

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALLEN RONALD,

No. 75329

Appellant,

V.

THE STATE OF NEVADA,

Respondent.

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APPELLANT'S APPENDIX VOLUME IV PAGES 679-753

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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Case No. 75329

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
vs.
RONALD ALLEN,
Defendant.

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

BEFORE THE HONORABLE MARK B. BAILUS, DISTRICT COURT JUDGE
FRIDAY, NOVEMBER 3, 2017

***RECORDER'S TRANSCRIPT OF HEARING:
JURY TRIAL – DAY FOUR***

APPEARANCES:

For the State:

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LAURA JEAN ROSE, ESQ.
Deputy District Attorneys

For the Defendant:

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

RECORDED BY: ROBIN PAGE, COURT RECORDER

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Las Vegas, Nevada; Friday, November 3, 2017

[Proceeding commenced at 10:33 a.m.]

[Outside the presence of the jury.]

THE COURT: Counsel, before our evening recess, I had admonished the defendant about his right to testify. Have you had an opportunity to discuss with him --

MR. HAUSER: We have discussed that with him, Your Honor.

THE COURT: And what is your position?

MR. HAUSER: We're -- he's not going to testify today.

THE COURT: Is that correct, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Defense, any presentation of evidence?

MR. HAUSER: No, Your Honor. The defense rests.

THE COURT: Mr. Clark, has any -- have all exhibits been admitted or has there been any exhibits that have been submitted but not admitted? All exhibits have been admitted?

Okay. The clerk advised me all the exhibits that have been submitted have been admitted into evidence.

This is the -- are the parties ready to settle instructions at this time?

MR. HAUSER: Yes, Your Honor.

THE COURT: I'm going to start with the State's proposed instructions.

1 State, in your proposed instructions, is there any
2 instructions you wish to withdraw?
3 MR. LEXIS: Just the flight.
4 THE COURT: You withdraw the flight instruction?
5 MR. LEXIS: Yes.
6 THE COURT: And all the other instructions are submitted?
7 MR. LEXIS: Yes.
8 THE COURT: Okay.
9 MR. LEXIS: Well, other than the verdict form. That is
10 changed.
11 THE COURT: That's correct. Do we have the new verdict
12 form?
13 MS. ROSE: Yes, Your Honor.
14 THE COURT: Have you provided it to the Court?
15 MS. ROSE: Yes, Your Honor.
16 THE COURT: Defense, have you seen the new verdict
17 form?
18 MR. HAUSER: Yes, Your Honor.
19 THE COURT: Is it acceptable?
20 MR. HAUSER: Yes, Your Honor.
21 THE COURT: On the new verdict form it starts off --
22 MR. LEXIS: No. We were supposed to -- no, that's not
23 how it was supposed to be. I'll go change it.
24 THE COURT: Okay.
25 MR. HAUSER: We're fine with it, but it's not the one we

1 agreed to.

2 MR. LEXIS: No.

3 THE COURT: No. I agree. It was supposed to be not
4 guilty, then guilty of battery of a protected person [indiscernible] --

5 MR. HAUSER: Yeah.

6 MR. LEXIS: -- and then go there. So you'll submit a
7 revised verdict form?

8 MS. ROSE: We will, Your Honor.

9 THE COURT: Okay. As soon as we settle instructions,
10 how long -- are you going to have it before we settle instructions?

11 MS. ROSE: Yes, Your Honor.

12 THE COURT: Okay. Thank you.

13 Does the defendant -- with -- I have a copy of defendant's
14 proposed jury instructions. As to the minutes -- does the defendant
15 withdraw any of your proposed instructions?

16 MR. HAUSER: I would say that we withdraw the majority,
17 and I'm counting them right now, just to make sure I know them all.

18 THE COURT: Okay.

19 MR. HAUSER: I know we're withdrawing 1, 2, 3, 5 --

20 THE COURT: Wait. Hold on.

21 MR. HAUSER: Sorry.

22 THE COURT: So you're withdrawing 1?

23 MR. HAUSER: Yes, Your Honor. 2, 3 --

24 THE COURT: Oh, hold on.

25 MR. HAUSER: Sorry.

1 THE COURT: I apologize. I'm marking --

2 MR. HAUSER: Quite all right.

3 THE COURT: I'm marking on the exhibit.

4 MR. HAUSER: Oh, oh. I'm sorry. I thought you were just
5 writing the numbers. My fault.

6 THE COURT: Give me a piece of paper. Just hand me that
7 piece of paper. I apologize, Counsel.

8 All right. So thank you. I appreciate that.

9 All right. So you're withdrawing 1?

10 MR. HAUSER: Yes, Your Honor.

11 THE COURT: 2?

12 MR. HAUSER: Yes.

13 THE COURT: Continue.

14 MR. HAUSER: 3, 5, 6, 8, and 12 -- oh, and 9. I'm sorry,
15 Your Honor. I missed one.

16 THE COURT: All right. Okay. Jury Instruction No. 4 reads:
17 Should you find that the injury suffered by a victim was caused
18 accidentally, you must find the defendant not guilty of battery; is that
19 correct?

20 MR. HAUSER: That's correct.

21 THE COURT: And what is the basis of that instruction,
22 Counsel?

23 MR. HAUSER: As we cited, McDonald v. State,
24 Your Honor, is the basis for that instruction. We took it directly out
25 of that case. It's an accurate statement of law. I know it's from 1973,

1 but it's never been overturned by the Nevada Supreme Court, where
2 the Court literally found that a battery charge could not stand where
3 the injury was accidentally inflicted. Therefore, we submitted this
4 instruction based purely on McDonald v. State.

5 THE COURT: Okay. State, what's your position on this
6 instruction?

7 MR. LEXIS: The heart of what they're getting at with this
8 law is covered in other instructions. This is confusing. It's clearly an
9 accident to the act which then could be found not guilty of the
10 battery. As far as whether the injury is an accident is an inaccurate
11 statement of law.

12 MR. HAUSER: And, Your Honor, just to complete the
13 record, since I know we're not giving this one, we had already talked
14 about the one we would have been giving. It's not an inaccurate
15 statement of law. Counsel said that about a million times in this
16 argument. It's a quote. A quote is not an inaccurate statement of
17 law. He keeps citing to other cases that disagree, but that doesn't
18 make it inaccurate. It is an accurate statement of law. He's making
19 assumptions about what the Court meant when they wrote this, and
20 I was using the actual words that the Court used.

21 He's saying by inflicted, they must have meant the actual
22 act, where it actually just says the injury was inflicted, and that was
23 accidental and therefore the battery charge cannot stand.

24 It's an appropriate statement of law, it's an accurate
25 statement of law, and it should be given in this case.

1 MR. LEXIS: He left out inflicted, first of all, on the top.
2 Inflicted means the cause of the actual accident, meaning the actual
3 act of the battery. Then I'll submit.

4 THE COURT: Okay. And are you offerings this as a theory
5 defense instruction, Counsel?

6 MR. HAUSER: We are, Your Honor.

7 THE COURT: I've reviewed the McDonald case, and it
8 does appear that the instruction is consistent with the language in
9 McDonald. Unfortunately, McDonald does not give any explanation
10 or factual basis for this proposition. The only reference in McDonald
11 is as follows: The contention of lack of probable cause as to
12 remaining counts as without merit, except as to Count 5, (battery
13 with a deadly weapon, NRS 200.481). And then it references
14 Footnote 1.

15 And in Footnote 1, it states: The battery charge cannot
16 stand because the record reflects the alleged injury was accidentally
17 inflicted. NRS 200.481 defines battery as any willful, unlawful use of
18 force of violence, emphasis added. Here from the prosecuting
19 attorney -- from the prosecuting witness's statement, it
20 unequivocally appears appellate did not intend to inflict a cut she
21 suffered.

22 As you know, the McDonald decision was a 1973-case, and
23 it does appear that it has not been overruled. But that was a
24 footnote, and not a holding of the case. So it was somewhat
25 contained indicta.

1 Since the McDonald decision, there's been additional
2 cases addressing that issue, most notably was the Hobbs decision.
3 And in Hobbs, the -- apparently it was a battery, domestic violence
4 situation involving spitting, whether spitting could constitute a
5 battery.

6 And the Supreme Court stated: In conclusion, the
7 language and meaning of NRS 200.481 is clear. At a minimum,
8 battery is the intentional and unwanted exertion of force upon
9 another, however slight.

10 Because the record clearly demonstrates that Hobbs
11 intentionally spat on McClain and because spitting on another
12 amounts to the use of force or violence, as contemplated by NRS
13 200.481, we conclude that Hobbs was properly convicted of domestic
14 battery, pursuant to NRS 200.485, and that the district court probably
15 dismissed Hobbs petition for a writ of habeas corpus.

16 In trying to harmonize the Hobb -- the McDonald decision
17 with Hobbs, it appears to the Court that in McDonald, what they
18 were referencing the injury, the cut, it was the act which caused the
19 cut, because under a -- under battery there's no requirement of
20 injury -- certainly in the spitting case, the Hobbs' case, there was no
21 injury.

22 What I am willing to -- so I do not think McDonald
23 accurately reflects the law. I think the only reason injury is an issue
24 in this case is not as it relates to the battery, but as it relates to the
25 substantial bodily harm.

1 So what I am willing to do is offer the modified version of
2 your proposed instruction, because I do believe your instruction is
3 confusing and doesn't accurately reflect what the law is after the
4 Hobbs' decision.

5 What I am willing to submit, as a jury instruction, is
6 willfully is distinguished from an act done accidentally,
7 inadvertently, or innocently. If you find that the act which caused the
8 injuries were done accidentally, you must find the defendant not
9 guilty of battery.

10 I will give that jury, noting your objection, if you request it.

11 MR. HAUSER: I would request it, Your Honor.

12 THE COURT: State, what's your position?

13 MR. LEXIS: Submit the one you already -- we have --

14 THE COURT: I'm not giving their instruction. I advised
15 them, noting their objection, I would submit this modified instruction
16 to the jury.

17 MR. LEXIS: The one that we've already included in the
18 instructions?

19 THE COURT: That's correct.

20 MR. LEXIS: Submitted, Judge.

21 THE COURT: Thank you. And I now have a copy of the
22 new verdict form. Have you seen the revised?

23 MR. HAUSER: We have, Your Honor.

24 THE COURT: And is that acceptable to the defense?

25 MR. HAUSER: We still have no problem with it.

1 THE COURT: All right. You said that you're now
2 withdrawing Jury Instruction No. 7?

3 MR. HAUSER: I actually think it was covered by other
4 instructions, Your Honor, so I will.

5 THE COURT: It is covered by other instructions, so --

6 MR. HAUSER: We're good.

7 THE COURT: Okay.

8 MR. HAUSER: We'll withdraw that one.

9 THE COURT: Withdrawing 7. And Jury Instruction No. 10,
10 you're not withdrawing?

11 MR. HAUSER: No, Your Honor. We submitted that one
12 because we believe it's a more accurate statement of law. I do
13 understand it's a California criminal instruction. It's out of their stock
14 instructions, but it gives more factors for the jury to weigh about the
15 credibility and believability of a witness. I don't think more factors is
16 a bad idea in this case. It's more thorough than the State's
17 instruction, which is why we offered it.

