

IN THE SUPREME COURT OF THE STATE OF NEVADA

Barry Harris,
Appellant

vs.

The State of Nevada,
Respondent,

) Supreme Court Case No.: 76774

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Electronically Filed
Apr 26 2019 07:17 p.m.
Nancy L. Brown
Clerk of Supreme Court

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Vol. III

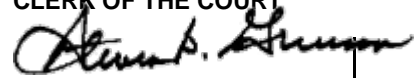
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-17-326569-1
)	
vs.)	DEPT NO. XX
)	
BARRY HARRIS,)	
)	
Defendant.)	Transcript of
)	Proceedings

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

JURY TRIAL - DAY 2

TUESDAY, APRIL 10, 2018

APPEARANCES:

FOR THE STATE:	MICHELLE L. SUDANO, ESQ.
	GENEVIEVE C. CRAGGS, ESQ.
	<i>Deputy District Attorneys</i>

FOR THE DEFENDANT:	DAMIAN R. SHEETS, ESQ.
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RECORDED BY: ANGIE CALVILLO, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

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1 LAS VEGAS, NEVADA, TUESDAY, APRIL 10, 2018, 12:43 P.M.

2 (Outside the presence of the jury)

3 THE COURT: Case No. C326569. Counsel, go ahead and
4 make your formal appearances for today.

5 MS. SUDANO: Good afternoon, Your Honor. Michelle
6 Sudano and Genevieve Craggs for the State.

7 MR. SHEETS: Good afternoon, Your Honor. Damian
8 Sheets on behalf of Mr. Harris who is present in custody.

9 THE COURT: Okay. You said -- I want to get the jury
10 in. What is the -- what's the thing you wanted to bring up?

11 MS. SUDANO: I think that we have a stipulation as to
12 a number of the State's exhibits. It would be Proposed 1
13 through 49, which are photos of the victim and the apartment. I
14 believe there's also a stipulation to Exhibits 63 and 64, which
15 are the medical records from AMR and from Sunrise.

16 And then there is an objection to Proposed 49 through
17 61, which are photos of a search warrant of the defendant's
18 vehicle that was executed a week after this incident. Although
19 there was not a gun found in the car at the time, they did find
20 ammunition and magazines, so we are seeking to admit that.

21 THE COURT: Okay. Is there any issue in terms of the
22 authenticity of the photos of 49 through 61?

23 MR. SHEETS: No, Your Honor.

24 THE COURT: Okay. So it's just a matter of relevance?

25 MR. SHEETS: Correct, Your Honor. Relevance and

1 prejudice versus probative. And I actually -- yes, 49 through
2 61. I haven't seen 62.

3 THE COURT: Okay.

4 MS. SUDANO: What is 62?

5 MR. SHEETS: I haven't seen 62, but I think -- we
6 didn't mention that right now, so I guess we'll get there.

7 MS. SUDANO: 62 is -- it's that. It's one of those.

8 MR. SHEETS: Oh, okay. 62 is from the car. So we're
9 actually including No. 62, as well, Your Honor, because that was
10 a photo taken within a car.

11 THE COURT: All right. So do you have -- do I have a
12 stipulation on 1 through 49?

13 MR. SHEETS: We have a stipulation as to 1 through 48.

14 THE COURT: 1 through 48. Okay. And then 62, 63, and
15 64?

16 MR. SHEETS: Just 63 and 64.

17 THE COURT: Okay. All right. And then 49 through 61,
18 you don't have any issue as to authenticity. It's an issue as
19 to relevance and prejudice?

20 MR. SHEETS: Correct, Your Honor.

21 THE COURT: Okay. What about 51, what is that?

22 MR. SHEETS: That's a photo from inside the vehicle of
23 a letter found inside the vehicle.

24 THE COURT: Okay. All right. Okay. Well, all right.
25 I'll go ahead and accept those. We'll admit 1 through 48, and

1 63 through 64, and then move for admission of 49 through 61 when
2 it becomes relevant and we'll deal with it at that point in
3 time.

4 (State's Exhibits 1-48 and 63-64 admitted)

5 MS. SUDANO: Thank you, Your Honor.

6 MR. SHEETS: Thank you, Your Honor.

7 THE COURT: Okay. Let's bring in the jury.

8 (Inside the presence of the jury)

9 THE COURT: All right. Let the record reflect the
10 presence of the attorneys for both sides, the presence of the
11 defendant. Do the parties stipulate to the presence of the
12 jury?

13 MS. SUDANO: Yes, Your Honor.

14 MR. SHEETS: Yes, Your Honor.

15 THE COURT: Okay. Good afternoon, ladies and
16 gentlemen. I appreciate everybody getting here in a timely
17 fashion. I really do. I apologize for getting started just a
18 little bit late. We had a couple things come up to try and get
19 organized. But I do apologize and we will definitely try to do
20 better in the future in terms of utilizing your time to the
21 maximum we can.

22 All right. As I said, what we're going to start off
23 today is I'm going to give you some preliminary jury
24 instructions, and then each side will have an opportunity to do
25 opening statements, and then the State will start presenting its

1 evidence. And so we'll get started with that and get things
2 moving.

3 All right. You are now the jury in this case and I
4 want to take a few minutes to tell you something about your
5 duties as jurors and to give you some preliminary instructions.
6 At the end of the trial, I will give you more detailed written
7 instructions that will control your deliberations. When you
8 deliberate, it will be your duty to weigh and to evaluate all
9 the evidence received in the case, and in that process to decide
10 the facts.

11 To the facts as you find them, you will apply the law
12 as I give it to you whether you agree with the law or not. You
13 must decide the case solely on the evidence and law before you
14 and must not be influenced by any personal likes or dislikes,
15 opinions, prejudices, or sympathy. Please do not take anything
16 I may say or do during the trial as indicating what I think of
17 the evidence or what your verdict should be. That is entirely
18 up to you.

19 This is a criminal case commenced by the State of
20 Nevada, which I sometimes may refer to as the State of Nevada
21 versus Barry Harris. This case is based upon an information.
22 The clerk will now read that information to you and state the
23 plea of the defendant.

24 (Information read)

25 THE COURT: As I have said before, the information

1 simply describes the charges the State brings against the
2 defendant. The information is not evidence and does not prove
3 anything. The defendant has pleaded not guilty to the charges
4 and is presumed innocent.

5 The State, therefore, has the burden of proving each
6 of the essential elements of the charges in the information
7 beyond a reasonable doubt. In addition, the defendant has a
8 right to remain silent, and never has to prove innocence or to
9 present any evidence. The purpose of this trial is to determine
10 whether the State will meet its burden.

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

18 You communicate with the Court through the marshal.
19 Our marshal's name is Bruce Swandeveldt and he is present at all
20 times while we are in session. During the course of this trial,
21 the attorneys for both sides and court personnel, other than the
22 marshal, are generally not permitted to converse with you. It's
23 not that we're being anti-social. It's simply that we are bound
24 by ethics and law not to speak with you because to do so might
25 somehow contaminate your verdict. We typically will not say hi

1 to you if we should pass you in the hall or be in the elevator
2 together.

3 There are rules of evidence that control what can be
4 received in evidence. When a lawyer asks a question or offers
5 an exhibit in evidence and a lawyer on the other side thinks
6 that it is not permitted by the rules of evidence, that lawyer
7 may object. If I overrule the objection, the question may be
8 answered or the exhibit received. If I sustain the objection,
9 the question cannot be answered or the exhibit cannot be
10 received.

11 Whenever I sustain an objection to a question, you
12 must ignore the question and must not guess what the answer
13 would have been. Sometimes I may order that evidence be
14 stricken from the record and that you disregard or ignore the
15 evidence. That means when you are deciding the case, you must
16 not consider the evidence that I told you to disregard.

17 It is the duty of a lawyer to object to evidence which
18 he or she believes may not be properly offered, and you should
19 not be prejudiced in any way against the lawyer who makes
20 objections on behalf of the party which he or she represents. I
21 may also find it necessary to admonish the lawyers, and if I do,
22 you should not show prejudice toward the lawyer or his or her
23 client because I found it necessary to admonish them.

24 Throughout the trial, if you cannot hear a question
25 asked by the attorney or the answer given by a witness, please

1 raise your hand as an indication. If I don't see your hand up,
2 please say excuse me, I didn't hear that, and we will ask that
3 the question be repeated or that the answer may be repeated.

4 If you wish, you may take notes to help you remember
5 the evidence. If you do take notes, please keep them to
6 yourself until you and your fellow jurors go to the jury room to
7 decide the case. Do not let note taking distract you from being
8 attentive.

9 When you leave court for resources, your notes should
10 be left in the courtroom. No one will read your notes. Whether
11 or not you take notes, you should rely on your own memory of the
12 evidence. Notes are only to assist your memory. You should not
13 be overly influenced by your notes or those of your fellow
14 jurors.

15 You will be given the opportunity to ask written
16 questions of any of the witnesses called to testify in this
17 case. You're not encouraged to ask large numbers of questions
18 because that is the primary responsibility of counsel. If after
19 both lawyers have finished questioning a witness, and only at
20 this time, there are any additional questions you would like to
21 ask the witness, write your question down with your juror number
22 on a full sheet of clean paper and raise your hand.

23 All questions from jurors must be factual in nature
24 and designed to clarify information already presented. The
25 marshal will pick up your question and give it to me. All

1 questions must be directed to the witness and not to the lawyers
2 or the Judge. After consulting with counsel, I will determine
3 if your question is legally proper. If I determine your
4 question may be properly asked, I will ask it. No adverse
5 inference should be drawn if the Court does not allow a
6 particular question. In addition, jurors must not place undue
7 weight on the responses to their questions.

8 The next phase of trial will now begin. First, each
9 side may make an opening statement. An opening statement is not
10 evidence. It is simply an outline to help you understand what
11 that party expects the evidence will show. A party is not
12 required to make an opening statement.

13 After the opening statements, the State will first
14 introduce evidence. At the conclusion of the State's evidence,
15 the defendant has a right to introduce evidence. However,
16 please remember the defendant is not obligated to present any
17 evidence or to prove his innocence. The law never imposes upon
18 the defendant in a criminal case the burden of calling any
19 witnesses. The defendant may do nothing at all because the
20 defendant has no burden of proof in the criminal trial.

21 As we've already discussed, the State has to prove two
22 things to you. First, the State has to prove to you beyond a
23 reasonable doubt that a crime occurred, and second the State has
24 to prove to you also beyond a reasonable doubt that the
25 defendant did it. At the close of the defendant's case, if any,

1 the State may introduce rebuttal evidence.

2 At the conclusion of all the evidence, I will instruct
3 you on the law. You must not be concerned with the wisdom of
4 any rule of law stated in these instructions, or the
5 instructions which I will read to you after the evidence is in.
6 Regardless of any opinion you may have as to what the law ought
7 to be, it would be a violation of your oath to base a verdict
8 upon any other view of the law than that give to you by the
9 Court.

10 After the instructions on the law are read to you,
11 each party has the opportunity to argue orally in support of his
12 or her case. This is called the closing argument or summation.
13 What is said in closing argument or summation is not evidence.
14 The arguments are designed to summarize and interpret the
15 evidence for you and to show you how the evidence and the law
16 relate to one another.

17 Since the State has the burden of proving the
18 defendant guilty beyond a reasonable doubt, the State has the
19 right to open and close the arguments, which means at the end of
20 trial the State gets to argue to you twice and the defense gets
21 to argue to you once.

22 Opening statement and closing arguments are intended
23 to help you in understanding the evidence and in applying the
24 law. But please understand, what the attorneys tell you is not
25 evidence. They are not witnesses. They have no firsthand

1 information, and, therefore, what they tell you is not evidence.

2 You must not be influenced in any degree by any
3 personal feelings of sympathy for or prejudice against any party
4 to the case, for each party is entitled to the same fair and
5 impartial consideration. After the attorneys have presented
6 their arguments, you will retire to select a foreperson to
7 deliberate and arrive at your verdict. Faithful performance by
8 you of these duties is vital to the administration of justice.

9 If, during the course of trial, you should recognize a
10 witness or realize you are familiar with the facts of the case
11 when the witness is testifying, please make a little note on
12 your jury pad that you recognize such and such a witness and how
13 it is you recognize that witness. At the next break in the
14 trial, please hand the note to the marshal and he'll present it
15 to the Court.

16 Frequently people do not recognize witnesses by name,
17 but may recognize them when they come into the courtroom to
18 testify. The child may be your -- the person may be your
19 child's soccer coach and you may know that person by the name of
20 Coach or Bob or Sally, or it may be someone who lives three or
21 four houses down from you and recognize them by sight, but you
22 don't know that person by name. And that happens quite
23 frequently. So if that should happen in this case, please just
24 make a note of that as the witness is testifying and at the next
25 break give the note to the marshal.

1 It is your duty to determine the facts and to
2 determine them from the evidence and the reasonable inferences
3 arising from such evidence. And in doing so, you must not
4 indulge in guesswork or speculation. The evidence you are to
5 consider in deciding what facts -- what the facts consist of,
6 one, the sworn testimony of any witness; two, the exhibits which
7 are received in evidence; and, three, any facts to which the
8 parties agree.

9 The term witness means anyone who testifies in person.
10 You must not consider anything which you may have seen or heard
11 when court is not in session, even if what you see or hear is
12 said or done by one of the parties or by one of the witnesses.
13 Evidence may be direct or circumstantial.

14 Direct evidence is direct proof of a fact, such as
15 testimony by a witness about what that witness personally saw or
16 heard or did. Circumstantial evidence is indirect evidence.
17 That is it is proved from one or more facts from which you can
18 find another fact.

19 You are to consider both direct and circumstantial
20 evidence. Either can be used to prove any fact. The law makes
21 no distinction between the weight to be given to either direct
22 or circumstantial evidence. It is for you to decide how much
23 weight to give to any evidence.

24 By way of example, if you wake up in the morning and
25 see that the sidewalk is wet, you may find from that fact that

1 it rained during the night. However, other evidence, such as a
2 turned on garden hose, may provide an explanation for the water
3 on the sidewalk. Therefore, before you decide that a fact has
4 been proved by circumstantial evidence, you must consider all
5 the evidence in the light of reason, experience, and common
6 sense.

7 In deciding the facts in this case, you may have to
8 decide which testimony to believe and which testimony not to
9 believe. You may believe everything a witness says or part of
10 it or none of it.

11 In considering the testimony of any witness, you may
12 take into account, one, the witness's opportunity and ability to
13 see or hear or know the things testified to; two, the witness's
14 memory; three, the witness's manner while testifying; four, the
15 witness's interest in the case and the outcome of the case, if
16 any; five, the witness's bias or prejudice, if any; six, whether
17 other evidence contradicted the witness's testimony; seven, the
18 reasonableness of the witness's testimony in light of all the
19 evidence; and, eight, any other factors that bear on
20 believability.

21 You must avoid bias, conscious or unconscious, based
22 on the witness's race, color, religious belief, national origin,
23 sexual orientation, gender identity, or gender in determining of
24 credibility. The weight of the evidence as to a fact does not
25 necessarily depend on the number of witnesses who testify about

1 it. What is important is how believable the witnesses are and
2 how much weight you think their testimony deserves.

3 No statement, ruling, remark, or facial expression
4 which I may make during the course of this trial is intended to
5 indicate my opinion as to what the facts are. I don't get to
6 decide the facts. You are the ones who determine the facts. I
7 may, during the trial, take notes on what the witnesses are
8 saying. Do not make any inference from this action on my part
9 because I am required to be prepared for legal arguments during
10 the trial, and for that reason I may sometimes take notes.

11 Our system of justice depends on the willingness and
12 ability of judges like me and jurors like you to make careful
13 and fair decisions. What we are asked to do is sometimes
14 difficult because everyone, including me, has feelings,
15 assumptions, perceptions, fears, and stereotypes.

16 We all have biases, including implicit biases, of
17 which we may not even be aware. They can influence the evidence
18 we see and hear, and how we perceive a person or a situation.
19 They can affect the evidence we remember and how we remember it.
20 They can influence the gut feelings and conclusions we form
21 about people and events. They can affect how we make important
22 decisions.

23 Fortunately, when we realize we can have implicit
24 biases and take efforts to recognize them, we can often control
25 them and minimize their possible affect on our consideration of

1 the evidence and decisions. As you listen to the witnesses and
2 consider the evidence, I encourage you to be mindful and
3 consider whether your perceptions of the witnesses and the
4 evidence are affected in any way by these hidden biases.

5 For this reason, you are encouraged to thoroughly and
6 carefully examine your decision making process to ensure the
7 conclusions you draw are a fair reflection of the law and the
8 evidence. You should resist jumping to conclusions based on
9 personal likes and dislikes, generalizations, gut feelings,
10 prejudices, sympathies, or stereotypes.

11 Consider examining your reasoning for any possible
12 bias by reconsidering your first impressions of the people and
13 the evidence in this case. Is it easier to believe statements
14 or evidence when presented by people who are more like you?

15 If you or the people involved in this case were
16 different -- were from different backgrounds such as richer or
17 poorer, more or less educated, older or younger, or of a
18 different gender, race, religion, or sexual orientation, would
19 you still view them and the evidence the same way? You must not
20 be bias in favor of or against any party or witness because of
21 his or her disability, gender, race, religion, ethnicity, sexual
22 orientation, age, national origin, or socioeconomic conditions.

23 When you are instructed to begin your jury
24 deliberations with your fellow jurors, please also listen to the
25 other jurors during deliberations who may be from different

1 backgrounds and who will be viewing this case in light of their
2 own insights, assumptions, and perspectives. The law demands
3 that you return a just verdict based solely on the evidence.
4 Your individual evaluation of that evidence, your reason and
5 common sense, and the instructions on the law. Our system of
6 justice is counting on you to render a fair decision based on
7 the evidence, not on biases.

8 I will now say a few words about your conduct as
9 jurors. First, keep an open mind throughout the trial and do
10 not decide what the verdict should be until you and your fellow
11 jurors have completed your deliberations at the end of the case.
12 Second, because you must decide this case based only on the
13 evidence received in the case and on my instructions as to the
14 law that applies, you must not be exposed to any other
15 information about the case or to the issues it involves during
16 the course of your jury duty.

17 Thus, until the end of the case or unless I tell you
18 otherwise, do not communicate with anyone in any way and do not
19 let anyone else communicate with you in any way about the merits
20 of the case or anything to do with it. This includes discussing
21 the case in person, in writing, by phone or electronic means,
22 via email, via text messaging, or any Internet chat room, blog,
23 website, or application, including, but not limited to,
24 Facebook, YouTube, Twitter, Instagram, LinkedIn, Snapchat, or
25 any other forms of social media.

1 This applies to communicating with your fellow jurors
2 until I give you the case for deliberations. And it applies to
3 communicating with everyone else, including your family members,
4 your employers, the media or press, and the people involved in
5 the trial.

6 Although you may notify your family and your employer
7 that you have been seated as a juror in the case and how long
8 you expect the trial to last. But if you are asked or
9 approached in any way about your jury service or anything else
10 about this case, you must respond that you have been ordered not
11 to discuss the matter and to report the contact to the Court.

12 As a caution, while you're here in the courthouse,
13 please always wear the badge the marshal has given you which
14 identifies you as a juror. When you come in in the morning and
15 during the breaks during the daytime or during the noon recess,
16 when you are in the elevators or walking around in the hallway,
17 I encourage you to only chitchat with people wearing a badge
18 indicating they are a juror.

19 And the reason for this is when people come in in the
20 morning, they aren't identified in any way when they come in.
21 Consequently, you will not know if you are carrying on a
22 conversation with a witness in this trial until it's too late
23 and they come in and take the witness and are sworn to testify.
24 Therefore, I urge you not to talk to anyone in the building
25 unless they're identified as a juror because if they're

1 identified as a juror, you know they're not going to have
2 anything to do with this case.

3 Because you will receive all the evidence and legal
4 instruction you properly may consider to return your verdict, do
5 not read, watch, or listen to any news media or other media
6 accounts or commentary about the case or anything to do with it.
7 Do not do any research such as consulting dictionaries,
8 searching the Internet, or using other references materials. Do
9 not make any investigation or in any other way try to learn
10 about the case on your own.

11 Do not visit or view any place discussed in this case,
12 and do not use any Internet programs or other devices to search
13 for or view any place discussed during the trial. Also, do not
14 do any research about this case, the law, or the people
15 involved, including the parties, the witnesses, or the lawyers
16 until after you have been excused as jurors. If you happen to
17 read or hear anything touching on this case in the media, turn
18 away and report it to me as soon as possible.

19 These rules protect each party's right to have this
20 case decided only on the evidence that has been presented here
21 in court. Witnesses here in court take an oath to tell the
22 truth and the accuracy of their testimony is tested through the
23 trial process.

24 If you do any research or investigation outside the
25 courtroom or gain any information through improper

1 communications, then your verdict may be influenced by
2 inaccurate, incomplete, or misleading information that has not
3 been tested by the trial process. Each of the parties is
4 entitled to a fair trial by an impartial jury. And if you
5 decide the case based on information not presented in court, you
6 will have denied the parties a fair trial.

7 Remember, you have all taken an oath to follow the
8 rules, and it's very important that you follow these rules. A
9 juror who violates these restrictions jeopardizes the fairness
10 of the proceedings. If any juror is exposed to any outside
11 information, please notify the Court immediately.

12 From time to time during the trial, it may become
13 necessary for me to take up legal matters with the attorneys
14 privately either by having a conference at the bench when the
15 jury is present in the courtroom, or by calling a recess.
16 Please understand that while you are waiting, we are working.

17 The purpose of these conferences is not to keep
18 relevant information from you, but to decide how certain
19 evidence is to be treated under the rules of evidence and to
20 avoid confusion and error. Of course, we will do what we can to
21 keep the number and length of these conferences to a minimum. I
22 may not always grant an attorney's request for a conference. Do
23 not consider my granting or denying a request for a conference
24 as any indication of my opinion of the case or what your verdict
25 should be.

1 At the end of the trial you will have to make your
2 decision based upon what you recall of the evidence. You will
3 not have a written transcript to consult. Even though we have a
4 court recorder who records all the testimony and everything that
5 goes on here in court, it's not typed up in any readable format
6 and is difficult and time consuming for the recorder to go back
7 and to play back lengthy testimony. Therefore, I urge you to
8 pay close attention to the testimony as it is given.

9 Okay. We'll be pleased now to start the closing
10 arguments. As I mentioned before, the parties don't have to
11 give a -- or not closing argument, opening statement. The
12 parties don't have to give an opening statement.

13 Is the State going to give an opening statement?

14 MS. SUDANO: Yes, Your Honor.

15 THE COURT: Is the defense?

16 MR. SHEETS: Yes, Your Honor.

17 THE COURT: Okay. Ladies and gentlemen, we'll start
18 with the opening statements. I want to emphasize again, the
19 opening statements are just intended to help you sort of know
20 what's going to be coming up in the case. I used to like to say
21 it's an opportunity for each side to sort of paint a picture of
22 what they think the evidence in the case is going to show.

23 As you'll see during the course of trial, the evidence
24 doesn't necessarily come in in a chronological fashion or
25 necessarily in a logical fashion because witnesses schedules and

1 different things will sometimes dictate how that evidence comes
2 in. So this is an opportunity for the parties to tell you what
3 the evidence is going to come and sort of fit it in so you have
4 a picture and a better understanding as a witness testifies as
5 to how their evidence and testimony fits in that picture.

6 But I want to emphasize, and I'll emphasize this
7 throughout the trial, what the attorneys tell you in opening
8 statements and in closing argument is not evidence. If they
9 tell you something and it doesn't pan out here during the
10 witness's testimony, you're relying on the witness's testimony.
11 That's the testimony that is evidence here, the witnesses, the
12 exhibits, and any facts stipulated to by the parties. And if
13 they say something ultimately that doesn't correspond with your
14 memory, it's your memory that controls.

15 So with that, we'll be pleased to hear from the State.

16 MS. SUDANO: Thank you, Your Honor. May I proceed,
17 Your Honor?

18 THE COURT: I'm sorry?

19 MS. SUDANO: May I proceed?

20 THE COURT: Yes, go ahead.

21 MS. SUDANO: Thank you.

22 STATE'S OPENING STATEMENT

23 MS. SUDANO: Ladies and gentlemen, you're going to
24 hear from the victim in this case, Nicole Dotson, and you're
25 going to hear that she has a lot of mixed emotions. You'll see

1 and hear firsthand the terror that she felt on August 22, 2017,
2 as she was describing to the first-responding police officers
3 and the paramedics what this man right here, the defendant,
4 Barry Harris, did to her on August 22, 2017.

5 You'll be able to see her demeanor as she's crying to
6 those officers and those paramedics, describing how the
7 defendant came to her apartment on August 22, 2017. How after
8 she asked him to leave, he stayed in the apartment, an apartment
9 that he didn't live in, even though they had been dating for six
10 or seven years, an apartment where although he had a key, he
11 didn't keep any property.

12 He got into an argument with her about the fact that
13 he was unfaithful to her, when she told him, you know what,
14 leave, I don't want you here, if you're seeing somebody else,
15 don't come back to my house. You'll hear her reaction as she's
16 telling the officers that after that he gets upset when she
17 tells him again to leave, and he starts to choke her while she's
18 sitting on the bed to the point where she can't breathe and she
19 thinks she's going to pass out, and how he started then punching
20 her in the head and knocked her down to the floor, starting
21 kicking her in the bedroom, telling her that he hated her,
22 telling her she's a fat bitch, things along those lines.

23 And then you'll hear that he got a gun out of his
24 pants pocket and made her go into the living room. And as she's
25 in the living room yelling for help, he points that gun at her

1 head, threatens to kill her. He tells her that if she continues
2 to yell, continues to make noise, that he's going to kill her.
3 Then he racked the gun, and at some point held it up against her
4 head, continued to make those threats and those statements. And
5 at some point put the gun in her mouth and threatened to kill
6 her if she continued to cry for help.

7 Now, you'll hear that he made her go into the bathroom
8 of that apartment. She crawled or climbed in there, still at
9 gunpoint, still as the defendant is saying all these things to
10 her, and he told her that she wasn't allowed to leave the
11 apartment, told her that she wasn't going anywhere, and that he
12 wasn't, either. And you'll hear that at that point she's
13 terrified.

14 He's still got the gun to her head throughout this.
15 He's still threatening her if she tries to leave, she tries to
16 get help, he's going to kill her. And you'll hear also that
17 while he's in the bathroom with her, he's hitting her in the
18 head with that gun.

19 Now, he's also kind of gathering his things up, trying
20 to get together so that he can leave. And as he's doing that,
21 he's kind of coming back and forth in front of that bathroom,
22 still with the gun trained on Nicole Dotson, still telling her
23 she's not free to leave at that point.

24 And you'll hear that Nicole didn't call 911, but
25 somebody else in the complex did. And while this is going on

1 with the defendant, they hear sirens inside the apartment, and
2 the defendant takes off and leaves. First responding officers
3 see him fleeing the apartment, and are able to make contact with
4 Nicole.

5 Now, you'll hear that she was terrified this entire
6 night and thought that the defendant was going to make good with
7 all of those threats to kill her if she said anything to the
8 police, if she continued to yell, if she tried to get out of
9 that apartment.

10 Now, you're also going to hear that after those
11 incidents on August 22, 2017, after she gave all of her
12 statements to the police, after she was transported in an
13 ambulance to the hospital, told everybody that would listen to
14 her, the ambulance, the police officers, the hospital staff, the
15 defendant had done these things to her and that he had put that
16 gun in her mouth, threatened to kill her, and struck her with
17 that gun. you're going to hear that at some point she forgave
18 the defendant for what he did. You're going to hear that she
19 feels that she can't live without him, that she wants to marry
20 him, and that she'll do anything that she can to help him with
21 this case here.

22 Now, ladies and gentlemen, just because Ms. Dotson
23 forgave the defendant for these terrible things doesn't mean
24 that they didn't happen. At the end of this trial, after you've
25 heard all the evidence, considered the statemen and the

1 photographs, the State of Nevada is going to come back and ask
2 you to find the defendant guilty of each and every one of the
3 counts with which he's charged. Thank you.

4 THE COURT: Thank you, counsel.

5 Be pleased to hear from the defense.

6 Counsel, we didn't discuss it beforehand, but I assume
7 the parties want to exclude any witnesses in this case?

8 MS. SUDANO: Yes, please, Your Honor.

9 THE COURT: Defense concur on that?

10 MR. SHEETS: Yes, Your Honor.

11 THE COURT: All right. Okay. And there's no witness
12 here currently in the courtroom?

13 MR. SHEETS: No, Your Honor.

14 THE COURT: Okay. All right.

15 DEFENSE OPENING STATEMENT

16 MR. SHEETS: Good afternoon. Compartmentalization,
17 that is what you're going to hear is necessary from the defense.
18 What you're not going to hear is that nothing happened. What
19 you're not going to hear is that Mr. Harris didn't do anything
20 to Ms. Dotson. What you're going to hear is that what did
21 happen is substantially different than what the State is going
22 to try to tell you happened throughout this case.

23 What you're going to hear is -- from Ms. Dotson what
24 you're going to hear is that my client periodically lived in and
25 out of an apartment that she lived in. She said that to the

1 police. She's going to testify to that. What you're going to
2 hear is that she went over there upset that he was possibly
3 having an affair, that an argument ensued.

4 What you're going to hear is that he did during that
5 argument put his hands on her, not something that's acceptable
6 by any means ever. But what you're going to hear is that it was
7 part of an argument, an argument where she believed he was
8 having an affair. You're going to hear that she has, since that
9 evening, indicated that the story she gave police that night
10 wasn't accurate.

11 You're going to hear her come forward and say I am 100
12 percent sure that he did not put a gun in my mouth. You're
13 going to hear that she actually told the police that evening
14 that she didn't even know if it was a real gun and that she
15 didn't even know if it was a real gun. You're going to hear
16 that later on she said there was no gun.

17 You're going to hear testimony that she went to the
18 hospital after being pressed by the police department to do so.
19 She had originally said she did not need to go. You're going to
20 hear that when she goes to the hospital that she denies injuries
21 to her abdomen, that she denies injuries to the top of her head,
22 that she denies injuries to her neck.

23 You're going to find they did a CT scan and that they
24 examined her and that her neck didn't have any injuries, that
25 her abdomen didn't have any injuries. That the only injury that

1 she had that they saw was from where he punched her in the eye,
2 something that you're not going to hear the defense say did not
3 happen.

4 But what we're going to ask in this case is that you
5 compartmentalize these great many charges and these very many
6 elements to these charges, deadly weapon, substantial bodily
7 harm, and we're going to ask you to come back with a verdict of
8 guilty for what he actually did versus what the State claims he
9 did. You're going to hear reasonable doubt as to many of those
10 elements on the charging document.

