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SCOTT JOHNSON,
called as a witness herein,
being first duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION

BY MR. PRENGAMAN:

Q Good afternoon.

A Good afternoon, sir.

Q Could you please tell us how you're employed.

A I'm employed with the City of Reno, Reno Police
Department.

Q You're a sworn peace officer with the City of Reno?

A Yes, sir.

Q And how long have you been employed total time in the
capacity of peace officer with the City of Reno?

A 12 years.

Q And what is your current assignment?

A I'm assigned as a detective to the Robbery/Homicide
Unit.

Q And how long have you held that assignment?

A I've been in that assignment for almost three years.

Q So back in February of 2016 you were a detective in the
Robbery/Homicide Unit?

A Yes, sir.

1 Q Okay. I want to direct your attention specifically to
2 February 19th, 2016. On that day did you have occasion to meet
3 with a man named Ian Hager?

4 A Yes, sir, I did.

5 Q And where did that meeting occur?

6 A That meeting occurred at the Reno Police Department.

7 Q And prior to that day, had you ever seen or known or
8 met with Ian Hager?

9 A No, I had not.

10 Q How did you become alerted that Mr. Hager was at the
11 police station?

12 A To my knowledge, I was working in the Robbery/Homicide
13 Unit in the detective division. It was a Friday that Mr. Hager
14 had come into the police department. He came into the front desk
15 and he was inquiring about some things there. And the things he
16 was inquiring about needed the attention of a detective. So I
17 went and met with him.

18 THE COURT: You may lead.

19 MR. PRENGAMAN: Thank you, Your Honor.

20 BY MR. PRENGAMAN:

21 Q Detective, is it true Mr. Hager, once you had a
22 chance -- you went out and met with Mr. Hager?

23 A That's correct, sir.

24 Q And do you see that man in the courtroom today, Ian

1 Hager?

2 A Yeah. He's sitting right there with the blue shirt on.
3 He's got the gray tie.

4 MR. PRENGAMAN: Your Honor, may the record reflect an
5 identification?

6 THE COURT: It will.

7 BY MR. PRENGAMAN:

8 Q Detective, when you met with Mr. Hager, is it true he
9 told you that he was there to make inquiry in a case involving
10 his brother?

11 A Yes, sir.

12 Q Not wanting to get into anything about that other than
13 what is relevant to your conversation with him, but so his
14 brother had died in 2012; is that right?

15 A Yes, sir.

16 Q And he wanted to talk about that case, which had been
17 investigated by the Reno Police Department?

18 A That's correct.

19 Q Now, when you met with him before that day that you
20 first met with him, were you even aware of the case?

21 A No.

22 Q You weren't involved in the original investigation?

23 A No, I was not.

24 Q Did Mr. Hager express to you that he had questions and

1 concerns about the conclusions that had come out of the
2 investigation?

3 A Yes, sir.

4 Q Did you tell him that based on his concerns that you
5 would -- although you didn't know anything about the case, you
6 would look into it, and then speak to him again about it?

7 A Absolutely.

8 Q After that meeting in person, did you ever speak to
9 Mr. Hager?

10 A A few more times.

11 Q Okay. After that meeting did you, in fact, look into
12 the details of the investigation of his brother's death?

13 A Yes, sir, I did.

14 Q And after looking into that, did you when was the very
15 next time about how long after that first in-person meeting was
16 your next conversation with Mr. Hager?

17 A I believe it was about a week later.

18 Q And in that conversation did you tell him what you had
19 found about the circumstances of his brother's death?

20 A Yes, sir.

21 Q And did you relay to him that based on your review, it
22 appeared that his brother had died of a combination of
23 methamphetamine overdose and accidental conduct at his own hand?

24 A Yes, sir, that's correct.

1 Q And when you told that to Mr. Hager, is it true that he
2 was unhappy about it and disagreed with that conclusion?

3 A Yes, sir. He appeared unsatisfied with that result.

4 Q And I don't want to get into the contents of the
5 communication, but did he express to you that he was very unhappy
6 with that as a conclusion?

7 A Yes. He was dissatisfied with that, and he made that
8 aware to me verbally.

9 Q Okay. And so that was about a week after that. Was
10 that in person or on the phone?

11 A I believe we spoke on the phone.

12 Q And then subsequent to that, and again, just to sort of
13 explain how things progressed, but did he -- he provided you with
14 some things that he wanted you to further look into?

15 A Yes, sir.

16 Q Did you do that?

17 A I did.

18 Q Did you have a series of further communications with
19 Mr. Hager roughly approximately every week into March?

20 A Yes, sir. I spoke with him briefly in a combination of
21 ways; through email and other means.

22 Q Okay. So you had some email contacts, he had your
23 email address?

24 A Yes, sir.

1 Q At work?

2 A Absolutely.

3 Q Now going specifically to March 31st of 2016, on that
4 day or thereabout, did Mr. Hager email to you using the account
5 that you previously conversed, an Internet link to a specific
6 Facebook location?

7 A Yes, sir, he did.

8 Q And did you follow that link to the Internet location?

9 A I did.

10 Q And was that -- did that link take you to Mr. Hager's
11 Facebook page or account?

12 A Yes, sir. It took me to a plethora of different videos
13 of Mr. Hager.

14 Q So he had a number of videos posted on his account?

15 A Yes, sir.

16 Q Now is it true there was a link to a specific one from
17 that email?

18 A Yes, sir. The link that he gave me directed me to one
19 particular video, but other videos could be viewed from there.

20 Q Okay. And it was all public? In other words, you
21 didn't have to be a Facebook friend or have any special
22 authorization to look at the videos?

23 A That's correct. When I clicked on that link and opened
24 it up, I needed no extra passwords or any other certifications to

1 view the link that was sent to me or subsequently any of the
2 other videos that were sent to me or in that file.

3 Q Okay. I'm going to ask you about a specific video
4 momentarily, but speaking generally now, did you recognize -- so
5 you looked at it, not just the video that linked, but other
6 videos as well?

7 A Yes, sir.

8 Q And is it true that in the videos you saw Mr. Hager,
9 the person that you met with in person, filmed in those videos?

10 A Yes, that's correct.

11 Q Now the one that he sent you -- I'm not going to ask
12 about the particulars, but in the video that he sent you, was he
13 talking about subjects related to what you and he had talked
14 about, the investigation of his brother's case?

15 A Yes, sir. When I opened that link and viewed that
16 video, the information I was getting from that was directly
17 related to the information I'd given to him.

18 Q So then you looked at some of the other videos that
19 were posted?

20 A Yes, sir.

21 Q Now I want to play a video that we admitted, and I want
22 to then ask you if it's one of the videos you observed when you
23 went to Facebook.

24 A Sure.

1 Q I'm going to show you what has been admitted as
2 Exhibit 18. Do you recognize that exhibit?

3 A Yes, sir. It's a Facebook video. It's dated and it
4 has my signature and my badge number on it.

5 Q So you've previously reviewed the contents?

6 A Yes, sir.

7 Q So, Detective, just at the very beginning of this clip
8 you recognize this as being the Facebook page that Mr. Hager sent
9 you the link to?

10 A Yes, sir. That name that is on there, Ian Andre, is
11 actually a name that Mr. Hager uses for his Facebook.

12 Q Okay. So I'm just going to move forward a little bit
13 in this video.

14 (Video playing.)

15 BY MR. PRENGAMAN:

16 Q Now do you recognize this video?

17 A Yes, sir.

18 Q And do you recognize it as a video wherein shortly
19 Mr. Hager produces a bag of white substance, and then represents
20 a number of things: That this is more than my brother had in his
21 system, that he was going to disprove the police theory about his
22 brother's death, and that there had been multiple causes of death
23 for his brother, including methamphetamine overdose and
24 asphyxiation?

1 A Yes, sir. That's what this video represented. And
2 that's -- what he showed in this video was directly related to
3 the information that I'd just given him.

4 Q And that's what I want to ask you. So now going back
5 to that first conversation that you had; so this is dated -- this
6 video is posted February 26th, correct?

7 A Yes, sir.

8 Q Do you recognize that as on or close to the time of
9 that first phone conversation you had with Mr. Hager after he had
10 shown up at the police station?

11 A Yes, sir. It was about a week later.

12 Q And are those details, the information he talks
13 about -- his brother's case, the causes of death given by the
14 police, the police theory of his brother's death -- are all of
15 those things that you recognize having spoken with him about and
16 having informed him of in that first phone conversation about a
17 week after the 19th?

18 A Yes. The information that I looked at per his request
19 about his brother's death was compiled together, and I informed
20 Mr. Hager of that information. And what I saw in this video was
21 directly related to the information that I had given him as a
22 result of my investigation.

23 Q Okay. Thank you very much, Detective.

24 MR. PRENGAMAN: I have no further questions.

1 THE COURT: Thank you.

2 Cross-examination?

3 CROSS-EXAMINATION

4 BY MS. FLAVIN:

5 Q Detective Johnson, you had several contacts with
6 Mr. Hager; is that correct?

7 A Yes, ma'am.

8 Q And the contacts were because you took over Ian's
9 brother's case; is that correct?

10 A I wouldn't say I took it over, but I reviewed the case
11 again, per his request.

12 Q And previously, another detective, I believe Detective
13 Fox, was overseeing the case previously?

14 A As well as a couple of others, in a combination of
15 things. When we do a homicide investigation, it's usually a team
16 that works on that investigation. So I reviewed the reports of
17 the several detectives that worked on the original case.

18 Q But at this time, this time in question, you were the
19 only detective, essentially, reviewing the case?

20 A Yes, ma'am.

21 Q And the case, Mr. Hager's brother's case, it had been
22 open for some time and Mr. Hager was working with the detectives;
23 is that correct?

24 A No. I actually found that that case had been closed.

1 Q But previously, before it had been closed, he had made
2 several contacts trying to work with the detectives to again
3 disprove the conclusion that the officers had come to; is that
4 correct?

5 A No, ma'am. In fact, the only information that I have
6 about him looking into the case was when I met him at the station
7 the day that he came in. The original case was conducted,
8 investigated, and then closed. Subsequently, I didn't have any
9 information that Mr. Hager was looking into the case or was
10 continuing to work the case. It was the first time that I had
11 heard of anything, was when he came into the station.

12 Q So the first time he came into the station, that was
13 the first information that you had that he had been at all
14 involved in this. But is it possible that he previously was
15 somewhat involved and there are no notes indicating his
16 involvement?

17 MR. PRENGAMAN: Objection. Calls for speculation.

18 THE COURT: Sustained.

19 BY MS. FLAVIN:

20 Q Mr. Hager had made contacts with officers on the case,
21 but you wouldn't have received that information?

22 MR. PRENGAMAN: Objection. Calls for speculation.

23 THE COURT: You can answer, if you know.

24 THE WITNESS: I have no idea about that information,

1 that I know of.

2 BY MS. FLAVIN:

3 Q Is it possible for someone to make contact with the
4 officers and there weren't notes in the file?

5 A Entirely.

6 Q And so the case involved the fact that Mr. Hager
7 believes his brother was murdered; is that correct?

8 A That's what Mr. Hager had claimed.

9 Q What he believed was that he was murdered; is that
10 correct?

11 A Yes, ma'am.

12 Q And your investigation concluded methamphetamine
13 intoxication; is that correct?

14 A Yes, ma'am.

15 Q And that's essentially an overdose?

16 A Yes, that and a combination of some other things.

17 Q And when Mr. Hager came into the police department,
18 that was your first contact with him at that time; is that
19 correct?

20 A Yes, ma'am.

21 Q And you subsequently followed up with him, you said,
22 approximately one week later?

23 A Yeah, about a week later.

24 Q And that is when you notified him that the

1 investigation was closed; is that correct?

2 A Yes. I notified him of information that he asked me to
3 look at and also that the investigation had been closed by the
4 original detectives.

5 Q And you stated that he appeared unsatisfied with that
6 result?

7 A Yes, ma'am.

8 Q Mr. Hager expressed that he wanted the investigation to
9 continue, correct?

10 A Mr. Hager had several different things he wanted me to
11 look at aside from what I just investigated. He had brought some
12 new things forward that he wanted me to review. So again, I
13 listened to what he had to say to me, and I looked at those
14 things as well.

15 Q So he kept bringing information to you to reopen or
16 further investigate; is that correct?

17 A Yes, ma'am.

18 Q And so the Facebook video, that was sent to you after
19 you spoke with him about the conclusions; is that correct?

20 A We had several conversations. This was -- or the video
21 that he had sent me was after one of those conversations, yes,
22 ma'am.

23 Q And you recognize that it was Mr. Hager in the video?

24 A Oh, yes, ma'am.

1 Q And you also stated that you recognize the information
2 in the video was directly linked to the information that you had
3 discussed with him?

4 A The information on this particular video is definitely
5 related to the case, and also on the video that he sent me a link
6 of.

7 Q And so the video got your attention, this video up
8 here, from February 28th?

9 A Oh, yes, ma'am, it did.

10 Q And the video was sent directly to you?

11 A He sent me a link to this particular video. The other
12 video he sent me. This one was also linked in with it.

13 Q The link was in the same email or the link he sent took
14 you to another link to the video?

15 A So, as with the Facebook software, I guess you could
16 say, the link that was sent to me directed me to Mr. Hager's
17 Facebook. When I opened up that link, his Facebook opened up.
18 Within his Facebook, other videos were there. These videos were
19 dated on the same date. And the videos that I reviewed were of
20 the same information and related to the exact information I had
21 just given him about his brother's case.

22 Q And so just to clarify, the link that you opened, did
23 it take you just to his general home page on Facebook or did it
24 take you specifically to this window of a video?

1 A You know, I can't remember if it took me to a group of
2 his videos linked with his Facebook or to his Facebook page. I
3 can't remember exactly, but there were things that I could
4 research in the videos.

5 Q And again you said that the -- his profile was public,
6 so you had full access to his entire page?

7 A That's what it appeared to me, yes, ma'am.

8 Q It didn't appear that any information or any access was
9 blocked from your view?

10 A From the link I was given, from what I was able to
11 view, to the best of my knowledge, no, ma'am.

12 Q And the email that you were sent just contained a link;
13 is that correct? There was no wording, no message, just a link?

14 A I believe it was a link. It may have had a very short
15 message associated with it. It could have just been "view this"
16 or something to that knowledge, but I remember it being a very
17 short email with just the link and who it was from.

18 Q And it was from Mr. Hager?

19 A Yes, ma'am.

20 Q And you watched the video soon after you received the
21 link; is that right?

22 A Yes, ma'am.

23 Q And the videos that you viewed appeared edited?

24 A I don't know much about editing. All I know is that

1 the videos were of Mr. Hager.

2 Q You heard music, background music on some of the
3 videos?

4 A Sure.

5 Q Some of the videos cut from one scene to another, that
6 sort of editing; is that correct?

7 A On some of them, correct.

8 Q And the videos seemed like they were trying to get your
9 attention; is that correct?

10 A That was the message that I got from the link that he
11 sent me, yes, ma'am.

12 Q So you believe they were trying to send you a message
13 and you paid attention; is that correct?

14 A Yes, ma'am.

15 Q And then you emailed, you sent the email that you
16 received, you sent that to another detective?

17 A Eventually, during the ongoing investigation for other
18 things, I did end up sending that email to someone else.

19 Q Because it got your attention?

20 A Yes, ma'am.

21 Q And after watching the video, you didn't contact any of
22 Mr. Hager's friends on Facebook; is that correct?

23 A I don't believe I talked to any of his friends on
24 there.

1 Q And you didn't immediately respond to Mr. Hager's home;
2 is that correct?

3 A Oh, no.

4 Q And you didn't ask for other officers to respond to his
5 home?

6 A Immediately afterwards?

7 Q That's correct.

8 A No, not immediately afterwards.

9 Q No welfare check was done on Mr. Hager after watching
10 the video?

11 A After this video, no, ma'am.

12 Q But you did have full access, again, to his whole page
13 including his contacts, his friends; is that correct?

14 A Yes, ma'am.

15 Q And in this video that we just saw a short snippet of,
16 you said you recalled watching this entire video from
17 February 28th?

18 A Yes, I did.

19 Q And Mr. Hager's behavior from the beginning to the
20 middle to the end of the video was constant?

21 A I'm sorry. I don't understand the question.

22 Q I should say his demeanor was fairly constant throughout
23 the video.

24 A I think that could be taken in several different ways.

1 From what I'm seeing in the video, his demeanor doesn't
2 necessarily change, but I can see changes in the video. And what
3 I know from being a drug recognition expert is that what I'm
4 seeing is just a very short snippet of what he's doing. I don't
5 get to see the after-effects of that.

6 So he's not continuing to film himself after he's taken
7 these drugs for a period of time after, such as hours later, so I
8 can see what the effects of those drugs are on his system. I can
9 only see what he's giving me in this video.

10 So, yes, his demeanor does partially change, but it
11 would have taken more to this video to show what the effects of
12 those narcotics were.

13 Q And so you stated that you are a DRE expert; is that
14 correct?

15 A Yes, ma'am.

16 Q And so you are trained to observe behaviors in
17 individuals that would mean that they're under the influence?

18 A Yes, ma'am.

19 Q What are some of the other things that you are trained
20 to detect?

21 A Are you asking in person's behaviors or what
22 particularly?

23 Q In person's behaviors?

24 A So depending --

1 Q I'm sorry. I should say person's behaviors who are
2 under the influence of controlled a substance.

3 A Sure. And as a drug recognition expert, one of the
4 things we're looking at -- there's a plethora of different drugs,
5 and different drugs can cause different things.

6 So methamphetamine is a stimulant and can cause
7 different behaviors, as well as marijuana is a different type of
8 a drug and can cause different types of behavior. So I don't
9 know exactly what all he has taken, other than what he's shown me
10 on the video. So it would be difficult from just that video for
11 me to make a good examination of him, because I don't have him in
12 front of me and I don't have the ability to test him for a
13 plethora of drugs.

14 So he could have just that narcotic on board, which
15 could be just one thing that I could test for or he could have a
16 plethora of different things on board. But I would need to see
17 him in person to be able to get an exact reading on what it is he
18 did, because each drug does different things to our bodies.

19 Q And so you stated in the video, it was edited, and you
20 weren't able to see, essentially, the entirety of his behavior
21 several hours later, you believe?

22 A That's correct.

23 Q And so you also cannot get an exact reading of his
24 behavior and really what specifically what went on in that video,

1 correct?

2 A I could see what went on in the video, but I can't make
3 a fair assessment as to what happened afterwards.

4 Q So you cannot make a fair assessment afterwards as to
5 if his behavior indicated that he was under the influence?

6 A That's correct.

7 Q But from what we do see in the video, although we don't
8 know specific time frame, there's no indication of -- that he was
9 sweating; is that correct?

10 A Well, that would be different to see on this video.
11 The manner in which he's use using the narcotics in the video,
12 the suspected narcotics, from what he said they are, if he's
13 ingesting them through his nose, he's not heating them up and
14 putting them in his body intravenously, which would cause an
15 effect much quicker.

16 So what we're seeing on the video is kind of what I
17 expect to see just from the small frame that I'm seeing it in.
18 If he was taking those drugs in a different manner, I may see
19 something faster, but what I'm seeing on there is a gentleman
20 using what is believed to be narcotics, according to his own
21 words. And he lays back, he tilts his head back, he acts in a
22 manner that the drugs are taking effect, but I don't get to see
23 anything afterwards that gives me a good indication of other
24 things within that narcotic.

1 Q And so because you weren't able to see him afterwards,
2 you do not really have a good indication of whether he was or was
3 not under the influence?

4 A That's correct. I mean in purposes of being able to
5 test him. From what I can see on the video, it looks like he's
6 taking a large amount of drugs and that they are having some
7 effect on him, but I'm not getting to see a full spectrum of what
8 it's going to do to him as we go forward.

9 Q So because you have not seen a full spectrum or been
10 able to observe his behavior minutes/hours later, you can't
11 really fully assess that he was, in fact, under the influence; is
12 that correct?

13 A That's a fair statement, ma'am.

14 MS. FLAVIN: Court's indulgence, Your Honor.

15 No further questions.

16 THE COURT: Redirect?

17 MR. PRENGAMAN: Your Honor, can we approach?

18 THE COURT: Sure.

19 (Discussion held at the bench.)

20 THE COURT: Ladies and gentlemen, we're going to have
21 to excuse you for a little bit as we smoothly continue the case
22 to make it in such an order that you can hear evidence as we move
23 closer to the end of the trial.

24 So the challenging news is you have to take a little

1 time out. Good news is we are way ahead of schedule. I think,
2 if things go according to plan, we might be giving you the case
3 tomorrow instead of Friday. So there's some good news and some
4 bad news. The bad news is you have take a recess now.

5 So all rise for the jury. Remember my admonishment
6 that I read every time. Thank you.

7 (The following proceedings were held outside the presence of the
8 jury.)

9 THE COURT: Please be seated. For the record,
10 Mr. Prengaman approached the bench and made a representation that
11 he believed based upon the questioning of the witness by the
12 defense they had opened a door related to additional matters.

13 That being said, I'll hear from you now.

14 MR. PRENGAMAN: Thank you, Your Honor. The Court
15 precluded me from getting into a number of subjects that were
16 covered in the videos in this substance of this witness and
17 potential testimony at the pretrial hearing that we had. And
18 specifically, the Court ruled that I couldn't get into any
19 threats to the police, any of the threatening conduct on the
20 videos, mentioning this detective by name, and the other conduct,
21 the extreme agitation, the violent representations, the
22 statements that the defendant made on the videos that I couldn't
23 play for this jury.

24 Now I believe I was well within what the Court

1 authorized me to do with this witness. You allowed me to
2 question him to establish the relevance of his conversations and
3 communications for the limited purpose of establishing the
4 connection in time between the content of this exhibit and then
5 even the subsequent one, which I elected not to go into fully.
6 And I stayed within that.

7 However, defense made a number, a series of questions
8 about the content. They asked, "Was he trying to get your
9 attention?" Multiple times that was placed to the detective.
10 "He did get your attention. He was trying to send you a
11 message." And that was followed by questions about why,
12 suggesting that there was something inappropriate about this
13 detective's failure to, for instance, go do a welfare check or
14 take any further action with regards to checking on the
15 defendant.

16 Well, the fair answer to that is that this detective
17 was threatened, and he has a very good reason why he did none of
18 those things, which is that he was concerned for his own safety
19 and his family's safety, based on what he saw in those videos.
20 The picture the defense has just portrayed is that he watched
21 these videos and essentially did nothing. And there was a
22 suggestion of bias, which I believe I should be entitled to
23 correct by eliciting from this detective the reasons he didn't
24 take any of those things. So that would be my offer.

1 And I think it's unfair for them to suggest that he's
2 sending a message and suggesting that this detective -- again,
3 following up on the idea that this detective is doing nothing for
4 the defendant, when, in fact, the reason he quit the
5 communication, which they asked about: You didn't talk to him
6 again. The implication being that basically the police are
7 uncaring about what happened.

8 And I didn't open that door, but they have drawn a
9 picture where it makes it appear that the police quit
10 investigating the case or quit communicating with him because
11 they're unfeeling, uncaring, et cetera, when in fact the reason
12 the detective had zero further communications was because of the
13 concern, the fear that he felt when he viewed the content of the
14 videos.

15 THE COURT: Thank you.

16 Ms. Flavin.

17 MS. HICKMAN: Judge --

18 THE COURT: It's Ms. Flavin's witness.

19 MS. HICKMAN: It is. If I could --

20 THE COURT: No, you're not -- you're not going to tag
21 team.

22 MS. HICKMAN: That's fine.

23 MS. FLAVIN: Your Honor, the questions that were
24 elicited today were of the same nature that were ask of Detective

1 Rowe earlier yesterday. And that did not open the door at that
2 time. And I believe the State even -- as far as the welfare
3 checks and whatnot, the State believes -- or the State proffered
4 that because of the timing of those videos, there was no
5 reason -- I should say the timing of when they were viewed --

6 THE COURT: Let me stop you for a second. One thing --
7 there's a number of things that concern me about your area of
8 questioning. One of the areas of questioning is you repeatedly
9 asked the witness related to Mr. Hager trying to send him a
10 message. You wanted to make sure that the jury knew that there
11 was being a message sent by the video.

12 Share with me why you were doing that.

13 MS. FLAVIN: Your Honor, actually, that was in response
14 to his response that he believed that he was trying -- that there
15 was a message. So my repeating that was repeating his response.

16 THE COURT: Continue with your argument.

17 MS. FLAVIN: And so, again, the State had no problem
18 with this same line of questioning, as far as timing of the
19 videos, welfare checks, checking in on the defendant afterwards.
20 The same line of questioning occurred with Detective Rowe. And
21 there was no issue then.

22 Today it is not an issue of that they are uncaring, but
23 it is a question, was there follow-up done? No. There was no
24 follow-up done.