18 THE COURT: State, what's your position?

19 MR. LEXIS: Which exact one again, Judge?

20 THE COURT: It's Defendant's Proposed Instruction No. 10.

21 MR. LEXIS: A lot of this stuff doesn't even pertain to this
22 case. We already offered one. It's duplicative. And ours makes
23 more sense. This is convoluted.

24 THE COURT: I agree with the State, Counsel. I believe
25 that this is covered by other instructions that we are submitting.

1 And this instruction would be confusing if I submitted it. Many of
2 the factors that it discusses aren't relevant in this case. One of the
3 factors is whether the witness has been convicted of a felony.
4 There's no testimony regarding that.

5 There was other instances, as examples in this instruction,
6 where there's no testimony, such as was the witness promised
7 immunity or leniency in exchange for his or her testimony? These
8 are examples which I think will confuse the jury since there's been
9 no testimony in the record of anything of that nature. So I'm not
10 going to give Instruction No. 10.

11 What about Instruction No. 11?

12 MR. HAUSER: We also offered this one about the types of
13 evidence to consider. We believe it's a more thorough statement of
14 law. It's also based on a California instruction. However, the
15 Nevada Supreme Court in Bails v. State has held that such
16 instruction is permissible in a case like this one.

17 Again, we think it's more thorough than the State's
18 instruction, and we don't find thoroughness to be objectionable. So
19 we submitted this instruction in contrary -- contrary to the State's
20 instruction.

21 THE COURT: State, what's your position?

22 MR. LEXIS: We already give a direct and circumstantial
23 and other type evidence instruction. This is confusing, convoluted,
24 and I believe some of it's an inaccurate statement of law. The
25 Nevada Supreme Court is clear, you could find someone guilty on

1 100 percent circumstantial evidence. There doesn't need to be this
2 prelude of, oh, you need to find such, X, Y, Z, before you could even
3 consider circumstantial evidence. So with that, I'll submit.

4 THE COURT: I agree with the State. I do think it's
5 confusing, and I believe it's sufficiently covered by other
6 instructions. So I'm not going to give 11.

7 I have Defendant's Proposed --

8 [Pause in proceeding.]

9 THE COURT: I'm going to have my clerk mark the State's
10 proposed exhibits with the citations as a Court exhibit, as well as the
11 defense proposed jury instructions as a proposed -- as a Court
12 exhibit. Where is the instructions? Is this them? Okay.

13 All right. So let's go over the instructions I am going to
14 give. All right.

15 The first instruction is going to be it's my judge -- it's not
16 my duty as a judge to instruct you.

17 Do you have it, Counsel? And that'll be Jury Instruction
18 No. 1.

19 Jury Instruction No. 2 is, If in these instructions any rule,
20 direction, or idea -- jury instruction --

21 And as to the other instructions, Counsel, you did not have
22 any objection to the State's obstructions -- instructions, other -- is
23 that correct?

24 MR. HAUSER: Other than what we've already put on the
25 record, no.

1 THE COURT: Very good.

2 An information is but a formal method of accusing a
3 person, that'll be Instruction No. 3.

4 To constitute the crime charged will be Instruction No. 4.

5 The defendant is presumed innocent will be Instruction
6 No. 5.

7 You are here to determine the guilt or innocence of the
8 defendant will be Instruction No. 6.

9 The evidence which you are to consider in this case
10 consists of testimony will be Instruction No. 7.

11 The credibility or believability of a witness is Instruction
12 No. 8.

13 A general intent crime, Instruction No. 9.

14 Battery means any willful and unlawful use will be
15 Instruction No. 10.

16 Willfully is distinguished from an act on accidentally,
17 inadvertently or innocently will be Instruction No. 11.

18 Instruction No. 12 will be as used in these instructions
19 substantial bodily harm means.

20 Instruction No. 13 will be when it is possible to commit a
21 particular crime.

22 Instruction No. 14, although you are to consider only the
23 evidence.

24 Instruction No. 15 is it is the constitutional right of the
25 defendant.

1 And, Counsel, you -- it's my understanding that you have
2 requested that I give Instruction No. 15; is that correct?

3 MR. HAUSER: Yes, Your Honor.

4 THE COURT: And so you have no objection to me giving
5 it?

6 MR. HAUSER: No, I do not.

7 THE COURT: Instruction No. 16, when you retire to
8 consider your verdict.

9 Instruction No. 17, during the course of this trial your
10 deliberations.

11 Instruction No. 18, if during your deliberation.

12 Instruction No. 19, now you will listen to the arguments of
13 counsel.

14 And then attached will be the verdict form that says not --
15 and you are not guilty --

16 Nope, wrong verdict form. Where is the new verdict form?
17 Make sure it's attached to it.

18 The new verdict form has the order not guilty, guilty of
19 battery on protective person with substantial bodily harm, guilty of
20 battery with substantial bodily harm, guilty of battery on a protected
21 person, and guilty of battery.

22 That's the order of the boxes; correct?

23 MR. HAUSER: Yes, Your Honor.

24 THE COURT: And that's the verdict form that the parties
25 have agreed on to give to the jury?

1 MR. HAUSER: Yes.

2 THE COURT: Is there any other jury instructions that

3 either party has requested that the Court give?

4 MR. HAUSER: No, Your Honor.

5 MR. LEXIS: No, Your Honor.

6 THE COURT: State?

7 MR. LEXIS: No, Your Honor.

8 THE COURT: Is there any other housekeeping matters that

9 we need to take care of?

10 MR. LEXIS: No, Your Honor.

11 MS. BONAVENTURE: No.

12 MR. HAUSER: I don't believe so.

13 THE COURT: I'm sorry.

14 MR. HAUSER: No, Your Honor. I don't believe so.

15 THE COURT: So my intent is to bring the jury in. I'm

16 going to ask you if you're going to present any evidence. You're

17 going to rest; correct?

18 MR. HAUSER: That's correct.

19 THE COURT: Okay. And then I'm going to, you know,

20 read the jury instructions to the jury, and then we'll do closing

21 argument. Is that acceptable?

22 MR. HAUSER: Yes, Your Honor.

23 MS. BONAVENTURE: Yes, Your Honor.

24 THE COURT: Why don't you bring -- is the jury ready to be

25 brought in?

1 [In the presence of the jury.]

2 THE COURT: Please be seated.

3 The State has rested.

4 Is the defense prepared to go forward with their case at
5 this time?

6 MR. HAUSER: Your Honor, the defense rests at this time.

7 THE COURT: Ladies and gentlemen of the jury, I'm about
8 to instruct you upon the law as it applies in this case. We're going to
9 go into the next phase of the trial. And that's where the attorneys
10 are going to make closing arguments.

11 We have concluded the evidentiary portion of the case. So
12 now we're going into the phase where counsel will make closing
13 arguments. And I'm about to instruct you upon the law as it applies
14 in this case.

15 I would like to instruct you orally without reading to you,
16 however, these instructions are of such importance it is necessary
17 for me to read to you these carefully prepared, written instructions.

18 The instructions are long and some are quite complicated.
19 If they are not especially clear when I read them to you, please keep
20 in mind that when you go to the jury room, you will be able to take
21 these carefully prepared, written instructions with you, so that you
22 can read them and consider them carefully.

23 [The Court read the instructions to the jury.]

24 THE COURT: Counsel, are you prepared to present your
25 closing argument?

1 MS. ROSE: Yes, Your Honor.

2 THE COURT: Proceed.

3 MS. ROSE: Thank you.

4 **CLOSING ARGUMENT BY THE STATE**

5 MS. ROSE: That's correct. I wasn't the primary target, but
6 you had to get through me to get to her. That's what you heard the
7 testimony from Officer K, who was up on the stand. And the
8 defendant, Ronald Allen, had a purpose to get through the purpose
9 to get to another.

10 Ladies and gentlemen, the State has to prove two things in
11 any criminal trial. That is, number one, a crime that was -- a crime
12 was committed and the defendant committed that crime.

13 This isn't a who did it? This isn't a clue mystery game.
14 We all know who did it. It was a -- it's -- it was -- it's not in
15 contention -- it's not at contention in this matter. Three individuals
16 had identified the defendant in this case. You have pictures of the
17 defendant at the scene of the crime. It's the defendant who
18 committed that crime.

19 However, we've got to still get to the crime that was
20 committed that day. So as charged, the defendant is charged with
21 battery on a protected person with substantial bodily harm. That's a
22 whole lot, so we're going to break that down.

23 There's three things to that. There's the battery, there's
24 the protected person, and then there's the substantial bodily harm.
25 So we're going to break those down even further.

1 The battery -- and I put these little jury instructions you
2 have here because these are just the State's rendition of these jury
3 instructions. You will have the jury instructions in front of you when
4 you're going back to deliberate to refer back to.

5 Battery -- the battery is defined in Jury Instruction No. 10.
6 Any willful and unlawful use of force or violence upon the person of
7 another is a battery.

8 The law defines willfully as implies simply a purpose or
9 willingness to commit the act in question. It does not require in its
10 meaning that the defendant held any intent to violate any law or to
11 injure another or to acquire any advantage.

12 The force used by the defendant need not be violent or
13 severe, and need not cause bodily pain or bodily harm. Any slight
14 touching by the defendant upon the person of another suffices, as
15 long as the touching was intentional and unwanted.

16 You're also going to get a jury instruction that says, if you
17 find the battery is an accident, if there Lexus accidentally bumps into
18 me and I fall to the ground and hit my head, the battery there is an
19 accident.

20 In this case, what do we have? Any willful and unlawful.
21 Defendant intentionally pushed Officer K to get to the female. He
22 had a purpose. He intentionally, willfully pushed through the officer
23 to get to the female.

24 Use of force or violence -- forcefully pushed so hard, the
25 officer [indiscernible], heard a pop, and brought him to the knee, and

1 then upon the person of another, Officer K.

2 You heard that Officer K -- it's not just the defendant came
3 strolling around, kind of casually, lightly kind of touched him,
4 pushed him through. No. The officer's testimony that day was the
5 defendant, when he was trying to put him on the police -- in front of
6 the police car, ran, full speed. You heard him. He was fast. He
7 sprinted -- not to the right or not to the left, not straightforward -- he
8 ran directly towards the officer who was blocking two females.

9 The defendant intentionally pushed through the officer,
10 causing him to kneel -- him to hear that pop, while the defendant
11 then again swam -- kind of swam next to him as the officer was
12 saying to get between the officer who was done and the police -- and
13 the patrol vehicle that day.

14 The State has proved beyond a reasonable doubt, ladies
15 and gentlemen, that a battery has been committed that day.

16 Protected person -- kind of common sense. Protected
17 person is so that if the battery is committed upon a police officer
18 during the performance of his duties as a police officer, then the
19 crime is battery on a protected person. Again, defined in that same
20 instruction.

21 Kind of common sense, officer -- the officer was
22 responding that day to the call from dispatch between -- a
23 harassment call between Ronald Allen and who you heard as Totty --
24 referred to as Totty. He -- and you heard his sergeant, yeah, he was
25 dispatched to the day. He was working in his capacity as a police

1 officer. You heard him. He was working -- I kept asking as a police
2 officer. You saw that he was in full uniform. He was in his black and
3 white. Ladies and gentlemen, he's a police officer. It's kind of
4 common sense, but it still has to be defined by law.

