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**JAMES COOPER**  
**Case No. 72091**

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1 A No.

2 Q Didn't tell you about any injuries on his chest or  
3 anything about being pushed or anything like that?

4 A No. He -- he -- he showed me those. At that point,  
5 I was concerned. It's -- it -- you know, I thought, okay,  
6 he's got some injuries.

7 MS. RHOADES: May I approach the witness, Your  
8 Honor?

9 THE COURT: Yes

10 MS. RHOADES: I'm just going to show them -- show  
11 him Defense's B.

12 BY MS. RHOADES:

13 Q I'm going to show you Defense's B, and it's kind of  
14 hard to see on the overhead, but I believe, that's his left  
15 hand with the bite mark on -- on the pointer finger.

16 A That's -- that's his hand that he -- that he did  
17 show me. His finger that he showed me.

18 Q And then how about, did he show you this very slight  
19 what appears to be a minor scratch on his other hand? Did he  
20 show you that injury?

21 A I inspected his hands. I don't recollect that at  
22 all. His -- his focus was on his finger --

23 Q Okay.

24 A -- I think. I think that's probably where he's  
25 feeling his pain.

1           Q    But there appears to be some sort of a very minor  
2 scratch that there might be a little bit of blood there; is  
3 that right?

4           A    I could see that.

5           Q    After you talked to the defendant, what did you do?

6           A    After I -- after I talked to the defendant, you  
7 know, I eventually -- you know, he was -- I left him in the  
8 courtyard. He still had his cell phone. I hadn't placed him  
9 in handcuffs.

10          Q    You had not?

11          A    I had not placed him in handcuffs. I -- from my  
12 side of the story, I considered based off of what I -- what I  
13 seen and what he told me, thought, okay, you know, it's --  
14 he's a victim of battery. And I needed to figure out the  
15 other half and what happened inside. So at that point, I my  
16 partner and I kind of switched paths. Officer Sylvia and I,  
17 we crossed paths.

18                I talked to him a little bit, you know, about what  
19 was happening out there and I went inside to go take a look  
20 at what was going on inside. That's when Officer Sylvia gave  
21 me a rundown of what -- what the boy had told him, and he  
22 relayed that to me, and I was pretty surprised at the events  
23 that he told me what the boy had told him.

24                And I specifically remember Officer Sylvia saying,  
25 he's like, yeah, you need to go talk to the -- talk to that



1 kid.

2 Q And so how many children were in the apartment?

3 A There were two.

4 Q And was the oldest one a boy, James Cameron Blair,  
5 about eight years old?

6 A Yes.

7 Q And then the youngest one, was it a little girl,  
8 Kaylee Jensen, about five years old?

9 A Yes.

10 Q So when you came back after you talked to Officer  
11 Sylvia, did you check Brittney out again or did you just  
12 start talking to the children?

13 A I first went in to see Brittney and try to talk to  
14 her. We had -- at that point, you know, we're -- everything  
15 was -- was safe for us, and the immediacy, urgency was, you  
16 know, was over. We were able to turn on some lights and so I  
17 got some better lights, and that's when I noticed the extent  
18 of her injuries.

19 Q What injuries did you notice on Brittney?

20 A I -- I -- I saw her face just puffy and swollen and  
21 badly beaten. I can -- it looked like her lips, her nose,  
22 her eye, it looked like she was missing hair as well. That's  
23 what I immediately noticed, you know, under that lighting  
24 condition, you know, right there in the apartment.

25 Q Did you see anything on her neck?

1           A    I did. I could see a fresh mark, very red. What I  
2 would refer to as a ligature mark, something that would be  
3 made from some type of a cord, a rope, something -- something  
4 of that nature. Not something that would be made by hands,  
5 hands, fists, you know, feet, pulling on a shirt, anything  
6 like that.

7           Q    Did all of the injuries you observed on Brittney  
8 appear to be fresh injuries?

9           A    They were very fresh.

10          Q    Were you trying to ask Brittney or did you ask  
11 Brittney what happened?

12          A    I was. She appeared to also be intoxicated. She  
13 was very hysterical, and I really wasn't able to get much  
14 from her. I used the word uncooperative, I believe, in my  
15 report. Just we couldn't get anything from her at all. She  
16 was just completely hysteria, I should say.

17          Q    Did you do a walk through of the entire apartment at  
18 some point?

19          A    I did.

20          Q    Did you do that by yourself or were you with the  
21 kids when you did that?

22          A    I -- I first tried to address Brittney and just find  
23 out from Brittney looking at the extent of -- the magnitude  
24 of her injuries, I wanted to know what happened. I wasn't  
25 able to get any information from her at that point. And I

1 remember what Officer Sylvia told me, and that's when I  
2 started to talk with the boy, and the boy's a sharp little  
3 kid. He was very smart.

4           You know, from the time that everything happened,  
5 he was no longer in tears and crying. I think everybody was  
6 -- you know, I think there was a little bit of shock that was  
7 going on. But he walked me through. He basically led me,  
8 you know, from room to room throughout the entire house of  
9 what transpired from his eyes and what he directly observed.

10           Q    About how big is the apartment?

11           A    I would say it's a two bedroom, two bathroom, main  
12 room, a kitchen. I would guess 800 square feet.

13           Q    So not very big?

14           A    Not very big at all.

15           MS. RHOADES: And may I approach the witness, Your  
16 Honor?

17           THE COURT: Yes.

18           BY MS. RHOADES:

19           Q    Showing you what's been marked as State's Proposed  
20 Exhibit No. 6. Do you recognize that?

21           A    Yes.

22           Q    And is that a sketch that you made in my office of  
23 how you remember the apartment being set up?

24           A    That was last week I made that sketch.

25           Q    And does that fairly and accurately depict the

1 sketch you drew last week of the apartment that you were in  
2 January 22nd?

3 A It's pretty close. That's -- I remember the  
4 apartment exactly that way.

5 Q Okay. And this sketch kind of helped you explain  
6 how everything went down?

7 A It was a very crazy event that the -- that the boy  
8 explained to me. And I think by explaining it, you know, I  
9 had -- I had to use the map to show room by room, step by  
10 step, you know, what happened and the evidence that I saw  
11 that corroborated with his story, and you know, the -- the  
12 evidence on both of -- both Mr. Cooper as well as Brittney.

13 Q Okay.

14 MS. RHOADES: I'd move for the admission of State's  
15 6, Your Honor.

16 THE COURT: Any objection?

17 MS. WALKENSHAW: No, Your Honor.

18 THE COURT: 6 -- 6?

19 MS. RHOADES: 6, yes.

20 THE COURT: 6 is admitted.

21 (State's Exhibit 6 admitted)

22 MS. RHOADES: Thank you.

23 BY MS. RHOADES:

24 Q I know you said that the boy had stopped crying.  
25 Can you just describe a little bit more his demeanor for us

1 when you were talking to him and he was walking you through  
2 the apartment?

3 A He -- he's a very sharp boy. Very -- he -- he  
4 explained to me in detail everything that -- you know, that  
5 he saw. You know, he walked me through. At times I had to  
6 stop and ask him, it's like okay, so what happened? There's  
7 times I remember, I asked this little boy two or three  
8 different times and you know, nothing deviated from his story  
9 that he told me while -- you know, while he told me, and  
10 basically, what Officer Sylvia had told me, there was no  
11 deviation from what he had told Officer Sylvia to what he had  
12 -- what he had told me, from my understanding.

13 Q Were you able to speak with Kaylee at all?

14 A I did. I did.

15 Q And what did Kaylee tell you?

16 A At this -- at this point, you know, where I'm  
17 investigating an incident, a crime, I don't like have  
18 witnesses together. I like to get people's memories because  
19 even in stress, memories can be a little bit different.  
20 There can be, you know, details or different perceptions.  
21 Two people could be in the same room, perceive things from  
22 different points. And I didn't their memories, you know,  
23 what they could say to -- to be the same.

24 And so -- so while I was walking through it with  
25 the boy, I had the girl, you know, sit in her room. There is

1 -- you know, there was a TV that was on the ground and had --  
2 you know, she just kind of sat in her bedroom just watching  
3 -- watching the TV. She was -- and the boy just walked me  
4 through -- Cameron, he walked me through the apartment, you  
5 know, step by step.

6           After I was done with Cameron, I went in to -- to  
7 talk with her. She was considerably younger. I had four  
8 children of my own, 12, 10, 4 and 2. I understand the  
9 maturity level of those ages. And when I was talking to her,  
10 where I had already talked with Cameron, you know, he -- he  
11 was, you know, present in the room as well. She really  
12 didn't have a lot to offer. She stayed, from my perspective,  
13 in the room during the entire incident and was more just like  
14 a uh-huh, yes, and she would add in little details, but she  
15 -- she was not involved to the same capacity that Cameron was  
16 involved.

17           Q Did she confirm to you that she was in the room when  
18 Cameron was in the room with the defendant?

19           A Yes, yes. Yeah, she -- she had told me how Cameron  
20 had -- had gotten thrown down and -- and Mr. Cooper had, you  
21 know, thrown -- you know, thrown the TV down off this  
22 nightstand, which was right next to the door. And that he  
23 took Cameron's phone, and she was really -- that's -- was  
24 basically her -- from the situation, that was her best  
25 ability to relay information to me, which that corroborated

1 with what Cameron walked me through step by step with every  
2 little detail.

3 Q What did Cameron call the defendant while he was  
4 telling you the story?

5 A Tuda.

6 MS. RHOADES: Permission to publish, Your Honor,  
7 State's 6?

8 THE COURT: Yes.

9 BY MS. RHOADES:

10 Q Okay. And you can draw on your screen. I just want  
11 to get this right. So this is the sketch you did. This is  
12 the entryway. And when you walk in -- or no, you -- this is  
13 the entryway, in is the living room and the kitchen is right  
14 across from the living room; is that right?

15 A Yes.

16 Q And is there a door leading into the kitchen?

17 A Yes.

18 Q And is this the short hallway that leads into the  
19 bedrooms?

20 A Yes.

21 Q And then on the right is the master bedroom and on  
22 the left is the kids' bedroom?

23 A Yes.

24 Q And this X here, is that where the master bathroom  
25 is?

1 A Yeah.

2 Q Approximately?

3 A Yes.

4 Q And then there's a bathroom in the hallway, like the  
5 main bathroom?

6 A Yeah, a common bathroom.

7 Q When James Cameron was walking you through what  
8 happened, tell us what he told you using the sketch.

9 A Okay.

10 Q And you can draw on it.

11 A How do I draw on it?

12 Q I think you just --

13 A Touch it?

14 Q Yes.

15 THE COURT: With your finger.

16 THE WITNESS: Okay. What -- what James Cameron had  
17 said, he said Tuda was in the bed. There was a bed like  
18 right here. He said -- he said Tuda was in the bed, and he  
19 said his mother was standing right about -- right about there  
20 and they're arguing. And he had said how he thought that  
21 they're arguing -- that Tuda was -- he thought Tuda was mad  
22 at her. He had gone through her phone, and thought she was  
23 cheating on him.

24 BY MS. RHOADES:

25 Q Do you remember it being the opposite way around or



1 writing in your report that it was the opposite --

2 A I mean --

3 Q -- way?

4 A I'm sorry, this -- this -- it's -- it is the  
5 opposite way. He remembers the mom had come from the -- from  
6 -- had come from the kitchen. She had gone through Tuda's  
7 phone and that Tuda -- she thought Tuda was cheating on her  
8 with some other girls. He said and mom came in and started  
9 to confront him on this.

10 Q Okay. And did Cameron tell you that he was in his  
11 room watching this happen?

12 A Yeah, they were -- they were in -- he and Cameron  
13 and Kaylee were in the -- in this bedroom. They were  
14 watching -- watching TV, and he heard the commotion and he  
15 got up and he saw them arguing. He specifically remembered,  
16 he saw his mom holding a box, a box of, you know, thought  
17 like crackers or something like that, and the mom -- mom was  
18 holding -- holding this box and Tuda was laying down in bed,  
19 and they're arguing. He said Tuda got up, and they were face  
20 to face arguing, and he remembers hearing his mom say  
21 something to the effect of like, no, no, don't do that.

22 He said he then -- he as in Tuda then, who was  
23 standing right there, essentially, punched his -- his mother  
24 in the stomach. He said she went down and fell into these  
25 bedroom doors on to the ground. And he said, you know, he

1 started to like yell at her when she was on the ground and  
2 was like maybe punching her or kicking her or basically,  
3 roughing her up while she was on the ground.

4 He then said the mom then got up, and got up from  
5 this position. I don't know how this is going to work, but  
6 then came down the hallway this way, this way and into the  
7 kitchen. And he said Tuda followed after her into the  
8 kitchen. He said so he came out and --

9 Q And I'm sorry to interrupt you. When you say he,  
10 just --

11 A Cameron --

12 Q -- either say Cameron or Tuda.

13 A Cameron came out of the kids' bedroom and he saw  
14 Tuda follow behind her also and go to the door. And so he --  
15 so Cameron watched Tuda right here push through a door as he  
16 said he saw his mother was trying to close.

17 And Cameron said he came out here, and he said his  
18 mother -- he saw his mother down on the ground up against the  
19 -- the cabinets and Tuda had come in and just started  
20 slamming her down and was -- was stomping on her, was  
21 punching her, kicking her and that stuff right there at the  
22 kitchen.

23 Q Did he say something about her hitting her head on  
24 something?

25 A He -- he had thought she hit her head up against

1 like the -- the cabinets or the counter or the -- there's a  
2 sink that's right here, and she was on the ground where he  
3 was punching her, kicking her, stomping on her at the ground  
4 right there.

5 At some -- at some point his mother had --  
6 Cameron's mother had yelled to him to call the police, and so  
7 when -- when he went to call the police, when Cameron went to  
8 call the police, he said he came this way --

9 Q And I'm going to stop you there. I just want to  
10 clear it.

11 A Okay.

12 Q But I'm having trouble clearing it. I think if  
13 we --

14 A Okay. So Brittney's here, Tuda's in here, Cameron's  
15 in here. She yells, call the police. He starts -- he starts  
16 running back this way towards the bedroom, and that's when he  
17 said Tuda had come out from behind, chased him down into the  
18 bedroom and grabbed him, threw him down and --

19 Q And when you say grabbed him?

20 A That Tuda grabbed Cameron, threw Cameron -- threw  
21 Cameron down and grabbed the phone. Cameron said at that  
22 point, Tuda knocked -- there's a nightstand, that TV -- well,  
23 it was on top of a nightstand, but he then knocked the TV  
24 down on the ground and he knocked -- he knocked the TV down  
25 on the ground. And then while this was happening, he said

1 his mom had come out back this way and was now in the  
2 hallway, too. And he said as this was happening, his mom was  
3 trying to pull Tuda off of him, off of Cameron, and they both  
4 went back into the bedroom this way. So Brittney first, Tuda  
5 second, pushing Brittney back in towards the bedroom.

6 Q Okay. So Tuda pushed mom back into the master  
7 bedroom and Cameron was in his room?

8 A Was in his room. Kaylee was in there as well. And  
9 this was really the part of the story that she was able to  
10 corroborate was with Cameron getting thrown down and Tuda  
11 coming in knocking the TV down, taking the phone and that --  
12 that's her part that she was able to corroborate.

13 Q Did Cameron tell you that he was thrown down on the  
14 bed?

15 A Yes.

16 Q Did Cameron tell you where he got the phone at?

17 A I don't recall where he had it, if he was playing on  
18 it, playing a game, or if he picked it up. There was --  
19 there was a table right here. I'm -- I'm just guessing at  
20 this point. I --

21 Q Okay. I don't want you to guess. When you were --  
22 I mean, at some point, were you standing in the kids' room  
23 and could you -- did you have a clear line of sight into the  
24 master bedroom?

25 A It's a clear. It's like 10 feet. A 10 feet -- 10

1 foot hallway.

2 Q Okay. So now both Brittney and Tuda are in the  
3 master bedroom and what does Cameron tell you happened?

4 A Cameron said he saw his -- his mom get thrown up --  
5 thrown against some kind of a -- either the bed or a table or  
6 something next to the bed. He wasn't quite sure what, but he  
7 said she -- so she went down on the ground and that's where  
8 Tuda continued to hit, kick, punch her even more right -- and  
9 they were both right here. Brittney, the first -- the top  
10 arrow. Tuda the second arrow. Cameron was, you know,  
11 somewhere over here, and he -- and he observed Tuda stomping  
12 on -- on Brittney at that point.

13 Q And what else did he say happened?

14 A From -- from this point, he had said that Tuda left  
15 the house. His mom then went into the bathroom to -- for  
16 shelter, for protection for just -- you know, she -- he said  
17 she went in and fell down and collapsed against the shower  
18 curtain, which was -- which was a rod with a curtain that was  
19 not supported where a normal, you know, bathtub somehow rod  
20 is but it was down on the ground. There was blood drops on  
21 the floor in front of the toilet, there was blood on the  
22 handle, door handle over there.

23 Q While he was telling you what was going on in the  
24 master bedroom the second time, did he tell you that mom and  
25 Tuda were on the ground and that mom was pulling at Tuda's

1 hair?

2 A I don't specifically recall at this point without  
3 going to my report if -- if he was saying which one or if  
4 either was pulling the hair. I don't recall that at this  
5 point without the report. What I -- what I do -- what I do  
6 also remember seeing, there were -- on this closet door right  
7 there, it was off the track, and there was a bend, so it  
8 wasn't straight. There was a bend in the closet door and  
9 there was also like a punched hole in the closet door.

10 So I asked him specifically about that. And he  
11 confirmed -- and Cameron had confirmed to me that the punched  
12 hole in the door has -- it was preexisting. It was -- it had  
13 been there from -- from something else. But he said the door  
14 off track and the bend in the door just happened when his mom  
15 got punched the first time while she was holding the box in  
16 hair hand.

17 Q Was there also a box of snacks scattered on the  
18 floor?

19 A Right -- there was a box of snacks scattered on the  
20 floor right in front of that -- right in front of that door.  
21 There was a toolbox with a handle and it was a -- kind of a  
22 roll behind tote that -- a roll behind tote with an  
23 extendable handle, and the handle was completely bent.

24 When I was outside initially with Tuda, he had told  
25 me that he worked that day like doing convention -- like day

1 labor type of stuff and that, you know, he does bring that  
2 tool bag, and that was something he used today. How I saw  
3 it, laying on the ground, it looked like a fresh bend, fresh  
4 damage to it and it's not something that is usable, that you  
5 can carry with a bag of tools, in my opinion, something that  
6 would be functional.

7           The tools were spread about all -- over the ground.  
8 There was cords. There was all kinds of tools all over the  
9 ground. I found or I saw on both -- in both spots on the  
10 ground right over there, it appeared to be a lock of his  
11 hair, which was a darker brown and a lighter dirty blonde  
12 lock, both were dreadlock braided type of hair. I found one  
13 of each in those locations, and I found one lock of her hair.  
14 One lock of her hair, none of his, over there in the kitchen  
15 where there was some other just general stuff and disarray on  
16 the floor.

17           The trash can was knocked over there as well.  
18 Also, at the foot of the bed, there was, I'll just call it an  
19 ottoman piece of furniture with bloodstain on the foot of --  
20 at the foot of the bed right over there.

21           Q   What appeared to be bloodstain to you?

22           A   Exactly.

23           Q   How about in the bathroom, was there any evidence in  
24 the bathroom to corroborate what Cameron told you?

25           A   Yes, the curtain rod in the bathroom, you know, this

1 curtain rod was down off the ground. There was some damaged  
2 tile on the wall over here that nothing to do with it. It  
3 was just repairs that needed to be done. Nothing related.

4 And then there was blood on the -- there was blood  
5 on the ground right over here and then where that other --  
6 the little arrow is -- I'm putting a lot of arrows -- by this  
7 doorway right here, there's blood on the door handle right  
8 over there.