1 THE COURT: But there was no follow-up done, according
2 to the State, because the defendant was threatening him and his
3 family. That's why there wasn't any follow-up done. So your
4 position is, is that's why you asked the question no follow-up
5 done related to speaking with Mr. Hager, but you are ignoring the
6 truth of what occurred, is that the detective didn't follow up
7 because he felt threatened. Is that correct?

8 MS. FLAVIN: Your Honor, they believed that he was
9 under the influence of a controlled substance, took a substantial
10 amount of a controlled substance. So our position is that
11 believing that there was such a large amount consumed, there
12 would be some follow-up after that on a welfare check. And that
13 wasn't done.

14 THE COURT: Of course it wasn't done, because he felt
15 threatened. That's what the State's position is.

16 MS. FLAVIN: And our position is that one should have
17 been done, and it wasn't, if it was believed that he consumed
18 such a large amount of a controlled substance. He was asked
19 whether he sent that information along to anyone else to follow
20 up. No, he did not. However, he was also asked earlier before
21 that if the link had been sent to anyone else. He responded
22 that, yes, it had subsequently been sent to another detective.

23 THE COURT: All right. Anything else?

24 MS. FLAVIN: No, Your Honor.

1 THE COURT: You get the last word, Mr. Prengaman.

2 MS. FLAVIN: And, Your Honor, I'm sorry. I did want to
3 add that the State did get the testimony that the video mirrors
4 the conversation. So that was information that the State elicited.

5 THE COURT: He sure did. He followed my order right
6 down the line. I allowed it, that testimony. The witness was
7 very careful about that. I allowed Mr. Prengaman to lead. He
8 followed my order right down the line. You made a different
9 strategy choice.

10 Anything else?

11 MS. FLAVIN: No, Your Honor.

12 THE COURT: Mr. Prengaman.

13 MR. PRENGAMAN: Your Honor, Sergeant Rowe is different.
14 From what the jury heard, he's in this completely different
15 situation. It's not the same to pose those questions to Sergeant
16 Rowe as it is to pose them to this witness, particularly from
17 what this jury heard.

18 But this detective would testify after he viewed that
19 content, what he did is he reported it -- he went to his
20 superiors, and they reported it, because they were concerned
21 about the threatening content of those videos. And that's the
22 simple fact that is in the police reports. It's out there.

23 And I think it's unfair to paint a picture of this
24 detective as again, failing to -- and I think they opened a

1 number of things. It's not just that they didn't care about him.
2 The implication was drawn that essentially he dropped the
3 investigation with the implication being that there was something
4 untoward or bias about that. When the truth is he cut off
5 communication, as anyone would, when they viewed the content.

6 THE COURT: I understand.

7 All right. This is what I find: I find that it's a
8 very, very close line with this door being open. I believe that
9 the impression that the defense left with the jury was unfair to
10 the State. However, I still believe that the threats issue is
11 much too prejudicial and it outweighs its probative value.

12 However, I'm going to allow you, Mr. Prengaman, on
13 redirect to inquire of the officer in the following way: That as
14 a result of the video, which caused him some concern, and as a
15 result of the concern he chose to discontinue communication with
16 the defendant.

17 And, Officer, did you refer it on to another agency or
18 refer it on to a supervisor as a result of that? What did you do
19 with it?

20 THE WITNESS: Your Honor, I did both.

21 THE COURT: All right. I will allow you to testify to
22 that: That as a result of what he saw in the video, it caused
23 him such concern that he referred it on and it began whatever
24 investigation it did, whether it be this case or others. If it's

1 this case, you can talk about this case. If it's others, don't
2 talk about the other cases. But that's my ruling based on what
3 occurred in this trial.

4 Anything else on this issue?

5 MR. PRENGAMAN: No, Your Honor.

6 THE COURT: Thank you. This would be the time -- well,
7 let's finish the examination, then we'll come back to you with
8 respect to your proffer.

9 MS. HICKMAN: Thank you.

10 THE COURT: All right. Bring the jury back in.

11 (The following proceedings were held in the presence of the
12 jury.)

13 THE COURT: I see the presence of the jury, the
14 defendant, the defense team, the prosecution is present.

15 Please continue with any of your redirect examination,
16 Mr. Prengaman.

17 MR. PRENGAMAN: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. PRENGAMAN:

20 Q Detective, I just want to -- you were asked a number of
21 questions about sort of multiple points in time, and I just want
22 to clarify the time. So the video that we see here -- so
23 Exhibit 18, the -- when you -- let me just go back.

24 So the first time, February 19, 2016, the first time

1 you have contact with the defendant --

2 A Yes, sir.

3 Q -- about a week after that, you say approximately a
4 week later you speak to him again, and you tell him the results
5 of your investigation into his brother's case?

6 A That's correct.

7 Q Then you have a series of further communications with
8 him about the case?

9 A Yes.

10 Q And correct me if I'm wrong, but that -- I'm not saying
11 to the day, but approximately a week, approximately weekly after
12 that, a week after the 19th; is that fair?

13 A Yes. Our communications covered the span of several
14 weeks, and it was pretty much weekly that we communicated.

15 Q So the first time was in person, second time you recall
16 being on the telephone?

17 A Yes, sir.

18 Q Then you had other communications, other telephone
19 conversations and exchanged emails with the defendant?

20 A Yes, sir.

21 Q And then it's on March 31st, on or very close to that
22 day that you -- within a day or two -- within a day that you
23 received the link to Mr. Hager's Facebook page; is that right?

24 A Yes, sir.

1 Q And so when you follow that link, the first video that
2 you look at is not this video?

3 A That's correct, sir.

4 Q But you do see other videos on his Facebook page --

5 A Yes, sir.

6 Q -- that you look at first?

7 A Yes, sir.

8 Q And I think you told us that the content -- and those
9 were videos posted in March, close to the 31st, and going back a
10 few weeks in March; is that fair?

11 A Yes, sir.

12 Q And you recognized -- I think you told us in those
13 videos you recognized things that you had discussed in talking to
14 Mr. Hager in your subsequent contacts, he was talking about in
15 those videos?

16 A Yes, sir.

17 Q So from what you saw just at that point, did it appear
18 to you based on your historical sort of looking at his videos
19 that you would talk to him, and then he would make a video and
20 sort of talk generally about what you had talked about, and then
21 sort of following the path of your conversations with him?

22 A Yes, sir. The videos that I was able to observe on
23 those particular dates really were in response to the information
24 that I had given him.

1 Q Okay. So to you looking at them, it's like you talked,
2 he then creates a video talking about what you talked about. You
3 talk to him again a week later, he does the same thing. That's
4 the impression you're getting from the timing of the videos he's
5 posting?

6 A It felt very much that way, that there was almost this
7 communication between him and I through these videos that he was
8 making.

9 Q Okay. So now, let me -- then at some point as you're
10 looking at the public videos that he is making on his page you
11 get to this video posted on February 26th that we have in
12 Exhibit 18; is that right?

13 A Yes, sir.

14 Q Okay. Now I just want to, for this sort of line of
15 questioning, I just want you to forget about the subsequent
16 videos and just focus on this one.

17 A Sure.

18 Q I just want to ask about the content.

19 A Sure.

20 Q I want to ask about the content of that first phone
21 conversation. So you met with him on the 19th. You then had a
22 phone conversation about a week later. I just want to talk about
23 that.

24 A Sure.

1 Q So when you viewed this video, the specific things that
2 he mentions, the three causes of death, the methamphetamine
3 overdose, the asphyxiation, are those specific points -- not just
4 related -- but are those specific things that you told him that
5 now he is talking about in this video?

6 A Sure. To my understanding the circumstances of his
7 brother's death had some different circumstances that he may not
8 have been aware of, but I made him aware of these circumstances
9 based on the original investigation.

10 Q And I want to get to that. The defendant's lawyer
11 asked you some questions about the possibility of whether
12 Mr. Hager had been involved previously with the past detectives.

13 When you spoke to him, and you gave him your
14 conclusions about the causes of death in that phone conversation
15 about a week after February 19th, from your interaction with him
16 did it seem to you that some of the information you were giving
17 him was new or news to him that he hadn't heard before?

18 A Yes, sir. He responded that way exactly.

19 Q Okay. And so is when you listened to this video, does
20 it follow the pattern of the other March videos; you have a
21 conversation with him, he goes and makes a video talking about
22 what you talked about?

23 A Yes, sir.

24 Q And is the timing of February 26th, would that be very

1 close, if not to the day of when you spoke to him on the phone?

2 A That's very much in line with the information that I
3 had given him. And from what I can see of that date, a direct
4 response to the information I had just given him.

5 Q Okay. Now you were asked a series of questions
6 about -- about whether you, for instance, after viewing these
7 videos -- and in terms of timing, this video posted in the past,
8 February 26th, right?

9 A Yes, sir.

10 Q You're watching these videos on March 31st or very
11 close do that day when you got the link?

12 A Yes, sir.

13 Q You were asked why you didn't, for instance, do a
14 welfare check or go check on Mr. Hager. Is it true that when you
15 looked at some of the latter March videos you had concerns about
16 what you saw in terms of the message in those videos?

17 A Yes, sir. I was concerned not only with the message,
18 but his well-being.

19 Q Okay. But is it true that the reason you had no
20 further contact or communication with Mr. Hager after you
21 followed that link is because of those, the concerns that you
22 had?

23 A Yes, definitely the concerns that I had. Yes, sir.

24 Q And then based on those concerns, did you refer what

1 you had seen to the Sparks Police Department?

2 A Absolutely? I was unable to meet with him personally,
3 so I directed that information to my superiors and to the Sparks
4 Police Department.

5 Q Okay. Thank you very much, Detective.

6 MR. PRENGAMAN: I have no further questions.

7 THE COURT: Thank you. Anything?

8 MS. FLAVIN: No, Your Honor. Thank you.

9 THE COURT: Thank you.

10 You're excused. Thank you for your testimony.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: You may step down.

13 All right. You want to call your next witness.

14 MR. PRENGAMAN: Your Honor, the State will rest.

15 THE COURT: Thank you very much.

16 It's kind of one of those days, ladies and gentlemen,
17 of getting up and getting down. For your information, the State
18 has just rested. They have presented their case in chief. What
19 I typically will do, wherever we are in trial, is I'll give the
20 defense a little bit of a timeout to regroup. They don't have to
21 present anything if they don't want to. I'm going to give them
22 just a little bit of time outside your presence, once again, to
23 make the decision on whether they're going to present a defense
24 and move forward in that regard.

1 of fact. So before the Court can do that, you have to find that
2 a rational finder of fact could accept the evidence as proof of
3 the defendant's guilt beyond a reasonable doubt.

4 And I think what the Court has to do is look at the
5 evidence in the light most favorable to the State and determine
6 whether or not, as applying those facts as they have been
7 presented, whether a rational trier of fact could find somebody
8 guilty on those facts.

9 So what I'm asking the Court to do is, assuming that
10 those facts are true in the light most favorable to the State,
11 look at what the case law is in regards to adjudicated mentally
12 ill and find that no rational trier of fact could find, under the
13 law, that Mr. Hager has been adjudicated mentally ill. When --
14 before a jury can consider the facts, look through the facts, due
15 process requires the State -- or requires the Court to go through
16 this process, really, on a motion by the defense.

17 So because of that law, what I would ask the Court to
18 do is to look at the law that is cited in the Motion to Dismiss
19 and find that the statute requires before somebody is adjudicated
20 mentally ill a determination by a board, court, commissioner,
21 other lawful authority, that a person, as a result of marked
22 subnormal intelligence or mental illness, incompetency, condition
23 or disease, is a danger to himself or others or lacks the mental
24 capacity to contract or manage his own affairs. That definition

1 comes directly out of federal law, which is 18 U.S.C. Section
2 922(g)(4).

3 I know that the Court had previously -- I know that the
4 Court had previously looked at the motion that was filed asking
5 that these statutes be dismissed as they are void for vagueness
6 as the Nevada Legislature failed to define what they meant by
7 adjudicated mentally ill and addict or unlawful user of a
8 controlled substance.

9 If you look at the legislative history for NRS 202.360
10 you will see there is the intent by the legislature to mirror the
11 federal law. In fact, during testimony on that statute, which is
12 Senate Bill 199 from the 72nd regular session of the Nevada State
13 Legislature in 2003, the changes which added adjudicated mentally
14 ill and addicted to or an unlawful user of a controlled substance
15 were introduced by a lobbyist for the Las Vegas Metro Police
16 Department.

17 That lobbyist stated in his testimony -- that was Stan
18 Olsen. He stated that the intent of SB 199 was to mirror federal
19 law. This would allow Nevada law enforcement to operate without
20 relying on federal involvement or federal oversight.

21 In addition, Exhibit G was admitted 3-10-2003. This is
22 a letter from Stan Olsen. He says, "The intent here as to adding
23 fugitives, narcotic addicts, those adjudicated mentally ill, and
24 those illegally in the United States was to mirror much of

1 federal law so Nevada law enforcement can enforce illegal firearm
2 laws without having to rely on federal involvement or oversight."

3 If the Court looks at further statutes that would
4 disallow somebody who has a mental illness from having a firearm,
5 the Court can see that this is the legislature's intent
6 throughout all of the statutes.

7 NRS 179.163 was added to Nevada statutes to comply with
8 the NICS improvement amendment of 2007. What that is, is a
9 Relief from Disabilities Act. That allows people who have, in
10 fact, been adjudicated mentally ill under, really, what is
11 essentially the federal statute -- incompetence, danger to
12 themselves or others, unable to manage their own affairs, guilty,
13 but mentally ill, and not guilty by reason of insanity -- to,
14 after a certain amount of time, apply to a judge to have their
15 firearms rights restored.

16 That statute laid out all of the statutes that are
17 similar to federal law where a person who has been found mentally
18 ill under those statutes lost their firearms rights could then
19 apply to have their firearms rights.

20 What is important about that is to note that there is
21 no provision for somebody in Mr. Hager's position, who, under
22 179A is found to have PTSD, found to have committed a crime,
23 because he plead guilty and is diverted to Mental Health Court,
24 successfully completes that, doesn't have a felony on his record,

1 he could never apply under the Nevada statutes to have his
2 firearms returned to him.

3 THE COURT: Well, he could get a pardon.

4 MS. HICKMAN: He could get it pardoned.

5 THE COURT: Yes. You said "never."

6 MS. HICKMAN: Right. But he could never get it back
7 the same way that somebody who has been found to be incompetent,
8 and a danger to themselves or others, somebody who is found not
9 guilty by reason of insanity. Those people could get their
10 firearms back under a much easier way than Mr. Hager ever would
11 be able to.

12 In addition, Judge, under -- just looking at whether or
13 not somebody has been adjudicated mentally ill, what you're
14 looking at is having somebody who in misdemeanor court could come
15 in and say, I got a DUI because, you know, I have really bad
16 anxiety, I've had a difficult time, I've been drinking, I'm
17 sorry. I'm looking to get help. And the judge says, I get that,
18 I'm going to order you to get a mental health evaluation. And if
19 they find it necessary, I'm going to order you get treatment.

20 Well, that person has now been adjudicated mentally ill
21 and would be in the same position Mr. Hager is, unable to get his
22 firearms back under the Relief from Disabilities Act and would
23 have to depend on some sort of a pardon in order to ever get his
24 firearms back.

1 THE COURT: Wouldn't it be more helpful if you'd focus
2 your argument using Mr. Hager's case as opposed to using others
3 by and large, because I think --

4 MS. HICKMAN: Well --

5 THE COURT: Let me just finish. Because I think what
6 the motion to dismiss is, based at this point in the trial, is
7 whether or not the State showed a prima facie case, enough to go
8 to the jury. And so that's really what the focus of your
9 argument is.

10 MS. HICKMAN: Well, the focus of my argument is as it
11 relates to Mr. Hager's case, the focus of the argument is what
12 the law provides. And so what I'm showing the Court is all of
13 the other ways that the law has shown that it intended for the
14 definition of adjudicated mentally ill to be somebody who has
15 been adjudicated mentally defective under the federal statute to
16 mirror that definition: That they have to be found to be
17 dangerous to themselves or others or unable to manage their daily
18 affairs.

19 So in this case the State has not made that showing.
20 They have not shown that he was ever determined, prior to this
21 case, to be a danger to himself or somebody else, unable to
22 manage his own affairs, incompetent, guilty but mentally ill or
23 not guilty by reason of insanity. There is no showing of that.
24 There are no facts to support those things. So even if the Court

1 believes all of the testimony about mental health, because you
2 have to for the purposes of this motion, and you believe
3 everything that the State has put forward, the State still has
4 not met their burden of production for a rational juror, trier of
5 fact, to come back on this case to find that he could be found
6 guilty beyond a reasonable doubt.

7 THE COURT: Thank you.

8 Mr. Prengaman.

9 MR. PRENGAMAN: Your Honor, the State addressed -- I
10 think the motion is essentially for an advisory verdict. There's
11 no Motion to Dismiss, at least at this point. It would be for
12 the Court to advise the jury.

13 The State --

14 THE COURT: Actually, I can dismiss it if I don't
15 believe that you've made a prima facie showing as to Counts -- I
16 think it's I, II, and III. I can dismiss those counts, because
17 that's related to the mental health facility. That's I, II, and
18 III. I can dismiss them if I don't believe you've made a prima
19 facie showing of the elements.

20 MR. PRENGAMAN: As to the merits, Judge -- and I
21 address that in my -- in the State's pleadings in response. But
22 the core of that argument is that there's a federal definition
23 that we need to follow. The legislature -- apart from what a
24 lobbyist said in the course of the proceedings, the legislature

1 had that definition before it and elected not to do it.

2 And the Gallegos case I cited I think in a number of my
3 pleadings, but in the opposition to the States vagueness
4 motion -- or the defense's Void for Vagueness Motion, but, for
5 example, the Gallegos case, 123 Nevada 289. But our court has
6 recognized the fact that the federal law that as a definition
7 that Nevada elects not to follow is evidence of the legislature's
8 intent not to have that as a definition.

9 And here, the federal statute says mental defect, when
10 Nevada enacted its legislation they chose specifically not to use
11 that term and its corresponding definition. They use a different
12 term, mental illness, which we have defined in our statutes. And
13 based on that definition it doesn't require the finding that
14 Ms. Hickman is talking about. It requires a finding -- a
15 determination by a judge, I would submit. There's a
16 well-recognized definition for that word that the legislature
17 elected to use and not follow the federal definitions. They
18 wanted to do something different.

19 And the State has certainly shown evidence of that, I
20 would submit, beyond a reasonable doubt. The evidence in a
21 nutshell is that there's one way to get into mental health court,
22 and it's not some low-level diagnosis. It is an Axis I
23 diagnosis. The only path into Mental Health Court is a serious
24 mental health diagnosis and a judge's decision. You don't get

1 into Mental Health Court unless a judge determines you are
2 qualified.

3 Two judges determined that this defendant met the
4 criteria, and they put him in Mental Health Court. And he was
5 determined to meet the criteria and be mentally ill under our
6 statutory definition, which is exactly the one the Mental Health
7 Court employs.

8 So unless the Court has any other areas that it wants
9 me to address in that regard I would submit the motion should be
10 denied. The State has shown a prima facie case.

11 THE COURT: Thank you. You get the last word,
12 Ms. Hickman.

13 MS. HICKMAN: Judge, if anything, Gallegos versus State
14 does give the Court quite a bit of guidance as to where the Court
15 should go with a case like this. The difference between Gallegos
16 versus State is that it was reversed because the statute is void
17 for vagueness, because "fugitive from justice" was never defined
18 by the Nevada Legislature.

19 Obviously, that motion has already been denied. But if
20 you look at what they did in Gallegos is there was a number of
21 cases in Nevada that defined "fugitive from justice." So they
22 pulled all of those together, and the Court tried to find a
23 definition to advise the jury of in determining what a fugitive
24 from justice is.

1 Once that case was reversed, the legislature then went
2 back and defined that, cobbling together a definition between the
3 federal definition and the definitions that had already been
4 provided somewhat in Nevada case law.

5 So I think the Gallegos also gives the Court some
6 evidence as to what the intent of the legislature was. The
7 intent was to mirror federal law. We do not have a definition
8 anywhere in Nevada law for adjudicated mentally ill. That is not
9 a term that is defined in Nevada. But based on the legislative
10 history the Court can see that that is what the legislature
11 intended. They intended to follow that federal definition.

12 The Court can also look at Gallegos and see that in
13 amending that the statute to add that definition in 2009, the
14 Court again intended to mirror the federal statute, but was also
15 able to use Nevada case law where that was defined previously.

16 So I think that the definition of adjudicated mentally
17 ill should be that -- as I stated earlier, it should mirror the
18 federal statute. And as a matter of law the Court should grant
19 the motion and deny the State the ability to have these three
20 counts go to the jury.

21 THE COURT: Thank you very much. Submitted?

22 MS. HICKMAN: Yes.

23 THE COURT: Thank you. I'm denying your motion. I
24 believe the State did show a prima facie case and Mr. Prengaman

1 outlined -- what the Court actually heard was that, the jury will
2 make a determination based on Mr. Popovich's testimony that a
3 judge sent him to Mental Health Court, not just one judge, but
4 two judges, and whether that's an adjudication by a judge, which
5 I think is open for the State to argue before the jury.

6 Do you have another motion?

7 MS. HICKMAN: I do, Judge. In the pretrial rulings you
8 did not preclude us from calling witnesses as to whether or not
9 we would be entitled to the entrapment by estoppel defense.

10 THE COURT: Just so you're clear, again, because you
11 weren't here for the record --

12 MS. HICKMAN: Thank you.

13 THE COURT: My ruling was I would never preclude you at
14 the outset. I wanted to see how the evidence went, so to speak,
15 in case something changed for you. It wasn't going to be a
16 blanket denial. Although there's a legion of federal cases that
17 say it could be granted at in limine motion. I didn't do that in
18 this case. I wanted to see how the evidence unfolded. I didn't
19 want to preclude any potential defense you might have. And I was
20 open to having the trial counsel argue it as well.

21 MS. HICKMAN: Thank you, Judge. If I could briefly
22 grab some things.

23 So I agree with Mr. Prengaman in his motion about the
24 entrapment by estoppel defense, what we would have the burden to

1 show in order to get that jury instruction.

2 THE COURT: And you agree with your substitute counsel,
3 Mr. Leslie, that this is a strict liability crime?

4 MS. HICKMAN: Yes.

5 THE COURT: He agreed with that as well.

6 MS. HICKMAN: Yes, I do. But if you look at some of
7 the case law, especially regarding federal firearms dealers, the
8 Court can see that -- what I'm looking at is U.S. versus
9 Tallmadge, 829 F. 2nd 767.

10 THE COURT: What district is that from?

11 MS. HICKMAN: I believe it's the Ninth. It's the
12 Ninth. That case holds that a federal firearms dealer is
13 somebody who can give people information as to whether or not
14 they can possess or own a firearm. What they specifically said
15 is, "Congress has not only granted certain persons the exclusive
16 right to engage in the business of selling firearms, but its also
17 given them the affirmative duty of inquiring of a prospective
18 buyer whether he has a criminal record that would make it
19 unlawful for him to purchase a firearm.

20 "Clearly the United States government has made a
21 licensed firearm dealer a federal agent in connection with the
22 gathering and dispensing of information on the purchase of a
23 firearm. We believe that a buyer has a right to rely on the
24 representations of a licensed federal firearm dealer who has been

1 made aware of all the relevant historical facts that a person may
2 receive and possess a weapon," and in this case it's whether or
3 not his felony conviction had been reduced to a misdemeanor. So
4 "that his felony conviction has been reduced to a misdemeanor."

5 So in this case we would like to present evidence that
6 Mr. Hager relied on the advice and the representations made by a
7 licensed firearm dealer that he was allowed to have firearms.

8 Where that comes from, Judge, is on January 14th of
9 2016, Mr. Hager went to the Sparks Police Department. He met
10 with Joanna Bellamy, who is an evidence tech. She filled out ATF
11 Form 4473. That is a form that a licensed firearm dealer would
12 fill out in giving somebody a firearm. She indicated in that
13 form that she is a licensed firearm dealer, she is aware of all
14 the State laws. In fact, she holds on to this --

15 THE COURT: Who is the "she" you're referring to?

16 MS. HICKMAN: Ms. Bellamy.

17 THE COURT: She's an evidence tech.

18 MS. HICKMAN: Judge, she signed it, but she is a
19 licensed firearm dealer. This is something that a licensed
20 firearm dealer would fill out. And she certifies by signing it:
21 I have read and understand the notices, instructions and
22 definitions on ATF Form 4473; on the basis of the statements in
23 Section A and Section C, if the transfer does not occur on the
24 day Section A was completed, my verification of the

1 identification noted in Question 20 A, and my reverification at
2 the time, if the transfer does not occur on the day Section A was
3 completed; the information in the current state laws and
4 published ordinances; it is my belief that it is not unlawful for
5 me to sell, deliver, transport or otherwise dispose of the
6 firearms listed on this form to the person identified in Section
7 A."