5 The State has proved beyond a reasonable doubt that
6 Officer K was acting as a protected person that day.

7 So substantial bodily harm. Now, there are two avenues
8 to get to substantial bodily harm. There is one, two, or both. It
9 doesn't have to be -- it's not an and -- it's either one, or two, or both
10 of them.

11 The first way we get there is, number one, bodily injury,
12 which creates a substantial risk of death or permanent disfigurement
13 or protracted loss of impairment of the function of any bodily
14 member or organ.

15 The second way to get there is prolonged physical pain,
16 which is defined as physical suffering or injury, that lasts longer than
17 the pain immediately resulting from the wrongful act.

18 So what that means is if Mr. Lexis comes and flicks me,
19 I'm not going to charge him with battery with substantial bodily
20 harm because that flick, even though it hurt, it dissipates. It kind of
21 dissipates as soon as the action takes place. It's something that is --
22 that prolonged pain that you suffer more than that just initial flick or
23 punch.

24 What do we have here? Officer K's injuries that was
25 caused by the defendant that day. You have a partially torn Achilles

1 that falls under permanent disfigurement, protracted loss or
2 impairment, prolonged physical pain. So you have both one and
3 two there.

4 Well, he had to have surgery on it. Prolonged physical
5 pain. You heard he took months of recovery. In order to testify at
6 that preliminary hearing that was a month after the accident, it took
7 him two hours just to kind of get up and get to -- not even get to the
8 courthouse, but he testified it took him, like, two hours just to get up
9 and get ready to get out the door. Months of recovery, prolonged
10 physical pain.

11 To this day, he has difficulty running. You heard that he is
12 not only now part of the sheriff's office, but he is also an officer in
13 the U.S. Army. He has to do PT. He has difficulty running to this
14 day. Again, permanent disfigurement, protracted loss or
15 impairment. Pain while running, from disfigurement, protracted loss
16 or impairment, prolonged physical pain.

17 Large scar, I kind of made him do something that he
18 probably didn't do very comfortable doing, but I made him take off
19 his shoe and his sock, to show you, ladies and gentlemen of the jury,
20 that scar that reached from the top down to the bottom of his foot.
21 Permanent disfigurement. That scar is not going to go away. You
22 heard testimony that even a year after this incident, Officer K is not
23 the same.

24 Let's put it all together, okay, battery on a protected
25 person with substantial bodily harm. You have the battery where

1 the defendant intentionally and forcefully pushed Officer K to get
2 through to the female. You have the protected person, Officer K was
3 performing his duties while out on a call as a police officer, and then
4 you have the substantial bodily harm. The forceful push when
5 defendant rushed Officer K caused Officer K to tear his Achilles,
6 causing surgery, and [indiscernible].

7 Ladies and gentlemen, the State's proved beyond a
8 reasonable doubt that this crime has occurred in its entirety.

9 Why -- you've heard Mr. Lexis say at the beginning of --
10 when we were picking you ladies and gentlemen as a jury. You're
11 going to hear it from me; you heard it from the judge; you're
12 probably going to hear it from the defense counsel; and you're
13 probably going to hear it from Mr. Lexis -- and I apologize, but you're
14 going to hear this a lot.

15 You're instructed that you don't leave your common sense
16 at the door when you walk in as jurors. You don't leave your
17 common, everyday experiences. You don't leave that. That has to
18 stay with you when you go back to deliberate.

19 You may draw reasonable inferences from the evidence
20 which you feel are justified in the light of common experience, but
21 we do not want you to speculate or guess. But you are to make
22 reasonable inferences from the evidence as presented.

23 You're going to see this instruction -- Jury Instruction 14.
24 Read it. You'll probably hear it again. But the reason why this keeps
25 coming up is use your common sense in this case.

1 On August 9th, 2016, that man, defendant Ronald Allen,
2 after the Officer K has had to respond to a harassment call between
3 him and Totty, goes up, identifies the defendant as the Pontiac that
4 was involved in the car -- in the call, excuse me. He identifies him.
5 He tries to go back to run his information when Totty comes,
6 screaming, scared, frantic, kind of shoving papers in his face.

7 He tells her at one point, Hey, I can't understand you,
8 you've got to calm down. While he's talking to Totty and Lisa
9 Gordon is standing next to her, this defendant jumps out of his car,
10 hands up -- jumps out of his car. The officer immediately tries to
11 pat -- goes to pat him down, puts him in the front of the cop car.
12 You heard Officer K. I was trying to talk to him, when he
13 immediately ran.

14 Again, he didn't run to the left. He didn't run straight. He
15 didn't run away. He wasn't fleeing the scene. What he was trying to
16 do, he took a quick right around the cop car to meet -- and met
17 Officer K. His primary purpose -- you heard Officer K, he wasn't --
18 Officer K wasn't the primary target.

19 But in order to get through -- to her, he had to get through
20 him. So what did the defendant do? The defendant did just that. He
21 pushes him or punches him. Lisa Gordon says she saw a punch.
22 Officer K doesn't know whether or not it was a punch or a push
23 because he's wearing his vest. Pushes. Immediately goes down.
24 And then you hear a swimming motion, which makes sense,
25 common sense.

1 Officer is kind of down. You have the patrol vehicle here.
2 The officer here. Defendant makes a swimming motion, kind of like
3 a get out of my way, I've got somewhere to go, pushes the
4 defendant [*sic*] again, and goes toward the female. And you heard
5 that eventually the defendant was tased and apprehended.

6 Ladies and gentlemen, this case, when you use your
7 common sense and when you make your reasonable inferences,
8 there is only one verdict in this case that you can reach. That's guilty
9 of the entire crime.

10 You're going to kind of see a lengthy verdict form. This
11 works today. And you're going to see this as your verdict form. And
12 you're going to see a not guilty -- well, one, the State's proven
13 beyond a reasonable doubt that all crimes have occurred. The
14 defendant is not not guilty. That can go away. Then you have the
15 bottom one here, guilty of battery.

16 Well, without the battery on a protected person, you can't
17 get to guilty of a battery. And we've, again, established that he is a
18 protected -- Officer K was a protected person that day.

19 Guilty of battery with substantial bodily harm. Well, again,
20 he's a protected person. That one's out. The only verdict in this
21 case that you can have is guilty of battery on a protected person with
22 substantial bodily harm.

23 Ladies and gentlemen, I know your job is not easy. Your
24 job is hard. We spent a lot of time in jury selection. Mr. Lexis was
25 emphasizing, do you have any -- anything that says I can't cast

1 judgment on another person? Your job as lay -- as jurors is hard.
2 But you also took the oath that the -- if the State presented evidence
3 that proves this case beyond a reasonable doubt, that you hold the
4 defendant guilty of the crime.

5 And we ask you guys just that. The State asks you to hold
6 Ronald Allen responsible for the crimes he committed against
7 Officer K on August 6th, 2016.

8 And with that, ladies and gentlemen, thank you.

9 THE COURT: Defense, do you wish to present your
10 closing argument at this time?

11 MR. HAUSER: Yes, Your Honor.

12 THE COURT: Proceed.

13 **CLOSING ARGUMENT BY THE DEFENSE**

14 MR. HAUSER: Good morning, members of the jury. I told
15 you at the beginning of this case that Ronald Allen sits there an
16 innocent man. That's still the case right now, because the State has
17 not met its burden in this case, proving each and every element to
18 you beyond a reasonable doubt. And therefore, at the end of this
19 trial, the only verdict you can come to is to find Ronald Allen not
20 guilty.

21 And let's be reminded about who had to provide that
22 proof. As I told you at the beginning of this trial, the burden is on
23 the State. The State has to produce evidence for each and every
24 element of that charge beyond a reasonable doubt.

25 Ms. Bonaventure and I did not have to ask any questions.

1 We didn't have to give an opening. I don't have to be up here talking
2 right now. I could literally have sat at this table, this entire trial, and
3 said nothing. And it wouldn't change the presumption of innocence
4 for Mr. Allen.

5 Well, what does beyond a reasonable doubt mean? It's
6 kind of a vague phrase. Well, we could think about it this way. The
7 legal system has three burdens. The lowest burden is a
8 preponderance of the evidence. And that's used in the civil trial,
9 when there's money at stake. And when there's money at stake, you
10 only have to prove your case more likely than not.

11 If the government wants to take away your children, if they
12 want to say you're an unfit parent who doesn't have the right to raise
13 your own kids --

14 MR. LEXIS: Your Honor, I'm going to object. This is
15 totally improper.

16 THE COURT: Counsel approach.

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

18 MR. HAUSER: It absolutely has relevance, Your Honor, it's
19 defining the burden for this -- in this case.

20 THE COURT: I'm sorry?

21 MR. HAUSER: It's defining the burden in this case. It's
22 very much relevant.

23 MR. LEXIS: Where is the -- go ahead.

24 THE COURT: No. Go ahead, make your objection.

25 MR. LEXIS: It's absolutely improper. [Indiscernible]

1 evidence of [indiscernible] kids being taken away [indiscernible].

2 THE COURT: Okay.

3 MR. HAUSER: It's -- it's not about Ronald Allen's kids,
4 Your Honor. It's a legal argument.

5 THE COURT: Okay. You can make a legal argument as to
6 the definition of what the preponderance of the evidence -- don't use
7 percentages.

8 MR. HAUSER: No, of course not.

9 THE COURT: Okay. If you want to make a legal
10 definition --

11 MR. HAUSER: Uh-huh.

12 THE COURT: This is preponderance, this is the definition
13 of preponderance. This is the definition of clear and convincing.

14 MR. HAUSER: Uh-huh.

15 THE COURT: And this is the highest burden of the
16 [indiscernible].

17 MR. HAUSER: That's where I'm going with this.

18 THE COURT: You can make your legal argument.

19 MR. HAUSER: Yes, sir.

20 MS. ROSE: Quantify it [indiscernible].

21 THE COURT: Right.

22 MR. HAUSER: I'm not doing that.

23 THE COURT: Well, you're doing it. You're just saying if
24 they wanted to take --

25 MR. HAUSER: Oh, no. The reason I'm doing that,

1 Your Honor --

2 THE COURT: No, no, don't do that.

3 MR. HAUSER: Okay.

4 THE COURT: If you wanted to tell them what the three
5 burdens are, and I -- in the legal system --

6 MR. HAUSER: Right.

7 THE COURT: -- do it. But tell them what the legal burdens
8 are, don't equate it to hypotheticals or facts.

9 MR. HAUSER: But, Your Honor, the reason I'm doing that
10 is to say that that's where the burden is. That's where they use that
11 burden.

12 THE COURT: Okay. You don't need to do that. You're
13 not -- you're making a legal argument I'm assuming to get to the
14 argument that the reasonable doubt is the highest --

15 MR. HAUSER: Right.

16 THE COURT: -- in a criminal case. You can say that in a
17 civil case, [indiscernible] preponderance of the evidence.

18 MR. HAUSER: Right. And in case --

19 THE COURT: [Indiscernible.]

20 MR. HAUSER: Right.

21 THE COURT: And in civil [indiscernible] and then clear
22 and convincing --

23 MR. HAUSER: Is in a case where they want to take your
24 kids away.

25 THE COURT: Well, no --

1 MR. HAUSER: That's where that burden comes from.

2 THE COURT: All right.

3 MR. HAUSER: Then I move on to reasonable doubt.

4 THE COURT: Don't give factual basis.

5 MR. HAUSER: Okay.

6 THE COURT: Just give types of cases.

7 MR. HAUSER: And that's what I was trying to do.

8 THE COURT: Civil, criminal -- no. Their objection is that
9 you're giving -- you're entering into more of a hypothetical area,
10 they're trying to take your kids away. Just don't interject factual
11 basis. Just legal argument as to the types of cases.

