IN THE SUPREME COURT FOR THE STATE OF NEVADA

* * * * *

JEFFREY D. SPENCER,

Case No. 77086

Electronically Filed Aug 01 2019 04:32 p.m. Elizabeth A. Brown Clerk of Supreme Court

Appellant,

Consolidated with

VS.

Case No. 77711

HELMUT KLEMENTI, EGON KLEMENTI, ELFRIEDE KLEMENTI, MARY ELLEN KINION, ROWENA SHAW, and PETER SHAW,

Respondents.

RESPONDENTS' JOINT APPENDIX VOLUME 1 OF 3

Michael A. Pintar (NV Bar #3789) McCormick, Barstow, Sheppard, Wayte & Carruth LLP 241 Ridge Street, Suite 300 Reno, Nevada 89501 775-333-0400 Michael.pintar@mccormickbarstow.com ATTORNEYS FOR RESPONDENTS ESTATE OF EGON KLEMENTI. ELFRIEDE KLEMENTI and MARY **ELLEN KINION**

Douglas R. Brown (NV Bar #7620) Sarah M. Molleck (NV Bar #13830) Lemons, Grundy & Eisenberg 6005 Plumas Street, Third Floor Reno, Nevada 89519 775-786-6868 drb@lge.net; smm@lge.net ATTORNEYS FOR RESPONDENT HELMUT KLEMENTI

Tanika Capers (NV Bar #10867) American Family Mutual Insurance Co. 6750 Via Austi Parkway, Suite 310 Las Vegas, Nevada 89119 702-733-4989 tcapers@amfam.com ATTORNEYS FOR RESPONDENTS ROWENA SHAW and PETER SHAW

CHRONOLOGICAL INDEX TO RESPONDENTS' JOINT APPENDIX

<u>NO.</u>	DOCUMENT	DATE	VOL.	PAGES
1.	Second Amended Counterclaim & Third Party Complaint (Spencer)	08/19/16	1	1-14
2.	Spencer's Renewed Motion to Amend Counterclaim & Third Party Complaint	08/19/16	1	15-16
3.	Opposition to Renewed Motion to Amend Counterclaim & Third Party Complaint	08/24/16	1	17-24
4.	Shaws' Joinder to Opposition to Renewed Motion to Amend Counter- Claim & Third Party Complaint	09/06/16	1	25-27
5.	Kinion's Motion for Attorney's Fees	03/21/17	1	28-34
	Exhibit 1: Mary Ellen Kinion letter to Maria Pence		1	35-37
	Exhibit 2: Transcript of Proceeding - January 30, 2017 Hearing		1	39-156
	Exhibit 3: Affidavit of Michael A. Pintar in Support of Kinion's Motion for Attorney's Fees		1	158-159
	Exhibit 1: Glogovac & Pintar redacted billings		1	160-174
6.	Stipulation for Dismissal With Prejudice (Helmut v. Spencer)	09/12/17	1	175-177
7.	Helmut Klementi's Motion for Summary Judgment	04/12/18	1	178-213
	Exhibit 1: Affidavit of Helmut Klementi		1	215-218
	Exhibit 2: Deposition of Helmut Klementi dated 4/14/16		1 2	220-245 246-257

<u>NO.</u>	DOCUMENT	DATE	VOL.	PAGES
7. cont.	Exhibit 3: Deposition of Jeffrey Spencer dated 7/28/16		2	259-318
	Exhibit 4: Letters from Douglas County Code Enforcement and Douglas County District Attorney		2	320-325
	Exhibit 5: Deposition of Elfriede Klementi dated 4/14/16		2	327-369
	Exhibit 6: Minutes of the Regular Meeting of the Kingsbury General Improvement District Board of Trustees		2	371-372
	Exhibit 7: Douglas County Sheriff's Department Investigation Narrative Report		2	374-387
	Exhibit 8: Deposition of Dep. Jesse McKone dated 4/7/16		2	389-417
	Exhibit 9: Temporary Order Against Stalking, Aggravated Stalking or Harassment		2	419-422
	Exhibit 10: Douglas County Planning Commission Meeting Minutes		2	424-430
	Exhibit 11: Statement of Helmut Klementi		2	432
	Exhibit 12: Selected pages of Transcript of Hearing – January 30, 2017		2	434-439
	Exhibit 13: Selected pages of Transcript of Spencer Preliminary Hearing on 4/24/13		2	441-483
	Exhibit 14: Letter from Dana Anderson dated 5/21/17		2	485-486
	Exhibit 15: Medical records of Jeffrey Spencer		3	488-516
8.	Kinion and Elfriedi Klementi's Motion for Sanctions based on Spoliation of Evidence	04/24/18	3	517-531

<u>NO.</u>	<u>DOCUMENT</u> <u>DAT</u>		VOL.	PAGES
8. cont.	Exhibit 1: Deposition of Jeffrey Spencer dated 7/28/16		3	533-549
9.	Helmut Klementi's Joinder to Motion for Sanctions Based on Spoliation of Evidence	05/18/18	3	550-552
10.	Kinion's Motion to Strike Spencer's Expert Witness Designation	05/25/18	3	553-557
	Exhibit 1: Jeffrey Spencer's Disclosure of Expert Witness		3	559-564
11.	Elfriede Klementi Joinder to Motion to Strike	05/25/18	3	565-567
12.	Helmut Klementi's Joinder to Motion to Strike	06/01/18	3	568-570
13.	Spencer Responses to Motion for Sanctions Based on Spoilation [sic] of Evidence	06/05/18	3	571-574
	Exhibit 1: Declaration of Jeffrey Spencer		3	577
	Exhibit 2: Declaration of Bill Stephens of Bill Stephens Productions, Inc.		3	579
	Exhibit 3: Declaration of Lynn Pierce, Esq.		3	581
14.	Spencer Video Exhibit in Support of Responses to Motions for Summary Judgment & to Motion for Sanctions Based on Spoilation [sic] of Evidence	06/05/18	3	582-585
15.	Shaws' Joinder to Motion to Strike	06/11/18	3	586-591
16.	Kinion and Elfriede Klementi's Reply in Support of Motion for Sanctions Based on Spoliation of Evidence	06/13/18	3	592-599

<u>NO.</u>	<u>DOCUMENT</u> <u>DATE</u>		VOL.	PAGES
17.	Transcript of Hearing - July 12, 2018	07/12/18	3	600-661
18.	Spencer Substitution of Counsel	07/18/18	3	662-666
19.	Elfriedi Klementi Request for Submission of Motion for Attorney's Fees	09/27/18	3	667-669
20.	Kinion Request for Submission of Motion for Attorney's Fees	09/27/18	3	670-672
21.	Shaws' Notice of Entry of Order (with Order Granting Motion for Summary Judgment attached)	09/28/18	3	673-680
22.	Helmut Klementi Request for Submission of Motion for Attorney's Fees	10/12/18	3	681-683
23.	Helmut Klementi Affidavit of Mailing of Request for Submission to Spencer	10/18/18	3	684-685
24.	Helmut Klementi Notice of Entry of Order re: Attorney's Fees	11/19/18	3	686-688
	Exhibit 1: Order re: Attorney's Fees		3	690-695
25.	Helmut Klementi Request for Entry of Judgment Pursuant to NRCP 58 and NRS 17.130	11/28/18	3	696-698
	Exhibit 1: Judgment		3	700-701
26.	Elfriede Klementi Request for Entry of Judgment Pursuant to NRCP 58 and NRS 17.130	12/06/18	3	702-704
	Exhibit 1: Judgment		3	706-707
27.	Kinion Request for Entry of Judgment Pursuant to NRCP 58 and NRS 17.130	12/06/18	3	708-710
	Exhibit 1: Judgment		3	712-713
28.	Judgment in favor of Helmut Klementi	12/20/18	3	714-715

<u>NO.</u>	DOCUMENT	DATE	VOL.	PAGES
29.	Kinion Notice of Entry of Judgment (with attached Judgment)	12/28/18	3	716-720
30.	Elfriede Klementi Notice of Entry of Judgment (with attached Judgment)	12/28/18	3	721-725

RECEIVED FILED Case No. 14-CV-0260 AUG 1 9 2016 2 Dept. No. 1 2016 AUG 19 PM 3: 46 Douglas County District Court Clork 3 C.R. WILLIAMS 4 5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STAT 6 IN AND FOR THE COUNTY OF DOUGLAS 7 8 HELMUT KLEMENTI. 9 Plaintiff. 10 SECOND AMENDED VS. COUNTERCLAIM & 11 JEFFREY D. SPENCER & DOES 1-5 THIRD PARTY COMPLAINT 12 Defendant(s). 13 JEFFREY D. SPENCER. 14 Counterclaimant, 15 VS. 16 HELMUT KLEMENTI, an individual, EGON 17 KLEMENTI, an individual, ELFRIDE KLEMENTI, an individual, MARY ELLEN 18 KINION, an individual, ROWENA SHAW, an individual, PETER SHAW, an individual. 19 & DOES 1-5. 20 Counterdefendant & Third Party Defendants. 21 Defendant/Counterclaimant JEFFREY D. SPENCER by and through his attorneys WILLIAM 22 23 J. ROUTSIS, II, Esq. and LYNN G. PIERCE, Esq., for his causes of action against the underlying 24 Plaintiff and named Third Party Defendants (identified collectively hereinafter as "Counter-25 defendants") hereby complains, alleges and avers as follows: Counterclaimant JEFFREY D. SPENCER is and was, at all times relevant to the causes of 26 1. action alleged herein, a resident of Douglas County, State of Nevada. 27 28 Counterdefendant HELMUT KLEMENTI is and was, at all times relevant to the causes of 2.

action alleged herein, a resident of Douglas County, State of Nevada.

3

3. Third Party Defendant EGON KLEMENTI is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.

4

Third Party Defendant ELFRIDE KLEMENTI is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County. State of Nevada.

6

5. Third Party Defendant MARY ELLEN KINION is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.

8

6. Third Party Defendant ROWENA SHAW is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.

10

7. Third Party Defendant PETER SHAW is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.

11 12

13

14

15

The true names and capacities whether individual, corporate, associate or otherwise of Third Party Defendants DOES 1 through 5, inclusive, and each of them, (identified collectively hereinafter as "Counterdefendants") are unknown to Counterclaimant at this time. He therefore sues said Counterdefendants by fictitious names and when their true names and capacities are ascertained, he will amend his Counterclaim accordingly. Counterclaimant is informed, believes and therefore alleges that each of the Counterdefendants designated herein as a DOE is responsible in some

16 17

manner for the events and happenings referred to herein and each DOE Counterdefendant caused the

19

20

21

22

injuries and damages complained of herein.

18

9. Counterclaimant is informed, believes and therefore alleges that at all times relevant to the causes of action alleged herein, each Counterdefendant was acting as an agent, representative, partner and/or co-conspirator of other Counterdefendants, and was acting in the course and scope of such agency, representation, partnership and/or conspiracy in the events referred to herein.

23 24

STATEMENT OF FACTS

25

10. In or about May 2012, JEFFERY SPENCER and his wife began erecting a fence on their residential property in Stateline for greater privacy in their yard and to contain their dog.

26 27

28

11. On or about May 27, 2012, Mrs. Spencer called the Douglas County Sheriff's Department to complain about EGON KLEMENTI coming on their property without their consent and taking

 Π

photographs of their underage nephews who were shirtless in their backyard.

- 2 | 12. On or about May 27, 2012, Officer Flagg of the Douglas County Sheriff's Department responded and spoke to EGON KLEMENTI to advise him of the Spencers' complaint and to advise him that if he went on the Spencers' property again, he would be subject to arrest for trespassing.
 - 13. On or about May 27, 2012, EGON KLEMENTI made no report nor complaint about JEFFERY SPENCER to Officer Flag.
 - 14. JEFFERY SPENCER is and was working as a contractor with the Kingsbury General Improvement District (hereinaster "KGID") for snow removal on roads within the Township of Stateline, Douglas County, Nevada.
 - 15. On multiple occasions in November and December 2012, EGON KLEMENTI called KGID and complained that when plowing the road, JEFFREY SPENCER was intentionally leaving a snow berm in EGON and ELFRIDE KLEMENTI's driveway. EGON KLEMENTI also presented KGID a photograph depicting snow at the edge of their driveway in support of his complaints.
 - 16. On or about December 12, 2012, MARY ELLEN KINION called KGID and complained that when plowing the road, JEFFREY SPENCER had intentionally left a snow berm in her driveway.
 - 17. On or about December 12, 2012, EGON KLEMENTI called the Douglas County Sheriff's Department and complained that JEFFREY SPENCER intentionally used his snow plow to strike EGON KLEMENTI with snow, ice and debris as he was shoveling snow in his own driveway, and that the event had been witnessed by a neighbor MARY ELLEN KINION, who would corroborate his complaint.
 - 18. On or about December 12, 2012, MARY ELLEN KINION called the Douglas County Sheriff's Department and reported that she had witnessed JEFFREY SPENCER intentionally use his snow plow to strike EGON KLEMENTI with snow, ice and debris from the snow plow, causing EGON KLEMENTI to suffer injuries.
 - 19. On or about December 12, 2012, Deputy Sanchez of the Douglas County Sheriff's Department responded and spoke with both EGON KLEMENTI and MARY ELLEN KINION regarding their allegations against JEFFREY SPENCER. Deputy Sanchez determined that no crime had been committed.

20. On or about December 12, 2012, MARY ELLEN KINION called KGID and stated that she witnessed JEFFREY SPENCER intentionally use his snow plow to strike EGON KLEMENTI with snow, ice and debris from the snow plow, causing EGON KLEMENTI to suffer injuries.

- 21. On or about December 12 and/or 13, 2012, EGON KLEMENTI and/or MARY ELLEN KINION made similar statements to other neighbors that JEFFREY SPENCER intentionally use his snow plow to strike EGON KLEMENTI with snow, ice and debris from the snow plow, causing EGON KLEMENTI to suffer injuries, and that MARY ELLEN KINION witnessed this battery.
- 22. On or about December 13, 2012, ROWENA SHAW and PETER SHAW sent a letter to KGID stating that MARY ELLEN KINION had witnessed JEFFREY SPENCER intentionally use his snow plow to strike EGON KLEMENTI with snow, ice and debris from the snow plow, causing EGON KLEMENTI to suffer injuries.
- 23. On or about December 13, 2012, ROWENA SHAW and PETER SHAW sent similar letters to various Douglas County agencies stating that MARY ELLEN KINION had witnessed JEFFREY SPENCER intentionally use his snow plow to strike EGON KLEMENTI with snow, ice and debris from the snow plow, causing EGON KLEMENTI to suffer injuries.
- 24. On or about December 13, 2012, EGON KLEMENTI called KGID's Director McKay and told him that JEFFREY SPENCER intentionally used his snow plow to strike EGON KLEMENTI with snow, ice and debris as he was shoveling snow in his own driveway.
- 25. On or about December 18, 2012, ELFRIDE KLEMENTI, EGON KLEMENTI, MARY ELLEN KINION, ROWENA SHAW and PETER SHAW attended a KGID meeting at which the Directors and members of the public were present.
- 26. ELFRIDE KLEMENTI spoke at that KGID meeting, reading from a letter she wrote to the Board, stating that there had been several police reports made, that her husband felt threatened by JEFFREY SPENCER, that JEFFREY SPENCER had been intentionally using his snow plow to create berms in their driveway, that JEFFREY SPENCER is aggressive and has a gun so she is afraid, and that she wants JEFFREY SPENCER removed from his position as a snow plow operator.
- 27 EGON KLEMENTI spoke at that KGID meeting stating that JEFFREY SPENCER had been intentionally using his snow plow to create berms in EGON and ELFRIDE KLEMENTI's driveway

13

14

15

16

17

18

19

20

21

22

23

24

25

26

to "seal him in" and that JEFFREY SPENCER had intentionally used his snow plow to strike EGON

- KLEMENTI with snow, ice and debris from the road.
- 28. MARY ELLEN KINION spoke at that KGID meeting stating that she had personally witnessed the events complained of by EGON KLEMENTI, that JEFFREY SPENCER had a big grin white using his snow plow to strike EGON KLEMENTI with snow, ice and debris, and that
- 5 JEFFREY SPENCER deliberately created snow berms with his snow plow in driveways.

 7 29. ROWENA SHAW spoke at that KGID meeting reading from her emails to KGID.
- 7 29. ROWENA SHAW spoke at that KGID meeting reading from her emails to KGID and Mr. McKay complaining about JEFFREY SPENCER, and that JEFFREY SPENCER deliberately created snow berms with his snow plow in driveways.
- 10 30. PETER SHAW spoke at that KGID meeting complaining about JEFFREY SPENCER, and that JEFFREY SPENCER deliberately created snow berms with his snow plow in driveways.
 - 31. On or about December 18, 2012, at approximately 8:00p.m., JEFFREY SPENCER heard someone near his vehicle in their driveway. Since there had been several vehicle thefts in the neighborhood, he told his wife to immediately call the Douglas County Sheriff's Department.
 - 32. As Mrs. Spencer was calling the Douglas County Sheriff's Department, JEFFREY SPENCER ran down the stairs at the front of his home, yelling to the person near his vehicle to identify himself, asking why that person was breaking into his vehicle.
 - 33. JEFFREY SPENCER ran out onto the icy street in the dark pursuing the intruder, who had not responded to identify himself. The intruder suddenly turned back toward JEFFREY SPENCER and they collided, causing the intruder to fall down in the street. JEFFREY SPENCER then saw the intruder was HELMUT KLEMENTI, twin brother of EGON KLEMENTI.
 - 34. When the Douglas County Sheriff's Department officers arrived in response to Mrs. Spencer's call, HELMUT KLEMENTI and EGON KLEMENTI both claimed HELMUT KLEMENTI had not been on JEFFREY SPENCER's property, that HELMUT KLEMENTI had been standing in the road taking pictures of the snow berm when JEFFREY SPENCER ran outside and punched HELMUT KLEMENTI in the face before throwing him to the ground.
- 27 | 35. The Douglas County Sheriff's Department officers also spoke with ELFRIDE KLEMENTI
 28 | and some neighbors that evening.

36.

2

3

4 5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

SPENCER's property next to his vehicle.

JEFFREY SPENCER was arrested that night for misdemeanor battery of HELMUT KLEMENTI. and was released after paying a bail that same evening.

Based on the statements of HELMUT KLEMENTI, EGON KLEMENTI and others.

- 37. Based upon the statements of HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE KLEMENTI, MARY ELLEN KINION and others, Douglas County Sheriff's Department instituted an investigation as to whether JEFFERY SPENCER had willfully abused an older person in violation of NRS §200.5092.
- 38. On or about December 24, 2012, HELMUT KLEMENTI, EGON KLEMENTI and ELFRIDE KLEMENTI filed for a restraining order against JEFFREY SPENCER.
- 39. On or about January 8, 2013, HELMUT KLEMENTI attended a Douglas County Planning meeting at which the Planning Board and members of the public were present.
- 40. HELMUT KLEMENTI spoke at that Douglas County Planning meeting, using the agenda item of the Spencer's fence, stating that JEFFREY SPENCER had assaulted him and he had a restraining order against JEFFREY SPENCER.
- 41. On or about January 15, 2013, ELFRIDE KLEMENTI, ROWENA SHAW and PETER SHAW attended a KGID meeting at which the Directors and members of the public were present.
- 42. ELFRIDE KLEMENTI spoke at that KGID meeting stating that she was afraid of JEFFREY SPENCER because he had pushed down and beaten up HELMUT KLEMENTI and had been arrested.
- 43. ROWENA SHAW spoke at that KGID meeting, stating she was thankful a Sheriff's Deputy was there at her request, and reading a prepared written speech making accusations against JEFFREY SPENCER.
- PETER SHAW spoke at that KGID meeting, reading a prepared written speech making 44. accusations against JEFFREY SPENCER.
- 45. Several weeks after the incident, ROWENA SHAW and PETER SHAW provided Douglas County Sheriff's Department a surveillance video from their home filmed or about December 18, 2012, which had been altered to remove frames showing HELMUT KLEMENTI on JEFFERY

46.

based upon representations made by HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE KLEMENTI, MARY ELLEN KINION and others at their direction and/or instigation. He was released that same day.

47. In or about early 2013, MARY ELLEN KINION wrote an unsolicited letter to the Douglas County District Attorney which included an accusation that IEEEERY SPENCER had threatened

County Sheriff's Department for re-arrest on felony charges from the December 18, 2012 incident

On or about January 17, 2013, JEFFERY SPENCER presented himself to the Douglas

- County District Attorney which included an accusation that JEFFERY SPENCER had threatened to punch EGON KLEMENTI in the face on May 27, 2012, even though she was not claiming to be a witness to the alleged assault and even though EGON KLEMENTI himself had not reported any such alleged assault.
- 48. On or about February 24, 2013, HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE KLEMENTI testified at a preliminary hearing, making accusations of criminal behavior against JEFFREY SPENCER.
- 49. EGON KLEMENTI testified at that preliminary hearing that JEFFREY SPENCER deliberately created berms in their driveway, and that JEFFREY SPENCER had deliberately showered him with road debris injuring him in his own driveway.
- 50. ELFRIDE KLEMENTI testified at that preliminary hearing that on May 27, 2012, JEFFREY SPENCER had threatened and then punched EGON KLEMENTI in the face, even through she was not present and did not see the alleged assault or battery. ELFRIDE KLEMENTI testified at that preliminary hearing that on December 12, 2012, JEFFREY SPENCER had deliberately used his snow plow to cover EGON KLEMENTI with snow and ice, even through she was not present and did not see the alleged battery. She also testified that JEFFREY SPENCER deliberately created berms in their driveway, that EGON KLEMENTI is frail and feels very threatened by JEFFREY SPENCER. ELFRIDE KLEMENTI testified at that preliminary hearing that on December 18, 2012, JEFFREY SPENCER hurt HELMET KLEMENTI, even though she did not see that alleged battery either.
- 51. HELMET KLEMENTI testified at that preliminary hearing that JEFFREY SPENCER hit him in the chest and knocked him to the ground on December 18, 2012.

- 1 52. On or about March 8, 2013, an Amended Criminal Complaint was filed in Case No. 13-0069.
- 2 charging JEFFERY SPENCER with willfully and unjustifiably causing EGON KLEMENTI,
- 3 ELFRIDE KLEMENTI and HELMUT KLEMENTI to incur pain, injury or mental anguish in
- 4 | violation of NRS §200.5092 and §200.5099.
- 5 | 53. On or about April 9, 2013, ELFRIDE KLEMENTI, MARY ELLEN KINION and ROWENA
- 6 | SHAW attended a Douglas County Planning meeting at which members of the public were present.
- 7 | 54. ROWENA SHAW used the Douglas County Planning meeting agenda item of the Spencer's
- 8 | fence to speak, stating that the Spencers were neighborhood bullies, and accusing JEFFREY
- 9 SPENCER of battering HELMUT KLEMENTI.
- 10 | 55. MARY ELLEN KINION used the Douglas County Planning meeting agenda item of the
- 11 | Spencer's fence to speak, reading a letter from ELFRIDE KLEMENTI making accusations against
- 12 | JEFFREY SPENCER.
- 13 | 56. On or about April 24, 2013, at the preliminary hearing in Case No. 13-0069, the State
- 14 | claimed JEFFERY SPENCER had: (a) feloniously used a snow plow to create snow berms in the
- 15 driveway of EGON and ELFRIDE KLEMENTI's home, blocking them into their home; (b)
- 16 | feloniously used a snow plow to intentionally batter EGON KLEMENTI with snow, ice and debris;
- 17 (c) feloniously battered HELMUT KLEMENTI causing him to incur substantial bodily injury on
- 18 December 18, 2012; and (d) feloniously verbally assaulted EGON KLEMENTI by threatening to
- 19 punch him in the nose on May 23, 2012.
- 20 | 57. In or about April 2013, MARY ELLEN KINION, who was not a party to the restraining order
- 21 proceeding initiated by HELMUT KLEMENTI, EGON KLEMENTI and ELFRIDE KLEMENTI.
- 22 wrote an ex-parte letter to the Justice of the Peace hearing that matter trying to get more restrictive
- 23 | restraining orders against JEFFREY SPENCER.
- 24 | 58. On or about September 16 through 27, 2013, JEFFERY SPENCER was tried on the criminal
- 25 || charges brought against him based upon representations of Counterdefendants and each of them.
- 26 59. HELMUT KLEMENTI, EGON KLEMENTI. ELFRIDE KLEMENTI, MARY ELLEN
- 27 KINION and ROWENA SHAW each testified at JEFFERY SPENCER's trial against JEFFERY
- 28 l

SPENCER.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

- 60. There was no credible evidence presented at trial that JEFFERY SPENCER had ever used 2 a snow plow to intentionally create snow berms in EGON and ELFRIDE KLEMENTI's driveway, 3 to trap them in their home, at any time and specifically not in the winter of 2012-13.
- 4 There was no credible evidence presented at trial that JEFFERY SPENCER had used a snow 5 plow to batter EGON KLEMENTI with snow, ice and debris while he was shoveling his driveway. 6 intentionally or unintentionally.
 - 62. There was no credible evidence presented at trial that JEFFERY SPENCER had verbally assaulted EGON KLEMENTI by threatening to punch him in the nose on May 23, 2012.
 - 63. Evidence presented at trial established that neither HELMUT KLEMENTI, EGON KLEMENTI nor ELFRIDE KLEMENTI had informed anyone of the alleged assault of May 23, 2012, at any time prior to filing for a protective order on or about December 24, 2012, despite numerous public statements made by them against JEFFREY SPENCER.
 - 64. Further evidence presented at trial established that neither HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE KLEMENTI nor MARY ELLEN KINION had made a report to the Douglas County Sheriff's Department of the alleged assault of May 23, 2012, at any time prior to January 2013, despite numerous interviews of them by Deputy Sheriff's regarding their allegations against JEFFERY SPENCER.
 - 65. Evidence presented at trial established that ELFRIDE KLEMENTI and MARY ELLEN KINION were not witnesses of the May 23, 2012, alleged verbal assault, and they had no basis to make such accusations against JEFFERY SPENCER.
 - 66. HELMUT KLEMENTI testified at trial that JEFFERY SPENCER had punched and battered him causing substantial bodily injuries.
 - 67. Evidence presented at trial established that HELMUT KLEMENTI had been knocked down by JEFFERY SPENCER who had run down his stairs and chased the figure he had seen by his truck, but there was no evidence that JEFFERY SPENCER had punched HELMUT KLEMENTI, and there was no credible evidence of intent to cause substantial bodily injury.
 - 68. At the conclusion of the trial, on or about September 27, 2013, the jury returned in short order with the verdicts finding JEFFERY SPENCER not guilty on all charges.

3

4

5

6

7 8

9 10

12 13

14 15

16 17

18

20

19

21 22

23

24

25 26

27

28

69. In or about March 2014, the restraining orders were all dissolved as there was no credible evidence that JEFFREY SPENCER was a threat of any kind to HELMUT KLEMENTI, EGON KLEMENTI and/or ELFRIDE KLEMENTI.

FIRST CLAIM FOR RELIEF - DEFAMATION

- 70. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 69 as if fully set forth herein.
- Counterdefendants, and each of them, made repeated false and defamatory statements 71. concerning JEFFREY SPENCER, publically asserting that he failed to properly do his job as a contract snow plower, that he assaulted and battered elderly persons, and that he had committed felonies against elderly persons.
- The statements of Counterdefendants, and each of them, were unprivileged and were 72. published verbally and in writing to businesses, agencies, boards, and members of the public generally.
- 73. Counterdefendants, and each of them, knew the statements were false when made, and/or were made with a disregard for the truth.
- 74. The statements of Counterdefendants, and each of them, were made to get JEFFREY SPENCER terminated from his contract employment, to lower the community's opinion of JEFFREY SPENCER, to cause him to be held up to contempt, and to initiate and continue criminal proceedings against JEFFREY SPENCER.
- 75. As a direct and proximate result of the acts and statements of Counterdefendants, and each of them, JEFFREY SPENCER sustained harm in his business and/or profession, loss to his reputation, good name and standing in the community, and other losses and costs. His damages are both special and general in an amount in excess of \$10,000 according to proof.

SECOND CLAIM FOR RELIEF - MALICIOUS PROSECUTION

- 76. Counterclaimant realleges and incorporates ¶¶ 1 through 75 as if fully set forth herein.
- 77. Counterdefendants, and each of them, made statements to and communicated with the Douglas County Sheriff's Department and Douglas County District Attorney's Office specifically to procure the institution of criminal charges and to add to the criminal charges brought, and then actively participated in the continuation of a criminal proceeding against JEFFREY SPENCER.

 78. Counterdefendants, and each of them, acted with malice since they knew the evidence they were providing in support of the criminal proceeding was false and/or was made with a reckless disregard for the truth.

- 79. JEFFREY SPENCER was acquitted of all charges brought against him.
- 80. As a direct and proximate result of the acts and statements of Counterdefendants, and each of them, JEFFREY SPENCER sustained harm in his business and/or profession, loss to his reputation, good name and his standing in the community, and other losses and costs. His damages are both special and general in an amount in excess of \$10,000 according to proof.

THIRD CLAIM FOR RELIEF - CIVIL CONSPIRACY

- 81. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 80 as if fully set forth herein.
- 82. Counterdefendants, and each of them, acted in concert in making repeated false and defamatory statements concerning JEFFREY SPENCER, that he failed to properly do his job as a contract snow plower, that he assaulted and battered elderly persons, and that he had committed felonies against elderly persons.
- 83. Counterdefendants, and each of them, acted in concert in making statements to and communicating with the Douglas County Sheriff's Department and Douglas County District Attorney's Office to procure the institution of criminal charges and to add to the criminal charges brought, and then actively participated in the continuation of a criminal proceeding against JEFFREY SPENCER.
- 84. Counterdefendants, and each of them, knew or should have known that the objective and purpose of making such statements and taking such acts was to cause harm to JEFFREY SPENCER, and explicitly and/or tacitly agreed to make such statements and take such acts to cause harm to JEFFREY SPENCER.
- 85. The statements and acts of Counterdefendants, and each of them, were intended to get JEFFREY SPENCER terminated from his contract employment, to lower the community's opinion of JEFFREY SPENCER, to cause him to be held up to contempt, to initiate criminal proceedings and to procure a criminal conviction against JEFFREY SPENCER.
- 86. The statements and acts of Counterdefendants, and each of them, were wrongful and were

27 | 28 | made and taken with a disregard for the truth, for the sole purpose of harming JEFFREY SPENCER.

87. As a direct and proximate result of the acts and statements of Counterdefendants, and each of them, acting in furtherance of their civil conspiracy, JEFFREY SPENCER sustained harm in his business and/or profession, loss to his reputation, good name and standing in the community, incurred substantial attorneys' fees and costs, and other losses and costs. His damages are both special and general in an amount in excess of \$10,000 according to proof.

FOURTH CLAIM FOR RELIEF - PUNITIVE DAMAGES

- 88. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 87 as if fully set forth herein.
- 89. Counterdefendants, and each of them, acted with a conscious disregard of the probable harmful consequences of their wrongful acts, with a willful and deliberate failure to avoid those consequences, by intentional misrepresentations, deceptions and/or concealment of material facts known to them with the intent to injure JEFFREY SPENCER.
- 90. Counterdefendants, and each of them, acted with express or implied malice, with an intent to injure JEFFREY SPENCER, and through despicable conduct with a conscious disregard of his rights, subjected JEFFREY SPENCER to cruel and unjust hardships.
- 91. As a direct and proximate result of the acts and statements of Counterdefendants, and each of them, JEFFREY SPENCER sustained harm and damages, should be awarded punitive damages.

FIFTH CLAIM FOR RELIEF - INFLICTION OF EMOTIONAL DISTRESS

- 92. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 91 as if fully set forth herein.
- 93. Counterdefendants, and each of them, acted intentionally or with a reckless disregard for the likelihood of causing emotional distress.
- 94. As a direct and proximate result of the acts and statements of Counterdefendants, and each of them. JEFFREY SPENCER sustained severe emotional distress, and suffered and continues to suffer from physical ailments directly attributable to the severe emotional distress.
- 95. As a direct and proximate result of the emotional distress caused by the acts and statements of Counterdefendants, and each of them, JEFFREY SPENCER has suffered mental and physical pain, has incurred medical expenses, and other losses and costs. His damages are both special and general in an amount in excess of \$10,000 according to proof.

1						
1	WHEREFORE. Counterclaimant JEFFREY SPENCER prays judgement against					
2	Counterdefendants, and each of them, for:					
3	1. Special damages in excess of Ten Thousand Dollars (\$10,000);					
4	2. General damages in excess of Ten Thousand Dollars (\$10,000);					
5	3. Punitive damages;					
6	4. Prejudgment interest;					
7	5. Attorneys' fees and costs; and,					
8	6. Such other and further relief as the Court may deem just and proper.					
9	The undersigned affirm pursuant to NRS §239B.030 that this pleading does not contain the					
10	social security number of any person.					
11	DATED this / day of anglos, 2016.					
12	Color of the Color					
13	WILLIAM J. ROUTSIS II, Esq. Nevada State Bar No. 5474 Nevada State Bar No. 3567					
14	1070 Monroe Street 517 Court Street, Suite 2f Reno, Nevada 89509 Reno, Nevada 89501					
15	Phone 775-337-2609/Fax 775-737-9321 Phone 775-785-9100/Fax 775-785-9110 Attorneys for Jeffrey D. Spencer					
16	Autheys for Seffrey D. Spencer					
17						
18						
19						
20						
21						
22						
23						
24	·					
25						
26						
27						
28						

l

2

5

4

7 8

9

10

12

13 14

15

16

17 18

19

20

21

22

23

24

2526

27

28

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I certify that on August 11, 2016, I served a true and correct copy of foregoing Counterclaimant JEFFREY D. SPENCER's Renewed Motion to Amend Counterclaim & Third Party Complaint, with the proposed Second Amended Counterclaim & Third Party Complaint attached thereto, and Notice of Change of Address for Lynn G. Pierce, Esq., attorney of record for JEFFREY D. SPENCER's was made to all parties to this action by:

Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

Personal Delivery

Facsimile

Federal Express/Airborne Express/Other Overnight Delivery

Reno-Carson Messenger Service

All parties signed up for electronic filing have been served electronically, all others have been served by placing a true copy thereof in a scaled envelope placed for collecting and mailing in the United States mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

Douglas R. Brown, Esq. Christian L. Moore, Esq. Lemons, Grundy & Eisenberg 6005 Plumas Street, Suite 300 Reno, Nevada 89509 Attorney for Helmut Klementi Lynne G. Pierce Esq. 515 Court Street, Ste 2f Reno, Nevada 89501 Attorney for Jeffrey Spencer

Michael Pintar, Esq. GLOGOVAC & PINTAR 427 West Plumb Lanc Reno, Nevada 89509

Attorney for Egon Klementi, Elfriede Klementi, Mary Ellen Kinion

David M. Zaniel, Esq. Renalli & Zaniel, LLC 50 West Liberty, Suite 1050 Reno, Nevada 89501 Attorney for Jeffrey Spencer

DATED this 11th day of August, 2016.

WILLIAM J. ROUTSIS II. ESO.

			RECEIVED		
1	CASE NO.	14-CV-0260	AUG 1 9 2016		
2	Dept. No.	1	Douglas County District Court Clerk	FILED	
3			District Court Clerk	2016 AUG 19 PM 3: 46	
4				GCOBIE H. WILLIAMS CLERK	
5	IN THE	E NINTH JUDI	ICIAL DISTRICT COU	RT OF THE STATE OF NEVADA	
6		IN A	AND FOR THE COUNT	Y OF DOUGLAS	
7	HELMUT KI	LEMENTI,			
8		Plaintit	ff,		
9	VS.			RENEWED MOTION TO AMEND COUNTERCLAIM &	
10	JEFFREY D.	. SPENCER & I	DOES 1-5	THIRD PARTY COMPLAINT	
11		Defendant(s).	/	·	
12	JEFFREY D.	SPENCER.			
13	Counterclaimant,				
14	vs.				
15	HELMUT KLEMENTI, an individual, EGON				
16	KLEMENTI, an individual, ELFRIDE KLEMENTI, an individual, MARY ELLEN				
17 18	KINION, an individual, ROWENA SHAW, an individual, PETER SHAW, an individual, & DOES 1-5,				
19	Counterdefendant &				
20	Third Party Defendants.				
21	Counterclaimant JEFFREY D. SPENCER by and through his attorneys William J. Routsis,				
22	II, Esq. and L	Jynn G. Pierce, I	Esq., hereby renews his M	otion to Amend his Counterclaim and Third	
23	Party Compla	aint. This Motion	n is made and based upon the	ne pleadings and papers on file herein, Points	
24	and Authoriti	ies hereof, and a	attached Second Amended	Counterclaim & Third Party Complaint.	
25			POINTS AND AUTH	IORITIES	
26	Background	I			
27	JEFF	REY D. SPEN	CER had previously serve	d and filed with the Court a proposed First	
28	Amended Co	ounterclaim and	d Third Party Complaint,	prepared by his former counsel William	
	i		1		

11 De

Swafford, Esq. When the matter came before the Court, attorney of record William J. Routsis, II, Esq., informed the Court that errors had been discovered in the proposed First Amended Counterclaim and Third Party Complaint, but that William Swafford, Esq., was not responding to any communication in an attempt to correct the errors, and that JEFFREY D. SPENCER was seeking new counsel to replace Mr. Swafford. William J. Routsis, II, Esq., thereafter filed a Motion for Substitution of Counsel in December 2015. JEFFREY D. SPENCER subsequently retained Lynn G. Pierce, Esq., who filed a notice of her appearance in this matter in May 2016.

The discovery has continued in this matter while Lynn G. Pierce, Esq., was reviewing the voluminous documents, pleadings and transcripts necessary to understand the case and prepare a proper Amended Counterclaim and Third Party Complaint. Meanwhile, all named Third Party Defendants have been participating in the discovery, and all of them are represented by counsel.

Legal Authority

At this stage in the proceedings, NRCP 15(a) permits a party to "amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." In this case, justice is served by permitting this proposed amendment as it contains a clear statement of facts, and reduces the previously proposed causes of action to those appropriate to the facts. The amendment will assist the parties and the Court in clarifying and streamlining the matters to be tried. Further, no party will be harmed or disadvantaged, as all have been participating in discovery and represented by counsel. This Renewed Motion is made for the reasons and purposes stated herein, not for any improper purpose, nor to cause undue delay.

WHEREFORE, JEFFERY SPENCER respectfully requests that the Court permit the filing of his Seconded Amended Counterclaim and Third Party Complaint.

The undersigned affirms pursuant to NRS §239B.030 that this pleading does not contain the social security number of any person.

DATED this /O day of August, 2016.

ynn G. Pierce, Esq., NV State Bar 3567

515 Court Street, Ste. 2f

Reno, NV 89501

Phone 775-785-9100/Fax 775-785-9110

CASE NO.: 14-CV-0260 1 2 DEPT. NO.: I 2016 AUG 24 PM 4: 40 RECEIVED 3 U.B. T. WILLIAMS AUG 2 4 2016 4 CLERK Douglas County 5 District Court Clerk 6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA 7 IN AND FOR THE COUNTY OF DOUGLAS 8 9 HELMUT KLEMENTI, 10 Plaintiff, OPPOSITION TO RENEWED MOTION TO AMEND COUNTERCLAIM AND THIRD 11 VS. PARTY COMPLAINT JEFFREY D. SPENCER & DOES 1-5, 12 13 Defendants. 14 JEFFREY D. SPENCER, 15 Counterclaimant, 16 VS. 17 HELMUT KLEMENTI, an individual, 18 EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and 19 DOES 1-5. 20 Counterdefendants & Third Party Defendants. 21 22 23 Third Party Defendants, Mary Ellen Kinion, Egon Klementi and Elfriede 24 Klementi (collectively "Third-Party Defendants"), by and through their attorneys, 25 Glogovac & Pintar, submit this Opposition to Counterclaimant's Renewed Motion for 26 Leave to Amend Counterclaim and Third-Party Complaint. This opposition is based 27

upon the memorandum of points and authorities submitted herewith, and upon all other papers, exhibits and documents on file with the Court.

3

5

6 7

8 9

11 12

10

13

14

15 16

17

18 19

20

21

22 23

24

25

26

27

28

MEMORANDUM OF POINTS AND AUTHORITIES

A. Background

This is an action stemming from disputes between neighbors that live in the Kingsbury Grade General Improvement District ("KGID") on the south shore of Lake Tahoe. The dispute escalated to the point that in 2013, counterclaimant Jeffrey Spencer ("Spencer"), was criminally prosecuted for assault on an elderly neighbor. Helmut Klementi. Therefore, Helmut Klementi filed a civil action against Spencer seeking recovery for personal injuries arising from the assault. In response, Spencer asserted a counterclaim against Helmet Klementi as well as third-party claims against Mr. Klementi's brother and sister-in-law, Egon and Elfie Klementi, and Kinion.

On April 22, 2016, Kinion filed a motion for summary judgment. The motion was joined by the Klementi's. As set forth in Kinion's motion for summary judgment, the third-party claims in this case are nothing more than vexatious claims designed to harass and intimidate the Third-Party Defendants. Kinion has moved this Court for an order granting summary judgment because, as a matter of law, Spencer cannot meet the required elements for a claim for malicious prosecution. In addition, Third-party Defendant's are seeking summary judgment because all of their communications with the police and/or district attorney's office, as well as their testimony at Spencer's criminal trial, are protected communications under the judicial proceeding privilege and/or are immune from civil liability under NRS 41.650.

///

///

///

Kinion's motion for summary judgment is adopted by this reference and incorporated herein.

B. Law and Analysis

It is within the court's discretion to deny a motion for leave to amend a complaint. Kantor v. Kantor, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000). In that respect, after responsive pleadings have been filed, a party may only amend its pleadings after obtaining leave of the court and when justice so requires. NRCP 15(a). The requirement that the amending party acquire leave of the court indicates that there are instances where leave should not be granted. Brown v. Capanna, 105 Nev. 665, 668, 782 P.2d 1299, 1301 (1989). A motion for leave to amend may appropriately be denied "(1) where there has been undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile. 4432 Individual Tobacco Plaintiffs v. Various Tobacco Cos. (In re Engle Cases) (11th Cir. 2014).

C. <u>The Proposed Amendment Should be Denied Due to Undue Delay in Amending their Pleadings and Plaintiffs' Conduct Which Has Led to the Destruction of Evidence</u>

1. Spencer has Unduly Delayed in Amending his Pleadings

Courts will deny a motion to amend when the cause of action should have been brought in the original complaint. See, Allen v. City of Beverly Hills, 911 F.2d 367, 374 (9th Cir. 1990) "A district court does not abuse its discretion in denying a motion to amend where the movant presents no new facts but only new theories and provides no satisfactory explanation for this failure to fully develop his contentions originally." Id. As such, a relevant inquiry in determining whether to grant leave to amend is "whether the moving party knew or should have known the facts and theories raised by the amendment in the original pleading." Jackson v. Bank of Hawaii, 902 F.2d at 1388.

///

By way of his proposed Amended Counterclaim and Third-Party Complaint, Spencer seeks to add new and more detailed claims concerning statements made by the Third-Party Defendants to the police and others. However, other than admitting that their proposed First Amended Counterclaim contained many errors and that the Spencer's have now retained new counsel to represent them, the motion is silent as to why leave to amend is now being sought over one (1) year later.

In <u>University & Community College Sys. v. Sutton</u>, 103 P.3d 8,19,120 Nev. 972 (Nev., 2004), the Nevada Supreme Court held, in part, that amendment of a pleading was inappropriate because the party had knowledge of the proposed amended facts for at least nine months prior to seeking amendment, and failed to so amend. Here, just as in <u>Sutton</u>, Plaintiffs ostensibly had knowledge of the information they now seek to include for over a year. Indeed Spencer's criminal trial occurred almost three (3) years ago.

Moreover, for the reasons set forth in the Third-Party Defendant's motion for summary judgement, allowing Spencer to amend his pleadings would be futile. Thus, Spencer's motion to amend should be denied.