11 You're also going to hear that evening that when the
12 police department spoke to her, you're going to hear that they
13 had made up their mind before they had even interviewed my
14 client. They were out there looking for him. You're going to
15 hear they didn't even interview my client about what happened.
16 They never took his statement.

17 Instead, they went straight to the decision to arrest
18 him without knowing if she had made any physical contact with
19 him beforehand, none of that. They had already decided what
20 they were going to do. You're going to hear at one point that
21 an officer wants her to write a statement.

22 When he does that, he specifically, you're going to
23 hear, tells her to write certain things in that statement, to
24 write how she felt when he put a gun in her mouth, to emphasize
25 that she was in fear for her life, to emphasize that he wasn't

1 letting her leave, to say that he punched her in the face.

2 In fact, when he tells her to do these things, he says
3 you give me these things, you put these in there, that's icing
4 on the cake, you saying this, it's the moneymaker. That is the
5 law enforcement -- you will hear that that is the law enforcer's
6 statement to her when telling her what to write in her statement
7 prior to having even interviewed my client.

8 You'll hear that she gave a recorded statement to
9 detectives later on that evening. And now all of those specific
10 statements are in that voluntary statement. They're in that
11 recorded statement she makes [indiscernible]. You're going to
12 hear that she gets on the witness stand during the preliminary
13 hearing, says things are different, says he's allowed in the
14 home, says he doesn't put the gun in her mouth, can't depict any
15 specific threats. What she will say is that he did punch her
16 and that he did kick her. That's what she said, and that's what
17 we're not denying. What we're going to ask the jury to do at
18 the end of this is to put all of that together.

19 Now, at this trial you're also going to see a video
20 and you're going to see somebody who is angry, who is sad, felt
21 like she's been cheated on, and she's been punched in the face.
22 So, of course, she's going to be scared. You're going to hear
23 that, you're going to see that, and she's going to explain that
24 to you from the witness stand.

25 You're going to hear that they were talking about how

1 they loved each other. And the State is going to try to make
2 the inference that that's why she changed her story. But you're
3 also going to hear in a phone call that when she says something
4 to the effect of I'll do what you need me to do, his response is
5 don't do what I say, do what's the truth, that's all I ask.

6 You're going to hear that he wasn't telling her to lie
7 for him, he wasn't telling her to put the case away, throw it in
8 the trash. What he was asking her to do was to tell the truth,
9 even when she said I'll do whatever you say. That's not what he
10 asked her to do. He said the truth.

11 At the conclusion of the testimony, it is the position
12 of the defense that you will have a reasonable doubt as to a
13 kidnapping count, as to a deadly weapon, and as to substantial
14 bodily harm, and as to burglary. At the end of the day, we're
15 going to ask you to find Mr. Harris guilty of simple assault and
16 battery domestic violence, the things that he admits or does not
17 deny that he -- that he did.

18 We're going to ask you to compartmentalize that
19 evidence and look at it from the standpoint of what can they
20 prove beyond a reasonable doubt. At the end of the day you're
21 going to find they never even found a gun. Thank you.

22 THE COURT: All right. Thank you, counsel. That
23 concludes opening statements. And as I said, we move now into
24 the presentation of evidence, and the State goes first with the
25 presentation. And the State may call its first witness.

1 MS. CRAGGS: Thank you, Judge. The State calls Blake
2 Ferron to the stand. If I could approach your clerk, as well.

3 THE COURT: Sure. Now, counsel, it's my understanding
4 that there has been a stipulation to admit Exhibits 1 through
5 48, and then 63 and 64; is that correct?

6 MS. CRAGGS: That is correct, Your Honor.

7 THE COURT: And you concur with that, counsel?

8 MR. SHEETS: That is correct, Your Honor.

9 THE COURT: All right. Exhibits 1 through 48 will be
10 admitted, and 63 through 64 will be admitted.

11 Officer, if I could have you come up to the witness
12 stand, there's a couple steps. When you get to the top, stay
13 standing for just a second and our clerk over here will swear
14 you in.

15 BLAKE FERRON, STATE'S WITNESS, SWORN

16 THE CLERK: Please be seated. Please state your name,
17 and spell your first and last name for the record.

18 THE WITNESS: My name is Blake Ferron; B-L-A-K-E
19 F-E-R-R-O-N.

20 THE COURT: Go ahead, counsel.

21 MS. CRAGGS: Thank you.

22 DIRECT EXAMINATION

23 BY MS. CRAGGS:

24 Q What do you do for a living?

25 A I'm a police officer with the Las Vegas Metropolitan

1 Police Department.

2 Q How long have you been a police officer with the Las
3 Vegas Metropolitan Police Department?

4 A I've been a police officer for about two and a half
5 years.

6 Q And do you have any training and experience for your
7 current position?

8 A I do.

9 Q And what is that?

10 A To become a police officer, you have to attend a
11 seven-month academy where you take numerous classes, patrol
12 related classes and drug related classes.

13 Q And what specific assignment do you have currently?

14 A Currently I'm at the Southeast Area Command flex team,
15 which is a plain clothes unit that assists patrol with plain
16 clothes activities, and we also do our own plain clothes work.

17 Q And you said you're at Southeast Area Command?

18 A Yes.

19 Q And what are the boundaries of the Southeast Area
20 Command?

21 A Roughly it's about Sunset is the southern boundary,
22 Charleston -- or Sahara is the northern boundary. It goes as
23 far as east as the valley can go, and then the western boundary
24 is roughly Maryland Parkway, but it changes throughout.

25 Q Okay. So can you explain to the ladies and gentlemen

1 of the jury. I know you said you assist the patrol officers,
2 and then you do some of your own plain clothes work. What does
3 that mean?

4 A So we utilize informants to do -- control narcotics
5 buys and then do search warrants on the houses that we do the
6 buys out of. We also do a lot of work apprehending suspects
7 that our detectives get probable cause to arrest. And then if
8 patrol has something that they need a search warrant done, we
9 come out and assist them to do the search warrant.

10 Q Now, in August of 2017, what was your assignment?

11 A I was a patrol officer.

12 Q Now, what do patrol officers do?

13 A So patrol officers just respond to calls such as
14 domestic violence or disturbances. It's the typical when you
15 think of a police officer in the police car, we just respond to
16 calls and then also do car stops and person stops.

17 Q So when you say that you respond to calls, how is it
18 that you're actually called out to a particular place?

19 A So our dispatch will assign us the call and it pops up
20 on our computer showing the location and the details that we
21 have from the person calling, and then we head there from that.

22 Q Okay. So dispatch actually assigns you to a specific
23 place when you're a patrol officer?

24 A Yes.

25 Q Okay. Now, were you working on August 22, 2017?

1 A I was.

2 Q Do you recall if you were working by yourself or with
3 a partner?

4 A I was by myself.

5 Q Okay. And were you in a vehicle or were you on a
6 bike?

7 A I was in a patrol car.

8 Q Okay. And do you recall being dispatched to 3850
9 Mountain Vista Street, Apartment 267 on that day?

10 A I do.

11 Q And do you recall around what time that occurred?

12 A It was around 11:25 p.m.

13 Q P.M.?

14 A Yes.

15 Q Okay. So what did that come up on your screen as, or
16 what information did you have as you went to that address?

17 A It came up as a possible domestic violence. The only
18 information I had was that the anonymous caller was calling in
19 stating --

20 MR. SHEETS: I'm going to object, Your Honor.
21 Hearsay.

22 MS. CRAGGS: May I respond, Your Honor?

23 THE COURT: No, I think you can ask him what he does
24 next after the call. We can go -- let's go there.

25 MS. CRAGGS: Okay. Thank you.

1 THE COURT: I'll sustain the objection.

2 BY MS. CRAGGS:

3 Q What did you do after you started going to that
4 address?

5 A Once I arrived at the address, I observed a silver
6 vehicle leaving. The car kind of stopped when I was pulling
7 into the complex, so I took down the plate because it was not
8 normal behavior for a vehicle, and then I started walking
9 towards the apartment.

10 Q I'm sorry. You said it was what kind of behavior?

11 A It was not normal behavior for a vehicle.

12 Q And how do you mean?

13 A As in I pulled into the complex and he immediately
14 slammed on his breaks and stopped and did not move anymore from
15 that point.

16 Q And it was coming out of the complex that you had just
17 been dispatched to?

18 A Yes.

19 Q Okay. And you said you took the plate down?

20 A Yes.

21 Q And do you remember what the plate was?

22 A I would have to refresh my memory with the report.

23 MR. SHEETS: May I, Your Honor, just --

24 THE COURT: Yeah, I was going to have them show it to
25 you before they show it to the witness.

1 MS. CRAGGS: Absolutely, Judge. I will do that.

2 BY MS. CRAGGS:

3 Q And you said your report. When you are dispatched out
4 to calls, do you memorialize everything that happened in a
5 report?

6 A Yes.

7 Q And did you do that in this case?

8 A Yes.

9 Q And is that the report to which you're referring?

10 A Yes.

11 MS. CRAGGS: Your Honor, may I approach? I've shown
12 opposing counsel.

13 THE COURT: Go ahead.

14 MS. CRAGGS: Thank you.

15 BY MS. CRAGGS:

16 Q So just take a look at that report and see if you can
17 find the license plate in here and let me know, okay.

18 A It was a Nevada license plate --

19 THE COURT: Well, hold on a second. Does the report
20 refresh your recollection as to the license?

21 THE WITNESS: It does.

22 THE COURT: All right. Then take -- move the report
23 off to the side and ask him the question.

24 MS. CRAGGS: Okay.

25 THE COURT: Otherwise, we need to do a --

1 BY MS. CRAGGS:

2 Q Do you recall what the license plate is?

3 A Yes.

4 Q And what was that?

5 A Nevada license plate 76E192.

6 Q And you said that was a silver Honda; is that right?

7 A Yes.

8 Q Okay. So you took that down. And then what did you
9 do after you memorialized that information?

10 A I then parked my vehicle and started walking towards
11 the apartment.

12 Q Okay. And that was Apartment 267?

13 A Yes.

14 Q Okay.

15 MS. CRAGGS: And, Your Honor, if I may publish what's
16 already been admitted as State's Exhibit 19.

17 THE COURT: Okay. Go ahead. And you have copies, I
18 assume, of all these exhibits, counsel?

19 MR. SHEETS: I do, Your Honor.

20 THE COURT: Okay.

21 BY MS. CRAGGS:

22 Q Now, I'm showing you -- and if you look to the left,
23 actually, officer, you can see it on your screen. Does this
24 appear to be a picture of that apartment building?

25 A It does.

1 Q Okay. I'm showing you what's already been entered as
2 State's Exhibit 20. Does this appear to be a picture of that
3 address of that apartment building?

4 A It does.

5 Q Now, what happened or what did you observe -- and I'm
6 putting State's Exhibit 19 back up on the monitor now. What did
7 you observe as you walked towards this apartment building?

8 A I observed a black female exit the target apartment
9 and walk down the stairs.

10 Q And did you approach her?

11 A I did.

12 Q And where did you actually end up meeting her?

13 A At the bottom of the stairs.

14 Q Okay. So can you actually see that in this picture?

15 A Yes.

16 Q Okay. Can you -- you can actually mark on the
17 monitor.

18 THE COURT: Here. I've got it.

19 MS. CRAGGS: Thank you, Judge.

20 THE COURT: Use this. It's supposedly more accurate.

21 BY MS. CRAGGS:

22 Q Can you just show me kind of where you ended up
23 speaking with her? Okay. So you actually saw her come down the
24 stairs?

25 A Yes.

1 MS. CRAGGS: And for the record, Your Honor, he's
2 marked to the bottom right of State's Exhibit 19.

3 THE COURT: Okay.

4 MS. CRAGGS: Thank you.

5 BY MS. CRAGGS:

6 Q Can you describe what her demeanor was as you walked
7 up to her?

8 A Well, her demeanor, she seemed to be in distress. She
9 was shaking, hysterically crying, and she was having a hard time
10 breathing.

11 Q Okay. Did you notice anything visible on her that
12 caused you concern?

13 A Yes, she had swelling on the left side of her face,
14 and it was -- her eye was closed shut. She couldn't even open
15 her eye.

16 Q Okay. And I'm going to show you what's already been
17 entered as State's 2. Do you recognize what's depicted in this
18 photo?

19 A I do.

20 Q Okay. What is that, officer?

21 A That's the female I made contact with, and that's a
22 picture of the swelling that she had on her eye.

23 Q Okay. And is that what it looked like when you first
24 observed her?

25 A Yes.

1 Q Okay. I'm showing you State's 3. Is this just a
2 frontward photo of what she looked like?

3 A Yes.

4 Q Okay. So you said she was having a hard time
5 breathing.

6 A Yes.

7 Q Did she tell you what happened?

8 A Yes. She immediately told me that --

9 MR. SHEETS: Objection, Your Honor. Hearsay.

10 THE COURT: You're going to need to lay a foundation
11 if you're wanting to get this in as an excited utterance.

12 MS. CRAGGS: May I respond, Your Honor? I guess I
13 have a question. He said she was hyperventilating and that she
14 couldn't breathe and that she was crying.

15 THE COURT: Well --

16 MR. SHEETS: And on that I would object as to
17 foundation --

18 THE COURT: Well, I --

19 MR. SHEETS: -- for the nature of the response.

20 THE COURT: Try to lay a little bit more. I haven't
21 quite gotten there yet in terms, I think, of sufficiency. See
22 if there's anything more that he observed.

23 MS. CRAGGS: Certainly, Judge.

24 BY MS. CRAGGS:

25 Q Now, in terms of what exactly she was doing, can you

1 describe what her actions were when you first spoke with her?

2 A She was shaking and crying and she couldn't breathe.
3 The first question I asked her was if she was okay because she
4 seemed to be in distress and was attempting to leave.

5 Q Can you explain how she was shaking?

6 A She -- her whole body just seemed to be shaking very
7 rapidly. She was just shaking and she couldn't stand still.
8 Obviously, she -- it appeared that she went through some sort of
9 trauma.

10 Q And when you said she was trying to leave, what do you
11 mean by that? Was she trying to walk away from you, did she
12 tell you that?

13 A No, it seemed like she was trying to get away from her
14 apartment or out of the area.

15 Q Okay. And what did she tell you had occurred?

16 MR. SHEETS: Objection, Your Honor.

17 THE COURT: I'll overrule. Go ahead.

18 MR. SHEETS: May I voir dire the witness briefly, Your
19 Honor?

20 THE COURT: All right. I'll go ahead and allow you
21 voir dire.

22 VOIR DIRE EXAMINATION

23 BY MR. SHEETS:

24 Q Officer, these statements that -- that Ms. Dotson made
25 to you, those were in response to specific questions made by

1 you; correct?

2 A My first question was are you okay. That's when she
3 responded.

4 Q And then you asked follow-up questions; correct?

5 A After asking if she was okay, yes.

6 Q Okay. And then she answered those questions; correct?

7 A Yes.

8 MR. SHEETS: I'd renew my objection. I don't believe
9 it meets the definition of an utterance, Your Honor. They were
10 solicited questions.

11 THE COURT: All right. I'll overrule.

12 MS. CRAGGS: Thank you, Judge.

13 DIRECT EXAMINATION (Continued)

14 BY MS. CRAGGS:

15 Q So you said your first question to her was are you
16 okay?

17 A Yes.

18 Q What was her response to that?

19 A No, my boyfriend just tried to kill me.

20 Q Did you then attempt to investigate further?

21 A Yes.

22 Q What did you do?

23 A I then asked her detailed questions about exactly what
24 happened and what had occurred.

25 Q And what did she tell you happened?

1 A She had told me that --

2 MR. SHEETS: I'm going to object. If we could make it
3 a standing objection.

4 THE COURT: All right. I'll overrule. I don't really
5 like standing objections. If you -- so every time we sort of
6 get past, if you want to make a new one, go ahead.

7 MR. SHEETS: Yes, sir.

8 THE COURT: And I'll rule at that point.

9 BY MS. CRAGGS:

10 Q What did she tell you happened?

11 A She had told me that she arrived home to her residence
12 around 10:00 p.m. that same day and went to the bedroom with her
13 boyfriend Barry Harris. Then while she was with him they got in
14 a verbal argument, and then she ended up telling him that she no
15 longer wanted to be with him. After that, Barry Harris became
16 increasingly agitated towards her, and then started to strangle
17 her with two hands around her neck.

18 Q And I'm just going to ask you this. While she was
19 telling you this, what was her demeanor?

20 A It was still the hysterically crying and unable to
21 breathe, and it took her a long time just to say a couple
22 sentences.

23 Q At any point while she's telling you what happened,
24 did she become calm?

25 A Not really, no.

1 Q Okay. So you said they're in the bedroom, and then
2 there's the strangling. Does anything happen after that?

3 A Yes, he --

4 MR. SHEETS: Objection insofar as it calls for the
5 same hearsay.

6 THE COURT: Okay. Overruled.

7 THE WITNESS: She stated that he then began to punch
8 and kick her, or punch her in the face area, punch her in her
9 abdomen, and then kick her, to which she fell off the bed. And
10 then from there I believe she said that he then went and grabbed
11 his black in color handgun, as she described it, and then put it
12 in her mouth and told her that if she were to scream for help,
13 that he would kill her.

14 BY MS. CRAGGS:

15 Q Now, did she tell you if they went anywhere other than
16 the bedroom in the apartment?

17 A Yes. I believe after he hit her in the face with the
18 handgun that she stated she was able to make it into the living
19 room.

20 MR. SHEETS: Same objection.

21 THE COURT: Overruled.

22 BY MS. CRAGGS:

23 Q And what happened in the living room, if you recall?

24 A In the living room he then walked out and pointed the
25 handgun at her and forced her to -- or told her to go into the

1 bathroom, to which she stated she complied because she thought
2 that he was going to kill her.

3 MR. SHEETS: Same objection.

4 THE COURT: Okay. Overruled.

5 BY MS. CRAGGS:

6 Q Did she tell you that anything happened at that point
7 or did he leave at that point?

8 A She stated that she began to scream for help, to which
9 he racked a round into the handgun, as she described it, and
10 then pointed at her again and stated that if she tried to scream
11 for help or tried to leave that he would kill her again. And at
12 that point she just sat on the bathroom floor and did not make
13 any other sounds.

14 MR. SHEETS: Same objection.

15 THE COURT: Okay. Thank you. Overruled.

16 BY MS. CRAGGS:

17 Q At that point did Mr. Harris stay in the apartment
18 according to her, or did he leave?

19 A He then left.

20 MR. SHEETS: Same objection.

21 THE COURT: Overruled.

22 BY MS. CRAGGS:

23 Q What did she do at that point?

24 A At that point she stated she waited for a minute, and
25 then when she walked out of the apartment, that's when I came in

1 contact with her.

2 Q Okay.

3 MR. SHEETS: Same objection.

4 THE COURT: Overruled.

5 BY MS. CRAGGS:

6 Q And you said that you were able to see the left side
7 of her face was swollen. Did she complain of any other injuries
8 at that time?

9 A Yeah, she was complaining of abdominal pain, her
10 stomach.

11 Q Okay.

12 MR. SHEETS: Same objection.

13 THE COURT: Okay. Overruled.

14 BY MS. CRAGGS:

15 Q Now, did do any other -- after speaking with her, I'm
16 sorry, did you do anything else in regards to this case?

17 A No.

18 Q Did you wait on scene until other officers arrived?

19 A Yes.

20 Q Okay. What other officers arrived, if you recall?

21 A We had Officer Bianco arrive to assist me, and then we
22 had southeast patrol detectives arrive.

23 Q Okay. And was Officer Bianco also a patrol officer?

24 A Yes.

25 Q Okay. And then what happened when the detectives

1 arrived?

2 A When the detectives arrived, they took over the
3 investigation, and I finished the report.

4 Q And as the first responding officer on the scene, you
5 said you finished the report. Do you always have to write a
6 report as the first responding officer?

7 A Yes.

8 Q Do you also give all the information that you learned
9 to the detectives when they arrive?

10 A Yes.

11 Q Are you aware whether there was any sort of crime
12 scene analyst that arrived?

13 A Yes, a crime scene analyst did arrive.

14 Q Did you speak with that crime scene analyst, as well?

15 A Yes.

16 Q And why is it that it's important that you speak with
17 both the crime scene analyst and the detective?

18 A That way both of them get the same story from the
19 responding officer since I do have the majority of the
20 information for them to start their investigation and so they
21 can start doing what they need to do.

22 Q Did you also give them the information regarding the
23 vehicle that you saw leave the complex?

24 A Yes, I did.

25 Q Okay. And did Ms. Dotson give you any information

1 about that vehicle when you were speaking with her?

2 A She just stated that it was his car.

3 MR. SHEETS: Objection.

4 THE COURT: At what point -- yeah, I'm concerned as to
5 what her state of mind was at the time that we're talking about
6 the vehicle.

7 MS. CRAGGS: I can lay further foundation --

8 THE COURT: Let's lay --

9 MS. CRAGGS: -- Your Honor, if I may.

10 THE COURT: -- some foundation on that.

11 MS. CRAGGS: Thank you.

12 BY MS. CRAGGS:

13 Q When you were talking to Ms. Dotson, without telling
14 me what she said about a vehicle, at what point was this?

15 A She initially told me when she first came out of the
16 apartment that he was in that vehicle, and then after --

17 Q Just let me stop you really quickly, okay. When you
18 say when she first came out of the apartment, it was the initial
19 time that you talked to her at the bottom of the stairs?

20 A Yes.

21 Q Okay. When you said she was crying?

22 A Yes.

23 Q Okay. And that's when she told you about the vehicle?

24 A Yes.

25 Q And what -- what did she tell you about it?

1 A She just stated it was a silver Honda sedan.

2 Q Okay. She didn't give you the license plate or
3 anything like that?

4 A No.

5 Q Okay.

6 MR. SHEETS: Same objection.

7 THE COURT: I'll overrule.

8 BY MS. CRAGGS:

9 Q Now, do you know if there was any sort of medical help
10 that was called or did you call any medical?

11 A Yes, we called for medical to respond.

12 Q Okay. And did medical respond to your knowledge?

13 A Yes.

14 Q And what happened when they arrived, if you were still
15 there?

16 A I believe they checked her out, and then they had
17 left.

18 Q Okay. But you're not sure what their interaction was?

19 A No.

20 Q Okay. And do you know if any -- any medical came back
21 to the scene based on your observations?

22 A Yes. I believe another ambulance came to the scene
23 and then she went with that ambulance.

24 Q Okay.

25 MS. CRAGGS: Nothing further, Your Honor. I pass the

1 witness.

2 THE COURT: Cross-examination.

3 CROSS-EXAMINATION

4 BY MR. SHEETS:

5 Q So, Officer, you testified that the vehicle you had
6 seen was a silver Honda. You didn't actually know that that
7 evening, did you?

8 A Know that it was related or --

9 Q You didn't -- you did not know that it was a silver
10 Honda, did you, sir?

11 A I did.

12 Q So you didn't state to Officer Bianco that you thought
13 it was a Hyundai and you thought it was a sedan?

14 A It was a sedan. I might have said Hyundai instead of
15 Honda.

16 Q Okay. It actually turned out not to be a sedan, but a
17 coupe; isn't that correct?

18 A To me, a sedan and a coupe are the same thing.

19 Q Are they, Officer? So you're trained that a sedan and
20 a coupe are the same type of vehicle at the academy?

21 A Yes.

22 Q And you're trained in being able to describe and log
23 and detail vehicles so that it makes it easier to catch
24 suspects; isn't that correct?

25 A Yes.

1 Q Okay. So do you recall actually telling Officer
2 Bianco that, in fact, it might have been a coupe instead of a
3 sedan later on?

4 A I do not recall, but I could have said it was a
5 Hyundai instead of a Honda.

6 Q Okay. But you don't recall whether or not you
7 specified, oh, you know, it may have been a coupe instead?

8 A I do not recall.

9 Q Okay. And you don't know -- so you don't know whether
10 that would have been before or after somebody else told you that
11 it was a coupe; correct?

12 A No, I do not recall.

13 Q Okay. Now, you indicated that you drove into the
14 apartment complex. Can you tell me how you went about driving
15 into the apartment complex? Did you go in fast, slow?

16 A I went in at a normal speed.

17 Q Okay.

18 A I pulled in and had to stop because there's a gate to
19 the complex.

20 Q Okay. Now, in relation to -- did you come in -- which
21 entrance did you come in? Are there more than one entrance?

22 A As far as I know, there's only one entrance.

23 Q Okay. So you're not aware of whether there's an
24 entrance in the front and an entrance in the back?

25 A No.

1 Q Okay. So which street did you enter off of?

2 A Mountain Vista.

3 Q So when you came off Mountain Vista, you waited for a
4 gate to open; correct?

5 A Yes.

6 Q Okay. And you pulled in and where was this other
7 vehicle in relation to you?

8 A It was facing my direction, coming my direction, and
9 it was about 15 to 20 feet away in front of me.

10 Q Was it directly in front of you, or was it off to the
11 side?

12 A It was off to the side.

13 Q Okay. And you didn't see who was driving that
14 vehicle, did you?

15 A No.

16 Q Okay. But you said that when you came in, it hit its
17 breaks; correct?

18 A Yes.

19 Q But you're unaware of the reason for that vehicle
20 hitting its breaks; correct?

21 A Yes.

22 Q It could have been the fact that a police officer was
23 driving in and they felt they needed to yield; correct?

24 A Yes.

25 Q Okay. Now, you said you had spoken with Ms. Dotson in

1 regards to this case. She didn't specify to you what the basis
2 of any argument they were having was, did she?

3 A No.

4 Q Okay. And did you ask that question?

5 A No.

6 Q Were you present when Officer Bianco was talking with
7 her?

8 A Yes.

9 Q Okay. So you actually heard Officer Bianco give her a
10 voluntary statement and tell her what needed to be written; is
11 that right?

12 A I believe I wasn't with him when he gave her the
13 voluntary statement.

14 Q Okay. So you weren't present with any conversation
15 where he may or may not have told her what to say?

16 A I was not present for that.

17 Q Okay. So you spoke with Ms. Dotson at the bottom of
18 the stairs and you testified that each of the questions that she
19 answered was -- or each of the statements she made was in a
20 direct response to a question you made; correct?

21 A Yes.

22 Q Okay. So it's not like she just uttered these things
23 without solicitation; is that correct?

24 A Other than I asked her if she was okay and she didn't
25 answer that question directly. She kind of stated what was

1 going on.

2 Q Okay. But the rest of the answers were in direct
3 relation to specific requests you were making; correct?

4 A Yes.

5 Q Okay. Now, Officer, you're not -- you're not a
6 doctor; correct?

7 A No.

8 Q You're not trained in -- well, I was going to say
9 doctors. You're not trained in human anatomy, biology --

10 A No.

11 Q -- or the sort? Okay. And so you're not trained
12 illnesses or conditions that may occur when something stressful
13 happens; correct?

14 A No.

15 Q So you would be -- you would be unable to testify as
16 to her difficulty breathing was the result of her crying and
17 potentially hyperventilating versus something else; isn't that
18 correct?

19 A As a medical issue, no.

20 Q Okay.

21 MR. SHEETS: No further questions.

22 THE COURT: All right. Redirect.

23 MS. CRAGGS: Court's indulgence. Just briefly, Your
24 Honor.

25 ///

REDIRECT EXAMINATION

BY MS. CRAGGS:

Q When you're the first responding officer to a call that you've been dispatched to, what is the purpose -- I guess what is your goal when you first arrive on scene?

A To slow down the situation and take control of the scene.

Q And are you trying to investigate to determine what occurred?

A Yes.

Q Okay. And I just wanted to clarify. Mr. Sheets asked you a couple questions about Ms. Dotson and your conversation. You said that when you said are you okay, she didn't really respond?

A She didn't really respond to that question directly, more stated what was happening when I asked her if she was okay.

Q Okay. So she didn't say yes or no, she kind of launched into the explanation of what occurred?

A Yes.

Q And when you wrote down the license plate, did you run that license plate through any sort of databases at that time?

A Yes.

Q Okay. And did you confirm as to what type of vehicle that license plate went to?

A Yes.

1 Q And what was that determination?

2 A It was a Honda.

3 Q And do you recall what kind?

4 A I do not know the specific kind. A Honda sedan is
5 what it came back to.

6 Q And then as we talked about earlier, then you put all
7 the information you had into your report?

8 A Yes.

9 MS. CRAGGS: Nothing further.

10 THE COURT: Recross.

11 RECROSS-EXAMINATION

12 BY MR. SHEETS:

13 Q Officer, isn't it true that when Officer Bianco
14 arrived you referred to the vehicle as the suspect vehicle;
15 isn't that correct?

16 A Yes.

17 Q Indicating that you had already concluded that a crime
18 had been committed by somebody inside that vehicle; isn't that
19 correct?

20 A Yes.

21 MR. SHEETS: No further questions.

22 THE COURT: Okay. Redirect.

23 MS. CRAGGS: No, Your Honor.

24 THE COURT: Does any member of the jury have a
25 question for this witness? As I said in my initial

1 instructions, you'll be given the opportunity to ask written
2 questions of any of the witnesses called to testify in this
3 case. You're not encouraged to ask a large number of questions
4 because that's the primary responsibility of counsel.

5 If, after both lawyers have finished questioning the
6 witness, and only at this time, there are additional questions
7 you would like to ask the witness, write your question down with
8 your juror number on a full sheet of clean paper and raise your
9 hand. All questions from jurors must be factual in nature, and
10 designed to clarify information already presented. The marshal
11 will pick up your question and give it to me.

12 All questions must be directed to the witness and not
13 to the lawyer or the judge. After consulting with counsel, I
14 will determine if your question is legally proper. If I
15 determine your question may properly be asked, I will ask it.
16 No adverse inference should be drawn if the Court does not make
17 -- does not allow a particular question. In addition, jurors
18 must not place undue weight upon responses to their question.

19 Anybody have a question for this witness? I see one
20 hand. Write it on a clean sheet of paper. Two. Be sure your
21 juror number is written on there. I think there was two hands.

22 All right. Okay. Can I see counsel at sidebar.

23 (Bench conference)

24 THE COURT: Okay. Juror No. 5, can we see the initial
25 report that Officer Blake Ferron filed? Obviously, no. All

1 right. And then as to the other juror whose badge number is
2 226. I think that's Juror No. 12. And was alcohol a factor? I
3 can ask if he observed any sign of alcohol.

4 MR. SHEETS: [Inaudible].

5 THE COURT: Okay. All right. Okay. Very good.

6 (End of bench conference)

7 THE COURT: All right. Officer, one additional
8 question. Was there anything that you observed that suggested
9 to you that the woman you were talking to at the apartment was
10 under the influence of alcohol?

11 THE WITNESS: No. Nothing with my conversation with
12 her did I ever suspect that she was under the influence of
13 alcohol at all. She didn't have any smell on her breath and she
14 wasn't slurring her words or anything like that.