12 MR. HAUSER: Right. My understanding was that's the
13 type of case where they use clear and convincing is when they try
14 and take the kids away.

15 THE COURT: Well, clear and convincing --

16 MR. HAUSER: And that's why I said that.

17 THE COURT: [Indiscernible] is in a civil case
18 [indiscernible].

19 MR. HAUSER: It can also be use for when [indiscernible]
20 is trying to take kids away. That's why I was using that.

21 THE COURT: Well, just -- just try to keep it clean. Try not
22 to get into any factual basis for clear and convincing. What is it that
23 you want to say?

24 MR. HAUSER: That when the government is trying to take
25 your kids away, the burden is clear and convincing.

1 THE COURT: Then say --

2 FEMALE SPEAKER: [Indiscernible.]

3 MR. HAUSER: And then I'm moving on.

4 FEMALE SPEAKER: [Indiscernible.]

5 THE COURT: You can also say there's certain types of civil
6 cases, they impose a higher standard, which is clear and convincing,
7 such as fraud -- something like that. Do you have a problem with
8 that?

9 MR. HAUSER: That's another example, Your Honor. But
10 my example is legally accurate and there's no actual reason I can't
11 do it.

12 THE COURT: Well, I'm not sure that is legally accurate,
13 Counsel.

14 MR. HAUSER: It's the standard when they try and take
15 kids away. That is --

16 THE COURT: In a civil case, they don't try to take your kids
17 away.

18 MR. HAUSER: No, not in a civil case. In a case where they
19 would try to --

20 THE COURT: That's a juvenile case.

21 MR. HAUSER: Right. In a case where they're trying to
22 remove parental rights and burden is clear and convincing. That's
23 the point I'm trying to make.

24 THE COURT: All right. I want you not to base -- if he says
25 in a juvenile case where they're trying to determine what your

1 parental rights, then he's correct in that sense.

2 MS. ROSE: I think that that [indiscernible].

3 THE COURT: I'm trying to sanitize what his argument is.

4 MS. ROSE: I think that is a [indiscernible].

5 THE COURT: All right. Don't use the example of the kids.

6 Use another --

7 MR. HAUSER: I will say in a juvenile case where they're
8 trying to determine their rights.

9 THE COURT: How about that?

10 MR. LEXIS: It's the same thing.

11 THE COURT: Huh?

12 MR. LEXIS: It's the same thing.

13 THE COURT: I'm sorry?

14 MR. LEXIS: It's the same thing, Your Honor.

15 MR. HAUSER: It's an accurate statement of law. I'm trying
16 to say that that's --

17 MS. ROSE: You can't quantify --

18 MR. HAUSER: It does not quantify reasonable doubt or
19 any other burden.

20 MS. ROSE: You can't even [indiscernible].

21 THE COURT: And that's the concern, you're trying to
22 quantify facts or you're trying to --

23 MR. HAUSER: Your Honor, if that --

24 THE COURT: Don't use it.

25 MR. HAUSER: If that was their objection, they should have

1 objected to the civil example, because that does the exact same
2 thing. To say it's higher than civil is the same thing as saying it's
3 higher than clear and convincing. If they wanted to make that
4 objection, then at this point it's untimely.

5 THE COURT: All right. Well --

6 MR. HAUSER: If they're saying you can't quantify it at all,
7 then well --

8 THE COURT: You're not quantifying it.

9 MR. HAUSER: I agree.

10 THE COURT: You're doing a factual comparison of what it
11 is, and that's what they're objecting to. So don't do the factual
12 comparison.

13 MR. HAUSER: All right. I'll sanitize it.

14 [Bench conference was concluded.]

15 MR. HAUSER: That's not it.

16 The burden today is beyond a reasonable doubt. And
17 that's the highest burden in our justice system. There is no
18 courtroom anywhere in this country that holds a party to a higher
19 standard than the State has to be held to today. And that's because
20 of what's at stake. It's not just money. It's not even just rights. It's
21 liberty.

22 And so we have to hold the State to that burden on each
23 and every element of this charge. And when you look at two of
24 these three elements today, you'll see they simply haven't been able
25 to do it.

1 So let's start with the first element. Did Ronald Allen
2 commit battery? Was there an intentional touching? No.

3 Members of the jury, what we actually have to rely on here
4 is two witnesses -- the only two eyewitnesses to the crime. The first
5 was Lisa Gordon. And what did Lisa Gordon tell us? She told us I
6 saw Ronald Allen punch the officer.

7 But you all asked a question after that that kind of hit it on
8 the head; right? Because you all asked where she was positioned
9 when she saw that, because Ronald Allen and the officer were at the
10 back of the car. They could be here. And where was Ms. Gordon?
11 At the front of the car.

12 And this isn't a small car. It's not a sedan you can see
13 over. You all saw it on the video. It's an SUV. It's a tall car. Where
14 does the window come to on an SUV? Here going up. Did she see a
15 punch that the officer testified hitting here? No. It's physically
16 impossible for her to have seen what she said she saw. She's
17 assuming what she saw. But members of the jury, assumption isn't
18 enough. You have to prove it -- not assume it.

19 So what we're then left with is the officer's testimony
20 himself, where he testified -- and I'm referring back to the
21 preliminary hearing here, because at the preliminary hearing, the
22 officer was under oath. He stood on that stand, raised his right
23 hand, and swore to tell the truth and nothing but the truth. The
24 same oath all of you took before this trial started.

25 And what did he tell us at the preliminary hearing? You

1 were never under the impression he wanted to injure you in any
2 way? No. Or even make contact with you? No. The officer -- the
3 victim in this case -- does not believe Ronald Allen intentionally
4 touched him. And that is literally how the State is defining battery in
5 this case. Was there an intentional touching? No.

6 What did we hear? He didn't intend to injure me. He
7 didn't intend to touch me. There was no collision. I was not the
8 primary target.

9 That's what we heard from the officer. And the State
10 would like to change that testimony, try and make it different here at
11 trial, try and say, no, no, no, no, no, no, he couldn't remember back
12 then. He was on painkillers.

13 So his testimony was different at the prelim. He
14 remembers it better now. Well, first, members of the jury, we all
15 know that's not how memory works. Memories don't improve with
16 time. Memories fade. You all remember this pretty vividly right
17 now. Tomorrow, you still will. A month from now, maybe. A year
18 from now? You'll remember that you served, but will you remember
19 the specifics? Remember how long the thing took? No. And that's
20 reasonable.

21 But then you asked the right question again. When he
22 said he was on painkillers, you said, well, what were you taking,
23 because that makes a difference? And what did he tell us? Well, I
24 was prescribed OxyContin, but I didn't take it, because I didn't want
25 to get addicted, which I applaud. That's the right thing to do. Fair

1 enough. So I was just on Motrin.

2 Members of the jury, that's just ibuprofen. That's Advil.
3 We take Advil all the time. You have a headache; you have a sore
4 back; you can take Advil. It doesn't mean you're incapable of
5 remembering things. Some of you might be on ibuprofen right now,
6 if you woke up and something was score this morning. But that
7 doesn't alter memories. It's not a hallucinogen. It doesn't really
8 affect the mind.

9 So when we want to say, oh, his testimony wasn't right
10 because he was on painkillers, this is the right story, that's just not
11 true. The truth is that a month after the preliminary hearing he told
12 us, he didn't want to injure me. He didn't want to hit me. There was
13 no collision between us. I don't recall if I was punched. I wasn't the
14 target.

15 So members of the jury, when you have the only true
16 eyewitness to the crime come before you and say, he did not intend
17 to hit me, how can the State then ask you to believe Ronald Allen
18 intentionally hit him? And that's what you have to believe beyond a
19 reasonable doubt. If you think it's even possible that the officer was
20 right, not even probable, not even maybe, but just possible,
21 members of the jury, that's a reasonable doubt.

22 And based on the officer's testimony alone, you have to
23 find Ronald Allen not guilty, because this was not an intentional
24 touching. This was an accident. He was trying to get around. He
25 messed up. There was a touching. But it wasn't on purpose. And

1 therefore, the State has failed to meet its burden in this case of
2 proving beyond a reasonable doubt this was intentional.

3 But even if you believe that there was an intentional
4 touching in this case, that's not the only burden the State has to
5 meet.

6 And I'm not talking about the second element of protected
7 person. We all know the officer was a police officer. We're
8 obviously not disputing that. But it's not enough just to say the
9 officer was hurt, because what they actually have to prove is that the
10 injury was caused by the battery. And that the State cannot prove
11 either.

12 What would be the easiest way for us to determine the
13 cause of an injury? Naturally, it would be to call the doctor that
14 evaluated the injury. But you didn't hear from my doctor today or
15 yesterday or the day before. No doctor's testimony was ever
16 presented.

17 Luckily, however, we do have the officer's medical
18 records. And I'm going to highlight one particular page for you right
19 now.

20 And I don't know how to zoom in on this thing, so I'm not
21 going to show it to you on that, but what this is is a doctor from the
22 Department of Radiology at UNLV. And they said in their report,
23 quote, this may represent a chronic injury. And don't worry about
24 just finding this particular page. It's in here, but I marked it with a
25 sticky note, because, good Lord, right? You'll be able to find that.

1 You'll be able to see that the doctor concluded this may be a chronic
2 injury.

3 We all know what chronic injuries are. Chronic injuries are
4 ones that build up over time. They're not just ones that occur right
5 at the spur of the moment. Could this have been something that
6 builds up over time? Yes. That's what happens with Achilles
7 injuries.

8 Think about what the officer told us. He's been an active
9 individual his entire life. He ran track in high school. He played
10 rugby in college. He joined the military. He worked out constantly.
11 He went through basic training. He has to run at that. He joins the
12 police academy. He has to go through basic training there. He joins
13 patrol -- he goes out on patrol. He has to chase down suspects.
14 He's constantly putting pressure on those Achilles, stopping and
15 starting, because that's his job, because that's what he was required
16 to do.

17 But what that does is it builds up that injury over time.
18 Any individual step could do it. And that means it's chronic. Well,
19 what chronic means is the State can't prove causation. And without
20 that, the State can't meet its burden.

21 I don't know how many of you watch basketball, members
22 of the jury, but about five years ago Kobe Bryant tore his Achilles
23 tendon. And he did it without making contact with a single person.
24 He did it making a regular move. Juke left, step right into the lane --
25 a move he's done Lord knows how many times in practice and in

1 games throughout his entire life. But that one time he stepped into
2 the lane and his right Achilles snapped right then and there, with no
3 one touching him, because it's a chronic injury. It builds up over
4 time. You can't prevent it. You can't do something about it without
5 not using it.

6 But if this is a chronic injury and the doctor believes this
7 may be a chronic injury, then this injury was not caused by the
8 battery. And that's where the State failed to meet its burden in this
9 case. They had to prove to you beyond a reasonable doubt that the
10 battery was the cause of the injury, and they simply can't do it. The
11 only doctor that we have any evidence from in those records says
12 they essentially don't know. This may be a chronic injury.

