

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LAMAR CHAMBERS

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

S.Ct. No. 73446

D.C. No. C292987-1

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APPELLANT'S APPENDIX

Volume 13

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Chambers v. State Case No. 73446

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1 Count Four, attempt murder with use of a deadly
2 weapon. Guilty of attempt murder with use of a deadly weapon.

3 Count Five, battery with use of a deadly weapon.
4 Guilty of battery with use of a deadly weapon.

5 Dated the 1st day of March. So say you one, so say
6 you all?

7 JURORS: Yes.

8 THE COURT: All right. Does either party desire to
9 have the jury polled?

10 MS. THOMSON: No, Your Honor.

11 MR. YANEZ: Yes, Judge.

12 THE COURT: All right. Then, will the Court clerk
13 please poll the jurors individually as to their verdict.

14 THE CLERK: Juror No. 1, is this your verdict as
15 read?

16 JUROR NO. 1: Yes.

17 THE CLERK: Juror No. 2, is this your verdict as
18 read?

19 JUROR NO. 2: Yes.

20 THE CLERK: Juror No. 3, is this your verdict as
21 read?

22 JUROR NO. 3: Yes.

23 THE CLERK: Juror No. 4, is this your verdict as
24 read?

25 JUROR NO. 4: Yes.

1 THE CLERK: Juror No. 5, is this your verdict as
2 read?
3 JUROR NO. 5: Yes.
4 THE CLERK: Juror No. 6, is this your verdict as
5 read?
6 JUROR NO. 6: Yes.
7 THE CLERK: Juror No. 7, is this your verdict as
8 read?
9 JUROR NO. 7: Yes.
10 THE CLERK: Juror No. 8, is this your verdict as
11 read?
12 THE COURT: No Juror No. 8.
13 THE CLERK: Juror No. 9, is this your verdict as
14 read?
15 JUROR NO. 9: Yes.
16 THE CLERK: Juror No. 10, is this your verdict as
17 read?
18 JUROR NO. 10: Yes.
19 THE CLERK: Juror No. 11, is this your verdict as
20 read?
21 JUROR NO. 11: Yes.
22 THE CLERK: Juror No. 12, is this your verdict as
23 read?
24 JUROR NO. 12: Yes.
25 THE CLERK: Juror No. 13, is this your verdict as

1 read?

2 JUROR NO. 13: Yes.

3 THE COURT: All right. Thank you. So, ladies and
4 gentlemen of the jury --

5 MR. YANEZ: Judge, can we approach real briefly?

6 THE COURT: Yes.

7 (Bench conference transcribed as follows)

8 MR. YANEZ: [inaudible] five minutes [inaudible]

9 THE COURT: Is that okay?

10 MR. YANEZ: [inaudible]

11 THE COURT: All right. I'll let the jurors know.

12 Five could turn into 10. I'll just tell them 10 minutes.

13 MR. YANEZ: [inaudible]

14 (End of bench conference)

15 THE COURT: Ladies and gentlemen of the jury, I
16 can't discharge you yet. I need to talk to the parties about
17 a separate procedural issue for a few minutes. So what I'm
18 going to do is excuse you. Please escort the jurors back to
19 the deliberation room. While you're in the deliberation room,
20 please do not discuss the case, do not discuss your verdict,
21 do not discuss the facts of the case. Don't form any
22 additional opinions. Don't do any research. Just wait for
23 us, as we need about five or six minutes. This is going to be
24 quick and we'll get back to you. Okay? Ladies and gentlemen,
25 you are excused with those admonishments.

1 (Jury recessed at 1:45 p.m.)

2 THE COURT: We're outside the presence of the jury.
3 Court will be in recess for five minutes to allow defense
4 counsel to confer with his client.

5 (Court recessed at 1:46 p.m. until 2:18 p.m.)

6 (Outside the presence of the jury.)

7 THE COURT: All right, folks. What are we doing?

8 MR. YANEZ: Judge, we filed a guilty plea
9 memorandum. You should have it before the Court. Pursuant to
10 our conversation after the verdict, I spoke to Mr. Chambers
11 and my legal advice and opinion was it basically be a waste of
12 everyone's time to move forward with the jury deciding the
13 ex-felon in possession. The jury found the deadly weapon,
14 which was a gun in this case. There's no way of disputing the
15 prior convictions. We just want to make it clear and it is in
16 the memorandum of course that he's not waiving any of his
17 appeal rights as to the verdict or pretrial issues or issues
18 that might have arisen during the trial.

19 THE COURT: Very good. Ms. Thomson.

20 MS. THOMSON: That's correct.

21 THE COURT: All right. Do I need to do a regular
22 plea canvass with him then? All right. So, Mr. Chambers, I
23 need you to ask a few questions. Please state your full name.

24 THE DEFENDANT: Gary Chambers.

25 THE COURT: What is your age?

1 THE DEFENDANT: Forty-eight.

2 THE COURT: How far did you go in school?

3 THE DEFENDANT: Twelfth grade.

4 THE COURT: Do you read, write and understand the
5 English language?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Have you received a copy of
8 the --

9 THE DEFENDANT: Yes, sir.

10 THE COURT: -- information which charges you with
11 the ownership or possession of a firearm by a prohibited
12 person?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You got to discuss this with your
15 attorney?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You understand the nature of this
18 charge?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. You understand if you plead
21 guilty to this charge of ownership or possession of a firearm
22 by a prohibited person as to this charge the Court must
23 sentence you to a minimum of not less than one year and the
24 maximum of not more than six years and could also fine you up
25 to \$5,000. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. As to this single count, you
3 understand that it is a probational offense.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. And no one can promise you
6 leniency, probation or any special treatment. You understand
7 that, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. How do you plead to the
10 charge of ownership or possession of a firearm by a prohibited
11 person?

12 THE DEFENDANT: Guilty.

13 THE COURT: You plead guilty. I also have your
14 guilty plea memorandum. Did you sign this on page five above
15 your typed name?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Did you sign it freely and voluntarily?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you believe it's the best thing for
20 you to do under the circumstances?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Did you read it and
23 understand it?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Did your attorney answer any and all

1 questions you had about it?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you have any questions for me?

4 THE DEFENDANT: No, sir.

5 THE COURT: Are you pleading guilty to ownership or
6 possession of a firearm by a prohibited person because it's
7 the truth that on or about July 9th, 2013, here in Clark
8 County, you did willfully, lawfully, and feloniously own or
9 have in your possession or under your control a weapon, to wit
10 a firearm, said defendant being an ex-felon, having in 2003
11 been convicted of robbery with use of a deadly weapon and
12 first-degree kidnapping in Case C185775, and having in 1997
13 been convicted of larceny from a person in Case C142992, and
14 having in 1997 been convicted of larceny from a person in Case
15 C142991 in the Eighth Judicial Court of Clark County, Nevada,
16 those being felonies under the laws of the State of Nevada?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Any questions for me?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. Then the Court finds that
21 your plea of guilty of ownership or possession of firearm by a
22 prohibited person is freely and voluntarily given, that you
23 understand the nature of the charge against you, the
24 consequences of your plea. Accordingly, your plea of guilt is
25 entered.

1 THE DEFENDANT: Thank you.

2 THE COURT: So we'll talk about sentencing
3 momentarily. Are we ready to bring the jury back in?

4 MS. THOMSON: Yes, Your Honor.

5 THE COURT: All right. Let's go ahead and bring the
6 jury in.

7 MS. THOMSON: While they're coming in, do you have
8 us talk to them in the back room or downstairs?

9 THE COURT: You can talk to them in the deliberation
10 room if you'd like to.

11 MS. THOMSON: I mean, assuming they're willing to
12 talk to us.

13 THE COURT: They might. Usually they do, although
14 they've had to wait long periods of time and I'm not sure how
15 they're feeling. But I will invite you and them to talk.

16 MS. THOMSON: Thank you.

17 THE COURT: Mr. Schwartz, thanks for hustling to get
18 that stuff done. I appreciate that.

19 MR. SCHWARTZ: No problem, Your Honor. Megan texted
20 me as I was running up the stairs.

21 THE COURT: Okay. I know I've been rushing
22 everybody. My plane leaves tomorrow at four. I had to get
23 this done.

24 MS. THOMSON: We appreciate it.

25 THE COURT: I'm assuming there's no objection to me

1 advising the jury that defendant just pled guilty to that
2 additional count, that's why we're waiting. It's a matter of
3 public record now.

4 MR. YANEZ: I would prefer that the Court not do
5 that.

6 THE COURT: Not do that?

7 MR. YANEZ: No.

8 THE COURT: Okay.

9 MR. YANEZ: I don't know if you want to know my
10 reason, but I have reasons for that.

11 MS. THOMSON: I'm curious.

12 MR. YANEZ: They might in the future serve as
13 jurors.

14 THE COURT: They're free to mention it.

15 MR. YANEZ: Right.

16 THE COURT: You just don't it to come from me.

17 MR. YANEZ: Right.

18 (Jury reconvened at 2:24 p.m.)

19 THE COURT: Welcome back. Thank you for your
20 patience. I appreciate it. Everyone accounted for, Marshal?

21 THE MARSHAL: Yes, Your Honor.

22 THE COURT: Please be seated. We're back on the
23 record one last time, State versus Chambers, C292987. One
24 last time in front of the jury.