2. Plaintiffs' Bad Faith Has Allowed Evidence to Be Destroyed.

As more fully set forth in Kinion's motion for summary judgment, the actions of the Spencer's attorneys have allowed critical evidence to be destroyed.² To this end, the underlying issue in this case is the Spencer's claim that the Third-Party Defendants have lied about Spencer's actions in an attempt to have him criminally convicted or fired from his job. In their proposed Second Amended Counterclaim and Third Party Complaint, they allege:

47. In or about early 2013, MARY ELLEN KINION wrote an unsolicited letter to the Douglas County District Attorney which included an accusation that JEFFREY SPENCER had threatened to punch EGON KLEMENTI in the face on May 27, 2012, even though she was not claiming to be a witness to the

² Third Party Defendants incorporate Spencer's motion to compel for the purpose of showing that Spencer's attorney negligently and/or inadvertently threw away his file from the criminal case.

alleged assault and even though EGON KLEMENTI himself had not reported any such alleged assault.

- 48. On or about February 24, 2013, HELMUT KLEMENTI, EGON KLEMENTI, ELFIDE KLEMENTI testified at a preliminary hearing, making accusations of criminal behavior against JEFFREY SPENCER.
- 49. EGON KLEMENTI testified at a preliminary hearing that JEFFREY SPENCER deliberately created berms in their driveway, and that JEFFREY SPENCER had deliberately showered him with road debris injuring him in his own driveway.
- 50. ELFRIDE KLEMENTI testified at that preliminary hearing that on May 27, 2012, JEFFREY SPENCER had threatened and then punched EGON KLEMENTI in the face, even though she was not present and did not see the alleged assault or battery. ELFRIDE KLEMENTI testified at that preliminary hearing that on December 12, 2012, JEFFREY SPENCER had deliberately used his snow plow to cover EGON KLEMENTI with snow and ice, even though she was not present and did not see the alleged battery. She also testified that JEFFREY SPENCER deliberately created berms in their driveway, that EGON KLEMENTI is frail and feels very threatened by JEFFREY SPENCER. ELFRIDE KLEMENTI testified at that preliminary hearing that on December 18, 2012, JEFFREY SPENCER hurt HELMET KLEMENTI, even though she did not see that alleged battery either.
- 51. HELMET KLEMENTI testified at that preliminary hearing that JEFFREY SPENCER hit him in the chest and knocked him to the ground on December 18, 2012.
- 52. On or about March 8, 2013, an Amended Criminal Complaint was filed in Case No. 13-0069, charging JEFFREY SPENCER with willfully and unjustifiably causing EGON KLEMENTI, ELFRIDE KLEMENTI and HELMET KLEMENTI to incur pain, injury or mental anguish in violation of NRS §200.5092 and §200.5099.

Such contentions notwithstanding, Spencer has failed to produce a letter written by Kinion to the Douglas County District Attorney, has failed to produce certified copies of the preliminary hearing transcripts, and has failed to produce certified copies of the Spencer's criminal trial transcripts. In other words, Spencer has destroyed and/or failed to produce critical evidence that they claim supports their allegations. Without the letter written by Kinion to the Douglas County District Attorney, certified copies of the preliminary hearing transcripts, or certified copies of the Spencer's

28 || ///

III

criminal trial transcripts Third party Defendants have been irreparably prejudiced. For this reason, the initial motion to amend should be denied.

In Nevada, a potential litigant or plaintiff is under an absolute duty to preserve evidence including documents, tangible items, and information relevant to litigation. Bass-Davis v. Davis, 122 Nev. 442, 134 P.2d 103, 106 (2006); Banks v. Sunrise Hospital, 120 Nev. 822, 830-31, 102 P.3d 52, 58 (2004). "When presented with a spoliation allegation, the threshold question should be whether the alleged spoliator was under any obligation to preserve the missing or destroyed evidence." Bass-Davis, 122 Nev. at 449-50. This pre-litigation duty to preserve evidence is imposed "once a party is on 'notice' of a potential legal claim." Bass-Davis, 122 Nev. at 450.

The spoliation of evidence, for which a party can be sanctioned, is the "destruction or significant alteration of evidence, or *the failure to preserve property for another's use as evidence* in pending or reasonably foreseeable litigation," in violation of a party's duty to preserve. See West v. Goodyear Tire & Rubber Co., 167 F.3d 776, 779 (2nd Cir. 1999)(emphasis added)(citing Black's Law Dictionary 1401 (6th ed. 1990)). According to that court, "[i]t has long been the rule that spoliators should not benefit from their wrongdoing." Id. As such, "[e]ven without a discovery order, a district court may impose sanctions for spoliation, exercising its inherent power to control litigation." Id.; see also Bass-Davis, 122 Nev. at 442, 134 P.2d at 106.

Pursuant to Rule 37 of the Nevada Rules of Civil Procedure, and Stubli v. Big D International Trucks, Inc. and the Budd Company, 107 Nev. 309 (1991), the instant motion should be denied based on the Spencer's spoliation of critical evidence.

II.

CONCLUSION

For all of the above reasons, Defendant respectfully requests an Order from this Court denying Plaintiffs' Motion to Amend Complaint Pursuant to NRCP 15(a).

1 1

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security pumber of any person.

DATED this 7 / day of August, 2016.

GLOGOVAC & PINTAR

By:

MICHAEL A. PINTAR, ESQ. Nevada Bar No. 003789 DONALD K. WHITE, ESQ. Nevada Bar No. 10467 Attorneys for Defendant, Allstate Insurance Company

1 CERTIFICATE OF SERVICE 2 Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of 3 Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that on the $2\frac{1}{3}$ day of August, 2016, I served the foregoing document(s) described as follows: 4 OPPOSITION TO RENEWED MOTION TO AMEND COUNTERCLAIM AND THIRD 5 **PARTY COMPLAINT** 6 On the party(s) set forth below by: 7 8 Placing an original or true copy thereof in a sealed envelope placed for Χ_ collection and mailing in the United States Mail, at Reno, Nevada, 9 postage prepaid, following ordinary business practices. 10 Personal delivery. 11 Facsimile (FAX). 12 13 Federal Express or other overnight delivery. 14 addressed as follows: 15 William Routsis, Esq. Lynn G. Pierce, Esq. 1070 Monroe Street 515 Court Street, Suite 2f 16 Reno. NV 89509 Reno, NV 89501 17 Attorneys for Jeffrey Spencer Attorneys for Jeffrey Spencer 18 Douglas R. Brown, Esq. David Zaniel, Esq. Lemons, Grundy & Eisenberg Ranalli & Zaniel, LLC 19 6005 Plumas St., 3rd Floor 50 W. Liberty St., Suite 1050 Reno, NV 89519 Reno, NV 89509 20 Attorneys for Helmut Klementi Attorneys for Jeffrey Spencer 21 Tanika Capers, Esq. 22 6750 Via Austi Parkway, Suite 310 Las Vegas, NV 89119 23 Attorneys for Rowena Shaw and Peter Shaw 24 25 Dated this 24 day of August, 2016. 26 27 Melissa Welch 28

FILED l RECEIVED TANIKA M. CAPERS 2016 SEP -6 PH 12: 02 2 Nevada Bar No. 10867 SEP 0 6 2016 6750 Via Austi Parkway, Suite 310 3 Las Vegas, NV 89119 Pourlag County Laurer Sour Clark Phone: (702) 733-4989, Ext. 51652 4 Fax: (877) 888-1396 5 tcapers@amfam.com Attorney for Defendant Rowena Shaw and Peter Shaw 6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA 7 IN AND FOR THE COUNTY OF DOUGLAS 8 9 HELMUT KLEMENTI, 10 Plaintiff. Case No. 14-CV-0260 11 VS. 12 Dept. No. II JEFFREY D. SPENCER & DOES 13 1-5. 14 Defendant JOINDER TO THIRD-PARTY 15 JEFFREY D. SPENCER. DEFENDANT MARY KINION, 16 EGON KLEMENTI AND ELFRIEDE Counterclaimant, KLEMENTI'S OPPOSITION TO 17 RENEWED MOTION TO AMEND 18 **COUNTERLCAIM AND THIRD** VS. PARTY COMPLAINT 19 HELMUT KLEMENTI, and 20 individual, EGON KLEMENTI, and individual, MARY ELLEN 21 KINION, and individual, and 22 DOES 1-5, 23 Counterdefendants. 24 25 26 27 28

Rowena Shaw and Peter Shaw, by and through their attorney of record. Tanika M.

Capers. Esq., hereby joins Defendants Mary Kinion, Egon Klementi and Elfriede

Klementi's Opposition to Renewed Motion to Amend Counterclaim and Third Party

Complaint.

Rowena and Peter Shaw further incorporate the Motion, Memoranda of Points and Authorities, and all subsequent briefing as though fully set forth herein by reference.

AFFIRMATION Pursuant to NRS 239B.030

The undersigned affirm that this document does not contain the social security number of any person.

Dated this 1st day of September, 2016

TANIKA M. CAPERS

Nevada Bar No. 10867

6750 Via Austi Parkway, Suite 310

Las Vegas, NV 89119

Phone: (702) 733-4989, Ext. 51652

Fax: (877) 888-1396 tcapers@amfam.com

Attorney for Rowena Shaw and Peter Shaw

l

2

3

4 5

6

7

8

9

10

11

12

13

14

15 16

17

18

19

20

21

22 23

24

25 26

27

28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b). I certify that on this 2nd day of September, 2016, the foregoing JOINDER TO THIRD-PARTY DEFENDANT MARY KINION, EGON KLEMENTI AND ELFRIEDE KLEMENTI'S OPPOSITION TO RENEWED

MOTION TO AMEND COUNTERLCAIM AND THIRD PARTY COMPLAINT was

served on the following by placing an original or true copy thereof in a sealed envelope

placed for collection and mailing in Las Vegas, Nevada, to:

1070 Monroe St. Reno, NV 89509

Attorney for Jeffrey Spencer

William J. Routis, II, Esq.

David M. Zaniel, Esq.

Ranalli & Zaniel, LLC

50 West Liberty Street, Stc. 1050

Reno. NV 89501

Attorney for Counterclaimant Jeffrey Spencer

Michael A. Pintar, Esq.

Christian Moore, Esq.

Douglas Brown, Esq.

Reno. NV 89519

Reno, NV 89501

Lynn G. Pierce, Esq.

440 Ridge Street, Suite 2

Attorney for Jeffrey Spencer

Lemons, Grundy & Eisenberg

6005 Plumas Street, Ste. 300

Attorneys for Helmut Klementi

Glogovac & Pintar

427 West Plumb Lane

Reno. NV 89509

Attorney for Mary Ellen Kinion

RECEIVED CASE NO .: 1 14-CV-0260 MAR 2 1 2017 2 DEPT. NO.: I **Dauglas County** 2017 MAR 21 PM 3: 11 Light Court Clerk 3 DOBBIE R. WILLIAMS 4 My BIAGGINEPUTY 5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA 6 IN AND FOR THE COUNTY OF DOUGLAS 7 8 HELMUT KLEMENTI, MOTION FOR ATTORNEY'S FEES 9 Plaintiff, AND COSTS 10 VS. 11 JEFFREY D. SPENCER & DOES 1-5, 12 Defendants. 13 JEFFREY D. SPENCER, 14 Counterclaimant, 15 16 KLEMENTI, an individual, HELMUT 17 EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 18 1-5, 19 Counterdefendants. 20 Counter-defendant, Mary Ellen Kinion ("Kinion"), by and through her attorneys of 21 record, Glogovac & Pintar, and pursuant to NRCP 18.005 and NRS 18.010, respectfully 22 submits this motion for attorney's fees and costs. 23 This motion is based upon the attached Memorandum of Points and Authorities along 24 with all papers and pleadings on file herein. 25 /// 26 /// 27 28

A. Introduction

On February 3, 2015, Spencer filed a document entitled Answer and Counterclaim. In the Counterclaim, Spencer alleged, in relevant part, that Kinion made false statements at a KGID board meeting and then later to the Douglas County District Attorney's Office for the purpose of persuading and inducing the State to prosecute Spencer. On April 22, 2016, Kinion moved for summary judgment on the claim for malicious prosecution. Following a hearing on January 30, 2017, the Court granted that motion.

I.

MEMORANDUM OF POINTS AND AUTHORITIES

As will be shown below, in asserting a claim for malicious prosecution, neither Spencer, nor his counsel, conducted a reasonable investigation, or they ignored the documents, other facts and applicable law that specifically identify and establish the impropriety of the claim against Kinion. Because the claim for malicious prosecution was brought and maintained without reasonable grounds, it cannot be considered as anything other than a heavy-handed, unsupported litigation tactic designated to harass. Thus, Kinion is entitled to an award of attorney's fees and costs pursuant to NRS 18.010(2)(b).

В. **Background**

The undisputed facts show that on December 18, 2012, Kinion attended a neighborhood KGID meeting wherein she informed KGID of the events that took place several days earlier regarding a snowplow incident involving Spencer and Egon Klementi ("Egon"). Later that same evening, Spencer assaulted Egon's brother, Helmut Klementi ("Helmut") while Helmut was taking pictures of the snow berm in front of his brother's house.

The Douglas County Sheriff's Office responded and conducted an investigation of the incident. As part of that investigation, Douglas County Deputy Sheriff McKone interviewed Helmut, Egon, Elfie Klementi, Janet Wells, Spencer and Marilyn Spencer. According to the Douglas County Sheriff's Report and Deputy McKone's deposition testimony, Spencer informed Deputy McKone that he attacked Helmut because he believed Helmut was breaking into his truck. Spencer also claimed that he thought Helmut was a teenager in a hoodie. Spencer

1

3

4

5 6

7

8

9

10

11 12

13

14

15

16 17

18 19

20

21

22

23 24

25

26 27

1
 2
 3

admitted to Deputy McKone that he grabbed Helmut and threw him to the ground. Ultimately, Deputy McKone did not find Spencer's account to be credible. As a result, Deputy McKone arrested Spencer for battery and abuse of an elder. Deputy McKone never spoke with or obtained a statement from Kinion. In fact, he never had any interaction with Kinion whatsoever and did not base his decision to arrest Spencer on any information originating from Kinion.

Following Spencer's arrest, the Douglas County Deputy District Attorney's office pursued criminal charges against Spencer. Later, at the direction of the Douglas County District Attorney, Kinion was asked to write a letter explaining what she saw and/or heard Spencer do. Kinion did that and sent a letter to the District Attorney's Office that was received in that office on February 22, 2013. Exhibit 1, attached.

On January 31, 2017, a hearing was held on Kinion's motion for summary judgment. At that hearing, Maria Pence, the Douglas County District Attorney who prosecuted the criminal case against Spencer testified. Ms. Pence specifically testified that no one was involved in the decision as to what criminal charges to bring against Spencer other than herself. Ms. Pence further testified that the original criminal charges she filed against Spencer were Battery, a misdemeanor, Intimidation of a Witness to Influence Testimony, a category D felony, and Exploitation of an Elderly Person, a gross misdemeanor. Exhibit 2, Hearing Transcript p. 49: 11-14. Later, the gross misdemeanor charge was enhanced by Ms. Pence to a felony based on the medical records that showed that Helmut Kelmenti had received substantial body injuries. Exhibit 2, p. 64: 4-9.

Ms. Pence's testimony confirms that Plaintiff's claim for malicious prosecution against Kinion was brought without a reasonable investigation and/or in ignorance of the facts. Ms. Pence's testimony was that nothing Kinion said or did affected the criminal charges filed against Spencer. Kinion had no involvement in the Douglas County Deputy Sheriff's decision to arrest Spencer on December 18, 2012 and nothing that Kinion wrote or said in her letter to the Douglas County District Attorney's office resulted in the charges against Spencer being enhanced. Kinion was simply told by Ms. Pence that, "if you have any information you think

that would be relevant or helpful, please write it down and send it to the District Attorney's Office." Exhibit 2, p. 22: 16-23.

C. <u>Discussion</u>.

1. Sanctions

NRS 18.010(2)(b) provides in pertinent part:

Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden-limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public. (Emphasis added).

In addition to Ms. Pence categorically denying that Kinion had any involvement in the criminal charges against Spencer it is clear that Spencer and his attorneys did no investigation before filing the claim for malicious prosecution. To this end, in asserting their claim against Kinion, Spencer did *not* have a copy of the February 22, 2013 letter written by Kinion that was received by the Douglas County District Attorney's office. Moreover, as established at the recent hearing, Spencer did *not* have a copy of the Criminal Complaint upon which the initial criminal charges against Spencer were based. Further, Spencer did *not* have a copy of the amended criminal charges. If they did, Spencer and his attorneys, would have known that the criminal charges asserted against Spencer were filed *before* the Douglas County District Attorney spoke to Kinion and that they were enhanced only upon the District Attorney's office learning of the severity of Helmut Klementi's injuries and damages. Nothing that Kinion said or did affected the criminal charges against Spencer. Based on the foregoing, the malicious prosecution claim was filed without reasonable grounds and solely to harass. Kinion should therefore be awarded her attorney's fees and costs.

2. Attorney's Fees.

In addition to an entitlement to attorney's fees under NRS 18.010(2)(b), Kinion is also entitled to an award of attorney's fees and costs by reason of her being the prevailing party in summary judgment. "To be a prevailing party, a party need not succeed on every issue," MB Am., Inc. v. Alaska Pac. Leasing Co., 367 P.3d 1286, 132 Nev. Adv. Op. 8 (2016), quoting LVMPD v. Blackjack Bonding, Inc., 131 Nev. ——, 343 P.3d 608, 615 (2015). In the MB Am case, the court affirmed attorney's fees awarded to Alaska Pacific after Alaska Pacific was granted summary judgment making Alaska Pacific the prevailing party. In this case, Kinion defeated a significant portion of the counter-claims against her. Therefore, attorney's fees and costs related to litigating the motion for summary judgment should be awarded.

"The decision whether to award attorney's fees is within the sound discretion of the trial court." Bergmann v. Boyce, 109 Nev. 670, 674 856 P.2d 560, 563 (1993), citing to County of Clark v. Blanchard Constr. Co., 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982); see National Tow v. Integrity Ins. Co., 102 Nev. 189, 191, 717 P.2d 581, 583 (1986). The Bergmann Court stated, "The fact that not all claims are frivolous does not prevent an award of attorneys' fees." Bergmann at 675, citing to Department of Revenue v. Arthur, 153 Ariz. 1, 734 P.2d 98, 101 (Ct.App.1986). Attorney's fees should be allocated with relation to "grounded and groundless claims." Id at 675-676.

From the beginning, the claim for malicious prosecution that Spencer brought against Kinion was frivolous, vexatious, and without merit. It was designed solely to harass and intimidate. As a result, Kinion was forced to seek legal counsel and her attorneys were required to perform written discovery and depositions to establish that the malicious prosecution claim was without merit.

The law firm of Glogovac & Pintar incurred \$16,160 in fees defending Kinion from Spencer's claim of malicious prosecution See Affidavit of Michael A. Pintar, attached hereto as Exhibit 3. Attorney Pintar performed most of the work himself, but also had the assistance of his partner, Scott Glogovac, associates, and paralegals.

1 What began as a criminal case against Spencer has now evolved into a civil action by 2 which Spencer seeks to harass and intimidate Kinion and the other counter-defendants. 3 Working up a case to the point where summary judgment is granted requires much time and 4 effort. It requires specific written discovery and deposition questions which focus in on the 5 pertinent issues in dispute. As a culmination of the time and attention, summary judgment was 6 entered in favor of Kinion. 7 3. Costs. 8 Costs must be actual costs that are also reasonable. Gibellini v. Klindt, 110 Nev. 1201, 9 1206, 885 P.2d 540, 543 (1994). 10 "Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered . . . 11 [i]n an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500." NRS 18.020(3). In 12 actions not specifically enumerated in NRS Chapter 18, the district court has discretion in awarding fees to the prevailing 13 party. NRS 18.050. Under either statute, a party must prevail 14 before it may win an award of costs." Golightly & Vannah, PLLC v. TJ Allen, LLC, 132 Nev. Adv. Op. No. 41 at *8 (2016). 15 As put forth above, Kinion was the prevailing party. NRS 18.005 defines the costs 16 allowed to be recovered. As set forth in Exhibit 3, Kinion has also incurred costs in the 17 amount of \$3,976.18 in defending this matter through the January 31, 2016 hearing. 18 AFFIRMATION 19 Pursuant to NRS 239B.030 20 The undersigned does hereby affirm that the preceding document does not contain the 21 social security number of any person. 22 DATED this day of March, 2017. 23 GLOGOVAC & PINTAR 24 25 By: 26 MICHAEL A. PINTA Nevada Bar No. 003789 27 Attorneys for Counterdefendant, Mary Ellen Kinion 28

CERTIFICATE OF SERVICE 1 Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac 2 & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the foregoing document(s) 3 described as follows: 4 MOTION FOR ATTORNEY'S FEES AND COSTS 5 6 On the party(s) set forth below by: Placing an original or true copy thereof in a sealed envelope placed for 7 X collection and mailing in the United States Mail, at Reno, Nevada, postage 8 prepaid, following ordinary business practices. 9 Personal delivery. 10 Facsimile (FAX). 11 Federal Express or other overnight delivery. 12 addressed as follows: 13 14 Tanika M. Capers, Esq. Douglas R. Brown, Esq. 6750 Via Austi Parkway, Suite 310 Lemons, Grundy & Eisenberg 15 Las Vegas, NV 89119 6005 Plumas St., 3rd Floor Attorneys for Defendants Reno, NV 89519 16 Rowena Shaw and Peter Shaw Attorneys for Counter-Defendant Helmut 17 Klementi 18 Lynn G. Pierce, Esq. William Routsis, Esq. 440 Ridge St., Suite 2 1070 Monroe Street 19 Reno, NV 89501 Reno, NV 89509 Attorneys for Counter-Claimant Attorneys for Counter-Claimant 20 Jeffrey Spencer Jeffrey Spencer 21 David Zaniel, Esq. 22 Ranalli & Zaniel, LLC 50 W. Liberty St., Suite 1050 23 Reno, NV 89509 Attorneys for Defendant 24 Jeffrey Spencer 25 Dated this ____ day of March, 2017. 26 27 28

EXHIBIT 1

EXHIBIT 1

FEB 22 2013

DOUGLAS COUNTY

Dear Maria Pence, This is a list of events that I saw and heard about

Last May Marilyn Spencer told me she won her restraining order against Bruce Taylor but she was mad that Elfie and Egon did not sit on her side of the court room for the event. She sent her lawyer over to ask which side they were on. The Klementis told him they were just spectators. They did not move to the other side where Marilyn had a group of people sitting.

Marilyn and Jeff parked a huge neon painted 18 wheeler truck on to their property. Marilyn came to my house to tell me they had a film of Egon standing at the edge of their property taking pictures of the truck. She said she was going to do something about it. I told her to leave him alone. She also told me they were going to put up a 6 ft fence and didn't want any neighbors complaining.

They were forced to remove the truck. The fence went up and there were complaints because the fence created a dangerous intersection.

Jeff accosted Egon in the street and yelled at him about coming on his property and taking pictures. Marilyn and Janet Wells, a neighbor, joined him. Jeff threatened to punch Egon in the face. The same day Marilyn and Jeff made a complaint that Egon was harassing them and insinuated that he was a pervert who took pictures of high school boys with their shirts off on their property. The fence builder had his sons helping him put up the fence. The same week they also tried to get TRPA involved saying the Klementi's did not have permits for work done on their property. They had permits.

Pete and Rowena Shaw made complaints about the fence. Pete was working at the edge of his property when Jeff backed his truck up to him and sat there revving up the engine to cause a cloud of exhaust to cover Pete. He didn't stop until Pete went into his house to get away.

I woke up one morning after it snowed to find a huge ice filled snow berm in front of my driveway. No other neighbor had one, I called KGID. They came and cleared it away and said it was a deliberate act. Later when I was outside I saw Jeff driving the plow truck fast past me with a big grin on his face. Egon was shoveling snow in his driveway. When Jeff drove past him he turned the blade on the snow plow to spray Egon with ice and snow. Egon was fortunately not hurt. This was reported and a KGID manager told us Jeff would not be allowed to snowplow on our street any more.

Jeff was also not allowed to snowplow on Juniper St because he was caught putting huge berms in front of the Taylor's house the year before. Janet Wells said Marilyn bragged to her about how Jeff was going to plow huge berms in front of the Shaw's and Klementi's houses this winter

A few days later Jeff plowed snow from his property and jammed it up against the Klementi's fence and driveway. At a KGID meeting the next night we were told to take pictures of the berms. This is what Helmut was doing later that night when Jeff came up and punched him in the chest so hard that

he landed on his back and couldn't get up. Jeff left him lying in the street in front of the Klementi's house.

Two days later I came home from work to a nasty phone message from Debbie Tilley, someone had known for twenty years. I found out from Debbie that Marilyn had told her that I was spreading rumors around town about her two teenage sons involvement in car break ins. Marilyn also told her that the klementi's and I wrote a threatening unsigned letter to the Poet's, who live in our neighborhood. It said something bad was going to happen to their son for breaking into cars. I was truly amazed that Marilyn would go this far. It is too crazy.

The day Jeff was charged in court, Dave Bashline and Michelle Grant, friends of the Spencer's, tried to get restraining orders against the Klementi's and myself. I am sure Marilyn was behind this also, I don't think she will ever quit.

I don't care about all the lies as much as I do Helmut getting hurt so badly. I see him a couple of times a week and he is still in a lot of pain and may have lifelong pain issues from his injuries. He is a kind and gentle person.

mongEllen Kenion 1715-588-6916

Thank you,

D1290

EXHIBIT 2

EXHIBIT 2

	1	CASE NO: 14-CV-0260				
	2	DEPT. NO: II				
	3					
	4					
	5	IN THE NINTH JUDICIAL DISTRICT COURT				
	6	IN AND FOR DOUGLAS COUNTY, STATE OF NEVADA				
	7					
	8	HELMUT KLEMENTI,	Transcript of Proceeding			
	9	Plaintiff,				
	10	v.				
	11	JEFFREY D. SPENCER, and DOES 1-5,	HEARING January 30, 2017			
	12	Defendants				
	13					
	14	JEFFREY D. SPENCER,				
\bigcirc	15	Counterclaimant,				
	16	v.				
	17	HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individua				
	18	MARY ELLEN KINION, an individual and DOES 1-5,	l,			
	19	Counterdefendants.				
	20					
	21					
	22					
	23		TANK CADAIACEC			
	24	SUNSHINE LITIGA				
	25	TRANSCRIBED	FROM JAVS CD			

	1	APPEARANCES
	2	
	3	FOR THE PLAINTIFF
	4 5	Lemons Grundy & Eisenberg 6005 Plumas Street, 3 rd Floor Reno, NV 89519
	6	FOR DEFENDANT SPENCER Lynn G. Pierce, Esq. 515 Court Street, Suite 2F
	7	Reno, NV 89501
	8	William J. Routsis, Esq. Law Offices of William J. Routsis, II
	9	1070 Monroe Street Reno, NV 89509
	10	
	11	FOR EGON & ELFRIEDE KLEMENTI AND MARY ELLEN KINION Michael A. Pintar, Esq.
	12	Glogovac & Pintar 427 W. Plumb Lane
	13	Reno, NV 89509
	14	
\bigcirc	15	FOR ROWENA & PETER SHAW Tanika M. Capers, Esq. 7300 Pirate's Cove Road, #1038
	16	Las Vegas, NV 89145
	17	
	18	TRANSCRIPTION Pam Simon
	19	
	20	Proceedings recorded by digital sound recording, transcript produced by certified transcriptionist.
	21	
	22	
	23	
	24	
	25	

Page -2-

	1	H	INDEX		
	2				
	3	EXAMINATION OF MARIA I	PENCE:		
	4	By the Court Page	e 12		
	5	By Ms. Capers Pag	e 15		
	6	By Mr. Moore Pag	e 18		
	7	By Mr. Pintar Pag	e 21		
	8	By Mr. Routsis Page	e 27		
	9	By Ms. Pierce Page	e 66		
	10	By Mr. Zaniel Pag	e 75		
	11				
	12				
	13	EXHIBITS:	Marked	Admitted	
	14	Exhibit 1 (Ms. Kinion letter)	10		
	15	Exhibit 2 (Criminal Complaint)	27	Not Admitted	
	16	Exhibit 3 (Amended Info.)	33	115	
,	17	Exhibit 4	79	79	
	18	Exhibit 5 (Police Report)	5	115	
	19				
	20				
	21				
	22				
	23				
	24				
	25				

Page -3-

1	EXAMINATION
2	MINDEN, NEVADA, JANUARY 30, 2017
3	
4	000
5	(Court in session at 1:38:38 p.m.)
6	
7	THE COURT: Thank you. Please be seated everybody. Good
8	afternoon to you all.
9	Alright. We're on the record in case number 14-CV-0260. The
10	title is Klementi versus Spencer; Spencer versus Klementi and Kinion. Two
11	Klementi's, excuse me.
12	We were here in December, and I asked – and I heard arguments
13	in regards to the Motion for Summary Judgment, and in regards to the Motion
14	to Amend.
15	And I thought it would be a good idea at the time to invite the
16	District Attorney that prosecuted the original case against Mr. Spencer to come
17	and testify based on a letter that was presented to me during that hearing, and
18	the letter was from Ms. Kinion.
19	Do you have that in front of you all, counsel?
20	MR. ROUTSIS: Yes.
21	THE COURT: And so when I was glancing – I didn't read the
22	letter in detail, but as I was glancing at it, it occurred to me that maybe we
23	could talk to the District Attorney to see what was going on in the District
24	Attorney's mind at the time of charging the original matter as a felony.
25	And so that's why we're here today. And also, I want to – when

Page -4-

1	we're done with the sur	nmary judgment, and when we're done with the
2	amendment, I want to pic	k a trial date.
3	MR.ROUTSIS:	Judge, we filed a Supplemental Opposition that the
4	Court asked – emailed to	the Court. Could we provide you with a physical
5	copy, now?	•
6	THE COURT:	Did you get it, Mr. Zaniel?
7	MR. ZANIEL:	Yes, Your Honor. I think it was circulated by
8	email.	
9	MR. ROUTSIS:	We got - I just file-stamped it five minutes ago.
10	THE COURT:	Okay. I didn't get it. I saw it this morning, and I'll
11	identify everybody, but I d	lidn't get it.
12	I saw where	Mr. Routsis sent something yesterday afternoon.
13	MR. ROUTSIS:	Yes.
14	THE COURT:	And I couldn't open it.
15	MR. PINTAR:	It was in Word Perfect, and I couldn't either.
16	THE COURT:	And then Mr. Zaniel wrote this morning.
17	MS. PIERCE:	I would like to apologize for that, Your Honor. I
18	was experiencing technica	l difficulties (inaudible) and so I attempted to send
19	it via Mr. Routsis' email, a	and I'm sorry it was not a success.
20	MR. ROUTSIS:	I can take the blame.
21	THE COURT:	So, Mr. Pintar, good afternoon. Mr. Moore,
22	good afternoon, nice seein	g you.
23	MR. MOORE:	Good afternoon, Your Honor.
24	THE COURT:	And Ms. –
25	MS. CAPERS:	Capers.

Page -5-

1	THE COURT: Capers. Good afternoon to you. You're standing
2	like maybe you didn't get it either? All three of you.
3	MR. PINTAR: No. This was just handed to us less than five
4	minutes ago.
5	Also, I want to apprise the Court that we were not provided with
6	the records that the Spencers received from the Douglas County District
7	Attorney's Office until late last week, so we haven't had a chance to go through
8	them all.
9	MS. CAPERS: And I haven't received them at all.
10	MR. PINTAR: And I believe your Order at the last hearing was
11	that those were supposed to be produced, and so we didn't review them and
12	prepare supplemental briefing.
13	I just wanted to apprise the Court that that was not done.
14	MR. ZANIEL: Your Honor, I disclosed them last Wednesday.
15	They signed for them. It was late. My office had an issue with that. My
16	paralegal wanted to review and summarize before disclosing.
17	Since then, I've talked to my paralegal about disclosing records
18	as soon as we get them, so I have to fix my internal issue. But it is true, that
19	they were not disclosed until last Wednesday.
20	And then with Ms. Capers, I'll put her on the mailing list. It's
21	still my understanding that I don't think Ms. Capers has made a formal
22	appearance in the case.
23	MS. CAPERS: No, I did.
24	MR. ROUTSIS: You did, okay. So we'll correct the Certificate of
5	Carriage and make sure that does not hannen again

Page -6-

Alright. Let's think what we could do. I mean, THE COURT: 1 2 that's all I'm going to say right now. I know that Mr. Glogovac was here earlier for Mr. Pintar. And, 3 4 you know, we'll catch up. I was saying, and I'll say this to all of the parties that are present. 5 If this case were on my normal docket 20 years ago in Reno, you watch me, and 6 counsel knows me, every counsel except for Ms. Capers, knows me, to the 7 point, come on, come on, come on, come on, come on. 8 Well, Senior Judge. Now, hmmm, let me see what's going on 9 here. Not that I was too quick to make any judgments earlier, but I had many, 10 11 many more cases. Now, I'm a little bit more - take my time. I'm older, that kind of 12 13 thing. Hopefully, a little bit wiser. So that's why. And so when I say to everybody today, if you feel 14 like you can't respond - remember, I've had the arguments before, and I 15 16 wanted to talk to the District Attorney. So, I want you all to talk to the District Attorney today. She's 17 going to be under oath. I'm happy that she came. And I want to get a flavor 18 19 for why she charged a felony. So if you feel like you want to supplement, if you feel like you 20 want to bring up anything else, we just got this late supplement. I just got it 21 just now, haven't read it. But that's where we are. 22 But let's take (inaudible). Let's go ahead and call the witness and 23 go from there. I've identified Ms. Capers. I've identified Mr. Moore. I've 24 identified Mr. Pintar, Mr. Zaniel, Ms. Pierce and Mr. Routsis who didn't send 25

Page -7-

1	me any email this week.	
2	And so you	're all present. Let's go. Where's our witness?
3	(Witness du	ıly sworn)
4	THE COURT:	Good afternoon to you, and thank you so much for
5	coming. I sincerely, since	erely appreciate it.
6	THE WITNESS:	You're welcome. It's not how I like to spend the
7	afternoon, but –	
8	THE COURT:	I understand, and I don't –
9	THE WITNESS:	But you asked, and I'm here to comply.
10	THE COURT:	And could you please state your full name for the
11	record?	
12	THE WITNESS:	Maria Elizabeth Pence, P-E-N-C-E.
13	MR. PINTAR:	Excuse me. Your Honor?
14	THE COURT:	Yes.
15	MR. PINTAR:	Do we have a court reporter here? Is this being
16	recorded?	
17	THE COURT:	It's all recorded, right?
18	THE CLERK:	Yes, on JAVS.
19	MR. PINTAR:	It is?
20	THE COURT:	Yeah.
21	MR. PINTAR:	Thanks.
22	THE COURT:	Even though we are one of the cow counties, we do
23	have (inaudible).	
24	MR. PINTAR:	You said that, not me.
25	THE COURT:	I know. I said it before you were going to say it.

Page -8-

1	(Laughing).
2	Forgive me, pardon. These are all Reno lawyers, and I have one
3	Las Vegas lawyer, so I know "big city."
4	Ms. Pence, thanks a lot for coming, and I want you to be
5	comfortable. I do not want, in any way, shape or form, to invade any
6	attorney/client privilege relationship, public relationship, anything like that.
7	I – where is that letter? Where is that letter from Ms. Kinion?
8	UNKNOWN: Your Honor, we provided - I just gave you the
9	document, the supplemental, and that letter is actually – it's an exhibit. And I'll
10	tell you, it's on – after the document which is 9, 10 pages, it's the first exhibit.
11	THE COURT: Ms. Pence, I'm going to hand you what has not
12	been admitted in evidence, but I'm going to hand you a letter authored by Mary
13	Ellen Kinion. There is no date on it.
14	But I want you to look at this. Go ahead and give it to her, thank
15	you.
16	I want you to look at this to see if you can refresh your memory
17	as to whether or not you received the letter, and whether or not it meant
18	anything to you.
19	I realize that's an open ended question, but I'm trying to make it
20	open ended, so I can go on from there.
21	So go ahead and take your time and see if you can identify and
22	refresh your recollection about receiving that letter.
23	THE CLERK: Just to be clear, are you – Mr. Pintar, you would
24	like me to mark this as Exhibit 1? Are we marking it?
25	MD DINTAD. Can we do that Your Honor?

Page -9-

1	THE COURT: I think we did last hearing for the purposes of the
2	hearing (inaudible).
3	THE CLERK: Okay. I don't have that right now (inaudible).
4	MR. PINTAR: Your Honor, for the record, I just want – this was
5	produced, what we marked Exhibit 1 for the first time last week.
6	THE CLERK: Okay.
7	MR. PINTAR: So I don't know where – it couldn't have been at
8	the last hearing.
9	THE COURT: I think it was at the last hearing. It was.
10	I didn't admit it into evidence, but I marked it in for the purposes
11	of the hearing.
12	MS. PIERCE: If I could clarify (inaudible) the record, Your
13	Honor, at the last hearing, we had found the letter very recently prior to the
14	hearing in the files that the investigator for Mr. Routsis still had from the
15	criminal matter which he didn't even know she still had it.
16	It is identical to the letter that has now been produced by the
17	DA's Office. So I don't know which copy you're looking at, but it's – it is the
18	same letter.
19	THE COURT: Alright. The letter I'm looking at, and I hope that
20	Ms. Pence is looking at, has, in somebody's writing, 12-2555Q. And to the
21	right of it, it's received February 22, 2013, Douglas County District Attorney.
22	Is that what you have on the first page?
23	THE WITNESS: It is, Your Honor.
24	THE COURT: Okay. That's what I'm looking at, and that's what
25	I think was marked at the last hearing.

Page -10-

1	THE CLERK: It's lodged in the file, so I don't have it in front of		
2	me, but it would be lodged on the left of the Court's file.		
3	THE COURT: Lodged would mean?		
4	THE CLERK: Yeah, over there. So I'm not seeing an envelope		
5	so I (inaudible – cross talking).		
6	THE COURT: Alright. I don't see an envelope, and that's what		
7	lodging is?		
8	THE CLERK: Right. It could (inaudible).		
9	THE COURT: Alright. So let's go ahead and just mark this as		
10	Exhibit 1.		
11	THE WITNESS: Your Honor, I apologize. This – mine appears to		
12	have some sort of a bates stamp at the bottom of it. Is that – no. So this was		
13	a bates stamped copy, so I don't have the same one that you have -		
14	THE COURT: I don't have (inaudible).		
15	THE WITNESS: - but I have similar. You mentioned there's only		
16	one letter.		
17	MR. ROUTSIS: Your Honor, I believe that's my bates stamp.		
18	That's how we produced the record.		
19	THE COURT: Yeah. Let's let you, Ms. Pence, go off of the		
20	marked letter. So, same thing. 12-2555Q, received February 22, 2013. No		
21	bates stamp on –		
22	THE WITNESS: No, it has the bates stamp still, Your Honor. I		
23	apologize. I think you're the only one whose copy is not bates stamped now.		
24	MR. MOORE: Would you like a bates stamped copy, Your Honor?		
25	THE COURT: No. (Inaudible – cross talking; laughing).		

Page -11-

(1	MR. MOORE: Well, I'd like a bates stamped copy.
,	2	THE COURT: Give it to him.
	3	MS. CAPERS: Well, I don't either, but -
	4	MR. MOORE: You don't have any of those.
	5	MS. CAPERS: I know, right?
	6	THE COURT: Button, button, who's got the button? As long as
	7	we're on the same page. Are we? Signed by Mary Ellen Kinion, 775-588-
	8	6916, the second page.
	9	Okay. Have you familiarized yourself with the contents of this
	10	letter, Ms. Pence?
	11	THE WITNESS: I have, Your Honor. I just briefly read through it.
	12	-000-
	13	MARIA E. PENCE
Ċ	14	called as a witness, having been duly sworn,
ب	15	testified as follows:
	16	DIRECT EXAMINATION
	17	BY THE COURT:
	18	Q And do you remember receiving this letter?
	19	A I remember seeing this letter before. I can tell the Court
	20	that the handwritten entry at the top was made by my legal secretary at the time,
	21	so it would have come to the Douglas County District Attorney's Office. She
	22	coded it to this particular criminal matter. That's a DA number. Q was my
	23	number at the time. And the time that it was received in our office was the
	24	February 22 nd , 2013, time.
	25	I'm not sure - I think that would be sometime several months

Page -12-

1	after I had originally charged this case, and I remember meeting Mr. Kinion at
2	the Tahoe Township Justice Court, and her expressing that she had some
3	information.
4	And I told her, you know, "If there's something that you think is
5 .	relevant to the case, to please feel to write something and send it to the District
6	Attorney's Office."
7	And that's about the extent of what I remember without going
8	back and checking file notes, as far as this letter.
9	Q When you met Ms. Kinion at Justice Court, was that the
10	day of the Preliminary Hearing, if you're – on this date? (Inaudible).
11	A I don't remember when it was. I think there were several
12	Court appearances at the Justice Court level before it went to Prelim, and I
13	don't know when - if she was a ride for them, if she came - I don't remember.
14	I just remember that's where I met her was at the Tahoe
15	Township Justice Court.
16	Q Did she say anything to you that – I'm going to use the
17	word unduly, unduly influence you to charge a felony or not? Anything like
18	that?
19	Was there anything in reaction on your part from what Ms.
20	Kinion either wrote or said to you?
21	A No. And I would just be guessing, but my guess is that -
22	I think when I originally charged this case, I don't remember if it was 2 or 3
23	counts, but she was not a part of the charging decision whatsoever at all.
24	I received this – I received a lot of information before Prelim.
25	Specifically, I think the biggest thing was medical documents, and I remember

Page -13-



there was voluminous records from doctors that Mr. Routsis wasn't able to find, and kept losing, that there were all these reasons that they were appearing.

But there was actually a ton of medical records, and I think probably the biggest change — and I apologize because it's been so long. I don't remember exactly, but I don't think the charges actually changed substantially at all from what I charged the day I read the Sheriff's Office Report until the day we went to trial.

I think the only enhancement was based on medical records because once there was substantial bodily harm, it elevated — I think it was a gross misdemeanor to a felony.

Q And the medical records influenced you to the point of the felony because of substantial bodily harm?

A Well, exactly. At the time that I charged it, I did not have any medical records.

O I see.

A At all. And then I think I was given his original medical records, and I talked to the victim himself in that count, and he was still seeing a doctor.

And by the time I actually understood what had actually happened to him – when I believe that he was pushed down by Mr. Spencer, it was much more severe than I had originally understood.

And the only reason it became a felony was because the level of proof that I would need for prolonged physical pain, where impairment was met by the medical records.