13 Here's the thing, members of the jury, the State has to
14 prove it's not. And they can say, well, it probably wasn't a chronic
15 injury; it likely wasn't a chronic injury; I think it wasn't a chronic
16 injury; maybe it was a chronic injury. Well, none of that's good
17 enough. I think, I guess, I assume, maybe is not enough. Probably is
18 not enough. You have to know it beyond a reasonable doubt. And
19 the medical records alone mean we have doubt.

20 So we're going to ask that you find every charge for
21 Ronald Allen with substantial bodily harm as a not guilty. You can't
22 convict him of causing an injury that we don't know and can't know
23 that he caused.

24 This is the last time you're going to hear from me. I'm
25 going to sit down, and then Mr. Lexis is going to get up here. He's

1 going to be outraged about the points I've just made. He's going to
2 tell you it might be ridiculous or absurd.

3 But I want you to evaluate what he says carefully. And I
4 want to bring you back to that tough part of your job. It's that part
5 we talked about right at the beginning of the trial. Because this is a
6 trial where a man took the stand and told you that his life was
7 altered. And he's a good man. He's a hero. 15 years a police officer,
8 19 years in the military, a good and decent man. And we feel bad.
9 Everyone in this courtroom feels sympathy for what he went
10 through.

11 And the tough part is for you. You now have to set that
12 aside and focus solely on the facts and the law. And you have to
13 hold Mr. Lexis to his burden and ask him to tell you why this
14 definitely wasn't a chronic injury, ask him to tell you why the officer
15 was wrong when he said he didn't intend to hit me, and see if he can
16 actually answer all your questions. But I'm confident he can't.

17 So when you get that verdict form, if you believe the
18 battery was intentional, then the appropriate verdict in this case is
19 battery on a protected person without causing substantial bodily
20 harm.

21 But if you believe that the officer was right [*sic*], then you
22 must find Ronald Allen not guilty. That is all.

23 MR. LEXIS: Your Honor --

24 THE COURT: Counsel, approach.

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

1 THE COURT: I wasn't going to take a break, but
2 [indiscernible] I don't know if you want to [indiscernible] the verdict
3 form has his ID number. We need to take that out.

4 FEMALE SPEAKER: Yeah.

5 MALE SPEAKER: Oh, yeah. We should have taken that
6 out.

7 THE COURT: Okay. Can you get me a [indiscernible]?

8 MALE SPEAKER: [Indiscernible] just white it out and then
9 copy it?

10 THE COURT: Do you want to do that?

11 [Indiscernible - simultaneous speech.]

12 THE COURT: Well, let me [indiscernible], is that okay?

13 MR. HAUSER: They're not going to know that.

14 MS. BONAVENTURE: I don't think it will show
15 [indiscernible].

16 THE COURT: Okay. We're going to try to white it out.

17 MS. BONAVENTURE: Yeah.

18 THE COURT: I'll let you do your closing, if you want. Do
19 you want to let them go to lunch and come back and go under oath,
20 or do you want them to [indiscernible].

21 MR. LEXIS: [Indiscernible.]

22 THE COURT: Okay.

23 MS. BONAVENTURE: Yeah. Can't we buy -- we buy them
24 lunch? Yeah.

25 THE COURT: No. That's fine. That's fine. All right. I'm

1 going to have this whited out. And then I'll show it to you how it's
2 going to look.

3 MS. BONAVENTURE: Okay. Yeah.

4 THE COURT: If you both agree to it, then I might
5 [indiscernible].

6 MS. BONAVENTURE: Okay.

7 MR. LEXIS: Thank you, Judge.

8 [Bench conference was concluded.]

9 MR. LEXIS: May I, Judge?

10 THE COURT: Yes, sir. Proceed.

11 **FURTHER CLOSING ARGUMENT BY THE STATE**

12 MR. LEXIS: Folks, defense counsel told you I'm going to
13 come up here and be angry and yelling and this, that, and the other.
14 This case is as straightforward as it gets, bottom line.

15 What's the state of mind of a man who is willing to
16 disregard an officer's commands, break free from the officer, and
17 then charge through him in order to get to somebody else? That's
18 who you're dealing with. A man with zero regard for the law.

19 The evidence in this case is overwhelming. As I told you
20 in voir dire, sometimes we're left with just one person, convicted
21 felon, drug addict, you name it -- it goes on and on. That's what
22 we're left with -- or somebody -- a home invasion where nobody is
23 home and we have no idea who it is and we have to piece it
24 together. Not this case.

25 On the far end of the spectrum, you have somebody who

1 the victim is an officer. And another officer responding to the first
2 responding officer. And then a witness, a truly independent witness,
3 take the stand. It was one of your questions that brought out she
4 doesn't even know this man.

5 Folks, defense counsel comes up here and tells you what,
6 when you have an overwhelming amount of evidence in this case
7 and the defendant is absolutely boxed into a corner, this is what
8 happens. Defense counsel does this, blames everybody other than
9 the defendant. Right?

10 Come up here and tell you about -- made comments about
11 kids and this, that, and the other. You have a jury instruction. This is
12 right off your jury -- this isn't the State's. Everything I'm showing
13 you is right off your jury instructions.

14 A verdict may never be based on the influence of
15 sympathy, prejudice, or public opinion. Your decision should be the
16 product of sincere judgment and sound discretion in accordance
17 with the rules of law, period.

18 What's next? This guy gives a full statement in a
19 transcript, pages, and picks apart nuances in his testimony. It's,
20 yeah, absolute -- does this guy look up here like he was given a
21 script, like he was giving an Academy Award winning performance,
22 this cop? Is he trying to come up here, over exaggerating, oh, yeah,
23 he charged through me, he picked -- hit me 50 times and I went
24 down. No. No.

25 He -- they harp on the fact that, oh, he didn't think he was

1 the primary target. That's what he keeps leaving out, when he
2 comes up here and tells you, straight from the transcript that was
3 read to you. He had to pass me to get to her. He pushed me to get
4 through me. I did not think I was the primary target.

5 Okay. Does that make it not a battery? No. And we'll talk
6 about that.

7 What's next? Spent 20 minutes on him up there, well, sir,
8 you know, this could have been done in the military. This could
9 have been done at West Point. This could have been done while you
10 were an officer. It doesn't matter.

11 Think how ridiculous that is. Folks, somebody is DUI,
12 driving through an intersection, and somebody runs into somebody,
13 blows a red light, runs into the --

14 MR. HAUSER: May we approach, Your Honor?

15 THE COURT: Yes.

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

17 MR. HAUSER: If I'm not allowed to talk about kids, he
18 can't talk about DUI.

19 MR. LEXIS: What? This is -- this is totally different. He's
20 trying to quantify reasonable doubt. I'm not.

21 THE COURT: Okay. What's the purpose of talking about
22 DUI?

23 MR. LEXIS: [Indiscernible] it's a chronic injury. I'm going
24 to talk about somebody who has osteoporosis. He just talked
25 about -- he's been up here for half his thing talking about if someone

1 has a chronic injury, he can't be found -- that's absolutely not the
2 case, and you know it, he knows it.

3 THE COURT: [Indiscernible.]

4 MR. LEXIS: So I'm giving examples too.

5 MR. HAUSER: I appreciate counsel accusing of making
6 false statements, but that's not what I did. I argued it based on the
7 evidence.

8 THE COURT: Okay. [Indiscernible] false statements. Let
9 the record be clear on that. Okay.

10 MR. HAUSER: But, Your Honor, DUI is a completely
11 different series of offenses, because there's alcohol involved. That
12 completely negates the intent issue. It's not the same as this case.

13 MR. LEXIS: It's a general take on [indiscernible].

14 THE COURT: You make your argument without arguing a
15 DUI case. Just like I asked him to sanitize it. Sanitize the argument.
16 I mean, apparently the concern is to sanitize it.

17 MR. LEXIS: Okay. Okay. Okay. That's fine.

18 [Bench conference was concluded.]

19 MR. LEXIS: Chronic injury, okay. Let me give you an
20 example of how ridiculous, and you tell me how it weighs your
21 common sense and it's not the law. Somebody -- some old lady
22 comes in here, okay? And I commit a battery upon her. She falls
23 down and breaks her hip or breaks her arm or something like that.
24 Can I come in here and tell you, well, it's not a battery because this
25 woman had a history of osteoporosis? She's got brittle bones; it's a

1 chronic condition. Joke. No. That's not the law.

2 And there's no evidence of this man having a history of --
3 it didn't matter if that guy tore his Achilles five times prior to this. If
4 this is the incident, if his action, his battery caused that substantial
5 bodily harm, then he's guilty of battery with substantial bodily harm,
6 period.

7 The injury itself -- he comes up here and brings you -- tells
8 you, oh, the medical records. It doesn't even matter, folks. What are
9 some of these medical records? Past medical history: None. Past
10 surgical histories: A previous bunion surgery. Past medical history:
11 Patient stated he had high blood pressure that elevated before he
12 was -- but he was not diagnosed with hypertension, otherwise no.
13 And even if he did, it doesn't matter.

14 Then we go into this cross-examination of him doing this
15 on whether or not it's a punch or a push or it's a backstroke-type
16 push or a swim-type push, it doesn't matter. The man got pushed.
17 That was the evidence. As a result of him suffering his injury, he got
18 pushed. Again, does it matter? No, folks. He's your information --
19 again, this is straight from your jury instructions. To wit, the officer,
20 a protected person employed by the Metropolitan Police
21 Department, while Officer K was performing his duties as a police
22 officer, which knew or should have known that Officer K was a police
23 officer, by pushing and/or punching the said Officer K resulting in
24 substantial bodily harm.

25 Pushing or -- and/or -- and/or. It doesn't matter. And your

1 common sense tells you that.

2 Folks, if somebody charged in this room right now and got
3 into it with that marshal in the back, and then in order to get out, that
4 guy -- the defendant tried to plow through him, you could ask -- first
5 of all, these people -- we take voluntary statements from people in
6 the room and even the victim -- it's going to -- your common sense is
7 going to tell you there's nuances. Some people are going to think,
8 oh, maybe it was the -- a full strike, maybe a half strike, maybe it was
9 a left punch, maybe it was a right punch, maybe it was actually the
10 push that pushed him down. Maybe he went to the right side, the
11 left side. It doesn't matter. That's why it's pled that way.

12 Pushed and/or punched. The law recognizes common
13 sense. It doesn't matter. The eyewitness described it as a punch.
14 Officer K described it as a push. It doesn't matter if it's the original
15 push or the push that -- while he was trying to go -- it was all one
16 fluid motion. The guy was on a mission to get to her. He had to get
17 through him. And he did, causing him to tear his Achilles, period.

18 Just short mention of substantial bodily harm, even
19 though Laura went through it. Okay, folks, it's very broad. Here is
20 the oral language: Or bodily injury -- substantial bodily harm means
21 bodily injury which creates a substantial risk of death or which
22 causes serious permanent disfigurement or protracted loss or
23 impairment of the function of any bodily member or organ.

24 That was the purpose of playing the body cam video. You
25 immediately saw the officer -- the sergeant said, He's in immediate

1 pain. You see the guy hobble off, and his foot, you could tell, was
2 messed up. He tells you on the stand that. You got medical records
3 of that. He had protracted loss.