25 Ladies and gentlemen of the jury, so thank you for

1 your patience. We had to deal with a matter outside of your
2 presence that did not involve the validity of your verdict,
3 but it is something that I needed to resolve with the parties
4 before I could let you go. Thank you very much for allowing
5 us that time.

6 So, ladies and gentlemen, as you know, I'm about
7 ready to discharge you. As you know, the right to trial by
8 jury is one of our basic and fundamental constitutional
9 guarantees. And I firmly believe in that right. That's the
10 right of every person accused of a crime to be judge by a fair
11 and impartial jury. We must have jurors. And unfortunately,
12 jury service is something that many people shirk from. They
13 don't wish to become involved, but I'm extremely pleased that
14 we had the 12 of you and the alternates for part of our time
15 to serve and be willing to serve and give up your valuable
16 time to be here and be part of this most important process.
17 You've been very attentive and conscientious and I thank you
18 all.

19 So on behalf of counsel, the parties in the Eighth
20 Judicial Court, I wish to thank you for your careful
21 deliberation which you gave to this case. The question may
22 now arise as to whether you may talk to other persons
23 regarding this matter. I advise you that you may now, if you
24 wish, talk to other persons and discuss your deliberations
25 which you gave to this case. You are free from all the prior

1 admonishments that I gave you. You are not required to talk
2 to anybody if you wish not to talk to anybody. I will be
3 available shortly in a few minutes to speak to you if you so
4 desire.

5 If any person persists in discussing this case after
6 you have indicated you do not wish to do so, then if you don't
7 want to talk to anybody about the case, you don't want to talk
8 about your deliberations and someone insists on questioning
9 you after you've so informed them, report that to me and I can
10 deal with that.

11 However, if you do wish to discuss your
12 deliberations or your thought process or ask questions of the
13 attorneys, I will invite you now to go back to the
14 deliberation room and in just a couple minutes I'm going to
15 excuse the attorneys and invite them to also go back there and
16 talk to you about this case and your deliberations and any
17 questions that you might have. You're free to talk to the
18 attorneys about any part of this process.

19 With that, is there anything that the parties would
20 like to put on the record before I excuse the jury?

21 MR. YANEZ: No, Judge.

22 MS. THOMSON: No, Your Honor.

23 THE COURT: All right. Ladies and gentlemen, with
24 the thanks of the Court you are now excused from service as
25 jurors in this matter. Free to go back to the jury

1 deliberation room if you'd like. You're not required to, but
2 anyone who has any questions or wants to chat with the
3 attorneys or say hi to me before you leave one last time,
4 please go back there and wait for us. We'll be just a couple
5 minutes. Thank you very much for your time.

6 (Jury recessed at 2:27 p.m.)

7 THE COURT: All right. So we need to set a
8 sentencing date. Mr. Chambers, the jury, having found you
9 guilty of certain counts, we need to set a sentencing date.
10 You will be required within the next several days to meet with
11 the Department of Parole and Probation so you can be
12 interviewed and provide them with information that they will
13 use to prepare a presentence investigation report. That
14 presentence investigation report will be provided to me for my
15 consideration and review, along with other evidence and
16 information in determining what is the appropriate sentence in
17 this situation. Do you understand that, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. The Court clerk will now
20 give you an in-custody sentencing date, the date that you will
21 be brought back to Court for sentencing.

22 THE CLERK: April 18th, 9:00.

23 THE COURT: April 18th at nine a.m. Defendant is
24 remanded back into custody pending his sentencing date.
25 Anything else to put on the record?

1 MR. YANEZ: One other thing, Judge. Can we order
2 that he stay here at CCDC? I'm afraid they're going to bring
3 him back up there in preparation for sentence. I know P&PS
4 that meet with him, I think it's just easier if we can keep
5 him here. So I would request that the Court order that he
6 remain detained here at CCDC and not transferred back to NDOC.

7 THE COURT: It's two full months. I don't know. We
8 have overcrowding issues. There's really reasons why we
9 really can't keep a person here that long. So I think he
10 needs to be transferred. If you want to file a written motion
11 to keep him down here you can, but I'm not going to allow that
12 for that extended length of time. All right?

13 Do we need to set bail? This was a second-degree
14 murder. Do you guys want to be heard on bail?

15 MS. THOMSON: At this point I don't know that the
16 argument really has a whole lot of value given that he was
17 [indiscernible] still being held on the parole hold, but I'd
18 ask that he be held without bail in case, for some reason,
19 they were to parole him on the prior case pending sentencing.

20 MR. YANEZ: At this point I don't think it makes a
21 difference. If it becomes an issue I'll file a motion before
22 Your Honor.

23 THE COURT: So I'm remanding without bail at this
24 point in time. You're free to file a written motion to set an
25 amount of bail.

1 MS. THOMSON: Thank you, Your Honor.

2 THE COURT: All right. I invite you to go back to
3 talk to the jurors. I'm sure you have some burning questions
4 for them. Thank you. Court is adjourned.

5 (Court adjourned at 2:31 p.m.)

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ACKNOWLEDGMENT:

Pursuant to Rule 3C(d) of Nevada Rules of Appellate Procedure, this is a rough draft transcript expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON
TRANSCRIBER

UNCERTIFIED ROUGH DRAFT

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STATE OF NEVADA,
Plaintiff,
vs.
GARY LAMAR CHAMBERS,
Defendant.

CASE#: C-13-292987-1
DEPT. 2

It was discovered that partial transcript in the above case from the Jury Trial held on Monday, February 27, 2017, Day 5, was missing from the original transcript that was filed with the Clerk's Office on October 31, 2017. This missing portion included discussions on several motions held outside the presence of the jury, witness testimony of Jennifer Corneal, and the reading of witness testimony Bridgett Graham, which was entered into the record.

Dated this 3rd day of August, 2018

Dalayne Easley
DALYNE EASLEY
Court Recorder

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THE STATE OF NEVADA,
Plaintiff,
vs.
GARY LAMAR CHAMBERS,
Defendant.

BEFORE THE HONORABLE RICHARD SCOTTI, DISTRICT COURT JUDGE
MONDAY, FEBRUARY 27, 2017

APPEARANCES:

For the Defendant: ABEL M. YANEZ, ESQ.

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[Proceeding resumed at 11:04 a.m.]

[Outside the presence of the jury]

THE COURT: Alright, let's go back on the record.

THE COURT RECORDER: Back on the record.

THE COURT: Counsel, are you all set?

MR. YANEZ: Yes, Judge.

THE COURT: Okay. Is the State ready?

MS. THOMSON: Yes, Judge.

THE COURT: Alright, we can bring the jury in.

MS. THOMSON: Judge, I think because this is going to be
our last real witness and she's not going to be very long --

THE COURT: Oh, she's not gonna be very long?

MS. THOMSON: I mean --

THE COURT: Let's go ahead and did you want to argue
the motion?

MS. THOMSON: Please.

THE COURT: Alright, well, let me hear from the State and
then the defense.

MS. THOMSON: And, Your Honor, looking at this case,
we had her legally served, this is Bridgett Graham, prior to trial given
the fact that she was served with a subpoena at preliminary hearing
and did appear. We were not on notice at that time that there was
going to be any concern with regard to her.

Then when we initially had the first indications of her lack
of cooperativeness I went through for the Court the steps that were

1 taken in order to attempt to locate her. I typed that yesterday and I
2 can be sworn if the Court needs me to. The only thing I would add
3 to it is she has not used Facebook since 4:00 yesterday but I don't
4 think that that's going to change the dynamic of the decision, really.
5 At this --

6 THE COURT: So she wasn't at the East Monroe address
7 but there's some other people there? What did those other people
8 say about whether she's been residing there?

9 MS. THOMSON: They said that she was there --

10 THE COURT: But she used the -- a server that was traced
11 to that location.

12 MS. THOMSON: That's correct. They said that she was
13 there the day before but that she's not staying there. That the
14 person who lives there who she usually comes to see that they
15 haven't seen in three weeks and they don't know where she is.

16 THE COURT: She's hiding out.

17 MS. THOMSON: I agree with you.

18 THE COURT: It seems like it. Well, let me hear from the
19 defense.

20 MR. YANEZ: And Judge, I didn't have a full opportunity
21 yet to finish reading the affidavit.

22 THE COURT: Oh, take a moment.

23 MR. YANEZ: Okay.

24 Well, here's my comments, Judge. Number one, I'm
25 assuming the State is claiming she's unavailable through the

1 exception that says persistent refusal to testify despite court order
2 to do so. Is that the State's position? I just want to make sure I'm
3 arguing the correct law.

4 MS. THOMSON: And the State's position is that both that
5 and that we have exhausted every legal process that we could to
6 obtain her presence here at this point. I think we've demonstrated
7 to the Court that there's nothing left to do to ensure her presence
8 and at this point we are unable to get her here based upon every
9 sort of aspect at our disposal.

10 THE COURT: Let's just pull up -- let me pull up the right
11 statute while we're talking about it. So, I mean I guess it's possible
12 she's beyond the jurisdiction of the court but we don't know
13 because she's not kept in contact with you.

14 MS. THOMSON: Well, at this point, Judge, she's beyond
15 the jurisdiction of the court in the sense that we've issued a warrant
16 and we've done all of these things to get her arrested. And there's
17 nothing more -- it doesn't necessarily, at least my reading, mean that
18 she has to be in Utah but she's beyond the jurisdiction of the court
19 in the sense that it's not like she's in CCDC.

