
3 or Exhibit B, either the transcript or the disk. And when I
4 ask plaintiff counsel some questions, I'm going to be
5 reminding him of certain affidavits that were in his motion to
6 disqualify about how long ago they seemed to have had it. But
7 I don't know when defense counsel first got it, but I do have
8 from the complaint itself the quote about Zach, get him or get
9 him, Zach. Sometimes it's phrased differently and I don't
10 remember exactly which way it was in the complaint. I can
11 look it up, but it's one of the two. It's either get him,
12 Zach or Zach, get him.

13 MR. CARRANZA: Sure. And that much it's clear that
14 the defense knew at the beginning of the case, right, because
15 that's part of the complaint. So they at least knew that the
16 shooter was named Zach, right. But what they didn't know and
17 what they couldn't get is how to locate this Zach in a world
18 full of Zachs.

19 What was denied to them though, as early on as the
20 written discovery, was the name of Ashley Christmas. Although
21 counsel tried on cross-examination of Detective Majors to get
22 a lot of mileage out of this idea of how vague the physical
23 description of Ashley Christmas was, the simple fact is we had
24 his -- or you had his name.

25 You could have given us his name. I wasn't going to

1 walk out of the courthouse and try to look for every
2 brown-skinned, thin-built man wearing nice clothes and start
3 my investigation there. I would have started with the name
4 had you given me that name.

5 THE COURT: Right. And I appreciate that you may
6 not be the right person, it would be counsel for [inaudible]
7 joinder, but it does appear at least by the time that the
8 discovery was served back in 2015, at least knew Pooh Man,
9 because that's in the request for admissions. So --

10 MR. CARRANZA: Sure. But as you can appreciate and
11 is --

12 THE COURT: Or does Pooh Man mean that -- I just
13 don't know if somebody then had the police report in order to
14 get the name Pooh Man, because Pooh Man didn't appear in the
15 complaint, and once again the Court doesn't have the benefit.
16 If that's not something someone wants to present to the Court
17 for its consideration, that's okay. But I'm just -- that's a
18 chronological fact that would be helpful to the Court.

19 MS. RENWICK: If you'd like, I'm happy to address
20 that, Your Honor.

21 THE COURT: Sure.

22 MS. RENWICK: The actual identity of Ashley
23 Christmas we weren't able to determine until meeting with
24 Detective Majors, which was in 2016. So that was immediately
25 before plaintiff's deposition, and that was when we were given

1 that voluntary statement which had his name in it. Pooh Man,
2 yes, was earlier identified, but that was a moniker. We
3 didn't have the name. And Zach, as you mentioned, was in the
4 complaint, but the actual names --

5 MR. CARRANZA: And as I'm sure the Court can
6 appreciate, although we might have a moniker of Pooh Man, we
7 don't have the -- in the civil world we don't have the
8 databases that Metro might have to be able to put that name
9 and connect that with a real live person.

10 And whether it's a matter of six months or a year,
11 whatever the case may be, at the end of the day it has
12 defeated the defense's ability to be able to go out and locate
13 these folks and serve them, because my understanding is that's
14 what we on the defense side have been trying to do, is locate
15 these folks and serve them as third party defendants given
16 their role in Mr. Hawkins' injuries.

17 THE COURT: Not part of 16.1 disclosures? No one
18 checked -- no one -- because you all -- where I was just going
19 and once again, I am focusing only on this case. This is just
20 for generalized information because, you know, I do have the
21 benefit from prior motion practice and affidavits. It
22 appears, you know, that there was discussions and things going
23 on pre-complaint, and then you have the complaint. But what
24 you also have is everyone knew that this involved a shooting
25 at the Meadows Mall, so I guess I was a little surprised that

1 no one would have contacted the police sooner than 2016?

2 MR. CARRANZA: Certainly on the defense side,
3 their --

4 THE COURT: That's not a criticism in any manner.
5 It's just I'm trying to get my chronological --

6 MR. CARRANZA: Absolutely, and on the defense --

7 THE COURT: -- analysis set here.

8 MR. CARRANZA: And on the defense side, as you well
9 know, we start at a little bit of a disadvantage because we're
10 not the filing party. We don't have all the facts. We are
11 sort of a reactive on the defense side. But the party with
12 these facts since even before the complaint was filed was
13 Mr. Hawkins.

14 He very easily could have identified Ashley
15 Christmas by name before the lawsuit was filed, at the time
16 the lawsuit is filed, during 16.1 and at any time after that.
17 And so really criticizing the defense for maybe being a step
18 late and a day late at starting the investigation, in my
19 opinion, is a little unfair when we look at the party that had
20 that information and simply failed to disclose that.

21 THE COURT: Which was why I was asking the question,
22 was it disclosed in 16.1?

23 MS. RENWICK: If I could clarify, Your Honor. With
24 respect to reaching out to Metro, documents that were
25 subpoenaed by Metro did not include any of the information

1 that was included in Detective Majors' investigation. What we
2 were provided when the defense subpoenaed Metro records
3 earlier on in the case, that was prior to our involvement
4 actually, before we had stepped into the case in September
5 2015.

6 Prior counsel had subpoenaed records, and what
7 they'd received was basically, I believe it was just the
8 initial investigation report of the responding officer who
9 appeared on scene. They did an intake of the clothing that
10 was found on scene, shell casings and that was it. And in
11 addition to the voluntary statements of some of the witnesses,
12 that was the entirety of what Las Vegas Metro provided when
13 subpoenaed.

14 THE COURT: I appreciate it. And once again, I'm
15 trying to get the scope of this, all the different factors I
16 have to take -- okay.

17 MR. CARRANZA: Absolutely. Any other questions I
18 can answer?

19 THE COURT: That's it. I do appreciate it.

20 MR. CARRANZA: Thank you.

21 THE COURT: Okay.

22 MR. CHURCHILL: Good afternoon, Your Honor.

23 THE COURT: Good afternoon.

24 PLAINTIFF'S CLOSING ARGUMENT

25 MR. CHURCHILL: Your Honor, I guess to begin with,

1 both legally and factually this is an extremely easy decision
2 for this Court to make. This motion must be denied. It must
3 be denied with prejudice. And let me just go through the
4 Ribeiro factors with you really, really briefly, but not so
5 brief that I'm not thorough.

6 The key factor in Ribeiro, and Your Honor's already
7 touched on it and I appreciate you touching on it, in Ribeiro,
8 Young, what he did was he fabricated evidence, and he gets
9 caught fabricating evidence and they have an evidentiary
10 hearing. And he's given the chance to recant or clarify
11 exactly what happened with this fabricated evidence, with
12 these diary entries. And Your Honor, he refused to do so.
13 And this is what the Nevada Supreme Court had to say about it.

14 Okay. It says, Generally Rule 37, or NRCP 37
15 authorizes discovery sanctions only if, so there's an only,
16 only if there has been willful noncompliance with a discovery
17 order of the court. Okay. As we sit here today, there --
18 Mr. Hawkins cannot be sanctioned in any way, shape or form
19 pursuant to Rule 37 because he has not violated any order of
20 the court.

21 The Nevada Supreme Court goes on to say, The court's
22 express oral admonition to Young to rectify any inaccuracies
23 in his deposition testimony suffices to constitute an order to
24 provide or permit discovery under NRCP 37(b)(2). So the --
25 with Young, Young is ordered by the court orally, verbally you

1 need to rectify this, you need to clarify this, I need to know
2 exactly what happened, and Young refused to do so.

3 Given the willfulness of Young's conduct, saying I'm
4 not going to, I'm not going to comply with this court's order,
5 the Nevada Supreme Court said that is willful noncompliance
6 with an order, which permitted -- which permitted a discovery
7 sanction. And that's very important, because in this case,
8 Your Honor, Mr. Hawkins is not in violation of any court order
9 that would allow a sanction under Rule 37.

10 THE COURT: Okay. I can stop you now or I can ask
11 you at the end, because I'm going to ask you about 16.1
12 disclosures.

13 MR. CHURCHILL: Of course. Yes.

14 THE COURT: Because it's clear your client, at least
15 through his prior counsel, which makes your client
16 responsible, right, at least as of March 16, 2015, 2015, he
17 had the police report.

18 MR. CHURCHILL: Correct. We had the police report.

19 THE COURT: But it was never disclosed to
20 defendants.

21 MR. CHURCHILL: Of course it was.

22 THE COURT: 16.1, you're saying the police report?

23 MR. CHURCHILL: Absolutely. It was given to them at
24 the EA -- at the ECC.

25 THE COURT: When was the ECC?

1 MR. CHURCHILL: I don't recall the date, but it was
2 provided immediately in the case. Here's --

3 THE COURT: Exhibit B was provided?

4 MR. CHURCHILL: No. Here's the --

5 THE COURT: Let's get -- let's get language correct
6 here.

7 MR. CHURCHILL: Yes, let's get -- let's get the
8 timeline correct here. This is what happened, Your Honor.
9 Both defendants and plaintiff sent subpoenas to Las Vegas
10 Metropolitan Police Department for the entire police record,
11 everything. Okay. If you -- I don't have the subpoena, but
12 it was extremely detailed and we wanted everything.

13 What we were given, as Ms. Renwick had indicated,
14 from Metro was a police report that was fairly thick, but did
15 not have Ashley Christmas's name in it, did not have
16 Zachariahs Berry's name in it. There was a brief portion in
17 the narrative where there was -- where the "Get him, Zach"
18 comes from. Okay. That's how plaintiff's counsel knew about
19 the name Zach. Okay. It came from -- it came from the
20 general police report.

21 Now, in addition to that, plaintiff's counsel did
22 contact Officer Majors to get the additional records. We knew
23 there were additional records. We knew that the cousin gave
24 an interview. We knew there were additional records.
25 Plaintiff's counsel requested those --

1 THE COURT: That was Mr. Phillips [phonetic] you
2 referenced earlier?

3 MR. CHURCHILL: It was Mr. Barrus, who was --

4 THE COURT: No, no. The cousin. You said the
5 cousin gave an interview.

6 MR. CHURCHILL: Yes. The --

7 THE COURT: The name of the cousin was the
8 gentleman --

9 MR. CHURCHILL: No, not Phillips. It was --

10 THE COURT: Was that the gentleman you mentioned
11 today?

12 MR. CHURCHILL: Keisha Love was the name of the
13 cousin.

14 THE COURT: Oh, the one -- the female minor that he
15 was with. Okay. Thank you.

16 MR. CHURCHILL: Correct.

17 THE COURT: That cousin. Okay.

18 MR. CHURCHILL: So we knew there was additional
19 information out there. Plaintiff's counsel, and this was
20 Jason Barrus [phonetic] at the time, had a conversation, and
21 this is in the affidavit, Officer Majors refused to give it to
22 him, refused, said it would be a huge dissemination violation
23 if I were to give this to you. Okay.

24 So unbeknownst to -- unbeknownst to us, in January
25 of 2016, defense counsel meets with -- meets with Officer

1 Majors. Okay. Officer Majors at that time gives them the
2 entire record. Okay. The entire record. They don't produce
3 it immediately pursuant to 16.1. Instead they go forward with
4 X'Zavion's deposition with all that information that
5 plaintiff's counsel tried to get from Detective Majors that he
6 would not give to plaintiff, but gave to them [indicating].

7 Okay. So that's where -- that's where the
8 additional information came from. All the sudden, once that
9 gets produced at the time of Officer Majors' deposition,
10 that's when we receive it is at the time of Officer Majors'
11 deposition, we're coming to find out all kinds of new
12 information that we had -- up until that point plaintiff had
13 no idea who Zach Berry was, Zachariahs Berry, whatever the
14 guy's name is, had no clue about it.

15 The only thing that plaintiff's counsel had to go by
16 was in the initial police report, in the narrative report
17 there was a phrase, Get him, Zach. Unknown who Zach was,
18 whether Zach was even the shooter. There was just the
19 statement, Get him, Zach. And Your Honor, let's be clear
20 about something. Mr. Hawkins testified he doesn't know Zach.
21 Officer Majors testified Mr. Hawkins couldn't identify Zach.
22 The only person he could identify was Pooh Man, Ashley
23 Christmas.

24 The issue is this, Your Honor. In Mr. Hawkins'
25 deposition he states, I didn't know him that well, we play --

1 we would exchange video games, that's how I knew him, I always
2 called him Pooh Man, I knew him as Pooh Man. Now, it's clear
3 all these years later that when he meets with the detective he
4 knows the name Ashley Christmas. And we're not disputing that
5 now. Okay. He knows --

6 But here's the thing, Your Honor. Detective Majors
7 testified that Peter Fleming is the one who called him up, and
8 this is the cousin that you were referencing before, and said,
9 These are the people who are involved, and he knew their
10 names. Mr. Hawkins testified today he spoke with Mr. Fleming
11 before he met with Detective Majors. That's how he's getting
12 Ashley Christmas's name at the time that he meets with him.

13 He didn't know him that well. Maybe years ago he
14 did know Ashley Christmas's name, but at the time of his
15 deposition, after years of medications and PTSD, he doesn't
16 recall. And Your Honor, here's the other thing.

17 THE COURT: But he recalled today here in court. I
18 mean, you understand part of the challenge for this Court is
19 he recalls very clearly when he's speaking with the officer in
20 both the video and the -- the video highlights it even more
21 than the transcription does, but the transcription --
22 obviously you had the video. But you know what I mean, you
23 can hear tone of voice, you can hear, you know, clear as a
24 bell.

25 MR. CHURCHILL: On that day --

1 THE COURT: Here [indicating] he has all sorts of
2 information.

3 MR. CHURCHILL: -- undeniably he knew Ashley
4 Christmas's name. On the day that he met with Detective
5 Majors he knew Ashley Christmas's name. Okay. That doesn't
6 mean he knew Ashley Christmas's name almost three years later.

7 THE COURT: So you're asking this Court to take from
8 a credibility standpoint that he doesn't --

9 MR. CHURCHILL: Yeah.

10 THE COURT: -- he knows it on certain time frames
11 but doesn't know it the discovery response time frames, either
12 interrogatories --

13 MR. CHURCHILL: I'll give you --

14 THE COURT: -- admissions or his deposition --

15 MR. CHURCHILL: I'll give you an example.

16 THE COURT: -- but yet he then knows it again in May
17 of 2016 --

18 MR. CHURCHILL: After --

19 THE COURT: -- for the exhibit that didn't get
20 introduced, but just you had me review beforehand?

21 MR. CHURCHILL: Sure. After, because after -- at
22 the time we had Officer Majors' deposition, we are given
23 information that we never had, that we requested from him that
24 he never gave us. And that's when I for the first time have
25 the chance to meet with Mr. Hawkins to go over who are these

1 people and the does this refresh your recollection.

2 And that's -- and so that's exactly what happens, is
3 he looks at this and says, okay, this does refresh my
4 recollection, I didn't remember this in February 2016, I
5 didn't remember this, but guess what, I told them from the
6 very beginning, page 7 of his deposition, I probably can't
7 give my best testimony today. And Your Honor, this is what he
8 tells them.

9 "Q Are you able to answer the questions
10 using those pain medications? Are you going to
11 be able to give your best testimony today?

12 "A I probably won't be able to give my
13 best testimony."

14 And now they're claiming surprise that in fact he
15 was telling the truth that he couldn't give his best
16 testimony? He never had the chance to review those records
17 despite plaintiffs making diligent attempts to get the records
18 from Officer Majors. He gives it to them --

19 THE COURT: Did you all -- did you ever seek to
20 compel? I didn't see --

21 MR. CHURCHILL: Your Honor, we subpoenaed them two
22 times asking for everything.

23 THE COURT: Okay. Same question as what I asked
24 defense counsel. If you didn't get the information, you
25 thought there was other information out there, because

1 obviously your client would have told you I spoke to him,
2 right, he recorded my conversation --

3 MR. CHURCHILL: Correct. And we went directly to
4 Officer Majors himself.

5 THE COURT: -- did you seek any court intervention
6 to compel compliance with the subpoena, is the question I
7 have.

8 MR. CHURCHILL: We did not. We went directly to --
9 we went directly to Officer Majors and he told -- he told
10 Jason Barrus it would be a huge dissemination violation.

11 THE COURT: Okay. You weren't present?

12 MR. CHURCHILL: I was not present, but that is in
13 Mr. Barrus's affidavit. It's in his -- it's in Officer
14 Majors' deposition as well. I can read that to you. He said
15 it would be a huge dissemination violation to give -- to give
16 us those records, yet he's giving those exact same records to
17 defendants.

18 And Your Honor, you asked the question and let's be
19 clear on this. Can one person remember one thing at one time
20 and not remember something at another time; and the answer to
21 that is 100 percent yes.

22 THE COURT: But just so we're clear, the Court's
23 question was he didn't have the -- was asking for the
24 accumulation of all three dates, in the responses to the
25 interrogatories on September 25, 2015, in responses to the

1 request for admissions on September 17, and then February. So
2 you have a five month span that he doesn't remember, but then
3 he remembers right after his deposition?

4 MR. CHURCHILL: He remembers after seeing the
5 records that Officer Majors provided at his deposition.

6 THE COURT: So the dates of the errata are going to
7 be after Officer Majors' deposition?

8 MR. CHURCHILL: Correct. Correct. Correct.

9 THE COURT: But he doesn't reference that anywhere
10 in his errata.

11 MR. CHURCHILL: He references what his -- that his
12 recollection was refreshed. I mean, I suppose he could have
13 written a whole paragraph on how it was refreshed, but that's
14 how it was refreshed is he actually got the records from
15 Officer Majors.

16 THE COURT: So he was present at Officer Majors'
17 deposition?

18 MR. CHURCHILL: He was not, but I got the -- I was
19 present at his deposition and got the records for the first
20 time, and then I was able to show X'Zavion Hawkins those
21 records.

22 THE COURT: Okay.

23 MR. CHURCHILL: And then he does the errata. That's
24 how his recollection gets refreshed is he actually saw -- he
25 actually saw those records. And even then, Your Honor, let's

1 be clear, he's saying in his errata I still don't remember
2 exactly everything that happened, but I'm not disputing what I
3 told Officer Majors because I believed that at that time, I
4 believed what I was telling him was true.

5 But he still doesn't have an independent
6 recollection of knowing Ashley Christmas's name. Even today
7 he still doesn't have an independent recollection of it. He's
8 going by the past memory recorded, or I forget the term of
9 art. But it's he gave a statement at one time where he knew
10 information that he no longer has today. And a good example
11 of how common that is, is Detective Majors today.

12 Detective Majors, one of the first things that he
13 says to Your Honor is that when he met with X'Zavion Hawkins,
14 X'Zavion Hawkins told him Zachariahs Berry and Ashley
15 Christmas, and that's not the truth. And I had to correct
16 that from him, that no, he knew Ashley Christmas's name, he
17 never knew Zachariahs Berry's name, and that Zachariahs
18 Berry's name came from -- came from Mr. Hawkins' cousin, not
19 from Mr. Hawkins.

20 And on top of that, the detective today testified
21 that, oh, Mr. Hawkins had this great description of Ashley
22 Christmas. He got questioned on that and it turns out that it
23 couldn't be more vague. The description that -- the
24 description of Pooh Man that was given four days after the
25 event was thin, brown hair, brown eyes and brown height, but

1 he wears nice clothes. That's, I mean, I would challenge any
2 detective to go out and find that person, you know, the person
3 who has brown height.

4 So people do remember things very differently over
5 time. There's nothing wrong with that. In fact, there's a --
6 Your Honor, there's a jury instruction specifically on past
7 recollection. And what does the jury instruction say? I
8 don't have it in front of me. But the specific instruction is
9 that misrecollection is extremely common, and that's what the
10 jury is told.

11 So yeah, it is very -- he still, even in his errata
12 he's still saying that he does not recall Ashley Christmas's
13 name today, but that at one time he believed that was his name
14 and he's not disputing it. And Your Honor, let's be clear,
15 this is we're talking about almost three years after being
16 shot nine times, taking severe medications. I mean, we're
17 talking morphine, psychotropic medications, nightmares,
18 flashbacks, severe pain every day.

19 If you really think about it, the Meadows Mall in
20 this case created a situation by not having security present
21 to monitor this line that every witness -- and keep this in
22 mind, Your Honor, when we go to trial in this case, we're not
23 going to ask the jury to even believe X'Zavion Hawkins'
24 testimony about the event that day, because his recollection's
25 not very good and we've seen that.

1 But there were several witnesses there that we've
2 deposed, and every single one of them say this should have
3 been prevented with security. Every single one. Every single
4 one of them said fighting has occurred at the Meadows Mall
5 during these shoe releases and the mall should have known
6 better.

7 They are trying to profit from their own negligence,
8 because it's their negligence is the reason why Mr. Hawkins
9 has PTSD today. It's the reason why he takes severe
10 medications for pain, psychotropic medications for depression
11 and anxiety that affect his ability to remember. They're
12 trying to profit from their own negligence.

13 But, Your Honor, if you have any other questions,
14 let me know, otherwise I'll --

15 THE COURT: I do.

16 MR. CHURCHILL: Okay. Yeah.

17 THE COURT: If you don't mind.

18 MR. CHURCHILL: Absolutely.

19 THE COURT: You reference Detective Majors'
20 deposition.

21 MR. CHURCHILL: Yes.

22 THE COURT: And you're saying that he did not -- he
23 refused to give them to Attorney Barrus, is what I heard you
24 say.

25 MR. CHURCHILL: Correct. Yes.

1 THE COURT: Do you have a copy of your opposition to
2 defendant's motion to dismiss your exhibit you attached,
3 Detective Majors' deposition? Because when you saw me quickly
4 flipping back, because my recollection was that he did allow
5 it, but attorney -- I'm looking at page 15 and 16 for
6 reference in the opposition, if you want to take a quick --

7 MR. CHURCHILL: You know what, Your Honor, I left my
8 big binder downstairs.

9 THE COURT: Okay. Does defense counsel have any
10 opposition --

11 MS. RENWICK: Do you want mine?

12 THE COURT: Okay. You've got a copy? Okay.
13 Because here's what -- I mean, I'll read it to you, but...

14 MR. CHURCHILL: Sure.

15 THE COURT: Okay. Just a moment. I'm just going to
16 start at -- okay. So I'm at the bottom of page 14, starting
17 on line 21. It's okay. It's actually, "Question. Very
18 good." Line 20, "Very good. Thank you. Now, at the meeting
19 that Mr. Renwick and I had with you we discussed the facts of
20 the investigation, correct? That is true. And you turned
21 over those documents that you had previously listed as
22 documents turned over? Yes."

23 And now this -- we're now on page 15. Okay. "And
24 you also told us you had spoken to Attorney Jason Barrus,
25 correct? That is correct. And what did Mr. Barrus ask you

1 and what did you tell him? I believe I have his email, if I
2 can pull it up. Okay. Yes. Certainly at the time you need
3 to refer to your notes. This is not a memory test."

4 Now we're at line 13, okay, which on the key I was
5 trying to do the introduction what the Court read. Now I'm
6 looking at line 13. Okay. "Here's his email. Quote,
7 Detective Majors: Thank you for taking my phone call earlier
8 today." And it looks like this is the email, because it's
9 referencing the email from Barrus, right.

10 MR. CHURCHILL: Right.

11 THE COURT: "As we discussed, I am trying to obtain
12 a complete copy of the investigation file relating to the
13 Meadows Mall shooting involving my client, X'Zavion Hawkins.
14 It is my understanding there are voluntary statements and
15 photographs related to the investigation, but I have not been
16 provided those by the records department.

17 "I was told that the detective will grant a release
18 of that information, the records department will release those
19 items to me without the need of a subpoena. You stated your
20 investigation is closed and you have no problem releasing the
21 photographs and voluntary statements to my office at this
22 time. Please confirm by responding to this email and by
23 sending an email to the records department and photo lab of
24 your agreement to release those items at this time. I
25 appreciate your cooperation. Thanks. Jason." And it says,

1 "From Jason Barrus law office."

2 Next question on line 9, "And what was your response
3 to Attorney Barrus?" Line 11, "I had to talk to counsel and
4 sent one back saying, The case is closed and I give permission
5 to release this case file to Jason W. Barrus." I give
6 permission, and then so Mr. Barrus then -- and then the next
7 question, Line 15, "So Mr. Barrus then could have subpoenaed
8 those materials from metropolitan police department? Answer.
9 That's true."

10 Line 19, "Okay. When you and I met, did you tell me
11 you had turned over those materials to Mr. Barrus? Yes.
12 Okay. I gave him authorization to get it on his own. I did
13 not -- I didn't pick it up and make copies and give it to him.
14 I see. So in fact you gave him authorization," now I'm on
15 page 17, "So you gave him authorization, but he did not obtain
16 the materials? Answer. I don't know if he obtained them.
17 Okay. Very good. Now just one last thing about the meeting."

18 But that seems to say that the attorney was given
19 full authorization but never bothered to pick them up. Now,
20 is there --

21 MR. CHURCHILL: Yeah. And Your Honor --

22 THE COURT: I'm sorry. That was --

23 MR. CHURCHILL: Yeah. If I may.

24 THE COURT: I'm not trying to put you on the spot,
25 but that's very different than what I thought I heard you say.

1 Is there another portion of the deposition maybe?

2 MR. CHURCHILL: Yes.

3 (Attorneys confer.)

4 MR. CHURCHILL: Yeah. Give us one second.

5 THE COURT: So are we talking about two different
6 time periods maybe?

7 MR. CHURCHILL: We're talking about two different
8 people asking Officer Majors questions. When I asked him
9 questions it was very different than when Mr. Aicklen asked
10 him questions. But yeah, in --

11 THE COURT: Okay.

12 MR. CHURCHILL: Yes, absolutely.

13 THE COURT: Because when I read that honestly, and
14 then my other question is then -- and once again, I don't have
15 the jump drive that you all reference, but in your motion to
16 disqualify one of the largest issues were is that Paul Sherpt
17 [phonetic], when he was then at Eglet, met with Mr. Barrus and
18 Tracy Eglet in December 2014. If I'm off a little bit, I'm
19 doing this by recollection. I can look at the memo.

20 And then later -- now I'm going to look at
21 [inaudible], is the March 16, 2015 email that you attached as
22 Exhibit 4 to that motion, where the key lines that you're
23 referencing in that part was I spoke -- and it says, "Dear
24 Lloyd and Jason: I spoke to Jason this afternoon and
25 discussed some of the problems we see with liability in this

1 case. Although the client is very nice, a very nice young
2 man, unfortunately the police report," because I am intending
3 to accent the words police report, "creates a lot of issues
4 for us. As a result we are unable to represent X'Zavion in
5 this case. We will send him a letter and let him know this as
6 well. Thank you for thinking of us, et cetera."

7 Okay. So there it says police report and it talks
8 about liability, and then you also have Ms. Manke's affidavit
9 relating thereto, where it talks about the conversation with
10 Mr. Barrus and giving over the zip drive. So I must admit --

11 MR. CHURCHILL: Your Honor, we had --

12 THE COURT: -- that I'm a little --

13 MR. CHURCHILL: Sure. So let's --

14 THE COURT: -- confused.

15 MR. CHURCHILL: Yeah. We had a police report.

16 Okay. It was not -- but we did not have the complete --

17 THE COURT: Do you have the police report by chance
18 with you? Does somebody have -- I'm sorry I'm asking for it,
19 but if you were to say there's a police report that's
20 different --

21 MR. CHURCHILL: Very different.

22 MS. RENWICK: Electronic copy, Your Honor. I'm
23 happy to pull it up on my laptop --

24 THE COURT: So do we have what you actually got, and
25 then -- I'm sorry. The reason why I'm asking these questions

1 is because when I read these without all the -- I'm not
2 applying the law. I haven't been through this entire case.

3 MR. CHURCHILL: Yeah, I understand.

4 THE COURT: But it looks like you had this
5 information, or you -- and you had access to it because
6 Detective Majors says you can have it, and I say you meaning
7 your client, and your client's responsible for all of his
8 counsel.

9 MR. CHURCHILL: Yeah. So here's -- here's what we
10 have, Your Honor. This is what we had at the time.

11 THE COURT: Which time, just so I get time frames
12 chronologically?

13 MR. CHURCHILL: So like at the time for example of
14 even before the complaint was filed we were -- we were able to
15 get the police report, okay, which is very different than
16 Detective Majors' file. Detective Majors' file also had a
17 copy of the police report, but it had his investigation notes,
18 the people that he interviewed, the phone calls that he
19 received. There were people that called -- this was on the
20 news. The hotline, people called in on the hotline. He did
21 recorded statements. So we knew there was additional
22 information out there in addition to the police report,
23 because we did have the police report. But the police report
24 has no mention whatsoever of Ashley Christmas, Zachariahs
25 Berry. It doesn't mention -- it doesn't mention them at all.