But I actually think that all - the charges were the same the entire



1	time. And I think there was at least a Criminal Complaint. I think it was
 2	amended at the lower court level.
3	I think there was some information filed that alleged the
4	substantial bodily harm. That's what elevated the one count to a felony from
5	a gross. And I think there was one more amendment when I added - asked to
6	endorse some witnesses because there were more medical personnel and more
7	people that were involved.
8	Q Does age have anything to do with it as far as Mr.
9	Klementi was over a certain age or anything like that?
10	A Absolutely. But that was done I think the day I received
11	the case.
12	Q Because of the age?
13	A Because of the age. There's the - the DA's Office, there's
14	a checklist for these sort of things, and you look at victim age, especially under
15	exploitation (inaudible) for the elderly, and he met the age criteria.
16	So I think it was charged – that was charged just based off of the
17	police report.
18	THE COURT: Okay. I don't have any other questions.
19	I want to invite the attorneys, and we can go in order, really, from
20	left to right, Ms. Capers - we'll start with Ms. Capers, to see if you have any
21	questions of Ms. Pence based on why she's here?
22	EXAMINATION BY MS. CAPERS
23	-000-
24	MS. CAPERS: I do. I represent Peter and Rowina Shaw. I don't
25	know if me saying those names jog your memory at all, but again, the same

Page -15-



į	1	type of questions I would ask as the Judge concerning the factors that weighed
	2	into you charging the matter.
	3	BY MS. CAPERS:
	4	Q Did anything Mr. Shaw or Mrs. Shaw say or do that
	5	influenced your decision to charge a felony in this matter?
	6	A Before I answer, can I just clarify?
	7	Q Yes.
	8	A That's Dr. Shaw?
	9	Q Yes.
	10	A They had video camera security outside of their home, is
	11	that right?
	12	Q Yes.
	13	A Okay. I know – I just want to make sure.
	14	No. And if it helps, just to sort of go back in time, when I was
	15	working as a Deputy District Attorney with the DA's Office, we have a
	16	charging manual.
	17	And the way things work is that when Sheriff's Office reports are
	18	generated, they are randomly assigned - sometimes randomly, sometimes at the
	19	direction of the DA, to particular deputies in the office.
	20	So we constantly have a stack of reports. And when we have
	21	time, we go through these reports, and we file certain guidelines that we're
	22	given, and we make a charging decision.
	23	No one is involved in the charging decision except for myself and
	24	then, for example, if I have a question of the deputy that writes the report, I'll
	26	and downstairs. I would try and find that out

Page -16-

But the charging decision is made solely by whichever Deputy 1 2 District Attorney was assigned that case. And it's always been office policy, and I can't speak for today, 3 but while I was employed there, victims and witnesses do not drive that 4 process. I mean, you can imagine in a domestic battery if you're relying on a 5 6 victim for filing. It doesn't work that way. And while the manual is very specific victims must be constantly 7 8 apprised of what's happening in a case, and what the - what's going on, that's 9 very different than allowing them to participate in the actual charging. And I know that the Shaws are actually - they were not victims, 10 but they would not have a part in the charging decision. 11 My - and again, I don't have a copy of all of the complaints, but 12 my understanding is is that the only real change was from a gross misdemeanor 13 for the abuse of Helmet Klementi up to a felony, and that was when the medical 14 records showed that there were serious injuries and that he was in prolonged 15 16 physical pain. So, in a long round-a-bout way, the Shaws had nothing to do with 17 my decision to upgrade the charges from a gross to a felony. 18 Alright. Thank you. I pass the witness. 19 MS. CAPERS: THE COURT: Thank you. Mr. Moore? 20 Thank you, Your Honor. 21 MR. MOORE: Well, no, wait. We might as well take it as far as 22 THE COURT: any cross-examination based on Ms. Capers' questions. 23 24 We can go one at a time, or we can go -We would be the opposing counsel. Can I proceed 25 MR. ROUTSIS:

Page -17-

	1	then to –		
`	2	THE COURT: Yes, that's what (inaudible).		
	3	MR. ROUTSIS: And this is specifically just regarding the Shaws,		
	4	right? Redirect?		
	5	THE COURT: Well –		
	6	MR. ROUTSIS: Right. Because that's all she asked is of the Shaws.		
	7	THE COURT: Right. Then just hold your thoughts. Hold your		
	8	notes because I'll go one side to another side.		
	9	Alright, so now Mr. Moore?		
	10	MR. MOORE: Thank you, Your Honor.		
	11	EXAMINATION BY CHRISTIAN MOORE		
	12	-000-		
	13	BY MR. MOORE:		
	14	Q Hi, Ms. Pence. My name is Chris Moore and I'm an		
	15	attorney who represents Helmet Klementi in the civil litigation. I'll let you		
	16	know what I'm doing here.		
	17	Although my client is not directly involved in maybe the		
	18	particular Motion for Summary Judgment, one of the things you did say in		
	19	response to the questioning here was that you knew the Shaws had a video		
	20	camera.		
	21	To your recollection, did you ever look at anything on that video		
	22	camera? And I'm asking that because I want to know if that had anything to		
	23	do with the charging?		
	24	A I – it had nothing to do with charging because by the time		
	25	Imy understanding is - and I would have to go back to the case file, all of		

Page -18-

these charging decisions were made well before I received the evidence from 1 these things, and that's generally how it works is we make charges based on the 2 reports. We file a particular set of charges. 3 There's always, you know, investigation ongoing, and as we get 4 new records, we get new reports. 5 My understanding is we did not actually get the footage from the 6 Shaws for sometime, and there was an issue with how to play it because it was 7 8 a very complicated system. I want to say it was months after I charged this that we actually 9 received that. I did, in fact, watch it, and I believe part of it may have even 10 been played at the trial, but it had nothing to do with the charges. 11 And I understand. (Inaudible) of this happened 3, 4 years 12 Q 13 ago. You talked about the video footage. Were you aware that the 14 Spencers had a video surveillance system? 15 16 A Yes, I was. And was some of that video available to you as part of the 17 Q 18 process? It was a well known fact that the Spencers had a video A 19 20 surveillance system. I was not provided with the actual surveillance footage, although 21 it was requested multiple times, up until, I think, almost immediately before 22 23 trial. And I believe the first - no, actually, I might not have even been 24 provided with the footage until trial. It was a huge contention as far as 25

Page -19-

1	discovery.	
2	At one point, I know it was turned over finally because it had	
3	been altered, and I did a Motion in Limine because it had been cut and spliced.	
4	MR. ROUTSIS: Objection. Move to strike. Misstates the evidence.	
5	THE COURT: This is her memory, so I'm not going to worry	
6	about it.	
7	THE WITNESS: And I asked the Court to exclude it.	
8	My recollection is the Court did exclude some portions of it. At	
9	some point, I think the video actually was played in Court, but I don't know if	
10	the actual, final push wasn't played in Court, but what the footage did show	
11	was Mr. Klementi on the ground, and Mr. Spencer over him and then -	
12	I don't remember if there was volume or not, but his body	
13	language, and then him returning to the home.	
14	MR. MOORE: And, Your Honor, this is probative really to much	
15	of the case because one of the things we'd like to address later on today is that	
16	video because we've been in the process, and as the Court may recall, we have	
17	been engaged with forensic experts and what have you.	
18	And so Ms. Pence's enlightenment is helpful to us. I'm not going	
19	to go too much farther, but I just wanted to let the Court know why I'm asking	
20	the questions.	
21	THE COURT: Thank you.	
22	BY MR. MOORE:	
23	Q And along those lines, the material that you said was such	
24.	a contention and of dispute, when it was provided to the District Attorney's	
25	Office, do you recall if there was any raw, or what we might call, some people	

Page -20-

1	call it native footage, that was provided? Or was it just the edited material?
2	A My recollection is that all we received was edited material.
3	I was informed by Mr. Routsis that he had the entire incident on
4	film and that he was going to play it at the trial, and that, you know, we would
5	see what really happened.
6	I was never given any raw footage. I don't believe the District
7	Attorney's Office received raw footage.
8	The ultimate compilation that we received had been broken into
9	pieces and cut down and actually edited with arrows and certain additions that
10	were not part of the original footage.
11	MR. MOORE: That's what we thought. Thank you.
12	THE COURT: Thank you. Mr. Pintar?
13	MR. PINTAR: Thank you.
14 .	EXAMINATION BY MICHAEL PINTAR
15	-000-
16	BY MR. PINTAR:
17	Q Ms. Pence, my name is Mike Pintar. I represent Ms.
18 -	Kinion.
19	I just want to ask you a couple questions just about the time
20	(inaudible) if you will, as best as you can.
21	So my understanding is that the altercation or incident between
22	Mr. Spencer and Mr. Klementi occurred on December 18th of 2012, is that
23	correct?
24	A I wouldn't - I don't have a way to independently
25	remember that. It would probably be alleged in the first original Criminal

Page -21-



	1	Complaint, but I have no independent memory of that.	
No.	2	Q Assuming – I don't have a copy of the report, assuming	
	3	that was the case, when would the initial charging document have been filed by	
	4	the Douglas County District Attorney's Office?	
	5	A It would have depended on when the (inaudible -	
	6	coughing). Sometimes it's two weeks later. Sometimes it's two months later.	
	7	I'm sure if somebody wanted to go in the District Court file, we	
	8	could just look at it and know exactly when it was filed right now.	
	9	Q Okay.	
	10	A It would be sometime after that.	
	11	Q You mentioned before, during your questioning with Judge	
	12	Kosach, that you had a conversation with Ms. Kinion at the Tahoe Justice	
	13	Court.	
_	14	Was that after the charging document had been filed in?	
	15	A Yes.	
	16	Q Okay. And that conversation that you had with Ms.	
	17	Kinion at the Tahoe Justice Court, tell us again what you directed her to do?	
	18	A At the time that we spoke, she represented to me that she	
	19	knew the Klementies, and she had some information, and would I – you know,	
	20	would I like to hear it.	
	21	And I said, "You know, if you have any information you think	
	22	that would be relevant or helpful, please write it down and send it to the District	
	23	Attorney's Office."	
	24	We have people all the time in cases like this, witnesses, victims,	
	25	who want to give us just a ton of information which isn't helpful. I don't have	

Page -22-

	1	anything to record it or look at it with. I don't have any way to sort through it.
	2	So I ask people, if they're serious and they have something they
	. 3	want to say or they think would be helpful to write it and send it to the office
	4	because then we do get this. We get something that gets logged and there's a
	5	record of it, and then I can review it and look at it.
	6	And if it's something that's helpful or that clarifies something,
	7	that's the most useful thing for me.
	8	Q So looking at Exhibit 1 with the bates stamp of February
	9	22 nd , 2013, (inaudible), does that mean that that's when it was received by your
	10	office?
	11	A Yes.
	12	Q Okay. And then - so - so this was received on or about
	13	February 22 nd of 2013?
	14	A That's what the stamp shows.
	15	Q Okay. After you had the initial charges, then you
	16	conducted the Preliminary Hearing, and I believe that was in April?
	17	A That's correct.
	18	Q Okay. And Ms. Kinion was not called as a witness at the
	19	Preliminary Hearing, is that correct?
	20	A I don't believe that she was. I don't remember, but I don't
	21	think she was.
	22	Q Okay. So is it fair to conclude, as you said before, she had
	23	nothing to do with the charges brought against Mr. Spencer?
	24	A No. By the time that she wrote – that this letter was
	25	received in February, charges would have already been filed, and they would

Page -23-



;	1	have been filed for at least – I'm guessing they were probably filed for at least
` _ ~	2	a month or so.
	3	So, no. She did not have anything to do with the charges that I
	4	filed.
	5	Q And would the same also be true for the amended charges
	6	that were filed after the Preliminary Hearing then?
	7	That's my understanding of the time sequence that there was
	8	some amended charges after the Preliminary Hearing, before the trial.
	9	A And I could be wrong. Obviously, the easiest thing would
	10	be to get the District Court file, but I think the only amendments were that a
	11	gross misdemeanor was enhanced to a felony, and that was based on medical
	12	records. That had nothing to do with Ms. Kinion.
	13	MR. PINTAR: Okay. Thank you.
	14	MR. ROUTSIS: Good afternoon, Ms. Pence.
	15	(Inaudible – cross talking).
	16	THE COURT: I was going left to right.
	17	MR. ROUTSIS: (Inaudible).
	18	THE COURT: Maybe that's not the way the Greeks do it.
	19	MR. ROUTSIS: It's our motion. He was trying to -
	20	MR. ZANIEL: I was just going to ask a couple of questions about
	21	the DA file.
	22	MR. ROUTSIS: I'd like to mark for the record the Criminal
	23	Complaint, if we can.
	24	THE COURT: Okay. You can - Mr. Zaniel is deferring.
	25	MR. ZANIEL: I'm defer - I'll reserve. Just a few follow up

Page -24-

	1	questions - procedural, jus	at about how the DA's Office works, not about the	
`.	2	substantive nature of the m	notion.	
	3	THE COURT:	Okay.	
	4	MR. ROUTSIS:	Thank you, Judge. May I approach, Your Honor?	
	5	THE COURT:	Yes.	
	6	MR. ROUTSIS:	Counsel, here's a copy of the Complaint in case you	
	7	all (inaudible).		
	8	MR. PINTAR:	Your Honor, again for the record, this is the first	
	9	time we've been presented	this document. (Inaudible) for the record.	
	10	MR. ROUTSIS:	Your Honor, these are part of the discovery they	
	11	were provided last week (in	naudible).	
	12	MR. MOORE:	Counsel, can you provide a document (inaudible -	
	13	cross talking).		
	14	MR. ROUTSIS:	Strike - strike that, Judge. (Inaudible).	
	15	MS. PIERCE:	If I may say, that was an attachment as an exhibit	
	16	to the Opposition to the Motion for Summary Judgment which was served on		
	17	all the parties.		
	18	MR. ROUTSIS:	They've had this for a long time.	
	19	MR. MOORE:	Thank you. Do you have a document control	
	20	number we could write dov	vn?	
	21	MS. PIERCE:	A document control number?	
	22	MR. MOORE:	Sure.	
	23	MR. ROUTSIS:	Judge, if we can, we provided a Motion, the	
	24	Complaint -		
	25	THE COURT:	All he's asking for is some kind of number so he	

:	1	can refer to it.	
ν.	2	MR. MOORE:	Thank you, Your Honor.
	3	MR. ROUTSIS:	We filed the motion –
	4	MS. PIERCE:	It was - no. Hang on. It's just - we've got to tear
	5	it apart. Just a second and	d I'll find it. It is—
	6	MR. ROUTSIS:	Judge, if I may, it was attached as an exhibit to the
	7	Motion Opposing the Su	mmary Judgment. I don't know what (inaudible –
	8	cross talking).	
	9	MS. PIERCE:	It was Exhibit 1 to the Motion.
	10	MR. ROUTSIS:	It was an exhibit to the Motion.
	11	MR. MOORE:	I'm sorry. Could –
	12	MS. PIERCE:	It was Exhibit #1 in Opposition to the Motion for
	13	Summary Judgment.	
	14	MR. MOORE:	Thank you.
\bigcirc	15	MS. PIERCE:	You're welcome.
	16	THE COURT:	Not the Supplemental? But the original
	17	Opposition?	
	18	MS.PIERCE:	No. The actual Opposition that was originally filed.
	19	MR. ROUTSIS:	Judge, they've had this for a long time. May I
	20	approach, Your Honor?	
	21	MS. PIERCE:	That was back in May.
	22	THE COURT:	Hang on. Let me get this straight.
	23	MS. PIERCE:	Okay.
	24	THE COURT:	Alright. You got that, Mr. Moore?
	25	MR. MOORE:	Yes. Thank you, Your Honor.

Page -26-



1	THE COURT: Okay. Now you can approach, Mr. Routsis.
2	MR. ROUTSIS: Thank you.
3	EXAMINATION BY MR. ROUTSIS
4	-000-
5	BY MR. ROUTSIS:
6	Q Ms. Pence, I want to approach and provide you with
7	what's been marked – I guess we've already had the exhibit. It's Exhibit #2.
8	Can you tell us what that is?
9	A It appears to be page 1 of a Misdemeanor Complaint filed
10	against Mr. Spencer.
11	Q What do you mean it appears to be? Is it file-stamped?
12	A Well, it's only – it's only page 1 of what appears to be
13	something that would be a two page document. Any Criminal Complaint
14	would have a sworn declaration attached, and this is only a face page.
15	So this is only page 1 of a Criminal Complaint. (Inaudible -
16	cross talking).
17	Q Alright. What is the front page? Is it a file-stamped copy
18	of a Criminal Complaint? Yes or no.
19	A This is page 1 of a file-stamped Misdemeanor Criminal
20	Complaint.
21	Q What date does it allege on the file-stamped copy?
22	A This alleged that it was filed on January 16th of 2013.
23	Q Can you tell the Court what charges were filed and against
24	who?
25	MR. PINTAR: Your Honor, I'm going to object. It's an
	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24

Page -27-

1	incomplete document. Mr. Routsis admits it's -
2	MR. ROUTSIS: (Inaudible) there's a page missing. It's the charging
3	document. She's alleging that the second page is wrong.
4	There's a charging document on the front that alleges the crime.
5	I mean, I think we can find the other page later – there's a second page.
6	THE COURT: What's the question?
7	MR. ROUTSIS: Ms. Pence, can you tell us what the charging
8	document – who it charges with what crime? Who is the Defendant and what
9	crime is being charged in the Complaint?
10	THE WITNESS: This Misdemeanor Complaint is charging Jeffrey
11	Spencer with the crime of Battery on a Person Over 60 Years of Age, and it
12	alleges that that occurred on December 18th of 2012.
13	BY MR. ROUTSIS:
14	Q Did you say misdemeanor or felony?
15	A The one page that you handed me is part of a
16	Misdemeanor Complaint. I think there's also a Felony and Gross Misdemeanor
17	Complaint on file on the same date. But this is only a part of the charging
18	documents.
19	From what I remember, there was also two gross misdemeanors
20	filed at the same time that that document was filed. But again, that's just from
21	memory.
22	Q Okay. So this Complaint indicates it was filed on January
23	16th, correct? At that time, it was filed as a misdemeanor, correct?
24	A That particular count was filed as a misdemeanor. I think
25	there were two others that were filed as gross misdemeanors.
	Q Okay. And the Preliminary Hearing occurred in this case
	Page -28-

1	sometime in February, correct?
2	A I don't know the date of the Preliminary Hearing, but it
3	would have been after that.
4	Q Okay.
5	A Was charged.
6	Q Ms. Kinion provided you a letter that your office indicates
7	it received on February 22 nd , correct?
8	A That's correct.
9	Q And in regards to that letter, you indicated that you
10	specifically asked her to write you a letter?
11	A I think what I indicated was that I instructed her, if she had
12	information she thought would be relevant or important to the case, if she
13	would write it down and send it to our office.
14	Q She didn't just offer you a letter in the mail and it came to
15	you without any request by you?
16	A No, Your Honor. Or no, sir.
17	Q I'd like to refer counsel to the trial transcript and I'm going
18	to read you a question and answer, and I want to ask you if this refreshes your
19	memory, okay?
20	MR. MOORE: Counsel, can we know where that's coming from,
21	please?
22	MR. ROUTSIS: Yes. Page 266 of the Trial Transcript of the
23	testimony of your client, Mary Ellen Kinion, which I presume you've read.
24	MR. MOORE: No. Counsel, that's not my client, and I would like
25	a little courtesy here. I would just like to know where that's coming from.

Page -29-



	1	MR. ROUTSIS: I just told you. Page 266 of the trial testimony of
Water a	2	Mary Ellen Kinion.
	3	MR. MOORE: Where is –
	4	MR. ROUTSIS: We provided that in the Opposition Motion. I'm
	5	reading this from our motion exhibits, counsel, okay?
	6	Please, can you refer to your motion so you don't keep
	7	interrupting me?
	8	MR. PINTAR: Your Honor, we're going to object to this exhibit.
	9	It hasn't been produced in its entirety. I don't know exactly what he's
	10	referencing, maybe a snippet of the trial testimony.
	11	We've asked many times for the trial testimony to be produced.
	12	It has not been. So I would object on that basis.
	13	THE COURT: Alright. Read the question and - read the question
	14	before the answer. Ask if she remembers the question.
()	15	MR. ROUTSIS: Your Honor, if I may-
	16	THE COURT: Please, do what I say so we can get through.
	17	BY MR. ROUTSIS:
	18	Q Ms. Pence, do you remember that Mary Ellen Kinion
	19	testified at trial against Mr. Spencer?
	20	A I remember her being a witness, yes.
	21	Q And regarding this letter that indicates your office received
	22	it on February 22 nd , do you remember asking:
	23	Q Okay. Did I ever ask you to
	24	write a letter?
	25	A No.

	1	Q Is everything that you wrote
`	2	in the letter truthful?
	3	A Yes.
	4	Now, did you ask her to write the letter?
	5	A Well, your first question was, "Do I remember that?" I
	6	don't remember that.
	7	Q What about –
	8	A And the second —
	9	Q Okay.
	10	A And the second part of that would be, as I told you, I never
	11	instructed her to write me a letter.
	12	What I told her is if she had some valuable information, that she
	13	should write it down and send it to the District Attorney's Office. That's the
	14	policy of the office.
	15	MR. ROUTSIS: I'd like to mark as next in order, and ask the Court
	16	to take judicial notice of the trial testimony, where there's a specific question
	17	asked by Ms. Pence, "Did I ever ask you to write a letter?" "No." "Is
	18	everything that you wrote in the letter truthful?" "Yes." And I'd like to move
	19	that into evidence.
	20	THE COURT: Well, is there any objection? There was an
	21	objection (inaudible).
	22	MR. PINTAR: Well, it is an objection because I don't know the
	23	context in which this testimony was made. I mean, we've been provided -
	24	that's just a snippet.
	25	THE COURT: I realize it's just a snippet and that –

Page -31-

	1	MR. ROUTSIS: It's part of the trial testimony. It was provided to
	2	them in our Opposition.
	3	THE COURT: Okay. I got that. So the objection is overruled.
	4	MR. ROUTSIS: Thank you.
	5	THE COURT: I'll go ahead and admit it.
	6	MR. ROUTSIS: Thank you.
	7	BY MR. ROUTSIS:
	8	Q Now, Ms. Pence – is it Ms. or Mrs? I'm sorry.
	9	A Either's fine.
	10	Q That doesn't refresh your recollection about how the letter
	11	came into your possession?
	12	A You're asking me two different things.
	13	You asked me if I asked Ms. Kinion to write me a letter. I told
	14	you I did not ask her to write me a letter. That agrees exactly with the trial
	15	transcript.
	16	What I asked Ms. Kinion to do, if she had something relevant or
	17	important, was to write it down and to send it to the District Attorney's Office,
	18	which is what she did.
	19	Q But the testimony specifically refers to you telling her,
	20	"Did I ever ask you to write a letter?"
	21	A And she says no.
	22	(Inaudible – cross talking)
	23	A So we're in agreement. I didn't ask her to write a letter
	24	and she agreed. Your point is well made.
	25	Q Okay. In any event, you received a letter on February 22 nd ,

Page -32-



1	1	correct?
	2	A My office did, yes, at the time. The District Attorney's
	3	Office got this document, Exhibit 1.
	4	Q And after that letter, it's been your testimony here today,
	5	that the only thing you did in terms of enhancing the charges was filing a
	6	Felony Battery because of the medical records that established substantial
	7	bodily injury, is that correct?
	8	A I think what I said was that the Complaint was amended
	9	at least once or twice. There was an Information filed. And then there was an
	10	Amended Information when I endorsed.
	11	But the only charge that was actually enhanced, and I believe it
	12	was lifted from a gross misdemeanor to a felony. And again, I need to see the
	. 13	file.
	14	And I think the easiest thing would be to obtain the District
	15	Court's file which has all of those filings in it, and then I can tell you exactly
	16	which was enhanced based on the fact that it became substantial bodily harm
	17	rather than a minor injury.
	18	MR. ROUTSIS: I think I could do one better. I can provide – if I
	19	can approach with defense Exhibit #3 which is a copy of the Amended
	20	Information which has been provided to counsel in the motion.
	21	THE COURT: Go ahead.
	22	BY MR. ROUTSIS:
	23	Q And is it, in fact, true that after you received the letter
	24	from Mary Ellen Kinion which alleged that she was a witness to a snow plow
	25	assault, and that she may have been a witness to an assault on May 27th, that

Page -33-



1	you did not just enhance the charges to a felony, you filed two counts of Felony
2	Elderly Abuse regarding two other alleged victims, Egon Klementi and Elvie
3	Klementi.
4	Does that refresh your memory now? Yes or no? Yes or no?
5	THE WITNESS: Your Honor, he's asked me four different
6	questions.
7	THE COURT: Yeah, I agree. One thing at a time.
8	MR. ROUTSIS: Does that document refresh your memory that you
9	didn't just simply make an enhancement to a felony due to medical injuries?
10	That you added —
11	THE COURT: Wait. That's a question.
12	THE WITNESS: No, it does not.
13	BY MR. ROUTSIS:
14	Q Can you tell us what charges are on the Amended
15	Information, please?
16	A On the document that you handed me, there is one – and
17	this would be Exhibit 3, Amended Information. And I think this is not the first
18	Information that I filed, but the second.
19	There are three charges. The first is a felony charge of Abuse,
20	and that is the one that now went from a gross misdemeanor to a felony based
21	on substantial bodily harm.
22	There are two additional gross misdemeanors in this which were
23	also filed, I believe, back in January at the same time that the Misdemeanor
24	Complaint was filed.
25	So no, it does not refresh my recollection as to anything

Page -34-



()	1	additional.	
\ _{***} ,	2	Q Well, you testified earlier that there was only one charge	
	3	that was elevated to a felony battery. Now, there's three charges before you.	
	4	A There is still only one charge that is a felony battery in this	
	5	information that you handed me. The other two are gross misdemeanors.	
	6	Q Correct.	
	7	A They were charged at the time of the misdemeanor battery	
	8	back at the Justice Court level.	
	9	If someone would get the District Court Clerk's file and follow	
	10	the exact filings – anyone can go across right now and get that, just FYI, it will	
	11	show that there was an original Criminal Complaint that charged a	
	12	misdemeanor and two gross misdemeanors.	
	13	Q Okay.	
	14	A The only thing that's changed in all of this time is one	
\bigcirc	15	gross misdemeanor to a felony.	
	16	Q Okay. Let's discuss that. Because on February 22 nd , you	
	17	received a letter from Mary Ellen Kinion.	
	18	A My office did receive this letter from Ms. Kinion. You're	
	19	right.	
	20	Q And at trial – (inaudible – cross talking).	
	21	THE WITNESS: It's in Volume 1. You'll find the original files.	
	22	BY MR. ROUTSIS:	
	23	Q Now, when you filed the Amended Information, do you	
	24	remember at trial that Judge Gibbons was our trial Judge?	
	25	A I do remember that.	

Page -35-

	1	Q And do you remember that the two allegations of Abuse
V .	2	of an Elderly Person – let's read to what you allege:
	3	Willfully and lawfully abuse an older person by
	4	inflicting injury or mental anguish, to wit: -
	5	Helmut Klementi, Egon Klementi, a person over
	6	60 using a snow plow and sprayed, covered or
*	7	showered Egon Klementi with ice, snow and
	8	debris?
	9	Do you recall that?
	10	A Is the question, "Do I remember that charge is in the
	11	Amended Information?"
	12	Q Yeah. Do you recall filing that?
	13	A Yes.
	14	Q And do you remember who was your only corroborating
\bigcirc	15	witness in that charge? Mary Ellen Kinion was the only witness at trial that
	16	testified she was an eyewitness to that event.
	17	The only other witness in that regard was Egon Klementi, the
	18	alleged victim. Is that a fair comment, Ms. Pence?
	19	A Again, that's three or four different questions and -
	20	Q Is that a fair comment?
	21	A No, it's not.
	22	Q Did you have another witness that testified to the snow
	23	plow assault on Egon Klementi on December 12th?
	24	A I think there were two other people that testified about
	25	that.

Page -36-

	1	Ms. Pence, 1'd be very careful. There was only one
\	2	witness. Are you sure you had other eyewitnesses there?
	3	A I don't know exactly.
	4	Q Then say that.
	5	A Counsel, do you need a break?
	6	Q No, I think you might need one.
	7	A Okay. Because I feel like very adversarial and nobody's
	8	objecting over here (inaudible – yelling).
	9	MS. CAPERS: Objection, Your Honor. I think, number one, he's
	10	testifying. Number two, let's give her the courtesy when asking questions,
	11	being argumentative, badgering her.
	12	Number three, I think it would be appropriate and maybe we take
	13	a break and get the Complaints because we're asking her - he's asking
	14	questions obviously over something she doesn't remember.
	15	It also would help us because I haven't received the DA files, so
	16	I'm not exactly sure, also, what these documents are.
	17	But I think, in all fairness, get the documents so we can see them,
	18	and then give her the documents to see if it properly refreshes her recollection,
	19	then ask the questions.
	20	MR. ROUTSIS: Judge, they have - in all due respect, they've been
	21	served an Opposition to the Summary Judgment. We attached these transcripts
	22	for the purpose so we can clearly -
	23	MS. CAPERS: But your questions are -
	24	MR. ROUTSIS: Please, counsel, don't interrupt me.
	25	She has the documents. She hasn't read it. That's not my fault.

Page -37-



(·	1	MS. CAPERS: The questions are going outside of the Complaints,
	2	and that was the reason why the Judge said, "Give us the DA file beforehand."
	3	And again, with not having that information, we can't even
	4	properly question.
	5	MR. ZANIEL: Off the record, Your Honor, the Complaint is not
	6	in the DA's file that I was given (inaudible).
	7	MR. ROUTSIS: Your Honor, I'll move beyond the Complaint.
	8	That's not where I'm at now, and I don't think that's particularly relevant to the
	9	(inaudible).
	10	I'm simply asking the prosecutor if, at the felony trial, Mary Ellen
	11	Kinion was the only corroborating witness to an alleged snow plow assault on
	12	Egon Klementi on December 12 th .
	13	You're under oath. Was he the only – was she the only
	14	corroborating witness? Yes or no.
	15	THE WITNESS: Going back to the first part of that, I don't think that
	16	you're understanding the process.
	17	And I think if you take a look at the original Complaint filed at
	18	the Justice Court, you'll find –
	19	MR. ROUTSIS: Your Honor, I'm going to move to strike.
	20	THE COURT: Be quiet. Just a minute. Part of this problem is
	21	you're always interrupting, Mr. Routsis. Let her finish. I'm trying to figure out
	22	what's going on. Please. I'm sorry.
	23	THE WITNESS: The original charge at the Justice Court level did
	24	not involve only one count.
	25	The partial piece of paper that you handed me was the first page

Page -38-

of a Misdemeanor Complaint, but there were also two gross misdemeanors, I believe, filed at the Justice Court level well before my office ever received this piece of paper.

There was a Second Amended Complaint, I believe, that was filed at the Justice Court level as well. That was the Complaint that the Prelim was had on.

There were no other changes. So when you keep saying, "Isn't it true that I elevated all of these charges and I elevated these different things," nothing was elevated from the original time of the charging back in January, until the trial, except for the one count that involved Helmut, and it went from a gross up to a felony because the medical records showed that there was substantial bodily harm.

As to your question about the snow plow incident, I think if you look at the Complaints back at the Justice Court, it's already been eluded to, and my understanding—I don't remember who testified at trial, but I think there was information regarding a call that Helmut made to his wife immediately after it had occurred, and a call that he made to Ms. Kinion, and then also even a call to the company that ran the snow plow business.

So I don't believe she was the only person with information about that, but I would have to go back and check the trial transcript.

Q Okay. Ms. Pence, my question is you alleged in an Amended Information that Egon Klementi was the victim of a snow plow assault, correct?

A Yes.

Q Mary Ellen Kinion wrote you a letter on February 22nd

<u> </u>	1	where she specifically stated she was an eyewitness to this assault, correct?
-	2	A Correct.
	3	Q You indicated that you had contact with her prior to the
	4	Preliminary Hearing where you discussed matters with her, and as a result of
	5	that, you received the letter sometime later, correct? Yes or no.
	6	A No.
	7	Q Okay. Did you have a conversation with Ms. Kinion
	8	before the letter was sent to you?
	9	A Yes.
	10	Q Okay. And you discussed her knowledge about this case
	11	or the Spencers, correct?
	12	A No.
	13	Q You talked about what?
	14	A She told me that she had information that she thought
	15	would be relevant. And I was the District Attorney that handled all of the
	16	Tahoe calendar at that time, and I told her I did not have time to talk with her.
	17	If she thought it was relevant or pertinent, she needed to put it in writing and
	18	send it to my office.
	19	Q Okay. Your testimony may be different than that, but in
	20	any event, you got a letter on February 22 nd and you alleged a gross
	21	misdemeanor against Mr. Spencer at trial. Mary Ellen Kinion testified, did she
	22	not?
	23	MR. MOORE: Your Honor, I have an objection to counsel
	24	characterizing testimony to the witness and arguing in the question that her
	25	testimony is different.

Page -40-



	1	THE COURT: Sustained.
· · ·	2	MR. MOORE: Thank you.
	3	BY MR. ROUTSIS:
	4	Q Mary Ellen Kinion was an eyewitness, an alleged
	5 ·	eyewitness, to that event, the snow plow incident on December 12th, was she
	6	not?
	7	A I don't remember. I know that she had information about
	8	it.
	9	Q You don't remember if she was an eye – testified as an
	10	eyewitness?
	11	A I don't remember if she testified that she was called after
	12	he was struck with the snow or if she actually saw it. I would need to look at
	13	the trial transcript.
	14	But I want to clarify because -
	15	MR. ROUTSIS: Your Honor, there's not a question pending.
	16	THE WITNESS: Well, your question is confusing because you keep
	17	eluding to the gross misdemeanor in the Amended Information. But there was
	18	a gross misdemeanor alleging this, I believe, at the Justice Court level well
	19	before the Prelim.
	20	MR. ROUTSIS: I'm not asking you about that, Ms. Pence. But
	21	that's not really a grave concern of mine.
	22	My concern is you filed an Amended Information. You had
	23	contact with Ms. Kinion prior to the letter. You indicate that that contact was
	24	discussion about information she had because you told her, according to you,
	25	to send a document to you.

Page -41-

She testified that she sent it unsolicited, but		She testified that she sent it unsolicited, but in any event, you
	2	must have discussed something about the case in order to prompt this type of
	3	discussion, correct?
	4	A She told me she had information she thought would be
	5	helpful.
	6	Q Okay. So when you're prosecuting a man for an elderly
	7	abuse count, and you charge him with the specific act of assaulting somebody
	8	with a snow plow, and Ms. Kinion testifies and provides you a letter in which
	9	she offers information, and I'd like the Court to take judicial notice of Ms.
	10	Kinion's trial testimony, this occurred December 12th (inaudible).
	11	You wrote a letter to the prosecutor to try to get them to
	12	prosecute. As you testified: "Mr. Spencer, you signed a letter, and it showed
	13	it received February 22 nd ." Okay, correct.
	14	MS. CAPERS: What page are we reading from, Your Honor?
	15	THE COURT: I don't know. That's the honest to God answer. I
	16	don't know.
	17	MS. CAPERS: I was just bringing it to the Court's attention. If we
	18	could get courtesy of where he's reading?
	19	MR. ROUTSIS: I assume incorrectly that when we file an
	20	Opposition to a Summary Judgment Motion, even though I'm a lawyer, that
	21	they will take the time to look at the document.
	22	THE COURT: All they were asking for was reference to what you
	23	are reading.
	24	MR. ROUTSIS: Page 17. Page 17 of Mary Ellen Kinion's testimony
	25	that we provided to counsel.

Page -42-



\bigcirc	1	THE COURT: Thank you.
. '	2	MR. ROUTSIS: Ms. Kinion (sic), again, do you recall her
	3	testimony?
	4	THE WITNESS: No.
	5	BY MR. ROUTSIS:
	6	Q You wrote – this is your questioning, Ms. Pence.
	7	A You asked me if I remembered it. I don't remember it.
	8	MR. ROUTSIS: Can I approach counsel?
	9	THE COURT: Yes.
	10	MR. ROUTSIS: Page 17. I'd ask you to read page 17 where it's
	11	highlighted. Does that refresh your memory if you asked Ms. Kinion a question
	12	regarding the purpose of that letter?
	13	THE WITNESS: This is your questioning of the witness. This is not
	14	what I asked.
	15	MR. ROUTSIS: Okay. Can you -
	16	THE WITNESS: That's your testimony.
	17	MR. ROUTSIS: Okay. My apology.
	18	THE WITNESS: Your testimony.
	19	BY MR. ROUTSIS:
	20	Q Can you tell me what the question and answer reveals?
	21	Why she wrote that letter to you?
	22	A I'm sorry. You want me to speculate as to why you asked
	23	my – a witness this question?
	24	THE COURT: There's no need to object. She's answered that
	25	(inaudible).

Page -43-

\bigcirc	1	MR. PINTAR: Okay. But again, I want to be clear. None of this
ν.	2	has ever been produced other than in - apparently in a motion. I don't know
	3	that there was an affidavit supporting that this was produced.
	4	But none of these documents have been produced in the course
	5	of discovery. So I'd just like to make that ongoing objection.
	6	THE COURT: Well, we're all – I'm trying to follow.
	7	MR. ROUTSIS: Okay. I'll just ask a simple question, Judge.
	8	From page 17 of Mary Ellen Kinion's testimony – question
	9	regarding the December 12th assault:
	10	Q This occurred December 12th, 2012, right?
	11	You wrote a letter to the prosecutor to try to get
	12	them to prosecute as you testified.
	13	Mr. Spencer: You signed a letter and it shows it received
	14	February 22 nd .
	15	A Correct.
	16	MR. PINTAR: Your Honor, I'm going to object. Mr. Routsis is
	17	reading his own questions.
	18	THE COURT: That's what Ms. Pence was saying.
	19	MR. ROUTSIS: Yeah, okay. I'm reading my own question. So
	20	what does it matter? (Inaudible).
	21	THE COURT: Okay. So where are we going with your own
	22	question?
	23	MR. ROUTSIS: Simply that the letter was written by Mrs. Kinion
	24	to prosecute –
	25	THE COURT: Yeah, we know there was a frickin letter written.

Page -44-



	1	MR. ROUTSIS: Right.	
	2	THE COURT: And she's reading it.	
	3	MR. ROUTSIS: Right. And the letter was written to prosecute Mr.	
	4	Spencer.	
	5	THE COURT: Take it for what it is! That's why I asked her.	
	6	MR. ROUTSIS: And Ms. Pence filed criminal charges and called	
	7	Ms. Kinion to the stand to testify regarding the December 12th incident, isn't	
	8	that correct? Yes or no, please.	
	9	THE WITNESS: It's not correct.	
	10	MR. ROUTSIS: You didn't call her as a witness?	
	11	MR. MOORE: I'm going to object. It's compound. That's one of	
	12	the problems.	_
	13	MS. CAPERS: (Inaudible). And mischaracterization.	
\bigcirc	14	THE COURT: That is a problem. I kind of understand where Mr.	
	15	Routsis wants me to go. But you're interrupting yourself so many times that	
	16	we're losing track of it.	
	17	MR. ROUTSIS: Let me just restate it calmly because she won't	
	18	answer the question.	
	19	THE COURT: She did answer the question. She won't answer it	
	20	the way you want her to answer it.	
	21	MR. ROUTSIS: She's not answering the question.	
	22	The simply question was, did you call her as a witness to testify	
	23	regarding the December 12th snow plow assault? Yes or no.	
	24	THE WITNESS: I did call her as a witness.	
	25	BY MR. ROUTSIS:	

Page -45-



	1	Q Thank you. And she was alleged to be a material
<u></u>	2	eyewitness, correct?
	3	A I don't remember if she was an eyewitness or not.
	4	Q Well, when you charge the crime, and you call a witness
	5	regarding that crime, you're supposed to have evidence to support that crime,
	6	correct?
	7	A I get it's compound and it —
	8	MR. PINTAR: Your Honor, he's being argumentative.
	9	THE COURT: He is. Sustained.
	10	MR. ROUTSIS: Okay. Here's a copy. We'll mark the Criminal
	11	Complaint and it doesn't charge, as you allege, elderly abuse.
	12	THE WITNESS: Well, that would be in a separate document, Mr.
	13	Routsis, because gross misdemeanors have to be charged in a separate
	14	Complaint. That is the misdemeanor Complaint.
	15	MR. ROUTSIS: Okay, okay.
	16	THE WITNESS: There's another Criminal Complaint on file that
	17	charges the gross misdemeanors. They are separate documents.
	18	MR. ROUTSIS: Okay, so –
	19	MS. CAPERS: And again, I renew my objection. This would go
	20	a lot smoother and more efficient if we could get all the documents for her to
	21	have to review because she doesn't remember.
	22	THE COURT: Apparently, we got the DA file.
	23	THE WITNESS: If I could have Volume 1, Your Honor, that would
	24	help.
	25	THE CLERK: (Inaudible).

Page -46-

	1	THE COURT: Yeah. You can have Volume 1. Hang on. Volume
٠	2	1 of the DA file.
	3	THE WITNESS: That's the District Court file?
	4	THE CLERK: Yes.
	5	THE WITNESS: That's what I need. Thank you. That's all I need.
	6	THE COURT: Take a break and let's get the DA's file.
	7	THE WITNESS: That's all I need is right there. (Inaudible – cross
	8	talking). It's all right there. Everything that I filed would be of public record
	9	and open to everyone to go and look at it.
	10	But if you give me that, I can put them out in order and then I can
	11	let the Judge know what the dates are.
	12	MS. PIERCE: For the record, Your Honor, I could not find that
	13	two page Criminal Complaint from Volume 1 which is why I went, just now -
	14	so now the second page dropped off on the copy we have here.
	15	THE WITNESS: Just the Court file. If it wasn't - when it got bound
	16	over, if they didn't send over the first because it got bound over on the
	17	Amended, it might still be in the Justice Court file.
	18	THE COURT: Is that what you're referring to, Mr. Routsis?
	19	MR. ROUTSIS: I'm sorry, Your Honor. (Inaudible).
	20	THE COURT: Could it be in the Justice Court file?
	21	MR. ROUTSIS: It would only be, I think, in the -
	22	THE COURT: What are you looking for?
	23	MR. ROUTSIS: The Criminal Complaint. The original. We've got
	24	here the Criminal Complaint. She's - not that it's deciding of this issue, but
	25	she says that she filed two gross misdemeanors along with the initial Criminal

Page -47-



1		Complaint.		
` .	2	THE WITNESS: And Your Honor, here's a copy of that filing with		
	3	the two gross misdemeanors.		
	4	THE COURT: Okay. Very good.		
	5	THE WITNESS: In Justice Court.		
	6	MR. ROUTSIS: What date is that?		
	7	THE WITNESS: The same date as the Misdemeanor Battery		
	8	Complaint.		
	9	MR. ROUTSIS: January 6th?		
	10	THE WITNESS: Correct.		
	11	THE COURT: January 16th.		
	12	MR. ROUTSIS: January 16th. Okay.		
	13	Now, on January 16th, you filed - can I look at that, Your Honor?		
	14	Thank you.		
(_)	15	Well, listen, Count I is not - Count I, in your Gross Misdemeanor		
	16	Complaint, is Intimidation of a Witness, okay? It has nothing to do with the		
	17	two Elderly Abuse Counts that are filed in the Amended Information. Would		
	18	you agree with that? Yes or no?		
	19	Do you want to look at it again? Yes or no?		
	20	THE WITNESS: Compound and it's complex. And if you want to		
	21	break that down into something I can answer with a yes or no, I'd be happy to.		
	22	BY MR. ROUTSIS:		
	23	Q Count I is not an allegation of an elderly abuse charge. It's		
	24	intimidation. Can I approach, Your Honor?		
	25	It's intimidation of a witness count.		

Page -48-

	1	A Count I in that Misdemeanor Complaint, that's correct.		
	2	That is – I'm sorry. Can I just see that for a minute?		
	3	Count I is a Category D Felony, Intimidation of a Witness. And		
	4	I think – so that charge is actually either reduced or dismissed.		
	5	Q Well, it was never filed.		
	6	A Actually, it was filed on January 16th of 2013.		
	7	Q But look at the Amended Information. It's not filed.		
	8	A You're asking me about the original Criminal Complaint		
	9	that I filed.		
	10	Q Okay.		
	11	A And the original charges in this case that I filed were both		
	12	Misdemeanor Battery, as well as Intimidation of a Witness to Influence		
	13	Testimony, a Category D Felony; Exploitation of an Elderly Person, as a gross		
	14	misdemeanor.		
	15	Q Okay. Thank you. Please keep this file.		
	16	We've allowed you to see, and it's on record, the Amended		
	17	Information. There is not filed, in the Amended Information, an Intimidation		
	18	of a Witness.		
	19	Can you tell us why you did not file that charge?		
	20	MR. MOORE: Objection. It is argumentative. Let this witness		
	21	testify what she knows, and she did do, instead of having Mr. Routsis		
	characterize what happens.			
	23	MR. PINTAR: Well, in addition, it's irrelevant because the claim		
	24	is that Ms. Pence increased the charges due to something that Ms. Kinion said.		
	And now he's asking her about why she reduced the charges.			