4 But just to go show you how broad this statute is, is part
5 two, it says or -- or this. Prolonged physical pain encompasses some
6 physical suffering or injury that lasts longer than the pain
7 immediately resulting from the wrongful act.

8 I go over there and slap Laura, and she's going to have
9 some pain immediately. But if it lasts longer than the -- what was
10 resulting of me immediately slapping her, she wakes up days later
11 with some pain too, that's substantial bodily harm, folks. This man,
12 no question.

13 Battery. Battery means any willful or unlawful use of force
14 or violence upon the person of another. The word willful, when
15 applied to the intent is with which an act is done applies simply to
16 the purpose or willingness to commit the act. Simply the purpose or
17 willingness to commit an act. It does not require that the defendant
18 had any intent to violate the law or injure another or -- he didn't even
19 need to have the intent to injure this man or to violate the law or to
20 acquire any advantage.

21 In addition, willful is distinguished from an act done
22 accidentally, inadvertently, or innocently. If you find -- and then it
23 goes on to tell you, if it was an accident, which it's clearly not, then
24 yeah.

25 If some waiter has a bottle -- big bottle on his -- a

1 champagne bottle and he's carrying it down, and some kid thinks it's
2 funny that this man's trying to balance this thing and pushes him
3 over, and that thing drops on someone's head and cuts them, that's
4 an accident.

5 Is that what we have in this case? No. No, folks.

6 What's the charge? Battery on a protected person with
7 substantial bodily harm. It says it's a general intent crime. A general
8 intent crime is one where an accused person meant to do an act
9 prohibited by law, which the defendant -- whether the defendant
10 intended the act's result is irrelevant. A specific intent crime
11 typically requires a defendant intentionally committed an act and
12 intended to cause a particular result when committing the act.

13 Folks, assault, a specific intent crime. Assault, basically I
14 intend to commit a battery. If I take this pan and I chuck it, I want it --
15 I'm mad. I want to throw it at Laura. But I miss her. And it causes
16 her -- that's an assault. It's a specific intent crime.

17 Now, as you heard, battery is a general intent crime. If I'm
18 up here and I say, you know what, just for the heck of it, I make this
19 volitional act of throwing that pan against the wall, and it hits Laura
20 in the head, that's a battery. That's a battery, period. Any slight,
21 unlawful touching.

22 The force used by the defendant may not be violent or
23 severe and not cause bodily pain or bodily harm. Any slight
24 touching by the defendant upon a person of another is sufficient, as
25 long as the touching was intentional and unwanted.

1 What's that tell you? It's a general intent crime. You're on
2 the elevator and you've decided that you want to do this to the guy
3 next to you, that's a battery.

4 Now, I throw this pen against the wall, and it lands in
5 Laura's eye socket, I -- again, I never intended to hit Laura, but if it
6 lands in her eye socket and it causes substantial bodily harm,
7 prolonged physical pain, it's battery resulting in substantial bodily
8 harm.

9 Point the finger all you want of, oh, this, that, and the
10 other. Result in possibilities and speculation. That's not reasonable
11 doubt, folks.

12 The testimony, the evidence came from right here. There
13 is nothing that you could grasp onto, nothing that is actual that says,
14 you know what, this man's injuries was actually -- he was faking it.
15 He showed up to work with a torn Achilles because he went out
16 skiing the day before, and that was the result. No.

17 You heard me ask the sergeant, Is this man on your
18 squad? Yeah.

19 Did he show up just fine that day? Yeah.

20 When he showed up, what was he? Well, he was in severe
21 pain and he could barely move his ankle.

22 And your common sense tells you that. Your common
23 sense tells you that. There's nothing actual that you could grasp on
24 to, to say, oh, yeah, it wasn't this man.

25 And again, it's the volitional act. It's a general intent

1 crime. It's the volitional act that means to actual cause the battery.
2 You don't need to have specifically intent, even though this man
3 did -- this man did it. He had to get through the officer to get
4 towards the woman, period. That was the testimony. It's
5 uncontroverted, period.

6 You want to say it's a specific intent crime, it surely was.
7 But it doesn't need to be, because battery is a general intent crime.
8 He clearly was the one running. He clearly is the one by his running
9 and in his path went through the officer, his volitional act. It's a
10 battery, folks.

11 Now, to be reasonable, folks. This is your reasonable
12 doubt instruction. Doubt, to be reasonable, must be actual, not mere
13 possibilities and speculation. We could go on a certain wheel of
14 possibilities and speculations all day long to try to tell them this
15 man -- his prior military service caused it, prior this, prior that.
16 That's possibility and speculation. There's nothing that came from
17 that witness stand that tells you, nope, that man did not volitionally
18 go through that man to get to her. Nothing.

19 There's nothing in the -- that came from that stand that
20 says, you know what, nope, the injuries sustained were some other
21 miracle source that just popped up on that day. No, folks. And
22 again, use your common sense. You can't just go that route all you
23 want. Again, if some osteoporosis old woman came in here and the
24 same situation occurred, that is not an argument in front of a jury.
25 Your common sense tells you that's ridiculous.

1 The State asks you to find the defendant guilty of battery
2 on a protected person, resulting in substantial bodily harm.

3 Thank you.

4 THE COURT: Counsel approach.

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

6 THE COURT: Okay. On the jury instructions, there was
7 also the ID number. Okay. So this is where [indiscernible] on the
8 jury instructions. And this is what the [indiscernible] like on the
9 verdict form.

10 Objection?

11 FEMALE SPEAKER: No, Judge.

12 THE COURT: Okay. I will make sure I signed it. Okay. All
13 right. So you want to send the jury out now?

14 FEMALE SPEAKER: Yes.

15 THE COURT: Okay. And I [indiscernible] at some point.

16 FEMALE SPEAKER: What time is it?

17 FEMALE SPEAKER: It's noon, yeah.

18 MALE SPEAKER: I would ask that the Court buy them --
19 that the Court buy them lunch [indiscernible].

20 THE COURT: Okay. Also, I told my clerk to make sure all
21 the exhibits are clean. There's no writing or anything on --

22 MALE SPEAKER: Yeah. We're going to set our laptop
23 on -- or we can give it to you as well.

24 THE COURT: No. The exhibits that are going to go back
25 with them.

1 MALE SPEAKER: I understand. I need to give you my
2 laptop too.

3 FEMALE SPEAKER: For what?

4 MALE SPEAKER: For the body cam.

5 THE COURT: Oh. All right. Well, make sure we're --

6 (Indiscernible - simultaneous speech.)

7 THE COURT: Well, here's the deal, as far as the exhibits
8 going back, make sure the clerk sends them back there
9 [indiscernible].

10 FEMALE SPEAKER: I'd like to take a look at the pictures
11 again, yeah.

12 THE COURT: Because I -- in any event, okay, so I'm going
13 to swear the marshal in. He's going to take the [indiscernible] jurors
14 to the jury room. And then you have agreed that the alternate, I can
15 excuse her, and we'll get her phone number and request that she be
16 30 minutes away. Is that agreeable to the parties?

17 FEMALE SPEAKER: Yes, sir.

18 THE COURT: Okay. All right. Then we'll have the marshal
19 swear them in.

20 [Bench conference was concluded.]

21 THE COURT: The clerk will now swear the marshal -- the
22 officer to take charge of the jurors.

23 [The marshal was sworn.]

24 THE COURT: Okay. Let the jury begin deliberation.
25 And who is the last one?

1 Ms. Baynes, if you could just remain for a minute.

2 [The jury retired to deliberate.]

3 THE COURT: All right. Ms. Baynes, you were the alternate
4 juror. Okay? So you may still need to deliberate if something were
5 to happen to one of the jurors. However, rather than stay at the
6 courthouse, the parties have agreed that you can leave the
7 courthouse, as long as that you're within a 30-minute range. In other
8 words, if something were to happen and we needed to have you
9 come back, you need to remain in a 30-minute range. And please
10 give my clerk a phone number that you can be reached upon. And
11 that's acceptable to the parties, Counsel?

12 MR. LEXIS: Yes, Your Honor.

13 MS. BONAVENTURE: Yes, Your Honor.

14 MR. HAUSER: Yes, it is, Your Honor.

15 THE COURT: Okay. So before you leave -- and don't -- I'm
16 going to have to admonish you, okay?

17 I know it sounds --

18 ALTERNATE JUROR NO. 1: Not for being late? Not for
19 being late, this morning?

20 THE COURT: You are admonished not to talk -- to
21 converse among yourself or with anyone else on any subject
22 connected with this trial or read, watch, or to listen to any report or
23 commentary on the trial or any person connected with this trial by
24 any medium of information including, without limitation, the social
25 media, text, newspapers, television, the Internet, and radio. Do not

1 visit the scene of any of the events mentioned during the trial or
2 undertake any investigation. Do not do any posting our
3 communications on any social networking sites or do any
4 independent research, including Internet searches or form or express
5 any opinion on any subject connected with the trial until this case is
6 concluded.

7 So if you could give my clerk your phone number. And
8 again, just remain within a 30-minute range.

9 ALTERNATE JUROR NO. 1: Thank you, Judge.

10 THE COURT: Thank you.

11 Counsel, remain.

12 Thank you.

13 [Pause in the proceedings.]

14 [Outside the presence of the jury.]

15 THE COURT: Counsel, before I send the exhibits back, I
16 want to make sure we are clean copies that are going back to the
17 jury. So check to make sure there's no handwriting, no paper clips,
18 anything on any of the exhibits. The reason [indiscernible] is I did an
19 appeal in Courtney versus State, where inadvertently they had
20 written the defendant's record. It was inadvertently done, nobody
21 caught it, and the case was reversed.

22 So just make sure there's no handwritten notes. Whatever
23 the exhibit is, is what's going back. And then my clerk is going to
24 have it provided to the jury.

25 You already done it? I have a great clerk. But you can

1 look just to be sure. But I just wanted to make sure we send back
2 clean copies of everything.

3 MS. BONAVENTURE: I already sent them back.

4 THE COURT: Okay. I apologize. I thought he was going to
5 give me an opportunity. But he represents to me he's checked
6 everything, and there's no inadvertent handwriting on it.

7 All right. Counsel, remain close by.

8 MS. ROSE: Will do, Your Honor.

9 THE COURT: We're in recess.

10 [Recess taken from 12:11 a.m. until 1:42 p.m.]

11 THE COURT: Please be seated.

12 The record will reflect the presence of the defendant, the --
13 his attorneys, and the deputy district attorneys.

14 Do -- what? Is he bringing the jury in? He's bringing the
15 jury in. It's my understanding we have a verdict, so --

16 [In the presence of the jury.]