8 The person identified in Section A is Mr. Hager.

9 Further, this lays out what the purpose of the form is.
10 And it essentially mirrors the case law that a federal firearms
11 dealer is somebody who has the power, the knowledge, and the
12 ability to tell somebody whether or not they can or cannot have a
13 firearm.

14 Above and beyond that, Judge, there are two firearms
15 that are charged; the Winchester shotgun, the 20-gauge, and the
16 Colt 911 pistol that were in Sparks Police Department's evidence
17 room until 1-14-2016.

18 It's important to know why Mr. Hager has those after
19 the time in the charging document. He's charged with possessing
20 both of those weapons in November of 2015 up until his arrest.
21 He did not possess those weapons during the entire period of time
22 that was charged. So I think that that is also relevant for that
23 reason.

24 The other witness that we could call to support that

1 position is Lori Renfro. She is the evidence tech from the
2 Nevada Department of Public Safety. She had some of Mr. Hager's
3 firearms that were taken upon his arrest when he was placed into
4 Mental Health Court.

5 She called Mr. Hager and told him he could come pick up
6 his guns. And that was done with the permission of the district
7 attorney that prosecuted him in that case. He asked that those
8 guns be retained until August 26, 2015. She did retain them
9 until August 26, 2015. She called him, told him it was time to
10 come pick them up. And he picked them up on August 28, 2015.

11 That's also important because the State showed pictures
12 of the Bushmaster that he took pictures of on August 28, 2015,
13 the exact day he picked them up from the Nevada Highway Patrol.

14 I think that goes directly to him relying on the advice
15 of that evidence tech and the district attorney who signed the
16 form giving those back to him after he had completed Mental
17 Health Court, after that district attorney's office, in fact,
18 prosecuted him for what the State is saying is an adjudication as
19 he is mentally ill.

20 So for those reasons I do think that we are entitled to
21 the defense. I think that we are entitled to present the
22 evidence of it. I think that we are entitled to the jury
23 instruction on it.

24 THE COURT: I followed your argument related to Sparks.

1 What was your argument related the highway -- how is the highway
2 patrolman a government agent to which he's compelled to rely
3 pursuant to the federal law you cited?

4 MS. HICKMAN: Because she didn't release it until she
5 had permission from the district attorney who prosecuted it.

6 THE COURT: All right. Anything else?

7 MS. HICKMAN: No.

8 THE COURT: Mr. Prengaman.

9 MR. PRENGAMAN: Your Honor, even assuming what has been
10 said, that doesn't make out to defense. The defense is that an
11 authorized government official empowered to render the claimed
12 erroneous advice, which none of these folks are.

13 And I would like an opportunity to read the Tallmadge
14 case. What I suspect it says is that the firearms dealer gave
15 specific representation that it was legal to possess those
16 firearms to the defendant, unlike this case.

17 So first of all, they can't show an authorized
18 government official is empowered to render the claimed erroneous
19 advice; empowered to tell the defendant you are legally able to
20 possess these firearms.

21 And secondly, they have to be made aware of all of the
22 relevant historical facts. Now in this case the defendant
23 reported on his form that he filled out -- if we even want to get
24 to that -- but he filled out on that form that he has never been

1 declared having a mental defect and he represented that he was
2 not an addict or the user of controlled substances on that form.

3 Then number three, the third element: Affirmatively
4 told him. So not just I inferred from it, if it was illegal for
5 me to possess it, why did they give it back to me. But
6 affirmatively told him the prescribed conduct was permissible.
7 That's absent here. Nobody has represented to him or told him
8 that he is legally entitled to possess those firearms.

9 That he relied on the false information that's absent
10 from the proffer. In fact, the -- it's not even clear if the
11 D.A. did tell something to the evidence clerk, which again would
12 be at best, "release the firearms," not, "Hey, Mr. Defendant, I'm
13 the district attorney and I'm telling you it's legal to possess
14 those," which is what's required. There's not even -- absent
15 from the proffer -- any evidence that the defendant knew about
16 that or heard it or had it, and that his reliance was reasonable.
17 And that is absolutely absent.

18 This proffer, in order to -- so it fails for those
19 previous elements. Every one of them, I would submit. But also
20 the proffer completely absent is the defendant's reliance: I
21 relied on this, I heard this, this was in my awareness; that's
22 absent from the proffer, particularly as to the district
23 attorney, that he even knew that that representation was made.
24 But even if that was made, that is insufficient. So he has not

1 made out, that proffer is insufficient.

2 Again, "reasonable." That would be that a Sparks
3 evidence clerk is actually a licensed firearm dealer. You would
4 have to believe that, it would have to be reasonable. They have
5 not proffered evidence that she was in fact one or any evidence
6 about the overall circumstances of going to the Sparks Police
7 Department, and the reasonableness of believing, even if she
8 signed off on the form saying, you know, I acknowledge that he
9 filled it out, but it was reasonable for him to believe that they
10 were engaging in -- that the Sparks Police Department is a
11 licensed firearm dealer and giving him that advice.

12 So unless the Court wants me to address anything
13 specific.

14 THE COURT: Just make your record as you see fit.

15 MR. PRENGAMAN: I would submit they have failed to make
16 out each element.

17 THE COURT: The last word.

18 MS. HICKMAN: Thank you, Judge. Just briefly.

19 The case law is in direct opposition to what the State
20 said as to the first prong that we have to show. A licensed
21 firearm dealer is a government agent who he can rely on their
22 information. Ms. Bellamy did hold herself out to be a licensed
23 firearm dealer. She signed a form as to that.

24 Second, as to all the relevant historical facts, the

1 State provided in discovery all of the relevant facts that
2 Ms. Bellamy, in fact, relied on. She has a copy of the petition
3 and order of dismissal and discharge and setting aside a
4 conviction. She was given that, and she was made aware of that
5 fact.

6 She has Mr. Hager's DUI conviction. She got that from
7 Reno Municipal Court. In fact, she delayed giving him his
8 firearms back for over a month while she investigated his
9 criminal history to determine whether or not she could give those
10 firearms back.

11 THE COURT: So if I'm correct, if I'm going to allow
12 you to present that defense, you're going to allow all the
13 various doors to be opened, including prior DUI convictions, and
14 that sort of thing.

15 MS. HICKMAN: Yes.

16 THE COURT: I just a want to make sure.

17 MS. HICKMAN: I don't have an objection to that. He
18 was convicted of the--

19 THE COURT: Well, you wouldn't get to object to it. I
20 just want to make sure that that is your understanding of what
21 you're requesting.

22 MS. HICKMAN: In fact, Ms. Bellamy sends fax letters to
23 all the various courts investigating his prior criminal history.
24 "May I please get a copy of the old CCW permit for Ian Hager,"

1 with his date of birth. "He's trying to get his firearm back
2 from our evidence section, but he had a domestic battery charge
3 from 2004 that we can't get a dispo for. He claims he was issued
4 a CCW after 2004, but it was revoked in 2009 for a DUI.

5 "I'm assuming if he was issued a CCW after the
6 domestic, that it was pled down to disturbing the peace like he
7 claims. Thank you."

8 This is enough for a proffer to show that him and her
9 had a conversation as to his criminal history, what was going on
10 in his life, as to whether or not he would be allowed to own a
11 firearm. And a month later she called him and says, "Yes, you
12 can come pick up your firearms." And he picks up two of the ones
13 that are charged here today.

14 Third, was it reasonable for him to rely on that.
15 Well, U.S. versus Batterjee, which is 361 F3d 1210, specifically
16 says it was reasonable for Mr. Batterjee to rely on the
17 information provided by the licensee in Form 4473, which is the
18 same form that Mr. Hager filled out with Ms. Bellamy that then
19 she investigated and gave him his firearms back.

20 As to whether or not it was an affirmative
21 representation: In this case, Batterjee, the issue was whether
22 he could have a firearm as an illegal immigrant. And the firearm
23 tech didn't know that the law had been changed. The form didn't
24 reflect that the law had changed. So no one said to him, you

1 know, as somebody who the law has changed, I'm still saying that
2 you can have it, but they're saying that it was reasonable and
3 that she told him he could have that firearm, and he took it from
4 her. It was reasonable for him to rely on it, and he should have
5 gotten the entrapment by estoppel defense.

6 As to the fourth. He obviously relied on that
7 information, because he took his guns from them. He's not hiding
8 them. He's telling the cops you won't finding anything you're
9 not supposed to find in my house. He's posting pictures on his
10 Facebook page, which are public for everybody. Obviously he
11 relied on the fact that he's allowed to have a firearm.

12 And was it reasonable? Yes. It was absolutely
13 reasonable when a licensed firearm dealer from the Sparks Police
14 Department says to you: I am giving you back four firearms,
15 after I've investigated your criminal history; I know about your
16 case out of Humboldt County, because I have the petition and
17 order setting it aside; I know about your domestic battery
18 arrest; I know about your DUI. I know all those things. Here
19 are your firearms.

20 It's also reasonable for him to rely on the information
21 from Ms. Renfro from NHP, who told him he can't have his guns
22 back until the district attorney releases those. The district
23 attorney who prosecuted him, who in fact was there when he went
24 into Mental Health Court, whose office said we recommend he go

1 into Mental Health Court, after he completed that, saying, yes,
2 you can release those guns to him, which is the Bushmaster and
3 the Sig Sauer that's sitting here today, that he's charged with
4 being unlawful person in possession of. So I think we have met
5 the standard to be able to show that evidence to the jury.

6 THE COURT: Submitted?

7 MS. HICKMAN: Yes.

8 THE COURT: I agree. You may put on that defense. It
9 still remains to be seen whether or not you get a jury
10 instruction. And, Mr. Prengaman, you may cross-examine as you
11 deem fit. But I'm allowing that defense. You made a proffer.
12 And I accepted it.

13 All right. How much time do you need for your opening?

14 MS. HICKMAN: It's going to be a short --

15 THE COURT: I mean, do you need some time now to
16 regroup for a second?

17 MS. HICKMAN: I do, Judge. I just have a couple of
18 issues that I want to make the Court aware of.

19 THE COURT: Oh, all right.

20 MS. HICKMAN: I have two witnesses here today of the
21 five that I'd like to call. The other three are available at
22 10:00 a.m. tomorrow morning.

23 THE COURT: Good.

24 MS. HICKMAN: I'll do my opening, and we will call

1 those two.

2 THE COURT: Sounds great.

3 MS. HICKMAN: Okay. Thank you.

4 MR. PRENGAMAN: Your Honor, if the defendant is not
5 going to testify to lay the foundation for all of that, I'm going
6 to object.

7 THE COURT: Don't -- don't -- you --

8 MR. PRENGAMAN: My position is that the only thing that
9 makes any of this relevant is the defendant saying I got these
10 representations.

11 THE COURT: I understand. You can make any record you
12 want, but I'm really clear on why I made my ruling, what needs to
13 be shown. Your arguments were very well taken. I understand
14 your position. And the defense will have to do what they have to
15 do or they're not going to be able to get their instruction.

16 So everybody knows that. And I appreciate that. They
17 can elect at the appropriate time if the defendant testifies or
18 if he doesn't. You know, I'm very sensitive to the record.

19 That have being said, do you need time to regroup for
20 your opening?

21 MS. HICKMAN: Can I have maybe 20 minutes?

22 THE COURT: 20?

23 MS. HICKMAN: 15? I was going to ask for 45.

24 THE COURT: You were going to ask for how much?

1 MS. HICKMAN: 45, so then I cut it over in half to 20.

2 THE COURT: No. Time out. How much time do you need
3 now to be ready to give your opening?

4 MS. HICKMAN: 20 minutes.

5 THE COURT: You need 20 minutes to collect your thoughts?

6 MS. HICKMAN: Right. And speak to my witnesses.

7 THE COURT: I'm not going to preclude, necessarily,
8 your timing on your opening.

9 MS. HICKMAN: Right.

10 THE COURT: Use your discretion on how much time you
11 need for your opening. I just need to know now how long I need
12 to keep the jury out before you're ready to --

13 MS. HICKMAN: 20 minutes.

14 THE COURT: 20 minutes is good.

15 MS. HICKMAN: Thank you.

16 THE COURT: See you back here at ten of.

17 (Recess taken.)

18 THE COURT: We're back on the record in CR16-1457,
19 State versus Ian Andre Hager. The defense is present, so is the
20 defendant and the prosecutor, as well as our jurors. Thank for
21 your patience. It's now time for the defense.

22 Ms. Hickman, will you be making an opening statement
23 and presenting a defense?

24 MS. HICKMAN: I would, Judge. Thank you.

1 THE COURT: All right. Let's hear your opening
2 statement now.

3 MS. HICKMAN: Thank you.

4 Ladies and gentlemen, it's now our turn to show you
5 what we believe this case is about. Now what this case is about
6 is about a person, Mr. Hager, who, in 2013 was dealing with some
7 significant demons in his life. And he was able, through the
8 Washoe County Mental Health Court, to receive treatment for those
9 demons and to move past them into his life.

10 What you're going to hear is that he was placed in
11 Mental Health Court. He went through Mental Health Court. And
12 he successfully completed it approximately a year after he was
13 placed into that court. Now, when he was able to successfully to
14 complete Mental Health Court, his case was dismissed and his
15 conviction was set aside. And once Mr. Hager was able to
16 successfully complete Mental Health Court, he continued to live
17 in Sparks at his home on Anqua, and he continued to go forward
18 with his life as it was prior to when he went into Mental Health
19 Court.

20 He lived alone in that home. His life was not easy.
21 He struggled with some of the demons that he continued to have,
22 but Mr. Hager was doing what he could to move forward with his
23 life. You're going to hear testimony from police officers from
24 the Sparks Police Department who had contact with Mr. Hager

1 throughout 2015. And those officers made contact with him at his
2 home. You're going to hear that they never suspected that he was
3 using methamphetamine, they never saw any drug paraphernalia, and
4 they never wrote any reports indicating that there was any
5 evidence that at those times Mr. Hager was actively using
6 methamphetamine.

7 You're also going to hear that on August 28th of 2015,
8 an evidence technician from the Division -- the Nevada Division
9 of Public Safety got in touch with Mr. Hager and returned
10 firearms to him. And she returned firearms to him after he
11 successfully completed Mental Health Court.

12 It's significant, because it's two of the firearms that
13 Mr. Hager is charged with possessing. First, was the Bushmaster,
14 which you've heard testimony about, and which you saw a picture
15 of Mr. Hager posted on his Facebook page on August 28, 2015. The
16 same day that those firearms were returned to him from the Nevada
17 Highway Patrol.

18 You're also going to hear that the technician from the
19 Nevada Highway Patrol returned a Sig Sauer pistol to him on that
20 day. Those firearms were both collected from Mr. Hager at the
21 time he was placed into Mental Health Court, and that they were
22 both returned to him upon the successful completion of Mental
23 Health Court.

24 You're also going to hear that prior to those firearms

1 being returned to him, police officers from the Sparks Police
2 Department, specifically Detective Edmonson, collected from
3 Mr. Hager a Colt 1911 and a black Remington firearm. The Colt
4 1911 is one that you've seen, you've seen photos of, and it's one
5 of the firearms that Mr. Hager is charged with possessing in this
6 case.

7 You're also going to hear that on August 20th of 2015,
8 eight days before Nevada Highway Patrol returned Mr. Hager's
9 firearms to him, Officer Raker, from the Sparks Police Department
10 collected a 20-gauge shotgun from Mr. Hager. That 20-gauge
11 shotgun is one of the firearms that he is charged with possessing
12 in this case.

13 You're going to hear that two and a half months into
14 the time that is charged in this case -- remember the State has
15 alleged that he possessed these firearms beginning in November of
16 2015 up until April of 2016. You're going to hear that in
17 January, specifically January 14th of 2016, an evidence
18 technician from the Sparks Police Department returned two of the
19 firearms that Mr. Hager is charged with to him.

20 Specifically, he was returned the Winchester that had
21 been previously collected, as well as that Colt 1911, which had
22 previously been taken from him earlier in the year. That
23 evidence technician also gave to Mr. Hager two other firearms.
24 That was in January of 2016. That was after Mr. Hager had

1 because you're going to tell me your first and your last name,
2 spelling your last name for the record.

3 THE WITNESS: Jason Edmonson, E-D-M-O-N-S-O-N.

4 THE COURT: Thank you.

5 Ms. Hickman.

6 MS. HICKMAN: Thank you.

7 JASON EDMONSON,
8 called as a witness herein,
9 being first duly sworn, was examined
10 and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. HICKMAN:

13 Q Detective Edmonson, how are you employed?

14 A I am a sergeant with the Sparks Police Department.

15 Q Sorry. Sergeant.

16 A That's all right.

17 Q And how long have you been employed with the Sparks
18 Police Department?

19 A Since 2002.

20 Q How long have you been a sergeant?

21 A Since April 1st of 2016.

22 Q Okay. Were you working in your capacity at the Sparks
23 Police Department March 6th of 2015?

24 A I was.

1 Q And on that date did you have the occasion to come into
2 contact with somebody by the name of Ian Hager?

3 A Yes, I did.

4 Q Do you see that person sitting in the courtroom?

5 A Yes, ma'am.

6 Q Can you please point to him and let us know something
7 he's wearing to identify him.

8 A Gentleman at the table over here with the blue shirt
9 and the gray tie.

10 Q And Sargeant Edmonson, where did you have contact with
11 Mr. Hager?

12 A It was at his residence on Anqua.

13 Q And when you responded there, were you able to visually
14 see Mr. Hager?

15 A For a short period of time, yes, ma'am.

16 Q And for that short period of time, did you observe
17 anything about him that would indicate to you that he was under
18 the influence of methamphetamine?

19 MR. PRENGAMAN: Objection. Foundation.

20 THE COURT: Sustained.

21 BY MS. HICKMAN:

22 Q Sergeant Edmonson, in your time as a police officer,
23 have you had training and experience to recognize controlled
24 substances?

1 A Yes, ma'am.

2 Q And have you had the opportunity to have training and
3 experience in recognizing people that are under the influence of
4 a controlled substance?

5 A Yes, ma'am.

6 Q And what does that training and both experience consist
7 of?

8 A Depends on the nature of the extent of the training,
9 but it encompasses observations, signs, symptoms, simply as how
10 somebody's mannerisms, how somebody talks, how somebody walks,
11 the effects of those narcotics on the body.

12 Q Okay. In those 14 years have you had the ability to
13 observe multiple people who are under the influence of a
14 controlled substance?

15 A Yes, ma'am.

16 Q How about specifically methamphetamine?

17 A I have, yes.

18 Q Would you be able to estimate how many people you've
19 seen under the influence of methamphetamine?

20 A Roughly 100.

21 Q Maybe about 100?

22 A As an estimate, yes.

23 Q Do you feel that you're able to observe somebody and at
24 least have a suspicion as to whether or not they're under the

1 influence?

2 A I believe I could, yes, ma'am.

3 Q So when you saw Mr. Hager in March of 2015, did you
4 have a suspicion that he was under the influence of anything,
5 anything involving controlled substances?

6 A Controlled substances specifically?

7 Q Yes.

8 A No.

9 Q Because there was some suspicion that he'd been
10 drinking, right?

11 A Correct.

12 Q He had been consuming alcohol?

13 A Yes, ma'am.

14 Q So when we're talking about controlled substances, if
15 you didn't have a suspicion that he was under the influence of a
16 controlled substance, you didn't have any suspicion that he was
17 specifically under the influence of methamphetamine?

18 A No, ma'am.

19 Q And your involvement in that contact was fairly small?

20 A Correct.

21 Q Did you have the opportunity to collect any firearms?

22 A Yes, I did.

23 Q And who did you collect those from?

24 A From Detective Ken Gallop.

1 Q And who is that?

2 A He, at the time, was a detective assigned to General
3 Detective Bureau within our department.

4 Q I'm sorry. I didn't here the last part.

5 A General Detective Bureau within our department.

6 Q So he was somebody you worked with?

7 A Yes, ma'am.

8 Q And to the best your knowledge those weren't Detective
9 Gallop's firearms, correct?

10 A No.

11 Q Do you know where he got those from?

12 MR. PRENGAMAN: Objection. Personal knowledge.

13 MS. HICKMAN: I'm sorry?

14 MR. PRENGAMAN: Personal knowledge.

15 THE COURT: Well, the question is "does he know where
16 Detective Gallop got them.

17 MR. PRENGAMAN: And hearsay, if he didn't observe.

18 THE COURT: I'll allow the question. Go ahead.

19 THE WITNESS: I'm sorry. Could you repeat --

20 MS. HICKMAN:

21 Q Do you know where Detective Gallop got those firearms
22 from?

23 A He had told me he had gotten them from Mr. Hager.

24 MR. PRENGAMAN: Objection. Hearsay. Move to strike.

1 THE COURT: Granted. That is hearsay without an
2 exception.

3 Ladies and gentlemen, I just struck some evidence.
4 You're not to consider that answer.

5 Thank you. Go ahead.

6 BY MS. HICKMAN:

7 Q You collected firearms?

8 A Yes, ma'am.

9 Q Where did you collect those from? Not the person, but
10 where?

11 A At the residence on Anqua. I don't recall the numbers.

12 Q If you looked at the chain of custody that you filled
13 out, would that help refresh your recollection?

14 A Yes, ma'am.

15 MS. HICKMAN: If I may approach.

16 THE COURT: You may.

17 BY MS. HICKMAN:

18 Q I'm showing you the chain of custody for the Sparks
19 Police Department Property and Evidence. Do you recognize that?

20 A Yes, ma'am.

21 Q And does looking at that help refresh your recollection
22 as to what the actual address was?

23 A Yes, ma'am.

24 Q What was that address?

1 A 2460 Anqua.

2 Q And do you know who's home that was?

3 A I believe it was Mr. Hager's home.

4 Q And you collected -- well, what did you collect?

5 A There was one handgun in a black case, and then one
6 shotgun, and some ammunition for both.

7 Q Do you remember any specifics about those or would you
8 need to again look at that chain of custody form to help remember
9 what they were?

10 A I recall that the handgun was a chrome or silver 1911-
11 style handgun and the other one I believe was a Remington
12 shotgun.

13 Q And when we're talking about that 1911-style handgun
14 would that be a Colt 1911?

15 A Yes, ma'am.

16 Q Okay. Did you mark the serial number of that firearm
17 when you were able to collect it?

18 A Yes, ma'am.

19 Q And if I show you -- do you remember what that is?

20 A I do not remember the serial number, no, ma'am.

21 Q If I showed you that form again would that refresh your
22 recollection as to what that is?

23 I'm showing you the same form, that chain of custody
24 form. Does that help refresh your recollection?

1 A It does.

2 Q Is the serial number written on there?

3 A It is.

4 MS. HICKMAN: Judge, I would ask that he just read it
5 from that, instead of him looking at it and trying to remember
6 it.

7 THE COURT: Do you have any objection to that process?

8 MR. PRENGAMAN: No, Your Honor.

9 THE COURT: Certainly. Go right ahead.

10 THE DEFENDANT: The serial number is 2750016.

11 BY MS. HICKMAN:

12 Q And is there a serial number for the Remington that you
13 collected?

14 A Yes, ma'am.

15 Q What is that?

16 A It is RS52388H.

17 Q Thank you. And Detective Edmonson, after you collected
18 the firearms, what did you do with them?

19 A I took them to the Sparks Police Department, and I
20 booked them into the evidence section.

21 Q And what does it mean to book something into the
22 evidence section?

23 A It means to take whatever evidence we have, properly
24 package it, identify it with the serial number and whatever

1 identifying marks. And then fill out the chain of custody form
2 that you were showing me. And then place it in a secure locker,
3 and then close it. And then take that paperwork, give a copy of
4 the paperwork to the evidence technicians. And then also write
5 it in a log book, or a second later of redundancy. And then take
6 another copy and submit it to the officer who does the original
7 case.

8 Q And you did all those things in this case?

9 A Yes, ma'am.

10 Q Are you aware of how somebody would get their property
11 back out of evidence?

12 A I know there are a couple of ways of doing it.

13 Q Do you personally know that?

14 A I have never personally released evidence to an
15 individual.

16 Q Okay. Then I'm not going to ask you those questions.
17 Thank you.

18 MS. HICKMAN: I have no further questions of this
19 witness. Thank you.

20 THE COURT: Thank you.

21 Cross-examination.

22 CROSS-EXAMINATION

23 BY MR. PRENGAMAN:

24 Q Sergeant, you were asked about your contacts with Ian

1 Hager back on April 6th. Now, you said you had limited contact.

2 About how long did you have in-person contact with Mr. Hager?

3 A Probably -- if I had to estimate, probably five minutes
4 or so.

5 Q Okay. And did you interact with him, speak to him?

6 A Very little.

7 Q Was somebody else interacting with him other than you?

8 A Yes, there was somebody else.

9 Q And what was your role? Were you the primary
10 investigator in this particular situation?

11 A No.

12 Q Were you -- as you were standing by, were you assessing
13 Mr. Hager to determine for yourself whether he was under the
14 influence of a controlled substance.