9 Q Okay. And then how about in the kids' room, did you  
10 see anything in the kids' room that corroborated his story?

11 A This TV was on the ground and there's like a cord in  
12 a box or something that it was just kind of stretched out and  
13 it didn't look like -- by the time I got there, the TV was  
14 upright so you can view it, but it didn't look like it --

15 Q It was in the spot it should have been?

16 A It's in a spot that I would place it in just with  
17 the way the cords was -- was stretched and the box and the TV  
18 being on the ground right in front of a piece of furniture  
19 right there.

20 MS. RHOADES: And may I approach the witness, Your  
21 Honor?

22 THE COURT: Yes.

23 BY MS. RHOADES:

24 Q I'm going to show you your report. Just going back  
25 to when Brittney and Tuda were in the master bedroom the



1 second time. Just look at this highlighted portion here,  
2 review that, and then look up at me when you're done and let  
3 me know if that refreshes your recollection about Brittney  
4 pulling Tuda's hair that second time.

5 A Yes. Yeah, I -- I did write that.

6 Q Did Cameron tell you that?

7 A Yes, he did tell me that.

8 Q That he saw his mom grab Tuda's hair as they were  
9 both wrestled on the ground -- as they both wrestled on the  
10 ground the second time they were in the bedroom?

11 A Yes.

12 Q Did -- I'm sorry, I referred to him as Blair, but  
13 Cameron say anything about his butt hurting?

14 A He did.

15 Q What did he say?

16 A He said it was sore. I left the room. I asked him  
17 if he -- if he could check it and, you know, feel it and just  
18 see if he, you know, take a look at it. I -- I walked out of  
19 the room with that happen. There was no officers. He was --  
20 he was in his bedroom at that time. He told me whether he  
21 was done and I came back in, I asked him if he had any  
22 bruising or anything like that that needed any attention and  
23 he said no, it just -- he said it hurt from when he was  
24 thrown down.

25 Q I'm going to show you a few pictures. Showing you

1 State's 20. Is that the living room with the front door  
2 entrance --

3 A Yes, it is.

4 Q -- where my finger's pointed? And then State's 19,  
5 is that looking from that front door into, I guess, the  
6 living room isn't in the picture, the dining area and is this  
7 is the kitchen?

8 A Yes, it is.

9 Q And this is the door -- doorway to the kitchen?

10 A Yes.

11 Q Showing you State's 10. Is that a photograph of the  
12 knocked downed trash can?

13 A In the kitchen, it is.

14 Q And showing you State's 11, is this also in the  
15 kitchen?

16 A Yes, it is interest a different angle.

17 Q And fair to say there's a pillow there, there's some  
18 debris on the ground,, and then there's a rug over to the  
19 left, is that correct?

20 A On top of the rug there's a -- one of her locks of  
21 hair.

22 Q And showing you State's 13, can you see that corner  
23 -- well, I guess, you can -- that corner of that same rug at  
24 the bottom of this photo?

25 A I can.

1 Q And is this the door into the kitchen?

2 A Yes, it is.

3 Q That's all the way on the left of the photo; is that  
4 right?

5 A Yes.

6 Q Close-up of the rug, State's 15. Can you circle  
7 where the hair is in this picture?

8 A Yes, I can.

9 Q Thank you. And that appeared to be Brittney's hair?

10 A Yes, it was.

11 Q Showing you State's 17. Still in the kitchen, is  
12 that that same door and then you can see kind of to the left,  
13 that's the hallway?

14 A Looking out, yes.

15 Q Showing you State's 22, is this in the master  
16 bedroom?

17 A Yes, it is.

18 Q And is this the toolbox you described --

19 A Yes.

20 Q -- or the toolkit? Can you circle on there how the  
21 toolkit or where you saw that it was indented?

22 A This handle right here specifically, that bend, that  
23 crease right there.

24 Q Do you also see the box -- well, the snacks that  
25 were dropped on the ground?

1 A Yes, I do.

2 Q And can you circle those for us? How about that --  
3 you see that hole in the closet door wall?

4 A Yes.

5 Q Did you ask Cameron about that?

6 A Yes, I did. That's the hole that he said it was --  
7 it's been there.

8 Q He told you not from this incident, something else?

9 A Not from this incident, not that hole.

10 Q If you can press on the left side corner, that  
11 should --

12 A Okay.

13 Q -- clear that. Okay. Showing you State's 24, is  
14 that looking into the master bedroom with the bed on the left  
15 and then that closet on the right?

16 A Yes.

17 Q And can you see here where my finger's pointing that  
18 the door's off the track?

19 A Yes.

20 Q And did Cameron tell you that that happened that  
21 night?

22 A Yes.

23 Q And showing you State's 25. Do you see some tools  
24 and cords on the ground?

25 A Yes.

1 Q And then do you see actually two of Tuda's hair on  
2 the ground?

3 A Yes.

4 Q Showing you State's 28, is this still in the master  
5 bedroom?

6 A Yes.

7 Q And right here where my finger's pointing, is that  
8 Brittney's hair?

9 A That was consistent with Brittney's hair.

10 Q And we see some cords here on the -- on the side of  
11 the bed; is that right?

12 A Yes.

13 Q Showing you State's 34. Is that a kind of side view  
14 of that closet door that was busted?

15 A Standing from where -- the end of the bedroom and  
16 looking down the hallway, which that is the kids' room over  
17 there, and right there, that's -- that's -- you can clearly  
18 see the bend in the door and that's what Cameron had said  
19 that was new.

20 MS. RHOADES: If I could have the Court's brief  
21 indulgence, Your Honor.

22 THE COURT: Yes.

23 MS. RHOADES: May I approach your clerk, Your  
24 Honor, and mark this as next in line?

25 THE COURT: Yes.

1 MS. RHOADES: Thank you.

2 (Ms. Rhoades/Clerk conferring)

3 MS. RHOADES: May I approach?

4 THE COURT: Yes.

5 BY MS. RHOADES:

6 Q Showing you State's 83. Do you recognize what's in  
7 that picture?

8 A Yes. It's that piece of furniture at the foot of  
9 the bed with the blood that was on it, on the corner.

10 Q What appeared to be blood?

11 A What appeared to be blood.

12 Q And this is how it looked on January 22nd and fairly  
13 and accurately depicts how it looked?

14 A Yes.

15 MS. RHOADES: I'd move for the admission of 83,  
16 Your Honor.

17 THE COURT: Any objection?

18 MS. WALKENSHAW: No, Your Honor.

19 THE COURT: 83's admitted.

20 (State's Exhibit 83 admitted)

21 MS. RHOADES: Thank you. And permission to  
22 publish?

23 THE COURT: Yes.

24 BY MS. RHOADES:

25 Q Showing you 83. Can you just kind of circle on

1 there where you saw that? Showing you State's 38, is that  
2 the bathroom in the hallway, the main bathroom?

3 A Yes.

4 Q And we see that the shower curtain is down and the  
5 rod is down as well?

6 A Yes.

7 Q Showing you 39. Do you see blood in this  
8 photograph?

9 A Yes, I do.

10 Q And then up here, that's the bath, just to give it  
11 some perspective and then this is the blood down here?

12 A Yes.

13 MS. RHOADES: Your Honor, we'd pass the witness.

14 THE COURT: Ms. Walkenshaw.

15 MS. WALKENSHAW: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. WALKENSHAW:

18 Q Officer, you indicated that you've been a police  
19 officer for six and a half years?

20 A Approximately.

21 Q Okay. Did you attend a police academy?

22 A I did.

23 Q Okay. Did you attend any courses in that police  
24 academy on how to write a report?

25 A I did.

1 Q Okay. And obviously, you understand police reports  
2 are important parts of the incident, correct?

3 A Correct.

4 Q Okay. You include all relevant facts in them,  
5 correct?

6 A Yes.

7 Q Okay. You understand that they get turned over to  
8 the prosecution, correct?

9 A Yes.

10 Q As well as the defense, correct?

11 A Correct.

12 Q And but they're very important regarding cases,  
13 correct?

14 A Correct.

15 Q Okay. And have you had an opportunity to review the  
16 report that you authored in this case?

17 A Yes.

18 Q As you sit up there now, is there anything in there  
19 that you would change about it?

20 A I couldn't -- I don't recollect.

21 Q Okay. So you can't think of anything right now that  
22 you would change?

23 A Can't think of anything off the top of my head.

24 Q Okay. When's the last time you reviewed it?

25 A It's been a while.



1 Q Okay. Now, the State had asked you a couple  
2 questions regarding James's, or I should say, Cameron's  
3 relation to you regarding what had happened, correct?

4 A Yes.

5 Q Okay. Now, when you responded, you initially spoke  
6 with Mr. Cooper, correct?

7 A Yes.

8 Q And Officer Sylvia, I believe, went inside --

9 A Yes.

10 Q -- is that correct? Okay. So at the time that you  
11 arrived, Mr. Cooper was outside of the apartment, correct?

12 A Yes.

13 Q Okay. In the general area, I think you had said,  
14 correct?

15 A I think I gave a more detailed than a general area.

16 Q Okay. About two apartments down?

17 A That's more like it, yes.

18 Q Okay. Obviously, not in one of those apartments,  
19 outside of the area?

20 A Yes.

21 Q Okay. Now, you indicated that when you first saw  
22 him, he was standing outside smoking a cigarette?

23 A Yes.

24 Q Okay. So it's fair to say then at the time that you  
25 arrived, obviously, the incident had already occurred,

1 correct?

2 A Correct.

3 Q So any information that you had regarding what had  
4 happened was relayed to you, not personally observed?

5 A Correct.

6 Q Okay. Now, a large majority of the information that  
7 you received was relayed to you by Cameron, correct?

8 A Yes.

9 Q Okay. And I think you'd indicated he was eight  
10 years old at the time?

11 A Yes.

12 Q Okay. And this was relayed to you verbally,  
13 correct?

14 A Yes.

15 Q Okay. There was no recorded interview given,  
16 correct?

17 A Yes.

18 Q Okay. You didn't record his statement?

19 A I did not record his statement.

20 Q Okay. And when you first spoke with Mr. Cooper, you  
21 indicated that he was calm, correct?

22 A Yes.

23 Q I think you said very calm even?

24 A Yes.

25 Q Okay. And you also testified that dispatch had

1 indicated that there were two separate callers, correct?

2 A Yes.

3 Q One seemed hysterical and one seemed calm --

4 A Yes.

5 Q -- is that air? Okay. Now, prior to this incident,  
6 you didn't know Mr. Cooper, correct?

7 A Not at all.

8 Q Okay. So you never met him before?

9 A No.

10 Q Okay. So you don't know his normal demeanor,  
11 correct?

12 A Correct.

13 Q Okay. You don't know if he's calm normally,  
14 correct?

15 A That's true.

16 Q Okay. You have no personal experience with him to  
17 contrast his behavior that day with, correct?

18 A That's correct.

19 Q Okay. Because you don't know him, correct?

20 A That's correct.

21 Q Okay. And just going to what Cameron had indicated  
22 to -- well, actually, we'll go -- since I'm on the topic of  
23 Mr. Cooper. You indicated that you spoke with him first,  
24 correct?

25 A Spoke with who first?

1 Q Mr. Cooper?

2 A Yes.

3 Q Okay. And you had indicated, I believe, on direct  
4 that he had made a comment regarding wanting to call because  
5 he didn't want to get in trouble?

6 A Yes.

7 Q Do you recall something like that?

8 A Yes.

9 Q And if I'm misstating it, tell me, but I recall it  
10 being something along those lines.

11 A Exactly.

12 Q Is that correct?

13 A Yes.

14 Q Okay. Would it surprise you to learn that that  
15 statement was not included in your report that you authored?

16 A In what capacity?

17 Q Would it surprise you to know that that -- you did  
18 not include that in your report, that statement that he made?

19 A And which statement exactly was that?

20 Q The statement that he called because he didn't want  
21 to get in trouble.

22 A There's a lot of statements that are made, and I  
23 don't report every piece of dialogue that everyone says.

24 Q Okay. So do you report what dialogue you find to be  
25 important?

1 Q -- to your arrest report refresh your recollection?

2 A I -- yeah, that would be great.

3 Q Okay.

4 MS. WALKENSHAW: If I could approach, Your Honor?

5 THE COURT: Yes.

6 THE WITNESS: Okay. Okay.

7 BY MS. WALKENSHAW:

8 Q Okay. Did that refresh your recollection?

9 A I'm just reading those --

10 Q That paragraph?

11 A -- paragraphs, yeah.

12 Q Yeah. Okay.

13 A Okay.

14 Q Is it fair to say that the statement Mr. Cooper made  
15 about not wanting to get in trouble is not included in your  
16 report?

17 A Yes.

18 Q Okay. Now, would it surprise you, if you did not  
19 include in your report anything that Kaylee had indicated to  
20 you?

21 A No.

22 Q That wouldn't surprise you?

23 A No.

24 Q So the fact that she corroborated part of Cameron's  
25 story you didn't find important?

1 A Not important. That's not the right word.

2 Q Okay. Why didn't you include it in your report?

3 A It didn't -- it didn't seem them as necessary to  
4 build on those -- those facts, which were already provided  
5 and established.

6 Q So a witness' corroboration of another witness'  
7 statement you didn't find necessary?

8 A I would love to write a manuscript of everything.  
9 The best way to capture any event is if you had every piece  
10 of dialogue, a manuscript of everything, and unfortunately,  
11 that's -- there's no capacity, no time where you can do  
12 everything.

13 Q Sure. And I don't think anyone expects a  
14 manuscript.

15 A Um-h'm.

16 Q But you didn't find that necessary to put in that  
17 Kaylee corroborated part of Cameron's recollection of the  
18 incident?

19 MS. RHOADES: Objection. Asked and answered.

20 THE COURT: It is. Sustained.

21 BY MS. WALKENSHAW:

22 Q You indicated when Cameron was explaining the  
23 incident that at the time he was in -- he -- by he, I mean  
24 Tuda -- was in the kitchen with Brittney, she had hit the  
25 kitchen cabinets; do you recall saying that?

1           A     If I go through line by line in my report -- I mean,  
2 if you're asking -- if you're saying I wrote that in my  
3 report, then yes, that's exactly what I wrote in my report.  
4 It's hard to remember something from January specifically  
5 line item by line item, but yes.

6           Q     Sure. And I completely understand. That would be  
7 difficult. I'm sure you respond to a lot of cases. You had  
8 testified on direct regarding Brittney going into the  
9 bathroom at some point, correct?

10          A     Yes.

11          Q     Okay. And that was after Tuda had left, correct?

12          A     Yes.

13          Q     Okay. And there was some testimony that she fell  
14 down and collapsed against the shower curtain, correct?

15          A     Yes.

16          Q     Okay. Would it surprise you if that was not in your  
17 police report or your arrest report?

18          A     I would have to see my arrest report to --

19          Q     Okay.

20          A     -- review it.

21          Q     Would it refresh your recollection to see your  
22 arrest report?

23          A     It would make it a lot easier.

24          Q     Okay.

25          A     You're asking me to --

1 Q Sure.

2 MS. WALKENSHAW: May I approach, Your Honor?

3 THE COURT: Yes.

4 THE WITNESS: So can I reference this exactly while  
5 it's in front of me or --

6 BY MS. WALKENSHAW:

7 Q Did that refresh your recollection?

8 A Yes.

9 Q Okay. And what was it that you --

10 A I had -- I had said that she went and locked herself  
11 in the bathroom. I didn't specifically say that she had  
12 collapsed on the curtain, but that she went in to lock  
13 herself into the bathroom and I also observed the blood drops  
14 that were on the floor.

15 Q Okay. Now, you had also indicated that Cameron had  
16 told you his butt was sore?

17 A Um-h'm.

18 Q And that was -- or that it hurt from when he was  
19 thrown down?

20 A Yes.

21 Q Is that correct? Okay. Would it surprise you if  
22 that wasn't in the police report?

23 A No.

24 Q That wouldn't surprise you?

25 A No.



1 Q Okay. And when you -- and I think we kind of  
2 touched on this a little bit. When you arrived, James was  
3 outside, correct?

4 A James Cooper?

5 Q Yes.

6 A Yes.

7 Q Okay. You had said something regarding his cell  
8 phone. Do you recall if he was still on the phone at the  
9 time that you arrived?

10 A When -- when I saw him he was smoking a cigarette.  
11 He wasn't talking on the phone.

12 Q Okay. And are you aware -- I know you were aware  
13 that two parties called the police. Are you aware who called  
14 first?

15 A No.

16 Q Okay. Now, it's fair to say that you observed  
17 several injuries on Brittney, correct?

18 A That's an understatement.

19 Q Okay. You observed them, correct?

20 A I observed some pretty severe injuries on Brittney.

21 Q Okay. But you have no personal knowledge other than  
22 what was relayed to you of how those came to be, correct?

23 A That's correct.

24 Q Okay. Because you didn't personally observe the  
25 altercation between them, correct?

1 A I was not there.

2 Q Okay. As far as you know, did Brittney ever provide  
3 a statement?

4 A I'm unaware if she provided a statement.

5 Q You're unaware. Okay. Now, you indicated that you  
6 also spoke with James and -- James Cooper, and he showed you  
7 injuries that he had sustained, correct?

8 A Yes.

9 Q Okay. An injury on his finger, correct?

10 A Yes.

11 Q Showing State's 66. Does that depict the injury  
12 that you saw on his finger right there?

13 A Yes.

14 Q Okay. And showing State's 64, does that reflect the  
15 area that he had showed you where his hair had been pulled  
16 out?

17 A Yes.

18 Q Okay. Now, you indicated that you hadn't seen any  
19 other injuries on Mr. Cooper, correct?

20 A Correct.

21 Q Okay. Fair to say that his skin is dark, correct?

22 A Correct.

23 Q So fair to say it would be easier to see bruising on  
24 somebody of my complexion as opposed to his complexion,  
25 correct?

1 A Sometimes.

2 Q Okay. What do you mean by that?

3 A It depends on the severity of the bruising. I don't  
4 think with Brittney the color of skin really would have  
5 mattered with the types of bruising and the severity that she  
6 sustained.

7 Q I don't mean with Brittney. I mean in regards to  
8 Mr. Cooper. It would be --

9 A Okay.

10 Q -- more difficult to see bruises on his skin  
11 complexion, correct?

12 MS. RHOADES: Objection. Argumentative, asked and  
13 answered.

14 THE COURT: I think it's a fair question.

15 MS. WALKENSHAW: He didn't answer it.

16 THE COURT: You may answer the question.

17 THE WITNESS: I think that's speculative as to what  
18 type of a bruise. What exactly are you talking about? A  
19 small bruise or a deep bruise, similar to what Brittney  
20 sustained.

21 BY MS. WALKENSHAW:

22 Q Either one.

23 A Okay. Like I said, with Brittney, that was pretty  
24 severe. The medics from my recollection, they were concerned  
25 that she had a orbital eye socket fracture or something like

1 that, maybe a brain bleed --

2 BY MS. WALKENSHAW:

3 Q Okay.

4 A -- based off -- based off the amount of trauma that  
5 she sustained. Bruising like that, you know, it's -- it's  
6 pretty fair to say doesn't -- that would show through with  
7 whatever type of skin.

8 Q Okay.

9 A It was pretty severe.

10 Q So we're talking about the bruising around the eye?

11 A Yes.

12 Q And are you aware of what injuries she actually did  
13 sustain or are you just saying what the medics speculated it  
14 might be?

15 A I'm telling you what they speculated.

16 Q Okay.

17 A I don't know what -- I'm not privy to doctor's  
18 information to get the final --

19 Q Okay.

20 A -- conclusion.

21 Q And do you have any information regarding when she  
22 was released or anything like that from the hospital?

23 A I don't.

24 Q Okay. So you don't have any personal knowledge as  
25 to that, just to clarify, correct?

1 A Yes.

2 Q Okay. In regards to smaller bruises, those would be  
3 more difficult to see?

4 A Possibly.

5 Q Okay.

6 A I think it all really just depends on the bruise. I  
7 would have to --

8 Q Okay.

9 A -- see. It's -- I'd be speculating, guessing at  
10 best right now.

11 Q Sure.

12 MS. WALKENSHAW: Court's indulgence. I don't have  
13 any further questions, Your Honor.

14 THE COURT: Any follow-up by the prosecution?

15 MS. RHOADES: Just very briefly, Your Honor. I  
16 know it's late in the day.

17 REDIRECT EXAMINATION

18 BY MS. RHOADES:

19 Q Officer Pickens, is there a reason why you didn't  
20 record Cameron's statements?

21 A I didn't have any -- I personally didn't have any  
22 recording -- anything to record him with.

23 Q I know you testified that Mr. Cooper had a phone.  
24 Did you see any other phones or were you aware of any other  
25 phones that were in the apartment?