15 THE COURT: Does that generate anything further from
16 the State?

17 MS. CRAGGS: Not from the State, Judge. Thank you.

18 THE COURT: Defense?

19 MR. SHEETS: No, Your Honor.

20 THE COURT: All right. Thank you very much for your
21 testimony today. You're excused.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: State may call its next witness.

24 MS. SUDANO: The State calls Nicole Dotson. May I
25 approach your clerk, Your Honor?

1 THE COURT: Yes, go ahead.

2 All right. Ma'am, if I could ask you to come to the
3 witness stand. There are a couple steps. Get to the top step
4 and I need you to stay standing for just a minute, and then I'll
5 clerk over here will swear you in.

6 NICOLE DOTSON, STATE'S WITNESS, SWORN

7 THE CLERK: Please be seated. Please state your name
8 and spell your first and last name for the record.

9 THE WITNESS: My name is Nicole Dotson, and it's
10 D-O-T-S-O-N.

11 THE COURT: How do you spell your first name?

12 THE WITNESS: N-I-C-O-L-E.

13 THE COURT: Okay. Ms. Dotson, I'd ask you to scoot as
14 close as you can to that microphone. You're sort of soft spoken
15 and I want to make sure everybody can hear you.

16 THE WITNESS: Okay.

17 THE COURT: All right. Go ahead whenever your ready,
18 counsel.

19 MS. SUDANO: Thank you.

20 DIRECT EXAMINATION

21 BY MS. SUDANO:

22 Q Ma'am, can I call you Nicole?

23 A Sure.

24 Q Okay. I want to take you back to August 22nd of last
25 year. Where were you living at that time?

1 A On Mountain Vista and Flamingo.

2 Q Was it 3850 Mountain Vista?

3 A Yes, ma'am.

4 Q All right. Was that Apartment 267?

5 A Yes, ma'am.

6 Q Is that here in Las Vegas, Clark County, Nevada?

7 A Yes.

8 Q Okay. Was that a downstairs apartment, upstairs
9 apartment?

10 A It was upstairs.

11 Q I'm going to show you State's Exhibit 19. And if you
12 look right over there to that screen, you can actually see
13 what's up in front of you. Do you recognize what's in Exhibit
14 19?

15 A Uh-huh. Yes, ma'am.

16 Q And what are we looking at there?

17 A My apartment.

18 Q Okay. And you said you lived in the upstairs
19 apartment; is that right?

20 A Yes, ma'am.

21 Q Okay. So up to the kind of center of the photo, is
22 that your door right there?

23 A Yes, ma'am.

24 Q Okay. Now, who was living in that apartment with you
25 in August of last year?

1 A It was me, my daughter, and Barry.

2 Q Okay. What's your daughter's name?

3 A Her name is Nalaya (phonetic).

4 Q How old is she?

5 A She's eight.

6 Q And you said that there was somebody else that was
7 living there at that time; is that right?

8 A Yeah, Barry was living there.

9 Q Okay. Do you see Barry here in the courtroom?

10 A Yes, ma'am.

11 Q Can you point to him and tell me something he's
12 wearing today?

13 A He's wearing a tie.

14 Q What color tie?

15 A I guess it's gray.

16 Q May the record reflect identification of the
17 defendant?

18 A All right. The record will so reflect.

19 Q How do you know the defendant?

20 A We're in a relationship.

21 Q Okay. Did you say you were or you are in a
22 relationship?

23 A We are in a relationship.

24 Q Okay. So currently as you sit here you are still in a
25 relationship; is that right?

1 A To some extent, yes.

2 Q How long have the two of you been in that
3 relationship?

4 A Approaching seven years, like a little under that,
5 like six years.

6 Q Okay. And stupid question, when we talk about a
7 relationship, what do you mean by that?

8 A Two people together, involved.

9 Q In a romantic sense?

10 A Correct.

11 THE COURT: Can I have you pull that microphone just a
12 little bit closer to you and see if we can maybe -- you can pull
13 that box closer to you, too. That might make it easier. All
14 right. Thank you.

15 BY MS. SUDANO:

16 Q Okay. Now, you said that the defendant was living
17 with you on August 22, 2017; is that correct?

18 A Yes, ma'am.

19 Q Did he have a key to the apartment?

20 A Yes, ma'am.

21 Q Was he on the lease to the apartment?

22 A No, ma'am.

23 Q Did he keep clothing or other personal items at the
24 apartment?

25 A Yes, ma'am.

1 Q Okay. Was it all of his clothing that was there?

2 A It was a lot of stuff.

3 Q Okay. He kept a lot of stuff there?

4 A Yes, ma'am.

5 Q Okay. What type of stuff did he keep there?

6 A Clothes, personal hygiene stuff, you know.

7 Q Okay.

8 A Shoes.

9 Q And when we talk about like clothes and shoes, are we
10 talking about one change of clothes, one pair of shoes, or are
11 we talking about something more than that?

12 A More than that.

13 Q Okay. How much more than that?

14 A There was random stuff all over. I can't say like --
15 I don't know how long it would have last him, but I know every
16 time he came home he was able to take a shower and change.

17 Q Okay. Now, you said every time he came home. Did he
18 spend every single night at that apartment?

19 A No, ma'am.

20 Q Okay. Where else was he staying?

21 A I don't know. I don't know where else.

22 Q Was he getting mail at your apartment?

23 A Not this apartment. When we lived here, when he was
24 there, we had only been there not even a whole month.

25 Q Okay.

1 A I was not even getting mail there yet.

2 Q Okay. So nobody was getting mail at that apartment?

3 A Not yet.

4 Q Okay. And you said he was not on the lease; is that
5 right?

6 A Correct.

7 Q Okay. But he did keep a lot of his stuff there?

8 A Right.

9 Q Okay. So other than the clothes and the shoes and the
10 hygiene items, any other stuff that was left in that apartment?

11 A No.

12 Q Now, you said he was not spending every night there;
13 is that right?

14 A Correct.

15 Q How many nights a week was he staying there?

16 A Usually five out of seven.

17 Q And had that been the case for that entire month that
18 you were there?

19 A Not the entire month, no. This wasn't something that
20 happened on a regular basis. However, sometimes he would say,
21 you know, I'm not coming or whatever and it would be like a
22 couple of days. But we had times where he'd come home every
23 single night.

24 Q Okay. I just want to make sure that I understand what
25 you --

1 A Yeah.

2 Q -- were saying.

3 A Yeah.

4 Q Okay. You said it wasn't a regular thing, and I'm not
5 sure which wasn't a regular thing, him staying there or him not
6 staying there?

7 A Him not staying there. That was more irregular than
8 him being there.

9 Q Okay. So in August of last year he was staying there
10 five to seven -- or five out of the seven days of the week?

11 A Correct.

12 Q Okay. Now, August 22, 2017, do you recall that day?

13 A August 22nd?

14 Q Yes, ma'am.

15 A Correct.

16 Q Okay. Where were you during the day and the evening
17 of August 22nd?

18 A During the day I was at work.

19 Q Okay. And what type of work do you do, ma'am?

20 A I work with people with Alzheimer's. I'm a memory
21 care specialist.

22 Q You're a memory care specialist?

23 A [Nods head yes.].

24 Q Is that a yes?

25 A Yes, ma'am.

1 Q Sorry. I need you to answer out loud because we're
2 making a record of everything that's --

3 A Okay.

4 Q -- being said, okay. Now, before you came back to the
5 apartment that evening, do you remember what your shift was?

6 A Yes, ma'am.

7 Q What was your shift?

8 A I worked 2:00 to 10:00. 2:00 a.m. to --

9 Q 2:00 p.m. to 10:00 p.m.

10 Q Okay. So during that afternoon or that evening, had
11 you had any conversations with the defendant?

12 A Yes, ma'am.

13 Q How were you having those conversations, face to face?

14 A No, ma'am.

15 Q How were you having them?

16 A We were on the phone.

17 Q Okay. What was the nature of those conversations?

18 A We were arguing.

19 Q What were you arguing about?

20 A Him not coming home.

21 Q Okay. Anything more specific than him not coming home
22 or not coming around?

23 A You know, obviously, I felt like he was cheating, so
24 that was it.

25 Q Okay. Did you tell him anything about whether or not

1 you wanted him to continue staying at the apartment?

2 A In anger I probably said don't come home tonight,
3 yeah.

4 Q Okay. So you told him not to be at the apartment when
5 you got back, is that fair?

6 A Yeah, that's what I said.

7 Q Okay. So did you expect him to stay at the apartment
8 that evening?

9 A No.

10 Q Did you have any further -- well, what was his
11 response when you told him don't come back or don't come home?

12 A Well, Barry is very persistent, so there was a lot of
13 times when I told him don't come and he came anyway. That was
14 kind of the nature of our relationship. He had a key. I mean,
15 I -- because I was angry, that's why I said didn't come -- don't
16 come, but I knew there was a chance he would be there, but I
17 didn't expect him to be there.

18 Q Okay. Did he say anything to you about whether he
19 intended to come over to the apartment or not?

20 A Specifically, I can't remember that.

21 Q Okay. And so I think you already testified you were
22 not expecting him to be there when you got home; right?

23 A Right.

24 Q And that was based on the argument and the
25 conversation that you had?

1 A Correct.

2 Q Okay. So when you got home that evening, about what
3 time was that?

4 A It was like 10:35, 10:45.

5 Q Okay. At night?

6 A Yeah, at night.

7 Q Okay. When you got to the apartment, was anyone
8 there?

9 A Yeah, Barry was there.

10 Q What about your daughter, was she there?

11 A No, ma'am.

12 Q Where was she?

13 A She was with her dad.

14 Q And is that common for her to stay with her dad?

15 A Yes, ma'am.

16 Q Okay. Was that planned or unplanned?

17 A Well, it was planned. He was taking her to school for
18 me and picking her up because of the hours I work, so --

19 Q Okay. So you didn't expect her to be at your house?

20 A I knew she wasn't going to be there.

21 Q Okay. Now, when you came home and the defendant was
22 there, where was he?

23 A He was laying in the bed.

24 Q Did you say anything to him when you came in?

25 A Not at first, no.

1 Q Did he say anything to you?

2 A When I walked in, I was on the phone. So I walked
3 into the kitchen, which I have to pass the bedroom. Then he got
4 up and came in the kitchen to get my attention, and we started
5 arguing.

6 Q Okay. What was the argument about at that point?

7 A Same thing.

8 Q Did you ever tell him to leave?

9 A At some point in the argument I was like, yeah, you
10 can just leave.

11 Q Did he respond to you telling him to leave?

12 A I'm sure he said something, but I don't recollect
13 exactly what he said.

14 Q Do you recall him telling you that he wasn't going
15 anywhere?

16 A At some point, yeah.

17 Q Do you remember when that was?

18 A It could have been in the beginning of the argument,
19 because that was when I think I said to leave.

20 Q Did you say anything to the defendant about not
21 wanting to be together anymore?

22 A Well, yeah, I mean, when you're arguing, you say
23 things when you're upset.

24 Q So you did tell him at some point that you didn't want
25 to be with him; is that correct?

1 A I'm sure I did, yeah.

2 Q Now, do you continue to argue in that kitchen area or
3 did the argument move somewhere else?

4 A No, the argument moves to the master bedroom.

5 Q Okay. Let's talk a little bit about your apartment
6 and the layout, I guess, right now. You indicated that there's
7 a master bedroom?

8 A Yes, ma'am.

9 Q Is it just a one-bedroom apartment?

10 A No, ma'am.

11 Q How many bedrooms?

12 A It's two bedrooms.

13 Q Who stays in that other bedroom?

14 A My daughter.

15 Q And how many bathrooms in the apartment?

16 A There are two bathrooms.

17 Q Where are the bathrooms located? Are they attached to
18 the bedrooms or are they separate?

19 A There's a bathroom in the master bedroom, and there's
20 a bathroom in the hallway of the guest bedroom.

21 Q Okay. So when you walk in your apartment, what are
22 you looking at?

23 A When you first come in, you're going to see the living
24 room and the dining room area. And then to the right, that
25 would be the master bedroom. The door is there. So in order

1 for you to go to the kitchen, and the door was open in the
2 master bedroom, you can see inside of the master bedroom. I
3 guess that's the best way to describe it.

4 Q Okay. And then what about the guest bathroom and your
5 daughter's bedroom, where are those located?

6 A Okay. So that's on the left side of the apartment.
7 It's not very -- the hallway is not very long. It's kind of
8 short. And then the bedroom and the bathroom like face each
9 other.

10 Q So just so we're clear, you walk into the apartment,
11 you've got the living room and the dining room, and then off to
12 the right is the master bedroom; is that correct?

13 A Correct.

14 Q And then off to the left is the hallway where the
15 guest bedroom and the guest bathroom are; is that right?

16 A Correct.

17 Q Okay. And so you indicated at some point the argument
18 moved from that dining room, living room, kitchen area into the
19 master bedroom; is that right?

20 A Yes.

21 Q What, if anything, happened inside the master bedroom?

22 A You said what happened?

23 Q Yes, ma'am.

24 A Barry went to go lay back down on the bed. I was
25 sitting on the edge of the bed. We were arguing. I don't

1 remember what was said exactly. I just know we were arguing
2 and --

3 Q Now, is this the same type of argument that you were
4 having before?

5 A Yes, ma'am.

6 Q Okay. So arguing about him not being around, him
7 cheating, you wanting him to leave; is that correct?

8 A Correct.

9 Q Okay. Did I miss anything on that?

10 A No, ma'am.

11 Q Okay. And so you don't remember exactly what was
12 said, but it was still those same type of things --

13 A Correct.

14 Q -- is that correct? Did the argument ever start to
15 escalate?

16 A Yeah, it started escalating.

17 Q And can you describe that for the ladies and gentlemen
18 of the jury?

19 A I guess you could just tell that we were both getting
20 angrier. I mean --

21 Q And when you say angrier, what do you mean by that?
22 Are people yelling or what's going on?

23 A Yeah, at this point we're -- I don't know if it was me
24 yelling only or we were yelling at each other.

25 Q At some point did the defendant start to yell at you?

1 A Yeah.

2 Q Do you remember anything specific that he was yelling
3 at you about or anything that he was saying?

4 A I don't remember specifically, no.

5 Q Was he ever calling you names or insulting you?

6 A Further into the incident, yes.

7 Q I'm sorry?

8 A Further into the incident, yes.

9 Q Okay.

10 A I don't remember right at that moment.

11 Q So you said that the argument did start to escalate
12 and you were yelling back and forth at each other; is that
13 right?

14 A Correct.

15 Q Where were you when that was taking place?

16 A I was sitting on the edge of my bed.

17 Q And where was the defendant?

18 A Laying in the bed.

19 Q Now, can you describe a little bit the layout of your
20 bedroom for us?

21 A Well, when you walk in, there was a closet on the
22 left-hand side, and then there was the master -- the bathroom.
23 And then the rest of it is just like space, I guess.

24 Q Where is the bed in the room?

25 A It was like in the center because there was an

1 entertainment stand in there.

2 Q And does it face out in the hallway, does it face the
3 bathroom?

4 A No, like it faces the wall closest to where the door
5 is.

6 Q And you said you were sitting on the bed, and the
7 defendant was laying down; is that correct?

8 A Correct.

9 Q All right. Who was closer to the door?

10 A Barry.

11 Q And is that because he was just laying on that side of
12 the bed?

13 A That was his side of the bed. That was where he was.

14 Q When you were sitting, were you sitting on the side
15 that was closest to the door, or were you sitting on the side
16 that was --

17 A No, I was closer to the window. I was on the opposite
18 side.

19 Q Okay. What, if anything, happened while you were
20 sitting on the edge of the bed?

21 A Okay. So we were arguing, and then at some point I
22 turned around to look at him, and, you know, he punched me in my
23 face.

24 Q Which side of your face did he punch you in?

25 A So the left side.

1 Q Okay. He punched you on the left side of your face.
2 And I saw you kind of touch -- excuse me -- touch the top of
3 your cheeks. What were you doing?

4 A I was looking for my dermal, my piercing, because the
5 only way I can indicate is I knew it wasn't on the side of my
6 piercing.

7 Q Okay. So the piercing is on your right side?

8 A Correct.

9 Q So you know that he hit you on the other side, your
10 left side?

11 A Correct.

12 Q Okay. Where was the defendant when he struck you in
13 the face?

14 A I can't remember if he was sitting up in the bed or if
15 he was standing up, but I'm almost positive he was sitting up in
16 the bed.

17 Q Did he say anything to you before he hit you?

18 A Well, I think we were arguing mutually when he -- when
19 it happened.

20 Q Do you remember what he was saying to you?

21 A No, I don't.

22 Q What happened after he punched you?

23 A So then I fell on the floor. The altercation
24 continued on that side of the bed. I was on the floor. I'm not
25 really sure. He wasn't punching me when I was laying on the

1 floor. He was on top of me and were tussling or something, but
2 he wasn't punching me. And I remember at some point he got up,
3 and then I got -- I got up and ran to the living room, and
4 that's when I screamed help me.

5 Q Okay. Now, you indicated that you were screamed help
6 me while you were in the living room; is that correct?

7 A I said it once, yeah.

8 Q Okay. And did you say it quietly?

9 A No, I screamed it real loud.

10 Q What was your intention for screaming help me?

11 A I wanted somebody to help me.

12 Q What was going through your mind at that time?

13 A Disbelief, to be honest.

14 Q Were you scared, happy?

15 A I was scared, I was shocked, I was confused, yeah.

16 Q Okay. Now, you said that the defendant hit you while
17 you were on the bed, and then you fell and the altercation
18 continued. Did he strike you more than one time?

19 A Not with his fist, no. Not right there, no.

20 Q Did he strike you with anything else?

21 A No. This is -- this is like later, further in the
22 incident.

23 Q Okay. So we'll get there. I just kind of want to
24 walk --

25 A Yeah.

1 Q -- bit by bit, okay? Now, when you ran out into the
2 living room and you yelled for help, what was the next thing
3 that happened after that?

4 A He came in there. At the time, the apartment didn't
5 have any furniture in it, so I was like leaning up against the
6 wall. I was sitting down, leaning up against the wall in the
7 living room. Really, I was just like worried about my eye. And
8 he came in the living room and I think we began to like tussle a
9 little bit, and then at some point he walked away and I went
10 into the bathroom. I went into the bathroom to sit down on the
11 floor.

12 Q Now, did you ever try to leave the apartment?

13 A No.

14 Q Okay. Why did you go into the bathroom?

15 A Because I felt -- I guess I felt safe there.

16 Q Did you go into the master bathroom?

17 A No, I went into my daughter's bathroom.

18 Q What, if anything, happened while you were in the
19 bathroom?

20 A So I'm clear now that he -- I believe he hit me in my
21 head or something like that, but it was with his hands or his
22 fists. Then he walked away and he -- he had walked away from
23 the bathroom multiple times, which I could have got up and left.
24 I just was sitting there because I was scared and, I don't know,
25 I was confused. So he had walked away from the bathroom

1 multiple times, and then there was a point where I like tried to
2 look out the bathroom to see where he was. He was in the room.
3 He was going through his pocket. And then after that I covered
4 my face again, so I wasn't sure what was happening, but I did
5 hear him come back to the bathroom. It was just like he was
6 saying whatever he was feeling, and I was sitting on the floor
7 in the bathroom crying. That was like what was happening.

8 Q Okay. Now, you said that when you were in the
9 bathroom, you peeked out at one point and he was going through
10 his pockets; is that right?

11 A Correct.

12 Q Did you see him get anything out of his pockets?

13 A At one point I thought I did, but now I know I don't
14 think he did because I can't recall seeing it any other time
15 than that. But you have to remember, I only had one eye, too.
16 My other eye would not open at all.

17 Q Okay. So at the time you thought he got something out
18 of his pocket; is that right?

19 A Correct.

20 Q What did you think he got out of his pocket?

21 A At the time I thought it was a gun.

22 Q Okay. What did that gun look like?

23 MR. SHEETS: Objection to calling it a gun. She said
24 it looked like a gun.

25 THE COURT: Well, no, I'll overrule. You can define

1 it better in cross-examination.

2 BY MS. SUDANO:

3 Q What did it look like, ma'am?

4 A Verbatim, I don't know, to be honest. I don't
5 remember.

6 Q Okay. What do you remember about it, if anything?

7 A At the time I just assumed maybe it was black.

8 Q Okay. Now, after he went into the room and he was
9 going through his pockets, what did he do at that point?

10 A Okay. So I wasn't like looking directly at him. Like
11 I said, I was in a corner. I was sitting down. I had my hands
12 over my face. I only had attempted to look out that one time.
13 All the other times I had my face covered. But I do remember
14 him coming back to the bathroom and he had like went and got a
15 soda or something, and he was like pouring it on top of me.

16 Q Okay. Was he saying anything to you while he was
17 pouring the soda on top of you?

18 A Yeah, he was upset.

19 Q What was he saying?

20 A I mean, I know he was calling a bitch or something
21 like that, but I don't remember verbatim that, either, that
22 conversation.

23 Q You just know that he was upset and he was calling you
24 a bitch?

25 A Yeah, he was calling me names, yeah.

1 Q What , if anything, do you remember yourself saying
2 back?

3 A I don't remember what I was saying because I wasn't
4 saying a whole lot when I was in the bathroom.

5 Q Okay. Why is that?

6 A Because I guess I was scared.

7 Q Did the defendant ever tell you not to make any noise
8 or not to say anything while you were in the bathroom?

9 A Yeah. I remember him telling me to stop yelling.

10 Q Did he say what would happen if you kept yelling?

11 A See, that I'm not 100 percent clear on, either. I'm
12 sure he did, but I don't remember what the words were.

13 Q Did he ever threaten to kill you while you were in the
14 bathroom?

15 A Again, that's -- I don't remember.

16 Q Did he threaten to kill you at any point while you
17 were in the apartment?

18 A No, I don't remember.

19 Q Now, you said you were sitting in the corner of the
20 bathroom; is that right?

21 A Uh-huh.

22 Q Is that yes?

23 A Yes, ma'am.

24 Q And you said you had your hands over your face; is
25 that right?

1 A Right.

2 Q Why were you sitting in the corner with your hands
3 over your face?

4 A Well, I was -- you know, I had just been struck, I was
5 in shock, I was scared.

6 Q At that point did you feel like you were free to
7 leave?

8 A Well, when he left the bathroom, I felt like I could
9 get up and leave, but I just was too scared. I sat there.

10 Q So you were too scared to get up and leave at that
11 point; is that right?

12 A Correct.

13 Q Okay. Was he ever saying anything to you about the
14 fact that you could not leave?

15 A Not when I was in the bathroom, no.

16 Q And did he say it at any other point while you were in
17 the apartment?

18 A No, he just indicated in the beginning of the
19 argument. I remember him saying that he wasn't leaving.

20 Q Okay. So at some point the defendant said that he was
21 not leaving the apartment?

22 A Right. But that was in the beginning. I know that
23 was before I ever got to the bathroom.

24 Q Okay. But you never recall him telling you that you
25 couldn't leave; is that right?

1 A Yeah, I don't remember that.

2 Q You said that at some point he left the bathroom.
3 What was he doing after he left the bathroom?

4 A I don't know. But because we live upstairs, I could
5 hear him walking. So I think maybe he was just pacing.

6 Q Okay. He was pacing back and forth?

7 A And around. I'm not -- not just back and forth in
8 front of the bathroom. Like I said, he left the bathroom for a
9 large amount of time at one point, so he couldn't have been just
10 right in front of the bathroom. Because I wasn't looking at
11 him. I could hear him.

12 Q Okay. Why weren't you looking at him?

13 A Because my eye hurt, my face hurt. I had -- I was in
14 pain. I was -- I was scared.

15 Q How long were you in the bathroom?

16 A Like all together?

17 Q Uh-huh.

18 A At least like 30 minutes.

19 Q Was the defendant in the apartment that entire 30
20 minutes?

21 A No, ma'am.

22 Q At some point did he leave the apartment?

23 A Yes, ma'am.

24 Q Tell us a little bit about that.

25 A So after he poured the soda, he said whatever he said,

1 and then I heard the front door, the lock, like the sound of the
2 lock, so I assumed he was gone. But because I was afraid, I
3 just sat on the floor for like another 15 minutes before I
4 decided to actually get up and go.

5 Q Now, did you ever call the police, ma'am?

6 A No, ma'am.

7 Q Now, you had a cell phone at this point; is that
8 correct?

9 A Yes, ma'am.

10 Q Where was it in the apartment?

11 A It was in the room on my side of the bed on the
12 charger.

13 Q When you say the room, you're talking about the master
14 bedroom?

15 A Correct.

16 Q And you said it was on your side of the bed on the
17 charger?

18 A Yes, ma'am.

19 Q Which side of the bed is yours?

20 A It would be the right side.

21 Q Okay. So the side closer to the door or closer to the
22 window?

23 A Closer to the window.

24 Q Did you have access to your phone after you ended up
25 in the bathroom?

1 A No, because I left the phone on the charger when I
2 went into the bathroom, so I didn't take it with me.

3 Q Now, while he was still in the apartment, do you
4 recall the defendant saying that he wanted to kill you?

5 MR. SHEETS: Objection, Your Honor. Asked and
6 answered.

7 THE COURT: I'll overrule.

8 THE WITNESS: I don't remember clearly, no.

9 BY MS. SUDANO:

10 Q Now, you indicated that you kind of stayed in the
11 bathroom, I think you said, for 15 minutes?

12 A Yes, ma'am.

13 Q After you heard the defendant lock the door; is that
14 correct?

15 A Uh-huh.

16 Q Is that a yes?

17 A Yes, ma'am.

18 Q Okay. When you walked out of the bathroom, what did
19 you do?

20 A I just grabbed my keys, my phone, and I headed out to
21 go get in my car. And when I came out, there were like a bunch
22 of cops at the bottom of the stairs with flashlights and
23 whatever.

24 Q When you say a bunch of cops, do you remember how
25 many?

1 A There was at least like five of them.

2 Q Okay. And did you have a conversation with those
3 officers?

4 A Yes, ma'am.

5 Q And did you tell them what had just happened?

6 A Well, besides the fact that it was pretty apparent,
7 which is honestly the only reason why I did what I did because
8 it was clear that I had been in some type of altercation.
9 Because I wasn't -- I didn't really want to deal with that. I
10 had just got off work, I was tired, I was delirious, I didn't
11 really want to deal with that. But they wouldn't -- I'm not
12 saying they wouldn't let me leave, but they encouraged me that I
13 needed to get some help medically and that I needed to make a
14 report.

15 Q Okay. So the police encouraged you to get medical
16 help; is that right?

17 A Correct.

18 Q All right. And why were they encouraging you to get
19 medical help?

20 MR. SHEETS: Objection. Speculation.

21 MS. SUDANO: If she knows.

22 THE COURT: No, I'll sustain that objection.

23 BY MS. SUDANO:

24 Q Okay. Now, ma'am, you had a pretty apparent injury at
25 that point; is that correct?

1 A Correct.

2 Q All right. I'm going to show you State's Exhibit 3.
3 What are we looking at there in State's Exhibit 3?

4 A I guess my eye.

5 Q Okay. And is your eye -- your left eye swollen shut
6 in Exhibit 3 there?

7 A Yes, ma'am.

8 Q And is that one of the injuries that you sustained at
9 the defendant's hands that evening?

10 A Yes, ma'am.

11 Q And is this how you looked when you were talking to
12 the police that evening?

13 A Yes, ma'am.

14 Q Okay. And you indicated that they wanted you to get
15 medical attention; is that correct?

16 A Correct.

17 Q Okay. Did you ultimately get medical attention?

18 A Eventually, yes.

19 Q Okay. When you say eventually, what do you mean by
20 that?

21 A There was more than one EMT that came.

22 Q So --

23 A And I turned down a couple of them.

24 Q Okay. So initially you turned down medical; is that
25 right?

1 A Correct.

2 Q Okay. And ultimately you ended up going to the
3 hospital; is that right?

4 A Correct.

5 Q Okay. How did you get to the hospital?

6 A The ambulance took me.

7 Q Okay. And do you remember which hospital you went to?

8 A I went to Sunset.

9 Q Okay. Sunrise?

10 A Sunrise. Sorry.

11 Q You're okay. Now, when you got there, did they check
12 you out?

13 A It was a doctor who looked at my eye, yes.

14 Q Okay. Now, did you ultimately leave the hospital that
15 evening?

16 A It was like the next morning, but yes.

17 Q Okay. When you left the hospital, were you diagnosed
18 with any injuries?

19 A No.

20 Q Okay. So just the -- the bruise to your eye; is that
21 right?

22 A Correct.

23 Q Okay. But no concussion, no broken bones?

24 A No, ma'am.

25 Q Okay. Did you eventually have to do -- well, let me

1 ask this. Did you get any pain medication or anything like
2 that?

3 A Yes, they prescribed me medication for the pain.

4 Q Did you take that pain medication?

5 A When I could, yes.

6 Q Did your eye hurt after you left the hospital?

7 A Yes.

8 Q How long did your eye keep hurting?

9 A So it hurt for -- it went through a process for like
10 four months.

11 Q Okay. So it hurt for four months?

12 A It hurt for like the first month.

13 Q Okay. And then you said there was a process for four
14 months. Can you explain for the ladies and gentlemen of the
15 jury what that process was?

16 A Well, I was referred to a -- whatever the eye doctor
17 is called. I was referred to one of those.

18 Q Okay. An optometrist --

19 A Yes.

20 Q -- or an ophthalmologist?

21 A Just to make sure that there was no long-term effects,
22 which there were not.

23 Q Okay.

24 A And he -- he just -- they removed the blood clots.

25 Q Okay. So you said no long-term effects, but then they

1 removed blood clots; is that correct?

2 A Right.

3 Q And that was at a follow-up appointment; is that
4 right?

5 A Correct.

6 Q Do you remember when that follow-up appointment was?

7 A That was like two weeks after I had went to Sunrise.

8 Q Okay. So two weeks later you still had the blood
9 clots in your eye; is that correct?

10 A Correct.

11 Q And did you have some sort of a procedure to have
12 those removed?

13 A I went to another little center. I don't know
14 necessarily if it's a procedure because it didn't take very
15 long, but they did remove the blood clots, so I'm not sure what
16 they call that.

17 Q Okay. Do you remember what that place was called?

18 A Like Envision or something like that. I don't know by
19 heart, no, because that's like five months ago.

20 Q Okay. But you did go to some center for a follow up
21 procedure on your eye; is that correct?

22 A Correct.

23 Q Okay. And they removed blood clots; is that correct?

24 A Correct.

25 Q Okay. Now, you said it was like a short procedure.

1 Were you allowed to drive yourself home, for instance?

2 A So that was the only stipulation. Someone had to
3 drive me and take me home, but I was able to leave within like
4 the first hour and a half of being there. I was able to return
5 back to work. He was just saying that I couldn't drive for like
6 a week.