20 THE COURT: Yea. Also, let me hear from defense
21 counsel.

22 MR. YANEZ: Well, I'm looking at the statute myself,
23 Judge, just to refresh my memory.

24 THE COURT: Alright, you can come borrow the book if --

25 MR. YANEZ: Well, thanks to technology I can just get it

1 off my phone.

2 THE COURT: Oh. I like to see -- I'm old school.

3 MR. YANEZ: Right, well, I do what I can under the
4 circumstances, so. As to the exception persistent in refusing to
5 testify despite an order of the judge to do so, my understanding and
6 in looking at the State's affidavit and the attached exhibit there's an
7 email exchange between the State and the witness and from my
8 reading of it, the first time the witness actually indicates that she's
9 not going to come and testify is on an email less than a week ago on
10 February 21st.

11 THE COURT: The first day she's supposed to show up is
12 the refusal; right?

13 MR. YANEZ: Right but there's other --

14 THE COURT: She's supposed to be here and she's not
15 here so that's a refusal. And every day that that continues isn't that
16 persistence?

17 MR. YANEZ: Not necessarily. If she's not contacted
18 again, I don't think so.

19 THE COURT: Well, if she's avoiding contact are you
20 saying that persistence means, I mean, we actually have to hear
21 from her? So -- okay.

22 MR. YANEZ: Well, again, I mean, we can go to Webster's
23 Dictionary and look up persistent but my understanding of persistent
24 is more than one occasion refuses to come and testify. Persistent in
25 refusing to testify --

1 THE COURT: Okay. Let me see the emails, yea.

2 MR. YANEZ: Okay. So the only time that I see a refusal
3 to testify is the email from February 21st at 5:40 p.m. All the
4 previous other emails just seem to indicate --

5 THE COURT: So, are you saying that the witness can
6 avoid the label of persistence simply by ignoring the
7 communications? I'm just trying to understand your understanding
8 of the rules so we're on the same page on how to interpret it.

9 MR. YANEZ: Well, I'm trying to interpret how the
10 legislature wrote the statute and they wrote it as persistent in
11 refusing to testify. So to me --

12 THE COURT: So, go get me my Webster's Dictionary in
13 my office; do you know where it is next to my Black's Law
14 Dictionary?

15 MR. YANEZ: The legislatures could have put, refuses to
16 testify despite an order of the judge to do so, which would this --

17 THE COURT: Well, we did give an order, so.

18 MR. YANEZ: Right. So there is a qualifier of persistency.
19 So my position is that exception doesn't apply as we only have one
20 known rejection to come and testify or refusal to come testify from
21 February 21st. And as to --

22 THE COURT: It just doesn't, I don't know, it doesn't seem
23 right that if someone, you know, promises to be here and then
24 they're not here and they're ordered to be here by the Court and
25 then they can get around having any of their testimony presented

1 merely by just hiding out and ignoring all communications; doesn't
2 that it seem to you that that's the whole intent behind the rule to
3 declare someone unavailable?

4 MR. YANEZ: Well, I think the legislature, in making the
5 rule, wanted something besides -- because a lot of times people can
6 change their minds. A lot of time people could say I'm not gonna go
7 testify and the next time the next day they feel differently or two
8 days later. I think that's why the legislature qualifies the rule with
9 there being some persistency in refusing to testify.

10 THE COURT: So, when was the last time that the State
11 tried to contact the witness by email?

12 MS. THOMSON: I sent her an email yesterday and did not
13 get any response.

14 THE COURT: Email yesterday; yesterday day being
15 Sunday? Okay.

16 MS. THOMSON: Yes, it was --

17 THE COURT: And you haven't had any response as of
18 today?

19 MS. THOMSON: No, Your Honor.

20 THE COURT: And what was the subject of your email;
21 what did you say?

22 MS. THOMSON: Well, the Court has --

23 THE COURT: I mean I have your stuff.

24 MS. THOMSON: For purposes of sort of background,
25 there's where she says I'll be there on Sunday, I promise and I

1 forward to her the order that she be remanded as the Court had
2 requested I do, and said basically as I told you before, I would seek
3 this, it exists, there shouldn't be an issue as long as you're there on
4 Monday. And so yesterday I sent her an email that said, see you
5 tomorrow morning, 9 a.m. at courtroom 11D. It is now 11:15 and
6 she still hasn't appeared.

7 THE COURT: Alright.

8 MR. YANEZ: Then as to the other exception, absent from
9 the hearing and beyond the jurisdiction of the court to compel
10 appearance, my understanding is that she still resides in this
11 jurisdiction. She's been out of town, at least that's what she
12 indicated, and that she was driving back into town; that was an
13 email from February 20th to the State where she wrote, I just told
14 my family how important this is and I'm driving back in an hour so
15 be there by the morning.

16 So, my understanding is she still resides here; she's not
17 out of jurisdiction. So, I don't think the State has met unavailability
18 under either two of those exceptions, Judge.

19 THE COURT: So persistent, according to Merriam
20 Webster's Collegiate Dictionary 11th Edition, various definitions:
21 existing for a long or longer than usual time, or continuous, its
22 definition 1. Definition 2A is: continuing or inclined to persist in a
23 course.

24 I don't interpret the word persistent as requiring affirmative
25 action by the witness who's claimed to be unavailable. I interpret

1 persistent as there being evidence of an intent not to comply with
2 the order and no change in that course of intent. No change in --
3 you know, a continuation in that position. So a continuation in the
4 position of lack of intent to comply is persistence. That's how I
5 interpret the word as used by the legislature.

6 I'm gonna find that there's been reasonable efforts by the
7 State here to try to get the witness here. I'm finding that she's
8 unavailable under 51.055(1b). I'm not reaching the decision
9 whether she's unavailable under (1d). I'm not reaching that
10 decision. I don't think I need to go there. But she is unavailable
11 under (1b) and I am going to grant the motion to allow the
12 preliminary hearing testimony based on the facts in front of me.

13 MR. YANEZ: Judge, before you get there.

14 THE COURT: Yes, sir?

15 MR. YANEZ: I just want to make a record of the other
16 factor that the Court needs to consider and that was the
17 effectiveness of the cross-examination.

18 THE COURT: Yeah, and I put on the record last time I
19 cited to a case that says you need a fair opportunity to cross-
20 examine and I referenced that case already, Nevada Supreme Court
21 case incorporating that by reference into my decision. If you have
22 some specific facts that think you didn't have a fair opportunity I
23 guess I'd like to hear those.

24 MR. YANEZ: Well, what the Nevada Supreme Court said
25 in the *Chavez* case, and that might have been the case Your Honor

1 had referenced, it's 125 Nevada 328, that it should be done on a
2 case by case basis. And this is what the Supreme Court said as to
3 the effectiveness or the opportunity to cross-examine, quote: we will
4 determine the adequacy of the opportunity on a case by case basis
5 taking into consideration such factors as the extent of discovery that
6 was available to the defendant at the time of cross-examination, and
7 whether the magistrate judge allowed the defendant a thorough
8 opportunity to cross-examine the witness.

9 I don't think at this point a record has been established as
10 to what discovery was available at the time of the cross-
11 examination. I know we're at a bit of a disadvantage in the criminal
12 side versus like the civil side. Typically, in the civil side you get
13 discovery and you do receive a copy and there's signatures, there's
14 kind of verification of when documentation or discovery was
15 received.

16 THE COURT: And doesn't -- didn't at the time the DA
17 have an open-file policy so you had full access to all of their
18 discovery at the time of that preliminary hearing you knew of the
19 witness' identity, you knew generally what --

20 MR. YANEZ: I don't know what they had at the time of
21 the preliminary hearing. What they had at the time of the
22 preliminary hearing --

23 THE COURT: Were you the attorney that --

24 MR. YANEZ: Yes, I was.

25 THE COURT: Okay.

1 MR. YANEZ: I was the attorney. I've been an attorney
2 since the beginning of this case. I can't remember, and again, it's
3 the State needs to provide the record not necessarily defense of
4 what discovery was available. I do know one thing that I was
5 unaware of at the time that I later found out is that the witness does
6 have an arrest for petit larceny, which is an impeachable offense
7 under NRS 50.085. It's an act of dishonesty.

8 I did not have that information with me at the time of the
9 preliminary hearing so I did not impeach her on that. That's
10 something I definitely would have impeached her on as it's an act of
11 dishonesty.

12 That's my position as to that portion.

13 THE COURT: So, did you not -- is that something that
14 arose after the hearing or existed at the time of the hearing, you just
15 didn't know about it?

16 MR. YANEZ: No, it existed before the preliminary hearing.
17 I just didn't know about it since it was a misdemeanor arrest, I did
18 not know about it. That's something, obviously, the State doesn't
19 initially disclose, sometimes never discloses. I know there's a
20 difference of opinion as to what's impeachable or not. Petit larceny
21 is -- larceny is a crime of dishonesty. There's a Nevada Supreme
22 Court case called Yates, Y-A-T-E-S --

23 THE COURT: I'm familiar with that case.

24 MR. YANEZ: -- that says larceny is a crime of dishonesty
25 and under NRS 50.085 it's something that I can impeach the

1 witness on. I didn't have an opportunity to do that.

2 So I wanted to make those notations before Your Honor
3 makes a final decision as to allowing the preliminary hearing
4 transcript.