1 It just focuses on what happened that night or that early
2 morning, you know, at 4:00 o'clock a.m. this is what happened.
3 It doesn't reference the interviews in the hospital, and there
4 were multiple interviews in the hospital, Your Honor. It
5 doesn't reference those at all. And so the key part was Jason
6 Barrus knew that there was additional information out there,
7 contacts Officer Majors, Officer Majors, please give it to me,
8 and he says, I can't, it would be a major dissemination
9 violation if I were to provide it to you. And he says,
10 Subpoena it. Okay. So what do -- what do we do? We get in
11 the case at that time, we subpoena it two times from Metro,
12 we're still never provided it. We're still never provided --
13 we requested --

14 THE COURT: Didn't you use the email that you got
15 back from Detective Majors where he says that he'll release
16 the file, and say, look, he's saying he's going to release the
17 file? I guess --

18 MR. CHURCHILL: He didn't. He said he would not
19 release the file.

20 THE COURT: So he lied?

21 MR. CHURCHILL: Yeah. There's another email.

22 THE COURT: That post dates this email?

23 MR. CHURCHILL: Yes, that comes after that. At
24 first he says -- he says, okay, I've closed my case, you can
25 have it, and then there basically says okay, you know. And he

1 says, I take it back, I checked with people, I can't give it
2 to you, it would be a major dissemination violation. And so
3 plaintiff's counsel was never able to get it despite
4 subpoenas, contacting Officer Majors. Should, you know, I
5 guess we could have followed up with --

6 THE COURT: Court intervention?

7 MR. CHURCHILL: -- court intervention. But the
8 truth of the matter is, Your Honor, plaintiffs were diligent
9 in attempting to get the information.

10 THE COURT: I'm not saying anyone's not. I'm just
11 trying to get a chronology here, because when I read these
12 documents it looks like you have it all, and what you're
13 explaining is that you don't, but I'm trying to compare that
14 with the evidentiary support and the record that I have.

15 MR. CHURCHILL: They will tell you we didn't have it
16 all. They got it in January 2016. We didn't get it until the
17 time of his deposition, which was, I think, March of 2016.

18 THE COURT: The February 25 deposition?

19 MR. CHURCHILL: Was it February 25? Yeah,
20 February 25 is -- if that was the date of Officer Majors'
21 deposition, then that's when we received it.

22 THE COURT: It's your Exhibit 10 to your --

23 MR. CHURCHILL: Yeah. That's when we received his
24 file with the recorded statements, all of those, all of those
25 things. We --

1 THE COURT: And you're saying your client never
2 disclosed to, without going to attorney-client privilege,
3 disclosed to any of his counsel any of these names?

4 MR. CHURCHILL: Yeah. Your Honor, can I read a
5 portion of the deposition?

6 THE COURT: Just give me a page reference so I can
7 just read along, if you don't mind. Sure.

8 MR. CHURCHILL: Yes. This is page 138, of Officer
9 Majors' deposition, and this is me asking him questions and
10 like I said, you're going to get very different answers
11 depending on who is asking the questions.

12 THE COURT: Sure. Go ahead, Counsel.

13 MR. CHURCHILL: Okay. So here's the question.

14 "Q It appears that you had emailed Mr.
15 Barrus that you could not provide him certain
16 documents because it would be a huge
17 dissemination violation?

18 "A Not without okaying it through legal.

19 "Q And you attempted to okay it through
20 legal?

21 "A Yes.

22 "Q And you were informed that it would
23 be a huge dissemination violation to give him
24 those documents?

25 "A As long as the case -- as long as the

1 case not active. As long as the case was
2 closed I could release it, which I authorized
3 in the email it could be released.

4 "Q But even then you said he needed to
5 follow up with a subpoena or court order?

6 "A Sure."

7 THE COURT: So how is that not releasing them,
8 saying he told Mr. Barrus to do something and he never --

9 MR. CHURCHILL: He said follow up with a subpoena,
10 which is exactly what we did two times.

11 THE COURT: You being your firm, when you took over
12 the case?

13 MR. CHURCHILL: Correct.

14 THE COURT: And did you attach the email or anything
15 so that...

16 MR. CHURCHILL: Yeah. I don't know if we attached
17 the email to the subpoena.

18 THE COURT: I'm talking a date time. Okay.
19 Mr. Barrus is out of the case before the complaint gets filed.

20 MR. CHURCHILL: Correct. Correct.

21 THE COURT: Because he's in the case from 2014 it
22 appears, then he --

23 MR. CHURCHILL: He originally referred it to the
24 Eglet firm.

25 THE COURT: In December 2014, which is referenced in

1 the prior record.

2 MR. CHURCHILL: And they had the case for a few
3 months and then it goes --

4 THE COURT: Three months, until March of 2015.

5 MR. CHURCHILL: Correct. Then it goes back to Jason
6 Barrus, and I don't know the exact date that he referred it
7 over to us, but it was very close in time to when the
8 complaint gets filed. The complaint --

9 THE COURT: Well, his communications with Detective
10 Majors would have been before March of 2015?

11 MR. CHURCHILL: Before March of 2015, yes. And so
12 Officer Majors is saying I can't -- so I approved it through
13 legal, but you still need to subpoena it. And that's what we
14 did. Two times we subpoenaed the information. We didn't get
15 it the first time, so we were even more detailed in the second
16 subpoena and I wish I had it for you, but I don't. But we
17 were even more detailed.

18 And by the way, what I'm telling you, defense
19 counsel's not going to disagree with what I'm saying right
20 now. They did the same subpoena and they were given the same
21 documents that we were given. So that was one of the problems
22 that we had, is Officer Majors was not cooperating with us.
23 Records, the records department, he's saying he's releasing it
24 to the records department, but the records department isn't
25 providing the records to us.

1 But the bottom line is, Your Honor, there's
2 absolutely -- there's absolutely no evidence, and there's
3 argument, but there's no evidence that X'Zavion Hawkins is
4 willfully violating a court order, willfully withholding
5 information. He tells them on page 7 of his deposition, it's
6 one of the first -- you go through the standard admonitions,
7 you know, at the beginning of the deposition, and that's one
8 of the very first questions he asked, what medications are you
9 on. He tells him I'm on these --

10 THE COURT: Counsel, I appreciate you're focusing on
11 the deposition. But where this Court's asking some questions
12 is given the number of counsel and given the in depth -- and
13 yes, I am referring back to some of the argument that was
14 within the motion to disqualify.

15 But given the depth of what you said that meeting
16 that took place where he gave all of his confidential
17 information and strategy and everything, you understand you're
18 asking the Court to say that -- to have the understanding that
19 it wasn't until February 25, 2016, after a complaint had been
20 filed, after all the discovery, et cetera, that you first
21 became aware of the name Ashley Christmas?

22 MR. CHURCHILL: That is the first time we became --

23 THE COURT: That your client never told you
24 anything? I mean, I'm not asking about attorney-client
25 communications, but I got Barrus, I've got Tracy Eglet, I got

1 Paul Sherpt, I've got you all speak -- oh, and Baker
2 [phonetic], right?

3 MR. CHURCHILL: Right.

4 THE COURT: I got five attorneys that the client
5 never said at any point in time the person that he went to
6 high school with, traded video games with, and yet he knew it
7 on only one date four days after while he's laying in a
8 hospital bed and doesn't know at any other point of time?

9 That's -- you understand that's a challenge for any
10 third party to appreciate that it's not just one lack of
11 recollection in February, it's complete with five experienced
12 attorneys, you know what I mean. And you have your
13 obligations under Rule 11 before you file a complaint, right.
14 And I'm not -- I'm just, you know, and you tell me there's a
15 very in depth discussion several hours, which is how you did
16 the motion to disqualify.

17 MR. CHURCHILL: Right.

18 THE WITNESS: With experienced counsels, you know,
19 not just one attorney. I got -- you told me there are three
20 attorneys there.

21 MR. CHURCHILL: Your Honor --

22 THE COURT: It's just a challenge for this Court to
23 fully appreciate that.

24 MR. CHURCHILL: And I can -- I can understand that
25 and appreciate your concern. I do.

1 THE COURT: They're all very good attorneys who ask
2 that as a basic question, you know, who did it.

3 MR. CHURCHILL: Always -- and I can only answer from
4 my experience, always referred to the person as Pooh Man,
5 never knew who the actual shooter was.

6 THE COURT: Then why isn't Pooh Man list -- it's in
7 the question, but why is there nothing about -- I mean, the
8 answer to Request No. 5 is, Plaintiff is without sufficient
9 information to either admit or deny. But we know who Pooh Man
10 is, right?

11 MR. CHURCHILL: Hold on. Let me --

12 THE COURT: And you know from your complaint shoot
13 him, Zach -- you know, get him, Zach. And shouldn't have that
14 one --

15 MR. CHURCHILL: No, Your Honor. This is a -- this
16 is perfect -- because Pooh Man is not the person who shot him.

17 THE COURT: Then why didn't you just deny it?

18 MR. CHURCHILL: Because he doesn't know who shot
19 him. I mean, that's the -- that's one of the problems.

20 THE COURT: But he said --

21 MR. CHURCHILL: He doesn't know. He believes the
22 person that shot him is named Zach. I mean, that's what he
23 tells the detective.

24 THE COURT: Yes. "Zach came up. He shot me up real
25 bad, man."

1 MR. CHURCHILL: Yeah. I mean -- okay. Your Honor,
2 let me ask you this. Legally is there any difference between
3 saying we're without sufficient information to admit or deny
4 therefore we deny, and just saying deny? Because the way the
5 question is, Admit that the person who shot you goes by the
6 name Pooh Man. And technically the answer's correct.

7 I mean, he's denying it because the reasonably the
8 person who shot him was not Pooh Man, it's not the person he
9 knew as Pooh Man. You know, could we have answered deny
10 instead of, yeah, sure. But there's no -- it's just like
11 answering the complaint, whether you deny or say, you know, we
12 don't have sufficient knowledge at this time therefore deny,
13 either way it's a denial. And it's -- the denial is true.
14 It's accurate.

15 If they would have asked admit that the person who
16 punched you was nicknamed Pooh Man, that would be an obvious
17 admit. Right. But that's not what's being asked.

18 THE COURT: Sorry. I didn't give you an opportunity
19 to fully -- that was just a couple of my questions. I thought
20 you --

21 MR. CHURCHILL: No, I appreciate -- I appreciate the
22 questions and I appreciate your concern. And, Your Honor, I
23 mean, frankly, I've got the same concern. And you better
24 believe I wish I had this information long before I got it
25 despite me sending two subpoenas to Metro to get the

1 information.

2 But this has -- candidly, my client's PTSD and the
3 things that he's experiencing, they're a challenge. I mean,
4 they're a challenge for an attorney, even experienced
5 attorneys. It's a challenge. But at the end of the day, Your
6 Honor, that's why we have finders of fact. I mean, that's why
7 we have juries. The jury will be instructed you can disregard
8 his entire testimony if you don't believe he's telling you the
9 truth, but at the same time, misrecollections happen and
10 that's common, and that's what the jury's instructed.

11 But going back to my argument before, Your Honor,
12 there's no -- there's absolutely no violation of a court order
13 in this case. Compared to Young, the Nevada Supreme Court
14 said that the verbal, the verbal order of the court to Mr.
15 Young to clarify his responses and then his refusal to do so
16 is violation of an order. We don't have that here.

17 In fact, Your Honor, long before you were involved,
18 before this hearing, Mr. Hawkins on his own before being
19 ordered to do so clarified his responses. That's what he --
20 that's what if Young would have done that, would his case have
21 been dismissed? The answer is no. The court gave him a
22 chance to clarify, to recant or to clarify, he refused to do
23 so. That was the violation of an order pursuant to NRCP 37.
24 Before this Court or any court ever issued an order to Mr.
25 Hawkins regarding this, on his own he clarified his deposition

1 responses.

2 Let me just touch on counsel argued deprivation,
3 that they've been deprived of the chance to find these people.
4 Your Honor, it's a hollow argument for several reasons. To
5 begin with, Detective Majors has known about the real names of
6 Ashley Christmas and Zachariahs Berry since August of 2013.
7 Guess what. He hasn't been able to find them either.

8 Number two, they did amend their complaint to name
9 these people. They did so timely, right, within the court --
10 the Court gave them a deadline --

11 THE COURT: You objected --

12 MR. CHURCHILL: -- to amend. So they had this
13 information with sufficient time to amend their answer and
14 bring a third party complaint, which they did. And the truth
15 of the matter, Your Honor, is this. They knew about
16 Zachariahs Berry, his name long before plaintiff ever did.

17 THE COURT: How?

18 MR. CHURCHILL: From Officer Majors.

19 THE COURT: Mr. Fleming, but -- I'm sorry. And once
20 again, this -- didn't you tell me Mr. Fleming's -- was part of
21 your questioning of your client was that, because your client
22 has said that officer -- Detective Majors brought forth
23 Ashley's name, right?

24 MR. CHURCHILL: Right.

25 THE COURT: Ashley Christmas's name rather than

1 himself. And I thought you said in your cross examination
2 here clients, cross, slash, direct, you all were kind of --
3 asked him if he had spoken with, was it -- I want to get the
4 name correct. Is it Fleming or Phillips?

5 MS. RENWICK: Fleming.

6 MR. CHURCHILL: Peter Fleming.

7 MS. RENWICK: Patrick Fleming.

8 MR. CHURCHILL: Patrick Fleming.

9 THE COURT: Mr. P. Fleming. Okay.

10 MR. CHURCHILL: Yes.

11 THE COURT: Mr. P. Fleming. Okay. And who is
12 Mr. Fleming?

13 MR. CHURCHILL: Mr. Fleming is Mr. Hawkins' cousin.

14 MS. RENWICK: Uncle.

15 MR. CHURCHILL: Uncle?

16 MS. RENWICK: Uncle.

17 THE COURT: Okay. A relative of Mr. Hawkins.

18 MR. CHURCHILL: Yes.

19 THE WITNESS: Easily accessible by Mr. Hawkins and
20 his counsel.

21 MR. CHURCHILL: Not -- unfortunately that is not the
22 case. He is since deceased.

23 THE COURT: But he wasn't deceased in -- at the time
24 of the incident, right?

25 MR. CHURCHILL: Correct.

1 THE COURT: When did Mr. Fleming pass away?

2 MR. CHURCHILL: I don't know the date, but it's
3 been -- it's been quite some time. I think well over a year.
4 But I don't know the --

5 THE COURT: But he knew Zachariah Berry and Ashley
6 Christmas's name and he never told Hawkins or his counsel
7 before filing a lawsuit, or told any of his attorneys or no
8 one interviewed him?

9 MR. CHURCHILL: Your Honor, you know, under --

10 THE COURT: And you knew he was a witness and that
11 he'd given a police statement?

12 MR. CHURCHILL: He did not give a police statement.
13 He spoke to --

14 THE COURT: Spoke to Detective Majors is what you
15 assert.

16 MR. CHURCHILL: -- Detective Majors. The problem is
17 he told Detective Majors, "I will never come forth and
18 testify, but these are the people's names."

19 THE COURT: And you know that because of how?

20 MR. CHURCHILL: It's in Officer Majors' deposition.
21 Because he's --

22 THE COURT: That's probably why --

23 MR. CHURCHILL: Let's just say he's a colorful -- he
24 was during the time of his life a colorful character himself.
25 But he -- but that's in his -- in Officer Majors' deposition

1 that this particular gentleman would -- he would not come
2 forth to testify, but he said these are the people's names.
3 But, Your Honor, if --

4 THE COURT: But none of the five attorneys ever --

5 MR. CHURCHILL: Ever spoke to this man, never.
6 Never had the chance.

7 THE COURT: You didn't speak to Ms. Love and didn't
8 speak to any --

9 MR. CHURCHILL: I spoke to Ms. Love. Did not
10 know -- did not know -- she as well said she didn't know --
11 she only knew him as Pooh Man. And that's in her recorded
12 statement. It's in her written statement. It's in her
13 deposition frankly.

14 THE COURT: No one bothered to talk to Mr. --

15 MR. CHURCHILL: No one talks to Mr. Fleming. And
16 like I --

17 THE COURT: Mr. Hawkins has this distinct
18 recollection in 2016 of talking to Mr. Fleming before he
19 talked to Detective Majors back in --

20 MR. CHURCHILL: I don't believe that's what he
21 testified today.

22 THE COURT: But you asked him whether he talked to
23 anyone.

24 MR. CHURCHILL: Yeah. Your Honor, I --

25 THE COURT: So that means at some point he had a

1 recollection today of talking with Mr. Fleming, because as
2 counsel you definitely do not put words in his mouth, so it
3 had to come from his own independent recollection, unless he's
4 reviewing a document, but no one told me he was reviewing any
5 documents, so how does that --

6 MR. CHURCHILL: Let me put it in --

7 THE COURT: And I'm sorry I'm putting you on the
8 spot, but, you know, these are key factors. This is a motion
9 to dismiss.

10 MR. CHURCHILL: Yeah. These are appropriate
11 questions.

12 THE COURT: And basically it's like everyone's
13 saying that nobody found out until 2016 on a case that's filed
14 in 2015 involving something that you both assert had high
15 media attention, high issues and things like that, and that is
16 a challenge.

17 MR. CHURCHILL: The first time I ever heard the name
18 P. Fleming was from Detective Majors. The first time ever.

19 THE COURT: Today on the stand?

20 MR. CHURCHILL: What's that?

21 THE COURT: Or at his deposition on February 25?

22 MR. CHURCHILL: At his deposition in February.
23 That's the first time we had ever heard of him, ever. And at
24 that time he was deceased. For certain he was deceased at
25 that time.

1 THE COURT: It would be interesting to see what
2 your 16.1 disclosures look like to see if there's any names on
3 that, because the diligence required [inaudible] 16.1
4 disclosures. But anyway, that's not [inaudible].

5 Okay. Thank you. That was all my questions. Did I
6 give you an opportunity to finish?

7 MR. CHURCHILL: Yeah, Your Honor. That's -- but
8 that's pretty much it. There has been no violation whatsoever
9 of any court order and Mr. Hawkins in fact already rectified,
10 before any sanction could even be imposed upon him, he had
11 already rectified his deposition responses.

12 THE COURT: Okay. Thank you so much. You get last
13 word. It's your motion, or your joinder, whoever's speaking,
14 or if you both speaking, let me know.

15 MS. RENWICK: Your Honor, I would just like to make
16 a point of clarification before counsel gets up to respond.
17 There's been numerous implications that we received this
18 information and somehow were preventing plaintiff from
19 accessing it. I can tell you we met with Detective Majors. I
20 called, found out who the investigating officer was. As
21 counsel mentioned, both parties --

22 THE COURT: His depo is clear. There was no
23 insinuations you all engaged in any inappropriate conduct or
24 anything.

25 MS. RENWICK: Both we did subpoena records and there

1 is -- our understanding is that the files are separated. So
2 the investigating officer's records aren't part of the file
3 that was in records, which is why we kept getting the same
4 documents again and again and not getting Detective Majors'
5 file.

6 We were told that in order to speak to Detective
7 Majors we would have to subpoena him, which we did. We
8 scheduled a meeting. As we related to counsel, we met with
9 him. It was January 28. At that point he turned over the
10 voluntary statement, the transcriptions of the voluntary
11 statements and the audio recordings. At no point did he give
12 us his entire file.

13 He brought his file with him to his deposition, at
14 which point it was attached as an exhibit to the deposition
15 transcript. So I want to make that very clear. And if you'll
16 review in the deposition transcript that you were just looking
17 at for Detective Majors as to the timeline, it's on page 140,
18 when we were talking about those emails back and forth to
19 Jason Barrus.

20 THE COURT: Oh, thank you. Okay.

21 MS. RENWICK: Page 140. It was September of 2014.
22 I believe September 25. That was the exchange with Jason
23 Barrus as to obtaining the file.

24 THE COURT: Thank you.

25 MS. RENWICK: Just so you have the -- I know

1 timeline was an issue.

2 THE COURT: Well, no, I appreciate it, because
3 that's -- you know, I don't know what happened ever to the zip
4 drive, but...

5 DEFENDANTS' REBUTTAL ARGUMENT

6 MR. CARRANZA: Your Honor, and I know we've talked a
7 little bit about Rule 37 at length, about what it requires and
8 whether or not there was an order that preexisted. But if I
9 remember the motion to dismiss correctly, it was multi-tiered
10 as far as the basis that this Court has at its disposal to
11 dismiss this complaint.

12 In addition to Rule 37, there's also this concept
13 that the Court has the inherent control over its own docket
14 and calendar to manage its calendar in cases as it sees fit.
15 I think that's memorialized in Rule 1 of our Rules of Civil
16 Procedure.

17 And the argument in the motion was that in addition
18 to Rule 37, this Court could also look to the unclean hands
19 that Mr. Hawkins came to this Court with by engaging in the
20 type of activity that he engaged in, because all we've seen
21 here is nothing but convenient explanation by Mr. Hawkins that
22 somehow he was having a bad day when his deposition was taken
23 in February on every topic that could have painted a different
24 picture about his case. But on those topics that supported
25 his case, he was crystal clear on.

1 I got to tell you, in my review of his deposition on
2 that day, he must have testified a dozen times that he called
3 out for security. That he remembers clearly apparently in
4 February of this year, despite the PTSD that he's suffering.
5 I'm not minimizing the fact that this young man was shot eight
6 to nine times. But what I'm trying to emphasize is that he
7 has hidden at every step of the way his involvement, if not
8 his instigating and escalating of that confrontation. And he
9 did it intentionally, Your Honor.

10 And whether there's an order under Rule 37 or not,
11 the notion that he does that type of -- that he's willing to
12 go to those lengths and apparently, according to Detective
13 Majors, is echoed by the activity and statements by his mother
14 at the hospital telling people not to cooperate with the
15 police officers.

16 THE COURT: Which I can't take into consideration.

17 MR. CARRANZA: And it was echoed by counsel just a
18 few minutes ago about Mr. Fleming and how colorful he was and
19 how he told Detective Majors in no uncertain terms that he
20 wasn't going to help. I think we need to drive home a point
21 with Mr. Hawkins and all litigants, going back to the Ribeiro
22 factors, that this isn't the type of conduct that we're going
23 to condone in Nevada's judicial system.

24 If you're going to bring a case to this court and
25 avail yourself of the court's resources to try to make

1 yourself whole, then you have to come to the court with clean
2 hands. You have to play your part in the judicial process.
3 You have to be truthful and honest, even under circumstances
4 where being completely truthful and honest may not benefit
5 you. You can't engage in this type of systematic concealment,
6 if not outright fabrication and lying for your convenience.

7 We touched a little bit about recanting and whether
8 or not Mr. Hawkins had the ability to recant or the
9 opportunity to recant. He did, Your Honor. In September of
10 2015, he submitted written discovery responses which were
11 inaccurate and untrue. When he was -- and he did those under
12 oath. When he was re-asked similar questions at his
13 deposition under oath, he did not recant. He chose to
14 continue down that road and try to paint the picture that
15 wasn't accurate, and he didn't do that for fun. He did that
16 so he could benefit financially at the end of the day as part
17 of this case.

18 And so on that, Your Honor, we'd submit. But we
19 think that this is the exact case that both Rule 37 and this
20 Court's inherent power authorize you to dismiss the lawsuit
21 based on his activity, and we'd ask that you do so. As
22 difficult decision as it may be, we think this case
23 warrants it. Thank you.

24 THE COURT: Okay. Thank you so much. Well, you're
25 all familiar with the recent Nevada Supreme Court decision in

1 Rish, right, and the hard standard...

2 Here's what the Court's inclined to do, and I'll
3 give you both a moment or two if you want a last word on it.
4 The Court's inclined really to issue some lesser sanctions at
5 this juncture and defer for more serious sanctions when more
6 things get flushed out. And I appreciate you do have a trial
7 date on the by week stack in November.

8 And here's the reason why that's the Court
9 inclination, is the Court is familiar obviously [inaudible]
10 but it's not the first time you know Johnny Ribeiro factors.
11 The fact that there was not some action to try and seek
12 further responses is a factor the Court has to look at when
13 it's looking at the willfulness aspect. I also have the
14 willfulness aspect statements by Mr. Hawkins not only in his
15 deposition, but on the stand as well that he has difficulty
16 remembering.

17 In both of his depositions he did say that he was on
18 medication. He says he has difficulty remembering now. At
19 the same time, looking at the chronology of documents I have
20 before me, including everything that's properly before me,
21 okay, it paints a chronology that is very challenging to find
22 is realistic that somehow, and particularly with the
23 clarification of the September 2014 date, that somehow when
24 counsel's offered to, back in September 2014, to get
25 information, doesn't pursue that information, that somehow Mr.

1 Hawkins never discloses to any of five different attorneys,
2 all very experienced attorneys, the name of the person, but
3 yet he clearly remembers and says it multiple times.

4 And then nobody follows up on who this Zach may be,
5 and yet it shows up in his complaint. Combine that. So at
6 least the time of the complaint, at the time supposedly when
7 all the aspects of liability were discussed in December 2014,
8 which prompted the DQ. So I have to take all sworn statements
9 by counsel at their word that there was some substantive
10 conversation and full on discussion of the merits of the case.

11 And it is somewhat incredulous to believe that no
12 one would ask, you know, do you know him by any other name,
13 but yet he was so readily able to do it or to somehow -- and
14 when I have clear statements that say police report and
15 liability, that somehow that has nothing to do with
16 understanding who these individuals were.

17 And then the clear deposition, not answering -- the
18 clarity in some of his answers and lack of clarity in other
19 answers is quite a challenge to say that that is all
20 inadvertent and lack of memory on certain topics, but yet
21 clarity of memory on other topics. But once again, those type
22 of issues really are going to go to a trier of fact. The
23 Court has to look at them in a general sense for this because
24 it's part of the factors I need to look at to determine what
25 sanctions if any would be appropriate under either Rule 37 or

1 the Court's inherent discretionary powers. But it is quite a
2 challenge.

3 And then when I look at the request for admissions,
4 you know, he denies admit you know the name of the person who
5 shot you. Well, it shows up in the complaint and it showed on
6 the complaint the Zach, get him. And so not to have
7 [inaudible] the complaint have any recollection that somehow
8 this was a Zach or that he thought it was Zach, didn't know a
9 last -- last name unknown, you know.

10 Because it's also inconsistent because he knew and
11 was able to clearly say today that he knew it wasn't Pooh Man
12 or Ashley Christmas or PMG, you know. So for him not to know
13 that at the time of a request for admissions is somewhat
14 incredulous [inaudible]. I got counsel -- over now my copy
15 doesn't -- then I verified interrogatory responses, which was
16 the man, the person who shot you and it lists the name, you
17 know what I mean. Those looking in internally are
18 inconsistent, and then he verified these.

19 So those present challenges. And there's clearly
20 issues here which render some type of sanction. The question
21 becomes what is the appropriate sanction. I mean, part of a
22 sanction that the Court could at this juncture think of is
23 that -- oh, excuse me.

24 And then I also have to add that as counsel admits,
25 it was when he showed him the police report he makes -- well,

1 it was referenced as 38, I didn't count the number, but it was
2 referenced as being about 30 substantive changes to his
3 deposition. Well, but yet there's no modification at that
4 time of the prior discovery responses provided, and there's no
5 information made available, and there is nothing that is done
6 at the same time to balance the prejudice with defendants, and
7 defendants --

8 Well, Zach's listed in the complaint obviously as of
9 September somebody knew about a Pooh Man, so when you did the
10 discovery you could do at the time based on the information
11 you had, but at least since January 2016, this being July,
12 allow the two other individuals come into the case. So that
13 was partly a curative.

14 The fact that they no longer exist I don't really
15 see as prejudice to defendants, because Detective Majors in
16 Exhibit 10 attached to the opposition stated that he at the
17 time tried to locate those individuals. And so them not being
18 able to be located by civil attorneys on behalf of a client
19 when the police officer's having difficulty doing so doesn't
20 necessarily seem like it's a prejudice if you knew the names
21 earlier.

22 It is concerning the lack of follow-up back in 2014.
23 I'm not saying for current counsel, but when the very
24 detective says, look, you can have it, just send a proper
25 subpoena, you know what I mean, you've got an email that says

1 that, then that's kind of a challenge, why it has to wait
2 until it gets turned over to new counsel, two new counsel down
3 the road. And then I don't know if you sent it with the email
4 or not when you sent the information.

5 But totality of the case, totality of listening to
6 all the witnesses, taking into account -- because I have
7 concern about whether or not the witness' lack of memory is
8 due to medical issues, which everyone admits he did say at the
9 time of his deposition that he was on different medication and
10 would have some challenges.

11 Now, he didn't clearly say which times he had
12 challenges, if he had it on a couple times, should have said
13 it potentially on more, or at least according to plaintiff's
14 viewpoint. An inexperienced individual having a deposition
15 taken for the first time it's not so unusual.

16 So remedy, what's the right remedy? I could
17 definitely see a lot of impeachment in Long's allowing the
18 full, you know, deposition, [inaudible] deposition, and then
19 what was his change and that, you know, an admitted statement
20 that he only made those changes after discussion with counsel
21 showing him all these inconsistencies and pointing out the
22 differences in the admissions and the differences in the
23 interrogatory from a --

24 So I can definitely see some type of jury
25 instruction that can be crafted closer to the time of trial,

1 if this case goes to trial, that would address all of these
2 and the harm and the prejudice. I could also see if it was a
3 curative if you all needed extended time for discovery. I
4 know you've done one extension, but you didn't request that
5 the trial dates be continued in your one discovery request to
6 discovery commissioner. So I could see continuing the trial
7 to allow some additional discovery. I could see that as also
8 a potential partial curative.