1           A     After everything was said -- you know, said and  
2     done, Cameron had actually -- he had actually also relayed  
3     that he saw that Tuda had hidden the phone in one of the  
4     cupboards, and, you know, I asked him what -- what's he  
5     talking about, like the phone that he took from him? He said  
6     -- and walked right into the kitchen, he opened up -- opened  
7     up one of the pantry doors and a phone was sitting right  
8     there. He's like, yeah, he -- he hid it in there and, you  
9     know, took off out the door.

10          Q     Was there any other phone in the apartment that  
11     Cameron told you he actually used to call 911 from?

12          A     I don't -- I don't -- I don't remember.

13          Q     You didn't count the phones in the apartment?

14          A     I didn't.

15          Q     When you initially came and you made contact with  
16     Mr. Cooper, you know, he appeared to have injuries and you  
17     started investigating the case. I mean, did you ultimately  
18     arrest Mr. Cooper?

19          A     We ultimately did, based off of the evidence that  
20     was on the scene and the excessive response that however this  
21     situation exactly started, the excessive response and  
22     magnitude of injuries that Brittney sustained far outweighed,  
23     you know, any type of a -- any -- any type of a -- you know,  
24     bite on a finger.

25          Q     And there was some talk about you not including

1 everything in your police report. You wrote a pretty  
2 extensive police report, several paragraphs long, and you  
3 tried to include everything -- everything that you could?

4 A I wish I could have foresight to see everything. I  
5 try to stick to the evidence. As for the child himself, I  
6 personally wasn't going away. I didn't see based off of the  
7 evidence and what was happening, I didn't see personally, a  
8 need to go into any kind of child abuse or child -- you know,  
9 anything along those lines. So, I didn't emphasize.

10 Kaylee's statement would have corroborated more  
11 along -- along the -- the child abuse or neglect. He didn't  
12 sustain any injuries that he claimed that, you know, was, you  
13 know, prolonged, pronounced, needed, you know, any kind of  
14 attention. And so instead of going into a different capacity  
15 with it, I stuck with a report that accurately depicted the  
16 battery domestic violence that occurred and the  
17 strangulation.

18 Q Okay. And you weren't necessarily thinking of other  
19 charges, but you're not necessarily the prosecuting agency;  
20 is that right?

21 A No, I -- I think anything could go, you know, in any  
22 which way at that point with where I was at the -- at my  
23 investigation. I wasn't looking to, you know, check this,  
24 check this. You know, I'm looking to establish do I have a  
25 crime or not, and that's what I felt was the best fitting

1 based off of the evidence and the testimonies, the  
2 statements, you know, from both parties.

3 Q Okay. And you testified that your general  
4 impression or that Mr. Cooper told you he didn't want to get  
5 in trouble for this again; do you remember that?

6 A I do.

7 Q And in your report, you didn't specifically say  
8 that, but did you specifically say that Cooper said he had  
9 basically, just gotten out of trouble for something related  
10 to this, and that he said he wasn't going to make that same  
11 mistake again? Did you write that in your report?

12 A Exactly.

13 Q Do you recall testifying under oath in this case at  
14 a prior hearing on February 25th, 2016?

15 A Yes.

16 Q Okay. At that hearing, did you testify that Cameron  
17 told you Brittney fell on the ground, knocking a curtain rod  
18 over and then she sat on the toilet and cried?

19 A Yes.

20 Q Do you also remember testifying about talking to  
21 Kaylee and statements that Kaylee made at that prior hearing  
22 under oath?

23 A I don't -- I remember that, but I don't remember all  
24 the specifics from every -- everything.

25 Q Would it refresh your recollection to look at a



1 transcript of that hearing?

2 A Yes.

3 MS. RHOADES: These are pages 27 and 28.

4 May I approach, Your Honor?

5 THE COURT: Yes.

6 BY MS. RHOADES:

7 Q If you could just review that highlighted portion  
8 and that highlighted portion and look at me when you're done.

9 A Okay. (Witness complies). Okay.

10 Q Okay. Does that refresh your memory about what you  
11 testified about what Kaylee had told you?

12 A Yes.

13 Q And what did she tell you?

14 A That -- she did witness the same things that Cameron  
15 had. She wasn't as articulate and able to explain, being  
16 five years old, still very, very young and immature. But she  
17 -- she was able to state the same thing that Cameron was able  
18 to. One thing that she did say as well was just how scared  
19 she was. Like when -- when Cameron had been thrown down.

20 Q In the bedroom? In their bedroom?

21 A In the bedroom, that really scared her.

22 Q And she said that she was in that bedroom when that  
23 happened?

24 A Yes, she was.

25 MS. RHOADES: I have nothing further, Your Honor?

1 THE COURT: Any further follow-up?

2 MS. WALKENSHAW: No, Your Honor.

3 THE COURT: With the thanks of the Court, Officer,  
4 you may be excused.

5 THE WITNESS: Thank you.

6 THE COURT: Does either party anticipate recalling  
7 this witness?

8 MS. RHOADES: No, Your Honor.

9 MS. WALKENSHAW: No, Your Honor.

10 THE COURT: Very well. Any other witnesses? Yeah,  
11 you have to witnesses?

12 MS. RHOADES: I have two more. We have two more  
13 witnesses that we're going to call tonight. I'm just  
14 kidding, Your Honor.

15 THE COURT: Not fun, Ms. Rhoades.

16 MS. RHOADES: I appreciate --

17 THE COURT: Not funny.

18 MS. RHOADES: -- every -- I appreciate everybody's  
19 indulgence, and I know that it's very, very late. We have no  
20 other witnesses today. However, we do have two witnesses  
21 that cannot testify until Thursday.

22 THE COURT: Very well. So that said, ladies and  
23 gentlemen, the good news is you get to go home. I remind you  
24 of your obligation not to talk about this case, not to form  
25 or express any opinion, not to do any research on any subject.

1 connected with this case, including but not limited to,  
2 newspapers, television or the Internet, including all forms  
3 of social media.

4 Tomorrow, the Court and counsel will be busy  
5 working on other things. The good news for you is we won't  
6 require your presence until Thursday morning. That said,  
7 please -- is 9:00 o'clock the soonest we can begin on  
8 Thursday?

9 MS. RHOADES: Well, the one witness can only  
10 testify between 9:00 and 10:00 and then the next at 11:30.

11 THE COURT: So it looks like 9:00 o'clock is when  
12 we can begin. I'm asking you to please be here promptly at  
13 9:00 o'clock so that we can get started. We can't get  
14 started if 95 percent of you are here and 5 percent aren't.  
15 So please be respectful of each other's time. We'll see you  
16 Thursday at 9:00 o'clock. Thank you.

17 (Outside the presence of the jury.)

18 THE COURT: Can I see counsel at the bench for  
19 purposes of scheduling, please.

20 (Bench conference begins)

21 THE COURT: So we need to give some thought to when  
22 we're going to set aside some time so settle the jury  
23 instructions on the record. You each have a copy of the  
24 other's set. I know some number of them are stock  
25 instructions that I would anticipate counsel might very well

1 stipulate to, but the Court still has to be conscious of  
2 that.

3 And it looks like Thursday is going to be jammed up  
4 with witness testimony. So it doesn't look like we'd  
5 probably be able to get to it Thursday.

6 MS. RHOADES: I mean, our two witnesses are two  
7 expert witnesses and they shouldn't take long. I think if we  
8 call the one at 9:00, we should be done at about 9:30 and  
9 then we'll have two hours until 11:30 when Gavin can testify.  
10 So maybe we can do jury instructions and give them a longer  
11 break. I don't know if that inconveniences them more or less  
12 or I don't know.

13 THE COURT: What about the defense?

14 MS. WALKENSHAW: That works fine for the defense.  
15 My only concern is that sometimes certain instructions we  
16 request that they be admitted given certain evidence that's  
17 introduced, and so since the State's witnesses won't be done  
18 and at this point we anticipate Mr. Cooper will testify, I  
19 don't know if the State would want to introduce any other  
20 questions based on -- or instructions based on his testimony.  
21 That would be my only concern --

22 THE COURT: Sure.

23 MS. WALKENSHAW: -- as to settling them before the  
24 evidence.

25 THE COURT: I understand. Are there any other

1 defense witnesses other than Mr. Cooper?

2 MS. WALKENSHAW: Potentially our investigator, but  
3 that's it.

4 THE COURT: All right.

5 MS. WALKENSHAW: I don't anticipate us needing to  
6 call him at this point. But he's the only other one we  
7 noticed.

8 MS. RHOADES: What time do you have to leave on  
9 Thursday to get to your --

10 THE COURT: It's out in Henderson so --

11 MS. RHOADES: Oh, far.

12 THE COURT: -- it's, you know, I'm going to have to  
13 -- probably I'll have to leave here no later than 1:00  
14 o'clock.

15 MS. RHOADES: Okay.

16 MS. WALKENSHAW: Okay.

17 THE COURT: 1:00 o'clock. So can we work towards  
18 an eye -- with an eye towards settling at least the bulk of  
19 these instructions even if there might be one or two or  
20 however many additional argued at a later point in time?

21 MS. WALKENSHAW: Of course.

22 MS. RHOADES: Yeah. We can -- do you want to do  
23 that on Thursday?

24 THE COURT: Yes.

25 MS. RHOADES: Okay.

1 THE COURT: Whenever you're -- if we have a break  
2 in between witnesses, then I think that's probably a good use  
3 of our time.

4 MS. WALKENSHAW: Okay.

5 MS. RHOADES: Okay.

6 THE COURT: Okay?

7 MS. WALKENSHAW: Thank you.

8 MS. RHOADES: Thank you so much for staying late  
9 tonight. Thank you.

10 THE COURT: You're welcome.

11 (Court recessed at 6:10 P.M., until Thursday,  
12 November 17, 2016, at 9:13 A.M.)

13 \* \* \* \* \*

14 ATTEST: I hereby certify that I have truly and correctly  
15 transcribed the audio/visual proceedings in the above-  
16 entitled case to the best of my ability.

17

18

*Julie Lord*

19

20

JULIE LORD, INDEPENDENT TRANSCRIBER

21

22

23

24

25

*Steven D. Grierson*

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,	.	CASE NO. C-16-312970-1
Plaintiff,	.	DEPT. NO. X
v.	.	
JAMES COOPER,	.	TRANSCRIPT OF
Defendant.	.	PROCEEDINGS
. . . . .		

BEFORE THE HONORABLE JESSIE WALSH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 3

THURSDAY, NOVEMBER 17, 2016

APPEARANCES:

FOR THE STATE:	KRISTINA A. RHOADES, ESQ. WILLIAM C. ROWLES, ESQ. <i>Deputy District Attorneys</i>
FOR THE DEFENDANT:	KENTON G. EICHACKER, ESQ. TALIA L. WALKENSHAW, ESQ. <i>Deputy Public Defenders</i>

COURT RECORDER:

VICTORIA BOYD  
District Court

TRANSCRIPTION BY:

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EXHIBITS

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1 LAS VEGAS, NEVADA, THURSDAY, NOVEMBER 17, 2016, 9:13 A.M.

2 (Outside the presence of the jury)

3 THE MARSHAL: Okay, come to order. The judge is on  
4 the bench. Department 10 is now in session. The Honorable  
5 Jessie Walsh, Judge, presiding.

6 THE COURT: All right. Outside the presence of the  
7 jury. Ms. Rhoades?

8 MS. RHOADES: Yes, Your Honor. I just wanted to  
9 make sure we placed on the record that we would request that  
10 the material witness warrant for Brittney Jensen be recalled  
11 or taken out of the system and your Court Clerk has assured  
12 me that it's been returned because she came in and gave her  
13 testimony. I don't know that there's anything else that we  
14 need to do except for put it on the record that it's out of  
15 the system now.

16 THE COURT: Does the State have any input on this  
17 matter? I mean, does the defense?

18 MS. WALKENSHAW: No, Your Honor.

19 THE COURT: So ordered.

20 MS. RHOADES: Thank you. And then State's 84,  
21 Proposed Exhibit 84, I believe, that's been stipulated to by  
22 the defense as admitted.

23 MS. WALKENSHAW: That's correct, Your Honor.

24 THE COURT: Very well. 84's admitted.

25 (State's Exhibit 84 is admitted)

1 MS. RHOADES: That's all.

2 THE COURT: Okay, then. I don't know if all of the  
3 members of the jury panel are present yet. But as soon as  
4 we're ready, we'll get started.

5 MS. RHOADES: Okay, thank you.

6 THE COURT: Is your witness here?

7 MS. RHOADES: Yes, she is. Elynne Greene. She's  
8 here.

9 THE COURT: Oh, very good. Good morning.

10 THE WITNESS: Good morning.

11 THE COURT: She can take the stand if she wanted  
12 to. Might save a few minutes.

13 MS. RHOADES: Okay.

14 (Pause in the proceedings)

15 (In the presence of the jury)

16 THE COURT: Please be seated, ladies and gentlemen.  
17 Will counsel stipulate to the presence of our jury?

18 MS. RHOADES: Yes, Your Honor.

19 MS. WALKENSHAW: Yes, Your Honor.

20 THE COURT: Ms. Rhoades, who is our next witness?

21 MS. RHOADES: Elynne Greene, Your Honor.

22 THE COURT: Ms. Greene, would you please stand to  
23 be sworn by madam clerk.

24 ELYNNE GREENE, STATE'S WITNESS, SWORN

25 THE CLERK: Please be seated, stating your full

1 name, spelling your first and a last name for the record.

2 THE WITNESS: My name is Elynne, E-l-y-n-n-e,  
3 Greene, G-r-e-e-n-e.

4 THE COURT: Whenever you're ready, Ms. Rhoades.

5 MS. RHOADES: Thank you very much.

6 DIRECT EXAMINATION

7 BY MS. RHOADES:

8 Q Ma'am, how are you employed?

9 A I'm with the Las Vegas Metropolitan Police  
10 Department. I'm manager of Victim Services and Human  
11 Trafficking.

12 Q And what -- your current job, what does that entail?

13 A I oversee both the southern Nevada Human Trafficking  
14 Task Force and the Victims Services Unit, plus I provide  
15 direct service to victims of crime.

16 Q How long have you been with Metro?

17 A Just over 23 years.

18 Q Has a lot of your work with Metro been directed  
19 toward victims of domestic violence?

20 A Absolutely. That's what I've been doing for the  
21 last 23 years.

22 Q Can you explain what you did before you were the  
23 Director of the Human Trafficking?

24 A Yes. I initially started as a victim advocate, and  
25 in 2008, I became supervisor of the Victim Services Unit, and

1 in February of 2016, I was promoted to manager and took human  
2 trafficking on.

3 Q What educational background and training have you  
4 had that allows you to deal with victims of domestic  
5 violence?

6 A I have a bachelor's degree in psychology and a  
7 master's degree in counseling in the creative arts, utilizing  
8 creative arts as a therapeutic tool. And I've worked in the  
9 field of victim services since 1974 in a variety of  
10 capacities, volunteer, as well as paid professional  
11 positions. And I have required ongoing training because I'm  
12 certified through the National Organization for Victim  
13 Assistance. So annually, I have to complete at least 20  
14 hours of direct victim service training.

15 Q So before you were with Metro, you worked with  
16 victims of domestic violence --

17 A I did --

18 Q -- is that fair to say?

19 A -- yes.

20 Q Were you a therapist for some time?

21 A I was. I was initially a therapist and I was  
22 working with victims of domestic violence and chemical  
23 dependency as a therapist, and I also worked with  
24 adolescents.

25 Q Did you also manage a crisis hotline or help in

1 managing a crisis hotline?

2 A I did. In San Diego, I oversaw a crisis team of  
3 volunteers. We had a hotline and we also had a domestic  
4 violence shelter.

5 Q And did you help run that shelter?

6 A Yes, I did.

7 Q The Crisis Response Team, can you tell us a little  
8 bit about that, what you did with that?

9 A I had anywhere from 35 to 70 volunteers, and they  
10 were all trained over a period of 40 hours. And they  
11 specifically responded with law enforcement in San Diego  
12 County, Escondido Police Department and Vista Sheriff on  
13 cases of domestic violence and some other related violent  
14 crimes.

15 Q And while you were a therapist, did you see several  
16 patients with various difficulties or were you mainly  
17 directed towards victims of domestic violence and children?

18 A I worked with a variety of victims; posttraumatic  
19 stress, chemical dependency issues, depression.

20 Q And at this point in your career, how many victims  
21 of domestic violence would you say you've worked with?

22 A Oh, I can tell you that currently over the last  
23 year, approximately, 75 to 80 domestic violence victims a  
24 month and that's just cutting back on my caseload due to  
25 administrative responsibilities.

1 Q So before that, it would have been even more a  
2 month?

3 A Significantly, yes.

4 Q So we're talking tens of thousands?

5 A Yes.

6 Q And in your work with victims of domestic violence,  
7 have you previously testified in court?

8 A I have.

9 Q Okay. About how many times?

10 A About, maybe 30 times here in state court in Clark  
11 County and once in federal court.

12 Q And this is you testifying as an expert of domestic  
13 violence when you testify --

14 A Yes.

15 Q -- that is correct? This case, you haven't met  
16 with, interviewed the victim or any children in this case; is  
17 that fair to say?

18 A Correct.

19 Q And you haven't met with or interviewed the  
20 defendant in this case?

21 A Correct.

22 Q Are you familiar with the term "cycle of abuse"?

23 A Yes, I am.

24 Q Can you explain that for the jury?

25 A The cycle of abuse is basically a term that used to

1 describe the scope of the behavior that's often seen. And  
2 what you usually happens is it's often described as walking  
3 on eggshells. There's a tension building phase where the  
4 victim may experience whether it's looks or just sort of the  
5 mood around their partner where they start to recognize that  
6 they did something wrong or there's some agitation.

7           And then there's what's called the explosion where  
8 there's either the physical violence or it could be sexual or  
9 it could be verbal, extreme verbal abuse. And then the last  
10 part is what they often refer to as the honeymoon phase or  
11 hearts and flowers. And it's the time where the abuser will  
12 often apologize, but not necessarily apologizing for his or  
13 her behavior, but rather, placing the blame on the other  
14 person, but sort of massaging the relationship back into  
15 place.

16           So that's -- that's kind of how the cycle works.  
17 And there's no time frame. For example, it's not like  
18 there's a day in between each phase. It could be months, it  
19 could be weeks, it could be hours.

20           Q   Have you -- in your experience, have you seen  
21 victims of domestic violence sometimes provoke abusers to get  
22 that abuse phase over with?

23           A   Yes, that's very common during that tension  
24 building, you just want to get it over with. It's like that  
25 moment when you -- when you realize something's going to

1 happen anyway, let's just get it over with. It's almost like  
2 taking back a little bit of control in a situation where you  
3 feel powerless.

4 Q And in your experience working with victims of  
5 domestic violence, do they often blame themselves for the  
6 abuse that they've suffered?

7 A That -- that is very common, especially if there's  
8 been a situation where they've tried to escalate it to get it  
9 over with. They often will take responsibility. And that  
10 goes back to that honeymoon phase where the abuser may say,  
11 you know, I'm so sorry that this happened, but if only you  
12 didn't.

13 Q How about protecting their abuser? Have you seen  
14 victims do that?

15 A That's very common, yes.

16 Q And in what kind of ways do they protect their  
17 abuser?

18 A Well, I think it's important to recognize that one  
19 of the most common questions that gets asked is why does a  
20 victim stay? And number one, they love that person. It  
21 might be an unbalanced, unhealthy relationship, but they love  
22 that person.