5 MS. THOMSON: And what I can inform the Court is that
6 the record demonstrates that Mr. Yanez had a copy of at least the
7 transcript of Ms. Graham because I reference it, he doesn't object
8 and there's an acknowledgement, what page and I say page 54. So
9 there's an acknowledgment within that preliminary transcript that he
10 had the transcript from her audio statement.

11 Furthermore, with regard to the petit larceny there's a
12 statute that allows for anytime a prior statement is coming that
13 defense can basically, isn't illicit, but provide any impeachment that
14 would have been provided as to bias or lack of truthfulness. So it's
15 not that he's precluded from presenting that petit larceny at this
16 point by using the transcript.

17 And I was going through and I cannot find at this moment
18 whether or not there was a reference to the transcript with regard to
19 Ms. Papoutsis, however, it is my recollection, and I cannot imagine
20 we would have gone forward without a transcript of Ms. Papoutsis
21 at preliminary hearing particularly given the fact that I know for sure
22 that we had Ms. Graham and if we look at sort of importance in
23 players in terms of the order that they're going to be doing these
24 transcripts, certainly Ms. Papoutsis' was completed and I am
25 comfortable saying that I'm positive that he would have had it.

1 THE COURT: So, it sounds like you might be a little bit
2 unsure on the extent of the discovery that was available but are you
3 concerned at all -- well, put it this way. If, you know, if it comes in
4 and it turns out that there was some critical piece of discovery that
5 was not available to the Defendant at the time then on appeal the
6 Supreme Court may very well find that there was a violation of the
7 right of confrontation. That is if, you know, it's a big assumption
8 that there was some critical piece of evidence that was not
9 available. That's a factor that I'm not able to fully consider at this
10 point in time.

11 I don't have any reason to believe that there was any
12 specific piece of discovery that wasn't available to the Defendant.
13 I'm not sure who has the burden of convincing me on that point
14 right now.

15 MS. THOMSON: Based upon the rule that Bridgett Graham
16 played in sort of this cast of characters, I am confident that there
17 was nothing that she would have the ability to testify about at that
18 time that was significantly different.

19 THE COURT: She had a statement that was given prior to
20 the preliminary hearing testimony and that statement you said that
21 you're convinced that it was provided to defense counsel before the
22 preliminary hearing?

23 MS. THOMSON: Yes, Your Honor because I actually
24 approached the witness with a page and provided counsel with a
25 page and I have not no doubt that Mr. Yanez would have been vocal

1 about the fact that he did not have that if

2 THE COURT: Alright. So the only thing that gives me a
3 little bit of pause then is the lack of defense counsel's knowledge of
4 the prior felony --

5 MR. YANEZ: It's not a felony, Judge. It's a misdemeanor
6 petit larceny.

7 THE COURT: Misdemeanor petit larceny; right.

8 MR. YANEZ: And for the record, the case number on that
9 is 10M24047X.

10 THE COURT: Thank you for putting that on the record.
11 Was that from another jurisdiction?

12 MR. YANEZ: No, that was here but it was a misdemeanor
13 charge.

14 THE COURT: Alright, so are you saying that would have
15 made it harder to discover?

16 MR. YANEZ: Yes. Things are a little bit easier now,
17 they've given us access to the Justice Court portal and things like
18 that to actually get documents but that's something the State would
19 not have disclosed prior to the preliminary hearing as it was a
20 misdemeanor charge.

21 MS. THOMSON: And I probably didn't but it can be
22 admitted now so there's no prejudice.

23 THE COURT: Well, no with you saying the prejudice is not
24 having that information somewhat ties the Defendant's hands in
25 questioning the witness' credibility at the time of the preliminary

1 hearing.

2 MS. THOMSON: But all he can ask her about is whether
3 or not she was arrested on that date for petit larceny. It's not like
4 he can be like, and what were the facts of that and let's talk about
5 it.

6 THE COURT: Yea, I --

7 MR. YANEZ: Well, I could have actually --

8 THE COURT: I think -- go ahead.

9 MR. YANEZ: I could have crossed her about the fact that
10 that's a crime of dishonesty and that she's a dishonest person. And
11 she could have very well admitted, yes, I'm a dishonest person,
12 which obviously has a big impact on her testimony.

13 THE COURT: So is the existence of that petit larceny
14 conviction something that the State would have had a duty to
15 disclose under *Brady* prior to the preliminary hearing, or under any
16 Nevada discovery statute?

17 MS. THOMSON: I don't believe so, no, Your Honor. First
18 of all, Mr. Yanez could have spoken with her either before the
19 preliminary hearing, on the day of the preliminary hearing; obviously
20 she was present, she was available to be spoken with. It was
21 ultimately provided to Mr. Yanez.

22 And probably the most important factor here is that I know
23 that there's a process by which counsel can, basically, lobby the
24 Court and get an order from the Court and be provided SCOPE
25 through the courts. So to say that it was unavailable, there's any

1 number of different aspects through which that could have come
2 out. And the fact that they won't be able to ask her if she's a
3 dishonest person is not sufficient to show that the use of the
4 transcript that there wasn't a fair cross-examination particularly
5 given the fact that the jury can be informed that she had petit
6 larceny.

7 MR. YANEZ: And, of course, my position is that prior
8 felony convictions and/or crimes of dishonesty, anything that's
9 impeachable under *Giglio* and *Brady* is stuff that needs to be
10 disclosed under our Constitution.

11 THE COURT: Well, I'm gonna go ahead and allow the
12 preliminary hearing transcript. I don't see that there's a violation of
13 the 6th Amendment confrontation clause merely where defense
14 counsel is not aware of a petit larceny misdemeanor and is deprived
15 of a chance to then cross-examine the witness on that misdemeanor.
16 I don't find that that rises to the level of depriving the Defendant of
17 a fair opportunity at cross-examination.

18 MS. THOMSON: Thank you. We have probably three
19 more issues. They are all pretty quick. First is just a matter of
20 housekeeping based upon what the Court said. The State does not
21 have an open file policy. We do have a procedure where we invite
22 defense counsel to look at our files but we do not have a policy.
23 The Supreme Court has specifically defined that and our procedure is
24 not in conformance with the policy. We do not have a policy.

25 Secondly, with regard to the transcript, there are a couple

1 of places one, where counsel and I have agreed to just delete a
2 page. When I was directing the witness I referred her to a page and
3 a portion of the transcript. The way it played out on the page and in
4 testimony isn't actually a fair representation of what she said. I took
5 it out of context when I was reading it and so it was taken out of
6 context with the witness and it was not followed up on. I think it
7 does not present a fair opportunity to the jury to hear specifically
8 what was said. I told Mr. Yanez either put in the paragraph out of
9 the statement to give it a context or we can take out the page. His
10 preference was take out the page and I'm perfectly fine with that.

11 THE COURT: Alright.

12 MS. THOMSON: The last issue we have is there is a page,
13 page 75, that Mr. Yanez, when reviewing the transcript, indicated
14 that there was an objection he had made that was overruled and so I
15 think that he still is making that objection. And I would say probably
16 we ought to have this Court rule on it in terms of whether --

17 THE COURT: What was the question?

18 MS. THOMSON: The -- basically the witness says, I heard
19 her screaming. She started screaming and yelling, somebody's
20 trying to rob her, I'm trying to -- no, I'm trying to rob her. I heard
21 her say that when I ran out of the car. This is what Bridgett says,
22 and that's when I heard her say he's trying to rob me, he's trying to
23 rob me and I heard her yelling. He didn't tell me that I just read that.
24 And Mr. Yanez objects to hearsay. I tell the court if it's screaming I
25 think is a sufficient basis for, and I don't say it but implied, obviously

1 excited utterance. The court overrules it and then we continue on.

2 So at this point, given the objection, I'm gonna ask the
3 Court to rule upon the objection. I can provide the page, I'll need it
4 back but I can provide the page to the Court if you want to see it.

5 THE COURT: Yea, I don't need to hear argument on that.
6 Everything I've heard in this case so far convinced me it would be an
7 excited utterance under 51095.

8 MR. YANEZ: Well, at least --

9 THE COURT: And we all heard that it was a very, very
10 short timeframe where this whole event happened. And we heard of
11 the very startling nature of the entire event.

12 MR. YANEZ: And I'm going on what foundation was or
13 wasn't laid at the preliminary hearing. The only thing the witness
14 says is I heard her yelling and so and then she describes what she
15 heard the yelling was. I object as to hearsay and Ms. Thomson says
16 if it's screaming I think that a sufficient basis; overruled.

17 Just the fact that someone is yelling doesn't turn that
18 statement into an excited utterance. There has to be a foundation
19 laid that there was a startling event, the person's demeanor, of
20 course, showed signs of either --

21 THE COURT: Well, we've heard all that in this trial, so.

22 MS. THOMSON: And at preliminary --

23 MR. YANEZ: Well, we've heard it with these witnesses
24 but we haven't heard with this witness.

25 MS. THOMSON: At preliminary --

1 MR. YANEZ: I mean I don't know what this witness would
2 have said. That's part of the problem of not being to confront this
3 witness.

4 THE COURT: The whole purpose behind the excited
5 utterance exception is to establish some assurances of accuracy and
6 reliability behind the out-of-court statement before it comes in and is
7 heard by the jury. We've established that, albeit, after the fact in
8 this proceeding.

