

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
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3 ALLEN RONALD,) No. 75329

4 Appellant,)

5 v.)

6 THE STATE OF NEVADA,)

7 Respondent.)

Electronically Filed
Jul 11 2018 02:09 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

8 _____)
9 **APPELLANT'S APPENDIX VOLUME III PAGES 436-678**

10 PHILIP J. KOHN
11 Clark County Public Defender
12 309 South Third Street
13 Las Vegas, Nevada 89155-2610

14 Attorney for Appellant

STEVE WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

ADAM LAXALT
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

Counsel for Respondent

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27 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
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INDEX
RONALD ALLEN
Case No. 75329

PAGE NO.

Amended Jury List filed 11/02/17	187
Criminal Complaint filed 08/11/16.....	1-2
Defendant's Notice of Witnesses filed 10/23/17	184-185
District Court Minutes from 09/26/16 through 02/06/18	215-231
Ex Parte Motion for Release of Medical Records filed 03/02/17.....	87-88
Ex Parte Motion for Release of Medical Records filed 03/02/17.....	89-90
Findings of Competency filed 06/05/17	106-107
Information filed 09/23/16.....	81-82
Instructions to the Jury filed 11/03/17	189-207
Judgment of Conviction (Jury Trial) filed 02/16/18.....	209-210
Jury List filed 11/01/17.....	186
Justice Court Minutes from 08/11/16 through 09/22/16	4-8
Motion for Order to Marry filed 11/19/16.....	83-86
Motion to Compel Production of Discovery & Brady Material Date of Hrg: 10/24/17	115-153
Notice of Appeal filed 03/06/18	211-214
Notice of Expert Witnesses filed 03/02/17	93-97
Notice of Witnesses filed 08/11/16	3
Notice of Witnesses filed 03/02/17	91-92
Order for Production of Inmates filed 09/28/17	111-114
Order Releasing Medical Records filed 03/09/17	98-99
Order Releasing Medical Records filed 03/09/17	100-101
Order Releasing Medical Records filed 03/09/17	102-103
Order to Transport Defendant from Southern Nevada Adult Mental Health Rawson-Neal Psychiatric Hospital filed 05/17/17	104-105
Second Amended Jury List filed 11/03/17	188

1	State's Notice of Intent to Seek Punishment as a Habitual Criminal filed 09/22/17.....	108-110
2		
3	State's Opposition to Defendant's Motion to Compel Production of Discovery & Brady Material Date of Hrg: 10/24/17.....	154-180
4		
5	State's Supplemental and Amended Notice of Witnesses filed 10/17/17	181-183
6	Verdict filed 11/03/17.....	208
7		
	<u>TRANSCRIPTS</u>	
8	Recorder's Transcript JURY TRIAL DAY 1	
9	Date of Hrg: 10/31/17.....	254-435
10	Recorder's Transcript JURY TRIAL DAY 2	
11	Date of Hrg: 11/01/17.....	436-532
12	Recorder's Transcript JURY TRIAL DAY 3	
13	Date of Hrg: 11/02/17.....	533-678
14	Recorder's Transcript JURY TRIAL DAY 4	
15	Date of Hrg: 11/03/17.....	679-741
16	Recorder's Transcript Calendar Call	
17	Date of Hrg: 03/28/17.....	235-238
18	Recorder's Transcript Calendar Call	
19	Date of Hrg: 10/24/17.....	247-249
20	Recorder's Transcript Entry of Plea	
21	Date of Hrg: 09/21/17.....	245-246
22	Recorder's Transcript Further Proceedings: Competency	
23	Date of Hrg: 06/02/17.....	239-241
24	Recorder's Transcript Further Proceedings: Return from Competency Court	
25	Date of Hrg: 06/08/17.....	242-244
26	Recorder's Transcript Initial Arraignment	
27	Date of Hrg: 09/26/16.....	232-234
28		

1	Recorder's Transcript Overflow	
2	Date of Hrg: 10/26/17	250-253
3	Recorder's Transcript Sentencing	
4	Date of Hrg: 02/06/18	742-753
5	Reporter's Transcript Preliminary Hearing	
6	Date of Hrg: 09/22/16	9-80
7		
8		
9		
10		
11		
12		
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7)
8 THE STATE OF NEVADA,)
9 Plaintiff,)

CASE NO: C-16-318255-1
DEPT. XVIII

10 vs.)

11 RONALD ALLEN,)
12 Defendant.)

13
14 BEFORE THE HONORABLE MARK B. BAILUS, DISTRICT COURT JUDGE
15 WEDNESDAY, NOVEMBER 1, 2017

16 ***RECORDER'S TRANSCRIPT OF HEARING:***
17 ***JURY TRIAL – DAY TWO***

18
19 APPEARANCES:

20 For the State:

CHAD N. LEXIS, ESQ.
LAURA JEAN ROSE, ESQ.
Deputy District Attorneys

22 For the Defendant:

XIOMARA BONAVENTURE, ESQ.
ROBSON M. HAUSER, ESQ.
Public Defenders

24
25 RECORDED BY: ROBIN PAGE, COURT RECORDER

1 Las Vegas, Nevada; Wednesday, November 1, 2017

2 [Proceeding commenced at 1:23 p.m.]

3
4 [Outside the presence of the prospective jury panel.]

5 THE COURT: This time set for trial in State of Nevada
6 versus Ronald Eugene Allen, Jr., Case No. C-16-318225. Let the
7 record reflect the presence of counsel for the State, counsel for the
8 defendant, and the Defendant.

9 We have a -- some minor housekeeping matters. At this
10 point, I'm going to excuse Juror No. 279, Jack Yeh; Juror No. 341,
11 Roshani Rahe; and Juror No. 304, Maria Escalona.

12 It's my understanding that the defense wants to make an
13 additional challenge for cause; is that correct?

14 MR. HAUSER: That's correct, Your Honor. As we talked
15 about briefly in chambers, we were going to motion to strike Juror
16 Ellen Westbay, Badge No. 289, for cause. I believe the State's in
17 agreement with this motion.

18 THE COURT: Okay. And the basis for the cause is?

19 MR. HAUSER: Without going into too many details, and I
20 can provide more if you want, we believe there is a personal
21 relationship with the family of defense counsel that would impact
22 Mr. Allen's due process rights in a negative way.

23 MR. LEXIS: [Indiscernible].

24 THE COURT: Okay. And also, I will excuse Juror No. 289,
25 Ellen Westbay.

1 In addition, when the -- you may seat the jury and then
2 have the clerk call the next three jurors and have them seated. But
3 before I start questioning them, I'm going to do some follow-up
4 questions regarding --

5 MR. LEXIS: Actually, I think we're taking four now. So it'll
6 be four.

7 THE COURT: There's four. I apologize. Including
8 Ms. Westbay, there's four. So I'll have them seated.

9 Then I'm going to do some follow-up questions regarding
10 Christopher Silva. Then I'm going to have counsel approach the
11 bench, and the State can make a determination if they still want to
12 challenge them for cause.

13 MR. HAUSER: Thank you, Your Honor.

14 THE COURT: Let's bring in the jurors in.

15 MR. LEXIS: Do you want me to excuse Ellen Westbay or --

16 THE COURT: You want to bring them in, and I'll just
17 excuse them? Or do you --

18 MR. LEXIS: However you want to do it, Judge.

19 THE COURT: Why don't you --

20 MR. LEXIS: She's the only one here. The other three are
21 already excused.

22 THE COURT: So, Ms. Westbay, so we did get -- just so you
23 know, I tried to have my staff get a hold of the three individuals we
24 agreed to excuse last night so they wouldn't have to come back
25 down, and --

1 MR. LEXIS: Okay. For time purposes, Judge, why don't
2 we have just the marshal excuse her until defense --

3 THE COURT: Okay. So why don't you just excuse
4 Ms. Westbay also.

5 [In the presence of the prospective jury panel.]

6 THE CLERK: Stand for the jury.

7 THE COURT: You may be seated. Marshal?
8 We have one too many.

9 THE MARSHAL: I know. I was just looking at my phone
10 [indiscernible].

11 THE COURT: Mr. Stephenson, come here, please.

12 [Bench conference was had and transcribed as follows:]

13 THE COURT: Who's the other [indiscernible] that should
14 be here?

15 Okay. All right. Ms. Rahe.

16 [Bench conference was concluded.]

17 THE COURT: Ms. Rahe? Roshani Rahe? I -- we're going
18 to excuse you at this time. I'd like to thank you. You're Badge
19 No. 341?

20 PROSPECTIVE JUROR NO. 341: Thank you. Should I
21 leave?

22 THE COURT: Yeah. My marshal will advise you. Thank
23 you for coming in today.

24 PROSPECTIVE JUROR NO. 341: Thank you so much.

25 THE COURT: I apologize that you had to wait.

1 PROSPECTIVE JUROR NO. 341: Thank you.

2 THE COURT: Mr. Stephenson, did you advise her she
3 doesn't have to report back to the jury commission?

4 THE MARSHAL: Yeah. He's doing that right now.

5 THE COURT: Why don't you call the next four people.
6 And have -- and have Randy [indiscernible] proceed?

7 THE CLERK: Arturo Pin?

8 Ashley Douglass?

9 William Yantz?

10 Ellen Perry?

11 THE COURT: I apologize for the little late start that
12 afternoon, ladies and gentlemen. There was some housekeeping
13 matters I had to take care of.

14 We're going to resume the jury selection at this time.
15 Before I ask the questions of newly seated potential jurors, Mr. Silva,
16 I need to ask you some follow-up questions, some clarification if I
17 could. Mr. Silva?

18 PROSPECTIVE JUROR NO. 250: Over here.

19 THE COURT: I apologize. I -- my chart's a little off. I didn't
20 read it correctly. So I'm looking other here, and you're over there.

21 PROSPECTIVE JUROR NO. 250: Yeah. That's what I
22 wasn't sure about it.

23 THE COURT: I was looking for you, and I couldn't find
24 you. I just need to ask you some follow-up questions, if you don't
25 mind, so I have some clarification.

1 You understand under the law, if you're selected as a
2 juror, you will be required to decide the facts of the case. Do you
3 understand that, that that's the role of jury is to decide the facts? Do
4 you understand that, sir?

5 You need to answer out loud. I'm sorry.

6 PROSPECTIVE JUROR NO. 250: Yes, I do.

7 THE COURT: Thank you. And you understand that
8 making your decision, you must be guided by the law as it applies to
9 the facts. You understand that?

10 PROSPECTIVE JUROR NO. 250: Yes, I do.

11 THE COURT: Okay. And it's my duty to instruct you as to
12 what the law is. Do you understand that?

13 PROSPECTIVE JUROR NO. 250: Yes.

14 THE COURT: In other words, at the end of the case, I'm
15 going to give the jury a set of instructions that they're going to have
16 follow as to what the law is. Do you understand that, sir?

17 PROSPECTIVE JUROR NO. 250: Yes.

18 THE COURT: And you'll follow my instructions as to what
19 the law is; right?

20 PROSPECTIVE JUROR NO. 250: Yes.

21 THE COURT: And even if you -- even if you disagree with
22 what the law is, even if you think it should not be the law, can you
23 still follow my instructions and apply the law?

24 PROSPECTIVE JUROR NO. 250: Yes.

25 THE COURT: And is there anything that you want to ask

1 me about the law?

2 In other words, I don't make the law. The attorneys don't
3 make the law. The Nevada legislature makes the law. And you
4 have -- as a juror, you would have to follow the law in the State of
5 Nevada in making your determination regarding the facts of the
6 case. And you understand that?

7 PROSPECTIVE JUROR NO. 250: Yes, of course.

8 THE COURT: And you're telling me unequivocally you can
9 do that?

10 PROSPECTIVE JUROR NO. 250: Yes.

11 THE COURT: Counsel, approach.

12 [Bench conference was had and transcribed as follows:]

13 THE COURT: What's your position?

14 MR. LEXIS: It's the same thing he said the first time. But
15 on the specific -- he specifically told me he's not going to be able to
16 find guilty if just [indiscernible].

17 THE COURT: The question was based on hypotheticals,
18 and the law -- he, you know -- I'm not going to have dismiss him for
19 cause. I mean, I think he was assured [indiscernible] if he were to
20 disagree; so I'm not going to dismiss him for cause.

21 MS. BONAVENTURE: Thank you, Your Honor.

22 [Bench conference was concluded.]

23 THE COURT: Mr. Pin?

24 And could you say your name and your badge number,
25 please?

1 PROSPECTIVE JUROR NO. 371: Arturo Pin, No. 371.

2 THE COURT: Okay. Sir, are you acquainted with any of
3 the court personnel that I've mentioned?

4 PROSPECTIVE JUROR NO. 371: Can you repeat that
5 again?

6 THE COURT: You had told me before you're not
7 acquainted with any of the court personnel; is that correct?

8 PROSPECTIVE JUROR NO. 371: I do not really understand
9 the question. I said before that English is my second language.

10 THE COURT: Okay. You're telling me you did not
11 understand that question?

12 PROSPECTIVE JUROR NO. 371: No.

13 THE COURT: Okay. What words didn't you understand?

14 PROSPECTIVE JUROR NO. 371: Basically the whole
15 question.

16 THE COURT: You didn't understand the word what? You
17 didn't understand the word are?

18 PROSPECTIVE JUROR NO. 371: The question -- I didn't
19 understand the question.

20 THE COURT: You didn't understand the question, Are you
21 acquainted with any of the court personnel that I have mentioned?

22 PROSPECTIVE JUROR NO. 371: No.

23 THE COURT: What words didn't you understand?

24 PROSPECTIVE JUROR NO. 371: The whole question.

25 THE COURT: Did you understand -- do you understand --

1 PROSPECTIVE JUROR NO. 371: I -- I know -- I understand
2 that you say -- you asked me if I understand. I don't know what
3 you -- what those other words mean.

4 THE COURT: Well, what words didn't you understand?
5 And I'll explain them to you.

6 PROSPECTIVE JUROR NO. 371: Just the first two words.
7 You say, I --

8 THE COURT: Do you understand, Are any of you? Do you
9 understand those words?

10 PROSPECTIVE JUROR NO. 371: I understand "any of you."

11 THE COURT: Do you understand under the word
12 "acquainted"?

13 PROSPECTIVE JUROR NO. 371: I don't know what those
14 mean.

15 THE COURT: It means know. Do you know -- do you
16 know. Do you understand the word know?

17 PROSPECTIVE JUROR NO. 371: Yes.

18 THE COURT: What about "with any of the court
19 personnel," do you understand those words?

20 PROSPECTIVE JUROR NO. 371: Court -- the last word, no.

21 THE COURT: Court. You don't understand what the word
22 "court" means?

23 PROSPECTIVE JUROR NO. 371: Court. Okay. Yes.

24 THE COURT: Court, C-O-R-U-T [*sic*].

25 PROSPECTIVE JUROR NO. 371: Yes. No, I understand.

1 THE COURT: You do understand what that word means?

2 PROSPECTIVE JUROR NO. 371: Yes.

3 THE COURT: Okay. And I said that I had mentioned -- in
4 other words, when I asked you do you know any of the court -- any
5 of the people in the courtroom.

6 PROSPECTIVE JUROR NO. 371: No.

7 THE COURT: Okay. If you don't understand the question,
8 let me know. It's important that you understand everything, okay?

9 PROSPECTIVE JUROR NO. 371: Okay.

10 THE COURT: All right.

11 How long have you lived in Clark County, Nevada?

12 PROSPECTIVE JUROR NO. 371: Six years.

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

14 PROSPECTIVE JUROR NO. 371: Two years of college in
15 Ecuador.

16 THE COURT: Okay. What is your occupation, sir?

17 PROSPECTIVE JUROR NO. 371: Truck driver.

18 THE COURT: I'm sorry?

19 PROSPECTIVE JUROR NO. 371: Truck driver.

20 THE COURT: Okay. Are you married?

21 PROSPECTIVE JUROR NO. 371: Yes.

22 THE COURT: And what does your wife do for a living?

23 PROSPECTIVE JUROR NO. 371: She does -- she works for
24 the helpers, house cleaning.

25 THE COURT: Okay. Do you have any children, sir?

1 PROSPECTIVE JUROR NO. 371: Yes, I do. Four.
2 THE COURT: You have four children?
3 PROSPECTIVE JUROR NO. 371: Yes.
4 THE COURT: How old are they?
5 PROSPECTIVE JUROR NO. 371: 17, 11, 10, and 9.
6 THE COURT: Okay. Have you ever served as a juror
7 before?
8 PROSPECTIVE JUROR NO. 371: No.
9 THE COURT: Have you ever testified as a witness in a
10 criminal case?
11 PROSPECTIVE JUROR NO. 371: No.
12 THE COURT: Have you or a close family member ever
13 been convicted of a crime?
14 PROSPECTIVE JUROR NO. 371: No.
15 THE COURT: Have you or a close family member ever
16 been the victim of a crime?
17 PROSPECTIVE JUROR NO. 371: No.
18 THE COURT: Do you have any relatives or close friends
19 who are law enforcement officers?
20 PROSPECTIVE JUROR NO. 371: No.
21 THE COURT: It is anticipated that law enforcement
22 officers will testify in this case. Will you give more credibility to their
23 testimony by the mere fact that they are law enforcement officers?
24 PROSPECTIVE JUROR NO. 371: No.
25 THE COURT: Sir, do you agree that if you are chosen to

1 serve as a juror in this case, that you will honor your duty to be
2 completely fair and impartial and to listen carefully to all of the
3 evidence?

4 PROSPECTIVE JUROR NO. 371: Yes.

5 THE COURT: Thank you, sir.

6 PROSPECTIVE JUROR NO. 371: You're welcome.

7 THE COURT: Ashley Douglass?

8 And what's your badge number, ma'am?

9 PROSPECTIVE JUROR NO. 387: 387.

10 THE COURT: Thank you.

11 Ma'am, how long have you lived in Clark County, Nevada?

12 PROSPECTIVE JUROR NO. 387: Six or seven years.

13 THE COURT: And how far did you go in school?

14 PROSPECTIVE JUROR NO. 387: GED.

15 THE COURT: And what is your occupation? What do you
16 do for a living?

17 PROSPECTIVE JUROR NO. 387: Overnight shift supervisor
18 at CVS.

19 THE COURT: And are you married?

20 PROSPECTIVE JUROR NO. 387: No.

21 THE COURT: Do you have any children?

22 PROSPECTIVE JUROR NO. 387: No.

23 THE COURT: Have you ever served as a juror in a case
24 before?

25 PROSPECTIVE JUROR NO. 387: Nope.

1 THE COURT: Have you ever testified as a witness in a
2 criminal case?

3 PROSPECTIVE JUROR NO. 387: No.

4 THE COURT: Have you or a close family member ever
5 been convicted of a crime?

6 PROSPECTIVE JUROR NO. 387: Convicted? No.

7 THE COURT: Convicted. No?

8 PROSPECTIVE JUROR NO. 387: No.

9 THE COURT: Thank you. I'm trying to speak up.
10 Apparently, I have a soft voice, and it doesn't travel well in my
11 courtroom. I have a microphone right here. So if you can't hear me,
12 please let me know. But I'm going to try to speak up, okay? All
13 right.

14 Have you or a close family member ever been the victim
15 of a crime?

16 PROSPECTIVE JUROR NO. 387: Yes.

17 THE COURT: And could you tell me the circumstances,
18 please?

19 PROSPECTIVE JUROR NO. 387: Can I do it privately?

20 THE COURT: I'm sorry?

21 PROSPECTIVE JUROR NO. 387: Can I do it privately?

22 THE COURT: Sure. Do you want to -- Counsel, do you
23 want to excuse the panel or do it at the bench or how would you like
24 to handle it?

25 I am going to allow her to do it privately, though.

1 MR. LEXIS: For time purposes, I would rather just do it at
2 the bench, Your Honor.

3 THE COURT: Okay. Is it going to be lengthy where we can
4 do it --

5 PROSPECTIVE JUROR NO. 387: No, it won't be lengthy.

6 THE COURT: Okay. But it's still going to be on the record,
7 just so you know. Everything that occurs --

8 PROSPECTIVE JUROR NO. 387: I'm aware.

9 THE COURT: -- at the bench is recorded.

10 PROSPECTIVE JUROR NO. 387: I'm aware.

11 THE COURT: Okay. And Randy, standby in front, and let
12 me know if you can hear anything.

13 [Bench conference was had and transcribed as follows:]

14 PROSPECTIVE JUROR NO. 387: All right. I was molested
15 as a child. Yeah.

16 THE COURT: All right. And did -- if you can't hear me, I'm
17 trying to speak very low.

18 And did they prosecute the individual?

19 PROSPECTIVE JUROR NO. 387: I did not want to go to
20 court.

21 THE COURT: And did you report it to the police?

22 PROSPECTIVE JUROR NO. 387: No. It was my father.

23 THE COURT: Were you satisfied with how the police
24 department handled the case?

25 PROSPECTIVE JUROR NO. 387: With police I have spoken

1 to, yes.

2 THE COURT: Okay. And you said you didn't want to go to
3 court?

4 PROSPECTIVE JUROR NO. 387: No, I didn't. I didn't want
5 to go to court. I was too afraid to testify in front of people.

6 THE COURT: Okay. And was there anything about that
7 experience that would make it difficult for you to be fair and
8 impartial to both sides in this case?

9 PROSPECTIVE JUROR NO. 387: No, not at all.

10 THE COURT: Okay. The attorneys may have some
11 follow-up questions. If they do, are you going to let them ask it, or
12 are you going to come back to the bench?

13 MR. LEXIS: I have no questions regarding this.

14 THE COURT: Okay. Do you have any questions?

15 MR. HAUSER: Nothing, your Honor.

16 THE COURT: Okay. All right. Thank you so much.

17 PROSPECTIVE JUROR NO. 387: Thank you.

18 [Bench conference was concluded.]

19 THE COURT: She'll go back. No, she's fine. I -- oh, and
20 she needs a microphone. I didn't understand what she was saying.

21 Do you have any close relatives or close friends who are
22 engaged in law enforcement or are law enforcement officers?

23 PROSPECTIVE JUROR NO. 387: No.

24 THE COURT: And you've heard this, but it is anticipated
25 that law enforcement officers will testify in this case. Will you give

1 more credibility to their testimony by the mere fact that they are law
2 enforcement officers?

3 PROSPECTIVE JUROR NO. 387: No.

4 THE COURT: And do you agree that if you are chosen to
5 serve as a juror in this case, that you will honor your duty to be
6 completely fair and impartial and to listen carefully to all of the
7 evidence?

8 PROSPECTIVE JUROR NO. 387: Yes, I agree.

9 THE COURT: William Jantz?

10 PROSPECTIVE JUROR NO. 379: Yantz.

11 THE COURT: How do you pronounce your name, sir?

12 PROSPECTIVE JUROR NO. 379: Yantz.

13 THE COURT: Okay. And what's your badge number, sir?

14 PROSPECTIVE JUROR NO. 379: 379.

15 THE COURT: Okay. How long have you lived in Clark
16 County, Nevada?

17 PROSPECTIVE JUROR NO. 379: Fifteen years.

18 THE COURT: And how far did you go in school?

19 PROSPECTIVE JUROR NO. 379: High school.

20 THE COURT: And what is your occupation, sir?

21 PROSPECTIVE JUROR NO. 379: I -- mechanic for the
22 school district.

23 THE COURT: Okay. And are you married?

24 PROSPECTIVE JUROR NO. 379: No.

25 THE COURT: Do you have any children?

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PROSPECTIVE JUROR NO. 379: No.

THE COURT: Okay. Have you ever served as a juror before?

PROSPECTIVE JUROR NO. 379: No.

THE COURT: Have you ever testified as a witness in a criminal case?

PROSPECTIVE JUROR NO. 379: No.

THE COURT: Have you or a close family member ever been convicted of a crime?

PROSPECTIVE JUROR NO. 379: No.

THE COURT: Have you or a close family member ever been the victim of a crime?

PROSPECTIVE JUROR NO. 379: No.

THE COURT: Do you have any close friends or relatives who have ever been engaged in law enforcement?

PROSPECTIVE JUROR NO. 379: No.

THE COURT: Kind of hesitated there.

PROSPECTIVE JUROR NO. 379: Because I deal with school police. I see them all the time.

THE COURT: Okay. But they're not close friends or relatives?

PROSPECTIVE JUROR NO. 379: No.

THE COURT: It is anticipated that certain law enforcement law officers will testify in this case. Will you give more credibility to their testimony by the mere fact that they are law enforcement

1 officers?

2 PROSPECTIVE JUROR NO. 379: I have to say yes, because
3 sometime I talk to the school police, and they tell me sometimes the
4 stories. And these guys [indiscernible] is -- to me, it's like the same
5 person all the time.

6 THE COURT: Okay. But understand that these aren't
7 going to be law enforcement officers that you know?

8 PROSPECTIVE JUROR NO. 379: Yeah, I understand that.

9 THE COURT: Okay. And they're just -- so just because
10 they're law enforcement officers, just because they're Metro police
11 officers or some other law enforcement, you're going to give them
12 more credibility than other witnesses that are going to come before
13 you?

14 PROSPECTIVE JUROR NO. 379: If -- I don't listen to their
15 story, yeah, I will.

16 THE COURT: Okay. But do you -- you have to be fair and
17 impartial to both sides. You understand that?

18 PROSPECTIVE JUROR NO. 379: Yes.

19 THE COURT: And credibility of witnesses, I'm going to
20 give you instruction on the credibility of witnesses. You understand
21 that?

22 PROSPECTIVE JUROR NO. 379: Yes.

23 THE COURT: And you will follow that instruction on
24 credibility, won't you?

25 PROSPECTIVE JUROR NO. 379: Yes.

1 THE COURT: Okay. And so do you agree that if you are
2 chosen to serve as a juror in this case, that you will honor your duty
3 to be completely fair and impartial and to listen carefully to all the
4 evidence before you make a decision?

5 PROSPECTIVE JUROR NO. 379: Yes.

6 THE COURT: Okay. Thank you, sir.

7 And Ellen Perry? Hi.

8 PROSPECTIVE JUROR NO. 380: Hi.

9 THE COURT: It's going to be no surprise, the questions
10 I'm going to ask you.

11 How long have you lived in Clark County, Nevada?

12 PROSPECTIVE JUROR NO. 380: Nine years.

13 THE COURT: And also, I just need your badge number for
14 the record.

15 PROSPECTIVE JUROR NO. 380: 380.

16 THE COURT: Thank you. And you said nine years?

17 PROSPECTIVE JUROR NO. 380: Yes.

18 THE COURT: Okay. And how far did you go in school?

19 PROSPECTIVE JUROR NO. 380: College.

20 THE COURT: And what is your occupation now?

21 PROSPECTIVE JUROR NO. 380: Homemaker.

22 THE COURT: And are you married?

23 PROSPECTIVE JUROR NO. 380: Divorced.

24 THE COURT: Okay. And what was the occupation of your
25 former spouse?

1 PROSPECTIVE JUROR NO. 380: Professional athlete.
2 THE COURT: Okay. Do you have any children?
3 PROSPECTIVE JUROR NO. 380: One.
4 THE COURT: And how old is your child?
5 PROSPECTIVE JUROR NO. 380: 23.
6 THE COURT: And what does your adult child do for a
7 living?
8 PROSPECTIVE JUROR NO. 380: She's a full-time student.
9 THE COURT: And does he live here in Las Vegas?
10 PROSPECTIVE JUROR NO. 380: With me. She goes to
11 UNLV.
12 THE COURT: Okay. Have you ever served as a juror
13 before?
14 PROSPECTIVE JUROR NO. 380: No.
15 THE COURT: Have you ever testified as a witness in a
16 criminal case?
17 PROSPECTIVE JUROR NO. 380: No.
18 THE COURT: You hesitated for a second there.
19 PROSPECTIVE JUROR NO. 380: The next --
20 THE COURT: A witness means where you would have
21 come to court and testified in a case.
22 PROSPECTIVE JUROR NO. 380: I had a domestic violence
23 with my ex-husband, which would probably be your next question.
24 And he -- the judge did question me, but he ended up pleading
25 guilty.

1 THE COURT: Okay. So you started the trial, but then he
2 ended up pleading guilty during the trial?

3 PROSPECTIVE JUROR NO. 380: Pretty much, yeah. The
4 first day he changed his mind and decided to plead guilty.

5 THE COURT: Okay. Is there anything about that
6 experience that would keep you from being fair and impartial in any
7 way?

8 PROSPECTIVE JUROR NO. 380: No.

9 THE COURT: Okay. Have you or a close family member
10 ever been convicted of a crime?

11 PROSPECTIVE JUROR NO. 380: My ex-husband.

12 THE COURT: And he was convicted of domestic battery,
13 domestic violence?

14 PROSPECTIVE JUROR NO. 380: Yes.

15 THE COURT: And was that here in Las Vegas, Nevada?

16 PROSPECTIVE JUROR NO. 380: No, it was not.

17 THE COURT: And where was that?

18 PROSPECTIVE JUROR NO. 380: Tennessee.

19 THE COURT: Okay. Is there anything about that that
20 would --

21 PROSPECTIVE JUROR NO. 380: No.

22 THE COURT: -- where you couldn't be fair and impartial to
23 both sides?

24 PROSPECTIVE JUROR NO. 380: No.

25 THE COURT: Okay. And you've already told me that

1 you've been the victim of a crime?

2 PROSPECTIVE JUROR NO. 380: Yes. And one other thing,
3 I was -- my house was burglarized a few years ago.

4 THE COURT: Okay. And was that here in Las Vegas,
5 Nevada?

6 PROSPECTIVE JUROR NO. 380: It was.

7 THE COURT: And did the police come out and
8 investigate?

9 PROSPECTIVE JUROR NO. 380: They did. And they
10 caught -- they fingerprinted the house and caught the people and --

11 THE COURT: Was he prosecuted?

12 PROSPECTIVE JUROR NO. 380: He was, yes.

13 THE COURT: And do you -- were you satisfied with the
14 prosecution?

15 PROSPECTIVE JUROR NO. 380: Yes.

16 THE COURT: I'm sorry?

17 PROSPECTIVE JUROR NO. 380: Yes.

18 THE COURT: Thank you. And is there anything about that
19 experience that would make it difficult -- difficult for you to be fair
20 and impartial in this case?

21 PROSPECTIVE JUROR NO. 380: No.

22 THE COURT: To both sides?

23 PROSPECTIVE JUROR NO. 380: Correct.

24 THE COURT: Okay. Do you have any friends or -- or close
25 friends or relatives who have ever been engaged in law

1 enforcement?

2 PROSPECTIVE JUROR NO. 380: No.

3 THE COURT: And it is anticipated that certain law
4 enforcement officers will testify in this case. Will you give more
5 credibility to their testimony by the mere fact that they are law
6 enforcement officers?

7 PROSPECTIVE JUROR NO. 380: No.

8 THE COURT: And do you agree that if you are chosen to
9 serve as a juror in this case, that you will honor the duty to be
10 completely fair and impartial and to listen carefully to all the
11 evidence before you make a decision?

12 PROSPECTIVE JUROR NO. 380: Correct.

13 THE COURT: Thank you. I'm now going to let the
14 attorneys ask some questions of the four new people.

15 MR. LEXIS: Just briefly, folks.

16 To the four of you that just came on, is there anything in
17 your past, religion, whatever may be, that's going to impair your
18 ability to cast judgment upon the end of this trial to determine
19 whether this person's guilty or not guilty?

20 Let the record reflect no response.

21 Does any one of you have disagreements or caution about
22 the notion that sentencing is up to the Judge? You are not to
23 concern yourself with sentencing during your deliberations. Do any
24 of you have a problem with that? Please raise your hand.

25 Let the record reflect no response.

1 Where is the mic? Can you please pass it to the last
2 individual, please? No. 380.

3 Ma'am, you've heard my questions prior. Same crime
4 committed against a doctor, same crime committed against a
5 homeless drug addict. Do you believe our office should prosecute
6 the homeless --

7 PROSPECTIVE JUROR NO. 380: Equally.

8 MR. LEXIS: Equally? Okay. Thank you. Do any of you
9 other three disagree with that?

10 Let the record reflect no response.

11 Same type of question as far as the one witness that takes
12 the stand. The evidence is going to come from right there. The
13 State puts on just one witness, and you believe that person beyond a
14 reasonable doubt. Are any of you, the four of you that just took a
15 seat, going to say, no, that's not enough, I need more evidence?

16 Let the record reflect no response.

17 Can you please pass it to Juror 371 right behind you,
18 ma'am.

19 Sir, from yesterday and today, if you had to put a
20 percentage on how much you understood, what would be the
21 percentage?

22 PROSPECTIVE JUROR NO. 371: I would say, like,
23 60 percent, maybe.

24 MR. LEXIS: 60 percent?

25 PROSPECTIVE JUROR NO. 371: Yes.

1 MR. LEXIS: Okay.

2 PROSPECTIVE JUROR NO. 371: This is new for me. You
3 know, I would say I'm used to -- to deal with person every day,
4 maybe talk the same words every day. But this is new for me. I --
5 there is new words that I don't know what it means.

6 MR. LEXIS: Can you please pass it down to the end to
7 Juror 379?

8 Sir, I assure you heard me yesterday the importance of
9 waiting and seeing what comes out of people's mouth when they
10 take that stand before casting any type of credibility and judgment.

11 PROSPECTIVE JUROR NO. 379: Yes.

12 MR. LEXIS: Do you agree with that?

13 PROSPECTIVE JUROR NO. 379: Yes, I will.

14 MR. LEXIS: Okay. Do you understand that whether the
15 person's a dentist, doctor, whatever specialized profession they may
16 be, you're not to automatically assume when they're walking in here
17 that what they're saying is the gospel? You need to sit there and
18 weigh their credibility and then form a judgment.

19 PROSPECTIVE JUROR NO. 379: Well, I -- like I say before,
20 sometime, people tell me the story. And, like, my judgment is, like,
21 toward them. So --

22 MR. LEXIS: Your judgment is what, sir?

23 PROSPECTIVE JUROR NO. 379: People telling me the
24 story about it. So my judgment is sometimes go against a person,
25 another person. It depends what -- it depends on the story.

1 MR. LEXIS: It depends on the story. Exactly. It depend on
2 what comes out of their mouth?

3 PROSPECTIVE JUROR NO. 379: Yes.

4 MR. LEXIS: It depends on what they're saying is
5 reasonable and makes sense with whatever other --

6 PROSPECTIVE JUROR NO. 379: As long as it makes
7 sense.

8 MR. LEXIS: -- evidence? Okay. Are you going to be able
9 to hold and cast judgment upon that?

10 PROSPECTIVE JUROR NO. 379: Yes.

11 MR. LEXIS: You're not going to automatically assume
12 somebody's lying by walking -- some victim, and they're a homeless
13 drug addict, are you going to automatically say, I'm not believing
14 anything that comes out of their mouth?

15 PROSPECTIVE JUROR NO. 379: No, no.

16 MR. LEXIS: Same thing with the cop. Are you going to be
17 able to wait and say, Hey, I want to see what he has to say before
18 casting an opinion?