9 Monetary sanctions for the cost of today, the other
10 thing I'm looking at, because but for your client's conduct
11 and the manner in which it was done, today would not have been
12 necessary. And I think that financial aspect of allowing
13 defense counsel --

14 And unfortunately for you, you got two sets of
15 defense counsel, but that's the way it is. Nothing negative.
16 I'm just saying you sue multiple people, you get multiple
17 defense counsel.

18 -- is to allow them to submit fees and costs for
19 today's hearing, have you have an opportunity to review it and
20 have the Court evaluate it, whether or not, you know, fees and
21 costs sanctions would be appropriate for today's hearing with
22 regards to your client, because there is very strong concerns.

23 And I think those alternative remedies short of
24 dismissal would be appropriate. That's the Court's
25 inclination. You're the moving party, you're plaintiff, I can

1 see first moving party in joinder if you have any position,
2 and then I'm going to ask plaintiff. If not, I'm going to --
3 there is no position, I'll turn the inclination into an order.
4 If you wish to be heard further, feel free.

5 MR. CARRANZA: Can we have a couple minutes?

6 THE COURT: Of course you may.

7 MS. RENWICK: Thank you.

8 MR. CARRANZA: Maybe take a break for everybody?

9 THE COURT: Sure. Let's take a brief break. It's a
10 few minutes before -- it's -- come back what, about five of
11 4:00, does that work for you? Do you need that much time?

12 Okay. If you all want me to defer ruling and you
13 all wanted to go to a mandatory settlement conference, there's
14 always another option there too.

15 MR. CARRANZA: We'll think about that as well.

16 (Court recessed at 3:44 p.m. until 3:58 p.m.)

17 THE COURT: Counsel, we're back from the break. Go
18 ahead, defense counsel.

19 MR. CARRANZA: We are, Your Honor, and we've had an
20 opportunity to discuss the three different prongs of the
21 remedy that you've proposed. Although it's not our preferred
22 remedy that we were looking for today, we think that we might
23 be able to work with the three prongs that you've proposed and
24 wanted to discuss those with you a little further. Did you
25 have a time frame in which you wanted the defense side to

1 submit their fees and costs related to today's hearing?

2 THE COURT: I was -- I usually leave that up to the
3 parties, because I don't know what else is going on currently
4 in your schedules.

5 MR. CARRANZA: Did you want that as part of a formal
6 motion, or are we just to submit that?

7 THE COURT: I always give the opposing side an
8 opportunity to review it.

9 MR. CARRANZA: We can do that.

10 THE COURT: It would be similar to a, you know, a
11 motion -- it's almost like a memorandum of costs and fees and
12 then, you know, a retaxing. But it basically would be I'd
13 give you a date in which you can submit. I would give
14 opposing counsel a date by which they could oppose. And then
15 the Court could either set it in chambers or if you all wish
16 to come in person I could set it in person.

17 MR. CARRANZA: Right. And could we get those --

18 THE COURT: And then of course it has to articulate
19 to Brunzell, you know --

20 MR. CARRANZA: Absolutely.

21 THE COURT: -- factors as well as factors for today.

22 So what I was looking, you know, three things.

23 Three things I'm looking at either in combination --

24 MR. CARRANZA: Yes, please.

25 THE COURT: -- or alternatively, et cetera. So I

1 need to get each person's viewpoint on that if you wish to be
2 heard on that.

3 MR. CARRANZA: Yes. Collectively if the three
4 prongs that you articulated I think are acceptable on the
5 defense side.

6 MS. RENWICK: They are, Your Honor.

7 THE COURT: Plaintiff's counsel.

8 MR. CHURCHILL: Your Honor, I don't -- I think -- I
9 made some notes. So the curative jury instruction, I would
10 say that should not, certainly not be included. And the
11 reason why I say that is there's already a jury instruction
12 that instructs the jury that if they don't believe his
13 testimony they can disregard it entirely. So I mean, that --
14 it doesn't get more curative than that. I mean, you're
15 telling a jury you can -- you're already telling a jury you
16 can disregard everything this man has to say because
17 they're -- you know, if you don't believe him, disregard
18 everything. So that, I think that's a curative instruction
19 that is plenty sufficient.

20 In terms of allowing impeachment on the -- on his
21 changes, I think the client's always understood that he's
22 going to have to explain why he made the changes and the time
23 frame and how it came about that he made the changes and, you
24 know, I think he already understands that. And so I mean,
25 that would be the one that I think would be most fair.

1 In terms of monetary sanctions, Your Honor, I would
2 simply argue this. He has not violated a court order. He
3 cured his errors on his own absent court intervention.

4 THE COURT: But he hasn't done it -- it violated by
5 timely supplementing any responses to any discovery once new
6 information, so that has been violated. I've got concerns
7 about 16.1 violations, and I do have concerns that he has
8 unnecessarily exacerbated the litigation proceedings by those
9 necessitating to date --

10 Well, the first hearing, I was giving you a pass on
11 the first hearing because it combined DQ with this, and I
12 wasn't going to have that one because [inaudible] argued that,
13 you know, that was a smaller portion. You had the full day
14 today for today's hearing. So but today's hearing's all about
15 conduct that would not have had to have happened but for your
16 client's actions.

17 And it's not just the depo. They brought up the
18 depo, the admissions, the interrogatories, and a failure to
19 disclose information that he had readily available, which is
20 part of his 16.1 obligations. You all have told me that these
21 names aren't in the 16.1.

22 MR. CHURCHILL: Which --

23 THE COURT: Is Ashley Christmas and Zach, or Zach
24 last name unknown or is Zach in any manner referenced in 16.1
25 or any supplemental 16.1?

1 MR. CHURCHILL: Your Honor, they are -- well, in the
2 supplementals they -- they may be, but not in the initial.
3 Certainly not in the initial. But, Your Honor, candidly,
4 nobody knew Zach Berry's name until January of --

5 THE COURT: Zach last name unknown?

6 MR. CHURCHILL: Yeah.

7 THE COURT: That could be, right? That's a
8 designation.

9 MR. CHURCHILL: I suppose that it could be. But,
10 Your Honor, to be fair, we don't know, the client doesn't
11 know, Detective Majors doesn't know who shot him. I mean,
12 nobody -- he couldn't identify the person and he doesn't know.
13 There is -- there is he heard Zach, but that doesn't --

14 THE COURT: Zach -- Counsel, what I'm looking at is
15 directly the transcript on page 1. "Zach came and he shot me
16 up real bad, man. I was on the floor. I thought all this was
17 gone the way he shot me. I thought all of this was gone like
18 for real, for real. Now I don't even think there was more,
19 blah, blah, blah. Metro appeared."

20 Okay. So I'm taking from his own statement Zach
21 shot me. And since he denied that Pooh Man shot him and
22 then -- okay.

23 MR. CHURCHILL: Yeah, Your Honor. He's --

24 THE COURT: So and he's identified and you've heard
25 it and saw it, and then --

1 MR. CHURCHILL: He could not identify Zach is what
2 we're saying. He knows a name of Zach, but it's not a person.
3 He can't identify a person.

4 THE COURT: I think you and I may be speaking or --
5 a little bit differently. Identify meaning he had some
6 information, whether it be the name of the individual. I'm
7 not talking about a physical description. And even a Zach
8 last name unknown, or a spelling unclear happens all the time
9 in 16.1 disclosures. It happens all the time in a variety of
10 other obligations, because to at least put them on notice from
11 the very beginning.

12 You knew that there was a Zach at the time you filed
13 the complaint, because there's a Zach involved. It may not
14 have -- it didn't matter if it was the shooter or not, but
15 reasonably Zach, get him means that Zach was there, Zach is a
16 witness, 16.1 obligations [inaudible] right, witnesses. So at
17 least if he even had a Zach last name unknown, which I
18 understood --

19 Now, if you're telling me that that's incorrect,
20 that he is designated, then that portion would be different
21 and I'd reconsider for that portion of it. But I thought you
22 all told me that neither -- and even Pooh Man wasn't on your
23 16.1 disclosures.

24 MR. CHURCHILL: I don't believe so. But, Your
25 Honor, it cuts both ways. I don't think it's on theirs

1 either. I don't think it's on theirs either, and they had the
2 same police report that we had. They had the exact same --
3 and when I say the police report, I mean the initial report,
4 not the supplemental stuff that we got from -- in other words,
5 it's the exact same conduct. Plaintiff shouldn't be
6 sanctioned for it any more than they should.

7 THE COURT: Which is a totality plus in all honesty,
8 Counsel, he's your client, your -- I appreciate you're telling
9 the Court and I, as an officer of the court, that at no point
10 your client ever disclosed to you anybody else who was
11 involved in it, right?

12 MR. CHURCHILL: Right.

13 THE COURT: But you've told me that even when you
14 spoke with Keisha Love, I believe was her name, the cousin who
15 was there present, the young minor female, that she knew him
16 as Pooh Man. Pooh Man's not on the 16.1 represented, and Pooh
17 Man should have been on the 16.1, because you knew from Keisha
18 Love.

19 Then you also have the police report, which at least
20 I have clear evidence you all have from back before the
21 complaint was filed because of the exhibits that you attached,
22 the email -- particularly not only the affidavits of
23 Mr. Barrus, the affidavits of Ms. Manke, and the
24 communications between Paul Sherpt and Mr. Barrus, right, all
25 say that?

1 MR. CHURCHILL: Yes.

2 THE COURT: Okay. So you're telling me all these
3 weren't given, that would at least give some information that
4 goes to their prejudice and harm. Okay. They can't assume --

5 I mean, if you take a car accident case, right, if
6 your client's the one in the second car, do they really know
7 who the passenger is, if there was a passenger? So you kind
8 of have to give that name over to defendants, rather than
9 defendants have to figure out if the passenger's on 16.1.
10 That's -- all that information would be in your clients,
11 because you needed all that information under Rule 11 to have
12 filed a complaint, to have done a diligent inquiry. That's
13 the reason there is a distinction there.

14 Okay. And plus, I also have a clear thing from
15 Detective Majors and it was clarified as mentioned, I think
16 page 140 is where the clarification was, that it was September
17 2014. But on pages 15 and 16, and even with the clarification
18 by your questioning, later on 158, 156, 158, I'm pretty close,
19 in his deposition he also says pursuant to that email that --
20 that Attorney Barrus, no one's saying -- I'm not saying
21 attorney's issues, but this is all your client's
22 responsibility, right, could have gotten that file.

23 Now, whether or not, and I appreciate the fact that
24 you tried to subpoena it a different way, through records or
25 whatever, but it was offered there. It'd be very hard pressed

1 to say -- I mean, that's a part of the due diligence from the
2 information and that your client would have had some of that
3 knowledge, and to all the sudden have the knowledge
4 miraculously on February 25 and not have had it anyways
5 before, after this evidentiary hearing, the evidence lies in
6 favor of the defendants that that's not...

7 So that's the basis of the sanction. I'm trying to
8 give him full consideration as much as possibly can within the
9 realm of more than reason of his selective lack of memory.
10 I'm not a medical provider. I'm in no way trying to say that
11 it doesn't happen. I'm saying the totality of all these
12 different things. You've got the written discovery too.

13 See, that's the thing. Written discovery is not
14 only attorney product, but speaking with the client and I've
15 got verifications. So that has all the time in the world --
16 well, not all the time in the world. It's got 30 days to
17 respond to it. It's not a single day incident. So I have to
18 take that totality.

19 So even if he was nervous at the deposition, even if
20 he was on medication that one day, when responding to you all
21 he had the obligation to provide you as counsel accurate
22 information, to respond to written discovery, and he had
23 plenty of time to do it because no one's presented to me
24 anything different.

25 And then even afterwards, if he found the

1 information he had an obligation to supplement that to provide
2 the information to defendants. That's where I see the large
3 difference. And we're not talking just -- 16.1 is kind of
4 like the little small itty-bitty thing, you know what I mean.
5 It's [indicating].

6 MR. CHURCHILL: Your Honor, I think all of the
7 written discovery as the questions are asked are still
8 technically true. The way they ask the questions --

9 THE COURT: So here today he said -- well, I --
10 giving it the most generous reading possible, I don't see it
11 that way. It's simply -- there is -- well, discovery is not
12 to be, quote, minuscally, potentially, technically, subtly,
13 you know. It's supposed to -- discovery is supposed to
14 provide the information to allow each side to fully prosecute
15 and/or defend their case.

16 And it's very hard pressed as you stand here today
17 that the -- he said on various times Zach. Whether it's Zach
18 last name unknown, he didn't have to know the last name,
19 didn't know it was Zach or Zachariah, but he knew a Zach shot
20 him because he said so, and it's yet not in his written
21 discovery, and it's not supplemented in any manner. It's
22 cause for exacerbation of these proceedings, and that's why I
23 think the monetary sanction is really important.

24 As far as the jury instruction, the jury
25 instruction, I have to see how things are fleshed out. I'm

1 trying to give your client the most possible benefit of the
2 doubt with regards to the memory issues that I couldn't take
3 into it -- I took into memory issues in a general sense based
4 on his testimony. But I could not take into account an expert
5 report because of all the objections properly related with
6 regards to that expert report. By the time of trial that may
7 look better or worse for one side or the other. That's why
8 I'm deferring with regards to a potential jury instruction,
9 because I have to have things fleshed out. But in fairness to
10 defense counsel, I can't pretend like none of this happened,
11 and so part of that may have to be rectified at the time of
12 trial so that the trier of fact has the appropriate
13 information consistent, and whether you considered it similar
14 to like a Bass Davis instruction, it falls within Johnny
15 Ribeiro. Jury instructions usually [inaudible] you know, and
16 a whole plethora of Nevada Supreme Court cases that I could
17 cite ad nauseam, but it's getting late.

18 That's -- I'm trying to give you [inaudible] as much
19 leeway as possible. There is strong concerns here. And then
20 even the fact that he made these after speaking with --
21 there's nowhere disclosed even on these, you know, this
22 declaration under penalty of perjury, That I have read the
23 entire transcript taken in the captioned manner, and say that
24 except for the changes and corrections, if any indicated, you
25 know what I mean, with the understanding I offer these changes

1 as if they were still under oath.

2 I mean, these -- it's an interesting challenge with
3 these changes, because as you acknowledge, you show him
4 something that disputes all this stuff, and so then he makes
5 changes? That's not him making changes based on information
6 that he first become aware of. It's presenting the document
7 that's totally inconsistent with what he said in several areas
8 of his deposition, and then he makes vague statements with
9 regards to that, you know.

10 And whether that's recollection refreshed, I take
11 it, you know, all with giving him the full benefit of the
12 doubt, but this exacerbates our proceedings. Okay. So and
13 that's fully taking and reading all the depositions that you have
14 provided me, everything that everyone's provided me,
15 affidavits, you name it.

16 So does that address -- I know you don't actually
17 agree with my ruling, but does that at least address the
18 questions you have?

19 MR. CHURCHILL: Yes.

20 THE COURT: Anymore questions on this side? Okay.
21 So to answer you directly, I'm going to direct defense counsel
22 to prepare my order. I think it's what makes the most sense.
23 You all generally can work out some dates that meet your needs
24 with regards to opposing, you know, the costs or the fees for
25 today.

1 All right. Because and when I say costs, I just
2 meant like subpoena costs. Okay. Because I presume there was
3 a subpoena costs, maybe there wasn't. But the fees for today,
4 give you an opportunity to review it and then just put in the
5 order whether or not you're going to request a hearing or
6 whether you just wish to be placed on a chambers calendar on a
7 Friday after you all submit it.

8 I think that probably gives you an opportunity to
9 speak among yourselves on what meets your schedule needs,
10 rather than giving you dates right now. If you want me to
11 give you dates right now I can. But oftentimes you all want
12 to check your calendars and --

13 MR. CARRANZA: Yeah. That'll work. That's fine.

14 MS. RENWICK: That's fine.

15 THE COURT: That work out okay with you, or do you
16 want dates right now?

17 MR. CHURCHILL: No. Let's -- we'll both confer. I
18 think with the recent changes things will be much more
19 amicable between the parties, so.

20 THE COURT: Would a settlement conference in any way
21 assist the parties?

22 MS. RENWICK: No. We've been discussing mediation.

23 THE COURT: Okay. Through your own third party.

24 MR. CARRANZA: Yes.

25 THE COURT: That was why I was saying is, you know,

1 even if you needed a judge on a short notice, I know
2 Department 30 runs 60 to 75 days out, and I appreciate
3 sometimes it doesn't meet everyone's needs. But with regards
4 to if you all needed somewhat of a quicker basis, I generally,
5 knock on wood, have been decently successful with if we send
6 out an email, you know, if parties give us like three days,
7 three dates, not three days notice, three dates, you know, I
8 send out an email to my colleagues, and sometimes people at
9 the last minute have had things settled that we can usually
10 get someone to volunteer for that.

11 Or I can also check with the senior judge department
12 to see what their availability is on shorter time frame. This
13 is given the complexity of this case, the Court would say that
14 this is the type of case that could go in front of a senior
15 judge if that's something you're interested in.

16 MS. RENWICK: Your Honor, perhaps given that we've
17 already broached the subject of mediation if we could discuss
18 that along with the order and get back to you?

19 THE COURT: Sure. When order a 7.21 would mean you
20 have to give me the order within ten days. Do you want to put
21 a cover letter on that order that A, the parties would like a
22 mandatory settlement conference, or B, we appreciate the
23 Court's offer but not at this time.

24 MR. CARRANZA: Yep. We'll make -- we'll make some
25 reference in that proposed order that addresses settlement

1 conference one way or the other.

2 THE COURT: Counsel, you had a question?

3 MR. CHURCHILL: I just wanted a clarification. So
4 the potential curative jury instruction you're withholding at
5 this time, and you --

6 THE COURT: I'm deferring it to a time closer to
7 trial once things have been fleshed out so that parties have a
8 full opportunity to present what you think would be an
9 appropriate curative, give you an opportunity to object
10 thereto, and I'll have a better understanding to flesh out
11 some of the information of where you're at.

12 MR. CHURCHILL: Perfect.

13 MR. CARRANZA: Your inclination is right now to
14 grant it, but we don't need to craft that today, we'll do that
15 closer to trial?

16 THE COURT: I'd like it phrased something effective,
17 craft, you know, we'll present an appropriate curative jury
18 instruction based, you know, at the time of trial.

19 MR. CHURCHILL: I thought you had indicated that --
20 do you want to hear the medical evidence before?

21 THE COURT: I was giving you a partial explanation
22 on why I think it's appropriate to defer making the
23 determination with regards to the curative, because I think at
24 this early juncture it -- the Court would need further
25 information so that the curative jury instruction accurately

1 reflects the status of the case at the time that it'd be
2 appropriate closer to trial actually.

3 Obviously the instruction will be at trial, but
4 proposed somewhere closer to the time of trial, because there
5 may be different factors that need to get taken into
6 consideration that may not be available currently today. So
7 that's why that would be deferred.

8 MR. CARRANZA: Thank you. And we'll also include in
9 the proposed order any requested extension or continuation of
10 discovery if in discussing with the parties we feel that's
11 appropriate or warranted.

12 THE COURT: Yeah. And that's going to be easier
13 [inaudible] come back to me, because since it will be all fine
14 tuned in one order rather than, Commissioner Bulla's
15 absolutely wonderful, but I think rather than having her
16 interpret what I'm saying, you probably would prefer just to
17 come to me.

18 However, if anyone objects to any discovery
19 extensions coming directly to the district court judge, I'm
20 more than glad to defer them to the discovery commissioner to
21 give you your opportunity to object [inaudible] report and
22 recommendation. So just either put it in or say we're going
23 back to discovery, so.

24 MR. CARRANZA: Understood, Your Honor. Thank you.

25 THE COURT: Okay. So anything else, points of

1 clarification, any other questions? Anything else that the
2 Court can address for the parties?

3 MR. CHURCHILL: Well, just one point of
4 clarification.

5 THE COURT: Of course.

6 MR. CHURCHILL: As we sit here today, nobody is --
7 there's still two months of discovery. Nobody has requested a
8 continuance of discovery. Would you agree, Your Honor, that
9 if in the future they requested a continuance of discovery it
10 would be limited to Ashley Christmas and Zach Berry and not
11 the mountain of evidence that has already been submitted, and
12 we already have dates pending for that?

13 THE COURT: Well, at this juncture, I think what
14 you're asking me is an advance ruling, because I don't know
15 what parameters you are specifically talking about. Any
16 request for extension of discovery is going to have to have a
17 good cause.

18 See, because you really, I mean, think about it, if
19 you're going to ask to extend discovery even absent today,
20 right, and I mean for good cause and oftentimes new counsel
21 come in, I mean, there's new counsel coming in is one of the
22 most common reasons that things pop up. I wasn't pointing at
23 you. I'm just saying that's the common one that doesn't
24 happen without any other issues being presented.

25 So I would have to see the -- I will make sure that

1 any discovery extension granted is going to be consistent and
2 reasonable with the facts and procedural history in this case.
3 That's as clear of an answer as I can give you because I don't
4 know what's going to come before me.

5 So I don't want to limit it or expand it, because
6 who knows, it may be you that's saying it as well, so I'm
7 going to -- or you. It doesn't matter. I'm just saying. So
8 I want to make sure that anyone has a fair opportunity, so no
9 one's prejudiced and you can proceed on your case fully as you
10 all deem appropriate.

11 MR. CARRANZA: Thank you, Your Honor.

12 MS. RENWICK: Thank you, Your Honor.

13 MR. CHURCHILL: Thank you, Your Honor.

14 THE COURT: Thank you all so very much.

15 (Proceeding concluded at 4:19 p.m.)
16
17
18
19
20
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.

**KARR REPORTING, INC.
Aurora, Colorado**


KIMBERLY LAWSON

1 to questions. If you need some accommodation or some break,
2 then yes, of course.

3 THE WITNESS: Yes.

4 THE COURT: As it relates to testimony, you need to
5 be responsive to questions.

6 MR. CARRANZA: Did Detective Majors take those
7 exhibits with him? Did we see that?

8 MR. LEE: I didn't see him carrying anything.

9 THE COURT: He had some papers rolled up when he
10 walked out. But you can use the marked ones.

11 MR. CARRANZA: Can we do that, Your Honor?

12 THE COURT: Of course.

13 MR. CARRANZA: Exhibit B. Thank you.

14 THE COURT: Does either counsel, other counsel want
15 to see it before it goes to the witness, Exhibit B?

16 MS. RENWICK: No, Your Honor.

17 THE COURT: Counsel for plaintiff, do you want to
18 see the marked Exhibit B?

19 MR. CHURCHILL: No. That's fine, Your Honor.

20 THE COURT: Okay.

21 BY MR. CARRANZA:

22 Q Mr. Hawkins, let me have you take a look at what's
23 been marked and admitted as Exhibit B. I'll represent to you
24 when you heard Detective Majors just testify and authenticate
25 that Exhibit B is the transcribed voluntary statement that he

1 took from you on August 22, 2013. Do you see that?

2 A Yes.

3 Q Let me have you turn to the first page of Exhibit B,
4 down at the bottom, the very last line. Detective Majors
5 appears to be asking you, quote, Location was Meadows Mall
6 parking lot, close quote. Do you see that? Bottom of page 1
7 of Exhibit B.

8 A Was I supposed to turn the page to go to page 1?

9 Q No, no. It's the very top page. The very first
10 page of Exhibit B. Do you see that? The very last line.

11 A Yes.

12 Q It says, D-E-T, for Detective --

13 A Yeah.

14 Q -- Majors.

15 A Yes. Correct.

16 Q And it says, the question that he posed is, Location
17 was, uh, Meadows Mall parking lot, close quote. Do you see
18 that?

19 A Yes.

20 Q And then on the very next page up at the top, the
21 very first line for X Hawkins, I'll represent that that's
22 you --

23 A Yes.

24 Q -- can you read what the answer is that you provided
25 him?

1 A "Meadows Mall, I was -- I was standing in line for
2 some Jordans, and I seen this guy, his name was Ashley
3 Christmas."

4 Q And then what does -- Detective Majors asks you, His
5 name is what, and what's your response?

6 A "Ashley Christmas as Pooh Man."

7 Q Are you telling me that you -- that Detective Majors
8 gave you the name Ashley Christmas before you answered that?

9 A That's correct. I was interviewed like that -- that
10 recorded statement wasn't the first time Detective Majors
11 even, you know, came to me.

12 Q Well, you just heard Detective Majors testify that
13 he came to you on two occasions that we discussed. The first
14 time you were in no condition to give an interview, and the
15 second time you gave this voluntary statement that we heard
16 the audio for.

17 A Actually, I talked to Detective Majors two times.

18 Q Before this, what's been marked as Exhibit B?
19 Before August 22, 2013?

20 A Before he -- he came with me with information.

21 Q Are you telling you that -- are you telling us that
22 Detective Majors --

23 A He knew everything. He had --

24 Q -- told you to identify Ashley Christmas?

25 A He had --

1 Q Let me ask my question --

2 A -- Pooh Man --

3 Q -- just so we're on the same page.

4 A Okay.

5 Q Are you telling this Court that Detective Majors
6 asked you to identify Ashley Christmas by name?

7 A No. He gave me a lineup but, you know, a photo, and
8 I circled him and I told him that his name was Pooh Man.

9 Q Okay. You also gave Detective Majors, Ashley
10 Christmas, a series of nicknames that Ashley Christmas went
11 by, including PMG and Little PMG; is that right?

12 A Yes, I did.

13 Q During your deposition, you didn't offer up a
14 physical description for Pooh Man, did you?

15 A During my deposition?

16 Q Yes.

17 A No, I didn't.

18 Q When you sat down with the lawyers, you didn't offer
19 any type of physical description of the person with the
20 shooter of Pooh Man, correct?

21 A No.

22 Q Right?

23 A Can you repeat that, because I'm having a hard time
24 understanding. I really am.

25 Q No, I appreciate that. At the time of your

1 deposition, when you sat down with the lawyers in this case --

2 A Yes.

3 Q -- on February 12th of this year, you didn't offer a
4 physical description of the person known as Pooh Man, correct?

5 A No, I didn't.

6 Q But when you met with Detective Majors on August 22,
7 you did give them a physical description, correct?

8 A Yes.

9 Q You indicated --

10 A Well, he --

11 Q You indicated --

12 A He gave the lineup picture and, you know, I
13 identified him. And before that, yes, I did give him a
14 description of how the person look did, yes, I did.

15 Q Right. Before that you said, He's about this
16 height, he's brown, something about his eyes, correct? Do you
17 remember giving him that information?

18 A I believe so. My memory is bad. I'm sorry.

19 Q You remember describing him as thin build and always
20 wears nice clothes, correct?

21 A I believe so.

22 Q In fact you told him on the day of the shooting he
23 was wearing a baseball type shirt, white shirt, black sleeves,
24 remember that?

25 A I don't remember, but -- I don't remember. I really

1 don't.

2 THE COURT: Counsel, because my staff, as you know,
3 is going straight through our motion calendar right into you
4 all, which has been more than 2 1/2 hours without a break. I
5 need to make sure that they get a break, so I'm going to have
6 to probably in the next few minutes take at least a ten minute
7 break.

8 And I need to know from you all how much time you
9 still need too, because originally it was going to be just a
10 total of a couple hours, so we'd only asked to switch with
11 Judge Williams [inaudible] 1:00 o'clock, so we're going to
12 take a break from noon to 1:00, and then do the other matter.
13 It looks like you're probably going a little bit longer than
14 originally anticipated, and so --

15 MR. CARRANZA: Yeah. I apologize. Again, I wasn't
16 part of the original explanation.

17 THE COURT: I know. I was trying to get some --

18 MR. CARRANZA: I can probably get through in about
19 40, 45 minutes what I need, and then whatever summation,
20 unless counsel's got anybody he'd like to call.

21 THE COURT: Are you going to want to talk to your
22 witness as well, Counsel?

23 MR. CHURCHILL: I'll have questions for him, of
24 course.

25 THE COURT: So the short answer [inaudible] my

1 staff's going to need a lunch break [inaudible], so
2 [inaudible]. I just need to check with Judge Williams to see
3 availability, because I know he's got some things in the
4 afternoon as well. So I've got to work that one out as well
5 as make sure they take [inaudible] break. So would now be a
6 good time to take a brief ten minute break? I don't want to
7 do it right in the middle of a question.

8 MR. CARRANZA: No, that's fine.

9 THE COURT: I was trying to wait until it looked
10 like you were --

11 MR. CARRANZA: That's fine.

12 THE COURT: And then when we come back, then we'll
13 figure out -- that will give counsel an opportunity to speak
14 among themselves to determine how much time you think so that
15 we can ballpark it with Judge Williams and then ballpark it --
16 but we are going to have to take a lunch break [inaudible]
17 people go through without a lunch break.

18 Okay. Let's take a brief ten minute break, give you
19 all a chance to talk among yourselves for scheduling, and then
20 we'll also check with Judge Williams. My marshal's going to
21 check [inaudible] see what we're going to do. All right. And
22 back in ten. Okay.