9 So I'm convinced it is an excited utterance. There's
10 assurances of reliability accuracy so I'm going to allow it --

11 MR. YANEZ: Okay.

12 THE COURT: -- under 51095, subject to your objection.

13 MR. YANEZ: Thank you.

14 THE COURT: Objection's noted.

15 MS. THOMSON: And I would note that at preliminary
16 hearing Ms. Papoutsis did testify before this witness so there was
17 that foundation laid with her.

18 THE COURT: And I'm not taking any position on whether
19 the judge at the time had a sufficient foundation to make the
20 decision that she did but I'm allowing it come in now before this jury
21 based on the excited utterance exception.

22 MS. THOMSON: May I --

23 THE COURT: By the way, I have this chart that I hand out
24 to people sometimes on just the exceptions to the hearsay rule. It
25 somewhat helpful, you guys can each take a copy. Why don't you,

1 Ms. Thomson, why don't you give a copy to --

2 MS. THOMSON: And if I asked really nicely --

3 THE COURT: There's a color coded version of it but this
4 isn't color coded.

5 MS. THOMSON: May I ask your Clerk to make copies of
6 the redacted version of the preliminary hearing transcript?

7 THE COURT: Yes, so we'll take care of that.

8 MS. THOMSON: Thank you. Can we have three copies?

9 THE COURT: Alright, any other preliminary matters before
10 we bring the jury back in?

11 MS. THOMSON: No, Your Honor.

12 THE COURT: Alright, let's bring the jury in, Marshal.

13 MS. THOMSON: We do have one more, sorry.

14 MR. YANEZ: Actually, can we wait a second, Judge? I
15 need a minute to --

16 THE COURT: Alright, we'll wait again.

17 Okay, are we gonna have some objections on the record
18 now?

19 MR. YANEZ: Yes, Judge.

20 THE COURT: These are to photos now? Alright, what do
21 we got?

22 MR. YANEZ: Judge, I was handed by the District Attorney
23 a bunch of pictures from the autopsy that was done in this case.
24 I'm well aware of the case law when it comes to these pictures.

25 THE COURT: Okay.

1 MR. YANEZ: I know the State's entitled to present their
2 case and that some of these pictures are coming in. However, I
3 think there's a line that needs to be drawn when they become
4 cumulative or there may be a little overly grotesque and might
5 inflame the passions of the jury.

6 For the record, the pictures that I am not objecting to that I
7 think could go before the jury and allow the State to present its
8 case, the entrance and exit wound and further their theory of the
9 case are the following: State's proposed Exhibit 75, 77, 78, 80 and
10 79.

11 THE COURT: And which ones do you object to?

12 MR. YANEZ: The ones I object to are 76. And 76 for the
13 record is an up-close picture of the decedent which I think --

14 THE COURT: Can you show me from there?

15 MR. YANEZ: -- which I think is, you know, fairly impactful
16 emotion-wise; it's a deceased person. Number 82 shows the wound
17 of the bullet, looks like it's probably the exit wound with the scalp
18 pulled all the way back, which I think is fairly met with the other
19 picture that shows the exit wound. I don't think you necessarily
20 need to show this close-up.

21 Eighty-three, same thing, it's even a further close up of
22 the, I think it's the exit wound. At least it's either the entrance or
23 exit wound. I'm not a coroner of course, I'm thinking it's the exit
24 wound.

25 The scalp on 84 also pulled back with brain matter

1 showing.

2 A further close-up is State's 85 that I'm objecting to.

3 And lastly, 86 which is a bloody picture of brain matter.

4 Those are the ones I'm objecting to based on the fact that
5 I think they are cumulative and overly prejudicial, Judge.

6 MS. THOMSON: And, Your Honor, with regard to State's
7 Exhibit 76, the overall is necessary to fully explain stippling and give
8 the jury an understanding of where the stippling was on his face.

9 THE COURT: Where the what?

10 MS. THOMSON: Stippling.

11 THE COURT: Yea, what's stippling?

12 MS. THOMSON: It's the gun powder that is not fully
13 burned. It is sort of a rash along the face and it's based -- it is
14 existent, as I understand it, when it is a shot that is between the
15 distances of contact where I don't believe there is stippling because
16 there's no opportunity some distance --

17 THE COURT: What are you offering that to prove? I
18 mean, why do you need to prove that there was stippling on the
19 face?

20 MS. THOMSON: Because it's an immediate range shot, it
21 gives the explanation that because of that the gun must be within a
22 certain range and that can be inches to a few feet. But the fact that
23 there is stippling on the face is part also why the determination is --

24 THE COURT: Hold on, so inches to a few feet?

25 MS. THOMSON: That's my understanding.

1 THE COURT: Counsel, are you willing to stipulate that the
2 gunshot that was from within a range of inches to a within a few
3 feet based on the stippling so we can avoid showing the photo?

4 MR. YANEZ: Yea, well I think Dr. Telgenhoff testified to
5 that and he described that as an intermediate gun range which is --
6 although it's not a contact when it goes up to two feet, that's my
7 understanding. I'm not sure if this medical examiner is gonna agree
8 to that but that's what Telgenhoff testified to that it can be up to
9 two feet. And the State can correct me; that's my memory of his
10 testimony.

11 THE COURT: If he's willing to stipulate then I don't know
12 we need the photo. Alright, so I want a stipulation though, not just
13 you agreeing that someone else said it.

14 MR. YANEZ: Stipulate that --

15 THE COURT: Stipulate that the gunshot was from based
16 on the stippling, you know, and someone else can explain what
17 stippling is and that the gunshot was from a range of a few inches
18 to a few feet.

19 MR. YANEZ: Yea, I have no opposition to that, Judge.

20 THE COURT: Alright, just obvious stipulation. You guys
21 can put it on the record or put in jury instructions. So, we're not
22 gonna show 76.

23 What about the others? I'm granting the motion to exclude
24 76 as unfairly prejudicial.

25 MS. THOMSON: With regard to 82 and 83 it is with the

1 scalp pulled back. It is the entrance wound. Eighty-two is an overall
2 sort of to get a sense of what we're looking at, and 83 is the closer-
3 up. That is relevant because the doctor will use it to explain how
4 she knows it's the entrance shot that in examining it you can see
5 the coloring from the bullet that you can, based upon how it appears
6 is how she makes the determination that it's the entrance shot or
7 wound, I suppose.

8 THE COURT: The entrance shot which was -- so where
9 was the entrance and where was the exit? Entrance was the top of
10 the head?

11 MS. THOMSON: There-ish [indicating] and there-ish
12 [indicating].

13 THE COURT: So the entrance was up here and the exit
14 was back there?

15 MS. THOMSON: Yes, Your Honor.

16 THE COURT: Counsel?

17 MR. YANEZ: I'll submit it on my previous argument,
18 Judge.

19 THE COURT: Well, is it important for the case to establish
20 which hole was the entrance and which was the exit? Is that
21 important?

22 MS. THOMSON: Your Honor, I think that to say that a
23 witness can testify but they can't testify to the totality of their
24 examination of their conclusions it comes to a point of well, if
25 defense counsel wanted to ask questions and the question from the

1 Court wouldn't be well, is that an important question, we should
2 have the opportunity to have --

3 THE COURT: Look, these are inflammatory prejudicial to
4 some extent photographs. I don't want to show something to the
5 jury unless its material, alright, and necessary; alright?

6 MS. THOMSON: And that's why I've gone through --

7 THE COURT: So you're gonna explain to me why it's
8 necessary then he's gonna say whether he's gonna stipulate to the
9 fact that you're seeking to prove if he's willing to stipulate it doesn't
10 need to be shown. If he's not willing to stipulate and it's an
11 important fact then it will be shown. Very simple.

12 MS. THOMSON: It's the State's position the doctor should
13 be able to explain her determinations for analysis.

14 THE COURT: But I disagree with that position so you're on
15 the record; alright? So tell me why it's important to prove what fact
16 and then I'll find out if they're willing to stipulate to the fact; alright?

17 MS. THOMSON: It's important so she can go through the
18 entirety of her examination of the photographs of the reports and
19 give her conclusion.

20 THE COURT: Is it important to know where the entrance
21 was and where the exit was? Is that important to know?

22 MS. THOMSON: No, Your Honor.

23 THE COURT: Alright. I'm not gonna allow 82 through 86;
24 they're too prejudicial.

25 THE COURT CLERK: Eighty-two through 86?

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THE COURT: No.
Alright, let's bring the jury in.
[In the presence of the jury]
THE COURT: Alright, welcome back Ladies and
Gentlemen; thank you for your patience. We're ready to proceed
now with the medical examiner. The State may call their witness.
MS. THOMSON: Thank you, Your Honor. The State calls
Dr. Corneal.
THE COURT: Alright, the Court Clerk will swear you in.
JENNIFER CORNEAL
having been called as a witness and being first duly sworn testified
as follows:
THE COURT CLERK: Will you please state and spell your
first and last name for the record?
THE WITNESS: Jennifer Corneal, J-E-N-N-I-F-E-R
C-O-R-N-E-A-L.
THE COURT: Alright, you may proceed.
MS. THOMSON: Thank you.

DIRECT EXAMINATION

BY MS. THOMSON:
Q Good morning, ma'am. How are you employed?
A I'm a medical examiner at the Clark County Coroner's
Office.
Q And, what is a medical examiner?
A A medical examiner performs external examinations and

1 autopsies on medical/legal cases and determines cause and manner
2 of death.