23 So the protection often comes in the form of  
24 minimizing or denying or changing their story or blaming  
25 other people for the fact that the abuse came out in a public



1 way.

2 Q And in your experience, what are the concerns with  
3 children growing up in an abusive home?

4 A There's a lot of concerns, and to not get technical,  
5 the brain actually can get rewired. So what happens is  
6 children exposed to domestic violence are more prone to  
7 either become victims themselves or to become abusers just  
8 because of the exposure to violence. But there's also  
9 learning challenges, there's a lot of other things that  
10 happen because of some of the impact of trauma on the brain,  
11 and especially on young developing children.

12 Q And in your experience with working in this field of  
13 work, what is generally the intent of an abuser when they  
14 abuse?

15 A It's power and control.

16 Q Besides physical abuse, what other types of behavior  
17 do abusers often use to control their victims?

18 A They can use more overt things like sexual abuse,  
19 money, withholding medication, or if there's substance abuse,  
20 withholding substances, basic threats. But there's also that  
21 subtle. The same way that some people with children walked  
22 in the house and they knew when their mother was -- had  
23 caught them on something, and it's that look that -- that  
24 they get.

25 Victims are very attuned to that so sometimes they

1 can sense that they should be afraid. And that's another --  
2 that's a form of very subtle coercion.

3 Q And have you often seen that there are some  
4 self-esteem issues with victims of domestic violence?

5 A Absolutely, because there's that sort of, I'm  
6 allowing this person to take control of my life and abuse me,  
7 so often it's related to low self-esteem and the self-esteem  
8 gets even more intense as the relationship progresses.

9 Q And in your experience, do these relationships start  
10 off violent?

11 A Absolutely not. In fact, it's very, very rare that  
12 a relationship starts out of with oh, he's really abusive or  
13 she's really abusive, and I'm just so grateful. What often  
14 happens is the abuse may start in subtle ways, and in  
15 retrospect the victim goes, you know, when my partner was  
16 calling me 16 times a day to tell me how much he or she loved  
17 me, I thought it was great. I thought it was really cool. I  
18 didn't realize that actually, that's manipulation. This  
19 person was tracking me. But you don't always realize those  
20 things until later on down the road.

21 Q And going back to the question of why do they stay,  
22 is it your experience that more often than not victims stay  
23 in abusive relationships?

24 A Yes. As a matter of fact, victims will often stay  
25 in a relationship despite opportunities to leave the

1 relationship multiple times for a lot of different reasons.

2 Q And if there is some sort of a separation period, is  
3 it often the victim reaching out to the abuser trying to  
4 restart that relationship with them?

5 A It's not uncommon. Again, there's different reasons  
6 for that as well.

7 Q What are -- what are some of the reasons you've  
8 seen?

9 A One reason is love, as I said before. That's a very  
10 common one. Sometimes there is a dependence on that person  
11 and they don't realize what it would be like to not be with  
12 that person. And other times -- and this is kind of  
13 something that we see a lot -- it helps to know where that  
14 abuser is, and that connection is sometimes based in fear.  
15 I'd rather know and have contact with that person, mixed in  
16 with all the other feelings that go with it, but it's that  
17 familiarity that breeds a certain sense of safety when you  
18 know what that person's mind is like because you also know  
19 their capacity to be abusive.

20 Q Now, specifically, in reconnecting and these answers  
21 might be similar, but why in your experience do victims stay  
22 in abusive relationships, but sides the reasons you gave us?

23 A It could be financial. It could be again, it's that  
24 strong bond that people have especially if you have low  
25 self-esteem, it's that sense that you need that person, that

1 you've been dependent on that person.

2 Q How about embarrassment? Have you seen that?

3 A Absolutely. Victims, I mean, if you imagine what  
4 it's like to be taken over by another person and physically  
5 and possibly sexually and financially abused, verbally told  
6 repeatedly that you're worthless, it's very, very likely that  
7 -- that you have that sense that this isn't right, and you  
8 don't want people to know because it's embarrassing.

9 Q And does the fact that victims are often convinced  
10 that it's their fault play into that embarrassment?

11 A Sure. And that also, then again, impacts their  
12 self-esteem, that they are worthless and this is the only  
13 person that's going to put up with them.

14 MS. RHOADES: State would pass the witness, Your  
15 Honor.

16 THE COURT: Very well. Mr. Eichacker.

17 MR. EICHACKER: Yes, Your Honor. Thank you.

18 CROSS-EXAMINATION

19 BY MR. EICHACKER:

20 Q You said you had a bachelor's degree in psychology?

21 A Yes.

22 Q And that was general psychology, correct?

23 A Yes.

24 Q There was in socialization in domestic violence?

25 A No.

1 Q Or victim behavior?

2 A That was part of it, and I was volunteering at a  
3 rape crisis center during that time as part of my training,  
4 but no -- it wasn't a psychology degree in a specific  
5 category.

6 Q And you said that was part of it. It wasn't a  
7 course?

8 A No. They didn't have courses actually at that time.

9 Q And then you also said you had a master's degree?

10 A Yes.

11 Q And that was this counseling?

12 A It was in counseling in the creative arts and  
13 expressive therapies.

14 Q Okay. So not psychology?

15 A Counseling. It was part of it, yeah, human  
16 behavior, child development, posttraumatic stress were some  
17 of the courses, yes.

18 Q But you're not a psychologist?

19 A No, I'm not. I don't have a doctorate.

20 Q And you said the creative arts, what did that --

21 A The creative arts, many people have a difficult time  
22 expressing themselves so we use modalities such as movement  
23 and art and music as a way to help people to express  
24 themselves, particularly in substance abuse or severe  
25 posttraumatic stress.

1 Q And you haven't maintained any certification with  
2 that counseling degree?

3 A Not in that, no.

4 Q And you said that you work with Metro now?

5 A Yes.

6 Q And your job is to direct individuals that have been  
7 predetermined to be victims to different resources?

8 A I provide resources when victims reach out to us for  
9 assistance and help guide them through the community  
10 resources, information about the criminal justice process.

11 Q But you have no say who is or isn't a victim?

12 A Generally, the individuals that we work with have  
13 been identified through police reports because they receive a  
14 victim information guide. So they've been identified through  
15 probable cause.

16 Q So whoever the police identify --

17 A Correct.

18 Q -- you deal with it? You have no follow-up  
19 assessment?

20 A Excuse me?

21 Q You have no follow-up assessment that you do into  
22 whether these people are actually victims?

23 A We're just giving general information. We're not  
24 counseling them. So that is correct.

25 Q So no follow-up. And the general -- the general

1 information you're directing them to local resources, helping  
2 them with safety planning?

3 A Correct.

4 Q And like you said, you're not counseling them. You  
5 also talked about your experience. You haven't conducted  
6 research on any of your theories dealing with victims?

7 A No, not direct research.

8 Q So you haven't published any articles?

9 A I was part of a task force where we reevaluated  
10 victim needs. It was from -- originally the document was  
11 from President Reagan and we revisited it in 1995, and I was  
12 part of that team in Washington, DC that revisited based on  
13 national research what victims need from law enforcement,  
14 prosecutors and the community.

15 Q So in '95, you summarized national research?

16 A We summarized it and we made recommendations to the  
17 president.

18 Q Yeah, but you didn't conduct any research?

19 A No, I was part of the team that sorted through the  
20 research.

21 Q Okay. So you don't compare your victims against one  
22 another?

23 A No, I don't. I -- they're all individuals.

24 Q And getting to that, you haven't met with Brittney  
25 Jensen, correct?

- 1 A Correct.
- 2 Q And you haven't met with James Cooper either?
- 3 A Correct.
- 4 Q So you don't know Brittney's demeanor?
- 5 A Correct.
- 6 Q You haven't seen her behavior?
- 7 A Correct. I haven't had any contact with her.
- 8 Q You know nothing about her?
- 9 A Right.
- 10 Q And same with Mr. Cooper, you haven't seen his
- 11 demeanor?
- 12 A That is correct.
- 13 Q His behavior?
- 14 A Correct.
- 15 Q And his interaction with Brittney?
- 16 A Correct.
- 17 Q So the only thing you're talking about today is
- 18 generalities?
- 19 A Yes.
- 20 Q And you would agree that every relationship is
- 21 unique?
- 22 A That is correct. There are certain dynamics that
- 23 are fairly consistent over time in abusive relationships, but
- 24 each relationship does have its unique qualities.
- 25 Q So then not all people would fit into your pattern



1 of the cycle of violence that you described?

2 A There's -- there's unique diversions or paths within  
3 -- within the cycle of abuse, but there's some consistencies  
4 in abusive relationships.

5 Q But you don't know what would be consistent, what  
6 wouldn't be, correct?

7 A Correct.

8 Q So they're different?

9 A Relationships, there's different motivations,  
10 correct.

11 Q Some victims are females?

12 A Correct.

13 Q Some are males?

14 A Correct.

15 Q Sometimes alcohol comes into play?

16 A Correct.

17 Q That affects the dynamic?

18 A Alcohol can affect the dynamics, but it's not the  
19 cause of domestic violence.

20 Q It can affect the dynamic, but it's not the cause?

21 A Correct.

22 Q But it comes into play?

23 A It does come into play, but --

24 Q It alters behavior?

25 A The behavior, yes, but it doesn't -- again, it

1 doesn't cause domestic violence because everyone knows people  
2 that have the history of substance abuse, whether it be  
3 alcohol or drugs that don't become abusive to someone that  
4 they're in a relationship with.

5 Q But it does alter behavior in people?

6 A It makes people more vulnerable, correct.

7 Q And it makes some people more aggressive?

8 A It can, yes.

9 MR. EICHACKER: Court's indulgence.

10 THE COURT: Sure.

11 MR. EICHACKER: Nothing further.

12 THE COURT: Very well. Ms. Rhoades.

13 MS. RHOADES: Yes, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. RHOADES:

16 Q So now, what you do now, you provide services in  
17 counseling people. You don't line all the victims up that  
18 come in a day and say you're a victim, you're not a victim,  
19 you're a victim, you're not a victim, right?

20 A Correct.

21 Q Counseling, I mean, you don't counsel now. How many  
22 years have you spent counseling victims and particularly  
23 victims of domestic violence?

24 A Well, I just want to clarify, counsel could be  
25 giving advice, which is basically, advice and resources. I

1 don't provide therapy to the victims. But I've been a  
2 providing counsel ever since 1974 beginning as a victim  
3 advocate at a center, providing resources and advice and  
4 information about the criminal justice system and safety  
5 planning and assessing the individual needs of victims.

6 Q And for some time you were a therapist and --

7 A Yes, I was. Then I was performing -- I mean, then I  
8 was providing therapy.

9 Q There was this, your pattern of domestic violence,  
10 your pattern of the cycle of abuse. Did you make this cycle  
11 of abuse up?

12 A No, I didn't. This is based on significant research  
13 over the years, and it has been consistent. It hasn't  
14 changed, despite a lot of changes in the field, a lot of new  
15 information that we learn about the brain and posttraumatic  
16 stress and a lot of other things, those have stayed very  
17 consistent.

18 Q And generally, you know, how do you know so much  
19 about victims of domestic violence?

20 A Based on a couple things. One is the fact that I  
21 consistently get ongoing training, I'm constantly reading to  
22 stay up in the field. I serve on the state Domestic Violence  
23 Prevention Council out of the attorney general's office where  
24 we have input from a variety of professionals. I also, as I  
25 said, I have to maintain my certification through the

1 national organization for victim assistance, and my  
2 experience working with victims and working with other  
3 professionals in the field.

4 Q And that experience consists of what you previously  
5 told us, working with over tens of thousands of victims of  
6 domestic violence and children of domestic violence?

7 A Yes. And you start to see consistency.

8 MS. RHOADES: Nothing further, Your Honor.

9 THE COURT: Any follow-up, Mr. Eichacker.

10 MR. EICHACKER: No, Your Honor.

11 THE COURT: With the thanks of the Court, Ms.  
12 Greene, you may be excused.

13 THE WITNESS: Thank you.

14 THE COURT: Do either party anticipate recalling  
15 Ms. Greene?

16 MS. RHOADES: No, Your Honor.

17 MR. EICHACKER: No, Your Honor.

18 THE COURT: Very well. May I see counsel at the  
19 bench, please.

20 (Bench conference begins)

21 THE COURT: So did I understand you correctly that  
22 we have a lag between now and the time you're going to call  
23 the next witness?

24 MS. RHOADES: Yeah. 11:30 she's going to be here.

25 THE COURT: And who is the next witness?

1 MS. RHOADES: Dr. Gavin, the strangulation expert.

2 THE COURT: And do you suppose she'll be on time?

3 MS. RHOADES: Yes, she will be on time.

4 THE COURT: Do you anticipate a lengthy  
5 examination?

6 MS. RHOADES: No, I anticipate it going about the  
7 same as this did.

8 THE COURT: What about the defense?

9 MS. WALKENSHAW: I agree.

10 THE COURT: Okay.

11 MS. WALKENSHAW: I don't think it will be lengthy  
12 at all.

13 THE COURT: Are you prepared, then, to address  
14 those jury instructions that have been thus far submitted?

15 MS. RHOADES: Yes.

16 MS. WALKENSHAW: Yeah.

17 MS. RHOADES: And then I think maybe, because if we  
18 come back at 11:30, I mean, she'll be done about 12:30, I  
19 think that's how -- and then they can put on any witnesses  
20 they have, and I think we could still get out of here by  
21 1:00.

22 THE COURT: They could put on witnesses they have  
23 in a half an hour's time?

24 MS. WALKENSHAW: I don't --

25 MS. RHOADES: An hour.

1 MS. WALKENSHAW: -- think would be feasible.

2 MS. RHOADES: Don't you have to leave by 1:00 Your  
3 Honor?

4 THE COURT: I have to leave no later than 1:00.

5 MS. WALKENSHAW: I anticipated starting our  
6 presentation, the evidence tomorrow.

7 THE COURT: Um-h'm. And do -- is it going to be  
8 one witness or two witness?

9 MS. WALKENSHAW: We're waiting to hear about the  
10 second one. As of right now, we're thinking it will be just  
11 one witness, Mr. Cooper.

12 THE COURT: Would he be the first one?

13 MS. WALKENSHAW: He would.

14 THE COURT: Do you anticipate that to be a lengthy  
15 examination?

16 MS. WALKENSHAW: Somewhat. It will probably be  
17 similar to Brittney's.

18 THE COURT: Oh, that's a long one. That took half  
19 a day, didn't it?

20 MS. RHOADES: I don't think it will take that long.  
21 I mean, from our cross perspective, it won't take as long as  
22 theirs did.

23 THE COURT: Does the defense anticipate a brief  
24 examination of Dr. Gavin?

25 MS. WALKENSHAW: Yes.

1 THE COURT: Okay. So let me tell the jury what's  
2 going on so they can take a break.

3 MS. RHOADES: Okay.

4 MS. WALKENSHAW: Okay.

5 (Bench conference concluded)

6 THE COURT: All right. Back on record. So I  
7 appreciate the jurors indulging me and counsel here at the  
8 bench for purposes of scheduling matters. The next witness  
9 the State intends to call is not available until 11:30.  
10 There are some issues that I need to discuss with counsel,  
11 specifically, the jury instructions need to be settled  
12 outside your presence as a matter of law, and we're going to  
13 stay and work on that.

14 But in the meantime, you're entitled to take a  
15 break until such time as we can resume the trial. I remind  
16 you of your ongoing obligations not to talk about this case,  
17 not to form or express any opinion, not to do any research on  
18 any subject connected with this case, including, but not  
19 limited to, newspapers, television, radio, the Internet and  
20 all forms of social media.

21 Please be prompt, members of the jury so we can  
22 resume at 11:30. Thank you.

23 (Outside the presence of the jury)

24 THE COURT: I'm going to step down to get my packet  
25 of instructions.

1 MS. RHOADES: Yeah, of course.

2 THE COURT: Thank you.

3 (Off the record at 10:42 a.m. until 10:44 a.m.)

4 (Outside the presence of the jury.)

5 MS. RHOADES: We're just going through them real  
6 briefly, Your Honor, to see if what --

7 THE COURT: Okay.

8 MS. RHOADES: -- we can agree on.

9 (Counsel conferring)

10 MS. RHOADES: Okay, Your Honor, we'll just go  
11 through them all.

12 THE COURT: Very well. Okay. We're back on record  
13 for purpose of settling the jury instructions outside the  
14 presence of the jury. Are there any stipulated instructions  
15 by counsel?

16 MS. RHOADES: I believe, the first few of the  
17 State's we got through are stipulated and then there's a  
18 couple that are not. So maybe we can just address them one  
19 by one. You have the State's most recent copy.

20 THE COURT: I do. Is that the same set that the  
21 defense has as well?

22 MS. WALKENSHAW: I believe so.

23 THE COURT: Okay, so --

24 MS. WALKENSHAW: The copy I printed was the most  
25 recent.



1 THE COURT: -- on the prosecutor's set, the first  
2 one, instruction number 1, It is my duty as judge to instruct  
3 you in the law. Any objection to that instruction number 1?

4 MS. WALKENSHAW: No, Your Honor.

5 THE COURT: How about number 2, If any of these  
6 instructions are repeated or stated in different ways? Any  
7 objection to that one, Ms. Walkenshaw?

8 MS. WALKENSHAW: No, Your Honor.

9 THE COURT: How about the third set of  
10 instructions, which indicates that an Amended Information is  
11 about a formal method of accusing a person of a crime.

12 MS. WALKENSHAW: I have no objection, Your Honor.

13 MS. RHOADES: And then just for the record, at the  
14 end, Your Honor, I believe that includes one of the ones that  
15 was proposed by the defense. Apply -- at the end it says,  
16 Apply the rules of the law contained in these instructions to  
17 the fact. Each charge and the evidence must be considered  
18 separately. That was included already in that one.

19 THE COURT: I lost you, Ms. Rhoades. I don't know  
20 where you're reading from, I'm sorry.

21 MS. RHOADES: I'm sorry, it's the last paragraph of  
22 that instruction that we're talking about.

23 THE COURT: The instruction that begins, An Amended  
24 Information is but a formal method of accusing?

25 MS. RHOADES: Yes. So page 2 of that same

1 instruction, the last paragraph.

2 THE COURT: What about the last paragraph?

3 MS. RHOADES: They had that in their proposed  
4 instructions and it's already included here. I just wanted  
5 to make note of that.

6 THE COURT: What about that, Ms. Walkenshaw?

7 MS. WALKENSHAW: That's correct, Your Honor. And  
8 Ms. Rhoades is right. I think my only concern is that it  
9 perhaps may be overlooked given that it's in the same  
10 instruction as the one regarding the Amended Information and  
11 relating to the charges.

12 I would just request that it be included in a  
13 separate instruction, but that's correct, it was one of our  
14 proposed.

15 THE COURT: Well, I think it's incumbent on counsel  
16 to make sure that it isn't overlooked by the jury.

17 MS. WALKENSHAW: Certainly.

18 THE COURT: But I don't see any reason in giving a  
19 duplicate instruction to --

20 MS. WALKENSHAW: Okay.

21 THE COURT: -- the members of the jury. The next  
22 instruction is a definition of battery. Any objection to  
23 that, Ms. Walkenshaw?

24 MS. WALKENSHAW: No, Your Honor.

25 THE COURT: Very well. The next instruction is

1 battery constituting domestic violence instruction. Any  
2 objection to that?

3 MS. WALKENSHAW: No, Your Honor.

4 THE COURT: The next one is that has to do with the  
5 definition of strangulation, any objection to that?

6 MS. WALKENSHAW: No, Your Honor.

7 THE COURT: Next instruction is the definition of  
8 substantial bodily harm. Any objection to that?

9 MS. WALKENSHAW: No, Your Honor.

10 THE COURT: Next one is a citation from NRS  
11 200.508. Looks like the definition of child abuse, neglect  
12 or endangerment. Any objection?

13 MS. WALKENSHAW: That's correct, Your Honor. No  
14 objection.

15 THE COURT: Next instruction defines abuse or  
16 neglect, physical injury, mental injury and negligent  
17 treatment or maltreatment of a child. Any objection to that?