23 (Court recessed at 11:33 a.m. until 11:43 a.m.)

24 THE COURT: Here's what we need to do. Judge
25 Williams, thank you again, is accommodating us and going to

1 let me -- use my courtroom this afternoon in his matter. So
2 we got that taken care of -- you saw the other person that was
3 here. I have a brief should only be a few moments at 1:00
4 o'clock matter that I got to get taken care of that I moved in
5 order to accommodate this. So what meets your needs as far as
6 timing in what you want to do?

7 MR. CARRANZA: I'm pretty sure that, and we've
8 talked while you were off the bench, and I'm pretty sure we
9 can pare this down from our end and be completed in the next
10 30 minutes. Okay.

11 THE COURT: And how much time do you need?

12 MR. CHURCHILL: That's total.

13 THE COURT: Total, so be done by 12:15?

14 MR. CARRANZA: I'm going to need 30, maybe 31
15 minutes.

16 MR. CHURCHILL: Your Honor, well -- I only --

17 THE COURT: I'm sorry. I thought you said 30 total.

18 MR. CARRANZA: Yeah, he did. He did. I meant 30
19 just for me.

20 MR. CHURCHILL: Okay. I won't need more than, well,
21 probably five minutes.

22 THE COURT: 12:30 is the very latest I can do,
23 because I've had staff -- I want to make sure everyone's got
24 lunch. Okay. 12:30 -- oh, no, I can't, because I've got a
25 1:00 o'clock hearing. Shucks. I can't do that. I know

1 you're trying to avoid having to break for the lunch hour and
2 come back, and I'm trying to find a way to see if that makes
3 sense, but I don't think it's going to --

4 MR. CARRANZA: I know he's -- I can imagine that
5 Mr. Hawkins, probably it would benefit to him to try to get
6 done, motor through and get out if for no other reason just to
7 get him out of the chair. It looks like he's a little
8 uncomfortable as it is.

9 THE COURT: Could we do it this way maybe? Are you
10 going to want him here for your summation? Does 30 minutes
11 include your closing?

12 MR. CHURCHILL: I'm his chauffeur today, so he's
13 here as long as I'm here.

14 THE COURT: You're not the chauffeur today?

15 MS. MANKE: I guess I could take Dave's car and
16 leave Dave.

17 THE COURT: No, no. I just meant I'm trying to
18 think of a way, because you also have summation in addition to
19 the witness testimony --

20 MR. CARRANZA: I mean, I'm sure we can make
21 summation very short. I'm sure the Court is well aware what
22 the issues are and what the standards are and we might even
23 submit after that with a short summation. Whatever comfort
24 level you have, Your Honor. My concern is for Mr. Hawkins and
25 making sure he's able to stay here as long as we need him.

1 THE COURT: My concern is obviously -- and I haven't
2 given you a chance to speak. Go ahead.

3 MS. RENWICK: Your Honor, we're fine with just
4 trying to pare it down as counsel mentioned.

5 THE COURT: I just -- it's a problem if we don't
6 break by noon. Staff has to have a full hour by federal law.
7 I've got a 1:00 o'clock, which means if we were breaking by
8 12:00 this all worked out. I mean, I could take them to 1:10
9 and have you come back at 1:15, and then life will work out.
10 But I'm just not seeing realistically how you're going to --

11 MR. CARRANZA: That turns into a long day for
12 Mr. Hawkins. I'd be happy to try to motor through and let's
13 get to 12:30, see where we are then, if we're done.

14 THE COURT: See, 12:30, my problem with 12:30 is
15 then they can't -- then they have to see -- I've got a 1:00
16 o'clock, so 12:30 plus an hour doesn't equal 1:00 o'clock,
17 just by my math.

18 (Court confers with the clerk.)

19 THE COURT: I'm going to have you continue, we're
20 going to see if it will work, and if not, then we'll have
21 to --

22 MR. CARRANZA: Great. Let's do that then.

23 THE COURT: So if you don't mind, Marshal, will you
24 assist the witness back to the stand. Thank you so very much.

25 (Pause in proceeding.)

1 (X'Zavion Hawkins resumes the witness stand.)

2 THE COURT: Counsel -- excuse me. Thank you so
3 much.

4 MR. CARRANZA: Thank you.

5 DIRECT EXAMINATION (continued)

6 BY MR. CARRANZA:

7 Q Mr. Hawkins, let's pick up back with your deposition
8 taken earlier this year. You were asked during your
9 deposition if Pooh Man had ever robbed you. Do you remember
10 that?

11 A In a deposition?

12 Q Correct.

13 A I really don't remember right here.

14 Q But do you remember that you were asked if Pooh Man
15 had ever jumped you and robbed you?

16 A I don't remember, but I guess -- I really don't
17 remember.

18 Q Would it help if we played a portion of your
19 deposition to see if that refreshes your recollection?

20 A Sure.

21 MR. CARRANZA: Is that hooked up, Your Honor?

22 (Pause in proceeding.)

23 (Deposition audio played - not transcribed.)

24 THE WITNESS: I remember that asked just now.

25 (Deposition audio played - not transcribed.)

1 BY MR. CARRANZA:

2 Q Does that refresh your recollection? Do you
3 remember being asked at your deposition if Pooh Man had robbed
4 you?

5 A Yes.

6 Q And your response was that no, he didn't rob you?

7 A Yes.

8 Q Do you remember saying something different to
9 Detective Majors?

10 A I really don't remember, but going over the recorded
11 statement today I know I said some things, yes.

12 Q Do you remember describing for him how Pooh Man drew
13 down on you? Do you remember that?

14 A Yes, but --

15 Q What does drew down on you mean? Pulled a gun on
16 you?

17 A I guess. I'm not sure. But --

18 Q Is that what you mean when you say, Drew down on me?

19 A No. I'm -- I don't remember. I don't know.

20 Q Do you remember describing for Detective Majors
21 during your interview that Pooh Man went into your pocket and
22 pulled -- then stole money from you? Do you remember that?

23 A After today I do, you know --

24 Q Because you heard that on the audio?

25 A Correct.

1 Q Do you remember also telling Detective Majors that
2 Pooh Man called you a bitch and posted it on Facebook? Do you
3 remember that?

4 A In the -- do I remember telling Detective Majors
5 that, no, I don't remember.

6 Q But you heard it today?

7 A I heard it today, yeah.

8 Q And you didn't tell the lawyers when they took your
9 deposition, you didn't tell them any of that, correct?

10 A Correct.

11 Q You didn't tell them you were having trouble
12 remembering. You didn't say that sounds like something that
13 might have happened. You just flat out denied it, correct?

14 A Correct.

15 Q Do you remember telling Detective Majors how upset
16 that robbery made you?

17 A No.

18 Q How you got heated?

19 A Yeah, after today, I believe so, yeah. After
20 hearing the recorded statement, if that's what I said, then
21 yeah.

22 Q You heard that this morning when we heard the
23 recording?

24 A Yes.

25 Q And how you hated that. I think you called him a

1 mother fucker because of the robbery, correct?

2 A Yes.

3 Q And at your depo you were asked by the lawyers if
4 you had thrown a glass bottle at Mr. Christmas or Pooh Man
5 prior to the shooting. Do you remember that?

6 A At my deposition when I was asked --

7 Q At your deposition when the lawyers asked you if you
8 had thrown a bottle at Pooh Man.

9 A Yes.

10 Q And you denied throwing the bottle?

11 A I don't remember.

12 Q Well, let's play that Number 11, please, see if this
13 helps you.

14 (Deposition audio played - not transcribed.)

15 BY MR. CARRANZA:

16 Q Do you remember that part of your deposition?

17 A Yes, now.

18 Q But when you spoke to Detective Majors, you admitted
19 to him that you threw the glass bottle at Pooh Man; isn't that
20 right?

21 A I guess I did, yeah.

22 Q We heard that this morning, how you got so heated
23 when you saw him that you threw the glass bottle at him,
24 correct?

25 A Yeah. I don't remember.

1 Q And that he dodged the bottle and he got ready to
2 fight, do you remember hearing that?

3 A Yes. I -- yes. I have bad memory loss. I'm so
4 sorry. Like it's so bad to where if I just did something,
5 so --

6 Q Let's talk about Zach Berry then. You were asked
7 during your deposition if you have ever seen the shooter
8 before. Do you remember that?

9 A Yes.

10 Q And again, you didn't say I may have seen him
11 somewhere before, you definitively answered no, I've never
12 seen the shooter before. Do you remember that?

13 A I never seen him.

14 Q In fact, you said you were so definitive about it
15 you said you never saw him a day in your life. Do you
16 remember that?

17 A Yes. I never saw him a day in my life. It's true.

18 Q You were asked if you knew the shooter's name and
19 you also said no, correct?

20 A Yes.

21 Q But when you met with Detective Majors in August of
22 2013, you identified the shooter as being named Zach. Do you
23 remember that?

24 A Yes.

25 Q You identified several times that Zach was the

1 shooter. Do you remember that?

2 A Yes. I remember, I guess.

3 Q Back at your deposition in February of this year,
4 you were asked if you ever knew or had heard the name Zach or
5 Zachariahs Berry. Do you remember being asked that?

6 A No, I don't.

7 Q Do you remember being asked if you ever knew someone
8 named Little Zach or Zach?

9 A I don't remember.

10 Q You never -- and do you remember indicating that you
11 had never heard the name Little Zach or Zach?

12 A No, I don't remember. I'm sorry.

13 Q Let's play Slide 14 and see if that helps.

14 (Deposition audio played - not transcribed.)

15 BY MR. CARRANZA:

16 Q Do you remember that testimony at your deposition
17 now?

18 A Now I do.

19 Q And do you remember denying ever having heard the
20 name Zach or Little Zach or Zachariahs Berry, correct?

21 A Yes.

22 Q But when you met with Detective Majors in August of
23 2013, you identified the shooter as named Zach; isn't that
24 right?

25 A I wasn't able to identify him, but --

1 Q You indicated to him that you remember Pooh Man
2 yelling out, Zach, get him. You remember that, right?

3 A Yeah. I remember.

4 Q I'm sorry?

5 A Yes.

6 Q Do you remember during your deposition being asked
7 about whether or not you ever either engaged in or got ready
8 to engage in a fight with Pooh Man? Do you remember that?

9 A No.

10 Q I'm sorry?

11 A No, I don't remember.

12 Q You don't remember being asked whether or not you
13 had squared up with either Pooh Man or the shooter before the
14 shooting?

15 A After hearing it this morning, but I still don't
16 remember. I still --

17 Q So at your deposition you remember indicating no,
18 that that never happened, correct?

19 A Yes. Yes.

20 Q But as we -- as you've told us here, after hearing
21 the audio from the recording this morning, you remember that
22 that's what you told Detective Majors back in August of 2013,
23 correct?

24 A Correct. Correct.

25 Q In fact, that's not the only time you've indicated

1 that you heard someone yell, Zach, get him, right?

2 A I don't remember.

3 Q Do you know that in a lawsuit, the way normally a
4 lawsuit begins is one party files what's called a complaint,
5 which includes the allegations of what it is that party says
6 happened? You know that, correct?

7 A I guess, yeah.

8 Q Let me have you take a look at what's been marked as
9 Exhibit A to these proceedings. While I'm doing that,
10 Mr. Hawkins, I'll represent to you that Exhibit A is a copy of
11 your complaint that's filed with this court dated April 27,
12 2015. If I can have you turn over to paragraph 22, which I
13 believe is on page 5 of the complaint.

14 THE COURT: You said 22?

15 MR. CARRANZA: Oh, page 4. I'm sorry.

16 THE WITNESS: Page 4?

17 MR. CARRANZA: Yes. Paragraph 22 on page 4.

18 THE WITNESS: Where it says [unintelligible]?

19 BY MR. CARRANZA:

20 Q Paragraph 22, it starts with, Plaintiff was
21 physically assaulted, do you see that?

22 A Oh, yes. I see that.

23 Q And the very last three words of that paragraph are,
24 quote, Get him, Zach, close quote. Do you see that?

25 A Yes.

1 Q So not only did you tell Detective Majors in August
2 of 2013 that you remembered someone yelling to the effect, Get
3 him, Zach, you also remembered it as of April of 2015, when
4 you filed your complaint to start this lawsuit, that you
5 remembered someone yell that, you just didn't remember it at
6 your deposition; is that your testimony?

7 A Yes.

8 Q But despite not telling Mr. Aicklen and Ms. Renwick
9 at the deposition, despite your answers to interrogatories,
10 despite your responses to request for admissions, and despite
11 now that your complaint you insist that you did know the name
12 of the shooter; is that right?

13 A Correct.

14 Q You know what I don't remember means, don't you,
15 Mr. Hawkins?

16 A Well, yeah, I do know what I don't remember means.
17 It's mean that you don't remember.

18 Q You've used that before as part of your
19 conversations with people?

20 A Yes, a lot.

21 Q You used it a couple times even during your
22 deposition, right?

23 A Yes.

24 Q When a question was asked from you -- of you that
25 you did not remember what the information was that they were

1 seeking, correct?

2 A Correct.

3 Q But you didn't give those answers when it came to
4 Ashley Christmas, the identity of the shooter, you throwing a
5 bottle, you squaring up to fight with the assailants; for
6 those you definitively said no, correct?

7 A Yes. I don't.

8 Q Now, you were told that after the deposition --

9 A [Inaudible.]

10 Q -- or during your deposition you were told that once
11 it was complete you'd have an opportunity to review the
12 transcript. Do you remember that?

13 A Can you repeat that again?

14 Q Sure. At the time of your deposition, it was
15 explained to you that once your deposition was over they were
16 going to transcribe your testimony and you were going to be
17 given a copy of your testimony so that you could review it.

18 A Correct.

19 Q You remember that was explained to you, correct?

20 A Yes.

21 Q And you remember that it was explained to you that
22 when you reviewed the transcript you'd have an opportunity to
23 make any changes you felt were warranted. Do you remember
24 that?

25 A Yes.

1 Q But you were also cautioned that if you made
2 changes, substantive changes to your deposition testimony,
3 that the lawyers would probably point that out to the court in
4 an effort to indicate to them that you were being untruthful
5 at the time of your deposition, or afterwards. Do you
6 remember that?

7 A Yes, I guess. I really don't remember, but yes.

8 Q Do you want me to play the slide where that's -- to
9 help you remember?

10 A You can.

11 Q Number 15. I'm sorry. Number 5.

12 (Deposition audio played - not transcribed.)

13 BY MR. CARRANZA:

14 Q Do you remember that now, Mr. Hawkins?

15 A Yes.

16 Q Let me have you take a look at what we've had marked
17 as Exhibit J to these proceedings. I'll represent to you that
18 Exhibit J is the deposition errata sheet for your deposition.
19 Do you see that?

20 A Yes, I see it.

21 Q Do you see that on the first page there's a
22 signature there at the bottom?

23 A Yes.

24 Q Do you recognize that signature?

25 A Yes.

1 Q And whose signature is that?

2 A It's mines.

3 Q And Exhibit J includes 30-odd changes to your
4 deposition testimony, does it not?

5 A Yes.

6 Q And the changes being made to the deposition
7 testimony, would you agree with me that those are substantive
8 changes?

9 A I'm sorry.

10 Q I'm sorry. I can't hear you.

11 THE WITNESS: Can I have just a moment?

12 MR. CARRANZA: Sure.

13 THE WITNESS: Can you answer the -- can you --

14 BY MR. CARRANZA:

15 Q Re-ask?

16 A Yes. Thank you.

17 Q Absolutely. Mr. Hawkins, would you agree with me
18 that the 30-odd changes that are reflected in Exhibit J would
19 constitute substantive changes to your deposition testimony?

20 A Yes.

21 Q That's they're more than just correcting a bad
22 spelling. You're substantively changing the nature of your
23 answers, correct?

24 A Correct.

25 Q For example, on page 2, the very first change you

1 make you indicate that on page 16, line 19, you're changing
2 the answer to, I presently don't recall; is that right?

3 A Line 19. You said on the second page, correct?

4 Q Yeah. The second page of Exhibit J, the very first
5 line up at the top, it says, Page 16, line 19.

6 A Yes.

7 Q And you've changed the answer to reflect, quote, I
8 presently don't recall. Do you see that?

9 A Yes.

10 Q If we turn to your deposition which is Exhibit C, on
11 page 16, line 19, the question to which you're changing the
12 answer is, quote, Do you know what Pooh Man's real name is,
13 close quote. The answer that you had given was, No. And what
14 you're trying to do now is change that no to I presently don't
15 recall; is that right?

16 A I'm sorry. I'm just having confusion with these
17 pages.

18 Q Okay. Well, I'm not sure -- I'm not sure we need to
19 go through all 30-odd changes for you, Mr. Hawkins.

20 A Correct.

21 Q But you'd agree with me that those changes were
22 substantive in nature; is that right?

23 A Yes.

24 Q And the basis that you identified for making those
25 changes you identify on your Exhibit J as, quote, Recollection

1 refreshed. Do you see that?

2 A Yes.

3 Q Was your recollection refreshed after your
4 deposition when you remembered you in fact had made all of
5 these admissions to Detective Majors when you were interviewed
6 in August 2013?

7 A Yes.

8 Q Was your recollection also refreshed when you
9 realized that the defendants may have in their possession the
10 voluntary statement that you gave to Detective Majors in
11 August of 2013?

12 A Can you repeat that?

13 Q Sure. Was your recollection refreshed once you
14 realized that the defendants, the defense had the voluntary
15 statement you had given to Detective Majors in August of 2013?

16 A Yes.

17 Q Was your recollection also refreshed when someone
18 told you, you had committed perjury by lying doing your
19 deposition?

20 A You said was it refreshed after someone --

21 Q After someone told you, you had committed perjury.

22 A No. I'm not sure. I don't know. Like --

23 Q Your deposition isn't the first time, Mr. Hawkins,
24 that you had given a false statement; is that right?

25 A My deposition?

1 Q Right. It's not the first time you had given a
2 false statement?

3 A No, I don't know.

4 Q You've given false statement before, correct?

5 A No, I guess so, yeah.

6 Q In fact, you've been charged with giving false
7 statements in the past; isn't that right?

8 MR. CHURCHILL: Objection, Your Honor. Relevance.

9 THE WITNESS: No, I don't --

10 MR. CHURCHILL: Your Honor, objection.

11 THE COURT: Let me hear the objection.

12 MR. CHURCHILL: Yeah. This is irrelevant. If he's
13 going somewhere beyond this specific case, it's completely
14 irrelevant and has no basis for this matter.

15 MR. CARRANZA: I disagree. I think it's got a high
16 level of relevance, if he's giving a false statement under
17 oath during his deposition, to inquire whether or not he's
18 ever given similar false statements under oath.

19 THE WITNESS: No.

20 MR. CARRANZA: I'm not going to belabor it, Your
21 Honor.

22 THE COURT: Under Johnny Ribeiro, one of the factors
23 is you know the Court needs to analyze is the degree of
24 willfulness of the offending party or the asserted defending
25 party -- I do have to evaluate whether or not it's a lack of

1 knowledge, first time issue. So I take in that narrow sense
2 one of those factors I do have to evaluate under Johnny
3 Ribeiro.

4 MR. CHURCHILL: Sure, regarding this case. But
5 regarding other matters entirely it's completely irrelevant.

6 THE COURT: I have to hear it to then understand
7 whether or not I should give it any weight at all and if I
8 give it any weight at all, what weight I should give it. But
9 I have to have an understanding of what it is so that -- I
10 haven't established whether it's in this case or another case
11 or anything else yet, so I haven't even heard that answer yet.
12 So I will hear the question and then I'm going to address your
13 objection. Okay.

14 BY MR. CARRANZA:

15 Q Mr. Hawkins, you've been charged with giving false
16 statements before; is that correct?

17 A No.

18 Q Do you remember in December 2012, being charged for
19 giving a false statement?

20 A I don't remember.

21 Q Do you remember in December of 2012 being charged
22 with any crime?

23 A I don't remember. My memory is bad.

24 Q Do you remember in December of 2012, being arrested
25 for possession of illegal drugs with intent to sell?

1 MR. CHURCHILL: Okay. Your Honor, now we are --

2 THE COURT: The Court's not going to take into
3 account the nature of what the underlying issue is, only I've
4 got to listen to have an understanding of whether or not
5 there's a credibility aspect in order to address the
6 willfulness problem of Johnny Ribeiro. So we're going to just
7 allow this -- this is not -- is this being sought to answer
8 it, or just for demonstrative?

9 MR. CARRANZA: Just to try to refresh his
10 recollection.

11 THE COURT: It can't be K, because you got the
12 videos.

13 MR. CARRANZA: Oh, I'm sorry. L?

14 THE COURT: Is it demonstrative purposes, to refresh
15 recollection --

16 MR. CARRANZA: Yes. Yes. For right now.

17 THE COURT: So let's wait a second, because I'm
18 going to have to make a ruling before we get there. Okay. Go
19 ahead.

20 BY MR. CARRANZA:

21 Q Let me have you take a look at what we'll have
22 marked as Exhibit L to the proceedings.

23 THE COURT: This will be Proposed Exhibit L, because
24 this is not referencing a prior document. Go ahead, Counsel.

25 MR. CARRANZA: Thank you, Your Honor.

1 BY MR. CARRANZA:

2 Q Mr. Hawkins, do you see up at the top a case number,
3 below that it says, State? Do you see that?

4 A Yes.

5 Q And then the name Hawkins, X'Zavion Jonto [phonetic]
6 after that, do you see that?

7 A It's Jontay [phonetic]. It's pronounced Jontay.

8 Q I apologize. Jontay, do you see that?

9 A Yes.

10 Q And right under that we have charges there, the
11 first charge which I'm not interested in. But there's a
12 second charge underneath that line that says, False statements
13 to or obstructing public officer. Do you see that?

14 A Yes.

15 Q Does that help refresh your recollection as to
16 whether or not you have been previously charged with providing
17 a false statement?

18 A I don't remember. I actually don't remember. I
19 never even been to court for this like --

20 MR. CHURCHILL: Yeah. Your Honor, again, I renew my
21 objection.

22 THE WITNESS: I don't even remember.

23 MR. CHURCHILL: It's dismissed before trial.

24 THE WITNESS: Yeah.

25 MR. CHURCHILL: It's completely irrelevant. And

1 there's no basis as it goes to credibility or anything else
2 because it's dismissed before trial. There's no judgment of
3 conviction. It's a fishing expedition.

4 THE COURT: Give me two seconds to flip through
5 it --

6 MR. CHURCHILL: Sure.

7 THE COURT: -- since this is being presented to the
8 Court for the first time, and I'll be glad to address your
9 objection in a second.

10 THE WITNESS: I never even remember [inaudible].

11 (Pause in proceeding.)

12 THE COURT: I'm going to let you respond to his
13 objection, and then the Court's going to rule.

14 MR. CARRANZA: What was the objection, relevancy?

15 THE COURT: I heard relevancy and prejudice, but...

16 MR. CARRANZA: Well, most evidence introduced
17 against a party are prejudicial, Your Honor. As to the
18 relevancy, I think this falls squarely --

19 THE COURT: Counsel, are those the two bases of your
20 objection? I just want to make sure.

21 MR. CHURCHILL: Yeah. I mean, relevancy is
22 primarily this is something that's dismissed before trial.
23 There's no judgment of conviction. It's inadmissible. It's
24 a -- first of all, he's trying to -- it's character and
25 conformity when there's no judgment of conviction and it's

1 something that's dismissed before trial. How is that relevant
2 to these -- to this proceeding especially when there's no
3 judgment of conviction? Essentially it's an unsubstantiated
4 prior bad act that's dismissed before trial.

5 MR. CARRANZA: And my question to the witness, Your
6 Honor, isn't about whether or not he was convicted for this
7 crime. It's whether he was ever charged with giving a false
8 statement. After all, that's what we're here to determine
9 today is whether or not he's providing -- he's provided a bad
10 statement at his deposition, in the answers to
11 interrogatories, in responses to request for admissions, and
12 all throughout this case, whether this is the first time he's
13 given a false statement or not I think is relevant to the
14 proceedings.

15 THE WITNESS: And I answered that for you.

16 THE COURT: The objection to the last question was
17 the objection -- I'm finding that the scope of where your
18 objection applies, to which portion. Because he hasn't sought
19 admission of the exhibit yet, so we don't have that yet.

20 MR. CHURCHILL: Yeah. The breadth of the objection
21 is it's completely irrelevant to these proceedings. It's a
22 fishing expedition. It's a charge that's dismissed before
23 trial. It's unsubstantiated and yeah, what's the relevance of
24 any of this as it relates to this case.

25 THE COURT: The Court's going to sustain the

1 objection because I have a dismissal of the matter, so I don't
2 have any judgment of conviction, so.

3 MR. CARRANZA: Okay. Thank you, Your Honor.

4 THE COURT: Okay.

5 BY MR. CARRANZA:

6 Q Mr. Hawkins, just a final series of questions. You
7 understand that lying under oath is a crime, correct?

8 A Correct.

9 Q Yes?

10 A Correct.

11 Q You understand it's a Category D felony?

12 A I wasn't aware of it, but --

13 Q Do you know that now?

14 A -- now, yeah.

15 Q -- if I represent to you that's a Category D felony?

16 You lied under oath when you submitted your false
17 answers to interrogatories; is that right?

18 A I guess I really didn't remember at the time.

19 Q I'm sorry. I can't hear you.

20 A I didn't remember. It wasn't lying. I was just I
21 didn't remember.

22 Q You didn't remember when you signed the verification
23 what the actual answer was, the accurate answer was; is that
24 your testimony?

25 A Yes, I guess so.

1 Q And then when you provided the answers to request
2 for admissions, you didn't remember the information then
3 either, did you?

4 A Can you repeat that, because I'm lost. I'm sorry.

5 Q Sure. Sure. You also didn't remember the
6 information when you signed off on and provided the answers in
7 response to the request for admissions; is that your
8 testimony?

9 A Yes.

10 Q And you also didn't remember the information when
11 you were asked under oath during your deposition about Ashley
12 Christmas, correct?

13 A Correct.

14 Q And you also didn't remember when you were under
15 oath at your deposition about Zach, the shooter, correct?

16 A Correct.

17 Q And your testimony is that you didn't remember at
18 your deposition time after time when you were asked about the
19 identities of these people, nicknames of these people, whether
20 or not you had been robbed before or not, whether or not you
21 had thrown a bottle at these folks or not, whether or not you
22 had tried to engage them in a fight or not; your testimony
23 today is that each and every time you just didn't remember
24 that information?

25 A A lot of things blurred out. I'm on -- I'm on a lot

1 of medication. I'm depressed and --

2 Q I understand that. But your testimony is --

3 A Yes.

4 Q -- that you didn't remember all that each and every
5 time it was asked of you in February of this year?

6 A I didn't remember.

7 Q But then miraculously after your deposition --

8 A After my deposition --

9 Q -- when you submit the errata, all the sudden you
10 remember?

11 A Some things I don't remember, yes.

12 MR. CARRANZA: That's all I have, Your Honor. Thank
13 you.

14 THE COURT: Cross-examination, Counsel.

15 MR. CHURCHILL: Yes.

16 CROSS-EXAMINATION

17 BY MR. CHURCHILL:

18 Q Mr. Hawkins, I'm going to be as brief as possible.
19 On February 12, is one of the very first things you told
20 defense counsel that you probably will not be able to give
21 your best testimony today?

22 A Yes, when my --

23 Q You told them that --

24 A Correct.

25 Q -- from the very beginning, correct?

1 A Correct.

2 Q And you told them that you get -- that you're very
3 forgetful, correct?

4 A Correct.

5 Q You told them the amount of medications that you
6 were on, correct?

7 A Yes.

8 Q Including morphine?

9 A Yes.

10 Q Hydrocodone?

11 A Yes.

12 Q 100 mg of morphine?

13 A Yes.

14 Q Let's go through the -- counsel asked you questions
15 about interrogatories and requests for admissions. Let's look
16 at this real quick. Interrogatory No. 27 had asked, What is
17 the name, address and phone number of the person who shot you.
18 You responded, Plaintiff lacks information to answer this
19 interrogatory, correct?

20 A Correct.

21 Q As of September 25, 2015, did you know the person's
22 name who shot you?

23 A No. Can you repeat that? I'm sorry.

24 Q Yeah. As of September 25, 2015, had you -- did you
25 know the name Zachariahs Berry?

1 A I don't remember.

2 Q Okay. And did you know Mr. Berry's address?

3 A No.

4 Q Did you know his phone number?

5 A No.

6 Q Is the answer that you gave 100 percent true and
7 accurate, you don't -- you could not give the person's -- in
8 fact, to the police officer you couldn't even identify who the
9 shooter was, could you?