Page -49-



	1	THE COURT: I'll sustain the objection because –
,	2	MR. ROUTSIS: Can I explain why it's relevant.
	3	THE COURT: - it's not -
	4	MR. ROUTSIS: Can I explain why it's relevant? She filed an
	5	Intimidation of a Witness charge.
	6	THE COURT: I agree.
	7	MR. ROUTSIS: Okay. She did not file it in the Amended
	8	Information.
	9	THE COURT: For whatever reason. I agree.
	10	MR. ROUTSIS: Right. She then filed an Elderly Abuse charge that
	11	she did not dismiss.
	12	And we support that Mary Ellen Kinion became a witness, and
	13	the timing of the Complaint is not relevant to our case.
	14	Mary Ellen Kinion became a witness, which is the reason she did
	15	not dismiss that count, because she was the - and we'll establish to the Court,
	16	she was the only eyewitness to a crime, to an alleged assault, that never
	17	happened, that a material issue of fact, it did not happen, we believe.
	18	And she later, Judge - we have trial transcript - deposition
	19	testimony. She testified under oath that she saw my client with a big grin on
	20	his face, put a berm in front of her house, and then assaulted Mr. Egon
	21	Klementi with a snow plow.
	22	She then testified at her deposition she did not see who drove the
	23	snow plow. She committed perjury under oath to put a man potentially in
	24	prison on an elderly abuse charge.
	25	That is the record and it is not controverted.

Page -50-



And so, when you talk about malicious prosecution, this is about 1. as malicious as a prosecution can get because she further testified in order to 2 enhance and ratchet up the charges that were not dismissed, like the 3 Intimidation of a Witness, that my client put berms of snow in front of her 4 house, and it was my client. She called his boss and she recanted on that as 5 6 well. The Opposition, in the opposing papers - when they filed their 7 Motion for Summary Judgment, they stated in the document that she did not see 8 who was driving the snow plow on that day, thereby, trying to exclude her from 9 what she testified to under oath. 10 She said it was Jeff Spencer. He picked up debris. 11 Now, we had an investigating officer come testify at trial. He 12 said he went out there. There was no evidence to indicate even a crime had 13 occurred based on the debris. He filed no report. 14 Now, it gets worse, Judge. How can she make a call to Egon or 15 the police if it never happened? 16 She testified that she called Egon Klementi. But Egon Klementi 17 - she waited an hour and a half before she called the police. 18 Now, we're supposed to believe she saw an 84-year old man get 19 assault with a speeding snow plow, and she sits down and has lunch? 20 But Egon Klementi - she never called Egon for something she 21 never saw. But Egon Klementi calls her. And this is the basis of our 22 conspiracy because we have an hour and a half delay. 23 Egon calls her. She then calls the police. 24 Is this a material issue of face for malicious prosecution, Judge? 25

Page -51-



	1	It is admitted – admitted perj	jury that she gave in her Opposition motion that she
,	2	isn't sure he was the driver.	
	3	The allegation	ns of an assault with a snow plow are unverified and
	4	at trial, we spent a lot of tim	ne with – it was a giant snow plow. She was down
	5	the street. You could not se	ee the front of the plow.
	6	The jury imp	olicitly agreed with us, although it's a different
	7	standard, we understand.	
	8	So when we	come before the Court here and we file an
	9	Opposition to a Summary Ju	adgment Motion, and we lay out the transcripts, and
	10	the issue is really very simp	ole.
	11	She indicates	in her testimony that she gave a letter to the State
	12	unrequested. She provided	a letter where she materially concludes she was a
	13	witness to multiple events.	That ratcheted up the energy for Ms. Pence.
	14	Now, as an of	fficer of the Court, I can tell you that there came a
	15	time during this case that M	s. Pence thought the Spencers were the anti-Christ
	16	because of people like Mary	y Ellen Kinion.
	17	MS. CAPERS:	Object, Your Honor.
	18	MR. ROUTSIS:	Mary Ellen Kinion's testimony –
	19	MR. PINTAR:	Objection.
	20	THE COURT:	I'm letting it go. Obviously -
	21	THE WITNESS:	And Your Honor (inaudible).
	22	THE COURT:	-recognize-totally recognize the passion. Totally
	23	understand. Totally unders	tand he's arguing the motion.
	24	MR. MOORE:	Okay. Thank you, Judge.
	25	MS. CAPERS:	But he's not -

Page -52-

	1	MR. MOORE: (Inaudible).	
\.,	2	THE WITNESS: I can step down if we're done.	
	3	THE COURT: I don't know if he's done.	
	4	MR. ROUTSIS: I'm not done.	
	5	THE WITNESS: Because there's no question.	
	6	THE COURT: There certainly is not.	
	7	THE WITNESS: At this point, and I've got a ton of work to do.	
	8	MR. ROUTSIS: Is she running the Courtroom? I mean, are you	
	9	running — are you the Judge?	
	10	THE WITNESS: No, I came -	
	11	THE COURT: Are you?	
	12	THE WITNESS: I want to be helpful, but I have a lot -	
	13	MR. ROUTSIS: No, but as soon as -	
	14	THE WITNESS: — of work to do.	
	15	THE COURT: You'll just keep going.	
	16	BY MR. ROUTSIS:	
	17	Q So Ms. Pence, you don't remember Mary Ann (sic) Kinion	
	18	testifying and being an eyewitness in the case?	
	19	A I remember her being an eyewitness in the case.	
	20	And what I can tell you about this case is now we've seen two of	
	21	the four, I think, for five charging documents. Once all of the parties have all	
	22	of the charging documents, I think will really help because much of what	
	23	you're referring to about things being reduced or enhanced – for example, the	
	24	exploitation	
	25	MR. ROUTSIS: There's no question pending. She keeps going -	

Page -53-

	1	THE COURT:	You weren't listening! She's answering. You were	
\	2	not listening. You were tal	lking to the clerk. You were looking for something	
	3	which creates horrible pro	blems.	
	4	MR. ROUTSIS:	Okay, okay.	
	5	THE COURT:	Let her finish.	
	6	THE WITNESS:	So the charges that you're asking about originally	
	7	are set out as exploitation of	charges, and I think that's in the Second Amended	
	8	– or in the Amended Crimi	inal Complaint at the Justice Court level.	
	9	If you look a	t the To Wit: language in those, and this is all by	
	10	memory, but if I could ha	eve that volume back, I could probably be more	
	11	specific, but the allegations,	, the To Wit: language that supported those charges,	
	12	are all the same.		
	13	And basically, it dealt with Mr. Spencer's actions towards the		
	14	three different individuals. And there was a charge, from what I remember, as		
\bigcirc	15	to each of the different individuals.		
	16	They went from being called exploitation to being called abuse		
17 char		charges after the Prelim because we had to pick whether we wanted the		
	18	exploitation or the abuse language.		
	19	It's the same	charge if you look at the NRS statute. It was never	
	20	enhanced or changed.		
	21	The only one t	hat was actually elevated was the one involving the	
	22	battery with Helmut becaus	e of the medical records, so that is correct.	
	23	MR. ROUTSIS:	Okay. Let's -	
	24	THE WITNESS:	But when Ms. Kinion testified at the trial, I don't	
	25	remember if she was an eye	ewitness. I remember she called to talk about the	

Page -54-



snow plow. I think that Elfie might have talked about the snow plow incident. 1 I think the snow plow driver himself. Your expert testified that, 2 in fact, it was very possible that a snow plow could throw that much snow at 3 that height. 4 I think there were 4 or 5 different people that addressed that 5 count. So I don't think she was the sole person. 6 And again – 7 Let's look at - thank you. Are you done? MR. ROUTSIS: 8 9 THE WITNESS: No. Your Honor, he keeps on interrupting Ms. Pence. 10 MR. PINTAR: Yes, I agree. Are you done? And again -THE COURT: 11 The problem that I keep hearing is that you said that 12 THE WITNESS: we got this letter for prosecution purposes, that we got – that she testified for 13 14 the prosecution. My recollection of this three years ago is that Ms. Kinion was 15 called as a prosecution or State's witness in our case. But as a lay person, as 16 someone outside of the District Attorney's Office and not the Sheriff's 17 Department, she would not have had the ability or the capacity to elevate or 18 decrease any of the charges. 19 What are you talking about? You're a prosecutor. 20 MR. ROUTSIS: If you get a witness that comes in and says, "I saw somebody kill somebody," 21 you're going to file a murder charge, right? Based on the witness, right? Yes 22 23 or no? If the charge of murder has already been filed, no, THE WITNESS: 24 I'm not going to do anything. And that's exactly the situation we have here. 25

Page -55-



	1	These charges were all filed well before this letter was received,
	2	and the only change that came after this letter was the Substantial Bodily Harm
	3	Enhancement.
	4	MR. ROUTSIS: Well, as we have the Misdemeanor Complaint and
	5	the Gross Misdemeanor Complaint, it's not alleged in that Complaint, that
	6	Count III in the Amended Information that Jeff Spencer wilfully and unlawfully
	7	abused an elder person by inflicting pain, injury or mental anguish. He caused
	8	Elfriede Klementi, a person who is 60 years of age or older, mental anguish by
	9	harming or threatening to harm her family, or by yelling at or threatening her
	10	husband, Egon Klementi, or by physically attacking her brother-in-law,
	11	Helmut."
	12	Okay. Now, in the letter Mary Ellen Kinion wrote to you, it sure
	13	appears like she's a witness to this event. She states:
	14	"Jeff accosted Egon in the street and yelled at him
(.)	15	about coming on his property and taking pictures.
	16	Marilyn and Janet Wells, a neighbor, joined
	17	(inaudible). Jeff threatened to punch Egon in the
	18	face."
	19	Right?
	20	THE WITNESS: That is in that letter.
	21	MR. ROUTSIS: It is in that letter, right?
	22	THE WITNESS: But everything you just described –
	23	MR. ROUTSIS: There's not a question, Judge.
	24	THE COURT: It is in the letter. Go ahead and ask the question.
	25	BY MR. ROUTSIS:

Page -56-



1	Q So you have her writing a letter. Doesn't it appear she's
2	making herself a witness to that?
3	MR. MOORE: Objection. Mischaracterizes testimony. He says,
4	"You have her writing a letter." That's not her testimony.
5	THE COURT: I agree. Sustained.
6	MR. MOORE: Thank you.
7	BY MR. ROUTSIS:
8	Q When you read the letter, and I assume you read the letter?
9	A I did.
10	Q Did you believe that she was a witness to that event?
11	A Did I believe that she saw those things herself?
12	Q Yes.
13	A I think I took the letter for what it said and I set it aside.
14	But the point that I'm try to make is that -
15	MR. ROUTSIS: Judge, there's not a question pending. She keeps
16	trying to offer – if I could conduct my examination.
17	THE COURT: Go ahead.
18	MR. ROUTSIS: Thank you.
19	THE COURT: What's -
20	MR. PINTAR: This is about malicious prosecution. I don't know
21	where he's going.
22	THE COURT: I don't quite know myself. So be specific on which
23	Complaint, Amended Complaint, which charge.
24	MR. ROUTSIS: Right.
25	<i> </i>

Page -57-

	1	BY MR. ROUTSIS:
	2	Q In the Amended Information, you allege - that was not
	3	charged in the Complaint that we just looked at on January 16th, okay.
	4	In the Amended Information, you make allegations regarding my
	5	client threatening to punch Mr. Egon Klementi on – you didn't put the date
	6	down, and Mary Ellen Kinion wrote you a letter and she made – she didn't say
	7	- "Jeff accosted Egon in the street." Okay.
	8	Now, she became very interesting because in your –
	9	MR. ROUTSIS: May I approach, Your Honor.
	10	THE COURT: I want you to ask a question.
	11	BY MR. ROUTSIS:
_	12	Q In your Amended Information, Mary Ellen Kinion is not
	13	on the witness – the original witness.
	14	MR. ROUTSIS: May I approach?
	15	THE COURT: Yes.
	16	BY MR. ROUTSIS:
	17	Q Is that correct?
	18	A That's correct.
	19	Q So you obviously had some conversations with her prior
	20	- after the filing of the Amended Information that made her a material witness,
	21	correct?
	22	A No.
	23	Q Well, she's not on the Amended Witness List, is that
	24	correct?
	25	A She's not.

Page -58-

1	Q But she was -
2	A She's not on the original.
3	Q That's the Amended Information, ma'am.
4	A Yeah, and she wasn't-
5	Q Okay. Just – there's not a question. That's the Amended
6	Information. She is not on the witness list? Yes or no? Is that correct?
7	A She is not on the witness list on the Amended
8	Information?
9	Q Okay. However, at some point in time, you had to put her
10	on the witness list to call her at trial, correct?
11	A That's correct. I filed –
12	Q Yes or no, please.
13	MR. PINTAR: Your Honor.
14	THE WITNESS: That's correct. I filed a Second Amended
15	Information and endorsed a multitude of new witnesses.
16	BY MR. ROUTSIS:
17	. Q So why did Mary Ellen Kinion become a witness after the
18	filing of the Amended Information and before trial?
19	What lead you to put her on the witness list?
20	MR. CAPERS: Objection, Your Honor. Compound. If he could
21	just ask one question.
22	THE COURT: Well, now I understand it so I'm going to sustain
23	- or overrule that objection.
24	MR. ROUTSIS: Thank you, Judge.
25	THE COURT: This is what we've been doing for an hour and a

Page -59-



\bigcirc	1	half. What lead you to put her, Mary Ann (sic) Kinion on the list?
(2	///
	3	BY MR. ROUTSIS:
	4	Q Why did you place her on the list before trial and not after
	5	the Amended Information?
	6	A I-
	7	MR. PINTAR: Your Honor – wait a second. That question made
	8	no sense. He said before trial but not after the Amended Information.
	9	MR. ROUTSIS: I said and after the Amended Information.
	10	MR. PINTAR: No, you said not after the Amended Information.
	11	THE COURT: Start over, Mr. Routsis.
	12	BY MR. ROUTSIS:
	13	Q Ms. Pence, you filed an Amended Information with a
	14	witness list. Mary Ellen Kinion is not on it. We've established that?
	15	A That's correct.
	16	Q You then put her on the witness list and called her to trial.
	17	What discussions or what evidence did she present that lead you to put her on
	18	the list?
	19	A I don't remember what discussions we had. I would -
	20	Q (Inaudible).
	21	A I would most likely guess at some point—
	22	MR. ROUTSIS: Objection to strike what she'd guess, Your Honor.
	23	THE COURT: Sustained.
	24	BY MR. ROUTSIS:
	25	Q So your answer is you don't remember what lead you to

Page -60-

	1	put her on the witness list, correct?
	2	A That's correct.
	3	Q But at trial, when you're trying to prove a man is convicted
	4	or guilty, trying to prove he committed a crime, you can't put on perjure
	5	testimony, correct? Knowingly? Is that correct?
	6	MR. PINTAR: Your Honor, where are we going with this?
	7	MR. ROUTSIS: Let me just have a little leeway. I'll get right to it.
	8	MR. PINTAR: No. He's been at it for an hour. How much leeway
	9	does he need? This is a pretty simple motion.
	10	THE COURT: No, I agree with Mr. Pintar.
	11	MR. ROUTSIS: I'm almost done.
	12	BY MR. ROUTSIS:
	13	Q Ms. Pence, you wouldn't put her on the witness list unless
	14	she had material evidence to one of the charges, correct?
\bigcirc	15	A That's correct.
	16	Q And as you sit here, you don't know if that evidence was
	17	true or false, do you?
	18	A I would absolutely believe that the information she had
	19	was true, or I would never have called her as a witness.
	20	So as an officer of the Court, and in my prosecution of this case,
	21	I believe everything she said would have been the truth.
	22	Q But you have no personal knowledge of that, do you?
	23	A Other than what she swore to in the Courtroom, no.
	24	Q And the jury acquitted him of all counts, correct? Yes or
	25	no.

Page -61-



()	1	A He was acquitted.
\ .	2	Q Of all counts?
	3	A He was acquitted.
	4	Q Of all counts, correct?
	5	A That's my understanding.
	6	Q What do you mean? You were there?
	7	MR. MOORE: Objection, Your Honor. That is really (inaudible).
	8	THE COURT: Sustained.
	9	BY MR. ROUTSIS:
	10	Q Okay. So at least we've established that she had material
	11	information to support the charges. Can you tell us what charges she had
	12	material information about?
	13	A Yes. And I would point you to the Criminal Complaint
	14	filed on January 16th, 2013, Count II, Exploitation of an Elderly Person as a
	15	gross misdemeanor, wherein I charged Mr. Spencer with all of the things that
	16	I charged him with in the Amended Information, and that was filed well before
	17	this.
	18	That information came from a multitude of people. I would guess
	19	that in addition to Ms. Kinion, I must have had some other information in order
	20	to file this Complaint.
	21	MR. ROUTSIS: Objection. Move to strike as to what she must have
	22	had. Unless she has personal knowledge, I move to strike.
	23	THE COURT: She can testify to it.
	24	THE WITNESS: Because I wouldn't have filed this Complaint back
	25	in January of 2013, alleging that Mr. Spencer was yelling at Egon as he walked

Page -62-



snow plow he was driving; that he was piling up snow berms and trapping them in their residence and/or physically attacking Mr. Klementi, if I didn't have other information, such as a police report, or law enforcement reports. MR. ROUTSIS: Really? THE WITNESS: At the time. MR. ROUTSIS: Really? Because we called the police officer to the	
other information, such as a police report, or law enforcement reports. MR. ROUTSIS: Really? THE WITNESS: At the time.	
5 MR. ROUTSIS: Really? 6 THE WITNESS: At the time.	
6 THE WITNESS: At the time.	
7 MR.ROUTSIS: Really? Because we called the police officer to the	1
<u> </u>	
8 stand at trial.	
He testified that he came out to the scene on December 12 th .	
MR. PINTAR: Your Honor, this assumes facts not in evidence.	
11 THE COURT: We're going way too far astray. Sustained.	
12 BY MR. ROUTSIS:	
Q Did you talk to the officer that went out on the call from	
Egon Klementi on December 12 th prior to trial? Yes or no? Did you talk to	
him prior to trial?	
16 A Yes.	
Q Did he tell you he wrote no police report?	
A No. He told me he went out and visited with them.	
Q And you found this sufficient information to file the	
20 charges?	
A That's not my recollection.	
MR. ROUTSIS: Okay. Thank you. Nothing further.	
23 THE COURT: Any questions, Mr. Zaniel?	
24 MR. ZANIEL: No, Your Honor.	
25 THE COURT: Any other questions?	

Page -63-

`	1	MR. MOORE: No thank you, Your Honor.
	2	THE COURT: Ms. Capers?
	3	MS. CAPERS: No, Your Honor.
	4	THE COURT: I just have a question in regards to – and I think I
	5	understand where Mr. Routsis was going, in regards to the snow plow.
	6	So I understand that the enhancement, if you will, from the gross
	7	misdemeanor to a felony, was based on the medical records, substantial bodily
	8	injury, correct?
	9	THE WITNESS: That's correct.
	10	THE COURT: What made you – tell me about this snow plow.
	11	And it's a different person, isn't it? It's a different victim?
	12	THE WITNESS: It is, Your Honor.
	13	The snow plow event was totally separate from the pushing of
	14	Helmut. The snow plow dealt with his brother, Egon, and it was a totally
)	15	separate incident.
	16	It was reported about - well before this letter. And, Your Honor,
	17	this would probably assist the Court as well. Originally, there was only one
	18	Complaint presented to the Court, and that was the misdemeanor battery that
	19	involved Helmut.
	20	The same day I filed that Complaint, I also filed a separate
	21	Complaint alleging a felony and a gross misdemeanor. And the felony was
	22	based on its mitigation of a witness because, at the time, it was my
	23	understanding that he had shoved Helmut down and attempted to intimidate
	24	him because Helmut was going to testify about an unlawful fence or some
	25	issues they were having in the neighborhood, and it was to scare -

Page -64-



So it wasn't the snow plow? THE COURT: 1 It was not the snow plow. 2 THE WITNESS: The second charge that I filed that same day, well before this 3 other again, was a gross misdemeanor, and that was about the snow plow. 4 So the snow plow incident was never enhanced or changed at any 5 point in time. It stayed a gross misdemeanor all the way through trial. It never 6 changed its character. And it was charged originally before I ever even got this 7 8 letter. It was charged back in January of 2013, and it alleges the snow 9 plow, him building up berms at the end of the residence. It was sort of a 10 compilation of all of the issues that had been brought to my attention due to 11 reports and investigation, and it stayed a gross misdemeanor, and it was never 12 enhanced. 13 And that was actually what it ended up being at trial. But this is 14 (inaudible) - I think the confusion is that there was never just "a misdemeanor" 15 and that it grew and grew and grew. 16 Back in January, which was the original filing date, there was a 17 misdemeanor battery against Helmut. There was a felony against Helmut for 18 intimidation of a witness. And then there was a gross misdemeanor that 19 involved both Egon, Helmut and Elfie, I believe. 20 Those three charges then changed slightly in character. The 21 Intimidation of a Witness is what actually became the abuse charge. And the 22 gross misdemeanor remained identical. 23 The other, Exploitation of an Elderly Person, was actually then 24 changed just to be against - I think it was one on Helmut, one on Elfie. But 25

Page -65-



	1	they were all charged originally. The nature of those charged never changed,
	. 2	Your Honor. This is that Count II, and it does have that same language.
	3	So the actual only—the only enhancement that ever occurred after
	4	receiving this letter, and after all of the investigation, was the charge involving
	5	Helmut, which Ms. Kinion was not a part of, and it was because of the medical
	6	records, and that did become a felony.
	7	THE COURT: Thank you. Thank you. I do understand. I do
	8	understand based on your testimony. The reason why I called you - I do
	9	understand.
	10	THE WITNESS: And I apologize because there were four charging
	11	documents.
	12	MS. PIERCE: I just have one question.
	13	EXAMINATION BY MS. PIERCE
	14	-000-
	15	BY MS. PIERCE:
	16	Q You said that the charging document on the - other than
	17	Helmut, that simple battery, the charging document and the other items,
	18	whether it was the Criminal Complaint or the information, or Amended
	19	Information or whatever, those charges were based on police reports and
	20	information from individuals, is that correct?
	21	A Investigation.
	22	Q Can you –
	23	A But I just want – I have a question. Helmut was actually
	24	listed in the felony as well.
	25	Q Can you tell us who you – who was spoken to in the

Page -66-

	1	process of investigation that lead to these charges?
<u></u>	2	A At the time that I filed the original Complaints, the only
	3	person that I would have spoken to was whatever officer wrote me the report
	4	that I was going from. And my guess is that officer spoke to a variety of
	5	people, and that he wrote a report, and then based on that report, those are the
	6	charges that I filed.
	7	. Q Does that police report then list all of the individuals with
	8	whom he spoke?
	9	A It should. It should have everything that he would have
	10	done before he actually presented what they call the final report to our office.
	11	MR. PINTAR: Your Honor, I told the Court in my moving papers
	12	that the officer testified at his deposition that he never spoke with Ms. Kinion
	13	at the scene, and before he filed the police report.
	14	THE COURT: For an offer of proof. Thank you.
	15	MS. PIERCE: I'm a little confused here because there was the
	16	officer who came out to investigate the incident on December 18th which
	17	involved Helmut Klementi.
	18	Is that the same officer that then did an investigation of the
	19	variety of other things?
	20	THE WITNESS: I don't remember. It would have been the original
	21	submission to our office. It usually has, on the Criminal Complaint, there
	22	should actually be a Sheriff's Office number that ties to a specific report, and
	23	that's the report that that's connected to.
	24	BY MS. PIERCE:
	25	Q And how would I identify that report in the production that

Page -67-

()	1	we received?
	2	A If I did my job right, it should be on the top of the
	3	Complaint, so hold on. It would be – it is – it's also on – this is the Amended
	4	Criminal Complaint that was filed March 8th, 2013. But it's Douglas County
	5	Sheriff's Office 12, which is the year, SO for Sheriff's Office, 41608. And
	6	that —
	7	Q I'm asking about who you would have spoken to before
	8	that second Criminal Complaint we're talking about, which has the charges of
	9	Elder Abuse – it had nothing – that are separate and apart from the battery on
	10	the 18th, December 18th, against Helmut Klementi.
	11	A I think that's part of the confusion.
	12	The two Criminal Complaints filed on January 16th are attached
	13	to 12SO41608. Those charges came right off of that report. So whichever
	14	officer authored that.
	15	I filed a Second Amended Criminal Complaint before the Prelim,
	16	also in the Justice Court, on March 8th, 2013. That Complaint has different
	17	charges in it based on that same report, 12SO41608.
	18	Q Okay. And that was what date?
	19	A March 8 th , 2013. That's the time when the charge with
	20	Helmut was elevated from a gross misdemeanor to a felony, and it alleges
	21	substantial bodily harm and the other one is the same.
	22	THE COURT: Did Ms. Kinion's letter influence you in regards to
	23	charging the elder abuse? That's the question.
	24	Did it influence you to charge elder abuse vis-a-vie the snow
	25	plow?

Page -68-

	1	THE WITNESS: No. I had already charged that before her letter.
	2	THE COURT: Thank you.
	3	MR. PINTAR: May I just approach real quick?
	4	THE COURT: Uh-huh.
	. 5	BY MR. PINTAR:
	6	Q Ms. Pence, I'm going to show you – I'm going to show
	7	you just to refresh your memory a copy of the preliminary (inaudible). And if
	8	you look at 12/12 - did you call Mr. Klementi to testify as to the incident with
	9	regard to the snow plow and the snow and ice being thrown on him?
	10	A Sorry. I just want to make sure I can identify who's
	11	testifying.
	12	Q Yeah.
	13	A Yes, Egon Klementi was called at the Preliminary Hearing.
	14	He, himself, testified about the snow plow incident.
	15	Q Okay. And Ms. Kinion was not called as a witness at the
	16	Preliminary Hearing, correct?
	17	A That's correct.
	18	Q Okay.
	19	A As far as I recall. I don't believe she was.
	20	THE COURT: Alright. Any more questions of Ms. Pence?
	21	MS. PIERCE: Your Honor, I'm still confused because I cannot
	22	find any police report in the produced information from the DA's Office that
	23	is prior to the January – was it 16th?
	24	THE COURT: Uh-huh.
	25	MS. PIERCE: Documents, other than the one that addresses the

Page -69-

1	incident with Helmut Klementi. So I'm –	
 2	THE COURT: So you're talking about something that addresses	
3	Egon?	
4	MS. PIERCE: Yeah, Egon and Elfie Klementi.	
5	THE COURT: It's the snow plow.	
6	MR. ROUTSIS: She's testifying, Judge, basically that she doesn't	
7	recall Ms. Kinion having an effect on the filing of the charges. And she's	
8	saying she's relying on the police report. It doesn't matter what the cop says,	
9	but who are the witnesses?	
10	We're having a real interesting debate here because we've got a	
11	letter on February 22 nd , through prior contact with Ms. Kinion, and we think	
12	she was critical with some material (inaudible).	
13	Her recollection is skewed on this. She doesn't remember a lot.	
14	The reality is though that the basic witness that identifies my client as	
15	committing a heinous crime, the only – and I'll say this for the record, the only	
16	corroborating witness is Mary Ellen Kinion.	
17	THE COURT: Okay. What did you mean, Ms. Pence, when you	
18	answered that same - you know, when I asked you, "Did this letter of February	
19	22 nd influence you in regards to the charges against Egon, vis-a-vie the snow	
20	plow?" You said to me, "No, I had already charged that based on the reports."	
21	So what's the confusion in regards to you don't have any records?	
22	MS. PIERCE: We don't have -	
23	MR. ROUTSIS: There's a two part confusion.	
24	She's saying that she based that filing - the letter is not -	
25	(inaudible).	

Page -70-



2	MR. ROUTSIS: She's saying she had contact with Mary Ellen	
3	Kinion and there's a dispute whether she asked her - Mary Ellen Kinion	
4	offered a letter after that.	
5	She was a material witness in the case. She doesn't - she won't	
6	- her testimony is that she based the charges on - I mean, she's a prosecutor,	
7	upon the police report, okay.	
8	Now, no police officer was there, so she had to have talked to	
9	Mary Ellen Kinion or Egon Klementi.	
.0	THE COURT: Okay. Alright. Hang on.	
.1	What did you base the charges of Elder Abuse on Egon vis-a vie	
2	- when I say vis-a-vie, meaning the snow plow? Did Ms. Kinion have any	
.3	influence or what did you - or if not, or if so, what did you base the charges on?	
4	THE WITNESS: Not having the file in front of me, I would have to	
.5	say that - and it kind of tells its own tale if you start at the beginning.	
6	The original charge that deals with the snow plow incident was	
7	filed back in January.	
8	THE COURT: January 16th.	
9	THE WITNESS: January 16th. And it's listed as part of a number of	
0.0	things.	
1	So at this time, the snow plow is not a huge issue. It's one of	
2	about six different factors. I included offensive language, violent conduct,	
3	yelling at Egon as he walked his dog, covering him with snow in the snow	
4	plow.	
.5	THE COURT: I see. I see.	
	3 4 5 6 7	Kinion and there's a dispute whether she asked her — Mary Ellen Kinion offered a letter after that. She was a material witness in the case. She doesn't—she won't — her testimony is that she based the charges on — I mean, she's a prosecutor, upon the police report, okay. Now, no police officer was there, so she had to have talked to Mary Ellen Kinion or Egon Klementi. THE COURT: Okay. Alright. Hang on. What did you base the charges of Elder Abuse on Egon vis-a vie — when I say vis-a-vie, meaning the snow plow? Did Ms. Kinion have any influence or what did you—or if not, or if so, what did you base the charges on? THE WITNESS: Not having the file in front of me, I would have to say that—and it kind of tells its own tale if you start at the beginning. The original charge that deals with the snow plow incident was filed back in January. THE COURT: January 16th. THE WITNESS: January 16th. And it's listed as part of a number of things. So at this time, the snow plow is not a huge issue. It's one of about six different factors. I included offensive language, violent conduct, yelling at Egon as he walked his dog, covering him with snow in the snow plow.

Page -71-



Piling berms at the end of the driveway. Physically THE WITNESS: attacking Helmut.

So the snow plow itself, back in January, was one of probably eight other factors that constituted the gross misdemeanor of Exploitation of an Elderly Person.

> It was not - this is it. This is the crux of the thing. It was -(Inaudible - cross talking).

And I do remember that there was a number of THE WITNESS: people that were concerned about Mr. Spencer and how he was snow plowing. I think that there were complaints that had been filed.

THE COURT:

I think, at some point, I talked to - I don't remember if it was KGID, or I can't remember the acronym, but the people who do the snow plow business, and they had actually asked him not to go into a particular neighborhood anymore because of complaints.

And so, I was trying to get more information about the berms, and whether this was a practice. But it wasn't like the snow plow incident was some pivotal point. It was part of all of these actions that were reported in the To Wit language.

You know, this letter does talk about the snow plow incident. But I also know that, I think at the time, there had been a number of complaints about Mr. Spencer and snow plowing. It was not specifically the Klementi's, and it was just one of those things.

I would guess, and I don't have the file, but the District Attorney file is part of the work product, we have an investigator that goes out and will follow up on those things.



Page -72-

I'm sure I talked to him. Usually, between the original filing and when you actually have a jury trial, there is a lot of work that we do in order to narrow down what's going to be able to be proven at trial, and what we won't be able to prove.

And I think by the time we got to trial, and I'm guessing based on Egon's Preliminary Hearing testimony where he talked about being sprayed, and what it was like, and that was how that ended up becoming a count in and of itself.

But it's been alleged as part of a kind of whole part of conduct since the beginning. So it probably had some impact, meaning it was supported by someone else, but it clearly wasn't part of the charge, and that charge was, in no way, ever enhanced because it stayed a gross misdemeanor.

MR. ROUTSIS: (Inaudible). She said she filed those charges based on a police report. There was no police report taken on the snow plow incident so you had to rely on witnesses.

THE WITNESS: I think what I said was I based it on the police report that was filed and investigation.

If I had our District Attorney file, I would be able to tell you at the point between December 18th to January 16th what sort of investigation was done.

MR. ROUTSIS: Ms. Pence, there was never a report filed on the snow plow incident, so you had to rely on witness information, and that's all I'm telling you.

Maybe you talked to Ms. Kinion. Can you admit it's possible she's provided you with information, and it may have lead to the charge? Can

Page -73-

	1	you admit that? Is that po	ossible? Yes or no? Is that possible?
	2	THE WITNESS:	No.
	3	MR. ROUTSIS:	It's not possible?
	4	THE WITNESS:	That her information lead me to a charge?
	5	Absolutely impossible.	
	6	MR. ROUTSIS:	No, that's not – no, no.
	7	THE COURT:	That was my question. Now, you're slicing it
	8	down.	
	9	MR. ROUTSIS:	No, I'm not, Judge.
	10	THE COURT:	Yes, you are. One counsel says she's confused.
	11	You don't want to be con:	fused.
	12	MR. ROUTSIS:	Judge, I'm just saying, she said she relied on a
	13	police report and there wa	s none.
	14	THE COURT:	Okay. There's no police report!
\bigcirc	15	MR. ROUTSIS:	Right! That means she got it from a witness, okay.
	16	Somebody told her –	
	17	THE COURT:	Got it from investigation. Got it from neighbors,
	18	a whole bunch of things.	
	19	MR. ROUTSIS:	Here's the concern that I have. She's got a very
	20	faulty memory, and Ms. K	inion – Ms. Kinion spoke to her prior to –
	21	MR. MOORE:	Your Honor, I'm going to have to object to this
	22	conversation.	
	23	THE COURT:	He's arguing with me.
	24	MR. ROUTSIS:	And it's a fair question because you're under
	25	penalty of perjury here.	

Page -74-

	1	Is it possible that you discussed with Ms. Kinion, prior to the
	2	filing of the charges, that she was a witness? She saw the snow plow incident?
	3	THE WITNESS: No.
	4	MR. ROUTSIS: Not possible? Okay. Okay.
	5	MR. ZANIEL: Your Honor, could I just ask one question?
	6	EXAMINATION BY MR. ZANIEL
	7	-000-
	8	BY MR. ZANIEL:
	9	Q As far as the witness interviews that are taken, do you have
	10	an investigator that goes out and talks to witnesses?
	1.1	A Yes, we do.
	12	Q Is that recorded somehow either by notes, by handwritten
	13	notes, or by tape recording?
	14	A They are supposed to take notes. If they do a formal
	15	interview, they do record those interviews.
	16	And there's – the way that the system works is that once you get
	17	a report for submission to file, there is no period of time where you go out and
	18	you do independent investigation and you would interview people, and then you
	19	would charge a case.
	20	That's absolutely forbidden in the District Attorney's Office as
	21	far as how we are allowed to file charges. We either look at the reports - if
	22	there's been investigation done, if anything's been confirmed or corroborated,
	23	we file an initial report, and that's the original Complaint that gets filed.
	24	At that point, once there's been a Complaint filed and the
	25	Defendant has been brought into Court and is apprised of what's happening,

Page -75-

then there's additional investigation. Then we do talk to witnesses. More 1 investigation is done, and that results generally in different filings. 2 So between the time that I read the report and the initial filings, 3 no one would have gone out and talked to people before filing the charges. 4 Alright. After the filing of the charges, then that would 5 Q have been the time frame to go interview the witnesses? 6 7 A Absolutely. In this case, were other witnesses interviewed by the 0 8 District Attorney investigator? 9 I think there was a number of witnesses that were A 10 interviewed, quite a few. And I remember doing a lot, a lot of work on this 11 12 case. I would say there were probably 20 to 25 people that were talked 13 to. There were Subpoenas that were sent out. There were a number of 14 different - other than the medical records, which was the big push, but there 15 was also the minutes for some of the improvement meetings, because I 16 remember a lot of this issue had to do with neighborhood improvements and 17 that sort of thing. Yeah. 18 This is your file. O 19 A Yeah. 20 Q So -21 So, yeah. There was - between the original filing which A 22 alleges this information and the felony, that's when all of that would have 23 happened. 24 One of the things I can't find in here though is any type of Q 25

Page -76-

1	witness type interviews. Granted, it would have been after the filing of the
2	Complaint, I understand that.
3	But if your investigator went out and talked to somebody and
4	wrote a note on it, that would become part of the file, correct?
5	A If he – again, I would be speculating as to what his job is.
6	There is attorney work product, but normally when they conduct a formal
7	interview, like in a domestic battery case, there's some sort of record of that
8	interview.
9	Q And you're pretty positive that there were a number of
10	interviews that took place in this case?
11	A I know that a number of people were spoken to. I don't
12	know who did it, which investigator would have done it. I think at one point
13	there were three investigators in our office. Someone would have spoken with
14	them.
15	Q Alright. And then you mentioned at the very beginning the
16	video of the Shaws. I think that was part of the DA file.
17	Is that kept in the file? Because we didn't get a copy of that
18	either, so that's the only reason I'm asking about that question.
19	A That was on a – I want to say it was on a flash drive, and
20	it would have been part of the State's file.
21	It would also be part of the District Court record because I think
22	it was introduced during the trial. I don't remember if it was admitted or not,
23	but –
24	MR. ZANIEL: Okay. So that's another source to get that.
25	That's all Vour Honor





	1	THE COURT: Ms. Pierce, I interrupted you when you said you
	2	were confused, and then Mr. Routsis took over.
	3	Do you have any other – any more questions?
	4	MS. PIERCE: I just want to clarify if I understood this latest
	5	testimony.
	6	BY MS. PIERCE:
	7	Q Before you file your criminal charges, you have not done
	8	investigation in the DA's Office? You are relying on police reports, is that
	9	correct?
	10	A That's the practice.
	11	MS. PIERCE: Thank you.
	12	MR. ROUTSIS: And I'd follow up that there was no report written
	13	on an snow plow incident by the arresting officer.
	14	THE COURT: That's correct, right? No report written?
	15	THE WITNESS: My understanding is that the officer that
	16	investigated the snow plow incident is not the officer that submitted the report
	17	for submission to the DA's Office for filing of charges.
	18	THE COURT: Okay. Any other questions?
	19	MS. PIERCE: Where would we find a copy of that officer's
	20	report?
	21	MR. ROUTSIS: The follow up question would be, if there's nothing
	22	mentioned in that report regarding the snow plow incident, you would have
	23	gotten that information from a witness, correct?
	24	THE WITNESS: Either from the investigator or from the other report
	25	that was filed or from the Klementi's themselves.

Page -78-

	1	MR. ROUTSIS: But you don't remember, do you?
()	1	THE WITNESS: I do not have an independent recollection without
	2	
	3	seeing the file.
	4	MR. ROUTSIS: Okay.
	5	THE COURT: Ms. Capers, you look like you were going to say
	6	something, ask something.
	7	MS. CAPERS: Yes, I was contemplating. Just one last question.
	8	BY MS. CAPERS:
	9	Q Do you remember all the witnesses that testified at the
	10	Prelim Hearing?
	11	A No.
	12	MS. CAPERS: Okay.
	13	THE COURT: Anything else of Ms. Pierce - Ms. Pence?
	14	MS. PIERCE: Not for this witness, Your Honor.
	15	THE COURT: Thank you, Ms. Pence. You can go ahead and step
	16	down.
	17	THE WITNESS: Thank you, Your Honor.
	18	THE COURT: I appreciate you coming, and I didn't realize it was
	19	going to be almost two hours.
	20	Let's take a short break, and then we're going to argue the
	21	Motion to Amend, and Opposition, and we're going to argue the Summary
	22	Judgment. Re-do arguments on both of those issues.
	23	Let's take about 10 minutes.
	24	THE CLERK: Just confirmation. I only have Exhibit 4 as being
	25	admitted, and so I'm hoping we're on the same page? I only have Exhibit 4
	23	

Page -79-



1	(inaudible).
2	
3	(Whereupon Court in recess at 3:24:35 p.m.)
4	-000-
5	(Whereupon Court in session at 3:45:17 p.m.)
6	THE COURT: Thank you. Please be seated everybody. Good
7	afternoon, again. We're back on the record in case number 14-CV-0260.
8	Now, what I'd like to do is close up on the arguments in regards
9	to the Summary Judgment Motion, and in regards to the Motion to Amend.
10	So I want to start – let's start with the amendment. We heard a
11	lot from Ms. Pence which helped, and I thank her for coming. But I didn't hear
12	anything in regards to the Shaws. In Ms. Pence's testimony, there is allegation
13	that they wrote a letter - they wrote a letter, and I did hear something about a
14	video.
15	But in regards to joining in on the Opposition to the Motion to
16	Amend, correct?
17	MS. CAPERS: Yes, sir, we did.
18	THE COURT: Tell me your argument again.
19	MS. CAPERS: Again, the substance of my argument last time
20	was, number one, the delay on the insufficiency of the explanation that Mr.
21	Routsis wasn't well versed in civil litigation. Again, I made an argument that
22	he doesn't have to be an expert, he simply needs to be competent. So I don't
23	think that's a sufficient issue.
24	And then the other issue I brought to your attention was the need
25	for the DA to be here because if this case had gone to jurors, they would only

Page -80-

be able to speculate or guess as to the elevation of the charges.

And even though I think it was beat with a dead horse today, it was shown very clearly, even though the majority of the conversation was concerning Ms. Kinion, but I did ask the question concerning the Shaws, and whether or not any information they gave was a factor in the elevation of charges, and again, the answer was no as to both.

What was very clear in her testimony was that the elevation or increase of charges was based upon the medical records – the one, I guess, from the Exploitation to the Elder Abuse was primaced upon the medical records, and not based upon the testimony of any of the witnesses.

And so, therefore, again, I think there's sufficient evidence to show that my clients should be dismissed, especially when you look at the specific elements of malicious prosecution: "Initiating, procuring the institution of or actively participating in the continuation of a criminal proceeding."

There's no evidence whatsoever that my clients initiated, procured the institution of or actively participated in the continuation of a criminal proceeding because you had the DA testifying here that what evidence that prompted the increase in charges was, in fact, the medical records.

And again, the reason I asked – I was a little hesitant to ask the question, in regards to all the witnesses that were used at the Preliminary Hearing, was to see if in fact that my clients testified at the Preliminary Hearing, and so whether or not any argument could be made that their testimony resulted in some charges being continued or were increased.

But again, there's absolutely no evidence concerning that.

And what's also important to note is that even the Plaintiffs stated

Page -81-



themselves, when you look at - when you go to Page 9 of the Supplemental 1 Opposition to Motion for Summary Judgment, that we just received five 2 minutes to this proceedings, is that the only way that a conspiracy claim could 3 go forward is if, in fact, you found the malicious prosecution claim is valid. 4 And from what we believe, the evidence that has been presented 5 here, there's no basis whatsoever to hold my clients in for malicious 6 prosecution. And therefore, the conspiracy charge is therefore moot. 7 And as such, I re-ask that my clients be dismissed or in the 8 alternative, specifically, that the Amended Complaint should not go forward. 9 Because again, if it does go forward, we're going to be here again. I'm going 10 to renew the same motions. 11 Thank you. Any reply to that in regards to the THE COURT: 12 13 Shaws? Actually, Your Honor, this kind of overlaps the MS. PIERCE: 14 Summary Judgment Motion. 15 Okay. I agree. THE COURT: 16 And the Summary Judgment Motion was made only MS. PIERCE: 17 listing the facts as they applied to Ms. Kinion. 18 So joining in the Summary Judgment Motion without listing -19 here are the undisputed material facts with respect to a particular party, there's 20 no basis to go forward because that's required by the rules. 21 You have to list all of the material facts that are undisputed. And 22 based on those undisputed material facts, there's nothing to go forward on. That 23 hasn't happened with respect to anybody except Ms. Kinion. 24 So saying to join in the Motion for Summary Judgment is 25

Page -82-



meaningless, and the law was properly cited. The law says that malicious prosecution is not just initiating or procuring the institution of, but actively participating in the continued criminal prosecution, and that is what we've alleged.

We have alleged that there were actions taken by the Shaws which were instrumental in this criminal prosecution going forward.

Now, based on what the DA said, her position, as I understand it, is basically, "I institute criminal charges without talking to witnesses. I do it based on the police report and the investigation done in the police report."

Well, the only police report in this matter that was actually in place at the time that the criminal charges were brought in January, was the police report on the incident with Helmut Klementi on December 18th, and they were witnesses to that. And they were listed in there as witnesses.

So whatever the DA, Deputy DA, remembered sitting here today, that was part of the very first Complaint that was made. And then it is our contention that there were other things that occurred as this went along, and there were other claims made that came in part from the Shaws.

Because as Ms. Pence testified, there were numerous people who talked to her about these issues referring to the supposed assault on Egon Klementi and the claimed snow plow incident and the berms.