7 Q Okay. So a week that you were not able to drive; is
8 that correct?

9 A Correct.

10 Q Did they have to sedate you or dilate your pupils or
11 anything to do that procedure?

12 A I was sedated, but I'm not sure if they dilated my
13 pupils.

14 Q You just know you weren't allowed to drive for a week?

15 A Correct.

16 Q Was it your understanding that that was a necessary
17 procedure or that your eye would eventually heal on its own?

18 MR. SHEETS: Objection, Your Honor. Calls for
19 hearsay.

20 THE COURT: No, I'll -- I mean, as to her
21 understanding as to the procedure. This was a medical procedure
22 for her. Go ahead. I'll overrule.

23 BY MS. SUDANO:

24 Q Okay. So was it your understanding that those blood
25 clots would heal on their own or that that was a necessary

1 procedure for you?

2 A The doctor at Sunrise, he told me that the reason why
3 I was being referred to the eye doctor was because --

4 MR. SHEETS: Objection, Your Honor. Hearsay.

5 THE COURT: I will -- wait, I will sustain that. The
6 first question as to what her understanding I was good with, but
7 now we're getting into --

8 MS. SUDANO: Okay.

9 THE COURT: -- more detail.

10 BY MS. SUDANO:

11 Q And so without telling us what those doctors said to
12 you, was it your understanding that those blood clots would go
13 away, or that you needed to have that procedure?

14 A No, he said that they needed to be removed.

15 Q And so that was your understanding?

16 A That was my understanding, yeah.

17 MR. SHEETS: Same objection, Your Honor.

18 THE COURT: I'll sustain the objection as to the
19 doctor said that they needed to be removed and order the jury to
20 disregard that, but I will allow that she understood that she
21 needed to have the blood clots removed from her eye.

22 MS. SUDANO: Thank you, Your Honor.

23 BY MS. SUDANO:

24 Q So you had that procedure, I think you said, about two
25 weeks after you had gone to the hospital; is that correct?

1 A Uh-huh.

2 Q Is that a yes?

3 A Yes.

4 Q And then you said it took four months for your eye to
5 heal; is that right?

6 A Correct.

7 Q All right. Explain for us, if you could, what was
8 going on with your eye during those four months.

9 A Well, it was going through a process, I guess. You
10 know, first it was, you know, bloodshot red, then it was like
11 yellow, and then it was like brown. It just took a really long
12 time for it to just be normal.

13 Q Okay. And that was about four months?

14 A Yeah.

15 Q Now, during that four months did you have pain or
16 changes in vision, was it blurry, was there anything going on
17 like that?

18 A No, there wasn't any pain after the first month.

19 Q Okay. What about the blurred vision or any changes in
20 your vision?

21 A Well, obviously, it was hard to see when it was
22 swollen, but the swelling went away in the first month, too.

23 Q Okay. But your eye was swollen for that first month?

24 A No, not the whole month. Just like the first two
25 weeks was it swollen. And then after that it was fine. It was

1 going through -- it was like different colors, but it was fine.

2 Q Okay. Now, we talked a little bit about this. The
3 police responded that day, and you had the opportunity to speak
4 with them; is that right?

5 A Yes, ma'am.

6 Q Okay. And you indicated that there were a number of
7 officers that were present when you left the apartment; is that
8 correct?

9 A Correct.

10 Q Were those people that were in uniform, or were those
11 like plain clothes officers?

12 A No, they all had on uniforms.

13 Q Okay. Were those individuals asking you if you were
14 okay and asking you what had happened?

15 A Yes, ma'am.

16 Q And then were you responding and telling them what had
17 happened?

18 A After so long, yes, ma'am.

19 Q Was that something that you did orally, or did they
20 have you write something down?

21 A One officer, he had me write something down. And then
22 another officer recorded me.

23 Q So the first officer that had you write something
24 down, prior to having him write that down, had you already told
25 them orally what had happened?

1 A Yes, ma'am.

2 Q Okay. So you tell them orally what's going on, and
3 then you write a statement down in your own writing; is that
4 right?

5 A Correct.

6 Q Okay. And then you said somebody else recorded you;
7 is that right?

8 A Correct.

9 Q Okay. Was that another one of those officers that was
10 in a uniform?

11 A No, he had on normal clothes.

12 Q Okay. Was that one of the detectives?

13 A I guess, yeah, he was a detective.

14 Q Okay. When did you talk to him? Was it before or
15 after you talked to the officers that were in uniform?

16 A It was after.

17 Q And was it before or after you went to the hospital?

18 A Before.

19 Q So where did that interview take place, the one that
20 was recorded?

21 A I think it was his car.

22 Q Were -- were you still near the apartment, or had you
23 gone somewhere else at that point?

24 A No, I was still in the parking lot of my apartment.

25 Q Okay. Now, again, this is a stupid question because

1 we're looking at one of them. Did somebody else come out and
2 take some photographs of you that evening?

3 A If they did, I don't know who they were.

4 Q Okay. But did somebody take picture of you?

5 A Yes, ma'am.

6 Q Okay. Because we're looking at one of them here in
7 Exhibit 3; right?

8 A Uh-huh.

9 Q Is that a yes?

10 A Yes, ma'am.

11 Q Okay. When did those individuals come and take photos
12 of you, was it before or after you had spoke to the other
13 officer?

14 A I don't remember like the timeline.

15 Q Okay. Was it while you were still outside the
16 apartment?

17 A Yes, ma'am.

18 Q So it would have been before you went to the hospital;
19 is that correct?

20 A Yes, ma'am.

21 Q Now, we talked a little bit about this, the first
22 ambulance came and you did not get in that ambulance; right?

23 A No.

24 Q Okay. But then you eventually got in the ambulance
25 and went to the hospital; is that right?

1 A Yes, ma'am.

2 Q Okay. When you got in the ambulance, were they asking
3 you what had happened?

4 A The paramedics?

5 Q Yes, ma'am.

6 A No.

7 Q Okay. So the paramedics never got any information
8 from you?

9 A They asked me basic information, but they didn't ask
10 me about the altercation.

11 Q Okay. Were you volunteering any information for them
12 about what happened?

13 A No.

14 Q Now, the purpose of you getting in the ambulance was
15 for you to get medical treatment; is that correct?

16 A Correct.

17 MR. SHEETS: Objection, Your Honor. Leading.

18 THE COURT: I'll -- it doesn't call for a specific
19 answer. I'll overrule.

20 MS. SUDANO: Thank you, Your Honor.

21 BY MS. SUDANO:

22 Q So it's your testimony that the paramedics were not
23 asking you for information about what happened?

24 A I'm sure one of them was like, you know, what happened
25 to your face, but I wasn't being very compliant. That's why I'm

1 saying that. Like I wasn't very happy with the idea that this
2 was extended. I wanted to go where I was going and get some
3 rest. I didn't want to do all this. But like I said, I was
4 informed that I needed to get medical attention, so I went ahead
5 and went to the hospital.

6 Q Okay. Now, do you recall telling the ambulance
7 personnel that your boyfriend had hit you in the head with a
8 pistol a few times?

9 A No.

10 Q Do you remember complaining to them of headaches and
11 pain to your right wrist?

12 A To my right what?

13 Q Wrist.

14 A No.

15 Q Do you remember describing the pain in your head as
16 throbbing?

17 A The eye was throbbing.

18 Q So you do remember telling them that your eye was
19 throbbing?

20 A I'm sure I probably did tell them that my eye was
21 throbbing.

22 Q Okay. So they got at least that much information from
23 you, right, that your eye was throbbing?

24 A Correct.

25 Q Okay. But you didn't tell them anything else about

1 what had happened?

2 A I don't recall, no.

3 Q Now, when you got to the hospital, were the hospital
4 staff asking you what had happened?

5 A Yeah. No, they -- everybody there was asking.

6 Q Okay. And did you tell them what had happened?

7 A I'm sure I did.

8 Q Do you recall telling them that you had been assaulted
9 by your boyfriend with his fist and a gun?

10 A I don't remember how I said it, but I'm sure I told
11 them. I don't remember exactly like if I said it like that or
12 not, but I'm pretty sure I told them what had happened to my
13 eye.

14 Q Okay. And did you tell them that you had been struck
15 with a fist and a gun?

16 A I know I said that I had been punched. I was really
17 fixated on my eye.

18 Q Okay. So do you recall telling them that you had been
19 hit by a gun, as well?

20 A No, I don't remember that.

21 Q Do you recall telling them that it was your boyfriend
22 that had hit you?

23 A Yes, ma'am.

24 Q Okay. Do you recall telling them that you had fallen
25 out of the bed during that altercation?

1 A I don't remember going over the whole everything. I
2 just remember saying my eye hurt.

3 Q So you do remember that you were complaining about
4 pain to your face and your eye?

5 A To my face, yeah.

6 Q Do you remember complaining about a headache?

7 A Yeah, I may have had a headache.

8 Q Do you remember, again, stating that you had been
9 assaulted by your boyfriend with a pistol?

10 A I don't remember if I said it like that or not, but I
11 know I said I had been assaulted.

12 Q Okay. It was the just gun that you don't remember
13 whether or not you told them?

14 A Yeah. I don't remember.

15 Q Now, do you recall telling them that he hit you
16 everywhere?

17 A No.

18 Q All right. Now, we talked a little bit about the
19 various statements that you made --

20 THE COURT: Counsel, I'm going to -- let's take our --

21 MS. SUDANO: Okay.

22 THE COURT: -- break right now. We've been going for
23 quite a while, and it sounds like you're about to go off on a
24 new tangent. So let's take our break.

25 As soon as we get you all back, I would encourage you

1 to go to the restroom, stretch. And as soon as we get you all
2 back, we will keep going with testimony here this afternoon.

3 While you're out there, don't talk to each other about
4 the case or about anyone who has anything to do with it. Do not
5 talk with anyone else about the case or about anyone who has
6 anything to do with it. Do not let anyone talk to you about the
7 case or about anyone that has anything to do with it. Do not
8 read any news stories or articles or listen to any television
9 reports about the case or about anyone that has anything to do
10 with it.

11 Do not visit the scene of any events mentioned during
12 the trial or undertake any investigation, experimentation, or
13 research on your own. This would include use of social media to
14 in any way discuss the case and the use of the Internet or other
15 reference materials to do any investigation or research. And do
16 not begin to form or express any opinion on any subject
17 connected with this case until it's finally submitted to you.

18 So I appreciate your attention the last couple hours.
19 We'll get you back in action as soon as we get you all back
20 outside the courtroom. So thank you. We'll see you soon.

21 (Jury recessed at 2:43 p.m.)

22 THE COURT: Do you need to use the restroom?

23 THE WITNESS: No, I'm okay, Your Honor.

24 THE COURT: All right. Do you want to have her sit in
25 the jury deliberation room while we're having the break?

1 MS. CRAGGS: If possible, I think that sounds good,
2 Your Honor.

3 THE COURT: Do you have somebody who can take her back
4 to the jury deliberation room?

5 MS. CRAGGS: Ma'am, do you want some water?

6 THE WITNESS: No, I'm okay. Thank you.

7 THE COURT: Okay. All right. Let's -- as soon as we
8 get everybody back together, we'll continue on. So, all right,
9 I'll see you as soon as -- as soon as I get the signal from the
10 marshal, we're going to be going back into action, so --

11 MS. SUDANO: Thank you, Your Honor.

12 (Court recessed at 2:44 p.m., until 2:57 p.m.)

13 (Inside the presence of the jury)

14 THE COURT: All right. Let the record reflect the
15 presence of the attorneys for both sides, the presence of the
16 defendant. Do the parties stipulate to the presence of the
17 jury?

18 MS. SUDANO: Yes, Your Honor.

19 MR. SHEETS: Yes, Your Honor.

20 THE COURT: Okay. Go ahead, ma'am, you can be seated.

21 Thank you everybody for getting back so quickly.

22 We'll continue with direct examination.

23 MS. SUDANO: Thank you, Your Honor.

24 BY MS. SUDANO:

25 Q All right. So, Nicole, I'm actually going to ask you

1 a couple of other questions before we jump into it. In August
2 of last year, do you know what type of car the defendant had?

3 A Yeah. He had -- I think it was like a Honda Civic.

4 Q Do you remember --

5 A I don't know. It was a Honda.

6 Q Do you remember what color it was?

7 A I think it was silver and black.

8 Q Silver and black?

9 A Uh-huh.

10 THE COURT: Could I have you scoot up just a little
11 bit more. Again, you're soft spoken, and so that microphone
12 helps us a lot. Thank you.

13 BY MS. SUDANO:

14 Q And was that the car that he was driving at that time?

15 A Yes, ma'am.

16 Q Did he have any other cars that he was driving?

17 A I never seen him in any other car.

18 Q Okay. So that was the only car that you associated
19 with him?

20 A Yes, ma'am.

21 Q Now, do you know if he drove it to your apartment on
22 August 22nd of 2017?

23 A I'm sure he did.

24 Q Did you ever see it leaving the apartment?

25 A No.

1 Q Was that no? I'm sorry.

2 A No, ma'am.

3 Q I just didn't hear you. Okay. I just want to clear
4 up a couple things on the timeline, too, I guess. You said you
5 got off work at 10:00, and you got home, I think you said, 10:35
6 or 10:45; is that correct?

7 A Yes, ma'am.

8 Q Now when you came into the apartment, you said you
9 were on the phone.

10 A Yes, ma'am.

11 Q And you walked into the -- kind of the kitchen, dining
12 room area; is that correct?

13 A Yes, ma'am.

14 Q How long did you stay on the phone?

15 A Not long, maybe like a minute or two.

16 Q Okay. And then did the defendant come into the room
17 at that point?

18 A No, I was still on the phone when he came into the
19 kitchen.

20 Q Okay.

21 A And I guess he wanted my attention, so I hung up the
22 phone.

23 Q Did the arguing start pretty immediately, or was there
24 a period where you guys were just talking and communicating?

25 A I'm sure for that first few minutes when we were in

1 the kitchen, we were talking.

2 Q What started the argument, then?

3 A Well, we started talking about the same thing that we
4 had been conversing about on the phone.

5 Q Okay. But it's your testimony that you were calm when
6 you came into the apartment?

7 A Yeah. I was on the phone. I was okay.

8 Q And he was calm when you came into the apartment?

9 A Yeah.

10 Q And it wasn't until a few minutes later that you
11 started arguing; is that right?

12 A Correct.

13 Q And it was just that same argument about him leaving
14 and him cheating on you; is that right?

15 A Correct.

16 Q Now, ma'am, do you want to be here today?

17 A No, ma'am.

18 Q Do you want the charges to be dropped and the case to
19 go away?

20 A Do I really have to answer that?

21 THE COURT: Yeah, you do have to answer.

22 THE WITNESS: Honestly, I didn't want to get involved
23 with the police and all of that. So, obviously, I'm not happy
24 about the charges and this and that.

25 ///

1 BY MS. SUDANO:

2 Q Okay. Now, we had just started before the break, I
3 was going to ask you about some statements that were made. Now,
4 you indicated that before you wrote that handwritten voluntary
5 statement you talked to one of the officers that was there, and
6 you just had a conversation; is that right?

7 A Yes, ma'am.

8 Q And do you recall telling that officer that you had
9 come home from work -- excuse me. Do you recall telling that
10 officer that you had come home from work, and you had gotten off
11 work about 10:00 P.M.?

12 A Yes, ma'am.

13 Q And do you recall telling the officer that the
14 defendant was inside your apartment when you came home?

15 A Yes, ma'am.

16 Q Do you recall telling him that you began arguing in
17 the bedroom?

18 A I'm not sure if I specified where we started arguing,
19 but I'm pretty sure I told him we were arguing.

20 Q And do you recall telling that officer that you stated
21 that you no longer wanted to be with the defendant?

22 A Like I said earlier, I may have said that because I
23 was upset.

24 Q Do you recall telling that officer that the defendant
25 became increasingly aggravated or agitated with you after you

1 stated that?

2 A Yeah. Something to that effect, yeah.

3 Q And do you recall telling that officer that the
4 defendant began to strangle you with two hands around your neck?

5 A That I don't remember, no.

6 Q You don't remember telling the officer that, or you
7 don't remember that happening?

8 A I don't remember that happening, and I don't remember
9 telling the officer that.

10 Q Okay. Do you remember telling the officer that the
11 defendant then began to strike you with a closed fist and kick
12 you?

13 A Yeah, I remember that.

14 Q Okay. And do you remember telling the officer that?

15 A At some point, yeah, when he was asking me what
16 happened.

17 Q Okay. And do you recall telling the officer that that
18 had gone on for a few minutes before you fell off the bed?

19 A I recall talking to him, but I don't remember the
20 timeline.

21 Q Okay.

22 A I don't know when I told him.

23 Q Okay. But you testified earlier that you did fall off
24 the bed, I believe --

25 A Yeah. I did --

1 Q -- is that right?

2 A -- fall off the bed, but I don't remember how I told
3 the cop.

4 Q Okay. Do you remember telling the officer that the
5 defendant then grabbed a black handgun?

6 A No. I don't remember clearly, no.

7 THE COURT: Why don't you clarify whether she
8 remembers telling the officer that or doesn't remember that
9 happening.

10 MS. SUDANO: Sure.

11 BY MS. SUDANO:

12 Q Do you remember telling the officer that, ma'am?

13 A No.

14 Q Do you remember the defendant grabbing that black
15 handgun while you were in the bedroom?

16 A I thought he grabbed something, but after I was able
17 to reflect on it, I don't believe he had anything in his hand.

18 Q Okay. So you've done some reflection about this case;
19 is that correct?

20 A Well, yeah, because the first time I was on I felt a
21 little under pressure, so --

22 Q Okay. So now you don't believe that there was a
23 handgun?

24 A No. There's a reason for that, too. Can I --

25 Q Okay. My question was just do you recall whether or

1 not there was a handgun.

2 A No.

3 Q Okay. No, you don't recall, or, no, there was not
4 one?

5 A No, I don't recall.

6 Q And you said you don't recall telling the officer that
7 the defendant grabbed a black handgun?

8 A Yeah, I don't recall.

9 Q Do you recall telling the officer that the defendant
10 put the handgun in your mouth?

11 A No.

12 Q Do you remember the defendant putting the handgun in
13 your mouth that evening, Nicole?

14 A No.

15 Q Do you remember while he -- do you remember telling
16 the officer that while he had the gun in the mouth, him stating
17 if you scream, I'll kill you?

18 A No.

19 Q Do you remember that happening?

20 A No. Not like that, no.

21 Q Do you remember something about him stating that if
22 you screamed, he would kill you?

23 A These things I don't remember clearly enough to
24 indicate for sure, so I'm just going to say no.

25 Q And you don't remember him having the handgun in your

1 mouth; is that correct?

2 A Correct.

3 Q Okay. And do you recall telling the officer that the
4 defendant continued to hit you in the face with the handgun?

5 A I may have said that.

6 Q Okay. And do you recall that happening?

7 A No.

8 Q Okay. So you told the officer that, but you don't
9 believe that it happened?

10 A No.

11 Q Okay. Why did you tell the officer that?

12 A Well, first of all, I was scared, I was confused, I
13 wasn't really sure right then and there what had happened
14 because it happened so fast, it was kind of like a blur.

15 Q Okay. So you were confused and it happened fast, but
16 you don't remember telling the officer that he put the gun in
17 your mouth?

18 A No.

19 Q Do you recall telling the officer that at one point
20 you were able to get into the living room, but the defendant
21 followed you into the living room?

22 A I may have said that, yeah.

23 Q And do you remember that happening?

24 A I think he came -- that was -- I never went into the
25 living room after I went into the bathroom when he was there.

1 Q Okay. So I think that this is before. Do you
2 remember --

3 A Yeah, that was before.

4 Q Okay. Do you recall telling the officer that the
5 defendant pointed the handgun at you, and this is in the living
6 room, and demand that you go into the bathroom?

7 A No.

8 Q Okay. And do you recall that happening?

9 A No.

10 Q Do you recall telling the officer that you actually
11 did go into the bathroom because you believed the defendant was
12 going to kill you?

13 A I could have said that because I voluntarily went into
14 the bathroom, so I was scared.

15 Q Okay. And at that time, did you believe the defendant
16 was going to kill you?

17 A To be honest, I'm not sure what I thought. I was just
18 in -- I was just in disbelief, I was scared, I wasn't -- I
19 really wasn't thinking in that aspect. I was just shocked, I
20 guess.

21 Q Okay. Now, do you recall telling the officer that you
22 began to scream for help?

23 A No, I don't remember that, either, but I may -- I'm
24 sure I did because I did scream for help.

25 Q Do you recall telling the officer that the defendant

1 racked a round into the handgun and pointed it at you again?

2 A No.

3 Q Do you recall that happening?

4 A No.

5 Q Do you recall telling the officer that if -- while
6 that was going on, the defendant told you that if you tried to
7 leave or scream for help, he would kill you?

8 A I don't remember a lot of what anything Barry said, to
9 be honest. I don't remember what he was saying.

10 Q Okay. But you were telling the officer all of this
11 shortly after it had taken place; is that right?

12 A When they met me in the bottom of the stairs in the
13 parking lot.

14 Q So would you agree with me that you had a better
15 memory about what was said in the apartment when you were
16 talking to the officers than you do now, eight months later?

17 A Not entirely, no.

18 Q Okay. So you think your memory is better now?

19 A I do. The -- I mean, some things, not everything.
20 Some things maybe I was more accurate that same night, but there
21 are some things that I know for a fact that did not happen. I
22 was just scared.

23 Q Okay.

24 A Scared.

25 Q So the things that -- well, strike that. All right.

1 So you -- you think, though, that you have a better memory about
2 some things now, and you had a better memory about other things
3 then?

4 A Correct.

5 Q So the fact that the defendant didn't have a gun, your
6 memory is better about that now?

7 A Yeah, because -- can I -- am I allowed to elaborate
8 when I answer that?

9 Q And I just want the answer from you, ma'am. Your
10 memory was --

11 A Well, because we were talking about when I was in the
12 bathroom and I was being hit. I know that I -- later I
13 processed that if I was being hit with something, it would have
14 been worse. It just felt like his fists.

15 Q Okay. So you can feel the difference between being
16 hit with a gun and being hit with a hand?

17 A Yeah.

18 Q Okay. Where were you being hit when you were in the
19 bathroom?

20 A That was in my head.

21 Q Were you doing anything to defend yourself or protect
22 yourself?

23 A No.

24 Q Where were your hands?

25 A They were like over my face, over my -- my head.

1 Q Okay. So you hand your hands over your face and over
2 your head; is that right?

3 A Correct.

4 Q And you said -- were your eyes closed at that point?

5 A When I -- when it was happening and I was kneeling
6 down, yeah.

7 Q And why were your eyes closed and your hands over your
8 face and your head?

9 A I guess because I was being hit.

10 Q Were you saying anything to the defendant while he was
11 hitting you?

12 A No, at this point I think I was just crying.

13 Q Was he saying anything to you while he was hitting
14 you?

15 A I think he was like calling me names.

16 Q Do you remember what names?

17 A I just remember being called a bitch a few times. I
18 don't remember -- like I said, a lot of the things that he said
19 I don't remember now.

20 Q Now, do you recall telling the officer that after you
21 ended up in the bathroom and after the defendant threatened you
22 for screaming for help, that you just sat there quietly in the
23 bathroom?

24 A Yes.

25 Q And do you recall telling the officer that after that

1 the defendant left the apartment?

2 A Yes.

3 Q Do you recall telling the officer that before the
4 defendant left he said that if he found out you had called the
5 police, he would kill you?

6 A Okay. I don't remember what Barry was saying
7 accurately.

8 Q Do you remember that happening?

9 A No, I -- I remember choosing to stay in the bathroom
10 until I knew for sure he was gone.

11 Q Now, do you recall also telling the patrol officers
12 that night that the defendant didn't live in the apartment there
13 with you?

14 A No.

15 Q Do you recall telling the officers that you assumed
16 that he was going back to his house?

17 A No.

18 THE COURT: I need you to speak up a little, ma'am.

19 THE WITNESS: Okay. No.

20 BY MS. SUDANO:

21 Q Okay. Do you recall telling the officers that the
22 defendant wasn't on the lease?

23 A Yes.

24 Q And that was accurate; right?

25 A Correct.

1 Q Now, do you also recall writing a handwritten
2 statement for the officers?

3 A In the beginning, I do remember he had me write a
4 statement.

5 Q Do you recall writing in that -- do you recall what
6 you put in that statement, I guess?

7 A Well, I do after I reviewed it recently, but prior to
8 that, no.

9 Q What did you write in that statement?

10 A Well, I was writing the incidents that had took place.

11 Q Okay. And so do you recall telling the officers in
12 that voluntary statement that he was waiting at the apartment
13 when you got home?

14 A Yeah.

15 Q Do you recall telling the officers that you started
16 arguing and you asked him to leave?

17 A Yeah.

18 Q Do you recall telling the officer that he refused,
19 started calling you -- bitches and hoes is how you wrote it?

20 A Yeah, the argument escalated.

21 Q Okay. And so --

22 A I don't --

23 Q -- he was calling you a bitch and a ho throughout the
24 argument?

25 A I don't remember clearly what he said, but I'm sure he

1 did.

2 Q Okay. And then do you recall writing that he started
3 to strangle you, and then punched you in your face?

4 A Yeah.

5 Q And you wrote that in your statement; is that correct?

6 A Correct.

7 Q And do you recall that happening?

8 A I don't know at what point I was strangled, but I
9 remember being punched in my face very clearly.

10 Q Okay. But you don't remember being strangled?

11 A No.

12 Q Okay. But you did write that in your statement; is
13 that correct?

14 A Yeah, because I reviewed the statement recently, so I
15 did see that I wrote that.

16 Q Do you recall writing that you -- that the -- that he
17 pushed you off the bed and then went to go get his gun?

18 A No.

19 Q You didn't put that in your statement?

20 A I don't remember saying that.

21 Q All right. Would looking at your statement refresh
22 your memory as to that?

23 A I mean, you could -- if it's the same one that I have,
24 then it's the same one that wrote that I have.

25 Q Well, do you think looking at it would refresh your

1 memory if you wrote that he pushed you off the bed and went to
2 get his gun?

3 THE COURT: Would it refresh your memory that you
4 wrote that?

5 THE WITNESS: No. I'm still --

6 THE COURT: Looking at your statement wouldn't refresh
7 your memory at all as to what you told the police officer?

8 THE WITNESS: Well, I could look at it and see if it
9 will help me.

10 MS. SUDANO: May I approach, Your Honor?

11 THE COURT: All right. You have, I assume, a copy of
12 this, counsel?

13 MR. SHEETS: Yes, Your Honor.

14 THE COURT: All right. Go ahead and approach.

15 BY MS. SUDANO:

16 Q All right. And now I'm just going to show you --
17 well, does this look like your statement?

18 A Uh-huh.

19 THE COURT: You need to answer --

20 THE WITNESS: Yes, ma'am.

21 THE COURT: -- yes or no. Okay.

22 BY MS. SUDANO:

23 Q Okay. And you filled out all your personal
24 information up at the top here?

25 A Yes, ma'am.

1 Q Okay. And is this your signature down here at the
2 bottom? Or that's the wrong one. That one?

3 A Yes, ma'am.

4 Q Okay. And does this appear to be your statement from
5 that evening?

6 A Yes, ma'am.

7 Q Okay. I'm going to draw your attention right to the
8 middle of it. And do you see what I'm kind of showing you
9 there?

10 THE COURT: I want you to read that --

11 THE WITNESS: Yes.

12 THE COURT: -- and when you're done reading it, let us
13 know that you're done reading it, okay?

14 THE WITNESS: Well, my --

15 THE COURT: Don't read it out loud, just let us know
16 that you're done reading it.

17 THE WITNESS: Okay. Was there -- okay. I'm done
18 reading it.

19 BY MS. SUDANO:

20 Q Okay. Did that refresh your memory, ma'am?

21 A Yes, ma'am.

22 Q Okay. So now do you recall telling the police that he
23 pushed you off the bed and went to get his gun?

24 A Yes, ma'am.

25 Q Do you recall writing in your statement that he put

1 the gun in your mouth and told you that if you screamed, he
2 would kill you?

3 A I recall writing that, yes, ma'am.

4 Q And you're writing this fairly -- fairly soon after
5 these events took place; is that right?

6 A Correct.

7 Q Do you recall writing in here that he started beating
8 you with a gun on top of your head?

9 A Yes, ma'am.

10 Q Do you recall stating that he kicked you and threw you
11 all over the place until you yelled -- until you yelled? I'm
12 sorry.

13 A Yes, ma'am.

14 Q And do you recall writing in here that he cocked the
15 gun back, put it to your head, and told you that you couldn't
16 leave or he would kill you?

17 A I recall writing that now, yes, ma'am.

18 Q Do you recall writing in here that he said when the
19 police found out, or he knew that you called -- or that he knew
20 that you said something, that he would kill you?

21 A Yes, ma'am.

22 Q And did you write at the very end of this, my
23 boyfriend, Barry Harris, of six years?

24 A Yes, ma'am.

25 Q Do you recall writing all of those things down for the

1 police?

2 A Yes, ma'am.

3 Q All right. And that was shortly after you had given
4 them the oral synopsis of what happened; is that correct?

5 A Correct.

6 Q All right. And then you also said that you talked to
7 the detectives that evening; is that correct?

8 A Yeah, one of them recorded something.

9 Q Okay. And is that an interview with you that was
10 recorded?

11 A I believe so.

12 Q And same thing, were you going through what had
13 happened that evening?

14 A Yes, ma'am.

15 Q And do you recall telling that detective you had
16 gotten home from work about 10:30 or 10:45?

17 A Yes, ma'am.

18 Q And do you recall telling him the defendant was
19 already inside your apartment?

20 A Yes, ma'am.

21 Q And that was Mr. Harris, your boyfriend of about six
22 years?

23 A Yes, ma'am.

24 Q Do you recall telling him that you had lived together
25 periodically?

1 A Yes, ma'am.

2 Q And that when you came in, he was laying in bed?

3 A Yes, ma'am.

4 Q You recall telling that detective that you had been
5 arguing before you got home, and that he was calling you a bitch
6 and being disrespectful?

7 A I recall saying that we were arguing.

8 Q Okay. But you don't recall stating --

9 A I don't remember what was said specifically.

10 Q Okay.

11 A No.

12 Q So you don't have any recollection whatsoever about
13 anything that the defendant said to you that evening; is that
14 correct?

15 A I know I was being disrespected. I just don't know
16 what he was saying exactly.

17 Q Do you recall telling the detective that when you saw
18 the defendant, you told him get out of my house?

19 A Yeah, I mean, I've said that.

20 Q Do you recall telling the detective you did not expect
21 the defendant to be at your house that evening?

22 A Yes, ma'am.

23 Q And do you recall telling the detective that when you
24 said get out of my house, the defendant responded with I'm not
25 going nowhere, bitch?