10 A That's correct.

11 Q Request for admissions, Admit that you know the
12 person who shot you. Do you know who shot you?

13 A No.

14 Q That's a true statement?

15 A That's a true statement.

16 Q You couldn't identify the person who shot you?

17 A I couldn't.

18 Q Admit that you are related to the person who shot
19 you. Is the person who shot you related to you?

20 A No.

21 Q So that's a true statement?

22 A [No audible response.]

23 Q Admit that the person who shot you is your cousin.
24 Is the person who shot you your cousin?

25 A No.

1 Q Admit that you know the name of the person who shot
2 you. Do you know the name of the person who shot you?

3 A Yeah.

4 Q Now you know the name of the person who shot you?

5 A Like I -- I do, but like I didn't remember at the
6 time. Now I do. Now that we went over everything I do.

7 Q When you met with Detective Majors, were you -- and
8 I -- Detective Majors corrected himself, but let's get it also
9 clear from you. You never told Detective Majors that the name
10 of the person who shot you was Zachariahs Berry, correct?

11 A No.

12 Q Okay. The only thing you could tell him was you
13 heard the name Zach?

14 A Correct.

15 Q Before you met with Detective Majors, did you meet
16 with family members?

17 A Yes.

18 Q Does one of your family members know the names of
19 Ashley Christmas and Zachariahs Berry?

20 A Yes.

21 Q And that is Peter Fleming?

22 A Correct.

23 Q Let's talk a little bit about changing your answers
24 to deposition testimony. At the time that you gave your
25 deposition in February 2016, were -- to your knowledge at that

1 time, were the answers that you gave accurate?

2 A I don't remember.

3 Q Did you do the best that you could --

4 A Yes.

5 Q -- to give correct answers in your deposition?

6 A Yes, I did.

7 Q After you found out, after you were able to read the
8 recorded statement, did that help -- did that bring back
9 memories for you?

10 A Yes, it did.

11 Q And did you accordingly correct your deposition
12 responses?

13 A Yes, I did.

14 Q Briefly -- Mr. Hawkins, I'm handing you a medical
15 record from your consulting physician, Dr. Renee New
16 [phonetic]. Do you recall treating with Dr. Ngo?

17 A Yes.

18 Q And you were treating with her because you were
19 having --

20 THE COURT: Counsel, do you have a copy for the
21 Court?

22 MR. CHURCHILL: Oh, I'm sorry, Your Honor.

23 THE COURT: No worries.

24 MS. RENWICK: Do you have a copy for me? I would
25 like to see this.

1 THE COURT: This is not a previously introduced
2 document; is that right?

3 MR. CHURCHILL: [Inaudible.]

4 MR. CARRANZA: It is not.

5 THE COURT: Okay. Before you have him reference it,
6 do I -- since you just got it, I have to wait a second to see
7 counsel's position. So please don't read it yet. Let's wait
8 a second until...

9 THE WITNESS: I'm sorry.

10 THE COURT: Just since it's a new document I need to
11 see what the positions are --

12 MR. CARRANZA: And obviously not having seen this as
13 part of the papers up until now, I'm not sure what direction
14 he's going, but I suspect he may be trying to use this in lieu
15 of expert testimony to come in here and try to have someone
16 testify as to Mr. Hawkins' state of mind or his ability to
17 recall events. And to that extent we'd object to this.

18 MS. RENWICK: Join, Your Honor.

19 THE COURT: Okay. Give me your offer of proof and
20 the purpose, since it's -- I got a new exhibit here for the
21 first time during the hearing, and I have no authentication,
22 certification. I got hearsay galore. I got lots of -- go
23 ahead. Can you tell me the purpose and let's hear if I have
24 an objection. Go ahead.

25 MR. CHURCHILL: Well, Your Honor, we have provided

1 the certificate of authenticity or the COR, custodian of
2 records for this document previously. I don't have it here
3 with me.

4 THE COURT: Previously in relationship to this
5 motion to the Court?

6 MR. CHURCHILL: In this -- pursuant to 16.1. No,
7 pursuant to 16.1.

8 THE COURT: Okay. That's a different clarification
9 point, you know.

10 MR. CHURCHILL: Yeah, understood. But, Your Honor,
11 the offer of proof for this is the doctor diagnoses him with
12 PTSD. There's flashbacks, nightmares, and he's given
13 antidepressants and medications to help him with the PTSD, the
14 nightmares and the flashbacks.

15 It's the doctor clearly indicates that it's related
16 to the shooting, that the depression, the persistence of
17 depression is related to the shooting, the flashbacks directly
18 relate to the shooting, the nightmares relate to the shooting.
19 It's something that he's undergoing treatment for. So he can
20 certainly testify about the treatment that he's received for
21 these conditions.

22 THE COURT: And the purpose would be what? Because
23 my quick skim of this says nothing about memory loss, and it's
24 dated September 25, 2015, and your records in your depo are
25 February 12, 2016.

1 MR. CHURCHILL: Yeah, the next one deals with the
2 memory loss. This is regarding the flashbacks and the
3 nightmares.

4 THE COURT: So offer proof of the purpose of why
5 each should be allowed for the first time. Did you provide it
6 to them between the last scheduled hearing and today's
7 hearing?

8 MR. CHURCHILL: They've had this document for years.

9 MS. RENWICK: Your Honor, it has not been cited in
10 the opposition. This is the first time it's been raised
11 before. We'd be digging through thousands of pages of medical
12 records to try to discern what they're seeking to offer as
13 evidence today.

14 THE COURT: Okay. So your offer of proof is it
15 should be -- because I have objections and a joinder.

16 MR. CHURCHILL: It goes to his --

17 THE COURT: The first time in a hearing [inaudible]
18 very large [inaudible] continued hearing and didn't provide
19 documents even between the last date and today.

20 MR. CHURCHILL: Well, Your Honor, they are
21 attempting to dismiss Mr. Hawkins' case. This is an important
22 document that shows what his -- what his state of mind is.

23 THE COURT: Counsel, the Court's question is, since
24 it's not a brand new document, it's dated 9/24/2015 -- you
25 stated it came in with the 16.1, so it's not something that

1 was just recently provided by a medical provider. What the
2 Court's trying to anticipate from a -- address from a
3 prejudice standpoint is if this is a document that was already
4 in your possession.

5 Okay. And therefore it was -- could have been
6 attached if you chose to do so to the opposition or a
7 potential supplement, or even request a supplement, or provide
8 it to the opposing parties even if you didn't have it for the
9 first hearing between the first hearing and today's hearing,
10 because it's been more than a month, ballpark it's about a
11 month, I know. I'd have to double-check the exact dates, but
12 I think it's about a month, that was one concern. Is why for
13 the first -- I got the surprise factor that they're objecting
14 to. That's why I'm trying to get an understanding if surprise
15 factor or the relevancy factor.

16 So I'm trying to understand what you're saying the
17 purpose is and why it should be able to be introduced today
18 for the first time.

19 MR. CHURCHILL: So I guess to address that, Your
20 Honor, the -- it's probably this week that I first decided to
21 go with or to -- that this was relevant to this particular
22 issue as it deals specifically with his nightmares and
23 flashbacks. And that's the question that I want to ask him
24 about, how bad are your flashbacks, did you seek medical
25 treatment for them, yes, I did. If this isn't a --

1 THE COURT: [Inaudible.]

2 MR. CHURCHILL: Well, I -- sorry. I apologize.

3 But that's the -- that's the offer of proof.

4 THE COURT: And do you have a brief response to the
5 [inaudible]?

6 MR. CARRANZA: I mean, there's a laundry list of
7 reasons why this is a problem. There's no authentication.
8 It's hearsay, the surprise factor, the relevancy. And again,
9 the relevancy really is at the forefront of the objections,
10 because at issue isn't whether or not he's having flashbacks
11 or nightmares.

12 I haven't -- I haven't reviewed the entirety of the
13 proffered exhibit, but there doesn't seem to be anything in
14 there that even remotely talks about memory problems
15 specifically in February of this year, when his deposition was
16 being taken, and comparing that to all the different instances
17 where he could remember certain events.

18 I'm not sure the fact that counsel -- and I
19 appreciate, believe me, just having being brought into this
20 case, no one appreciates more than me the idea that I'm just
21 trying to get my hands around certain documents. But
22 counsel's been in this case from the very beginning. The idea
23 and the notion and that he just this week decided that this
24 document was somehow relevant, I'm not sure it gets around his
25 obligation to identify or at least try to identify this as a

1 potential exhibit, especially in light of the fact that we
2 have had communications over the last couple weeks where I
3 specifically asked him what witnesses do you intend to call
4 and what documents that you intend to introduce.

5 And so for the long laundry list of reasons, Your
6 Honor, I just don't think it's worth -- it needs to come in.
7 I don't think we need to ask questions about it and we should
8 just move on.

9 MS. RENWICK: Your Honor, as I mentioned, we join
10 the objection along with hearsay. It lacks foundation. I'd
11 also like to point out that in preparation for today, as
12 counsel mentioned, we discussed who -- what witnesses would be
13 called. I sent a specific letter to counsel if there were
14 additional documents that were to be introduced as evidence
15 that were not included in the record with the underlying
16 motion and opposition, we should have been made aware of it in
17 advance.

18 THE COURT: I think all their objections have merit,
19 so I'm not going to allow the document in. And I do have it
20 for any purpose that's already previously been -- the document
21 itself does, I would sustain it on hearsay. I'd sustain it on
22 surprise. I sustain it on relevancy because there's no
23 assertion in any of the pleadings currently before the Court
24 with regards to depression and flashbacks, nor is there any
25 basis raised anywhere in the opposition.

1 And as you probably saw my law clerk [inaudible]
2 motion to disqualify, because I was hoping that I'd read that
3 part for today too, just to make sure there wasn't anything in
4 here that somehow related to today's hearing that somebody was
5 going to bring up and say, well, it's in the other papers that
6 I originally [inaudible] you should consider it all, Judge.
7 Not in there either.

8 And I don't see the relevancy. I think hearsay. I
9 think it's surprise. I think not being part of the record, to
10 bring it for the first time are all sufficient basis for this
11 Court to preclude it. So they're all alternative basis in
12 their totality and alternative. Okay.

13 MR. CHURCHILL: All right. Well, I'm certainly
14 allowed to ask him questions about his flashbacks and
15 nightmares.

16 THE COURT: The objection was on the referencing of
17 the document, so if you wouldn't mind [inaudible] just turn it
18 over so it's not reading it or --

19 THE WITNESS: I'm not reading nothing.

20 MR. CHURCHILL: Maybe take it back, Your Honor?

21 THE WITNESS: It's been turned over ever since you
22 told me, so.

23 THE COURT: Oh, perfect. Okay. So we're set.
24 Okay. So I sustain the objection. You may proceed. But it
25 is, you realize, already 12:33. There is no way this is going

1 to get finished by 12:30, which was three minutes ago. I am
2 going to have to break for a lunch break. I need to make sure
3 [inaudible] to all staff. So I don't want to cut you off in
4 the middle of your question, if you need a question to finish
5 it. I will tell you we have taken care of my telephonic is
6 now at 2:00 p.m. So if we break now, we can come back at
7 1:30, and you can either A, be done by 2:00 o'clock, or B, I
8 break to take the other one and you all are welcome to stay
9 here and this is going to be telephonic...

10 MR. CARRANZA: And my concern is again Mr. Hawkins,
11 my recommendation to this Court, it's the Court's ultimate
12 decision obviously, is that we just finish up here in the next
13 minute, five minutes or so, so we can excuse Mr. Hawkins and
14 then come back after lunch for summation.

15 THE COURT: I don't want to in any way limit. I
16 have a pending motion to dismiss --

17 MR. CARRANZA: And that's why I was --

18 THE COURT: -- [inaudible].

19 MR. CARRANZA: I was talking to him as you were
20 speaking, Your Honor. He's comfortable with that.

21 THE COURT: What does few minutes mean? For some
22 attorneys that means an hour, for some people it really means
23 just --

24 MR. CHURCHILL: No. I will be done in five minutes.

25 THE COURT: Pardon?

1 MR. CHURCHILL: I'll be done in five minutes. I
2 really will.

3 THE COURT: Okay. Go ahead, Counsel.

4 BY MR. CHURCHILL:

5 Q Okay. Mr. Hawkins, for how long have you suffered
6 from flashbacks?

7 A Ever since this happened.

8 Q Have you sought medical treatment for flashbacks?

9 A Yes.

10 Q Are you prescribed medications to help you with
11 that?

12 A Yes.

13 Q And for depression as well?

14 A For depression as well.

15 Q Let me ask you, when you have flashbacks, do you in
16 your mind imagine how things could have been differently --
17 does the scenario change?

18 A Yeah. It -- I think about it all the time, how it
19 could have been differently.

20 Q Does it always seem real to you?

21 A No. Some stuff, it come to my mind, I don't know
22 whether it's real and I don't know whether it's fake.

23 Q Is that one of the reasons that you told the
24 defendants from the very beginning at your deposition that you
25 likely couldn't give your best testimony?

1 A Correct.

2 MR. CHURCHILL: Your Honor, I also have the
3 neuropsychological assessment from Dr. Loom [phonetic]. He is
4 an expert in this case. He did provide a report, it has been
5 given to them, that deals specifically with memory loss.

6 MR. CARRANZA: Your Honor, the same list of
7 objections. First and foremost is it's a hearsay issue. We
8 should have had the doctor here to testify for the Court in
9 lieu of the expert report. And in the interest of trying to
10 expedite everything so that Mr. Hawkins can get off the stand,
11 we'd submit on that, Your Honor.

12 MS. RENWICK: Joined, Your Honor.

13 MR. CHURCHILL: Again, Your Honor, this is highly
14 relevant as it deals specifically with the memory loss.

15 MR. CARRANZA: And I don't think it adds anything
16 more to the conversation other than counsel asked of his
17 client do you have memory problems. And I think we've gone
18 through that a number of different times.

19 THE COURT: What's your purpose? Are you seeking --
20 I mean, what's the purpose of the document? Are you seeking
21 it as an exhibit? What are you trying to --

22 MR. CHURCHILL: Seeking it as an exhibit, but
23 specifically that he's sought medical treatment for memory
24 loss.

25 THE COURT: Is that disputed by the parties?

1 MS. RENWICK: With respect to this specific report,
2 Your Honor, I believe Dr. Long [phonetic] was the -- it was in
3 May of this year, and he's been designated as an expert
4 witness, so he should have been present here if counsel
5 intends to introduce it, his report as evidence.

6 THE COURT: Quick clarification. You just said May
7 of this year, so that he sought --

8 MS. RENWICK: Yes.

9 THE COURT: -- memory loss treatment for the first
10 time in May of 2016; is that --

11 MS. RENWICK: Two days, Your Honor, is my
12 understanding based on that report is the expert saw him, on
13 two occasions to do an assessment of him.

14 THE COURT: What days?

15 MS. RENWICK: May 16 and 17.

16 THE COURT: 2016?

17 MS. RENWICK: 2016.

18 THE COURT: Four months after the depo?

19 MR. CHURCHILL: After the deposition.

20 THE COURT: It was about four months after the depo,
21 right?

22 MR. CARRANZA: After the deposition, after the
23 errata, after the issue, after the motion was filed.

24 MR. CHURCHILL: Less than three months after the
25 deposition.

1 THE COURT: But he wasn't -- did he have no medical
2 testimony -- that medical testimony doesn't opine that he had
3 memory loss issues back in February 2016, does it?

4 MR. CHURCHILL: It does.

5 THE COURT: A doctor saw him for the first time in
6 May and was able to say that he had memory loss issues four
7 months previously?

8 MR. CHURCHILL: No. He's -- what the doctor says is
9 that he has significant memory loss related to the PTSD which
10 he's had since --

11 THE COURT: My question was a little bit more
12 specific. Did the doctor say that when he saw him for the
13 first time in May 2016, that he [inaudible] to a reasonable
14 degree of medical probability, right, because you can't do an
15 expert without [inaudible] I appreciate you got hearsay and
16 all the other ones, but I'm going to basically start with this
17 one, that he had memory loss four months prior in February?

18 MR. CHURCHILL: Yeah.

19 THE COURT: Does he give a date of starting with the
20 memory loss --

21 MR. CHURCHILL: I don't know --

22 THE COURT: -- or does he say he attributes that he
23 has PTSD and now he's diagnosing he's having memory loss in
24 May? I'm trying to see is he really nunc pro tunc back to
25 February in his report?

1 MR. CHURCHILL: Yeah. I think he goes even further
2 than that.

3 THE COURT: Can I see the report real quickly?

4 MR. CHURCHILL: Of course.

5 THE COURT: So that I can have an understanding and
6 get a -- it's almost through your five minutes though.

7 MR. CARRANZA: I think you're on the right trail,
8 Your Honor.

9 MR. CHURCHILL: Well, in terms of my question --

10 THE COURT: Well, but you have to anticipate you've
11 introduced a brand new document that's not been provided to
12 the counsel and are there objections that they were going to
13 object. Hold on a second. Date.

14 (Pause in proceeding.)

15 THE COURT: Counsel, do you want to approach for a
16 quick second. Do we have like really --

17 (Bench conference - not transcribed.)

18 THE COURT: So since I understand that counsel for
19 plaintiff wants to admit what is a 35-page report by James
20 Caylin [phonetic], PhD, clinical neuropsychology, West
21 Charleston, Las Vegas, and since it says the
22 neuropsychological assessment did not take place until May 23,
23 2016, it's not been previously been provided as part of the
24 record, was not noticed by any of the subsequent conversations
25 between the two hearing dates between the parties that this

1 record would be introduced, the Court would -- and because it
2 post dates the alleged allegations of lack of veracity through
3 either the admissions or interrogatories which took place in
4 2015 or the February 2016 deposition, it's several months
5 later, and since although the Court by definition in the few
6 minutes that it just was provided to this Court for the first
7 time, it is -- it's hearsay, it doesn't give an opportunity to
8 cross-examine on any of those issues, it is surprise, plus it
9 also, by quickly even this Court after looking at the
10 diagnostic impressions on page 32, doesn't reference anything
11 about not being able to have -- there's [inaudible] analysis,
12 and the Court doesn't want to opine on the expert report
13 because that issue's not in the report, but for purposes of
14 what the -- offer of proof and purpose of use for today, the
15 Court doesn't find that it would meet that standard either.

16 So therefore the Court is not going to admit as an
17 exhibit the 35-page document for the additional reason
18 [inaudible] expert reports aren't admitted anyway because of
19 the hearsay matter issues and the lack of cross-examination,
20 et cetera. So it's not going to be admitted as an exhibit.
21 That doesn't preclude your asking him about his memory loss
22 and the treatment from a general standpoint.

23 But counsel really not -- I mean, I've got -- I've
24 got to -- if you've got like a few more questions, I'm not
25 trying to preclude you in any way or limit you, but if you've

1 got more documents and you've got arguments down the pipe,
2 this is really -- I've got to make sure my staff gets their --

3 MR. CHURCHILL: I understand.

4 THE COURT: First off [inaudible] paying overtime,
5 but they've got to get their break.

6 MR. CHURCHILL: Can I ask three questions?

7 THE COURT: You can ask what you deem is necessary.
8 I've just got to get -- I'm not in any way limiting you,
9 because this is a very serious motion and I want to make sure
10 that everyone has [inaudible] to be heard. I'm going to
11 [inaudible] reconvene this after the lunch hour. I'm just
12 making sure that my staff gets their [inaudible]. Counsel, go
13 ahead, [inaudible] questions.

14 BY MR. CHURCHILL:

15 Q Mr. Hawkins, do you suffer from memory loss?

16 A Yes.

17 Q And have you sought treatment for memory loss?

18 A Yes.

19 Q At any time during your deposition were you trying
20 to hide the identity of Ashley Christmas or Zachariahs Berry?

21 A No, not at all.

22 Q In fact, you knew that Detective Majors' deposition
23 was coming up shortly after your deposition?

24 A Correct.

25 Q And in your deposition you told them that you

1 identified Pooh Man to Detective Berry [sic], correct?

2 A Correct.

3 Q Thanks.

4 MR. CARRANZA: Nothing further, Your Honor.

5 THE COURT: Any redirect?

6 MR. CARRANZA: No, nothing at all.

7 THE COURT: I want to make sure. Any join -- from
8 the joinder party, any questions?

9 MS. RENWICK: Nothing further, Your Honor.

10 THE COURT: And I want to make sure plaintiff's
11 counsel, have you had a full opportunity to ask all the
12 questions you wish of your witnesses? Because I don't want
13 you in any way to feel constrained by time. The Court's going
14 to give you as much time as the parties need. I just need to
15 break for a lunch break.

16 MR. CHURCHILL: No. We're good, Your Honor.

17 THE COURT: You're good, you're fine?

18 MR. CHURCHILL: Yeah.

19 THE COURT: Okay. This witness is excused for all
20 purposes, so based on the agreement of the parties, correct?

21 MS. RENWICK: Yes, Your Honor.

22 MR. CARRANZA: Yes, Your Honor.

23 THE COURT: At this juncture do you want to break
24 for lunch and come back for summation, or are you submitting?
25 What do you want to do?

1 MR. CARRANZA: I'd be happy to submit as far as
2 evidence and witnesses, Your Honor, and be happy to come back
3 this afternoon for a quick summation.

4 THE COURT: What do all the parties want to do?

5 MS. RENWICK: We're fine with that, Your Honor.

6 MR. CHURCHILL: I would like to do a summation, Your
7 Honor.

8 THE COURT: Sure. Okay. Do you want to come
9 back -- it's a quarter of 1:00 now. By the time -- I've got
10 to come back at 2:00 o'clock, or actually I'm going to say
11 2:10, because I'm going to take a telephonic first, and then
12 take you all. Okay. And so that if -- is your client going
13 to be present in the afternoon?

14 MR. CHURCHILL: He will not. He will not.

15 THE COURT: He will not. Okay. Then you're going
16 to see a sign on the door on where you're at, okay, because I
17 don't want to confuse Judge Williams too much, but if you
18 don't have the accommodation, I want to make sure that he has
19 his courtroom back unless you all tell me you need to leave
20 your stuff here.

21 MR. CHURCHILL: No.

22 MS. RENWICK: We can pack it, Your Honor.

23 THE COURT: Marshal, will you check with Judge
24 Williams about having [inaudible].

25 (Court confers with the marshal.)

1 (Pause in proceeding.)

2 THE COURT: And just so we're clear for the record
3 for the clerk's purposes, there was a Proposed L that was
4 objected to and was not introduced. Then what we're going to
5 call -- plaintiff's counsel, just so we have clarity for your
6 two exhibits, we're going to call it Plaintiff's 1 was the
7 first report. Okay. Dr. Ngo. How would you pronounce that
8 last name?

9 MR. CHURCHILL: I think it's New [phonetic].

10 THE COURT: New. Okay. Dr. Ngo's report. So
11 Proposed Plaintiff's 1 was objected to, the Court gave all its
12 reasoning and so that was not admitted. And then we had
13 Plaintiff's Proposed 2, the Court addressed all the objections
14 subject to the objections, but sustained objections, so
15 Plaintiff's Proposed 2 was Dr. --

16 (Court confers with the clerk.)

17 THE COURT: Dr. Loom's [phonetic] report was also
18 not admitted for all the reasons stated. Okay. So those are
19 three exhibits that were not admitted. All the previously
20 designated exhibits were also admitted for today's purposes.
21 I have to get back to you on the disk for K.

22 MR. CARRANZA: Right. And so just for housekeeping
23 purposes, make sure we dot our I's and cross our T's, all the
24 exhibits that have been previously submitted are deemed
25 admitted except and save for what you've just outlined.

1 THE COURT: Those three, that is correct. So if it
2 was in the pleadings -- now, what I just want to point for
3 clarification, it was in the pleadings for purposes of this
4 hearing, separate and apart from the motion to disqualify,
5 because you have different docs in that, then it is deemed for
6 purposes of the record for this hearing, because the Court did
7 not hear any agreement differently, that you're asking for any
8 additional documents subject to the ones that were introduced
9 and denied today; is that correct?

10 MR. CARRANZA: Yeah. And the only additional -- the
11 only additional exhibit is I can't remember if the errata was
12 part of the initial submissions, Exhibit J?

13 MS. RENWICK: It was.

14 MR. CARRANZA: It was. Okay. Then we're fine.

15 THE COURT: We just need to clarify, because the
16 original motion had A through I.

17 MS. RENWICK: Right. There was -- I'm just trying
18 to find a supplemental here, Your Honor.

19 THE COURT: If you can give us [inaudible] on that.
20 Marshal, what do they want to do with their
21 courtroom?

22 THE MARSHAL: They're fine with switching back.

23 THE COURT: Having their courtroom back?

24 THE MARSHAL: Yeah.

25 THE COURT: Okay. Since they're going to have their

1 courtroom back so [inaudible], then what I would ask if you
2 would take your stuff with you during the lunch break. Does
3 anyone need to leave stuff back now in my courtroom, or are
4 you okay taking it with you?

5 MR. CARRANZA: We can take it with us, Your Honor.

6 THE COURT: Okay. Thanks for your -- okay.

7 [Inaudible.]

8 MS. RENWICK: Sure. Perfect.

9 THE COURT: Is there anything else the parties need?
10 If not, we'll see you back at 2:10.

11 MS. RENWICK: Thank you, Your Honor.

12 (Court recessed at 12:49 p.m. until 2:14 p.m.)

13 THE COURT: We're on X'Zavion Hawkins vs. GGP
14 Meadows Mall, et al, 717577. Since we have actually switched
15 courtrooms and so now we're on a different JAVS device, I hate
16 to do this, but would you mind making your appearances again.

17 MR. CHURCHILL: David Churchill for the plaintiff,
18 X'Zavion Hawkins.

19 MR. CARRANZA: Edgar Carranza for Mydatt and Mark
20 Warner.

21 MS. RENWICK: Charlene Renwick on behalf of GGP
22 Meadows Mall, Mydatt and Mark Warner.

23 THE COURT: And do you all want --

24 MR. CARRANZA: Debora Halbert with my office, and --

25 THE COURT: You don't need to get up.

1 MR. LEE: David Lee on behalf of GGP and Mydatt.

2 THE COURT: Okay. Thank you. Housekeeping matter.
3 Go ahead, Counsel.

4 MS. RENWICK: Your Honor, I think we were trying to
5 sort out the exhibit --

6 THE COURT: J and K.

7 MS. RENWICK: What was we believed was K -- no, K
8 was the video, I believe, Your Honor. The errata, which we
9 thought was Exhibit J is actually Exhibit E to the reply brief
10 filed by the defendants. I went back through the index and it
11 wasn't submitted by the defense until the reply.

12 THE COURT: Okay. So you're requesting that the
13 clerks modify what was previously Exhibit J and make it
14 Exhibit E so it's consistent with what was previously in the
15 record as to the Exhibit E to the reply brief. Does that work
16 for all parties?

17 MR. CARRANZA: That's fine, Your Honor.

18 MS. RENWICK: Yes, Your Honor.

19 MR. CHURCHILL: Yes, Your Honor.

20 THE COURT: Okay. Got that taken care of. And then
21 K, I did not have a chance to check with my law clerk, who
22 obviously was out at his lunch and I was trying to get taken
23 care of these other matters and a couple other things, so I'll
24 have to get back to you on K and the disk. Okay.

25 Yeah. We're going to make sure. I don't believe --

1 I think it got played or heard -- but anyway, we just need to
2 confirm, so we'll get that taken care of for you and you
3 should have an answer on that by tomorrow, but since it's a
4 stipulated exhibit it's probably no problem getting an extra
5 copy, right?

6 MS. RENWICK: Not a problem at all, Your Honor.

7 THE COURT: Perfect. Okay. Any other housekeeping
8 matters? Any other issues anyone needs taken care of, or
9 should we just go to summations? Okay. So you're moving
10 party. Go ahead, and then I'll do joinder. Feel free, you
11 can sit down, you can stand up, you can go to the podium. If
12 you want a portable mike, we'll give you a portable mike.
13 It's all good.

14 MR. CARRANZA: I'll just go to the podium just out
15 of force of habit, Your Honor.

16 THE COURT: No worries.

17 DEFENDANTS' CLOSING ARGUMENT

18 MR. CARRANZA: Your Honor, what we have here is a
19 case where plaintiff filed his lawsuit in April of last year,
20 and as part of that lawsuit he has allegations, criticisms,
21 concerns over the defendants and what they did and didn't do
22 that resulted in his injuries.

23 And in order to prove his case, he's decided to take
24 a tactical approach to painting a picture that's most
25 favorable for his case. And in doing that he decided the best

1 way to paint this favorable picture is to allege that he was
2 the victim of a random act of violence by unknown assailants.

3 And so what he does from the very beginning of this
4 case is he dips his brush into the paint to start to make
5 strokes about evidence, witnesses, third persons that are
6 involved in an effort again, to fashion and position this case
7 in the best possible light for him. And he does it from the
8 very beginning, Your Honor. He does it when he provides
9 information that's responsive to requests for admissions, and
10 he denies that he knows the shooter.

11 Now, what I can anticipate from counsel to be is
12 that what he meant when he denied knowing who the shooter was
13 is that he didn't know him by name, he didn't know him
14 personally, he hadn't spent a lot of time with the guy. But
15 he doesn't say that in his response to request for admission.
16 He denies that he knows the shooter.