18 MS. WALKENSHAW: No, Your Honor.

19 THE COURT: Next one is a general intent  
20 instruction. Any objection?

21 MS. WALKENSHAW: No, Your Honor.

22 THE COURT: Next one is an instruction that battery  
23 constituting a domestic violence is a general intent crime.  
24 Any objection?

25 MS. WALKENSHAW: The only objection is that, Your

1 Honor, is that although California clarified that the battery  
2 is a general intent crime, Nevada did not specifically  
3 clarify that. There is obviously and the DA included that  
4 Nevada based its battery statutes on California's; however,  
5 there wasn't any explicit finding by a Nevada court that it  
6 was a general intent crime and so that would be my objection.

7 THE COURT: Ms. Rhoades?

8 MS. RHOADES: Your Honor, battery is a general  
9 intent crime. I mean, it's noticed in -- noted in that  
10 unpublished decision. It's noted in Beyer (phonetic) citing  
11 to California, that case that we have in law school about  
12 someone hitting a plate out of somebody's hand, I think talks  
13 about how battery is a general intent crime. So it is a  
14 general intent crime, and we would be just instructed -- ask  
15 that they be instructed as such.

16 THE COURT: It is my understanding of the law, Ms.  
17 Walkenshaw. Do you want your objection noted for the record  
18 and made part of the record?

19 MS. WALKENSHAW: Noted for the record. Thank you,  
20 Your Honor.

21 THE COURT: Very well. The Court intends to give  
22 this instruction over defense counsel's objection, and I'll  
23 ask that it be marked as court's exhibit and made part of the  
24 record, Madam Clerk.

25 THE CLERK: It's going to be Court's 4.

1 THE COURT: Court's 4. Very well, the next  
2 instruction indicates that battery constituting domestic  
3 violence, strangulation is a general intent crime. Any  
4 objection to that?

5 MS. WALKENSHAW: Just the same objection, Your  
6 Honor.

7 THE COURT: Very well. The Court intends to give  
8 it. I'll note that defense counsel objects it -- objects to  
9 it being given and I'll ask that it be made part of the  
10 Court's record.

11 THE CLERK: Court's 5.

12 MS. WALKENSHAW: Thank you, Your Honor.

13 THE COURT: The next instruction instructed that  
14 child abuse, neglect or endangerment is a general intent  
15 crime. Any objection?

16 MS. WALKENSHAW: No, Your Honor.

17 THE COURT: Okay. The next one has to do with  
18 lesser included offenses. Any objection to that?

19 MS. WALKENSHAW: No, Your Honor.

20 MS. RHOADES: And just specifically, Your Honor,  
21 for the record, after the defense submitted their proposed,  
22 we did include the lesser included that was in here. This  
23 one is specifically for the battery domestic violence, and  
24 then we also included the second one that's specific to the  
25 battery domestic violence strangulation.

1 THE COURT: Very well. Any input on that, Ms.  
2 Walkenshaw?

3 MS. WALKENSHAW: That's correct, Your Honor.

4 THE COURT: Very well. That one will be given.  
5 Next instruction appears to be a reasonable doubt  
6 instruction.

7 MS. WALKENSHAW: No objection, Your Honor.

8 MS. RHOADES: Oh, I'm sorry, I lost you, Your  
9 Honor. I have the --

10 THE COURT: It reads --

11 MS. RHOADES: -- two, When it is impossible to  
12 commit, and then if you find beyond a reasonable doubt, those  
13 two lesser includeds and then we have Crowley after that.  
14 When a trial witness fails.

15 THE COURT: I'm reading the one that begins, If you  
16 find beyond a reasonable doubt that the defendant committed a  
17 battery, that said battery was committed by strangulation and  
18 that said battery constituted --

19 MS. RHOADES: Oh.

20 THE COURT: -- domestic violence, you're instructed  
21 that battery constituting domestic violence strangulation was  
22 the appropriate verdict.

23 MS. RHOADES: Oh, okay, I'm sorry. Yeah, that's  
24 not the reasonable doubt instruction. That's the lesser  
25 included with the strangulation.

1 THE COURT: Any objection to that one, Ms.  
2 Walkenshaw?

3 MS. WALKENSHAW: No, Your Honor.

4 THE COURT: Very well. The next one is a Crowley  
5 instruction. And we did address this previously during the  
6 course of the trial. Any objection to this instruction, Ms.  
7 Walkenshaw?

8 MS. WALKENSHAW: No, Your Honor.

9 THE COURT: Very well. Next instruction is the  
10 Tavares v. State case, is cited for the record. And this is  
11 the one I think that we gave during the course of the trial  
12 before the testimony was elicited of the witnesses regarding  
13 other bad acts; is that correct?

14 MS. WALKENSHAW: I believe so, Your Honor. The  
15 defense obviously doesn't have any objection to this  
16 instruction.

17 THE COURT: Very well. Next instruction comes from  
18 the Daniel v. State case.

19 MS. RHOADES: And the State did construct this. I  
20 didn't see one in the defense's proposed. This is the for  
21 the evidence that came out about Brittney's prior domestic  
22 violence and we took cases -- or the language straight from  
23 the Daniel case.

24 THE COURT: Any objection to that instruction, Ms.  
25 Walkenshaw?

1 MS. WALKENSHAW: No, Your Honor. And I'll submit  
2 one identical to this given that this is the language and  
3 just substituting "defendant" for "alleged victim" since it  
4 was similar testimony regarding both.

5 THE COURT: Okay. So what my procedure kind of  
6 consists of is to address first the prosecution's proposed  
7 instructions --

8 MS. WALKENSHAW: Okay.

9 THE COURT: -- then the defense's. So I'm going to  
10 get to your packet in a few minutes.

11 MS. WALKENSHAW: Certainly. Sorry.

12 THE COURT: So no objection to this one, though?

13 MS. WALKENSHAW: No, Your Honor.

14 THE COURT: All right. The next one is the  
15 instruction that reads, To constitute the crime charged,  
16 there must exist a union or joint operation of an act  
17 forbidden by law and an intent to do the act. Any objection?

18 MS. WALKENSHAW: No, Your Honor.

19 THE COURT: Defendant is presumed innocent. No  
20 objection to that one, is there in.

21 MS. WALKENSHAW: No, Your Honor.

22 THE COURT: All right. You are here to determine  
23 whether the defendant is guilty or not guilty from the  
24 evidence in the case.

25 MS. WALKENSHAW: No objection.



1 THE COURT: The evidence which you are to consider  
2 in this case consists of the testimony of the witnesses, the  
3 exhibits and any facts admitted or agreed to by counsel.

4 MS. WALKENSHAW: No objection.

5 THE COURT: Also addresses direct and  
6 circumstantial evidence. Any objection?

7 MS. WALKENSHAW: No, Your Honor.

8 THE COURT: Very well. Next one reads, Evidence  
9 that the defendant attempted to suppress evidence against  
10 himself or to procure false testimony or evidence on his  
11 behalf from another person is not in itself sufficient to  
12 warrant a finding the guilt. Any objection?

13 MS. WALKENSHAW: The only objection I have at this  
14 point, Your Honor, is that there hasn't been any testimony  
15 from any of the parties that he attempted to suppress  
16 evidence against himself, and given the testimony that's come  
17 out at this point, I don't think that this is an appropriate  
18 instruction because there hasn't been any evidence or  
19 testimony as to that fact.

20 THE COURT: Ms. Rhoades.

21 MS. RHOADES: Yes, Your Honor. This is a correct  
22 statement of the law, and the State is going to argue that it  
23 can be inferred. And it did kind of argue with Brittney  
24 about it on the jail calls. Mr. Cooper tells her you know  
25 what to do, don't overthink shit, don't overthink shit again.

1 You know what you got to do. Just do what you gotta do, and  
2 then he's telling Brittney, you know, you jumped on me  
3 everywhere, you jumped on me in the bathroom. That's  
4 obviously, not what the State feels that happened, and I  
5 think that qualifies under the -- this instruction to warrant  
6 giving it.

7 THE COURT: Ms. Walkenshaw.

8 MS. WALKENSHAW: And when she was actually  
9 questioned specifically regarding those statements, she'd  
10 indicated that she felt his statements were to mean to tell  
11 the truth, nothing regarding an attempt to suppress evidence  
12 against himself. And that she had asked him regarding what  
13 had happened because she could not remember what had  
14 happened, not in a, he's telling her what happened, he's  
15 telling her what to say happened.

16 And so given that and given her testimony regarding  
17 that, I mean, I asked her specifically regarding this because  
18 I knew that that was the State's position regarding the  
19 statements. I don't think that this would be an appropriate  
20 instruction.

21 THE COURT: So it's Court's view that both sides  
22 are now arguing the case. This is a correct statement of the  
23 law. The Court intends to give it. Counsel can make their  
24 respective arguments about whether or not this is the case.  
25 But I will note defense counsel's objection for the record

1 and make this proposed instruction a Court's exhibit.

2 MS. WALKENSHAW: Thank you, Your Honor.

3 THE CLERK: No. 6.

4 THE COURT: Next instruction is from the Carter v.  
5 Kentucky (phonetic) case. Right of the defendant not to  
6 testify. Any objection to that?

7 MS. WALKENSHAW: I have no objection to this.  
8 Obviously, should he testify, we wouldn't need it. I have no  
9 objection to it.

10 THE COURT: So what should we do? Should we mark  
11 it somehow in case -- I mean, there have been a number of  
12 these at some point. I suppose what we could do is leave it  
13 in the packet for now, but not number any of them until such  
14 time as we know what the result on this issue is going to be.  
15 What do you think about that?

16 MS. WALKENSHAW: That's fair, Your Honor.

17 THE COURT: Very well. Next one is -- reads, If  
18 evidence of self-defense is present, State must prove beyond  
19 a reasonable doubt defendant did not act in self-defense.  
20 Any objection to that?

21 MS. WALKENSHAW: No, Your Honor.

22 THE COURT: Next one begins, The right of  
23 self-defense exists only as long as the real or apparent  
24 danger --

25 MS. WALKENSHAW: No objection, Your Honor.

1 THE COURT: Very well. Next one reads, The right  
2 of self-defense is not available to an original aggressor.  
3 Any objection?

4 MS. WALKENSHAW: No objection.

5 THE COURT: Credibility or believability of a  
6 witness, any objection to that?

7 MS. WALKENSHAW: No, Your Honor.

8 THE COURT: Next witness instruction, any objection  
9 to that?

10 MS. WALKENSHAW: No, Your Honor.

11 THE COURT: Okay. That's the State's proposed set  
12 of instructions; is that correct?

13 MS. RHOADES: I believe we have a few more, Your  
14 Honor.

15 THE COURT: Do you?

16 MS. RHOADES: Yes. The verdict form and then a few  
17 general instructions.

18 (Court/Law Clerk conferring)

19 THE COURT: Okay. The next instruction then is the  
20 common sense instruction.

21 MS. RHOADES: Yes.

22 THE COURT: Okay. No objection?

23 MS. WALKENSHAW: No objection.

24 THE COURT: Subject of punishment.

25 MS. WALKENSHAW: I have In your deliberation, yes.

1 I have no objection to that, Your Honor.

2 THE COURT: Very well. Duty as jurors to consult  
3 with one another.

4 MS. WALKENSHAW: No objection.

5 THE COURT: Must select a foreperson who will  
6 preside over your deliberations. Any objection?

7 MS. WALKENSHAW: No, Your Honor.

8 THE COURT: During your deliberation you must not  
9 communicate with anyone in any way regarding the case or its  
10 merits.

11 MS. WALKENSHAW: No objection.

12 THE COURT: Playbacks of testimony. Any objection  
13 so that?

14 MS. WALKENSHAW: No.

15 THE COURT: Now you will listen to arguments of  
16 counsel. Any objection?

17 MS. WALKENSHAW: No.

18 THE COURT: All right. Proposed verdict form.  
19 Have you had a chance to review the State's proposed verdict  
20 form, Ms. Walkenshaw?

21 MS. WALKENSHAW: I have, Your Honor.

22 THE COURT: Any objection?

23 MS. WALKENSHAW: I submitted one that was just  
24 slightly different that included a lesser included for the  
25 child abuse, neglect or endangerment. So I think the Court

1 would have to determine whether that was an appropriate  
2 lesser. And then if not -- if it was determined to be  
3 appropriate, I think otherwise our verdict forms are the  
4 same, except mine just includes that.

5 If it's not determined to be appropriate, I think  
6 State's verdict is fine. And then, obviously, just that I  
7 would request that "not guilty" go before "guilty" given that  
8 Mr. Cooper is presumed to be innocent and so I just request  
9 that that be at the top as opposed to guilty.

10 THE COURT: Ms. Rhoades.

11 MS. RHOADES: I mean, I don't know that that  
12 matters. I think it's fine the way it is. We do object to  
13 -- the child endangerment is not a lesser included of the  
14 felony child abuse with which the State has charged with  
15 Cooper with. We have some case law on that. They're  
16 separated, two separate statutes.

17 One of the -- one section, Subsection 1 actually  
18 qualifies under a, kind of a felony murder theory for that,  
19 and then Subsection 2 is totally separate and doesn't  
20 necessarily qualify for the felony murder. The legislature  
21 separated them. There's different elements. It doesn't meet  
22 the Blockburger (phonetic) test. The gross misdemeanor is  
23 not a lesser included ever the felony.

24 THE COURT: Ms. Walkenshaw.

25 MS. WALKENSHAW: And I'll submit it to Your Honor.

1 THE COURT: Very well. In that case, the Court's  
2 inclined to give the State's proposed verdict form. I'll  
3 note defense counsel's objection for the record.

4 MS. WALKENSHAW: Thank you.

5 MS. RHOADES: And Your Honor, can we go back? I'm  
6 sorry. I apologize. To two of the State's instructions.  
7 That one, During your deliberation you must not communicate,  
8 I believe we took that from the case that we received from  
9 your law clerk.

10 THE COURT: Yes.

11 MS. RHOADES: Should we include something like  
12 during your deliberation you must not communicate with anyone  
13 except each other in any way regarding the case or merits or  
14 do you think that's already implied in the other  
15 instructions?

16 THE COURT: That's a good point.

17 MS. RHOADES: Maybe just except each other after --

18 THE COURT: Don't we need specific language  
19 regarding conducting experiments?

20 MS. RHOADES: You must not do any research, consult  
21 any dictionaries, using the Internet or using any reference.  
22 You must not make any investigation, test a theory of the  
23 case, recreate any aspect or in any other way investigate.

24 (Court/Law Clerk conferring)

25 MS. RHOADES: Well, how about then if we change

1 this first line to read, During your deliberation, you must  
2 not communicate with anyone other than each other?

3 MS. RHOADES: Okay.

4 THE COURT: In any way regarding the case or its  
5 merits.

6 MS. RHOADES: Okay.

7 THE COURT: And then in the last sentence, what  
8 about on line 7 and after the words "recreate any aspect of  
9 the case", how about "conduct any experiments". Inserting  
10 that language just before the language that reads or in any  
11 way investigate or learn about the case on your own? How  
12 about that?

13 MS. RHOADES: No objection by the State.

14 MS. WALKENSHAW: No objection, Your Honor.

15 THE COURT: Very well. Thank you, counsel.

16 MS. RHOADES: And then the second one I wanted to  
17 address is the -- going back to the self-defense  
18 instructions. I just wanted to make sure that you had the --  
19 we added a last line in there, and I just wanted to make sure  
20 the Court had the recent copy. It says, The right of  
21 self-defense exists only as long as the real or apparent  
22 threat and danger is how it starts.

23 THE COURT: Give me some idea where in the packet  
24 that is since these aren't numbered.

25 MS. RHOADES: About 15 pages back,



1 THE COURT: Okay. It reads, The right of  
2 self-defense exists only so long as a real or apparent threat  
3 and danger continues to exist?

4 MS. RHOADES: Yes. And then that last paragraph  
5 should say, The acts of self-defense are justified. Is that  
6 what you have, Your Honor?

7 THE COURT: Yes.

8 MS. RHOADES: Okay. I just wanted to make sure.  
9 Thank you.

10 THE COURT: Okay. We settled that one already. Do  
11 you agree, Ms. Walkenshaw?

12 MS. WALKENSHAW: Yes, Your Honor.

13 THE COURT: All right. Does the State propose any  
14 other instructions other than those submitted?

15 MS. RHOADES: No.

16 THE COURT: All right. So let's go to defense's  
17 packet. The first one in their packet addresses the issue of  
18 burden of proof, but we've already admitted one like this; do  
19 you agree, Ms. Walkenshaw?

20 MS. WALKENSHAW: Yes, Your Honor.

21 THE COURT: Very well. Next proposed one has to do  
22 with reasonable doubt. We already have one on reasonable  
23 doubt, correct?

24 MS. WALKENSHAW: We do, Your Honor.

25 THE COURT: Very well. Next one has to do with

1 evidence, direct and circumstantial, but we already have that  
2 one, right?

3 MS. WALKENSHAW: Yes,

4 THE COURT: Next one has to do with the credibility  
5 of the witnesses. We have that already, correct?

6 MS. WALKENSHAW: We do.

7 THE COURT: And battery constituting domestic  
8 violence from the language from the Crawford case, we have  
9 that as well; do you agree?

10 MS. WALKENSHAW: I believe so, Your Honor.

11 THE COURT: Well, let's make sure.

12 MS. RHOADES: No. At the inverse. I didn't do the  
13 inverse of it.

14 MS. WALKENSHAW: Okay. There wasn't one submitted  
15 like this, Your Honor.

16 THE COURT: Okay. So, I suppose we need one in  
17 there. Probably that underlying language needs to come out,  
18 though, and --

19 MS. WALKENSHAW: Yes. Okay.

20 THE COURT: -- and the words "defendant's proposed  
21 instruction A" needs to come out as well.

22 MS. RHOADES: And Your Honor, if I could just make  
23 a brief record --

24 THE COURT: Sure.

25 MS. RHOADES: -- of why we didn't include something

1 like this. The State doesn't feel that they're entitled to  
2 this instruction. Crawford specifically says that they are  
3 entitled to instructions on their theory of the case, which  
4 we have included in our instruction, which is the  
5 self-defense instructions. And also, that the State has to  
6 prove beyond a reasonable doubt that their -- these acts were  
7 not done in self-defense in order for him to be found guilty.

8  
9 This is duplicative, it's not a theory of defense  
10 and it's already covered by the instructions on battery  
11 domestic violence and the reasonable doubt instructions and  
12 they're already instructed that they're to find every element  
13 -- that the State has proven every element beyond a  
14 reasonable doubt in order to find him guilty, and they can  
15 only do that if they do find every element proven by that  
16 standard.

17 And I think that the defense can argue otherwise,  
18 but other than that, it's already covered in the instructions  
19 given.

20 THE COURT: Okay. Can you point me to the language  
21 that you think covers this, Ms. Rhoades?

22 MS. RHOADES: Yes, I can. In our instructions the  
23 reasonable doubt instruction, which is -- I wish that these  
24 pages were numbered, I'm sorry.

25 THE COURT: I think I found it. Does the defense

1 have it?

2 MS. RHOADES: Well, we also have the lesser  
3 includeds. I mean, they're instructed several times, if  
4 you're not satisfied beyond a reasonable doubt that the  
5 defendant is guilty of the offense charged, he may, however,  
6 be found guilty of any lesser included offense if the  
7 evidence is sufficient to establish his guilt of such lesser  
8 offense beyond a reasonable doubt. And then they're  
9 repeatedly told, you can only find these charges if you find  
10 beyond a reasonable doubt that he is guilty.

11 And then we also have the presumed innocent one,  
12 which is the reasonable doubt. This presumption places upon  
13 the State the burden of proving beyond a reasonable doubt  
14 every element of the crime charged and that the defendant is  
15 the person who committed the offense.