15 A Yes. I was just there making sure that everybody else
16 in the house was safe.

17 Q Okay.

18 A Yes, sir.

19 Q But in terms of what -- you were asked some questions
20 about whether you saw evidence that he was under the influence of
21 controlled substances --

22 A Yes.

23 Q -- specifically methamphetamine. Do you recall those
24 questions?

1 A Yes.

2 Q What I'm getting at is as you were -- so you were there
3 sort of a security role?

4 A Yes, sir.

5 Q In the five or so minutes that you had visual contact
6 with Mr. Hager, were you conducting, going through the steps you
7 would to determine hey is this guy under the influence of a
8 controlled substance?

9 A Yeah, that was crossing my mind.

10 Q For your safety?

11 A Yes, sir.

12 Q You said there was concern that he was under the
13 influence of alcohol?

14 A Yes, sir.

15 Q Was there -- was he evidencing signs of impairment?

16 A Yes.

17 Q And are you telling us that based on what you saw, you
18 don't believe he was under the influence of methamphetamine? Is
19 that what you're saying?

20 A I guess that wasn't my -- I noticed the impairment from
21 the alcohol primarily.

22 Q And so, I just want to clarify -- and I just want to
23 clarify the nature of what you saw. I mean, are you telling us
24 that he was not under the influence or methamphetamine or are you

1 telling us he looked like he was under the influence of alcohol
2 and he may or may not have been under the influence of something
3 else?

4 A That's a correct assessment, as far as being under the
5 influence of alcohol and unknown any other substances, yes, sir.

6 Q And then with the regard to the -- when you say you got
7 the firearm -- just to kind of clarify how things happened, when
8 you say you got these firearms that you booked into evidence from
9 Detective Gallop, where were you when you obtained them from
10 Gallop?

11 A Just right in the -- either right in the doorway or
12 just outside on the steps of the front door.

13 Q Okay. Did you have any other -- did you have any other
14 involvement as far as those firearms or further contact with
15 Mr. Hager?

16 A No, sir. Just booked the firearms, and then that was
17 it.

18 MR. PRENGAMAN: Thank you. No further questions.

19 THE COURT: Thank you.

20 Ms. Hickman?

21 MS. HICKMAN: No, thank you.

22 THE COURT: Thank you. You're excused. Thank you for
23 your testimony. You may step down.

24 Call your next witness.

1 MS. FLAVIN: Officer Raker, Your Honor.

2 THE COURT: All right.

3 Please step forward and be sworn. You're going to
4 follow him and raise your right hand.

5 (Witness sworn.)

6 THE COURT: Please take the witness stand right over
7 here. Make yourself comfortable. I'm going to know you're
8 comfortable because you're going to tell me your first and your
9 last name, spelling your last name for the record.

10 THE WITNESS: I'm Matthew Raker, R-A-K-E-R.

11 THE COURT: Thank you.

12 Ms. Flavin.

13 MATTHEW RAKER,
14 called as a witness herein,
15 being first duly sworn, was examined
16 and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. FLAVIN:

19 Q Officer Raker, how are you employed?

20 A I'm a police officer with the City of Sparks.

21 Q How long have you been employed there?

22 A Little over ten years.

23 Q And are you a patrol officer?

24 A I'm currently assigned as a motor officer to the

1 traffic division.

2 Q What do those duties entail?

3 A Primarily accident enforcement and accident
4 investigation.

5 Q Have you been trained to recognize when someone is
6 under the influence of a controlled substance?

7 A Yes, ma'am.

8 Q And what have you been trained to recognize?

9 A We've been through DUI training, primarily for alcohol.
10 In terms of drug recognition, I've not been through the DRE
11 school.

12 Q And so although you've not been through DRE school, are
13 there -- on a DUI stop say, if you believe of a person to be
14 under the influence a controlled substance, what symptoms would
15 you be looking for?

16 A In terms of a DUI stop it would be their level of
17 impairment. And that goes to the field sobriety tests, as to how
18 we determine whether or not they're impaired.

19 Q What would you look for as far as impairment?

20 A Well, again, since my training in that is primarily
21 towards DUI enforcement, it would be any of the signs or symptoms
22 demonstrated by the field sobriety tests; the horizontal gaze
23 nystagmus or the walk-and-turn test or the one-leg stand.

24 Q And would that primarily be with alcohol and not with

1 controlled substances?

2 A Controlled substances will also show levels of
3 impairment. So whether it's a balance issue or a motor skill or
4 something like that, they're just clues to the impairment.
5 Controlled substances will display those, as alcohol will.

6 Q So you may see motor issues, balance issues, those
7 types of things if someone was under the influence of a
8 controlled substance?

9 A Yes, ma'am.

10 Q Have you been trained to recognize drug paraphernalia?

11 A Yes, ma'am.

12 Q And can you tell the jury what drug paraphernalia
13 actually is.

14 A In terms of an actual definition, that's a little
15 difficult. But in terms of what we use it for, anything that
16 would be used to ingest some sort of a narcotic, whether it's
17 some sort of a smoking pipe or a hypodermic device, something of
18 that nature.

19 Q So I wanted to direct your attention to August 20th of
20 2015. Were you working on that date?

21 A Yes, ma'am.

22 Q And what shift were you working?

23 A On swing shift.

24 Q Did you arrive at a home in Sparks approximately just

1 after 6:00 p.m.?

2 A Specifically?

3 Q Do you recall around that time in the evening?

4 A Swing shift is a very busy shift. So I'm sure I was
5 somewhere at that point.

6 Q Do you recall making contact with Ian Hager?

7 A I do.

8 Q And do you see him today in the courtroom?

9 A Yes, I do.

10 Q Can you identify where he's seated and what he's
11 wearing?

12 A He's the gentleman in the blue shirt at the defendant
13 table.

14 MS. FLAVIN: Your Honor, will the record so reflect
15 identification?

16 THE COURT. It will.

17 BY MS. FLAVIN:

18 Q To the best of your knowledge the home that you -- that
19 you made contact with Mr. Hager, that was his home; is that
20 correct?

21 A Correct.

22 Q Did you have an opportunity to see Mr. Hager walk?

23 A He exited the home, yes.

24 Q So did you also have the opportunity to hear Mr. Hager

1 speak?

2 A Yes, ma'am.

3 Q And so were you able to make any observations
4 specifically about his motor skills or his balance?

5 A Specifically his motor skills, I didn't make any
6 notation in my report. To be honest with you, my exact
7 recollection is a little bit vague, so I'm going off what my
8 report was, because this was, you know, over a year ago.

9 But I did note in my report that he had signs that it
10 appeared that he was intoxicated.

11 Q Intoxicated with?

12 A Alcohol.

13 Q But your report did not make any mention as far as
14 being under the influence of a controlled substance; is that
15 correct?

16 A Correct.

17 Q And did you make any observations as far as any drug
18 paraphernalia?

19 A Not at that time, no. My contact with Mr. Hager was
20 outside of the residence.

21 Q It was outside of the residence, so you didn't have an
22 opportunity to walk anywhere inside the residence?

23 A I did not go inside his home, no.

24 Q Were you the officer that booked certain items into

1 evidence that day?

2 A We did book a shotgun and five shotgun shells,
3 ammunition.

4 Q And what was the shotgun that was booked?

5 A I don't honestly remember the make of it. It was a
6 20-gauge. I would have to look at the evidence tag to see what
7 it specifically was.

8 Q Did you fill out a chain of custody form?

9 A I believe so, yes.

10 Q Would looking at that form refresh your recollection?

11 A It would.

12 Q Would you like to take a look?

13 A Yes, I would.

14 MS. FLAVIN: Your Honor, may I approach?

15 THE COURT: You may.

16 BY MS. FLAVIN:

17 Q I'm handing you a copy of the change of custody form
18 that you filled out.

19 A And I booked a Winchester 20-gauge shotgun Model 120.

20 Q Thank you.

21 Officer, did Mr. Hager allow you to take that Winchester?

22 A Yes, ma'am.

23 Q And after you departed with the Winchester, Mr. Hager
24 remained in the home after officers left?

1 A Yes, ma'am.

2 MS. FLAVIN: Thank you.

3 THE COURT: Cross-examination?

4 MR. PRENGAMAN: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. PRENGAMAN:

7 Q Good afternoon.

8 A Good afternoon.

9 Q Why was the gun taken from Mr. Hager that day?

10 MS. FLAVIN: Objection, Your Honor.

11 THE COURT: Overruled.

12 MS. FLAVIN: Your Honor, may I approach?

13 THE COURT: All right.

14 (Conference at the bench, not reported.)

15 THE COURT: You may continue.

16 BY MR. PRENGAMAN:

17 Q Why was the gun taken from Mr. Hager that day?

18 A We responded to the home regarding a suicidal subject
19 that was reported by Detective Gallop. Based on statements he
20 made in conversation with Detective Gallop, as well as with
21 Sergeant Leary, we decided if that he was willing to let us take
22 the firearm for safekeeping it would be in his best interest, so
23 he wouldn't harm himself.

24 Q And when you were at the residence, it sounds like you

1 had an opportunity to observe the defendant; is that right?

2 A That's correct.

3 Q How would you describe his demeanor? How was he
4 acting?

5 A At the time of our contact with him, he was very
6 visibly upset, he was crying, did appear to be under the
7 influence of alcohol.

8 Q You were asked some questions -- and so who else was
9 present besides yourself?

10 A I know Sergeant Leary was present. There were other
11 patrol officers, specifically I couldn't recall.

12 Q Okay. Can you just give us an idea of what happened.
13 So when you arrived were other people there or were you the first
14 one on the scene, so to speak? Or describe your role and how
15 that unfolded.

16 A This would be to the best of my recollection, but as I
17 remember it, is there were several units in the area. We have
18 had history with Mr. Hager, and so we didn't immediately approach
19 the house. Sergeant Leary, who has had contact with Mr. Hager
20 was able to contact him by text and by phone, and kind of
21 gathered more information as to how he was doing that night.

22 And through that conversation Sergeant Leary was able
23 to get Mr. Hager to come outside to meet us, as opposed to us
24 approach the house.

1 Q Were you privy to those conversations that were had? I
2 mean, were you there to listen to them, to hear them with your
3 own ears?

4 A Just what I could overhear from Sergeant Leary's side
5 of the conversation.

6 Q Okay. And in terms of demeanor, you said he was upset,
7 appeared to be intoxicated. Did -- it doesn't sound like you --
8 you didn't -- let me ask it this way: It doesn't sound like you
9 did any type of specific assessment upon Mr. Hager for
10 intoxication of alcohol or controlled substances?

11 A Correct. There weren't any specific tests or anything
12 like that done.

13 Q Was that your purpose for being there?

14 A To test for intoxication? No.

15 Q Yes, exactly. I mean, was one of the reasons you were
16 there or one of your duties or something you did while you were
17 at the scene to assess Mr. Hager and kind of determine for
18 yourself whether he was under the influence of alcohol or
19 controlled substances or both?

20 A That was not why we were intentionally there.

21 Q So when the defendant's lawyer was asking you about if
22 you saw any indication of controlled substance use, would it be
23 fair to say that he may have been under the influence of a
24 controlled substance or have used one or may not, you just don't

1 know?

2 A Don't know.

3 Q He appeared intoxicated by alcohol at least?

4 A Correct.

5 Q And correct me if I'm wrong, isn't it accurate that
6 there are some signs and symptoms of controlled substance
7 intoxication that sort of overlap with alcohol intoxication?

8 A Yes, sir.

9 Q So it's not always clear, just from visually looking at
10 someone and seeing how they're acting, whether it's alcohol or
11 controlled substances or a mixture?

12 A Correct, sir.

13 Q So you didn't go in the house, you didn't have an
14 opportunity to look for paraphernalia, controlled substances, or
15 anything like that?

16 A No, sir.

17 Q And so he was -- was Mr. Hager placed under arrest that
18 day for any crime?

19 A No, sir.

20 Q So the weapon that was taken was collected why?

21 A It was primarily due to the nature of the call and some
22 statements that he had made to Detective Gallop and Sergeant
23 Leary gave us some concern of suicidal ideation. And then with
24 his appearing to be intoxicated, if we removed the weapon,

1 removed a mechanism of him possibly harming himself.

2 Q Okay. Thank you, Officer.

3 MR. PRENGAMAN: No further questions.

4 THE COURT: Redirect?

5 MS. FLAVIN: Yes, please Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. FLAVIN:

8 Q So Officer Raker, you booked evidence on that evening;
9 is that right?

10 A Yes, ma'am.

11 Q If paraphernalia was found in the room or -- I'm sorry,
12 in the home by another officer, you would have been the one to
13 book it?

14 A I was the primary case agent. If it were removed from
15 the residence in terms of a crime being charged, then it would
16 fall into something that I would have booked, depending on what
17 court it's going to. Different courts require different things
18 with paraphernalia.

19 Q But under any circumstance that evening you did not
20 book anything other than the firearm?

21 A And the five shotgun shells.

22 Q And the gun shells. And you -- again, did you make any
23 notation in your report as far as being under the influence of a
24 controlled substance?

1 A Not specifically.

2 Q And did you feel that FSTs needed to be done when you
3 were there?

4 A FSTs would typically only be done in terms of a DUI.

5 Q Did you believe that any sort of testing to see if he
6 was under the influence was done or needed to be done?

7 A Not at the time, no.

8 Q And when you left the home that evening, Mr. Hager was
9 left at his residence?

10 A Correct.

11 Q And you overheard a conversation -- or I'm sorry, you
12 said you overheard a conversation with Sergeant Leary?

13 A Between --

14 Q Is that -- you overheard -- did you overhear --

15 A I was present when Sergeant Leary was on the phone with
16 Mr. Hager, and what I could overhear from that conversation.

17 Q And did they conclude that Mr. Hager was not genuinely
18 suicidal?

19 A That was Sergeant Leary's assessment.

20 Q And that was one of the reasons or the reason why
21 Mr. Hager was left at his residence?

22 A Correct.

23 MS. FLAVIN: Thank you.

24 THE COURT: Anything on recross?

1 MR. PRENGAMAN: Just briefly, Your Honor.

2 RE-CROSS-EXAMINATION

3 BY MR. PRENGAMAN:

4 Q Officer, in terms of whether you booked any
5 paraphernalia, did -- while you were there or to your knowledge
6 from being there, did the Sparks Police Department search the
7 defendant's house for drugs and drug paraphernalia that night?

8 A That was not the intention to enter the home. It was
9 to retrieve the firearm.

10 Q Okay. Who went into the home?

11 A To be honest, I don't know.

12 Q Okay. So you don't know what they did; if they went in
13 the entryway, if they followed Mr. Hager to get the gun. You
14 have no clue what anyone did inside the residence?

15 A Not inside the residence. I know that Mr. Hager stayed
16 outside with us.

17 Q Did Mr. Hager give some direction to -- who went in to
18 locate the gun?

19 A I don't --

20 Q You don't remember. Okay.

21 A I stayed outside.

22 Q If it happened -- I mean, if it happened, did you hear
23 Mr. Hager, like, give direction of where to go to get the gun?

24 A That I don't specifically recall.

1 Q Okay. Thank you very much.

2 MR. PRENGAMAN: No further questions.

3 THE COURT: Thank you. You're excused. Thank you for
4 your testimony. You may step down.

5 My understanding, Ms. Hickman, is that this is the only
6 witness you have lined up for today. Is that correct?

7 MS. HICKMAN: That is correct.

8 THE COURT: You have some other witnesses for tomorrow?

9 MS. HICKMAN: Yes.

10 THE COURT: Very good.

11 Ladies and gentlemen, it's a good time for us to take
12 our evening recess. As you've heard, Ms. Hickman will have some
13 other witnesses tomorrow. And as I shared with you, the good
14 news is I anticipate being done tomorrow by way of the testimony.
15 Then we're going to take a short recess for us to put all the
16 case in order for the lawyers. They'll come back and do their
17 closing argument. And hopefully you'll get the case given to you
18 tomorrow.

19 I don't put a time limit on jury deliberations. So
20 although you're going to follow my admonition about speaking with
21 your family that you're in a criminal case and nothing else, you
22 may tell them that you may be here a little bit later tomorrow,
23 depending on when we get done, because I don't put a time
24 limitation when you get the case. So I leave that to your

1 discretion when you get the case, but sometimes it helps to let
2 your family members know where you are. And so I just share that
3 were with you.

4 That being said, we're going to take our evening
5 recess. During this recess, it's your duty not to converse
6 amongst yourselves or anyone else on any subject connected with
7 the trial or to read, watch or listen to any report of or
8 commentary on the trial by any person connected with the trial,
9 or by any medium of information, including without limitation,
10 newspaper, television, Internet, smart phone, radio. You're not
11 to form or express an opinion on any subject connected with this
12 case until it is finally submitted to you.

13 Let me share with you that we are close to the end.
14 And I know I read that admonition very rapidly, but what it
15 really means is that you must keep an open mind until the case is
16 given to you. This is a very critical time, when we're close to
17 the case being over. So please don't do anything that is in
18 violation of any of the orders that I've given you, because
19 they're given to you for a reason: So everybody can have a fair
20 trial.

21 That being said, we will see you tomorrow at 10:00
22 o'clock. All rise for the jury.

23 ///

24 (The following proceedings were held outside the presence of the

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jury.)

THE COURT: All right. We're outside the presence.
Anything further from anyone?

MS. HICKMAN: No, not from me. Thank you.

THE COURT: Very good. We'll see you all back here at
10:00 o'clock. Thank you.

(Proceedings Continued to Thursday, December 15, 2016.)

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 16th day of August 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Terrence P. McCarthy, Chief Appellate Deputy,
Washoe County District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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John Reese Petty
Washoe County Public Defender's Office

IN THE SUPREME COURT OF THE STATE OF NEVADA

IAN ANDRE HAGER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Aug 16 2017 12:58 p.m.
No. 72613 Elizabeth A. Brown
Clerk of Supreme Court

Appeal from a Judgment of Conviction in Case Number CR16-1457
The Second Judicial District Court of the State of Nevada
Honorable Scott N. Freeman, District Judge

JOINT APPENDIX VOLUME THREE

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TABLE OF CONTENTS

1.	Defendant’s Jury Instruction No. 2 <u>rejected</u> on December 16, 2016	1JA 176
2.	Defendant’s Jury Instruction No. 3 <u>rejected</u> on December 16, 2016	1JA 178
3.	Information <u>filed</u> on October 5, 2016	1JA 1
4.	Judgment <u>filed</u> on February 9, 2017	1JA 185
5.	Jury Instructions (1-28) <u>filed</u> on December 16, 2016	1JA 143
6.	Motion In Limine to Preclude Irrelevant Testimony <u>filed</u> on November 21, 2016	1JA 6
7.	Notice of Appeal <u>filed</u> on March 10, 2017	1JA 187
8.	Opposition to Defendant’s “Motion in Limine to Preclude Irrelevant Testimony <u>filed</u> on December 1, 2016	1JA 10
9.	Transcript of Proceedings: Motion in Limine <i>held</i> on December 5, 2016, <u>filed</u> on December 6, 2016	1JA 18
10.	Transcript of Proceedings: Trial <i>held</i> on December 12, 2016	2JA 189
11.	Transcript of Proceedings: Trial <i>held</i> on December 13, 2016	2JA 224
12.	Transcript of Proceedings: Trial <i>held</i> on December 14, 2016	3JA 429
13.	Transcript of Proceedings: Trial <i>held</i> on December 15, 2016	4JA 631

14. Transcript of Proceedings: Trial <i>held</i> on December 16, 2016	5JA 899
15. Trial Exhibit 36 <u>admitted</u> on December 13, 2016	1JA 104
16. Trial Exhibit 38 <u>admitted</u> on December 14, 2016	1JA 110
17. Trial Exhibit 98 <u>admitted</u> on December 15, 2016	1JA 129
18. Trial Exhibit 99 <u>admitted</u> on December 15, 2016	1JA 137
19. Trial Exhibit 100-A <u>admitted</u> on December 15, 2016	1JA 141
20. Verdict (Count I) <u>filed</u> on December 19, 2016	1JA 179
21. Verdict (Count II) <u>filed</u> on December 19, 2016	1JA 180
22. Verdict (Count III) <u>filed</u> on December 19, 2016	1JA 181
23. Verdict (Count IV) <u>filed</u> on December 19, 2016	1JA 182
24. Verdict (Count V) <u>filed</u> on December 19, 2016	1JA 183
25. Verdict (Count VI) <u>filed</u> on December 19, 2016	1JA 184

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

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IN AND FOR THE COUNTY OF WASHOE

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THE HONORABLE SCOTT N. FREEMAN, DISTRICT JUDGE

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THE STATE OF NEVADA,

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Plaintiff,

Case No. CR16-1457

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vs.

Dept. No. 9

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IAN ANDRE HAGER,

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Defendant.

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VOLUME III - PAGES 1-202

17

TRANSCRIPT OF PROCEEDINGS

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JURY TRIAL

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Wednesday, December 14, 2016

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Reported by:

EVELYN J. STUBBS, CCR #356

A P P E A R A N C E S

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IAN ANDRE HAGER

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I N D E X

WITNESSES:

PAGE:

KEVIN DACH	
DIRECT EXAMINATION (Cont'd) BY MR. PRENGAMAN:	9
CROSS-EXAMINATION BY MS. HICKMAN:	24
JAMES POPOVICH	
DIRECT EXAMINATION BY MR. PRENGAMAN:	57
CROSS-EXAMINATION BY MS. HICKMAN:	63
REDIRECT EXAMINATION BY MR. PRENGAMAN:	74
RECROSS-EXAMINATION BY MS. HICKMAN:	78
DEBBIE OKUMA	
DIRECT EXAMINATION BY MR. PRENGAMAN:	93
CROSS-EXAMINATION BY MS. FLAVIN:	101
REDIRECT EXAMINATION BY MR. PRENGAMAN:	109
SCOTT JOHNSON	
DIRECT EXAMINATION BY MR. PRENGAMAN:	111
CROSS-EXAMINATION BY MS. FLAVIN:	120
REDIRECT EXAMINATION BY MR. PRENGAMAN:	139
JASON EDMONSON	
DIRECT EXAMINATION BY MS. HICKMAN:	174
CROSS-EXAMINATION BY MR. PRENGAMAN:	182
MATTHEW RAKER	
DIRECT EXAMINATION BY MS. FLAVIN:	186
CROSS-EXAMINATION BY MR. PRENGAMAN:	192
REDIRECT EXAMINATION BY MS. FLAVIN:	196
RECROSS-EXAMINATION BY MS. FLAVIN:	198

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ADMITTED</u>
6	Photo of Defendant on couch	91
7 A, B, C	Still photos from iPhone video	11
8	Capture - IMG 2855	15

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

E X H I B I T S (cont'd)

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ADMITTED</u>
10	iPhone video, 1-25-16	16
14 A, B, C	Photos from iPhone video, 2-2-16	18
27	iPhone IMG 5823	91
28	iPhone video 3-29-16	23
38	Mental Health Court documents	62
69	Photo of Defendant's residence	91
80	Photo of gun	91
92	Capture IMG 6042	23
95	DSM-IV	90

1 RENO, NEVADA; WEDNESDAY, DECEMBER 14, 2016; 11:05 A.M.

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4 THE COURT: We're on the record in CR16-1457, State
5 versus Ian Andre Hager. I understand the parties want to meet
6 with me outside the presence.

7 MS. HICKMAN: I'm trying to get our timing down,
8 because we do have witnesses who are on call. I just kind of
9 wonder if we can get an estimate of where we're going today, what
10 our schedule is, so we can let them know if we will need them
11 this afternoon or tomorrow morning.

12 THE COURT: We will have a full day until 5:00 o'clock.
13 Full day starting at 10:00 tomorrow.

14 MS. HICKMAN: Full day?

15 THE COURT: Yes.

16 MS. HICKMAN: Are we taking a break today, like a lunch
17 break, or are we going straight through?

18 THE COURT: I was planning on going straight through,
19 since we're starting at 11:00, but there will be a short break.

20 MS. HICKMAN: Okay.

21 THE COURT: I might have to take -- I didn't give the
22 jurors a heads-up that they should have eaten before today, so I
23 need to play that by ear.

24 May I ask why you ask?

1 MS. HICKMAN: Because I have witnesses that I am
2 coordinating with, and I want to have an idea of how far we're
3 going to get today. So I need to let them know if they need be
4 here this afternoon or if they should be here tomorrow.

5 THE COURT: Oh, okay. I understand your question now.

6 MS. HICKMAN: No. I'm not trying to figure out my
7 lunch plans.

8 THE COURT: He's only called three witnesses. How are
9 you doing on your schedule?

10 MR. PRENGAMAN: Pretty good, Judge. I would estimate
11 that I would end in the early afternoon today. If we're going to
12 go straight through --

13 THE COURT: Oh, yes.

14 MR. PRENGAMAN: -- I might have to ask -- I sort of am
15 trying to juggle -- but, by guess -- I didn't ask yesterday, so I
16 should have asked the Court for clarification on today's
17 schedule. I sort of anticipated that we might take a lunch
18 break. I might have to ask -- approach at some point to maybe
19 ask for a little break or leeway to kind of get my witnesses
20 here. But I expect --

21 THE COURT: I just hate taking a lunch break. It's
22 11:00 o'clock.

23 MR. PRENGAMAN: I wouldn't ask for a full lunch break,
24 Judge, especially where we're starting now. I'm just saying I'm

1 going to try to have everyone ready to go. I think I'm going to
2 finish in the early afternoon, but I might, if I have a little
3 hiccup or somebody was told and can't quite make it, because
4 we're readjusting.