17 All he could have said was I don't know who this
18 person is, but I know his name is Zach. Whether that came
19 from a family member or friend that he knows of, whether
20 that's through his own recollection that on the date of the
21 incident he remembered hearing somebody yell out Zach,
22 whatever the case may have been, he very easily could have
23 provided that information, but he didn't, and then he goes on
24 painting this picture.

25 And the next thing he does is about a week or two

1 weeks later he submits verified answers to interrogatories
2 where again he's asked about the identities of these folks and
3 he doesn't provide the information. He's asked, provide the
4 name, address and telephone number. I might concede that he
5 may not know the address and telephone number of these people
6 that are involved, but again, he could have provided the name.

7 And the request for -- or the interrogatory
8 specified that it was seeking the name of those folks. And so
9 this all happens in September, almost a year ago now. Doesn't
10 get called on it, doesn't get caught, and so he thinks to
11 himself, hey, I'm going to keep walking down this road, I'm
12 going to keep painting this picture because so far it's
13 working out for me.

14 We get to his deposition in February of this year
15 and this time he's asked repeatedly on a wide variety of
16 topics to provide information. He's asked if he recognizes
17 the name Ashley Christmas. He denies it. He's asked if he
18 recognizes the name Zach or Little Zach or Zachariahs Berry.
19 Whatever iteration we want to choose, he denies being familiar
20 with that name.

21 Never gives an explanation on the record during his
22 deposition that he's having trouble remembering this
23 information. He's definitive about not knowing that
24 information. At one point he gets combative with Mr. Aicklen,
25 who's asking him some of these questions. He gets combative

1 with him and asks him, why do you keep asking me these
2 questions, I've already told you no, I don't know the answers
3 that you want me to give you.

4 And he goes down that road, continuing to paint this
5 picture that he wants to paint. He denies throwing a bottle
6 at these folks while they're over at the mall. He denies in
7 essence initiating and escalating the confrontation between
8 them. Why is he doing this, for sport? Absolutely not, Your
9 Honor. He's doing this to paint the best possible picture.

10 Because he knows good and well that if he tells the
11 truth, if he admits that he was confrontational with these
12 folks, if he admits the history that these folks had robbed
13 him, all the sudden that explains why this situation escalated
14 in the direction it escalated. And he knows good and well
15 that that's not in his best interest as he moves forward with
16 this case, so he chooses to lie about it.

17 These lies aren't accidental. They're not isolated.
18 They're repetitive. Not just at the deposition, but as we've
19 outlined already, throughout the entire discovery process.
20 And so the defendants -- in essence what's happened is that
21 the defendants were denied that information at a very early
22 stage. They were denied the ability to go out, locate these
23 folks, interview these folks, get to the bottom of exactly
24 factually how this incident played out.

25 And they were denied not because of their own

1 efforts, but because of the lies perpetrated by Mr. Hawkins.
2 Had they been provided that information, we'd be in a very
3 different position right now, Your Honor. We'd be in a
4 position heading into trial with the facts fully fleshed out,
5 with all the witnesses identified and accounted for ready to
6 go to trial.

7 Instead where we are is we're back to square one
8 right now. We're back to where we should have been a year ago
9 with some of this information coming out. But unfortunately
10 for the defense, we've now been deprived of these witnesses
11 and that information, and at the end of the day that's really
12 what is wrong with Mr. Hawkins' approach.

13 And once he learned that he had been discovered,
14 instead of coming clean, what does he do? He decides to keep
15 painting the picture. Except now he produces this errata, the
16 most incredible errata that I've seen in a few years, where he
17 doesn't correct simple misspellings, simple typos. He
18 systematically tries to correct every lie that he definitively
19 gave during his deposition.

20 And he unabashedly gives as the reason for those
21 corrections that his recollection has been refreshed. Doesn't
22 say how, doesn't say with what. Just incredibly expects this
23 Court to believe that on September 17 he didn't remember, on
24 September 25 he didn't remember, on February 12 he didn't
25 remember, but incredibly, when he signs off on the errata, he

1 now remembers. It's just not believable. It's not credible.

2 I think we sat here this morning, heard his
3 testimony, compared that to the testimony of Detective Majors,
4 compared that to his own voice during the audio, compared that
5 to the transcription of the audio that was Exhibit B, and that
6 explanation just doesn't hold mustard, Your Honor.
7 Fortunately though for the parties and for this Court,
8 Nevada's pretty clear on its standard for discovery abuses.

9 I know you're intimately familiar with the Young
10 decision. You know the criteria and the factors that the
11 Young court outlined for other courts to consider when they're
12 determining what type of sanctions to impose with these type
13 of discovery abuses. And very briefly, Your Honor, I'd like
14 to go over those with you, because I think at the end of the
15 day when you add them up, the conclusion is that the lawsuit
16 should be dismissed.

17 First and foremost, the willfulness, the degree of
18 willfulness of Mr. Hawkins is undeniable. We've already gone
19 through how it wasn't an isolated lie, it wasn't an isolated
20 fabrication. It was a systematic effort by Mr. Hawkins to
21 create and paint a picture that just didn't exist. Not just
22 on one topic, but on the topics across the board that in any
23 way would have led the defense to discover information that
24 would have been supportive of their case. So we think that
25 weighs in our favor.

1 The severity of the sanctions compared to the
2 severity of the discovery abuse, I suggest to this Court that
3 the severity of the discovery abuse doesn't get, rarely gets
4 any higher. And so we think the proportionality of the
5 sanction that we're requesting fits right there with the
6 severity of the discovery dispute.

7 The idea and the notion of whether or not the
8 evidence that the non-offending party sought is irreparably
9 lost or not also weighs in our favor. We've outlined that we
10 haven't been able to locate these witnesses or these -- the
11 parties, the shooter and Pooh Man. They haven't been -- we've
12 intended all along to try to bring them in as a third party,
13 as under a third party complaint, so that they're answerable
14 and accountable for their involvement in the incident, and
15 we've been denied that.

16 Not again because of our own doing, but because
17 we've been -- obstacles have been laid before us, lies have
18 been told to -- with the intent of stopping our discovery of
19 who these folks were, where they're located, so that we could
20 bring them into this lawsuit. And so I'd suggest that yes,
21 the defense has been irreparably harmed and that evidence has
22 been irreparably lost.

23 The court in Young also asks that you consider the
24 degree to which the offending party, the non-offending party
25 would be prejudiced by a lesser sanction. Again, I suggest to

1 this Court that there isn't a sanction short of dismissal that
2 will right the wrong that's been committed here. To do that
3 plays into the next factor.

4 To do that rewards Mr. Hawkins, rewards his
5 behavior, rewards him for doing what he knew all along was
6 wrong for him to do. What he knew that when he took that oath
7 whether in answering the interrogatories or in giving
8 testimony, he knew what he was required to do. He shirked
9 that responsibility and instead chose to paint -- to try to
10 paint the very different picture, and we think that weighs in
11 our favor.

12 This notion of balancing the feasibility and the
13 fairness of the requested sanction with lesser sanctions that
14 might be available to the Court, again, for the same reasons
15 we don't think that lesser sanctions are either feasible or
16 more importantly fair to the non-offending defendants. We
17 have done nothing but spend time, money and resources to try
18 to figure out what happened, to try to move the case forward
19 and prepare it for a trial that's right down the road. And
20 now we've been denied that, which leads into the next factor.

21 This policy of adjudicating cases on the merits as
22 opposed to on motion -- in motion practice, a lot of times
23 discovery abusers cite to this factor most strongly, this
24 notion that, Your Honor, you shouldn't impose sanctions
25 against me, you should dismiss my case because there's this

1 policy that we should adjudicate these cases on the merits.

2 The reality is in this case, because we've been
3 denied access to the information, because we've been denied
4 these witnesses, Mr. Ashley Christmas and Mr. Zach Berry,
5 there can never be an adjudication on the merits. We're never
6 going to be able to fully present to the members of the jury
7 exactly what happened because of what Mr. Hawkins did.

8 At the end of the day, Your Honor, the idea is --
9 and I'm not even going to address the last one, this notion of
10 are we unfairly penalizing the party for something that the
11 lawyers, his lawyers did. Certainly not making an argument or
12 not insinuating that the lawyers had anything to do with this.
13 In fact, I believe that the lawyers tried to correct this when
14 they realized their client was perjuring himself, and instead
15 he went off and bungled the errata more than he did his
16 initial testimony.

17 So I'm not at all going to try to blame them. And
18 to that degree, that factor also weighs in what we're
19 requesting. Because at the end of the day, Your Honor, the
20 Court needs to not only be concerned with this case, but it
21 needs to be concerned with the integrity of the judicial
22 process as a whole.

23 And I'd suggest to you that when you have a litigant
24 who's willing to go to the extremes that Mr. Hawkins was
25 willing to go to and did go to, and willing to continue that

1 charade of trying to paint this picture up to and including
2 this morning getting on that stand trying to justify his
3 answers the way he did, that's when we have to put an end to
4 those type of cases. And in my opinion, Your Honor, that time
5 has come in this case, and we'd request that you grant us the
6 motion to dismiss. Thank you.

7 THE COURT: I have a couple questions.

8 MR. CARRANZA: Sure.

9 THE COURT: What do I do with the fact that unlike
10 [inaudible] Young/Ribeiro, people interchangeably call it by
11 both, here I don't have any court order from discovery. No
12 one pursued further admissions. No one pursued further ROG
13 responses. No one pursued anything with regards to the
14 deposition. It went straight from errata to motion to
15 dismiss.

16 MR. CARRANZA: Oh, I understand. You know, the idea
17 is with the Johnny Ribeiro case, the idea is they laid out
18 sort of the general game plan on how to consider these type of
19 discovery sanctions, and the idea was, well, if you've got
20 something that you think is a problem, file a motion, get an
21 order, and if the party continues to violate that order, then
22 maybe it rises to the level where dismissal is appropriate.
23 What I suggest to this Court is that we're already there.

24 We don't need to give this litigant the chance to
25 continue to violate the orders. He's already shown us through

1 his conduct and his behavior that he is going to continue to
2 violate the orders. The oath that we take as citizens of this
3 country and as litigants in this courtroom isn't I'm going to
4 tell a lie -- or I'm going to tell the truth only after you
5 catch me in a lie. Your obligation is to be truthful in the
6 proceedings from the very word go.

7 And so this notion that we might have to file for
8 relief and get an order from this Court beforehand I don't
9 think is necessary. I think we're already there. His conduct
10 and his behavior has risen and taken us to that level without
11 the idea of having an order beforehand, Your Honor.

12 After all, what I'd like to remind the Court is that
13 the Young case was nowhere near as egregious as this is. If
14 you remember, the Young case was a dispute between two
15 business litigants, one of which turned over what he called, I
16 think, business diaries or business journals, if my memory
17 serves.

18 THE COURT: Yes.

19 MR. CARRANZA: And what was at issue was that that
20 litigant added one or two notations that didn't exist before,
21 and so at the evidentiary hearing in that case, they had a
22 handwriting or ink expert come in and testify and say, yeah,
23 for those two cases, those look like those two notes were
24 added after the fact. In this case we've got an avalanche of
25 violations by Mr. Hawkins, not just two.

1 THE COURT: But in the Ribeiro/Young, like I said,
2 whichever, wasn't also an issue that he never recanted, and
3 here I have -- that he never modified or recanted? Here I do
4 have deposition, although characterized differently by each of
5 the parties, and granted, they are substantive and extensive,
6 full fodder for cross-examination, but he does at least on the
7 deposition, as argued by counsel both at the hearing that you
8 didn't have the benefit of being here because you weren't in
9 the case yet, but also brought somewhat today and was in the
10 pleadings that, you know, albeit there's credibility issues
11 with regards to the depo changes due to their extensive
12 nature, due to looking at the other discovery, due to as I'm
13 going to ask a question of plaintiff's counsel, come on, the
14 complaint even has the name Zach. So if you look at it from a
15 chronological standpoint it presents some challenges. But I
16 do have depo erratas here, so I do have a different factual
17 scenario, and then they also don't have a violation of an
18 order. So if there were lesser sanctions, isn't that
19 something really the Court should be looking at?

20 MR. CARRANZA: I don't know that there's a lesser
21 sanction that can fix what we're doing. As I mentioned, we've
22 got two perpetrators, Ashley Christmas and Zach Berry, who are
23 in the wind, who we can't locate.

24 THE COURT: But you knew about Zach at least from
25 the time -- well, what no one's provided to the Court yet, by

Case No.

IN THE SUPREME COURT OF THE STATE OF NEVADA

X'ZAVION HAWKINS, an Individual,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE
COUNTY OF CLARK, THE HONORABLE Joanna Kishner, DISTRICT JUDGE,

Respondent,

-and-

GGP MEADOWS MALL, a Delaware Limited Liability Company; MYDATT
SERVICES, INC. D/B/A VALOR SECURITY SERVICES, an Ohio Corporation; and
MARK WARNER, an Individual.

Real Parties in Interest.

District Court Case No. A-15-717577-C

PETITION'S APPENDIX VOLUME VI

DAVID J. CHURCHILL, Nev. Bar No. 7301

JOLENE J. MANKE, Nev. Bar No. 7436

INJURY LAWYERS OF NEVADA

6900 Westcliff Drive, Suite 707

Las Vegas, Nevada 89145

Telephone: 702-868-8888

Facsimile: 702-868-8889

david@injurylawyersnv.com

jolene@injurylawyersnv.com

Attorneys for Petitioner

CHRONOLOGICAL INDEX TO PETITIONER'S APPENDIX

<u>Ex.</u>	<u>Title</u>	<u>Vol.</u>	<u>Pages</u>
1.	Complaint: Hawkins v. GGP Meadows Mall, LLC, et al.; Case No. A-14-717577-C, filed April 27, 2015	1	0001-0012
2.	Defendant Mydatt Services Inc. d/b/a Valor Security Services' Answer to Plaintiff's Complaint, filed on May 20, 2015	1	0013-0025
3.	Defendant GGP Meadows Mall, LLC's Answer and Cross Claims, filed on May 20, 2015	1	0026-0038
4.	Defendant Mark Warner's Answer to Plaintiff's Complaint, filed on May 30, 2015	1	0039-0050
5.	Defendant/Cross-Claimant GGP Meadows Mall, LLC's Notice of Voluntary Dismissal of Cross-Claims as to Defendant/Cross-Defendant Mydatt Services, Inc. d/b/a Valor Security Services, filed on July 22, 2015	1	0051-0053
6.	Notice of Appearance, filed on September 9, 2015	1	0054-0055
7.	Notice of Appearance, filed on September 21, 2015	1	0056-0057
8.	Substitution of Counsel, filed on September 22, 2015	1	0058-0059
9.	Notice of Disassociation of Counsel, filed on September 30, 2015	1	0060-0062
10.	Notice of Association of Counsel, filed on November 16, 2015	1	0063-0065
11.	Defendants' Motion to Dismiss Plaintiff's Complaint, filed March 23, 2016	1	0066-0190
12.	Defendants' Supplemental Exhibits of Audio and Video Discs in Support of Motion to Dismiss Plaintiff's Complaint, filed on March 24, 2016	1	0191-0194
13.	Defendant GGP Meadows Mall, LLC's Joinder to Defendants Mydatt Services, Inc. d/b/a Valor Security Services and Mark Warner's Motion to Dismiss Plaintiff's Complaint, filed on April 1, 2016	1	0195-0197

<u>Ex.</u>	<u>Title</u>	<u>Vol.</u>	<u>Pages</u>
14.	Plaintiff's Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint and Countermotion for Sanctions, filed on April 11, 2016	2	0198-0338
15.	Defendants Mydatt Services, Inc. d/b/a Valor Security Services and Mark Warner's Reply to Plaintiff's Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint and Opposition to Plaintiff's Countermotion for Sanctions, filed on April 26, 2016	2	0339-0453
16.	Plaintiff's Motion to Disqualify Lewis Brisbois Bisgaard & Smith and for Sanctions on Order Shortening Time, filed on May 11, 2016	2	0454-0489
17.	Proposed Order on Defendants' Motion to Dismiss Plaintiff's Complaint and Plaintiff's Countermotion for Sanctions; Defendants' Motion for Leave to File Third-Party Complaint; and Plaintiff's Countermotion to Bifurcate Trial, filed on May 16, 2016	2	0490-0493
18.	Notice of Entry of Order, filed on May 17, 2016	2	0494-0500
19.	Defendants Mydatt Services, Inc. d/b/a Valor Security Services and Mark Warner's Opposition to Plaintiff's Motion to Disqualify Lewis Brisbois Bisgaard & Smith and for Sanctions on Order Shortening Time, filed on May 18, 2016	3	0501-0641
20.	Plaintiff's Reply in Support of Motion to Disqualify Lewis Brisbois Bisgaard & Smith and for Sanctions on Order Shortening Time, filed on May 20, 2016	3	0642-0657
21.	Defendant GGP Meadows Mall, LLC's Supplemental Exhibit to Joinder to Defendants Mydatt Services, Inc. and Mark Warner's Motion to Dismiss Plaintiff's Complaint, filed on June 7, 2016	3	0658-704
22.	Substitution of Attorneys, filed on July 6, 2016	3	0705-0709
23.	Defendants' Motion for Attorneys Fees and Costs, filed on August 19, 2016	4	0710-0814
24.	Order Granting in Part and Denying in Part Motion to Dismiss, filed on August 24, 2016	4	0815-0822

<u>Ex.</u>	<u>Title</u>	<u>Vol.</u>	<u>Pages</u>
25.	Findings of Fact, Conclusions of Law and Order re: Plaintiff's Motion to Disqualify Lewis Brisbois Bisgaard & Smith and for Sanctions on Order Shortening Time, filed on August 30, 2016	4	0823-0829
26.	Notice of Entry of Order, filed on September 7, 2016	4	0830-0838
27.	Plaintiff's Opposition to Defendants' Motion for Attorneys Fees and Costs and Countermotion for Attorneys Fees and Costs re: Motion to Disqualify Lewis Brisbois Bisgaard & Smith, filed on September 7, 2016	4	0839-0852
28.	Defendants' Opposition to Plaintiff's Countermotion for Attorneys Fees and Costs re: Motion to Disqualify Lewis Brisbois Bisgaard & Smith, filed on September 13, 2016	4	0853-0868
29.	Defendants' Reply to Plaintiff's Opposition to Motion for Attorney's Fees and Costs, filed on September 13, 2016	4	0869-0888
30.	Plaintiff's Supplemental Brief in Opposition to Defendants' Motion for Attorneys Fees and Costs, filed on September 26, 2016	4	0889-0921
31.	Defendants' Mydatt Services, Inc. and Mark Warner's Reply to Plaintiff's Supplemental Brief in Opposition to Motion for Attorney's Fees and Costs, filed on October 3, 2016	4	0922-0931
32.	Order re: Defendants' Motion for Attorney's Fees and Costs, filed on October 3, 2016	4	0932-0937
33.	Notice of Entry of Order re: Defendants' Motion for Attorney's Fees and Costs, filed on October 4, 2016	4	0938-0947
34.	Order Denying in Part and Granting in Part Motion for Attorney's Fees and Costs Related to Motion to Dismiss, filed on October 17, 2016	4	0948-0951
35.	Notice of Entry of Order, filed on October 18, 2016	4	0952-0959
36.	Defendants, Mydatt Services, Inc. d/b/a Valor Security Services and Mark Warner, Motion to Strike Plaintiff's Complaint and Dismissal, filed on November 18 2016	4	0960-0987

<u>Ex.</u>	<u>Title</u>	<u>Vol.</u>	<u>Pages</u>
37.	Reporter's Transcript of Proceedings All Pending Motions, from May 3, 2016	5	0988-1029
38.	Reporter's Transcript re: Evidentiary Hearing: Defendants' Motion to Dismiss Plaintiff's Complaint/Defendant GGP Meadows Mall LLC's Joinder to Defendants' Mydatt Services, Inc. and Mark Warner's Motion to Dismiss Plaintiff's Complaint/Plaintiff's Opposition to Defendants' Motion to Dismiss Complaint Plaintiff's Motion to Disqualify Lewis Brisbois Bisgaard & Smith and for Sanctions on Order Shortening Time, from June 8, 2016	5	1030-1129
39.	Reporter's Transcript of Proceedings – Evidentiary Hearing: Defendants' Motion to Dismiss Plaintiff's Complaint/Defendant GGP Meadows Mall, LLC's Joinder to Defendants Mydatt Services, Inc. and Mark Warner's Motion to Dismiss Plaintiff's Complaint/Plaintiff's Opposition to Defendants' Motion to Dismiss Complaint, from July 21, 2016	6	1130-1331
40.	Reporter's Transcript of Proceedings on Defendants' Motion for Attorneys' Fees and Costs; Plaintiff's Opposition to Defendants' Motion for Attorneys' Fees and Costs and Countermotion for Attorneys' Fees and Costs re: Motion to Disqualify Lewis, Brisbois, Bisgaard & Smith, from September 20, 2016	6	1332-1359

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

HON. JOANNA KISHNER DEPARTMENT XXXI Eighth Judicial District Court Regional Justice Center 200 Lewis Avenue Las Vegas, NV 89155	<i>Respondent</i>
--	-------------------

Respondent

Email:
dlee@lee-lawfirm.com

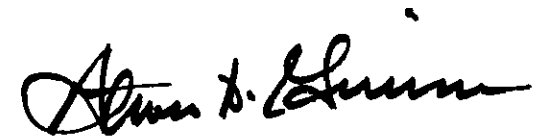
Attorneys for Real Parties in Interest
GGP MEADOWS MALL, LLP,
MYDATT SECURITY SERVICES,
INC. d/b/a VALOR SECURITY
SERVICES and MARK WARNER

Email:
edgarcarranza@backuslaw.com

Attorneys for Real Parties in Interest
MYDATT SECURITY SERVICES,
INC. d/b/a VALOR SECURITY
SERVICES and MARK WARNER

Employee of INJURY LAWYERS OF NEVADA

EXHIBIT 39



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

X'ZAVION HAWKINS,)	
)	CASE NO. A-15-717577
Plaintiff,)	DEPT NO. XXXI
vs.)	
)	
GGP MEADOWS MALL, LLC,)	
)	
Defendant.)	TRANSCRIPT OF
)	PROCEEDINGS

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING: DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S COMPLAINT/DEFENDANT GGP MEADOWS MALL LLC'S JOINDER
TO DEFENDANTS' MYDATT SERVICES, INC. AND MARK WARNER'S MOTION
TO DISMISS PLAINTIFF'S COMPLAINT/PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS COMPLAINT**

THURSDAY, JULY 21, 2016

APPEARANCES:

For the Plaintiff:	DAVID J. CHURCHILL, ESQ. JOLENE J. MANKE, ESQ.
For the Defendant:	DAVID S. LEE, ESQ. CHARLENE RENWICK, ESQ. EDGAR CARRANZA, ESQ.

RECORDED BY SANDRA PRUCHNIC, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

I N D E X

WITNESSES FOR THE DEFENDANTS:

WILLIAM MAJORS

Direct Examination By Mr. Carranza 8

Cross-Examination By Mr. Churchill 33

X'ZAVION HAWKINS

Direct Examination By Mr. Carranza 41

Cross-Examination By Mr. Churchill 96

CLOSING ARGUMENTS:

By Mr. Carranza 122

By Mr. Churchill 138

REBUTTAL CLOSING ARGUMENT:

By Mr. Carranza 175

E X H I B I T S

DEFENDANT'S EXHIBITS ADMITTED:

PAGE

B Recorded Statement 26

K Audio Disk of Recorded Statement 26

C Deposition Transcript of X'Zavion Hawkins 57

1 **LAS VEGAS, NEVADA, THURSDAY, JULY 21, 2016, 9:59 A.M.**

2 *** * * * ***

3 THE COURT: Counsel, let's hear appearances.

4 (Pause in proceeding.)

5 THE COURT: So we get appearances first. Let me
6 make sure. Like I said, we're calling Case 717577, X'Zavion
7 Hawkins vs. GGP Meadows Mall. Appearances, please.

8 MR. CHURCHILL: David Churchill for the plaintiff,
9 X'Zavion Hawkins.

10 MR. CARRANZA: Edgar Carranza for Defendants Mydatt
11 and Mark Warner. With me I have Debora Halbert from my
12 office.

13 THE COURT: Thank you.

14 MS. RENWICK: Charlene Renwick on behalf of GGP
15 Meadows Mall, Mydatt and --

16 THE COURT: Observing or making appearances today?

17 UNKNOWN SPEAKER: I'm here for the 10:00 o'clock.

18 THE COURT: You're 10:00 o'clock. No, no. 10:00
19 o'clock got moved to 1:00 o'clock. You got specific notice on
20 that -- let me be clear. That's why I'm saying everybody else
21 here for -- because I was looking that way. For the HMLV
22 Capital vs. Clear Recon Group, we sent you a --

23 UNKNOWN SPEAKER: That's at 1:00 o'clock?

24 THE COURT: Yeah. We sent you a notification --

25 (Pause in proceeding.)

 KARR REPORTING, INC.

1 THE COURT: Okay. Sorry for that interruption. So
2 we had plaintiff's counsel. Did you want to make an
3 appearance or not?

4 MS. MANKE: I'm Jolene Manke. I'm here for
5 plaintiff just helping to shuffle papers.

6 THE COURT: No worries. Counsel.

7 MR. LEE: Your Honor, David Lee on behalf of GGP and
8 Mydatt. I am not intending to speak on the record today, but
9 just in case.

10 THE COURT: Okay. No worries. Appreciate it.
11 Okay. Let's do a couple quick little housekeeping clean-ups.
12 I appreciate you probably used an old caption from pre-days
13 and prior hearings, but we need to make sure we have correct
14 counsel listed on meetings; meaning you're not on it
15 currently, a prior firm is still on the subpoena for today,
16 but obviously that's not a big issue, you all can get that
17 taken care of with any future pleadings.

18 MS. RENWICK: I apologize, Your Honor. I think that
19 subpoena was issued shortly after the last hearing and we just
20 missed that.

21 THE COURT: Okay. It was the one that was filed
22 7/19, what I'm looking at.

23 MS. RENWICK: Okay. I apologize, Your Honor. I
24 missed that entirely.

25 THE COURT: No worries. I just wanted to make --

1 you can probably appreciate in light of the Court's prior
2 ruling I can't have --

3 MS. RENWICK: Absolutely.

4 THE COURT: -- counsel appearing. And I presumed it
5 was just --

6 MS. RENWICK: It was an error. I apologize, Your
7 Honor.

8 THE COURT: It's the same subpoena and I --

9 MR. CARRANZA: Your Honor, I believe we have
10 submitted a substitution of counsel --

11 THE COURT: We saw that --

12 MR. CARRANZA: -- reflecting our appearance.

13 THE COURT: We did see that and we saw your letters
14 [unintelligible], and we still don't have an order on the last
15 motion, but nothing -- we [inaudible]. So parties are
16 currently in violation of 7.21 on getting that order in, and
17 it's going to be a lot longer than ten days.

18 MS. MANKE: I drafted the order, Your Honor. I
19 apologize if I dropped the ball. I'll take responsibility for
20 that.

21 THE COURT: Okay. I don't know if you've all
22 seen it.

23 MS. RENWICK: We have not seen it, Your Honor.

24 THE COURT: You may want to before it gets filed, so
25 please do circulate it. Please [unintelligible] order to show

1 cause for non-compliance with 7.21, which you probably, you
2 know, would prefer to just get it in, okay?

3 MS. MANKE: I'll take care of it, Your Honor.

4 THE COURT: Do appreciate it. Thank you so very
5 much. Okay. So we're here in 12D, because making sure to the
6 accommodation just so you understand there was a request for
7 an accommodation, so we've got an ADA accessible lift. From a
8 procedural standpoint you all have requested the evidentiary
9 hearing, so we have the evidentiary hearing on the agreed upon
10 date and time.

11 I understand you have some witnesses that you want
12 to testify, so I just have a format question. My inclination
13 on this would be that you probably do your witness testimony
14 first and then we'll allow each of the parties, to the extent
15 they wish to, kind of do a summation rather than [inaudible]
16 tells me that you've already prepared some introduction before
17 witnesses, and then want to do introduction and summation.

18 The Court's going to evaluate that, but I figured
19 you all -- because you all told me before that you had
20 witnesses with tighter schedules, and so I was trying to be
21 accommodating to balance everybody's needs out. I don't know
22 if that's still the case.

23 MR. CARRANZA: Your Honor, we're comfortable with
24 moving forward with calling witnesses if that's the Court's
25 preference.

1 MR. CHURCHILL: Yeah, Your Honor. That's
2 absolutely. And one --

3 THE COURT: If it's not what you all were intending
4 to do, somebody needs to let me know. I just -- oftentimes
5 you want to call witnesses and then do a summation rather than
6 do an introduction and a summation, but if you want both, let
7 me know.

8 MR. CHURCHILL: No.

9 THE COURT: You don't?

10 MR. CHURCHILL: Introduction and a summation, no. I
11 think we'd go forward and call the witnesses and do a
12 summation.

13 THE COURT: Okay. That's two out of three.

14 MS. RENWICK: We're fine with that, Your Honor.

15 THE COURT: Okay. So format-wise, since this is
16 defendant's motion, presumably you all would be calling your
17 witnesses first, unless you all have some different agreed
18 upon structure or something else suggested differently.