3 Q What training, education, experience did you have -- do
4 you have to have that position?

5 A I'm a doctor. I completed medical school. I also
6 completed a residency in pathology and I'm a Board Certified
7 Anatomic Pathologist. Then I completed a fellowship in forensic
8 pathology. And I'm a Board Certified Forensic Pathologist.

9 Q And how long have you worked for the Clark County
10 Coroner's Office?

11 A Since July 2015.

12 Q Did you have employment before that or is the first medical
13 job you've had?

14 A This is my first job since fellowship.

15 Q At the Clark County Coroner's Office is a Dr. Telgenhoff
16 currently employed?

17 A No.

18 Q Okay. And are you familiar with whether or not he once
19 worked there?

20 A He did.

21 Q Were you asked to look at photographs and a report
22 generated by Mr. Telgenhoff to determine cause and manner of
23 death of the individual autopsied in that case?

24 A Yes.

25 Q And did you, in fact, go through those photographs and

1 the report?

2 A I did.

3 Q And did you come to your own conclusions about cause
4 and manner?

5 A I did.

6 MS. THOMSON: May I approach the witness?

7 THE COURT: Yes.

8 BY MS. THOMSON:

9 Q I'm showing you what's been marked as State's proposed
10 Exhibits 75, 77, 78, 80 and 79. Do you recognize each of these
11 photographs?

12 A I do.

13 Q Okay. And are each of these photographs photographs
14 that you reviewed in assistance of making your determinations?

15 A They are.

16 MS. THOMSON: I move for admission of [indiscernible]
17 exhibits.

18 THE COURT: Counsel?

19 MR. YANEZ: Submit it.

20 THE COURT: Alright, they're admitted, 75, 77, 78, 79
21 and 80.

22 **STATE'S EXHIBITS 75, 77, 78, 79, 80 ADMITTED**

23 BY MS. THOMSON:

24 Q Showing you what's been marked at State's Exhibit 75;
25 can you explain what this is and why it's important?

1 A This is an identification tag on the body bag. It shows this
2 man's case number, his name. It's also showing the seal that was
3 placed at the scene.

4 Q And the measurement ruler, I suppose; what significance
5 does that have?

6 A We place a ruler with a case number in our photographs to
7 again identify the photograph with the case.

8 Q Can you explain for the Ladies and Gentlemen of the jury
9 what the process is when a body comes in for autopsy, what the
10 steps are that you take?

11 A When a body comes in the seal is broken. If it's a
12 suspicious case then there's a processing of the body by our
13 technicians as well as crime scene technicians. Then the medical
14 examiner does an external examination which includes looking over
15 the body, looking for scars, tattoos, injuries, that type of thing
16 documenting those.

17 Then we complete an internal examination looking at the
18 organs, looking for internal injuries, looking for natural disease.

19 Q So, the initial observation is as the body arrives, nothing's
20 changed, and then it's cleaned up and then it moves to internal after
21 that; is that accurate?

22 A Yes.

23 Q In this case we've talked about, I don't know, six photos.
24 Are those the only six photos that you reviewed to come to your
25 conclusions?

1 A No.

2 Q Okay. And can you approximate how many photos were --
3 approximate approximately how many photos were taken during the
4 autopsy that you reviewed to form your conclusions?

5 A Greater than 20.

6 THE COURT: For the record, the jury will be just advised
7 that the Court has decided that certain photos do not need to be
8 shown to you and will not be shown to you; alright? So you're
9 looking at some of the photos.

10 Alright, go ahead.

11 MS. THOMSON: Thank you, Your Honor.

12 BY MS. THOMSON:

13 Q In your review of the photos of the external examination,
14 were there any notable injuries to the person of Mr. Bly?

15 A Yes.

16 Q And can you describe for the Ladies and Gentlemen of the
17 jury what external indicia you had of injuries?

18 A He had a gunshot wound to his head as well as numerous
19 bruises and scrapes over his body in various ages of healing, as far
20 as the bruises and scrapes are concerned.

21 Q When we talk about scrapes, when you're talking about
22 the different ages of healing are we talking about sort of the, I
23 walked into a table kind of scrape or are we talking about very
24 significant like gouges out of skin and body?

25 A More like the, I walked into a table scrape.

1 Q In addition to the gunshot wound to his head did you
2 observe any notable injuries to either of his hands?

3 A Yes, he had a large scrape on the palm of his right hand.

4 Q Showing you what's been marked as State's Exhibit 77, is
5 that the injury you're talking about?

6 A Yes.

7 Q And are you able to tell anything about the age of this
8 injury?

9 A It's difficult with it being a photograph.

10 Q Would you be able to narrow it that, for example, it's not
11 two weeks old or is it you have no ability to give us any range?

12 A It's not two weeks old.

13 Q The injury that we see here, are you able to make any kind
14 of conclusions about how this injury occurred or was caused?

15 A It could be caused by several different methods or
16 mechanisms. He could have scraped it on the ground. It could be
17 more of a burn injury. It's difficult to tell like I said because it's a
18 photograph, and I didn't see him personally. The edges look a little
19 darker which may be dirt or charring.

20 Q So, what I'm understanding is this may be a burn, it could
21 potentially be like sloughing of skin whether on the ground or
22 somewhere else?

23 A Correct.

24 Q When you were observing the photographs from the
25 autopsy did you have notice any injuries to the face, and I'm talking

1 exclusive of the head.

2 A Yes.

3 Q Or scalp I suppose is a better way to phrase that. Can you
4 describe what injuries you observed to the face?

5 A He has small pinpoint abrasions mostly over the left side of
6 the face but also over the right a little bit. These are consistent with
7 stippling.

8 Q And can you explain what stippling is?

9 A Stippling occurs when unburnt gunpowder strikes the skin
10 from a certain distance when a gunshot wound happens.

11 Q Are you able to tell from the stippling specifically where
12 the gun is located?

13 A Not specifically.

14 Q So, would it be fair to say that because he had stippling on
15 the left side of his face the gun was mostly likely towards the left
16 side of his face or is that not something you'd be able to say?

17 A It was most likely towards the left side of the face.

18 Q Is there any distance that these stippling indicates to you
19 the firearm could have been?

20 A Stippling is indicative of intermediate range gunshot
21 wounds. Those range between six inches and a couple feet, two
22 feet.

23 Q And is there a way whether it's something you can do or
24 there are other individuals to be able to determine specifically how
25 far away a gun was to cause such stippling?

1 A A firearms expert can use, if they have the gun available
2 that was used to shoot a person, that plus a similar type of
3 ammunition, they can do test firing and determine an approximate
4 range of fire based on the pattern of stippling that they cause with
5 their test firing shots.

6 Q So with the firearm actually used you can narrow down
7 that range of six inches to two feet?

8 A Yes, possibly.

9 Q I say you; a firearms individual could.

10 A Correct.

11 Q The injury that you observed to the scalp, I'm going to
12 show you State's Exhibit 78, this photograph is again from the same
13 case. We can tell from the little measurement tool; is that correct?

14 A Yes.

15 Q Okay. And can you tell whether or not this is the entrance
16 or exit of the projectile?

17 A Well, you can sort of see the stippling here which would
18 make this the entrance wound. It's easier to see with further
19 pictures going deeper into the scalp and skull.

20 Q So is it fair to say that this would be a photograph that
21 was taken really early on during the autopsy?

22 A Yes.

23 Q Okay. And can you describe to the Ladies and Gentlemen
24 of the jury what the process is for specifically with this kind of injury
25 how you get to the levels where you're able to make such a

1 determination?

2 A We will clean the hair, shave this area here then reflect the
3 scalp back, look at the skull, then take the skull cap off and go
4 further.

5 Q And is there anything about the nature of the injuries you
6 see to the skull that reflects to you whether or not it was entrance
7 or an exit?

8 A Yes.

9 Q And can you describe what kinds of things you're looking
10 for to make that determination?

11 A On entrance wounds we tend to see internal beveling in
12 the skull, which I did see in further photographs. There was also a
13 small amount of bullet wipe along the entrance wound on the skull
14 which is just a little bit of soot that you see on an entrance wound
15 that you would not see on an exit wound.

16 And the same with the exit wound. There's external
17 beveling which I could also see in the photographs.

18 Q And to be fair, you said there are other photographs. You
19 used those photographs to make your determination today?

20 A Correct.

21 Q It's not strictly relying on just this number?

22 A Right.

23 Q Okay. Showing you what's been marked as State's
24 proposed Exhibit 80, you referred to the shaving of that area. Is this
25 the shaved of that area closer up?

1 A Yes.

2 Q Okay. And then further down is where you get to the
3 skull, obviously.

4 A Yes.

5 Q And showing you State's Exhibit 79. It appears as though
6 we have an ear in this photograph; is that correct?

7 A Yes.

8 Q Okay. I apologize, let me back out a little bit. Where is
9 this injury on his person?

10 A This is behind his right ear.

11 Q And are you able to tell whether this is an entry or exit
12 wound?

13 A With State's further photographs that I observed, it's the
14 exit wound.

15 Q And it's reasonable given the fact that the other was the
16 entrance wound that this would be the exit; is that accurate?

17 A Correct.

18 Q Was there any kind of projectile collected during the
19 autopsy from the body of Mr. Bly?

20 A No.

21 Q When you were reviewing the documents available to you
22 other than the photographs and the report written by Dr. Telgenhoff,
23 did you use anything else to make your determinations as to the
24 cause and manner of death of Mr. Bly?