16 This is essentially an argument and just restating  
17 what they're already told.

18 THE COURT: So the Court's inclined to give it,  
19 note prosecutor's objection for the record.

20 MS. RHOADES: Also, Your Honor, there's a deadly  
21 weapon --

22 MS. WALKENSHAW: Yes.

23 MS. RHOADES: -- and that's --

24 MS. WALKENSHAW: We can just strike that.

25 MS. RHOADES: -- wrong.

1 MS. WALKENSHAW: In line 5, just strike the words  
2 "use of a deadly weapon".

3 THE COURT: Okay, I think you're -- counsel's sort  
4 of jumping around on me. We're just looking at the one  
5 instruction, which is number 7 in the defense packet.

6 MS. WALKENSHAW: That's correct. On line 5, it  
7 says "battery with use of a deadly weapon constituting  
8 domestic violence". I would just ask that the with "use of a  
9 deadly weapon be struck". "Battery constituting domestic  
10 violence" remain. And I'll remove the language that the  
11 Court requested to be removed.

12 THE COURT: As well as this?

13 MS. WALKENSHAW: Yes.

14 THE COURT: All right. Let's move on to page 8 in  
15 the defense packet. It's a battery instruction. We already  
16 have that. Do you agree, Ms. Walkenshaw?

17 MS. WALKENSHAW: I do, Your Honor.

18 THE COURT: What about the self-defense  
19 instruction? Do we have an instruction like that, Ms.  
20 Rhoades?

21 MS. RHOADES: I believe so, yes. That they have to  
22 find him not guilty if they find that we have not proven  
23 beyond a reasonable doubt that he didn't act in self-defense.  
24 That's included in ours.

25 THE COURT: Where?

1 MS. RHOADES: That is the one that starts the  
2 self-defense instructions. If evidence of self-defense is  
3 present, the State must prove beyond a reasonable doubt that  
4 the defendant did not act in self-defense. If you find that  
5 the State has failed to prove beyond a reasonable doubt the  
6 defendant did not act in self-defense, you must find the  
7 defendant not guilty. A lot of negatives in here.

8 THE COURT: Can you give me -- I know. Can you  
9 give me some idea where this instruction is in your packet?

10 MS. RHOADES: It's about in the middle. It's the  
11 first instruction that cites to Runyon (phonetic) after the  
12 Carter instruction.

13 THE COURT: Looks like it's covered, Ms.  
14 Walkenshaw. Do you agree?

15 MS. WALKENSHAW: I do, Your Honor.

16 THE COURT: All right. Next instruction, number  
17 10.

18 MS. RHOADES: It's the State's position, Your  
19 Honor, that this is already covered in the right of  
20 self-defense exists only instruction that State has provided.  
21 This is not a correct statement of the law. This is an  
22 interpretation. In Davis, I did not find this language  
23 anywhere. It says, the proposed defense instruction, In  
24 doing so he may use all force and means which such person  
25 believes -- I mean, I didn't find that language. It's kind

1 of making the self-defense law more broad than it actually  
2 is.

3 THE COURT: Do you have a copy of the Davis case  
4 that reflects that this language tracks with Davis, Ms.  
5 Walkenshaw?

6 MS. WALKENSHAW: I did not bring a copy with me,  
7 Your Honor.

8 MS. RHOADES: I have a copy of the case, Your  
9 Honor, but I didn't find that language in there.

10 THE COURT: Why don't you give it to the defense.  
11 Perhaps, she can find it.

12 (Pause in the proceedings)

13 MS. WALKENSHAW: Sorry, Your Honor. If I could  
14 just have the Court's indulgence for one moment?

15 THE COURT: Sure.

16 MS. WALKENSHAW: The defense's position regarding  
17 that language where it indicates in doing so he may use all  
18 force and means, which such person believes to be reasonable  
19 necessary, was based primarily off of the fact pattern that  
20 was in Davis. And in that case, it was involving a shooting,  
21 not a battery as in this case, but it was involved a shooting  
22 and whether -- whether that shooting was reasonable given the  
23 statements that the victim had made to Davis prior to the  
24 incident itself.

25 And based on that, we submitted those because in

1 our interpretation of the facts he did use the force that he  
2 found to be reasonably necessary, although, perhaps in  
3 hindsight it wasn't, and so that's the instruction. I'll  
4 submit it to Your Honor.

5 THE COURT: So since the language doesn't track and  
6 it seems to me to be a pretty broad statement, I'm not  
7 inclined to give it. I'll note Counsel's objection for the  
8 record. And I'll ask that it be marked court's exhibit.

9 THE CLERK: It will be 9.

10 THE COURT: Okay. That takes us to page 11, which  
11 I think is a duplication of one of the instructions the State  
12 submitted. Do you agree?

13 MS. WALKENSHAW: It is, Your Honor.

14 MS. RHOADES: So we're not giving that one, right?

15 THE COURT: We're not giving that one.

16 MS. RHOADES: Okay.

17 THE COURT: It's a duplication. The next  
18 instruction on page 12 of the defense's proposed is titled  
19 self-defense, and I think Counsel has cited the Runyon case.

20 MS. RHOADES: I think this was given, too.

21 THE COURT: It appears that -- it appears that this  
22 is actually covered in some of the other instructions we've  
23 previously settled. Do you agree with that, Ms. Walkenshaw?

24 MS. WALKENSHAW: Yes, Your Honor.

25 THE COURT: Very well. What about proposed



1 instruction number 13?

2 MS. RHOADES: Your Honor, we do object to this. I  
3 have reviewed that case, State v. Scott (phonetic). It is a  
4 1914 case. It's very old. It uses some antiquated language  
5 that has been -- I mean, Runyon is the primary case on  
6 self-defense, and we've included all those instructions on  
7 that. And Davis as well addresses that, too. We've included  
8 some from Davis. Those are all more recent. This is  
9 antiquated language that is misleading, confusing and it has  
10 been updated in prior Nevada Supreme -- or more recent Nevada  
11 Supreme case law, and I don't think it's -- it's the correct  
12 statement of law.

13 THE COURT: Ms. Walkenshaw?

14 MS. WALKENSHAW: I can reword it based on the more  
15 updated cases and cite to those. That being said, though, I  
16 do think that is a correct statement of what was stated in  
17 Scott. I know that it was -- it's an older case. That being  
18 said, it hasn't been overturned. I'll submit it to Your  
19 Honor.

20 THE COURT: Do you have the language from this  
21 case? Does it track?

22 MS. RHOADES: No. I didn't find this language  
23 tracking. I have a paragraph that's highlighted where I  
24 think they're getting this language from, and it's pretty  
25 lengthy.

1 THE COURT: If the language doesn't track, the  
2 Court's not inclined to give it. I'll also note that we have  
3 some other instructions regarding self-defense that I think  
4 covered the law that the jury needs to get, but I'll note  
5 Counsel's objection for the record.

6 MS. WALKENSHAW: Thank you.

7 THE COURT: And I'll ask that be marked as court's  
8 exhibit.

9 THE CLERK: No. 10.

10 THE COURT: Thank you. Next one, page 14 of  
11 defense's packet. What about this one, Ms. Rhoades?

12 MS. RHOADES: We do object to this as well. It's  
13 covered under the instructions given. It's essentially  
14 argument that this kind of self-defense is a blanket for him  
15 to do whatever he wants. I found some language in Davis that  
16 might be comparable if they want it, in that defendant  
17 reasonably -- if defendant reasonably believed that he was in  
18 imminent danger from Brittney and that the use of force was  
19 necessary under the circumstances to avoid death or great  
20 bodily injury to himself, then his actions were justified,  
21 something along that nature, but that's also already covered.  
22 I just don't feel that this is a correct statement of the law  
23 and is not language directly out of Runyon.

24 MS. WALKENSHAW: And Your Honor, my only concern  
25 with the proposed language by the District Attorney is that

1 it seems to limit that his fear needed to have been for death  
2 or substantial bodily harm, and I don't think that it's  
3 overbroad. I mean, if anything, it's limiting because it's  
4 indicating that simple injury is not enough to justify a  
5 battery. Otherwise, I'll submit it on that.

6 THE COURT: Well, if the language doesn't track,  
7 you know, the Court has some concern about giving an  
8 instruction that really isn't accurately reflected in the  
9 case law. So I'm not inclined to give it. I'll note  
10 Counsel's objection for the record. And ask that it be  
11 marked as court's exhibit.

12 THE CLERK: 11.

13 THE COURT: Next, page 15.

14 MS. WALKENSHAW: I think this was already given,  
15 Your Honor.

16 THE COURT: I think so. 16?

17 MS. WALKENSHAW: This is just the Crawford  
18 instruction for -- that incorporates self-defense for battery  
19 domestic violence.

20 MS. RHOADES: I think this is confusing and it's  
21 already given and they're already instructed, you know, as I  
22 stated before, if they find I can't reasonable doubt that it  
23 was -- the actions were in self-defense, then they can't find  
24 him guilty. And I don't even know if this is a correct  
25 statement of the law. Convinced beyond all reasonable

1 doubts. That misinterprets the -- that's different language  
2 than what the statutory language is for reasonable doubt.  
3 That James Cooper used force upon Brittney Jensen for the  
4 purpose of battery domestic violence rather than for the  
5 purposes of self-defense. I mean, they don't necessarily  
6 have to determine his purpose was to commit battery domestic  
7 violence, as we've already discussed, battery's a general  
8 intent crime.

9 THE COURT: Ms. Walkenshaw?

10 MS. WALKENSHAW: I'll submit it, Your Honor.

11 THE COURT: Well, I'm not inclined to give it for a  
12 couple of reasons. The first is, beyond all reasonable doubt  
13 is really not what's required. It's beyond a reasonable  
14 doubt, which is what required. And the other is I don't  
15 think there's any requirement that State has to show that  
16 defendant intended that his purpose was to engage in battery  
17 domestic violence. But I'll note Counsel's objection for the  
18 record. And ask that it be made part of the court's record.

19 THE CLERK: 12.

20 THE COURT: Okay. Number 17. Ms. Walkenshaw?

21 MS. WALKENSHAW: Thank you, Your Honor. This is  
22 one that the defense often submits usually just to make as a  
23 part of the record. I understand the Court's position on  
24 this. I have submitted this previously to the Court, but it  
25 is one that we typically submit, and so I'll just submit it

1 on that, Your Honor.

2 THE COURT: Ms. Rhoades.

3 MS. RHOADES: And we would object. They're already  
4 -- they're already properly instructed on the standard for  
5 reasonable doubt. An additional instruction is confusing and  
6 should not be given, and we would object to giving this.

7 THE COURT: I think it would be confusing to the  
8 jury to give this instruction so the Court is not inclined to  
9 do so, but I'll note Counsel's objection for the record.

10 MS. WALKENSHAW: Thank you, Your Honor.

11 THE COURT: And ask that it be made part of the  
12 record.

13 THE CLERK: 13.

14 THE COURT: Okay. Number 18.

15 MS. WALKENSHAW: I think we addressed this. This  
16 is just similarly worded as to the previous one.

17 THE COURT: Very well. So we won't give that one.  
18 19, lesser included offense.

19 MS. WALKENSHAW: I believe this is already  
20 included.

21 THE COURT: Very well. We won't give that one.  
22 Number 20?

23 MS. WALKENSHAW: I believe this one's already  
24 included as well. The State included it.

25 THE COURT: All right. Number 21. Don't we have

1 this covered in a previous instruction?

2 MS. RHOADES: Yes, Your Honor.

3 MS. WALKENSHAW: We do.

4 THE COURT: Ms. Walkenshaw?

5 MS. WALKENSHAW: We do.

6 THE COURT: Very well. I won't give 21. 22?

7 MS. WALKENSHAW: I believe that this was already  
8 covered.

9 THE COURT: All right, 23?

10 MS. WALKENSHAW: This was already covered as well.

11 THE COURT: All right, 24?

12 MS. WALKENSHAW: I can't recall if --

13 MS. RHOADES: This is the one that's at the end of  
14 the Amended Information.

15 MS. WALKENSHAW: Okay.

16 THE COURT: Very well. I won't give 24. It's  
17 already included. Number 25.

18 MS. WALKENSHAW: This is the -- we already have  
19 this one. This is Carter.

20 THE COURT: Very well, 26.

21 MS. WALKENSHAW: I believe the State already  
22 included this language in theirs.

23 MS. RHOADES: We did.

24 THE COURT: Very well. 27.

25 MS. WALKENSHAW: Do we already have this?

1 MS. RHOADES: We have this instruction.

2 MS. WALKENSHAW: We have it, Your Honor.

3 THE COURT: Very well. 28?

4 MS. RHOADES: We have this one as well.

5 THE COURT: All right. 29? Or do you agree, Ms.  
6 Walkenshaw?

7 MS. WALKENSHAW: Yes.

8 THE COURT: 29?

9 MS. WALKENSHAW: And this is just the lesser -- the  
10 defendant's proposed lesser included in regards to the child  
11 abuse, which I think was already previously addressed.

12 THE COURT: Right. Do you want me to make a record  
13 of this that you want this given?

14 MS. WALKENSHAW: Yes, please.

15 THE COURT: All right. The Court's not going to  
16 give in one over defense counsel's objection based on  
17 previous argument. I'll ask it be marked and made part of  
18 the court's record.

19 THE CLERK: 14.

20 THE COURT: Number 30?

21 MS. RHOADES: That's already given, I believe.

22 MS. WALKENSHAW: It is.

23 THE COURT: All right. Number 31?

24 MS. RHOADES: This is the gross misdemeanor  
25 instruction, which is not appropriate here.

1 THE COURT: Very well, not given. 32 is the  
2 verdict form, which we already addressed.

3 MS. WALKENSHAW: Yes.

4 THE COURT: Okay. Are there any other instructions  
5 other than those that was already addressed that the defense  
6 asks be given?

7 MS. WALKENSHAW: No, Your Honor.

8 THE COURT: Are there any --

9 MS. WALKENSHAW: Actually, there's only one, which  
10 I had addressed during the State's. It's the Daniel  
11 instruction, and I can submit one. Specifically, this  
12 language was regarding alleged victim. I'll use the exact  
13 same language and I'll just substitute defendant.

14 MS. RHOADES: I don't think what that applies to.  
15 We have a Tavares instruction for the bad acts of the  
16 defendant. What would the Daniel case apply to the  
17 defendant?

18 THE COURT: I don't know. It's not in my packet.

19 MS. WALKENSHAW: That's correct. That's fine, the  
20 Tavares one is fine, Your Honor, in regards to the bad act.  
21 That's the only reason I was addressing it.

22 THE COURT: Okay. So that will cover what you need  
23 to do in your closing argument?

24 MS. WALKENSHAW: What's that, Your Honor?

25 THE COURT: The instructions we've already



1 addressed --

2 MS. WALKENSHAW: Yes.

3 THE COURT: -- will cover what you need to cover  
4 for purposes of argument?

5 MS. WALKENSHAW: Yes.

6 THE COURT: All right. Are there any objections to  
7 any of the instructions we've discussed other than those  
8 noted for the record by either side? Ms. Rhoades?

9 MS. RHOADES: No, Your Honor.

10 THE COURT: Ms. Walkenshaw?

11 MS. WALKENSHAW: No, Your Honor.

12 THE COURT: Do either of you propose any additional  
13 instructions that we've not yet discussed? Ms. Rhoades?

14 MS. RHOADES: No, Your Honor.

15 MS. WALKENSHAW: No, Your Honor.

16 THE COURT: Ms. Walkenshaw?

17 MS. WALKENSHAW: No, Your Honor.

18 THE COURT: Do you agree that we've settled these  
19 jury instructions in open court on the record? Ms. Rhoades?

20 MS. RHOADES: Yes, Your Honor.

21 THE COURT: Ms. Walkenshaw?

22 MS. WALKENSHAW: Yes, Your Honor.

23 THE COURT: Do you agree that the Court can give  
24 these instructions to the jury before closing argument? Ms.  
25 Rhoades?

1 MS. RHOADES: Yes, Your Honor.

2 THE COURT: Ms. Walkenshaw?

3 MS. WALKENSHAW: Yes, Your Honor.

4 THE COURT: All right. Now, there were some typos  
5 and some language that needed to be cleaned up from both  
6 sides' proposed instructions. Are you going to take care of  
7 those matters?

8 MS. RHOADES: I think ours are pretty -- pretty  
9 much done, but I can certainly include the one that the Court  
10 ruled to be given in our packet and type it up so it's  
11 formatted and e-mail that to your law clerk later this  
12 afternoon.

13 THE COURT: No. It should be provided by you --  
14 actually, counsel should get together. The instructions  
15 should be kind of a cohesive piece. So I know that there was  
16 at least one where we added some language and took out some  
17 language --

18 MS. WALKENSHAW: Yes, yeah.

19 MS. RHOADES: Um-hum.

20 THE COURT: -- by the prosecution, and I think the  
21 defense had maybe a typo on --

22 MS. WALKENSHAW: On one of ours.

23 THE COURT: -- one or two of them.

24 MS. WALKENSHAW: That's correct.

25 THE COURT: So the other thing that I want to know

1 is since we don't yet know whether the defendant will be  
2 testifying, we can't yet number these, but I'm asking you to  
3 get together in terms of sequencing these instructions  
4 because the Court added some from the defense to the  
5 prosecution's standard instructions, and it would be my  
6 preference that you coordinate with each other how you want  
7 these in sequence so that they track in a logical fashion for  
8 the jury. If you can't agree on that, of course, I'll step  
9 in and do it.

10 MS. WALKENSHAW: Certainly.

11 THE COURT: The other thing I would ask you is, is  
12 it okay with you if as I read them to the jury, we number  
13 them for purposes of time efficiency or do you want them  
14 numbered in advance?

15 MS. RHOADES: That's fine with the State.

16 MS. WALKENSHAW: That's fine.

17 MS. RHOADES: And we can put them in order. We can  
18 probably do that right now.

19 THE COURT: Okay. All right. So is there anything  
20 else we need to address?

21 MS. RHOADES: I don't believe so.

22 THE COURT: We did get the character evidence  
23 instruction in that packet, right?

24 MS. RHOADES: Yes.

25 THE COURT: Okay.

1 MS. RHOADES: That's the Tavares instruction.

2 THE COURT: And then when you get a clean set of  
3 instructions, I need one cited as well as uncited, and the  
4 jury's going to need one. So the Court needs one separate  
5 from the one that's going to the jury because in case there's  
6 a question.

7 MS. RHOADES: So one copy for the jury.

8 THE COURT: One copy for me.

9 MS. RHOADES: One copy for the Court.

10 THE COURT: And copy for counsel.

11 MS. RHOADES: And then copies for counsel?

12 THE COURT: Yes.

13 MS. RHOADES: I can do that.

14 THE COURT: Okay, thank you.

15 MS. WALKENSHAW: Thank you.

16 MS. RHOADES: Thank you.

17 (Court recessed at 10:29 a.m. until 11:35 p.m.)

18 (In the presence of the jury.)

19 (Pause in the proceedings)

20 THE MARSHAL: Please remain in order. Department  
21 10 is now in session. The Honorable Jessie Walsh, Judge,  
22 presiding.

23 THE COURT: Please be seated. Good afternoon,  
24 members of the jury.

25 THE JURY: Good afternoon.

1 THE COURT: Good morning, I guess, to ya'll.  
2 Counsel stipulate to the presence of our jury?

3 MS. RHOADES: Yes, Your Honor.

4 MS. WALKENSHAW: Yes, Your Honor.

5 THE COURT: Ms. Rhoades, who's our next witness?

6 MS. RHOADES: Our next witness is Dr. Lisa Gavin.

7 THE COURT: Ma'am, would you please come forward to  
8 the witness box. Please remain standing. Raise your right  
9 hand to be sworn by Madam Clerk.

10 DR. LISA GAVIN, STATE'S WITNESS, SWORN

11 THE CLERK: Please be seated, stating your full  
12 name, spelling your first and last name for the record.

13 THE WITNESS: Good morning, everyone. I'm Dr. Lisa  
14 Gavin, L-i-s-a, G-a-v-i-n.

15 THE COURT: Whenever you're ready, Mr. Rowles.

16 MR. ROWLES: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. ROWLES:

19 Q Good morning, Doctor. You introduced yourself as a  
20 doctor. Are you a medical -- a physician, excuse me?

21 A Yes, I'm an MD.

22 Q And how are you currently employed?

23 A I'm currently employed as a forensic pathologist, a  
24 medical examiner here at the Clark County Coroner's Office in  
25 Las Vegas.