19 MR. CARRANZA: No, that's our plan, Your Honor.

20 THE COURT: Okay. Well, then at this juncture,
21 Counsel, would you like to call your first witness?

22 MR. CARRANZA: Yes, please. We'd like to call
23 Detective Majors. I believe he's outside.

24 THE COURT: Thank you so very much. The
25 exclusionary rule in effect for anyone who's testifying?

1 MR. CHURCHILL: Yes, Your Honor.

2 THE COURT: Other than obviously your client's
3 available to be here because your client's a client.

4 MR. CHURCHILL: Right.

5 THE COURT: Party privilege.

6 (Pause in proceeding.)

7 MR. CARRANZA: And Your Honor, do you prefer that we
8 stand, take the podium, sit, what do you prefer?

9 THE COURT: I'm fine with whatever you wish to do,
10 so if you want to stand, you can sit. If you --

11 MR. CARRANZA: I'll just stay at counsel table just
12 to make it easier for everybody.

13 MR. CHURCHILL: No objection at all.

14 THE COURT: Okay. Perfect. Thank you. Go ahead
15 and swear in the witness. Thank you.

16 WILLIAM MAJORS, DEFENDANT'S WITNESS, SWORN

17 THE CLERK: Please state and spell your name for the
18 court's record.

19 THE WITNESS: My name is William Majors,
20 W-i-l-l-i-a-m, M-a-j-o-r-s.

21 THE COURT: Counsel, at your convenience.

22 MR. CARRANZA: Yeah.

23 DIRECT EXAMINATION

24 BY MR. CARRANZA:

25 Q Detective Majors, could you please briefly tell us

1 where you're currently employed?

2 A I'm currently employed with the Las Vegas
3 Metropolitan Police Department, Patrol Investigations.

4 Q And just -- I take it since you're employed with the
5 Las Vegas Metropolitan Police Department that at one point you
6 attended the police academy; is that fair?

7 A I did, yes, sir.

8 Q Briefly give us your background and experience from
9 the date and you left the academy and then the approximate
10 dates that you served in any of your given assignments,
11 please.

12 A After I left the academy I was assigned to Bolden
13 Area Command. I spent approximately three years on patrol.
14 Spent after that three years in a problem solving unit, which
15 is a plain clothes unit. It goes after narcotic sales and
16 robbery decoy operations.

17 I then was an FTO for a period of like a year, then
18 tested for gang crimes. And I was with gangs just under four
19 years. After that I tested for violent crimes with the
20 robbery bureau, the robbery homicide bureau. I was there for
21 a period of approximately five years. And currently I'm back
22 at Bolden Area Command patrol investigations after
23 decentralization.

24 Q Okay. Appreciate that. And your position in August
25 of 2013, would that have been in what -- on what assignment?

1 A I was a detective with violent crimes section.

2 Q Give us a real brief overview of what your duties
3 and responsibilities were in violent crimes.

4 A We investigate pretty much any attempt murders,
5 battery with a deadly weapon, anything non-biased, non-gang
6 related. We complete full investigations all the way to
7 prosecution. We see it from the very beginning to the end.
8 We conduct interviews, search warrants, pen registers,
9 anything that would help us in the capacity of conducting
10 investigations.

11 Q Let me take you back to August 17, 2013. Are you
12 familiar with an attempted murder that took place at the
13 Meadows Mall on that day?

14 A I am.

15 Q And do you recall who the victim was in that case?

16 A The victim was X'Zavion Hawkins.

17 Q And I assume that you played some role in the
18 investigation of that attempted murder?

19 A Yes. I was the lead investigator.

20 Q Give us a sense for what that means. What does the
21 lead investigator do?

22 A Basically I'm responsible for everything. I'm
23 responsible for making sure the interviews are done. I'm
24 responsible to make sure the scene is documented the right
25 way. I am responsible for sending detectives out to get

1 follow-up done, since it was kind of a big scene. I'm
2 basically case agent. I see it from the very beginning to the
3 end.

4 Q And do you do that yourself, or do you do that with
5 the assistance of other personnel?

6 A I do that with assistance of -- that day it was half
7 the squad.

8 Q Let's go back to August 17, 2013, and the Meadows
9 Mall incident. You identified that you recall that the victim
10 in that case was X'Zavion Hawkins; is that right?

11 A Yes, sir.

12 Q Did you, in your involvement in that investigation
13 have an opportunity to meet with and interview Mr. Hawkins?

14 A I did.

15 Q Do you see Mr. Hawkins in the courtroom here today?

16 A I do, sir.

17 Q Would you point him out for us?

18 A He's wearing the long-sleeved black shirt
19 [indicating].

20 Q And in general, give us an overview of how these
21 type of murder or attempted murder investigations, how do they
22 get processed, how do they get handled?

23 A Basically we received the call that there was a
24 shooting over at the Meadows Mall. We sent two officers to
25 the scene and we sent two officers to the hospital. The

1 reason we do that is sometimes we get additional family
2 members or witnesses that come forward at the scene or at the
3 hospital and we need additional units to actually help conduct
4 those interviews and retrieve evidence, if any.

5 Q And in this case, give me a sense for how the
6 initial investigation was handled. Did you respond to the
7 scene, did you respond elsewhere? Give us an overview of
8 that.

9 A It was my job to respond to the hospital where the
10 victim was at.

11 Q And did anyone respond to the scene?

12 A Yes, they did.

13 Q And what was your purpose in responding to the
14 hospital?

15 A My purpose was to attempt to get an interview from
16 the victim as soon as possible to try to identify a suspect.

17 Q And so did you respond that day?

18 A I did.

19 Q And that's August 17, 2013?

20 A Yes, sir.

21 Q And tell us about what happened when you arrived at
22 the hospital.

23 A It was a dynamic scene, and when I mean dynamic, it
24 wasn't controlled. Everybody was screaming, everybody was
25 yelling. I had Mr. Hawkins' mother was extremely upset and

1 she was telling everybody not to cooperate with the police. I
2 pulled her aside and said we need --

3 MR. CHURCHILL: Objection, Your Honor.

4 THE WITNESS: -- that's what was said.

5 MR. CHURCHILL: Nonresponsive and irrelevant.

6 MR. CARRANZA: I've just asked him for an overview
7 of what he saw when he arrived at the hospital, Your Honor.

8 THE COURT: The Court is not -- the Court's not
9 going to take it for the truth of the matter asserted, so not
10 hearsay, just for a description of what was observed be it
11 appropriate for purposes.

12 Now, a quick question. Is that another potential
13 witness here in the courtroom?

14 MR. CARRANZA: That's not a witness, Your Honor.

15 THE COURT: Not a witness?

16 UNKNOWN SPEAKER: No, Your Honor.

17 THE COURT: Just wanted to make sure. Okay.

18 Because I didn't know if I had an exclusionary -- need to know
19 if [unintelligible] exclusionary rule.

20 Okay. So overruled the objection for an indication
21 of where the Court's going to take that statement into
22 account. Go ahead, Counsel.

23 BY MR. CARRANZA:

24 Q Could you please continue with your description of
25 the scene at the hospital. And just so we're clear, what

1 hospital is that?

2 A This is UMC Trauma.

3 Q Okay.

4 A So as we got to the hospital we were told that the
5 victim was being rushed into surgery and he could not be
6 interviewed at that time. I did talk to the attending
7 physician and the nurse, and they said when he gets out that
8 he would be intubated and we couldn't interview him then
9 either.

10 Q What was your concern about his condition as far as
11 your interview went?

12 A His condition was deteriorating. He was classified
13 as critical condition, life threatening, and it was my
14 intention to get -- try to identify who did this to him as
15 soon as possible.

16 Q And so what happens -- what happens vis a vis
17 Mr. Hawkins and his interview once you're provided that
18 information by the attending physician?

19 A Say that again.

20 Q Yeah. What do you do as far as --

21 A I come back.

22 Q -- your intent --

23 A I come back. If he can't give me the interview
24 then, then I return when he can.

25 Q And so do you in fact ever return?

1 A I did.

2 Q When was that?

3 A That was approximately four to five days later.

4 Q And where do you return to and tell us about what
5 happens once you return.

6 A It was at UMC, but this time it was at intensive
7 care. And I did talk to Mr. Hawkins and I did conduct a taped
8 interview with him.

9 Q Let me stop you right there and back up just a
10 couple of steps. When you make contact with Mr. Hawkins on
11 your second attempt approximately four or five days after your
12 first attempt, what's his condition then?

13 A He's alert, he's aware. I actually talked to a
14 nurse that was attending him and said, yes, I could interview
15 him.

16 Q And do you have any training and experience as far
17 as determining when witnesses or victims are alert and what
18 their awareness level is?

19 A I used to be a medic with AMR prior to joining
20 Metro. I've also processed and been a part of these
21 investigations, hundreds over time, and I've seen when people
22 cannot give a good interview as opposed to when they can.

23 Q And how long have you said that you've spent with
24 Metro?

25 A Fifteen years.

1 Q Great. So let's go back to that second interview
2 attempt when you meet with Mr. Hawkins. Were you in fact able
3 to go forward with your interview?

4 A Yes, I was.

5 Q Tell us a little bit about that. Is anyone in the
6 room with you as you're interviewing Mr. Hawkins?

7 A Detective Mark Menzie [phonetic] was also with me.

8 Q Why was Detective Menzies [phonetic] there with you?

9 A He was my partner assigned to this investigation as
10 well.

11 Q And was he there the entire time?

12 A Yes, he was.

13 Q Anybody else in the room with you other than
14 Detective Menzies and Mr. Hawkins?

15 A No.

16 Q And do you in fact get an opportunity to interview
17 Mr. Hawkins about the events of August 17?

18 A I did.

19 Q So tell us about that. What generally, an overview,
20 what does he tell you?

21 A Mr. Hawkins basically told us that he knew the
22 people that did this to him. He said it was two people. One
23 was Ashley Christmas. The other one was Zachariahs [phonetic]
24 Berry. Ashley Christmas also goes by Pooh Man [phonetic]. He
25 was very detailed in his answers. He said basically they had

1 a beef before.

2 Q I'm sorry. What do you mean by beef?

3 A Excuse me. They had arguments before. He was
4 being -- he said he got robbed by these two individuals.
5 These individuals show up at the shoe release. One of them
6 act as if he was going to shake his hand. A bottle got
7 thrown. I don't know if it was from the victim or from
8 somebody else, at which time when the guy went to go shake his
9 hand he then went to punch, the suspect went to go punch the
10 victim, and they thought they were both going to fight each
11 other. It was like a mutual combat thing. At some point a
12 gun was introduced into the situation and the victim was shot
13 approximately, I believe it was seven times.

14 Q I appreciate that. Was this interview with
15 Mr. Hawkins four or five days after the incident, was that
16 recorded by an audio recording?

17 A Yes, it was.

18 Q And why is that audio recorded?

19 A So there's no confusion on what was said, who said
20 it and who was there.

21 Q Did Mr. Hawkins know that you were recording that
22 interview by audio?

23 A Yes, because I asked him. I mean, I told him.
24 Excuse me.

25 Q And did you get the sense that he understood it was

1 being recorded?

2 A Yes.

3 Q And what happens to the audio recording of your
4 interview after it's taken?

5 A I bring the interview back to the office. I get it
6 transcribed. When it gets transcribed, it gets brought back
7 to me to make sure it's complete and accurate. And then I
8 get -- submitted it into OnBase. It's a permanent electronic
9 record of our interviews.

10 Q OnBase is the system that Metro uses?

11 A Yes, it is.

12 Q And is -- did I understand you correctly that after
13 you've reviewed the transcription for accuracy, once you've
14 determined that it is accurate, then at that point you upload
15 it into One Base?

16 A Yes, OnBase.

17 Q OnBase. I'm sorry.

18 MR. CARRANZA: And I'm not sure, Your Honor, where
19 we are as far as exhibits. I know exhibits have been
20 introduced as far as motion practices. I'm not sure if there
21 was any agreement prior to my entering the case about how
22 those were going to be handled, but I've got copies of
23 exhibits that I'd like to show some of the witnesses.

24 THE COURT: The Court's not aware of any agreement
25 the parties have. One of you please let me know.

1 MS. RENWICK: I don't believe that there was a
2 discussion as to it, but these exhibits were submitted as part
3 of the motion. It includes the voluntary statement of
4 Mr. Hawkins as well as the recorded audio, which I believe
5 during the actual motion Your Honor had mentioned having an
6 opportunity to have heard.

7 MR. CARRANZA: So can I have some of the exhibits
8 marked, and do you have a copy, do you need a copy? I've got
9 extras.

10 THE COURT: It's going to be easiest to purposes of
11 this hearing just to mark them so that we're clear, because I
12 got a little change in counsel, a little change in kind of a
13 combined hearing, if you don't mind. If you've got a copy for
14 the clerk, that we'll mark them and do the objections and --

15 MR. CARRANZA: I do, Your Honor. May I approach?

16 THE COURT: Of course. And [inaudible] need to
17 approach or approach the witnesses to bring them things, be
18 perfectly fine.

19 MR. CARRANZA: This is Exhibit B. Does Your Honor
20 need --

21 THE COURT: Yes.

22 MR. CARRANZA: I'll give that one for the witness,
23 Your Honor.

24 THE COURT: This is?

25 MR. CARRANZA: Exhibit B as in boy.

1 THE COURT: Thank you so very much. And we're
2 continuing with the original designations that you've utilized
3 in the past; is that correct?

4 MR. CARRANZA: I'm going to try.

5 THE COURT: That's why you're starting with B
6 versus A? Okay.

7 MR. CARRANZA: I'm going to try to the extent I can
8 figure out how that was --

9 THE COURT: I just want to know for purposes of --
10 because for clarity, I have the wonderful opportunity, not
11 only do I have my current -- my court clerk with us, but we
12 also have a training clerk, and so that they can put for their
13 notes either we need to know if you're starting from A, or if
14 you're keeping it consistent with the prior hearing just so it
15 makes sense.

16 MR. CARRANZA: I think we're keeping it consistent
17 with the motion in the prior hearing.

18 MS. RENWICK: Yes. I think that would make it
19 easiest for everybody.

20 THE COURT: Okay. Is that agreeable to plaintiff's
21 counsel as well?

22 MR. CHURCHILL: I'm sorry, Your Honor?

23 THE COURT: Just that the order of exhibits, instead
24 of starting over for today's purposes with the A, that you're
25 utilizing the exhibit designations that were previously

1 introduced at prior hearings; does that work for you as well?

2 MR. CHURCHILL: That's fine, yes.

3 THE COURT: Okay.

4 (Court confers with the clerk.)

5 MR. CARRANZA: And Your Honor, since we're taking
6 care of housekeeping, we'd like to play the audio recording.
7 Is there a -- I think we had talked to someone in the IT
8 department about having -- having that connected. Okay.

9 THE COURT: Do you have the appropriate cord so you
10 can play it? Because I tell you, that's not making anyone
11 [inaudible]. But once again, you got to coordinate -- because
12 we only have cords in there. And then if you're playing it
13 off a laptop, or what are you planning on playing it off of?

14 MR. CARRANZA: Yes.

15 THE COURT: Have you brought your own external
16 speakers?

17 MS. HALBERT: We do, just with the laptop itself.

18 THE COURT: Because there's [inaudible]. Madam
19 Court Recorder, can we get it switched over so that they --

20 THE COURT RECORDER: Yeah. I'm going to switch it
21 over now.

22 THE COURT: Do you want to do a quick test on that?
23 And while you're doing that, just I want to confirm --

24 MR. CARRANZA: Sure.

25 THE COURT: -- is since these exhibits that I

1 understand you're only introducing exhibits that have
2 previously been provided with prior motions, right? So they
3 were stipulated admitted; meaning I didn't have any prior
4 objections or prior motions, or is there some different
5 agreement --

6 MR. CARRANZA: Again, I was going to go through the
7 formality of offering them in too. I don't -- because again,
8 because I wasn't aware if there was a prior agreement to
9 admit.

10 THE COURT: I'm not either. That's why I'm
11 checking. So I'll just wait and have you submit things and
12 we'll deal with it at that juncture, and if there's a prior
13 understanding we can deal with it at that time; does that
14 work?

15 MS. RENWICK: There was no prior understanding, Your
16 Honor. We got as far as the actual motion in setting the
17 hearing. We never actually got to the logistics of this
18 hearing, so that was -- that was left on the -- unaddressed.

19 THE COURT: So resubmit it, we'll deal with it and
20 we'll take care of it. Okay.

21 MR. CARRANZA: Appreciate that. Thank you, Your
22 Honor.

23 THE COURT: Thank you for your patience.

24 THE WITNESS: No worries.

25 THE COURT: They're trying to get some...

1 MR. CARRANZA: Thank you, Detective.

2 THE WITNESS: No worries.

3 BY MR. CARRANZA:

4 Q I've just handed you what's previously been marked
5 as Exhibit B to these proceedings. Do you recognize Exhibit
6 B?

7 A Yes, I do.

8 Q Tell us what Exhibit B is.

9 A This is my transcribed copy of X'Zavion Hawkins'
10 interview at the hospital.

11 Q And Exhibit B, that's the -- that's the statement
12 that was transcribed directly from the audio as you've
13 described, after you had taken it, you gave it to the
14 appropriate Metro personnel for the transcriptions?

15 A Yes, sir.

16 Q And that's the transcription that after it was
17 prepared you reviewed for accuracy?

18 A Yes, sir.

19 Q And if I were to play the audio recording of the
20 interview, I could follow that fairly closely by following
21 along in Exhibit B?

22 A Yes, sir.

23 MR. CARRANZA: Then with the Court's indulgence what
24 I'd like to do now is play Exhibit K to these proceedings,
25 which I understand is the 15 minute or so recorded audio of

1 the interview.

2 THE COURT: That's fine for these purposes. My
3 clerk's going to have me follow up with you on whether or not
4 you either have -- either A, new disk, or B, an agreement to
5 use the previously submitted disk, because they need to keep
6 control [inaudible] potentially admitted. So go ahead.

7 MR. CARRANZA: Absolutely. Can we do that now? I
8 don't know if counsel's got an objection or will agree to use
9 the previously submitted disk. My understanding is that that
10 was submitted as part of the original motion filing.

11 MR. CHURCHILL: That's fine, Your Honor.

12 THE COURT: Okay.

13 (Court confers with the clerk.)

14 THE COURT: Here's what we're going to do. We
15 appreciate -- as you know, we've moved courtrooms, so we don't
16 have access to everything that we normally would have in our
17 own courtroom, so here's what we're going to do. Based on
18 agreement of counsel to the previously submitted agreed upon
19 Exhibit K, if we go back -- oftentimes when we return the
20 documents we just to need to make sure if we still have it
21 we'll tell you all. If we don't have it, we need another copy
22 of it, and we'll just notify the parties. Does that work for
23 everyone?

24 MR. CARRANZA: I'm comfortable with that, Your
25 Honor.

1 MR. CHURCHILL: That's fine, Your Honor.

2 THE COURT: Good. Go ahead.

3 MR. CARRANZA: Thank you, Your Honor. I'm trying to
4 pull up the audio recording now.

5 (Pause in proceeding.)

6 (Exhibit K audio played - not transcribed.)

7 THE COURT: Can the witness hear that?

8 THE WITNESS: I can.

9 THE COURT: Because if there's no objection from any
10 of the parties, I have no concern if you wish the witness to
11 come closer to the computer if that would be easier.

12 THE WITNESS: I can hear it fine.

13 (Exhibit K audio plays - not transcribed.)

14 BY MR. CARRANZA:

15 Q Thank you for your patience, Detective Majors. Is
16 that the recorded statement you recall taking in August of
17 2013?

18 A Yes, sir.

19 Q And is that the -- do you recognize the voices on
20 that audio recording?

21 A I do.

22 Q Can you identify what those -- whose voices those
23 were?

24 A One was my voice, the other was Detective Mark
25 Menzie, and the other was the victim, X'Zavion Hawkins.

1 Q And as far as you could tell, is that a true and
2 correct copy of the audio recording of your interview?

3 A Yes, sir.

4 Q And is that the audio that was used to transcribe
5 what's been marked as Exhibit B?

6 A Yes, it was.

7 Q And that's the audio that you used to confirm the
8 accuracy of the transcription on Exhibit B?

9 A Yes, sir.

10 Q And that's --

11 MR. CARRANZA: Well, I guess at this time, Your
12 Honor, what I'd like to do is just formally offer into
13 evidence both Exhibit B, the voluntary statement that's been
14 previously attached to the motion, and Exhibit K, the audio
15 recording that I understand was also previously attached to
16 the motion.

17 MR. CHURCHILL: No objection, Your Honor.

18 MS. RENWICK: No objection, Your Honor.

19 THE COURT: Hearing no objection, both are admitted.
20 Thank you.

21 (Defendant's Exhibit B admitted.)

22 (Defendant's Exhibit K admitted.)

23 THE COURT: You may proceed.

24 MR. CARRANZA: Thank you.

25

1 BY MR. CARRANZA:

2 Q Detective Majors, during your interview at UMC, did
3 Mr. Hawkins appear disoriented to you?

4 A No. No.

5 Q Did he appear as if he was in some kind of haze or
6 he was foggy in his recollection?

7 A Not at all.

8 Q And in your years of experience in interviewing
9 victims and witnesses, how would you rate his alertness and
10 his orientation?

11 A Very well. I mean, he developed really decisive
12 answers. He was clear. He was concise. He offered up things
13 that I didn't know about.

14 Q Any information that you offered or prompted him
15 with, or was this all by his own recall?

16 A This is all by his own recall.

17 Q And we heard the audio here being played and
18 generally it sounded like you asked him a lot of information
19 about the shooting, about the person's involved in the
20 shooting. I'd like to specifically ask you questions to see
21 if you remember; is that okay?

22 A Yes, sir.

23 Q Do you -- I thought I heard him identify someone
24 named Ashley Christmas. Did I hear that right?

25 A Yes, sir.

1 Q What do you remember about how he identified that
2 and who that was?

3 A That was the first time I heard that it was Ashley
4 Christmas.

5 Q And who did he identify Ashley Christmas, what role
6 did he have in that incident on August 17?

7 A He was the one that confronted the victim. He was
8 also one of the guys that robbed the victim at an earlier
9 time, and he was also the one that said, "Get him, Zach,"
10 prior to Zach shooting at the victim.

11 Q Did he also give you any nicknames that Mr.
12 Christmas went by?

13 A He went by Pooh Man.

14 Q And where did that come from?

15 A That came from Ashley -- or excuse me, that came
16 from the victim.

17 Q Any other nicknames that he provided you about that
18 Mr. Christmas used?

19 A Little PMG.

20 Q Do you remember him describing for you Mr.
21 Christmas' approximate age?

22 A He said he was about 18.

23 Q Did he physically describe his appearance to you?

24 A Yes.

25 Q What did he describe?

1 A Muscular build. I don't remember verbatim exactly
2 what he was wearing, but yes, he gave a description of what he
3 looked like.

4 Q And that's all in Exhibit B?

5 A That's all in my recording and transcription.

6 Q Did he also identify for you who Mr. Christmas hung
7 out with or associated with?

8 A No.

9 Q Do you remember him identifying a gentleman named
10 Duane Cornwell [phonetic]?

11 A Yes. Yes, he did.

12 Q And what was -- who did he identify Mr. Cornwell
13 to be?

14 A I just assumed he was one of the people that he hung
15 out with, one of the guys he knows that hangs out with.

16 Q And again, that information is in Exhibit B?

17 A Yes, it is.

18 Q Did he also identify for you what high school
19 Mr. Christmas attends?

20 A Yes, he did. Cheyenne.

21 Q And I thought I heard you talk about his offering up
22 information about Mr. Christmas' involvement in a prior
23 robbery of Mr. Hawkins. Did I hear that?

24 A That is correct.

25 Q What do you remember him telling you about that?

1 A He said that actually Pooh Man had robbed him of 60
2 bucks of the 150 that his dad gave him, and he never reported
3 it.

4 Q And did he describe how the robbery was -- went down
5 or it happened?

6 A Yes. He described it in the interview.

7 Q Did Mr. Hawkins describe what occurred once he saw
8 Ashley Christmas on August 17, 2013?

9 A The way he described it was that if he sees him it's
10 going to basically be on. And when somebody says that
11 basically, you know, he's angry that the fact that somebody
12 took his money, and what I got from him when he said that is
13 basically there's going to be a fight.

14 Q And did you ask him about whether or not he had
15 thrown a bottle, a glass bottle --

16 A Yes.

17 Q -- at Mr. Christmas?

18 A He said he was the one that threw the glass bottle.

19 Q Did he tell you why?

20 A I don't remember that.

21 Q Did he tell you whether or not he hit Mr. Christmas
22 with the bottle?

23 A I don't -- if it's in the interview, it's in the
24 interview. I don't remember that.

25 Q Did Mr. Hawkins admit trying to fight Ashley

1 Christmas on August 17, 2013?

2 A Yes.

3 Q And again, you remember that and that's part of your
4 Exhibit B?

5 A That's part of the interview.

6 Q What about Zach Berry, did Mr. Hawkins during your
7 interview identify Zach to you?

8 A He only knew him as Zach and had a nickname of
9 Little PMG.

10 Q And what was his role in the August 17 incident?

11 A His role, he was the one that actually shot the
12 victim.

13 Q And did you learn from Mr. Hawkins how Zach got
14 involved in the incident?

15 A He was with Mr. Christmas.

16 Q And do you remember him identifying or describing
17 whether Mr. Christmas called Zach to act during the
18 altercation on August 17?

19 A No.

20 Q Whether he called out, Zach, get him or --

21 A Yes. Yes. That's what I just said was he said --
22 he's the one that said, Zach, get him.

23 Q Now, you've interviewed witnesses before as part of
24 your 15 year career; is that right?

25 A Yes, sir.

1 Q And did you get the feeling from Mr. Hawkins that he
2 was having trouble recalling the events of August 17?

3 A No.

4 Q Did he seem like he was in a fog or haze because of
5 either pain or medications?

6 A No, sir.

7 Q Did his condition, when you interviewed him, look
8 similar to how you see Mr. Hawkins today?

9 A Exactly, no. He just got out of surgery. Not just
10 recently, but I mean, he got out of surgery maybe the day
11 before, so he was laid up. He was in intensive care. So no,
12 not exactly how he looks now.

13 Q Does he look more alert today than on August 22,
14 when you interviewed him?

15 A You know, from -- I base alertness on when I talk to
16 somebody and they give me an intelligent response.

17 Q I appreciate that. After your interview, after
18 Exhibit B -- or after Exhibit K, the audio recording is taken
19 and after you had Exhibit K transcribed and it becomes
20 Exhibit B, did Mr. Hawkins ever reach out to you to try to
21 add information or change any information he provided to you?

22 A Mr. Hawkins, after the interview, after I stopped
23 tape and I was talking to him, telling him that I would be
24 coming back with more pictures to show him, basically he told
25 me that he wasn't going to help me do my job, verbatim.

1 Q You mean that's --

2 A Verbatim, his words to me, "I'm not going to help
3 you do your job."

4 Q Was your partner, Detective Menzie, there throughout
5 the entire interview?

6 A Yes, he was.

7 Q And was he present there when that statement by
8 Mr. Hawkins was made?

9 A Yes.

10 MR. CARRANZA: Your Honor, I don't think I have
11 anything further. Thank you.

12 THE COURT: Okay. Thank you so very much. Are you,
13 because you filed a joinder, did you have any additional
14 questions, or should I go to plaintiff?

15 MS. RENWICK: No. No further questions, Your Honor.

16 THE COURT: No questions at this time. Okay. Go
17 ahead, Counsel for plaintiff. Thank you.

18 CROSS-EXAMINATION

19 BY MR. CHURCHILL:

20 Q Good morning, Detective.

21 A Good morning.

22 Q To begin with, one of the first statements that you
23 made this morning was that when you met with Mr. Hawkins at
24 the hospital, that he was able to identify for you the names
25 of Ashley Christmas and Zachariah, Zachariahs Berry; is that

1 correct?

2 A Yes, in the interview.

3 Q In the interview. Could you please look through the
4 interview and identify where Mr. Christmas -- or I'm sorry,
5 Mr. Hawkins identified Zachariahs Berry?

6 A Page 2, third -- or excuse me, yeah, third sentence
7 down it says, "X. Hawkins, Ashley Christmas known as Pooh
8 Man."

9 Q Okay. That's great for Ashley Christmas, but my
10 question was where does he identify Zachariahs Berry?

11 A Okay. He identified a guy by the name of Zach. I
12 later upon my investigation determined it was Zachariah Berry.

13 Q Okay. So the -- so let's clarify. The truth is
14 Mr. Hawkins never told you in this interview that there was a
15 gentleman by the name of Zachariahs Berry that was involved in
16 this shooting?