25 A I reviewed the investigator's report and the toxicology

1 report as well.

2 Q Did the investigator's report or the toxicology report affect
3 at all your determination as to cause and manner?

4 A No.

5 Q With regard to the cause of death, what are the options
6 you can pick from?

7 A I'm not sure I understand your question.

8 Q Because I asked the wrong one; sorry. With regards to the
9 manner of death, what are the options you can pick from?

10 A Natural, suicide, accident, homicide, undetermined.

11 Q And can you tell us sort of what are the factors you look
12 for between suicide, accident and homicide.

13 A This is all based on circumstances around death and the
14 findings of the autopsy. In this case, an intermediary gunshot
15 wound is not a common suicide manner. It can be seen in accidents
16 and homicides. Then you go with the other information that is
17 provided to the case. There was no indication of an accidental
18 misfire or somebody who wasn't knowledgeable in firearms.

19 Q When you say homicide that is not the same as the legal
20 term, murder; is that correct?

21 A Correct.

22 Q What is homicide?

23 A In forensic pathology homicide just means the death at the
24 hands of another.

25 Q When you reviewed the photographs did you reach a

1 manner of death in this case?

2 A Yes.

3 Q And what was that?

4 A Homicide.

5 Q And when you reviewed the photographs did you, and the
6 report, reach a cause of death in this case?

7 A I did.

8 Q And what was that?

9 A Perforating intermediate range gunshot wound of the head.

10 MS. TOMSON: Court's indulgence. I'll pass the witness.

11 THE COURT: Alright. Cross-exam?

12 **CROSS-EXAMINATION**

13 BY MR. YANEZ:

14 Q Good morning, doctor.

15 A Good morning.

16 Q How are you?

17 A Fine, how are you?

18 Q Good. On that point of manner of death you indicated that
19 homicide means the death of a human being at the hands or caused
20 by another human being; correct?

21 A Correct.

22 Q So, hypothetically, if someone shoots another person in
23 self-defense that would still be considered, and kills them, that
24 would still be considered a homicide; correct?

25 A Yes.

1 Q Now, based on your review of the pictures and of the
2 autopsy report we have one gunshot entrance wound; correct?

3 A Correct.

4 Q And that you indicated that was towards the top of the
5 head?

6 A Yes.

7 Q Okay. And you indicated -- you described it as
8 intermediate; correct?

9 A Correct.

10 Q Okay. And you said that could be within inches all the
11 way up to about two feet; right?

12 A Yes.

13 Q Okay. This isn't a contact shot. And what I mean by
14 contact shot, this isn't a case where the gun's pressed up against
15 the skull or the skin and the bullet's pressed, right -- or the trigger's
16 pulled; right?

17 A It's not.

18 Q Okay. Part of the autopsy in this case and in every case is
19 what's called a toxicology screen; right?

20 A Correct.

21 Q And in my layman's term, is that basically a blood test to
22 see what kind of drugs or substances were inside of that person's
23 body at the time of death?

24 A Yes.

25 Q And in this case --

1 MS. THOMSON: Objection; hearsay.

2 MR. YANEZ: I haven't asked the question yet.

3 THE COURT: Well, are you objecting to the last question
4 on grounds of hearsay or this coming up question?

5 MS. THOMSON: This coming up question.

6 THE COURT: Okay I think he just got out, in this case.
7 Maybe you know what he's gonna ask, I don't know yet. Can I hear
8 the question first?

9 MS. THOMSON: Yes, Your Honor.

10 THE COURT: Alright. Don't answer until I hear the
11 question, please.

12 BY MR. YANEZ:

13 Q In this case, you reviewed the toxicology results; correct?

14 THE COURT: So, I will overrule the objection to that
15 question.

16 THE WITNESS: Yes.

17 BY MR. YANEZ:

18 Q And there were some substances that --

19 MS. THOMSON: Objection; hearsay.

20 MR. YANEZ: It's her review of the toxicology report.

21 THE COURT: Well, let's hear the question. Are you
22 anticipating that through these questions he's gonna illicit
23 information that's in the report --

24 MS. THOMSON: What I --

25 THE COURT: -- that is uttered statements other than this

1 witness?

2 MS. THOMSON: Yes. This witness has testified that she
3 did not rely upon the toxicology report to come to her conclusions in
4 this particular case and therefore, anything within that toxicology
5 report would not be documents that would be admissible as basis of
6 her conclusions, and they'd be hearsay.

7 MR. YANEZ: Well she's --

8 THE COURT: So what would be the basis of getting into
9 the report if she didn't rely on the report?

10 MR. YANEZ: Well, it's number one, something she
11 reviewed. Number two, she's an expert and experts are allowed to
12 rely on hearsay. Any time there's an expert that takes the stand
13 hearsay is introduced --

14 THE COURT: Of course but she said I guess she didn't
15 rely on the report. So I guess you need to lay some foundation. If
16 she considered it in forming any opinions or ruling out any opinions,
17 then it would be important for us to explore. But if she didn't rely
18 on it for any purpose then I don't know how it's relevant.

19 MR. YANEZ: Okay, I can simply ask her.

20 THE COURT: Okay.

21 MR. YANEZ: Okay.

22 BY MR. YANEZ:

23 Q Doctor, tell the jury what documents you reviewed in doing
24 your analysis in this case.

25 A I reviewed the autopsy report, the investigative report and

1 the toxicology report as well as the autopsy photos.

2 Q So one of the things you considered -- and again, you
3 weren't the medical examiner who actually examined the body;
4 right?

5 A Correct.

6 Q Okay. So it's important for you to review all possible
7 documents relating to the autopsy; right?

8 A Yes.

9 Q And it's standard in every autopsy to do a toxicology
10 screen; right?

11 A Nearly every autopsy.

12 Q And that's because that could have an impact on your
13 opinion as to cause and manner of death; correct?

14 A Correct.

15 Q And in this case you did that; right?

16 A Yes.

17 Q Okay. You reviewed the toxicology report that was done.

18 A I did.

19 Q Okay. And there were things -- substances that were
20 found in the decedent's body in his blood system; correct?

21 A Correct.

22 Q One of those things was methamphetamines.

23 A Yes.

24 Q Okay. Another thing or substance that was found is
25 something called amphetamines; correct?

1 A Yes.

2 Q And correct me if I'm wrong but amphetamines typically is
3 what's called a metabolite of methamphetamines; is that fair to say?

4 A Usually, yes, there are drugs that just are amphetamine but
5 in this case it looks more like a metabolite of the methamphetamine.

6 Q Okay. And I actually had to look that word up. And
7 correct me if I'm wrong, metabolite basically is the product of the
8 body breaking down the methamphetamine; is that fair to say?

9 A Yes.

10 Q Okay. I want to ask you a couple of questions that Dr.
11 Telgenhoff testified to under oath and see if you agree with them or
12 not. Okay? He described the amount of methamphetamines that
13 was found in Mr. Bly's body as very large. Would you agree with
14 Dr. Telgenhoff's testimony?

15 A Yes.

16 Q Dr. Telgenhoff testified that methamphetamines can cause
17 hallucinations at times. Would you agree with that statement?

18 A It's possible.

19 Q He testified that methamphetamines can cause aggressive
20 behavior. Would you agree with that?

21 A Again, possible.

22 Q He testified that it can cause people to act violently.
23 Would you agree with that?

24 A Again, possible, varied from person to person.

25 Q And finally, Dr. Telgenhoff testified that

1 methamphetamines can produce irrational reactions in people.

2 Would you agree with that?

3 A Again, possible.

4 Q Thank you, doctor.

5 MR. YANEZ: I have nothing further, Judge.

6 THE COURT: Alright then. Recross?

7 MS. THOMSON: Thank you, Your Honor.

8 **REDIRECT EXAMINATION**

9 BY MS. THOMSON:

10 Q Was there anything about the methamphetamines in the
11 toxicology that affected your determination as to the cause or
12 manner of death in this case?

13 A No.

14 Q The gunshot wound that you were asked about, do you
15 have an estimate on about how long someone could live with an
16 injury of that caliber, or of that type maybe is a better word?

17 A Definitely pretty quick.

18 Q So is it fair to say that if there were immediate assistance
19 available potentially it could last longer but without immediate
20 assistance death would be almost immediate?

21 A Correct.

22 MS. THOMSON: I'll pass the witness.

23 MR. YANEZ: Nothing further, Judge.

24 THE COURT: Anything from the jurors? Yes. Marshal, we
25 have a question from a juror.

1 Alright, come on down
2 [Bench conference]
3 MR. SCHWARTZ: What position was victim in when shot?
4 MS. THOMSON: She can't get into that.
5 MR. YANEZ: Maybe ask if she can.
6 THE COURT: She might be able to answer that but it's a
7 half question. I'll ask the question.
8 MS. THOMSON: Okay.
9 MR. YANEZ: Okay.
10 [Bench conference ended]
11 **JUROR QUESTION**
12 THE COURT: If you can answer this answer the question
13 to the jury.
14 What position was the victim in when shot?
15 THE WITNESS: I cannot answer that, I can only tell you
16 the direction of the bullet through his body.
17 THE COURT: Using your head as a reference, can you
18 show us again where the entrance wound was and where the exit
19 wound was. So the entrance wound is your pointing.
20 THE WITNESS: The entrance was here [indicating] and the
21 exit wound was behind the right ear [indicating].
22 THE COURT: Okay, thank you. I'll give this to the Court
23 Clerk to mark as an exhibit. Follow-up, anybody?
24 MS. THOMSON: No, Your Honor.
25 MR. YANEZ: No, Judge.