5 THE COURT: I'm open to taking a break to collect your
6 witnesses too. That's not a problem with me. I don't like
7 starting trials at 11:00. So we've got to power through as best
8 we can, because these are important trial days.

9 MR. PRENGAMAN: I anticipate ending today with my
10 witnesses or probably early to midafternoon.

11 THE COURT: So you have witnesses after that?

12 MS. HICKMAN: I do. When you say "early," to
13 midafternoon --

14 MR. PRENGAMAN: Oh, I'm sorry. I don't want to say
15 like 2:00 and then --

16 MS. HICKMAN: Well, maybe if we know when we're on our
17 last two witnesses, and we can sort of see where we are and
18 determine if I need to get mine here today or if they can just
19 start at 10:00 tomorrow morning.

20 THE COURT: Well, would it --

21 MS. HICKMAN: Sorry.

22 THE COURT: No. I was about to say, you know, we can
23 take an hour at 1:00, but the day -- it's already 11:00 o'clock.
24 What would be helpful to you, as far as the defense is concerned,

1 if you're looking at a break?

2 MS. HICKMAN: The break isn't the issue to me. Can I
3 just tell me to be here at 10:00 tomorrow?

4 THE COURT: No, not if he's done in the afternoon. You
5 have to have people here this afternoon.

6 MS. HICKMAN: Okay. So then maybe we can take a break
7 around like 1:00, if it's like 45 minutes, then I can go and talk
8 to witnesses.

9 THE COURT: All right. We will take a break.
10 Is that helpful to you too.

11 MR. PRENGAMAN: It might not be, just because I've got
12 one witness who I told her to be here at 1:00. We may not be
13 able to get her to reschedule.

14 THE COURT: You can approach anytime.

15 MR. PRENGAMAN: Thank you, Your Honor.

16 THE COURT: Let's leave it at that. Let's continue on.
17 You can approach anytime and say this is a good time for you or a
18 good time for you, kind of idea.

19 MR. PRENGAMAN: I would estimate if the defense is
20 ready -- I'm thinking, I can't be held to it, but around 2:00, I
21 would estimate, the way things are going.

22 THE COURT: All right. Good.

23 MR. PRENGAMAN: And then, Judge, at some appropriate
24 time I want to ask the Court advice on my instructions. I want

1 to ask the Court to take judicial notice of the DSM-IV, that's
2 incorporated in the statute. I want to do that before I rest,
3 just make that request at the appropriate time.

4 THE COURT: All right. Sounds good. Let's bring in
5 the jury.

6 (The following proceedings were held in the presence of the
7 jury.)

8 THE COURT: Please be seated. The record will reflect
9 the presence of the defendant, the defense team, the prosecution,
10 and all our jurors are present.

11 Once again, thank you for your patience. I wish I
12 could tell you it was like TV; it is not like TV. So we got you
13 out here as soon as we could and we're ready to proceed.

14 Thank you, Officer. You may take the witness stand.
15 You're still understand oath.

16 And you may continue your examination.

17 MR. PRENGAMAN: Thank you, Your Honor.

18 KEVIN DACH,
19 resumed as a witness herein,
20 being previously duly sworn, was examined
21 and testified as follows:

22 DIRECT EXAMINATION (Cont'd)

23 BY MR. PRENGAMAN:

24 Q Good morning, Detective.

1 A Good morning.

2 Q I think when we left off yesterday, we were looking at
3 Exhibit No. 9. Do you recall that?

4 A Yes, sir.

5 Q And you had testified that -- regarding the GPS times
6 that we see for each of those files. And you'd told us that
7 that's in Greenwich Mean Time, correct?

8 A Correct.

9 Q And that there's an eight-hour offset with our time
10 zone back on the date that these photos were taken?

11 A That is correct.

12 Q Can I ask you just with this exhibit, if you could,
13 indicate minus eight, because that's what you said, if I subtract
14 eight hours. So just for our reference, if you could on the GPS
15 time for each of the appropriate lines on those three images, if
16 you could just write "minus eight."

17 A (Witness complies.)

18 Q And showing again the Exhibit 9. So you've indicated
19 that on each one; minus eight, minus eight, minus eight?

20 A That is correct.

21 Q Detective, is it accurate that with all of the images
22 we'll be looking at in this case all of them that have GPS time
23 the same offset would apply?

24 A Yes, sir, it is.

1 Q So for instance, if the jury is looking at these when
2 they deliberate, they can see the minus eight here, and they will
3 know that they -- if they are interested in doing so, need to
4 subtract eight from the GPS time on all of the images?

5 A That is correct.

6 Q Detective, I'd like to show you now Exhibit 7. I'd
7 like you to take a look at that exhibit and tell me if you
8 recognize it.

9 A Yes, I do.

10 Q And does that exhibit contain an individual file that
11 you located on the defendant's iPhone during the search that you
12 conducted?

13 A Yes, it does.

14 MR. PRENGAMAN: Okay. And what I'd like to do, Your
15 Honor, we have marked for identification 7 A, B, and C. And I'm
16 going to move for their admission at this time.

17 MS. HICKMAN: Judge, I agreed to stipulate to those.

18 THE COURT: They're admitted.

19 (Exhibits 7 A, B, and C were admitted into evidence.)

20 MR. PRENGAMAN: Thank you, Your Honor.

21 BY MR. PRENGAMAN:

22 Q Detective, I'm going to show you now first Exhibit 7-A.
23 Do you recognize what we see there?

24 A Yes. It's a still photo from the video.

1 Q Okay. So this is a still photograph that was taken
2 from Exhibit 7?

3 A That's correct.

4 Q And can you tell us what we see in this still photo
5 from that video?

6 A You're looking at Mr. Hager. He's wearing a red and
7 white hat. And this is located in the loft area of his
8 residence.

9 Q And you know that from the time you spent during the
10 search of his residence back on April 8th?

11 A That's correct.

12 Q And are there any distinctive landmarks, if you will,
13 or items that you see there that -- you watched the entire video;
14 is that correct?

15 A That is correct.

16 Q So you can tell us if this is that area from watching
17 it, correct?

18 A Yes, sir.

19 Q Looking at this still image, do you see some landmarks,
20 so to speak, that indicate that it's in that loft area?

21 A The most clear landmark is the clock that's in the
22 background.

23 Q And that would be right here on the right side of the
24 photo?

1 A Yes, sir.

2 Q I'm going to show you now what we have admitted as
3 Exhibit 7-B. Do you recognize what we see there?

4 A Yes, sir. It's in the same area.

5 Q Is this another still image taken from the video that
6 is on the Exhibit 7?

7 A Yes, sir.

8 Q Okay. And we see a hand in the upper-left side of the
9 video. Whose hand is that?

10 A Mr. Hager's.

11 Q And what do we see in the video that's relevant to the
12 search you were conducting?

13 A Two rifles.

14 Q Could I ask you to please circle the area where you see
15 the rifles, please.

16 A (Witness complies.)

17 Q And again, you are able to tell us if this is shot in
18 the loft area?

19 A Yes, sir.

20 Q And then finally showing you Exhibit 7-C, what do we
21 see here?

22 A Very similar photo. Same area, same weapons.

23 Q Okay. And from a slightly different vantage?

24 A Yes, sir.

1 Q Can you tell from having been in the house that this
2 was also taken in the loft area?

3 A Yes, sir.

4 Q Is there another distinctive feature of the loft area
5 that we see in this still photo?

6 A You have the guitars and you also have that bench in
7 the background.

8 Q And then the carpet that we see in the lower right-hand
9 corner, is that carpet that you saw in the loft area when you
10 were there?

11 A That's correct.

12 Q Detective, I'm now going to show you what has been
13 admitted as Exhibit 8. Do you recognize what we see there?

14 A Yes. It's a still photo. The file name is MP4, so
15 it's a video, but it's a still photo of that video.

16 Q And is that data that corresponds to the file that's on
17 Exhibit 7?

18 A Yes.

19 Q Now with this particular data, we don't see the Exif or
20 GPS time; is that correct?

21 A That is correct.

22 Q I believe you told us yesterday that we see the file
23 time, which possibly could indicate when the file was created or
24 possibly the last time it was accessed?

1 A That's correct.

2 Q Based on the data that's associated with that file --
3 and that would pertain to the 7 A, B, and C still photos, correct?

4 A That's correct. Just to this video right here.

5 Q So based on what you told us yesterday, would it be
6 accurate to say that based on the data associated with that file,
7 you know that that file was not accessed any time after
8 November 28th?

9 A Correct.

10 MR. PRENGAMAN: Your Honor, my mistake. I believed
11 that Exhibit 8 was previously admitted. I don't believe it was,
12 so I move for it's admission, please.

13 THE COURT: Any objection?

14 MS. HICKMAN: No, Judge. I believe we stipulated to
15 all those yesterday.

16 THE COURT: Oh, good.

17 MR. PRENGAMAN: I thought so.

18 THE COURT: Let the record be clear.

19 It's admitted.

20 (Exhibit 8 was admitted into evidence.)

21 BY MR. PRENGAMAN:

22 Q Detective, now I'm going to show you Exhibit 10. Will
23 you please take a look at that exhibit and tell me if you
24 recognize it.

1 A Yes, I do.

2 Q Have you previously reviewed the contents of that video?

3 A Yes, I have previously reviewed it.

4 Q And does that contain -- does that disk contain another
5 video that you located while searching Mr. Hager's iPhone?

6 A Yes, it does.

7 Q And I'm going to show you now what we have admitted as
8 Exhibit 11.

9 MR. PRENGAMAN: Your Honor, I'll move for the admission
10 of Exhibit No. 10.

11 MS. HICKMAN: No objection.

12 THE COURT: It's admitted.

13 (Exhibit 10 was admitted into evidence.)

14 MR. PRENGAMAN: Thank you, Your Honor.

15 BY MR. PRENGAMAN:

16 Q Detective, what do we see here in Exhibit 11?

17 A Appears to be two handguns in the same location of
18 Mr. Hager's home, in his bedroom.

19 Q So you recognize the background from the images?

20 A I do.

21 Q Do these images, are they similar to the content of the
22 video that has been admitted in Exhibit 10?

23 A Yes, sir.

24 Q And looking at these two -- and these are not still

1 photos from that video; is that right?

2 A Correct.

3 Q These are separate pictures that were taken?

4 A Separate pictures, correct.

5 Q And again, based on the data that's associated with
6 those items, what can you tell us about when they may have been
7 created?

8 A Well, it shows the file time. So again, this would
9 show that they were not altered after 1-25 of 16. It does not
10 give the Exif time to say when that photo was actually taken.

11 In this particular case, you have two photos that
12 appear to be the same location. One of them is a -- has at the
13 top -- I can circle it for you, has a "THM" at the end of the
14 image. That just means the thumbnail of another picture. At the
15 bottom it shows to be a JPG, which is a JPEG picture like would
16 be taken from a camera.

17 Q So again, you can tell us that these may or may not
18 have been taken on January 25th of 2016, but they were not
19 accessed after that?

20 A Correct.

21 Q Okay. And then what was the date that the video that's
22 on Exhibit 10 was taken?

23 A That's on January 25, 2016.

24 Q And then likewise as to that, you can say the same

1 thing, that you can tell us that that was not -- at least not
2 accessed after that day, but it may or may not have been created
3 on that day?

4 A Correct.

5 Q Thank you. Showing you now what we've marked as
6 Exhibit 14 for identification. Can you take a look at that and
7 tell me what it contains.

8 A It's also a video from Mr. Hager's phone.

9 Q You located it during your search?

10 A Yes, sir.

11 Q As to that item, can you tell us what the -- let me
12 stop there.

13 MR. PRENGAMAN: Your Honor, I'm going to -- we've
14 marked Exhibits 14 A, B, and C for identification. I'd move for
15 their admission.

16 THE COURT: Any objection?

17 MS. HICKMAN: There's no objection, no.

18 THE COURT: Admitted.

19 (Exhibits 14 A, B, and C were admitted into evidence.)

20 MR. PRENGAMAN: Thank you, Your Honor.

21 BY MR. PRENGAMAN:

22 Q Detective, I'm showing you Exhibit 14-A. Will you
23 please tell us what we see here.

24 A That's a still shot from the video showing Mr. Hager

1 carrying a handgun in the loft in his home.

2 Q Okay. And is this a still photograph that was taken
3 from the video that is contained on Exhibit 14?

4 A Yes.

5 Q Are you able, from either what we see in the background
6 here or from you having been able to watch the entirety of the
7 video, to tell us where it appears that this video was filmed?

8 A It's in the loft at Mr. Hager's home.

9 Q I'm going to show you Exhibit 14-B. Can you tell us
10 what you see here?

11 A Another still image from that video. It shows
12 Mr. Hager. He has a handgun. Appears to be draped over his
13 shoulder. Unknown what type of holster that is.

14 Q Okay. Could you just very quickly circle the area
15 where that handgun is located.

16 A (Witness complies.)

17 Q And then finally Exhibit 14-C, what do we see there?

18 A That's from the same video, just a slightly different
19 angle, also showing a handgun near Mr. Hager's chest area.

20 Q And Exhibit 14 A, B, and C are all still photos taken
21 from the video that's contained on Exhibit 14; is that right?

22 A Yes, sir.

23 Q Showing you now Exhibit 15. Can you tell us what we
24 see here in terms of the data?

1 A It shows that -- it's basically an imagine showing that
2 this is video that was downloaded from the phone. It does not
3 give Exif time, but gives a file date and time here, as well as
4 shows where that was located in the phone.

5 Q And so the IMG 3999, that's the same file that's on
6 Exhibit 14?

7 A Yes, it's the file name.

8 Q So again, you can tell us that this file may or may not
9 have been created on February 2, 2016, but it was not accessed
10 after that?

11 A Correct.

12 Q Detective, I'm showing you what we've admitted as
13 Exhibit No. 16. Can you tell us what we see here.

14 A This is a photograph taken by Mr. Hager's phone.

15 Q Okay. And this has GPS time and Exif time, correct?

16 A Yes, it does.

17 Q Can you tell us, please, when this photo was taken by
18 Mr. Hager, the defendant's phone?

19 A On 2-5-2016, at 0028 hours and 53 seconds.

20 Q Okay. And then if we were looking at the GPS time, we
21 would need to minus eight to correspond, correct?

22 A Yes, you would.

23 Q And then, Detective, are you able to tell us by looking
24 at the GPS coordinates, based on the work that you did, where

1 this photo was taken?

2 A It was taken at Mr. Hager's home.

3 Q Showing you what's been admitted as Exhibit 23. Is
4 this also a photograph that you located on Mr. Hager's phone
5 during your search?

6 A It was.

7 Q And are you able to tell us because of the data
8 associated with the photograph on the phone that it was taken by
9 Mr. Hager's phone?

10 A Yes. And Mr. Hager is in the picture as well.

11 Q And can you tell us, we see the Exif time, that would
12 be the time that the photograph was taken, correct?

13 A Yes, sir.

14 Q So it was taken on February 29, 2016?

15 A Yes, sir.

16 Q And then by looking at the GPS coordinates based on the
17 work that you did, can you tell us where this photo was taken?

18 A It was taken in Mr. Hager's home.

19 Q Detective, I'm showing you Exhibit 24, which has been
20 admitted. Is this another photograph that you located on
21 Mr. Hager's iPhone during your search?

22 A It was.

23 Q And what do we see? So it's a photo. What do we see
24 in the photo?

1 A Could you zoom in a little bit?

2 Q Would it help if I just hand it to you?

3 Does it appear to be a door again?

4 A Yes, it does.

5 Q And can you tell us, by looking at the data, what day
6 this photograph was taken?

7 A 2-29-2016 at 2204 hours and 12 seconds.

8 Q And by at GPS coordinates and based on the work you
9 did, can you tell us where this photograph was taken?

10 A At Mr. Hager's home.

11 Q Showing you now Exhibit 27 admitted. Is this another
12 photograph that you located on Mr. Hager's phone?

13 A It was.

14 Q And can you tell us what date this photograph was taken
15 on?

16 A 3-21-2016 at 1958 hours and one second.

17 Q Okay. And by utilizing the GPS coordinates associated
18 with that photograph and the work you did, can you tell us where
19 that was taken?

20 A Yes, it was taken in Mr. Hager's home.

21 Q I'm going to show you now what we have marked for
22 identification as Exhibit 29. Strike that. I'm going to show
23 you what we've marked as Exhibit 28 for identification.

24 Detective, could you please take a look at that exhibit

1 and tell me if you recognize it.

2 A Yes, I do.

3 Q Does that Exhibit No. 28 contain a video that you
4 located of your search of Mr. Hager's iPhone?

5 A Yes, it does.

6 MR. PRENGAMAN: And I'll move for the admission of
7 Exhibit 28.

8 MS. HICKMAN: No objection.

9 THE COURT: Admitted.

10 (Exhibit 28 was admitted into evidence.)

11 MR. PRENGAMAN: Thank you, Your Honor.

12 BY MR. PRENGAMAN:

13 Q I'm not going to play that now, Detective. What I'd
14 like to show you now is -- if we haven't, I'd move for the
15 admission of Exhibit 92.

16 MS. HICKMAN: No objection.

17 THE COURT: It's admitted.

18 (Exhibit 92 was admitted into evidence.)

19 MR. PRENGAMAN: Thank you, Your Honor.

20 BY MR. PRENGAMAN:

21 Q Detective, can you please take a look at this exhibit
22 92, and tell me if you recognize what we see there.

23 A Yes. It's a image of the video.

24 Q The video that we -- is contained on Exhibit 28?

1 A Yes, sir.

2 Q And this has no Exif data or GPS data or location data?

3 A That's correct.

4 Q So as to the video that's contained in Exhibit 28, you
5 can tell us that it may or may not it may or may not have been
6 created on March 29, 2016, but it was not accessed after that?

7 A Correct.

8 MR. PRENGAMAN: Thank you, Detective. I have no
9 further questions.

10 THE COURT: Thank you.

11 Cross-examination.

12 MS. HICKMAN: Thank you, Judge.

13 If I could have just a moment.

14 Thank you.

15 CROSS-EXAMINATION

16 BY MS. HICKMAN:

17 Q Detective Dach, I believe you said yesterday when you
18 were testifying that you have been a police officer in some
19 capacity for about 13 years; is that correct?

20 A Yes, ma'am.

21 Q Have all 13 of those years been with the Sparks Police
22 Department?

23 A Yes.

24 Q So as your career as a police officer, you started out

1 by going through the POST academy?

2 A Yes, ma'am.

3 Q And from there you went on to or you went through some
4 patrol training; is that correct?

5 A Yes, ma'am.

6 Q And that involved driving around with a training
7 officer to make sure that you know what to do when you're on
8 patrol; is that correct?

9 A Yes, ma'am.

10 Q And then you were on patrol?

11 A Yes, ma'am.

12 Q And on patrol you essentially worked by yourself,
13 correct?

14 A That is correct.

15 Q And would you tell me just your general duties as a
16 patrol officer.

17 A Yeah. We have to respond to calls for service, and
18 obviously that can vary from domestics, to robberies, to
19 burglaries, whatever may come up at the time. When you're not
20 responding to calls, you can do self-initiated activity, traffic
21 stops, business checks, things of that nature.

22 Q Okay. So you mentioned traffic stops. Some of the
23 traffic stops you did may be investigating a DUI, correct?

24 A Yes, ma'am.

1 Q And some of the either self-initiated or calls for
2 service may involve investigating cases where a person is under
3 the influence of a controlled substance, correct?

4 A That is correct.

5 Q And you have also investigated cases where a person is
6 in possession of a controlled substance, correct?

7 A Yes, ma'am.

8 Q And on a lower level you have investigated cases where
9 a person may be in possession of drug paraphernalia, correct?

10 A Yes, ma'am.

11 Q You've also investigated drug buys or sells, selling
12 drugs or things along those lines?

13 A Yes, ma'am.

14 Q And when you were on patrol, were you on any special
15 units or any special assignments, such as the gang unit, the
16 Street Enforcement Team, the ROPE Team or a DRE officer?

17 A Yes. I was on the Crime Suppression Unit, as well as
18 the DRE.

19 Q So you are a DRE?

20 A I am, I --

21 Q You were?

22 A I were. I've been through the training, but I've not
23 kept on it.

24 Q So you would be familiar with the training that a drug

1 recognition expert goes through, correct?

2 A Correct.

3 Q And part of that training is you're familiar with the
4 drug recognition expert manual, correct?

5 A Yes. I've looked at it, yes.

6 Q Because that's what your trained off of, right?

7 A Yes. We go to a class, 40-hour class for it.

8 Q And in that class they give you the manual, correct?

9 A Correct.

10 Q And the manual teaches you how to recognize certain
11 signs of intoxication, correct?

12 A Correct.

13 Q And it teaches you how to recognize someone who has
14 either recently used a controlled substance or has used
15 controlled substances in the recent past, correct?

16 A Correct.

17 Q And when I'm talking about a drug recognition expert,
18 that is somebody who is generally called out on a DUI stop where
19 controlled substance may be suspected, correct?

20 A That is it definitely one option, yes.

21 Q And that person has special training to help recognize
22 those signs, correct?

23 A Correct.

24 Q So you would be familiar with the signs that somebody

1 is under the influence of methamphetamine, correct?

2 A We perform similar to -- like you said, similar to a
3 DUI, perform sobriety tests to determine whether the person is
4 possibly under the influence or not.

5 Q But before you even get to the field sobriety test, you
6 have to make certain determinations if you're going to put
7 somebody through them, correct?

8 A Correct.

9 Q Right. You don't just put everybody who you stop
10 through a field sobriety test to determine who is or isn't under
11 the influence, right?

12 A Typically it's based on the investigation, and it's
13 actually a consensual thing. So the person being put through
14 that would have to consent to that.

15 Q So before you even get to the point where you're asking
16 them to consent, you would make certain observations about
17 somebody to determine if you personally thought that that person
18 was under the influence of a controlled substance?

19 A Yes, or the officer, that you're -- like you mentioned,
20 helping someone else out, you would talk to them and determine
21 what they had seen.

22 Q And correct me if I'm wrong, but a detective is
23 somebody who has more experience than a patrol officer with law
24 enforcement, court procedures, crime lab procedures, et cetera,

1 correct?

2 A Typically, yes.

3 Q They have a little bit more time into the department?

4 A Typically, yes.

5 Q And how long have you been a detective?

6 A Eight years.

7 Q Eight years. So you've been, so you were on parole

8 for --

9 A Five.

10 Q -- five years?

11 A Yes, ma'am.

12 Q Math isn't what I'm best at.

13 A Me neither.

14 Q So through the process of the POST academy, your
15 training with a training officer, and being on patrol, and eight
16 years as a detective, it's fair to say that you're familiar with
17 collecting and processing evidence; is that correct?

18 A Correct.

19 Q It's something that you've done personally a number of
20 times?

21 A Yes, ma'am.

22 Q You've trained other people to do it?

23 A Yes, ma'am.

24 Q And you're familiar with collecting suspected

1 narcotics, correct?

2 A Yes, ma'am.

3 Q You're familiar with booking those into evidence,
4 correct?

5 A Yes, ma'am.

6 Q And then you're familiar with the process of how those
7 would get tested by the crime lab, right?

8 A Yes, ma'am.

9 Q And when I'm talking about the crime lab, you're
10 familiar with that being the Washoe County Crime Lab, correct?

11 A That is correct.

12 Q And that is the crime lab that is used by not just
13 Sparks Police Department, but the Reno Police Department and the
14 Washoe County Sheriff's Office, correct?

15 A And various others, correct.

16 Q And that lab is an accredited lab, correct?

17 A I believe so.

18 Q And to the best of your knowledge, that lab is used to
19 do scientific testing on pieces of evidence, correct?

20 A That is correct.

21 Q They have the ability to do scientific, reliable tests
22 on suspected narcotics, correct?

23 A That is correct.

24 Q They can test certain items of evidence to determine if

1 there is DNA on those, correct?

2 A Yes, they could.

3 Q And DNA would be -- actually, I'm not going to ask you
4 that.

5 And you personally have had cases where you have
6 submitted narcotics to the crime lab to have them test those,
7 correct?

8 A Yes. Not for DNA, but yes.

9 Q For drugs?

10 A Yes.

11 Q And that's a fairly routine thing that's done, correct?

12 A Yes.

13 Q Drugs are collected, they're booked into evidence,
14 they're sent to the lab, and the lab tests them, correct?

15 A That is correct.

16 Q And I'm not asking you if you know the actual tests
17 that are done, but to the best of your knowledge those tests are
18 scientific and reliable, correct?