17 A He said, Zach also known as Little Pooh Man G.

18 Q And he also said that -- Mr. Hawkins also said that
19 Ashley Christmas is known as Little Pooh Man G?

20 A Negative. That is not true. Pooh Man is Ashley
21 Christmas. Little Pooh Man G is going to be Zachariahs Berry.
22 I know this from field interviews. That's how we were able to
23 identify Zachariahs Berry. He also has a Facebook account.
24 He also had another social media account with Little Pooh Man
25 G on it, and it had his picture on it.

1 Q Okay. So what's -- now let's look at what the truth
2 is now.

3 A Okay.

4 Q What he specifically says, I'll read it to you. It
5 says, "Pooh Man, but Pooh Man, he asked him, he said Zach.
6 Zach came out of nowhere. I guess Zach, he called himself
7 Little Pooh Man G. I'm not -- I'm not sure if that's a
8 nickname, but I know he said Zach." So the truth is he knows
9 the name is Zach, he does not know if the nickname is Little
10 Pooh Man G.

11 A Well, he said it here, that -- that's where I got
12 the name Little Pooh Man G, and I was able to look it up, and
13 prior stops were made on this person. We were able to
14 identify him as Zachariahs Berry because of that nickname --

15 Q But the specific --

16 A -- that he provided.

17 Q The specific quote from Mr. Hawkins was, I'm not
18 sure if that's his nickname, correct?

19 A Did he say that in the interview, yes.

20 Q Okay. And Mr. Hawkins was able to identify in a
21 photo lineup Ashley Christmas, correct?

22 A Yes, he was.

23 Q And he was never able to identify Zachariahs Berry,
24 correct?

25 A That is correct.

1 Q And counsel had asked you if Mr. Hawkins was able to
2 describe Mr. Christmas to you, and I think you had agreed the
3 description that he gives is extremely vague?

4 A Including the first and last name?

5 Q The description of what he looks like. So here's
6 your question. "Can you describe him? What's he look like?"
7 And here's the answer. "He like -- probably like his height,
8 brown. I don't know. Like he is like brown, like got
9 [inaudible] eyes." I'm assuming brown eyes. Then he's asked,
10 Is he heavy-built, thin-built --

11 A I asked that.

12 Q You asked that. And he responds, "He like," you
13 ask, "Muscular," and then he responds, "Thin-built, wear nice
14 clothes." And that's the extent of the description that he
15 gives you.

16 A Along with the name of the suspect.

17 Q Okay. But in describing the person, that's pretty
18 vague, correct?

19 A That's your opinion. That's not my opinion. When
20 somebody gives a first and last name, that's really something
21 to go off of.

22 Q If you were going to go out and look for a possible
23 assailant on the street with the description of, He like his
24 height brown, are you going to be able to find somebody with
25 brown height pretty easy?

1 A No. I'm going to find the person named Ashley
2 Christmas.

3 Q I don't know why you want to focus on that.

4 A I don't understand what you're saying. I wish -- is
5 there a question?

6 Q Yeah. The question is the description of how
7 he's -- you asked what does he look like, and the description
8 is vague, correct?

9 A The description's vague, but the name isn't.

10 Q Okay. Now, let's talk about that. You know that
11 Mr. Hawkins met with family members before he met with you
12 regarding this shooting, don't you, true?

13 A Yes.

14 Q And you also were able to obtain Ashley Christmas's
15 name as well as Zachariahs Berry -- as well as Zachariahs
16 Berry's name from one of Mr. Hawkins' family members, correct?

17 A Yes.

18 Q And you don't have any idea of what information
19 these family members are passing along to Mr. Hawkins in the
20 minutes, hours, days before he meets with you, correct?

21 A Do I know what they're passing along, the
22 information; is that your question?

23 Q Correct. That's my question.

24 A That's the information they gave me. I'm going off
25 the information they gave me.

1 Q So you know that Mr. Hawkins has a family member who
2 was able to identify both assailants by their names, correct?

3 A No. One assailant, but that person wasn't there.
4 The second assailant the only way I was able to identify was
5 from the moniker of Little P Man -- Pooh Man G.

6 Q Are you saying that Mr. Fleming [phonetic] did not
7 provide you both names?

8 A Mr. Fleming wasn't present for the shooting.

9 Q I understand that. But you spoke with Mr.
10 Fleming --

11 A I did. I did.

12 Q -- and he provided you both names, correct?

13 A That is correct.

14 Q Okay. And you don't know what conversations
15 Mr. Hawkins had with Mr. Fleming prior to meeting with you, do
16 you?

17 A No.

18 Q Okay.

19 A But I try to base my investigation on eyewitnesses
20 rather than third party hearsay.

21 Q And, sir, you're not a doctor, are you?

22 A I am not a doctor.

23 Q When you say that Mr. Hawkins, when you met with
24 him, is alert and oriented times three, let's talk about what
25 that really means. That means he knows his name, date and

1 location?

2 A Right.

3 Q And that -- that's the extent of him being alert and
4 oriented times three.

5 A Is there a question? I'm sorry. I'm trying to
6 understand what you're saying.

7 Q But you're not a doctor. You're not able to assess
8 Mr. Hawkins medically.

9 A When I said times three, I used to be a medic prior
10 to joining Metro, so I have a little bit of background.

11 Q You're not a doctor, correct?

12 A I am not a doctor.

13 Q You are not able to assess Mr. Hawkins' physical and
14 mental ailments, are you?

15 A No, but I do talk to doctors that are there. I do
16 talk to nurses that are attending him and ask if he's able to
17 give an interview.

18 Q And you had indicated that you spoke to a nurse,
19 correct?

20 A Yes.

21 Q And the nurse said, Yeah, you can ask him questions?

22 A Yes.

23 Q That's what you testified?

24 A Yes.

25 Q Mr. Hawkins was cooperative with you, correct?

1 A To a point. At some point he stopped calling. He
2 wouldn't return my calls after he was released from the
3 hospital.

4 Q And you certainly don't know Mr. Hawkins' current
5 medical condition, do you?

6 A I do not.

7 Q You would not know his medical condition as of
8 January of 2016, correct?

9 A No, sir.

10 Q All right. Thank you.

11 A Thank you.

12 MR. CARRANZA: Nothing further, Your Honor.

13 THE COURT: Further redirect?

14 MS. RENWICK: Nothing further, Your Honor.

15 THE COURT: There being nothing further, then this
16 witness is excused. Now, this witness was subpoenaed by
17 defense. Is there a separate subpoena that he [inaudible] or
18 is he excused for all purposes?

19 MR. CHURCHILL: He's excused for all purposes.

20 THE COURT: We appreciate it. Thank you so very
21 much. You're excused for all purposes. We appreciate your
22 time.

23 THE WITNESS: Thank you.

24 (Pause in proceeding.)

25 THE COURT: At this juncture, Counsel, would you

1 like to call your next witness?

2 MR. CARRANZA: The only other witness we'd like to
3 call is Mr. Hawkins.

4 THE COURT: Mr. Hawkins, my marshal can assist you
5 to the witness stand if you'd like.

6 Is there any other accommodation we can offer your
7 client, Counsel?

8 MR. CHURCHILL: No, Your Honor.

9 THE COURT: Okay. No worries. Just want to make
10 sure if there's anything else we'd be glad to do so.

11 (Pause in proceeding.)

12 X'ZAVION HAWKINS, DEFENDANT'S WITNESS, SWORN

13 THE CLERK: Please state and spell your name for the
14 court's record.

15 THE WITNESS: It's X, apostrophe Z, a-v-i-o-n.
16 Hawkins, H-a-w-k-i-n-s.

17 THE COURT: Counsel, you may proceed at your
18 convenience.

19 DIRECT EXAMINATION

20 BY MR. CARRANZA:

21 Q Good afternoon, Mr. Hawkins. How are you?

22 A Good afternoon.

23 Q I know I haven't had a chance to meet you before, so
24 I wanted to introduce myself. My name is Edgar Carranza, and
25 I am the lawyer that's taken over part of the defense for

1 Mydatt and Mark Warner in your case.

2 A Correct.

3 Q Okay. Mr. Hawkins, do you understand the oath you
4 just took?

5 A Yes.

6 Q Do you understand that it obligates you to tell the
7 truth?

8 A Correct.

9 THE COURT: Just a second. Counsel, before --
10 let's -- Marshal, would you mind assisting in getting the
11 microphone a little bit closer. Appreciate it. Just you're
12 very soft spoken. We want to make sure --

13 THE WITNESS: I'm sorry. My voice is very soft.

14 THE COURT: Oh, no worries. No worries. We're just
15 going to get the microphone a little bit closer to you, so
16 that should assist. Thank you so very much.

17 THE WITNESS: And my knees won't go under this
18 thing, because it's kind of --

19 THE COURT: Marshal.

20 THE MARSHAL: Do you want me to lower it?

21 THE WITNESS: Yeah.

22 THE COURT: If you'd assist. Let us know when it --

23 THE MARSHAL: Tell me when it's good.

24 THE WITNESS: Okay. Right there is fine.

25 THE COURT: Okay. Thank you. Counsel, if you

1 wouldn't mind re-asking your last question, just so we get it
2 clear for the record.

3 MR. CARRANZA: Absolutely. Mr. Hawkins, do you need
4 a glass of water or anything while we go along?

5 THE WITNESS: Yes. I be in pain a lot, so...

6 MR. CARRANZA: Your Honor, may I approach?

7 THE COURT: Of course.

8 MR. CARRANZA: Get that for you.

9 THE WITNESS: Thanks.

10 BY MR. CARRANZA:

11 Q Mr. Hawkins, my last question to you, let me just
12 start over. I wanted to make sure that you were clear about
13 the obligation of the oath you just took --

14 A Yes.

15 Q -- that it obligates you to tell the truth.

16 A Correct.

17 Q And if you don't do that, then that there are
18 penalties that might follow if you fail to do that. Do you
19 understand that?

20 A I understand.

21 Q And you heard the playing of the audio recording of
22 your interview with Detective Majors that we've attached and
23 admitted as Exhibit K; is that right?

24 A Yes. I heard it.

25 Q And you saw Detective Majors as he testified here

1 this morning?

2 A Yes.

3 Q And you recall being interviewed during the
4 investigation of the attempted murder on you of August 17,
5 2013, don't you?

6 A Yes.

7 Q And you remember you were interviewed by several --
8 or a couple of detectives; is that right?

9 A Yes.

10 Q And you recognize Detective Majors as one of the
11 detectives that interviewed shortly after the attempted
12 murder; is that right?

13 A Yes. He was one of the main ones actually.

14 Q And you recall that when he interviewed you he
15 mentioned to you that the interview was being recorded?

16 A Yes.

17 Q You acknowledged that you understood that?

18 A I was -- yes, I did. I was under a lot of
19 medication at the time though, so.

20 Q I understand. And we'll talk about that. But you
21 understood that it was being recorded when you were being
22 interviewed, correct?

23 A Yes.

24 Q And earlier today you recognized your voice on that
25 audio recording?

1 A Yes.

2 Q Do you also recall indicating to Detective Majors
3 and to Metro in general that you wanted your assailants
4 arrested?

5 A Yes.

6 Q Do you remember saying something to Detective Majors
7 that you wanted to, quote, get their -- get his ass off the
8 street, close quote?

9 A Yes.

10 Q And so to help them in their job you provided them
11 your honest answers and information that they asked of you
12 when they interviewed you?

13 A Yes, I did.

14 Q Now, Mr. Hawkins, I don't know how much you know
15 about lawsuits, but generally in a lawsuit the parties are
16 asked to give information by various means. Sometimes we have
17 witnesses give a deposition, and I know you've been through
18 that process.

19 A Yes.

20 Q And sometimes we ask questions by written requests,
21 right? Are you familiar with that process?

22 A Yes.

23 Q And in this case lawyers have asked you information
24 by written requests for information; is that right?

25 A Yes.

1 Q Sometimes they're called interrogatories. Does that
2 sound familiar to you?

3 A Could you explain that?

4 Q Sure. Sure. Interrogatories are generally written
5 questions where a lawyer asks another party to answer and
6 provide information. Do you remember having written questions
7 presented to you and you asked to give information?

8 A Yes.

9 Q Well, let me see if -- let me see if we can make it
10 even easier for you. I'd like you to take a look at what's
11 already been marked as Exhibit I to these proceedings.

12 MR. CARRANZA: May I, Your Honor?

13 THE COURT: Of course you may. And all counsel
14 should feel free if you need to approach the witness or
15 whatever, or approach the clerk, feel free to do so. Thank
16 you, sir.

17 BY MR. CARRANZA:

18 Q I'm not going to ask you to read through Exhibit I,
19 Mr. Hawkins. I just want you to take a look at it and see if
20 you recognize Exhibit I. Let's do this. If you can turn to
21 the second to the last page.

22 A The second to the last page?

23 Q Yes, please.

24 A Okay.

25 Q Are you there?

1 A Yes.

2 Q Top of the page should say, Verification.

3 A No. It says, Answer to -- excuse me. Yes.

4 Q Okay. Do you see that first sentence begins with,
5 I, X'Zavion J. Hawkins? Do you see that?

6 A No. I'm on the second to the last page where it
7 says -- what's the top of the page?

8 THE COURT: Counsel, if you want to approach.

9 MR. CARRANZA: Sure. Let me see if I can help you,
10 Mr. Hawkins.

11 THE WITNESS: Yeah, 'cause I went to the second to
12 the last page.

13 MR. CARRANZA: See if I can -- that's the last page,
14 second to the last page.

15 THE WITNESS: Oh, sorry.

16 BY MR. CARRANZA:

17 Q That's all right. Do you see that up at the top
18 where it says, Verification?

19 A Yes.

20 Q And then that first sentence begins with, I,
21 X'Zavion J. Hawkins, do you see that?

22 A Yes.

23 Q And it goes on to say, quote, Being first duly
24 sworn, close quote. Do you see that?

25 A First duly sworn?

1 Q Right after your name.

2 A Yes.

3 Q The next sentence begins, quote, That I have read
4 the foregoing, close quote. Do you see that?

5 A Yes, I see that.

6 Q And then it gives the name of the document, and then
7 it goes on to say, quote, And know the contents thereof, that
8 the same is true of my own knowledge, close quote. Do you see
9 that?

10 A Yes.

11 Q And under that is a signature. Do you see that?

12 A Yes. It's my signature.

13 Q That's your signature?

14 A Yes.

15 Q I'm sorry. I couldn't hear you.

16 A Yes.

17 Q And that's dated, it looks like it was signed on
18 September 25, 2015; is that right?

19 A Yes.

20 Q And so you obviously read that before signing it,
21 yes?

22 A Yes.

23 Q So you understood that you, by providing those
24 answers and signing the verification, you were attesting to
25 the truth and accuracy of the information provided?

1 A Yes.

2 Q You understood that you were providing those answers
3 under oath?

4 A Yes.

5 Q Let's turn over to page 12 of Exhibit I, if you
6 would, please. You notice at the bottom right-hand corner in
7 very small numbers are the page numbers. Bottom right-hand
8 corner. Let me see if I can help you, Mr. Hawkins.

9 A Bottom right-hand. I don't see the right-hand
10 numbers.

11 THE COURT: The page immediately before the
12 verification?

13 MR. CARRANZA: Yes.

14 THE COURT: Counsel, do you have a copy as well?

15 MS. RENWICK: I do. Thank you.

16 BY MR. CARRANZA:

17 Q Are you on page 12, Mr. Hawkins?

18 A Yes.

19 Q I'll call your attention down to Interrogatory
20 No. 27, the last question asked of you. Do you see that?

21 A Like where it says number -- yes, I see.

22 Q And the question being posed to you is, quote, What
23 is the name, address and phone number of the person who shot
24 you, close quote. Do you see that?

25 A Yes.

1 Q And the answer you provided is, quote, that you,
2 quote, Lacks information to answer this interrogatory, close
3 quote. Did I read that accurately?

4 A I'm not understanding, because you said --

5 Q The answer that was provided says --

6 A You said what is the name and address and the phone
7 number of the person who shot you?

8 Q Right. That's what Interrogatory No. 27 asks of
9 you, yes.

10 A Okay.

11 Q And then the answer you provide, which was right
12 under that, it says, "Answer to Interrogatory No. 27." The
13 answer that you provide is that you lack the information to
14 answer that.

15 A No. I --

16 Q That's what that says --

17 A I would never even know that like.

18 Q That's what that says, right?

19 A No. I didn't know that.

20 Q Did I read that incorrectly, or does that say,
21 quote, Plaintiff lacks information to answer this
22 interrogatory?

23 A Yes. I see that.

24 Q Let me also have you take a look at what's been
25 marked as Exhibit H to these proceedings.

1 A So are we going to page 8?

2 THE COURT: Counsel, you're introducing a new
3 document, Exhibit H?

4 MR. CARRANZA: Exhibit H as in Harold.

5 THE WITNESS: Oh, okay.

6 MR. CARRANZA: I'll represent to you, Mr. Hawkins,
7 that Exhibit H is a first set of request for admission that
8 was served on your lawyers earlier in this case.

9 THE COURT: Counsel, just for clarification, just so
10 my clerks understand, the reference that you're doing is
11 from -- at least for Exhibits E, I and H, are attached to
12 defendant's motion to dismiss complaint electronically filed
13 on March 23, 2016.

14 MR. CARRANZA: Right. That was --

15 THE COURT: Okay.

16 MR. CARRANZA: -- the understanding, that we were
17 going to try to stay consistent with the exhibits since they
18 were labeled as part of the motions.

19 THE COURT: That didn't have a K attached to that
20 motion, so I'm just trying to distinguish that that's what the
21 three of them came to. It ended at I on that initial motion.

22 MS. RENWICK: Oh, the K, Your Honor, there was a
23 supplemental -- the supplemental exhibits were filed after the
24 motion because it was the disk.

25 THE COURT: I'm just making sure everyone's on the

1 same page, because I know you came newer into the case so that
2 we're referencing [inaudible] for their purposes.

3 MR. CARRANZA: Thank you. I thank you for the
4 clarification, Your Honor.

5 THE COURT: Thank you.

6 BY MR. CARRANZA:

7 Q Mr. Hawkins, if I can have you look at Exhibit H,
8 the document I just handed you, and turn to page 2.

9 A Okay.

10 Q The very first request, Request No. 1 on page 2,
11 tell me if I'm reading this accurately, asks you to, quote,
12 Admit that you know the person who shot you, close quote. Do
13 you see that?

14 A Yes.

15 Q Request No. 1 is what I'm reading. Do you see that?

16 A Says admit that you know the person --

17 Q Do you know the person who shot you. Did I read
18 that accurately?

19 A Yes, you did.

20 Q And your response is that you deny that; is that
21 right?

22 A Yes.

23 Q Also as part of this case, Mr. Hawkins, your
24 deposition has been taken. Do you remember that?

25 A Yes.

1 Q And that was taken by a gentleman named Josh Aicklen
2 along with Ms. Renwick, who's here at defense counsel table.
3 Do you remember that?

4 A Repeat that again. I'm sorry.

5 Q Sure. The lawyers that took your deposition was a
6 gentleman by the name of Josh Aicklen and also Ms. Renwick,
7 who's here at counsel table with me.

8 A Correct.

9 Q You remember seeing her at your deposition, yes?

10 A Yes.

11 Q Your deposition was taken on February 12 of this
12 year; is that right?

13 A Yes.

14 Q And you remember at the beginning of your deposition
15 you were sworn to tell the truth and took an oath similar to
16 the one you took here this morning?

17 A Correct.

18 Q And in fact, you guys took a recess during the
19 deposition and I believe you were reminded that your testimony
20 was still under oath. You remember that, correct?

21 A Yes.

22 Q And as part of those proceedings it was explained to
23 you the importance of taking an oath like that. Do you
24 remember that?

25 A Yes.

1 Q And you remember that it was explained to you that
2 it would be the -- it's the same oath that you would take in
3 front of a judge like we have here today?

4 A Correct. And --

5 Q And it was also explained to you that because of its
6 importance, it was very important that you try to give your
7 best testimony. You remember that, correct?

8 A Yes.

9 Q And I think at that point you explained to the
10 lawyers present that you were taking a --

11 A After --

12 Q -- series of medications because of your injuries,
13 correct?

14 A Correct.

15 Q And I think you indicated to them that sometimes
16 because of the medications you might forget a thing or two,
17 right?

18 A I have bad memory loss, like really, really bad
19 memory loss.

20 Q Okay. And I remember you explaining that to them,
21 that you had memory problems, correct?

22 A Yes. It's terrible.

23 Q And then because you said that to them, they
24 explained to you that then it was very important for you to
25 let them know if you were having trouble. Do you remember

1 them asking that of you?

2 A I guess so. I really don't remember, but...

3 Q Do you remember them explaining to you that if in
4 fact you were having trouble, that you needed to let them know
5 that you were having trouble?

6 A No, I don't remember that.

7 Q Do you remember them explaining to you that if you
8 didn't let them know that you were having trouble that they
9 were going to assume that the answers you were giving was your
10 best answer that you could provide? Do you remember that?

11 A Yes. I guess so.

12 Q And you never told the attorneys that you were
13 having trouble during your deposition, did you, Mr. Hawkins?

14 A No, I did.

15 Q No, you did, or no, you did not?

16 A I did tell them that I had bad memory loss.

17 Q And we've just gone over that. You explained to
18 them that you were taking medications that affected your
19 memory.

20 A Correct.

21 Q And then they turned around and explained to you
22 then in answering their questions you needed to make sure that
23 you told them for any given question that you were having
24 trouble remembering. And you remember that explanation,
25 correct?

1 A Yes.

2 Q I'm sorry?

3 A Yes. I guess.

4 Q And my question --

5 A He --

6 Q My question to you then is, you never said -- you
7 never said that to them then, you never said stop? For any
8 question that they asked you, you never said, hang on, I'm
9 having trouble remembering the answer to this question?

10 A I did that numerous times through the deposition. I
11 did.

12 Q Do you remember what questions?

13 A No, I don't remember exactly what question. But I
14 was stopped like a couple of times and asked, you know, try
15 your best to remember, and like that's what I really remember.

16 Q Well, let's do this then, Mr. Hawkins. We have a
17 copy of your deposition that again, I believe has been marked
18 as Exhibit C to the proceedings.

19 THE COURT: This is Exhibit C from the 3/23/16
20 defendant's motion to dismiss.

21 THE WITNESS: After --

22 THE COURT: He's going to get you a copy. Just one
23 second.

24 THE WITNESS: Okay.

25 THE COURT: Thank you so much.

1 BY MR. CARRANZA:

2 Q Do you recognize Exhibit C, Mr. Hawkins?

3 A I'm still looking at it. I'm sorry. Yes.

4 Q Do you remember being provided a copy of Exhibit C,
5 your deposition transcript, after your deposition?

6 A No. I don't remember, but I guess I was.

7 Q Do you remember reviewing your answers that you
8 provided --

9 A Yeah. I remember reviewing over my answers, yes.

10 Q That was part of -- that was asked of you during
11 your deposition?

12 A Yes.

13 MR. CARRANZA: Your Honor, I'd like to offer
14 Exhibit C into evidence.

15 MR. CHURCHILL: No objection.

16 THE COURT: With no objection it's admitted.

17 MS. RENWICK: No objection, Your Honor.

18 THE COURT: [Inaudible.] Okay. Thank you.

19 (Defendant's Exhibit C admitted.)

20 BY MR. CARRANZA:

21 Q Mr. Hawkins, during your deposition you were asked
22 about the shooting; is that right?

23 A Yes.

24 Q And you testified generally that you were at the
25 Meadows Mall the morning of the shooting; is that right?

1 A Yes.

2 Q And you were there for a shoe release event?

3 A Correct.

4 Q And that you were there with your cousin, Keisha
5 Love [phonetic]; is that right?

6 A Correct.

7 Q You were asked about the persons who assaulted you.
8 Do you remember that?

9 A Yes.

10 Q And you testified at your deposition that Pooh Man
11 was the second man that assaulted you, not the shooter, but
12 the second man, the person with the shooter. Do you remember
13 that?

14 A No. I don't -- like you said the person that was
15 with -- can you explain that over? I'm sorry.

16 Q Sure. You were asked if Pooh Man, if he was the
17 shooter, and I believe you indicated he was not the shooter,
18 he was the person with the shooter.

19 A Correct.

20 Q You remember that as part of your deposition?

21 A Yes.

22 Q And you remember the lawyers asking you if you knew
23 what Pooh Man's real name was?

24 A Yes.

25 Q And your answer to them was no; do you remember

1 that?

2 A Yes.

3 Q And they asked you several times on several
4 different occasions during your deposition if you knew Pooh
5 Man's real name; is that right?

6 A Correct. My memory --

7 Q And each time you indicated that you did not know
8 his real name; is that right?

9 A We -- yes.

10 Q Not that you were having trouble remembering or that
11 at one time you knew the name and you might have forgotten it.
12 Your answers were very clearly no. Remember that?

13 A Yes, but in the same breath I did tell them, you
14 know, like I don't remember, you know, his real name or
15 whatever, but we always called him Pooh Man. I always --
16 we -- I always called him Pooh Man. I never even --

17 Q I understand. But you denied knowing his real name
18 on the date of your deposition.

19 A Yes. But after --

20 Q And that was a definitive denial. That wasn't a I
21 might have known it once upon a time. That was a no, right?

22 A Yes. But after giving my deposition --

23 Q You were also asked --

24 MR. CHURCHILL: Hold on.

25 MR. CARRANZA: I'm sorry.

1 MR. CHURCHILL: Your Honor, can counsel please allow
2 the witness to finish answering the question --

3 THE WITNESS: Yeah.

4 MR. CHURCHILL: -- before asking another question?

5 THE WITNESS: Okay.

6 THE COURT: And your position on that.

7 MR. CARRANZA: My position is this is obviously an
8 adverse party. He's free to rehabilitate if he really thinks
9 he can try to rehabilitate that.

10 MR. CHURCHILL: He's giving an answer and he's
11 cutting him off. That's what's going on.

12 MR. CARRANZA: He asked and answered -- or he
13 answered my question, Your Honor.

14 THE WITNESS: No. I was still going on and --

15 THE COURT: Wait. The Court has to make a ruling.
16 You got to wait a second, okay?

17 THE WITNESS: I'm sorry.

18 THE COURT: No worries. I have a -- so the basis of
19 your objection is what?

20 MR. CHURCHILL: He's cutting off the answer that the
21 witness is giving. It's an incomplete answer. He's cutting
22 him off.

23 THE COURT: The Court's going to overrule because
24 you have the opportunity to cross-examine the witness and the
25 Court is right here listening to the answers or partial

1 answers subject to the cross-examination.

2 Okay. So and -- so you can proceed.

3 MR. CARRANZA: Thank you, Your Honor.

4 BY MR. CARRANZA:

5 Q Mr. Hawkins, you were also asked during your
6 deposition if you knew Pooh Man as Little Pooh Man G. Do you
7 remember that?

8 A Yes.

9 Q And you denied knowing him as Little Pooh Man G?

10 A Yes.

11 Q You were asked if you knew someone nicknamed PMG.
12 Do you remember that?

13 A Yes.

14 Q And you denied knowing anyone with that moniker?

15 A Yes.

16 Q You were also asked during your deposition if you
17 knew someone named or nicknamed Little PMG. Do you remember
18 that?

19 A Yes.

20 Q And you denied knowing anyone with that nickname,
21 correct?

22 A Yes.

23 Q In fact, you said you didn't know any other
24 nicknames for Pooh Man; isn't that right?

25 A No. I don't. I don't know nothing like no other

1 nicknames, no.

2 Q So that's right, that you --

3 A At the time we --

4 Q That you denied --

5 A -- when my deposition was given --

6 Q Correct.

7 A -- but I corrected it.

8 Q When you were under oath at your deposition on
9 February 12, 2016 --

10 A Yes.

11 Q -- you denied knowing any other nicknames for Pooh
12 Man, correct?

13 A Yes.

14 Q You were directly asked during your deposition if
15 you knew someone named Ashley Christmas. Do you remember
16 that?

17 A Yes.

18 Q And do you remember answering no?

19 A Yes.

20 Q Do you remember you were asked that several times?

21 A Yes, I was.

22 Q At some points you even got frustrated that the
23 question kept getting asked and you kept denying knowing
24 anyone with that name; is that right?

25 A Yes.

1 Q And your responses weren't that name sounds
2 familiar, I might know someone by that name. Your responses
3 were definitively no, I don't know who Ashley Christmas is; is
4 that right?

5 A Yes. Yes.

6 Q But you gave Detective Majors that information in
7 August of 2013; isn't that right?

8 A Well, at the time --

9 Q You gave him that information in August of 2013?

10 A No. Detective Majors was coming to me with
11 information.

12 Q And I'm sorry.

13 A And Detective Majors --

14 Q Right.

15 A -- I knew that he had --

16 Q When he interviewed you on August 22, 2013, you gave
17 Detective Majors the name Ashley Christmas; isn't that right?

18 A That name was brought to my attention from Detective
19 Majors because I was able to --

20 Q Let me have you take a look at Exhibit B, if you
21 would, Mr. Hawkins. Do you have Exhibit B up there?

22 THE COURT: [Inaudible.] You can approach if you
23 wish. Is it still on the witness stand?

24 THE WITNESS: Can I say something?

25 THE COURT: Questions need to be pending and answers