1 A I don't know if he said that or not, but I know -- I
2 believe he said he wasn't leaving, I know that for sure.

3 Q Okay. And do you recall telling the detective that
4 you had told the defendant that if he continued to disrespect
5 you, you were going to call the police?

6 A I may have said that, yes.

7 Q Okay. And do you recall telling the detective that
8 the defendant did not live in the apartment at that time?

9 A No.

10 Q Okay. So you don't remember making that statement to
11 the detective?

12 A No.

13 Q And do you recall telling the detective that the
14 defendant was not on the lease?

15 A No.

16 Q Okay. And --

17 THE COURT: I need you to speak up a little bit, okay.
18 BY MS. SUDANO:

19 Q Do you recall telling the detective that the defendant
20 doesn't get mail there?

21 A No. I think I may have mentioned that he wasn't on
22 the lease. I don't remember talking about the mail and all
23 that.

24 Q Okay. Do you recall telling the detective that he
25 doesn't keep clothes there?

1 A No.

2 Q Do you recall telling the detective that he just kind
3 of comes and goes, periodically?

4 A Well, yeah, I know I probably said that.

5 Q Okay. But you don't remember anything about the
6 clothes or the mail?

7 A No.

8 Q And do you recall telling the detective that the
9 defendant did, in fact, have a key?

10 A He did have a key, so I know I told him that.

11 Q Okay. So that one you have a clear memory on?

12 A Yes.

13 Q You recall telling the detective that the argument was
14 about the defendant leaving, and the fact that he was upset that
15 you threatened to call the police?

16 A The -- do I recall telling that to the officer?

17 Q Yes.

18 A No.

19 Q Okay. And do you recall the defendant being upset
20 with you for threatening to call the police?

21 A No.

22 Q Do you recall telling that detective that the
23 defendant had started to strangle you at that point?

24 A Yeah.

25 Q And do you recall that happening?

1 A No.

2 Q And do you recall stating that you had been strangled
3 for a long time, and that you started to fight back?

4 A No.

5 Q So that you don't remember saying?

6 A I don't remember that part, no.

7 Q Okay. You just told the officer that you had been
8 strangled?

9 A I remember seeing that in one of my statements, so
10 yes.

11 Q And do you recall stating that you were slammed down
12 on the bed, and the defendant started punching you in the head?

13 A Yes.

14 Q And you remember that happening?

15 A No. I remember falling off of the bed. I was on the
16 floor.

17 Q And do you recall telling the detective the defendant
18 had punched you really hard in the face?

19 A Yes, ma'am.

20 Q And do you recall telling the detective that he threw
21 you on the floor?

22 A Yes, ma'am.

23 Q Do you recall telling the detective that you got up
24 and ran into the living room and started to scream for help?

25 A This is on this recorded interview?

1 Q I'm asking if you remember, yes, ma'am.

2 A Yes.

3 Q And do you remember that being the case?

4 A I got up and ran in the living room and asked for
5 help, yes, ma'am.

6 Q And do you remember telling the detective, after that,
7 that the defendant came into the living room with the gun, put
8 it in your mouth?

9 A I don't remember if I told him that or not, no.

10 Q Do you recall telling her -- or telling him that the
11 defendant said to you at that point, bitch, I'll blow your
12 brains out, if you make any noise, I will fucking kill you.

13 A Yeah, no. That -- I don't remember if I told him that
14 or not.

15 Q And it's your testimony today that that never
16 happened; right?

17 A That whole segment with the gun, no.

18 Q Do you recall telling the detective that you continued
19 to yell for help?

20 A No, because I only asked for help like, at the most,
21 twice.

22 Q Okay.

23 A So --

24 Q So you've got a clear memory that you asked for help
25 once, maybe twice?

1 A Right. I only screamed it once or twice.

2 Q Okay. Memory is very clear on that point?

3 A Yeah, I didn't -- I remember, I wasn't -- I wasn't
4 screaming that over and over.

5 Q So you recall telling the detective that the defendant
6 had kicked you in the sides and punched you in the head while
7 this was going on?

8 A Yeah, I may have told him that.

9 Q And do you recall telling the detective that the
10 defendant hit you in the head or was hitting you in the head
11 with the bottom of the gun?

12 A Yeah.

13 Q Okay. Do you remember that happening?

14 A No. I remember being hit in the head, but I don't
15 believe it was with a gun.

16 Q And do you recall telling the detective that the
17 defendant put you in the bathroom up against the wall, and put
18 the gun to your head?

19 A No.

20 Q Do you remember that happening?

21 A No.

22 Q Do you recall telling the detective that the defendant
23 told you to be quiet, and that if you kept -- if you kept making
24 noise, he would pull the trigger?

25 A No.

1 Q Do you remember that happening?

2 A No.

3 Q Do you recall telling the detective that he went into
4 the other room and got juice and poured it on you?

5 A Yes.

6 Q Do you remember that happening?

7 A Yes.

8 Q Okay. So you've got a very clear memory of that?

9 A There are certain things that I'm very clear on, yeah.

10 Q Okay. But anything having to do with a gun or having
11 to do with you being held, you don't remember?

12 A I do remember, to a certain extent.

13 Q Okay. But it's not as clear as your memory on the
14 other things?

15 A No.

16 Q Okay. Do you recall telling the detective that the
17 defendant was calling you all kinds of fat bitches, and saying
18 that he hates you?

19 A Yes.

20 Q Do you remember that happening?

21 A To some extent, yes.

22 Q Okay. So you do remember him saying those things?

23 A Because that was when the soda was being poured on me.

24 Q Okay. So you remember him making those statements?

25 A Yeah.

1 Q All right. Do you recall telling the detective that
2 the defendant told you if you called police or found out that
3 you -- or if he found out you called police, he would be back to
4 kill you?

5 A I remember seeing it in my statement, so I'm sure I
6 said it, but I don't remember that. I don't remember if it was
7 actually said to me or not.

8 Q Okay. Do you remember telling the detective that the
9 defendant had the gun to your head the entire time?

10 A No.

11 Q Do you remember that happening?

12 A No.

13 Q Do you remember telling the detective that the reason
14 the gun was to your head was so that you wouldn't run out the
15 front door or call the police?

16 A I recall -- I mean, I -- I recall it from the
17 statement, yes.

18 Q But you don't recall that happening?

19 A No. I remember sitting on the floor for a long
20 segment of time.

21 Q But no memory of the gun, obviously. Do you recall
22 telling the detective that the -- the gun was pointed at you the
23 whole time the defendant was walking around the house while you
24 were in the bathroom?

25 A No.

1 Q Do you recall that happening?

2 A No.

3 Q Do you recall telling the detective that if you -- the
4 defendant told you that if you come to the door or make any
5 noise or try to get out, that he would kill you?

6 A I recall these things being said on the statement,
7 yes, but I don't recall them happening.

8 Q Do you recall telling the detective that you sat in
9 the bathroom until you knew for sure that the defendant was
10 gone?

11 A Yes, ma'am.

12 Q Do you recall that happening?

13 A Yes, ma'am.

14 Q Do you recall telling the officer that you stayed in
15 the bathroom until you felt safe, and then that you gathered
16 your jacket and your purse, and you left the apartment?

17 THE COURT: You've been focusing detective on the
18 recorded statement, you just used the reference then to officer.

19 MS. SUDANO: Oh, I'm sorry. Yes, still on the
20 detective statement.

21 THE COURT: Okay. Go -- reask the question, but I --
22 I just want to make sure we're -- we're on the same statement.

23 MS. SUDANO: I apologize.

24 BY MS. SUDANO:

25 Q So do you recall telling the detective that you stayed

1 in the bathroom until you felt safe, and then you gathered your
2 jacket and your purse and you went out?

3 A Yes, ma'am.

4 Q Okay. And do you recall that happening?

5 A Yes, ma'am.

6 Q Okay. And do you recall telling the officer that when
7 you walked down the stairs, one of the officers was there to
8 meet you?

9 A Yes, but I remember more than one, but, yes, ma'am.

10 Q Okay. So now you think that there were multiple
11 officers there?

12 A Someone had a flashlight, someone did not.

13 Q Do you recall telling the detective that the gun that
14 the defendant had had a brown bottom part, and like a skinny
15 pointed part?

16 A I recall what's in the statement, yes.

17 Q Okay. Do you recall that being the case?

18 A No, I'm not sure.

19 Q You're not sure what?

20 A I'm not sure if it was a gun or not, because like I
21 said, my face was covered the majority of the time I was in the
22 bathroom.

23 Q Okay. But you would agree with me that you were able
24 to give the detective a description that evening; is that
25 correct?

1 A That's correct.

2 Q Okay. And you were able to give the patrol officers a
3 description that evening; is that correct?

4 A Correct.

5 Q Okay. And do you recall actually demonstrating, and
6 now I'm talking about the officer, for the officer what the gun
7 looked like?

8 A No, I told him what it looked like.

9 Q Okay.

10 A What I thought it looked like.

11 Q Okay. And so you were able to provide them detail
12 about what the gun looked like at that time; is that right?

13 A Correct.

14 Q Okay. But now you're not sure whether or not there
15 was a gun at all?

16 A Yeah, I'm not sure.

17 Q Okay. Even though you were able to describe the brown
18 bottom part and the skinny pointed part to the detective that
19 evening?

20 A I guess that's correct.

21 Q Do you recall telling the detective -- back on the
22 detective -- that you guys were arguing about him not coming
23 around and you kind of telling him, hey, if you're seeing other
24 people, don't come back to my house?

25 A That sounds like something I would say, so I'm sure I

1 said it.

2 Q Now, do you recall telling the detective that when the
3 defendant was strangling you, you couldn't breathe?

4 A I recall seeing these things in the statement the
5 first time, yes.

6 Q Do you recall saying that to the officer, though?

7 A Yes, ma'am.

8 THE COURT: Officer or detective?

9 MS. SUDANO: I'm sorry. Detective. You're right,
10 Your Honor. I apologize.

11 BY MS. SUDANO:

12 Q You recall saying that to the detective?

13 A Yes, ma'am.

14 Q Okay. Do you recall that happening though?

15 A No, ma'am.

16 Q Now, do you recall when you were doing this interview
17 with the detective that he asked you to demonstrate how you had
18 been choked?

19 A I don't remember the asking of the demonstration at
20 all.

21 Q Okay. Do you recall stating that you couldn't
22 demonstrate, your hands were really sore, and he beat me really
23 bad?

24 A No. That could be why I didn't demonstrate, my hands
25 were hurting.

1 Q Okay. So I thought you just said you remember being
2 asked how to demonstrate it.

3 A Yeah, I don't remember anything about a demonstration
4 because I never demonstrated.

5 Q Okay. But you do recall saying that you couldn't
6 demonstrate because your --

7 A Now that you're --

8 Q -- hands were --

9 A -- reflecting on it, yes.

10 Q Okay. So you're doing some more reflection; is that
11 right?

12 A Well, that jogged my memory. I remember my hands were
13 hurting.

14 Q Okay. And why were your hands hurting?

15 A I guess it was from, you know, the altercation, the
16 tussling.

17 Q Okay. Was that from, you know, being hit in the head
18 with the gun and trying to block it?

19 A Well, my hand -- my -- I was -- my arms -- my hands
20 and my arms were up, yes, so that could -- that's very possible.

21 Q Do you recall telling the detectives that when the
22 defendant was choking you, he was applying so much pressure that
23 you couldn't breathe?

24 A I remember -- I recall seeing it in my first
25 statement, yes.

1 Q And do you recall that happening?

2 THE COURT: Wait. First statement, what's -- I --
3 let's clarify what statement she recalls that being said in
4 because we've got three that are out there now.

5 BY MS. SUDANO:

6 Q When you're talking about first statement, which one
7 do you mean?

8 A The written one.

9 Q The written one? Okay. So you don't recall, then,
10 telling the detective that you were being choked and the
11 defendant was applying pressure to the point where you couldn't
12 breathe?

13 A Yeah, no. I don't remember what I said.

14 Q Okay. And you don't recall that happening?

15 A Yeah, no. I don't remember it.

16 Q Okay. Do you recall telling the detective that this
17 argument started while the defendant was laying on the bed, and
18 you were sitting on the edge of the bed?

19 A I do remember that, yes, ma'am.

20 Q Do you recall telling the detective when the defendant
21 sat up, he started to choke you first?

22 A Yes, ma'am.

23 Q Okay. And you recall that happening?

24 A No, ma'am.

25 Q Do you recall telling the detective that then he

1 started to hit you when you fell on the floor?

2 A Yes, ma'am.

3 Q And do you recall that happening?

4 A Yes, ma'am.

5 Q Okay. So that was after he choked you?

6 A I just remember turning around on the bed and being
7 punched. I'm not sure about being choked.

8 Q Do you recall telling the detective that this all
9 happened, you know, back to back to back, that you were
10 strangled, and then pushed, and then punched?

11 A I'm sure, because it happened pretty fast.

12 Q Okay. Do you recall telling the detective that it was
13 a constant beating?

14 A No.

15 Q Do you recall feeling like it was a constant beating?

16 A Well, I was pretty shook up, so yeah.

17 Q Do you recall telling the detective that while you
18 were in the living room, you saw the defendant going through his
19 pockets to get the gun?

20 A No, I always thought it was when I was in the
21 bathroom.

22 Q Do you recall telling the detective that you saw him
23 with the gun at that point?

24 A What I thought was a gun, yes, ma'am.

25 Q And that was the thing that you described as black and

1 skinny with a brown handle?

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

3 Q But now you're not sure that that was a gun?

4 A No. I'm not sure.

5 Q Now, do you recall telling the detective that before
6 he went into the room and got it out of his pocket, you couldn't
7 see it?

8 A I recall that, yeah.

9 Q Okay. So wherever the gun was in the pocket, it
10 wasn't somewhere that you could see it?

11 A No, ma'am.

12 Q Okay. And do you recall telling the detective again
13 that he put the gun into your mouth at that point?

14 A No, ma'am.

15 Q And do you recall that happening?

16 A No.

17 Q Do you recall telling the detective that the defendant
18 forced you to climb or crawl into the bathroom?

19 A No.

20 Q Do you remember that happening?

21 A No.

22 Q Okay. And do you recall telling the detective that he
23 got a two liter of lemonade and poured it on you?

24 A I do remember that.

25 Q And do you recall that happening?

1 A Yes, ma'am.

2 Q All right. Now, you already testified that you didn't
3 want anything to do with the police and you didn't want anything
4 to do with this case; is that right?

5 A Yes, ma'am.

6 Q Okay. Was there a previous court proceeding where you
7 were asked to come in and testify?

8 A Yes, ma'am.

9 Q And did you come in to testify on your own?

10 A No, ma'am.

11 Q In fact, did you have to be arrested -- arrested on a
12 warrant to come in and testify?

13 A Yes, ma'am.

14 Q Okay. And is that what we call a material witness
15 warrant?

16 A Yes, ma'am.

17 Q Okay. So it's just related to this case?

18 A Yes, ma'am.

19 Q Okay. Now, so when you came in, did you testify at
20 the preliminary hearing?

21 A If that's what it was. I don't know.

22 Q Okay. But you came in front of a judge and you
23 testified, you were asked questions?

24 A Correct.

25 Q Okay. Similar to this?

1 A Correct.

2 Q Okay. And what -- were you in custody on that warrant
3 at the time?

4 A Yes, ma'am.

5 Q And did you indicate at that time, again, that you
6 didn't want the be there?

7 A Yes, ma'am.

8 Q You didn't want anything to do with the case?

9 A No, ma'am.

10 Q And kind of similar to what we're doing today, you
11 were asked some questions, and you were asked to answer them; is
12 that correct?

13 A Correct.

14 Q Do you recall when you came in that day whether or not
15 the defendant told you that you didn't have to say anything,
16 didn't have to answer any questions you didn't want to answer?

17 A The outburst was -- that's what I recall, yes.

18 Q Okay. So the defendant said those things to you as
19 you were walking into the courtroom?

20 A He said those things, yes, ma'am.

21 Q Do you recall being asked some questions about what
22 happened in the bedroom and the living room?

23 A Yes, ma'am.

24 THE COURT: By who --

25 THE WITNESS: Yes, ma'am.

1 THE COURT: -- or where? What -- what proceeding are
2 we talking about?

3 MS. SUDANO: The preliminary hearing.

4 THE COURT: Okay. I'm sorry.

5 MS. SUDANO: Okay.

6 THE COURT: All right.

7 BY MS. SUDANO:

8 Q So when you came in before and you testified, you
9 recall being asked those questions about what had happened in
10 the bedroom and the living room; is that correct?

11 A Yes, ma'am.

12 Q Okay. And do you recall testifying at that point,
13 that after you left the bedroom, you were trying to go out the
14 front door?

15 A Yes, ma'am.

16 Q Okay. And that, in fact, you were trying to leave at
17 that point; is that right?

18 A I believe so.

19 Q Okay. And do you recall testifying that you weren't
20 able to leave, because the defendant wouldn't let you go?

21 A I recall that statement. I don't remember those
22 things happening.

23 Q Okay. So you did testify at the preliminary hearing,
24 though, that the defendant would not let you leave; is that
25 right?

1 A Correct.

2 Q Okay. And you testified that you weren't able to get
3 out the front door; is that correct?

4 A I'm sure that's correct.

5 Q Okay. And at that time, you were under oath, just
6 like you are now; is that right?

7 A Yes, ma'am.

8 Q Okay. And that happened December 14th, does that
9 sound right?

10 A Oh, I remember. Yes, ma'am.

11 Q Okay. So that was December 14th of 2017 that you came
12 in and testified; is that correct?

13 A Correct.

14 Q Okay. Now, do you recall on that day saying that you
15 did see the defendant with a gun?

16 A No, I don't recall what I said.

17 Q Okay. You don't recall testifying to that?

18 A I'm sure I did, but I don't remember what I said.

19 Q Would looking at the transcript from that day refresh
20 your memory as to what you testified to?

21 A Yeah, because I don't remember what I said.

22 MS. SUDANO: Okay. Page 16.

23 MR. SHEETS: Got it.

24 MS. SUDANO: May I approach, Your Honor?

25 THE COURT: Okay. Again, you got this, counsel? Mr.

1 Sheets?

2 MR. SHEETS: Yes, I have it.

3 THE COURT: You have this?

4 MR. SHEETS: I do, Your Honor.

5 THE COURT: Okay. All right.

6 MS. SUDANO: May I approach?

7 THE COURT: Go ahead.

8 MS. SUDANO: Thank you.

9 THE COURT: What page are we looking at for the
10 record?

11 MS. SUDANO: 16, Your Honor.

12 THE COURT: Okay.

13 BY MS. SUDANO:

14 Q All right. Ma'am, I'm going to show you the first
15 page of this.

16 A Okay.

17 Q Does that appear to be the transcript from when you
18 testified in this case before?

19 A I believe so, yeah.

20 Q Okay. And you've seen this; right?

21 A I have one, yeah.

22 Q Okay. I'm going to draw your attention to page 16.
23 Go ahead and read that to yourself, okay, and let us know when
24 you're done.

25 A Okay.

1 Q Did that refresh your memory?

2 A Yes, ma'am.

3 Q Okay. All right. Now, were you asked a question
4 about whether or not you ever saw the defendant with any weapons
5 that day?

6 A Yes, ma'am.

7 Q Okay. And did you respond that, yes, you saw him with
8 the gun?

9 A Yes, ma'am.

10 Q Okay. And do you recall when you saw him with the
11 gun?

12 A No. I believe it was when I was in the bathroom, when
13 I peeked out the bathroom. But I recall what the statement
14 said, when I was sitting in the living room.

15 Q Okay. So as you're sitting here today, you believe it
16 was while you were in the bathroom, but you testified previously
17 that it was in the living room; is that correct?

18 A Correct.

19 Q Okay. And do you recall testifying previously that
20 you saw the defendant waving the gun in the air?

21 A Do I recall testifying that? Yes, ma'am.

22 Q And do you recall that happening?

23 A No, ma'am.

24 Q And do you recall being asked whether or not you knew
25 if you were being hit with the gun or the defendant's hands?

1 A Yes, ma'am.

2 Q And what was your response to that?

3 A At the time, I thought it was a gun.

4 Q Do you recall what your response -- hold on. All
5 right. And do you recall stating that you had a memory to some
6 extent of being hit in the head with the gun at that point?

7 A Yeah, just like now, it was kind of blurry, but I had
8 some memory of being hit in the head, yes, ma'am.

9 Q Okay. So the memory about the gun is blurry?

10 A Correct.

11 Q Okay. But your memory about a lot of other things,
12 like the lemonade and what happened in the bedroom, that's all
13 pretty clear; is that right?

14 A The clearest thing, to me, is when I was hit in my
15 eye, to be completely honest. Everything else seems like a
16 blur, but I do remember to some extent.

17 Q Okay. And do you recall testifying that while this
18 was all going on, you were scared and you were trying to get
19 away?

20 A I recall that.

21 Q I'm sorry?

22 A I recall that.

23 Q So you were trying to get out of the apartment, then?

24 A I don't remember going towards the door, but --

25 Q Okay.

1 A -- I remember being in the living room at some point,
2 and then going into the bathroom.

3 Q And how did you get into the bathroom?

4 A I either crawled or -- I think I crawled into the
5 bathroom.

6 Q Okay. And how did you -- why did you crawl into the
7 bathroom?

8 A My eye was hurting very bad.

9 Q Okay. So it's your testimony that you crawled into
10 the bathroom because your eye hurt?

11 A Yeah, my -- my eye was hurting. I couldn't see. I
12 felt scared. I went into the bathroom.

13 Q Okay. Now, do you recall testifying at the
14 preliminary hearing that you weren't able to describe the gun
15 because you just got a glimpse of it while you were kneeling
16 down?

17 A That's correct.

18 Q Do you also remember stating that it was small enough
19 to fit in one hand?

20 A That's correct.

21 Q And do you recall it being small enough to be able to
22 fit in one hand?

23 A Whatever I saw, yes, ma'am.

24 Q Okay. Do you recall stating at the preliminary
25 hearing that the first time that you saw the gun was in the

1 bathroom?

2 A Yes, ma'am.

3 Q Do you recall -- well, do you recall that being the
4 case?

5 A No.

6 Q All right. When was the first time that you saw the
7 gun?

8 A When I -- I believe it was when I was in the bathroom,
9 when I was -- what I said, when I was in the bathroom, either I
10 was kneeling down or I was already down, but I remember being in
11 the bathroom.

12 Q Okay. And why were you kneeling in the bathroom?

13 A Well, at that time, I was getting on the floor
14 somehow. I -- I know I was sitting on the floor. I don't
15 remember why I would be just kneeling for a long period of time.
16 I remember sitting down on the floor in the corner and I had my
17 hands and my arms over my face.

18 Q And why were you sitting in the corner in the
19 bathroom?

20 A Because I felt secure. I was scared.

21 Q And we may have already talked about this, which
22 bathroom were you in? It was your daughters --

23 A I was in my daughter's --

24 Q -- right?

25 A -- bathroom.

1 Q Okay. Now, do you recall testifying at the
2 preliminary hearing that prior to going to in the bathroom, you
3 tried to leave through the front door?

4 A I recall that testimony, yes.

5 Q Okay. And you recall that happening?

6 A Yeah, I may have.

7 Q Okay. And do you recall testifying that the defendant
8 stopped you and kind of pulled you back from the front door?

9 A No.

10 Q Okay. Do you recall that being the case?

11 A No.

12 Q Okay. So you remember going towards the front door
13 and trying to leave, but not the defendant pulling you back?

14 A I really don't remember going towards the door at all.
15 It seemed like I was in the -- it -- I was only in the kitchen
16 when I first walked in, when I was on the phone, and then I was
17 in the room. There was altercation there, and then I was in the
18 bathroom. I don't remember being close to the door --

19 Q Okay.

20 A -- but I'm sure I remember that in the statement.

21 Q Okay. And didn't you just tell me that you remember
22 that you probably tried to go to the door, something along those
23 lines?

24 A Yeah. That -- see, I don't remember, it's not as
25 clear, but if I wrote that in the statement, you know.

1 Q Okay. So if you wrote that in your statement, that
2 would have been accurate at the time?

3 A I'm guessing so, yeah.

4 Q Okay. What about the other things that you wrote in
5 your statement, would those have been accurate at the time?

6 A Not everything, no.

7 Q Okay. And the things that weren't accurate were the
8 things about you being held against your will and the gun; is
9 that right?

10 A Like I said, I just remember if I did see something, I
11 only saw it once, and I said that in more than one statement.
12 Then as far as the bathroom is concerned, I do remember Barry
13 walking away from the bathroom consecutively pacing, so in my
14 mind, maybe I felt like I had to stay there. So that's why I
15 assumed I was being kept there, but I could have very well got
16 up and ran out if I wanted to.

17 Q Okay. So it had nothing to do with the defendant
18 pointing a gun at you and threatening to kill you if you tried
19 to leave?

20 A No.

21 Q Okay. And nothing to do with him stating he would
22 kill you if he actually got up and left?

23 A No.

24 Q And it had nothing to do with him stating if he found
25 out you called the police, then he would kill you?

1 A No.

2 Q Do you recall testifying at the preliminary hearing
3 that you were putting those things in your statement due to
4 mixed emotions?

5 A Yeah.

6 Q And what did you mean by that?

7 A First of all, I've never been to jail, so I was
8 traumatized. I was so traumatized and I was upset about being
9 in this predicament in the first place. However, when she
10 questioned me she did allow me to see the statement to refresh
11 my memory, so I gave answers as accurate as I could to what I
12 could remember.

13 Q Okay. So my question was whether or not you remember
14 testifying that you wrote the things and said the things in
15 your --

16 A Yes, ma'am.

17 Q -- prior statements, due to mixed emotions.

18 A I do remember saying that, yes, ma'am.

19 Q Okay. And what did you mean by mixed emotions?

20 A I don't even know how to answer that. I just had a
21 lot of mixed emotions. Like I said, I was traumatized, I was
22 scared, I was confused, I -- I just -- I had never testified, I
23 had never been to jail. That's -- that's the only way I know
24 how to answer that.

25 Q Okay. But that all has to do with you testifying and

1 being arrested prior to the preliminary hearing. That has
2 nothing to do with what you wrote in your statement; is that
3 correct?

4 A Well, no. When we were -- when she -- before I
5 testified, I was able to -- or when I was testifying, I was able
6 to look at the statement to refresh my memory, and things I
7 could remember, that's what I testified on.

8 Q Okay.

9 A Some things were a blur, so I did still have, in the
10 testimony that day for the preliminary hearing, mixed emotions
11 because I couldn't remember accurately from how long it had
12 been.

13 Q Okay. And do you recall testifying that you were
14 upset at the time that the defendant was cheating on you?

15 A Yes, ma'am.

16 Q Okay. But then do you remember also testifying that
17 by the time you talked to the detective, you were no longer
18 concerned about the defendant cheating and you were concerned
19 about the injuries to your eye and your face?

20 A Correct.

21 Q Okay. So was that your primary motivation in talking
22 to the detective was the injuries that you had sustained?

23 A Correct.

24 Q So it wasn't because you were mad about anything that
25 had happened with the defendant?

1 A No, ma'am.

2 MS. SUDANO: Court's indulgence.

3 BY MS. SUDANO:

4 Q All right. Ma'am, when is the last time that you
5 talked to the defendant?

6 A A few days ago.

7 Q I'm sorry, when?

8 A A few days ago.

9 Q Did you talk to him at all yesterday?

10 A I think he may have called me last night when I was at
11 work.

12 Q Now, have you had a number of conversations with him
13 since this case started about the fact that you love him and you
14 want to marry him?

15 A We can -- we talked, yeah.

16 Q Okay. You talked about those type of things?

17 A Yes, ma'am.

18 Q Okay. And do you recall at any point telling the
19 defendant that you would do anything to help him with this case?

20 A No.

21 Q Do you recall whether or not he ever told you that
22 there were some things that needed to be corrected in your
23 testimony?

24 A Said like that, no.

25 Q Okay. And do you recall the defendant ever telling

1 you that he wanted you to prove your love to him?

2 A I heard him say it before.

3 Q With regards to this case, or in the context of this
4 case?

5 A I don't know what it was in regards to, but I remember
6 him saying that.

7 Q Do you recall having a conversation with him where he
8 wanted to make sure that the two of you were on the same page
9 about this case?

10 A No.

11 Q Do you recall telling him that you would do whatever
12 you could to help him in this situation?

13 A I recall telling him on a lot of phone calls that I
14 would do anything to be supportive and to help him, yes. But
15 not in regards to this case, just to help him in general.

16 Q Did you tell him that you were -- that he -- or excuse
17 me, did he ever tell you that he wanted to make sure that you
18 understood everything about this case?

19 A No.

20 Q Do you recall telling him that you were intimidated to
21 go to court, but that you would do it to help him or for him?

22 A I remember telling him that I was scared to go to
23 court, yes.

24 Q But that you would do it for him?

25 A No, I'm not doing it for him.

1 Q Okay. Why are you doing it, ma'am?

2 A Because it's a requirement. This is what -- this is
3 the protocol. This is what they told me that I had to do.

4 Q Do you recall telling -- or the defendant telling you
5 that you needed to express your feelings?

6 A No.

7 Q Do you recall him telling you that if you love him the
8 same way that he loves you, you wouldn't be soft spoken about
9 this?

10 A No.

11 MR. SHEETS: Your Honor, I'm going to object. Can we
12 have a sidebar?

13 THE COURT: All right.

14 (Bench conference)

15 MR. SHEETS: So my objection is based on an uncharged
16 bad act. She is producing this testimony to imply that my
17 client is dissuading or influencing a witness's testimony
18 improperly, and that's not a charged crime in this particular
19 case. He is charged with dissuasion for the purposes of
20 preventing prosecution or delaying prosecution, and not for the
21 testimony of a witness. The charging document is very specific,
22 and I'm very concerned about this line of questioning.

23 THE COURT: State's response?

24 MS. SUDANO: And Your Honor, it's -- it's not an
25 uncharged bad act at this time. It goes to these acts and these

1 charges and the fact that her testimony is different now than it
2 was previously after he's had a number of these conversations
3 with her. So we can do a Tevares instruction if the Court
4 wants, but it's not any sort of an uncharged bad act. It goes
5 to everybody's motive and bias, the fact that they're still
6 together, the fact that he's encouraging her to say these
7 things. Mr. Sheets has these calls, is aware of these calls,
8 and did not lodge any objection to this line of questioning
9 prior to right now.

10 THE COURT: All right. Well I see this going to her
11 credibility at this point in time. How much more are you going
12 to be going with this?

13 MS. SUDANO: [Inaudible].

14 THE COURT: All right. Well, let's kill -- let's kill
15 those two questions and move on.

16 MR. SHEETS: Thank you.

17 MS. SUDANO: Thank you.

18 THE COURT: All right.

19 (End of bench conference)

20 MS. SUDANO: Court's indulgence one moment.

21 THE COURT: Go ahead.

22 MS. SUDANO: May I proceed? I apologize.

23 THE COURT: Go ahead.

24 MS. SUDANO: All right.

25 ///

1 BY MS. SUDANO:

2 Q Now, ma'am, do you recall a conversation with the
3 defendant about some of the things being said because you had
4 these mixed emotions?