So as we sit here today, there's no basis to say that there is not a valid claim there.

And as far as the delay, the delay was due in part to a problem with a former counsel who wouldn't get out, and I couldn't come in, and there's been numerous changes of counsel, and there have been subsequent

Page -83-

proposed amendments to their Complaint. 1 So, you know, the argument of delay is not a good argument. 2 And I would submit that by participating in the continuation of those 3 proceedings, according to the law, the Shaws - an argument can be made to a 4 jury that the actions taken by the Shaws were, in fact, actions for the purpose 5 of continuing a criminal proceeding for which Mr. Spencer was acquitted of all 6 7 charges. 8 Thank you, Your Honor. Mr. Moore, who - okay. I want to hear from you, THE COURT: 9 Mr. Moore, and then I want to hear from Mr. Pintar. Because you can still see 10 how these are so intertwined in my mind - these, the Motion to Amend, which 11 is a much more liberal standard, versus the Motion for Summary Judgment. 12 I think Ms. Pence helped. However, this argument right now, it's 13 on my mind, and so, I want to clear it up. 14 Why didn't you allege a conspiracy against all the neighbors? 15 That kind of thing. So am I parsing out some? Am I dismissing some? This 16 is where I'm going. 17 I understand, Your Honor. MR. MOORE: 18 Keeping in mind that I represent Helmut Klementi who, of 19 course, initiated this whole thing, as a Plaintiff. And then we have 20 Counterclaims that have resulted in this case which is like a bad law school 21 22 exam procedurally. THE COURT: Yes, it is. 23 And Your Honor, I respectfully suggest that when MR. MOORE: 24 we have these things, we have to control what's happening by eating the 25

Page -84-



elephant one bite at a time, and I believe that's exactly what the Court is doing, and that's what we're doing at the hearing.

I will note that procedurally, my client's Motion to Amend – the Court had already granted it. I mean, we're clean as far as my client's concerned, so that's history.

We are here, of course, because we're interested in what the outcome is. But we have not opposed any of the motions that are currently pending. So I'm just procedurally letting you know where we are at.

Quite frankly, I think that Ms. Capers had a good observation.

What we're trying to do here, hopefully, is be efficient and avoid unnecessary expense to all the parties.

I would think that – I would like to think that everyone has that same goal in mind. Keeping that in mind, the Court is (inaudible) what evidence is there of the so called conspiracy, of these acts by these specific individuals.

And so, when I look at the pending motions, I think that's what we want to know. What evidence is there? And that's what the Court is reasonably giving every opportunity, from what I've observed, to the Counterclaimant Spencer to present.

And so, that's my observation, Your Honor. And I think the evidence is there. And I harken back to Ms. Capers' observation, is if the Motion for Summary Judgment is denied as to her clients right now, we know what's going to happen. She's just going to turn around and file a motion because it would be without prejudice at that point, and I think the Court is trying to be more efficient.

I'm, at this point, Your Honor, I recognize what the Court said at the beginning of this hearing. The Court is trying to find out what the evidence is so the Court can make decisions, to the extent the Court can, and at the same time – hopefully, we get a trial date because this way, we're going to push this thing along because all good things have to come to an end.

THE COURT: Thank you. Okay. Mr. Pintar.

You filed a Motion for Summary Judgment of Ms. Kinion.
You've heard the testimony of Ms. Pence.

Is there anything to add to your Motion based on the testimony of Ms. Pence?

MR. PINTAR: Yes. Just a couple things, Your Honor.

I just want to make clear on the time line. So the incident with Helmut Klementi occurs in December of 2012. The charges are filed in January of 2013, so the following month.

Ms. Pence just testified that the exploitation charges were filed at that time. She also said that later on, after those charges are filed, is when she had the conversation with Ms. Kinion at the Tahoe Justice Court, and explained to Ms. Kinion that, "If you have something to offer, then put it in writing."

Now, Mr. Routsis has made a lot of supposition about the – what Ms. Kinion did and what her role in this case was. But I would just direct Your Honor to Ms. Kinion's letter, and you'll see right at the top. It says, "This is the list of events that I saw and heard about."

She's not claiming to be a witness to all this stuff. She's trying to help, exactly what Ms. Pence asked her to do.

Page -86-



So she's not claiming she witnessed this stuff, and she never has. She's – and it says right here, "This is a list of events that I saw and heard about."

And Your Honor, the problem and why we're here is this was never produced. So Plaintiff's filed this case, and it didn't have any evidence. It didn't have any facts to support this thing.

I mean, it's all – I don't know if it's a Rule 11 violation, but it's pretty darn close because they didn't have what (inaudible) charged and then when the amended charges – and so now we're scrambling here two years after the fact.

Now we're getting the facts and the facts are clearly showing that Ms. Kinion had nothing to do with these charges.

She wasn't called to testify at the Preliminary Hearing in April.

And then – and you heard Ms. Pence testify that the only reason the one charge was changed was because of the medicals and the injuries to Helmut Klementi, and that was changed from a gross misdemeanor to a felony.

That's what malicious prosecution – they're claiming that Ms.

Kinion had something to do with either initiating or prosecuting these charges,
and the person who brought the charges said that wasn't the case.

They have no evidence at all to support malicious prosecution.

So we would respectfully request that our Motion for Summary Judgment be granted. Thank you.

THE COURT: I didn't take it – and thank you. I did not take it as a threat, Ms. Capers, however, tell me why, if I deny the summary judgment based on what I feel are triable issues, why is this coming back again on behalf

Page -87-



	1	of the Shaws?
	2	MS. CAPERS: Well, number one, because at that point, you're
	3	granting their Motion for the Amended Complaint.
	4	THE COURT: Really, no, not in my mind.
	5	MS. CAPERS: Well, for me, you would have to approve or grant
	6	the Amended Complaint to officially bring us in, and then of course, then I
	7	would, I guess, bring these motions again for you to address, then my client is
	8	actually officially in.
	9	But what I tried to do here though is show that the arguments by
	10	Mr. Pintar now are really the same. Okay, it's the same – as they say triable
	11	issues of fact. So to be more efficient, yeah, we joined the Motion, but because
	12	this hasn't proceeded in the most procedurally correct way, you know, I've tried
	13	to be proactive and get in the case before we're actually in the case. Does that
	14	make sense?
\bigcirc	15	And so therefore –
	16	THE COURT: That answered my question.
	17	MS. CAPERS: Oh, okay.
	18	THE COURT: That did because, you know, that's exactly what I
	19	meant when I said, "What does Ms. Pence have to do – she didn't say anything
	20	about the Shaws?" Was there the video? Was it edited? Did they do anything?
	21	What about the conspiracy? What about the malicious prosecution by the
	22	Shaws? What about defamation?
	23	MS. CAPERS: Right. And I get it. And so, I can understand -I
	24	guess for you as a Judge there may be some questions still. But this is how I
	25	looked at it, is that the absence of information from her showed that the letters

Page -88-



or whatever you want to say from my client and the other witnesses were not very – I guess they weren't very influential in her decisions.

And I think she said that time and time again even though Plaintiff – or Mr. Routsis, counsel would continually ask that question – well, what – and you at the end asked, "What was the decision and increase of charges based upon?"

And that was why we originally came here. That was a singular question, right, Your Honor, from last time? So once we get here, she answered that question. Did it expand you a little?

So what went into your decision making process? She said originally it was the police reports. Then she said that, "Okay, once the charges were filed there would have been some type of investigation by the police officer."

But what was very clear, if you will hear as a prosecutor, what she said, she said, "The witness statements alone would not have been influential in her charging decision."

So it may have been a factor, but not the factor that we would need to show that they initiated it, they procured the institution of, or if they actively participated in the continuation of a criminal proceeding.

And let me say this, you and I both know, at the end of the day, actively participating does not mean that you're a witness in a trial. And that's the leap that they want you to make.

Just because they wrote a letter – and I was going to bring this out, but I didn't, which was very important by Mr. Pintar, is that "I saw or heard about."

Page -89-



So if they tell what they saw or heard about, that doesn't mean there's a malicious prosecution claim. At the end of the day, that's left to 2 3 prosecutorial discretion. And from what we saw here from Ms. Pence today, all these 4 witnesses were not that important. 5 Thanks. Alright. THE COURT: 6 My turn? 7 MS. PIERCE: Yeah. I don't dare ask Mr. Routsis. 8 THE COURT: Nope, nope. I'm talking this time. 9 MS. PIERCE: You're talking. No, that's good. 10 THE COURT: Okay. From what Ms. Pence said, the initial 11 MS. PIERCE: charges get based on police reports. There was no police report about the May 12 incident threat to punching Egon Klementi in the face. 13 There was no police report regarding Mr. Spencer creating berms 14 15 in front of elderly people's houses. There was no police report on the snow plow incident of 16 December 12th. And on that one, police actually came out and investigated and 17 found no evidence of a crime such that a report was not even written. 18 So other information had to have been provided to the Deputy 19 DA for her to bring these charges. She had to get it from somewhere. 20 And what was interesting is she made a comment that a lot of 21 people were very concerned about Mr. Spencer. And that's another concern 22 because it doesn't show up in the DA produced files as prior to filing the 23 24 charges. And even if it had not influenced her in filing the charges in the 25

Page -90-



first place, we have heard about, and apparently it's standard practice in a criminal proceeding, you have – what do you call it? Information.

And in this case, you had an Amended Criminal Complaint and you had Amended Informations that, from what I understand, at least an Initial Information and two Amended Informations after investigation was done.

So even before you even get to trial and a person being a witness, there's investigation going on here. And the question is, for malicious prosecution, did people insert themselves in this process in a way that was dishonest for the purpose of getting criminal charges against Mr. Spencer to go forward and an intent to get him convicted?

The – you know, we want to be efficient in Court, but we also want to have justice. In this case, the accusations, the Ms. Kinion (inaudible), because I have to speak just to Ms. Kinion because there's no Motion for Summary Judgment that alleges the facts necessary for a motion by any other party.

THE COURT: Except Ms. Capers joined in the Motion for Summary Judgment.

MS. PIERCE: Yes. But the basic rules of NRCP—what is it? 56? I'm sorry, I'm bad with numbers. (Inaudible). Yeah, it is 56. "Requires that a party put forward undisputed facts supported by affidavits, trial transcripts, whatever evidence is there."

We don't have that from anybody. So I can't respond to that, and I don't see how the Court can rule on that without it.

With respect to the allegation that Ms. Kinion made that was included in her letter maybe that she just heard about, threatening to punch

Page -91-



	1	Egon Klementi in the face, which made it into the charges, she wasn't a witness	
<u>'</u>	2	to it.	
	3	And yet, the only witness to that was Egon Klementi.	
	4	MR. PINTAR: Your Honor, may I approach? Because they just	
	5	continue the misrepresentation.	
	6	In the documents from the District Attorney is the police report	
	7	from May of 2012, and I don't know why they say that there wasn't one. And	
	8	in that report, Egon Klementi clearly talks about how he was approached and	
	9	assaulted by Mr. Spencer.	
	10	So they're continuing to make these allegations that there's no	
	11	support, and there it's in, in their own documents that they produced.	
	12	MR. ROUTSIS: That's not true.	
	13	MR. PINTAR: It's right there.	
	14	MR. ZANIEL: What's the bates stamp number on that, Your	
	15	Honor?	
	16	MS. PIERCE: Is there a bates number on that, Your Honor?	
	17	THE COURT: D1469. We'll just refer to it (inaudible).	
	18	MR. ROUTSIS: Judge -	
	19	MS. PIERCE: Wait, wait. Ssshhh. 1461.	
	20	THE COURT: 9.	
	21	MR. ROUTSIS: Judge, while she's looking, can I – what happened	
	22	on that date –	
	23	THE COURT: Help her. I don't want to hear what happened on	
	24	the date, not from you. I mean, I respect what you're saying, but -	
	25	MR. ROUTSIS: Okay.	

Page -92-

1	THE COURT:	If this is a report – if this is a Douglas County
 2	Sheriff's Report.	
3	MR. ROUTSIS:	It was Marilyn that (inaudible).
4	MS. PIERCE:	Oh, yes, there is a report here. And the
5	complaining witness was	Marilyn Spencer.
6	MR. ROUTSIS:	Thank you.
7	MS. PIERCE:	There is no police report by Mr. Egon Klementi.
8	Marilyn Spencer had cal	led the police because he kept coming onto their
9	property and taking pictur	res.
10	And in resp	oonse to her call, that police officer went out, and
11	spoke to Egon Klementi to	tell him this complaint had been made against him,
 12	and to tell him if he went o	on the Spencer's property again, he could be arrested
13	for trespassing.	
14	And Egon K	Ilementi said nothing about a supposed assault.
15	MR. ROUTSIS:	That day. That occurred that day.
16	MS. PIERCE:	That's what this report was.
17	MR. ROUTSIS:	Read the last two pages of the report. It's Egon
18	Klementi. He's responding	g.
19	Judge, he int	errupted her conversation, and I have the right to tell
20	you what happened. Egon Klementi –	
21	THE COURT:	Wait, please. We're looking at a document.
22	MR. ROUTSIS:	I know. I was the only one at trial. Does anyone
23	want to hear what happene	ed?
24	THE COURT:	She was your co-counsel. Talk to her.
25	MR. ROUTSIS:	I know. But he got up and interrupted her, Judge.

Page -93-

	1	If I could just tell you what happened.		
	2	THE COURT: S	it down. You can tell Ms. Pierce. And you can	
	3	tell me after you consult with	Ms. Pierce.	
	4	MS. PIERCE: T	here's nothing – wait, wait. There's one thing in	
	5	here that says -		
	6	MR. ROUTSIS: H	le was interviewed on the 27th. He never	
	7	mentioned the crime occurred	or an assault occurred. He went down 30 days	
	8	later and made this claim.		
	9	MS. PIERCE: B	ut it's not in here.	
	10	MR. ROUTSIS: B	ut that's what happened (inaudible). Records	
	11	show it was written on the 27th	. They don't have any evidence because it never	
	12	happened.		
	13	MS. PIERCE: T	his report was a complaint by Marilyn Spencer.	
	14	THE COURT: M	Ir. Pintar, what do you mean the last two pages,	
	15	please?		
	16	MR. PINTAR: E:	xcuse me?	
	17	THE COURT: W	hat do you mean by the last two pages of what	
	18	you gave me?		
	19	MR. PINTAR: W	Vell, they're claiming there's no evidence other	
	20	than what Ms. Kinion said ab	out the assault where Mr. Spencer got into Mr.	
	21	Klementi's face.		
	22	He – Mr. Klem	enti, himself, wrote to the police and told him	
	23	about it.		
	24	THE COURT: A	nd what do you mean by saying they never got the	
	25	report? I don't understand.	1	

Page -94-

MR. ROUTSIS: See, I'll be very simple here. That's what happens when you don't read the trial transcripts. Here's what happened.

On the 27th of May, Marilyn Spencer called the police to say, "Egon Klementi is coming around taking pictures. We have neighbors. He's bothering us."

The police came out. They walked over to the Klementies, and said, "Mr. Klementi and Elfie," — this was the testimony and it's uncontroverted, "They're making complaints. Don't go." Gave him a warning, "Don't go take any more pictures." They said they wouldn't.

Moments before that was allegedly the assault that occurred that Egon was supposed to have been assaulted and Jeff threatened to punch him. The cops are at his home. He doesn't say a word. Doesn't say a word. The report is written. Marilyn is the complaining witness.

Thirty days later, he writes a report saying, "Oh, my, he assaulted me that day." And I asked him on the stand, "How could you not say that to the police just moments after you were assaulted and had made a complaint about the Spencers when they built a fence, when they looked sideways. How could you not make a complaint? You were just assaulted moments before. They accused you and gave you a warning about not going on their property and taking pictures."

And I'll never forget the testimony. I looked (inaudible). "We don't know how to do those things." "Do what things Elfie? You don't know how to make a complaint? The cops are at your house? You don't know how to pick up a phone? Your husband was just assaulted."

Judge, this is the most - those are the facts, and they're

Page -95-



	1	uncontroverted.
- '	2	MS. PIERCE: Your Honor, which goes very directly to a matter
	3	of fact. The facts show that that complaint was made by Marilyn Spencer.
	4	A month later, he goes back in and says, "Oh, by the way, he
	5	assaulted me that day just before the police arrived."
	6	Whether his argument is credible or not, or whether it was done
	7	maliciously for the purpose of trying to procure charges against Mr. Spencer,
	8	and it was later added to charges against Mr. Spencer, it's a factual dispute.
	9	That's what a jury trial is all about. The jury gets to decide the
	10	facts. He was acquitted of that charge.
	11	Now, I understand the standards are different. But still, this is a
	12	disputed issue of material fact.
	13	MR. PINTAR: But they're claiming that Ms. Kinion said this stuff.
	14	And there's proof right there that it was Mr. Klementi himself who wrote that.
	15	And it's not a month later. It's May 12th – May 30th of 2012.
	16	I mean, this is a person who got assaulted and he reported it to the
	17	police, and they're trying to claim that Ms. Kinion made this up. I don't
	18	understand it.
	19	MS. PIERCE: We're not trying to say Ms. Kinion made it up. Her
	20	letter can be read a couple of different ways as to whether she was asserting
	21 .	knowledge or she was asserting hearsay.
	22	But the point is, she raised this with the DA, and we're talking
	23	about later. We're not talking about back in May when this incident
	24	supposedly occurred, and no charges were brought.
	25	Much later, in January, charges - of the next year, charges were

Page -96-



brought on this incident. 1 2 Your Honor, 10 minutes ago, she just said that there MR. PINTAR: was no police report. Now, I've shown them the police report. Now, they're 3 4 making - changing their story. No, we're not changing it. I don't know why he 5 MR. ROUTSIS: 6 keeps saying that. This is a - when I said police report, I was talking 7 MS. PIERCE: 8 about a Douglas County Sheriff Incident Report, okay. This is a statement made by - what follows it in D1475, is a 9 statement made by Egon Klementi. So he's making, now, a belated complaint 10 11 about this incident. But, you know - I mean, this is a civil dispute that never went to 12 charges at the time. There was a long delay from which an argument can, and 13 has been made, before and can be made again to a jury, that it never happened, 14 15 and that's why there was a long delay. And when nothing happened to file criminal charges then, it was 16 brought up again over half a year later, and criminal charges were finally filed 17 as a supplement, in addition to, only after, the incident with Helmut Klementi. 18 Those are factual disputes. This is a matter where there is a real 19 issue, and what role Ms. Kinion had in it is she brought it up again to the DA, 20 and we don't know what date she actually brought it up to the DA. 21 Although Ms. Pence testified she never - her conversation with 22 Ms. Kinion was very short. In her deposition, Mary Ellen Kinion said that she 23 had spoken with Maria Pence, and that it was - that it was at a later date that 24 25 she wrote her letter.

Page -97-

And Mrs. Spencer, during the break, advised me that there was another letter she wrote to Maria Pence that predated the one that's produced here. I don't have it.

But these are all factual disputes. And there was a big argument last time about this letter that somehow it wasn't a valid letter, and that we hadn't properly identified it, and there was no explanation for it.

And as it turns out, yeah, it was a letter that was received by the DA's Office. What we represented at the last hearing was absolutely accurate.

But that's not the only thing. The supposed battery with the snow plow, she claims, Ms. Kinion claims that she saw Mr. Spencer drive by with a big grin on his face, her words, "big grin," picking up snow and road debris from the plow that he propelled on Egon Klementi in his driveway.

And that she claims she called Egon Klementi and then 911 to report it. And she made the same allegations under oath at Mr. Spencer's criminal trial.

Now, in her motion, she claims another snow plow, which Kinion thinks was driven by Spencer, put the berm of snow back in front of Kinion's driveway.

As the snow plow was driving away, Kinion went outside to try and identify the driver. At that time, she saw the snow plow proceed toward Egon Klementi's house. Egon Klementi was standing in his driveway shoveling snow.

Kinion then observed the snow plow approach Mr. Klementi's residence, increased its speed, and captured old snow from the side of the road and propel old snow, along with other road debris, onto Mr. Klementi.

Page -98-



Having witnessed this event, Kinion immediately called and checked on Mr. Klementi. Now, that's not what the evidence showed at trial.

And this is another case. There was no police report. Sheriff's Officer Sanchez responded to the 911 call from Egon Klementi on December 12th. The officer investigated and found no evidence of a crime so he didn't even write a report. And that was at the criminal trial that testimony was given.

And her description at the criminal trial of where she was supposedly standing, and where Egon Klementi was supposedly standing, given the size of the snow plow, looking at it from behind as it approached Egon Klementi, there was evidence that she couldn't have even viewed what she claimed to have seen.

And the discrepancy between whether she actually saw Mr. Spencer with a big grin on his face or she ran out to see who the driver was because she couldn't tell. That's a material fact.

She accused him in a criminal trial, with a big grin, implying malice, of assaulting an elderly neighbor. And now she's saying she didn't see who the driver was.

Also, her sworn testimony directly conflicted with Egon Klementi's sworn testimony, and testified under oath that he called Ms. Kinion, not the other way around.

And she also testified that she didn't call 911 until after she had her lunch, after an hour after she supposedly witnessed this assault.

Now, from those facts, a jury could look at this and say, "Did she ever really even see an assault?" because the police officer found no evidence of an assault.

Page -99-

And the question is, what circumstantial evidence shows here is Egon Klementi called her, and this is a fabricated event. This is a conspiracy to get charges against Mr. Spencer which were based on no facts, and he was acquitted of that.

In terms of the alleged battery of Helmut Klementi on the 18th of December, that's in her letter, but she admits she didn't see any assault and battery. She did not speak to the investigating officer, and yet, she includes facts in her letter that Helmut Klementi was punched in the chest, which was not what the evidence showed.

What the evidence showed was that Mr. Spencer was pursuing Mr. Klementi running on an icy street, and all of a sudden – and he was going to make a citizen's arrest. He's testified to that.

Mr. Klementi turned around, started back toward him, and the two of them collided. There was no punch in the chest.

So where is she getting these supposed facts for the DA? Especially since she wasn't a witness.

She inserted herself in this case. She became a witness in this case. She provided letters to the DA, Deputy DA in this case, and she testified under oath that she did it for the specific purpose of getting Mr. Spencer convicted. That was her purpose, and she failed in that, but she was involved in it.

And so, the process of inserting herself here, making representations which were not true, and changing her story now from what she said under oath at trial.

There are material issues of disputed fact here. This is not

Page -100-



something that can go away with summary judgment.

If these elements of the supposed berms, which she admitted at trial she never saw what – what snow plow driver created the berms, but she thought it was Mr. Spencer, but she never saw him do it.

So she has – and that was one of the factors that went into adding these elderly abuse charges that involved Egon and Elfie Klementi. She inserted herself in here. She talked about things which were proved untrue or proven that she couldn't have observed, and she's changing her position now from what she said under oath.

So did she perjure herself? Now, these are factual issues. She went beyond that. The Deputy DA made a comment about she went to – what is it – I always transpose the letter. KGID, who was a contract employer of Mr. Spencer. She tried to get him fired from his job. She made complaints there with allegations of things she had never seen.

She, in addition, not a party to the Klementi's filing for a Restraining Order against Mr. Spencer, Ms. Kinion wrote an ex parte letter to the Justice of the Peace hearing the matter trying to get more restrictive orders against him.

There are numerous examples, in addition to the criminal trial, of the actions she was taking to persecute this man.

Now, NRCP 56, she has to set forth each material fact supported by evidence which must be undisputed. She hasn't done that.

As a matter of fact, a number of the allegations she made in terms of the material facts, are contrary to the actual evidence.

For malicious prosecution, all that we need to show to overcome

Page -101-

a Motion for Summary Judgment is that she had a role in either initiating procuring the institution of or actively participating in the continuation of a criminal proceeding.

We have presented evidence that supports that. Malice, which is shown by making statements with knowledge they were false, or making statements with reckless disregard for the truth.

She was caught in lies under oath and she's changing her story which she previously gave under oath. And she testified contrary to another party here, Egon Klementi. Their testimony is directly contradictory.

There was a termination of the prior criminal proceeding with Not Guilty Verdicts on all counts.

And the criminal conspiracy, the argument was if the malicious prosecution claim goes away, the conspiracy claim goes away. But as I've articulated, there's plenty of disputed material facts to support malicious prosecution by Ms. Kinion.

The question raised about why there were no claims of conspiracy against all the neighbors, in filing a Complaint, the elements of a claim simply need to be set out based on basic facts. You don't need to put everything in there.

It is, "Here's a recitation of the facts. Here's the legal conclusion for this charge. Here's the legal conclusion for the charge. Here's the legal conclusion for this charge." That's what the claims in a Complaint do.

The Amended Complaint is designed to clean up the prior Complaint which had some misstatements and clarify what is – what actually occurred that each of these people did.

Page -102-



And as the - as Ms. Pence testified, she was hearing from a lot 1 of people. There were a lot of people who, no doubt, made statements based 2 on what we have seen from the contract employer's file accusing Mr. Spencer 3 4 of various things. Whether it rises to the level of civil conspiracy is another 5 question. But malicious prosecution is basic. And I am only going to address 6 the malicious prosecution with respect to Ms. Kinion because that's the only 7 issue before the Court on the summary judgment. 8 Reminded by co-counsel. With respect to the one allegation she 9 made that she testified that she was supposedly a witness, and that was the 10 snow plow assault and battery of Egon Klementi, she was the only 11 corroborating witness. The only one. There was no other witness in that trial 12 that said that other than Egon Klementi himself. 13 What Elfie testified to was simply what her husband told her, 14 which is hearsay. 15 So I would submit, Your Honor, that the summary judgment can't 16 be ordered based upon all of these material issues of disputed fact which, as a 17 matter of law, go to the jury. 18 Thank you. THE COURT: 19 I'm not going to (inaudible). MR. ROUTSIS: 20 I'm going to ask for a reply and then I'll make a THE COURT: 21 decision on the amendment and on the summary judgment. 22 Malicious prosecution talks about initiation of the MR. PINTAR: 23 24 charges. We know that Ms. Kinion had nothing to do with the initiation 25

Page -103-



1 of the charges. Ms. Pence confirmed again today that she had nothing to do 2 with the amending of the charges. So I don't know what - there's no question of fact about that. It's 3 4 undisputed. And now, they're talking about what happens at the criminal trial. 5 6 Well, as the Court well knows, anything is going to be privileged. I mean, there's that judicial immunity whole thing. Plus, the charges have already been 7 8 brought by that point. So with that, I would submit the motion. 9 Yeah, but what about the other allegations? THE COURT: 10 11 MR. PINTAR: What? Defamation, conspiracy. 12 THE COURT: That's not before the Court. I mean, when we filed 13 MR. PINTAR: this Motion, two years after the fact, they filed an Amended Complaint. 14 I mean, we're talking about the Complaint that was on file and 15 claims malicious prosecution. As Ms. Capers said, I mean, the Shaws are not 16 in yet. This Second Amended Complaint is not in yet. 17 And the defamation, I mean, then you go right to everything that 18 she said is privileged. I mean, there's no basis for a defamation. It's all 19 20 immune. Alright. Now I'm starting to see - see exactly. THE COURT: 21 You know, I've read this stuff. 22 What I parson, as Mr. Moore said, when I'm trying to eat one 23 elephant at a time, we're talking only about the malicious - if we're talking 24 only about the malicious prosecution defense, and Plaintiff is talking -25

Page -104-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
2.5

Counterclaimant is talking about all the other allegations that has to do with the amendment.

MR. PINTAR: Correct. The operative Counterclaim only pleads malicious prosecution and conspiracy to commit malicious prosecution.

MR. ZANIEL: Your Honor, not to add to the problems, but there's the amended – the Plaintiffs have filed an Amended Complaint, which was granted, and nobody has responded to that yet. There's not an Answer on file to the Plaintiffs' Amended Complaint, so I'm not sure how that – that's a law school failure question again.

MR. MOORE: Well, we won't take default against you.

MR. ZANIEL: But I see whatever your ruling is today, it's going to have to incorporate something to the fact that we're going to have to file an Answer to the Amended Complaint.

MR. MOORE: Yes.

MR. ZANIEL: If we file an Answer to that Amended Complaint, are we going to see Counterclaims to that, as well, and what are those Counterclaims going to be, and who are the parties going to be to that? And then I don't know where we're going to stand four months down the road when all that is completed.

THE COURT: Well, okay.

If this Motion for Summary Judgment has only to do with the malicious prosecution, that is exactly why I asked Ms. Pence to be here.

I do not believe — I believe Ms. Pence. I do not believe that the charge was enhanced by anything that Ms. Kinion did in regards to the gross misdemeanor going to a felony. That is very clear to me that it was based on

Page -105-



1	medical records.			
2	The exploitation charge was original. Ms. Kinion, she didn't			
3	influence the District Attorney, Ms. Kinion did not because that was charged			
4	in January. Ms. Kinion's letter was February. I don't see that.			
5	And Ms. Kinion had nothing to do with the malicious prosecution			
6	charges.			
7	So the Motion for Summary Judgment is GRANTED as to Ms.			
8	Kinion, as to the malicious prosecution.			
9	Now, we get to the amendment. That is exactly why I asked, just			
10	rhetorically, why the hell didn't you just sue all the neighbors? And I think the			
11	answer is, we got one that wrote a letter, we got one that said something, we got			
12	one that's got video.			
13	So I think we have to sort it out by me GRANTING the Motion			
14	to Amend, and having everybody either do it over again, or have everybody			
15	respond to the Amended Complaint.			
16	So I'm GRANTING to amend the Complaint, but Ms. Kinion is			
17	out of the malicious prosecution allegation.			
18	Now, I want you to draft an Order, Mr. Pintar, in regards to the			
19	malicious prosecution summary judgment.			
20	MR. PINTAR: Point of clarification, Your Honor.			
21	In the Amended Complaint, does that mean they cannot refile the			
22	malicious prosecution against anybody?			
23	THE COURT: I'm saying Ms. Kinion.			
24	MR. PINTAR: Okay.			
25	THE COURT: I haven't heard - I'm saying just Ms. Kinion. I			





	haven't heard anything - I haven't heard anything about (inaudible). We mi			
N	2	come back again, Ms. Capers.		
	3	MS. CAPERS: Well, we would have to unless we're going to call		
	4	the DA.		
	5	THE COURT: But you joined in the Motion?		
	6	MS. CAPERS: I did join in the Motion.		
	7	THE COURT: But I didn't hear anything so we're going to have		
	8	to come back.		
	9	MS. CAPERS: Okay. Are we going to have the DA back again?		
	10	THE COURT: No, we won't have the – we don't need the DA.		
	11	MS. CAPERS: Because I don't really see any of the facts will		
	12	change as regarding the malicious prosecution for my clients.		
	13	THE COURT: Well, I agree with that.		
$\overline{}$	14	MS. CAPERS: Okay.		
	15	THE COURT: Except for the fact when Ms. Pierce was reciting		
	16	fact after fact after fact, that had everything to do with the amendment		
	17	in my mind.		
	18	So you go ahead and amend. I want you to - well, the		
	19	amendment. We have to answer the Amended Complaint.		
	20	MR. ZANIEL: Your Honor, wouldn't it just be procedurally more		
	21	sound if we filed an Answer to Plaintiff's Amended Complaint that's on file		
	22	now?		
	23	THE COURT: Yes.		
	24	MR. ZANIEL: And then add the Counterclaims, and whatever		
	25	complaints the Counterclaim wants to add, with the exclusion of Mary Ellen		

)	1	Kinion's malicious prosecution claim, then they could add whatever claims			
"	2	they wanted; as opposed to amending the Counterclaim to the old Complaint.			
	3	Let's just clean it up and we all answer the same Amended Complaint.			
	4	MR. MOORE: And in fact we are on the same wavelength on this,			
	5	Your Honor, and that's why we have not been pushing for an Answer because			
	6	we thought the last thing this case needed was another pleading floating out			
	7	there.			
	8	So I do agree with Mr. Zaniel's suggestion. What Mr. Pintar,			
	9	following up on your Order can do, is go ahead and reflect the Motion is			
	10	GRANTED as to the Motion for Summary Judgment on Kinion on malicious			
	11	prosecution. The Court has clearly ordered on that.			
12 With that bein		With that being issued at the same time, counsel for the Spencers			
	13	can discuss among themselves the responsive pleading that they should file to			
	14	my clients' Amended Complaint, which has been filed some time ago.			
	15	And what I would just ask is if we could just have a time limit for			
	16	that, so that then the Court would have things in order.			
	17	THE COURT: Can you respond in 30 days to the Amended			
	18	Complaint?			
	19	MS. PIERCE: Yes, Your Honor.			
	20	MR. ZANIEL: Yes, Your Honor. My Answer is going to stay the			
	21	same. There's very little procedurally different with the Amended Complaint.			
	22				
	23	So as the Defendant, Jeff Spencer, I can be done with mine in a			
	24	day, and then it would just be the Counterclaim issues.			
	25	MS. PIERCE: I would just like to put one thing on the record,			

Page -108-



`;	1	please. I'm still not getting all the emails and documents. I've never seen
,	2	the —
	3	MS. ZANIEL: Neither is Ms. Capers. That was my fault.
	4	MS. PIERCE: So can we please be sure that everybody is listed?
	5	THE COURT: Yeah, when I (inaudible – cross talking).
	6	MS. PIERCE: My current address at 515 Court Street.
	7	THE COURT: Now, what I'd like to do – when I leave, get the
	8	addresses straightened out amongst yourselves, but what I'd like to do, is yeah
	9	-30 days from, well by March 1st, answer the Amended Complaint, okay? And
	10	do whatever you have to do in regards to responding to the Amended
	11	Complaint. That's all parties.
_	12	MR. PINTAR: Yes, Your Honor.
	13	THE COURT: Okay. Yes, we might be – we will be back here
	14	again, but I'll wait for the pleadings.
)	15	But I'd like to set a trial date, and that depends on this — on
	16	Douglas County, the two District Courts here, as far as availability, toward the
	17	end of the year; October, November, that kind of thing, and how long the trial
	18	will be.
	19	When I first saw this thing, I saw two weeks. But I don't know
	20	if we really – I don't know. So that is up to you. I've got a calendar here, and
	21	the clerk can ask as far as availability.
	22	MR. ZANIEL: Your Honor, I don't know about two weeks any
	23	time the rest of this year.
	24	MR. MOORE: If I may be heard? I don't mean to interrupt you,
	25	counsel, because I know you're working here, but I think I better put something

Page -109-

	1	out there right away for everyone to know.	
1144	2	My client is over 80 years old. I have the ability, if need be-	
	3	THE COURT: Opportunity.	
	4	MR. MOORE: To file a Motion for Preferential Trial Setting. I	
	5	would much rather have everyone work and coordinate their calendars. That's	
	6	much better for everyone, and hopefully, we'll do that.	
	7	But I point that out to hopefully encourage people to recognize	
	8	we need to have it probably this year.	
	9	MR. ZANIEL: Your Honor, I think you - if you order that a	
	10	preferential trial setting be done, then I can attach that to a Motion to Continue	
	11	on one of my other trials.	
	12	MR. MOORE: That sounds reasonable and we might do that.	
	13	Maybe we should control our faith by identifying a trial date that we think	
_	14	would work, and then I can follow up with appropriate motion practice.	
\bigcirc	15	THE COURT: Alright. Let's start shooting some dates.	
	16	I'm going to go into October. I'm kind of deferring to the clerk.	
	17	MR. MOORE: Judge, we're talking about 60 days on the senior-	
	18	with the senior —	
	19	THE COURT: Oh, very sorry. Very sorry. Absolutely.	
	20	MR. MOORE: If need be, we don't want to pull the trigger if we	
	21	can find a date that works for people this year.	
	22	I mean, my client is trying to see what's doable.	
	23	MR. PINTAR: We could bifurcate the trial, too.	
	24	THE COURT: So when would the 60 days start?	
	25	MR. MOORE: When we file it and when the Court issues the	

Page -110-

	1	Order, really. So we'd have to think down the road.		
	2	Let's say we filed it by March 1. Just for the sake of discussion,		
	3	the Court could rule maybe in two weeks. Well, we'd have to see what's		
	4	opposed.		
	5	THE COURT: Okay.		
	6	MR. MOORE: I'm just thinking out loud, Your Honor. I'm		
	7	thinking, okay, filed March 1. That gets us to April. Then 60 days after that.		
	8	May, June. I think we're talking about really the summer, Your Honor.		
	9	MS. CAPERS: I'm out of the country in July.		
	10	THE COURT: Well, see that's where we're going.		
	11	MS. CAPERS: Right. I just wanted to put that out there.		
	-12	MR. MOORE: We want to work with people, and I don't know		
	13	what the Court's calendar is. The preferential setting may dictate that. But I		
understand this is being shared, and this is complicated. I get that.		understand this is being shared, and this is complicated. I get that.		
\bigcirc	15	MR. ZANIEL: What about August 1st, Your Honor? Ms. Capers,		
	16	are you out the entire month? Or to July 31st?		
	17	MS. CAPERS: Yeah, I don't get back until the 25th. That would		
	18	be pushing it because I'll have no access. I'm in Haiti. So maybe even the		
	19	second week in August.		
	20	MR. PINTAR: Judge, the PI case will take three days. It's pretty		
	21	simple. I mean, and then we could do our case in a year because it's going to		
	22	take more time.		
	23	MR. MOORE: Well (inaudible).		
	24	THE COURT: Let's throw all this out. I'm open.		
	25	MR. MOORE: We're not going to bifurcate this case. (Inaudible		

Page -111-

1 - cross talking).		- cross talking).		
	2	MR. ZANIEL: August 7th, Your Honor. On that week, I do not		
	3	have a trial. I do have a week the following trial (sic), but if your Order says		
	4	expedited trial, I file a Motion to Continue on that one, and we're good.		
	5	THE COURT: What about trying the case in Reno in a vacant		
	6	Courtroom? Does everybody –		
	7	MR. MOORE: We could stipulate to that.		
	8	THE COURT: We're all from Reno basically, except for Ms.		
	9	Capers.		
	10	MS. CAPERS: That's fine. It's probably easier for her, too.		
	11	MR. MOORE: It may be, but the question will have to do with the		
	12	jury. The parties have demanded a jury. You may want to (inaudible).		
	13	THE COURT: How many days are you looking at?		
_	14	MR. ZANIEL: I think the Plaintiff's case in chief, yeah, that's not		
\bigcirc	15	going to take too long.		
	16	MR. MOORE: Yeah, I think our case in chief – although judging		
	17	what we've seen so far, I'm going to say three days for our case in chief.		
	18	THE COURT: We could say 7 or 8 days for trial.		
	19	THE CLERK: We have a lengthy trial coming up, starting the very		
	20	end of July into August. So, I mean, we got one going up until September 1st		
	21	there.		
	22	MR. ZANIEL: Your Honor, if everybody stipulates to move to		
	23	Reno, then this calendar becomes irrelevant, correct?		
	24	THE COURT: What about the jury though?		
	25	MR. MOORE: We'd have to agree that (inaudible - cross talking).		

	1	That's the issue is whethe	ier or not we –		
<u> </u>	. 2	MR. ZANIEL:	If we stipulate to just venue change.		
	3	THE CLERK:	You'd have to change the venue, wouldn't you?		
	4	MR. MOORE:	You're right, we would, in order to make that work.		
	5	(Inaudible – cross talking)).		
	6	MR. ZANIEL:	Are you good with that?		
	7	MR. ROUTSIS:	I'm not, no.		
	8	MR. ZANIEL:	You're not good with that?		
	9	MR. ROUTSIS:	No. I want a Douglas County jury.		
	10	MR. ZANIEL:	Okay. Then we're back to the calendar.		
	11	THE COURT:	Alright. Let's react to your Motion for Speedy		
_	12	Trial based on age. Let's	see where we are there, and then we can circulate as		
	13	far as available dates.			
	14	I will check, of course, with Douglas County because they're			
\bigcirc	15	(inaudible). The Defenda	nt has the right to have a trial in their home county,		
	16	and I've just heard, off the record to the side, wants a Douglas County jury, so			
	17	we're going to go Douglas County, of course.			
	18	And I'm goo	od myself, August, September.		
	19	THE CLERK:	And July you said wasn't good, right? You're		
	20	gone?			
	21	MS. CAPERS:	Right. Because then my clients (inaudible).		
	22	MR. MOORE:	But that's why we're having this discussion because		
	23	I will time my motion before	ore that.		
	24	MS. CAPERS:	Okay.		
	25	THE COURT:	Very good.		

Page -113-



1	MR. MOORE:	Because we want to – we understand people have		
2	cases (inaudible).			
3	MS. CAPERS:	If we answer, then we do a Demand for Jury Trial		
4	as well.			
5	THE COURT:	And whenever we pick a trial date and how long,		
6	I'm going to say – I'll say	two weeks because I think it's longer than a week.		
7	But I volunt	eer, and I've been doing this as a Senior for the last		
8	four years, I volunteer to	o do myself and a jury insulates me from this, a		
9	settlement conference, so	if we want to pick a settlement conference too, about		
10	a month or six weeks be	a month or six weeks before the jury trial, and we can do the settlement		
11	conference in Reno. That	will save us. Because I can always get rooms there.		
12	(Inaudible). This is the D	ouglas County Sheriff –		
13	Alright. So	I'm waiting – March, at least by March 1st, well, no,		
14	leave it flexible too, Mr. Moore.			
15	MR. MOORE:	I think we will. And what we will do is we'll		
16	contact the Court separatel	y in a month and we'll see because the timing of our		
17	motion may impact things.	We're just letting parties know we're (inaudible).		
18	Right now, it's sounding li	ike September, October.		
19	THE COURT:	Yeah. Everybody understand that?		
20	THE CLERK:	If it's – there is availability in the other Courtroom.		
21	It looks like there's a week	, August 14 th through the 18 th . That's a possibility.		
22	So in your guys' discussion	ns or whatever, just know that that's a possibility as		
23	well.			
24	MR. ROUTSIS:	Judge, I'd like to move the exhibits into evidence.		
25	THE COURT:	Alright. Exhibit what for today?		

Page -114-

	1	MR. ROUTSIS:	(Inaudible – cross talking).
	2	THE COURT:	5. Any objection to number 5? That's the police
	3	report I just handed back	to you.
	4	MR. PINTAR:	Nope.
	5	THE COURT:	Mr. Pintar – 5 will be admitted.
	6	THE CLERK:	2.
	7	THE COURT:	2 is what?
	8	THE CLERK:	2 is the first page of the Criminal Complaint
	9	from the Justice Court.	
	10	MR. PINTAR:	I object to that because –
	11	MS. CAPERS:	It's incomplete.
	12-	MR. PINTAR:	It's incomplete.
	13	THE COURT:	Alright then, I won't admit it.
	14	THE CLERK:	Okay. Then you have 3 which was the Amended
\bigcirc	15	Information.	
	16	MR. PINTAR:	No objection to that.
	17	THE COURT:	3 will be admitted.
	18	THE CLERK:	And 4 is already admitted. So everything but 2.
	19	THE COURT:	So does everybody have my - and I think what
	20	happened to the pleading t	hat just got before the hearing, Mr. Routsis sent it to
	21	me yesterday, but I couldn	i't open it because it wasn't Word.
	22	MR. ZANIEL:	It was Word Perfect, Your Honor.
	23	THE COURT:	It was Word Perfect. I'm PDF Word. Everybody
	24	has my address and phone	number and all that?
	25	MR. MOORE:	I think we do, Your Honor. The Court has been

Page -115-

	1	very accessible. The recor	rd will reflect that.
· • • · ·	2	I have two o	ther matters, if I may, for scheduling.
	3	THE COURT:	Okay.
	4	MR. MOORE:	To make it a lot more efficient while we're all here.
	5	We've been	trying to reschedule the depositions of Jeffrey and
	6	Marilyn Spencer to take pl	ace. We sent out correspondence on December 1st,
	7	and that's been influx. Eve	eryone is here. We should be able to find a date.
	8	We had prop	oosed the week of March 6th for those depositions,
	9	and I'm just checking to se	ee if we can use that time.
	10	MR. ZANIEL:	I had two trials, Your Honor. One trial went off.
	11	One trial is still on.	
	12	MR. MOORE:	Yeah, I'm in trial that week as well.
	13	MR. ZANIEL:	March 13th looks good. March 14th looks good.
	14	March 16 th looks good. I co	ould do March 20, 21st or 22nd. Now you know why
\bigcirc	15	we need everyone in one ro	oom.
	16	MS. CAPERS:	20 th . I'm good on the 20 th .
	17	THE COURT:	20 th , going once, going twice.
	18	MR. ZANIEL:	20 th ? March 20 th ? (Inaudible – cross talking).
	19	MR. MOORE:	And the 21st would be on –
	20	THE COURT:	And the 21 st .
	21	MR. ZANIEL:	I've got a depo that date. Two depos that date.
	22	What about the 22 nd ?	
	23	MR. MOORE:	I'm okay with the 22 nd .
	24	MS. CAPERS:	I'm okay with –
	25	MR. ZANIEL:	I'm good the 22 nd as well.