17 THE COURT: Please be seated.

18 Do the parties stipulate to the presence of the jury?

19 MR. LEXIS: Yes, Your Honor.

20 MR. HAUSER: Yes, Your Honor.

21 THE COURT: Has the jury elected a foreperson?

22 THE FOREPERSON: Yes, Your Honor.

23 THE COURT: And who is the foreperson? And could you
24 state your name?

25 THE FOREPERSON: Manuela Gayhart.

1 THE COURT: And has the jury reached a verdict?
2 THE FOREPERSON: We have, Your Honor.
3 THE COURT: Will the foreperson please hand the verdict
4 to my marshal?
5 Will the defendant and his attorneys please rise?
6 The clerk will now read the verdict out loud.
7 THE CLERK: District Court, Clark County, State of Nevada,
8 Plaintiff, Case No. C-16-31A-255-1, Ronald Allen, Defendant.
9 Verdict: We, the jury, in the above-entitled case, find the
10 defendant as follows:
11 Count 1: Battery on a protected person with substantial
12 bodily harm. Guilty of battery on a protected person with substantial
13 bodily harm. Dated this 3rd day of November 2017. Manuela
14 Gayhart, Foreperson.
15 Ladies and gentlemen of the jury, is this your verdict as
16 read, so say you one so say you all?
17 JURORS: (A chorus of yeses.)
18 THE COURT: Do either of the parties desire to have the
19 jury polled?
20 MS. BONAVENTURE: Yes, Your Honor.
21 MR. LEXIS: No, Your Honor.
22 THE COURT: Okay. Defense desires to have the jury
23 polled. If you could poll the jury.
24 [Jury polled.]
25 THE COURT: The clerk will now record the verdict in the

1 minutes of the Court.

2 Be seated.

3 Ladies and gentlemen, as you know, the right to a trial by
4 jury is one of our basic and fundamental constitutional rights. I
5 firmly and truly believe in this right, that is the right to have every
6 person accused of a crime to be judged by a fair and impartial jury.

7 You must have -- jurors, unfortunately jury service is
8 something that many persons shirk from, as you can tell during the
9 jury selection process. They do not wish to become involved. That's
10 why I'm so pleased that you 12 men and women have been willing
11 to give of your valuable time, you have been most attentive and
12 most conscientious and most patient, as during the course of this
13 trial we had to do some housekeeping matters. I know we got late
14 starts a couple of days, and unfortunately there was nothing we
15 could do about that.

16 On behalf of counsel, the parties, in the Eight Judicial
17 Court, I wish to thank you for your careful deliberation, which you
18 gave to this case. The question may arise as to whether you may
19 talk to other persons regarding this matter. I advise that you may, if
20 you wish to, talk to other persons and discuss your deliberations
21 which you gave to this case. You are not required to do so however.

22 I will be available shortly to speak to you, if you desire. I
23 usually like to talk to the jurors afterwards, if they're willing to talk to
24 me, to get your input. It's something I find very beneficial. If any
25 jurors want to talk to me afterwards, my bailiff will bring you into the

1 jury room and we'll talk about the case, and then, you know, for as
2 long as you want, and then you'll be free to go.

3 But you don't have to. If you want to just leave after I
4 discharge you, you certainly can.

5 If any person persists in discussing this case after you
6 have indicated you do not wish to do so or raises an objection as to
7 your result or as to your deliberations, you can report that directly to
8 me. Just call my chambers, if anybody in any way harasses you or
9 persists in asking you questions.

10 Lots of times, the attorneys, after court, like to also get
11 your input to see what they did well or what they could improve
12 upon. And certainly, that's your discretion also, if you want to talk to
13 the attorneys afterwards. Sometimes they wait out in the hallway
14 or -- I was talking to my staff.

15 It used to be you had to go down to the third floor if you
16 wanted to receive, you know, payment for being a juror. But now
17 they're telling me you can go online and do it that way, and that's a
18 lot more convenient. And so most of the jurors are doing it online
19 now. But it's my understanding they still can go down to the third
20 floor after court, if you want. So it's your decision whether you want
21 to do it online or just go down to the third floor.

22 So at this time, I'm going to excuse the jury. Anybody that
23 wants to meet with me after court, or do you just want to take off?

24 What I'm going to do then is I'm going to excuse the
25 attorneys and the defendant.

1 So at this time --

2 MR. LEXIS: Your Honor, may we approach?

3 THE COURT: Well, I also need to set a date.

4 MR. LEXIS: Yes. We need -- if we could excuse the jurors
5 for a second.

6 THE COURT: Well, why don't you approach.

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

8 THE COURT: There's always something that has to be
9 resolved.

10 MS. BONAVENTURE: That's fine. We don't have to wait
11 for Robson.

12 THE COURT: Huh?

13 MS. BONAVENTURE: We don't have to wait for Robson.
14 What did you want to approach about?

15 MR. LEXIS: We just need to excuse the jurors so we can
16 set the sentencing date and put some other stuff on the record.

17 MS. BONAVENTURE: We can step out, Your Honor. I
18 believe you want to talk to them.

19 THE COURT: Well, that's what I'm going to have you do.

20 MS. BONAVENTURE: We can just step out.

21 THE COURT: I want to talk to them for a second and thank
22 them personally.

23 MS. BONAVENTURE: Yeah.

24 MR. LEXIS: Okay.

25 THE COURT: So I'm going to --

1 MS. BONAVENTURE: We'll step out.

2 THE COURT: -- have him go back, step out. And they're
3 going to come out. So just let them go then, and then --

4 MR. LEXIS: Okay. Will you tell them that we would like to
5 talk to them too if they want.

6 THE COURT: I just did -- I'll tell them after I talk to them.

7 [Bench conference was concluded.]

8 THE COURT: At this time, I'm going to take a recess. If
9 you could take the defendant, excuse him for a minute.

10 And then we're off the record.

11 [Recess taken from 1:52 p.m. until 2:04 p.m.]

12 THE COURT: Please be seated.

13 There was something you wanted to bring before the
14 Court, Counsel?

15 MR. LEXIS: Yes, Your Honor. According to the State's
16 notice of habitual criminal treatment, I have No. 4, 5, and 6, and 7,
17 that I'm going to mark as an exhibit and admit now so Your Honor
18 has a chance just to have them.

19 It's the 2005 conviction out of California, felony for
20 possession of cocaine; a 2011 state of California conviction for
21 evading a peace officer; a 2013 California conviction for second
22 degree robbery; and a 2017 Clark County, Nevada, convictions for
23 invasion of a home, burglary while in possession of a deadly
24 weapon, battery with a deadly weapon resulting in substantial bodily
25 harm constituting domestic violence, and battery with intent to kill,

1 constituting as domestic violence.

2 THE COURT: Are these certified copy --

3 MR. LEXIS: Yeah.

4 THE COURT: Shucks. Are they -- are these certified
5 copies, Counsel?

6 MR. LEXIS: Yes, yes.

7 THE COURT: Okay. And you provided copies of the
8 judgment convictions to defense counsel?

9 MR. LEXIS: Yes.

10 MR. HAUSER: We have them, Your Honor.

11 THE COURT: Okay. That's fine. So marked.
12 We need to set a sentencing date.

13 MS. BONAVENTURE: I'm sorry, Judge.

14 THE COURT: We need to set a sentencing date.

15 MS. BONAVENTURE: That's right.

16 THE COURT: What's -- what time frame are you
17 contemplating?

18 MS. BONAVENTURE: Well, Your Honor, we already have
19 a PSI that is really current. So unless the State wants a new PSI, I
20 believe we could use the one from the last case.

21 THE COURT: No. I'm not going to do that.

22 MS. BONAVENTURE: Okay.

23 THE COURT: I want a new PSI.

24 MS. BONAVENTURE: Okay.

25 THE COURT: I want a recommendation from --

1 MR. HAUSER: Oh, okay.

2 THE COURT: -- Department of Parole and Probation.

3 MR. HAUSER: Fair enough.

4 THE COURT: So it takes about 60 days to get one. You
5 want to -- are you going to -- I assume you're going to do a
6 sentencing memorandum or something contesting the habitual
7 criminal?

8 MS. BONAVENTURE: Yes, Your Honor. Or if you would
9 like something in writing, we absolutely will. Otherwise, we'll do
10 oral argument.

11 THE COURT: Well, it's entirely counsel's discretion how
12 you want to handle sentencing.

13 MS. BONAVENTURE: Okay. Okay. Great.

14 THE COURT: So do you want to set sentencing out about
15 75 days?

16 MS. BONAVENTURE: That's great, Your Honor. That's
17 fine.

18 THE CLERK: February 6, 9 a.m.

19 THE COURT: Is there any other matters that need to be
20 brought to the Court's attention?

21 MR. LEXIS: No, Your Honor. February 6, you said?

22 THE CLERK: February 6.

23 MR. LEXIS: Thank you.

24 THE COURT: Defense?

25 MS. BONAVENTURE: No, nothing else, Judge. Thank

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you.

THE COURT: Court's adjourned.

[Proceeding adjourned at 1:07 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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THE STATE OF NEVADA,
Plaintiff,
vs.
RONALD ALLEN,
Defendant.

VS.

Case Number: C-16-318255-1

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Las Vegas, Nevada; Tuesday, February 6, 2018

[Proceeding commenced at 10:49 a.m.]

THE COURT: On page 18, case number C318255, State
versus Allen.

Counsel, state your appearances, please.

MR. LEXIS: Chad Lexis for the State.

MR. HAUSER: Robson Hauser and Xiomara Bonaventure on
behalf of Mr. Allen, who is present in custody.

THE COURT: This is time set for entry of judgment and
imposition of sentence. Is there any legal cause or reason why
judgment should not be pronounced at this time?

MR. HAUSER: No, Your Honor.

THE COURT: By virtue -- by verdict of the jury, I hereby
adjudge you guilty of the offense of battery on a protected person with
substantial bodily harm.

State, what's your position on sentencing?

MR. LEXIS: Judge, first of all, during the trial I submitted to
you certified judgments of convictions more than enough for you to
habitualize him under the large habitual statute.

THE COURT: And it's my understanding that we have those
present in court today.

MR. LEXIS: Correct.

THE COURT: And those are certified copies, correct?

MR. LEXIS: Correct, Judge.

1 THE COURT: And --

2 MR. LEXIS: In addition, Judge, at 37 years old, if you look at
3 this man's history in -- I'm sure the Court has seen some dangerous
4 people over the past month, but there is no question that man is the
5 most dangerous man you have in the courtroom in the past month. No
6 question.

7 You look at some of the convictions he's been charged with, to
8 sway your witness with threat or force; sodomy, victim under 14; sale of
9 cocaine; evading a police officer; second degree kidnaping; and then
10 invasion of home, burglary with a deadly weapon; battery with a deadly
11 weapon resulting substantial bodily harm, constituting domestic violence;
12 battery with intent to kill, constituting domestic violence.

13 I tried that case against him a few months ago and let me tell
14 you, his mother, his sisters, his cousin, all say the same thing. They are
15 scared for their life. They are scared for other people's life. They are
16 convinced that if this man gets out of jail, he's going to kill somebody.
17 He was given a ten to life sentence by the last judge. And the only
18 reason he wasn't given more is because the judge admittedly said that
19 he didn't think that he could give consecutive counts when sentencing
20 under the large habitual criminal. We wanted to run a couple
21 consecutive.

22 Second, regardless of that, Judge, if I hear of any nice guy, oh
23 he's such a nice guy or he's a changed man, ridiculous. His conduct
24 over and over and over is of violence. He almost killed his own mother
25 with a baseball bat. That judge, even in sentencing, found that the only

1 reason he didn't is because he believed that he heard the lights and
2 sirens coming so he took off running.