5 A Yes, ma'am.

6 Q I'm sorry?

7 A Yes, ma'am.

8 Q All right. And I apologize, I just don't remember if
9 I asked you this one. Do you recall a conversation with the
10 defendant where he told you not to be soft spoken, and that if
11 you loved him the same way that he loved you, you would speak
12 up?

13 A Yeah, I was asked already, and I said no.

14 Q Okay. Thank you.

15 MS. SUDANO: Nothing further, Your Honor.

16 THE COURT: All right. Cross-examination.

17 MR. SHEETS: Your Honor, could I implore the Court for
18 maybe a five-minute break, just a brief one? The exhibits --

19 THE COURT: We've only been going for about an hour.

20 MR. SHEETS: The exhibits were only numbered this
21 morning, and so I just need to see which order they're in.

22 THE COURT: All right. Well --

23 MR. SHEETS: Unless Your Honor is okay with me taking
24 a minute.

25 THE COURT: Why don't you go ahead and -- I want to --

1 let's get started because I don't want to be taking a break.

2 MR. SHEETS: Yes, Your Honor.

3 (Pause in proceedings)

4 THE COURT: All right. Whenever you're ready,
5 counsel.

6 CROSS-EXAMINATION

7 BY MR. SHEETS:

8 Q So, Ms. Dotson, let's get something out the way right
9 now at the beginning. Now, you had been asked if you recalled
10 at a -- you recall testifying at a preliminary hearing; correct?

11 A Correct.

12 Q And the State asked if you recalled my client telling
13 you you didn't have to answer any questions and you didn't have
14 to give any statements; correct?

15 A That's correct.

16 Q Isn't it true that at that particular hearing you were
17 -- you had been --

18 A Incarcerated.

19 Q -- arrested? Correct.

20 A Uh-huh.

21 Q And you were -- you were in the custody of the State;
22 correct?

23 A That's correct.

24 Q And isn't it true that my client actually said you
25 ain't got to do nothing you don't want to do, you got a right to

1 an attorney. Isn't that correct?

2 A I don't remember hearing the thing about the attorney.

3 Q Would it refresh your recollection to take a look at
4 the transcript?

5 A That's fine.

6 MR. SHEETS: May I approach?

7 THE COURT: All right. What page?

8 MR. SHEETS: That would be page 4.

9 THE COURT: Okay. Go ahead.

10 BY MR. SHEETS:

11 Q If you could just take a look and read next to that,
12 and then look at me when you're done.

13 THE COURT: Counsel, I need you to move just a little
14 off to the side so the jurors can see the witness.

15 THE WITNESS: Okay. I recollect.

16 BY MR. SHEETS:

17 Q Okay. And that does refresh your recollection?

18 A Yes, sir.

19 Q And that's actually what he said; isn't that correct?

20 A Correct.

21 Q Okay. So the question by the State that implied my
22 client told you you didn't have to give any statements or answer
23 any questions, that's not what actually happened; correct?

24 A Correct.

25 Q Okay. He was just advising you that you had a right

1 to an attorney, and you didn't have to do anything you didn't
2 want to do; correct?

3 A Correct.

4 Q And you were concerned about being there that day;
5 isn't that correct?

6 A Concerned?

7 Q You were worried, stressed, frustrated?

8 A Oh, yeah. I was -- I was emotionally really, really,
9 really, really stressed.

10 Q And that's because you were -- that's because you were
11 in custody; correct?

12 A Correct.

13 Q And had -- and you had -- let me ask you this. Have
14 you had any conversations with individuals that you believe to
15 be affiliated with the State prior to your testimony at the
16 preliminary hearing?

17 A Like other inmates?

18 Q No, prosecutors, advocates, corrections officers,
19 somebody that you would have had knowledge probably was an
20 affiliate of either the District Attorney's Office or the police
21 department.

22 A Correct.

23 Q Okay. And did -- did anything they said concern you
24 or worry you about your testimony?

25 A I felt like if I didn't testify exactly what was

1 written on the first statement that I was going to have to stay
2 in jail.

3 Q Now, you said you felt like that. Why did you feel
4 like that?

5 A I guess because they -- they -- that was the first
6 statement that I wrote and -- I mean, she didn't say anything to
7 me in that regard, she didn't say you're going to stay here in
8 jail or anything.

9 Q And -- and just to clear it up, in fact, the -- the
10 district -- and when you say she -- the District Attorneys in
11 this case, they didn't say anything to you, did they --

12 A No.

13 Q -- that let you to believe you had to say anything;
14 correct?

15 A They never said anything, no.

16 Q Right. They just told you if your statement was
17 different, then they would confront you with your other
18 statements; correct?

19 A Correct.

20 Q And -- but did somebody else other than them make a
21 statement to you that made you feel like you had to stick to a
22 certain set of facts?

23 A Yeah, but I don't remember who.

24 Q Okay. And what did that person tell you?

25 A That I was going to do like -- if I was in contempt of

1 court, that I was going to do like 30 days.

2 Q So somebody told you -- now let -- let me ask before I
3 get there, was this somebody another inmate?

4 A Well, inmates said things too, but no. It was
5 somebody else, but it wasn't the -- those ladies.

6 Q Right. No. And --

7 A It was not them.

8 Q No question, not them.

9 A No.

10 Q Okay. But so this somebody else was somebody who was
11 not incarcerated?

12 A Correct.

13 Q Okay. And -- and this person told you -- they -- they
14 led you to believe that if you gave a statement at the
15 preliminary hearing that differed from your statement to the
16 police, that you would be found in contempt of court and given
17 jail time?

18 A Correct.

19 Q Okay. Did that person have any badge, you know, like
20 a metal badge?

21 A Correct.

22 Q Okay.

23 A But I don't remember --

24 Q Did --

25 A -- who.

1 Q Was it -- was it a metal badge?

2 A No, it was like a cop or a detective, but it -- no, it
3 wasn't a detective. It was a cop because it was when I was
4 incarcerated.

5 Q Okay. It was at the detention center?

6 A Yeah. it was when I was incarcerated.

7 Q All right. And did that frighten you at all?

8 A I was traumatized.

9 Q Did that have any effect on your testimony at the
10 preliminary hearing?

11 A I felt like it did, because -- well, like I stated in
12 my statement, I had mixed emotions, even the day that I
13 testified at the preliminary, whatever it's called, hearing.

14 Q Okay. Well, and you had mixed emotions because what
15 happened was, obviously, traumatic; correct?

16 A Correct.

17 Q And -- and he punched you and that's not okay;
18 correct?

19 A Correct.

20 Q Right. Now, so we've heard from you already that the
21 statement at the beginning of the preliminary wasn't as
22 originally testified to. Let's talk about the phone calls real
23 quickly. You've -- you've admitted you had several phone
24 conversations with my client.

25 A This is correct.

1 Q Okay. And -- and in those phone calls you talked
2 about a lot of things; correct?

3 A Correct.

4 Q You guys quoted the bible; correct?

5 A Correct.

6 Q You were talking about your relationship; correct?

7 A Correct.

8 Q Now, when he was -- you know, when you're talking
9 about proving your love for each other, you didn't actually
10 think that he was -- it was him trying to get you to testify a
11 certain way --

12 MS. SUDANO: Your Honor, I'm going to object --

13 MR. SHEETS: -- is that correct?

14 MS. SUDANO: -- as to speculation.

15 MR. SHEETS: It's her own thought --

16 THE COURT: Well --

17 MR. SHEETS: -- Your Honor.

18 THE COURT: -- she can -- you can ask her as to what
19 she understood the statement to be saying to her.

20 BY MR. SHEETS:

21 Q You didn't feel that you were being compelled to
22 testify a certain way, did you?

23 A No, sir.

24 Q Okay. In fact, during several of those phone calls,
25 my client actually told you that he just wanted the truth;

1 correct?

2 A Yeah, there were times when he did say that.

3 Q And, in fact, in one phone call he says all I want is
4 the truth no matter what.

5 A Correct.

6 Q And -- and, to you, did that mean -- did that mean no
7 matter what as long as it helps me, or just no matter what good
8 or bad?

9 A He knew it was no matter what good or bad.

10 Q Okay. And -- and in another phone call, he -- you
11 were -- he encouraged you to come to court; isn't that correct?

12 A Correct.

13 Q Because he wanted you to testify; isn't that correct?

14 A Correct.

15 Q Because he wanted the jury to hear the truth; correct?

16 A Correct.

17 Q In fact, at one point you said something along the
18 lines of I'll do whatever you need, and he said don't -- don't
19 do as I say, do what's true, do what's the truth, and that's all
20 I want.

21 A That's correct.

22 Q Okay.

23 MR. SHEETS: If I may approach the witness.

24 THE COURT: You want to show her an exhibit?

25 MR. SHEETS: Yes, I want to show her three of them.

1 THE COURT: Okay. Does State know what you're about
2 to show her?

3 MS. SUDANO: No.

4 MR. SHEETS: She knows about one of them.

5 THE COURT: Are you going to be offering these into
6 evidence?

7 MR. SHEETS: It's very possible, yes.

8 THE COURT: Very possible, or --

9 MR. SHEETS: Well, pending authentication.

10 THE COURT: Well, I was going to ask the State, do you
11 have any objection to these exhibits?

12 MS. SUDANO: D and E no, C I want her to lay the --
13 the foundation on.

14 THE COURT: Okay. All right. Then go ahead and --
15 well, which two --

16 MR. SHEETS: Move to admit --

17 THE COURT: -- did you --

18 MR. SHEETS: -- D and E.

19 THE COURT: D and E. Any objection for the State?

20 MS. SUDANO: No, Your Honor.

21 THE COURT: All right. D and E will be admitted.

22 (Defense Exhibits D and E admitted)

23 MR. SHEETS: May I approach with C, Your Honor?

24 THE COURT: You can go ahead and approach with C.

25 ///

1 BY MR. SHEETS:

2 Q I'm giving you Defense Proposed Exhibit C. Now does
3 that appear to be a fair -- or what does that appear to be?

4 A It looks like the layouts to my apartment.

5 Q And the center one in particular, is that a fair and
6 accurate depiction of the layout of your department?

7 A That's correct. That's correct.

8 MR. SHEETS: Move to admit C.

9 MS. SUDANO: No --

10 THE COURT: Any --

11 MS. SUDANO: -- objection.

12 THE COURT: -- objection?

13 MS. SUDANO: No.

14 MR. SHEETS: May I approach?

15 THE COURT: All right. But let's make clear, I take
16 it there's more than one layout that's on that sheet of paper?

17 MR. SHEETS: Correct. In fact, I'll approach. May I
18 approach?

19 THE COURT: I was going to say let's like circle which
20 one, have her circle which one is the correct layout so that we
21 don't have any issue as to that.

22 MR. SHEETS: That was my very next question.

23 BY MR. SHEETS:

24 Q And if you could just put your initials into that
25 circle. Thank you.

1 THE COURT: C will be admitted.

2 (Defense Exhibit C admitted)

3 BY MR. SHEETS:

4 Q Now, did you have an opportunity to review several
5 photos with the State?

6 A Yes, sir.

7 Q Okay. And just kind of going through them, this was
8 one of those photos; correct?

9 THE COURT: I need to have an exhibit number.

10 MR. SHEETS: This is 3.

11 THE COURT: Okay.

12 BY MR. SHEETS:

13 Q Correct?

14 A Yes, sir.

15 Q And this was one; correct?

16 A Yes, sir.

17 THE COURT: Again, I need an exhibit number.

18 MR. SHEETS: This is No. 19.

19 THE COURT: Okay.

20 MR. SHEETS: If I may for a brief moment, Your Honor,
21 display the --

22 THE COURT: You know, counsel, if you -- just so you
23 know, there's a -- see the -- on this side of the podium?

24 MR. SHEETS: Oh.

25 THE COURT: There's a little thing that you can pull

1 out, if you want. Don't pull it too far out but --

2 MR. SHEETS: That's what I was afraid of.

3 THE COURT: -- you can pull it out and --

4 MR. SHEETS: Excellent.

5 THE COURT: -- set stuff on it.

6 BY MR. SHEETS:

7 Q Now -- okay. There we go. So you had testified that
8 -- at least today you testified that when you thought you had
9 saw something that you originally thought was a -- was a gun, it
10 was in the living room; correct?

11 A That was in one of the statements, correct.

12 Q Okay. And then you testified at the preliminary
13 hearing that you didn't see it until the bathroom; correct?

14 A Correct.

15 Q Now, taking a look at the circled layout, this appears
16 to be an accurate layout of your apartment; correct?

17 A Correct.

18 Q And based on your testimony, this is the --

19 A Master --

20 Q -- master bedroom?

21 A -- bedroom. Correct.

22 Q And that one --

23 THE COURT: All right. Just so we have something
24 clear for the -- because it just says bedroom. You're pointing
25 to the bedroom to the right side of the exhibit; is that

1 correct?

2 THE WITNESS: Correct.

3 THE COURT: All right.

4 BY MR. SHEETS:

5 Q And the bathroom on that right side is the master
6 bathroom; correct?

7 A Correct.

8 Q And then the bedroom on the left side is the
9 daughter's bedroom?

10 A Correct.

11 Q And then this bathroom here on the left side is the
12 bathroom that you were in?

13 A Correct.

14 Q Okay. Now -- and then this center area here is the
15 living room; correct?

16 A Correct.

17 Q And it's -- it's attached, without a wall, to the
18 dining room?

19 A Correct.

20 Q And then the kitchen just off to the side; correct?

21 A Correct.

22 Q Okay. Now when you left your apartment and came into
23 contact with officers, prior to giving your statement with
24 officers or the statement -- your recorded statement to the
25 detective, you did not go back into the apartment and move

1 anything around; correct?

2 A No.

3 Q Okay. And you didn't move anything around after my
4 client had left; correct?

5 A No.

6 Q Okay. Showing admitted Defense Exhibit D. What does
7 this appear to be a photograph of?

8 A A brush.

9 Q Okay. And do you know where that is within your
10 apartment?

11 A It's in the -- like right in front of the little
12 hallway to the guest bathroom and guest room.

13 Q Okay. And showing you Defense Exhibit E. Does that
14 appear to be that same hairbrush?

15 A Correct.

16 Q And is that a long and skinny black object?

17 A Correct.

18 Q Okay. And that's an object that you did not move?

19 A Correct.

20 Q Okay. Now, when you testify you thought you had saw a
21 firearm, you used a word, you assumed it was a firearm; is that
22 correct?

23 A Correct.

24 Q Just -- was that because of the heat of the moment and
25 the heat of the argument?

1 A Correct.

2 Q Is it possible that it was, in fact, this hair brush
3 instead of a firearm?

4 MS. SUDANO: I'm going to object as to speculation.

5 THE COURT: Sustained.

6 MR. SHEETS: I'll withdraw the question.

7 BY MR. SHEETS:

8 Q Nonetheless, to your knowledge, was a firearm found in
9 that apartment by police?

10 A No.

11 Q Okay. When you returned back to your apartment, you
12 didn't find a firearm consistent with your description; correct?

13 A No.

14 Q Okay. When you were -- now, you testified when you
15 were looking into the -- peeking out of the bathroom and looking
16 into the living room, you were -- you were crying and you were
17 upset; right?

18 A Correct.

19 Q And one of your eyes was -- wasn't functioning
20 properly at the time?

21 A Correct.

22 Q So that -- would it be fair to say that that impaired
23 your vision at that time?

24 A Well, the one eye was shut closed, the other eye was
25 perfectly fine.

1 Q Was it -- was your vision clear, or was it harder to
2 see because of tears?

3 A Of course it was hard to see because I only had one
4 eye, so.

5 Q And were your tears affecting the vision at all?

6 A Yeah, I was crying.

7 Q And -- and I -- I hope you don't think I'm trying to
8 make light of the situation, so forgive some of my questions
9 being direct. When you peaked out of the bathroom, those were
10 very quick glances; correct?

11 A Correct.

12 Q Okay. Now, when you testified at the preliminary
13 hearing, do you remember being asked if my client resided with
14 you at the -- at the home; correct?

15 A Yes, sir.

16 Q And you -- you said yes; is that --

17 A Correct.

18 Q -- right? And you said he had a key to the apartment;
19 correct?

20 A Yes, sir.

21 Q And that he was free to come and go as he pleased;
22 correct?

23 A Correct.

24 Q And that even if you didn't expect you him that night
25 -- well, I'll ask you this first. Even if you didn't expect my

1 client to be there that night, would he still have permission to
2 be there?

3 A Correct.

4 Q And that's consistent with what you testified at the
5 preliminary hearing; correct?

6 A Correct.

7 Q Okay. At the preliminary hearing you were asked to
8 describe a gun, and you actually testified you were unable to
9 describe it; isn't that correct?

10 A I'm guessing. I'm -- I'm not sure what I said.

11 Q Would it refresh your recollection to look at a
12 transcript?

13 A Yeah, because I don't remember.

14 THE COURT: What page for the record?

15 MR. SHEETS: 30, Your Honor.

16 THE COURT: Okay. Go ahead.

17 Read it to yourself and let us know when you're done.

18 THE WITNESS: Okay.

19 BY MR. SHEETS:

20 Q So having looked at that, does it refresh your
21 recollection?

22 A Yes, sir.

23 Q And you -- you actually answered that you could not
24 describe the firearm; isn't that correct?

25 A Correct.

1 Q You remember being asked about what you saw, and you
2 said I just got a glimpse of it?

3 A Correct.

4 Q In a preliminary hearing, you testified you did not
5 see it until you were in the bathroom; is that correct?

6 A Correct.

7 Q And at that same preliminary hearing, when you were
8 being questioned by the District Attorney, you indicated that
9 you did not see a gun when you were talking to him at the
10 beginning; correct?

11 A Correct.

12 Q And you didn't see a gun in the bedroom; correct?

13 A Correct.

14 Q And you didn't see it in the living room; correct?

15 A Correct.

16 Q And you didn't see it before you went to the bathroom;
17 correct?

18 A Correct.

19 Q Okay. So would it be fair to say -- well, and is that
20 all accurate?

21 A Correct.

22 Q Okay. And now you've testified that you went to the
23 -- you went into the bathroom. Did you do that voluntarily?

24 A Yes.

25 Q Did my client order you to go to the bathroom?

1 A No.

2 Q Did he step in front of the door and prevent you from
3 leaving?

4 A I do remember him being in front of the door when we
5 were arguing, but he left for periods of time, so no, he didn't
6 just stand there and guard the door.

7 Q So let me ask it a little bit clearer. After he had
8 punched you, did he block you from going out the door?

9 A No.

10 Q Okay. So you -- when -- when you went in the living
11 room, you testified that you kind of went -- kind of leaned up
12 against a wall and then kind of sunk; correct?

13 A Correct.

14 Q And I -- I have to assume that that's because you were
15 -- you were heartbroken?

16 A My eye hurt.

17 Q And -- and your eye hurt and you were sad --

18 A I was sad, yeah.

19 Q -- you were shocked.

20 A I was shocked.

21 Q You were -- you were upset?

22 A Uh-huh.

23 THE COURT: You need to answer yes or no.

24 THE WITNESS: Yes, sir. Yes.

25 ///

1 BY MR. SHEETS:

2 Q And you were -- you were disappointed?

3 A Yes.

4 Q And you were probably heartbroken?

5 A Yes.

6 Q And when you went into the bathroom, was it that
7 similar sentiment, was that similarly why you went to the
8 bathroom?

9 A I went to the bathroom because I felt safe.

10 Q You felt like you could be alone?

11 A Correct.

12 Q And you could kind of deal with what had just
13 happened?

14 A Correct.

15 Q And just so we can make it 100 percent clear, at no
16 point did my client threaten you to go to that bathroom;
17 correct?

18 A Correct.

19 Q At no point did my client grab you and yank you into
20 that bathroom; correct?

21 A Correct.

22 Q You went into that restroom 100 percent voluntarily?

23 A Correct.

24 Q And even though you went into that bathroom, my client
25 came in and -- and did hit you again?

1 A Correct.

2 Q And -- and that was with an open fist, a closed fist,
3 or with his foot?

4 A I don't know because my head -- my head was down, my
5 arms was over my face, I was kneeled down on the ground.

6 Q So would you say that the reason that he -- would you
7 say that the physical contact in the bathroom was the result of
8 anything he did to force you to go to the bathroom, or if it --
9 or it was more incidental to you being in the bathroom?

10 MS. SUDANO: And Your Honor, I'm going to object. I
11 think --

12 THE COURT: I'll sustain that.

13 BY MR. SHEETS:

14 Q Now, you were upset that evening at -- before the
15 physical altercation, you were upset at Mr. Harris; correct?

16 A Correct.

17 Q You felt that he was maybe venturing beyond the
18 singularity of the relationship?

19 A Correct.

20 Q And needless to say, that -- that was frustrating?

21 A Correct.

22 Q And -- and you were upset about it?

23 A Correct.

24 Q And you guys were talking about that; correct?

25 A Correct.

1 Q And -- and then you got into the argument, and it got
2 more and more heated; correct?

3 A Correct.

4 Q To the point where both of you guys were yelling?

5 A Correct.

6 Q And that's when all of this altercation happened;
7 correct?

8 A Correct.

9 Q Now, you said something earlier that kind of struck
10 me, and you testified earlier, quote, you say things when you're
11 upset; correct?

12 A Correct.

13 Q And -- and -- and that means that sometimes people
14 will -- in your opinion, what does that mean?

15 MS. SUDANO: And, Your Honor, I'm going to object as
16 to the relevance of her opinion about what that means.

17 THE COURT: Well, she -- she has testified to it.
18 I'll -- I'll overrule the objection. Just what she meant by
19 that statement.

20 THE WITNESS: I know when you get into it with
21 somebody, you tend to say things that you don't mean because
22 you're upset.

23 BY MR. SHEETS:

24 Q And sometimes -- sometimes you just say things that
25 are flat out exaggerated; correct?

1 MS. SUDANO: And Your Honor, again, I'm going to --

2 THE COURT: I'll --

3 MS. SUDANO: -- object.

4 THE COURT: -- I will sustain that -- that objection.

5 BY MR. SHEETS:

6 Q Let me ask you this, when you're upset, have you said
7 anything that's flat out exaggerated?

8 THE COURT: I'll sustain it as to whenever. I mean,
9 let's focus on this incident here. I mean -- I mean, I don't --

10 BY MR. SHEETS:

11 Q So let's -- let's go talk about the -- the officer
12 that you made contact with when you got to the bottom of the
13 stairs.

14 A Okay.

15 Q When you got to the bottom of the stairs, you -- you
16 said you came into contact with at least one, maybe two
17 officers; correct?

18 A Correct.

19 Q And at that point, did you -- did you randomly say
20 something to the officer, or did he ask you any -- did he ask
21 you questions?

22 A He was asking me questions.

23 Q And when you answered the questions, were they direct
24 answers to those questions?

25 A I don't remember.

1 Q Okay. Nonetheless, were they responses to the
2 officer's questions?

3 A Correct.

4 Q Okay. Now, right from the get go -- strike that.
5 Now, you had testified a little bit earlier that there was --
6 that you had felt some pressure at the preliminary hearing. You
7 also testified earlier that you felt some pressure at different
8 times. Did you feel any pressure to say or do anything that
9 night of the event?

10 A When it happened?

11 Q Correct. Did you feel pressure to say or -- say
12 anything to the police officers or do anything, in terms of
13 statements?

14 A No, sir.

15 Q Okay. Did -- did you originally deny an ambulance?

16 A Correct.

17 Q And the police officers continued to urge you to -- to
18 go into an ambulance; correct?

19 A Correct.

20 Q And did you feel pressured when they made those
21 statements?

22 A Not necessarily pressured, no.

23 Q Okay. Did you feel like you had to say certain things
24 because you were told to say certain things?

25 A For the preliminary, that hearing?

1 Q No, no, no. We're talking specifically about the
2 night of the event.

3 A No.

4 Q Did you -- when you gave your voluntary statement to
5 officers, an officer actually told you what to emphasize in that
6 statement; isn't that correct?

7 A I don't remember that, no.

8 Q Do you recall an officer handing you the voluntary
9 statement and telling you that's your office?

10 A Can you repeat that?

11 Q Do you remember an officer -- do you recall an officer
12 handing you a voluntary statement, setting on top of the
13 cruiser, and telling you it was your office?

14 A No.

15 Q Do you remember him telling you that you needed to
16 emphasize that he put a gun in your mouth?

17 A He didn't mention anything about the gun. He just
18 said that I needed to write what happened.

19 Q Do you remember him telling you that you needed to
20 emphasize that you were in fear for your life?

21 A No.

22 Q Do you remember him telling you that you needed to
23 emphasize that my client wouldn't let you leave?

24 A No.

25 Q Do you remember him telling you that you needed to say

1 that he punched you in the face?

2 A No.

3 Q Do you remember him telling you that if you said those
4 things, it was icing on the cake?

5 A No.

6 Q Do you remember him telling you, by you saying this,
7 it's the money maker?

8 A No.

9 Q Okay.

10 MR. SHEETS: Court's indulgence.

11 THE COURT: Okay.

12 BY MR. SHEETS:

13 Q Now, there was a lot of discussion as to your memory
14 of certain events, and you had testified that some of it was a
15 little bit blurry; correct?

16 A Correct.

17 Q And that's because you were -- and you testified that
18 your memory is a little bit better today than it was then;
19 correct?

20 A Correct.

21 Q And is that because at the time you had been punched
22 in the head, and you might have been a little woozy?

23 A Could be.

24 Q And you were shocked and in disbelief?

25 A Correct.

1 Q And you were emotional; correct?

2 A Correct.

3 Q And you've had some time to think about everything; is
4 that right?

5 A Correct.

6 Q Okay. Now -- now, you had mentioned that my client
7 had told you to stop yelling, and -- and you had testified to
8 that today. Now, when he told you to stop yelling, did he --
9 did he tell you why he needed you to stop yelling?

10 A No, I don't remember that.

11 Q He didn't -- he didn't express any purpose for telling
12 you to stop yelling; correct?

13 A I don't remember why he asked me to stop yelling. I'm
14 not sure what was said, a lot of what he said.

15 Q Now, you had testified that when this was all
16 concluded that you had grabbed your keys and your phone and you
17 were going to your car; is that correct?

18 A Correct.

19 Q Were you planning to call the police?

20 A No.

21 Q And you had no intention on --

22 A No.

23 Q -- doing that? Did you have any intention on -- on
24 calling a District Attorney?

25 A No.

1 Q You didn't -- and during this entire process, did you
2 have any -- any desire or did you have any intention on having
3 him arrested or prosecuted?

4 A No.

5 Q Okay. Now, we had spoken a little bit about -- we had
6 spoken a little bit about injuries to your eye.

7 A Correct.

8 Q And you had indicated it was a four-month process;
9 correct?

10 A Correct.

11 Q And that's a healing process; correct?

12 A Correct.

13 Q Now, from a standpoint of physical pain, you weren't
14 in physical pain for that four months; correct?

15 A No, not the whole four months.

16 Q In fact, you had indicated you were in physical pain
17 for about the first month; correct?

18 A Correct.

19 Q Now, for that entire month, was it -- was it a severe
20 pain, or did it -- did it digress?

21 A Well, I guess as my eye gradually started to heal, the
22 pain went away.

23 Q Did -- at this point, are you aware of any lingering
24 side effects or anything in your eye?

25 A Yes, I was aware that they wanted me to have the blood

1 clots removed.

2 Q Well, no. As of right now like are your eyes -- I
3 guess what I'm asking, are your eyes healthy now?

4 A Today?

5 Q Yes.

6 A Of course.

7 Q Okay. Are there any -- any lingering issues today, as
8 the result of what occurred?

9 A No, sir.

10 Q Okay. Now, when you went to the hospital, you had
11 testified that you didn't recall making several statements to
12 the hospital. Did -- did officers follow you to the hospital,
13 or did you just go by yourself?

14 A No, I went inside of the ambulance.

15 Q Okay. Did an officer meet you at the hospital, follow
16 you, or none of the above?

17 A No, I don't remember seeing an officer once I got
18 there.

19 Q Okay. Now, you had also testified that my client
20 drove a gray Honda, or a gray or silver Honda; correct?

21 A Correct.

22 Q Now, you had -- when you initially spoke with
23 officers, you -- you told them what kind of car he was driving;
24 correct?

25 A Correct.

1 Q And they had thought it was a different kind of car at
2 that time; isn't that correct?

3 A I don't remember. I don't know if they thought it was
4 different or not.

5 Q You recall them indicating that it was a Hyundai
6 sedan?

7 A No, I don't.

8 Q Now with regards to this car, that -- that was a car
9 that my client was driving; correct?

10 A Can you repeat that? I'm sorry.

11 Q This Honda Civic was a car that you saw my client
12 driving; correct?

13 A That was his car.

14 Q Well, did you know whether -- you don't know if he
15 owned it; correct?

16 A Well, he drove it all the time. I knew it was in
17 somebody else's name.

18 Q So it was some -- so you knew it was somebody else's
19 car. Did you see him drive that car to your apartment that
20 night?

21 A No.

22 Q And did you see him drive that car away from your
23 apartment that night?

24 A No.

25 Q Okay. Now, you've testified today that you -- you

1 were not strangled; is that correct?

2 A Correct.

3 Q Okay. So I'm showing you State's Exhibit 3. It would
4 be fair to say that there is -- there are no markings on your
5 neck; correct?

6 A Correct.

7 Q And is this a tattoo?

8 A Correct.

9 THE COURT: You're pointing down at the bottom of the
10 screen and toward the middle?

11 MR. SHEETS: Correct.

12 THE COURT: All right.

13 BY MR. SHEETS:

14 Q Now, did you -- before police arrived, did you fix
15 your hair or did you comb your hair or anything like that?

16 A No.

17 Q So your hair in this picture, does it appear to be
18 composed?

19 A Not to me, but I guess.

20 Q Fair enough.

21 THE COURT: What exhibit -- I'm not sure you
22 identified it. What is the exhibit that's on the screen?

23 MR. SHEETS: The exhibit that is currently on the
24 screen is going to be No. 2.

25 THE COURT: Okay.

1 BY MR. SHEETS:

2 Q We're going to look at State's Exhibit 5. Is this a
3 clear picture with better lighting of your neck?

4 A Correct.

5 Q And State's Exhibit 6, that's a picture of the
6 affected eye; correct?

7 A Correct.

8 Q And then State's Exhibit 8. There is no injuries on
9 -- no visible injuries on your neck; correct?

10 A Correct.

11 Q State's Exhibit 14. Again, no visible injuries on
12 your neck; correct?

13 A Correct.

14 Q State's Exhibit 15. Again, no visible injuries on
15 your neck; correct?

16 A Correct.

17 Q State's Exhibit 16. No visible injuries on your neck;
18 correct?

19 A Correct.

20 Q State's Exhibit 17. No visible injuries on your neck?

21 A Correct.

22 Q And State's Exhibit 18. No visible injuries on your
23 neck; correct?

24 A Correct.

25 Q Now, the State asked if you had recalled indicating

1 that my client had applied so much pressure that you couldn't
2 breathe. Is that what you told the police or the detectives the
3 night of the event?