19 A That's correct.

20 Q And they are admissible in court to show what a
21 substance actually is, correct?

22 A Yes, ma'am.

23 Q And as someone who has 13 years in law enforcement,
24 you're familiar with criminal statutes, correct?

1 A Yes, ma'am.

2 Q Because you are charged as an officer in determining
3 whether or not there's probable cause to arrest somebody, right?

4 A Yes, ma'am.

5 Q Or write them a ticket, right?

6 A Yes, ma'am.

7 Q Or how to proceed with a case, correct?

8 A Yes, ma'am.

9 Q And you also have the ability to determine if further
10 investigation needs to be done in a case, right?

11 A Yes, ma'am.

12 Q Such as testing with the crime lab, correct?

13 A Yes, ma'am.

14 Q And again, as a detective, you're familiar with what
15 pieces of evidence may be pertinent in a case, correct?

16 A Yes, ma'am.

17 Q You would use your own experience, training, whatever
18 it may be, to decide whether or not something should be
19 collected, correct?

20 A Yes, ma'am.

21 Q And in your experience you're aware that it would be a
22 felony for someone to be in possession of a controlled substance,
23 correct?

24 A Yes, ma'am.

1 Q And you're also familiar that possession of a
2 controlled substance, it's a felony to have any testable amount
3 of a controlled substance, correct?

4 A Yes, ma'am.

5 Q And testable amount can come down to just residue,
6 correct?

7 A It could, yes.

8 Q And when I say "residue," I'm talking about what may be
9 left over once it is all consumed.

10 A Correct.

11 Q And when we talk about "testable amount," that refers
12 to those tests that the Washoe County Crime Lab can do on
13 suspected narcotics to tell us what they are, right?

14 A Yes, ma'am.

15 Q Because in the field you don't have those same tests
16 available to you that the crime lab has, correct?

17 A Correct.

18 Q What you have in the field is something that may
19 potentially give you a presumptive positive, correct?

20 A Yes, ma'am.

21 Q And that's also somewhat scientific, correct?

22 A Yes, ma'am.

23 Q You're familiar with those tests?

24 A I am.

1 Q That's something that would be supplied to an officer
2 or a detective from the Sparks Police Department?

3 A Yes, ma'am.

4 Q And if you didn't have one on you and you needed one,
5 you'd have the ability to get your hands on one, correct?

6 A Yes, ma'am.

7 Q Fairly quickly?

8 A Yes, ma'am.

9 Q And Detective, you are also familiar with serving
10 search warrants, correct?

11 A Yes, ma'am.

12 Q In fact, in this case you took part in serving two
13 search warrants, right?

14 A Yes, ma'am.

15 Q You served a search warrant on Mr. Hager's home, right?

16 A Yes, ma'am. I assisted with that.

17 Q And then you were part of serving the search warrant on
18 his cell phone, correct?

19 A Yes, ma'am.

20 Q And with your experience, you know that while you are
21 serving a search warrant if you come across evidence of a
22 different crime, you're allowed to collect those materials,
23 correct?

24 A You can. What you're supposed to do is actually, if

1 you choose to, would be to apply for a search warrant, so you
2 basically freeze everything in place. Go and find a judge, apply
3 for a search warrant, and see if that would be granted.

4 Q So in an abundance of caution you could then get
5 another search warrant if you come across something that's in
6 plain view and you want to make sure that you're well within your
7 rights to collect that, right?

8 A Correct.

9 Q And that's something that's possible?

10 A Yes, ma'am.

11 Q It's something that you've done personally?

12 A Yes, ma'am.

13 Q It's something that, to the best of your knowledge,
14 Detective Rowe has done personally?

15 A I don't want to speak for Detective Rowe.

16 Q Okay. You know that he authored the search warrant
17 application in this case, correct?

18 A Yes.

19 Q So he's done it before?

20 A He's done search warrants before, yes.

21 Q When you collect something from a search, you're
22 allowed to book those into evidence, correct?

23 A Yes, ma'am.

24 Q And I'm talking about you personally, right?

1 A Yes, ma'am.

2 Q Okay. I just want to make sure.

3 And when you collect items, you don't have to get the
4 approval to collect those, you can rely on your own judgment to
5 decide if something is relevant, correct?

6 A Correct.

7 Q And once you book something into evidence either you or
8 a district attorney can decide if that should be tested by the
9 crime lab, correct?

10 A Correct.

11 Q And that's that accredited lab that we were talking
12 about before?

13 A Yes, ma'am.

14 Q And in this case, like we were talking about earlier,
15 you took part not just in actually serving the search warrant,
16 but in all the information that was gathered to determine to
17 apply for that search warrant, correct?

18 A No, ma'am.

19 Q You just served it?

20 A Right. I was not involved in the previous part.

21 Q Okay. Did you have information about why the search
22 warrant was being applied for?

23 A I did. We were given a briefing before going out there.

24 Q Who gave you that briefing?

1 A It was Detective Rowe, and I believe there were some
2 supervisors in there, and some other people that were involved in
3 the operation.

4 Q So you, through that briefing, were privy to certain
5 pertinent facts about this case, correct?

6 A Yes, ma'am.

7 Q And specifically about Mr. Hager, correct?

8 A Yes, ma'am.

9 Q And I say, "privy to that." Obviously you spoke to
10 Detective Rowe, right?

11 A Yes, ma'am.

12 Q And he spoke to you, correct?

13 A Yes, ma'am.

14 Q When you were serving that search warrant, you had the
15 ability to be in contact with Detective Rowe, correct?

16 A I guess we could have. He was, I think, doing an
17 interview at the time. So I mean, we could have waited for him,
18 if that's what you're asking, to get information from him.

19 Q But you also could have gotten a hold of him if
20 necessary, right?

21 A Yeah. Somebody pull him out of an interview or
22 something?

23 Q Right.

24 A Yes, ma'am.

1 Q Because you have a cell phone?

2 A Yes, ma'am.

3 Q He has a cell phone?

4 A Yes, ma'am.

5 Q You have his cell number?

6 A Yes, ma'am.

7 Q So you could call him if necessary, right?

8 A We don't take our cell phones, necessarily, into
9 interview rooms, but when he got out of the interview he would
10 get my phone call.

11 Q And if you needed to get him out of that interview
12 room, he's doing that at the police department, correct?

13 A Yes, ma'am.

14 Q And somebody could go get him?

15 A Yes, ma'am.

16 Q So when you were searching Mr. Hager's home, the
17 purpose of you being there was to collect evidence of a potential
18 crime, correct?

19 A Yes, ma'am.

20 Q And while you were searching that house, you didn't
21 collect a metal straw, correct?

22 A Correct.

23 Q You didn't even have any information that you should be
24 looking for one, correct?

1 A No, I did not.

2 Q You didn't collect a Bible, correct?

3 A No.

4 Q You didn't have any information that you should be
5 looking for one, correct?

6 A No.

7 Q And there was a lot of testimony about what you found
8 in the loft of Mr. Hager's home. Do you remember that?

9 A No.

10 Q You don't remember testifying to that?

11 A No. I searched the master bedroom.

12 Q That's all you did?

13 A Yes, ma'am.

14 Q You're familiar with the loft in his home?

15 A Yes, ma'am.

16 Q You had to walk by it to get into the master bedroom?

17 A Yes, ma'am.

18 Q And then you saw it on a number of videos that you saw
19 on the cell phone, correct?

20 A Yes, ma'am.

21 Q And so you personally didn't process this area that's
22 shown in Exhibit 67, correct?

23 A That is correct.

24 Q You personally did not do any swabs or evidence

1 collection or anything of that table that I circled or that
2 bench, correct?

3 A That is correct.

4 Q And you personally did not collect this small wooden
5 box that's on the floor next to that bench, correct?

6 A No, ma'am.

7 Q And while you were searching that home, you didn't
8 collect a Bible; is that correct?

9 A That is correct.

10 Q In fact, you didn't even know to look for one, right?

11 A That is correct.

12 Q As you testified, you searched the master bedroom in
13 the house, correct?

14 A Yes, ma'am.

15 Q When you searched the master bedroom in this house,
16 your attention was drawn to the bedside table that's shown in
17 Exhibit 75, correct?

18 A Yes, ma'am.

19 Q And when you look at that table, obviously there are a
20 number of things on top of it, right?

21 A Yes, ma'am.

22 Q And then you can see this drawer down at the very
23 bottom, right?

24 A Yes, ma'am.

1 Q And there's a paper bag, it looks like, sticking out of
2 that?

3 A A bag, yes, ma'am.

4 Q You didn't collect that bag, right?

5 A No, ma'am.

6 Q And then you opened that drawer, right?

7 A Yes, ma'am. I think it was me that opened it, yes.

8 Q And you opened that drawer because the search warrant
9 you were serving allowed you to look for ammo, correct?

10 A Ammunition, firearms, indicia of ownership.

11 Q So both or I guess all three of those could have been
12 in that drawer, right?

13 A That's correct.

14 Q I'm showing you what's been introduced as 76. That is
15 what you saw when you opened that drawer, right?

16 A Yes, ma'am.

17 Q And in order to get to the drawer as we see it here,
18 you had to move whatever that bag was, correct?

19 A Yes, ma'am.

20 Q Do you remember how many other things you had to move
21 to get the drawer to the position we see it in 74?

22 A I don't. It was almost nothing. Basically as soon as
23 we open, we take a photograph, so that way we're not disturbing
24 any evidence.

1 Q Okay. So it's your testimony you took a photograph of
2 that paper bag in place?

3 A I didn't take any photographs. It would have been
4 Evidence Technician Brown that would have taken any kind of
5 photographs.

6 Q And your testimony yesterday was that you believe that
7 certain items in this drawer where drug paraphernalia; is that
8 correct?

9 A Yes, ma'am.

10 Q I'm going to zoom in just on the drawer, because what
11 we're talking about are the baggies that are circled here and
12 down here, correct?

13 A Yes, ma'am.

14 Q And then this glass pipe, correct?

15 A Yes, ma'am.

16 Q And you have testified that that pipe is commonly used
17 to smoke methamphetamine, right?

18 A Yes, ma'am.

19 Q And those baggies can often be used to package drugs
20 after somebody purchases them; is that correct?

21 A Yes, ma'am.

22 Q And with all the experience that you have that we've
23 talked about, you know that when somebody buys drugs in a baggie
24 and leaves a baggie, there's often residue inside those bags,

1 correct?

2 A Sometimes they can be, yes, ma'am.

3 Q Those baggies can be used also for things other than
4 packaging drugs, right?

5 A Yes, ma'am.

6 Q So I just want to talk to you about these baggies to
7 start off with. It's fair to say you didn't collect those,
8 correct?

9 A That is correct.

10 Q And nobody else collected those, correct?

11 A That is correct.

12 Q And you didn't collect those baggies to book them into
13 evidence, right?

14 A That is correct.

15 Q You never referred those to the Washoe County Crime Lab
16 to have them tested, correct?

17 A Correct.

18 Q You didn't have the crime lab test them to see if there
19 was drug residue on them, correct?

20 MR. PRENGAMAN: Objection. Asked and answered.

21 THE DEFENDANT: Sustained.

22 BY MS. HICKMAN:

23 Q You didn't have a field test brought to you to see if
24 there was a presumptive positive for narcotics in there?

1 A Correct.

2 Q And, Detective Dach, essentially what you did was you
3 looked at those, you had Ms. Brown photograph them, and then you
4 left them there, correct?

5 A Yes, ma'am.

6 Q And it's fair to say that you didn't go through that
7 procedure to get in touch with Detective Rowe to tell him about
8 these baggies, right?

9 A That is correct.

10 Q You didn't give Detective Rowe any information to ask
11 Mr. Hager what these baggies may have been used for, correct?

12 A That is correct.

13 Q And you personally had some contact with Mr. Hager
14 before you served the search warrant, correct?

15 A Before, correct.

16 Q And it's safe to assume in that conversation he never
17 mentioned these baggies to you in any way, correct?

18 A No. We did not discuss anything you said.

19 Q And he never mentioned to you that in his home he would
20 find baggies that at one point contained methamphetamine, right?

21 A No.

22 Q And then you testified that this glass pipe is commonly
23 used to smoke methamphetamine, right?

24 A Yes, ma'am.

1 Q And in your experience just as a police officer, you
2 know how to use that pipe to smoke methamphetamine, right?

3 A Exactly.

4 Q In this part that is more round, somebody would put a
5 small amount of methamphetamine in there, correct?

6 A Yes, ma'am.

7 Q And then they would heat that up through some sort of a
8 heat source, correct?

9 A Yes, ma'am.

10 Q Like a match or a lighter?

11 A Or a torch.

12 Q Okay. And when we look at this pipe that was in that
13 drawer you have no way of knowing when that pipe was last used,
14 correct?

15 A Correct.

16 Q You have no idea of knowing when that pipe or if that
17 pipe was ever used to smoke methamphetamine, correct?

18 A Correct.

19 Q You have no way of knowing if methamphetamine was ever
20 even in that pipe, correct?

21 A Correct.

22 Q You don't know how long it's been sitting in that
23 drawer?

24 A Correct.

1 Q And similarly to the baggies, you didn't collect that
2 pipe, correct?

3 A Correct.

4 Q You didn't have it booked into evidence?

5 A Correct.

6 Q And you never had it sent to the crime lab to see if
7 there was any kind of drug residue on that pipe, correct?

8 A Correct.

9 Q In fact, you don't know if that pipe has ever even been
10 used to do anything, right?

11 A I know it burned, so it's got -- it's been used. Just
12 don't know what it was used for.

13 Q You don't know if it was ever used for any kind of
14 illicit substance though?

15 A Correct.

16 Q We were talking about DNA earlier. If someone were to
17 use that pipe and put the end in their mouth there is the
18 potential there would be DNA on that pipe, correct?

19 A There is a possibility.

20 Q You didn't have the crime lab test for DNA to see who
21 used that pipe, correct?

22 A Correct.

23 Q So to the best of your knowledge the pipe and the
24 baggies were left in this drawer and it was closed, correct -- or

1 left open when you left the house, correct?

2 A Correct.

3 Q And it's fair to say that things can't be tested if
4 they're not collected?

5 A Correct.

6 Q And as we see this drawer, the picture is taken because
7 there are things that you think may be significant in there,
8 correct?

9 A Yes and no. We actually took a lot of photographs of
10 the house, not necessarily because they're significant, but as
11 part of our -- where we go, we take pictures throughout the
12 residence, even if it's not relevant.

13 Q Okay. But what I'm asking you about this drawer in
14 particular, you're taking pictures about what you think is
15 relevant in the drawer?

16 A We did take pictures of the drawer to document the
17 pipe, the baggies, things of that nature.

18 Q So it's safe to say there were no controlled substances
19 found in that drawer, correct?

20 A That's correct.

21 Q As you participated in the search of the rest of
22 Mr. Hager's home, you didn't find any other controlled substances
23 in the home, correct?

24 A Correct.

1 Q You didn't find any baggies elsewhere in the house that
2 you suspected to be drug paraphernalia, correct?

3 A That's correct.

4 Q You didn't find any sort of a meth pipe anywhere else
5 in the house, correct?

6 A I did not.

7 Q That you thought may have been used at some point to
8 smoke methamphetamine, correct?

9 A I did not locate any other others.

10 Q And after you saw this picture, you didn't then go back
11 to re-search parts of the house to make sure there was nothing
12 you missed, correct?

13 A Correct.

14 Q So beyond what we see in this drawer, there wasn't any
15 evidence in the house of anything that you suspected to be drug
16 paraphernalia, correct?

17 A I only searched the master bedroom. That's all I can
18 talk about. I don't know what they found in the rest of the
19 house.

20 Q So let's talk about the master bedroom. You did not
21 see anything in the other table, correct?

22 A Correct.

23 Q You didn't see anything in the dresser, correct?

24 A Well, actually somebody else searched that, but no,

1 they did not mention that either.

2 Q You didn't see anything on top of the dresser, correct?

3 A Correct.

4 Q You didn't see anything under the bed, correct?

5 A Correct.

6 Q You didn't find anything on top of the bed, correct?

7 A Correct.

8 Q Okay. You testified also that you made contact with
9 Mr. Hager in his vehicle; is that correct?

10 A Yes, ma'am.

11 Q You were the person who spoke to him at that point of
12 contact, right?

13 A Yes, ma'am.

14 Q And you also participated in searching his car, correct?

15 A That is correct.

16 Q And when you searched his car, you didn't find any
17 baggies that looked like this, correct?

18 A Correct.

19 Q You didn't find any pipes that look like this, correct?

20 A Correct.

21 Q You didn't find any controlled substances, correct?

22 A Correct.

23 Q You didn't find any indicia of drug use in his car at
24 all, right?

1 A Correct.

2 Q And you spoke to Mr. Hager; is that correct?

3 A Yes, ma'am.

4 Q And when you spoke to him, you had no suspicion that he
5 was under the influence of methamphetamine, correct?

6 A I didn't speak to him long enough to do any type of
7 tests or anything like that. It was a very brief conversation.

8 Q Okay. And I'm not talking about tests. All right.

9 A Okay.

10 Q You didn't put him through field sobriety tests,
11 obviously?

12 A No.

13 Q That wasn't your concern, right?

14 A Right. And basically at that point he was going to be
15 meeting with another detective, Detective Rowe, to talk about why
16 we were there.

17 Q Okay. I'm just talking about you personally. When you
18 had contact with him, you did not have any suspicion that he was
19 under the influence of methamphetamine, correct?

20 A Correct.

21 Q You also searched Mr. Hager's cell phone, correct?

22 A Yes, ma'am.

23 Q And we talked about your training to do those searches,
24 right?

1 A Yes, ma'am.

2 Q It's a fairly thorough training?

3 A Yes, ma'am.

4 Q It took you a lot of time to be certified to be able to
5 do those searches and to see what you're seeing, correct?

6 A Yes, ma'am.

7 Q I guess, "to see what you're seeing," to know what
8 you're looking at. Is that fair?

9 A Yes, ma'am.

10 Q I believe you testified that part of the reason you do
11 the search like you do it is to make sure that you don't delete
12 or mess anything up on the phone, correct?

13 A Correct.

14 Q So that you can see what is stored on that phone
15 without accidentally moving, deleting or altering it in any way,
16 correct?

17 A Correct.

18 Q And part of the training that you went through allows
19 you to look on a phone and really see everything that's on it,
20 right?

21 A It does.

22 Q That includes text messages?

23 A Yes, ma'am.

24 Q Voicemails?

1 A Yes, ma'am.

2 Q Photos, obviously?

3 A Yes, ma'am.

4 Q Videos?

5 A Yes, ma'am.

6 Q And anything also that may have recently been deleted,
7 correct?

8 A Yes, ma'am.

9 Q It also allows you to look through somebody's contacts,
10 correct?

11 A Yes, ma'am.

12 Q And when you went through Mr. Hager's phone, you looked
13 through all of his pictures that were on that phone, correct?

14 A No.

15 Q You didn't look through them?

16 A I looked through some of the pictures, but not all of
17 them, no.

18 Q Okay. So the ones that you looked through, you didn't
19 see any photos of a controlled substance, correct?

20 A Correct.

21 Q You didn't see any photos of drug paraphernalia, correct?

22 A Correct.

23 Q You didn't see any photos of Mr. Hager using this meth
24 pipe or anything similar, correct?

1 A Correct.

2 Q You didn't see any photos of these bags that you
3 suspected to be drug paraphernalia full of drugs in his phone,
4 correct?

5 A Correct.

6 Q You didn't see any photos that would show that those
7 bags were used to contain drugs at any time, correct?

8 A Correct.

9 Q You looked through his text messages, correct?

10 A No.

11 Q You had access to them if you wanted them, right?

12 A Yes. A phone is similar to a small computer, if you
13 will, and there's lot of data on there. So we don't generally
14 just go through every piece of data on someone's phone. Just
15 like a computer, it would take a very long time.

16 So the detective, whoever is in charge, in this case it
17 was Detective Rowe, gives you kind of direction of where he wants
18 you to look. In this case he said, you know, look for videos and
19 images from October to now -- or October until the time he was
20 arrested --

21 Q Okay.

22 A -- for narrowing it down, if you will, for this case.

23 Q So the reason you didn't go through the text messages
24 was that was a choice, right?

1 A Yes.

2 Q That was a decision that was made by you and Detective
3 Rowe?

4 A That is correct.

5 Q Did you consult with the district attorney at all in
6 making that decision?

7 A No.

8 Q So just you and Detective Rowe?

9 A Correct.

10 Q If you wanted to, you could have gone through his text
11 messages, correct?

12 A Yes, ma'am.

13 Q You could have gone through his text messages to see
14 whether or not there were texts about buying drugs, correct?

15 A Correct.

16 Q And I'm assuming you didn't do that?

17 A Yes.

18 Q And I'm assuming you didn't go through his contacts; is
19 that fair?

20 A I think I did look through the contacts. The reason
21 that is, is because it comes up on the report when you first make
22 the report. I didn't go through and find out who every number
23 belongs to, but I noticed that, yeah, there are contacts.

24 Q You didn't go through his contacts to see if there was

1 anything that obviously looked like somebody that he may buy
2 drugs from, correct?

3 A Like a known drug source, is that what you're saying?

4 Q Yes.

5 A No, I did not.

6 Q You could have?

7 A Yes, ma'am.

8 Q You chose not to?

9 A Yes, ma'am.

10 Q Through discussions with Detective Rowe, correct?

11 A Yes, ma'am.

12 Q You decided that wasn't part of the investigation you
13 wanted to do, right?

14 A Correct.

15 Q Okay. Were you present when any of the firearms were
16 recovered in his home?

17 A Yes. I saw a variety of firearms in the living room
18 when I walked in, and I located one in the master bedroom on the
19 bed.

20 Q And which was the one that you located in the master
21 bedroom on the bed?

22 A It was a SIG Sauer .40 caliber handgun.

23 Q So you personally saw that firearm, correct?

24 A Yes, ma'am.

1 Q And in seeing certain firearms in the living room,
2 would you be able to identify them as they were, or are you just
3 saying I knew that they were there?

4 A Yes, ma'am. I saw them there, but I did not spend any
5 time there to go through them.

6 Q Okay. So as to your personal knowledge, you know that
7 you found that Sig Sauer in the bedroom, correct?

8 A Correct.

9 Q Yes, ma'am.

10 MS. HICKMAN: Judge, I have no further questions for
11 him.

12 THE COURT: Anything on redirect?

13 MR. PRENGAMAN: No questions, Your Honor.

14 THE COURT: Thank you. You may step down. Thank you
15 for your testimony.

16 THE WITNESS: Thank you, Your Honor.

17 Call your next witness.

18 MR. PRENGAMAN: State will call James Popovich.

19 THE COURT: Please step forward and be sworn.

20 (Witness sworn.)

21 THE COURT: Please take the witness stand. Make
22 yourself comfortable. I'm going to know you're comfortable,
23 because you're going to tell me your first and last name,
24 spelling your last name for the record.

1 THE WITNESS: James Popovich. Last name spelled
2 P-O-P-O-V-I-C-H.

3 THE COURT: Thank you.

4 Mr. Prengaman, you may proceed.

5 MR. PRENGAMAN: Thank you, Your Honor.

6 JAMES POPOVICH,
7 called as a witness herein,
8 being first duly sworn, was examined
9 and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. PRENGAMAN:

12 Q Good morning.

13 A Good morning.

14 Q Could you please tell us what your occupation is.

15 A Specialty Courts manager for the Second Judicial
16 District Court.

17 Q And just briefly by way of sort of explanation, what
18 are the specialty courts in Washoe County?

19 A Specialty courts are courts where it's -- it's taking a
20 lot of the traditional criminal processing courts and diverting
21 cases, whether substance abuse or mental health on board, and
22 trying to treat that within a court-supervised environment,
23 usually 12 to 18 months.

24 Q And so you are the supervisor over all of the specialty

1 courts here in the Second Judicial District Court in Washoe
2 County?

3 A That's correct.

4 Q Does the Second Judicial District Court -- has the
5 court here established a Mental Health Court?

6 A They have.

7 Q And is that established under Nevada law, and
8 specifically the Nevada Revised Statutes Chapter 176A?

9 A It is.

10 Q And you touched on it, but just very briefly and
11 generally, could you give us an idea of what Mental Health Court
12 does?

13 A Mental Health Court treats those criminal cases. It's
14 one of our only multi-jurisdictional courts. So we treat felony
15 cases here in the district court, as well as cases from the lower
16 courts; justice and municipal courts. And we treat those with
17 severe mental illnesses as a paramount diagnosis over substance
18 abuse, minimum 12-month program.

19 Q And does a district court judge oversee or administer a
20 Mental Health Court?

21 A Yes.

22 Q And you said Mental Health Court is a multi-
23 jurisdictional court. Does our Washoe County Mental Health Court
24 accept referrals from other courts apart from the ones you

1 mentioned, for instance the rural district courts?