19 PROSPECTIVE JUROR NO. 379: Yes.

20 MR. LEXIS: To the four of you who took a seat, does any
21 of you -- you heard my questions yesterday. You heard the defense
22 attorney's questions. Anything else you think we should know about
23 on your ability to be a fair and impartial juror?

24 Let the record reflect no response.

25 Thank you very much.

1 MR. HAUSER: All right. Good afternoon, folks. I'm
2 Robson Hauser. Just a few questions for our new jurors.

3 Mr. Pin, thank you, sir. Would you pass the microphone
4 back to him.

5 Am I pronouncing your last name correctly, sir?

6 PROSPECTIVE JUROR NO. 371: Correct.

7 MR. HAUSER: And that's Badge 371; is that right?

8 PROSPECTIVE JUROR NO. 371: Correct.

9 MR. HAUSER: Mr. Pin, you mentioned that you're a truck
10 driver; is that right?

11 PROSPECTIVE JUROR NO. 371: Correct.

12 MR. HAUSER: Do you often hear radio traffic when you're
13 driving the truck?

14 PROSPECTIVE JUROR NO. 371: No.

15 MR. HAUSER: How do you communicate with your
16 bosses or other drivers?

17 PROSPECTIVE JUROR NO. 371: I'm a local driver. And
18 just when I talk to my dispatchers, I use my cell phone.

19 MR. HAUSER: That's smart. That should have been my
20 first question, is how do you do that? Okay.

21 What language do you speak when you communicate on
22 the cell phone?

23 PROSPECTIVE JUROR NO. 371: English. With my
24 dispatchers, English.

25 MR. HAUSER: And how long have you spoken English

1 throughout your life? I know it's your second language, but for how
2 many years?

3 PROSPECTIVE JUROR NO. 371: I've been here for 15
4 years. And, you know, like, when I came here, didn't speak anything,
5 any English. I went to -- I took classes for English as a second
6 language.

7 MR. HAUSER: Okay.

8 PROSPECTIVE JUROR NO. 371: That's where I -- I learned
9 a little bit.

10 MR. HAUSER: And now, you said you have children here;
11 right?

12 PROSPECTIVE JUROR NO. 371: Yes.

13 MR. HAUSER: What's their first language?

14 PROSPECTIVE JUROR NO. 371: English. I speak in
15 Spanish, they respond to me in English. I understand most of the
16 words. Sometimes, I tell them I don't understand, and they try to
17 speak Spanish.

18 MR. HAUSER: Okay. But you at least do understand a
19 little bit of it?

20 PROSPECTIVE JUROR NO. 371: Yeah.

21 MR. HAUSER: Okay. And when they speak English to
22 you, you don't really have a problem with it?

23 PROSPECTIVE JUROR NO. 371: Like I said, sometimes,
24 they say some words that I don't know what it means. But I tell them
25 I don't know what it means; so they try to explain me in different

1 words in English or try to speak in Spanish.

2 MR. HAUSER: And I know that lawyers, especially when
3 you see them on TV, tend to throw around big, you know, \$10
4 words; right? If we were using more common language, would that
5 be more helpful to you as a juror?

6 PROSPECTIVE JUROR NO. 371: Yes.

7 MR. HAUSER: Do you understand what it says "to be
8 presumed innocence"? Do you know what that means?

9 PROSPECTIVE JUROR NO. 371: No.

10 MR. HAUSER: Do you understand that Mr. Allen is not
11 guilty as he sits here today?

12 PROSPECTIVE JUROR NO. 371: He's not guilty as of right
13 now because we -- we didn't hear anything about him. So right now
14 he's innocent.

15 MR. HAUSER: And if you had to vote right now on
16 whether or not he was guilty, how would you vote?

17 PROSPECTIVE JUROR NO. 371: I don't really know,
18 because what I know is we need to have evidence to make a
19 decisions.

20 MR. HAUSER: Let me make that more clear. That's my
21 fault.

22 If you had to vote right now upon hearing no evidence,
23 would you vote guilty or not guilty for Mr. Allen?

24 PROSPECTIVE JUROR NO. 371: Not guilty. Because I
25 don't know anything about it.

1 MR. HAUSER: Because you haven't heard any evidence;
2 right?

3 PROSPECTIVE JUROR NO. 371: Yes.

4 MR. HAUSER: I appreciate it. Thank you.

5 Will you pass the mic to Miss Douglass?

6 Is your badge 387?

7 PROSPECTIVE JUROR NO. 387: Yes, sir.

8 MR. HAUSER: Now, I think you hesitated when you were
9 asked if you knew anyone that was convicted of a crime; is that
10 right?

11 PROSPECTIVE JUROR NO. 387: No?

12 MR. HAUSER: Am I totally mistaken on this?

13 PROSPECTIVE JUROR NO. 387: I don't remember
14 hesitating.

15 MR. HAUSER: This is my fault. You don't know anyone
16 that's been convicted of a crime?

17 PROSPECTIVE JUROR NO. 387: No.

18 MR. HAUSER: Do you know anyone that's been accused
19 of a crime?

20 PROSPECTIVE JUROR NO. 387: No.

21 MR. HAUSER: Oh, okay. I'm totally mistaken on that one.
22 All right.

23 I have no further questions for you, Miss Douglass. Thank
24 you.

25 Will you pass it to 379, Mr. Yantz?

1 Sir, I'm sure you know where I'm going to go with this
2 one, kind of down the same road as Mr. Lexis.

3 You said that you would give more credibility to a police
4 officer than to a normal witness; is that right?

5 PROSPECTIVE JUROR NO. 379: Kind of.

6 MR. HAUSER: What do you mean by "kind of"?

7 PROSPECTIVE JUROR NO. 379: Because, like I said
8 before, I heard the stories. And most of the stuff that I hear is about
9 the same person. Like, I don't want to say, like, the nationality, but I
10 say, like, a person. That's why I'm, like, kind of confused sometime
11 about it. Sometimes, like, made me think things about it.

12 MR. HAUSER: Okay. But I'm just -- if someone gets up
13 here with a badge on and testifies they're a sergeant, a major with
14 the Metropolitan Police Force, you would inherently believe them
15 more than if someone did not have that?

16 PROSPECTIVE JUROR NO. 379: I would think so.

17 MR. HAUSER: And that's because of the way you've lived
18 your life?

19 PROSPECTIVE JUROR NO. 379: No. Because I work
20 with -- for the school police -- as a school bus mechanic, and I have
21 to service their vehicle all the time.

22 MR. HAUSER: Got it. So you're basing that on personal
23 experiences with officers?

24 PROSPECTIVE JUROR NO. 379: Yes.

25 MR. HAUSER: And how often do you deal with officers in

1 your work?

2 PROSPECTIVE JUROR NO. 379: Every day.

3 MR. HAUSER: Every day.

4 PROSPECTIVE JUROR NO. 379: Because they bring the
5 vehicle to me to be serviced.

6 MR. HAUSER: And they're nice to you?

7 PROSPECTIVE JUROR NO. 379: Oh, yeah.

8 MR. HAUSER: They're kind to you?

9 PROSPECTIVE JUROR NO. 379: Oh, yeah.

10 MR. HAUSER: They're respectful?

11 PROSPECTIVE JUROR NO. 379: Oh, yeah.

12 MR. HAUSER: And so you would trust them more than
13 you would someone else?

14 PROSPECTIVE JUROR NO. 379: Yes. And they always talk
15 to me every day.

16 MR. HAUSER: And I want to be clear: There's no wrong
17 answer. That's a reasonable thing to do. I'm not blaming you for
18 having that opinion. That makes sense to me.

19 But do you see how it's important to evaluate everyone
20 equally for Mr. Allen?

21 PROSPECTIVE JUROR NO. 379: Yes, I see it.

22 MR. HAUSER: Okay. I don't want you to have to go apart
23 from your own beliefs in order to make an appropriate decision in
24 this case.

25 Do you think you can set aside all the kindness that

1 officers have shown you throughout the years and all the respect
2 you have for that profession if one of them takes the stand?

3 PROSPECTIVE JUROR NO. 379: I think I could.

4 MR. HAUSER: Okay. I appreciate that.

5 Thank you, Mr. Yantz.

6 THE COURT: Counsel? Oh, I'm sorry. Go ahead.

7 MR. HAUSER: Oh. Sorry, Your Honor. And can we go
8 down to Ms. Perry.

9 Badge No. 380; is that right?

10 PROSPECTIVE JUROR NO. 380: Correct.

11 MR. HAUSER: You mentioned that you were a victim of
12 domestic violence?

13 PROSPECTIVE JUROR NO. 380: Yes.

14 MR. HAUSER: And I always hate to have to ask these
15 questions, but it is something I have to ask.

16 Being the victim of a crime, naturally, you would be
17 sympathetic to people in a similar plight; is that right?

18 PROSPECTIVE JUROR NO. 380: Right.

19 MR. HAUSER: Not specifically domestic violence, but just
20 other victims in general?

21 PROSPECTIVE JUROR NO. 380: Correct.

22 MR. HAUSER: Is that something that's going to come into
23 play if you have to sit in here today?

24 PROSPECTIVE JUROR NO. 380: No.

25 MR. HAUSER: If there's a victim who's up there who

1 underwent a very traumatic experience, is that going to bring back
2 any hard memories for you?

3 PROSPECTIVE JUROR NO. 380: I don't think so.

4 MR. HAUSER: Okay. I just wanted to make sure.

5 A couple more questions for you, and this is just a more
6 general thing: Do you remember yesterday Mr. Lexis talked a little
7 bit about CSI?

8 PROSPECTIVE JUROR NO. 380: I don't watch those
9 shows.

10 MR. HAUSER: You don't watch those shows. You know
11 generally what they are?

12 PROSPECTIVE JUROR NO. 380: I have an idea, yes.

13 MR. HAUSER: You know that it's about crime scene
14 investigation; that's where CSI comes from?

15 PROSPECTIVE JUROR NO. 380: Correct.

16 MR. HAUSER: And you know they're fictionalized for TV?

17 PROSPECTIVE JUROR NO. 380: Yes.

18 MR. HAUSER: Do you think that those shows at least have
19 something of a basis in reality?

20 PROSPECTIVE JUROR NO. 380: I've never watched one.

21 MR. HAUSER: Fair enough. I should have asked someone
22 that has. I appreciate that. Thank you, ma'am.

23 That's all from me, Your Honor.

24 THE COURT: Counsel, approach.

25 [Bench conference was had and transcribed as follows:]

1 THE COURT: All right. Any challenges -- I'm sorry. Any
2 challenges for cause?

3 MR. LEXIS: Yeah. They guy that knows 60 percent, he
4 says, of what's going on.

5 THE COURT: Arturo Pin?

6 MR. LEXIS: Yes.

7 THE COURT: Okay. Any other challenges for cause?

8 MR. HAUSER: No, Your Honor.

9 THE COURT: I'm going to excuse Mr. Pin. The jury
10 instructions were very technical. I'm not going to take the chance
11 that he doesn't understand the jury instructions; so I do find
12 compliant [indiscernible], and I dismiss him for cause.

13 MR. HAUSER: No objection.

14 THE COURT: Okay.

15 [Bench conference was concluded.]

16 THE COURT: At this time I'm going to thank and excuse
17 Arturo Pin. Sir?

18 PROSPECTIVE JUROR NO. 371: Yes.

19 THE COURT: You're excused. My marshal -- I don't
20 believe you have to report back to the jury commission; is that
21 correct?

22 THE MARSHAL: Yes.

23 THE COURT: So you're excused. Thank you for coming in
24 today. I appreciate it.

25 PROSPECTIVE JUROR NO. 371: Thank you.

1 THE CLERK: Angelica Castro, Badge No. 388.

2 THE COURT: Hi. Could you state your name and your
3 badge number, please?

4 PROSPECTIVE JUROR NO. 388: Angelica Castro, and my
5 badge is 388.

6 THE COURT: Thank you so much. So how long have you
7 lived in Clark County, Nevada?

8 PROSPECTIVE JUROR NO. 388: Twenty-seven years.

9 THE COURT: All right. And how far did you go in school?

10 PROSPECTIVE JUROR NO. 388: High school in my
11 country, El Salvador.

12 THE COURT: Okay. And, ma'am, what is your
13 occupation?

14 PROSPECTIVE JUROR NO. 388: Excuse me?

15 THE COURT: I'm sorry. What is your occupation?

16 PROSPECTIVE JUROR NO. 388: I work at a warehouse.

17 THE COURT: A warehouse? And what do you do at the
18 warehouse?

19 PROSPECTIVE JUROR NO. 388: I'm a scanner.

20 THE COURT: All right. And are you married, ma'am?

21 PROSPECTIVE JUROR NO. 388: Divorced.

22 THE COURT: And what did your former spouse do?

23 PROSPECTIVE JUROR NO. 388: He's a worker.

24 Construction.

25 THE COURT: Okay. And do you have any children?

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PROSPECTIVE JUROR NO. 388: No.

THE COURT: All right. Have you ever served as a juror before?

PROSPECTIVE JUROR NO. 388: No.

THE COURT: Have you ever testified as a witness in a criminal case?

PROSPECTIVE JUROR NO. 388: No.

THE COURT: Have you or a close family member ever been convicted of a crime?

PROSPECTIVE JUROR NO. 388: No.

THE COURT: Have you or a close family member ever been the victim of a crime?

PROSPECTIVE JUROR NO. 388: No.

THE COURT: Do you have any relatives or close friends who are engaged in law enforcement or law enforcement officers?

PROSPECTIVE JUROR NO. 388: No.

THE COURT: And it is anticipated that certain law enforcement officers will testify in this case. Will you give more credibility to their testimony by the mere fact that they are law enforcement officers?

PROSPECTIVE JUROR NO. 388: No.

THE COURT: Okay. And so do you agree that if you are chosen as a juror in this case, that you will honor your duty to be completely fair and impartial and listen carefully to all the evidence before you make a decision?

1 PROSPECTIVE JUROR NO. 388: Yes.

2 THE COURT: Counsel.

3 MR. LEXIS: Ma'am, you heard my questions earlier;
4 correct?

5 PROSPECTIVE JUROR NO. 388: Yes.

6 MR. LEXIS: Anything from your past that's going to affect
7 your ability to cast judgment?

8 PROSPECTIVE JUROR NO. 388: No.

9 MR. LEXIS: You understand sentencing's up to the
10 Judge?

11 PROSPECTIVE JUROR NO. 388: Yes.

12 MR. LEXIS: Is that a yes, ma'am?

13 PROSPECTIVE JUROR NO. 388: Yes.

14 MR. LEXIS: If the State put one witness on the stand, you
15 believe that person beyond a reasonable doubt, would that be
16 enough for you to find the defendant guilty as the law allows, or
17 would you say, No, I still need more?

18 PROSPECTIVE JUROR NO. 388: I don't know.

19 MR. LEXIS: Okay. Did you hear me go through my
20 examples yesterday?

21 PROSPECTIVE JUROR NO. 388: Yes.

22 MR. LEXIS: Okay. Can you take the crimes for just -- it's
23 the defendant and one other person, the victim?

24 PROSPECTIVE JUROR NO. 388: I don't really understand
25 that question.

1 MR. LEXIS: Okay. Do you agree sometimes that -- say,
2 there's somebody in the back alley, and somebody gets mugged. Do
3 you agree that those can occur sometimes?

4 PROSPECTIVE JUROR NO. 388: Yes.

5 MR. LEXIS: Would you agree sometimes there's no other
6 evidence, that there's no cameras and there's no injuries?

7 PROSPECTIVE JUROR NO. 388: Yeah.

8 MR. LEXIS: Now, in those types of situations, the State
9 would call one witness to the stand. It's going to be your job to
10 weigh their credibility. If you believe that person beyond a
11 reasonable doubt as the law allows that the defendant is guilty,
12 would you be able to find the defendant guilty, or are you someone
13 that says, No, I just cannot base it on just one person?

14 PROSPECTIVE JUROR NO. 388: Yeah. I have to hear the
15 evidence and --

16 MR. LEXIS: Okay. And if you hear the evidence, which --
17 testimony is evidence from that one person that takes the stand, and
18 you believe them beyond a reasonable doubt, would you be able to
19 find the defendant guilty?

20 PROSPECTIVE JUROR NO. 388: Yes.

21 MR. LEXIS: What is the hesitation?

22 PROSPECTIVE JUROR NO. 388: I was thinking.

23 MR. LEXIS: Explain it to me, ma'am.

24 PROSPECTIVE JUROR NO. 388: If I -- if I think -- if they
25 show -- show enough evidence and -- then I think the person is

1 guilty, I guess.

2 MR. LEXIS: When you say "evidence," what -- do you
3 mean more than testimony?

4 PROSPECTIVE JUROR NO. 388: No. No. That won't be
5 enough with the person saying --

6 MR. LEXIS: Okay. You're not going to be -- you're not
7 going to be someone who says, You know what, even though I
8 believe beyond a reasonable doubt, I don't see any physical injuries
9 on her; so I'm not going to find guilty? Or I'm -- there's no other
10 independent eyewitness; so I'm going to find not guilty? Do you get
11 what I'm saying?

12 PROSPECTIVE JUROR NO. 388: Yeah, I hear you.

13 MR. LEXIS: Okay. And just speak -- it's okay if you -- if
14 you're someone who needs more. I just need to know if you believe
15 that person beyond a reasonable doubt, would you be able to find
16 guilty?

17 PROSPECTIVE JUROR NO. 388: Yes.

18 MR. LEXIS: Ma'am, I just want to give you one last
19 example just to be clear, okay?

20 Two people on the elevator. Only two people, and there is
21 no cameras on there. There's no other eyewitnesses, okay? And
22 somebody gets battered or they get choked, and there's -- choked
23 out, and they pass out, and there's no injuries on them.

24 If that person takes the stand, just that one person, this is
25 where the evidence comes from. And testimony is evidence. If you

1 believe that person beyond a reasonable doubt, would you be able
2 to find guilty?

3 PROSPECTIVE JUROR NO. 388: Yes.

4 MR. LEXIS: Why do you hesitate? Explain what's going
5 on.

6 PROSPECTIVE JUROR NO. 388: I'm thinking. I try to -- to
7 see the -- the -- what you are trying to say. That's why I'm just -- I
8 make a pause because I -- I'm thinking. I try to -- to see the -- the
9 scene or the --

10 MR. LEXIS: Okay. Thank you very much, ma'am.

11 THE COURT: Counsel, any questions?

12 MR. HAUSER: Yes, Your Honor.

13 I have just a few for you. If I came in here today and said,
14 You know what, I saw you going 110 on the freeway on the way to
15 work and I think you're guilty of speeding, would you be able to
16 defend yourself?

17 PROSPECTIVE JUROR NO. 388: If I was?

18 MR. HAUSER: Yeah.

19 PROSPECTIVE JUROR NO. 388: Speeding? I would say it
20 is true.

21 MR. HAUSER: Now, I'm not asking how fast you went on
22 the way here. I want to be clear. I'm not asking for any admissions.
23 Don't do that. This is all recorded. This is an imaginary scenario
24 here.

25 If I came into court and said, You were going 110 and

1 that's a crime, how would you defend yourself if you didn't do it?

2 PROSPECTIVE JUROR NO. 388: If I what?

3 MR. HAUSER: If you didn't do it. If you weren't speeding,
4 you were going 45, how would you defend yourself?

5 PROSPECTIVE JUROR NO. 388: With my word, because
6 I'm going to say, No, I wasn't.

7 MR. HAUSER: Yeah. But I mean, do you have any other
8 witnesses that could say you weren't speeding?

9 PROSPECTIVE JUROR NO. 388: No. But I don't think
10 you're going to have --- you either, you know, as a witness.

11 MR. HAUSER: I mean, will you -- did you have a camera
12 pointed at your speedometer on the way here so that you could
13 prove you were only going the speed limit?

14 PROSPECTIVE JUROR NO. 388: No.

15 MR. HAUSER: Did you write down the license plates of
16 the cars that were around you on the road so that you could call
17 those people as witnesses in your defense?

18 PROSPECTIVE JUROR NO. 388: No.

19 MR. HAUSER: Why didn't you do that? Is it because you
20 didn't know you were going to be accused of a crime?

21 PROSPECTIVE JUROR NO. 388: No. Because I'm just
22 driving, not doing --

23 MR. HAUSER: Exactly. You wouldn't assume that
24 someone was going to come in here and accuse you; so you didn't
25 take steps in advance to defend yourself from an accusation you

1 didn't predict; right? If you knew I was going to accuse you of
2 speeding, you would've gotten those witnesses or you would have
3 filmed your speedometer; right?

4 PROSPECTIVE JUROR NO. 388: Yes.

5 MR. HAUSER: But because you didn't know that was
6 coming, you didn't do that. And that's okay. Should you have to
7 prove that you weren't speeding?

8 PROSPECTIVE JUROR NO. 388: No.

9 MR. HAUSER: Who should have to prove that you were?

10 PROSPECTIVE JUROR NO. 388: The person who accused
11 me.

12 MR. HAUSER: Exactly. The person who makes the
13 accusation is the person that should provide the proof; right?

14 PROSPECTIVE JUROR NO. 388: Yes.

15 MR. HAUSER: And just because you don't have any
16 evidence in your defense doesn't make their job easier; right?

17 PROSPECTIVE JUROR NO. 388: Yes.

18 MR. HAUSER: Because you didn't know you'd have to
19 defend yourself.

20 PROSPECTIVE JUROR NO. 388: Right.

21 MR. HAUSER: Thank you, ma'am.

22 THE COURT: Counsel. Approach.

23 [Bench conference was had and transcribed as follows:]

24 THE COURT: Any challenges for cause?

25 MS. BONAVENTURE: No, Judge. We'll pass it for cause.

1 THE COURT: Okay. So now we have -- we're going to go
2 into the peremptory challenge. I will explain to them -- okay. So I
3 have to read a little speech onto the record, so you guys are aware.
4 Okay.

5 You're each -- Counsel, you're each entitled to exercise
6 four peremptory challenges against the proposed -- proposed
7 regular jurors and then one peremptory challenge against a
8 proposed alternate juror. Quietly, you will alternate writing your
9 challenges down on the clerk's form, passing it back and forth.

10 On any given juror, you're allowed to waive your right to
11 challenge. We will do this process first for the proposed regular
12 jurors and then for the proposed alternate jurors. Then, I will review
13 your forms and ask counsel to approach again.

14 Before any of the challengers are released, that is the time
15 to assert any Batson challenge or any challenge under JEB v.
16 Alabama. Any Batson challenge not asserted at that time before the
17 jurors are released will be deemed waived. It will be an untimely
18 Batson challenge.

19 After resolving any Batson challenge, if any, I will release
20 any persons that will not be on the jury panel and announce the final
21 jury panel.

22 Any questions?

23 MR. LEXIS: You're going to throw the last 4 people,
24 obviously, are our juror selection that we need have our last
25 [indiscernible]. The last preempt only advised to the last four seats

1 is what you're telling me?

2 THE COURT: Right. In other words, you do your first 4,
3 and that will be the 12. And then the last one, we'll have you
4 peremptory --

5 MR. LEXIS: Yeah. But that just applies to the last four
6 seats because some judges let us have 5 everywhere. But here,
7 you're giving us 4?

8 THE COURT: Well, no. I'll let you do with 5. If you want
9 to do this -- here's what I anticipate. I'll let you decide when you're
10 doing your peremptories.

11 You get 10. Each gets 5. Back and forth, back and forth.
12 Whoever the 14 are left is the jury.

13 MR. LEXIS: Okay. Because I'm just making sure because
14 the way you've initially explained it, Your Honor, some judges just
15 have the last 3 for the alternates, which would be the last four seats.
16 But if you're --

17 THE COURT: And I will do it however you want to do it.

18 MS. BONAVENTURE: You could just do 5, Judge.

19 THE COURT: What we'll do is -- do you understand the
20 first? Once I get them back, the first 12 will be the jury, and the last 3
21 will be -- so you have to look at that when you're making your
22 peremptories as to who -- no, I'm serious. I mean, it's a decision --
23 because sometimes, you may want to waive depending on who you
24 want to move up on the thing.

25 So I'll give you 10, each 5 and 5. And then the first 12 will

1 be the jury. And the second -- the next 3, will be the jurors, and the
2 rest -- will be alternate jurors, and then the rest will be dismissed.

3 So I'm going to -- do you want me to let them go and let
4 them sit outside and just --

5 MR. LEXIS: Oh, no. Just read your own stuff to them as
6 we go back and forth.

7 THE COURT: Okay. So you're just going to do it back and
8 forth? Try to talk to some of them.

9 MS. BONAVENTURE: We will.

10 MR. HAUSER: Oh, yeah. No problem.

11 [Bench conference was concluded.]

12 THE COURT: Ladies and gentlemen, we're now entering
13 the last phase of jury selection, the exercise of what's called
14 peremptory challenges. This will take a few minutes of some private
15 conferences; so I'm not going to excuse you. This shouldn't take too
16 long.

17 If you converse, just converse socially. Don't talk about
18 the case. Don't -- any comments about that, and quietly. Thank you.

19 Now, this shouldn't take that long.

20 You know what? Marshal? You know what? I'm going to
21 excuse the jury. This is going to take about five, ten minutes.

22 Why don't we take a short recess for about ten minutes,
23 and then just come back to the courtroom, remain outside, and then
24 I'll have you come back in.

25 THE CLERK: Stand for the jury.

1 THE COURT: I'll give you about -- you know what? And
2 I'm going to admonish you.

3 During the recess, you are admonished not to talk or
4 converse among yourselves or with anyone else on any subject
5 connected with this trial; or read, watch, or listen to any report of or
6 commentary on the trial or any person connected with this trial by
7 any medium of information, including, without limitation, social
8 media, text, newspapers, television, the Internet, and radio. Do not
9 do any posting or communication on any social networking sites or
10 do any independent research, including Internet searches, or form or
11 express any opinion on any subject connected to this trial at this
12 time. Thank you.

13 [Outside the presence of the prospective jury panel.]

14 THE COURT: Counsel, as soon as you're finished, notify
15 my marshal.

16 MS. BONAVENTURE: Thank you, Judge.

17 [Recess taken from 2:17 p.m. until 2:30 p.m.]

18 [Outside the presence of the prospective jury panel.]

19 THE COURT: We're back on the record on State versus
20 Allen.

21 It's my understanding that counsel has concluded their
22 peremptory challenges and provided the copy of the sheet to the
23 clerk; is that correct?

24 MS. BONAVENTURE: Yes, Your Honor.

25 THE COURT: The clerk now -- when I bring the jury back

1 in, I'm going to seat each of the jurors base -- you know, the first 12
2 will be the jury. The second -- the last 3 will be the alternates.

3 Before I bring -- let's see. My concern is do you think
4 you're going to make a Batson challenge?

5 MR. HAUSER: No, Your Honor.

6 THE COURT: A JEB challenge?

7 MR. HAUSER: We have no challenges to make.

8 THE COURT: So is there any objection to the Court
9 accepting two peremptory challenges?

10 MR. HAUSER: No, Your Honor.

11 THE COURT: Okay. And defense counsel has indicated to
12 the Court there is no Batson challenges or challenges under JEB v.
13 Alabama; is that correct?

14 MR. HAUSER: That's correct, Your Honor.

15 THE COURT: Okay. And I provided the form to the clerk.
16 You ready?

17 THE CLERK: Yeah.

18 THE COURT: Well, no. I need you to bring the jury back
19 in.

20 [In the presence of the prospective jury panel.]

21 THE COURT: Please be seated.

22 It appears to the Court that all of the peremptory
23 challenges have either been exercised or waived. The clerk will now
24 call the names of the 14 persons who will comprise the jury,
25 including the alternates.

1 THE CLERK: Josephine Cervantes, Kyle Tyler, Charles
2 Curtis Gerdes, Rodney Smith, Michelle Busalacki, Manuela Gayhart,
3 Timothy Paul, Chelsea Hazlett, Ashley Douglass, Scott Russell,
4 Jeremy Varney, Hileman Stone, Grace Aguilar, and Barbara Baynes.

5 THE COURT: If your name was not called, please be
6 seated in the audience for a few minutes. So if you're name was not
7 called, please be seated in the audience.

8 Ladies and gentlemen sitting in the audience, I'd like to
9 thank you for your participation in the jury selection process. I'm
10 going to excuse you at this time.

11 He's counting to make sure I have 14 people. And I do.

12 So I'd like to thank you for participating, as this is a very
13 important process. Obviously, the system would not work without
14 your participation. I know you had to take a few days off of your
15 daily activities of work, and I really appreciate you coming down and
16 participating.

17 So at this time, those who were not picked as either a
18 juror or an alternate, I am going to excuse you at this time.

19 At this time, I'm going to have the clerk administer the
20 oath to the jury. Where'd he go?

21 Okay. The clerk will now administer the oath to the jurors.

22 [The jury panel was sworn in by the Clerk.]

23 THE COURT: The jury has now been empaneled. You
24 may be seated.

25 At this point, I'm going to read you some preliminary

1 instructions regarding a trial. Then after that, each party is going to
2 have an opportunity to do what are called opening statements. And
3 then after that, we're going to start the presentment of evidence.

4 So let me go over the preliminary instructions with you.
5 It's going to take a few minutes, but I need to make sure everybody
6 understands the ground rules, okay?

7 Ladies and gentlemen, you are admonished that no juror
8 may declare to a fellow juror any fact relating to this case of this
9 knowledge. And if any juror discovers during the trial or after the
10 jury has retired that he or any other juror has personal knowledge of
11 any fact or controversy in this case, he or she shall disclose that
12 situation to me in the absence of the other jurors.

13 This means that if you learn during the course of the trial
14 that you are acquainted with the facts of the case or the witnesses
15 and you have not previously told us of that relationship, you must
16 then declare that fact to me.

17 The way that you communicate with the Court throughout
18 our trial is through my marshal, my -- Randy Stephenson. He is
19 present at all times while we are in session. And you've previously
20 met my marshal. He's the one who's escorted you in and out so --
21 previously.

22 During the course of the trial, the attorneys for both sides
23 and court personnel other than the marshal are not permitted to talk
24 with you. If that's not -- it's not that they are antisocial. It's simply
25 that they are not -- they are all bound by ethics and the law not to

1 speak with you because to do so might contaminate your verdict.
2 We do not even allow them to say hi to you if we -- if we should pass
3 in the hall or be in the elevator together.

4 If you should recognize a witness or be familiar with the
5 facts of the case when the witness is testifying, please make a little
6 note on your jury pad that you recognize such and such as a witness
7 and how it is that you recognize that witness. At the next break in
8 the trial, please hand the note to the marshal, and he will present it
9 to the Court and counsel.

10 Frequently, people do not recognize witnesses by names
11 but may recognize them when they come into the courtroom to
12 testify. If that should happen in this case, please just make a note of
13 that as the witness is testifying. And at the next break, give it to the
14 marshal.

15 You are admonished additionally that you are not to visit
16 the scene of any of the acts or occurrences made mentioned of
17 during the trial unless specifically directed to do so by the Court.
18 The reason that we do not want you to -- going out to any particular
19 scene or location referenced during the trial is not because we don't
20 want you to know everything there is to know about the location, but
21 simply that there is no guarantee that the intersection of the street,
22 the apartment complex, the restaurant, or whatever looks the same
23 today as it did at the time of the incident.

24 Usually, photos are taken at the time of the incident or
25 shortly thereafter, and we will use those photographs during the trial

1 rather than going to the site to look at it firsthand.

2 The case -- this is a criminal case commenced by the State
3 of Nevada. Sometimes, I may refer to it as State versus Ronald
4 Allen. This case is based upon that information.

5 The clerk has -- the clerk will now read the information to
6 you and state the plea of the defendant.

7 THE CLERK: District Court, Clark County, Nevada; Case
8 No. C-16-318-255-1; State of Nevada, plaintiff; Ronald Allen,
9 defendant.

10 Information: Steve Wolfson, District Attorney, within and
11 for the County of Clark, State of Nevada, in the name and by the
12 authority of the State of Nevada, informs the Court that Ronald
13 Allen, the defendant above named, having committed the crime of
14 battery on a protected person with substantial bodily harm on or
15 about the 9th day of August, 2016, within the County of Clark, State
16 of Nevada, contrary to the form, force, and effect of statutes in such
17 cases made and provided and against the peace and dignity of the
18 State of Nevada, did willfully, unlawfully, knowingly, and feloniously
19 use force or violence upon the person of another, to wit L.

20 Karanikolas, a protected person employed as a police officer, while
21 L. Karanikolas was performing his duties as a police officer, which
22 defendant knew or should have known that L. Karanikolas was a
23 police officer, by pushing and/or punching the said L. Karanikolas,
24 resulting in substantial bodily harm to L. Karanikolas.

25 By Steven Wolfson, Kelsey Einhorn, Deputy District

1 Attorney, to which the defendant has entered a plea of not guilty.

2 THE COURT: This case is based upon that information
3 that has just been read to you by the clerk. You should distinctly
4 understand that the information is simply a charge, and that it is not,
5 in any sense, evidence of the allegations that it contains.

6 The defendant has pled not guilty to the charge. The State
7 therefore has the burden of proving each of these essential elements
8 of the information beyond a reasonable doubt.

9 The purpose of this trial is to determine whether the State
10 will meet that burden. It is your primary responsibility as jurors to
11 find and determine the facts.

12 Under our system of criminal procedure, you are the sole
13 judge of the facts. You are determine -- you are to determine the
14 facts from the testimony you hear in the other evidence, including
15 exhibits introduced in court. It is up to you to determine the
16 inferences which you feel may properly be -- be properly drawn from
17 the evidence.

18 If during the examination of witnesses, some questions
19 occur to you, be patient. The answers will probably be given before
20 the witness is excused. If not, write your question on a slip of paper
21 and hand it to the marshal. He will then give it to me, and if the
22 question is proper under the law, I will see that it is answered.

23 Any questions must be factual in nature and designed to
24 clarify information already presented. If your question is asked, you
25 may not place undue weight on the answer to the question.

1 The parties may sometimes present objections to some of
2 the testimony or other evidence. At times, I may sustain those
3 objections or direct that you disregard certain testimony or exhibits.
4 You must not consider any evidence to which an objection has been
5 sustained or which I have instructed you to disregard. It is the duty
6 of the lawyers to object to evidence which he or she believes may
7 not be properly offered, and you should not be prejudiced in any
8 way against the lawyers who make objections on behalf of the party
9 which he or she represents.

10 I may also find it necessary to admonish the lawyers. And
11 if I do, you should not show prejudice towards the lawyer or his or
12 her clients because I found it necessary to admonish him or her.

13 Throughout the trial, if you cannot hear a question asked
14 by the attorney or the answer given by the witness, please raise your
15 hand as an indication. If I don't see your hand up, please say,
16 Excuse me, I didn't hear that, and we will ask that question be
17 repeated or the answer be repeated.

18 If you wish, you may take notes to help you remember
19 what any witnesses have said. If you do take notes, please keep
20 those notes to yourself until you and your fellow jurors go to the jury
21 room to decide the case.