4 A Correct. That was in the statement.

5 Q Is that what actually happened?

6 A I don't recall.

7 Q Okay. And just so I make sure this is all accurate,
8 it'd be fair to say that there were -- you gave different
9 statements to the police at preliminary hearing in -- in your
10 testimony today; correct?

11 A Correct.

12 Q And in the two statements to the police -- or the
13 written statement to the police, the verbal statement to the
14 police, and the recorded statement to the police, you indicated
15 -- you indicated that there was a strangulation, that you
16 thought it was a gun; correct?

17 A Correct.

18 Q So looking at Defense Exhibit C, the layout of the
19 apartment, the State made a big point of asking you about all
20 the things that you recalled telling detectives the night of the
21 event. Now, your statement that you were -- your testimony
22 today that you were on your knees or that you were sitting down
23 in the bathroom, this bathroom right here, that's remained
24 consistent throughout; correct?

25 A Correct.

1 Q And the State went through a lot of effort to talk
2 about you said this happened or that happened in your recorded
3 statement to detectives; correct?

4 A Correct.

5 Q Now, once you went into the bathroom, you never
6 actually came out of the bathroom; correct?

7 A Correct.

8 Q You remember -- do you recall telling detectives
9 during that recorded statement that you had seen my client
10 walking around the living room, pointing the gun at you the
11 entire time, collecting belongings?

12 A No, I don't remember me saying that.

13 Q Okay. Because if you had said that, it would be
14 difficult because you're in the bathroom; correct?

15 A Correct.

16 Q And the living room and the dining room and the
17 kitchen are blocked by this wall; isn't that right?

18 A Correct.

19 Q So if that statement had been given to the police, it
20 would have been impossible to have actually occurred; correct?

21 A When you put in that perspective.

22 Q Yeah, because you wouldn't have been able to see him;
23 correct?

24 A Correct.

25 Q Now, when officers got there, you were -- you were

1 worked up a little bit --

2 A Correct.

3 Q -- correct? And you were -- I don't want to say you
4 have any trouble breathing, but -- but were you -- do you know
5 what hyperventilating it?

6 A Of course.

7 Q Do you believe that you were hyperventilating when
8 officers arrived?

9 A To some extent, yeah.

10 Q And that was making it somewhat difficult for you to
11 catch your breath; correct?

12 A Correct.

13 Q Because the event had -- had frightened you?

14 A Correct.

15 Q So I'm just kind of going through things somewhat in
16 order. When you first arrived back at the apartment, my client
17 is in the bed; correct?

18 A Correct.

19 Q Is that abnormal or --

20 A No.

21 Q He'd often lay in the bed; correct?

22 A Correct.

23 Q There was no couch in the apartment?

24 A Correct.

25 Q No chair?

1 A Correct.

2 Q Do you know what the TV -- was the TV was on?

3 A I don't remember that.

4 Q Okay. He didn't get up and run to you up at the
5 door --

6 A No.

7 Q -- correct?

8 A No.

9 Q When he got up from the bed to come and see you, he
10 was calm; correct?

11 A Yeah, he was calm.

12 Q And that's when he came to see you in the kitchen;
13 correct?

14 A Correct.

15 Q Okay. And at that point, you don't -- you don't see
16 anything that you think may be a firearm; correct?

17 A Correct.

18 Q And that's when the argument goes on; correct?

19 A Correct.

20 Q And during that time you had testified, and I just
21 want to make it clear, you talked a little bit without arguing
22 before you actually argued; correct?

23 A For a few moments, yes.

24 Q Okay. So its not like you walked in and you
25 immediately started on this topic that resulted in what we're

1 here for today; correct?

2 A Correct.

3 Q You talked about other things; correct?

4 A Not really, no.

5 Q So you were talking about it, but it was just much
6 calmer?

7 A Correct.

8 Q Okay. All right. And you -- you did that for a few
9 minutes?

10 A Correct.

11 Q And then when ideologies couldn't conform, that's when
12 it started to get --

13 A Correct.

14 Q -- worse? Okay. All right. And it's your position
15 today that my client was not holding you in the apartment
16 against your will?

17 MS. SUDANO: And Your Honor, I'm going to object. I
18 think that calls for a legal conclusion.

19 THE COURT: Well, rephrase the question.

20 BY MR. SHEETS:

21 Q It's -- it's your opinion that my client wasn't --

22 THE COURT: Well, I don't want an opinion. I want was
23 he doing anything that caused her to think that she couldn't
24 leave.

25 ///

1 BY MR. SHEETS:

2 Q Was my client doing anything to lead you to believe
3 that you could not leave?

4 A No.

5 Q Was my client doing anything to lead you to believe
6 that you had to go to that bathroom?

7 A No.

8 Q Now, as you sit here today, you are not sure if that
9 was a firearm that my client had; correct?

10 A That's correct.

11 Q Now, when you testified at the preliminary hearing,
12 you -- you actually indicated -- or let me ask you this. You --
13 are you 100 percent sure that my client did not put a gun in
14 your -- in your mouth?

15 A Correct.

16 Q Are you 100 percent sure that my client did not put a
17 gun to your head?

18 A Correct.

19 Q Okay. And you actually testified at the preliminary
20 hearing that you were certain that -- that there had not been a
21 gun put in your mouth; correct?

22 A Correct.

23 Q And is that your first time under oath?

24 A Correct.

25 Q Under penalties of perjury; correct?

1 A Correct.

2 Q Same oath you've taken today?

3 A Correct.

4 Q Now, when you gave statements to the officers, were
5 those -- those weren't under oath; correct?

6 A I don't think so.

7 Q Did you have to swear in and say that you --

8 A Oh, no. No, no, no.

9 Q Okay. And is what you're testifying to today the
10 truth?

11 A Correct.

12 MR. SHEETS: Court's indulgence.

13 BY MR. SHEETS:

14 Q So we're going to look at State's Exhibit 8. There is
15 no visible injuries on your mouth or lips; correct?

16 A Correct.

17 Q Looking at State's 6. Same thing; correct?

18 A Correct.

19 Q State's 3. Same thing; correct?

20 A Correct.

21 Q So you went to the Sunrise Hospital; isn't that right?

22 A Correct.

23 Q And as part of being at Sunrise Hospital, they ask you
24 a series of questions, questions that are related to your
25 medical diagnosis; correct?

1 A Correct.

2 Q Now, one of the statements the State referred to was a
3 statement where you had spoken to detectives and -- and it was
4 recorded; correct?

5 A Correct.

6 Q And in that recording, there was a -- in that
7 statement there was a claim that you had lost consciousness;
8 correct?

9 A Correct.

10 Q Now, you remember telling the hospital that you did
11 not lose consciousness; correct?

12 A I don't remember what I told them.

13 Q Would it refresh your recollection to take a look at
14 medical records?

15 A That's fine.

16 MR. SHEETS: It's going to be State's Exhibit 64.

17 THE COURT: Okay.

18 MR. SHEETS: May I approach?

19 THE COURT: Well, 64 is admitted, isn't it?

20 MR. SHEETS: It is. 63 and 64 were by stipulation.

21 THE COURT: Do you want to just put it up on the --

22 MR. SHEETS: Oh, sure.

23 THE COURT: What page are we looking at, though? So I
24 -- we have it on the record.

25 MR. SHEETS: They don't -- they're not actually

1 numbered.

2 THE COURT: Well --

3 MR. SHEETS: So we're on the -- what would be page 1
4 of 7 and one of the initial portions of it.

5 BY MR. SHEETS:

6 Q Now looking at that, would that refresh your
7 recollection?

8 A Yes, sir.

9 Q And that says denies loss of consciousness; correct?

10 A Correct.

11 Q Now, would it be fair to say that you never actually
12 even told the hospital that you were strangled; correct?

13 A Correct.

14 Q Now, is it your testimony today that my client kicked
15 you several times while you were on the ground, or did not kick
16 you?

17 A He may have kicked me. I don't remember.

18 Q Okay. But -- but you don't remember. Okay. So do
19 you remember telling the hospital that you denied dizziness;
20 correct?

21 A That I denied dizziness?

22 Q Yeah. Do you remember telling the hospital you
23 weren't dizzy?

24 A No.

25 Q Does it refresh -- would it refresh your recollection

1 to see the report?

2 A Okay.

3 Q You -- you denied abdominal pain at the hospital, too;
4 correct?

5 A Correct.

6 Q Okay. And, in fact, in the statement that you gave
7 the hospital, you did not indicate anything regarding
8 strangulation; correct?

9 A Correct.

10 Q Okay. In fact, they did a --

11 THE COURT: Are you going to -- oh, I'm sorry. I
12 thought you were about to show something else. Go ahead,
13 counsel. I apologize.

14 BY MR. SHEETS:

15 Q They did a review of your neck and found that there
16 were no injuries; correct?

17 A Correct.

18 Q Okay. And they did a review of your chest, found no
19 injuries; correct?

20 A Correct.

21 Q Your abdomen, no injuries; correct?

22 A Correct.

23 Q Your back, no injuries; correct?

24 A Correct.

25 Q So the only injury that they found was swelling to the

1 side of -- the left side of your face and the eye; correct?

2 A I wouldn't have just called it swelling, but okay.

3 Q There were no broken bones; correct?

4 A Correct.

5 Q They didn't find any bumps on the top of your head;
6 correct?

7 A Correct.

8 Q There were no scratches or bruises on the top of your
9 head; correct?

10 A Correct.

11 Q No bleeding on the top of your head; correct?

12 A Correct.

13 Q Now, when you had also been encountered by an
14 ambulance, you -- was the company Medic West or AMR? Does that
15 sound right?

16 A I don't remember what the ambulance was.

17 Q Nonetheless, they didn't find any -- any injuries to
18 the top of your head; correct?

19 A Correct.

20 Q And the only thing that they found were light
21 scratches on your temporals --

22 A Okay.

23 Q -- and swelling of the eye; correct?

24 A Okay. Correct.

25 Q Now, turning your attention to --

1 THE COURT: Wait, wait. What exhibit is this?

2 MR. SHEETS: State's Exhibit -- admitted Exhibit 63.

3 THE COURT: Okay. It has been admitted?

4 MR. SHEETS: Yes, Your Honor.

5 THE COURT: Okay. 63. All right. And what page are
6 we so we have some sense here. Give me some --

7 MR. SHEETS: It would be the second -- the second
8 overall page of the document.

9 THE COURT: Okay. All right. Go ahead.

10 BY MR. SHEETS:

11 Q Taking a look at the findings in the head. They found
12 that you had slurred speech; correct?

13 A Correct.

14 Q Okay. And you had a hematoma in the left eye;
15 correct?

16 A Correct.

17 Q And the neck was atraumatic?

18 A What does that mean?

19 Q The neck, there were no injuries; correct?

20 A Correct.

21 Q Okay.

22 MS. SUDANO: Your Honor, at this point I'm going to
23 object to him asking her to testify about her medical diagnoses.
24 She can testify about the injuries, I think, but not --

25 THE COURT: Well, she can -- I mean, if she knows

1 whether they found no injury on her neck or not. If she's just
2 repeating what is in the report, then, yeah, we -- the report
3 will speak for itself.

4 BY MR. SHEETS:

5 Q So you're aware that the only injuries found were to
6 the left side of your face?

7 A Correct.

8 Q Okay. And that's -- now, do you remember being asked
9 if you wanted an icepack for your eye and denying that?

10 A Yes, I do.

11 Q Okay. So as we sit here today and we've heard all of
12 your testimony, it would be fair to say that my client did not
13 strangle you; correct?

14 A I don't recall that, no.

15 Q Do you recall -- you don't recall him putting hands
16 around your neck and squeezing to the point where you lost
17 consciousness; correct?

18 A I don't remember, no.

19 Q Okay. Would it be fair to say that the testimony
20 you've given today is the truth, the whole truth, and nothing
21 but the truth?

22 MS. SUDANO: I'm going to object as to asked and
23 answered at this point, Your Honor.

24 THE COURT: That has been asked and answered. I'll
25 sustain the objection.

1 BY MR. SHEETS:

2 Q Now, as we're coming to a conclusion here, you were
3 asked by the State if you wanted these charges dropped and you
4 wanted the case dismissed, and you didn't want to answer that.
5 Isn't it true that you want my client punished for what he did?

6 A No.

7 Q Do you believe that my client should be held
8 accountable for what he did?

9 A To some extent, yes.

10 Q And what he did was punch you in the face; correct?

11 A Correct.

12 Q And kick you correct?

13 A Correct.

14 Q And pour juice on you; correct?

15 A Correct.

16 Q And as terrible as that is, there -- that's the extent
17 of what he did; correct?

18 A I don't remember that. There is a lot I don't
19 remember what.

20 Q Okay.

21 MR. SHEETS: No further questions.

22 THE COURT: All right. Redirect.

23 MS. SUDANO: Thank you, Your Honor.

24 THE COURT: Would you like some water, ma'am?

25 THE WITNESS: No. Thank you.

REDIRECT EXAMINATION

BY MS. SUDANO:

Q All right. Ms. Dotson, I've just got a few more questions for you, okay. So we've talked a little bit about that car, that silver or gray Honda. I think it was your testimony earlier that you had never really seen the defendant drive any other car; is that right?

A Correct.

Q Had you seen anybody else drive that silver Honda?

A No.

Q So even though it was registered in somebody else's name, for intents and purposes, it's his car; is that right?

A Correct.

Q Okay.

MR. SHEETS: I'm going to object as to speculation, Your Honor.

THE COURT: I'll overrule.

BY MS. SUDANO:

Q All right. Now, we've talked a little bit about the defendant laying in the bed when you came into the apartment. Was he dressed, undressed, shoes, no shoes?

A Well, he didn't have on no shoes, but he had on clothes.

Q Okay. Was he under the covers?

A No.

1 Q Okay. He was just laying on top of the bed?

2 A Correct.

3 Q Do you recall what he was doing?

4 A He looked like he was relaxing.

5 Q But you don't recall if he was watching TV or anything
6 like that?

7 A No, I don't remember that, no.

8 Q Did he have a cell phone at that time?

9 A Yeah.

10 Q Was he playing on his cell phone?

11 A I don't remember. I just know he was laying down. I
12 don't --

13 Q Okay.

14 A -- know what he was doing.

15 Q Okay. But he was clothed, but no shoes?

16 A Correct.

17 Q Okay. And you testified at some point that he'd gone
18 back into the bedroom after you guys had gone into the living
19 room, and he had gotten something out of his pocket; is that
20 right?

21 A Correct.

22 Q Okay. Was that the pocket of his pants, what pocket?

23 A Some pants he had on the night stand next to the bed.

24 Q Okay. So were those different pants than he was
25 wearing?

1 A Well, yeah, because he had the pants on.

2 Q Okay. So was he wearing like shorts or was he
3 wearing --

4 A No, he had on pants.

5 Q Okay. All right. So you were asked some questions
6 right now about whether or not you told the detective that you
7 had lost consciousness when you were being strangled. Do you
8 recall those questions?

9 A Correct.

10 Q Okay. Now, do you recall actually telling the
11 detective in the interview or seeing anywhere in the interview
12 where you said you lost consciousness?

13 A No.

14 Q Okay. Now, isn't it true that you just told the
15 detective that you couldn't breathe and that you had fallen
16 down, but you never said you lost consciousness; is that right?

17 A I don't remember. I don't think I said that, no.

18 Q All right. I want to talk a little bit about the
19 preliminary hearing, that hearing where you were in custody. Do
20 you know why you were in custody for that hearing?

21 A I was told it was because I didn't willingly come to
22 the other court dates that I was subpoenaed to.

23 Q Okay. So you had been subpoenaed previously, and you
24 had not come; is that correct?

25 A Correct.

1 Q Okay. So you were given the opportunity to come out
2 of custody?

3 A Come out of custody?

4 Q I'm sorry. Bad questions. You were given the
5 opportunity to come to the preliminary hearing out of custody;
6 is that correct?

7 A Correct.

8 Q Okay. And you didn't take advantage of that
9 opportunity?

10 A Well, I had been texting the detective on numerous
11 occasions how afraid I was to come to court and how I wanted it
12 a certain way in order for me to testify.

13 Q Okay.

14 A He was saying you cannot meet those standards, so I
15 did not go to court.

16 Q Okay. And then that's what caused you to be arrested;
17 is that correct?

18 A Correct.

19 Q Now, there was some conversation about somebody with a
20 badge that told you you'd stay in custody for 30 days; is that
21 right?

22 A Correct.

23 Q Okay. But you said you don't know who that person
24 was?

25 A No.

1 Q Was it anybody that was in any way affiliated with
2 this case?

3 A No.

4 Q So did anybody from the State, meaning Ms. Craggs,
5 myself, our investigator Jerome, did any of those people tell
6 you that thing?

7 A No, Jerome made a comment, but that wasn't it.

8 Q Okay. Did -- when you got to court that day, did you
9 have a conversation with Ms. Craggs?

10 A Yes.

11 Q Okay. Did Ms. Craggs tell you that your only job was
12 to tell the truth?

13 A Correct.

14 Q Okay. And did the Judge also have a conversation with
15 you, either before your testimony or during your testimony?

16 A I believe he said -- she -- she said something to me,
17 yeah.

18 Q Okay. Was it something to that same effect, that your
19 only job was to tell the truth?

20 A Yeah. And she said if I don't remember something to
21 just say I don't remember.

22 Q Okay. Now, we talked about some phone calls that you
23 had back and forth with the defendant after you testified before
24 in this case. Were you also writing letters or communicating in
25 person back and forth?

1 A No.

2 Q Okay. So the only conversation that you had was over
3 the phone?

4 A Correct.

5 Q Okay. So you never wrote him letters?

6 A In the very beginning.

7 Q Okay. Did he ever write you letters?

8 A In the very beginning.

9 Q Did any of those letters talk about the case?

10 A No, ma'am.

11 Q He never once mentioned the case in those letters?

12 A Not that I can remember, no.

13 Q Did he mention the case in those letters?

14 A I don't remember. No.

15 Q All right. Now, let's talk a little bit about the
16 fact that you had previously said the defendant had permission
17 to be at your apartment that evening. Do you recall that
18 testimony?

19 A Correct.

20 Q Okay. Do you recall testifying earlier, when I was
21 asking you questions, that you had told him not to be there that
22 evening?

23 A Yeah, over the phone I may have said that, yeah.

24 Q Okay. And you told him, you know, basically don't
25 stay at my place, I don't want to see you right now?

1 A Right. But I knew he had a key, so I wasn't -- I just
2 wasn't expecting him to be there. And, yes I did say out of
3 anger don't come here or whatever, but he was still -- he could
4 go there. He had a key.

5 Q Okay. Now, you were asked some questions about
6 whether or not you felt pressure to testify a certain way at the
7 preliminary hearing. Do you recall that?

8 A Correct.

9 Q Okay. Now, you indicated that you did feel some
10 pressure because of those -- whoever that other person with the
11 badge was; is that right?

12 A Yeah, and other things the inmates were telling me.
13 Just my first experience being in jail, yeah.

14 Q Okay. But isn't it true that you said a number of
15 things at the preliminary hearing that are basically the same
16 that you've testified here to today?

17 A Correct. Correct.

18 Q So, you know, that you were unsure about the gun?

19 A Correct.

20 Q Okay. And that the defendant was staying at your
21 apartment or living at your apartment?

22 A Correct.

23 Q Okay. And that you're not sure whether he hit you
24 with the gun?

25 A Correct.

1 Q And that he never hit you in the -- or never put the
2 gun in your mouth?

3 A Correct.

4 Q Okay. So even though you felt pressured, you
5 obviously said all of those things at the preliminary hearing;
6 is that correct?

7 A I believe so, yes.

8 Q Okay. Now, you also testified that you didn't feel as
9 though the police were pressuring you to say or do anything that
10 evening; is that correct?

11 A Correct.

12 Q Okay. Did you feel like the police wanted you to
13 exaggerate at all?

14 A No.

15 Q Now, you -- we went over this, but you talked to the
16 police before you wrote your statement; is that correct?

17 A Correct.

18 Q Okay. And so they had already gotten the story from
19 you before you wrote it down?

20 A Correct.

21 Q Now, you had made a couple of comments about something
22 that happened when you were in the living room. You said that
23 you do recall during that argument the defendant standing in
24 front of the door; is that right?

25 A In front of the -- are you talking about the bathroom

1 door?

2 Q That, I guess, is my question. You recall him
3 standing in front of some door?

4 A Yeah, he only stood in front of the bathroom when he
5 was saying whatever he had to say.

6 Q Okay.

7 A He never -- I don't even remember being at the front
8 door, so I don't know why he would be. I mean, the only time he
9 was at the front door is when he was leaving.

10 Q Okay. Now -- so when you testified that he was
11 standing in front of the door during the argument, that was in
12 the bathroom; is that correct?

13 A Correct.

14 Q Okay. I thought you testified before that the
15 argument kind of stopped in the bathroom and you were just
16 crying?

17 A No, I was sitting down on the floor just crying, but
18 that doesn't mean he wasn't still saying whatever he was saying.
19 We weren't argument, but he was saying whatever he was saying,
20 and I was sitting down on the floor crying.

21 Q Okay. So the argument had stopped by the time you
22 ended up in the bathroom; is that right?

23 A If you mean us going back and forth, yes.

24 Q Now, you talked a little bit about you went into the
25 bathroom because you felt safe in there; is that correct?

1 A Correct.

2 Q Okay. Did you ever try to -- well, I guess let me ask
3 this first. Safe from what?

4 A Just from us fighting, from -- from hitting, being hit
5 again, I guess.

6 Q Did you ever try to close or lock the bathroom door?

7 A No.

8 Q Why not?

9 A I guess I just felt really secure just sitting there
10 in the corner in the bathroom. I didn't attempt to do anything.
11 I didn't attempt to get up. I didn't attempt to close the door.
12 I just had my hands over my face, scared.

13 Q Okay. And you felt secure even when he came back in
14 and continued to strike you?

15 A Well, of course, I was -- and that make me scared,
16 but, yeah, I felt like I just wanted to stay right there. I'm
17 not -- wait until he leave.

18 Q Now, you were also asked some questions about the
19 injuries to your eye. Do you recall that?

20 A Correct.

21 Q Okay. And you said right now no lasting long-term
22 effects; is that correct?

23 A Not right now, no.

24 Q Okay. Do you still have to go back to the doctor?

25 A Correct.

1 Q Why do you have to go back to the doctor?

2 A He said that we need to check every six --

3 MR. SHEETS: Objection, Your Honor. Speculation -- or
4 hearsay.

5 THE COURT: No, I don't think -- I mean, it just
6 indicates the doctor has made the statement. It doesn't go into
7 any -- I mean, if you're just saying that the doctor has said
8 that she has to come back every six months --

9 THE WITNESS: Yeah, that all.

10 THE COURT: -- I'll overrule for her to testify as to
11 that.

12 THE WITNESS: That's all I'm saying.

13 BY MS. SUDANO:

14 Q Okay. So you do, as you're sitting here eight months
15 after, still have to keep going back to the doctor for follow
16 up?

17 A Correct.

18 Q Okay. And is it possible that you might develop some
19 -- some long-term effects?

20 MR. SHEETS: Objection, Your Honor. Foundation.

21 THE COURT: I'll sustain that.

22 BY MS. SUDANO:

23 Q Okay. You have to go back because it's possible there
24 could be effects; is that correct?

25 MR. SHEETS: Objection, Your Honor.

1 THE COURT: I'll sustain that.

2 BY MS. SUDANO:

3 Q Okay. Now, ma'am, finally I want to ask you a little
4 bit about your daughter. You said she wasn't staying there that
5 night; is that right?

6 A That's correct.

7 Q Was it typical for her not to stay there?

8 A Correct.

9 Q And you indicated that that was because of your work
10 schedule and her school schedule; is that right?

11 A Correct.

12 Q Okay. Did she also indicate that she didn't want to
13 stay in the apartment if the defendant was there?

14 A She had her -- you know, her feelings.

15 Q Okay. And was that one of her feelings?

16 A I don't know if she felt like that --

17 MR. SHEETS: I'm going to object, Your Honor.
18 Relevance.

19 THE COURT: I'll sustain.

20 MS. SUDANO: Nothing further. Thank you, Your Honor.

21 THE COURT: Okay. About how much time do you think
22 you're going to need, Mr. Sheets?

23 MR. SHEETS: Probably five minutes.

24 THE COURT: Can everybody hang out for five more
25 minutes?

1 THE WITNESS: Please, no.

2 THE COURT: All right. Let's do what you need to do,
3 Mr. Sheets.

4 RECROSS-EXAMINATION

5 BY MR. SHEETS:

6 Q You testified that my client was inside the apartment
7 sitting on the bed relaxing; correct?

8 A Correct.

9 Q And, again, you didn't have any couch; correct?

10 A Not yet, no.

11 Q Okay. When you saw him relaxing, was he welcome to
12 stay there?

13 A Of course.

14 Q Okay. You had not tried to evict him or anything;
15 correct?

16 A No.

17 Q Okay. Now, the State asked you about -- about the
18 fact that you were in here in custody. They said you had an
19 opportunity to get out of custody by testifying; correct?

20 MS. SUDANO: Objection. Misstates the testimony and
21 the question.

22 THE COURT: I think it does misstate the question, but
23 I'll allow you to go ahead and ask it.

24 BY MR. SHEETS:

25 Q Did you feel like by testifying you would be given an

1 opportunity to get out of custody?

2 A Of course.

3 THE COURT: I need you to speak up just a little bit,
4 ma'am.

5 THE WITNESS: Of course.

6 BY MR. SHEETS:

7 Q And at the time you testified, you testified earlier
8 that at the time you felt like you had to testify a certain way
9 because somebody with a badge had let you to believe you had to
10 testify a certain way; correct?

11 A Correct.

12 Q And -- and the State followed up and asked you if they
13 were affiliated with this case, but you actually don't know if
14 they were affiliated with this case; correct?

15 A Right.

16 Q They were talk to you specifically about this case;
17 isn't that correct?

18 A No, it was kind of like I was asking questions from
19 this person.

20 Q Okay. So it was presumably somebody at the detention
21 center?

22 A Correct.

23 Q Okay. And was this somebody a detention officer or
24 corrections officer?

25 A Correct.

1 Q And it was a Metropolitan Police officer?

2 A Correct.

3 Q Okay. And did this officer know why you were in
4 custody?

5 A Correct.

6 MS. SUDANO: Objection. Speculation.

7 THE COURT: Sustained.

8 BY MR. SHEETS:

9 Q Do you have personal knowledge of whether the officer
10 knew why you were in custody?

11 A Well, it was in my pod, so I'm sure he knew.

12 THE COURT: All right. I'll -- I'll sustain the
13 objection and order the jury to disregard the last answer.

14 BY MR. SHEETS:

15 Q Did you tell the officer why you were in custody?

16 A No.

17 Q Did the officer personally indicate to you that he
18 knew why you were in custody?

19 MS. SUDANO: Objection. Hearsay.

20 THE WITNESS: No.

21 THE COURT: No, that wouldn't be for the truth of the
22 matter asserted. I'll -- I'll overrule.

23 BY MR. SHEETS:

24 Q Okay. All right. Now, you're here to tell the truth;
25 correct?

1 A Correct.

2 Q And in all of these conversations with my client over
3 the phone, that's what he's told you to do; correct?

4 A He's encouraged me, yeah, to be honest.

5 Q Okay. And to be present?

6 A Correct.

7 MR. SHEETS: No further questions.

8 THE COURT: All right. Short redirect if necessary?

9 MS. SUDANO: No. Thank you, Your Honor.

10 THE COURT: Does any member of the jury have a
11 question for this witness? Anybody? Okay. I see one hand.
12 Anybody else? Write it on a clean sheet of paper and put your
13 jury number on it.

14 Can I see counsel at sidebar.

15 All right. Anybody else?

16 THE MARSHAL: Yeah, I got one more.

17 THE COURT: Okay.

18 (Bench conference)

19 THE COURT: All right. Juror No. 8, what was the fear
20 of testifying? Any objection from State? I'm assuming
21 preliminary hearing.

22 MS. CRAGGS: Yeah. I guess my only issue is I'm not
23 really sure what they're asking.

24 MR. SHEETS: I'm concerned that it could open up the
25 door for bad acts.

1 THE COURT: All right. I won't ask that question.

2 Who did you have fear of? Any objection, State?

3 MS. SUDANO: I mean, it's kind of the same.

4 MS. CRAGGS: I mean, our notes show that she has fear
5 of both him and his family because she was concerned that she
6 would --

7 THE COURT: All right.

8 MS. CRAGGS: -- [inaudible].

9 MR. SHEETS: [Inaudible] as to --

10 THE COURT: All right. I won't ask that question.

11 You felt safe in the bathroom, why not safe leaving if you
12 stated he didn't try to stop you from leaving? That's --

13 MR. SHEETS: I think that's a fair question.

14 THE COURT: Okay. All right.

15 MS. SUDANO: No objection.

16 THE COURT: Okay. No objection to Question No. 3 of
17 Juror No. 8. And then Juror No. 2, somewhat in a relationship,
18 who still wants to be in a relationship. I think that's fair if
19 she -- if she indicated. I mean, is it -- is it mutual or is
20 one over the other?

21 MS. CRAGGS: No objection.

22 MR. SHEETS: I may follow up on that, but no
23 objection.

24 THE COURT: All right. And then on 8/22/17, was that
25 the only time, first time, the defendant hurt during the six or

1 seven years?

2 MS. CRAGGS: No.

3 MR. SHEETS: No.

4 THE COURT: Okay. I was going to say, I don't think
5 so.

6 MR. SHEETS: Objection for the record.

7 THE COURT: Okay. All right. Okay. So all right. I
8 think we have just two, then. All right.

9 MS. CRAGGS: Thank you.

10 MR. SHEETS: Okay.

11 MS. SUDANO: Thanks.

12 (End of bench conference)

13 THE COURT: Okay. Ma'am, just a couple more
14 questions. You testified that you felt safe in the bathroom,
15 but why didn't you feel safer leaving if you stated -- since you
16 stated the defendant didn't try to stop you from leaving?

17 THE WITNESS: Because I knew that he was going to
18 leave.

19 THE COURT: Okay. And you indicated you were in
20 somewhat of a relationship with the defendant. Who wants to
21 still be in the relationship, you, him, or both of you?