1 THE COURT: Anything else? Well, juror in seat number
2 seven has a question. Any other questions because I'm really
3 supposed to get them all at once? No more questions? Alright.

4 [Bench conference]

5 MR. SCHWARTZ: Did the examining doctor have an
6 opinion about what caused the hand wound or burn?

7 MS. THOMSON: A burn.

8 MR. SCHWARTZ: A burn.

9 MR. YANEZ: Well, I think admissible because she's
10 supposed to give her opinion, right --

11 MS. THOMSON: Right.

12 MR. YANEZ: -- as to what she found.

13 MS. THOMSON: Yea, I mean, I think it's inadmissible. I
14 think if she said that the examining doctor [indiscernible] to my
15 opinion potentially but she's not gonna say that. Plus they don't
16 think he did.

17 MR. YANEZ: Okay, so --

18 MS. THOMSON: I don't remember seeing one in the
19 autopsy report.

20 MR. YANEZ: Yea, I don't --

21 THE COURT: So it needs some more foundation before I
22 ask it [indiscernible].

23 MR. YANEZ: Well the issue -- is the potential
24 confrontation issue is, under the law she's allowed to give her

25 //

1 opinion based on her review which she can't if the doctor's
2 opinion --

3 THE COURT: [Indiscernible]

4 MR. YANEZ: Right.

5 THE COURT: So, I'm not gonna give this one; alright?

6 MR. YANEZ: Okay.

7 MS. THOMSON: Okay.

8 THE COURT: Alright.

9 [Bench conference ended]

10 THE COURT: Alright, so unfortunately I'm not going to
11 give that question but thank you for the question in any event;
12 alright? Please don't concern yourself as to the reason why I am not
13 asking the question; alright?

14 Doctor, you're excused. Thank you very much for your
15 time.

16 THE WITNESS: Thank you.

17 THE COURT: Alright, I need to ask the State, do you have
18 another witness?

19 MS. THOMSON: Your Honor, our final witness is reading a
20 preliminary hearing transcript of Bridgett Graham.

21 THE COURT: Alright and do you have somebody to read
22 the transcript?

23 MS. THOMSON: Yes, we have Ms. Mendoza.

24 THE COURT: Alright, Ms. Mendoza may take the witness
25 stand.

1 So, Ladies and Gentlemen of the jury, what we're doing is
2 we're reading testimony of a witness at a preliminary hearing. And
3 Assistant District Attorney Ms. Mendoza is going to play the part of
4 the witness that testified at the preliminary hearing. She's gonna
5 receive a special oath that requires her in giving her statement to
6 accurately testify to the statements made by the witness at the time
7 of the preliminary hearing.

8 Madam Clerk, will you please administer the special oath?

9 **ERIKA MENDOZA**

10 having been called to well and truly read the answers of the
11 deponent and therefore being duly sworn reads as follows:

12 THE COURT CLERK: Please state your name for the
13 record, first and last name.

14 MS. MENDOZA: My name is Erika Mendoza, E-R-I-K-A
15 M-E-N-D-O-Z-A. And I'll be reading from Witness Bridgett Graham's
16 previous testimony.

17 THE COURT CLERK: Thank you.

18 MS. THOMSON: And, Your Honor, I forgot to give her the
19 first page where she has the named spelled.

20 THE COURT: You may proceed whenever ready.

21 **[The Testimony of Bridgett Graham was read into the record.]**

22 MS. MENDOZA: Name is spelled B-R-I-D-G-E-T-T. Last
23 name Graham, G-R-A-H-A-M.

24 MS. THOMSON: The Clerk says thank you.

25 THE COURT: The Court is allowing the reading of the

1 transcript because the Court has made a finding that the witness is
2 unavailable for reasons that you don't need to concern yourself;
3 alright? Let's proceed.

4 MS. THOMSON: Thank you, Your Honor.

5 **[Continuation of the reading of the Testimony of Bridgett Graham**
6 **was read into the record.]**

7 THE COURT: Alright that concludes the reading of the
8 preliminary hearing testimony.

9 Thank you, Ms. Mendoza.

10 MS. MENDOZA: Thank you.

11 MS. THOMSON: Thank you, Your Honor. At this time the
12 State will rest.

13 THE COURT: Alright, the State rests its case-in-chief.

14 Ladies and Gentlemen, we need to take our lunch break
15 now and when we come back I'll tell you how we're gonna proceed.
16 Let me go ahead and read the official full admonishment.

17 MR. YANEZ: Can we approach, Judge?

18 THE COURT: Yes, you may.

19 [Bench conference]

20 THE COURT: Yes?

21 MR. YANEZ: My expert's not gonna be here until three.

22 THE COURT: Three o'clock?

23 MR. YANEZ: Yes.

24 THE COURT: Oh, so we can take a long lunch break?

25 MR. YANEZ: Yes.

1 THE COURT: So they don't have to wait.
2 MR. YANEZ: Yea.
3 THE COURT: Can you guys -- do you guys want to be
4 back here at two so we can work on jury instructions?
5 MS. THOMSON: Sure.
6 MR. YANEZ: Yea.
7 THE COURT: Can we do that?
8 MR. SCHWARTZ: You think maybe an hour?
9 MR. YANEZ: Well, we can get started on it, if we need
10 more, right?
11 THE COURT: Okay.
12 MR. YANEZ: I don't think we'll need more.
13 MR. SCHWARTZ: I'd be surprised if we need an hour.
14 MS. THOMSON: [Indiscernible], right?
15 MR. YANEZ: No, no.
16 THE COURT: Two fifteen, let's say two fifteen and then I
17 need to --
18 MR. YANEZ: Canvass.
19 THE COURT: -- canvass as to his Constitutional rights to
20 testify.
21 MR. YANEZ: Right.
22 THE COURT: Let's do that before we [indiscernible] unless
23 he doesn't know yet.
24 MR. YANEZ: No, I don't think -- I mean, he could change
25 his mind but I don't think he's gonna testify.

1 THE COURT: So let's have him meet back here at two
2 fifteen, or two fifty-five.

3 [Indiscernible conversations]

4 MS. THOMSON: Okay. Do you anticipate us closing
5 today, just so we know during that hour we have.

6 MR. YANEZ: I would say we close tomorrow, that'd be
7 my preference.

8 MR. SCHWARTZ: Whatever you'd like.

9 THE COURT: Let's do it tomorrow.

10 MS. THOMSON: Okay.

11 [Bench conference ended]

12 THE COURT: Alright, Ladies and Gentlemen, due to
13 scheduling issues I'm not gonna need you back here, you're gonna
14 cringe, sorry, 3:00. But I do need you here at three so you're gonna
15 have a long lunch; alright? Alright. That's two and a half hours.
16 We have to work on jury instructions and I have a couple other
17 things I need to do and just for various reasons 3:00; alright?

18 Do not talk to anybody about the issues in the case. Do
19 not do any research. Do not read any reports of the case. Do not
20 form any opinions. Avoid any contact with witnesses, parties and
21 the attorneys. Any questions from any of you about the process so
22 far? No? Alright, I'll see you all back here at 3:00, be ready to go.
23 We'll be ready to go at three; alright?

24 Thank you, counsel. And it looks like we're making good
25 progress. I anticipate closing arguments tomorrow; alright?

1 THE MARSHAL: Rise for jury.

2 [Outside the presence of the jury]

3 THE COURT: Alright, we're outside the presence of the
4 jury. Officers, can we have the Defendant back like ten minutes
5 before three because I need to talk to him about some stuff.

6 THE CORRECTIONS OFFICER: Yes, Judge.

7 THE COURT: Alright, so about 2:50 for the Defendant.
8 Very good, thanks.

9 MS. THOMSON: And Your Honor, the Court has a copy of
10 the transcript. I'd ask that it be marked as a Court's Exhibit, only I'd
11 ask to add one more page because we missed the spelling of her
12 first name and a copy of it.

13 THE COURT: Yes. Does the Clerk have a copy?

14 MS. THOMSON: No, that's it.

15 THE COURT: Go ahead and give that to the Court Clerk.

16 MS. THOMSON: Thank you. And that's a Court's Exhibit.

17 THE COURT: That is a Court's Exhibit.

18 MS. THOMSON: Perfect.

19 THE COURT: Alright, when we resume at 2:50 with the
20 Defendant I will canvass the Defendant, ask the Defendant about
21 whether he intends to testify. So he'll have this opportunity
22 between now and then to talk to his counsel about his Constitutional
23 Rights not to testify and whether he wants to waive those rights;
24 alright?

25 MR. YANEZ: Thank you, Judge.

1 THE COURT: Also, I would like to have counsel back
2 probably 2:15 so we can work on jury instructions. Will that work?

3 MS. THOMSON: Yes, Your Honor.

4 MR. YANEZ: Yes.

5 THE COURT: Alright, court's in adjournment until 2:15.

6 [The Lunch recess was taken at 12:32 p.m.]

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19
20 ATTEST: Pursuant to Ryle 3C (d) of the Nevada Rules of Appellate
21 Procedure, I acknowledge that this is a rough draft transcript,
22 expeditiously prepared, not proofread, corrected, or certified to be an
23 accurate transcript.

24 
25 DALYNE EASLEY
Court Recorder/Transcriber