22 Do not let note-taking distract you so that while you are
23 writing down the answer to one question, three or four more
24 questions are asked and answered and go right past you, and you
25 have no recollection of these answers.

1 Notepads will be provided to you. I believe the marshal
2 will provide them to you if they haven't already been so. The
3 notepads are to be kept in the courtroom; so you can't take them
4 with you. And the marshal typically collects them at the end of each
5 day. And then they'll be on your seat when you return the next day.

6 You should rely upon your own memory of what was said
7 and not be overly influenced by the notes of other jurors when you
8 go back to deliberate.

9 This case will proceed in the following order: First, the
10 State will make an opening statement outlining its case. The
11 opening statement is like a road map, an outline, an overview, a
12 synopsis. During the opening statement, the State will be telling you
13 what they expect the evidence will be.

14 After the State opens, the defendant has the right to make
15 an opening statement if he or she wishes. Neither party is required
16 to make an opening statement.

17 At the opening statement, the State will first introduce --
18 I'm sorry -- after the opening statements, the State will first introduce
19 evidence.

20 At the conclusion of the State's evidence, the defendant
21 has a right to introduce evidence. However, please remember the
22 defendant is not obligated to present any evidence or to prove -- or
23 to prove his evidence. The law never imposes upon the defendant in
24 a criminal case a burden of calling any evidence -- calling any
25 witnesses or introducing any evidence. The defendant and his

1 attorneys can sit through the trial and do nothing, not ask any
2 questions, not call any witnesses, do nothing at all, because the
3 defendant has no burden of proof in a criminal case.

4 As we have already discussed, the State has to prove two
5 things to you. First, the State has to prove to you beyond a
6 reasonable doubt that a crime occurred; and second, the State has to
7 prove to you also beyond a reasonable doubt that the defendant did
8 it.

9 At the close of the defendant's case, if any, the State may
10 introduce rebuttal evidence.

11 At the conclusion of all the evidence, I will instruct you on
12 the law. You must not be concerned with the wisdom of any rule of
13 law stated in these instructions or the instructions I will read to you
14 after the evidence is in. Regardless of any opinion you may have as
15 to what the law ought to be, it would be a violation you -- of your
16 oath to base a verdict upon any other view of the law than that given
17 by you by the Court.

18 Now, please understand, ladies and gentlemen, the Court
19 does not make up the law. The law each day is created by the State
20 legislature.

21 After the instructions on the law are read to you, each
22 party has the opportunity to argue orally in support of this case.
23 This is called the closing argument or summation. What is said in
24 closing argument or summation is not evidence. The arguments are
25 designed to summarize and interpret the evidence for you and show

1 how the evidence and law relate to one another.

2 Since the State has the burden of proving the defendant
3 beyond a reasonable doubt, the State has the right to both open and
4 close the arguments, which means that at the end of the trial, this
5 case -- the State gets to argue to you twice and the defendant gets to
6 argue to you once.

7 After the attorneys have presented their argument, you
8 will retire to select a foreperson to deliberate and arrive at your
9 verdict. Faithful performance by you of your duty is vital to the
10 administration of justice. It is your duty to determine the facts and
11 determine them from the evidence and the reasonable inferences
12 arising from such evidence. And in so doing, you must not indulge
13 in case -- guesswork or speculation.

14 The evidence which you are to consider consists of the
15 testimony of witnesses and the exhibits admitted in evidence. The
16 term "witness" means anyone who testifies in person or by way of
17 deposition, and it may include the parties to the lawsuit. A
18 deposition is simply an examination of a witness on a prior date
19 under oath with their attorney present, where the testimony is taken
20 down in written format and whose written questions as answers that
21 will be read to you during the trial.

22 Admission of evidence -- shucks. Admission of evidence
23 in court is governed by rules of law. From time to time, it may be
24 the duty of the attorneys to make objections and my duty as the
25 judge to rule on those objections and decide whether a certain

1 question may be answered or whether certain evidence may be
2 admitted. You must not concern yourself with objections made by
3 the attorneys or what the Court's reason -- reasons for its rulings.

4 You must not consider testimony or exhibits to which an
5 objection has been sustained or which has been ordered stricken.
6 Further, you must not consider anything which you may have seen
7 or heard when the Court is not in session, even if what you see or
8 hear is said or done by one of the parties or by the witnesses.

9 While you are in the courthouse, please always wear the
10 badge the marshal has given you, or you will -- or will be given to
11 you which identifies you as juror.

12 When you come in the morning and during breaks, during
13 the daytime or during the noon recess, when you are in the elevators
14 or walking around in the hallway, I always tell jury panels to please
15 only chitchat with people wearing a badge that indicates they are
16 jurors.

17 When you come through the metal detectors in the
18 morning, the guards down there do not have spray cans which will
19 identify -- this is part of the script that I have never liked, but I'm
20 going to read it anyway -- when you come through the metal
21 detector in the morning, the guards down there do not have orange
22 cans of paint and do not spray paint big Ws on people who are going
23 to be witnesses. So the witnesses in this trial and all the rest of the
24 trials that are -- that are going on today in this building are not
25 identified in any way.

1 You will not know if you are carrying on a conversation
2 with a witness in this trial until it's too late and they come in and take
3 the witness stand and are sworn in to testify. Therefore, I would
4 urge you not to talk to anyone in the building unless they are
5 identified as a juror, because if they're identified as a juror, you know
6 they are not going to have anything to do with this case.

7 In every case, there are two types of evidence: direct
8 evidence and circumstantial evidence. Direct evidence is testimony
9 by witnesses about what the person saw or heard or did.
10 Circumstantial evidence is testimony and exhibits which are proof of
11 a particular fact from which, if that fact is proven, you can infer the
12 existence of a second fact.

13 You may consider both direct and circumstantial evidence
14 in deciding this case. The law permits you to give equal weight to
15 both types of evidence, but it is up to you to decide how much
16 weight to give to any particular piece of evidence.

17 Opening statements and closing arguments are intended
18 to help you in understanding the evidence and applying the law, but
19 please understand what the attorneys tell you is not evidence. They
20 are not witnesses. They have no firsthand information. Therefore,
21 what they tell you is not evidence.

22 You are not to concern yourself in any way with the
23 sentence -- with the sentence which the defendant might receive if
24 you should find him guilty. Your function is solely to decide whether
25 the State has proven to you beyond a reasonable doubt that the

1 defendant is guilty of the crime charged. If and only if you find him
2 guilty, then it becomes the duty of the Court at a later date to
3 pronounce sentence.

4 You must not be influenced in any degree by any personal
5 feelings of sympathy for or prejudice against any party to a lawsuit,
6 for each party is entitled to the same fair and impartial consideration.
7 No statement, ruling, remark, or facial expression which I may make
8 during the course of the trial is intended to indicate my opinion as to
9 what the facts are.

10 I don't get to decide the facts. You are the only ones who
11 determine the facts. In this determination, you alone must decide
12 upon the believability of the evidence and the weight and value --
13 and its weight and value.

14 In considering the weight and value of the testimony of
15 any witness, you make a -- you may take into consideration the
16 appearance, attitude, and behavior of the witness; the interest of the
17 witness in the outcome of the lawsuit; the relationship of the witness
18 to an party to a lawsuit; the inclination of the witness to speak
19 truthfully or not; the probability or improbability of the witness's
20 statements; and all the facts and circumstances in evidence. Thus,
21 you may give the testimony of any witness just such weight and
22 value as you believe that the witness is entitled to receive.

23 I may, during the trial, take notes of what the witnesses
24 are saying. Do not make any inference from this action on my part
25 because I'm required to be prepared for legal arguments of the

1 attorneys during the trial. For that reason, I may take extensive
2 notes.

3 Again, let me remind you that until this case is submitted
4 to you, do not talk to each other about it or about anyone who has
5 anything to do with it until -- until the end of this case when you go
6 to the jury room and decide your verdict. Do not talk with anyone
7 else about this case or about anyone who has anything to do with it
8 until the trial has ended and you have been discharged as jurors.
9 Anyone else includes members of your family and your friends.

10 Those of you who are employed obviously need to call
11 your boss today at one of the breaks and tell him or her you have
12 been chosen as a juror in a criminal case and the judge has told you
13 that the trial is going to last two or three days. You may also tell him
14 that if the trial is over earlier, that you will be back to work sooner.
15 That's all you can tell your workplace until after you have been
16 discharged by the Court.

17 Do not let anyone talk to you about this case or anyone
18 who has anything to do with this case. If someone should try to talk
19 to you about this case while you are serving as a juror, please report
20 that immediately by contacting my marshal.

21 Do not read any news stories or other articles or listen to
22 any radio or television reports about this case or anyone -- or anyone
23 who has anything to do with it. Do not do any research or make any
24 investigation about the case on your own.

25 Now, this is a very simple instruction. It's so simple that

1 people frequently ignore it or overlook it or do not comprehend it; so
2 let me amplify the instruction. That means if something happens
3 during the trial and there is some test -- testimony or some witness
4 that you do not understand what they are talking about and you
5 know that your best friend is an absolute expert in this area, you
6 cannot call him tonight and say, Hey, in the trial today, the witness
7 was talking about this and that, and the next thing, and the next
8 thing, and can you explain that to me?

9 It also means that you cannot jump on the information
10 superhighway and Google up or Ask Jeeves questions about
11 anything to do with this trial.

12 Do not make up your mind about what the verdict should
13 be until after you have gone to the jury room to decide the case and
14 you and your fellow jurors have discussed the evidence. It is
15 important throughout the trial to keep an open mind.

16 At the end of the trial, you will have to make your decision
17 based on what you recall of the evidence. You will not have a
18 written transcript to consult. Even though we have a court recorder
19 who takes down the testimony, it is not typed up in a readable form,
20 and it is difficult and sometimes time-consuming for the recorder to
21 read back lengthy testimony. Therefore, I would urge you to pay
22 close attention to the testimony as it is given.

23 We will now hear opening statements. But before that,
24 does either party invoke the rule of exclusion of witnesses?

25 MR. HAUSER: Yes, Your Honor. We can approach then.

1 THE COURT: If there is anybody present who expects to
2 be called as a witness in this matter --

3 I grant the motion to exclude witnesses.

4 Is there anybody present who expects to be called as a
5 witness in this matter? If you are, you are directed to please leave
6 the courtroom.

7 I'm sorry? Did you want to approach?

8 MR. HAUSER: Yeah. We can approach.

9 [Bench conference was had and transcribed as follows:]

10 MR. HAUSER: We still need to work out, Judge, if there
11 are objections to --

12 THE COURT: Huh?

13 MR. HAUSER: We need to work out their objections as to
14 how we're going to read every sentence. I mean, I believe it's not an
15 issue. There's no pretrial motion. It's extremely untimely. But we
16 still need to put it on the record, if that's what you want to do.

17 THE COURT: Okay. You want to do opening statements
18 first?

19 MR. HAUSER: No. Because we're going to get into all
20 that.

21 THE COURT: Okay. All right. Let me do the rule of
22 exclusion. We'll take a break, put it on the record.

23 MR. HAUSER: Thank you, Your Honor.

24 [Bench conference was concluded.]

25 THE COURT: If there is anybody present who expects to

1 be called as a witness in this matter, you are directed to please leave
2 the courtroom. Please remain available in the hallway, and do not
3 discuss your testimony or the testimony of any other witnesses with
4 anyone except the parties to this case and their attorneys.

5 Is there anybody who is expected to be a witness in this
6 case?

7 Seeing none, we'll go forward.

8 I need to take a break before the opening statements; so
9 we'll -- I'm going to take our 15-minute break at this time.

10 Ladies and gentlemen, we're going to take a 15-minute
11 recess. During this recess, you are admonished not to talk or
12 converse among yourselves or with anyone else or any subject
13 connected with this trial; or read, watch, or listen to any report of or
14 commentary on the trial or any person connected with this trial by
15 any medium of information, including, without limitation, the social
16 media, text, newspapers, television, the Internet, and radio.

17 Do not visit the scene of any of the events mentioned
18 during the trial or undertake any investigation. Do not do any
19 posting or communications on any social networking sites, or do not
20 do any independent research, including Internet searches, or form or
21 express any opinion or -- on any subject connected with the trial
22 until the case is finally submitted to you.

23 At this point, we'll be in a 15-minute recess.

24 THE CLERK: Court's in recess.

25 [Outside the presence of the jury.]

1 THE COURT: Okay. This hearing is being conducted
2 outside the presence of the jury.

3 Prior to Court today, the prosecutors provided me a little
4 lead-in statement I'm going to say before we play the -- the body
5 cam.

6 I'm going to say, Ladies and gentlemen of the jury, you're
7 going to be shown a portion of body camera footage in a second,
8 which has been edited at the Court's request.

9 And then we're going to play the body cam.

10 It's my understanding this is an edited portion. Do you
11 have any objection to playing the edited portion of the body cam?

12 MS. BONAVENTURE: No, Your Honor. We do not have
13 any objection.

14 THE COURT: So then the next issue that has arisen is the
15 testimony that's going to be elicited for purposes of establishing
16 some basis for the body cam.

17 When you have -- it's my understanding, Mr. Lexis, you're
18 going to say that they were called for a domestic disturbance?

19 MR. LEXIS: Your Honor, this is a brief short of the facts,
20 okay?

21 He beat up his mother that 85; all right? She almost died.
22 Then fast-forward until the day in question. The cousin calls, and it's
23 the person that got beat up in this case. Calls 911, saying the
24 defendant is stalking her, trying to get into her residence, is on meth,
25 et cetera, et cetera, et cetera, okay?

1 The cop then gets there, sees the defendant parked, orders
2 him out. He doesn't follow his commands. He then breaks free. He
3 then -- the cop tries to go around as the defendant's trying to get to
4 this woman. He then goes through the cop, goes after the woman,
5 and the cop then has to tase him and put him into custody.

6 Instead of bringing out any of the stuff that happened the
7 day before or even the fact that the man was, to believe on the
8 911 call, to be on meth stalking this woman, she's completely afraid
9 of him, we are simply going to say -- editing it all out for the
10 defendant's benefit and say they were dispatched there due to a
11 domestic disturbance between a male and a female and take it from
12 there.

13 THE COURT: And defense, what's your position?

14 MR. HAUSER: Well, it's not quite as simple as just to say
15 they were called to a domestic disturbance and then the rest is just
16 admissible.

17 Our position is that domestic disturbance characterizes
18 Mr. Allen in a way that isn't fair to him when that person's probably
19 not here and probably not going to testify, nor is it necessary to say
20 that it was a domestic disturbance.

21 It is sufficient for the officer to be at the scene responding
22 to a disturbance. There's absolutely no benefit, no added reason to
23 use the word "domestic" other than to poorly characterize Mr. Allen
24 in the eyes of the jury.

25 That's why we object to the use of the word "domestic" in

1 this case, and simply say the officer arrived due to a call that had -- a
2 dispute had arisen. That's simple enough to get him to the scene.

3 After the incident occurs, after the officer gets injured,
4 then if the State wishes to get into, then Mr. Allen resumed beating
5 the woman who was there and the officer had to tase him, none of
6 that has to do with this case at all.

7 That's still in justice court, where he's being charged with
8 domestic violence, and the State can get into during that trial. But
9 none of that actually bears on the evidence at hand today, which is
10 that there was an injury -- the battery on the protected person with
11 substantial bodily harm was already concluded, even in the eyes of
12 the State at that point because the injury had already occurred.

13 There's no need to go into what happened after that when
14 it would negatively impact Mr. Allen in the eyes of the jury. It goes
15 against his due process rights, it's not part of the complete story of
16 the crime, and it's incredibly prejudicial. So we do object to any of
17 that coming in.

18 MR. LEXIS: A couple of things. First of all, the identity as
19 far as why it's relevant for a domestic is our eyewitness to this can
20 identify the person who was getting beat up, the female, and this
21 man because they know each other due to the family relationship.
22 They don't -- there's evidence that that's why he's -- she's going to
23 be able to identify this man and the other lady that's involved.

24 Second of all, this is not no res gestae. This is not no prior
25 bad act. This is all the same event. This man charged through the

1 officer in order to get to the woman. It's our burden to prove that
2 this man committed a battery on this person. And even if it was not
3 the event, it goes to his state of mind, his intent, his motive. That's
4 why he busted through this man to get to her.

5 The first responding officer arrives on the scene, and the
6 officer is on top of that man, Taser's deployed, that goes -- that even
7 goes to the substantial bodily harm element to show that he was
8 injured, and what this man's state of mind and intent was, motive,
9 why he had to get to that woman, why he busted through that cop,
10 the battery, to get to him. It's not even a question, and they know
11 that.

12 There was -- there's no way they would have raised this
13 with the original judge. No way, Judge. It's the same event.

14 MR. HAUSER: May I be heard to that.

15 THE COURT: Let me -- let me ask some questions.

16 MR. HAUSER: Absolutely.

17 THE COURT: Okay. As you're aware, there's a procedure
18 to bring in other bad acts, other acts actually --

19 MR. HAUSER: Yeah, sure.

20 THE COURT: -- based on the Petrocelli case. Have you
21 been on notice as to these facts during the course of this trial? I
22 mean, during the course of this case?

23 MR. HAUSER: We are aware of the facts of this -- yes,
24 before this.

25 THE COURT: Did you file a motion in limine to keep out

1 other acts --

2 MR. HAUSER: No. This --

3 THE COURT: -- in request of a Petrocelli hearing?

4 MR. HAUSER: No, we did not.

5 THE COURT: Okay. And you've been aware of this body
6 cam through the trial? I mean, throughout the case?

7 MR. HAUSER: I don't recall the exact time we got it.
8 We've had it, yes.

9 THE COURT: Okay. And what's your position that this --
10 they're going to play the entire body cam.

11 MR. LEXIS: We're not.

12 THE COURT: I mean, they're going to play the portions
13 that you have identified regarding the body cam. What's your
14 position? What is your objection to it?

15 MR. HAUSER: To the -- playing the body cam? None. I
16 have no objection to the body cam that's going to be played.

17 THE COURT: Okay.

18 MR. HAUSER: I have no problem with that whatsoever.

19 It's the testimony I expect to be elicited that I have the
20 problem with, which is what Mr. Lexis believes I would never have
21 raised in front of Judge Johnson.

22 The way I look at this case, Your Honor, is this is all clearly
23 bad act evidence that goes beyond any res gestae or anything that
24 happened in the case. And therefore, the State had to file a motion
25 to admit this evidence.

1 It's not only on the defense to maybe file a motion to keep
2 out clearly inadmissible evidence; it's on the State to file that motion
3 to bring in other bad acts, to bring in other circumstances that might
4 have occurred in this case, and they didn't do that in this case.

5 I'd absolutely be jumping up and down regardless of
6 which courtroom I was in. The judge does not impact which
7 arguments I'm going to make in this case.

8 THE COURT: Here's what we're going to do, Counsel.
9 This all should have been done pretrial, okay? If you have a concern,
10 these should have been done as a motion in limine.

11 What witness is going to testify to this -- is going to testify
12 as to -- no. Stop. What witness is going to testify to the events that
13 they're contending as other bad acts?

14 MR. LEXIS: All of them, Judge, because it's -- the only
15 people that they are -- were there when this happened, within
16 seconds. That's why it's not a bad act. It's all the same event.

17 THE COURT: Okay. We're going to have a Petrocelli
18 hearing outside the presence of the jury when that witness testifies,
19 and I'm going to make a determination on whether it comes in.
20 When is this witness going to testify?

21 MR. LEXIS: Yeah. We're going to have do that -- we're
22 going to have do that all before we even open.

23 THE COURT: Is any of the witnesses here today?

24 MR. LEXIS: Yes, sir.

25 THE COURT: Which ones?

1 MR. LEXIS: Yeah, we could -- we could get them here
2 now -- well, as soon as we can. We don't know -- go ahead. Go
3 ahead.

4 MS. ROSE: Your Honor, it's the State's position that -- and
5 if you'd -- if Your Honor wants a Petrocelli hearing just because of
6 the fact that Your Honor does believe it's a bad act -- it's also the
7 State's position that it's a res gestae argument. It's literally
8 completing the story.

9 The officer's testimony that they're going to hear is the
10 fact when this defendant broke loose from him, he thought he was
11 fleeing. But instead, he was surprised when he encounters this
12 individual, and he literally, like -- he rushes him, pushes him. That's
13 when he falls and he tears his Achilles tendon. And the only reason
14 why he -- how he did that was literally to push through him to get to
15 this individual when he started beating the crud out of her.

16 I mean, Your Honor, it's not just a bad act. It's -- the State
17 can't -- the witnesses really can't even testify as to what happened
18 without knowing -- without giving that to the jury, why he's literally
19 rushing this officer to get to this individual.

20 So, I mean, it is -- I understand that Your Honor can
21 classify -- it can maybe look at it as a bad act. The State's position is
22 that it's a res gestae argument, the fact that the State can't really tell
23 the complete story without this information coming into the jury.
24 The witnesses can't even -- the victim, I don't believe, can even
25 testify accurately or truthfully unless that information comes in. And

1 there's no way the State can tell a story.

2 MR. LEXIS: My first responding officer definitely cannot
3 testify because when he gets there, the Taser is deployed, the victim
4 is on top -- the officer's on top of the defendant. And the
5 independent eyewitness can't testify either because she's going to
6 testify too that she saw this man bust through the cop and go
7 straight towards hitting the woman. And then the officer had to go
8 put -- take him into custody by tasing him.

9 MS. ROSE: And, Your Honor, just -- and just for the
10 record, this -- I -- from Bletcher v. State, which is from the Supreme
11 Court of Nevada, it is 11 Nev. 1477 or 907 P.2d. 978 for 1995. It's the
12 complete story of the crime doctrine, as provided in the NRS 48.035,
13 Subsection 3: Evidence of another act of or crime which is so closely
14 related to an act in controversy of a crime charged that an ordinary
15 witness cannot describe the act in controversy -- controversy or the
16 crime charged without referring to the other act or crime shall not be
17 excluded.

18 And it also -- I mean, it gives a cautionary instruction that
19 that is to be taken into the account of the jury for the purposes of the
20 testimony of the defendant.

21 So we're not -- obviously, this charge right now, we're not
22 charging the defendant with battery, a -- constituting domestic
23 violence. We're charging the defendant on a battery on a protected
24 person resulting in substantial bodily harm. This case -- I mean, the
25 case law's clear, the statute's clear that this is res gestae evidence,

1 Your Honor.

2 THE COURT: Counsel, that case seems to be controlling in
3 this situation.

4 MR. HAUSER: I have another case that I think actually
5 more clearly defines the issue at stake -- at stake here.

6 Your Honor, according to State v. Shade, the cite is
7 111 Nev. 887, also from 1995, the controlling question is whether
8 witnesses can describe the crime charged without referring to
9 related uncharged acts rather than weighing the prejudicial effect of
10 evidence of other bad acts.

11 So the Petrocelli hearing would deal with the prejudicial
12 effects, which is another issue that we've been dealing with. In this
13 case, it's literally whether or not they can tell the story of the crime
14 without that.

15 The crime that they're alleging occurred in this case, the
16 crime that he is being charged with today is running into officer and
17 causing substantial bodily injury. And there is absolutely no reason
18 the State could not elicit that testimony from the witness and then
19 say, And then Mr. Allen was arrested. No reason whatsoever. They
20 don't have to get into anything after that because it doesn't go into
21 any element of this offense.

22 They could say contact was made, his Achilles was torn,
23 and then Mr. Allen was placed under arrest. They can argue, and
24 they certainly are, that they need that, but it's not actually necessary.
25 It goes to prejudice the jury against him. It goes to talk about things

1 that aren't necessarily relevant to this particular crime. They
2 occurred nearly at the same time, but that doesn't make them part of
3 the same story.

4 Time is not the only factor here, Your Honor. The time
5 could easily end when the injury occurs.

6 There's no need to get into a Taser. There's no need to
7 get into domestic violence. When the injury occurs, the crime then is
8 complete. The domestic violence is a trial for another day.

9 They could absolutely elicit this testimony, telling the
10 complete story of the crime when it ends at the injury and then
11 simply say, Mr. Allen is taken into custody.

12 THE COURT: The State?

13 MS. ROSE: And, Your Honor, briefly. The Petrocelli
14 hearing is not just to determine for prejudicial effects. It also -- the
15 Petrocelli is for Your Honor to hear from the witness whether or not
16 the State cannot prove beyond a clear and convincing standard
17 whether or not those acts happened. And that's why the State -- if
18 Your Honor would like this outside the presence of the jury, we can
19 bring the officer in, but --

20 THE COURT: To me, to clean this up, it seems the easiest
21 way to clean this up is to hold a Petrocelli hearing.

22 Can you get your witnesses here today?

23 MR. LEXIS: Which witness --

24 THE COURT: Which ones would you need to show that
25 this is --

1 MR. LEXIS: They're all going to testify to that. But if we're
2 just going to bring in one to wrap -- who knows the most, it's going
3 to be the victim, the actual officer.

4 THE COURT: Is he here?

5 MR. LEXIS: We'll get him here.

6 THE COURT: Okay. How long?

7 MS. ROSE: I will find out in two minutes, Your Honor.

8 THE COURT: Counsel, provide me copies with both cases.
9 I'm going to take a short recess.

10 MR. HAUSER: Thank you, Your Honor.

11 THE CLERK: Court's in recess.

12 [Recess taken from 2:15 p.m., until 3:27 p.m.]

13 [Outside the presence of the jury.]

14 THE CLERK: Court's back in session.

15 THE COURT: Where's the district attorney?

16 MR. HAUSER: I think he's in that room right there.

17 THE COURT: Do you have the copy of the case that you
18 cited to me, Counsel?

19 MR. HAUSER: I do not, Your Honor. I apologize.

20 THE COURT: During the break, I read Bletcher v. State.
21 There's two issues going on here. One is whether the
22 incident is so incur -- interconnected that the witnesses cannot testify
23 without referencing the later incident.

24 This was presented by information. That means there was
25 a preliminary hearing. At the preliminary hearing, did the witnesses

1 testify to the second aspect of this?

2 MS. ROSE: Yes, Your Honor.

3 THE COURT: Okay. Did you object to that at the
4 preliminary hearing?

5 MS. BONAVENTURE: No, Your Honor. I do not believe
6 we did object to that. However --

7 MR. HAUSER: I don't believe so. No, Your Honor.
8 Double-checking the transcript, but I do not believe we did.

9 THE COURT: There's two issues I have to decide.

10 Number one is whether the evidence of another act or
11 crime which is so closely related to an act and controversy of crime
12 charged that an ordinary witness cannot describe the act in
13 controversy or the crime charged without referring to the other act
14 or crime -- okay.

15 According to the defense, they're representing to the
16 Court that that can occur. In other words, apparently, at the point
17 the officer is injured should be where the evidence stops. That's
18 what they're representing to me.

19 Is that not correct?

20 MS. ROSE: I don't believe that the testimony has -- it can
21 stop there, because the fact is the officer's testimony is literally he
22 pushed through me to get to her. Because he was so enraged, he
23 was sprinting to get to this individual and he --

24 THE COURT: But why can't it stop right there? In other
25 words, why can't the testimony stop once he injures the officer?

1 Because that's what he's charged with. You have represented to me
2 that there's a separate case where he's been charged with, I guess,
3 domestic violence; is that correct?

4 MS. ROSE: That's correct, Your Honor.

5 THE COURT: Okay.

6 MR. LEXIS: The only reason that was separated is
7 because it was a misdemeanor.

8 THE COURT: I understand, Counsel. This is being raised
9 after a jury has been impanelled for the -- apparently for the first
10 time in the middle of the trial.

11 MR. LEXIS: By the defense.

12 MS. ROSE: And, Your Honor, this --

13 THE COURT: Well, they're objecting to the tape. They're
14 objecting to the tape, and so I have to make some determinations.

15 The first determination I have to make is can this officers --
16 these various officers in this body can be presented -- is it necessary
17 to show the domestic -- the battery, the domestic violence?

18 I haven't seen the tape. I haven't heard the testimony of
19 the officers, but I'm not understanding because Belcher [*s/c*]
20 actually -- Bletcher actually -- they did not let the drugs in. They
21 determined that the story could be -- that the testimony could be
22 without the drugs actually coming in.

23 And that's my question, Counsel: Why can't we just stop
24 when the officer gets injured? That's what I'm not understanding.

25 MS. ROSE: And, Your Honor, in Bletcher, it was

1 uncharged pill bottles that the State brought in that it was more -- it
2 was evidence or more drugs that were uncharged.

3 In this case, it's completely different in the fact that the
4 battery occurred before the defendant can push through him to get
5 to this other individual. That's the -- you can't tell the story of the
6 force of the how he did it, of why he did it, without pushing through
7 the officer to get to the other -- the other victim. I mean, it is so
8 intertwined.

9 Literally, in the preliminary hearing, it was brought up
10 multiple, multiple times, Your Honor. I mean, the defense counsel
11 knew this testimony was going to come out. It's almost impossible
12 to talk about without it coming out.

13 I mean, if Your Honor would like to review the preliminary
14 hearing transcripts to make a determination, it literally is -- the
15 officer can't describe the actions beyond, like, he had to push
16 through me to get to her. He kept saying it over and over and over
17 again: I wasn't the primary target, but he had to push through me to
18 get to this individual.

19 THE COURT: Yeah. But why can't we stop once he
20 pushes through her? In other words, have him testify to that, show
21 the video cam to that, but then stop before he actually gets to the
22 other person.

23 MS. ROSE: Well, the body camera doesn't show the
24 incident, Your Honor. The body camera shows the defendant after --
25 after the sergeant arrives, when he has his Taser -- the Taser's

1 deployed at that point. You can't -- you can't say why the Taser
2 would be deployed without saying why he tasered the individual. He
3 tasers the individual because he had beaten the crap out of Delacey
4 Collins.

5 MS. BONAVENTURE: And if I -- if I may, Your Honor.

6 The body camera video isn't even the officer who's the
7 victim in this case. The officer was from a -- the body camera video
8 is from an officer who responded. He was the first officer to respond
9 to the officer down call.

10 And so I believe that they wanted to submit that -- that
11 body camera video for the purpose of showing that the officer stood
12 up and limped away, I guess substantiating some substantial bodily
13 harm.

14 It doesn't show anything that occurred, which is why I
15 don't -- we don't have an issue with the way that they edited the
16 body camera video. I think that you're -- you're starting to touch
17 upon what we would like, is that we have no problem with them
18 substantiating a motive, saying that he was trying to get to
19 somebody else. But the fact that he got to that other person is not
20 necessary to complete their story.

21 It covers -- it gets them exactly what they want: His
22 motive, the force with which he was fleeing or they thought he was
23 fleeing, his intention, his motivation to get where he was going,
24 without completing it all the way.

25 And we still -- once -- if we cut it off at that, saying that his

1 intention was this without getting to this, I think we can come to that
2 compromise. And I believe both parties would be happy with that.

3 MR. HAUSER: And, Your Honor, if I may add, at the
4 preliminary hearing, that's what happened. The witness's testimony
5 on the question of what happened stopped with the words, When I
6 felt the pain. He didn't then say, When I felt the pain because then
7 he was doing this, or When I felt the pain because he was doing this.
8 He describes the injury, he describes stepping back, he describes
9 feeling pain, and then his testimony stops, and then the State asks
10 another question. So I know the officer can describe the entire crime
11 without getting into what happened afterwards because he's done it
12 before.

13 THE COURT: Okay. Again, I am not convinced that you
14 need to demonstrate what happened after the officer was injured to
15 tell the complete story.

16 MR. LEXIS: This man got pushed or punch -- pushed in
17 the chest. The State needs to prove that this man had an intent to
18 run into this man and the force was great enough to cause
19 substantial bodily harm.

20 THE COURT: Okay. And you -- what I -- I apologize.
21 Finish your argument. I want -- I always like to give everybody the
22 opportunity to make a complete argument; so finish your argument.

23 MR. LEXIS: This man pushed through this man with such
24 force, conviction, and motive and intent, as defense counsel stated.
25 And it's evidenced by the fact that he went straight for this woman,

1 as we have photographs of her injuries that she sustained that we
2 plan on bringing into evidence --

3 MS. BONAVENTURE: And which we plan on objecting to.

4 MR. LEXIS: -- and he then had to tase him because he
5 wouldn't stop, which goes -- is so relevant because it goes to his
6 intent, his motive. And we're the ones that need to prove this was
7 no accident. This was no simply going towards him and just trying
8 to get around him. No. We have to prove that he was hit hard
9 enough that caused substantial bodily harm. For us just to stop at,
10 Oh, yeah, I tried to run over -- tried to stop him, he pushed me, and
11 then we can't say anything else, it -- when it's all the same event, it's
12 totally hampering the State's ability to tell the truth.

13 MS. ROSE: And, Your Honor, just for the record, to make
14 the record clear that Mr. Hauser did, in fact, ask questions about
15 where Ms. Delacey -- Ms. Collins --

16 THE COURT: Okay. Here's what we're going to do,
17 Counsel. This all should have been done -- certainly should have
18 been done before we impaneled the jury. But this should have been
19 done pretrial. These issues should have been resolved.

20 I'm going to dismiss the jury. I want a copy of the
21 preliminary hearing transcripts. I'm going to give you both
22 opportunities to submit briefs on this issue. I want them -- we're not
23 going to start until 1 o'clock tomorrow, but I want to review the
24 preliminary hearing transcripts to make a determination of whether
25 you can tell the complete story without bringing in what actually

1 occurred.

2 Bring the jury panel in, please.

3 THE CLERK: All rise for the jury.

4 [In the presence of the jury.]

5 THE COURT: Please be seated.

6 Some legal issues have arisen that need to be resolved
7 before we can continue with opening statements and the
8 presentment of evidence. It may take a little bit of time; so rather
9 than have you sit out in the hallway for a while, I'm just going to
10 dismiss you for the evening and have you come back tomorrow at 1
11 o'clock, at which time we should have -- we should be able to go
12 forward at that time.

13 So this is going to be our evening recess. I apologize for
14 not bringing you in sooner, but there has to be some additional
15 matters resolved. So at this time, this will be our evening recess.
16 I'm going to excuse you for the evening.

17 During the recess, you are admonished not to talk or
18 converse among yourselves or with anyone else on any subject
19 contained with this trial; or read, watch, or listen to any report of or
20 commentary on the trial or any person connected with the trial by
21 any medium of information, including, without limitation, the social
22 media, text, newspapers, television, the Internet, and radio.

23 Do not visit the scene of any of the events mentioned
24 during the trial or undertake any investigation. Do not do any
25 posting or communications on any social networking sites or do any

1 independent research, including Internet searches, or form or
2 express any opinion or any subject -- on any subject connected with
3 the trial until the case is finally submitted to you.

4 So I'll see everybody tomorrow at 1 o'clock. Thank you.

5 A JUROR: Do we know -- do we know anything further
6 down the road? Just 1 o'clock tomorrow, that's it?

7 THE COURT: Just 1 o'clock. I anticipate being able to go
8 all day Friday. So we're going to do a half a day -- today's
9 Wednesday; right?