3 Here in this case he is beating up his cousin and the cop
4 comes and then, sure enough he gets a -- blows out his Achilles trying to
5 fight this man. And the cop even said, and told me personally, didn't
6 come out in trial, but told me personally because we had a ruling from
7 Your Honor that didn't come out, he would have shot that man. The only
8 reason why he didn't shoot him is because it was whatever he could
9 grab first, his taser or his gun when he went down. And then he saw the
10 Defendant go straight for that woman, his own blood, and continue to
11 beat her.

12 There is no question. Any type of concurrent time argued by
13 the defense is a slap in the face to victims and a slap in the face to
14 Las Vegas Metropolitan Police Department. Period. Period.

15 I'd ask for life, a life sentence under the large habitual. That is
16 the only just resolution for this man if you look at his conduct, if you take
17 the words of his own family, this man gets out of jail he's going to kill
18 somebody.

19 Submit.

20 THE COURT: Mr. Allen, before your attorney speaks, is there
21 anything you'd like to tell the Court on your own behalf before I
22 pronounce sentence?

23 THE DEFENDANT: I'm going to let my attorney speak for me.

24 THE COURT: Usually, I have you speak and allow your
25 attorney to speak last.

1 THE DEFENDANT: I'll allow --

2 THE COURT: Unless there's a victim impact statement.

3 THE DEFENDANT: I'll allow my attorney to speak for me, sir.

4 THE COURT: You have no statement, sir?

5 THE DEFENDANT: No, sir.

6 MR. HAUSER: No. We talked about that before, Judge, he
7 wants me to handle it.

8 THE COURT: Okay.

9 Defense, any argument in mitigation?

10 MR. HAUSER: Well, what I'm hearing is whatever argument
11 I'm going to make is ridiculous. So I don't really know what I can say at
12 this point. But life without is what they just asked for.

13 I would like to correct something that Mr. Lexis mentioned
14 about the last sentencing argument. The judge did not know, at that
15 time, that he could stack habitual sentences. But he did ask the State if
16 he could and the State said, no. The State had an opportunity to correct
17 him and give him a bigger sentence at that point and they chose not to
18 do it.

19 That's not on the judge, that's not on the State. Whatever
20 happened, happened. But this isn't some type of, well, now we need to
21 seek additional retribution against this man. What we're actually looking
22 at, Your Honor, is an institutionalized individual. First time he went to
23 juvenile hall, he was 12.

24 I've looked through his life history. I've looked through his
25 criminal history. I know it's not good. And I'm not going to say anything

1 to downplay it. But what you look at is a crime that was committed, the
2 first one, when he was 15 years old, that sodomy and oral copulation
3 case, he was 15. Victim under 14 sounds a little different when you're
4 15 then when you're 37.

5 But that's what we're dealing with in this case. A man who
6 has never had a chance and we sent him away and locked him in a box
7 during his most formative years. And then we're shocked when he
8 comes out of that box and doesn't know how to interact with other
9 people. That's really what we've got here, Judge.

10 I added it up on his PSI today. I was sitting there, I had some
11 time. In between 1996 and now he's been free for a little over five years
12 of his life. Five years of his life between the ages of 15 and 37. You do
13 a lot of growing up between 15 and 37, Judge, and he did it in a violent,
14 inhumane place.

15 Did he commit crimes to put himself there? Absolutely. But
16 we're now going to say, it's too late. Lock him up, throw it away, literally,
17 never again let him see the light of day. That's what the State's asking
18 us to do today. It's too much, Your Honor. It's simply too much in this
19 case.

20 One of the State's arguments was, well, he was about to be
21 shot anyway. It doesn't seem like a justification for life at all.

22 I'm not going to stand here and say he's a nice guy, we've
23 always gotten along fine, but I'm not going to talk about his personality.
24 What I am going to talk about, Your Honor, is the fact that he's never
25 really had a shot. That mother, that Mr. Lexis was defending; he met her

1 first time at age 34. You know that, you heard that entire trial.

2 You heard the facts in this case. This wasn't some life or
3 death struggle with an officer. He was trying to commit domestic
4 violence in that case, a misdemeanor. He pushed the officer, the officer
5 stepped back and an accident happened at that point. Did he cause it?
6 Sure. But it's not like it was his intention. It's not like it was something
7 he was aiming to do. He wasn't aiming to do any harm. And the State
8 wishes to take that and say that it is worthy of life without. It's too harsh,
9 Judge.

10 We've got a couple of options today. My request would be for
11 concurrent time because he's already doing four, ten to life sentences,
12 they're all running concurrent. I would request a fifth ten to life if Your
13 Honors inclined to do that.

14 And here's why, you've seen his PSI, you've seen his record,
15 you've seen how many times he's been revoked on parole. The odds
16 that he makes parole at ten, slim to none. So we're looking at another
17 two or three years after that.

18 So now we're talking 12 to 13 years before he's even eligible
19 for parole. At that point, he's a 50 year-old man. We all know that crime
20 decreases as age increases; it's statistically speaking a fact. So then
21 we'd be talking about a 50 year old who's been institutionalized his
22 entire life. The odds that he comes out and goes right back to it, don't
23 seem that high. And at the very least that is sufficient punishment for
24 the crimes he's committed in this case.

25 There's a reason he got the ten to life in the other case. And

1 the other judge specifically said, well, you didn't kill her, so I'm not going
2 to give you life. And I think that logic should still apply here. But I don't
3 think it's necessary to give him another habitual sentence to run
4 consecutive to his current cases.

5 If Your Honor's not inclined to do concurrent treatment, I
6 would ask you not to habitualize him, to give him a two to five on this
7 case. That adds an additional two years on top of the likely 13 years
8 that he has to do on that case before he can then make parole. That's a
9 long time in prison, Judge. That's an awful long time in this case for
10 what was, strictly speaking, not something he intended to happen. He
11 did it, we all know what happened.

12 But when we actually look at what he did. When we actually
13 look at the severity of this crime, especially in light of his previous
14 offenses, this one should not be worthy of the more severe punishment.
15 If any case was worthy of life, it was the previous case with his mother
16 and the judge in that case said, no. This is not a life sentence. Neither
17 should this one be.

18 So what I'm asking for, Your Honor, is either a minimum
19 consecutive sentence or a habitual sentence to run concurrent to his
20 other case.

21 Just so Your Honor knows while he's been in prison, he's
22 actually trying to better himself, maybe for the first time. He's finally
23 realizing, look, I've got a long time to go here. When I get out, I can't be
24 like this anymore. And he's hoping to get out. He's hoping to make
25 parole.

1 So in the meantime, he graduated in anger management
2 class. I know it doesn't sounds like much with his record, but it's
3 important that he's doing what's available to him. It's important that he
4 takes any available steps to better himself. So he's taking that class,
5 he's currently enrolled in Commitment to Change up at the prison.

6 Sure, it doesn't erase what he did, but it does say that he's at
7 least trying. And he's trying in a way that his entire life no one has ever
8 tried to help him. He's put himself in this situation with his choices. But
9 when you start off in juvenile hall at 12 years old, this is where we end
10 up. When you institutionalize children, they become violent. And now
11 that Mr. Allen's an adult he's trying to fix it.

12 So, again, I'll submit it on the concurrent sentence, Your
13 Honor, or a consecutive minimum sentence on this case of a two to five.

14 THE COURT: Anything else, Counsel?

15 MR. HAUSER: No, Your Honor.

16 THE COURT: And if I understand your argument, you're not
17 contesting these certified copies of judgment of convictions?

18 MR. HAUSER: I did want to address -- sorry, Your Honor, I
19 did forget to mention -- no, I'm not contesting the habitual treatment.

20 What I would say, Your Honor, is that the sodomy case, he
21 was actually tried as a juvenile, I would ask that you ignore that for
22 habitual purposes. But he is still habitual eligible, yes.

23 THE COURT: All right. That's fine, Counsel. I'll ignore it for
24 purposes -- habitual purposes.

25 MR. HAUSER: Thank you.

1 THE COURT: However, I'm going to adjudicate your client
2 under the small habitual criminal statute.

3 In accordance with the law of the State of Nevada this Court
4 does now sentence you confinement in the Nevada Department of
5 Corrections for a maximum term of 240 months with a minimum parole
6 eligibility of 96 months, consecutive to Case Number C-16-317786.

7 In addition, \$25 administrative assessment fee; \$150 for a
8 DNA analysis fee and submit to testing; \$3 for a DNA administrative
9 assessment fee. The Court imposes -- the Court does not impose a
10 fine, there is no restitution ordered, and you not entitled to any days for
11 credit time served in this case.

12 MR. HAUSER: Your Honor, I'd -- two points on that, one I do
13 believe he is entitled to some credit for time served because he did
14 serve a long time on this case before it was adjudicated on the prior
15 case.

16 THE COURT: All right.

17 MR. HAUSER: And I believe he is entitled to credit for the
18 time before he was actually serving a sentence on that case, not the
19 time since that time. So he would be entitled to 387 days credit for
20 before the sentencing the occurred last August.

21 THE COURT: How many days?

22 MR. HAUSER: 387, Your Honor.

23 MR. LEXIS: I -- he was in custody in the other case, Judge.

24 MR. HAUSER: He was. You can accrue credit on both cases
25 at the same time. We do it in cases all over the place. But once he's

1 actually sentenced then he's only accruing credit on one case. Prior to
2 him being sentenced in that case, he was accruing credit on both.

3 MR. LEXIS: And when did he get sentenced?

4 THE COURT: I can't hear --

5 MR. HAUSER: August 3rd.

6 THE COURT: I'm sorry; I can't hear you Mr. Lexis.

7 MR. LEXIS: I was asking him when he got sentenced in that
8 other case.

9 MR. HAUSER: August 30th, 2017. He was arrested on
10 August 9th, 2016, that's 387 days.

11 THE COURT: State, what's your position?

12 MR. LEXIS: That's fine, Judge.

13 MR. HAUSER: Additionally, Your Honor, I would ask that you
14 waive the \$150 DNA fee, as he was previously convicted of four felonies
15 in Nevada. His DNA has to have been taken by now.

16 THE COURT: State, what's your position on the waiver of the
17 \$150?

18 MR. LEXIS: That's fine.

19 THE COURT: Okay. \$150 will not -- what about submit to
20 testing? Has he already been DNA'd?

21 MR. HAUSER: I have to imagine it was ordered in the
22 previous case.

23 THE COURT: Okay. All right.

24 MR. LEXIS: That's correct.

25 MR. HAUSER: If it wasn't, I'm fine with it.

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MR. LEXIS: That's correct, it's been ordered.

THE COURT: \$150 for the DNA and you said 387 days credit for time served?

MR. HAUSER: Yes, Your Honor.

THE COURT: He'll be given 387 days credit for time served. He still qualifies for habitual criminal -- habitual, yeah. He still qualifies under the small habitual statute so I sentenced him under that.

MR. HAUSER: Thank you, Your Honor.

MS. BONAVENTURE: Thank you, Judge.

MR. LEXIS: And, again, Judge, that's consecutive to his other case; correct?

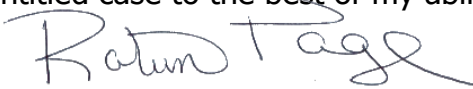
THE COURT: That's correct.

MR. LEXIS: Thank you.

[Proceeding concluded at 11:03 a.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.



Robin Page
Court Recorder/Transcriber