1 Q What are some of your responsibilities at that  
2 position?

3 A To determine the cause of death and manner of death  
4 in sudden and unexpected deaths here in Clark County as well  
5 as several adjacent counties.

6 Q And how long have you worked there?

7 A A little over seven years.

8 Q If you don't mind telling us a little bit about your  
9 educational background.

10 A I apologize because I have a cold today so -- I went  
11 to medical school at the University of Connecticut School of  
12 Medicine. I did a pathology residency in Hartford Hospital  
13 in Connecticut. I did a surgical pathology fellowship in  
14 Hartford Hospital in Connecticut. I did a forensic pathology  
15 fellowship in New Mexico. I have a medical license to  
16 practice here in the State of Nevada. I'm certified in  
17 anatomic pathology and forensic pathology.

18 Q And prior to your employment with the Clark County  
19 Coroner's Office, excluding the fellowships that you  
20 mentioned, have you had any other work experience?

21 A No.

22 Q And are you a member of any professional  
23 affiliations?

24 A Yes.

25 Q What are those professional affiliations?

1           A     The American Academy of Forensic Sciences, The  
2 National Association of Medical Examiners, The International  
3 Association of Coroner and Medical Examiners, and a couple  
4 other pathology organizations.

5           Q     You actually touched on this a little bit briefly,  
6 but what exactly is a forensic pathologist?

7           A     A forensic pathologist, as I mentioned, determines  
8 the cause of death and manner of death and sudden and  
9 unexpected deaths. It's an area of pathology that deals in  
10 looking at the body and determining what pathology may be  
11 present or what injury may be present that resulted and/or  
12 contributed to that person's death.

13          Q     Now, during your training and experience with  
14 regards to the forensic pathologist aspect of your job, have  
15 you received any specific training with regards to  
16 strangulation cases?

17          A     Strangulation tends to be part of your training in  
18 forensic pathology and as well as your experience in terms of  
19 the cases that you encounter over the course of your career  
20 and training.

21          Q     So you've examined cases where the individual was  
22 purportedly strangled?

23          A     Yes.

24          Q     Okay. If you are able to say, how many people do  
25 you believe you've examined that have been purportedly

1 strangled?

2       A    The way in which people tend to kill other people  
3 tends to be with things like firearms or stabbing or blunt  
4 force injury. Strangulation tends to be a smaller component  
5 of those methodologies. So the percentage of the total cases  
6 may be about 1 or 2 percent of cases versus where you have  
7 firearms being a more significant number of those cases.

8       Q    And when you say cases, you generally mean  
9 autopsies; is that correct?

10      A    Yes. Autopsies or external examinations, correct.

11      Q    Have you previously testified in court regarding  
12 strangulation?

13      A    Yes.

14      Q    How many times?

15      A    In -- regarding strangulations, I think it's about  
16 17 times now.

17      Q    And is that in regards to live cases?

18      A    Yes..

19      Q    Okay. And do you mind explaining to the ladies and  
20 gentlemen of the jury what a live case means?

21      A    In terms of the person not becoming a decedent not  
22 being dead and ending up on my autopsy table, this might be  
23 an individual that I've been asked to consult on and review  
24 any information, whether it be photographs, medical records  
25 or any type of history that they've received regarding the



1 incident that occurred.

2 Q Now, we talked a little bit -- well, we've mentioned  
3 strangulation. Is there an actual difference between choking  
4 and strangulation?

5 A Yes. Forensically there's a difference between the  
6 two. Choking is when you actually have something that's  
7 inside the airway and has obstructed that airway. An example  
8 would be a young child takes something like a little ball and  
9 it gets stuck in their windpipe. That would be choking or  
10 someone chokes on a piece of food that they've eaten and it  
11 gets stuck in their airway. That's choking by forensic  
12 definition.

13 Strangulation is when you've had some type of  
14 compression occur to the outside of the neck that's resulted  
15 in stopping the flow of blood or the airway.

16 Q Now, with regards to strangulation, are there  
17 different types of strangulation or different ways a person  
18 can be strangled?

19 A Yes.

20 Q What are those, please?

21 A There are many ways. The most common way that  
22 people tend to refer to is ligature strangulation where some  
23 object or something is put around the neck or against the  
24 neck that has resulted in the compression of the neck or some  
25 people talk about manual strangulation where some hands have

1 been laid on or an arm has been laid on the neck and compress  
2 the neck in that way.

3 Q And so we talked a little bit about compression and  
4 lack of oxygen. What is the term asphyxia?

5 A Asphyxia is a lack of oxygen. We talk about the way  
6 in which our body gets oxygen. We breathe in air through our  
7 windpipe and it gets exchanged in our lungs into our  
8 bloodstream and then our red blood cells carry that oxygen to  
9 our different organs in our body.

10 Well, in particular, you want to make sure that  
11 you're getting oxygen to your brain. And the way in way you  
12 do that is through the vessels that are present in your neck.  
13 And to get oxygen up to your brain, you need to have at that  
14 blood flow occur. If you have that blood flow stop, you've  
15 stopped the red blood cells with the oxygen from getting up  
16 to the brain and you've caused basically, a hypoxic  
17 situation, a lack of oxygen. That's an asphyxia can result  
18 from a lack of oxygen. So that's what asphyxia means.

19 Q Are there different ways in which lack of oxygen can  
20 occur?

21 A Oh, absolutely. Of course, we've begun by  
22 describing strangulation. But you can have it from the  
23 choking that I described as well. You've stopped the oxygen  
24 from getting into the lungs; therefore, you've stopped  
25 oxygenating the bloodstream.

1           Other ways that you can do it is if you're in an  
2 area where you don't have oxygen in that environment, where  
3 you've resulted in like increased in carbon monoxide where  
4 you've been exposed to a confined space that has a lot of  
5 carbon monoxide in it versus oxygen content. That can  
6 decrease the amount of oxygen in your system, therefore  
7 creating an asphyxia.

8           You can do it by inhalants, for example. But using  
9 inhalants that you decrease the amount of oxygen that you're  
10 getting into your system. Of course, we've talked about the  
11 different methods of strangulation, but those are -- there's  
12 a variety of things that can end up causing asphyxia.

13          Q    Okay. And so what are some of the effects or  
14 symptoms of what I would say is lack of oxygen.

15          A    There are different symptoms of strangulation and  
16 there are different signs of strangulations. The symptoms  
17 are the feelings that are happening to the individuals having  
18 the compression that's occurring to the neck. The signs are  
19 the evidence that you may have either on the cutaneous  
20 surface, on the outside skin surface, or on the inside of the  
21 throat or inside the body or in these muscles in the neck.

22                So the symptoms that people have can range. They  
23 can be a sense of dizziness, a sense of euphoria. They can  
24 have a sensation of blacking out or having their ears ring.  
25 They can have symptoms that occur during that time that are

1 directly related to the event of the lack of oxygen  
2 occurring.

3 Other symptoms can occur after the event if the  
4 person has survived that event. And those can be anything in  
5 a wide range of things, whether or not it's a cough, a  
6 scratchy throat, a feeling that they're having a problem  
7 swallowing, whether or not they have a continued lapses in  
8 memory and they're not able to recall different things. A  
9 variety of symptoms can result even after the event.

10 Q And so I want to talk a little bit about the dangers  
11 of strangulation. What are the some of the dangers of  
12 strangulation?

13 A Well, the obvious danger is that someone can die.  
14 They can end up on my autopsy table. The other sequelae are  
15 consequences of it can be related to the things that happen  
16 over a period of time. If the lack of oxygen has occurred  
17 for a period of time, you could have issues with brain  
18 function afterwards and how well that person is able to  
19 concentrate, for example, can even be affected because you've  
20 had those moments of lack of oxygen getting to the brain.

21 Q And so we talked a little bit about strangulation  
22 and the areas of the neck or compression of the vessels of  
23 the airway. What areas in the neck, what vessels in the neck  
24 are of concern for strangulation?

25 A In the center of your neck you have your windpipe,

1 that's your trachea, the center part. On either side of that  
2 you have vessels that send blood up to your brain and bring  
3 blood down from your brain. The vessels are the carotid  
4 artery that sends the blood up to the brain; the jugular vein  
5 that brings the blood back down from the vein, and of course,  
6 you have your trachea, your windpipe in the center.

7           If you're compressing any of those vessels on the  
8 side, you've decreased the amount of oxygen that can get up  
9 into the brain and therefore created a hypoxia and asphyxia  
10 situation. If you compress significantly enough, you can  
11 actually decrease the amount of air you're getting into the  
12 lungs and add a kind of a double whammy on to it where you've  
13 actually now decreased the amount of air getting in and  
14 decreased the flow of blood up into the brain.

15           Q    So we mentioned -- or you mentioned the jugular  
16 vein, the carotid artery and the trachea. Let's take that  
17 one by one. Where exactly is the jugular vein?

18           A    The jugular vein are on either side of your windpipe  
19 running up and down your neck vertically.

20           Q    And you mentioned that compression of either of  
21 those three things can result in lack of oxygen. Just how  
22 much amount of pressure is actually necessary for the jugular  
23 vein?

24           A    To compress the jugular vein it takes about 4.4  
25 pounds of pressure. That would be about the equivalent of

1 taking an empty soda can and crushing it between your  
2 fingers. It's a fairly minimal amount of pressure to be able  
3 to do it.

4 To compress the carotid artery, which runs parallel  
5 in the same direction to the jugular vein, it takes about 11  
6 pounds of pressure. And to compress the windpipe takes about  
7 30 pounds of pressure.

8 Q Okay. And so we talked about the areas of concerns  
9 and the amount of pressure required, but roughly, how long  
10 would a person have to actually exert that amount of pressure  
11 to kill someone?

12 A If you have continuous pressure to your vessels,  
13 just the vessels alone, someone can become unconscious within  
14 10 to 15 seconds. The issue becomes is like people tend to  
15 fight back. So you're not getting that continuous pressure  
16 occurring. And they can get moments where they'll start to  
17 have oxygenation occur because they'll be able to get some  
18 blood flow happening.

19 But if you have numerous incidences that occur  
20 within a shorter period of time where you've had continuous  
21 pressure applied to those areas, you can end up having the  
22 same situation as if it was continuous pressure without  
23 separate incidences occur because the person doesn't have  
24 time to recover between each of those incidences to get back  
25 up to their oxygenation level.

1           So generally, you can have someone succumbing in a  
2 short period of time. In fact, they can actually die within  
3 2 to 4 minutes if there's continuous pressure. But it's the  
4 fact that people tend to fight back that you end up seeing a  
5 longer period of time.

6           Q     Now, Doctor, if someone had been strangled, what  
7 injuries would you expect to see?

8           A     They can vary in terms of what you see, what signs  
9 you see on the body or internally. There can actually be no  
10 injuries whatsoever to the neck area after a compression has  
11 occurred and someone has gone unconscious or died. You can  
12 have no injuries identified.

13                Injuries that are commonly spoken about or things  
14 like petechial hemorrhages. A petechial hemorrhages are  
15 little capillaries that kind of are burst blood vessels. You  
16 can see them sometimes on the white of the eye or on the  
17 inside of the eye lids. You can see them in the mucosal  
18 membranes. Sometimes you can see them on the skin surfaces,  
19 and you can actually see them inside in the soft tissues  
20 inside the throat as well.

21                They're burst vessels that occur from the pressure  
22 that's being applied to the area and not allowing that flow  
23 to continue. Other things that you can see might be  
24 contusions or bruises that are present on the neck surface  
25 and depending upon the interaction between the individuals,

1 you can start to see abrasions or scrapes occur in those  
2 areas as well.

3 Internally, you can start to see things that are  
4 swellings that are occur inside the soft tissues inside your  
5 throat, inside the back of your throat. If they're  
6 unfortunate enough to end up on my autopsy table, I can  
7 actually see hemorrhages within the muscles that are present  
8 in that area in addition to the other things that I've  
9 mentioned.

10 Q So you touched upon the injuries and you briefly  
11 touched upon the fact that there may be no injuries at all;  
12 is that correct?

13 A That's correct. Excuse me.

14 Q Now, is there a difference in the type of injuries  
15 you would expect to see as a result of manual strangulation  
16 compared to ligature strangulation?

17 A Yes, there can be.

18 Q What are some of those differences?

19 A Manual strangulation can leave the variety of  
20 contusions and abrasions, bruises and scrapes that I've  
21 mentioned relative not only to the assailant's hands being  
22 pressed on there, but also that the victim's trying to remove  
23 whatever hands or objects or arms are present around their  
24 neck. So sometimes you can see where the victims actually  
25 clawed at themselves and trying to remove whatever is present



1 there.

2 When you get into a ligature situation, you could  
3 sometimes see the compression of the ligature across that  
4 area and you can actually see a bruise or even an abrasion as  
5 a result of that ligature being compressed that area. And  
6 depending upon whether or not that's just a compression  
7 without anybody moving, you may just see the contusion or you  
8 may see a combination of a contusion and abrasion if there's  
9 some movement that's occurring.

10 Q Thank you, Doctor. Now, Doctor, before you  
11 testified today, you had an opportunity to review some  
12 photographs; is that correct?

13 A Yes.

14 MR. ROWLES: May I approach your clerk, Your Honor?

15 THE COURT: Yes.

16 THE WITNESS: Pardon me, I'm going to pour some  
17 water.

18 MR. ROWLES: And Your Honor, if I may inquire if  
19 whether the jury can see the screen or if we can have that  
20 moved?

21 THE COURT: Sure.

22 MR. ROWLES: Thank you, Mr. Diamond.

23 THE MARSHAL: You're welcome.

24 BY MR. ROWLES:

25 Q Now, Doctor, I want to go through a few of these

1 photographs with you today on the stand. Let me know if  
2 there's any concern with seeing anything on the screen.

3 A Okay.

4 Q Showing you what's been previously admitted as  
5 State's 45. Do you see that?

6 A Yes.

7 Q Okay. And what injuries do you see in this picture?

8 A There appears to be a contusion of the eye and  
9 abrasion -- oh, sorry, contusion or bruise. An abrasion or  
10 scrape of the forehead, a possible scrape and -- and/or  
11 laceration, tear of the skin on the nose area, and that's  
12 what I can interpret on this particular --

13 Q I'll show you the next one.

14 THE WITNESS: Your Honor, how do I clear it?

15 THE COURT: It's lower left.

16 THE WITNESS: Thank you.

17 BY MR. ROWLES:

18 Q State's 47. Do you recognize this photo?

19 A Yes.

20 Q Okay. And what type of injuries do we see here?

21 A Again, we can visualize the contusion of the eye.  
22 We have an area that has sign of a punctate area of a  
23 contusion on the left cheek. This could be also a probably  
24 have some elements of the petechiae that I described earlier,  
25 but also can be related to a contusion, a bruise that's

1 occurred there as well.

2 Q Okay. And when you say it could be related to a  
3 contusion or bruise, is that also it could be as a result of  
4 blunt force trauma?

5 A That's correct.

6 Q Okay. But you also mentioned the, I think, it's  
7 petechia?

8 A Yes.

9 Q Okay. And what indications or what is indicative of  
10 that on this picture?

11 A There's a couple areas and it's hard for this one to  
12 particularly point it out, but I think we got it. There's a  
13 couple points at the top of those dots that I've created that  
14 have that kind of blood vessel bursting appearance to them.

15 Q And that's generally -- you testified earlier,  
16 that's generally sometimes as a result of a strangulation?

17 A Yes, it's possible.

18 Q Showing you State's 51. What kind of injuries do  
19 you see here, Doctor?

20 A Across the anterior aspect of the neck, there is a  
21 elongated, linear, horizontal contusion that's present.  
22 Towards the end of this contusion is an area of scraping,  
23 abrasion that's occurred. In addition, down in the lower  
24 part of the neck there is another area of contusion, bruising  
25 that's occurred as well, that doesn't quite have the full

1 linear shape.

2 Q I want to show you State's 52. And are we looking  
3 just more at a close-up of the previous exhibit?

4 A Yes.

5 Q And so you briefly touched upon this here, but the  
6 type of injury that we're observing in this photograph, is  
7 that consistent with ligature strangulation?

8 A Yes, it is consistent with ligature strangulation.

9 Q And you mentioned the area I'd say to the far left,  
10 the abrasion. Let me show you a closer-up of that.

11 MR. ROWLES: And Your Honor, I believe this has  
12 been previously admitted by stipulation as State's 84.

13 THE COURT: Very well.

14 BY MR. ROWLES:

15 Q And is this a closer-up of that abrasion?

16 A Yes, it is. And you can see the skin surface has  
17 been scraped away, and then the area of that linear contusion  
18 off to the side. And it's suggestive of that either the  
19 individual is moving or the ligature may be moving adjacent  
20 to their neck that you end up with the scraping as well as  
21 the contusion from the compression.

22 Q Going back to State's 52. With this type of mark,  
23 what are some of the concerns that you would see with  
24 pressure to the vessels or to the airway in this photograph?

25 A For some anatomy the windpipe is down the center in

1 the front of the person, in the front of the neck. Running  
2 along the sides of the neck are where you're going to have  
3 your vessels running. And that is where you're going to end  
4 up resulting in your compression. And if you're dealing with  
5 a ligature, you're going to get that across that whole area  
6 in terms of how it's compressed upon the neck.

7           Once you have that area getting compressed, then  
8 you run into the issues that described to you regarding  
9 compression of those vessels, having the lack of oxygen flow  
10 via the lack of blood flow to the brain. And in addition, if  
11 you have the compression in the anterior aspect overlying the  
12 wind windpipe, you may also have an element of the lack of  
13 air getting in, depending upon the force that's being  
14 exerted.

15           Q   And Doctor, with this type of mark, is it indicative  
16 of a significant amount of pressure applied to that area?

17           A   It depends on the individual in terms of how easily  
18 that they bruise, and in terms of how easily that person can  
19 get that particular bruise. The fact that the skin is  
20 abraded as well suggests that there's been some force applied  
21 where it's just not oh, that person bruises a little bit more  
22 than that other person. You have the abrasion occurring that  
23 applies, that some force has been applied to here, to result  
24 in scraping the skin.

25           Q   And that abrasion that you referenced, showing

1 State's 84, is this what you were referring to?

2 A Yes. That's associated with that contusion that's  
3 consistent with the ligature.

4 MR. ROWLES: Court's indulgence, Your Honor.

5 THE COURT: Sure.

6 BY MR. ROWLES:

7 Q Just one last question, Doctor. I want to show you  
8 State's 52 again. With -- based on your training and  
9 experience, can you approximate what size the ligature object  
10 may have been based on this photograph?

11 A Part of why we do these types of photographs, and we  
12 do them regularly in our autopsy situation, is put in the  
13 ruler to be able to give some idea of the information that  
14 the contusion can provide relative to the implement that may  
15 have been used in the particular incident.

16 And it obviously, has some designations in terms of  
17 measurements that are here. So you can use those  
18 measurements relative to that person, that individual injury  
19 and extrapolate some information regarding the size of the  
20 ligature.

21 This one may be, approximately, about a quarter of  
22 an inch in terms of its width, but then you don't know what  
23 portion of that ligature may or may not be being applied to  
24 the -- the individual at the time. So you can do some  
25 comparisons, but you can't be definitive about what that is.

1 Q Thank you, Doctor.

2 MR. ROWLES: I'll pals the witness, Your Honor.

3 THE COURT: Very well. Ms. Walkenshaw.

4 MS. WALKENSHAW: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. WALKENSHAW:

7 Q Good morning, Doctor.

8 A Good morning.

9 Q Now, you never spoke with Brittney Jensen in this  
10 case, correct?

11 A That's correct.

12 Q Okay. And you never examined her, correct?

13 A That's correct.

14 Q Okay. You didn't review any medical records of  
15 hers, correct?

16 A Correct.

17 Q Okay. Any records from the EMTs or ambulance or  
18 anything like that?

19 A No, I did not.

20 Q Okay. And are you aware of any inspection that had  
21 been done on her throat?

22 A Other than the photographs that were documented.

23 Q Right. Other than the -- I mean, internal  
24 inspection, are you aware of anything like that?

25 A I am not, no.

1 Q Okay. Now, you had discussed some additional signs  
2 of strangulation. I think you'd indicated the petechia,  
3 correct?