10 A JUROR: Yes.

11 THE COURT: Half a day on Thursday, all day on Friday,
12 okay?

13 A JUROR: Thank you.

14 [Outside the presence of the jury.]

15 THE COURT: Mr. Lexis?

16 MR. LEXIS: Yes, sir.

17 THE COURT: Again, my goal is not to create error in this
18 record. I'm being presented with issues that I thought was resolved,
19 and I thought that the only matters in this case was the -- was the
20 trial.

21 If you -- I can conduct a Petrocelli hearing, okay? If you
22 feel that all you need is this officer. But before I make a
23 determination of whether it's other acts, I first have to make the
24 determination of whether you can present your case without the
25 objectionable part by the defense.

1 So if you want to do the Petrocelli hearing now, I have
2 time to do it now. I am going to take the preliminary hearing
3 transcripts and review them from the -- to make a determination on
4 whether it's necessary to do that or not. But if you want to do the
5 Petrocelli hearing now, I can do it now with the understanding that
6 that may not become an issue if I determine that you could present
7 your case without the other acts, the other bad acts. So I'll leave it in
8 your discretion.

9 MR. LEXIS: Your Honor, I'm just trying to keep things
10 moving. I understand that if you find that it's the same event, we
11 don't need to do a Petrocelli -- if you find it's res gestae, I'm willing
12 to do a Petrocelli hearing. If you find it is bad acts, then we need to
13 do a Petrocelli hearing.

14 THE COURT: And I don't want to spring this on you.
15 That's what I'm saying. One of the -- from reading your body
16 language before, it seemed to indicate that you did not know if you
17 had sufficient witnesses to do the Petrocelli hearing. And then I
18 know -- know that you tried to contact the -- you indicated that the
19 person that you agreed would be the officer in the case who appears
20 to be present. But is that going to be -- do you feel that that would
21 be comfortable for the Petrocelli hearing, or do you think you would
22 need other witnesses?

23 MR. LEXIS: As far as the breaking away and going after
24 this individual --

25 THE COURT: As far as the other bad acts. As far as

1 meeting your burden that this is an other bad act and should be
2 admissible in this case.

3 MR. LEXIS: No. I believe that we can have the officer
4 testify.

5 THE COURT: That's all you need?

6 MR. LEXIS: Your Honor, he was the only one -- yes, I
7 believe the officer.

8 THE COURT: Okay. If he's here and you're prepared to go
9 forward and if the defense is prepared to go forward, I will conduct a
10 Petrocelli hearing with the understanding that it -- I may never get to
11 that issue. In other words, if I determine that they can present their
12 case without presenting the domestic violence, then I'm going to
13 exclude.

14 I don't know if you heard what I just said, Counsel.

15 MR. LEXIS: Yes. As far as the battery and domestic
16 violence -- if that's the main issue on that, but it was not.

17 I mean, I came in here thinking that was the main issue. If
18 that was the main issue, then I'll just have them testify that they
19 were dispatched between a disturbance between a male and a
20 female, even though I'm telling the Court that the one lady can
21 identify that man and knows him due to the family relationship.

22 But I can admonish her, don't go into it. But then also,
23 now we're sprung on the other thing of we can't tell our story about
24 him barging through the officer to get to the woman.

25 THE COURT: But they're arguing it to me, Counsel. And I

1 need the -- I'm hearing this in the vacuum right now. What they're
2 arguing to me is that you can present your case and stop it before he
3 actually does the battery on that individual, that you can -- you can
4 present to the jury why he was trying to go to the officer without
5 actually presenting that he committed the battery on that person,
6 okay?

7 That's what they're presenting. That's what they're
8 arguing to me, that you can tell the complete story without actually
9 presenting the other bad act, the actual, physical other bad act.
10 They're willing to agree that you can go all the way up, present
11 everything all the way up, until he actually does the physical acts
12 that constitute the battery; is that correct, Counsel?

13 MS. BONAVENTURE: As far as what they need in order to
14 get his motive, like that he was trying to get to another person,
15 which I think conveys exactly what they want is the motive, what he
16 was trying to say, the motive they had in order -- and his intent to
17 get by the officer.

18 THE COURT: And they're saying that you don't actually
19 have to present the battery itself?

20 MS. BONAVENTURE: Uh-huh.

21 THE COURT: That's what they're arguing to me.

22 MR. LEXIS: Okay. So when the officer who's responding;
23 and they -- he's on top of this man; the Taser's deployed; this, that,
24 and the other; what -- what should I tell this man to say as far as --
25 or -- and the woman who's going to testify that, Yeah, I saw this man

1 hit the cop, bust through the cop, and go straight towards the
2 woman, but then I saw --

3 THE COURT: You can testify to everything except the
4 battery itself; is that correct, Counsel? Answer on the record.

5 MS. BONAVENTURE: Yes, yes.

6 MR. HAUSER: Oh. Yes, Your Honor. I'm sorry.

7 THE COURT: In other words, what they want to keep out
8 is the actual physical events, the battery itself. So you could go all
9 the way up to the battery itself, and that's what they're claiming is
10 the other acts that needs to be excluded, that you could still tell your
11 story --

12 MR. LEXIS: So when I -- and again, I'm not trying to -- to
13 do anything with the Court as far as being disrespectful, but what --
14 when the cop says, I tried to defend this woman, stop this man and
15 come through me, I just -- what does the Court want me to say as far
16 as him getting to her? The cop needs to be able to say, I tried to stop
17 this man from him getting to her.

18 THE COURT: Defense Counsel, what's your position?

19 MS. BONAVENTURE: Your Honor, I think that the best
20 thing is for you to read the preliminary hearing transcript, because
21 I'm going to give Mr. Lexis the benefit of the doubt. He did not put
22 on the preliminary hearing. Both of us were at that preliminary
23 hearing.

24 And I'm not going to say that he's mischaracterized some
25 of the events that occurred, but I don't think he realized that the tone

1 with which all of it was said. The officer was very -- was very honest.
2 He was very -- he wasn't overexaggerating things. And it seems like
3 the tone with which Mr. Lexis is approaching all these facts are
4 completely different than the evidence that came out at the
5 preliminary hearing. I really think that it would be helpful for you to
6 read the preliminary hearing and see what was actually -- what
7 actually came out at preliminary hearing.

8 MR. HAUSER: And I do think that if Your Honor does
9 review that transcript, you'll see in the transcript that he describes
10 being struck by Mr. Allen, he describes the injury that occurred, and
11 then his testimony ceases, and then more questions are asked. But
12 that clearly indicates that we can stop right there and just not ask
13 those additional questions.

14 And that's why we're saying that we don't need to talk
15 about the battery that occurred afterwards. Everything up to that,
16 okay. But the actual fact that he was hitting the woman afterwards,
17 that's where we're objecting, and I think that that's consistent with
18 where he stopped.

19 THE COURT: And I'm going to look at the preliminary
20 hearing transcripts. But I'm not understanding why you need to
21 bring the actual battery in. Why do you need to bring the actual,
22 physical battery? Why can't we just stop right there?

23 MR. LEXIS: Because it goes to show this man's intent,
24 motive, and why he busted through the cop to get to him and the
25 force he did to get through him.

1 Your Honor, I'm trying to work with you. What -- what
2 would you like me to tell the cop and the -- because I'm obviously
3 going to tell them don't say what happens, exactly what happens.
4 What do you want me to tell them that happened after the guy -- the
5 cop's going to say, yes, he came through me and went towards the
6 woman. Do you want me to say, Okay, once I saw him on the
7 woman, then I decided --

8 THE COURT: Here's what I want to do, Counsel. We're
9 going circular because I haven't -- provide me a copy of the
10 preliminary hearing transcript, okay?

11 MR. LEXIS: I got it right here. I'm going to give it to you
12 right now.

13 THE COURT: I appreciate it. You can approach. Thank
14 you.

15 I have the jury coming back tomorrow at 1 o'clock. I have
16 a criminal calendar tomorrow. So I'm in Department 11 at 9 o'clock.
17 If you want to do any quick briefings, provide it to my chambers by
18 9 o'clock tomorrow.

19 MR. HAUSER: Yes, Your Honor.

20 THE COURT: If you can work this out in the meantime as
21 to what would be admissible, what you -- what both parties would
22 agree to, obviously that's always the best policy. If not, then I will
23 make a determination tomorrow.

24 My question, Counsel, is do you want to do a Petrocelli
25 hearing before I make my determination, understanding that I may

1 never get to the issue?

2 MR. LEXIS: I believe that preliminary transcript of what
3 the officer says will be more than sufficient, Your Honor.

4 THE COURT: Okay. All right. What I'm going to do is
5 have -- I'm just going to have --

6 [Pause in the proceedings.]

7 THE COURT: We will reconvene tomorrow at 12:30. I
8 need -- where's the -- I need the defendant here by 12:30 tomorrow.
9 Okay? And then we'll make my decision at that point.

10 And then I want to start the trial at 1 o'clock. I don't want
11 to keep delaying this. I need to move this trial along.

12 If you have anything you want to me to review -- I've read
13 the Bletcher decision. If there's any other -- my first decision's going
14 to be whether you can present your case without actually presenting
15 the battery itself. Can you stop it right up until the time -- that's the
16 only thing I'm considering. You're going to get to present
17 everything else from what I'm understanding from the defense, the
18 argument, motive, and why he was going through the officer, this
19 and that. But what they're asking is the actual -- is this correct? -- if
20 I'm not stating your position correctly, you need to let me know now.

21 MS. BONAVENTURE: Sure.

22 MR. HAUSER: Absolutely, Your Honor.

23 THE COURT: Okay. What -- all you're asking me to do is
24 exclude the actual, physical battery, where he -- is this on the video
25 cam, or is this going to be testimony?

1 MR. HAUSER: Testimony, Your Honor.

2 THE COURT: Okay. So you just want the testimony to end
3 at the point that he physically attacks the individual according to the
4 testimony; is that correct?

5 MS. BONAVENTURE: Yes, Your Honor. But also any
6 mention previously to battery, domestic violence, that he was
7 brought to -- or that the cop was discharged.

8 THE COURT: You know what? You better get it in writing,
9 Counsel. This should have been done pretrial. So if -- that better be
10 in my office by 9 o'clock -- you know what? Make it 8:30.

11 MR. HAUSER: We've got time. We can do that today,
12 Your Honor.

13 THE COURT: Well, I will be over here at 8:30 because I am
14 in Department 3 on this floor. But if you want supplemental -- any
15 type of points in authority to be filed, and -- you need to get it to me
16 by 8:30 tomorrow.

17 MS. BONAVENTURE: Okay. Would you like us to send a
18 complimentary copy or --

19 THE COURT: Absolutely.

20 MS. BONAVENTURE: To where? Where exactly?

21 THE COURT: Where do they -- do they e-mail it or drop it
22 off?

23 THE CLERK: They can do either.

24 THE COURT: You can either e-mail it or drop it off at my
25 chambers.

1 MR. HAUSER: Can do.

2 MS. ROSE: And, Your Honor, just -- just for clarity
3 purposes, is it the position of the defense counsel that it's our
4 testimony altogether stops at that point? Because essentially by not
5 talking about the battery, we don't get into how he gets
6 apprehended. We don't get that he's tasered. We don't get that the
7 sergeant arrives on scene and sees him; so the body cam doesn't
8 come into play. Do you see what I'm --

9 THE COURT: I do.

10 MS. ROSE: Because there's no -- so, I mean, is it defense
11 counsel that all that from then on gets excluded also? Because then
12 we obviously can't show that [indiscernible].

13 THE COURT: And, Counsel, I'm not sure how that gets
14 excluded quite frankly because --

15 MS. BONAVENTURE: Well, Your Honor, I don't think that
16 any of that is even -- none of that is even probative of the charge
17 that's being charged right now. Him being tased, how he's
18 apprehended, none of that has anything to do with the battery on the
19 officer and the substantial bodily harm.

20 THE COURT: What about the video camera?

21 MS. BONAVENTURE: I don't even know why they're
22 admitting the video camera, the video body camera. It's not nothing
23 of the incident. It's of the officer responding. It's seriously like a
24 10-second clip with no sound.

25 And so that -- the only thing I can imagine is they want it

1 for -- to show that the officer was hobbling away to substantiate
2 substantial bodily harm. I just don't know why they even want it.

3 MS. ROSE: That's -- that's why I just wanted clarity,
4 Your Honor, to see if that's all the exclusion.

5 THE COURT: You know what, it's 4 o'clock. If you want
6 supplemental points -- if you want points in authority submitted, I'm
7 giving you the opportunity to submit it to me by 8:30 tomorrow
8 morning. If you want to see if you can come to a resolution on this
9 issue, that's fine too.

10 But the only issue I'm trying to make a determination of
11 right now is whether the other acts comes in. That's it. How you
12 present your case based on that ruling -- again, and certainly,
13 Counsel, you can object, and that would preserve your issue.

14 MR. HAUSER: Of course.

15 THE COURT: But the only issue that you have raised
16 orally in the middle after the jury has been impaneled is other acts
17 that you do not want the domestic -- the battery domestic violence
18 that he's being charged in another case to come in. That's the only
19 issue I'm looking at right now. So again, Counsel, that's what's
20 before me right at the moment.

21 MR. LEXIS: And it looks like they brought up a third issue
22 now. It's not just the battery on the girl, but also the officer
23 apprehend -- finally being able to apprehend this man by tasing him.

24 How that is another bad act is beyond me. It's the
25 officer -- it's a continuing act of this -- the officer trying to get a hold

1 of this man and detain this man, which eventually --

2 THE COURT: Well, the only issue I'm going to decide right
3 now, okay, is whether you can tell the complete story, whether --
4 yeah -- whether you can tell the complete story without actually
5 bringing in the physical act of the battery domestic violence. That's
6 the only issue I'm resolving right now. And I will make my ruling
7 tomorrow. I'll give you an opportunity to argue it, but I'm going to
8 make my ruling tomorrow.

9 1 o'clock, the jury will be back, and we're going to go
10 forward at that point.

11 MR. LEXIS: And can you -- we're going to bring our
12 witness in. Can you order her back here at 3:30? Because she's not
13 going to be happy that she took all day off --

14 THE COURT: Bring her in.

15 I'm not going to be able to say her name though.

16 MR. LEXIS: Lisa Gordon.

17 THE COURT: Oh.

18 Hi, Officer Gordon?

19 MR. LEXIS: No. This is Lisa Gordon.

20 THE COURT: Oh, this is Lisa Gordon? Hi, Lisa Gordon.

21 A pretrial issue has come up, and it's a legal matter. And
22 we thought we were going to present it today, but I'm being
23 requested to review some documents before that happens. So I'm
24 going to need you to come back tomorrow at 3:30. Is that --

25 MS. GORDON: I can't.

1 THE COURT: Why can't you come back tomorrow at 3:30?

2 MS. GORDON: Because I have nobody to cover my store.

3 THE COURT: Okay. And what store?

4 MS. GORDON: Where I work at. So the facility where I
5 work at, I'm a manager. And I have an assistant, but he's off
6 tomorrow; so I have nobody to cover the store.

7 THE COURT: Okay. Let's go forward -- is this the witness
8 you're going to present on the Petrocelli case?

9 MR. LEXIS: No. It's the officer, the victim officer.

10 THE COURT: Then what is this person here for?

11 MS. ROSE: We anticipated calling her -- we anticipated
12 going forward with witnesses and presenting evidence today,
13 Your Honor. She has limited -- she had limited availability for today,
14 and it was our understanding that she has hesitancy, as Your Honor
15 knows, because she has work issues coming back here tomorrow.

16 However, since we didn't present any testimony or any
17 evidence today, we would like Your Honor to order her back here
18 tomorrow so she can go back to her bosses and everybody else to
19 tell her it's an order of the Court.

20 THE COURT: Okay. Ma'am?

21 MS. ROSE: She's under subpoena.

22 THE COURT: She's under subpoena?

23 Ma'am, you're going to have come back. You're going to
24 have find somebody to cover for you at your store. Work with the
25 district attorney. They will get you in and out. I'll even call you out

1 of order if I have to. I will make it as convenient for you as I possibly
2 can. But apparently, the State intends to use you as a witness in
3 their case, and they're requesting that I order you back, that you're
4 under subpoena. So you need to come back when they request you
5 to come back. But please work with them and give them --

6 MS. GORDON: I know. But this is an inconvenience for
7 me, which I don't mind working with them, but I also -- it's an
8 inconvenience for me, so --

9 THE COURT: And I can't help that. Apparently, you're a
10 witness in a criminal case, and you've been subpoenaed by the State
11 of Nevada to testify. So unless they release you from your
12 subpoena, you're going to have come back at some point and testify
13 in this case.

14 We're expecting to take testimony tomorrow afternoon. I
15 don't know how long the State's case is going to take. It may go
16 over to Friday. So there is some leeway as to when you can come
17 back and testify. So meet with the district attorney after court today,
18 and they will try to make it as convenient as they can. But at this
19 point, they still need you to testify.

20 MS. GORDON: Okay.

21 MR. LEXIS: What time do you expect us starting on
22 Friday?

23 THE COURT: I expect -- do we have anything on Friday
24 [indiscernible]?

25 We can start at 9 o'clock on Friday.

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MR. LEXIS: I'll talk to her.

THE COURT: Okay. Court's in recess.

THE CLERK: Court's adjourned.

[Proceeding adjourned at 4:00 p.m.]

* * * * *

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



Shannon D. Romero
Certified Electronic Transcriber
CET**D324



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7)
8 THE STATE OF NEVADA,)
9 Plaintiff,)

CASE NO: C-16-318255-1
DEPT. XVIII

10 vs.)

11 RONALD ALLEN,)
12 Defendant.)

13
14 BEFORE THE HONORABLE MARK B. BAILUS, DISTRICT COURT JUDGE
15 THURSDAY, NOVEMBER 2, 2017

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **JURY TRIAL – DAY THREE**

18
19 APPEARANCES:

20 For the State:

CHAD N. LEXIS, ESQ.
LAURA JEAN ROSE, ESQ.
Deputy District Attorneys

22 For the Defendant:

XIOMARA BONAVENTURE, ESQ.
ROBSON M. HAUSER, ESQ.
Public Defenders

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25 RECORDED BY: ROBIN PAGE, COURT RECORDER

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INDEX

Page

SHANNON ROHRBAUGH

Direct Examination by Mr. Lexis	42
Cross-examination by Mr. Hauser	49

LEOPOLD KARANIKOLAS

Direct Examination by Ms. Rose	50
Cross-examination by Mr. Hauser	77
Redirect Examination by Ms. Rose	91
Recross-examination by Mr. Hauser	99
Further Redirect Examination by Ms. Rose	102
Further Recross-examination by Mr. Hauser	103
Further Redirect Examination by Ms. Rose	111

LISA GORDON

Direct Examination by Ms. Rose	127
--------------------------------	-----

EXHIBITS:

Admitted

1	Body Cam Clip	44
2	Photo	70
3	Photo	70
4	Photo	70
5	Photo	70
7	Photo	54
8	Photo	76
24	UMC Medical Records – Karanikolas	66

1 Las Vegas, Nevada; Thursday, November 2, 2017

2 [Proceeding commenced at 12:36 p.m.]

3
4 THE COURT: This is a continuation of the -- please be
5 seated.

6 This is a continuation of the trial entitled State of
7 Nevada vs. Ronald Allen, Case No. C-16-318-255.

8 Over the evening break, I have had an opportunity to
9 review the preliminary hearing transcripts in this case, as well as
10 the State's memorandum of points of authorities and the
11 supplemental brief filed by defense counsel.

12 Let me make myself perfectly clear on this: These were
13 issues that should have been resolved with the assigned judge.
14 This case was assigned to overflow with the indication there were
15 no outstanding pretrial issues in this case. We're now on the
16 third day of this trial, and we've yet to start the evidentiary
17 portion. We are going to start the evidentiary portion at 1 o'clock
18 today.

19 I want to verify: It's the defense position that you are
20 willing to allow the fact as to the issue of motive why he was
21 called. You just don't want to use the words domestic
22 disturbance. You want -- that they can testify as to why they were
23 called and then what happened. The only thing you want me to
24 keep out is the actual physical acts that occurred on the victim in
25 the battery domestic violence case; is that correct?

1 MR. HAUSER: And as you said, Your Honor, the word
2 domestic when talking about the issue; that is correct.

3 THE COURT: I agree with defense counsel.

4 First of all, the first thing I did was verify that there was
5 never a notice filed in this case to bring in other acts; so I don't
6 need the hold the Petrocelli hearing because there was no notice
7 provided. If the State had wanted to do it, it should have been
8 done with the assigned judge and litigated at that point.

9 As to the complete story doctrine, I agree with the
10 defense. I read the witness's direct examination in the
11 preliminary hearing, and he -- the witness can testify consistent
12 with his preliminary hearing testimony, which means that he can
13 testify that the reason he was there is he got a call that there was
14 a harassment between a man and a woman. That's what he
15 testified to at the preliminary hearing.

16 Do you have a problem with that?

17 MR. HAUSER: No, Your Honor.

18 THE COURT: Okay. Then he can testify as to what
19 occurred after that.

20 As to the person that's going to testify, the officer
21 who's going to testify as to the video cam, what is the basis that
22 he's going to state he was there? That he got a call? Did he get a
23 call because of the domestic violence case, or was it just part of
24 the initial call?

25 MS. BONAVENTURE: I believe, Your Honor, that it was

1 a call that the officer -- he was responding to the officer's distress
2 call.

3 THE COURT: Then he can testify to that. If he's
4 responding -- and he can testify to what's on the tape. The only
5 thing that he -- I'm keeping out is any physical acts against the
6 victim in the battery domestic violence case. That's what you've
7 requested me keep out; correct?

8 MS. BONAVENTURE: Yes, Your Honor.

9 THE COURT: Okay. Is there anything else that we need
10 to address before we start this trial at 1:00?

11 MS. BONAVENTURE: Yes, Your Honor. The pictures
12 that I believe that are part and parcel of this, I believe that the
13 State had marked for -- as exhibits pictures of the domestic
14 battery victim in this case, Delacey Collins.

15 THE COURT: Okay. We don't need those pictures. I
16 mean, what was the State's purpose in bringing those pictures in?

17 MR. LEXIS: We don't -- you're excluding the pictures of
18 the person that she beat up after going past the cop?

19 THE COURT: Right. We're not going to have anything
20 about the domestic violence case unless you can tell me what is
21 the relevancy --

22 MR. LEXIS: This is the same -- Judge, it's all -- you
23 made your ruling, that's fine. It's all the same act. That's why it's
24 not brought up. The defense attorney's trying to run amok. It's
25 all the same act.

1 THE COURT: All right. And you know what? If the
2 State -- and I'm not faulting either party. This should have been
3 resolved before it got to this point, but if it was other bad acts,
4 obviously, there's a procedure to bring in.

5 MR. LEXIS: It's not a bad act. It's not another bad act.

6 THE COURT: Well, you put your eggs in one basket,
7 and I, as an overflow judge, don't agree with that.

8 MR. LEXIS: Okay. It's not a bad act. But we'll go with
9 whatever your ruling is.

10 THE COURT: That's my ruling. I want to keep this trial
11 as clean as I can.

12 I read the preliminary hearing transcript -- and by the
13 way, if you open the door, I'm going to let it in. On your
14 cross-examination, he testified as to the injuries. So I will tell you:
15 You open the door, I'm going to let it in.

16 MR. HAUSER: Oh, absolutely. Absolutely. That's on
17 us.

18 MS. BONAVENTURE: And the only other pictures that I
19 believe he had marked as exhibits, Judge, are pictures of our
20 client, Mr. Ronald Allen. I believe we would object to those being
21 brought in. I don't think they're relevant, in fact, to the actual --

22 THE COURT: Does it show anything that's related to
23 the injuries? The other thing is he could testify as to his injuries.

24 In other words -- I also notice there's a flight
25 instruction. Is that dealing with when he was still trying to be

1 handcuffed and he went around the vehicle? Is that --

2 MR. LEXIS: Absolutely.

3 THE COURT: No. I'm just asking is that the flight
4 instruction? I mean, is that the basis for us to make a proposal?
5 Because I don't know the underlying facts. When I was reading
6 the preliminary hearing transcripts, I assumed that was going to
7 be your argument as to flight.

8 MR. LEXIS: Yes.

9 THE COURT: Okay.

10 MS. BONAVENTURE: And we will stipulate to the
11 pictures of the officer that were submitted by the State as
12 exhibits.

13 THE COURT: Why did you -- again, you know, why did
14 you want to bring the pictures of the defendant in? Just to show
15 it? I mean, he's going to be on the video. No, just tell me.

16 MR. LEXIS: Judge, I mean, I don't know how much
17 more relevant it is than -- it's the defendant -- the picture of the
18 defendant at that time, at the scene, at the location. I mean, we
19 need approval.

20 THE COURT: What is the problem with that, Counsel?

21 MS. BONAVENTURE: Your Honor, it's so much more
22 prejudicial than probative. In fact, when we were looking at the
23 exhibits --

24 THE COURT: Okay. But you've agreed that the video
25 can come in.

1 MS. BONAVENTURE: Yeah. The video doesn't even
2 show my client. The way it was edited by the State, the video
3 does not show my client. It simply shows the police officer
4 hobbling away from the officer, but not in the way that these
5 pictures did.

6 THE COURT: Okay. But I don't understand what the --
7 why did this -- remember it has to be substantially. What is this --
8 why is it substantially more prejudicial?

9 MR. HAUSER: Your Honor, the only thing the pictures
10 actually show is close-ups of his neck tattoos. Absolutely no
11 probative value whatsoever, the fact that he has a neck tattoo.
12 That doesn't establish ID any more that he can just say, this is
13 Ronald Allen, this is the guy that was at the scene.

14 THE COURT: Okay. If the witnesses can't identify
15 him -- all right. I'll reserve ruling until the time of -- until I see the
16 pictures.

17 MR. HAUSER: Certainly.

18 MR. LEXIS: Judge, we still need clarification on what
19 are these people going to testify to.

20 THE COURT: They're going to testify consistent to their
21 preliminary -- at least the officer, the one I was asked to resolve
22 over the evening recess, is going to -- he's going to testify
23 consistently with his preliminary hearing testimony on direct
24 examination.

25 MR. LEXIS: How do you want me to tell the officer,

1 though, when he busts through him and goes after the woman
2 and starts beating her --

3 THE COURT: Exactly how he said it in his preliminary
4 hearing testimony. Not exactly, but in the same vein that he
5 testified to in his preliminary hearing testimony.

6 And officer -- Question: And, Officer, what happened
7 after you made -- you said went back to the vehicle, and you're
8 running his information. What happened after that?

9 Answer: As I was talking to the cousin or whatever the
10 family member was, either the defendant stepped out of the
11 vehicle, hands up. He had his hands up. I stepped out of vehicle
12 to make contact with him. No issue with him.

13 He turned around. He put his hands behind his back.
14 He let me pat him down. As soon as he -- then I put him in front
15 of my vehicle. As soon as he touched the front bumper of my car,
16 he took off. And he started going around the passenger's side; so
17 I thought he was going to run. So I went around the driver's side.

18 So when I went around the driver's side, I didn't realize
19 that he was actually going after his relative. So he came around
20 the back of the patrol vehicle, and we met up on the back left side
21 about the light, the rear light. That's where we met. Okay.

22 Answer: At that point, there was an altercation
23 occurred. I -- I stopped because I realized he was going after her.
24 So I had to change directions; so I stepped really quick. I was
25 between him and the individual that he was going after, at which

1 point I felt myself get stepped back in order to catch my
2 unbalance. As soon as I stepped back, that's when I blew out my
3 Achilles. So I felt a sharp pain to my right -- my right leg. I ended
4 up dropping immediately because it turned out it was partial tear
5 to my Achilles. So that's when I felt the pain.

6 That explains the -- that is relevant to the battery.

7 MR. LEXIS: No. I'm talking about after that. What --
8 how do you --

9 THE COURT: Then he can testify exactly how he -- not
10 exactly -- then he can testify consistently after the injury. That's --
11 that's the crime that we're in front of me.

12 Quite frankly, the complete story doctrine actually
13 applies to the misdemeanor. This case probably needs to come
14 in on the misdemeanor -- battery domestic violence as the
15 complete story. But that's it.

16 MR. LEXIS: What do you want me to --

17 THE COURT: I'm not telling you -- listen --

18 MR. LEXIS: I need -- I need to know what -- what does
19 this guy do? Do the questions stop at that point?

20 THE COURT: Read his preliminary hearing transcript,
21 and he can testify consistent with his preliminary hearing
22 transcript.

23 MS. ROSE: And, Your Honor, if I may, because I'm the
24 person that's going to be directing him. And I -- I mean, I guess
25 the clarification comes in as to how the individual's apprehended,

1 how he was taken into custody.

2 THE COURT: But why is that relevant? Why is his
3 apprehension and taken into custody relevant for the battery?

4 MS. ROSE: The relevance between -- that's relevant in
5 any criminal case, on how the individual -- if he's trying to flee
6 from the police officers in the -- in the propensity in which the
7 defendant is trying to run --

8 THE COURT: Okay. So you're telling me it goes to the
9 issue of flight?

10 MS. ROSE: It goes into the issue of the entire situation,
11 Your Honor.

12 THE COURT: Okay. If it goes to the issue of flight, it
13 would be relevant. But if it doesn't go to the issue of flight, what
14 is the relevancy?

15 MS. ROSE: And I understand your Court --
16 Your Honor's ruling, the Court's ruling. However, it's the State's
17 position that the entirety if -- and I understand that you're going
18 off the preliminary hearing transcript. If I tell my witness to testify
19 consistently with his preliminary hearing transcript, in that
20 transcript he also testifies as to I'm not the -- I wasn't the primary
21 target. She was. And he knows that because of the fact that he
22 went after her and --

23 THE COURT: Okay. They've agreed -- they've agreed
24 to that. They agreed that that can come in. What they have not
25 agreed and what I am keeping out is the actual physical acts that

1 constituted the charge of battery domestic violence.

2 MS. ROSE: I understand, Your Honor. If I may, the --
3 the issue becomes is if I get -- I can't tell my officer, well, okay,
4 you apprehended the individual -- you apprehended this
5 individual by tasing him. Why did you taser him? He can't
6 answer that question.

7 And then I would like to preclude that argument from
8 defense counsel that this is merely speculation, the fact that he
9 thinks that this guy is only going to this female, and that's why he
10 was pushed through because at this point, it's -- the jury --

11 THE COURT: They've agreed to that. They have
12 agreed that you can testify to that.

13 MS. ROSE: The -- I need to hear -- I need to hear on the
14 record --

15 THE COURT: They did the other day. That's what I
16 relied upon in making my ruling. They told me that they would
17 agree that for purposes of motive, why he pushed through the
18 officer, it was to get to the other individual. The only thing they
19 asked me to keep out is the actual physical conduct that
20 constituted the charge of battery domestic violence.

21 MS. ROSE: Okay. If they are stipulating to the fact that
22 he went -- he was going after the female involved in the
23 disturbance call, that's one thing. But the experience that I have
24 is that there is a ruling made and there's argument subsequently
25 that says, Well, this is mere speculation. He didn't know this. It's

1 just an -- because I understand -- and I understand the theory of
2 defending this --

3 THE COURT: And if they make that argument and you
4 object to it, I'll declare a mistrial based on the defense counsel's
5 improper argument.

6 MR. HAUSER: Absolutely, Judge. We will not be
7 arguing that.

8 THE COURT: If they try to argue any -- the only issue
9 that the arrest would have is if it goes to the issue of flight,
10 consciousness of guilt, that he was trying to flee the area, and
11 they had to taser him and subdue him to prevent him from
12 leaving the area. That's why I asked about the flight instruction.

13 MS. ROSE: And, Your Honor, it's my belief that the
14 officer is going to testify that after he's attacking the female and
15 that he is giving him lawful commands because he -- at this point,
16 he can't move because of the injury. He is -- the female -- he's
17 trying to tell him get off the female, at which point he gets up, and
18 it looks like he's going to flee, but it's after he attacks the female.

19 So I just need to make sure that I'm telling -- I'm not
20 doing any improper --

21 THE COURT: I understand, Counsel. That's why we're
22 here right now --

23 MS. ROSE: -- via counsel or the Court's ruling is I have
24 to -- I'm going to direct him to say he tasered him basically just
25 from fleeing the scene?

1 THE COURT: No. It's my understanding that he can
2 testify pursuant to what the defense has agreed to, that he was
3 going after the female. And that's why he was tasered. What
4 they want me to keep out is that he actually physically assaulted
5 or battered the female.

6 If it goes to flight -- the arrest has nothing to do with
7 the crime, the arrest itself, but if it goes to an issue in the case,
8 such as flight, that you were trying to prevent him from fleeing
9 the area and you want a flight instruction, you will be able to
10 develop that.

11 MS. ROSE: And, Your Honor, in order -- because if he
12 gets -- when he tases the individual -- I mean, obviously we have
13 the use-of-force documents and everything -- by tasing the
14 individual, it's a whole --

15 THE COURT: If he was tasing the individual to keep
16 him from assaulting the woman, that's a different issue. If he
17 tased the individual and arrested him to keep him from fleeing,
18 that's an issue that's relevant in this case.

19 MS. ROSE: Understood, Your Honor.

20 MR. LEXIS: But it's both.

21 MS. ROSE: It's both. That's why I don't --

22 MR. LEXIS: That's why we have to instruct this man to
23 not tell the truth. I mean, if that's what we have to do, it's what
24 we'll do.

25 THE COURT: Okay. Counsel, you will -- don't ever say

1 you're going to have instruct them not to tell the truth. Okay? All
2 right.

3 I'm making a pretrial ruling as to the complete story
4 doctrine; all right? I am keeping out -- it's not part of the complete
5 story that he assault -- that this man battered the female. I expect
6 you to present your case properly.

7 MS. ROSE: And we can go -- we -- so the defense's --
8 the defense's stipulation -- or your -- based off the parts --

9 THE COURT: I'm not understanding what the issue is,
10 Counsel. I'll be honest with you --

11 MS. ROSE: I just want -- I just want to make sure where
12 to stop the testimony.

13 THE COURT: This case was announced ready for trial --
14 it's announced ready for trial, a two- or three-day trial. It was
15 supposed to be a straightforward, simple trial. Obviously, there
16 were issues in this case that needed to be resolved before
17 calendar call.

18 Defense counsel could have brought this to the Court's
19 attention through a motion in limine. You could have brought it
20 through -- through a other bad acts motion if you thought it was
21 even close to other bad acts, which it obviously would have been.

22 So as far as your witnesses today, I expect them to
23 testify truthfully, and I expect you to ensure that they testify
24 truthfully.