Page -116-



()	1	MR. MOORE: So we have two dates, March 20th and 22nd,
L	2	reserved for the depositions. Hopefully, the final depositions of the Spencers.
	3	THE COURT: Okay. 20 and 22?
	4	MR. MOORE: 20 and 22.
	5	MR. ZANIEL: At Sunshine?
	6	MR. MOORE: Yeah. I'll send out notices.
	7	THE COURT: Anybody else? Alright. I'm going to leave.
	8	ALL COUNSEL: Thank you, Your Honor.
	9	THE COURT: Thanks a lot, everybody. Mr. Pintar is preparing
	10	the summary judgment and everybody is responding to the Amended
	11	Complaint. (Inaudible – cross talking).
	12	
	13	
	14	
\bigcirc	15	(Whereupon Court in recess at 4:51:44 p.m.)
	16	
	17	
	18	
	19	
	20	
	21	
	22	
	23	
	24	
	25	

Page -117-

	1	
``	2	STATE OF NEVADA)) SS:
	3	COUNTY OF WASHOE) 55.
	4	I, PAMELA D. SIMON, a notary public in and for the County of
	5	Washoe, State of Nevada, do hereby certify:
	6	That I was provided a JAVS CD of the hearing above-referenced, and
	7	that said transcript, which appears hereinbefore was transcribed verbatim into
	8	typewriting as herein appears to the best of my knowledge, skill, and ability and
	9	is a true and correct record thereof.
	10	I further certify that I am not an attorney or counsel for any of the
	11	parties, nor a relative or employee of any attorney or counsel connected with
	12	the action, nor-financially interested in the action.
	13	DATED this day of February, 2017.
	14	
\bigcirc	15	
	16	PAMELA D. SIMON
	17	
	18	
	.19	
	20	
	21	
	22	
	23	
	24	
	25	ı

Page -118-

EXHIBIT 3

EXHIBIT 3

1	CASE NO.: 14-CV-0260	
2	DEPT. NO.: II	
3		
4		
5		
6	IN THE NINTH JUDICIAL DISTRIC	T COURT OF THE STATE OF NEVADA
7	IN AND FOR THE C	COUNTY OF DOUGLAS
8	HELMUT KLEMENTI,	
9	Plaintiff,	
10	vs.	A TOTAL A VIEW OF BALCHTAFF A DINUTAD IN
11	JEFFREY D. SPENCER & DOES 1-5,	AFFIDAVIT OF MICHAEL A. PINTAR IN SUPPORT OF COUNTER-DEFENDANT
12	Defendants.	MARY ELLEN KINION'S MOTION FOR ATTORNEY'S FEES AND COSTS
13	TEPEDEN D. GDENGED	
14	JEFFREY D. SPENCER,	
15	Counterclaimant,	
16	VS.	
17	HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY	
18	ELLEN KINION, an individual, and DOES 1-5,	
19	Counterdefendants.	
20		
21	STATE OF NEVADA)	
22	COUNTY OF WASHOE) ss.	
23	·	hereby swear under penalty of perjury that the
24	following assertions are true:	
25		1 . Justice 1 de maredies before all courte in the
26		and admitted to practice before all courts in the
27	State of Nevada, and I am a member in good s	tanding with the State Bar of Nevada.
28		
	1	

- 2. I am the attorney of record for Counter-defendant, Mary Ellen Kinion ("Kinion") in the above-entitled action.
- I make this affidavit in support of Kinion's Motion for Attorney's Fees and Costs.
- 4. Attorneys' fees and paralegal fees in the amount of \$16,160.00 (85.9 hours @ \$150/hr.; 24.5 hours @ \$125/hr. and 2.5 hours @ \$85/hr.) have been incurred by the law firm of Glogovac & Pintar with respect to defending Kinion against the claim for malicious prosecution and for the preparation of Kinion's Motion for Summary Judgment and the subsequent hearings held on December 15, 2016 and January 30, 2017. (Attached hereto as Exhibit 1 are copies of the redacted invoices reflecting the legal work performed).
- That the attorneys' and paralegal fees charged are just, reasonable and fair under the circumstances.
- 6. That attached to the motion as <u>Exhibit 1</u>, is a true and correct copy of Kinion's letter to the Douglas County District Attorney.
- 7. Attached as Exhibit 2, is a true and correct copy of the January 30, 2017 hearing transcript.

8. Further affiant sayeth not.

Dated this day of March, 2017.

MICHAEL A. RINTAR, ESQ

SUBSCRIBED and SWORN to before me,

is _____ day of March, 2017.

NOTARY PUBLIC

MELISSA WELCH
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 16-3926-16 - Expires Spetember 23, 2020

EXHIBIT 1

EXHIBIT 1

Allstate Insurance Company 500 E. Warm Springs Rd., Ste. 200 P. O. Box 98761 Las Vegas, NV 89193-8761 May 2, 2016 Our File No. ALL.1741

Invoice Number: 62698

Re:

Klementi and Kinion v. Spencer

DOL: December 12, 2012

0360834337.2

Statement of Account for Services Rendered Through April 30, 2016

ATTORNEY FEES

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
03/04/16	KCK	Legal research re: testimony immunity for Kinion.	1.00	125.00
03/04/16	KCK	Prepare memo re: testimony immunity for Kinion.	1.50	187.50
03/08/16	MAP	E-mails with Zaniel's office re: depositions.	0.20	30.00
03/09/16	SM	Prepare draft interrogatories to plaintiff.	1.50	127.50
03/11/16	SM	Prepare draft request for production of documents to plaintiff.	1.00	85.00
03/14/16	MAP	Revise and finalize interrogatories and request for production of documents to plaintiff.	1.00	150.00
03/17/16	MAP	Meeting with client re: case strategy and further handling.	1.50	225.00

Statement of Account for Services Rendered Through April 30, 2016

Our File No. ALL.1741

<u>Date</u>	<u>Atty</u>	Description	<u>Hours</u>	Amount
				: }
03/28/16	MAP	Review subpoenas to Peter and Rowena Shaw.	0.10	15.00
04/04/16	MAP	Phone call with insured re: upcoming deposition.	0.20	30.00
04/06/16	MAP	Meeting with insured re: deposition preparation.	3.00	450.00
04/08/16	MAP	Phone call with Klementi's counsel re: declaratory relief action.	0.50	75.00
04/08/16	MAP	Review letter from Klementi's counsel to Spencer's counsel re: lack of 16.1 production.	0.20	30.00
04/12/16	MAP	Review Spencer's request for production of documents to Klementi.	0.10	15.00
04/12/16	RRH	Review and analyze deposition of Jesse McKone in preparation to draft motion for summary judgment.	0.50	62.50
04/42/46	MAD		0.00	45.00
04/13/16	MAP	Phone call with insured re: deposition.	0.30	45.00
04/13/16	MAP	Review Officer McKone's deposition transcript.	1.00	150.00
04/14/16	MAP	Attend Helmut Klementi's deposition.	4.50	675.00
04/14/16	MAP	Attend Elfie Klementi's deposition.	3.50	525.00
04/14/16	MAP	Meeting with Klementi's counsel re: discovery.	0.80	120.00

Statement of Account for Services Rendered Through April 30, 2016 Our File No. ALL.1741

<u>Date</u>	Atty	Description	Hours	Amount
04/14/16	RRH	Review claim file materials and documents in preparation to draft motion for summary judgment.	1.00	125.00
04/14/16	RRH	Review and analyze deposition of Mary Kinion in preparation to draft motion for summary judgment.	1.50	187.50
04/14/16	RRH	Begin drafting defendant's motion for summary judgment.	5.50	687.50
04/15/16	RRH	Continue drafting defendant's motion for summary judgment.	3.00	375.00
04/15/16	RRH	Revise and edit draft of defendant's motion for summary judgment.	1.00	125.00
04/17/16	MAP	Review insured's deposition transcript.	1.00	150.00
04/17/16	MAP	Revise motion for summary judgment on counter-claims.	0.80	120.00
04/20/16	MAP	Further revision to motion for summary judgment.	1.00	150.00
04/20/16	MAP	Review case file at the courthouse re: pleading and procedural irregularities.	2.50	375.00
04/20/16	MAP	Prepare demand for prior pleadings to defendant/counterclaimant Spencer.	0.30	45.00
04/21/16	MAP	Prepare demand for prior discovery and pleadings to	0.50	75.00

Page four May 2, 2016 Statement of Account for Service

Statement of Account for Services Rendered Through April 30, 2016

Our File No. ALL.1741

<u>Date</u>	Atty	Desc	eription	<u>Hours</u>	Amount
		Spencer.			
04/22/16	MAP	Phone call with Klementi's codiscovery.	ounsel re: anti-SLAPP laws,	1.00	150.00
04/22/16	MAP	Finalize motion for summary	judgment.	0.80	120.00
04/27/16	MAP	Prepare letter to counter-claim Routsis re: past due discovery		0.20	30.00
		STAFF	SUBTOTALS		
Kenton Karra Howey, Robe Sherie Morril Pintar, Micha	ert R. I	@ 125.00 @ 125.00 @ 85.00 @ 150.00	\$ \$ \$ \$		
	Total	Professional Services			

Allstate Insurance Company 500 E. Warm Springs Rd., Ste. 200 P. O. Box 98761 Las Vegas, NV 89193-8761 June 6, 2016 Our File No. ALL.1741 Invoice Number: 62751

Re:

Klementi and Kinion v. Spencer

DOL: December 12, 2012

0360834337.2

Statement of Account for Services Rendered Through May 31, 2016

ATTORNEY FEES

<u>Date</u>	Atty	Description	Hours	Amount
05/04/16	MAP	E-mails with Helmut Klementi's counsel re: prior attorney.	0.30	45.00
05/04/16	MAP	E-mails with Spencer's attorney re: deposition.	0.30	45.00
05/06/16	MAP	Meeting with insured re: legal status and further handling.	1.00	150.00
05/09/16	MAP	E-mails with counsel re: plaintiff's deposition.	0.20	30.00
05/10/16	MAP	Phone call with Spencer's counsel re: case background.	0.50	75.00
05/17/16	MAP	Review and analyze plaintiff's opposition brief and exhibits.	0.60	90.00
05/18/16	MAP	Phone call with insured re: allegation in Spencer's reply brief.	0.50	75.00
05/18/16	MAP	Legal research re: issues addressed in motion for summary judgment, standards and need for admissible evidence.	3.50	525.00
05/18/16	MAP	Begin preparing reply in support of motion for summary judgment.	2.00	300.00
05/19/16	MAP	Continue preparing reply in support of motion for summary judgment.	1.50	225.00
05/19/16	MAP	Legal research re: immunity for judicial proceedings.	2.00	300.00

Page two
June 6, 2016
Statement of Account for Services Rendered Through May 31, 2016
Our File No. ALL.1741

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	Amount
05/20/16	MAP	Revisions to reply brief in support of motion for summary judgment.	3.00	450.00
05/22/16	MAP	Revise, finalize reply brief in support of motion for summary judgment.	1.00	150.00
05/22/16	MAP	Legal research re: authorities for amending complaint.	1.50	225.00
05/22/16	MAP	Review request for submission of substitution of counsel.	0.10	15.00
05/23/16	MAP	Legal research re: Nevada's anti-SLAPP laws.	2.00	300.00

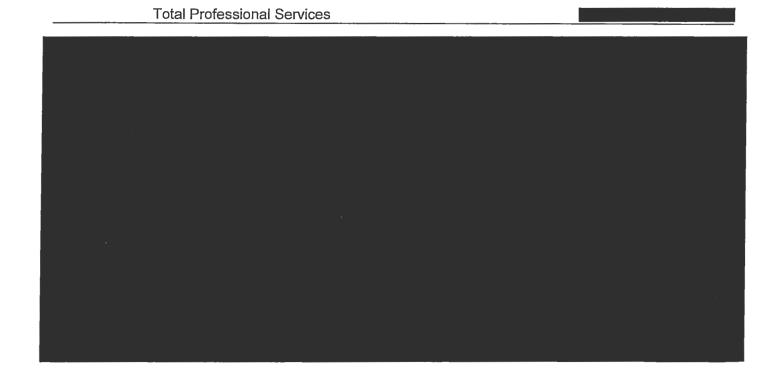
STAFF SUBTOTALS

Pintar, Michael A.

@

@ 150.00

\$



Allstate Insurance Company 500 E. Warm Springs Rd., Ste. 200 P. O. Box 98761 Las Vegas, NV 89193-8761

August 8, 2016 Our File No. ALL.1741 Invoice Number: 62863

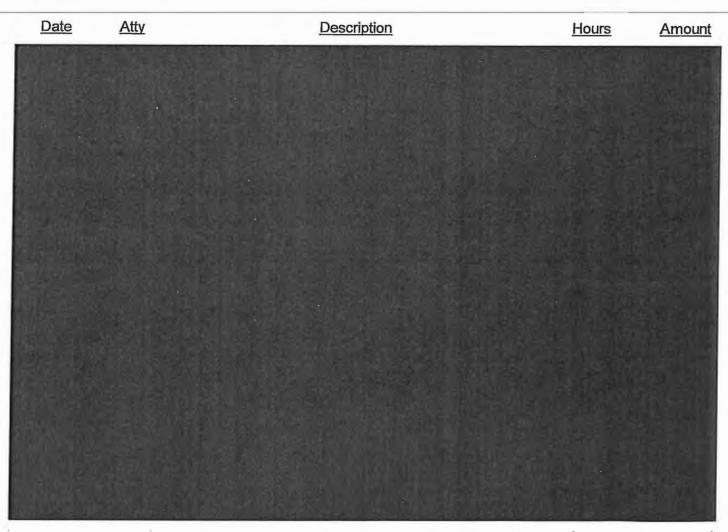
Re:

Klementi and Kinion v. Spencer DOL: December 12, 2012

0360834337.2

Statement of Account for Services Rendered Through July 31, 2016

ATTORNEY FEES



Page two August 8, 2016 Statement of Account for Services Rendered Through July 31, 2016 Our File No. ALL.1741

<u>Date</u>	<u>Atty</u>	Description	Hours	Amount
07/28/16	MAP	Prepare for deposition of Jeff Spencer.	2.50	375.00
07/28/16	MAP	Attend deposition of Jeff Spencer.	6.00	900.00
07/29/16	MAP	Phone call with Helmut Klementi's counsel re: status.	0.30	45.00



STAFF SUBTOTALS

Pintar, Michael A. @ 150.00 \$



Allstate Insurance Company 500 E. Warm Springs Rd., Ste. 200 P. O. Box 98761 Las Vegas, NV 89193-8761

September 6, 2016 Our File No. ALL.1741 Invoice Number: 62884

Re:

Klementi and Kinion v. Spencer

DOL: December 12, 2012

0360834337.2

Statement of Account for Services Rendered Through August 31, 2016

ATTORNEY FEES

<u>Date</u>	Atty	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
				:
08/11/16	MAP	Prepare for hearing.	1.00	150.00
08/11/16	MAP	Attend hearing/oral argument on pending motions.	2.00	300.00
08/11/16	MAP	Meeting with insured re case status.	0.50	75.00
08/18/16	MAP	Prepare opposition to plaintiff's motion to amend complaint.	3.00	450.00
08/19/16	MAP	E-mail with court re: continuance of hearing re: motion for summary judgment and other pending motions.	0.20	30.00

Allstate Insurance Company 500 E. Warm Springs Rd., Ste. 200 P. O. Box 98761 Las Vegas, NV 89193-8761 December 5, 2016 Our File No. ALL.1741 Invoice Number: 63040

Re:

Klementi and Kinion v. Spencer

DOL: December 12, 2012

0360834337.2

Statement of Account for Services Rendered Through November 30, 2016

ATTORNEY FEES

Date Atty Description Hours Amount

Page two
December 5, 2016
Statement of Account for Services Rendered Through November 30, 2016
Our File No. ALL.1741

<u>Date</u>	<u>Atty</u>	<u>Description</u>	Hours	Amount
11/08/16	DKW	Legal research re: issues raised by Spencer's insufficient responses to requests for production.	3.50	437.50
11/08/16	DKW	Begin drafting meet and confer letter to Spencer's counsel re: insufficient responses to requests for production.	2.00	250.00
11/09/16	DKW	Complete draft of meet and confer letter to Spencer's counsel re: insufficient responses to requests for production.	1.80	225.00
11/14/16	DKW	Finalizing meet and confer letter.	0.70	87.50

Allstate Insurance Company 500 E. Warm Springs Rd., Ste. 200 P. O. Box 98761 Las Vegas, NV 89193-8761 February 2, 2017 Our File No. ALL.1741 Invoice Number: 63163

Re:

Klementi and Kinion v. Spencer

DOL: December 12, 2012

0360834337.2

Statement of Account for Services Rendered Through January 31, 2017

ATTORNEY FEES

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	Amount
12/08/16	DKW	Further revisions to meet and confer letter to Lynn Pierce.	1.50	187.50
12/09/16	MAP	Finalize meet and confer letter.	0.50	75.00
12/14/16	SAG	Reviewing file materials and preparing for court hearing on all pending motions.	4.50	675.00
12/15/16	SAG	Additional preparation for court hearing on all pending motions.	2.00	300.00
12/15/16	SAG	Travel to Minden, Nevada for court hearing.	1.00	150.00
12/15/16	SAG	Attend court hearing on all pending motions.	2.00	300.00
12/15/16	SAG	Post-hearing meeting with clients re: status and further handling of case.	0.50	75.00
12/15/16	SAG	Return trip to Reno.	1.00	150.00

Page two
February 2, 2017
Statement of Account for Services Rendered Through January 31, 2017
Our File No. ALL.1741

<u>Date</u>	Atty	<u>Description</u>	<u>Hours</u>	Amount
01/26/17	MAP	Phone call with insured re: upcoming hearing.	0.30	45.00
01/27/17	MAP	Review pleading in preparation for hearing.	1.00	150.00
01/27/17	MAP	Review legal research in preparation for hearing.	1.00	150.00
01/27/17	MAP	Review extensive file from Douglas Court District Attorney.	2.50	375.00
*				
01/30/17	MAP	Continue review of extensive file from district attorney's office.	2.50	375.00
01/30/17	MAP	Travel from Reno to Minden for court hearing re: motions.	0.80	120.00
01/30/17	MAP	Attend hearing.	4.00	600.00
01/30/17	MAP	Meeting with clients after hearing to discuss case.	1.00	150.00
01/30/17	MAP	Return trip to Reno.	0.80	120.00

Page three February 2, 2017 Statement of Account for Services Rendered Through January 31, 2017 Our File No. ALL.1741

STAFF SUBTOTALS

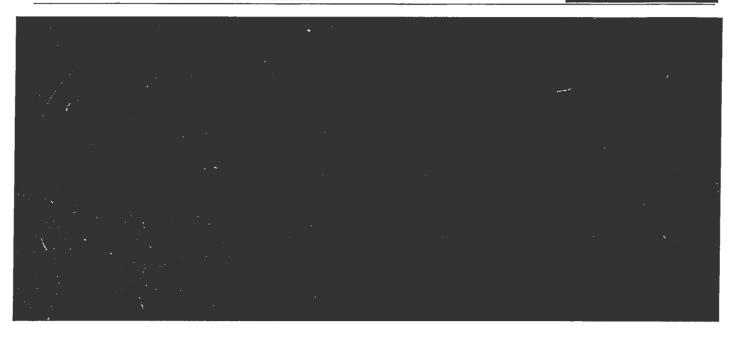
Don K. White Glogovac, Scott A. Pintar, Michael A.

@ 125.00 \$ @ 150.00 \$

@ 150.00 \$



Total Professional Services



ORIGINAL

DAVID M. ZANIEL, ESQ.
Nevada Bar No. 7962
RANALLI, ZANIEL, FOWLER & MCEGEIVED
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Telephone: (775) 786-4441
Attorneys for Defendant
Jeffrey D. Spencer

SEP 1 2 2017

Douglas County
Jeffrey D. Spencer

2017 SEP 12 PM 3: 10

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,)		
Plaintiff,)		14 644 08 60
vs.)	Case No. Dept. No.	14-CV-0260 I
EFFREY D. SPENCER & DOES 1-5,)		
Defendant.)))		
EFFREY D. SPENCER,)		
Counterclaimant,)		
√s.)		
HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, ROWENA SHAW, an individual PETER SHAW, an individual & DOES 1-5,))))		
Counterdefendants & Third Party Defendants))		

STIPULATION FOR DISMISSAL WITH PREJUDICE

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff, HELMUT KLEMENTI, by and through his attorney of record, Christian Moore, Esq., of LEMONS,

26

27

28

GRUNDY & EISENBERG, and Defendant, JEFFERY D. SPENCER, by and through his attorney of record, David Zaniel, Esq., of RANALLI, ZANIEL, FOWLER & MORAN, that this matter be dismissed with prejudice, with each party bearing their own fees, costs, and interests. This Stipulation is inclusive of JEFFERY SPENCER as a Defendant in this action only, and is not applicable to the Counterclaim filed into the above-titled case.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

day of September 2017. DATED this _____ day of September 2017.

RANALLI, ZANIEL, FOWLER & MORAN

LEMONS, GRUNDY & EISENBERG

David M. Zaniel, Esq. Nevada Bar No. 7962 50 West Liberty Street, Ste 1050 Reno, Nevada 89501

Attorney for Defendant

Christian L. Moore, Esq. Nevada Bar No. 3777

6005 Plumas Street, Third Floor Reno, Nevada 89519 Attorney for Plaintiff

2

CERTIFICATE OF MAILING

- 1	
3	Pursuant to Nevada Rules of Civil Procedure 5(b), I certify that I am an employee of
4	RANALLI & ZANIEL, LLC and that on the 12th day of December 2017 and I certify that
5	service of the foregoing STIPULATION FOR DISMISSAL WITH PREJUDICE was made to all
7	parties to this action by:
8	placing a true copy thereof in a sealed, stamped envelope with the United States
9	Postal Service at Reno, Nevada;
.0	personal delivery, received by ;
1	facsimile;
.2	United States Postal Service Express Mail or other overnight delivery; or
3	<u> </u>
5	Reno/Carson Messenger Service
6	addressed as follows:
.7	Lynn G. Pierce Esq. GLOGOVAC & PINTAR LYNN G. PIERCE ATTORNEY AT LAW 427 West Plumb Lane
.8	515 Court Street, Suite 2f Reno, Nevada 89509 Reno, Nevada 89501 **Attorney for Counter-Defendant Kinion,**
.9	Attorney for Counter-Claimant Klementi
0	Michael Pintar, Esq. Douglas R. Brown, Esq. William Routsis, Esq.
1	LEMONS, GRUNDY & EISENBURG 1070 Monroe Street
2	6005 Plumas Street, Third Floor Reno, Nevada 89509 Reno, Nevada 89519 Attorney for Counter-Claimant
23	Attorney for Plaintiff Tanika Capers, Esq.
25	AMERICAN FAMILY INSURANCE 6750 Via Austi Parkway, Suite 310
26	Las Vegas, Nevada 89119 Attorney for Peter and Rowena Shaw
27	Han
8 8	Employee of Ranalli, Zaniel Fowler & Moran
	3

20

21

22

23

24

25

26

27

28

Case No. 14-CV-0260

Dept. No. I

RECEIVED.

APR 1 2 2018

Douglas County District Court Clerk



2018 APR 12 PM 3: 40

BOSSIE R. WILLIAMS CLERK

M. BIAGGINE PUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

Case No. 14-CV-0260

VS.

Dept. No. I

JEFFREY D. SPENCER,

Defendant

JEFFREY D. SPENCER,

Counterclaimant,

VS.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counter-defendants.

COUNTER-DEFENDANT HELMUT KLEMENTI'S MOTION FOR SUMMARY JUDGMENT ON ALL COUNTERCLAIMS

Comes now, Counter-Defendant HELMUT KLEMENTI, by and through his counsel of record, Lemons, Grundy & Eisenberg, and hereby files *Counter-Defendant's Motion for Summary Judgment on all Counterclaims* contained in Counterclaimant Jeffrey Spencer's *Answer to Amended Complaint and Amended Counterclaim and Third-Party Complaint* on file herein as those claims pertain to Helmut Klementi. This Motion is made pursuant to NRCP 56, and is based on the pleadings and papers on file with the Court, the following memorandum of points and authorities, the attached exhibits, oral argument presented at the hearing of this matter, if any, and any other information this Court deems appropriate to consider.

Lemons, Grundy & Eisenberg 6005 Plumas St. THIRD FLOOR Reno, NV 89519 (775) 786-6868

- 1 -

MEMORANDUM OF POINTS AND AUTHORITIES

2

3

INTRODUCTION AND SUMMARY OF ARGUMENT

4 5

6

7

8

9 10

11

12

13 14

15

16

17

18

19

20

21

22

23

24

25

26

This case stems from a dispute between neighbors in the Kingsbury General Improvement District (KGID) in Douglas County, Nevada that ultimately culminated in criminal proceedings against Defendant/Counterclaimant Jeffrey Spencer ("Mr. Spencer") after he was arrested for the battery of Plaintiff/Counter-Defendant Helmut Klementi ("Helmut"). Helmut filed a civil action for damages against Mr. Spencer and this claim was settled and dismissed. However, Mr. Spencer has filed the following counterclaims against Helmut: (1) defamation, (2) malicious prosecution, (3) civil conspiracy for defamation, (4) civil conspiracy for malicious prosecution, (5) punitive damages, and (6) intentional infliction of emotional distress.

After engaging in significant discovery and conducting countless depositions, including obtaining the testimony of Deputy District Attorney Maria Pence, the evidence has revealed that summary judgment in favor of Helmut is appropriate for the following reasons. First, as a matter of law, the statements Helmut made to law enforcement, the Douglas County Planning Commission and his testimony before the court in Mr. Spencer's criminal proceedings are privileged as a matter of law. Moreover, the evidence demonstrates that Helmut's statement that Mr. Spencer confronted and knocked him to the ground while he took pictures of snow berms is true. Mr. Spencer has admitted in his deposition that he confronted and knocked Helmut to the ground; thus, the truth of this statement is established. Semantic arguments on the differences between knock, punch, and collide are not enough to establish a genuine issue of material fact in this case. The evidence also demonstrates that Mr. Spencer himself cannot identify a single, specific derogatory statement that Helmut has said about him:

[Mr. Brown]

Q: What is your understanding of the nature of the statements that were made at the meeting?

[Mr. Spencer]

A: Derogative against me.

27

- 2 -

¹ Because Helmut Klementi and his twin brother, Egon Klementi, share the same last name, this motion will refer to each brother by his first name for the purpose of clarity.

1	Q: Okay. In what respect? Are we talking derogative as in you are ugly,
	derogative as in you just plowed my street and bermed in my driveway? Can you
2	give me any more specifics than derogatory? A: No.
3	
4	Exhibit 3, Deposition of Jeffrey Spencer dated July 28, 2016, p. 84 (emphasis added).
5	Q: You have alleged my client has made false statements about you in this
6	lawsuit.
7	A: Uh-huh (affirmative).
	Q: You understand that?
8	A: Yes.
0	Q: Okay. What I'm trying to get at is, whether — are you aware, as you sit
9	here today, of any false statements that Mr. Klementi, my client, may have made about you from the time you got out of jail, until the time of the trial? And we're
10	not talking about going into the trial yet.
	A: Yes, he has.
11	Q: Okay. Tell me what statements you are aware of that you believe that he
12	has made that are false during that time frame.
	A: I would have to look at our file to see. I know he has made more about
13	the incident that night. I'm not sure about any meetings.
14 15	Q: I'm sorry?
	A: I'm not sure about any other meetings.
	Q: Meetings?
	A: I don't think he went to the county meeting. Yeah.
16	Q: So where else would he have made statements during that period? A: I said, I'm not sure about the meetings. I would have to look at the file.
17	A: I said, I'm not sure about the meetings. I would have to look at the file, though.
10	Q: But you do believe statements were made during that period?
18	A: Yes.
19	Q: What statements?
20	A: Derogative stuff against me.
	Q: I'm sorry?
21	A: Derogative stuff against me.
22	Q: What sort of derogative stuff?
22	A: Same stuff. The snowplowing, that I beat him up, all that.
23	Q: Who did he make these statements to?
2.1	A: I would have to look at the file.
24	Q: Okay. What is going to help you about the file? What is going to refresh
25	your memory about the file? What documents?
26	A: Looking at the documents that we have. Q: Okay. Which ones? That's what I'm trying to get at is where where can
26	I look? You have alleged my client made false statements. I'm entitled to know
27	when those statements were made, and who they were made to. And so I'm
20	trying to get a better handle on who, what, when, and where with respect to
28	those statements during the time frame that we just talked about.
ĺ	

LEMONS, GRUNDY & EISENBERG 6005 PLUMAS ST. THIRD FLOOR RENO, NV 89519 (775) 786-6868

Lemons, Grundy & Eisenberg 6005 Plumas St. THIRD FLOOR Reno, NV 89519 (775) 786-6868

- 4 -

Second, as to Mr. Spencer's claim for malicious prosecution, the evidence reveals that

the decision to arrest Mr. Spencer was not Helmut's decision – it was the decision of Deputy Jesse McKone. The decision to charge Mr. Spencer was solely the decision of Deputy District Attorney Maria Pence. Because Helmut had a good faith belief a crime had been committed against him and the decision to arrest and charge Mr. Spencer was not Helmut's, he cannot be liable for malicious prosecution. Similarly, the testimony provided by Helmut during Mr. Spencer's criminal proceedings is privileged as a matter of law because absolute privilege is not limited to claims for defamation.

Third, Mr. Spencer's claims for civil conspiracy cannot stand because Mr. Spencer cannot prove commission of the underlying torts. Moreover, Helmut never conspired with other defendants in this case to defame or maliciously prosecute Mr. Spencer.

Fourth, as to the claim for intentional infliction of emotional distress Helmut's cooperation with the police investigation and judicial proceedings against Mr. Spencer is simply not "extreme and outrageous conduct" as a matter of law. Mr. Spencer has presented no law to support his claim that Helmut's conduct was extreme and outrageous in this case. Importantly, as well, Mr. Spencer has failed to produce any evidence of physical manifestations of severe emotional distress that is necessary to support his claim for damages.

Fifth, and finally, "punitive damages" is not a stand-alone claim in Nevada <u>and</u>, more importantly, Mr. Spencer has produced no evidence — let alone, clear and convincing evidence, that Helmut's action of reporting a crime to law enforcement and testifying against Mr. Spencer is conduct that warrants an award of punitive damages. This Court may make that determination as a matter of law; therefore, summary judgment is also appropriate on this claim.

For all these reasons, as more fully set forth below, it is undisputed no genuine issue of material fact remains in this case for trial and Helmut is entitled to judgment as a matter of law in his favor.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Helmut Klementi is eighty-three years old and lives at 163 Pine Ridge Drive, Stateline, Nevada, in the Kingsbury General Improvement District ("KGID"). Exhibit 1, Affidavit

10

11

9

1213

14

15 16

_ 17

18

19

20

21 22

23

24

25

27

28

26

Lemons, Grundy & Eisenberg 6005 Plumas St. THIRD FLOOR Reno, NV 89519 (775) 786-6868

7

5

12

13 14

15 16

17

18 19

20

21

2223

24

25

26

27

Lemons, Grundy 28
& Eisenberg

& EISENBERG 6005 PLUMAS ST. THIRD FLOOR RENO, NV 89519 (775) 786-6868 of Helmut Klementi in Support of Motion for Summary Judgment on All Counterclaims ("Affidavit of Helmut") ¶3; Exhibit 2, Deposition of Helmut Klementi dated April 14, 2016 ("Helmut Deposition"), pp. 8:2-9, 12:15.

- 2. Helmut had a twin brother, Egon Klementi ("Egon"), who lived with his wife Elfriede "Elfie" Klementi at 187 Meadow Lane, Stateline, Nevada at the corner of Meadow Lane and Charles Avenue. Affidavit of Helmut ¶4; Exhibit 2, Helmut Deposition, p. 94:3—5.²
- 3. Counterclaimant Mr. Spencer resides at 321 Charles Avenue, Stateline Nevada, with his wife Marilyn Spencer ("Ms. Spencer"). Exhibit 3, Deposition of Jeffrey Spencer dated July 28, 2016, p. 8:8-15.
- 4. There existed a dispute between Mr. Spencer and the other neighbors in the KGID district, including Helmut's brother Egon, regarding a fence that Mr. Spencer had built on his property in May 2012 in violation of Douglas County Code. Affidavit of Helmut ¶¶5-6; Exhibit 4, Letters from Douglas County Code Enforcement and Douglas County District Attorney regarding violations of Douglas County Code, bates-stamped D2539, D2563-2567.
- 5. In December 2012, Mr. Spencer operated a snow plow in the neighborhood streets of KGID, including Charles Avenue, Meadow Lane, and Juniper Drive. Exhibit 3, Jeffrey Spencer Deposition, p. 16:22-25, 17:1-4; 68:12-15.
- 6. During December 2012, residents of the neighborhood, including Egon and Elfie, experienced issues with Mr. Spencer "berming-in" their driveways with snow and debris in the course of his duties as a snow plow operator. Exhibit 3, Jeffrey Spencer Deposition, p. 68:12-15; **Exhibit 5**, Deposition of Elfriede Klementi dated April 14, 2016, pp. 46-50.
- 7. On December 18, 2012, Helmut attended a meeting of the Board of Trustees for the KGID with Egon and Elfie. Affidavit of Helmut ¶7; Exhibit 2, Helmut Deposition, p. 86:8-11.
- 8. Although he attended, Helmut did not make a statement or otherwise speak at the December 18, 2012 meeting before the Board of Trustees for the KGID. Affidavit of Helmut ¶¶8-9; Exhibit 2, Helmut Deposition, p. 92:21-22, p. 93:10-12; Exhibit 6, "Minutes of the Regular

² Egon Klementi passed away in the fall of 2017. <u>See</u> Notice of Suggestion of Death Upon the Record.

8

10 11

12

13

14 15

16

17 18

19

20

21

22 23

24

25

27

28

26

Meeting of the Kingsbury General-Improvement District Board of Trustees," dated Tuesday, December 18, 2012, bates-stamped KLEMENTI-127—128.

- 9. At the December 18, 2012 KGID Board of Trustees meeting, Chairperson Norman gave instructions for the neighbors concerned about the snow berms to take pictures. Affidavit of Helmut ¶10; Exhibit 2, Helmut Deposition, p. 107:12-15; Exhibit 6, "Minutes of the Regular Meeting of the Kingsbury General Improvement District Board of Trustees," dated Tuesday, December 18, 2012, bates-stamped KLEMENTI-127—128.
- 10. When the December 18, 2012 KGID Board of Trustees meeting concluded. Helmut went to Egon's and Elfie's home for dinner. Affidavit of Helmut ¶11; Exhibit 2, Helmut Deposition, p. 93:16-24.
- 11. After dinner, Helmut left Egon's house to take pictures of the snow berms in front of Egon's property and to then return home. Affidavit of Helmut ¶12; Exhibit 2, Helmut Deposition, p. 97:18-25, p. 107:12-15.
- 12. As Helmut was taking pictures of the snow berm, he was knocked to the ground by Mr. Spencer. Affidavit of Helmut ¶13; Exhibit 2, Helmut Deposition, p. 117:1-3; p. 119:19-24, p. 127:11-14; Exhibit 3, Jeffrey Spencer Deposition, pp. 98:1-25—99:1-23, 100:15-19.
- Mr. Spencer has admitted that he knocked Helmut to the ground, that it was not 13. an accident, that he knew it was a Klementi brother, and that he stood over Helmut screaming after he knocked him to the ground. Exhibit 3, Jeffrey Spencer Deposition, pp. 98:23-25—99:1-23.
- 14. Mr. Spencer also stated that he pushed the person now known as Helmut in order to stop them from getting away. Affidavit of Helmut ¶17; Exhibit 7, Douglas County Sheriff's Department Investigation Narrative, Case No. 125O41608, bates-stamped D0309.
- It was Helmut's opinion and belief that Mr. Spencer punched him in his side and 15. knocked him to the ground. Affidavit of Helmut ¶14; Exhibit 2, Helmut Deposition, pp. 117:1-3. 119:19-24, 130:23-25-131:1-10.
- 16. Because Helmut sustained injuries as a result of this incident, emergency services were called and Douglas County Sheriff's Deputy Jesse McKone responded and commenced an

7

8 9

10

11

12 13

14

15

16 17

18

19

20

21 22

23

24

26

25

27

LEMONS, GRUNDY 28 & EISENBERG

6005 Plumas St. THIRD FLOOR RENO, NV 89519 (775) 786-6868 investigation. Affidavit of Helmut ¶15; Exhibit 8, Deposition of Deputy Jesse McKone dated April 7, 2016, pp. 13:1-25-23:1-10.

- Helmut reported in good faith his belief to Deputy McKone that Mr. Spencer had 17. assaulted him and knocked him to the ground. Affidavit of Helmut ¶16.
- After interviewing witnesses and investigating the scene, Deputy McKone 18. concluded that Mr. Spencer's testimony regarding the incident was not credible and he opined that Mr. Spencer used the excuse of someone breaking into his truck as a reason to confront and commit a battery upon Helmut when he saw Helmut taking photographs of the snow berms. Exhibit 8, McKone Deposition, p. 36:14-22; p. 62:2-9; Exhibit 7, Douglas County Sheriff's Department Investigation Narrative, Case No. 12SO41608, bates-stamped D0302.
- **1**9. Accordingly, based on his investigation and opinion, Deputy McKone arrested Mr. Spencer for battery/abuse of an elderly person. McKone Deposition, p. 62:2-9; Exhibit 7, Douglas County Sheriff's Department Investigation Narrative, Case No. 12SO41608, batesstamped D0299-D0302.
- 20. The decision to arrest Mr. Spencer was solely Deputy McKone's decision, based on "the inconsistences with what [he] had seen on scene and Mr. Spencer's rendition." Exhibit 8, McKone Deposition, p. 62:8-9.
- 21. On or about December 26, 2012, Helmut obtained a Temporary Restraining/Protective Order against Mr. Spencer. Affidavit of Helmut ¶¶18-19; Exhibit 9, Temporary Order Against Stalking, Aggravated Stalking or Harassment, filed December 26, 2012.
- 22. On January 8, 2013, Helmut attended a meeting before the Douglas County Planning Commission and its members. Affidavit of Helmut ¶¶20-21; Exhibit 10, Douglas County Planning Commission Meeting Minutes dated January 8, 2013, bates-stamped D1132—1138.
- 23. At that meeting, Helmut read a statement during public comment that stated Mr. Spencer confronted and punched him while he was taking pictures of a snow berm pushed against his brother Egon's fence and that Helmut had a restraining order against Mr. Spencer. Affidavit of Helmut ¶¶22-23; Exhibit 11, Statement of Helmut Klementi, bates-stamped D1124.

24. Ultimately, Mr. Spencer was charged with battery upon Helmut and criminal complaints were filed against him by the Douglas County District Attorney's office. Amended Counterclaim, ¶¶ 53-57; Counterclaimant's Opposition to Motion for Summary Judgment [Mary Ellen Kinion], Exhibits 1—2.

- 25. District Attorney Maria Pence testified before this Court on January 30, 2017 extensively regarding charging decisions of the district attorney's office and she testified that "no one is involved in the charging decision except for myself and ... the charging decision is made solely by whichever Deputy District Attorney was assigned that case." Exhibit 12, selected pages of Transcript of Hearing Motion for Summary Judgment ("January 30, 2017 Hearing"), dated January 30, 2017, pp. 16:23-25—17:1-2.3
- 26. D.A. Pence also testified the decision to enhance the gross misdemeanor battery charge against Mr. Spencer to a felony charge stemmed from her receipt of medical records showing that Helmut had sustained substantial bodily harm. Exhibit 12, January 30, 2017 Hearing, p. 14:8-24, p. 64:6-9.
- 27. The criminal proceedings against Mr. Spencer proceeded to a preliminary hearing and criminal trial, where Helmut testified against Mr. Spencer on behalf of the State of Nevada as a victim of a crime. Affidavit of Helmut Klementi ¶23.
- 28. The only statements Helmut made about Mr. Spencer were (1) his statement to Deputy McKone on December 18, 2012, (2) his statement to the Douglas County Planning Commission on January 8, 2013, and (3) his testimony at Mr. Spencer's preliminary hearing and trial. Affidavit of Helmut ¶25; Exhibit 7, Douglas County Sheriff's Department Investigation Narrative, Case No. 12SO41608, bates-stamped D0299—D0300; Exhibit 9, Douglas County Commission Planning Meeting Minutes, bates-stamped D1132—1138; Exhibit 10, Statement of Helmut Klementi, D1124; Exhibit 13, selected pages of Transcript of Preliminary Hearing dated

³ Due to its length and the fact it is part of the court record, select pages from this transcript are attached.

3 4

5

6 7

8

10

11

12

13 14

15

16

17

18

19

20

21

22

23

24

25

26

27 28

⁴ Due to its length and the fact it is part of the public record of Mr. Spencer's criminal trial, select pages from this transcript are attached.

April 24, 2013, bates-stamped D1618, 1724—1764; Exhibit 2, Helmut Deposition, p. 114:9-13.

STANDARD OF REVIEW 111.

Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil Procedure when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. NRCP 56; Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). Id. A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. Id. The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. Id. at 731.

Although the pleadings and proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment. *Id.* at 732. The nonmoving party is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture. Id.

The manner in which each party satisfies its burden of production "depends on which party will bear the burden of persuasion on the challenged claim at trial." Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). If the nonmoving party will bear the burden of persuasion at trial, the moving party "may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party's claim, or (2) 'pointing out ... that there is an absence of evidence to support the nonmoving party's case." Francis v. Wynn Las Vegas, LLC, 127 Nev. Adv. Op. 60, 262 P.3d 705, 714 (2011) (internal citations omitted). In this case, because Mr. Spencer bears the burden of persuasion at trial, Helmut may satisfy his burden of production by submitting evidence that negates essential elements of Mr. Spencer's claims and by pointing out that there is an absence of evidence to support Mr. Spencer's case.

LEMONS, GRUNDY & EISENBERG 6005 Plumas St. THIRD FLOOR Reno, NV 89519 (775) 786-6868

To withstand summary-judgment,-Mr. Spencer-as the nonmoving-party cannot rely-solely on the general allegations and conclusions set forth in the pleadings, but must instead present specific facts demonstrating the existence of a genuine factual issue supporting its claims. *Ransdell v. Clark County*, 124 Nev. 847, 860, 192 P.3d 756, 765 (2008). Again, the substantive law controls what factual disputes are material to Mr. Spencer's claims — other factual disputes are simply irrelevant.

IV. LEGAL ANALYSIS OF EACH COUNTERCLAIM

A. Defamation: summary judgment on Helmut's affirmative defenses in response to Mr. Spencer's claim for defamation against Helmut is appropriate because Helmut's statements are privileged as a matter of law.

Liability for defamation may only arise if the plaintiff proves the following: "(a) a false and defamatory statement concerning another; (b) an **unprivileged** publication to a third party; (c) fault amounting at least to negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm, or the existence of special harm caused by the publication." *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422, 425 (2001) (emphasis added).

Whether a statement is defamatory is generally a question of law, unless it is subject to two different interpretations. *Id.*; *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1191, 866 P.2d 274, 281 (1993) ("Whether or not a statement is capable of defamatory construction is a question of law for the court."). A court reviewing an allegedly defamatory statement reviews "the words in their entirety and in context in order to determine whether they are susceptible of defamatory meaning." *Lubin*, 117 Nev. at 111, 17 P.3d at 426.