2 A It does.

3 Q So, for instance, a judge in the Sixth Judicial
4 District in Winnemucca could, if he determined it appropriate,
5 refer somebody to the Washoe County Mental Health Court?

6 A Yes.

7 Q And then if -- who would determine ultimately if that
8 individual referred by the judge meets the criteria to be
9 admitted into the Mental Health Court?

10 A The ultimate decision is the district judge. The team,
11 comprised of the specialty court officers, defense and
12 prosecution, parole and probation, they staff the case, they look
13 at the PSI, they look at the mental health eval, criminal
14 history. And they staff that case, with the ultimate decision
15 being the district judge's.

16 Q So would it be fair to say that those individuals that
17 you just described, they sort of staff it, and even make
18 recommendation about what should happen. Is that fair?

19 A That's correct.

20 Q Ultimately it's the judge that decides this referral,
21 this individual meets the criteria, admit or deny?

22 A Correct.

23 Q Now you've touched on it. What is the criteria for
24 admission to Mental Health Court?

1 A Severe mental illness is the first criteria. And the
2 statute states that a SMI, severe mental illness, acronym being
3 SMI. So when I refer to SMI, that's what I would refer to. One
4 of the DSM --

5 MS. HICKMAN: I'm going to object to foundation as to
6 him testifying to statutes.

7 THE COURT: I didn't hear him testifying as to
8 statutes.

9 MS. HICKMAN: He said, "the statute says."

10 THE COURT: I'm going to allow it.

11 Go right ahead. Overruled.

12 THE WITNESS: The current statute that addresses Mental
13 Health Court, does state the diagnostic and statistical manual
14 four, which is -- currently the ones that's used is five. So the
15 statute does describe in the severe mental illnesses under that
16 statute for people to be eligible for Mental Health Court would
17 be major depression, PTSD, schizophrenia, schizoaffective, and
18 bipolar.

19 BY MR. PRENGAMAN:

20 Q And is it true that that DSM-IV, according to the
21 criteria that the Mental Health Court follows by statute, is the
22 diagnosis of the severe mental illness has to be an Axis I in the
23 DSM-IV?

24 A Correct.

1 Q And do diagnoses that you just listed off, are they all
2 Axis I diagnoses under the DSM-IV?

3 A Under DSM-IV, correct.

4 Q Mr. Popovich, as the supervisor of the specialty
5 courts, including the Mental Health Court, do you have custody
6 and control of the records and documents associated with Mental
7 Health Court?

8 A I do.

9 Q Were you previously asked to provide some records
10 pertaining to a particular participant in the Mental Health
11 Court?

12 A I was.

13 Q I'm going to show you what we have marked for
14 identification as Exhibit 38, and just ask you to take a look at
15 that and tell me if you recognize the exhibit.

16 A I do recognize these.

17 Q Okay. And were you requested to provide records
18 pertaining to the specific participant, Ian Hager, in Mental
19 Health Court?

20 A Yes.

21 Q And are the records that you have before you records
22 that pertain to his case in Mental Health Court?

23 A They are.

24 MR. PRENGAMAN: Your Honor, I would move for the

1 admission of the exhibit at this time.

2 MS. HICKMAN: If I could look at it just real briefly.

3 THE WITNESS: Exhibit 38.

4 MS. HICKMAN: Judge, may we briefly approach?

5 (Discussion held at the bench.)

6 THE COURT: All right. Thank you. Subject to your
7 comments, they will be admitted.

8 (Exhibit 38 was admitted into evidence.)

9 MR. PRENGAMAN: Thank you, Your Honor.

10 BY MR. PRENGAMAN:

11 Q And, Mr. Popovich, is it accurate that Ian Hager was
12 referred by the Sixth Judicial District Court to our Mental
13 Health Court in 2013?

14 A Correct.

15 Q And did the Mental Health Court judge determine that he
16 met the criteria and accept him into the program?

17 A He did.

18 Q And did Mr. Hager participate in the Mental Health
19 Court, program?

20 A He did.

21 Q And are you able to tell us the date or close to the
22 date approximately when he was accepted into the program?

23 A Based on this, I can.

24 Q Certainly. If you need to refer to the exhibit.

1 A Sure. I show May 7, 2013.

2 Q And what was Mr. Hager's qualifying diagnosis?

3 MS. HICKMAN: I'm going to object as to foundation.

4 MR. PRENGAMAN: It's in the record.

5 THE COURT: Overruled.

6 BY MR. PRENGAMAN:

7 Q Mr. Popovich, what was Ian Hager's qualifying diagnosis
8 for admission into the Mental Health Court program?

9 A PTSD.

10 Q That would be post-traumatic stress disorder?

11 A Correct.

12 Q DSM-IV Axis I diagnosis?

13 A Correct.

14 Q Thank you, Mr. Popovich.

15 MS. HICKMAN: I have no further questions.

16 THE COURT: Cross-examination?

17 MS. HICKMAN: Thank you.

18 If I may approach and get the exhibit?

19 THE COURT: Sure.

20 MS. HICKMAN: Thank you.

21 CROSS-EXAMINATION

22 BY MS. HICKMAN:

23 Q Mr. Popovich, you remember testifying about how a
24 person gets into the Mental Health Court, correct?

1 A Correct.

2 Q And the State asked you questions about a referral that
3 could come from a judge in one of the rural counties, correct?

4 A Correct.

5 Q Such as Humboldt County?

6 A Yes.

7 Q So when a referral comes to you as specialty courts, or
8 Mental Health Court in particular, is that a request from the
9 judge for it to be staffed to see if somebody is eligible?

10 A That's correct.

11 Q So a referral to Mental Health Court is not a judge
12 saying this person is eligible, it is a judge saying we're asking
13 you to determine whether or not somebody is eligible?

14 A Correct.

15 Q And not everybody who has a DSM-IV or V mental health
16 diagnosis is eligible for Mental Health Court, correct?

17 A That's correct.

18 Q And not everybody who is referred to Mental Health
19 Court is accepted into Mental Health Court, correct?

20 A Correct.

21 Q And we talked about the process of how staffing is done
22 with Mental Health Court, correct?

23 A Correct.

24 Q There are numerous people who are often there, correct?

1 A Correct.

2 Q One of them is generally a defense attorney, right?

3 A Correct.

4 Q There's a member from the prosecution, correct?

5 A Yes.

6 Q Someone from the Division of Parole and Probation,
7 correct?

8 A Yes.

9 Q Did I say a specialty courts officer?

10 A Not yet.

11 Q Okay. A specialty courts officer?

12 A Yes.

13 Q And often is that person somebody by the name of Renee
14 Biondo?

15 A She's one of the two specialty court officers assigned
16 to Mental Health Court.

17 Q And the other one is Kayla Garcia?

18 A Correct.

19 Q So one of those two or both are often at staffing,
20 correct?

21 A Correct.

22 Q And staffing usually takes part for all of the
23 referrals that come in in a week, correct?

24 A Correct.

1 Q And you look at all of the different information that
2 you have about somebody to determine whether or not they would be
3 eligible to take part in Mental Health Court, correct?

4 A Yes.

5 Q And one of the things that a person has to have to get
6 into Mental Health Court is a qualifying diagnosis, correct?

7 A Yes.

8 Q And a qualifying diagnosis has to come from a licensed
9 professional, correct?

10 A Correct.

11 Q Somebody can't just say, "Hey, I think I have PTSD, put
12 me in Mental Health Court," right?

13 A Correct.

14 Q And we talked about a licensed professional. What are
15 those people generally licensed in?

16 A Marriage and family therapy, clinical psychology,
17 psychiatry.

18 Q Those are all things that require an advanced degree?

19 A Masters level or higher, yes.

20 Q And they all require a person to do a personal
21 evaluation of a person, correct?

22 A Correct.

23 Q And a personal evaluation of that person finding that
24 they may meet these diagnostic qualities to qualify them for

1 Mental Health Court, correct?

2 A Yes.

3 Q And if we look at what has been admitted as Exhibit 38,
4 in, this document is an acceptance letter, correct?

5 A Yes.

6 Q And it's an acceptance letter accepting Mr. Hager into
7 Mental Health Court; is that correct?

8 A Yes.

9 Q And you've seen that, correct?

10 A I have.

11 Q And that acceptance letter into Mental Health Court is
12 not signed by a judge; is that correct?

13 A Correct.

14 Q It doesn't appear as though it's signed by Renee Biondo
15 either, but her name is on the form, correct?

16 MS. HICKMAN: If I may approach.

17 THE COURT: Yes.

18 THE WITNESS: Signed by the second name, Isabel
19 Meadows, who was the specialty court officer for Mental Health
20 Court at that time, yes.

21 MS. HICKMAN:

22 Q Okay. So it's safe to say that Isabel Meadows also is
23 not a judge, correct?

24 A Correct.

1 Q And so this acceptance letter ultimately is never
2 signed by a judge, correct?

3 A Correct.

4 Q And this is the ultimate piece of paper that a person
5 would need to be accepted into Mental Health Court, correct?

6 A Correct.

7 Q So when we are talking about a judge making the
8 ultimate decision, generally he or she is part of the team
9 deciding whether or not somebody should get in, correct?

10 A Part of the team, correct.

11 Q And the ultimate decision part of that could come down
12 to if there's a contested debate if someone should get in or it's
13 a really close call or he just thinks this person needs a chance,
14 and no one else does, right, he has the ultimate authority?

15 A Correct.

16 Q But in this case if you look at this acceptance letter
17 from Mental Health Court that is signed by Isabel Meadows,
18 there's nothing on that indicating that the judge made the
19 ultimate decision in this case, correct?

20 Let me put it down a little bit, sorry.

21 A Would you mind going to the first -- thank you.

22 Are you on the second page again?

23 MS. HICKMAN: Actually, Judge, if I just may approach
24 and have him look at it that way.

1 THE COURT: Yes.

2 THE WITNESS: That's correct, that this document
3 wouldn't show that the judge made the ultimate decision.

4 MS. HICKMAN:

5 Q Okay. And in this case there was a referral that was
6 made by Mr. Hager's attorney out of Humboldt County, correct?

7 A Correct.

8 MS. HICKMAN: And if I may approach again.

9 THE COURT: You may.

10 BY MS. HICKMAN:

11 Q This is that referral?

12 A Correct.

13 Q And there is a diagnosis on that referral, correct?

14 A It's stated on the line there, yes.

15 Q Okay. And to the best of your knowledge that's not
16 written by one of those licensed professionals that we talked
17 about, correct?

18 A Correct.

19 Q And Mr. Popovich, do you also oversee drug court?

20 A I do.

21 Q And there are different aspects to drug court, correct?
22 There's an adult drug court, and then there's a diversion drug
23 court?

24 MR. PRENGAMAN: I'm going to object on relevance

1 grounds.

2 THE COURT: Beg your pardon?

3 MR. PRENGAMAN: Relevance. The objection was
4 relevance.

5 THE COURT: Overruled.

6 BY MS. HICKMAN:

7 Q So there's an adult drug court, and then there's a drug
8 diversion court, correct?

9 A Correct.

10 Q And those are both courts that were designed
11 essentially to treat people that have substance abuse issues,
12 correct?

13 A Correct.

14 Q There's two ways that a person could get into one of
15 those two drug courts, right?

16 A Correct.

17 Q There's two different referrals, if that makes sense.
18 There's a 458 deferral and there's a 453 deferral, correct?

19 A That's correct.

20 Q And if somebody comes into drug court under a 453
21 deferral, those are cases where somebody is potentially caught
22 red-handed with drugs in their possession and they can be
23 diverted or placed straight into drug court, correct?

24 A Correct.

1 Q And then there's something called a 458, correct?

2 A Correct.

3 Q And a 458 referral is one where there has been a
4 finding by a licensed professional that a person is either
5 addicted to drugs or addicted to alcohol, correct?

6 A Correct, or gambling.

7 Q Okay. But if I stick just with drugs.

8 A Sure.

9 Q Okay. So in order to be admitted into drug court under
10 a 458 deferral, there would have to be a finding that a person is
11 a drug addict by a licensed professional?

12 A Correct.

13 Q And part of what has been admitted as Exhibit 38 is
14 this policy and procedure handbook for Mental Health Court,
15 correct?

16 A Correct.

17 Q And it goes through the laws that would be in place if
18 a person were to be placed in Mental Health Court, correct?

19 A Correct.

20 Q And essentially what it does, is it gives the Mental
21 Health Court information about who's eligible, what will happen
22 to somebody when they go through it, and the effects of
23 completing that Mental Health Court, correct?

24 A Correct.

1 Q And before I get into that, there's also two ways to
2 end Mental Health Court, correct? You can either end it on a
3 diversion status, and then your conviction is dismissed and the
4 conviction is set aside, right?

5 A Correct.

6 Q Or you can be sent there as a condition of probation,
7 and you can complete it successfully, but you would still have
8 the conviction on your record, correct?

9 A Correct.

10 Q And to the best of your knowledge, Mr. Hager was in
11 drug court on a diversionary status, correct?

12 A Correct.

13 Q Meaning once he was able to successfully complete
14 Mental Health Court his case was dismissed and any conviction
15 would have been set aside, correct?

16 A Correct.

17 Q And if you look at the policy and procedure that was
18 provided -- I'm going to zoom in. If you look at NRS 176A.260 --
19 do you see what I'm looking at?

20 A I do.

21 Q And that statute is -- there's a number of things in
22 it, but one of them is the discharge of the defendant upon
23 fulfillment of terms and conditions and the effective discharge.
24 Do you see that?

1 A What number is that?

2 Q I'm talking about the header line up there.

3 A Oh, yes.

4 Q Okay. And then if you look at subsection four of the
5 statute -- do you want me to make it bigger for you?

6 A No, I can see four.

7 Q Okay. What that goes through is what the status of a
8 person is once they are done with Mental Health Court as a
9 diversion, correct?

10 A Correct.

11 Q And if you look at the last part of that statute --
12 actually, sorry, starting here, where it says, "Discharge and
13 dismissal restores the defendant in the contemplation of the law
14 to the status occupied before the arrest, Indictment or
15 Information," right?

16 A Correct.

17 Q And then it says, "The defendant may not be held
18 thereafter under any law to be guilty of perjury for otherwise
19 giving a false statement, for a reason of failure to recite or
20 acknowledge that that arrest, Indictment, Information or trial,
21 in response to an inquiry made of the defendant made for any
22 purpose," correct?

23 A Correct.

24 MS. HICKMAN: Your Honor, I have no further questions.

1 THE COURT: Any redirect?

2 MR. PRENGAMAN: Yes. Thank you, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. PRENGAMAN:

5 Q Mr. Popovich, the defendant's lawyer -- the defendant's
6 lawyer showed you the acceptance letter for Mental Health Court
7 that was in this packet --

8 A Correct.

9 Q -- do you recall that?

10 Is this essentially like a ministerial "you got in"
11 type of letter?

12 A It is.

13 Q Okay. So the fact that it's not signed by a judge, is
14 it fair to say that's unremarkable?

15 Well, let me ask it a better way. This is simply
16 something sent by a staff member alerting the applicant that they
17 have been accepted.

18 A Right.

19 Q So it's not a court order or anything like that?

20 A Correct.

21 Q Does the fact that this letter was sent out -- I can't
22 remember whether you said it or not already, but the individual
23 who signed it, Ms. Isabel Meadows, she's one of the specialty
24 court officers?

1 A She was at that time.

2 Q And she's obviously not a judge, right?

3 A Correct.

4 Q But the fact that she sent it out, does that mean that
5 Mr. Hager somehow got into Mental Health Court without a judge
6 saying so?

7 A No.

8 Q In spite of the defendant's lawyer's questions about
9 the staffing, you talked about that, but ultimately is it the
10 Mental Health Court judge's decision who gets in?

11 A It is.

12 Q If Renee Biondo, for instance, the specialty court
13 officer, says I think this individual should get in and the judge
14 says no, does the person get in?

15 A No.

16 Q So it's a judge's decision that they meet the criteria?

17 A Correct.

18 Q Now the defendant's lawyer asked you a couple questions
19 about not everyone getting into Mental Health Court; is that
20 right?

21 A Correct.

22 Q Is it entirely possible that somebody could have the
23 diagnosis, the DSM-IV Axis I serious mental health diagnosis, and
24 yet the judge ultimately decided that person does not get into

1 Mental Health Court?

2 A Yes.

3 Q So not everybody gets in; is that fair?

4 A That's correct.

5 Q So they have to meet the criteria for diagnosis to get
6 in?

7 A Yes.

8 Q So would it be fair to say that the DSM-IV Axis I
9 diagnosis is necessary, but not sufficient to get into Mental
10 Health Court?

11 A Correct.

12 Q You mentioned some things that are considered, criminal
13 history, others things. Would it be possible, hypothetically,
14 for instance, for somebody to meet the criteria, but to have a
15 criminal history that is just too significant for various reasons
16 to be admitted into the program?

17 A Yes.

18 Q Okay. But as to Mr. Hager's case, he met the criteria,
19 and he got in?

20 A Yes.

21 Q Now the defendant's lawyer also asked you -- I believe
22 she asked you if that -- if that there was in this packet, there
23 was a -- it reflects a diagnosis of PTSD as you indicated?

24 A Yes.

1 Q And she asked whether there was a -- an evaluation from
2 a licensed individual in here. And there's not one in here, is
3 there?

4 A Correct.

5 Q However, there was one that was considered and received
6 when Mr. Hager's application came in; isn't that right?

7 MS. HICKMAN: Objection. I don't know if he has
8 personal knowledge of that.

9 THE COURT: Well, that would be the question; do you
10 have personal knowledge of that?

11 THE WITNESS: There was one received at the time.

12 THE COURT: Overruled.

13 BY MR. PRENGAMAN:

14 Q And so there was an evaluation conducted by a
15 professional that rendered the diagnosis of the PTSD that allowed
16 Mr. Hager to qualify for the program?

17 A Correct.

18 Q Okay. It's just not in this packet?

19 A Correct.

20 Q And she asked you some questions about the referral,
21 and certainly somebody can be referred or their defense attorney
22 could apply or make an application. Those are some of the ways
23 that the application could come to the Mental Health Court; is
24 that fair?

1 A That's correct.

2 Q However, sometimes people are ordered by the
3 district -- by a sentencing judge into Mental Health Court; is
4 that right?

5 A Yes.

6 Q And in this case Ian Hager was ordered to apply to
7 Mental Health Court by a district court judge?

8 A Yes.

9 Q Thank you, Mr. Popovich.

10 MR. PRENGAMAN: I have no further questions.

11 THE COURT: Thank you.

12 Re-cross.

13 MS. HICKMAN: Yes, please.

14 RE-CROSS-EXAMINATION

15 BY MS. HICKMAN:

16 Q So this acceptance letter that we are talking about for
17 Mental Health Court, this is what gets filed to let somebody know
18 that they have been accepted to Mental Health Court, correct?

19 A It does get filed, yes.

20 Q There's not an order that follows this by the specialty
21 court judge that says I find so and so qualifies because of
22 diagnosis of "X," I find that person belongs in Mental Health
23 Court, correct?

24 A Correct.

1 Q There is simply this piece of paper that's signed by
2 someone who is not a judge, correct?

3 A Correct.

4 Q So when the State is asking you, "The judge found that
5 he should be in Mental Health Court," the judge is part of the
6 decision to place him in Mental Health Court, correct?

7 A Correct.

8 Q And the judge did not sign an order saying this person
9 should be in Mental Health Court, correct?

10 A That's correct.

11 Q Instead he worked as part of the team, correct?

12 A Correct.

13 Q And when the team is meeting and deciding whether or
14 not somebody should be in Mental Health Court, that's done in a
15 judge's chambers; is that true?

16 A A staffing room.

17 Q A staffing room?

18 A Yes.

19 Q It's essentially a table and everybody sits around it,
20 correct?

21 A Correct.

22 Q There's not a court reporter, correct?

23 A Correct.

24 Q There's not a court clerk, correct?

1 A Correct.

2 Q There's no official record of what is or is not said in
3 that room?

4 A Correct.

5 Q So when you talk about Mr. Hager getting into Mental
6 Health Court, you don't know whether the judge had anything to
7 say about whether or not he belonged, correct?

8 A I don't know that for sure.

9 Q You don't know which judge was even present on the day
10 that he was being staffed by the team, correct?

11 A Correct.

12 Q And there's no record from his Mental Health Court
13 documents telling you which judge that was, correct?

14 A Correct.

15 Q So if somebody is denied getting into Mental Health
16 Court, there's no ability to appeal that, correct? They can't
17 ask a higher court to review that staffing decision and order
18 them into Mental Health Court, correct?

19 And that's kind of confusing, right? Because --

20 A Well, there's not an official appeal process, but it
21 does occur when the sentencing judge does ask for reconsideration
22 of that case.

23 Q Right.

24 A And then I have seen denials turn into acceptances

1 based on that reconsideration.

2 Q So there are times when somebody can either re-refer or
3 a sentencing judge can say look, "I know you guys didn't accept
4 him, but I am ordering him into this," correct?

5 A Correct.

6 Q But it is not something that can be appealed to the
7 supreme court, that somebody didn't get into Mental Health Court,
8 correct?

9 A To my knowledge, no.

10 Q Have you ever seen it done?

11 A I have not.

12 Q And even if somebody is ordered to apply to Mental
13 Health Court, that person does not ever have to attend Mental
14 Health Court, correct? It's voluntary?

15 A It's voluntary until they're ordered. Once they're
16 ordered, they would be considered noncompliant if they did not
17 attend. So they'd be out of compliance with the sentencing court
18 order.

19 Q Okay. So if somebody is voluntarily in Mental Health
20 Court and they comply, they're not out of compliance as they go
21 through it, correct?

22 A Correct.

23 Q And they can't be forced to participate in Mental
24 Health Court?

1 A Forced, no.

2 MS. HICKMAN: Thank you. I have no further questions.

3 THE COURT: Thank you. You're excused. You may step
4 down. Thank you for your testimony.

5 Call your next witness.

6 MR. PRENGAMAN: May we approach?

7 THE COURT: You may.

8 (Discussion held at the bench.)

9 THE COURT: All right. Ladies and gentlemen, I was
10 going to give you a break at 1:00 o'clock, because we're moving
11 along, but the lawyers have asked if we can do that just a little
12 bit earlier, so we can make sure all the witnesses are here.

13 So I'm going to give your hour lunch now. So it's
14 12:30. If you can come back at 1:30, that would be great. If
15 that's all right with everybody 1:30 recess. I'm not seeing
16 anybody shaking their head or throwing a fist at me. So let's do
17 1:30, then please, ladies and gentlemen.

18 And remember this, we're going to take our lunch
19 recess, during this recess, it's your duty not to converse
20 amongst yourselves or with anyone else on any subject connected
21 with the trial, or read, watch or listen to any report of or
22 commentary on the trial or any person connected with the trial or
23 by any mean of information including without limitation
24 newspaper, television, Internet, smart phones, radio. You're not

1 to form or express an opinion on any subject connected with this
2 case until it's finally submitted to you.

3 I'll see you back here at 1:30. Thank you for your
4 time.

5 All rise for the jury.

6 (The following proceedings were held outside the presence of the
7 jury.)

8 THE COURT: All right. We're outside the presence of
9 the jury. You may be seated.

10 I've been advised at the bench that the State
11 anticipates two more witnesses, and then defense plans to call
12 witnesses.

13 Are you planning on doing an opening statement before
14 the commence of your case?

15 MS. HICKMAN: Yes, for the short answer.

16 THE COURT: All right. And you can be seated unless
17 you have something else you want to tell me.

18 MR. PRENGAMAN: Just that I -- that the Court has
19 previously ruled that the defense cannot -- if I may, Your Honor,
20 if you would allow me just to say it now.

21 THE COURT: Yes.

22 MR. PRENGAMAN: Based on the Court's previous ruling --
23 as I look at the defense's notice of witnesses, virtual -- I
24 think all of them relate to the defendant's guns being in the

1 possession of the Sparks Police Department and then returned to
2 him at his request. And we've addressed that in the pretrial.

3 THE COURT: That's correct.

4 MR. PRENGAMAN: The Court's order is that they can't
5 get into that, make reference to it in front of the jury without
6 essentially coming to the Court for a hearing on that subject to
7 see if they can meet the requirements.

8 So when I hear that, I just want to -- if -- I need to
9 lodge my objection, that they -- those witnesses to me all look
10 like that's where they come from. And so if they're going to
11 start calling them, I'm going to object, essentially invoke the
12 Court's prior order that they need to get authorization.

13 THE COURT: I understand. Do you want to respond?

14 MS. HICKMAN: Judge, I do understand that. My
15 intention was to have the State close its evidence, make our
16 record as to whether or not we would be allowed to call those
17 witnesses, what we would intend them to testify to, and then get
18 the Court's permission or not as to what I can and cannot put on,
19 and then open from there.

20 THE COURT: Sure.

21 MS. HICKMAN: So I imagine having a hearing about that,
22 obviously, before I close them like the Court ordered -- call
23 them.