25 MS. ROSE: And, Your Honor -- and that's why I am --

1 I'm being overcautious right now because I as the State do not
2 want to question him any further than I need to or direct him --

3 THE COURT: Okay. But what is the problem -- why
4 can't he testify like his preliminary hearing transcript?

5 MS. ROSE: And, Your Honor, I just want to make sure
6 that I can tell -- that I'm going to direct him to stop at the
7 defendant pushed through him in order to -- to get to her, to
8 attack her. What am I going to be able to --

9 THE COURT: Okay. Let me talk to the defense
10 attorney.

11 What is the issue about him getting arrested? What
12 is -- why can't they bring out the fact that he was tasered and then
13 arrested? Obviously, they're going to -- it goes to an issue of
14 flight.

15 MR. HAUSER: I think Your Honor actually addressed
16 this earlier. We don't believe it goes to the issue of flight because
17 he was tased while committing the battery domestic violence. He
18 wasn't tased when he was running away. There's no actual flight
19 here. He's committing another crime, which Your Honor has
20 already excluded. That's when he is tased. The tase does not
21 actually go to the flight instruction.

22 THE COURT: But if he was leaving, why can't it be part
23 of them both? Why isn't it part of the flight and preventing him
24 from committing a battery domestic violence?

25 MR. HAUSER: I do not believe the record supports that

1 he was leaving. That's why, Your Honor, because he was in the
2 act of committing that crime.

3 THE COURT: But they have a right to develop it.

4 MR. HAUSER: They do. And if the record --

5 THE COURT: And -- so if I'm going to let the tasing in
6 and the arrest, if it goes to an issue in this case such as flight, if it
7 goes to -- but I'm not going to let them bring in the fact that he
8 was physically assaulting her. So they could ask, After he ran
9 past the officer, what did you do next? I tased him, and then I had
10 to subdue him, and I arrested him.

11 Now, their concern is -- Mr. -- stop.

12 MR. HAUSER: Sorry, Your Honor.

13 THE COURT: Mr. Lexis's concern is that somehow isn't
14 going to give the jury a full picture as to your client. So you are
15 going to have to agree to that.

16 MR. HAUSER: We will.

17 MS. BONAVENTURE: We will.

18 MR. HAUSER: Yes.

19 THE COURT: And waive any issue regarding that.

20 MR. HAUSER: We'll waive that, Your Honor.

21 THE COURT: As long -- they can do the Taser and the
22 arrest, as long as they don't mention the physical battery aspect
23 of it.

24 MR. HAUSER: I think we're all on the same page here,
25 Judge.

1 THE COURT: Do you agree to that?

2 MR. HAUSER: Yes, we do.

3 MS. BONAVENTURE: Yes.

4 THE COURT: You agree it's not error for me to let it in?

5 MR. HAUSER: No, it's not error.

6 THE COURT: Okay. State.

7 MS. ROSE: And, Your Honor, I could -- the officer can

8 testify using the word attack, to attack her -- he was going

9 through me to attack her.

10 THE COURT: Go after her. All right? Whatever he

11 testified to at the preliminary hearing.

12 MS. ROSE: That's what he was testifying to at the

13 preliminary hearing, though, Your Honor, was that he went to

14 attack her.

15 THE COURT: Okay.

16 MS. ROSE: And that's why, Your Honor, there's so

17 many moving parts of the preliminary hearing.

18 THE COURT: I agree, Counsel. There is a lot of moving

19 parts that should have been resolved prior to today, in fact, prior

20 to me impaneling a jury in this matter.

21 MS. ROSE: I understand that, Your Honor. I just want

22 to make sure, again, that I'm not causing any type of mistrial or

23 I'm not the one that's bringing in improper evidence.

24 THE COURT: I agree. And I am not failing the State in

25 any way. This was raised orally by the defense at the time of trial,

1 but I have to deal with it.

2 So he's going to testify as to what he saw, and you can
3 object if you think it's whatever. But he's probably going to
4 testify somewhere along the lines that he was going after her to
5 attack her.

6 MS. BONAVENTURE: Well, that's what he used and
7 said in his preliminary hearing statement, that I was between him
8 and the individual that he was going after. There's no need to use
9 to word attack. That, at that point, is speculative.

10 THE COURT: You can object. I mean, in other words --
11 I'm not going to micromanage this direct and cross-examination.

12 MS. BONAVENTURE: And I don't know why they're
13 asking you to.

14 THE COURT: And I don't -- and I expect both parties
15 not to try to create error in this record.

16 MR. HAUSER: No, Your Honor.

17 THE COURT: Okay?

18 MS. ROSE: And like I said, Your Honor, I am being
19 overly cautious --

20 THE COURT: So if he says something that you feel is
21 not based on personal knowledge or -- make the appropriate
22 objection at the time.

23 MR. HAUSER: That we can do.

24 THE COURT: Okay. Is there anything else?

25 MR. HAUSER: Not at this time, Your Honor.

1 MS. ROSE: And, Your Honor, we can do opening
2 statements, but --

3 THE COURT: We're going to do opening statements.
4 We're going to take testimony today.

5 MS. ROSE: I understand that. I'm just -- I would -- like,
6 we need to talk to our witnesses to tell them not to testify as to
7 anything that they saw or any of that -- because all of the
8 witnesses are going to testify as to what they saw that day, and I
9 have to make sure we pretrial them cautiously to ensure that
10 that's not a mistrial in this case, that if they go into that testimony,
11 I have to -- we have to direct them to leave that out, because as of
12 right now --

13 THE COURT: What are you asking me, Counsel?

14 MS. ROSE: Just before -- after opening statements, we
15 just -- we're going to need -- of course, we're going to bring our
16 witnesses in. It's just going to be a pause between witnesses so
17 we can pretrial them on the Court's ruling.

18 THE COURT: Counsel, I will give you whatever you
19 deem as necessary.

20 MS. ROSE: Thank you, Your Honor. But we are --

21 THE COURT: This trial is going to definitely go --
22 probably go all day tomorrow, hopefully not into Monday.

23 MS. ROSE: I don't think so, Your Honor. And once we
24 get started with evidence, we'll go quick. But we can --

25 THE COURT: Okay. So I will accommodate the State

1 based on my ruling.

2 MS. ROSE: Thank you, Your Honor.

3 THE COURT: I appreciate you wanting to pretrial your
4 witnesses based on my ruling.

5 So you want to do opening statements. Are you going
6 to do an opening statement or reserve?

7 MR. HAUSER: We are going to do an opening,
8 Your Honor.

9 THE COURT: Okay. We're going to opening
10 statements. Then I'm going to take a recess. For how long will
11 you need?

12 MS. ROSE: Our -- we can have our witnesses here a
13 little bit earlier so we can talk to them before. Probably -- we'll
14 probably just need a 10-minute recess or --

15 THE COURT: You tell me how long you would last. I'll
16 take a recess.

17 Now, where -- where am I going to put the jury? Are
18 your witnesses -- were are your witnesses going to be so you can
19 pretrial them?

20 MS. ROSE: We can either tell our witnesses to meet us
21 on another floor. We can take them --

22 THE COURT: Whatever you want, but just make sure
23 that it's not around the witnesses.

24 MS. ROSE: Oh, yeah. Absolutely, Your Honor.

25 THE COURT: Okay. So I will reserve ruling on the

1 photograph. You can propose it. They can make their -- I need to
2 see the photograph before I rule one way or the other quite
3 frankly.

4 MS. ROSE: Okay.

5 THE COURT: And again, Counsel, this should have
6 been done pretrial if he had tattoos. If you felt the tattoos were
7 prejudicial and you wanted to keep them out, it should have been
8 as a motion in limine based on the case law that somehow it was
9 prejudicial. Waiting until the time of trial is not the appropriate
10 time to bring out this type of matter.

11 So you can make an evidentiary objection, but it can't
12 be a motion to suppress or exclude or things of that nature
13 because the time has run.

14 MR. HAUSER: Certainly, Your Honor.

15 THE COURT: So I'll let you make your objection, and
16 we'll go from there.

17 MS. BONAVENTURE: Thank you.

18 MR. HAUSER: Sounds good.

19 THE COURT: All right. I'm going to bring the jury in. Is
20 everybody prepared -- prepared to go forward?

21 MS. ROSE: Yes, Your Honor.

22 THE COURT: Oh, wait. I've just been advised we don't
23 have all the jurors.

24 MS. ROSE: Okay. And, Your Honor, just -- and for
25 clarification purposes for my opening statement, I can say he was

1 called to the scene based off of a disturbance between a male and
2 a female --

3 THE COURT: No. Say that he was called to the scene.

4 MS. ROSE: If you direct me to the page, Your Honor, I
5 can just make sure that I --

6 THE COURT: I'm looking. I thought it said he was
7 called to the scene because there -- of a man harassing a female,
8 something along that line. He said -- on page 16. I believe it's
9 line -- starting at line 11.

10 Question: And you just tell me a little bit about what
11 happened when you arrived.

12 Answer: I arrived on the call referencing a male
13 potentially harassing a female.

14 That's why he arrived. That's his own words.

15 MS. ROSE: Okay, Your Honor.

16 THE COURT: He arrived -- a male potentially harassing
17 a female.

18 MS. ROSE: Will do.

19 THE COURT: And that's what I expect them to testify
20 to.

21 MS. ROSE: I just wanted to make sure that I'm not
22 saying anything I'm not supposed to during the openings. Thank
23 you.

24 THE COURT: I appreciate that, Counsel. Do we have all
25 the jurors?

1 THE MARSHAL: [Indiscernible] one has a problem says
2 something emotional is going on that he's not sure he can give a
3 hundred percent. I told him that you're not going to let him go,
4 but that I would bring it up. So I brought it up.

5 THE COURT: All right.

6 THE MARSHAL: So I already told him he wasn't going
7 to be dismissed.

8 THE COURT: An issue with one of the jurors has
9 arisen.

10 THE MARSHAL: Unless you want to bring him in so he
11 can explain it to you.

12 THE COURT: One of the jurors has advised the
13 marshal -- what juror?

14 THE MARSHAL: Juror No. 3, Charles Gerdes.

15 THE COURT: -- has advised the marshal because of all
16 the stress and everything that's going on his life, he doesn't
17 believe he can focus --

18 THE MARSHAL: Give a hundred percent.

19 THE COURT: -- give 100 percent. Do you want to
20 question this juror, or do you want me to do anything?

21 MR. LEXIS: I would object.

22 THE COURT: Okay. Do you want me to do anything?

23 MR. HAUSER: If Your Honor wanted to ask a couple
24 questions to find out what's going on, make sure it's not like a --
25 you know, an immediate death in the family. Otherwise, I think

1 he's kind of going have to suck it up.

2 MS. BONAVENTURE: Because maybe -- if it's
3 something he's taking medication for --

4 THE COURT: All right. Do you want me to make a
5 record orbit? That's what I'm asking.

6 MR. HAUSER: Yes. Please, Your Honor.

7 THE COURT: All right. Bring him in here.

8 And I apologize if I'm short, but I want to begin the --
9 we've already impaneled the jury; so we need to move forward
10 with the evidentiary aspect of this case.

11 MS. ROSE: Understood, Your Honor.

12 MR. HAUSER: Quite all right, Your Honor.

13 THE COURT: So I apologize if I was short with either
14 counsel.

15 MR. HAUSER: Not a problem, Your Honor.

16 [In the presence of Juror No. 3.]

17 THE COURT: Can you stand at the podium, or do you
18 want to sit in the jury box?

19 JUROR NO. 3: I can stand right here, sir.

20 THE COURT: Okay. You've notified my marshal that
21 you have an issue serving on the jury?

22 JUROR NO. 3: Yes, sir.

23 THE COURT: And what is your issue, sir?

24 JUROR NO. 3: Right now, this is like the worst week for
25 me emotionally and mentally. Right now, with work and my kids

1 and --

2 THE COURT: Okay. But what is -- why is it the worst
3 week?

4 JUROR NO. 3: Just what I've got going on --

5 THE COURT: All right. Well, I'm asking you what do
6 you have going on that makes it the worst week?

7 JUROR NO. 3: I have a lot of work going on. I have my
8 kids that I haven't seen in probably -- you know, on and off for the
9 last six months, a few times because of my work schedule, a past
10 relationship I'm trying to get through. And right now it's just -- at
11 this point in time, the level of capacity for me to be a proper juror
12 is -- is just not there. I mean, I can't guarantee that I will give 100
13 percent to the juror -- to the jury. And I know --

14 THE COURT: Also -- go ahead. I want a complete
15 record. Tell me -- you haven't really explained to me other than
16 you want to see your kids and work and things of that nature is
17 causing you, I guess, stress.

18 JUROR NO. 3: Yes.

19 THE COURT: Is there anything else you want to tell me
20 to expand on? Because I'm going to give the attorneys the
21 opportunity to question you about this, and then we're going to
22 address it. Is there anything else you want to say as to why you
23 feel that you cannot be a juror on this panel?

24 JUROR NO. 3: I have --

25 THE COURT: And don't -- don't be intimidated by

1 either the Court or the attorneys. You're telling me you don't
2 believe you can give 100 percent, and all I'm asking you is give
3 me some details so the attorneys will understand why you're
4 saying that.

5 JUROR NO. 3: All right. So for one thing about work --
6 or my kids, start off there first. I get my kids every other week and
7 Thursdays. So with work, I've been working so many weekends
8 that I have been switching, and sometimes I can't even have the
9 kids on the days I need to see them. I missed them on Halloween
10 this week, and it just -- it just -- it's getting to me.

11 THE COURT: Do you remember I asked you about if
12 anybody had an undue hardship? And I don't believe you raised
13 your hand.

14 JUROR NO. 3: Well, I -- I honestly didn't think I was
15 going to even be picked due to the fact that -- of me having a
16 record and --

17 THE COURT: What record?

18 JUROR NO. 3: My firearms record back in --

19 THE COURT: Okay.

20 JUROR NO. 3: -- 1980.

21 THE COURT: But you didn't bring -- you didn't mention
22 this when I asked for any undue hardship, if I recall; is that
23 correct?

24 JUROR NO. 3: Correct.

25 THE COURT: What about your work?

1 JUROR NO. 3: It's just -- we're really busy. And
2 specific details, I really can't talk about.

3 THE COURT: And if I understand, you do get your --
4 your children every other week. You're just --

5 JUROR NO. 3: Every other weekend.

6 THE COURT: Every other weekend. Well, we're not
7 going to go on weekends.

8 JUROR NO. 3: Right. I understand that. I'm talking the
9 past six, eight months, I have not been home to see them on
10 those weekends. And I understand that --

11 THE COURT: But you will be home to see them this
12 weekend because we're not going to go on weekends.

13 JUROR NO. 3: I know. But it's not -- I understand that.

14 THE COURT: Okay. Does either counsel wish to ask
15 any questions of this juror?

16 MR. LEXIS: No, Your Honor.

17 MS. BONAVENTURE: I would ask a couple questions. I
18 see here that your marital stat -- your Charles Gerdes; right?

19 JUROR NO. 3: Correct.

20 MS. BONAVENTURE: Okay. I see that your marital
21 status is divorced. Is that something recent?

22 JUROR NO. 3: No. 2014.

23 MS. BONAVENTURE: 2014. So it's been a couple
24 years? Okay.

25 I see here you're an engineer for Northrop Grumman.

1 Is the -- the job you do deal with sensitive information?
2 JUROR NO. 3: Yes.
3 MS. BONAVENTURE: Something of a secret nature?
4 JUROR NO. 3: Yes.
5 MS. BONAVENTURE: Okay. I see you have kids;
6 correct?
7 JUROR NO. 3: Yes. Two -- twins.
8 MS. BONAVENTURE: Two twins. They are what age?
9 JUROR NO. 3: Six years old.
10 MS. BONAVENTURE: Six years old. Okay. And you
11 said you don't really see them often?
12 JUROR NO. 3: Not as much as I'm supposed to.
13 MS. BONAVENTURE: Okay. Are you on any
14 medication for anything? Anxiety? Depression?
15 JUROR NO. 3: Yes, I am, currently. But for --
16 MS. BONAVENTURE: For what?
17 JUROR NO. 3: For anxiety.
18 MS. BONAVENTURE: For anxiety. Okay.
19 And the reason you didn't say anything before is
20 because you didn't want to speak up?
21 JUROR NO. 3: I -- like I said, I didn't think I was going
22 to get picked due to the fact that -- of my past.
23 MS. BONAVENTURE: Oh. About the misdemeanor.
24 JUROR NO. 3: I thought there was enough other
25 people that weren't associated to whatever. And I don't -- and

1 this is the first time being selected to a jury or even being over
2 there being selected.

3 MS. BONAVENTURE: Uh-huh. But you feel it's come
4 to a point where you feel like you have to say something now?

5 JUROR NO. 3: Yes. Yes. And I -- I apologize for not
6 saying anything earlier, but it just -- today just kind of broke it for
7 me.

8 MS. BONAVENTURE: And is there anything that
9 happened particularly today?

10 JUROR NO. 3: Just about everything at work.

11 MS. BONAVENTURE: Okay. So everything --

12 JUROR NO. 3: A situation at work that's been going on
13 for a little while.

14 MS. BONAVENTURE: Okay. So you think you can't
15 give a hundred percent?

16 JUROR NO. 3: No, I can't.

17 MS. BONAVENTURE: What percent do you think you'd
18 be able to give?

19 JUROR NO. 3: Maybe 75, if that. I mean, like I said, I --
20 I am at the point where I can't deal with anything else right now.

21 I mean, if this was next week, then -- or the week after, I
22 think I could deal with it. But right now with work, like I said, and
23 not seeing the kids this week, and then the stress of going
24 through this process, which I kind of was confused about on how
25 everything was done --

1 MS. BONAVENTURE: So when you were sitting over
2 there, are you able to pay attention to what we're saying, or are
3 you thinking about a hundred things?

4 JUROR NO. 3: I'm thinking of a hundred things. But
5 I'm also trying to pay attention to what you guys have going on.

6 MS. BONAVENTURE: Okay. And you think about
7 75 percent of you is here?

8 JUROR NO. 3: Yeah. If that, yes.

9 MS. BONAVENTURE: Okay. I don't have any other
10 questions, Judge.

11 THE COURT: If I don't excuse you, are you going to
12 hold it against either the State or the defense if I don't excuse
13 you, feeling they should have let me go or --

14 JUROR NO. 3: No. I mean, I have no ill feeling. I just --
15 I just needed to tell you my situation and that I don't think I will be
16 able to be a proper juror. I mean --

17 THE COURT: You're telling me you're on medication
18 for anxiety?

19 JUROR NO. 3: Just that one. Just for sleeping.

20 THE COURT: And what are you taking?

21 JUROR NO. 3: Xanax.

22 THE COURT: Okay. Anything else --

23 JUROR NO. 3: But I don't take it during the day. I just
24 take it night.

25 THE COURT: Anything else, sir?

1 JUROR NO. 3: No, sir.

2 THE COURT: Okay. If you could just step outside.

3 JUROR NO. 3: Thank you.

4 THE COURT: Counsel -- I need to let the door shut.

5 [Outside the presence of Juror No. 3.]

6 THE COURT: What -- is he a alternate, or is he a juror?

7 MS. BONAVENTURE: He's Juror No. 3, I believe.

8 THE COURT: Okay. If he's excused, we'll only have

9 one alternate, which is -- should be enough because it's such a

10 short trial.

11 State, what's your position on excusing him?

12 MR. LEXIS: I request that he stay. He stated his

13 underlying reason is he's stressed out at work. I'm sure other

14 people are stressed out at work.

15 THE COURT: My concern is -- well, defense, make your

16 position.

17 MS. BONAVENTURE: Well, Your Honor, I understand

18 the State's position. However, I think it's a little bit different when

19 he's on medication. I mean, I'm stressed out at work, but I'm not

20 on medication to sleep. I haven't gotten to that point, and I can

21 understand that he has.

22 I feel like -- he seems like a very quiet person. In fact,

23 when we were doing jury selection, he was extremely quiet. I

24 think for him to stand up here and say something now took a lot

25 out of him. You see that it's very difficult for him to share that

1 personal information that I was able to get out of him by asking
2 pointed, directed questions because maybe he's just -- he's
3 embarrassed about taking medication.

4 I think that we're fine if Your Honor wants to let him go.
5 Obviously, we have two alternates, and we'll have one left for
6 whatever else is going to fall on us in this trial. I don't know what
7 else is left, but we will submit to the Court's decision.

8 THE COURT: Well, my concern is he did seem sincere.
9 I mean, he -- he did indicate he was on sleep medication, having
10 difficulty sleeping. He can't give 100 percent. The 75 percent, I
11 wasn't necessarily -- obviously, he doesn't want to serve. We've
12 let other people off that can't -- especially the one person who
13 claims he couldn't understand English but -- so this is such is a
14 short trial, I'm going to excuse him, and we'll have one alternate.

15 MR. HAUSER: Your Honor, one more thing before we
16 start. Nothing to do -- nothing to do with the trial. I want to be
17 clear.

18 I came down with food poisoning last night. I just
19 wanted you to know if I'm making a quick dash for the door, I'm
20 not trying to be disrespectful.

21 THE COURT: There's actually a case on this.

22 MR. HAUSER: Is there really?

23 THE COURT: I litigated it. You can be excused.

24 MR. HAUSER: Oh, no. I'm happy to be here. I just
25 want you to know if I leave, I'm not doing it just because I'm

1 bored. I'm doing because I got to go. I just wanted to let the
2 Court know.

3 THE COURT: There's actually a case on this. It's State
4 v. Williams. So if you -- if you have to leave based on -- I forget
5 what it was termed in that case.

6 MR. HAUSER: That's all right.

7 THE COURT: I understand.

8 MR. HAUSER: I appreciate it, Judge. Thank you.

9 THE COURT: I'm ready.

10 THE MARSHAL: Do you want me to excuse him and
11 bring in the rest?

12 THE COURT: Yes.

13 THE MARSHAL: All right.

14 THE COURT: Why don't you bring him in? I have to --
15 I'll excuse him.

16 THE MARSHAL: Okay.

17 THE COURT: Thank you.

18 [In the presence of Juror No. 3.]

19 THE COURT: Thank you.

20 I appreciate your candor, and you seem sincere. I'm
21 not completely convinced that you could not be a good juror, but
22 out of an abundance of safety based on the representations that
23 you made, I am going to excuse you.

24 I don't know if you have to report back to the jury
25 commissioner or not. But in the future, if you're ever called to be

1 selected as a juror, when the judge asks you a question that you
2 think is applicable to you, you need to tell that judge.

3 JUROR NO. 3: I understand. And I apologize.

4 THE COURT: And I'm not -- I'm not being mean. I truly
5 am not because I do believe you're sincere. And -- but I'm just
6 saying the reason we go through the jury selection process is
7 because we want people who want to be jurors. We want 12
8 impartial jurors.

9 And I appreciate, again, your candor, but again, when --
10 like on the undue hardship, things like that, or anything, tell the
11 judge. A couple of people actually told me a few things. A lady,
12 like, was going to have a surgery, and things of that nature.

13 So, again, I do think you're sincere, and out of
14 abundance of cause of action based on what you represent to me,
15 I am going to excuse you.

16 JUROR NO. 3: All right. Thank you. Thank you.

17 THE COURT: Okay. Thank you.

18 [Outside the presence of Juror No. 3.]

19 THE COURT: Can I bring the jury in now?

20 MR. HAUSER: Yes, Your Honor.

21 THE COURT: Usually I'm very patient.

22 THE MARSHAL: All rise for the jury.

23 [In the presence of the jury.]

24 THE COURT: You may be seated. Thank you.

25 Let the portion of -- the proceedings, the trial, we're

1 going to, at this point, take evidence. But before we -- any
2 witnesses are called to testify, the parties are going to have the
3 opportunity to make an opening statement.

4 State of Nevada, you may present your opening
5 statement to the jury at this time.

6 MS. ROSE: Thank you, Your Honor.

7 **OPENING STATEMENT BY THE STATE**

8 MS. ROSE: On August 9th, 2016, Officer Karanikolas,
9 who I'm going to refer to as Officer K since it's kind of a mouthful,
10 responded to 4770 South Pecos at the Extra Space Storage based
11 off a disturbance call -- based off a call that a male was potentially
12 harassing a female.

13 At which time Officer K had responded to the scene at
14 the Extra Space Storage, he sees a Pontiac which matches the car
15 in the description of the call. He approaches -- he approaches the
16 Pontiac, sees the driver in the vehicle, makes contact with the
17 driver. The driver identifies himself as the defendant, who's
18 sitting right behind me as Ronald Allen. The officer takes -- the
19 officer tells the defendant to hang tight, stay in your vehicle. He
20 goes back to his patrol vehicle to run his identification.

21 At which time, a woman comes out of, a female --

22 MS. BONAVENTURE: Your Honor, could we please
23 approach. I highly object.

24 THE COURT: Approach.

25 [Bench conference was had and transcribed as follows:]

1 MS. BONAVENTURE: We dealt with this before the last
2 trial. But she's making -- she's testifying for the record right now.
3 She's not saying that the evidence may show this. She's not
4 saying any of that. She's actually testifying on the record.

5 THE COURT: Once in a while, can you throw in, We
6 expect the evidence to show?

7 MS. ROSE: I will.

8 MS. BONAVENTURE: That's what we want.

9 MS. ROSE: I will.

10 THE COURT: Thank you.

11 [Bench conference was concluded.]

12 MS. ROSE: The evidence will show in this case that the
13 officer then went back to his patrol car to run his identification.

14 The evidence will show that there is a female who then
15 approached the officer's vehicle, frantic. The officer started
16 having a conversation with her.

17 At that time, the defendant jumped out of his vehicle
18 and, at which time, Officer K then approached the defendant,
19 patted him down for any potential weapons, and put him on the
20 front of the patrol car.

21 Now, at the front of the patrol car, Officer K is trying to
22 talk to the individual when he takes off running. The evidence will
23 show that he takes off running around the patrol car.

24 Officer K wants to cut him off. As he goes around to
25 his other side of the patrol car, he gets in the front of the

1 defendant, and he realizes the defendant is not fleeing at the time.
2 He's actually trying to get to the female, who is standing closer to
3 Officer K. The officer is the only person -- the evidence will show
4 that the officer is the only person that separates the defendant
5 and the female.

6 So the defendant pushes through the officer. The
7 officer then kind of has to regain his balance after the push, the
8 push -- the forceful push, has to regain his balance, steps back
9 with his right leg, and immediately buckles. He drops to his knee,
10 at which time he's immobile. He can't move. He sees the
11 defendant running, has to deploy his Taser at one point, and
12 defendant's actually apprehended.

13 Ladies and gentlemen, after the conclusion of this case,
14 after you hear all the evidence and the testimony, the State's
15 going to be asking you to hold the defendant guilty to one count
16 of the battery of a protected person resulting in substantial bodily
17 harm.

18 Thank you.

19 THE COURT: Defense counsel, do you wish to make an
20 opening statement?

21 MR. HAUSER: Yes, Your Honor. May I proceed?

22 THE COURT: Yes.

23 **OPENING STATEMENT BY THE DEFENSE**

24 MR. HAUSER: Good afternoon, ladies and gentlemen.

25 This is Ronald Allen. And he sits here before you today

1 an innocent man, an innocent man that I and Ms. Bonaventure are
2 proud to represent.

3 And he sits here today an innocent man because the
4 law defends him in this case. He sits here an innocent man
5 because the State has the burden of proof in this case. That's
6 what you're going to have evaluate today is can the State prove
7 their case beyond a reasonable doubt?

8 You see, as the defense, we bear no burden today.
9 We're not required to ask any questions. Witnesses are going to
10 take the stand. We don't have to ask questions. I don't have to be
11 up here talking to you right now. We didn't have to ask you any
12 questions during jury selection. This entire trial, Ms. Bonaventure
13 and I can sit at that table and not say a word, and it wouldn't
14 change the fact that Mr. Allen is presumed innocent in the eyes of
15 the law.

16 So what does the State actually have to prove today
17 beyond a reasonable doubt? They have to prove specifically two
18 things: One, that Mr. Allen committed a willful act that
19 constitutes battery. And two, that the battery was the direct cause
20 of the officer's injury.

21 Members of the jury, when you hear all the evidence
22 today, I ask you to critically evaluate it. And I ask you to do this
23 job knowing not that it is easy, but that it is hard because an
24 officer's going to take that stand today, and the evidence is going
25 to show that he did get hurt. And you'll probably feel sympathy

1 for him. And that's okay.

2 But what makes your job so hard today is that you will
3 have to set those feelings aside and evaluate only the evidence as
4 it's presented to you. And that's what I ask you to do today: to
5 not be blinded by sympathy, to put those feelings aside, to
6 critically evaluate each and every witness that takes that stand.
7 And I'm confident that if you do, you will come back with the only
8 verdict that the evidence supports in this case. And at the end of
9 this trial, we're going to ask you to find Mr. Ronald Allen not
10 guilty of battery on a protected person with substantial bodily
11 harm.

12 Thank you.

13 THE COURT: Thank you, Counsel.

14 The State's going to call their first witness, but I need a
15 short recess before the State calls their witness. I apologize. We
16 are actually going to go forward with this evidentiary portion of
17 this case; so I'm going to take a ten-minute recess. The
18 admonishment's going to take longer than your recess.

19 During this recess, you are admonished not to talk or
20 converse among yourselves or with anyone else on any subject
21 connected with this trial; or read, watch, or listen to any report or
22 commentary on the trial or any person connected with this trial by
23 any medium of information, including, without limitation, to
24 social media, text, newspapers, television, the Internet, and radio.

25 Do not visit the scene of any of the events mentioned

1 during this trial or undertake any investigation. Do not do any
2 posting or communications on any social networking sites or do
3 any independent research, including Internet searches, or form or
4 express any opinion or -- on any subject connected with the trial
5 until the case is finally submitted to you.

6 We'll be in a short recess for ten minutes. Thank you.

7 THE CLERK: All rise for the jury.

8 [Outside the presence of the jury.]

9 [Recess taken from 1:17 p.m. until 1:42 p.m.]

10 THE COURT: Thank you. Bring the jury in, please.

11 THE MARSHAL: Yep. I'm on it.

12 THE COURT: This is a continuation of Case
13 No. C-16-318-255, Plaintiff State of Nevada versus Defendant
14 Ronald Allen.

15 [In the presence of the jury.]

16 THE COURT: Let the record reflect that counsel for the
17 State, counsel for the defendant -- the defendant and the jury is
18 present. You may be seated.

19 State ready to call their first witness?

20 MR. LEXIS: Shannon Rohrbaugh.

21 SHANNON ROHRBAUGH

22 [having been called as a witness and being first duly sworn,
23 testified as follows:]

24 THE CLERK: Please be seated.

25 Would you state and spell your name for the record.

1 THE WITNESS: My name is Shannon Rohrbaugh. It's
2 S-H-A-N-N-O-N, last name Rohrbaugh, R-O-H-R-B-A-U-G-H.

3 MR. LEXIS: May I proceed, Your Honor.

4 THE COURT: Yes.

5 **DIRECT EXAMINATION**

6 BY MR. LEXIS:

7 Q Where do you work, sir?

8 A For the Las Vegas Metropolitan Police Department.
9 Specifically Bolden Area Command.

10 Q How long have you worked there?

11 A January will be 12 years.

12 Q Can you take us through a history of where you've
13 been?

14 A I started out on patrol in Enterprise Area Community,
15 which was the Old Southwest. Then I went to Bolden Area
16 Command. I was on Saturation Team. And then I was in Motors
17 and Traffic section. Then I got promoted, and I was in Southeast
18 Area Command. And now I'm back in Bolden Area Command.

19 Q Where were you working on August 9th, 2016?

20 A Southeast Area Command.

21 Q And you were a sergeant at that time?

22 A Yes, sir, I was.

23 Q And are you in charge of a group of officers?

24 A Yes, sir, I am.

25 Q And at that time, was Officer Karanikolas one of your

1 team members?

2 A Yes, sir, he was.

3 Q And did you get a call that day, a distress call from him,
4 at a particular location at 4770 South Pecos?

5 A Yes, sir. There was a distress call announced over the
6 radio.

7 Q And is that here in Clark County, Nevada?

8 A Yes, sir, it is.

9 Q Upon receiving that call from Officer Karanikolas,
10 where did you go?

11 A At that point, I left the previous call and responded
12 emergency lights and sirens to his call.

13 Q Okay. Were you wearing a body cam that day?

14 A Yes, sir, I was.

15 Q And at that point in time, was everyone in Metro
16 wearing body cam or just a select few?

17 A No, they weren't. It was just a select few.

18 Q And to your knowledge with the people that responded
19 to this investigation, are you the only one that had body cam?

20 A Yeah. For that scene, yes, sir.

21 Q Officer Karanikolas did not have a body cam?

22 A No, he did not have one issued.

23 Q And did you activate it at that point in time where you
24 got the call and you were going to the scene?

25 A Yes, sir, I did.

1 Q Were you able to review a clip of your body cam prior
2 to your testimony today?

3 A Yes, sir, I did.

4 Q And is that a true and accurate representation of what
5 the body cam looked like on that day?

6 A Yes, sir, it is.

7 MR. LEXIS: Your Honor, I move to admit by stipulation
8 State's Exhibit 1.

9 THE COURT: Do you have any objection?

10 MR. HAUSER: By stipulation, we have no objection,
11 Your Honor.

12 THE COURT: Very good. Ladies and gentlemen of the
13 jury, you're going to be shown a portion of a body camera
14 footage in a second, which has been edited at the Court's request.

15 And, Counsel, I apologize. Did you move for
16 admission?

17 MR. LEXIS: Yes.

18 THE COURT: And it's admitted.

19 **[PLAINTIFF'S EXHIBIT NO. 1 ADMITTED.]**

20 BY MR. LEXIS:

21 Q Is this you going to the scene, sir?

22 A Yes, sir, it is.

23 Q Are you going code?

24 A Yes, sir, I am.

25 Q What does that mean?

1 A That means emergency systems, lights and sirens.
2 Q Were you the first person to arrive at the scene?
3 A Yes, sir, I was.
4 Q Did you see Officer Karanikolas when the shift started,
5 sir?
6 A Yes, sir, I did.
7 Q And you reached [indiscernible] to him at that time?
8 A No, there wasn't, sir.
9 Q Officer Karanikolas was acting in his capacity as a
10 peace officer that day?
11 A Yes, sir, he did.
12 Q Peace officer meaning as a police officer?
13 A Yes, sir.
14 Q Okay. That police vehicle to the right, is that Officer
15 Karanikolas's police vehicle?
16 A Yes, sir, it is.
17 Q And is he parked behind the suspect's vehicle?
18 A Yes, sir, he was.
19 Q Is that Officer Karanikolas?
20 A Yes, sir, it is.
21 Q And is that the suspect that he's on top of?
22 A Yes, sir, it is.
23 Q Is that the person that you've come to learn -- Ronald
24 Allen?
25 A Yes, sir.

1 Q Do you see that person in Court today?

2 A Yes, sir, I do. He's at the defendant's table to the left.

3 MR. LEXIS: Let the record reflect the sergeant's

4 identified the defendant.