In this case, Mr. Spencer alleges Helmut is liable for defamation because Helmut told Douglas County Sheriff's Deputies and the Douglas County Planning Commission that Jeffrey Spencer had punched him and knocked him to the ground. *Amended Counterclaim and Third-Party Complaint*, ¶¶34, 41. Mr. Spencer also asserts Helmut is liable for defamation because Helmut testified at Mr. Spencer's preliminary hearing and criminal trial that Mr. Spencer had punched or hit him in the chest and knocked him to the ground, causing injury. *Id.*, ¶¶ 52, 60,

LEMONS, GRUNDY & EISENBERG 6005 PLUMAS ST. THIRD FLOOR RENO, NV 89519

(775) 786-6868

16

17

18

19

20

21

22

23

24

25

and 67. However, each of Helmut's statements, even if this Court-found them defamatory (which, they are not), is protected by either a qualified privilege or absolute privilege because each statement was made in the context of reporting a crime or in a quasi-judicial or judicial proceeding, as explained further herein. Both the qualified privilege and the absolute privilege are defenses to Mr. Spencer's defamation claim and Helmut has properly alleged these privileges in his affirmative defenses to Mr. Spencer's Amended Counterclaim and Third-Party Complaint. See, Lubin v. Kunin, 117 Nev. at 114, 17 P.3d at 427.

> 1. Helmut's statements to Douglas County Sheriff's Deputies are protected by qualified privilege.

In this case, it is undisputed that Helmut's statements to law enforcement are protected by a qualified privilege. The Nevada Supreme Court has held that, where a person makes communications to police before initiation of criminal proceedings, that party enjoys a qualified privilege if the statements are made in good faith. In Pope v. Motel 6, 121 Nev. 307, 114 P.3d 277 (2005), the court clarified its holding in K-Mart Corp v. Washington by finding that a qualified privilege satisfied the balance between safeguarding reputations and encouraging full disclosure by citizens "in order to discharge public duties and protect individual rights." Id. at 316-317. This privilege exists so that citizens, like Helmut, can report what they perceive in good faith as the commission of a crime and not be subject to "frivolous lawsuits." Id. at 317.

Importantly, the court held that after an individual has reported a crime, a plaintiff must prove, by a preponderance of the evidence, "that the defendant abused the privilege by publishing the defamatory communication [to law enforcement] with actual malice." Id. at 317 (emphasis added). "Actual malice is a stringent standard that is proven by demonstrating that a statement is published with knowledge that it was false or with reckless disregard for its veracity." Id. citing Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 722, 57 P.3d 92, 92 (2002) (emphasis added).

In Pope, the manager for Motel 6 believed that a former employee and her husband were stealing from the motel and responsible for "problems" on the premises. The manager reported this fact to local law enforcement. The trial court granted summary judgment in Motel

26

27

LEMONS, GRUNDY 28

& EISENBERG 6005 Plumas St. THIRD FLOOR Reno, NV 89519

(775) 786-6868

•

LEMONS, GRUNDY & EISENBERG 6005 PLUMAS ST. THIRD FLOOR RENO, NV 89519 (775) 786-6868 6's favor, because the former employee could not demonstrate that the manager's statements to the police were made with knowledge that they were false. Upholding the trial court's decision on appeal, the Nevada Supreme Court found:

Suspicions of criminal wrongdoing are commonly expressed to police, and often the suspicion is misplaced. Without more, the mere fact that an individual informs police of possible criminal wrongdoing does not establish malice. To overcome the qualified privilege, Juanita was required to establish that Inman acted with reckless disregard for veracity or with knowledge of falsity. She failed to do so.

As a qualified privilege applies to Inman's statements to the police and Juanita failed to advance any evidence of malice, we conclude that the district court properly granted summary judgment to Motel 6 on this issue.

Pope, 121 Nev. at 318, 114 P.3d at 284 (emphasis added).

Similarly, in *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657 P.2d 101 (1983), the Nevada Supreme Court explained that a qualified or conditional privilege exists where the allegedly defamatory statement is made in good faith "on any subject matter in which the person communicating has an interest, or in reference to which he has a right or a duty, if it is made to a person with a corresponding interest or duty." Whether a statement is conditionally privileged is a question of law for this Court. *Id.* The burden then shifts to the plaintiff to prove that the defendant abused the privilege by making the defamatory statement with malice in fact. *Id.* This issue does not even go to the jury unless there is sufficient evidence for the jury to reasonably infer that the defendant made the statement with actual malice. *Id.* In fact, the court in *Circus Circus Hotels Inc.* reversed the trial court for allowing the jury to decide the initial question of whether an employer's statements were protected by qualified privilege. *Id.*

Both *Pope* and *Circus Circus Hotels, Inc.* are controlling in this case. Here, it cannot be disputed that Helmut believed Mr. Spencer punched him in the ribs and knocked him to the ground. Based on that belief, Helmut immediately reported this fact to Deputy McKone as part of his public duty and his individual right to report what happened to him on the night of December 18, 2012. The mere fact that Helmut reported to law enforcement an incident in which he was harmed does not constitute malice and this Court may make that determination

LEMONS, GRUNDY & EISENBERG 6005 PLUMAS ST. THIRD FLOOR RENO, NV 89519

(775) 786-6868

as a matter of law. In fact, the burden shifts to Mr. Spencer to establish that Helmut acted with reckless disregard for the veracity of the situation or with knowledge of his statement's falsity.

However, there is simply no evidence that Helmut reported facts to Deputy McKone that Mr. Spencer knocked him to the ground with reckless disregard or with knowledge that his statement was false (which, it was not). As stated in the *Statement of Undisputed Facts*, supra, Mr. Spencer has admitted that (1) he intended to collide with Helmut, (2) he knocked Helmut to the ground, (3) he realized "immediately" that it was a Klementi brother, and (4) he stood over Helmut screaming at him. *Statement of Undisputed Facts*, ¶13. Because Helmut made his statement to law enforcement without malice and with protection of a qualified privilege, this issue cannot even go to the jury unless this Court finds there is sufficient evidence that Helmut made his statements with actual malice. Mr. Spencer has not, and cannot, advance any evidence of malice by Helmut in this case. Therefore, summary judgment is appropriate on Helmut's affirmative defense of qualified privilege as to Mr. Spencer's First Claim for Relief for defamation because the statements Helmut made to law enforcement after the incident are protected by qualified privilege as a matter of law.

Helmut's statements to the Douglas County Planning Commission and at Mr.
 Spencer's criminal proceedings are protected by an absolute privilege as a matter of law.

Mr. Spencer asserts that the statements Helmut made to the Douglas County Planning Commission and at Mr. Spencer's criminal trial are defamatory statements for which Helmut is liable. However, Nevada recognizes and follows the "long-standing common law rule that communications uttered or published in the course of judicial proceedings are absolutely privileged." *Circus Circus Hotels, Inc.*, 99 Nev. at 60-61, 657 P.2d at 104; *Nickovich v. Mollart*, 51 Nev. 306, 274 P. 809, 810 (1929) (a witness who testifies in the course of judicial proceedings is not liable for the answers he makes to questions posed by the court or counsel and all his answers are privileged).

The absolute privilege also applies to "quasi-judicial proceedings before executive officers, boards, and commissions...." *Id.* The absolute privilege precludes liability as a matter

of-law even-where the defamatory statements are "published with knowledge of their falsityand personal ill will toward the plaintiff." Id. The policy behind this privilege is that, "in certain situations, the public interest in having people speak freely outweighs the risk that individuals will occasionally abuse the privilege" by making defamatory statements. Id.; Knox v. Dick, 99 Nev. 514, 518, 665 P.2d 267, 270 (1983) (holding that the absolute privilege is applicable to quasi-judicial proceedings so "the right of individuals to express their views freely upon the subject under consideration is protected."). There is no question our supreme court has applied the absolute privilege in the quasi-judicial context. Id.

The scope of absolute privilege in Nevada is "quite broad." Fink v. Oshins, 118 Nev. 428, 433, 49 P.3d 640, 644 (2002). The defamatory communication "need not be strictly relevant to any issue involved" in the judicial or quasi-judicial proceeding; rather, it needs only to be "in some way pertinent to the subject of controversy." Id. citing Circus Circus Hotels, Inc., 99 Nev. at 61, 657 P.2d at 104 (defamatory material need only have "some relation" to the proceeding and as long as it has "some bearing" on the subject matter, it is absolutely privileged). The privilege applies even where actual judicial proceedings have not yet been initiated, so long as the statement is made "in contemplation of the initiation of the proceeding." Id. Courts should apply the privilege "liberally, resolving any doubt in favor of its relevancy or pertinency." Id. (internal quotations omitted) citing Club Valencia Homeowners v. Valencia Assoc., 712 P.2d 1024, 1027 (Colo.Ct.App.1985) ("No strained or close construction will be indulged to exempt a case from the protection of privilege") and Chard v. Galton, 277 Or. 109, 559 P.2d 1280, 1282 (1977) (noting that the absolute privilege should apply liberally).

22 23 24

The issues of absolute privilege and relevance are questions of law for this Court to decide. Circus Circus Hotels, Inc., 99 Nev. at 62, 657 P.2d at 105. In Circus Circus Hotels, Inc., the court concluded that a letter written by plaintiff's former employer, Circus Circus, presented in the context of an administrative proceeding was protected by the absolute privilege and should not have been presented to the jury at plaintiff's trial against Circus Circus for defamation. Because the letter from Circus Circus was related to the unemployment security division's

- 15 -

27

25

26

LEMONS, GRUNDY

28 decision on whether to grant plaintiff unemployment benefits, it was privileged. The court also

LEMONS, GRUNDY

& EISENBERG

6005 Plumas St. THIRD FLOOR

Reno, NV 89519 (775) 786-6868 relevant to fall under the absolute privilege. *Id.* at 62.

held the trial court erred by allowing the jury to decide-whether the letter's content was

Similarly, in *Knox*, the court disagreed with the plaintiff that the quasi-judicial privilege did not extend to the Clark County Personnel Grievance Board. 99 Nev. at 518, 665 P.2d at 270. Rather, the court found that that the quasi-judicial privilege applied because the board conducted its meetings in a quasi-judicial manner pursuant to the guidelines set forth in the Clark County Code that permitted the taking of evidence and examination of witnesses. *Id*.

Here, there is simply no question that any statement Helmut made during Mr. Spencer's criminal proceedings, including the preliminary hearing and criminal trial, are protected by absolute privilege for which liability cannot attach. Even if the statements made by Helmut were false or malicious (which, they are not), Helmut cannot be liable for defamation as a matter of law. *Nickovich*, 51 Nev. at 306, 274 P. at 810.

Further, Helmut's statements to the Douglas County Planning Commission are also protected by absolute privilege as a matter of law. First, the Douglas County Planning Commission is a quasi-judicial body. *Knox*, supra. It is governed by the Douglas County Code, Title 20, and conducts itself in "a manner consistent with quasi-judicial administrative proceedings," because it notices and conducts hearings, takes evidence, permits questioning of witnesses, and exercises its discretion to consider or exclude evidence. D.C.C. §§ 20.24.010—.070.⁵ It even permits appeals. D.C.C. §§ 20.28.010—.040. Thus, the Douglas County Planning Commission is a quasi-judicial body. Second, Helmut's statement to the Douglas County Planning Commission on January 8, 2013 is privileged because it is relevant to the subject controversy: Mr. Spencer's construction of a fence that violated Douglas County Code and the resulting dispute between the neighbors that ensued, culminating in the events on the night of December 18, 2012. *Circus Circus Hotels*, *Inc.*, 99 Nev. at 61, 657 P.2d at 104 ("relevance" is not measured in the traditional evidentiary sense, but rather must have "some relation" to the proceeding). Helmut's statement to the Douglas County Planning Commission certainly has

⁵ This Court may take judicial notice of the Douglas County Code. NRS 47.140.

1

3

5

6

7 8

9

11

12 13

14 15

16

17

18

19 20

21

22

23

24

25

26

27

if it is "an exaggeration or generalization" that a reasonable person could interpret as mere rhetorical hyperbole. *Id.* Finally, a statement of opinion is protected speech under the First Amendment of the United States Constitution. *Lubin*, 117 Nev. at 112. The court examines whether a reasonable person would be likely to understand the remark as an expression of

opinion or a statement of fact. *Id.* A court reviewing an allegedly defamatory statement reviews

opinion or a statement of fact. *Id.* A court reviewing an allegedly defamatory statement reviews

the words in their entirety and in context in order to determine whether they are susceptible of defamatory meaning." *Id.* at 111.

Here, if for some reason this Court does not apply the qualified and absolute privileges to Helmut's statements, which are protected as a matter of law, then Helmut is not liable for

It is an undisputed fact that the only published statements Helmut made regarding Mr. Spencer were made to the Douglas County Planning Commission and to the court in context of Mr. Spencer's criminal proceedings. Because this fact is undisputed and because this Court may apply the absolute privilege liberally and as a matter of law, summary judgment on Helmut's affirmative defenses asserting absolute privilege is proper.

 Alternatively, Helmut's statement that Mr. Spencer punched him is not defamatory because it is substantially true and is Helmut's generalization and opinion of what occurred December 18, 2012.

As stated, whether a statement is defamatory is generally a question of law, unless it is

subject to two different interpretations. "A statement is defamatory when it would tend to

lower the subject in the estimation of the community, excite derogatory opinions about the

subject, and hold the subject up to contempt." Lubin, 117 Nev. at 111, 17 P.3d at 425. However.

a statement is not defamatory "if it is absolutely true, or substantially true." Pegasus v. Reno

Newspapers, Inc., 118 Nev. 706, 715, 57 P.3d 82, 88 (2002). A statement is also not defamatory

his statements because they are substantially true and they are statements of opinion protected by the First Amendment. This Court must examine Helmut's statements in their entirety and in context.

Helmut stated that on December 18, 2012, he was taking pictures of the snow berms in front of his brother Egon's home when Mr. Spencer yelled at him and then ran into the street, punched or hit him, and left him lying in the street. Although it is Helmut's opinion that Mr. Spencer punched or hit him, thus causing him to be knocked to the ground, it is an undisputed fact that Mr. Spencer stated in his police statement that he pushed Helmut and admitted in his deposition that he collided with Helmut, knew it was a Klementi brother, intended to collide with that person, and stood over Helmut screaming. See, Statement of Undisputed Facts, ¶13. Mr. Spencer testified in his deposition as follows:

[Mr. Brown]

Q: It was an accident; is that your testimony?

[Mr. Spencer]

A: Not an accident. I meant to stop whoever was breaking into my truck.

Q: Okay. And so —

A: I went out looking for whoever it was. I just ran into him because he was right there. At the last minute I seen him.

Q: Okay. So when was it that you first became aware that it was -1 know Egon and Helmut are twins. So when was it you first became aware that it was a Klementi that you had impacted?

A: I knew it was a Klementi almost immediately -

Q: Okay.

A: -- because they started talking in their native tongue or whatever, and I can tell by the accents.

Q: Once you collided with him -- I have seen the video. He hits the deck. You don't. What do you do?

A: I recognize it's him, or one of them, as I said. I can tell. I hear him talking. And I start screaming and yelling at him, why didn't he say who you were. You know, why didn't he identify himself. I hear one of them yelling to call 911. I say, we have already called them. Then I walked back to my house.

Q. Why didn't you say, we collided, I didn't intend to push him [in Mr. Spencer's police statement]?

A: **Because I intended to hold him**, and I didn't think of it. I don't have the vocabulary that you do. I mean, you know, I was under duress and just trying to write down what happened...

|| //,

- / | / / /

28

///

(77S) 786-6868

Exhibit 3, Jeffrey Spencer Deposition, p. 99:1-23, 121:7-12 (emphasis added). Viewing Helmut's 1 2 statement in its entirety and in context, it is clear that Helmut's statement is not false or 3 defamatory because it is substantially true in light of Mr. Spencer's statement to police that he 4 "pushed the person" and his deposition testimony that he intended to collide with Helmut and 5 stop him. Simply because Helmut believed he had been assaulted or punched by Mr. Spencer does not make his statement in this regard defamatory. Helmut's statement that he had been 6 7 assaulted by Mr. Spencer is a generalization of the events that occurred on December 18, 2012 8 and it is not defamation. Moreover, Helmut's opinion that Mr. Spencer punched or assaulted 9 him is protected. See Lubin, 117 Nev. at 112, 17 P.3d at 423 ("statements of opinion are 10 protected speech under the First Amendment and not actionable at law).

Helmut also stated before the Douglas County Planning Commission that he had a restraining order against Mr. Spencer. This is an undisputed statement of fact that is absolutely true. <u>See</u>, *Statement of Undisputed Facts*, ¶21. Thus, Helmut's statement is not defamatory and not actionable at law. *Pegasus*, 118 Nev. at 715, 57 P.3d at 88.

In conclusion, should this Court believe that the qualified and absolute privileges afforded to crime victims not apply, it is clear that Helmut's statements are not defamatory because they are substantially true and they are his generalization and opinion of what happened to him. It is an undisputed fact that Mr. Spencer knocked Helmut to the ground and intended to do so. This renders Helmut's statement substantially true. Helmut's generalization of the event is not defamatory and, thus, summary judgment should be granted in Helmut's favor on Mr. Spencer's First Claim for Relief for defamation because it fails as a matter of law.

22

11

12

13

14

15

16

17

18

19

20

21

23

24

25

26

27

⁶ It is well within the province of this Court to judge the credibility of the witnesses before it. *Douglas Spencer & Associates v. Las Vegas Sun, Inc.*, 84 Nev. 279, 281, 439 P.2d 473, 475 (1968).

Lemons, Grundy 28 & Eisenberg

LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519

(775) 786-6868

- Malicious Prosecution: - summary - judgment - is - appropriate because the undisputed facts demonstrate that Helmut was not involved in the decisions to arrest and charge Mr. Spencer and he had a good faith belief that Mr. Spencer criminally assaulted him.

1. Mr. Spencer's prima facie claim for defamation fails as a matter of law.

To establish a prima facie case of malicious prosecution in Nevada, a plaintiff must prove the following: "(1) want of probable cause to initiate the prior criminal proceeding; (2) malice; (3) termination of the prior criminal proceedings; and (4) damage." *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002) <u>citing Jordan v. Bailey</u>, 113 Nev. 1038, 1047, 944 P.2d 828, 834 (1997). This claim also requires that the defendant "initiated, procured the institution of, or actively participated in the continuation of a criminal proceeding against the plaintiff." *Id.*

Want of probable cause is judged by an objective test. *Jordan*, 113 Nev. at 1047-48. "It is for the court to decide whether a reasonable attorney would have considered the prior action legally tenable – ignoring any subjective factors such as the attorney's expertise and belief." *Id.*; *Boren v. Harrah's Entm't, Inc.*, 2010 WL 4934477, at *4 (D. Nev. Nov. 30, 2010) (interpreting Nevada law and finding that the "reasonable attorney" test applies to both attorneys and non-attorneys under *Jordan*). Only when a reasonable person would find that the action was "completely without merit" can a court authorize a malicious prosecution action to proceed. *Boren*, 2010 WL 493447 at *4.

A defendant cannot be held liable for malicious prosecution when he or she reports information they believe to be true to law enforcement and without directing, requesting, or pressuring law enforcement to commence criminal proceedings. *Lester v. Buchanen*, 112 Nev. 1426, 929 P.2d 910 (1996). Specifically, the Restatement (Second) of Torts as cited by *Lester*, explains that:

[G]iving the information or even making an accusation of criminal misconduct does not constitute a procurement of the proceedings initiated by the officer if it is left entirely to his discretion to initiate the proceedings or not. When a private person gives to a prosecuting officer information that he believes to be true, and the officer in the exercise of his uncontrolled discretion initiates criminal proceedings based upon that information, the informer is not liable under the rule stated in this Section even though the information proves to be false and his belief was one that a reasonable man would not entertain.

The exercise of the officer's discretion makes the initiation of the prosecution his own and protects from liability the person whose information or accusation has led the officer to initiate the proceedings.

Lester, 112 Nev. at 1429, 929 P.2d at 912-13 citing Restatement (Second) of Torts § 653 (1977), comment g (emphasis added). In *Lester*, the Nevada Supreme Court upheld the trial court's order granting summary judgment in favor of a defendant video store against the plaintiff customer's claim of malicious prosecution. The video store filed a complaint with the police department after a customer failed to return a videotape. The customer was arrested on an outstanding warrant, but charges against the customer were later dismissed. The court found summary judgment was proper because the undisputed facts demonstrated the video store's good faith belief that the customer had not returned the video.

Further, in examining whether the video store initiated, procured, or actively participated in the continuation of criminal proceedings against the customer, the court found summary judgment was appropriate in favor of the video store based on undisputed testimony

14 | from the prosecuting attorney. Specifically, the court found:

[T]he record is devoid of any evidence that the police officers commenced the criminal prosecution at the direction, request, or pressure of Video Express. At his deposition, the Deputy District Attorney in charge of prosecuting this matter testified that Video Express had no further involvement, beyond their initial police report, in the decision to institute criminal proceedings. Further, Lester testified that she does not have any evidence that Video Express did anything more than submit an initial statement to the Reno Police Department.

Lester, 112 Nev. at 1430, 929 P.2d at 913. Finally, it is axiomatic that the presence of probable cause negates the existence of malice. *Boren*, 2010 WL 493447 at *6 (in order to find malice, the proceedings must have been initiated primarily for a purpose other than to bring the offender to justice).

The undisputed facts coupled with the case law set forth herein demonstrates that summary judgment in favor of Helmut is warranted. As an initial matter, it is undisputed probable cause existed to arrest and prosecute Mr. Spencer for battery of Helmut. This Court accepted the testimony of Deputy District Attorney Maria Pence at the January 30, 2017 hearing; thus, there is no need to belabor the point that D.A. Pence believed a crime had been

3 4

5 6

7 8

9 10

11

12

13 14

15 16

17

18

19

20

21

22

23

24

25 26

committed and that Mr. Spencer had committed the crime. D.A. Pence testified repeatedly that she was the only person involved in the charging decision for Mr. Spencer's case. See Statement of Undisputed Facts, ¶25. Probable cause also existed when the justice court bound Mr. Spencer over for trial on the charges after the April 24, 2013 preliminary hearing.

Further, it is an undisputed fact that Deputy McKone's decision to arrest Mr. Spencer was solely the decision of the deputy, who based his decision on "the inconsistences with what [he] had seen on scene and Mr. Spencer's rendition." See Statement of Undisputed Facts, ¶¶18—20. This is consistent with Deputy McKone's report. *Id.*

Finally, it is undisputed that when Helmut reported the assault to Deputy McKone, he reported the facts of the incident as he believed them to be true — that Jeffrey Spencer ran up and hit him, knocking him to the ground. Affidavit of Helmut ¶14.

There are simply no facts demonstrating that Helmut requested or pressured law enforcement or the Douglas County District Attorney's office to commence a criminal proceeding against Mr. Spencer. As a matter of law, because Helmut had a good faith belief that Mr. Spencer assaulted him, he cannot be held liable as a matter of law, even if the information later proves false or Helmut's belief is one that a reasonable man would not entertain. Lester, 112 Nev. at 1430, 929 P.2d at 913 (even if criminal action was commenced at direction of defendant, summary judgment was proper because defendant had good faith belief plaintiff did not return the property). Moreover, because probable cause clearly existed to arrest Mr. Spencer for assault and proceed to a preliminary hearing and trial, there is no question that a reasonable person would have considered the criminal proceedings against Mr. Spencer "legally tenable." Jordan, 113 Nev. at 1047, 944 P.2d at 834. Therefore, no disputed material facts remain and Helmut is entitled to judgment as a matter of law on Mr. Spencer's Second Claim for Relief for malicious prosecution.

///

27

28

- 22 -

 $^{^7}$ These facts actually are true, as established in the Statement of Undisputed Facts and Section A, Defamation.

LEMONS, GRUNDY & EISENBERG 6005 PLUMAS ST. THIRD FLOOR RENO, NV 89519

(775) 786-6868

2. The privilege of absolute immunity extends to claims for malicious-prosecution; thus, Helmut's statements made in this case are privileged as a matter of law.

Helmut is further not liable to Mr. Spencer for malicious prosecution because his statements are protected by absolute immunity. The Nevada Supreme Court recently confirmed in *Harrison v. Roitman*, 131 Nev. Adv. Op. 92, 362 P.3d 1138 (2015) that the absolute immunity doctrine is not limited to claims of defamation. Instead, the court, citing to the United States Supreme Court, recognized that "[t]he common-law and United States Supreme Court jurisprudence indicate that absolute immunity protects witness statements made during judicial proceedings from tort liability *in general* and do[es] not limit absolute immunity's application to defamation claims." *Id.* at 1143, n. 6 (emphasis in original) citing *Briscoe v. LaHue*, 460 U.S. 325, 330-31, 103 S. Ct. 1108, 1113-14 (1983) (surveying English common law and early American law). In reaffirming the "functional approach" to absolute immunity outlined by the United States Supreme Court, the court held that "functional categories, not … the status of the defendant, control[s] the immunity analysis." *Id.* (alterations in original) (internal citations omitted).

The functional approach to absolute immunity examines the following: (1) "whether the [person seeking immunity] performed functions sufficiently comparable to those of [persons] who have traditionally been afforded absolute immunity at common law;" (2) "whether the likelihood of harassment or intimidation by personal liability [is] sufficiently great to interfere with the [person']s performance of his or her duties;" and, (3) "whether procedural safeguards exist in the system that would adequately protect against [illegitimate] conduct by the [person seeking immunity]." *Harrison*, 131 Nev. Adv. Op. 92, 362 P.3d at 1140.

The reasons why Helmut's statements are protected and privileged are fully and completely set forth under Section A of this motion. Application of absolute immunity is a question of law for the court to decide and there is no question it applies in this case. As to the first prong of the functional approach, the Nevada Supreme Court has already established that witnesses are traditionally immune at common law for subsequent damages liability arising

456

7 8 9

111213

10

15

16

14

17 18

19

20

2122

23

24

25

2627

Lemons, Grundy 28

& Eisenberg 6005 Plumas St. THIRD FLOOR

Reno, NV 89519 (775) 786-6868 from their testimony in judicial proceedings. *Id.*, at 1140-41. This is because the law recognizes that the rights of an individual "yield to the dictates of public policy" to ensure that witnesses are free to testify without fear of intimidation or liability. *Id.* at 1141.

The second prong is also met because the looming threat of liability, harassment, and intimidation for victims of a crime absolutely may interfere with their right and public duty to testify. This principle is exemplified by the fact that Mr. Spencer was charged in the underlying proceeding with Intimidation of a Witness to Influence Testimony, a violation of NRS 199.230. There is no question the looming threat of liability to witnesses and crime victims in criminal cases warrants absolute immunity.

Finally, the third prong of "procedural safeguards" is met through the availability of cross-examination and appellate review in the judicial system. *Id.* at 1142-43. The third prong is satisfied by the mere <u>existence</u> of the procedural safeguards and does not depend upon whether the party successfully uses them. *Id.* Here, it is absolutely undisputed that Helmut was subject to cross-examination at Mr. Spencer's preliminary hearing and trial. Thus, the third prong for functional immunity is satisfied.

Helmut has fully established the doctrine of functional immunity applies to bar Mr. Spencer's claim against him for malicious prosecution in the event this Court determines that Mr. Spencer's prima facie claim does not fail as a matter of law. Because Helmut was a witness who testified in Mr. Spencer's criminal proceedings and because the doctrine of absolute immunity is not limited to defamation claims, Helmut's status as a testifying witness protects him from liability and gives him immunity for malicious prosecution as a matter of law. *Harrison*, 131 Nev. Adv. Op. 92, 362 P.3d at 1143 (finding no good reason to depart from principle that doctrine of absolute immunity applies to claims outside defamation, including malicious prosecution and negligence). As such, summary judgment in Helmut's favor on his affirmative defense of privilege is appropriate on this claim.

///

///

4

5

6

7

8 9

10 11

12

13

14 15

16

17

18

19

20

21 22

23

24

25

26

28

Civil-Conspiracy: summary judgment is appropriate on-Mr.-Spencer's claims for civil conspiracy in Helmut's favor, because torts underlying the civil conspiracy claims fail and Mr. Spencer cannot demonstrate any unlawful agreement between the parties.

Mr. Spencer's Third and Fourth Claims for Relief assert civil conspiracy for defamation and malicious prosecution. An actionable claim for civil conspiracy ""consists of a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts. Consol. Generator-Nevada, Inc. v. Cummins Engine Co., Inc., 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (finding summary judgment was appropriate on civil conspiracy claim where there was no evidence defendants agreed and intended to harm plaintiff); Sharda v. Sunrise Hosp. & Med. Ctr., LLC, 2017 WL 2870086, at *10 (D. Nev. July 3, 2017) (plaintiff's claim for civil conspiracy failed where he did not plead a plausible underlying agreement).

It is crucial that, in order to prevail on a claim for civil conspiracy, a plaintiff must show the commission of the underlying tort and an agreement between defendants to commit that tort. Jordan v. Dept. of Motor Vehicles & Pub. Safety, 121 Nev. 44, 75, 110 P.3d 30, 51 (2005),8 (the underlying tort is a "necessary predicate" to a cause of action for conspiracy); Sharda, 2017 WL 2870086, at *10 (same).

Here, as fully set forth under Sections A and B, the underlying claims for defamation and malicious prosecution fail as a matter of law. There are no genuine issues of material fact remaining as to the allegations of defamation and malicious prosecution against Helmut – and, he is immune from liability under the doctrines of qualified and absolute immunity. Because Mr. Spencer's claims for defamation and malicious prosecution fail as a matter of law, his claims for civil conspiracy likewise necessarily fail because he is unable to prove the commission of the underlying tort.

///

27

- 25 -

Abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 181 P.3d 670 (2008).

1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |

12

Moreover, Mr. Spencer simply cannot meet the elements for a claim of civil conspiracy. There are no facts demonstrating the existence of an agreement between Helmut and any of the defendants in this case to accomplish an unlawful objective, such as to maliciously prosecute or defame Mr. Spencer. That would require Helmut to concoct a scheme to undergo substantial physical pain and suffering in order to get Mr. Spencer arrested and then work with the other defendants to present false testimony against him. Such a proposition is completely absurd. Mr. Spencer cannot prove the existence of an agreement by Helmut and the other defendants or intent by Helmut and the other defendants to purposely cause Mr. Spencer harm, because the undisputed facts are, there is no agreement or intent. In the absence of admissible and authenticated evidence establishing a genuine issue of material fact, Mr. Spencer's claims for civil conspiracy fail as a matter of law and summary judgment is appropriate.

D. Punitive Damages: summary judgment is warranted on Mr. Spencer's claim for punitive damages because this claim is not a stand-alone claim in Nevada and, more importantly, there is no evidence that Helmut acted with malice, oppression, or fraud.

Mr. Spencer asserts a claim for punitive damages as his Fifth Claim for Relief. However, it is well-established that punitive damages is not a stand-alone claim; rather, it is a prayer for relief tied to a specific cause of action. *Clark v. Lubritz*, 113 Nev. 1089, 1096, 944 P.2d 861, 865 (1997) (holding that Nevada's statute on punitive damages is a verbatim copy of the California statute); *McLaughlin v. Nat'l Union Fire Ins. Co.*, 29 Cal. Rptr. 2d 559, 578 (1994) (there is no separate cause of action for punitive damages and plaintiffs must still prove the underlying tortious act). Flatly put, Mr. Spencer cannot assert a separate cause of action for punitive damages and the Fifth Claim for Relief can be dismissed on this basis alone.

However, summary judgment is appropriate on the merits of Mr. Spencer's request for punitive damages in this case because there is absolutely no evidence that Helmut acted with malice, oppression, or fraud. Before even submitting the issue of punitive damages to a jury, the district court should conduct a threshold inquiry of whether the alleged misconduct is properly subject to this form of civil punishment. *Evans v. Dean Witter Reynolds, Inc.*, 106 Nev.

Lemons, Grundy 28 & Eisenberg 6005 Plumas St.

27

& EISENBERG 6005 PLUMAS ST. THIRD FLOOR RENO, NV 89519 (775) 786-6868

6 7

9

8

11

10

12 13

14 15

16

18

17

19

20 21

22

23

2425

26

27

598, 612, 5 P.3d 1043, 1052 (2000); see also Countrywide Home-Loans, Inc. v. Thitchener, 124 Nev. 725, 740, 192 P.3d 243, 252-53 (2008). "[T]he district court has discretion to determine whether the party's conduct merits punitive damages as a matter of law." Winchell v. Schiff, 124 Nev. 938, 948, 193 P.3d 946, 953 (2008). Punitive damages are not a compensatory measure of recovery; rather, they are intended to punish and deter a defendant's culpable conduct. Bongiovi v. Sullivan, 122 Nev. 556, 580, 138 P.3d 433, 450 (2006).

Punitive damages are governed by statute and may only be awarded when the plaintiff proves, by clear and convincing evidence, that the "defendant has been guilty of oppression, fraud, or malice, express or implied" NRS 42.005(1). "Oppression" means "despicable conduct that subjects a person to cruel and unjust hardship with conscious disregard of the rights of the person." NRS 42.001(4). "Fraud" means "an intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive another person of his rights or property or to otherwise injure another person." NRS 42.001(2).9 "Malice, express or implied" means "conduct which is intended to injure a person or despicable conduct which is engaged in with conscious disregard of the rights or safety of others." NRS 42.001(3).

The statutory definitions of "oppression" and "malice, express or implied" include the term "conscious disregard," which means "knowledge of the probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid those consequences." NRS 42.001(1). In accordance with that statutory language, conscious disregard "denotes conduct that, at a minimum, must exceed mere recklessness or gross negligence." *Countrywide Home Loans*, 124 Nev. at 743, 192 P.3d at 255.

Clear and convincing evidence is evidence that is "so strong and cogent as to satisfy the mind and conscience of a common man, and so to convince him that he would venture to act upon that conviction in matters of the highest concern and importance to his own interest." In

LEMONS, GRUNDY & EISENBERG

6005 Plumas St. THIRD FLOOR

RENO, NV 89519 (775) 786-6868

⁹ Mr. Spencer's claim for punitive damages does not include a claim for fraud and, even if it did, he did not satisfy the NRCP 9(g) heightened standard for pleading a fraud claim. Therefore, this motion does not address fraud.

re Discipline of Drakulich, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

Lemons, Grundy 2

& EISENBERG 6005 PLUMAS ST. THIRD FLOOR RENO, NV 89519 (775) 786-6868 In this case, Mr. Spencer cannot come forward with any evidence – let alone clear and convincing evidence – that Helmut's conduct was "despicable conduct" that was <u>intended</u> to injure Mr. Spencer or made in conscious disregard for his safety. In fact, the converse is true – Mr. Spencer acted with conscious disregard for Helmut's safety when he admittedly pursued Helmut on an icy street and knocked him to the ground. There is also no evidence that Helmut had knowledge of probable harmful consequences resulting from a wrongful act (reporting a crime is not a wrongful act) and that he willfully and deliberately failed to act to avoid those consequences. A request for punitive damages in this context is simply absurd.

Further, it is an undisputed fact that Helmut acted in good faith and with a reasonable belief that Mr. Spencer had punched or assaulted him on the night of December 18, 2012. Affidavit of Helmut ¶¶14-16. Consistent with that good faith belief, Helmut reported the incident to law enforcement and testified at Mr. Spencer's criminal proceedings. As stated under Section A, Defamation, and Section B, Malicious Prosecution, the existence of a good faith belief negates the presence of malice. Lester, 112 Nev. at 1430, 929 P.2d at 913 (good faith belief that a crime had been committed); Boren, 2010 WL 493447 at *6 (the existence of probable cause negates malice); Pope, 121 Nev. at 318, 114 P.3d at 284 (no malice where reporting party believed crime had been committed). Subjecting Helmut to punitive damages for his good faith belief that he was the victim of a crime and fulfilling his civic duty and individual right to report that crime smacks of injustice. Such an award in this case would establish unwanted precedent and deter citizens and victims from coming forward and reporting crimes out of fear that they will later be subject to liability and obscene damage amounts for contacting local law enforcement and participating in the judicial process. This result is clearly not the type of conduct that a punitive damage award is meant to deter.

Because there is no evidence that Helmut's conduct is the type where an award of punitive damages is appropriate and because this Court can make this determination as a matter of law, summary judgment should be granted in Helmut's favor on Mr. Spencer's Fifth Claim for Punitive Damages.

E.

6

8

12

15

18

19

22

24

25

27 28

Intentional Infliction of Emotional Distress: summary judgment is appropriate on Mr. Spencer's claim for intentional infliction of emotional distress because there is no evidence Helmut acted intentionally or with a reckless disregard of causing emotional distress and Mr. Spencer's reported symptoms do not satisfy the requirement of "physical manifestations" of emotional distress.

1. Helmut's conduct is not extreme and outrageous and the record is devoid of evidence that Helmut acted intentionally or with a reckless disregard of causing Mr. Spencer severe emotional distress.

Mr. Spencer's Sixth Claim for Relief asserts that Helmut acted intentionally or with reckless disregard for the likelihood of causing emotional distress when he reported to law enforcement that he had been injured, when he stated at the Planning Commission he was hurt by Mr. Spencer, and when he testified at Mr. Spencer's criminal proceedings regarding the same.¹⁰ However, there is absolutely no evidence that Helmut acted intentionally or that his actions of reporting a crime constitute reckless disregard in this case.

In a claim for intentional infliction of emotional distress, a plaintiff must prove the following: "(1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress, (2) the plaintiff's having suffered severe or extreme emotional distress, and (3) actual or proximate causation." Barmettler v. Reno Air, Inc., 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998) (concluding summary judgment was proper where plaintiff failed to establish either the first or second elements of this claim) citing Star v. Rabello, 97 Nev. 124, 125, 625 P.2d 90, 91–92 (1981) (citation omitted).

A prima facie claim of intentional infliction of emotional distress requires a plaintiff to prove that the defendant's conduct was "extreme and outrageous." Maduike v. Agency Rent-A-Car, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998). Extreme and outrageous conduct "is that which is outside all possible bounds of decency and is regarded as utterly intolerable in a civilized

¹⁰ To be clear, Mr. Spencer's claim for "infliction of emotional distress" is the intentional tort of intentional infliction of emotional distress because, (1) he alleges Helmut acted with intentional or reckless disregard; and, (2) there is no counterclaim for negligence in this case.

17

18

19

20

21

22

23

24

25

26

27

community." Id. citing Galifornia Book of Approved-Jury Instruction 12.74 (internal citations omitted). In Maduike, the Nevada Supreme Court upheld the trial court's decision that the first element of the tort was not met when a car rental agency's employees were rude and refused to provide a family with a new rental car after the brakes on the car they rented failed and caused a collision. Id. at 4-5. The court agreed with the rental agency's argument that its employee's conduct was, at most, unkind or inconsiderate behavior but it did not rise to the level of being "atrocious, intolerable, or outside all possible bounds of decency." Id. at 5; and see, Barmettler, 114 Nev.at 443, 956 P.2d at 1384 (no extreme and outrageous conduct where employer violated its own policy to keep confidential the fact that employee entered substance abuse rehabilitation); Chowdhry v. NLVH, Inc., 109 Nev. 478, 483, 851 P.2d 459, 462 (1993) (accusations by hospital that surgeon abandoned patient were insufficient to constitute extreme and outrageous behavior); compare, Olivero v. Lowe, 116 Nev. 395, 400, 995 P.2d 1023, 1026 (2000) (conduct was extreme and outrageous where construction laborer was physically attacked by homeowner and threatened with handgun).

Here, Helmut's actions of reporting a crime and making a statement about what happened to him on the night of December 18, 2012 simply do not rise to the level of extreme and outrageous conduct as a matter of law. Similarly, testifying before a judge in Mr. Spencer's criminal trial is not extreme and outrageous conduct. Again, subjecting victims and citizens to damages when they exercise their civil obligation to report a crime and testify in judicial proceedings is simply against public policy and would set dangerous precedent. Victims and witnesses report crimes and testify multiple times a day and this conduct is simply not "extreme and outrageous" as a matter of law. See, e.g., Churchill v. Barach, 863 F. Supp. 1266, 1275 (D. Nev. 1994) (customer's conduct was not extreme and outrageous as a matter of law when he wrote letter to airline complaining about employee because this type of conduct occurs "thousands of times each day").

Moreover, even if Helmut's conduct was extreme and outrageous (which, it is not), Mr. Spencer cannot demonstrate that Helmut intended to cause Mr. Spencer emotional distress or acted with reckless disregard in causing Mr. Spencer severe emotional distress. This case is

Lemons, Grundy 28 & EISENBERG 6005 Plumas St. THIRD FLOOR

RENO. NV 89519

(775) 786-6868

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

completely distinguishable from cases where the court has found extreme and outrageous conduct. For example, in *Olivero*, the Nevada Supreme Court found that a homeowner who physically attacked and threatened a construction laborer with a handgun and forced him to work at gunpoint was liable for intentional infliction of emotional distress because that conduct was extreme and outrageous. 116 Nev. at 400, 995 P.2d 1026. That is the type of conduct this tort is meant to address. Here, there is simply no evidence in the record supporting Mr. Spencer's allegation that Helmut's conduct was extreme and outrageous with the intention or reckless disregard of causing emotional distress. Therefore, Mr. Spencer's Sixth Claim for Relief for infliction of emotional distress fails as a matter of law on the first element and summary judgment must be granted in Helmut's favor.

2. Mr. Spencer has failed to present proof of severe or extreme emotional distress.

In Nevada, when a party claims emotional distress damages that precipitate physical symptoms (as opposed to emotional distress damages secondary to a physical injury), then either a physical impact must have occurred or, in the absence of a physical impact, the plaintiff must prove "serious emotional distress" causing physical injury. *Barmettler*, 114 Nev. at 448, 956 P.2d at 1387.

Absent physical impact, "the less extreme the outrage, the more appropriate it is to require evidence of physical injury or illness from the emotional distress." *Chowdhry*, 109 Nev. at 483, 851 P.2d at 462 citing *Nelson v. City of Las Vegas*, 99 Nev. 548, 555 665 P.2d 1141, 1145 (1983); and *Churchill*, 863 F. Supp. at 1276 (where the outrage is less extreme, evidence of physical injury or illness is required). The stress "must be so severe and of such intensity that no reasonable person could be expected to endure it." *Alam v. Reno Hilton Corp.*, 819 F. Supp. 905, 911 (D. Nev. 1993). "Insomnia and general physical or emotional discomfort are insufficient to satisfy the physical impact requirement." *Id.* The physical impact requirement is not met even where a party has "great difficulty in eating, sleeping, and suffers outward manifestations of stress and is generally uncomfortable." *Churchill*, 863 F. Supp. at 1276; *Alam*, 819 F. Supp. at 911 (feelings of inferiority, headaches, irritability and weight loss did not amount

Lemons, Grundy & Eisenberg 6005 Plumas St. THIRD FLOOR Reno, NV 89519 (775) 786-6868

2

3 4

5

6 7

8

9

10

11

12

13

14

15 16

17

18

19

20

21

22

23

24

25

26

27

to severe emotional distress).

In this case, the "emotional distress" suffered by Mr. Spencer does not rise to the level of "severe or extreme emotional distress" that is required to recover damages for this tort. Mr. Spencer has never produced any medical records or documentation of severe and extreme emotional distress in this case and the records that have been produced by third-party defendant Mary Ellen Kinon reveal that Mr. Spencer's claims for emotional distress fail as a matter of law. Mr. Spencer may argue that the opinion of his therapist, Dana Anderson, is sufficient to prove that Mr. Spencer has suffered severe and extreme emotional distress because Ms. Anderson diagnosed him with "PTSD." However, a careful look at the specific symptoms Mr. Spencer experiences demonstrates his symptoms are insufficient to constitute severe and extreme emotional distress: "reliving the trauma," "stomach ache," "nervousness," "bad dreams," "frightening thoughts," "feeling tense," "difficulty sleeping," "lack of concentration," "inability to deal with stressful situations," "negative thoughts," "depression, anxiety," and, loss of having fun. Affidavit of Helmut ¶ 26; Exhibit 14, letter from Dana Anderson dated May 21, 2017, bates-stamped KINION-350—351. As explained in case law above, these symptoms do not constitute severe and extreme emotional distress. Mr. Spencer's complaints of stress, fatigue, and weight loss similarly do not constitute severe and extreme emotional distress. Churchill, 863 F. Supp. at 1276; Alam, 819 F. Supp. at 911.