22 THE WITNESS: I would like to believe both of us.

23 THE COURT: Okay. Does that generate anything further
24 from the State?

25 MS. SUDANO: No. Thank you, Your Honor.

1 THE COURT: That generate anything further from the
2 defense?

3 MR. SHEETS: Just briefly.

4 FURTHER RECROSS-EXAMINATION

5 BY MR. SHEETS:

6 Q You had said that you were afraid he was going to
7 leave. Were you afraid -- were you afraid that he was going to
8 pull you back into the apartment?

9 A Will you say that again?

10 Q You weren't afraid that my client was going to pull
11 you back in the apartment, though, were you?

12 A No.

13 MR. SHEETS: Okay. No further questions.

14 THE COURT: Does that generate anything further from
15 the State?

16 MS. SUDANO: No. Thank you, Your Honor.

17 THE COURT: All right. Thank you very much, ma'am,
18 for your testimony. You are excused.

19 THE WITNESS: Thank you.

20 THE COURT: All right. And, ladies and gentlemen, I
21 appreciate your patience for the extra ten minutes and your
22 bladders for the last two hours. We're going to break for the
23 night. We'll get back together tomorrow morning at 9:00. If
24 you could be here at 8:50, and we will make every effort to get
25 started at 9:00 and get in a full day of testimony tomorrow.

1 Let me remind you until the case is submitted to you,
2 do not talk to each other about it or about anyone who has
3 anything to do with it until the end of the case when you go to
4 the jury room to decide on your verdict. Do not talk with
5 anyone else about the case or about anyone who has anything to
6 do with it until the trial has ended and you have been
7 discharged as jurors.

8 Anyone else includes members of your family, your
9 employer, and your friends. You may tell them that you are a
10 juror in a criminal case, but don't tell them anything else
11 about it until after you've been discharged by me.

12 Do not let anyone talk to you about the case or about
13 anyone that has anything to do with it. If someone should try
14 to talk to you, please report it to me immediately by contacting
15 the marshal. Do not read any news stories or articles or listen
16 to any radio or television reports about the case or about
17 anyone that has anything to do with it.

18 Do not visit the scene of any events mentioned during
19 the trial or undertake any investigation, experimentation, or
20 research on your own. This would include use of social media to
21 in any way discuss the case and the use of the Internet or other
22 reference materials to do any investigation or research. And do
23 not begin to form or express any opinion on any subject
24 connected with this case until it's finally submitted to you.

25 I appreciate everybody's attention and patience with

1 us today. I think we got in a pretty good day. We'll get in a
2 good day tomorrow. Have a good evening.

3 (Jury recessed at 5:13 p.m.)

4 THE COURT: Okay. Will the State be ready to go at
5 9:00 tomorrow?

6 MS. SUDANO: Yes, Your Honor.

7 THE COURT: All right. You anticipate anything we're
8 going to need to cover before then?

9 MS. SUDANO: I do have one thing. We can either do in
10 the in morning or we can do it now.

11 THE COURT: All right. Well, let's hear it now
12 because I want to get going as soon as 9:00 hits.

13 MS. SUDANO: So there are -- I guess that was a lie.
14 There are a couple of things. The first one is the photos of
15 the car. Obviously, we can still authenticate those through the
16 detectives. However, Mr. Sheets has now made a point of there
17 was no gun in the apartment and he stated in his opening that
18 there was no gun found.

19 So I think the fact that the detectives took the step
20 to do a search warrant and located not a firearm, but magazines
21 and ammunition in the vehicle that was used by the defendant and
22 that was located near him at the time of his arrest has become
23 particularly relevant.

24 It's not prejudicial. They don't know at this point
25 anything at all about his history because we've bifurcated the

1 ex-felon in possession. So all the jury will hear is that they
2 were conducting a search warrant on that vehicle looking for a
3 firearm based on her statements to them that a firearm had been
4 used in the underlying offenses.

5 THE COURT: All right. Any response from the defense?

6 MR. SHEETS: Yes, I have -- I have a very material
7 issue with them admitting the photographs. The photographs were
8 taken of a vehicle that was impounded seven days after the
9 alleged incident in a vehicle -- and the photo that was Exhibit
10 No. -- I want to presume it was the last of the photos.

11 MS. SUDANO: It was 62.

12 MR. SHEETS: Exhibit No. 62 has a letter addressed to
13 the defendant which they find in the car. But if you look and
14 just peek just below it in a -- they didn't take a clear enough
15 photo, there's also an insurance card for another individual
16 inside that vehicle. So there are indicators that multiple
17 people have an interest in that vehicle or an ownership interest
18 in that vehicle. The vehicle is actually registered to a Shelia
19 Towns.

20 And it's taken a week later, my client is not in it,
21 it's in his vicinity, but he's not in the car, he's not holding
22 the door, he's not touching the door, so they arrest him. So in
23 my opinion it is way more prejudicial than it is probative
24 because you have a vehicle that -- that has indications there
25 inside that it is occupied by multiple persons.

1 And for the purposes of a criminal case, if you were
2 going to charge with possession, if this were possession of
3 ammunition, Gillespie versus Sheriff would govern. He has to
4 have immediate and exclusive access and the ability to exercise
5 dominion and control in order to be held in constructive
6 possession.

7 In this case there's no actual possession because he's
8 not actually in the vehicle. This is a -- this would be a
9 constructive possession issue and there wouldn't be enough
10 because there's enough evidence inside the vehicle that it's
11 occupied by multiple people. And Gillespie was very, very clear
12 in that circumstance, even when there was one individual within
13 the bathroom at the corrections facility, and they held there
14 wasn't even probable cause in that circumstance. It is a Nevada
15 Supreme Court ruling.

16 So in this particular circumstance, I think you have a
17 vehicle that is a week separated from event, so you don't know
18 even if -- let's presume it was his ammunition. You don't know
19 if he put it there after the fact. You don't know if he put it
20 in there post event. So its probative value is incredibly
21 limited in that its substantially after the fact. He's not in
22 the vehicle.

23 There's indicators that there are at least two people
24 that possibly have it. There's an indication that somebody else
25 owns the vehicle. And whether or not he was driving that night

1 when we have seven days pass, I mean, there's just -- it's a
2 whole lot of assumption built in there. There's not a lot of
3 weight. There's not a lot of probative value. And the
4 prejudice of having that saying, oh, these bullets were found in
5 a gun that is his car because there's a letter inside this car
6 is problematic.

7 THE COURT: What is this letter?

8 MR. SHEETS: The letter has his name on it. There's a
9 letter which his name on which, of course, they take for
10 identification purposes, you know, or occupation purposes. Like
11 when they -- whey they raid a home they want to find a bill, a
12 home bill with somebody's name on it.

13 THE COURT: Yeah. All right.

14 MR. SHEETS: Same thing, but there are two --

15 THE COURT: Indicia of ownership and control.

16 MR. SHEETS: There are at least two different
17 documents that have two different names on there, and the
18 photographs don't give enough specific depiction of, wait,
19 what's in the plastic bag. They don't have photographs of a --
20 you know, anything else, really, that shows -- and there's a
21 photograph inside the -- it looks like a -- like they don't have
22 the glovebox, but you see there's documents in the center
23 console.

24 I mean, they only take a photo of the one item that
25 has his name on it, but in that same photo there's another item

1 that happens to have somebody else's name on it, and the car is
2 registered to somebody else. So she sees him driving it. She
3 didn't see him drive it here. She doesn't know because she's --
4 she's already testified he's gone for several night at a time.

5 Maybe the reason he doesn't come by is because he's
6 cheating on her with another girl, and, quite frankly that, car
7 is being driven by that other person. You just don't know, and
8 there's just way too much assumption there and way too much
9 prejudice there, I think, to admit those photographs.

10 THE COURT: All right. Quick response by the State?

11 MS. SUDANO: And, Your Honor, I think that those are
12 all great arguments to make to the jury, but they go to the
13 weight of the evidence, not to its admissibility. I don't think
14 that there is any prejudicial value. It's not substantially
15 more prejudicial than it is probative, certainly. So, again,
16 the State's --

17 THE COURT: Okay. Well, the testimony of the witness
18 so far is that this car is essentially the exclusive car of the
19 defendant. He was there that night. It shows him leaving.
20 There is a letter addressed to him in there. The fact that the
21 -- it's in somebody else's name, we've got an insurance policy
22 there.

23 In the passage of time, while it packs, you know, in
24 terms of its probative value, I don't think it eliminates the
25 probative value. And then under the rules, it's the unfair

1 prejudice has to substantially outweigh the probative value of
2 the evidence. I don't think it reaches there. I'll ponder it
3 overnight, but my inclination at this point is to allow the
4 admission of the photographs.

5 MR. SHEETS: Yes, Your Honor. And I will put together
6 some research on the issue overnight, as well.

7 THE COURT: That's great. If you can, send it to my
8 -- my law clerk tonight so that he can either look at it tonight
9 or tomorrow morning.

10 MR. SHEETS: Yes, Your Honor. And I will cc the
11 State, as well.

12 THE COURT: Okay. Good. The second thing?

13 MS. SUDANO: Yes, Your Honor. So Mr. Sheets also made
14 a point in argument -- or in opening about the fact that nobody
15 tried to take a statement from the defendant or anything along
16 those lines at the time of his arrest. At the time of his
17 arrest, the CAT team was looking for him, and they did locate, I
18 believe, at his work. And he became confrontational with them
19 at the time of his arrest, and he kicked a sergeant, I believe,
20 while they were trying to take him into custody.

21 So to make those arguments of, oh, well, they didn't
22 even try to get a statement from him, I think, is somewhat
23 disingenuous given the circumstances of his arrest and his
24 uncooperativeness with the detectives at that time. So I think
25 that the door has been opened to some of that.

1 MR. SHEETS: My response is he was in warrant by that
2 time. They had already found probable cause and decided who it
3 was. You heard the testimony of the officer, when he saw that
4 car driving away, that was the suspect vehicle because he had
5 already decided that person had committed a crime.

6 THE COURT: I don't know if the warrant, the fact that
7 it's gone to warrant, I mean, I guess, you know, if he kicked
8 the officer out of -- disliked, you know, because he was upset,
9 I mean, if you're -- are you suggesting he kicked the officer in
10 an attempt to escape?

11 MS. SUDANO: I don't know that it was an attempt to
12 escape so much as an attempt to resist.

13 THE COURT: Well, I'm not inclined at this point in
14 time to -- to allow that testimony in. I mean, depending on
15 what the defense does and what the defendant -- you know, I'm
16 going to tell you if you, you know, sort of go down that -- you
17 know, this is opening. Opening is not evidence. I know you can
18 open up things in opening, but opening isn't evidence. I will
19 warn you that --

20 MR. SHEETS: Right.

21 THE COURT: -- you may open this up if you keep
22 pounding at that issue, but I'm not going to at this point, in
23 view the defendant's constitutional right against
24 self-incrimination to go down that route at this point in time.
25 So I will deny the questioning as to the detective on -- on that

1 issue.

2 MR. SHEETS: Thank you, Your Honor.

3 MS. SUDANO: Thank you, Your Honor. One more thing
4 here.

5 THE COURT: Okay.

6 MS. SUDANO: So there was a whole line of questioning
7 with Ms. Dotson about the fact that the officers were supposedly
8 telling her certain things to put into her statement. If you
9 actually watch the body cam of this case and everything that's
10 going on in this case, the officers are asking whether or not
11 there have been prior instances of domestic violence.

12 And the fact that there have been, she hasn't
13 reported, or when the police have been involved she hasn't
14 followed up and has not come to court. And so that's why the
15 officer was emphasizing that -- that those things needed to be
16 included or described in the statement is because of the history
17 of domestic violence. And there's a point in there where he's
18 kind of saying, you know, you need to promise me that this time
19 you're going to come to court.

20 So I think that that line of questioning, as well as
21 the general attack on her credibility and the argument that
22 she's making this all up because he's cheating on her or is mad
23 at her in some way -- or she's mad at him for the cheating in
24 some way is her motive to say these things to the officers or
25 that it's being prompted by the officers.

1 I think both of those lines of questioning open the
2 door to other relevant instances of domestic violence under
3 48.061, which indicates that, you know, prior instances of
4 domestic violence are relevant for any purpose once the
5 credibility of the victim has been attacked in that way or she's
6 -- they've come up with some reason to claim she's fabricating
7 these particular allegations.

8 MR. SHEETS: My response, if I could.

9 THE COURT: Yeah.

10 MR. SHEETS: First of all, they're the ones who opened
11 -- who started that line of questioning. They're the ones who
12 brought up the cheating issue. They're the one who impeached
13 their own witness. They're the one who talked about
14 inconsistent statements. They had her address the cheating.
15 They're the ones who specifically said, and you're not doing
16 this, your primary purpose for this was this, and it didn't have
17 anything to do with this. They're the ones who entered that
18 into play. They did that.

19 To -- to come up with some concoction that the
20 officers telling her what to emphasize in this case is directly
21 related to a prior criminal history is just kind of -- first of
22 all, it's presumptuous, and it's irrelevant to what happened
23 here. If they knew that that was going to be something that was
24 possibly going to be addressed, they needed to have -- to ask
25 for a Petrocelli hearing.

1 THE COURT: Well, I take it you're going to be asking
2 the detective did you tell her that this is the frosting on the
3 cake?

4 MR. SHEETS: Well, they want to introduce the body
5 cams, and they -- I haven't reviewed the redacted body cams
6 because they just presented those to me before we started today.
7 And I don't know what they've redacted, but certainly any
8 discussion of any prior criminal history. The officer refers to
9 him as a criminal right at the beginning of this whole thing.
10 He actually looks at her and says -- she goes, he's a criminal,
11 and he goes, oh, yeah, we are, we're going to get him. That's
12 what he says right at the beginning.

13 THE COURT: Okay.

14 MR. SHEETS: Yeah. So I don't think any of that is
15 relevant to whether or not he committed this crime, and I don't
16 really feel like I've even made the implication that she's got
17 some kind of -- that she created some vengeful statement because
18 of some cheating thing.

19 THE COURT: Well, no, I mean, the cheating, I don't
20 think that's what they're saying. I think they're saying that
21 you're suggesting that she wrote this down because she was being
22 prompted by the officer to write this down.

23 MR. SHEETS: What I -- what I asked was whether the
24 officer told her to write these things down. She denied that.
25 It's over.

1 THE COURT: All right.

2 MR. SHEETS: But, I mean, the fact of the matter is
3 that the body --

4 THE COURT: So you're not going to be asking the
5 officer if he said to her this is the icing on the cake?

6 MR. SHEETS: The only reason I would be doing it would
7 be for the purposes of a prior inconsistent statement.

8 THE COURT: Okay.

9 MR. SHEETS: Because she's --

10 THE COURT: Well, I mean --

11 MR. SHEETS: -- denied it occurred.

12 THE COURT: -- you could do that, but a prior
13 inconsistent statement comes in as non-hearsay under the Nevada
14 Rules of --

15 MR. SHEETS: Correct.

16 THE COURT: -- of, you know, and so --

17 MR. SHEETS: And there's nothing in --

18 THE COURT: -- I think the -- I think they can ask the
19 officer why did you make that statement?

20 MR. SHEETS: Because -- and -- and she's going to be
21 -- he's going to be allowed to say because there was some prior
22 criminal history?

23 THE COURT: Well, I mean, if that's the reason why --
24 you know, I'd have to look at the context, if he's trying to
25 create something that -- you know, out of what -- what isn't

1 clear. But I mean --

2 MR. SHEETS: It's not clear at all on the body cam.

3 THE COURT: -- if he's saying that I said, you know,
4 this is -- you know, this -- you know, if it relates to his, you
5 know, understanding of her prior history and you want to ask him
6 that, he has a right to explain, you know. Because you're
7 trying to make it sound like he's saying that to force her in
8 this instance. If he's saying I'm saying that for some other
9 reason, he's going to be given the chance to explain what that
10 other reason is.

11 MR. SHEETS: I think you probably should see the body
12 cam. There is --

13 THE COURT: Well, I assume there's a transcript.

14 MR. SHEETS: No. No. It's -- there is no transcript.
15 It was done on the body cam out there in the field.

16 THE COURT: Well, you can transcribe a body cam, so
17 don't --

18 MR. SHEETS: That would -- I don't know if it's --

19 THE COURT: -- you know, so don't sit here and act
20 amazed at that. But, I mean --

21 MR. SHEETS: I'm kind of shocked, yeah. It didn't
22 happen here.

23 THE COURT: -- when are you going to be calling the
24 person who -- the detective for the written statement?

25 MS. SUDANO: So the detective for the written

1 statement will be later. The officer that this statement was
2 made to was the other first responding patrol officer.

3 MR. SHEETS: These were verbal statements.

4 THE COURT: Okay. And he said that -- he's the one
5 who said this is the icing on the cake?

6 MR. SHEETS: Yeah. He handed it to her and he said
7 what I need to do is I need you to give me a statement, this is
8 the best thing you can do for me.

9 THE COURT: All right.

10 MR. SHEETS: And then he goes through and then he says
11 I need you to emphasize how you felt when he, you know, when he
12 put the gun in your mouth, I need you to -- I need you to -- to
13 say how you felt, you were in fear for your life, I need you to
14 emphasize that he wasn't letting you leave. He says it just
15 that way as he hands her the voluntary statement.

16 THE COURT: I mean, those I don't think necessarily
17 lead into prior --

18 MR. SHEETS: Right.

19 THE COURT: -- prior history.

20 MR. SHEETS: I think if you watch it, it's very clear,
21 it's one direct line of communication.

22 THE COURT: I mean, I guess which of the statements
23 are you -- that you're going to ask him about do you think ties
24 in to his line of logic in terms of the prior -- the prior
25 domestic violence history?

1 MS. SUDANO: So --

2 MR. SHEETS: And, see, I think she's denied any
3 pressure. Oh, I'm sorry. That was for her.

4 THE COURT: That was -- yes, it was for her.

5 MS. SUDANO: Your Honor, what happens is he gets her
6 the voluntary statement, and then before he really explains what
7 the voluntary statement is, they start talking about, you know,
8 prior instances of domestic violence and the fact that she's
9 called police before, she's been strangled before, but she's
10 never actually followed through with the prosecution of the
11 case.

12 And, you know, the officer sort of hands her a blue
13 card, the domestic violence cards, and says, you know, this time
14 I really want you to -- to get a TPO or something along those
15 lines, or I highly encourage you to do that this time. And so
16 the whole conversation leading up to the voluntary statement is
17 the fact that there are these prior instances of domestic
18 violence that she hasn't followed through on.

19 And so he's really emphasizing to her, you know, this
20 time it needs to be different, I need you to promise me this
21 time that you're going to come to court, and things along those
22 lines. And that's really the context that he's saying those
23 things in.

24 MR. SHEETS: I don't really believe that to be
25 accurate. He gets in the car and there's a long pause, and then

1 he comes out and sets out the voluntary statement and doesn't
2 say I need you to give me a voluntary statement this time. He
3 doesn't say that. He's like this is the only way we're going to
4 get him this time, none of that is when he's handing the
5 voluntary statement.

6 THE COURT: I'm not sure that I see that close a tie
7 into the prior criminal history that this opens it up. Maybe --
8 I mean, it's hard for me at this point to -- to make an
9 assessment, you know. Treat -- tread with the understanding
10 that you may open up -- open up a door. At this point in time,
11 my tendency is I don't see it opening up the door, but I haven't
12 seen or heard what questions you're going to ask and what --

13 MR. SHEETS: I can put them out there right now.

14 THE COURT: Huh?

15 MR. SHEETS: I can tell you exactly what I plan to
16 ask, and the State knows exactly what I'm going to ask. I'm
17 just going to ask him if he made those statements. I'm not
18 going to ask him what the --

19 THE COURT: Which statements? Let's -- let's be
20 clear, then, on the record. What statements are you going to
21 ask him that he made?

22 MR. SHEETS: I'm going to ask him if --

23 THE COURT: This is the one who made -- who made --
24 took the written statement?

25 MR. SHEETS: Correct.

1 MS. SUDANO: Yes.

2 MR. SHEETS: Out there in the field.

3 THE COURT: All right.

4 MR. SHEETS: I just plan to simply ask him when you
5 handed her her voluntary statement, did you tell her that she
6 needed to specifically indicate how she felt, and that he put
7 the gun in her mouth, and I'm going to actually take his direct
8 quote and I'm going to just read them, did you specifically make
9 this statement.

10 Did you tell her that she needed to emphasize that she
11 was in fear for her life, did you tell her that she needed to
12 emphasize that he wasn't letter her leave, you leave, did you
13 tell her that she needed to say that he punched her in the face,
14 did you tell her that if she said that it was icing on the cake,
15 and did you tell her that by saying this it's the money maker.
16 That was the --

17 THE COURT: The icing on the -- I mean, the other ones
18 I don't see generating any -- any real need to -- to go into
19 prior criminal history. I guess, what was the context of the
20 icing on the case, and what was the other one?

21 MR. SHEETS: He's literally -- he's just one --

22 THE COURT: Icing on the cake and the money maker.

23 MR. SHEETS: By you saying this, it's the money maker.
24 He was just saying it in --

25 THE COURT: What was the context? Let me ask the

1 State their perspective as to the context to those two
2 statements by the officer.

3 MS. SUDANO: And those are made right after the first
4 two statements, or the first three, or however many it was, that
5 Mr. Sheets was saying, you know, I need you to emphasize, you
6 know, the fear that you felt and the fact that he wouldn't let
7 you leave. It's right after those two things.

8 But the reason that he's saying that, and the State's
9 understanding of the context of it's the icing on the cake or
10 it's the money maker is, you know, hopefully this time we can
11 arrest him on charges and, you know, keep him in custody and
12 you're going to follow through. It's the State's understanding
13 that that is the context.

14 MR. SHEETS: And there's nothing in that area that --
15 that are even --

16 THE COURT: Do we have the --

17 MR. SHEETS: Yes.

18 THE COURT: -- the recording?

19 MS. SUDANO: No. That --

20 MR. SHEETS: I do.

21 MS. SUDANO: -- is currently --

22 MR. SHEETS: I can play it, pull it up if we can get
23 it by web.

24 MS. SUDANO: So, okay, yes. The conversation that he
25 is having with her before he shows her the voluntary statement

1 about the prior charges and all of that is currently redacted
2 out of the proposed exhibit.

3 THE COURT: Okay.

4 MR. SHEETS: If I recall, he was in the car and then
5 got out and handed her the statement; right?

6 MS. SUDANO: Yeah. There's a whole conversation
7 before he explains to her what the statement is.

8 MR. SHEETS: Unfortunately, I -- court's indulgence.
9 Let me try and connect to the Internet here. Hey, it's working
10 now. And just for the record, the reason I have to use the
11 Internet is we aren't given hard copies of these. We're given
12 links to access them on the defense side. I had to change my
13 password last night. I think that was part of the problem.
14 It's Bianco's ten-minute video; right?

15 MS. SUDANO: Yeah.

16 MR. SHEETS: I'll try and fast-forward to it. There's
17 the break in the conversation and I'll try and get to that
18 directly. Okay. We should be able to play for you, Your Honor,
19 the -- may we approach the bench on it, or do you just want to
20 hear it through the microphone?

21 THE COURT: I'd rather just hear it from the
22 microphone.

23 MR. SHEETS: Okay. I will do my best, Your Honor. So
24 the start of the video is silent for the first 30 seconds, and
25 they are standing outside the vehicle and he's facing her. And

1 they're photographing her right now for the pictures that we
2 saw.

3 (Audio played)

4 MR. SHEETS: Your Honor, we're okay stopping here at
5 this point. I mean, now he's asking standard questions off of
6 one of those DVTPO forms and she's going to talk about how he
7 deals drugs out of a house.

8 THE COURT: All right. Well, okay. Here's my -- I
9 don't see -- I don't -- personally, I don't see a significant
10 connection between the officer's concern about the prior events
11 and her fear and indicating that she wants to do something and
12 report and she's fearful of him in this event.

13 And so, I mean, I don't -- to be honest, if he asks
14 about it, I don't have a problem if you play that segment of the
15 recording, you know, of how the officer asks her and what her
16 state of mind was at the time that he says that to her. You
17 know, I think -- I think it puts it in context as to what he --
18 you know, why he said those things to her, and -- and so I don't
19 -- but I don't think we need to get into the prior -- you know,
20 where he says that, you know, has he done this to you before,
21 you know.

22 You know, I think you can start with her saying that,
23 you know, she's fearful and she feels that she needs to, you
24 know, to do this and, you know, she's concerned about her
25 daughter or whatever. And he says, okay, here's what I need you

1 to do.

2 And, you know, you can look at the emphasize and how
3 whether or not he brow beat her, or just, you know, explained,
4 you know, and trying to get across something to her. So if you
5 want to ask him those questions, I mean, I'm open to letting the
6 State play the -- that little segment of it as to how he asked
7 the questions and phrased it to her.

8 MR. SHEETS: The only thing I would be concerned if we
9 put her statement is her statement beforehand is I haven't
10 before, I have to do it this time. That's my only thing.

11 THE COURT: I would cut that out, but --

12 MR. SHEETS: I think they did. I presume they did.

13 THE COURT: I think the rest of it conveys that she
14 wants to -- she's fearful and she wants to go forward with
15 things at this point in time. So, I mean, from that point up
16 until he -- you know, he finishes up with this is the money
17 maker or, I forget, the icing, whatever it is. I don't have a
18 problem with that being played.

19 I think it -- I think -- I'm not sure if that damages
20 the State that much and I don't know if it helps you that much,
21 but I think that, you know, if you want to go down that route,
22 I'll let you ask the questions and I'll let the State play that
23 segment of the recording.

24 MS. SUDANO: Thank you, Your Honor.

25 MR. SHEETS: Yes, Your Honor.

1 THE COURT: All right. Let's see. Anything else from
2 the State?

3 MS. SUDANO: No. Thank you.

4 THE COURT: All right. Anything else from defense?

5 MR. SHEETS: Court's indulgence. My client.

6 (Off-record colloquy)

7 MR. SHEETS: No, Your Honor, we don't have any issues.

8 THE COURT: Okay. Now, the other thing I want to
9 bring up is jury instructions. Because we if have a chance of
10 getting this to the jury on Thursday, we're going to have to get
11 these plowed through somehow tomorrow, and you've indicated that
12 you've got a hockey game that you want to go to, so --

13 MR. SHEETS: I think we're right on schedule. We've
14 already swapped jury instruction.

15 THE COURT: Okay.

16 MR. SHEETS: I've invited them to co-mingle about them
17 this evening. I don't know if they want. They -- I think --

18 THE COURT: I mean, I would --

19 MR. SHEETS: -- they've got a big day tomorrow.

20 THE COURT: -- encourage you to talk to him because
21 we're going to need to try to look at them during -- during the
22 lunch hour tomorrow.

23 MS. SUDANO: Okay.

24 MR. SHEETS: Okay.

25 THE COURT: So, I mean, and so we need -- I would

1 encourage you talking tonight if you can and seeing where -- and
2 identifying the instructions that are at issue between either
3 the State's or yours --

4 MR. SHEETS: Yes.

5 THE COURT: -- so that we can -- you know, because if
6 we're going to spend a ton of time arguing them on a lunch hour,
7 then, you know, like I said, I want you to make the ballgame,
8 but I also want to get -- get these instructions done, so --

9 MR. SHEETS: Yes. I will -- I will beg you.

10 THE COURT: I would ask the State to have some mercy
11 upon Mr. Sheets' --

12 MR. SHEETS: Please.

13 THE COURT: -- ballgame or hockey game plans. It is
14 the first game of the playoffs.

15 MR. SHEETS: It's the first game for the entire
16 franchise in the playoffs.

17 THE COURT: Right.

18 MR. SHEETS: I've been a season ticketholder, and
19 those tickets cost me over \$1,000.

20 THE COURT: Okay. So I would ask the State to have
21 some -- some mercy on Mr. Sheets' season tickets, and let's see
22 if we can have some level of cooperation to get that ironed out
23 so we can deal with any issue, just deal with issues tomorrow at
24 -- at noon.

25 MS. SUDANO: So the State's only issue with having

1 mercy on Mr. Sheets' personal schedule is Dr. Gavin is going to
2 come in and testify in our case. However, we're actually the
3 third case she's going to testify in tomorrow afternoon. So
4 she's testifying for someone at 1:00, somebody else at probably
5 2:00, and then she anticipates being able to come to us about
6 3:30. I don't believe that she's available on Thursday
7 afternoon, so our only shot at Dr. Gavin is tomorrow afternoon.

8 THE COURT: Can we get her in on one of the 1:30 or
9 2:30?

10 MS. SUDANO: She's testifying for Mr. DiGiacomo and
11 Ms. Weckerly in what I assume is their capital case, so probably
12 not going to be able to move her from that time slot. My
13 understanding is the reason she's testifying at 1:00 for the
14 other individual is that that is the only witness that he's got
15 left, and they start tomorrow at 1:00.

16 THE COURT: Okay. What case is that in?

17 MS. SUDANO: I don't know the defendant's name, but
18 it's in front of Judge Miley.

19 MR. SHEETS: Just call her in the morning. Can you
20 call her in the morning?

21 THE COURT: Yeah, can we call her in the morning?

22 MS. SUDANO: I don't know that she's available in the
23 morning. I can check with her this afternoon to see if she is.

24 THE COURT: Generally I'll run up until about 1:00
25 before we break for lunch, so if she can just be down here for

1 12:00. I would -- how long is her testimony going to be?

2 MS. SUDANO: Not very long. Maybe 45 minutes.

3 MR. SHEETS: I know the last time that I was --
4 crossed swords with her, it was maybe -- at most it was an hour
5 and 15 minutes.

6 THE COURT: Okay. I mean, if she can be down here at
7 12:00, let's see if we can get her down here at 12:00. And like
8 I said, we'll -- we'll go until approximately 1:00 in terms of
9 breaking for lunch.

10 MS. SUDANO: Yes, Your Honor.

11 THE COURT: And if she can be here a little earlier,
12 so much the better, all right. So let's see if we can do that
13 and make sure we don't have any issue at the end of the day.
14 But let's talk tonight on these jury instructions and get them
15 -- get them -- see if we can get an agreement on -- on these or
16 at least narrowed down to where we're just talking about a
17 handful of these during the lunch hour and Mr. Sheets can have
18 his -- have his lunch.

19 MR. SHEETS: I'll eat it here if I've got to.

20 THE COURT: All right.

21 MR. SHEETS: I'll make it work.

22 THE COURT: Okay. Everybody have a great evening.

23 We'll see you all tomorrow at about 8:50 in the morning.

24 MS. SUDANO: Thank you, Your Honor.

25 MR. SHEETS: Thank you, Your Honor.

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MS. CRAGGS: Thank you.
(Court recessed at 5:48 p.m., until Wednesday,
April 11, 2018, at 9:18 a.m.)

* * * * *

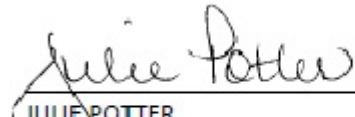
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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