5 THE COURT: So reflected.

6 BY MR. LEXIS:

7 Q Are you now assisting Officer Karanikolas?

8 A Yes, sir, I am.

9 Q Did he appear to be in any pain?

10 A Yes, sir, he did.

11 Q Do you see remnants of a Taser beam -- his Taser

12 beam deployed?

13 A Yes, sir, I do.

14 Q Do you see him -- is that Officer Karanikolas there

15 hobbling back?

16 A Yes, sir, it is.

17 Q Does it appear to be with a limp?

18 A Yes, sir. I do.

19 Q And at that point, do you take the defendant into

20 custody?

21 A Yes, sir, I did.

22 Q Was the medics called?

23 A Yes, sir, they were.

24 Q Did you then come to learn that Officer Karanikolas

25 might have a torn Achilles?

1 MR. HAUSER: Objection. Foundation.

2 THE COURT: Are you going to tie up foundation with a
3 later witness, Counsel?

4 MR. LEXIS: Yes, Your Honor.

5 THE COURT: Okay. I will allow it subject to them
6 laying a foundation with a later witness.

7 BY MR. LEXIS:

8 Q You can answer that, sir.

9 A Yes, sir, I did.

10 Q Did you then come in contact with another -- a woman,
11 an African-American female, named Delacey Collins?

12 A Yes, sir, I did.

13 Q And did she appear to be upset?

14 A Yes, sir, she did.

15 Q Did you then conduct an investigation to see if any
16 other witnesses may be around?

17 A Yes, sir, I did.

18 Q Did you come into contact with a woman named Lisa
19 Gordon?

20 A Yes, sir, I did.

21 Q And did she appear to be inside the office complex at
22 the place that you arrived at?

23 A Yes, sir, she was.

24 Q That being 4770 Pecos?

25 MR. HAUSER: Objection. Leading. Leading,

1 Your Honor.

2 THE COURT: Overruled.

3 BY MR. LEXIS:

4 Q You can answer that, sir.

5 A Yes, sir. She was inside the building.

6 Q Okay.

7 THE COURT: These are foundational questions.

8 BY MR. LEXIS:

9 Q Did you attempt to see if there was any surveillance
10 video?

11 A Yes, sir, we did.

12 Q And was any surveillance video existed?

13 A No. There was no video available.

14 Q Was Officer Karanikolas eventually transported to
15 UMC?

16 A Yes, sir, he was.

17 Q And the defendant then taken into custody after the
18 investigation was completed?

19 A Yes, sir, he was.

20 MR. LEXIS: Court's indulgence.

21 BY MR. LEXIS:

22 Q And, sir, obviously, Officer Karanikolas had to use
23 force?

24 A Yes, sir, he did.

25 Q And as the sergeant, did you conduct and do some

1 force investigation?

2 A Yes, sir, I did.

3 Q And was that ultimately deemed justified?

4 A Yes, it was.

5 MR. LEXIS: No further questions, Your Honor.

6 THE COURT: You pass the witness. Defense?

7 MR. HAUSER: Your Honor, just a few questions.

8 **CROSS-EXAMINATION**

9 BY MR. HAUSER:

10 Q Officer, you arrived after Officer Karanikolas was
11 already hurt; is that right?

12 A Yes, sir, I did.

13 Q You didn't see what caused his injury?

14 A No, sir, I did not.

15 Q I appreciate that. Thank you, Officer.

16 MR. HAUSER: I'll pass the witness, Your Honor.

17 THE COURT: Any rebuttal questions?

18 MR. LEXIS: No, Your Honor.

19 THE COURT: Can the witness be excused?

20 MR. LEXIS: Yes, Your Honor. I leave it to the Court.

21 THE COURT: Yes?

22 MR. LEXIS: Yes. He can be excused [indiscernible].

23 THE COURT: Thank you, Officer.

24 THE WITNESS: Thank you, Your Honor. Thank you.

25 THE COURT: State, your next witness?

1 MS. ROSE: And, Your Honor, the State's ready to call
2 its next witness.

3 THE COURT: Who is it? Bring him in.

4 MS. ROSE: We are calling Leopold Karanikolas.

5 LEOPOLD KARANIKOLAS

6 [having been called as a witness and being first duly sworn,
7 testified as follows:]

8 THE CLERK: Would you state and spell your name for
9 the record.

10 THE WITNESS: Leopold Karanikolas, spelled
11 L-E-O-P-O-L-D, last name K-A-R-A-N-I-K-O-L-A-S.

12 MS. ROSE: May I proceed, Your Honor.

13 THE COURT: Absolutely.

14 MS. ROSE: Thank you.

15 **DIRECT EXAMINATION**

16 BY MS. ROSE:

17 Q How are you employed?

18 A I'm currently employed with King County Sheriff.

19 Q Okay. Are you employed in any other capacity?

20 A I am. I'm also employed as a U.S. Army reserve officer.

21 Q Okay. And how are you previously employed?

22 A After graduating West Point, I was a active duty officer
23 for approximately five years. I got out of the military, did a year
24 as a logistics provider, and then joined Las Vegas Metropolitan
25 Police Department in 2008. And then I rejoined the Army through

1 the reserves in 2009.

2 Q Okay. So I'm going to take you back to August of 2016.

3 Were you employed -- were you an employee of the
4 Las Vegas Metropolitan Police Department?

5 A I was.

6 Q And were you employed as a peace officer?

7 A Yes.

8 Q And a peace officer is synonymous with a police
9 officer?

10 A It is.

11 Q Okay. Now, back -- I'm going to take you specifically to
12 August 9th, 2016.

13 On August 9th, 2016, were you working -- were you
14 dispatched to a call, a harassment call between a male and female
15 at 4770 South Pecos here in Clark County, Nevada?

16 A I was.

17 Q Okay. And when you arrived on scene, what did you
18 do?

19 A When I arrived on scene, due to the details of the call,
20 there said there was a brown Pontiac that was waiting inside the
21 parking lot. So when I arrived, I saw a brown Pontiac that was
22 described, and I pulled in behind the brown Pontiac.

23 Q Okay. When you pulled in, were you in a patrol
24 vehicle?

25 A I was. A marked unit.

1 Q Okay. So we know them as black-and-whites?

2 A Yeah.

3 Q Okay. Are you in an issued -- Las Vegas Metropolitan

4 Police Department-issued uniform?

5 A I was.

6 Q Okay. Were you wearing a body cam that day?

7 A I was not.

8 Q Okay. And back in 2016, was it required for all officers?

9 A It was not.

10 Q Okay. All right. So you get -- you get out, and you go

11 to the Pontiac that you identified from the call?

12 A Correct.

13 Q Okay. What do you do once you reach the Pontiac?

14 A I walked up to the window and saw a black male sitting

15 in the vehicle. He was reading a newspaper; so I made contact

16 with that individual.

17 Q Okay. Did you -- did the individual give you a name?

18 A He did.

19 Q Okay.

20 A He gave me the name Ronald Allen.

21 Q Okay. Did he give you identifiers for you to run the

22 individual?

23 A He did not. He didn't have any ID on him.

24 Q Okay. What did you have to -- after you discussed, you

25 know, you had that conversation with him?

1 A So I basically got the information from him, asked him
2 a couple questions of why he was here. He stated I was here for
3 family, family, and he was meeting family there, and he was just
4 waiting inside the vehicle until they arrived. He said he lived
5 there.

6 After I asked him a couple more preliminary hearing
7 questions, basic questions about his background, I just told him
8 to stay within the vehicle and do not leave the vehicle, and I went
9 back to my vehicle.

10 Q Okay. Once you got to your vehicle, what happened?

11 A As I got inside my vehicle, I went and started running
12 his name on our systems to try to locate him in the system since I
13 didn't have an ID on him. I couldn't find him. So typically, what
14 we do is we try to go through several different databases to see if
15 we could find him.

16 As I was sitting there looking through all my systems
17 trying to identify the individual, a black female ran up to my car
18 on the driver's side.

19 Q On your driver's side. Okay.

20 I'm going to show you a picture, which is State's
21 Proposed Exhibit No. 7.

22 THE COURT: Have you shown it to defense counsel?

23 MS. ROSE: Yes. And I do believe that this is going to
24 be --

25 THE COURT: Any objection?

1 MR. HAUSER: No, Your Honor.

2 THE COURT: It will be admitted.

3 MS. ROSE: And, Your Honor, may I approach the
4 witness?

5 THE COURT: Absolutely.

6 MS. ROSE: Thank you.

7 BY MS. ROSE

8 Q Do you recognize this, Officer?

9 A I sure do.

10 Q Okay. And how do you recognize it?

11 A That was the brown Pontiac that was described and
12 that I had pulled in behind.

13 Q Okay. Was -- does that fairly and accurately depict of
14 the car that you saw that day?

15 A Yes, it is.

16 MS. ROSE: And, Your Honor, I believe this is
17 stipulated, but I move for admission of State's Proposed Exhibit
18 No. 7.

19 THE COURT: So moved. So admitted. I'm sorry.

20 MS. ROSE: Thank you.

21 **[PLAINTIFF'S EXHIBIT NO. 7 ADMITTED.]**

22 MS. ROSE: Can I have the element, please?

23 That's okay. While we get that going, we can continue.

24 BY MS. ROSE

25 Q Okay. So you have -- so you said an African-American

1 female approached your vehicle?

2 A Yes.

3 Q Okay. Without telling me what she said or any
4 conversations that you had with her, what was her demeanor?

5 A She was very agitated. Very upset, very scared, very
6 frantic. She was talking so fast, I couldn't understand what she
7 was saying to me. She was just throwing papers in my face. At
8 one point, I actually had to stop her and say, Listen, I need you to
9 stop. I need you to slow down. We need to go back because I
10 don't understand anything you're saying to me. She was very
11 insistent. Very insistent.

12 Q Okay. Now, did you, at one point, determine that she
13 was the female involved in the call?

14 A Yes, I did.

15 Q Okay. And -- at that point, did you see the defendant
16 do anything?

17 A So as I was trying to interact with her, the defendant
18 immediately jumped out of the vehicle, very quickly. And when
19 he did that, I immediately took the papers that she was just kind
20 of throwing at me, and I threw it back at her and told her to back
21 up.

22 Q Okay. So you directed her to back up?

23 A I did.

24 Q Okay. When the defendant jumped out of his vehicle,
25 what did you do?

1 A I immediately jumped out of my vehicle and engaged
2 with the defendant.

3 Q Okay. And what did you do with the defendant?

4 A So he -- he started approaching my vehicle. I told him
5 to come to my vehicle. He had his hands up, kind of just walking
6 towards my vehicle. I directed him to the front -- front of my
7 patrol car, right there where there's a buddy bumper. That's
8 where I kind of directed him.

9 I got behind him, asked him he had anything on him I
10 need to know about, anything if I could pat him down. He said no
11 problem. So I put his hands behind his back. He let me pat him
12 down. I patted him down really quick, made sure there was
13 nothing on him. And then I went back to my driver's side by the
14 driver's side front wheel well to talk to him.

15 Q Okay. And when you went to go talk to him after you
16 placed him in front of your patrol vehicle, what did the defendant
17 do?

18 A So I started asking the question. And he immediately
19 started running. He ran facing the -- if you're facing the car, he
20 ran to the passenger's side like it was like a race, like a sprint. He
21 immediately ran.

22 Q Okay. Okay. He immediately -- when he immediately
23 ran, what did you do?

24 A I immediately ran up the driver's side of the vehicle.
25 And I believe called it out on the radio to give me a red. So he ran

1 the passenger's side, and I kind of ran the driver's side.

2 Q You called on the radio to do what?

3 A Give me a red, which basically means I'm in trouble.

4 Something's going on.

5 Q Okay. And you made that -- that call to dispatch?

6 A Yes.

7 Q Okay. So when you ran -- when you -- when the
8 defendant ran -- and at the time -- and I'm sorry, we don't have
9 the -- we don't have this functioning here, but the vehicles are --
10 your patrol vehicle is parked behind the defendant's vehicle;
11 correct?

12 A Correct.

13 Q Okay. So defendant is running the -- on the
14 passenger's side?

15 A Of my patrol vehicle.

16 Q Of your patrol vehicle. And then -- you're at the
17 driver's side already?

18 A Right, correct.

19 Q So you run from the driver's side to cut off the
20 defendant?

21 A Correct.

22 Q Okay. Did you eventually get in front of the defendant?

23 A I did. So as I ran to the back of my vehicle, I anticipated
24 that he was going to kind of veer this way, kind of veer to the back
25 and to the right.

1 MS. ROSE: And I'm sorry. Your Honor, just for the
2 record, the officer is making his hand motions to veer to the right.

3 THE COURT: That's correct.

4 THE WITNESS: So -- and I thought I was going to be
5 able to cut him off. So as I turned the corner on the vehicle, that's
6 when he was almost right in front of me.

7 BY MS. ROSE

8 Q Okay. And you're moving your -- if you're moving your
9 right hand, that's going to -- that's your -- that's yourself?

10 A Yes, that's correct. My right hand, this is me -- I'm
11 sorry. This is me, and this is the defendant. So he's -- so the
12 vehicle -- if I can use my little prop right here, the vehicle's right
13 here. This is the front of the vehicle. So he's running this way,
14 and I'mll coming this way.

15 Q Perfect. And just -- this is all recorded; so we just have
16 to make sure we make the representations on the record.

17 Okay. So you eventually get in front of the defendant.
18 What happens then?

19 A So when I -- when he came around this way and I came
20 around, he was pretty much -- probably about halfway if not
21 almost three-fourths of the way already on the backside of my
22 vehicle. So I turned and stepped to his direction in order to pretty
23 much cut him off, and that's when he kind of sped up.

24 MS. ROSE: Okay. And, Your Honor, just for the record,
25 the officer is using both of his hands to kind of depict the area in

1 which the defendant is in comparison to him, where the
2 defendant is coming around to the left and the officer's coming to
3 the right.

4 THE COURT: So reflected.

5 BY MS. ROSE

6 Q Okay. So he gets in front of you -- you get in front of
7 him. You -- you're at the back tailgate -- or the taillight of your
8 car --

9 A Correct.

10 Q -- of your patrol vehicle. What happens when that
11 interaction happens?

12 A So as he sees me, he speeds up. And there's an
13 impact. I can't -- at some point, I feel some kind of pressure on
14 my vest, right here on my right side. It feels like a push or
15 potentially a punch, more -- probably a push. And as he hits me, I
16 have to step back in order to gain my balance.

17 Q Okay. And you're wearing your vest?

18 A Correct, I am.

19 Q Okay. And that's a tactical vest?

20 A Correct, it is.

21 Q Okay. So you can't -- it's not that -- you know that
22 impact was made that he either pushed or punched. You just
23 can't feel exactly what it is because of that vest?

24 A Correct.

25 Q Okay. So he pushes or punches you, and you step

1 back. I'm going to ask you, for the ladies and gentlemen of the
2 jury, can you step back off the box?

3 And I'm not going to do the demonstration, but can
4 you -- once he pushes or punches you, what happens to your
5 body?

6 A So this is, like, the backside of the vehicle. And I stay
7 calm, right? I step this way, and then I see him.

8 Q Okay.

9 A So as soon as he kind of hits me, I back up. I basically
10 have to step back in order to catch my balance.

11 Q Okay. And that's a result -- a direct result from his
12 push?

13 A Yes.

14 Q Push or punch?

15 A Yes, correct.

16 Q Okay. And then what happens -- go ahead --

17 MS. ROSE: And for the record, Your Honor, the officer
18 is standing up, and he's -- he stepped back with his right foot after
19 demonstrating the defendant's push or punch to his chest.

20 THE COURT: The record is so reflected.

21 THE WITNESS: So when that happened, when I
22 stepped back, I immediately felt like a pop in the back of my body
23 in my leg. I didn't know what it was. And I immediately dropped.
24 So it basically just -- I -- immediately, I dropped to the ground.

25 ///

1 BY MS. ROSE

2 Q Okay. And that's based off of that initial push or
3 punch?

4 A Correct.

5 THE COURT: And let the record reflect when the
6 witness dropped to the ground, he dropped to one knee; is that
7 correct?

8 MS. ROSE: That's correct.

9 THE WITNESS: Correct.

10 THE COURT: And is that your testimony, you dropped
11 to one knee?

12 THE WITNESS: I can't recall. But yes, I remember it as
13 one knee.

14 THE COURT: Thank you.

15 MS. ROSE: Okay.

16 BY MS. ROSE

17 Q Thank you. You can step forward or step back to the
18 box.

19 Okay. So after that initial push/punch, was he running
20 fast toward you?

21 A Oh, he was. He was very fast.

22 Q Okay. So he sprinted through you -- sprinted kind of
23 through you?

24 A Yes.

25 Q Okay. At what -- what did you do after you dropped to

1 a knee?

2 A So as I dropped to a knee, he kind of moved between
3 me and the vehicle to get past me.

4 Q Okay.

5 A So I -- I describe it as, like, a swimming motion. That's
6 kind of the way -- it's easiest for me to describe it. He kind of
7 grabs to the vehicle, and he kind of grabs me, and he kind of
8 shoves past us.

9 Q Okay.

10 A When he does that, I'm on the ground. So I kind of
11 turn, and I try to step off my right foot.

12 Q Okay. What happens when you try to step off your
13 right foot?

14 A Nothing. I can't get up.

15 Q You can't get up?

16 A Nothing. I don't feel anything.

17 Q Okay. And that was from the initial -- due to the initial
18 push, that pop that you heard?

19 A Correct.

20 Q Okay. And then no movement in your right leg?

21 A Correct.

22 Q Okay. Was he running towards anything?

23 A Yes. So the female -- when I came this way, the female
24 was off to my right.

25 Q Was -- off to your right behind you?

1 A To my front right. So kind of -- she was kind of right
2 there. If this is the end of the vehicle, she was kind of right there,
3 and I saw her moving this way.

4 Q Okay.

5 A So she -- so she came this way. And he was running
6 towards her.

7 Q Okay. Fair to say that you weren't the initial target?

8 A Correct.

9 Q Okay. Fair --

10 A More -- it's probably closer to say that I wasn't his
11 primary target.

12 Q You weren't his primary target?

13 A Correct.

14 Q What do you believe his primary target was?

15 A The female.

16 Q Okay. What was separating him and the female?

17 A Myself.

18 Q Okay. At one point, when you turned to see the
19 defendant, did you have to deploy your Taser?

20 A Yes.

21 Q What direction was he running?

22 A He was running back up the driver's side. So he was
23 running around the back and back towards the front of my vehicle
24 on the driver's side.

25 Q Okay. And at one point, you had to deploy your Taser?

1 A Correct.

2 Q Okay. And I'm sorry, just for the record, what's the --
3 what's the official term of the Taser?

4 A We call it an electronic control device, ECD.

5 Q Okay. Okay. Now, at any -- when he started initially
6 running -- let's say when he was running just off the cuff, off the
7 bat, was he able to run past you, the other direction?

8 A Yes. He had multiple ways to run.

9 Q Okay. So he could've run straight?

10 A Correct. He could've gone up south on -- which I
11 thought he was going to do. I thought he was going to go south
12 on Pecos.

13 Q But he didn't?

14 A No, he did not.

15 Q Okay. And instead, he ran your direction?

16 A Correct.

17 Q And your direction -- the only thing that was separating
18 him and the female was you?

19 A Correct.

20 Q Okay. Officer, now, after you deployed the Taser, what
21 happened?

22 A After I deployed the Taser, it hit him and he locked up,
23 so -- and fell on the ground. So locked up, his -- basically, his
24 muscles stopped working, for lack of a better term, and he fell on
25 the ground.

1 Once he fell on the ground, I kind of hobbled my way
2 up there. Like, I think one foot kind of somewhat crawled, and
3 then hobble my way up there on one foot. I got on top of him and
4 then started to take him into custody. He started kind of grabbing
5 my fingers. So when I had his hands behind his back, he kind of
6 started grabbing my hands, and I told him to knock it off. And
7 then I was able to put him into custody and put handcuffs on him.

8 Q Okay. And did Sergeant Rohrbaugh -- Rohrbaugh end
9 up coming to your assistance?

10 A Correct.

11 Q Okay. With the initial female, was there any other
12 female with her?

13 A There was. There was a second female.

14 Q Okay. Did you have any time to identify that
15 individual?

16 A No. I have no idea who she is.

17 Q Okay. Now, after Sergeant Rohrbaugh got there, were
18 you transported to UMC?

19 A I was.

20 Q Okay. And was that by ambulance?

21 A Yes.

22 Q Okay. Once at UMC, were you seen by a doctor?

23 A Seen by, like, a bunch of them.

24 Q Okay.

25 MS. ROSE: Court's brief indulgence.

1 May I approach your -- your clerk, Your Honor.

2 THE COURT: Absolutely.

3 MS. ROSE: Thank you.

4 BY MS. ROSE

5 Q And you were seen at University Medical Center?

6 A Correct.

7 Q Okay. And that was on August 9th, 2016?

8 A Correct.

9 Q Okay.

10 MS. ROSE: And, Your Honor, at this time, the State's
11 going to move for admission of State's Proposed -- oh, I'm so
12 sorry. Oh, thank you -- State's Proposed Exhibit No. 24, which are
13 certified records of -- medical records from UMC.

14 THE COURT: Any objection?

15 MR. HAUSER: Per stipulation, Your Honor, we have no
16 objection.

17 THE COURT: They're admitted.

18 **[PLAINTIFF'S EXHIBIT NO. 24 ADMITTED.]**

19 MS. ROSE: Thank you, Your Honor.

20 THE COURT: And what exhibit is that, Counsel?

21 MS. ROSE: That's 24, Your Honor.

22 THE COURT: Plaintiff's 24?

23 MS. ROSE: Yes.

24 BY MS. ROSE

25 Q Okay. When you were seen at UMC, what were your

1 injuries?

2 A A couple scratches. But I had basically a partial tear in
3 my right Achilles.

4 Q Okay. Partial tear in your right Achilles?

5 A Correct.

6 Q Did you eventually have to do surgery?

7 A I did.

8 Q Okay. How long -- how long did the surgery take?

9 A I'd say about three hours. Three hours.

10 Q About three hours. How long did it take you to
11 recover?

12 A 100 percent?

13 Q Well, are you at 100 percent now?

14 A I am not, no.

15 Q Okay. How long did it take you to recover from the
16 initial surgery?

17 A So honestly, I don't know how to answer that.

18 So there's stages. So that's the only way I can describe
19 it. It's stages.

20 So the way -- the best way to describe it -- and I've had
21 broken bones -- is a broken bone, after six to eight weeks, it's off.
22 You're good to go. This was basically an -- incremental
23 improvements throughout. So I couldn't even put my foot on the
24 ground. It was too painful. I probably started walking probably
25 early October, maybe mid October is when I could actually start

1 walking or whatever you want to call it, hobbling or old-man
2 walking, whatever you want to say.

3 Q Okay.

4 A So I don't know really how to describe it other than
5 that.

6 Q Okay. So you -- you said you aren't 100 percent better?

7 A I am not.

8 Q As of today's date?

9 A No.

10 Q What are -- what are the prolonged pain that you feel
11 now or prolonged side effects that you feel now?

12 A So it's hard for me to run. When I do run -- so what
13 your Achilles does, it kind of re-cocks your leg to run again. On
14 my right Achilles, it's basically, like, pretty much stomping on the
15 ground is how it feels. I don't feel that spring in my step that I do
16 on my left. It's tight. It's chronically tight. So I really have to
17 worry about stretching it out. Walking down the stairs -- I can feel
18 the pain on the bottom when I'm walking down to the stairs.
19 Especially when it starts to stretch out, I can feel the pain. I work
20 out, which I do, the next day it'll be painful as well.

21 Q Okay. So you're limited with this still to this day?

22 A I am.

23 Q And this is almost -- this is a little bit over a year later?

24 A Correct.

25 Q Okay. And you said that you're currently still employed

1 with the -- or you're now employed with the King County Sheriff's
2 Department?

3 A Uh-huh.

4 Q And where is that at?

5 A It's up in Seattle. Seattle, Washington.

6 Q Okay. So you're still an officer?

7 A I -- that's correct.

8 Q And you are -- you said you were also within the U.S.
9 Army presently?

10 A Yes.

11 Q And you have a lot of running -- running as duties as a
12 Army officer?

13 A Correct.

14 Q And as -- and as a part of the sheriff's company or the
15 sheriff's office --

16 A Correct.

17 Q -- at King County? Okay.

18 And, Officer, quickly, I'm going to show you State's
19 Proposed -- I know this isn't working, so we might have to go old
20 school with the jury -- but these are State's Proposed Exhibits 2, 3,
21 4, 5, and 7.

22 MS. ROSE: Showing the defense counsel.

23 MR. HAUSER: We have no objection to those exhibits,
24 Your Honor.

25 THE COURT: And they're so admitted. Or do you

1 move to admit?

2 MS. ROSE: Yes, Your Honor.

3 THE COURT: They're so admitted.

4 **[PLAINTIFF'S EXHIBIT NOS. 2, 3, 4, 5, 7 ADMITTED.]**

5 MS. ROSE: Thank you. May I approach the witness.

6 THE COURT: Yes.

7 MS. ROSE: Thank you.

8 BY MS. ROSE

9 Q And, Officer, I'm just going to take a -- take a look.
10 You've already seen this?

11 A Correct.

12 Q Was that you're -- was that your [indiscernible] tag that
13 day?

14 A It was.

15 Q Okay. And what's picture -- what's that?

16 A That's a picture of me.

17 Q Okay. On the day of the incident?

18 A Yes, it is.

19 Q Okay. What is this picture?

20 A That's the picture of my leg splinting. I believe the fire
21 department did that.

22 Q Okay. So while on scene, you had the fire
23 department -- the fire department arrived before getting
24 transported?

25 A Correct.

1 Q Okay. And the fire department put a splint on your --
2 I'm sorry, Your Honor -- on your right-hand leg?

3 THE COURT: Counsel, you might want to identify each
4 exhibit as you're going through it with him by exhibit number --

5 MS. ROSE: You're right, Your Honor.

6 THE COURT: -- so we have a clear record.

7 BY MS. ROSE

8 Q This is State's Proposed -- or now admitted 3.

9 That is -- you said that's a picture of your splint on your
10 leg?

11 A Uh-huh.

12 Q And State's -- now admitted 2. Is that just a full body
13 picture of you in the splint?

14 A Correct.

15 Q Okay. I'm sorry. We're going to have do a Vanna
16 White moment.

17 MS. ROSE: May I have permission to publish State's
18 Exhibit 2 and 3.

19 THE COURT: Yes, you do.

20 MS. ROSE: Okay.

21 This is the officer on that date. And don't worry, you
22 will have these photos at the end of the trial.

23 BY MS. ROSE

24 Q Now, the man who did this to you that day, do you see
25 him in court?

1 A I do.

2 Q Can you please identify him by pointing and describing
3 an article of clothing he is wearing?

4 A That's the black gentleman, wearing a white shirt and
5 black pants.

6 Q Okay.

7 MS. ROSE: And, Your Honor, may the record reflect
8 the identification of the defendant.

9 THE COURT: So reflected.

10 MS. ROSE: Thank you, Your Honor.

11 BY MS. ROSE

12 Q Now, on that, I'm going to show you State's Exhibit -- a
13 Proposed Exhibit 8. Sorry.

14 MS. ROSE: Showing defense counsel as marked
15 Proposed Exhibit No. 25.

16 MR. HAUSER: Your Honor, may we approach.

17 THE COURT: Yes. Well, are you making an objection?

18 MR. HAUSER: Yes, Your Honor.

19 THE COURT: You're objecting to the proposed exhibit?

20 MR. HAUSER: We are, Your Honor.

21 THE COURT: Approach.

22 [Bench conference was had and transcribed as follows:]

23 MS. ROSE: So, Your Honor, we were -- we took -- this
24 is -- I mean, it's kind of a bad quality because their objection was
25 with the tattoos. We blew this up, but we'd rather have a clear

1 shot of his face obviously. But this was --

2 THE COURT: Which one are you proposing, Counsel?

3 MS. ROSE: I was going to propose 25 and No. 8.

4 THE COURT: Okay. And why -- why do we need both
5 photos, just duplicates?

6 MS. ROSE: Oh, we wouldn't -- I would only do one.

7 But if Your Honor --

8 THE COURT: Which one do you want?

9 MS. ROSE: I would like State's Proposed 8.

10 THE COURT: Okay. And you're proposing Exhibit 8.
11 What's your objection?

12 MR. HAUSER: I'm sorry. I have to check out which one
13 was 8.

14 MS. ROSE: This one. The top one.

15 MR. HAUSER: Yeah. It's a picture of him in handcuffs,
16 Your Honor. He's already been correctly identified.

17 THE COURT: And they've seen the video with him in
18 handcuffs. There's been testimony that he is in handcuffs.
19 What's the prejudicial --

20 MS. BONAVENTURE: What is this even probative of?
21 This is completely irrelevant. He's already been identified by two
22 officers on the stand.

23 THE COURT: Okay.

24 MR. HAUSER: It's cumulative at this point, Your Honor.

25 MS. BONAVENTURE: It's absolutely cumulative.

1 THE COURT: Okay. I'm going to allow it
2 [indiscernible]. What's this one?

3 MS. BONAVENTURE: We can make a record when the
4 jury -- outside of the presence of the jury.

5 THE COURT: Make it now. What -- you want to make a
6 record on this photograph?

7 MS. BONAVENTURE: You're recording bench
8 conferences?

9 THE COURT: Correct.

10 MR. HAUSER: Oh, okay. All right. Then [indiscernible]
11 been made. We're good.

12 MS. BONAVENTURE: Then we don't need to -- we're
13 used to them being not.

14 THE COURT: Okay. So your argument is cumulative;
15 correct?

16 MS. BONAVENTURE: Yes, it's cumulative. It's
17 definitely duly prejudicial.

18 THE COURT: What's prejudicial about it, Counsel?

19 MS. BONAVENTURE: Because, Your Honor, he's sitting
20 there with his eyes half open, in handcuffs --

21 THE COURT: And we just saw a video with him in
22 handcuffs.

23 MS. BONAVENTURE: Yeah. But it's going to show his
24 face. There's no need for this. It's absolutely cumulative. It's
25 repetitive. It's unnecessary. It's unduly prejudicial. It's

1 everything.

2 THE COURT: Okay. Do you -- would you like to make a
3 further record, or are you --

4 MS. BONAVENTURE: No. I think we're good.

5 MR. HAUSER: No. I think we're good.

6 THE COURT: I'm going to allow it.

7 MR. HAUSER: Thank you.

8 MS. BONAVENTURE: Thank you.

9 MS. ROSE: Thank you, Your Honor.

10 [Bench conference was concluded.]

11 MS. ROSE: And just for the record, Your Honor, I'm
12 showing defense counsel State's Proposed Exhibit 8.

13 MS. BONAVENTURE: And we object for the record.

14 MR. HAUSER: We've made our record on this,
15 Your Honor.

16 THE COURT: Okay.

17 MS. ROSE: If Your Honor would like me to lay the
18 foundation with the --

19 THE COURT: What are the foundation -- are you
20 objecting on foundation?

21 MR. HAUSER: No.

22 THE COURT: Do you -- okay. I --

23 MS. ROSE: Your Honor, can I just lay the record, just
24 for the record.

25 THE COURT: Sure.

1 MS. ROSE: Thank you, Your Honor. May I approach?

2 THE COURT: Yes.

3 BY MS. ROSE

4 Q Do you recognize this?

5 A I do.

6 Q Okay. How do you recognize it?

7 A That was a picture that was taken at the scene.

8 Q Okay. Of -- and it's a fair and accurate depiction of
9 what you saw that day?

10 A It is.

11 Q Okay. And who --

12 MS. ROSE: And, Your Honor, at this time, I would
13 move for admission for State's Exhibit 8.

14 THE COURT: So admitted.

15 **[PLAINTIFF'S EXHIBIT NO. 8 ADMITTED.]**

16 MS. ROSE: Thank you, Your Honor.

17 BY MS. ROSE

18 Q And can you identify the person that is in that photo?

19 A In the courtroom?

20 Q No. Just --

21 A Yes. That was the individual that I had contacted in the
22 brown Pontiac.

23 Q Okay. And that's Ronald Allen?

24 A That's correct.

25 Q Okay. And that's just him on that day?

1 A Correct.

2 Q Okay.

3 MS. ROSE: And, Your Honor, permission to publish for
4 the jury State's Exhibit 8.

5 THE COURT: Granted.

6 MS. ROSE: Court's brief indulgence.

7 Your Honor, I'll pass the witness at this time.

8 THE COURT: Any questions by the defense?

9 MR. HAUSER: Yes, Your Honor.

10 **CROSS-EXAMINATION**

11 BY MR. HAUSER:

12 Q Good afternoon, Officer.

13 A Good afternoon.

14 Q You and I spoke about this case once before.

15 A Did we?

16 Q I got a haircut, if that helps.

17 You remember testifying at the preliminary hearing?

18 A Yes.

19 Q That was me.

20 A Okay.

21 Q Fair enough.

22 A So --

23 Q I'm not offended. It's all good.

24 You would agree with me, based on your recollection
25 that day, you were not Mr. Allen's primary target; is that right?

1 A Correct.

2 Q You would, in fact, say that he never made a fist of a
3 punch to you, as you recall?

4 A I can't say yes or no to that.

5 Q Okay.

6 A Okay. The thing is that I felt contact. Now, what that
7 contact is, I don't -- I don't know.

8 Q Okay. You don't know is the point?

9 A Yeah. I don't know if it was a push or a punch. I can't --

10 Q Fair. Now, he was trying to get around you; is that
11 right?

12 A I wouldn't define it as around. I would define it as
13 through.

14 Q Well, now, you noticed that -- you mentioned earlier he
15 did kind of this swim move; right?

16 Now, did you ever play football by any chance?

17 A I have not.

18 Q That's all right. We'll skip that one.

19 But you would agree with me he was trying to get
20 between you and the car; right?

21 A I'm sorry. I'm not understanding what you're saying.

22 Q So you said that you were standing next to the car
23 when you were face-to-face with Mr. Allen; right?

24 A Correct.

25 Q And he was trying to get through the gap between you

1 and the car?

2 A Yes.

3 Q Okay. And that's when he kind of went through that
4 gap, maybe pushing you out of the way?

5 A I would -- I would not say -- the way you describe it as
6 in kind of he stepped to the side, I would not say that, no.

7 Q Okay. Let me ask you this way: You would not call this
8 a collision?

9 A Well, so define a collision. And let me define a
10 collision. When I think collision, I think of two cars head-on,
11 going like this --

12 Q Right.

13 A -- with significant damage.

14 Q Okay.

15 A Okay. I would probably say an impact would probably
16 be a better statement, which is not as -- not like heads going
17 through windows, so --

18 Q Uh-huh. You would then say this was not a head-on
19 collision?

20 A Not in the accident sense.

21 Q Right. You would agree with me on that one?

22 A I'm -- I'm not --

23 Q I know we're talking past each other.

24 A We are. Because I'm not really trying -- I'm not
25 understanding, and I don't think I'm articulating well about how I

1 see it.