24 THE COURT: That's fine. One of the things, just for

1 the record, is that you were not counsel during the motions
2 hearing. And I made a very specific ruling. I don't know if you
3 had an opportunity to review the transcript --

4 MS. HICKMAN: I did.

5 THE COURT: -- and speak with your colleague who was
6 here at the time. But I made a finding as a matter of law
7 related to this case, that it's a strict liability crime. And
8 that's where it is.

9 So if there had been a desire to be able to say, "Hey,
10 wait a minute, the Sparks Police Department gave my guns back,"
11 there is a very specific aspect of law the Court is familiar with
12 by the estoppel argument, entrapment by estoppel, and those
13 elements have to be met. And if you're, as Mr. Prengaman said, I
14 just want to make a record, you're inclined to do that, we will
15 have a hearing outside, if you're going to need that defense. If
16 not, I'm not going to allow that testimony.

17 MS. HICKMAN: Which is my understanding, Judge. I did
18 get a copy of the transcript. I have read that. That's why I
19 reserved my opening, and that's why I would intend to have a
20 hearing before I go into that. I'm not trying to violate the
21 Court's order.

22 THE COURT: I understand.

23 MS. HICKMAN: And I don't think we've done it through
24 cross at all here.

1 THE COURT: You have not. You've both been very
2 diligent about the previous rulings. And so far this trial has
3 been very smooth.

4 That being said, let me do a Carter versus Kentucky
5 admonishment. Please rise.

6 Mr. Hager, I'm about to read you an admonishment about
7 testifying, that every defendant is entitled to hear before you
8 open the defense case related to your testifying.

9 Under the Constitution of the United States and under
10 the Constitution of the State of Nevada, you cannot be compelled
11 to testify in this case. Do you understand that?

12 THE DEFENDANT: Yes, sir, I do.

13 THE COURT: You may, at your own request, give up this
14 right and take the witness stand and testify. If you do, you'll
15 be subject to cross-examination by the district attorney. And
16 anything that you may say, be it on direct or cross-examination,
17 will be the subject of fair comment when the deputy district
18 attorney speaks to the jury in his final argument. Do you
19 understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: If you choose not to testify, the Court
22 will not permit the district attorney to make any comments to the
23 jury because you have not testified. Do you understand that?

24 THE DEFENDANT: I do, Your Honor.

1 THE COURT: If you elect not to testify, I will
2 instruct the jury, but only if your attorney specifically
3 requests as follows:

4 The law does not compel a defendant in a criminal case
5 to take the stand and testify. And no presumption may be raised
6 and no inference of any kind may be drawn from the failure of the
7 defendant to testify. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you have any questions about that so
10 far?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Do you have any prior felonies?

13 THE DEFENDANT: No, sir.

14 THE COURT: All right. The second part of the
15 admonishment has to do with whether you have any prior felonies.

16 THE DEFENDANT: I have a question about that real quick.

17 THE COURT: Check with your lawyers first.

18 THE DEFENDANT: Okay.

19 MS. HICKMAN: I think his concern would be if he was
20 asked if he had a felony on the stand, would he have to answer
21 truthfully from that Mental Health Court case.

22 THE COURT: Well, let me --

23 MS. HICKMAN: But we can talk about that.

24 THE COURT: Let me read the second part of the

1 admonishment, just in an abundance of caution, for people who
2 clearly have a convicted felony. It's still up in the air in
3 this case, but let me read it to you anyway.

4 THE DEFENDANT: Okay.

5 THE COURT: If you have been convicted of a felony in
6 the last ten years, if you take the witness stand and testify,
7 the district attorney, in the presence of the jury, will be
8 permitted to ask the defendant number one, if you've been
9 convicted of a felony; number two, what was the felony; and
10 number three, when did it happen. No details may be gone into
11 however.

12 It's not before me, but it's obvious what this case is
13 about. I'm not sure if that applies to you.

14 THE DEFENDANT: Okay.

15 THE COURT: So focus on the first part, consult with
16 your attorneys on the second part. But that's what Carter versus
17 Kentucky requires me to read to you. And that's what every
18 defendant is entitled to before the defense case.

19 THE DEFENDANT: Thank you, Your Honor.

20 THE COURT: Okay. Are there any questions other than
21 that one?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. Very good. You may be seated.
24 So we'll start again at 1:30. And who are your next

1 two witnesses?

2 MR. PRENGAMAN: Ms. Okuma, who is the P&P officer, and
3 then Detective Scott Johnson.

4 THE COURT: All right. Very good.

5 MR. PRENGAMAN: And what I would anticipate, I think
6 we're going to come back and it's not going to be that long
7 before the hearing outside the presence. I think those witnesses
8 aren't going to be, in my opinion, lengthy.

9 THE COURT: Good.

10 MR. PRENGAMAN: And so just I think the jury is going
11 to be here, and then probably be out pretty quick.

12 THE COURT: Here's what I think, I think that you're
13 going to make your argument. You're going to make your proffer
14 to me outside the presence, Ms. Hickman, related to what you
15 anticipate your defense to be. In light of the Court's comments,
16 I don't really think that will be that long.

17 So it will really be like having them go out for a
18 little bit and then having them come back, if there's some
19 questions, which happens in trial. So I think we'll be okay.

20 MR. PRENGAMAN: So then what I'd like to do, Judge, is
21 when I finish my two witnesses, I'd like to make my request for
22 taking judicial notice, if I may. So --

23 THE COURT: Do it now. Let's do it now.

24 MR. PRENGAMAN: Okay. I'm going to request, Judge, the

1 statute -- I have a copy. And Mr. Popovich addressed these. But
2 the DSM-IV does -- the DSM-IV -- so, sorry.

3 The statute, in terms of criteria, makes specific
4 reference to the DSM-IV. And as I read that, that is essentially
5 the statute incorporating the terms of that. So therefore, in
6 addition to the testimony, I'm requesting that the Court take
7 judicial notice of the relevant provisions of the DSM-IV, which I
8 have a copy of the relevant provisions that reflect that
9 post-traumatic stress disorder is an Axis I diagnosis. So if I
10 may.

11 MS. HICKMAN: I have no objection.

12 THE COURT: Thank you. It's admitted.

13 (Exhibit 95 was admitted into evidence.)

14 THE COURT: Any other housekeeping matters before we
15 clean things up? Do you have all your exhibits admitted up to
16 this point without the other witnesses?

17 MR. PRENGAMAN: Your Honor, there are some that we
18 stipulated to that I, for purposes of time, didn't show every
19 single photo.

20 So what I would request is that all the stipulated
21 photographs be admitted into evidence.

22 MS. HICKMAN: That's fine. I have no objection. I
23 just wanted to --

24 THE COURT: I got that. I saw the wheels turning.

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They're admitted.

(Exhibits 6, 27, 69, 80.)

MR. PRENGAMAN: Thank you, Your Honor.

THE COURT: All right. Very good. I think we're in good shape to begin at 1:30. That gives you time, Ms. Hickman to --

MS. HICKMAN: Yes.

THE COURT: All right. See you then.

MS. HICKMAN: Thank you.

(Lunch recess taken.)

--o0o--

1 RENO, NEVADA; WEDNESDAY, DECEMBER 14, 2016; 1:39 p.m.

2 AFTERNOON SESSION

3 --o0o--

4 THE COURT: Thank you. Please be seated. Back on the
5 record in CR16-1457, State versus Ian Andre Hager. The record
6 will reflect the presence of the defendant, the defense team, the
7 prosecution, and all our jurors are present.

8 Thank you very much.

9 Mr. Prengaman, you may call your next witness.

10 MR. PRENGAMAN: Thank you, Your Honor. State will call
11 Debbie Okuma.

12 THE COURT: Please step forward and be sworn.

13 (Witness sworn.)

14 THE COURT: Please take the witness stand. Make
15 yourself comfortable. I'm going to know you're comfortable,
16 because you're going to tell me your first and last name,
17 spelling your last name for the record.

18 THE WITNESS: My name is Debbie, D-E-B-B-I-E, last name
19 O-K-U-M-A.

20 THE COURT: Thank you. Mr. Prengaman.

21 DEBBIE OKUMA,

22 called as a witness herein,

23 being first duly sworn, was examined

24 and testified as follows:

1 DIRECT EXAMINATION

2 BY MR. PRENGAMAN:

3 Q Good afternoon.

4 A Good afternoon.

5 Q Ms. Okuma, would you please tell us how your employed
6 and your occupation.

7 A Yes. I am a presentence investigation specialist with
8 the Division of Parole and Probation.

9 Q And just very briefly can you tell us what your job
10 duties entail?

11 A Certainly. When a case in district court -- someone
12 either pleads guilty or is found guilty, the case comes to me.
13 And what I do, my function is taking a case and making it into a
14 report for the judge, because the judge only has a certain amount
15 of time to get to know the defendant. So I do an investigation
16 into the criminal history and their background, personal
17 background.

18 Q And then you compile that information into a report?

19 A Yes, Presentence Investigation Report.

20 Q So in the course of doing your research preparing that
21 report, do you typically meet with the defendant in person?

22 A Yes, I do.

23 Q And do you obtain from that person a number of points
24 of information, including sort of biographical data about their

1 personal history, life history?

2 A Social history from birth, yes.

3 Q Do you also typically inquire and document information
4 about substance abuse history, prior use of controlled
5 substances, and things in that vein of substance abuse?

6 A Yes.

7 Q I'm going to just play -- oh, sorry. Ms. Okuma, where
8 are you assigned? What court do you work in?

9 A It used to just be the Sixth Judicial District, now
10 it's the Eleventh and the Sixth.

11 Q Thank you. Back to March of 2013. How long had you
12 had your position or worked for the Division?

13 A December 1999.

14 Q So back in March of 2013, you had held the same position?

15 A Yes.

16 Q And were you assigned then to work out of the Sixth
17 Judicial District Court?

18 A Yes.

19 Q I'm going to play just a part of what we had previously
20 admitted as an exhibit, Exhibit 31-A.

21 (Video playing.)

22 BY MR. PRENGAMAN:

23 Q So, Ms. Okuma, you have been recognized as part of this
24 case. Do you recall it?

1 A Yes.

2 Q So you were in attendance at the hearing, this hearing
3 specifically that we're looking at, March 11th, 2013, State
4 versus Ian Hager?

5 A Yes.

6 Q And do you recall this hearing, the defendant entering
7 a plea, and then you being responsible for compiling the
8 Presentence Investigation Report that you've spoken of for
9 Mr. Hager?

10 A Yes.

11 Q And do you recall meeting with Mr. Hager in order to
12 compile that report?

13 A Yes.

14 Q And do you see Mr. Hager in the courtroom today?

15 A Yes.

16 Q And do you recognize him?

17 A Yes.

18 Q Could you please, for the record, so we know who you're
19 talking about, describe the clothing that he's wearing today.

20 A He's wearing a blue shirt with a gray tie, over at the
21 defense table.

22 MR. PRENGAMAN: Your Honor, will the record reflect an
23 identification?

24 THE COURT: It will.

1 BY MR. PRENGAMAN:

2 Q And so at this hearing, March 11, 2013, did you
3 ultimately meet with the defendant prior to the sentencing that
4 occurred?

5 A Yes.

6 Q And did you follow the procedure that you've outlined
7 for compiling a Presentence Investigation Report?

8 A Yes.

9 Q Okay. And so in the course of personally meeting with
10 Mr. Hager, when you get information or make inquiries about
11 subjects like substance abuse or other prior history, do you do
12 that just by sort of a question-and-answer or is there some other
13 format that you follow or is there some combination?

14 A Well, the Division, at an arraignment, the defendant is
15 given an questionnaire. It's a pretty lengthy packet. They're
16 instructed to fill that out, and then call -- in my case, me, so
17 we can do a meeting at my office to go over that questionnaire.

18 Q So the defendant, in this case, Mr. Hager, wrote down
19 information on that form and then met with you?

20 A Yes.

21 Q And did you follow up by discussing that information
22 with him?

23 A Yes.

24 Q And then you compiled your report, your Presentence

1 Investigation Report; is that right?

2 A Off that information, yes.

3 Q What I'd like to do, I have some very specific
4 questions for you about some of the information that you talked
5 to him about. And in case you can't remember everything, what
6 I'd like to do is provide you with copies of two documents.

7 I'm showing defense what was marked for identification
8 as 83.

9 Just first for the record, I'll show you 83. Would you
10 take a look at that and tell me if that is a copy of the
11 Presentence Investigation Report you completed for Mr. Hager?

12 A Yes.

13 Q And showing you Exhibit 96. Will you take a look at
14 that please and tell me if you recognize that as a copy of the
15 packet that Mr. Hager filled out and brought and spoke to you
16 about?

17 A Yes.

18 Q If you need to refer to either of those to answer a
19 question, just let me know that you need to do that to refresh
20 your memory. Again, I'm going to ask you about some very
21 specific points.

22 So in terms of, specifically, your discussion with
23 Mr. Hager about substance abuse, did he report to you that he had
24 been addicted to methamphetamine?

1 And do you need to refer to one of those documents to
2 refresh your memory?

3 A Yes. May I?

4 Q Please. And if you'll let us know which document
5 you're looking at.

6 A I'm going to look at the Presentence Investigation
7 Questionnaire that he filled out.

8 Q Okay.

9 A On page 10 of the document it said that -- he noted
10 that at between 12 and 19 years of age he began the regular use
11 of methamphetamine.

12 Q And is it true that when he fills it out, there's sort
13 of a place where he can indicate whether addicted or not; is that
14 right?

15 A Yes.

16 Q And for that period of time, did he indicate addiction
17 to methamphetamine?

18 A It says, "I was," but it doesn't say from what time to
19 what time. It just says, "I was."

20 Q Okay. And then did he indicate either by writing on
21 the form or in verbal form to you in response to discussion when
22 the last time he said at that point that he'd use methamphetamine
23 was?

24 A Yes. The date of this report -- or that I interviewed

1 him, it was March 13, 2013. And he said the last time that he
2 used methamphetamine at that time was January 2013, sometime in
3 January.

4 Q Okay. Then did he report being addicted to any other
5 controlled substance?

6 A He said that he became addicted to prescription
7 medication, specifically Oxycontin. And that was at 26 years of
8 age when it became regular. And the last time that he used that
9 at that time was in December of 2011.

10 Q So that's what he reported was the last day that he
11 used Oxycontin?

12 A Correct.

13 Q Did he indicate again by writing it down on the form or
14 by telling you verbally that drugs could be a problem for him if
15 he didn't have positive direction?

16 A On page 11, it specifically asks them, "Do you believe
17 that alcohol is a problem for you? Do you believe that drugs are
18 a problem for you?"

19 He marked "Yes" on both, "They can be if I don't have
20 positive direction."

21 Q And then the report that you compile, you then send it.
22 It goes to the judge. In this case the judge that we see on the
23 video; is that right?

24 A Yes.

1 Q Okay. And when you did that, did the defendant provide
2 a mental health assessment that was submitted to the judge along
3 with the Presentence Investigation Report?

4 A I believe so, yes.

5 Q Okay. And if it helps to refresh your memory to look
6 at 84.

7 A On page three of the Presentence Investigation
8 Question -- or report, it says that --

9 Q And instead of having you read that whole section, does
10 that reflect or refresh your memory as to --

11 A One was submitted, yes.

12 Q Okay. So when you submitted the Presentence
13 Investigation Report to the judge, that was along with a mental
14 health assessment that had a diagnosis for the defendant?

15 A Correct.

16 Q Okay. And was that diagnosis PTSD?

17 A I do not recall. The defendant said that he was
18 diagnosed with that, but I don't recall what's in that evaluation.

19 Q Okay. And does the -- does that segment under "Mental
20 Health History" refresh your memory?

21 A It refreshes my memory that one was submitted, but not
22 what the evaluation actually said.

23 Q Okay. And that was a -- and so when it reflects there
24 the PTSD, that's him telling you? He provided the report to you;

1 is that right?

2 A I don't recall that. I just remember him saying that
3 he had those things, was diagnosed with those things.

4 Q And then you received a report, a mental health
5 assessment?

6 A And then attached it.

7 Q And that was attached and sent to the judge?

8 A Yes.

9 Q For his review as part of the sentencing?

10 A Yes.

11 MR. PRENGAMAN: Thank you very much. No further
12 questions.

13 THE COURT: Cross-examination.

14 CROSS-EXAMINATION

15 BY MS. FLAVIN:

16 Q Ms. Okuma, you are a trained officer, correct?

17 A I'm not an officer, no.

18 Q Do you just write presentence investigations?

19 A Yes. I'm a civilian.

20 Q So you're not POST certified?

21 A No.

22 Q Are you trained to recognize drug use?

23 A No.

24 Q So you aren't able to write a violation report, then,

1 on a defendant?

2 A No.

3 Q And so on -- you met with Mr. Hager, though, on March
4 13, 2013, correct?

5 A Yes.

6 Q And this was to review the questionnaire that he had
7 filled out?

8 A Yes.

9 Q And in order to complete his Presentence Investigation
10 Report; is that correct?

11 A Yes.

12 Q And when a defendant completes a questionnaire, those
13 are confidential; is that correct?

14 A Yes.

15 Q And because they're confidential, you encourage the
16 defendants to be honest and very truthful and forthcoming?

17 A Yes.

18 Q And at that time in 2013, Mr. Hager's address is the
19 same address as it is now on page two; is that correct?

20 A I don't know what the address is now, but the address
21 here is noted as -- it's a Sparks address, A-N-G-U-A (sic).

22 Q Anqua?

23 A Um-hum.

24 Q So 2460 Anqua Drive?

1 A Yes.

2 Q So that was the address that you had at the time he
3 completed the presentence investigation, correct?

4 A I believe so.

5 Q As the PSI writer, you don't put exactly the wording,
6 necessarily, the defendant is using in your questionnaire. You
7 summarize it and give that report to the judge?

8 A Yes.

9 Q And so you met with Mr. Hager in your office in person?

10 A Yes.

11 Q So you met face to face, not over the telephone?

12 A Correct.

13 Q And as a civilian and having interviewed many different
14 defendants, there was no indication that Mr. Hager was under the
15 influence of a controlled substance at that time, correct?

16 A Correct.

17 Q And so you had no suspicion of drug use on that day?

18 A No.

19 Q And so even though you're not specifically trained to
20 recognize drug use, in your professional opinion and seeing
21 several other individuals, you can say on that day that you did
22 not suspect drug use of Mr. Hager?

23 A Not that I recall.

24 Q And would you be able to identify if someone was say

1 tweaking on methamphetamine?

2 A I'm sure I could.

3 Q And you didn't see any of those symptoms exhibited on
4 that day?

5 A No.

6 Q And Mr. Hager on his questionnaire, he didn't use the
7 term "addicted" to any substance; is that correct?

8 A I don't remember. It's just what's on his report. I
9 don't remember discussing that; just covering what was on -- what
10 he wrote on his report. And he did note that he was addicted to
11 methamphetamine.

12 Q But he did not himself use the specific term "addicted"?

13 A It's written "addicted" on the actual report. And he
14 said "yes."

15 Q But not as far as any of his written responses in the
16 questionnaire; is that correct?

17 A He verbally told me that between a certain age and a
18 certain age he was addicted. He used it regularly, and it was
19 problematic for him.

20 Q And you said that range was between 12 and 19?

21 A It says, yes, 12 to 19.

22 Q And Mr. Hager was 28 years old at the time the report
23 was conducted?

24 A Yes.

1 Q And so he stated between 12 and 19 he had a problem,
2 but at the time of the report he was 28 years old?

3 A He said the last time that he used was in January of
4 that year, but he did not say that this was problematic for him
5 at that time, just it had been in the past.

6 Q Had been in the past?

7 A Correct.

8 Q And the last use you stated was January of 2013?

9 A Yes.

10 Q So that was approximately three months before the
11 report was written?

12 A Correct.

13 Q And so January of 2013, that was approximately
14 three months before that report was written and almost four years
15 ago from today's date; is that correct?

16 A Yes.

17 Q And you didn't ask him how often he used
18 methamphetamine at that time of the report, did you?

19 A He noted the last time that he used was in January of
20 2013. But, no, I did not ask him how often.

21 Q So you don't know if he used daily, correct?

22 A He indicated that he did not use daily at that time,
23 just between the ages of 12 and 19. 12 and whatever that said.

24 Q 12 and 19.

1 A Yeah, just between those times. So you know, I can
2 only go on what he's telling me. And he said that at that time
3 he last used in January, but he didn't specifically say that it
4 was problematic or it was regular.

5 Q And so with no information as far as whether it was
6 problematic at that time or regular, you don't believe there was
7 daily use. What about weekly use or monthly use?

8 MR. PRENGAMAN: Objection. Calls for speculation.

9 THE COURT: Sustained.

10 BY MS. FLAVIN:

11 Q You don't know if there was monthly use, regular
12 monthly use?

13 THE COURT: I sustained the objection. She answered
14 what she knew.

15 BY MS. FLAVIN:

16 Q So the only information that you had, essentially, from
17 the report is that his last use was in January of 2013?

18 A Of methamphetamine, yes.

19 Q Of methamphetamine. And you do, however, have
20 information from the questionnaire that he didn't spend money on
21 drugs weekly, correct?

22 A I would have to refer to the questionnaire.

23 Q If it would help refresh your recollection. I believe
24 it's on page 11.

1 A He did not indicate what he spent on controlled
2 substances weekly or monthly.

3 Q And what did he in fact indicate?

4 A The question, "Have you ever committed an offense to
5 support your habit?"

6 Q What did he indicate on how much money he spent weekly?

7 A He didn't indicate any.

8 Q Did he put a zero there or how did he indicate that?

9 A No. He put a line through it.

10 Q So he put a line through "No weekly money spent on
11 drugs," is that correct?

12 A Correct.

13 Q And then another line through "No monthly money spent
14 on drugs," correct?

15 A Correct.

16 Q And further Mr. Hager responded "yes" and "no" to
17 "Other drugs are a problem," correct?

18 A Correct.

19 Q And he elaborated that they can be if he doesn't have
20 positive direction?

21 A Correct.

22 Q But there's no indication at that time that there was
23 negative direction, correct?

24 A Correct.

1 Q And as part of your PSI report you run a criminal
2 history check; is that right?

3 A Yes.

4 Q And you're able to see if there are any prior arrests?

5 MR. PRENGAMAN: I'm going to object to that, Your
6 Honor, as relevance.

7 THE COURT: What would be the relevance?

8 MS. FLAVIN: This would be going towards substance
9 abuse history.

10 THE COURT: You want to approach for a minute?

11 (Discussion held at the bench.)

12 THE COURT: The objection is overruled.

13 BY MS. FLAVIN:

14 Q And as part of your PSI report you do run a criminal
15 history check, correct?

16 A Yes.

17 Q And at that time you were able to see if he had any
18 prior arrests; is that correct?

19 A Yes.

20 Q And you noted in your report whether he did have any
21 prior arrests; is that correct?

22 A Yes.

23 Q And you did not see any arrests for possession of
24 paraphernalia; is that correct?

1 A Correct.

2 Q And you did not see any arrests for possession of a
3 controlled substance; is that correct?

4 A Correct.

5 MS. FLAVIN: Court's indulgence, Your Honor.

6 THE COURT: Um-hum.

7 BY MS. FLAVIN:

8 Q And so going back again to the questionnaire that
9 Mr. Hager filled out, in his response to whether drugs can be a
10 problem he answered "yes" and "no." Is that correct?

11 A Correct.

12 Q So it could be either/or?

13 A Correct.

14 Q So it wasn't that, yes, it was a problem, it was
15 either/or?

16 A Correct.

17 MS. FLAVIN: Okay. Nothing further, Your Honor.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MR. PRENGAMAN:

21 Q Ms. Okuma, just specifically on that subject of the
22 prior arrests that you noted in the presentence investigation,
23 did you note that there had been an arrest for a prior offense in
24 March 19th of 2009 relating to drugs and alcohol?

1 A Yes.

2 Q So, in fact, there was at least one prior arrest that
3 related to drugs and alcohol for Mr. Hager; is that correct?

4 A Yes.

5 MR. PRENGAMAN: No further questions, Your Honor.

6 THE COURT: Thank you. Anything on recross?

7 MS. FLAVIN: No, thank you, Your Honor.

8 THE COURT: Thank you for your testimony. You are
9 excused now.

10 Call your next witness.

11 MR. PRENGAMAN: State will call Detective Scott
12 Johnson.

13 THE COURT: Please step forward and be sworn.

14 (Witness sworn.)

15 THE COURT: Please take the witness stand.

16 THE WITNESS: Thank you, sir.

17 THE COURT: Make yourself comfortable. I'm going to
18 know you're comfortable, because you're going to tell me your
19 first and last name, spelling your last name for the record.

20 THE WITNESS: Yes, Your Honor. It's Scott Johnson,
21 S-C-O-T-T, J-O-H-N-S-O-N.

22 THE COURT: Thank you.

23 Mr. Prengaman, you may proceed.

24 MR. PRENGAMAN: Thank you, Your Honor.