4 A Correct.

5 Q Okay. And I think you also had mentioned that there  
6 may be like some swelling or some lumps; is that correct?

7 A That would be predominantly internally that you can  
8 end up seeing that. Although, if there's enough pressure  
9 applied, you can actually seeing the swelling in the  
10 cutaneous areas and underneath the skin. That depends upon  
11 the duration and the intensity of the pressure.

12 Q Okay. Now, we have -- and showing you State's 52.  
13 You had indicated that here we see some, I think you've  
14 termed it a contusion, correct?

15 A Yes.

16 Q Okay. Is that another word for bruising or are  
17 those two different things?

18 A That's another word for bruising.

19 Q Okay. And it's fair to say that bruises occur from  
20 trauma, correct?

21 A Yes.

22 Q Okay. And various types of trauma can cause  
23 bruises?

24 A Correct.

25 Q Okay. Now, we had talked a little bit about the



1 pressure that it takes to lose consciousness, correct?

2 A Correct.

3 Q Okay. And I think you'd indicated that this area  
4 right here is the windpipe, correct?

5 A Yes.

6 Q And is to, I guess, for lack of a better word, stop  
7 the wind from going in or cut that off, you'd indicated it  
8 would take 30 pounds of pressure?

9 A Correct.

10 Q Okay. And now, would that type of pressure need to  
11 be applied to both sides?

12 A It can -- yes, if you need to have both sides being  
13 compressed in order to be able to have complete stopping of  
14 that circulation because you have it on both sides of your  
15 neck. You will get some decrease in your circulation, but  
16 not as intense as if you have both sides compressed.

17 Q Okay. So in order to cause a person to lose  
18 consciousness, you would need to compress both sides,  
19 correct?

20 A Not necessarily both sides completely compressed,  
21 but one side can result in a decrease of the flow and there  
22 decrease in the oxygenation, but you're not going to end up  
23 resulting in death because you've not closed off their  
24 circulation entirely.

25 Q Okay. Now, in regarding the -- you'd indicated that

1 this was consistent can ligature strangulation, correct?

2 A Correct.

3 Q Okay. But you can't come to a conclusion that  
4 that's what happened, correct?

5 A Definitively, no, this is -- this is consistent with  
6 what I see in ligature strangulations, in hangings, for  
7 example --

8 Q Okay.

9 A -- we see this type of injury. But definitively in  
10 this particular instance, no.

11 Q Okay. Now, is it fair to say that you would have  
12 been able to make a better diagnosis if you had been able to  
13 been able to personally examine the individual?

14 A Not necessarily. We're often called upon to look at  
15 photographs and make determinations, particularly if it's  
16 another forensic pathologist that has evaluated that body at  
17 the time of autopsy or at the time of examination. We may be  
18 called upon to provide testimony or provide our opinion  
19 regarding the cause of death and we may not have the body at  
20 that time to look at and we may be relying on photographs or  
21 information outside of our own examination.

22 So I'm regularly called upon to look at photos that  
23 I haven't seen that individual.

24 Q Okay. If you had been able to interview her, it's  
25 fair to say you would have been able to question her,

1 perhaps, regarding some of other symptoms she experienced,  
2 correct?

3 A Yes.

4 Q And that may have helped you come to a more  
5 definitive conclusion, correct?

6 A It's possible, yes.

7 Q Okay.

8 MS. WALKENSHAW: Court's brief indulgence.

9 THE COURT: Sure.

10 BY MS. WALKENSHAW:

11 Q Now, in regards to this case, were the only picture  
12 that you viewed the ones regarding that you've just been  
13 shown now?

14 A I saw these and a picture of her chest as well.

15 Q Okay.

16 A I believe it was her upper chest area.

17 Q You didn't observe any other pictures of Mr. Cooper,  
18 any of his injuries?

19 A No.

20 Q Okay.

21 MS. WALKENSHAW: I have no further questions.

22 THE COURT: Very well. Mr. Rowles?

23 MR. ROWLES: Just very briefly, Your Honor. Your  
24 Honor, may I approach your clerk?

25 THE COURT: Yes.

1 MR. ROWLES: Thank you.

2 REDIRECT EXAMINATION

3 BY MR. ROWLES:

4 Q Doctor, you've testified a little bit about ligature  
5 strangulation, and I'm showing you State's 52 here. I  
6 believe it was on direct that when it comes to ligature  
7 strangulation that both the jugular, the carotid artery and  
8 the tracheal are being compressed?

9 A Usually you have -- at the very least you have the  
10 vessels being compressed. Essentially compressing the  
11 vessels is all you need. You don't necessarily need to have  
12 the trachea compressed. Once you have those vessels  
13 compressed, you stop that flow of blood, you stop that  
14 oxygenation to the brain.

15 Q And so it's possible to have the result in the lack  
16 of oxygen if just the jugular vein's compressed?

17 A No, because you would -- you need the jugular and  
18 the carotid, but they're literally right against each other.  
19 So it's near impossible to compress one without compressing  
20 the other. They literally run parallel to each other.

21 Q And you referenced that when -- if one's being  
22 compressed and not the other, that it's -- it's difficult for  
23 it to result in death?

24 A One side.

25 Q One side, yes.

1 A One side versus both sides.

2 Q Both sides. Okay. So if only one sides being  
3 compressed it's somewhat difficult to result in death?

4 A Correct.

5 Q Are there any other concerns, however, because I  
6 believe you testified that it still results in lack of  
7 oxygen, but other than that, though, are there any other  
8 concerns with just one side?

9 A Yes. You're still decrease in the amount of  
10 oxygenation that's occurring to the brain because you've  
11 compressed the amount that normally gets up to the brain. So  
12 you've had those hypoxia effects that we've talked about,  
13 those lack of oxygen effects occurring because you've  
14 decreased the amount of oxygen getting up to the brain.

15 MR. ROWLES: Court's indulgence.

16 BY MR. ROWLES:

17 Q And so as a result of that, can brain damage result  
18 of lack of oxygen?

19 A Brain damage can result from a lack of oxygen.

20 Q Okay.

21 MR. ROWLES: Nothing further, Your Honor.

22 THE COURT: Any follow-up.

23 MS. WALKENSHAW: Court's indulgence. Just briefly.

24 RECROSS-EXAMINATION

25 BY MS. WALKENSHAW:

1           Q    You'd indicated that a lack of oxygen can result in  
2 brain damage, correct?

3           A    Correct.

4           Q    Okay. Generally speaking, based on your training  
5 and experience, how much of a lack of oxygen would be  
6 required to result in brain damage? Or I may be asking that  
7 wrong, but how long of a period would there have to have been  
8 a lack of oxygen?

9           A    It tends to take a significant amount of period  
10 before you're going to end up with brain damage. And you're  
11 talking more than seconds. You're talking minutes to be able  
12 to result in that. You're talking about, you know, areas  
13 where you have continuous pressure occurring to those sites  
14 to be able to result in those hypoxic situations.

15                Again, though, if you don't have it being  
16 continuous, if you have intermittent moments where you're  
17 ending up or having several moments within a short period of  
18 time where you're getting that compression to occur, you drop  
19 down that oxygenation level because you haven't allowed them  
20 that recovery period of time.

21                So even though it may not happen continuously for a  
22 period of time, if you have several events within a short  
23 period of time, you're doing a similar effect to the lack of  
24 oxygen in the -- in the system.

25           Q    Okay. But overall whether it's continuous or a

1 number of short -- shorter intervals, overall it takes an  
2 extended period of time to result in brain damage; is that  
3 correct?

4 A Correct..

5 Q Okay.

6 MS. WALKENSHAW: I don't have any further  
7 questions.

8 THE COURT: Very well. Any follow-up, Mr. Rowles?

9 MR. ROWLES: No, Your Honor. Thank you.

10 THE COURT: Do either party anticipate recalling  
11 Dr. Gavin?

12 MS. RHOADES: No, Your Honor.

13 MS. WALKENSHAW: No, Your Honor.

14 MR. ROWLES: I believe we have a question.

15 THE COURT: With the thanks of the Court,  
16 Dr. Gavin, you may be excused. Oh, not so fast, Dr. Gavin.  
17 Can I see counsel, please at the bench.

18 MS. RHOADES: Yes.

19 (Bench conference begins)

20 MS. RHOADES: How long can severe strangulation  
21 symptoms last? I mean, I guess we can ask and then --

22 MS. WALKENSHAW: Yeah.

23 MS. RHOADES: -- follow up with (inaudible).

24 MS. WALKENSHAW: Uh-huh.

25 THE COURT: Counsel okay with that?

1 MS. WALKENSHAW: Yeah.

2 MS. RHOADES: Yeah. We might need to follow-up,  
3 but.

4 THE COURT: Of course, you may.

5 MS. RHOADES: Okay, thank you.

6 (Bench conference concluded).

7 THE COURT: All right. I'm going to read the  
8 question into the record. If you can answer it, please do  
9 so. If you can't, just say so.

10 How long can severe strangulation symptoms last?

11 THE WITNESS: I think, in part, it depends on what  
12 those definition of severe strangulation symptoms are.  
13 Individuals, if they've had it's kind of a blackout or a lack  
14 of memory as a result of lack of oxygen, can have that  
15 indefinitely. The injuries that occur more physically in  
16 terms of whether or not the neck is swollen, whether or not  
17 the internal area of the neck is swollen, those things will  
18 heal over time unless you've caused significant damage to  
19 some of the nerves that are present there that allow you to  
20 swallow or something like that. That may take a longer  
21 period of time.

22 So depending on what you mean or describe by  
23 severe, there can be healing, but then there can be some  
24 things that will never recover.

25 THE COURT: Any follow-up questions by counsel?



1 Mr. Rowles?

2 MR. ROWLES: Court's indulgence.

3 FURTHER REDIRECT EXAMINATION

4 BY MR. ROWLES:

5 Q And Doctor, just to clarify, some of the main  
6 concerns of lack of oxygen to the brain, it's in large part  
7 that then brain damage; is that correct?

8 A Yes.

9 Q Okay.

10 MR. ROWLES: Nothing further, Your Honor.

11 THE COURT: Ms. Walkenshaw?

12 MS. WALKENSHAW: I don't have any follow-ups.

13 Thank you.

14 THE COURT: I'll ask that this be marked as court's  
15 exhibit next in order and made part of the record.

16 MR. ROWLES: Thank you, Your Honor.

17 THE CLERK: 15.

18 THE COURT: Okay. Now you may be excused with the  
19 thanks of the Court, Dr. Gavin.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: May I see counsel at the bench, please.

22 (Bench conference begins)

23 THE COURT: Do you have anymore witnesses?

24 MS. RHOADES: No, I think we are prepared to rest.

25 I just want to double check the exhibits. I think

1 everything's been admitted, though.

2 THE COURT: Okay. What about the defense?

3 MS. WALKENSHAW: We anticipate calling Mr. Cooper.  
4 I would request that we be allowed to start with his  
5 testimony tomorrow given that we only have about 40 minutes  
6 before we'd have to stop today. I don't know that I would  
7 finish my direct, and it might cause for some disjunct today  
8 when -- if we stop in the middle of direct and start in the  
9 middle of direct tomorrow.

10 THE COURT: Do you have another witness besides  
11 that?

12 MS. WALKENSHAW: At this point, we don't. And if  
13 we do, it will be a very short witness. But at this time, we  
14 don't.

15 THE COURT: When do you imagine you might be  
16 finished with your examination with him?

17 MS. WALKENSHAW: If we were to start tomorrow, I  
18 would imagine that it would take somewhere around an hour,  
19 probably.

20 THE COURT: Okay.

21 MS. RHOADES: Maybe we can canvass him after  
22 they're excused so we get that out of the way.

23 THE COURT: That's what I was going to --

24 MS. WALKENSHAW: Okay.

25 MS. RHOADES: What time --

1 THE COURT: -- suggest.

2 MS. RHOADES: -- do you want to start tomorrow?

3 THE COURT: 9:00 o'clock sharp.

4 MS. RHOADES: Okay.

5 THE COURT: Unless you want to start sooner than  
6 that.

7 MS. WALKENSHAW: It's up to the Court. I can be  
8 here.

9 THE COURT: All right. Could I ask you to take a  
10 quick check on the evidence --

11 MS. RHOADES: Yes.

12 THE COURT: -- and then formally rest on the  
13 record --

14 MS. RHOADES: Yes.

15 THE COURT: -- in front of the jury before we  
16 excuse them?

17 MS. RHOADES: Okay.

18 THE COURT: Thank you.

19 MS. WALKENSHAW: Thank you, Your Honor.

20 MS. RHOADES: Thank you.

21 (Bench conference concluded)

22 MS. RHOADES: And Your Honor, if I could have the  
23 Court's brief indulgence.

24 THE COURT: Sure.

25 MS. RHOADES: Your Honor, I've confirmed all the

1 exhibits have been admitted and at this point, the State  
2 would rest its case-in-chief.

3 THE COURT: Very well.

4 MS. RHOADES: Thank you.

5 THE COURT: So members of the jury, I'm going to  
6 ask you to return tomorrow promptly at 9:00 o'clock so we can  
7 resume this trial. Remind you of your obligation not to talk  
8 about this case, not to form or express any opinions, not to  
9 do any research on any subject connected with this case,  
10 including but not limited to, newspapers, television, radio  
11 the Internet and all forms of social media. Thank you. Have  
12 a nice afternoon.

13 (Outside the presence of the jury)

14 THE COURT: Please be seated. Mr. Cooper --

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: -- under the Constitution of the United  
17 States and under the Constitution of the State of Nevada, you  
18 cannot be compelled to testify in this case. Do you  
19 understand?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: You may at your own request give up  
22 this right and take the witness stand and testify. If you  
23 do, you will be subject to cross-examination by the District  
24 Attorney and anything that you may say, be it on direct or  
25 cross-examination, will be the subject of fair comment when

1 the District Attorney speaks to the jury in final argument.  
2 Do you understand?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: If you choose not to testify, the Court  
5 will not permit the District Attorney to make comments to the  
6 jury because you have not testified. Do you understand, sir?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: If you elect not to testify, the Court  
9 will instruct the jury, but only if your attorneys  
10 specifically requests as follows: The law does not compel a  
11 defendant in a criminal case to take the stand and testify  
12 and no presumption may be raised and no inference of any kind  
13 may be drawn from the failure of a defendant to testify.

14 Do you have any questions regarding these rights,  
15 sir?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Counsel, I don't recall whether Mr.  
18 Cooper -- I don't know whether Mr. Cooper's got any felony  
19 convictions within the past ten years. Does he?

20 MS. RHOADES: I don't believe so. He has one  
21 that's about 20 years old, a violent offense that was about  
22 20 years old. And then he's got the more recent offenses,  
23 depending on how the testimony goes. I mean, Brittney did  
24 get up there and testify that he -- you know, I think her  
25 words were, he's a wonderful person and a loving father, and

1 I know the loving father was in the letter, but she  
2 elaborated on it more.

3 It would be State's position, especially if  
4 Mr. Cooper testifies, that we would be able to get in not  
5 only the July 2015 incident with Brittney, but he has two  
6 other acts of domestic violence on two other women, and she  
7 opened the door for that.

8 THE COURT: So the jury's already heard about the  
9 July 2015 incident, haven't they?

10 MS. RHOADES: Yes.

11 THE COURT: And so somewhere in this file of  
12 paperwork there's the character evidence instruction that the  
13 Court may have to give to the jury at some point tomorrow.  
14 What do counsel think about that?

15 MS. RHOADES: That's the Tavares instruction. I  
16 think, yeah, we should give that before he testifies because  
17 I will -- I plan on asking at least some questions about the  
18 July 2015 incident and potentially other incidents of  
19 violence.

20 THE COURT: Ms. Walkenshaw?

21 MS. WALKENSHAW: I would agree that that could come  
22 out. The Tavares instruction should be read is what I was  
23 saying. That that should --

24 THE COURT: Any other response to the prosecution's  
25 argument?

1 MS. WALKENSHAW: Well, the statements that Brittney  
2 made regarding Mr. Cooper were statements that she had put in  
3 her letter. And specifically, she said, James is a loving  
4 father figure to my two children, a caring spouse to me and a  
5 hardworking, positive person. And those are things,  
6 obviously, that she had said in her letter.

7 In regards to the two prior battery domestic  
8 violence convictions, I don't think that Brittney's testimony  
9 opened the door to that. She did not necessarily say that he  
10 was non-violent. She said that he was loving and she said  
11 that he was caring and hardworking, and I don't -- obviously,  
12 there hasn't been a bad acts motion filed as to those. There  
13 was as to the July 2nd incident that was ruled upon by the  
14 Court.

15 The jury has heard testimony regarding that matter.  
16 But as to the two other incidents, they're not necessary for  
17 impeachment purposes at this point. Mr. Cooper obviously  
18 hasn't testified to anything regarding impeachment, and  
19 they're obviously very prejudicial. Their relevance is  
20 limited because it's with different victims, it's in the  
21 past. They're farther in distance from this July incident,  
22 and again, there hadn't been any type of bad acts motion  
23 filed.

24 THE COURT: Ms. Rhoades?

25 MS. RHOADES: It also goes to rebut his and

1 Brittney's claim that this was all done in self-defense. And  
2 he said on one of the calls, you know, I think it was the 911  
3 call, this is the same shit as it was in July. Well, it's  
4 obviously, not the same shit because he has two different  
5 cases with two different females than Brittney where he did  
6 basically the exact same things as he's doing here.

7 And Brittney did elaborate more. It was on  
8 cross-examination with Ms. Walkenshaw that she went beyond  
9 that letter. I don't think based on that letter that it  
10 opens the door for any of those things. It was based on her  
11 testimony. She kept going and just kept saying what a great  
12 person Mr. Cooper was.

13 THE COURT: So I remember her testimony. I don't  
14 think I could recite it precisely. Did you look at it  
15 precisely on the video, Ms. Walkenshaw?

16 MS. WALKENSHAW: The -- her testimony yesterday?

17 THE COURT: Yes.

18 MS. WALKENSHAW: No, Your Honor.

19 THE COURT: That's just from recollection?

20 MS. WALKENSHAW: That's correct.

21 THE COURT: What about you, Ms. Rhoades?

22 MS. RHOADES: No, I haven't -- I haven't received a  
23 video. I haven't requested one. Maybe we can get that and  
24 readdress it tomorrow and see exactly what she said?

25 THE COURT: If you talk nicely to the court



1 recorder, maybe so. All right.

2 MS. RHOADES: Please.

3 THE COURT: It's the Court's view that thus far,  
4 based on what we've heard, I think the July -- only the July  
5 2015 incident is fair game. Now, that could change depending  
6 on what the testimony is tomorrow. I don't know.

7 The other thing is, Mr. Cooper, I read you the  
8 instruction, I canvassed you. I didn't ask you what you  
9 intend to do. Do you intend to testify or do you prefer to  
10 remain silent?

11 THE DEFENDANT: I intended it testify, Your Honor.

12 THE COURT: And is that decision made after having  
13 consulted with counsel, Ms. Walkenshaw?

14 THE DEFENDANT: Yes.

15 THE COURT: Very well. So is there anything else  
16 we need to discuss before we adjourn for the day?

17 MS. RHOADES: I don't believe so.

18 MS. WALKENSHAW: I don't think so.

19 THE COURT: All right. See you tomorrow.

20 MS. RHOADES: Thank you very much, Your Honor.

21 MS. WALKENSHAW: Thank you, Your Honor.

22 (Court recessed at 12:25 P.M., until Friday,

23 (November 18, 2016, at 9:29 A.M.)

24 \* \* \* \* \*

25

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

4  
5 *Julie Lord*

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8 JULIE LORD, INDEPENDENT TRANSCRIBER  
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