2 Q We are all in court. We're all nervous. I understand.

3 You would not describe it as, you know, head-on
4 collision. He didn't run straight into you, hit you in the face?

5 A I would -- I would say that.

6 Q You would say it was a collision?

7 A Yeah. I would say he ran head-on into me. Yes, I
8 would say that.

9 Q Let me see here.

10 Officer, you do remember testifying at that preliminary
11 hearing; is that right?

12 A Correct.

13 Q And the date of that was September 22nd, 2016; does
14 that sound right?

15 A I can't recall.

16 Q It's been a while.

17 A It has been a while.

18 Q More than a year. You would recognize your testimony
19 if I showed you a transcript of it; right?

20 A Go ahead.

21 MR. HAUSER: Your Honor, may I approach the
22 witness.

23 THE COURT: For what purpose?

24 MR. HAUSER: Impeachment, Your Honor.

25 THE COURT: Okay. But you have -- did you ask him a

1 question that he doesn't recall?

2 MR. HAUSER: Not quite, Your Honor. Contradiction.

3 THE COURT: You need to ask him the question first.

4 And then if his answer is different, then you can impeach him.

5 MR. HAUSER: And that's where I'm going with this
6 right now.

7 THE COURT: Okay. What is it that you're seeking to
8 impeach? What -- what issue?

9 MR. HAUSER: You want me to make this now, or
10 should we approach?

11 THE COURT: Approach.

12 MR. HAUSER: All right.

13 [Bench conference was had and transcribed as follows:]

14 THE COURT: What is it that you want to do? What is it
15 that you want to do?

16 MR. HAUSER: I think it's a contradiction of the
17 preliminary when he said --

18 THE COURT: What's the contradiction?

19 MR. HAUSER: There was no collision in the testimony.

20 THE COURT: Okay. Did you ask him, Do you
21 remember testifying at the preliminary hearing that there was no
22 collision?

23 MR. HAUSER: I was going to show it to him and then
24 do that.

25 THE COURT: You need to establish the inconsistency

1 first. Establish the -- what he said [indiscernible] at the
2 preliminary hearing, that there was no collision. And then if you
3 want, you can try to refresh his recollection with those
4 preliminary hearing transcripts. Show it to him, and have him
5 read it to himself. Then ask him again, say, Did that refresh your
6 recollection? And if he says it doesn't, then you say, didn't you
7 say at the preliminary hearing the following?

8 MR. HAUSER: All right.

9 THE COURT: But you need to establish the
10 inconsistency if you're going to impeach him.

11 MR. HAUSER: I think I've already done that,
12 Your Honor. He said he would describe it as collision. At the
13 preliminary hearing, he said he --

14 THE COURT: You never -- ask him [indiscernible].

15 MR. HAUSER: I'm not refreshing his recollection,
16 Your Honor. I'm impeaching him.

17 THE COURT: Okay. But you need to ask him, Do you
18 recall testifying at the preliminary hearing that it was not the
19 collision?

20 You have to give him the opportunity to say, oh, you
21 know, you were right. If it's --

22 MR. HAUSER: Okay.

23 THE COURT: If he says that, you don't have to impeach
24 him.

25 MR. HAUSER: I'll do it that way, Your Honor.

1 MS. ROSE: And just for the record, Your Honor, this is
2 the first time that either one of them have defined collision --

3 THE COURT: What's that?

4 MS. ROSE: This is the first time that any -- either one of
5 them defined what collision was. So it's going to be ---

6 THE COURT: Okay. Well, you're going to get a chance
7 to read it through with him.

8 You need to establish the inconsistency. However, you
9 want to do it.

10 MR. HAUSER: I'll do it your way, Your Honor. You're
11 the Judge.

12 THE COURT: No, don't do it my way. Do it --

13 MR. HAUSER: No. I'm going to do it your way.

14 THE COURT: Do it however you want -- however you
15 want to do it.

16 MS. BONAVENTURE: Do it his way.

17 MS. ROSE: And you also have to direct me to the page
18 that you're going to [indiscernible].

19 [Bench conference was concluded.]

20 BY MR. HAUSER:

21 Q Officer, do you remember testifying at preliminary
22 hearing that you would say that there was no collusion -- or
23 collision? Excuse me.

24 A I don't. To be honest with you, at the time of the
25 preliminary hearing, I was still in recovery mode. I mean, just to

1 come to court took me like four hours, two hours just to get
2 ready.

3 Q I recall.

4 A And I was on medication. So I would be -- I would -- it
5 was definitely a hard day.

6 Q I understand that. But your testimony is you don't
7 recall testifying to that at preliminary hearing?

8 A That's correct.

9 Q All right.

10 MR. HAUSER: Your Honor, may I approach the witness
11 with preliminary hearing transcript that I will first share with
12 opposing counsel.

13 THE COURT: Yes.

14 MR. HAUSER: May I approach, Your Honor?

15 THE COURT: Yes.

16 BY MR. HAUSER:

17 Q Let me show you from the front of this so we get some
18 clarification.

19 Officer, go ahead and read over this. Do you recognize
20 the caption here?

21 A I'm sorry. In what manner?

22 Q Do you recognize that it says this is the reporter's
23 transcript of preliminary hearing for this case?

24 A Okay. Yes.

25 Q All right. And do you recognize that your name is on

1 here as a listed witness?

2 A Yes.

3 Q All right. You recall testifying at this preliminary
4 hearing?

5 A I do.

6 Q All right. I'm going to direct your attention to page 24.

7 A Uh-huh.

8 Q Lines 3 through 6. Go ahead and refresh -- just read
9 over that, and then look -- look at me when you're done.

10 A Okay.

11 Q All right.

12 MR. HAUSER: May I retrieve, Your Honor.

13 THE WITNESS: Well, can I -- I'm sorry. I'm sorry.

14 BY MR. HAUSER:

15 Q Page 24, lines 3 through 6.

16 A Okay.

17 Q So, Officer, do you recall the preliminary hearing that
18 you testified there was no collision?

19 A I just read it.

20 Q And based on refreshing your recollection, is your
21 memory refreshed as to your testimony at that time?

22 A No. I just -- I just read it.

23 Q You would agree with me that the transcript says you
24 did testify there was no collision at the preliminary hearing? All
25 right. That's fair enough.

1 MS. ROSE: And -- I'm sorry, Your Honor. Was that to
2 refresh your recollection, or was that --

3 THE COURT: He said it didn't refresh his recollection,
4 and Counsel said pointed out to him that that's what the
5 transcript says, and he agreed.

6 MS. ROSE: Okay.

7 THE COURT: That's what the transcript of this
8 testimony says.

9 MS. ROSE: Thank you, Your Honor. I just didn't hear it.

10 BY MR. HAUSER:

11 Q And, Officer, I know you were in recovery at that time,
12 but you would agree with me that memory doesn't improve with
13 time; right?

14 A I --

15 Q I can make it more specific. You would agree with me
16 that you remember last August more vividly now than you will in
17 a year; right?

18 A I -- no. I wouldn't disagree with you on that.

19 Q Okay.

20 A I would disagree. The truth is when the incident
21 happened, there were so many waves of pain, it was just
22 phenomenal waves of pain.

23 Q I understand.

24 A So -- and even after the incident, there were still waves
25 of pain. So sitting in a chair like this on that day was very painful.

1 I actually had -- had my leg elevated probably 23 hours of the day
2 just because it was so painful.

3 Q I'm asking more generally that you would agree that
4 memory tends to not improve with time.

5 A No, I would not agree with that.

6 Q You think memory improves with time? Three years
7 from now, you'll remember this incident better than you do right
8 now?

9 A I do, yeah.

10 Q Three years from now? Ten years from now?

11 A Depends on your memory. It doesn't -- just because
12 you have time does not mean your memory is going to dissipate,
13 depending on the event.

14 Q I agree. It doesn't necessarily mean --

15 A Right. So as a combat veteran in Iraq, I remember
16 some things that happened to me in the military like they
17 happen -- as a matter of fact, now that you bring that up, I am
18 remembering something that happened. So -- and I remember
19 like it happened ten minutes ago.

20 Q Fair enough. Let me actually transition into that.

21 How long have you been in the military?

22 A It's 15 years without my academy time. My academy
23 time doesn't count as far as for their retirement part, but it's
24 actually 19 years with that time.

25 Q So in those 19 years, you've been subject to physical

1 training obviously? They don't just let you sit behind a desk and
2 not work out; right? You have to do some running; right?

3 Weightlifting?

4 A Right.

5 Q Combat training --

6 A Well, not necessarily. That is -- that is not necessarily
7 correct.

8 Q Okay. No on the weightlifting?

9 A You -- you don't --

10 Q Maybe. Have you --

11 A It's individual. So some people can, some people
12 don't.

13 THE COURT: Let's stop. Counsel.

14 MS. ROSE: I'm sorry. Can we -- I don't know if there is
15 relevance to this or if Counsel can move on to the next question.

16 THE COURT: Counsel, are you going to tie this up?

17 MR. HAUSER: Absolutely, Your Honor.

18 THE COURT: All right. I'll give you a few more
19 questions to tie this up.

20 MR. HAUSER: Certainly, Your Honor.

21 BY MR. HAUSER:

22 Q But you do have to work out when you're in the
23 military; right?

24 A That's not true at all.

25 Q Did you?

1 A I do.

2 Q Okay.

3 A But I know people who don't.

4 Q Of course. But on -- let's talk about you then. You
5 worked out during those 19 years?

6 A On and off.

7 Q On and off. But you did on and off; right?

8 A Yes, on and off.

9 Q Did you play any high school sports?

10 A I didn't. I only did track.

11 Q You did track. What event did you do in track?

12 A I did pole vaulting.

13 Q Fair enough. Okay. How about in college? Did you
14 play any sports?

15 A I only did inter-murals.

16 Q What did you play in inter-murals?

17 A I played handball. I did some wrestling. Can't
18 remember. I did some rugby.

19 MS. ROSE: Your -- I'm sorry, Your Honor. I just -- I just
20 would like to know the relevance or if he would like to get to the
21 question that he's going to get to.

22 THE COURT: Counsel, approach, please.

23 [Bench conference was had and transcribed as follows:]

24 MS. ROSE: If he wants to ask --

25 THE COURT: [Indiscernible] testifying directly to what

1 sports he played in high school?

2 MR. HAUSER: Yeah.

3 THE COURT: What are your -- how are you going to tie
4 this up? What is the relevance?

5 MR. HAUSER: In closing, Your Honor. I have to tie it
6 up in closing. I can't argue right now. The relevance is that they
7 have to prove beyond a reasonable doubt that this incident
8 caused the injury. I'm saying that it could have been a lifelong
9 injury. It could have been a chronic injury. It developed over --

10 THE COURT: Okay. But you're not asking -- you're not
11 asking those questions. Was he injured prior to -- you have to --

12 MR. HAUSER: The thing is, Your Honor --

13 THE COURT: You have to establish an injury. That's
14 the relevance of this. At some point, you have to establish at
15 some point in high school or prior to this incident, he established
16 an injury to his ankle, foot, or something. Now, you're going to
17 have to tie it up.

18 MR. HAUSER: I don't think they need to tie it up that
19 specifically, Your Honor. Just because there was no past injury
20 doesn't mean it can't cause wear and tear on the body over time.

21 MS. ROSE: [Indiscernible] past injury.

22 THE COURT: Okay.

23 MR. HAUSER: And I'm saying that I -- that's not
24 required. Relevance is a very low bar. It goes directly to an
25 element the State has to prove. I'm saying that he's been an

1 active high school life. He's worked out. He's played sports.

2 THE COURT: How many more questions do you want
3 to ask him --

4 MR. HAUSER: Two or three.

5 THE COURT: All right. Go ahead and ask him those
6 questions.

7 MR. HAUSER: Nothing that crosses them; so I'll keep it
8 short.

9 [Bench conference was concluded.]

10 BY MR. HAUSER:

11 Q Officer, do you still work out pretty regularly?

12 A I do when I can.

13 Q What kind of workouts do you do now?

14 A Weightlifting. I do running. That's pretty much it,
15 when I have time.

16 Q Play, like, any sports in your spare time anymore?

17 A I didn't -- I wasn't really a sports guy to begin with.

18 Q I appreciate that. Thank you for your time, Officer.

19 MR. HAUSER: I'll pass the witness.

20 THE COURT: Any redirect, Counsel?

21 MS. ROSE: Just really briefly, Your Honor.

22 **REDIRECT EXAMINATION**

23 BY MS. ROSE:

24 Q You played a lot of sports; is that right?

25 A Did various sports; correct.

1 Q Okay. You did various sports. At any time did you
2 have an injury to your Achilles?

3 A On that side, no. On either side, no.

4 Q Okay. On the right side, did you ever have an injury to
5 your Achilles?

6 A No.

7 Q Okay. So you never had a previous injury?

8 A No.

9 Q Okay. To -- I'm sorry. Let me make sure I clear that up.
10 You never had a previous injury to your right Achilles?

11 A Correct.

12 Q Okay. Counsel showed you some testimony that you
13 testified to at preliminary hearing. And did you get a -- you got a
14 chance to read that?

15 A Yes.

16 Q Okay. And did you remember -- do you recall what that
17 said?

18 A That the parties showed me?

19 Q Yes.

20 A Can I look at it again?

21 Q Yes.

22 MS. ROSE: Your Honor, showing defense counsel page
23 24 of the preliminary hearing.

24 THE COURT: Does showing you the preliminary
25 hearing transcript refresh your recollection?

1 THE WITNESS: Honestly, it did not.

2 THE COURT: Well, will this refresh your recollection?

3 THE WITNESS: Only what I just read about --

4 THE COURT: You want to approach and have him
5 review to see if it refreshes his recollection; is that the purpose?

6 MS. ROSE: Your Honor, to be honest, because that was
7 only a bit -- a part that Counsel had represented. So to make the
8 entirety of the record, I just need to make sure that the entire
9 statement gets read in.

10 THE COURT: Okay.

11 MS. ROSE: And that's why -- and, Your Honor, I'm
12 sorry -- that's why I wasn't sure if it was a -- to refresh his
13 recollection or what it was.

14 THE COURT: Well, why don't you ask him if he recalls
15 it, the entire portion, and see if he remembers or not?

16 MS. ROSE: Most definitely.

17 BY MS. ROSE:

18 Q Officer, did you -- do you, of your own independent
19 recollection, recall testifying to what Counsel showed you
20 previously at your preliminary hearing transcript?

21 A I remember us talking about it. About -- but specifically
22 no.

23 Q Okay. Specifically on the page that he showed you, do
24 you recall that information?

25 A No.

1 Q Okay. Would showing you the preliminary hearing
2 transcript refresh your recollection?

3 A If I get a broader view than just those few sentences.

4 Q Okay. Just --

5 A He took them out of context.

6 Q Okay. Just to what you've said that day or to -- what
7 you said that Counsel showed you, would it refresh what you said
8 in that little paragraph?

9 A I'm sorry. I'm not understanding the question. I
10 apologize.

11 Q No. That's okay. Would me showing you the
12 preliminary hearing transcript refresh your recollection?

13 A I don't know.

14 Q Okay.

15 MS. ROSE: May I approach, Your Honor, to see --

16 THE COURT: Yes.

17 MS. ROSE: Thank you.

18 BY MS. ROSE:

19 Q And I direct you to line -- specifically lines 2 through 7.

20 A Okay.

21 Q Now, Officer, at that time you were asked whether or
22 not there was a collision that happened; correct?

23 A Correct.

24 Q Okay. And you responded with -- do you recall now
25 with what you responded?

1 A No collision. But there was an impact.

2 Q That there was not a collision. And then do you recall
3 what you just read after that, your entire statement?

4 A I don't recall the whole statement verbatim.

5 Q Okay. Do you remember testifying to the question
6 posed, And then there happened to be some kind of collision
7 maybe?

8 Answer, which is you: No, there was not. There was
9 not a collision. He had to get past me to get to her.

10 A Correct.

11 Q Do you recall -- do you recall reading that from the
12 transcript?

13 A Yes, I do.

14 Q Okay. So can you describe that "he had to get past me
15 to get to her" statement?

16 A All right. So when they defined a collision -- and that's
17 where I think that the issue is, is what's your definition of
18 collision. Collision to me would be -- in this case would be we
19 collided so hard that, you know, it resulted in death or some kind
20 of collision. That's why I'm not comfortable with collision as
21 being the right word. Impact, I'm more comfortable with.

22 Q Okay.

23 A So when he -- the way he described it -- so the way it
24 happened was there was an impact that caused me to step back.
25 After that, he tried -- he basically swam through myself and the

1 vehicle to get past us.

2 Q Okay. And the impact was the fact the defendant
3 pushed through -- he pushed through you?

4 A Correct.

5 Q Okay. So you just didn't -- no one at the time at
6 preliminary hearing defined collision for you?

7 A Correct.

8 Q Okay. So you were -- you were operating under your
9 definition of collision and not somebody else's?

10 A Yeah. I probably was using more of an accident
11 definition of collision; so, you know --

12 Q Understandable. So let's talk about the swimming
13 motion. Do you -- again, do you recall testifying at that
14 preliminary hearing?

15 A Uh-huh.

16 Q Okay. Do you ever recall testifying about the
17 swimming motion?

18 A I recall discussing it and describing it that way, that it
19 was kind of like -- it was swimming past me, grabbing me and the
20 car and kind of pushing past me.

21 Q Okay. Do you know why he was pushing past you?

22 A He passed me to go -- because the female was coming
23 to my left.

24 Q Okay.

25 A So if -- on the ground. So she was coming to my left.

1 So he was getting past me to go to her.

2 Q Okay. Is it fair to say that he pushed through you?

3 A Yes.

4 Q Okay. And I'm not talking about the swimming. When
5 he -- that -- so it's my understanding that he initially pushes
6 through you?

7 A Correct.

8 Q And then you're on the ground; is that correct?

9 A Uh-huh, that's correct.

10 Q And then he then tries to do that swimming motion
11 that you defined while you're on the ground?

12 A Correct.

13 Q And your -- he's swimming through the car and you?

14 A Correct.

15 Q Okay. So that's what the swimming motion is; correct?

16 A Yes, that's the swimming motion.

17 MS. ROSE: And just for the record, Counsel is making
18 a swimming motion [indiscernible].

19 THE COURT: Record will so reflect.

20 MS. ROSE: Okay.

21 BY MS. ROSE:

22 Q And you said that you're not 100 percent recovered?

23 A That's correct.

24 Q Okay. And you still feel pain today?

25 A I do.

1 Q Okay. Do you -- at surgery, did -- you said that you had
2 surgery?

3 A I did.

4 Q Did that leave any scars?

5 A It did.

6 Q Okay. Where is the scar?

7 A It's on my right -- right Achilles side. So the back of my
8 right leg on the bottom. It's about six inches.

9 Q And I know this might be weird, but can you stand up
10 to show the ladies and gentlemen of the jury your scar.

11 A Can I take my shoe off?

12 THE COURT: You need to step down.

13 THE WITNESS: Can I take my shoe off?

14 THE COURT: Let's take his shoe off. Is there any
15 objection to him taking his shoe off?

16 MR. HAUSER: I do not object to him taking the shoe
17 off.

18 THE WITNESS: At least -- because it's all the way down
19 there.

20 THE COURT: It's whatever you need to do --

21 MS. ROSE: Whatever you're comfortable with.

22 THE COURT: Oh. Could you move down a little bit?

23 MS. ROSE: And -- and for the record, Your Honor, the
24 witness is on the ground showing the scar to the ladies and
25 gentlemen of the jury.

1 THE COURT: Can you also [indiscernible]?

2 MS. ROSE: Officer, thank you so much for your
3 testimony today.

4 No further questions, Your Honor.

5 THE COURT: Any recross?

6 MR. HAUSER: Yes, Your Honor. I'll keep it short.

7 **RECROSS-EXAMINATION**

8 BY MR. HAUSER:

9 Q Officer, I think you just testified that when he swam
10 through you, you were already on the ground; is that right?

11 A Correct.

12 Q Now, it's my understanding that the swim move was
13 the contact with you; is that right?

14 A No, that's not correct.

15 Q He did that before, or he made contact with you before
16 and then did a swim move.

17 A [Indiscernible].

18 Q Officer, do you recall testifying at the preliminary
19 hearing, So then that's when I had to step back because he had
20 kind of pushed through me to get to me, kind of swam through
21 me?

22 A I don't.

23 Q Would it refresh your recollection if I showed you the
24 transcript?

25 A Go ahead and show me the transcript.

1 Q All right.

2 MR. HAUSER: May I approach, Your Honor.

3 THE COURT: Yes.

4 MR. HAUSER: And for the record, I'm showing
5 preliminary hearing transcript page 25, lines 15 through 17.

6 BY MR. HAUSER:

7 Q Just go ahead and look up at me when you're done.

8 Does that refresh your recollection as to what at least
9 the transcript says?

10 A Yeah.

11 Q Not that you would specifically remember it?

12 A Right, correct.

13 Q But you would agree with me that the transcript does
14 say, He swam through me?

15 A Right.

16 Q Right. And you don't believe that he actually intended
17 to make contact with you at all?

18 A No. Well, no, I don't agree with you. Let me say that.

19 Q Okay. You don't remember testifying at the
20 preliminary hearing transcript that you don't think he had any
21 intent to make contact with you?

22 A I believe what I said, if I'm correct, is that I was not the
23 primary target.

24 Q That's right.

25 A So I was not the primary target. That doesn't mean

1 there was not intent. It just means I was not the primary target.

2 Q No. Would it refresh your recollection if I showed you
3 the preliminary transcript?

4 A [Indiscernible].

5 Q All right.

6 MR. HAUSER: And, Your Honor, for the record, I'm
7 showing him page 23, lines 19 through 23.

8 BY MR. HAUSER:

9 Q So down here, 19 through 23.

10 A 19 through 23?

11 Q Yes, sir.

12 A Okay.

13 Q I appreciate that. Thank you so much.

14 So, Officer, you would agree that the preliminary
15 hearing transcript does indicate that you said he did not intend to
16 make contact with you?

17 A I said -- I think it said it -- I did not -- he did not attempt
18 to injure me; is that correct?

19 Q I'll clarify it. You would agree with me that the
20 preliminary hearing transcript says, But you were never under the
21 impression he wanted to injure you in any way?

22 Answer: No.

23 Or even make contact with you? Question.

24 Answer: No. He wanted to go after her.

25 You would agree with me that's reflected in the

1 transcript?

2 A Correct.

3 Q Thank you, Officer.

4 MR. HAUSER: I have nothing further at this time.

5 THE COURT: Can the witness be excused?

6 Oh, I'm sorry. I apologize. Is there any jury questions
7 at this point?

8 MS. ROSE: Oh, Your Honor, I'm sorry. I just need to
9 clear up what just was said briefly. Just only briefly, Your Honor.

10 **FURTHER REDIRECT EXAMINATION**

11 BY MS. ROSE:

12 Q Officer --

13 THE COURT: Go ahead.

14 BY MS. ROSE:

15 Q We just talked -- we were talking a lot about this
16 preliminary hearing transcript; right? And you -- we've already
17 established that you don't really recall what was said, and part of
18 that was read into the record.

19 Is it fair to say that day that you explained that there
20 was -- he didn't -- you were not the primary target?

21 A Correct.

22 Q And somebody else was?

23 A Correct.

24 Q And is it fair to say, based off your preliminary
25 transcript, that you testified that first, there was the initial -- the

1 initial push to push -- push through you, and then that swim
2 motion?

3 A Right.

4 Q Two separate acts?

5 A Right.

6 Q And what caused -- and which act caused the tear in
7 your Achilles?

8 A The first act.

9 Q Okay. Which was?

10 A The push.

11 Q The initial push?

12 A Correct.

13 Q That brought you to the ground?

14 A Yes.

15 Q Okay.

16 THE COURT: Counsel, anything --

17 MS. ROSE: No other -- no other further questions.

18 MR. HAUSER: Just one question, Your Honor.

19 THE COURT: Okay. Ask one question.

20 MR. HAUSER: One question.

21 THE COURT: No. Ask it. Go ahead.

22 **FURTHER RECROSS-EXAMINATION**

23 BY MR. HAUSER:

24 Q Officer, you would agree with me you were under oath
25 when you testified at the preliminary hearing?

1 A Right.

2 MR. HAUSER: All done, Your Honor.

3 THE COURT: Ladies and gentlemen, I look to my bailiff
4 to see if you have asked -- handed him any -- want to ask him any
5 questions. He notifies me.

6 So if during the testimony, you write down your
7 question, make sure you get his attention, and he will let me
8 know that you want to -- because after each witness, if you --
9 you're entitled to write down your questions and have it
10 presented to me, because we're going along with the -- I think I
11 did this in the preliminary instructions, but I look to him to see if
12 you have any questions. So if I don't see him let me know he's
13 been handed questions, then I assume you don't want to have
14 any.

15 So during the course, if you write down a question,
16 hand it to him. And then at the end of the witness, I'll say, any
17 jury questions? And he will bring them up to me, okay? All right.

18 I didn't know if I was completely clear, but under our
19 statutes, you can ask questions. You know, you have to write
20 them down, and then I look at them and discuss them with the
21 attorneys, okay? Same thing.

22 Do you have any question on how that works?

23 Is there any other questions other than the ones that
24 have been handed to the bailiff?

25 Okay. Thank you so much.

1 Counsel, approach.

2 [Bench conference was had and transcribed as follows:]

3 MS. BONAVENTURE: I'm okay if you want to say that.

4 MS. ROSE: [Indiscernible].

5 MR. HAUSER: I think that's a good question.

6 MS. BONAVENTURE: Oh. So they're confused about

7 that, probably because you guys were going back and forth. And

8 the preliminary transcript's not an exhibit.

9 MR. HAUSER: No.

10 MS. ROSE: No.

11 MS. BONAVENTURE: So, well, what do you guys

12 think?

13 MR. HAUSER: I don't want it that close [indiscernible].

14 MS. BONAVENTURE: Do you have a problem with

15 this?

16 We don't -- both parties have no problem with that

17 question, Judge.

18 THE COURT: Okay.

19 MR. HAUSER: What are they going to do with that?

20 MS. BONAVENTURE: Yeah.

21 MR. HAUSER: I don't know if Judge can read because

22 we can't read the whole pages.

23 MS. BONAVENTURE: Right.

24 MR. HAUSER: So --

25 MS. BONAVENTURE: Well, what do you guys think

1 about that?

2 MR. HAUSER: And I -- I don't think they --

3 THE COURT: Do you have any objections to these?

4 MS. ROSE: I have no objections for you.

5 THE COURT: Huh.

6 MS. BONAVENTURE: I mean, I think that the attorneys
7 would have to --

8 THE COURT: Well, you're going to have to ask this
9 question.

10 MS. BONAVENTURE: -- to kind of cross on that again.

11 THE COURT: In other words, they want to know what
12 the transcript say, and here's --

13 MS. BONAVENTURE: Right.

14 THE COURT: -- the line [indiscernible] on page 23. So I
15 would -- let's just ask, Did you testify -- and I'm not sure. What
16 line is that on?

17 MS. ROSE: Because they missed it -- they missed it on
18 cross.

19 THE COURT: Huh?

20 MS. ROSE: I mean, we can -- if Your Honor --

21 MR. LEXIS: We'll address it after you ask the question.
22 If we get an opportunity to clear it up, we'll do it then.

23 THE COURT: Okay. In other words, apparently they
24 want to know what the transcripts say.

25 MS. ROSE: Absolutely.

1 MS. BONAVENTURE: Right. And by clearing it up, we
2 mean let them talk.

3 THE COURT: But do you know what lines we're talking
4 about up here?

5 MR. HAUSER: Presumably the ones we recorded.

6 THE COURT: Right. I assume it's -- so do you have any
7 problem saying, Officer, at the preliminary hearing --

8 MS. ROSE: He's not going to remember it. He's going
9 to say, Yeah, we read you this.

10 THE COURT: Or agree to just say, Doesn't the
11 transcript say that you testified -- so it's like do you agree with
12 that?

13 In other words, they want to know what the transcript is
14 asking --

15 MS. BONAVENTURE: Right. Because they got
16 confused. I think maybe just each attorney should have an
17 opportunity to clarify what they were pointing in those pages.

18 THE COURT: So here's what I'm going to do --

19 MS. ROSE: Your Honor, I'm so sorry. Those
20 preliminary hearing transcripts --

21 THE COURT: Huh?

22 MS. ROSE: Those preliminary hearing transcripts were
23 taken this all out of context about what we would be doing at this
24 point, that we to move to another -- those pages --

25 THE COURT: Okay. Well, this question is not proper.

1 It's not a factual question. It's not -- it's not -- it doesn't ask
2 questions. Just says what does the transcript say, and it gives
3 two pages numbers out of the preliminary hearing transcripts.
4 But what I'm telling you is obviously, one of the jurors wants to
5 know, and you're going to have an opportunity to ask additional
6 questions.

7 MS. ROSE: Okay.

8 THE COURT: So if you want to put this in to clarify his
9 position -- obviously, one of the jurors needs clarification as to
10 what the transcript -- I will allow you to do that. Do you have
11 any -- do either of you have any problem with that?

12 MS. ROSE: No.

13 MS. BONAVENTURE: Just give me another crack at
14 him. That's what it is.

15 I just want to clarify, Judge. You're just willing to give
16 each party another crack at -- clarifying that --

17 THE COURT: Okay. Here's the way it goes. Okay,
18 here's the way it goes.

19 I'm going to ask the questions. Then both parties have
20 an opportunity to do follow-up questions regarding the jury
21 questions. And what I'm saying is this isn't really a question. It's
22 supposed to be a factual question that's relevant and, you know,
23 like -- and what I'm saying is what this question says is what did
24 the transcripts say? And it says, Preliminary transcript, page 25,
25 page 33.

1 It's -- obviously, this juror needs some clarification
2 based on -- I will allow you to clarify. I'm not going to read this as
3 a question because it's not a proper question.

4 Do you have any problem with them not reading it as a
5 question but reopening the examination as to page 23 and 24 in
6 front of the jury?

7 MS. BONAVENTURE: No issue with that.

8 THE COURT: Do you have any problem with that,
9 Counsel?

10 So I'm not going to give this question, but I am going
11 to ask the other two.

12 MS. BONAVENTURE: Yeah. Did you guys have a
13 problem with that [indiscernible]?

14 We don't have a problem with it.

15 THE COURT: Okay. So I'm going to ask these two.
16 And then about [indiscernible] I will allow counsel to ask some
17 additional questions regarding preliminary transcript and then let
18 you ask whatever you want to ask.

19 MS. BONAVENTURE: That sounds great.

20 THE COURT: And you don't have to answer. If you
21 don't want to answer this, you don't have to.

22 MR. HAUSER: And we'll only limit it to those two
23 pages obviously.

24 THE COURT: Huh?

25 MR. HAUSER: We should only limit it to those two

1 pages.

2 THE COURT: Apparently, she has some questions
3 about what the transcripts actually said based on your
4 examination. So that's what you should probably limit it to. You
5 need clarification.

6 MS. ROSE: Thank you, Judge.

7 THE COURT: Thank you.

8 MR. HAUSER: Thank you, Judge.

9 [Bench conference was concluded.]

10 THE COURT: Randy?

11 THE MARSHAL: Yes, sir.

12 THE COURT: On the earlier witness, the first witness,
13 [indiscernible].

14 This is one of the jury questions.

15 Sir, what bones -- they use your first name, so I'm
16 going to use his first name -- What bones has Leo broken?

17 THE WITNESS: So I just need to clarify: Is it this
18 incident or --

19 THE COURT: No. I believe the question is do you
20 have -- what bones have you broken? What bones has Leo
21 broken?

22 THE WITNESS: I had a fracture in my left leg, in my
23 instep, that was due to a noncancerous tumor. So they -- part of
24 my left hip is missing. Before, I had a bone graft from the hip to
25 the leg. And then I had a bunion removed on my right foot.

1 THE COURT: Okay. And then the second question is,
2 Did they all heal correctly?

3 THE WITNESS: Yes.

4 THE COURT: Another question is -- this juror calls you
5 Officer K. Do you mind if I call you Officer K? I can tell you right
6 now I cannot pronounce your last name.

7 THE WITNESS: Your Honor, you're not the first.

8 THE COURT: I appreciate that.

9 Can Officer K clarify if impact or collision was the
10 middle of chest or one side or the other?

11 THE WITNESS: I'm sorry. Can you say that again?

12 THE COURT: Can Officer K -- I'm sorry -- can Officer K
13 clarify if impact/collision was the middle of chest or one side or
14 the other?

15 THE WITNESS: I remember it being over on my right
16 side.

17 THE COURT: Okay. And there was another question
18 dealing with preliminary hearing transcripts, and the attorneys
19 are going to be allowed to ask some additional questions
20 regarding the preliminary hearing transcripts.

21 So at this time, does the State have any additional
22 questions of this witness?

23 MS. ROSE: Just briefly, Your Honor.

24 THE COURT: Thank you.

25 ///

1 **FURTHER REDIRECT EXAMINATION**

2 BY MS. ROSE:

3 Q So with the previous things that you were talking about
4 on your right -- like your right side, your right leg and your right
5 hip -- or, I'm sorry, your left side, left hip, and left leg, that wasn't
6 to your right side?

7 A That was not, no.

8 Q That was not. And this injury that occurred due to the
9 push was to the right?

10 A Correct.

11 Q Okay. So I just wanted to clarify some stuff with you.

12 Obviously, again, you recall testifying at the preliminary
13 hearing, but you don't recall exactly what was said without the
14 preliminary hearing transcripts; is that correct?

15 A Correct.

16 Q Okay. So without the preliminary transcript, you don't
17 really recall what was said?

18 A Correct.

19 Q And what we were showing to you were just bits and
20 pieces that were out of context?

21 A Correct.

22 Q Okay. After you reviewed the preliminary hearing
23 transcript.

24 So we made -- we made reference to a bunch of stuff
25 that we were kind of piecemealing from your -- from what you

1 saw of the transcript?

2 A And If I remember the preliminary hearing, it's exactly
3 how it was. Very chaotic and not really sequenced.

4 Q Okay. So at the preliminary hearing, were you able to
5 articulate very well what happened?

6 A No.

7 Q And is that the fault of maybe the people that were
8 asking you questions?

9 A I think it was that. It was also the fact that I was in a lot
10 of pain, I think a lot of it. So I mean -- still, like I said, at that time,
11 there was still a lot of pain.

12 Q Okay.

13 A So --

14 Q Okay. So specifically -- and I know -- you've already
15 stated that you can't really recall the preliminary transcript as
16 described?

17 A Correct.

18 MS. ROSE: And, Your Honor, at this time, I would
19 either move to read in the -- the two-page -- well, it'd have to
20 really be three pages of the preliminary hearing transcript so we
21 don't have confusion of the context.

22 THE COURT: Counsel, approach.

23 [Bench conference was had and transcribed as follows:]

24 THE COURT: Okay. Counsel, approach.

25 On page 23 -- remember she wanted pages 23 and 25.

1 MS. ROSE: Yeah.

2 THE COURT: I would -- what part do you want to -- I'm
3 not going to read in the whole page --

4 MS. ROSE: Well, no.

5 THE COURT: -- because we're going to go over it.
6 What part do you want -- where do you want to start?

7 MS. ROSE: I would definitely omit the cousin portion.

8 THE COURT: But I think -- I think the part is lines 19
9 through 25 on page 23 and -- and line 1 on page 24. Isn't that
10 what the examination is about?

11 MS. ROSE: The -- the issue is, is it's taking --
12 everything's taken out of context. And then the second part of the
13 top of page 24 is what we went into, 23 to the top of 24. Does that
14 make sense?

15 THE COURT: Okay. What --

16 MS. ROSE: So I would -- I mean, the thing is it's -- the
17 way that --

18 THE COURT: Okay. What I would let you read in, and I
19 think what the witness is requesting, is whatever part you tried to
20 refresh his recollection was the complete answer.

21 MS. ROSE: Exactly. And --

22 THE COURT: Okay. And so whatever parts of page 23
23 and 25, if the parties have a problem reading to him his complete
24 answer and saying, that's what you said at the preliminary
25 hearing.

1 MS. ROSE: His complete answer would go from
2 page -- and this is what I would request. I'm not going to get into
3 your -- the top of that, but from pages -- from pages 23, line 19 to
4 page 24 to line 12, because that's his complete answer to that.
5 Does that make sense?

6 THE COURT: Uh-huh.

7 MS. BONAVENTURE: And, Your Honor, if I may
8 suggest an alternate solution. If we could have him read his --

9 THE COURT: All right. Why don't we do that? Why
10 don't we have him read saying --

11 MS. ROSE: Oh, he can -- oh, he can read it. Yeah, he
12 can read it in. That's fine.

13 MS. BONAVENTURE: And then he can respond to the
14 questions --

15 THE COURT: Okay. So do you want to say, do you
16 recall the question -- part about your answer was such and such?
17 How do you want to do it?

18 MS. BONAVENTURE: I'm not saying let him read it out
19 loud.

20 THE COURT: First, let's get this [indiscernible]. Okay.
21 So we're going to page 23, lines 18 through 25; and page 24, lines
22 1 through 12.

23 Do both parties agree that that can be --

24 MR. HAUSER: Yes.

25 THE COURT: -- introduced into evidence.

1 MR. HAUSER: Yes, Your Honor.

2 THE COURT: Okay. All right. So we've got that done.

3 All right.

4 What's the other page? Page 25. What do you want to

5 put as a complete answer?

6 MS. ROSE: So probably, it would be, Okay, describe

7 how it happened.

8 See, these are two different -- he's describing two

9 different things here.

10 THE COURT: Well, did -- did either party cross-examine

11 him on anything on page 25?

12 MR. HAUSER: Yes, sir.

13 THE COURT: What did you cross-examine him on?

14 MR. HAUSER: Lines 15 through 18.

15 THE COURT: Huh?

16 MR. HAUSER: Lines 15 through 18.

17 MS. ROSE: Well, and then also on the top of pretty

18 much all of 25.

19 THE COURT: I'm not going to do all of them.

20 MS. ROSE: Well, okay. So --

21 THE COURT: Okay. So -- what was the question that

22 you're asking?

23 MR. HAUSER: Oh, is it me? 15 through 18,

24 Your Honor.

25 MS. ROSE: But you can't get that in without --

1 MR. HAUSER: Your Honor, there was an objection that
2 could have been made at the time to --

3 THE COURT: Huh?

4 MR. HAUSER: If they felt that it was incomplete, there
5 was an objection that was made at the time to remove the
6 pleadings.

7 THE COURT: Okay. This is what a juror has asked,
8 clarification on page 25.

9 MR. HAUSER: I'm okay reading 6 through 18.

10 THE COURT: What about page -- line 6 through 18?

11 MR. HAUSER: I have no problem with that.

12 MS. ROSE: And then after reading that, Judge, we
13 need to make sure that we clarify that those are two separate
14 instances. And then I'd be done.

15 THE COURT: Okay. And then you can ask questions.
16 He's going to say he doesn't remember, he was on medication.
17 You can ask -- but that's what you're saying at the preliminary
18 hearing?

19 MR. HAUSER: Yeah.

20 MS. ROSE: Yeah.

21 THE COURT: So we agree, or the parties agree, on
22 page 25, we can read into the record lines -- line 6 through 18,
23 page 23. I want to make sure I read this right. What did you say?
24 Page -- line --

25 MR. HAUSER: On 23, Your Honor. It was 19 until the

1 end of 25. And then it was page 24 as well.

2 THE COURT: 19 to 25, and 24 --

3 MR. HAUSER: It was 1 through 12.

4 MS. ROSE: To line 13 -- yeah.

5 THE COURT: 1 through 12. Okay. The parties have
6 stipulated they can read that into the record, and then there will
7 be follow-up questions.

8 MS. ROSE: That's totally fine. Do you want me to --

9 MR. HAUSER: Sure.

10 THE COURT: Okay. Oh, wait. One more question.

11 MS. ROSE: Sure. Okay. I'll have him read it.

12 THE COURT: Okay. Here's the question. I don't have
13 time [indiscernible].

14 MS. BONAVENTURE: Oh, do we have another?

15 THE COURT: Because you're going to talk about that
16 anyway.

17 MS. BONAVENTURE: Was Officer -- Officer K on
18 medication at the preliminary hearing?

19 THE COURT: Any objection to that question, Counsel?

20 MR. HAUSER: Not really.

21 THE COURT: Okay. Then I'll read that.

22 MR. HAUSER: I think it's already on the record; so no, I
23 don't have an objection.

24 THE COURT: Okay. You have no objection?

25 MS. BONAVENTURE: Well, kind -- but if you don't have

1 a problem with it --

2 THE COURT: I believe he's already testified to that.
3 Apparently, this is a clarification. Do you have any objection to
4 me asking this question?

5 MR. HAUSER: No.

6 THE COURT: Okay. And then at this point, you're
7 going to bring that in, and both parties have an opportunity to do
8 additional questions based on [indiscernible]. Okay.

9 [Bench conference was concluded.]

10 THE COURT: I'm going to ask an additional question
11 from one of the jurors.

12 Was Officer K on pain medication at the preliminary
13 hearing?

14 Were you on pain medication at the preliminary
15 hearing?

16 THE WITNESS: I was.

17 THE COURT: And if yes, what kind?

18 THE WITNESS: So they prescribed me Oxy, one of
19 those; Percocet, one of those; and then one of those, and then
20 Motrin. So I didn't want to -- honestly, I didn't want to take the
21 higher one because I didn't want -- I heard too many stories about
22 people getting dependent on it; so I just dealt with the pain and
23 just took some Motrin and went.

24 THE COURT: Thank you.

25 Counsel, any additional questions?

1 MS. ROSE: Yes, Your Honor. I am just going to have --

2 THE COURT: I'm just saying that one of the jurors
3 asked a question regarding the preliminary hearing transcripts
4 regarding page 23 and page 25; so this line of questioning is in
5 response to that jury question.

6 The parties have agreed that we committed to evidence
7 at the trial, his previous testimony, and then they're going to be
8 allowed to ask follow-up questions.

9 MS. ROSE: Your Honor, may I approach the witness.

10 THE COURT: Yes.

11 BY MS. ROSE:

12 Q All right. I'm going to have read you into the record
13 just as it says lines 19 through 12, 23 to 24.

14 Okay. So stop -- so stop here, and then read -- you can
15 read that in?

16 THE COURT: Counsel, why don't you stay --

17 MS. ROSE: I will, Your Honor.

18 THE WITNESS: So this to this?

19 BY MS. ROSE:

20 Q To this, yes. Just everything that's written.

21 A But you were never under the impression he wanted to
22 injure in any way?

23 Answer is: No.

24 Question -- question is: Or ever -- or even make contact
25 with you?

1 Answer is: No. He wanted to go after her.

2 Question is: He just -- that's exactly right. He wanted to
3 go after someone else. She was there.

4 Answer was: Right.

5 And then, there happened to be some kind of collision
6 maybe.

7 Answer was: No, there was not. There was not a
8 collision. He had to get past me to get to her.

9 Question was: All right.

10 Answer was: So I became -- so when you say he didn't
11 want to go after me, let me go ahead and clarify.

12 Answer: Correct. I was not the primary target. That is
13 correct. However, in order to get to her, he had to get through
14 me.

15 Q Thank you, Officer. And then page 25, line 6 through
16 18. So start from line 6, and just stop at 18, okay?

17 A Question is: Okay. Describe how that happened.

18 Answer is: Like I said, I was so -- there was the car and
19 the rear taillights. Because that's when were -- that's where we're
20 at. And then this was me. So he's trying to go between the two
21 of us, the car and the rear taillight is what he was trying to do. So
22 I remember him kind of pushing both sides to get kind of -- kind
23 of like when you're swimming, kind of like a swimming motion is
24 just the best way I could describe it -- is the best way I could
25 describe it.

1 Okay.

2 Answer: So that's -- so then that's when I had to step
3 back because he kind of pushed me to go through me, kind of
4 swim through me.

5 18; right? 18; right?

6 Q Yeah. To 18.

7 A Answer: And that's when I stepped back. And that's
8 when I felt the pain. I mean, it just -- I mean, it was a pop and a
9 pain.

10 Q Thank you, Officer. All right. So we had you read --
11 because we were kind of jumping around on the preliminary
12 hearing transcripts and everything.

13 Your testimony -- your testimony today, as you sit here
14 today, is that how -- there's two separate instances, if I can
15 understand correctly, and correct me if I'm wrong. There is the
16 initial push through you when you step back and heard the pop,
17 and that's when you couldn't even move your right leg. Is that
18 correct -- was that your testimony from today?

19 A Yes.

20 Q Okay. And then after that occurred, the swimming
21 motion happened?

22 A Correct.

23 Q Okay. And it -- that preliminary hearing transcript kind
24 of failed to articulate exactly what the heck happened that day?

25 A Correct.

1 Q Okay. Did you mean to lie to anybody at preliminary
2 hearing -- at the prelim?

3 A No.

4 Q Okay. Were you just trying to answer the questions as
5 best as you can?

6 A I was.

7 Q And were you nervous?

8 A Well, nervous and pain would be the two I would
9 describe.

10 Q And then there was a lot of cutoffs and everything else
11 in the preliminary transcript?

12 A Correct.

13 Q But your testimony today, as you sit here today under
14 oath, is what you had just previously testified to?

15 A Correct.

16 Q Okay.

17 THE COURT: Counsel, any additional -- oh, I'm sorry.

18 MS. ROSE: No. I'm finished, Your Honor. Thank you.

19 MR. HAUSER: We don't have any additional questions,
20 Your Honor.

21 THE COURT: Can this witness be excused?

22 MS. ROSE: Yes, Your Honor.

23 THE COURT: Sir, thank you for your testimony today.

24 THE WITNESS: Thank you, sir.

25 MR. LEXIS: Can we approach, Your Honor?

1 THE COURT: Yes, sir.

2 [Bench conference was had and transcribed as follows:]

3 MR. LEXIS: So we need to inform our next witnesses
4 of your ruling, so if we could take 15 minutes.

5 THE COURT: All right. Well, here's the deal.

6 Let's take a short break. I have a commitment. I have
7 to leave here at 4:40; so obviously we're not going to finish today.
8 I mean, we're going to have come back tomorrow.

9 MR. LEXIS: Okay. The person that I'm going to call is
10 the one that -- we won't have her back again.

11 THE COURT: Oh, that lady. Call her next, please. Let's
12 accommodate her. I appreciate it.

13 How many more witnesses do we have today? I mean,
14 we're doing pretty good. We're getting through.

15 MR. LEXIS: It's depending on -- things are very fluid
16 right now.

17 THE COURT: I just need to leave at 4:40. I apologize. I
18 thought we were going to be done by today.

19 MR. LEXIS: Well, let's get -- let's get and release this
20 one [indiscernible].

21 THE COURT: And then we'll start at 10:00 tomorrow.
22 And hopefully, this will go to the jury tomorrow.

23 MS. BONAVENTURE: Judge, you said you could stay
24 until how long today?

25 THE COURT: 4:40.

1 MS. BONAVENTURE: 4:40.

2 THE COURT: So how long do you need? 10 minutes?
3 15 minutes?

4 MR. LEXIS: 15 minutes.

5 THE COURT: Okay. Thank you.

6 MS. ROSE: Thank you.

7 [Bench conference was concluded.]

8 THE COURT: We're going to take our afternoon recess
9 at this time. During the recess -- we're going to take a 15-minute
10 recess.

11 So during this recess, you are admonished not to talk
12 or converse among yourselves or with anyone else on any subject
13 connected with this trial; or read, watch, or listen to any report or
14 recommend -- any report or commentary on the trial or any
15 person connected with this trial by any medium of information,
16 including, without limitation, the social media, text, newspapers,
17 television, the Internet, and radio.

18 Do not visit the scene of any of the events mentioned
19 during the trial or undertake any investigation. Do not do any
20 posting or communications on any social networking sites or do
21 any independent research, including Internet searches, or form or
22 express any opinion on any subject connected with this trial until
23 the case is finally submitted to you.

24 And we'll be in a 15-minute recess.

25 Counsel, stay for one moment.

1 You can be excused.

2 THE CLERK: Rise for the jury.

3 [Outside the presence of the jury.]

4 THE COURT: And just for the record, I want -- after the
5 first witness, Officer Rohrbaugh, the bailiff, had informed me that
6 none of the witnesses had handed him any notes or any
7 questions. So I didn't ask if there was any jury questions because
8 he indicated none of them had handed him any notes.

9 But just I have a good -- a good record. I'm going to
10 ask after each witness because I'm not sure -- I want to make sure
11 they understood that they're allowed to ask questions.

12 But as to the first witness, he did not indicate that any
13 of them had handed him any notes. That's why I didn't ask any
14 jury questions. I just wanted to make sure the record is clear on
15 that.

16 MS. ROSE: Thank you, Your Honor.

17 MR. HAUSER: Thank you, Your Honor.

18 THE COURT: Thank you.

19 [Recess taken from 3:14 p.m. until 3:30 p.m.]

20 THE MARSHAL: Remain seated. District Court
21 Department 18 will be back in session.

22 THE COURT: This is a continuation of the trial State of
23 Nevada versus Ronald Allen, Case No. C-16-318255.

24 Can you bring the jury in, please?

25 [In the presence of the jury.]

1 THE COURT: Please be seated.

2 Let the record reflect the presence of counsel for the
3 State, counsel for the defense, and the defendant and the jury.

4 Is the State ready to proceed?

5 MS. ROSE: Yes, Your Honor.

6 THE COURT: Please call your next witness.

7 MS. ROSE: The state calls Lisa Gordon.

8 THE CLERK: Please remain standing.

9 LISA GORDON

10 [having been called as a witness and being first duly sworn,
11 testified as follows:]

12 THE CLERK: Would you state and spell your name for
13 the record.

14 THE WITNESS: Lisa Gordon. L-I-S-A, G-O-R-D-O-N.

15 MS. ROSE: And, Your Honor, may I proceed?

16 THE COURT: Yes.

17 MS. ROSE: Okay.

18 **DIRECT EXAMINATION**

19 BY MS. ROSE:

20 Q I'm going to direct your attention to August 9th, 2016.

21 Where were you working then?

22 A Extra Space Storage.

23 Q Is that located on 4770 South Pecos here in Las Vegas,
24 Clark County, Nevada?

25 A Yes.

1 Q Okay. And what was your role at Extra Space Storage?

2 A Assistant manager.

3 Q Okay. And were you working on that date?

4 A Yes.

5 Q Okay. Now, at some time during that day, did a

6 Las Vegas Metropolitan Police officer arrive?

7 A Yes.

8 Q Okay. When he arrived, did you go outside?

9 A Yes.

10 Q Okay. Who were you with?

11 A Totty.

12 Q Okay. And is she a black female?

13 A Yes.

14 Q Okay. And you and Totty went to go approach the
15 police officer?

16 A Yes.

17 Q Okay. After she -- after you guys approached the police
18 officer, what happened?

19 A She was talking to him. And then a gentleman was --
20 he was talking to a gentleman, and he basically had his hands
21 behind his back, and he was saying whatever he was saying. And
22 then the gentleman broke loose and started running, and that was
23 that.

24 Q Okay. So you say a gentleman. Do you see that
25 gentleman here in court today?

1 A Yep. Right there.

2 Q Okay. Can you point at him and describe an article of
3 clothing he's wearing?

4 A The shirt he has on with a tie. The beige shirt or white
5 shirt, yeah.

6 Q Okay.

7 MS. ROSE: Your Honor, may the record reflect the
8 identification of the defendant?

9 THE COURT: So reflected.

10 BY MS. ROSE:

11 Q Okay. So you're outside with the officer when you see
12 a -- you, at some point, see the officer and the male talking?

13 A Uh-huh.

14 Q Okay. And then you said that the male --

15 THE COURT: You need to answer yes or no. We're
16 recording; so if you can just answer yes or no or explain your
17 answer.

18 THE WITNESS: Okay.

19 BY MS. ROSE:

20 Q And he breaks loose from the officer. At one point,
21 does the officer -- does the officer and the defendant meet?

22 A After the officer is trying to go after him to stop him
23 from running. So that's where they meet up.

24 Q Okay. At some point, did you see -- did you see -- what
25 did you see after that?

1 A That's it. The officer fell to the car, and he was just
2 slumped over the -- his patrol car.

3 Q Okay. Did you make -- did you see them make contact?

4 A Yeah, they did.

5 Q Okay. What was that contact?

6 A That gentleman right there, he punched the cop.

7 Q Okay. And you -- and him punching the officer, is
8 that -- is that the action that caused the officer to kind of, like,
9 slump down --

10 A Yes.

11 Q Okay. And what did -- so after he punched the officer,
12 did he run?

13 A Yes.

14 Q Was he running towards something?

15 A Yes. He ran behind the patrol car, and he was just
16 running, so --

17 Q Okay. And where were you and Totty at the time?

18 A We were standing right in front of the police officer's
19 car.

20 Q Okay. Was the officer trying to block the defendant
21 from any -- from anything?

22 A Yeah, he was.

23 Q Okay. What was the officer trying to block him from?

24 A It looked like he was coming towards us, so --

25 Q When you say he, you mean the --

1 A The defendant. That guy right there.

2 Q Okay. So you mean he's trying to block you -- he's
3 trying to block the defendant from coming at you and Totty?

4 A Yes, yes.

5 Q Okay. You are -- you are the assistant manager at the
6 time at Extra Space Storage?

7 A Yes.

8 Q Did you -- was there any surveillance pointing at that
9 area?

10 A No.

11 Q Okay. So no surveillance that would capture this
12 incident?

13 A Not at all.

14 Q Okay. Did you know -- did you know the officer at the
15 time?

16 A No.

17 Q Okay. Have no clue who he is?

18 A No.

19 Q First time you saw him that day?

20 A Yes.

21 Q Okay.

22 MS. ROSE: No further questions, Your Honor.

23 THE COURT: Okay. Do you pass the witness?

24 MS. BONAVENTURE: Your Honor, we have no
25 questions. We'll pass the witness. Thank you.

1 THE COURT: Okay. Can the witness be excused?
2 MS. ROSE: Yes, Your Honor.
3 THE COURT: Ma'am, thank you for coming in and
4 testifying today.
5 Oh, I'm sorry. No questions? Where's my bailiff?
6 Can I ask the jurors to put your badge numbers on the
7 piece of paper, if you would.
8 Counsel, approach.
9 [Bench conference was had and transcribed as follows:]
10 MS. BONAVENTURE: Did she actually see the
11 defendant punching the officer?
12 What is the relationship between you and the
13 defendant?
14 I don't know if that's important or not.
15 MS. ROSE: Context out of contact.
16 MS. BONAVENTURE: I think before, we answered that.
17 MR. HAUSER: Yeah. And that, I think, is a problematic
18 thing.
19 MS. ROSE: If we answer that question, we're going to
20 get into --
21 MS. BONAVENTURE: I think that question is kind of
22 vague.
23 THE COURT: Oh, wait. Let me look at that. Okay. Let's
24 go through them one more time. Okay.
25 As to the first one, Did she actually see the defendant

1 punching the officer?

2 Is there any objection to that?

3 MR. LEXIS: No.

4 THE COURT: And the second one, I think what it says,
5 What is the relationship between her and the defendant?

6 I was trying to ask is there any relationship between her
7 and the defendant?

8 MS. BONAVENTURE: There is none. They don't know
9 each other.

10 THE COURT: And the second question is, What was
11 context -- what was context of contact with the defendant?

12 I'm not quite sure what --

13 MS. BONAVENTURE: It's vague in and of itself.

14 THE COURT: Huh?

15 MR. LEXIS: They want to know the entire story.

16 MS. BONAVENTURE: That's not true.

17 MS. ROSE: If we ask that question, Your Honor, I am --
18 I'm nervous that she is going to talk about --

19 THE COURT: Okay. So I'm not going to ask that
20 question.

21 MS. BONAVENTURE: Then we don't ask it.

22 THE COURT: I agree.

23 MS. ROSE: I mean, if you want to ask it -- if she
24 personally has a relationship with the defendant, you can if she
25 does. But that question is poised [indiscernible].

1 THE COURT: Okay. So again, I don't want to open up
2 any doors.

3 MR. HAUSER: I'm afraid that's all that it does.

4 THE COURT: I agree. So I'm not going to give -- I'm
5 not sure what is the relationship between her and the defendant.
6 Am I opening up any doors if I ask that question?

7 MR. LEXIS: We need to make sure to excuse the jury
8 when I ask her that question.

9 MS. ROSE: Okay. It's going to be -- she doesn't have a
10 relationship -- she's a lay witness.

11 THE COURT: Huh?

12 MS. ROSE: She's a lay witness. I don't know what she
13 says after she --

14 THE COURT: Okay. Let me see what the next question
15 is. I need clarification. [Indiscernible].

16 MS. ROSE: See, I don't -- if I lead her, I can have these
17 questions asked. But if I don't lead her, I don't know -- you know
18 what I mean?

19 THE COURT: All right. And here's another one.

20 MS. BONAVENTURE: I mean, I think that she's
21 answered this question. She said he was -- he was coming at
22 both of us. She already said that.

23 MR. LEXIS: I don't have a problem with this question.

24 MS. BONAVENTURE: Her position in regard to the
25 police vehicle at the time the incident took place of the impact.

1 She's answered a lot of these.

2 THE COURT: Huh?

3 MS. BONAVENTURE: I think she's actually answered
4 this question. I think she's answered that question.

5 THE COURT: Did you see this one?

6 MR. LEXIS: She is basically going to ask that question.

7 THE COURT: What about this question? Do you have
8 any objection to that question?

9 MS. BONAVENTURE: No. She's already answered it.

10 THE COURT: Okay. So there's no objection to the
11 question, did she see the defendant -- did she see who defendant
12 was trying to get to? Was it Lori or Totty?

13 MS. BONAVENTURE: She did. She said he was
14 coming at us.

15 MS. ROSE: She's saying -- she said she was -- he was
16 coming at us. They want to know what about her, Totty.

17 THE COURT: And who's Totty?

18 MS. ROSE: Totty is Delacey Collins, the girl that we --

19 THE COURT: It's --

20 MS. ROSE: It's Delacey Collins, the --

21 MR. HAUSER: The other girl that was present.

22 MS. ROSE: Yeah.

23 THE COURT: Okay. So can I ask this question without
24 opening any door?

25 MS. ROSE: If you specifically -- if you specifically ask

1 who he was trying to go after --

2 THE COURT: I think that's fine. So I can ask the first
3 part of it; is that correct?

4 MR. LEXIS: I suggest --

5 MS. BONAVENTURE: I think maybe just the second --
6 was he coming at you and Totty?

7 THE COURT: Huh?

8 MS. BONAVENTURE: I think Ms. Rose is right in that
9 we should make it a leading question. Was he coming towards
10 you and Totty?

11 THE COURT: Okay. Is that okay?

12 MS. BONAVENTURE: Because she's already said that.

13 THE COURT: Okay. So it needs to be was she --

14 MS. BONAVENTURE: Or he, he. Sorry.

15 THE COURT: Or was he coming towards you?

16 And the name is Totty.

17 MS. BONAVENTURE: Totty. That's what she's been
18 calling her.

19 THE COURT: All right. So I'll rephrase this one. This
20 one's fine.

21 MS. BONAVENTURE: Great.

22 THE COURT: What about this one? Is she -- do we
23 have an objection for this one?

24 MS. BONAVENTURE: Oh, no.

25 MS. ROSE: No.

1 THE COURT: No. That one's fine? Okay. So I'll ask
2 that one, this one. All right.

3 And then, on this one, I'm not going to give this one
4 because it opens up the door.

5 MS. ROSE: You can ask her what her -- if she has, like,
6 a personal relationship with him. She doesn't, but what is the
7 relationship --

8 THE COURT: Okay. So I'm not going to ask the second
9 one because that will open up the door; correct?

10 MS. ROSE: Or the context of contact [indiscernible].

11 MS. BONAVENTURE: And I like the idea of asking a
12 leading question: Do you have a personal relationship with
13 Mr. Allen?

14 MS. ROSE: Or what is the relationship --

15 THE COURT: Okay. So I'm going to ask her, Do you
16 have a relationship with the defendant?

17 And obviously [indiscernible]. I'm not going to ask the
18 second part, What was context of contact with the defendant?

19 MS. BONAVENTURE: Right.

20 THE COURT: So I'm not going to ask that. Okay?

21 So I'm going to ask the first two as they're written. And
22 then the second two, Was she coming towards you? Was he, the
23 defendant, coming towards you and Totty? And do you have a
24 relationship with the defendant [indiscernible]?

25 MS. ROSE: Yeah, Totty.

1 THE COURT: Huh?

2 MS. ROSE: Totty.

3 THE COURT: Oh. Did you have a relationship with

4 Totty?

5 MS. BONAVENTURE: No. That's not their question.

6 That's not their question.

7 MS. ROSE: Oh, no. Can you and Totty -- it's just you

8 and Totty.

9 THE COURT: Okay. Say it. But --

10 MS. BONAVENTURE: No. But that's not that question.

11 THE COURT: Okay. What you -- is it T-O-T-I-E? How

12 do you spell the person's name?

13 MS. ROSE: T-O-T-T-Y. It's pronounced Taw-tee.

14 THE COURT: T-O-T-T-Y. So was the defendant coming

15 towards you and Totty --

16 MS. ROSE: Yes.

17 THE COURT: Okay. All right.

18 MS. BONAVENTURE: And then what was the second

19 question you would rephrase, Judge?

20 THE COURT: The second was, Did you have a

21 relationship with the defendant, or do you have any relationship --

22 do you want to say, Do you have any relationship with the

23 defendant or a relationship?

24 MS. BONAVENTURE: A relationship is fine.

25 THE COURT: A relationship? Okay.

1 MS. BONAVENTURE: Thank you.

2 THE COURT: Thank you.

3 [Bench conference was concluded.]

4 THE COURT: The jury has a couple questions.

5 THE WITNESS: Okay.

6 THE COURT: Did you actually see the defendant
7 punching the officer?

8 THE WITNESS: I seen him hit him, yes.

9 THE COURT: All right. Where were you positioned in
10 regards to the police vehicle at the time the incident took place or
11 the impact between the defendant and the officer?

12 THE WITNESS: Right in front of the patrol car. Like,
13 right in front. Like, right where the hood is, right there.

14 THE COURT: And was the defendant coming towards
15 you and Totty?

16 THE WITNESS: That's what it seemed like.

17 THE COURT: And did you have a relationship with the
18 defendant?

19 THE WITNESS: No. I don't even know him.

20 THE COURT: Okay.

21 Any additional questions by counsel?

22 BY MS. ROSE:

23 Q And I just want a quick question in a response of a yes
24 or no.

25 A Okay.

1 Q Was the defendant going towards the other female
2 who was -- you identified as Totty?

3 A Yes.

4 Q Okay. Thank you.

5 MS. ROSE: No further questions.

6 THE COURT: Any questions by the defense?

7 MS. BONAVENTURE: No, Your Honor. Thank you.

8 THE COURT: Can I excuse this witness at this time?

9 MS. ROSE: Yes, Your Honor.

10 THE COURT: Thank you, ma'am, for your testimony
11 today. And you're excused.

12 THE WITNESS: All right.

13 MR. LEXIS: May I approach briefly, Judge.

14 THE COURT: Sure.

15 [Bench conference was had and transcribed as follows:]

16 MR. LEXIS: Just making sure. So -- this should be
17 quick -- just making sure [indiscernible].

18 MS. BONAVENTURE: Will we have to count for that, or
19 is there something that [indiscernible].

20 MS. ROSE: I think he's just making sure that all of the
21 votes are admitted before --

22 MR. LEXIS: State's going to rest.

23 THE COURT: I'm sorry?

24 MR. LEXIS: State's going to rest.

25 THE COURT: Oh.

1 MS. ROSE: We'll put it on the record.

2 THE COURT: All right. Are you going to present a
3 witness? Okay.

4 We'll do closing arguments tomorrow, first thing
5 tomorrow morning, and submit it to the jury.

6 MR. LEXIS: We need to jury instructions right -- like,
7 right now, Judge, because we're going to make sure we're going
8 to have no argument on this.

9 THE COURT: Okay. I was going to do jury instructions
10 tomorrow morning at 9 o'clock.

11 MS. ROSE: Okay.

12 MR. HAUSER: Get it out of the way.

13 MR. LEXIS: All right. Okay. I said, Judge, don't do it
14 until you have to leave, Judge.

15 THE COURT: That's fine. I'll do it until I have to leave.
16 I'm just saying -- I mean, I'm going to leave at 4:30.

17 MR. LEXIS: Got you. I got you. All right.

18 MR. HAUSER: We're good?

19 THE COURT: All right.

20 [Bench conference was concluded.]

21 MR. LEXIS: State rests, Your Honor.

22 THE COURT: At this time, ladies and gentlemen, I'm
23 going to excuse you for the -- our evening recess. I expect this
24 case to conclude tomorrow morning, and then I'll probably go to
25 you sometime tomorrow for deliberation.

1 So I'm going to -- this is going to be our evening
2 recess.

3 During the recess, you are admonished not to talk or
4 converse among yourselves or with anyone else on any subject
5 connected with this trial; or read, watch, or listen to any report or
6 commentary on the trial or any person connected with the trial by
7 any medium of information, including, without limitation, to
8 social media, text, newspapers, television, the Internet, and radio.

9 Do not visit the scene of any of the events mentioned
10 during the trial or undertake any investigation. Do not do any
11 posting or communications on any social networking sites or do
12 any -- do any independent research, including Internet searches,
13 or form or express any opinion on any subject connected with the
14 trial until the case is finally submitted.

15 I don't have a calendar tomorrow; so we can start at 10
16 o'clock tomorrow morning. Is that agreeable to counsel?

17 MS. BONAVENTURE: Yes, Judge.

18 MR. HAUSER: Yes, Your Honor.

19 THE COURT: So you're excused for evening recess.
20 And if you could be here by 10 o'clock tomorrow, we'll resume at
21 that time.

22 [Outside the presence of the jury.]

23 THE COURT: Counsel, at this -- let the record show that
24 the jury is no longer present.

25 At this time, I'm going to -- I'm going to go over the

1 defendant's right to self-representation and advise him regarding
2 the consequences. If he has any [indiscernible] convictions, I will
3 give you the opportunity to discuss the labor with him. And then
4 when we come back tomorrow, you can either begin your case, or
5 if you rest, and we'll do -- be prepared to do closing arguments
6 tomorrow.

7 MS. BONAVENTURE: Thank you, Judge.

8 THE COURT: Okay.

9 Mr. Allen, you can have a seat.

10 Mr. Allen, under the Constitution of the United States
11 and under the Constitution of the State of Nevada, you cannot be
12 compelled to testify in the case. Do you understand that, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You may, at your own request, give up
15 this right and take the witness stand and testify. And if you do,
16 you will be subject to cross-examination by the deputy district
17 attorney. And anything that you may say, be it on direct or
18 cross-examination, will be the subject of further comment when
19 the deputy district attorney speaks to the jury in his or her final
20 arguments.

21 Do you understand that, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: If you choose not to testify, the Court will
24 not permit the deputy district attorney to make any comments to
25 the jury because you have not testified.

1 Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: If you elect not to testify, the Court will
4 instruct the jury, but only if your attorney specifically requests as
5 follows: The law does not compel a defendant in a criminal case
6 to take the stand and testify, and no presumption may be raised
7 and no inference of any kind may be drawn from the failure of a
8 defendant to testify.

9 Do you have any questions about these rights, sir?

10 THE DEFENDANT: No, sir.

11 THE COURT: You are further advised that if you have a
12 felony conviction and more than ten years has not elapsed from
13 the date you have been convicted or discharged from prison,
14 parole, or probation, whichever is later; and the defense is not set
15 to preclude that from coming before the jury; and you elect the
16 take the stand and testify, the deputy district attorney, in the
17 presence of the jury, will be permitted to ask the following
18 questions: One, have you been convicted of a felony? Two, what
19 was the felony? And three, when did it happen? However, no
20 details may be gone into -- however, no details may have gone
21 into.

22 Do you understand that, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: At this time, we're going to have a
25 evening recess, and I'm going to inquire tomorrow of the defense,

1 if they intend to present any witnesses and whether you waive
2 your right to testify, unless you're prepared to advise me of that
3 now.

4 MS. BONAVENTURE: Judge, we'll have a talk with
5 him.

6 THE COURT: All right. At this time, we're going to take
7 a recess, and we're going to settle instructions.

8 And then tomorrow morning -- what time can you get
9 him back over here? Can you have him here by 9:30?

10 THE MARSHAL: Yes.

11 THE COURT: And then we'll put the argument on the
12 record regarding the instructions.

13 MR. HAUSER: Sounds good.

14 THE COURT: So if we'll reconvene -- Counsel?
15 Counsel?

16 MS. ROSE: Sorry, Your Honor.

17 THE COURT: We're going to settle instructions, and
18 then we're going to reconvene tomorrow at 9:30 outside the
19 presence of the jury. And you can make your record regarding
20 the instructions.

21 MS. ROSE: Perfect, Your Honor.

22 THE COURT: Is there a conference room? We may
23 have to -- see if any of the jury rooms -- at this time, we're in
24 recess.

25 THE CLERK: Court's adjourned.

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THE COURT: See if any of the jury rooms are available.
Otherwise, we're going to do it in -- have to do it in here.

[Proceeding concluded at 3:55 p.m.]

* * * * *

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



Shannon D. Romero
Certified Electronic Transcriber
CET**D324

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No. 75329

vi.

Respondent.

STEVE WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

ADAM LAXALT
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

Counsel for Respondent

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 0 day of June, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

KEDRIC A. BASSETT
HOWARD S. BROOKS

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

RONALD ALLEN, #1185020
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

BY /s/Rachel Howard
Employee, Clark County Public Defender's Office