Moreover, Mr. Spencer's physical symptoms he attributes to this case are pre-existing conditions and symptoms he suffered long before this case even started. His treating physicians note that his past medical history includes pre-existing depression and a "long history of gastrointestinal reflux disorder." Affidavit of Helmut ¶27; Exhibit 15, medical records of Jeffrey Spencer, bates-stamped KINION-138—140, 151—156 (noting that heartburn and regurgitation issues started 10-15 years ago). With this medical history, Mr. Spencer simply cannot attribute his heartburn and depression to Helmut's actions in this case.

Therefore, because Mr. Spencer has not suffered severe and extreme emotional distress as a matter of law, summary judgment in Helmut's favor on the Sixth Claim for Relief for infliction of emotional distress is appropriate.

- 32 -

. CONCLUSION

LEMONS, GRUNDY

& Eisenberg 6005 Plumas St. THIRD FLOOR

Reno, NV 89519 (775) 786-6868

The Nevada Supreme Court has held that Rule 56, "should not be regarded as a disfavored procedural shortcut," but instead as an integral part of the rules of civil procedure as a whole, "which are designed to secure the just, speedy and inexpensive determination of every action." Wood v. Safeway, Inc., 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005) citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 and FRCP 1. As our court has recognized, a nonmoving party may not rely on "gossamer threads of whimsy, speculation and conjecture." Id. at 7.0. Instead, when a motion for summary judgment is properly made and supported as required by NRCP 56, the non-moving party must, "by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue." Id. (emphasis added). Factual disputes that are not genuine and material to the issues cannot defeat summary judgment. Id.

Helmut has demonstrated that summary judgment is proper in this case on each of Mr. Spencer's counterclaims and upon Helmut's affirmative defenses. Helmut's statements are privileged as a matter of law, and this Court can make that determination on summary judgment. Helmut's good faith belief that he was hurt by Mr. Spencer negates any "intent" or "malice" in this case for the purpose of Mr. Spencer's claims for defamation, malicious prosecution, intentional infliction of emotional distress, and punitive damages. There is simply zero evidence of any conspiracy and Mr. Spencer cannot prove the underlying tort. Mr. Spencer's complaints of stomach aches and sleepless nights are insufficient as a matter of law to warrant damages for severe and extreme emotional distress. Despite the fact this case has been pending for years, Mr. Spencer has not come forward with any evidence that would raise a genuine issue of material fact for the purpose of defeating summary judgment in Helmut's favor. Therefore, Helmut respectfully requests this Court grant summary judgment in his favor

///

///

and against Mr. Spencer on each claim against Helmut in Mr. Spencer's Amended Counterclaim 2 and Third-Party Complaint. 3 The undersigned does hereby affirm that the preceding document does not contain 4 the social security number of any person. Dated: April 11 , 2018. 5 6 Lemons, Grundy & Eisenberg 7 8 Douglas R. Brown, Esq. 9 Sarah M. Molleck, Esq. Attorneys for Counterdefendant Klementi 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27

LEMONS, GRUNDY & EISENBERG 6005 PLUMAS ST. THIRD FLOOR RENO, NV 89519 (775) 786-6868

CERTIFICATE OF MAILING 2 Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg 3 and that on April 1, 2018, I deposited in the United States Mail, with postage fully 4 prepaid, a true and correct copy of the within COUNTER-DEFENDANT HELMUT KLEMENTI'S 5 MOTION FOR SUMMARY JUDGMENT ON ALL COUNTERCLAIMS, addressed to the following: 6 Michael A. Pintar, Esq. William J. Routsis II, Esq. Glogovac & Pintar 1070 Monroe Street 427 West Plumb Lane Reno, Nevada 89509 Reno, Nevada 89509 Attorney for Jeffrey Spencer Attorney for Mary Ellen Kinion, Egon Klementi and Elfriede Klementi Lynn G. Pierce, Esq. 515 Court Street, Suite 2f 10 Reno, Nevada 89501 Tanika Capers, Esq. Attorney for Jeffrey Spencer 6750 Via Austi Parkway, Suite 310 11 Las Vegas, Nevada 89119 Attorneys for Rowena Shaw and Peter David M. Zaniel, Esq. 12 Ranalli & Zaniel, LLC Shaw 50 West Liberty Street, Suite 1050 13 Reno, Nevada 89501 Attorney for Jeffrey Spencer 14 15 16 17 18 19 20 21 22 23 24 25 26 27

imons, Grundy & Eisenberg)05 Plumas St.

SUITE 300 ENO, NV 89519

75) 786-6868

28

INDEX OF EXHIBITS

Exhibit No.	Description	Length of Exhibit
1	Affidavit of Helmut Klementi	4 pages
2	Deposition of Helmut Klementi dated 4/14/16	38 pages
3	Deposition of Jeffrey Spencer dated 7/28/16	60 pages
4	Letters from Douglas County Code Enforcement and	6 pages
	Douglas County District Attorney	
5	Deposition of Elfriede Klementi dated 4/14/16	43 pages
6	Minutes of the Regular Meeting of the Kingsbury General	2 pages
	Improvement District Board of Trustees	
7	Douglas County Sheriff's Department Investigation	14 pages
	Narrative, Case No. 12SO41608	
8	Deposition of Deputy Jesse McKone dated 4/7/16	29 pages
9	Temporary Order Against Stalking, Aggravated Stalking or	4 pages
	Harassment	
10	Douglas County Planning Commission Meeting Minutes	7 pages
11	Statement of Helmut Klementi	1 page
12	Selected Pages of Transcript of Hearing-Motion for	6 pages
	Summary Judgment	
13	Selected Pages of Transcript of Preliminary Hearing	43 pages
14	Letter from Dana Anderson dated 5/21/17	2 pages
15	Medical records of Jeffrey Spencer	29 pages

EXHIBIT 1

EXHIBIT 1

AFFIDAVIT OF HELMUT KLEMENTLIN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON ALL COUNTERCLAIMS

) ss.

2

1

STATE OF NEVADA

COUNTY OF WASHOE

3

4

5 6

7

8 9

10

11

12 13

14

15

16

17 18

19

20

21 22

23

24

25

26

LEMONS, GRUNDY & EISENBERG 6005 Plumas St. THIRD FLOOR RENO, NV 89519

(775) 786-6868

27

28

///

I, HELMUT KLEMENTI	, being first duly	sworn, depose	and say unde	r penalty of periury

- I am over the age of 18 years and am a resident of Stateline, Nevada. I am making this Affidavit based upon my personal knowledge, except as to those matters where I may state they are based upon information and belief, and as to those matters and information I believe them to be true. If called as a witness to testify as to the contents of this declaration, or any of the facts stated herein, I am and would be legally competent to testify as to those matters in a court of law.
- I am a counter-defendant in case no. 14-CV-0260 in the Ninth Judicial District 2. Court of the State of Nevada.
- I am eighty-three years old and live at 163 Pine Ridge Drive, Stateline, Nevada, 3. in the Kingsbury General Improvement District.
- 4. At the time of the events complained of in Mr. Spencer's Amended Counterclaim and Third Party Complaint, I had a twin brother, Egon Klementi ("Egon"), who lived with his wife Elfriede "Elfie" Klementi at 187 Meadow Lane, Stateline, Nevada at the corner of Meadow Lane and Charles Avenue.
- At the time of the events complained of in Mr. Spencer's Amended 5. Counterclaim and Third Party Complaint, there was a dispute between Mr. Spencer and the other neighbors in the KGID district, including my brother Egon, regarding a fence that Mr. Spencer had built on his property in May 2012 in violation of the Douglas County Code.
- 6. Attached as Exhibit 4 is a true and correct copy of letters from Douglas County Code Enforcement and the Douglas County District Attorney regarding violations of the Douglas County Code, bates-stamped D2539 and D2563-2567, and produced by Counterclaimant Jeffrey Spencer in this case.

- 7. On December 18, 2012, I attended a meeting of the Board of Trustees for the KGID with Egon and Elfie.
- 8. Although I attended the meeting, I did not make a statement or otherwise speak at the December 18, 2012 meeting before the Board of Trustees for the KGID.
- 9. Attached hereto as **Exhibit 6** is a true and correct copy of the "Minutes of the Regular Meeting of the Kingsbury General Improvement District Board of Trustees," dated Tuesday, December 18, 2012, bates-stamped KLEMENTI-127—128, and produced by me in this case.
- 10. At the December 18, 2012 KGID Board of Trustees meeting, Chairperson Norman gave instructions for the neighbors concerned about the snow berms to take pictures.
- 11. When the December 18, 2012 KGID Board of Trustees meeting concluded, I went to Egon's and Elfie's home for dinner.
- 12. After dinner, I left my brother Egon's house to take pictures of the snow berms in front of Egon's property and to then return to my home.
- 13. As I was taking pictures of the snow berms, I was knocked to the ground by Mr. Spencer.
- 14. It was my opinion and belief that Mr. Spencer punched me in my side and knocked me to the ground.
- 15. I sustained injuries as a result of this incident and Douglas County Sheriff's Deputies responded.
- 16. I reported to Deputy McKone my good faith belief that Mr. Spencer had assaulted me and knocked me to the ground.
- 17. Attached hereto as **Exhibit 7** is a true and correct copy of the Douglas County Sheriff's Department Investigation Narrative, Case No. 12SO41608, bates-stamped D0302 and produced by Counterclaimant Jeffrey Spencer in this case.
- 18. On or about December 26, 2012, I obtained a Temporary Restraining/Protective Order against Mr. Spencer.

27

28

- 19. Attached hereto as **Exhibit 9** is the *Temporary Order Against Stalking,* Aggravated Stalking or Harassment, filed December 26, 2012 in Tahoe Justice Court, batesstamped D1573—1576, and produced by Counterclaimant Jeffrey Spencer in this case.
- 20. On January 8, 2013, I attended a meeting before the Douglas County Planning Commission and its members.
- 21. Attached hereto as **Exhibit 10** is a true and correct copy of the Douglas County Planning Commission Meeting Minutes dated January 8, 2013, bates-stamped D1132—1138, and produced by Counterclaimant Jeffrey Spencer in this case.
- 22. At that meeting, I read a statement during public comment that stated Mr. Spencer confronted and punched me while I was taking pictures of a snow berm pushed against my brother Egon's fence and that I had a restraining order against Mr. Spencer.
- 23. Attached hereto as **Exhibit 11** is a true and correct copy of the statement that I read, bates-stamped D1124, and produced by Counterclaimant Jeffrey Spencer in this case.
- 24. I testified on behalf of the State of Nevada as the victim of a crime in Mr. Spencer's criminal proceedings before the court, including the preliminary hearing and criminal trial.
- 25. The only statements I made about Mr. Spencer were (1) my statement to Deputy McKone on December 18, 2012, (2) my statement to the Douglas County Planning Commission on January 8, 2013, and (3) my testimony at Mr. Spencer's preliminary hearing and trial.
- 26. Attached hereto as **Exhibit 14** is a true and correct copy of a letter from Mr. Spencer's marriage and family therapist, Dana Anderson, dated May 21, 2017, bates-stamped KINION-350—351, and produced in response to a subpoena in this case.

25

Lemons, Grundy & Eisenberg 6005 Plumas St.

THIRD FLOOR RENO, NV 89519

(775) 786-6868

///

///

///

///

///

26

27

28

$-\frac{1}{1}$	27. Attached hereto as Exhibit 15 are true and correct copies of medical records
2	from Gastroenterology Consultants and Dr. Gao for Jeffrey D. Spencer, bates-stamped
3	KINION-138—140, 151—156, and produced in response to a subpoena in this case.
4	I declare under penalty of perjury the foregoing is true and correct.
5	Dated: this $\frac{29}{\text{day of}}$ day of $\frac{Markh}{2018}$, 2018.
6	
7	Helmut O. Klementi
8	HELMUT KLEMENTI
9	
10	SUBSCRIBED and SWORN to before me this day of March, 2018. SUSAN G. DAVIS Notary Public - State of Nevada
11	Appointment Recorded in Washoe County No: 99-37796-2 - Expires July 24, 2019
12	Susan H. Dairs
13	Notary Public
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

Lemons, Grundy & Eisenberg 6005 Plumas St. Third Floor Reno, NV 89519 (775) 786-6868

EXHIBIT 2

EXHIBIT 2

```
1
 2
 3
 5
        IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 6
 7
                      IN AND FOR THE COUNTY OF DOUGLAS
                                   -000-
 8
 9
                                       Case No. 14-CV-0260
      HELMUT KLEMENTI,
10
                    Plaintiff,
                                       Dept. No. II
11
      VS.
      JEFFREY D. SPENCER, et al.,
12
                    Defendants.
      AND RELATED COUNTERCLAIMS.
13
14
                               DEPOSITION OF
15
16
                              HELMUT KLEMENTI
17
                               April 14, 2016
                                Reno, Nevada
18
19
20
21
22
23
24
     JOB NO. 299004-C
25
     REPORTED BY: DEBORAH MIDDLETON GRECO, CCR #113, RDR, CRR
```

1	дрред	Page 2	1	Page
2			2	
3	FOR THE PLAINTIFF:	Nicholus Palmer, Esq. Laub & Laub 630 E. Plumb Lane	3	EXAMINATION PA
4		Reno, NV 89502		Examination by Mr. Zaniel
5		323-5282 Nik@lawlaub.com	4	Examination by Mr. Routsis
6		- / h er gant 1 - Flan		Further Examination by Mr. Zaniel
7	FOR THE DEFENDANTS:	David M. Zaniel, Esq. Ranalli & Zaniel, LLC 50 West Liberty St., #1050	5 6	
8		Reno, NV 89501 786-4441	7 8	EXHIBITS
_		Dzanicl@ranallilawyers.com		NUMBER DESCRIPTION PA
10 11			9	
	FOR THE COUNTERCLAIMANT:	William J. Routsis, II, Esq.	10	
12		1070 Monroe Street Reno, NV 89509	11	
13		337-2609	12	
14 15	FOR COUNTERDEFENDANTS	Christian L. Moore, Esq.		(NO EXHIBITS MARKED FOR THESE PROCEEDINGS)
	KLEMENTI:	Lemons, Grundy & Eisenberg 6005 Plumas Street, #300	13	
16		Reno, NV 89509	15	
17		786-6869	16	
18		Clm@lge.net	17	
19	TO COMPANY WINDOWS WINDOWS	Wishes I B Distant Egg	18	
20	FOR COUNTERDEFENDANT KINION:	Michael A. Pintar, Esq. Glogovac & Pintar	19	
0.		427 West Plumb Lane Reno, NV 89509 333-0400	20	
21		Mpintar@gplawreno.net	21	
22	(Continued on Next Page)		23	
23	(Continued on Mexic Page)		24	
24 25			25	
		Page 3		Page
1	APPEARAN	C E S (Continued)	1	BE IT REMEMBERED that on Thursday, April 14, 2016, a
2	DOD THE CHANG	Tanika M. Capers, Esq.	2	the hour of 1:14 p.m. of said day, at the offices of
3	FOR THE SHAWS:	6750 Via Austi Parkway, #310	3	SUNSHINE LITIGATION SERVICES, 151 Country Estates Circle, Reno
-		Las Vegas, NV 89119	4	Nevada, before me, DEBORAH MIDDLETON GRECO, a Certified Court
4		(702) 371-5657	5	Reporter, personally appeared HEIMUT KLEMENTI, who was by me
4		(702) 371-5657 Tcapers@amfam.com	5 6	Reporter, personally appeared HEIMUT KLEMENTI, who was by me first duly sworn and was examined as a witness in said cause.
4 5			-	
5			6	first duly sworn and was examined as a witness in said cause.
5 6 7			6 7	first duly sworn and was examined as a witness in said cause
5 6 7 8			6 7 8 9	first duly sworn and was examined as a witness in said cause. 00- HELMUT KLEMENTI called as a witness, having been duly sworn,
5 6 7 8	ALSO PRESENT:		6 7 8 9	first duly sworn and was examined as a witness in said cause.
5 6 7 8	ALSO PRESENT:	Tcapers@amfam.com	6 7 8 9 10 11	first duly sworn and was examined as a witness in said cause.
5 6 7 8	ALSO PRESENT:	Tcapers@amfam.com Mary Ellen Kinion	6 7 8 9 10 11 12	first duly sworn and was examined as a witness in said cause. OO- HELMUT KLEMENTI called as a witness, having been duly sworn, testified as follows: EXAMINATION BY MR. ZANIEL:
5 6 7 8 9	ALSO PRESENT:	Tcapers@amfam.com Mary Ellen Kinion Elfriede Klementi	6 7 8 9 10 11 12 13	first duly sworn and was examined as a witness in said cause. OO- HELMUT KLEMENTI called as a witness, having been duly sworn, testified as follows: EXAMINATION BY MR. ZANIEL: Q Can you state your name for the name, sir.
5 6 7 8 9 10	ALSO PRESENT:	Tcapers@amfam.com Mary Ellen Kinion Elfriede Klementi Jeffrey Spencer	6 7 8 9 10 11 12 13 14	first duly sworn and was examined as a witness in said cause.
5 6 7 8 9 10 11	ALSO PRESENT:	Tcapers@amfam.com Mary Ellen Kinion Elfriede Klementi Jeffrey Spencer	6 7 8 9 10 11 12 13 14 15	first duly sworn and was examined as a witness in said cause. 000- HELMUT KLEMENTI called as a witness, having been duly sworn, testified as follows: EXAMINATION BY MR. ZANIEL: Q Can you state your name for the name, sir. A Helmut, H-E-L-M-U-T, Klementi, K-L-E-M-E-N-T-I. Q All right. Mr. Klementi, you have been in the room
5 6 7 8 9 10 11 12 13	ALSO PRESENT:	Tcapers@amfam.com Mary Ellen Kinion Elfriede Klementi Jeffrey Spencer	6 7 8 9 10 11 12 13 14 15 16	first duly sworn and was examined as a witness in said cause.
5 6 7 8 9 10 11 12 13 14 15	ALSO PRESENT:	Tcapers@amfam.com Mary Ellen Kinion Elfriede Klementi Jeffrey Spencer	6 7 8 9 10 11 12 13 14 15 16 17	first duly sworn and was examined as a witness in said cause.
5 6 7 8 9 10 11 12 13	ALSO PRESENT:	Tcapers@amfam.com Mary Ellen Kinion Elfriede Klementi Jeffrey Spencer	6 7 8 9 10 11 12 13 14 15 16 17 18	first duly sworn and was examined as a witness in said cause.
5 6 7 8 9 10 11 12 13 14 15	ALSO PRESENT:	Tcapers@amfam.com Mary Ellen Kinion Elfriede Klementi Jeffrey Spencer	6 7 8 9 10 11 12 13 14 15 16 17 18 19	first duly sworn and was examined as a witness in said cause.
5 6 7 8 9 10 11 12 13 14 15 16 17	ALSO PRESENT:	Tcapers@amfam.com Mary Ellen Kinion Elfriede Klementi Jeffrey Spencer	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	first duly sworn and was examined as a witness in said cause.
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	ALSO PRESENT:	Tcapers@amfam.com Mary Ellen Kinion Elfriede Klementi Jeffrey Spencer	6 7 8 9 10 11 12 13 14 15 16 17 18 19	first duly sworn and was examined as a witness in said cause.
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	ALSO PRESENT:	Tcapers@amfam.com Mary Ellen Kinion Elfriede Klementi Jeffrey Spencer	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	first duly sworn and was examined as a witness in said cause.
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	ALSO PRESENT:	Tcapers@amfam.com Mary Ellen Kinion Elfriede Klementi Jeffrey Spencer	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	first duly sworn and was examined as a witness in said cause.
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	ALSO PRESENT:	Tcapers@amfam.com Mary Ellen Kinion Elfriede Klementi Jeffrey Spencer	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	first duly sworn and was examined as a witness in said cause.

i	Page 6		V	Page 8
l	think it's important and prudent of me to go over these with you	1	A	0kay.
2	just so I know that you understand them, okay?	2	Q	What is your date of birth, sir?
3	A Yes.	3	A	April 11, 1934.
4	Q Okay. The first rule is that you are under oath this	4	Q	19
ì	afternoon. That oath that we just took, that you just took, is	5	A	'34,
6	the same oath as if you were sitting in a courtroom.	6	Q	So you just had a birthday?
7	So it obligates you to tell the truth today under the	7	A	Yes.
8)	penalty of perjury.	8	Q	And how old does that make you today?
9	Do you understand that?	9	A	82.
10	A Yes.	10	Q	Very good.
11	Q If you don't understand a question that's asked of	11		And where were you born, sir?
12	you, stop us and let us know that you don't understand the	12	A	Bregenz, Austria. In Austria.
13	question.	13	Q	Can you spell the city?
14	If you answer the question today, I will have assumed	14	A	B-R-E, G like George, E-N-Z.
15	that you have understood it and answered the question to the	15	Q	And now my understanding, and I can kind of speed
16	best of your ability.	16	things al	ong a little bit.
17	Is that fair?	17		I think you and Egon are twin brothers?
18	A Yes.	18	A	Yep.
19	Q The last rule is that you will have the opportunity to	19	Q	And at some point early on, in the '50s, you and your
	review your testimony. It's going to come out in a book, and	20	brother s	started a bike act; is that
ł	you can go through it line by line.	21	А	Yes.
22	If you make any changes to your testimony after today,	22	Q	The proper way to say that, a bicycle act?
i	I would be able to comment upon those changes, and it may affect	23	Ā	Yes. Yes.
1	your credibility.	24	Q	Okay. How did you learn to start how did you learn
25	Do you understand that?	25	that?	100 2021
	Page 7	ļ		Dans 0
1	A Yes.	1	А	Page 9 We were amateurs for seven years, Austrian champions.
2	Q Okay. As with the other rules that you heard, if you	2	Then we h	nad to decide business at home or show business.
1	want to take a break, you let me know. We're going to be taking	ļ		
		13		AND MY DIOLNEY AND MYSELL, WE CHOSE SHOW DUSINESS.
4		3	0	And my brother and myself, we chose show business. Okav. So in the '60s, then, is when you started to do
1	a couple of breaks, I'm sure, during your deposition.	3 4 5	Q this act	Okay. So in the '60s, then, is when you started to do
5	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know.	4 5	this act	Okay. So in the '60s, then, is when you started to do professionally?
5 6	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the	4 5 6	this act	Okay. So in the '60s, then, is when you started to do professionally? '53 or so.
5 6 7	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question.	4 5 6 7	this act A Q	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then,
5 6	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question. And if we don't talk over each other, that will make	4 5 6 7 8	this act A Q eventual	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then, ly, the show went international?
5 6 7 8 9	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question. And if we don't talk over each other, that will make the court reporter's job easier, okay?	4 5 6 7 8	this act A Q eventual1	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then, ly, the show went international? Yes.
5 6 7 8 9	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question. And if we don't talk over each other, that will make the court reporter's job easier, okay? A Yeah.	5 6 7 8 9	this act A Q eventuall A Q	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then, ly, the show went international? Yes. And at the beginning it was just the two of you?
5 6 7 8 9 10	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question. And if we don't talk over each other, that will make the court reporter's job easier, okay? A Yeah. Q All right. So in an effort to speed things up, I have	5 6 7 8 9 10	this act A Q eventual A Q A	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then, ly, the show went international? Yes. And at the beginning it was just the two of you? Yes.
5 6 7 8 9 10 11 12	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question. And if we don't talk over each other, that will make the court reporter's job easier, okay? A Yeah. Q All right. So in an effort to speed things up, I have a meeting I have to get to at 5:30, and I my wife's birthday	5 6 7 8 9 10 11 12	this act A Q eventual A Q A Q A	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then, ly, the show went international? Yes. And at the beginning it was just the two of you? Yes. Then your brother met Elfie?
5 6 7 8 9 10 11 12 13	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question. And if we don't talk over each other, that will make the court reporter's job easier, okay? A Yeah. Q All right. So in an effort to speed things up, I have a meeting I have to get to at 5:30, and I my wife's birthday is tomorrow, and I haven't gotten her a present yet.	5 6 7 8 9 10 11 12 13	this act A Q eventual A Q A Q A	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then, ly, the show went international? Yes. And at the beginning it was just the two of you? Yes. Then your brother met Elfie? Got married.
5 6 7 8 9 10 11 12 13	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question. And if we don't talk over each other, that will make the court reporter's job easier, okay? A Yeah. Q All right. So in an effort to speed things up, I have a meeting I have to get to at 5:30, and I my wife's birthday is tomorrow, and I haven't gotten her a present yet. So what I'm going doing to do is, I'm going to go over	4 5 6 7 8 9 10 11 12 13	this act A Q eventual A Q A Q A	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then, ly, the show went international? Yes. And at the beginning it was just the two of you? Yes. Then your brother met Elfie? Got married. Then Elfie joined the act?
5 6 7 8 9 10 11 12 13 14 15	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question. And if we don't talk over each other, that will make the court reporter's job easier, okay? A Yeah. Q All right. So in an effort to speed things up, I have a meeting I have to get to at 5:30, and I my wife's birthday is tomorrow, and I haven't gotten her a present yet. So what I'm going doing to do is, I'm going to go over some background information with you, okay?	4 5 6 7 8 9 10 11 12 13 14 15	this act A Q eventual A Q A Q A	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then, ly, the show went international? Yes. And at the beginning it was just the two of you? Yes. Then your brother met Elfie? Got married. Then Elfie joined the act? Yes.
5 6 7 8 9 10 11 12 13 14 15	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question. And if we don't talk over each other, that will make the court reporter's job easier, okay? A Yeah. Q All right. So in an effort to speed things up, I have a meeting I have to get to at 5:30, and I my wife's birthday is tomorrow, and I haven't gotten her a present yet. So what I'm going doing to do is, I'm going to go over some background information with you, okay? A Yes.	4 5 6 7 8 9 10 11 12 13 14 15	this act A Q eventual A Q A Q A Q A	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then, ly, the show went international? Yes. And at the beginning it was just the two of you? Yes. Then your brother met Elfie? Got married. Then Elfie joined the act? Yes. And that was in the '60s?
5 6 7 8 9 10 11 12 13 14 15 16 17	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question. And if we don't talk over each other, that will make the court reporter's job easier, okay? A Yeah. Q All right. So in an effort to speed things up, I have a meeting I have to get to at 5:30, and I my wife's birthday is tomorrow, and I haven't gotten her a present yet. So what I'm going doing to do is, I'm going to go over some background information with you, okay? A Yes. Q And then I'm going to ask about, a little bit about	4 5 6 7 8 9 10 11 12 13 14 15 16	this act A Q eventual A Q A Q A Q A	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then, ly, the show went international? Yes. And at the beginning it was just the two of you? Yes. Then your brother met Elfie? Got married. Then Elfie joined the act? Yes. And that was in the '60s? Yeah.
5 6 7 8 9 10 11 12 13 14 15 16 17 18	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question. And if we don't talk over each other, that will make the court reporter's job easier, okay? A Yeah. Q All right. So in an effort to speed things up, I have a meeting I have to get to at 5:30, and I my wife's birthday is tomorrow, and I haven't gotten her a present yet. So what I'm going doing to do is, I'm going to go over some background information with you, okay? A Yes. Q And then I'm going to ask about, a little bit about that evening of December 18th.	4 5 6 7 8 9 10 11 12 13 14 15 16 17	this act A Q eventuall A Q A Q A Q A Q A Q A	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then, ly, the show went international? Yes. And at the beginning it was just the two of you? Yes. Then your brother met Elfie? Got married. Then Elfie joined the act? Yes. And that was in the '60s? Yeah. Okay. And for how long did you perform this act for?
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question. And if we don't talk over each other, that will make the court reporter's job easier, okay? A Yeah. Q All right. So in an effort to speed things up, I have a meeting I have to get to at 5:30, and I my wife's birthday is tomorrow, and I haven't gotten her a present yet. So what I'm going doing to do is, I'm going to go over some background information with you, okay? A Yes. Q And then I'm going to ask about, a little bit about that evening of December 18th. And then I'm going to ask about your injuries and your	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	this act A Q eventual A Q A Q A Q A Q A	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then, ly, the show went international? Yes. And at the beginning it was just the two of you? Yes. Then your brother met Elfie? Got married. Then Elfie joined the act? Yes. And that was in the '60s? Yeah. Okay. And for how long did you perform this act for? 35 years.
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question. And if we don't talk over each other, that will make the court reporter's job easier, okay? A Yeah. Q All right. So in an effort to speed things up, I have a meeting I have to get to at 5:30, and I my wife's birthday is tomorrow, and I haven't gotten her a present yet. So what I'm going doing to do is, I'm going to go over some background information with you, okay? A Yes. Q And then I'm going to ask about, a little bit about that evening of December 18th. And then I'm going to ask about your injuries and your treatment, okay?	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	this act A Q eventual A Q A Q A Q A Q A Q A Q A	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then, ly, the show went international? Yes. And at the beginning it was just the two of you? Yes. Then your brother met Elfie? Got married. Then Elfie joined the act? Yes. And that was in the '60s? Yeah. Okay. And for how long did you perform this act for? 35 years. Okay. We looked at Exhibit 8 here, which is a
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question. And if we don't talk over each other, that will make the court reporter's job easier, okay? A Yeah. Q All right. So in an effort to speed things up, I have a meeting I have to get to at 5:30, and I my wife's birthday is tomorrow, and I haven't gotten her a present yet. So what I'm going doing to do is, I'm going to go over some background information with you, okay? A Yes. Q And then I'm going to ask about, a little bit about that evening of December 18th. And then I'm going to ask about your injuries and your treatment, okay? A Yeah.	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	this act A Q eventual A Q A Q A Q A Q A Q A Q A	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then, ly, the show went international? Yes. And at the beginning it was just the two of you? Yes. Then your brother met Elfie? Got married. Then Elfie joined the act? Yes. And that was in the '60s? Yeah. Okay. And for how long did you perform this act for? 35 years. Okay. We looked at Exhibit 8 here, which is a of the act, I believe that you have done.
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question. And if we don't talk over each other, that will make the court reporter's job easier, okay? A Yeah. Q All right. So in an effort to speed things up, I have a meeting I have to get to at 5:30, and I my wife's birthday is tomorrow, and I haven't gotten her a present yet. So what I'm going doing to do is, I'm going to go over same background information with you, okay? A Yes. Q And then I'm going to ask about, a little bit about that evening of December 18th. And then I'm going to ask about your injuries and your treatment, okay? A Yeah. Q And then I'm going to have Mr. Routsis here ask you	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	this act A Q eventual A Q A Q A Q A Q A Q A Q A	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then, ly, the show went international? Yes. And at the beginning it was just the two of you? Yes. Then your brother met Elfie? Got married. Then Elfie joined the act? Yes. And that was in the '60s? Yeah. Okay. And for how long did you perform this act for? 35 years. Okay. We looked at Exhibit 8 here, which is a
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question. And if we don't talk over each other, that will make the court reporter's job easier, okay? A Yeah. Q All right. So in an effort to speed things up, I have a meeting I have to get to at 5:30, and I my wife's birthday is tomorrow, and I haven't gotten her a present yet. So what I'm going doing to do is, I'm going to go over some background information with you, okay? A Yes. Q And then I'm going to ask about, a little bit about that evening of December 18th. And then I'm going to ask about your injuries and your treatment, okay? A Yeah. Q And then I'm going to have Mr. Routsis here ask you questions about the other things.	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	this act A Q eventual A Q A Q A Q A Q A Q A Q A	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then, ly, the show went international? Yes. And at the beginning it was just the two of you? Yes. Then your brother met Elfie? Got married. Then Elfie joined the act? Yes. And that was in the '60s? Yeah. Okay. And for how long did you perform this act for? 35 years. Okay. We looked at Exhibit 8 here, which is a of the act, I believe that you have done. You have seen the brochure, I take it? Yeah.
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	a couple of breaks, I'm sure, during your deposition. If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question. And if we don't talk over each other, that will make the court reporter's job easier, okay? A Yeah. Q All right. So in an effort to speed things up, I have a meeting I have to get to at 5:30, and I my wife's birthday is tomorrow, and I haven't gotten her a present yet. So what I'm going doing to do is, I'm going to go over same background information with you, okay? A Yes. Q And then I'm going to ask about, a little bit about that evening of December 18th. And then I'm going to ask about your injuries and your treatment, okay? A Yeah. Q And then I'm going to have Mr. Routsis here ask you	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	this act A Q eventual A Q A Q A Q A Q A Q A Q brochure	Okay. So in the '60s, then, is when you started to do professionally? '53 or so. Okay. And you started in Austria, and then, ly, the show went international? Yes. And at the beginning it was just the two of you? Yes. Then your brother met Elfie? Got married. Then Elfie joined the act? Yes. And that was in the '60s? Yeah. Okay. And for how long did you perform this act for? 35 years. Okay. We looked at Exhibit 8 here, which is a of the act, I believe that you have done. You have seen the brochure, I take it?

		Page 10		_	Page 12
1	Q	Okay. So these	1	Q	When was that?
2	A	Mostly the bottom man.	2	A	I don't remember.
3	Q	You look really young in these photos.	3	Q	Okay. You broke a wrist. Was it in a different
4	A	Yes.	4	country o	or in the United States?
5	Q	So these were a little while ago?	5	A	It was in Germany.
6	A	Oh, yeah.	6	Q	What other injuries did you sustain while performing
7	Q	Okay. Is there any part of the performance that you	7	the bike	
8	did that	your brother didn't do, or vice versa, or could you	8	A	I don't remember any serious injuries.
9	interchan	_	9	Q	So the one serious one you do remember is the broken
10	A	No. We couldn't interchange. We	10	wrist?	
11	Q	You had your own specific	11		Which wrist was it?
12	A	Yeah.	12	A	The left one.
13	Q	Okay.	13	Q	All right. So let's go back.
14	A	He was the top man. I was the bottom man.	14		What is your address, sir?
15	Q	Okay. So can you tell us what that means to somebody	15	A	163 Pine Ridge Drive, Stateline, Nevada. 89449.
16	that has	no idea about bike acts?	16	Q	Okay. And how long have you been in that house for
17		What does the bottom man mean?	17	A	Since
18	A	Well, he carries Elfie and my brother, the two on top	18	Q	Approximately?
19	or but	, I mean, we had such variation, it's	19	A	'80 something.
20	Õ	So you were always on the bike at the bottom?	20	Q	Did you move to that neighborhood at a different time
21	A	No. That's just Egon where you pointed. Usually, I	21	than you	r brother?
22	am always	on the bottom. Here I'm on the bottom. Elfie stay on	22	A	No, about the same time.
23	the botto	m, and I was the rider, riding the bike.	23	Q	And you heard Elfie this morning?
24	Q	Okay. So for the most part, you were on the bottom?	24		She said that they came to the United States for a
25	A	Yes.	25	short per	riod of time, 3 to 6 months, and then returned.
		Page 11		W. C.	Page 13
1	Q	But in that one particular photo Egon was?	1		Did you do the same?
2	A	To fool the audience.	2	А	Exactly the same.
3	Q	To fool the audience.	3	Q	Okay.
4		But for the most part, you were on the bottom?	4	A	Ed Sullivan show and different TV shows and
5	A	Yes.	5	Q	You said the Sullivan show?
6	Q	So you typically had your brother and Elfie on top of	6	A	Yeah.
7	you as yo	ou were riding?	7	Q	Ed Sullivan show?
8	А	Yeah.	8	A	'58, yeah.
9	Q	Okay. And how long are these performances for?	9	Q	So you performed on the Ed Sullivan show?
10	A	10 to 12 minutes.	10	A	Yeah.
11	Q	Okay.	11	Q	What other major type shows have you been a performer
12	A	Each performance.	12	on?	
13	Q	All right. During your career was about 50 years,	13	A	All around the world. But always Las Vegas show, I
14	then?		14	mean, yo	u know, style.
15	A	35 years.	15	Q	Did you have a standing Las Vegas type show for a
16	Q	35 years.	16	while?	Like at Caesar's Palace, were you there every night for
17		During the 35 years did you ever injure yourself	17	a certain	n period of time?
18	during a	ny of these performances?	18	A	Six months in the Dunes before they tore it down.
19	A	Yeah.	19	Q	So that was in the '80s?
20	Q	Did you ever fall off the bike?	20	A	'78. No. No. After I mean, I'm not sure.
1 20	A	Myself, very little, yeah.	21	Q	Okay. So you did a nightly act at the Dumes for a
21			22	while?	
1	Q	What injuries did you have?	1 44	MIND TO 1	
21	Q A	What injuries did you have? Just broke the wrist once.	23	A	Yes.
21 22		_			Yes. How about at Caesar's?

-	D	1	
1	Page 14 Q Okay. Was your act part of a bigger act, like a	1	Page 16 Q Business. Okay. And then at the end of that three
2	traveling-type circus or traveling show?	2	years, you had a choice to make, you and your brother.
3	A Three years Circus Vargas. That was the only one.	3	You could have gone into business for yourself, or you
4	Only circus within the states.	4	could have gone into show business?
5	Q What was the name of that circus?	5	A Yes.
6	A Circus Vargas.	6	Q And you and your brother chose show business?
7	Q Circus Vargas?	7	A Yes.
В	A V-A-R-G-A-S.	8	Q And you worked under somebody else as an apprentice
9	Q And where was that at? Here in the United States?	9	for a certain number of years, and then you went out on your
10	A United States and Canada.	10	own.
11	Q Okay. All right. So you moved into that Pine Ridge	11	Did I get that right?
12	Street in the '80s, approximately the same time your brother	12	A Not exactly. I mean, apprentice, and then four years
13	did?	13	in the shop. I mean, you know, salesman or whatever. And then
14	A Exactly.	14	we changed to professional show business.
15	Q Have you ever been married, sir?	15	Q Okay. So while you were doing your apprentice, you
16	A No.	16	were also doing some business work, and then you made a choice
17	Q Do you have any children?	17	just to do the shows?
18	A No.	18	A Yeah.
19	Q Did you quys tell me about the schooling in	19	Q Okay, Good enough.
20	Austria.	20	How about any military-type stuff? Again, I'm not
21	Did you and your brother go to I'm not sure how	21	sure how Austria works.
22	schooling works in Austria.	22	Is it mandatory that you enter a military?
23	A Different. You start, and then you go to high school.	23	A At this time, after the war, we didn't have a
24	That's about it.	24	military.
25	This time it was the most, you know, and then	25	Q Okay. So you have never been in the military?
23			
1	Page 15 professional, like, business school for three years, and then we	1	Page 17 A No.
1 2	changed to show business after four years working in the shop,	2	Q Have you ever filed a lawsuit other than the lawsuit
3	you know, I mean, like, first apprentice, and then	3	that we're involved in now?
4	Q Okay. Let me summarize to make sure I understand.	4	A Never.
_	You went to, and this is your brother. You did the	5	Q Have you ever been named as a defendant in a lawsuit
5		6	other than for this lawsuit?
7	same thing. You and your brother went to high school, completed	7	A No.
		8	Q Nobody has sued you?
8	high school?	9	A No.
9	A Yes.	10	Q Okay. What did you have a doctor that you would
10 11	Q Then you furthered your education by going to a business school?	11	
		: 11	acc on a regular basis a primary save dester?
1		İ	see on a regular basis, a primary care doctor?
12	A Yes.	12	I don't know if you are familiar with that term.
12 13	A Yes. Q You didn't finish the business school, you went	12 13	I don't know if you are familiar with that term. A Yes. Yeah.
12 13 14	A Yes. Q You didn't finish the business school, you went A No. I finished, yeah.	12 13 14	I don't know if you are familiar with that term. A Yes. Yeah. Q Did you have one of those before December of 2012?
12 13 14 15	A Yes. Q You didn't finish the business school, you went A No. I finished, yeah. Q You finished your business school.	12 13 14 15	I don't know if you are familiar with that term. A Yes. Yeah. Q Did you have one of those before December of 2012? A Yes.
12 13 14 15 16	A Yes. Q You didn't finish the business school, you went A No. I finished, yeah. Q You finished your business school. Is that equivalent to a college degree?	12 13 14 15 16	I don't know if you are familiar with that term. A Yes. Yeah. Q Did you have one of those before December of 2012? A Yes. Q What was your doctor's name?
12 13 14 15 16 17	A Yes. Q You didn't finish the business school, you went A No. I finished, yeah. Q You finished your business school. Is that equivalent to a college degree? A No, it's different. It's really different. You do	12 13 14 15 16 17	I don't know if you are familiar with that term. A Yes. Yeah. Q Did you have one of those before December of 2012? A Yes. Q What was your doctor's name? A Dr. Steven Brooks.
12 13 14 15 16 17 18	A Yes. Q You didn't finish the business school, you went A No. I finished, yeah. Q You finished your business school. Is that equivalent to a college degree? A No, it's different. It's really different. You do it, if you like, to open a shop or a business, you know,	12 13 14 15 16 17 18	I don't know if you are familiar with that term. A Yes. Yeah. Q Did you have one of those before December of 2012? A Yes. Q What was your doctor's name? A Dr. Steven Brooks. Q How do you spell the last name?
12 13 14 15 16 17 18 19	A Yes. Q You didn't finish the business school, you went A No. I finished, yeah. Q You finished your business school. Is that equivalent to a college degree? A No, it's different. It's really different. You do it, if you like, to open a shop or a business, you know, restaurant or anything.	12 13 14 15 16 17 18 19	I don't know if you are familiar with that term. A Yes. Yeah. Q Did you have one of those before December of 2012? A Yes. Q What was your doctor's name? A Dr. Steven Brooks. Q How do you spell the last name? A B-R-O-O-K-S.
12 13 14 15 16 17 18 19 20	A Yes. Q You didn't finish the business school, you went A No. I finished, yeah. Q You finished your business school. Is that equivalent to a college degree? A No, it's different. It's really different. You do it, if you like, to open a shop or a business, you know, restaurant or anything. Q So they teach you business principles?	12 13 14 15 16 17 18 19 20	I don't know if you are familiar with that term. A Yes. Yeah. Q Did you have one of those before December of 2012? A Yes. Q What was your doctor's name? A Dr. Steven Brooks. Q How do you spell the last name? A B-R-O-O-K-S. Q And where has Steven Brooks' office located?
12 13 14 15 16 17 18 19 20 21	A Yes. Q You didn't finish the business school, you went A No. I finished, yeah. Q You finished your business school. Is that equivalent to a college degree? A No, it's different. It's really different. You do it, if you like, to open a shop or a business, you know, restaurant or anything. Q So they teach you business principles? A Okay.	12 13 14 15 16 17 18 19 20 21	I don't know if you are familiar with that term. A Yes. Yeah. Did you have one of those before December of 2012? Yes. What was your doctor's name? Dr. Steven Brooks. How do you spell the last name? B-R-O-O-K-S. And where has Steven Brooks' office located? Stateline Medical Center.
12 13 14 15 16 17 18 19 20 21 22	A Yes. Q You didn't finish the business school, you went A No. I finished, yeah. Q You finished your business school. Is that equivalent to a college degree? A No, it's different. It's really different. You do it, if you like, to open a shop or a business, you know, restaurant or anything. Q So they teach you business principles? A Okay. Q Is that what they did for you?	12 13 14 15 16 17 18 19 20 21 22	I don't know if you are familiar with that term. A Yes. Yeah. Did you have one of those before December of 2012? Yes. What was your doctor's name? Dr. Steven Brooks. How do you spell the last name? B-R-O-O-K-S. And where has Steven Brooks' office located? Stateline Medical Center. And is, to your knowledge, is Dr. Brooks just a
12 13 14 15 16 17 18 19 20 21 22 23	A Yes. Q You didn't finish the business school, you went A No. I finished, yeah. Q You finished your business school. Is that equivalent to a college degree? A No, it's different. It's really different. You do it, if you like, to open a shop or a business, you know, restaurant or anything. Q So they teach you business principles? A Okay. Q Is that what they did for you? A Yes.	12 13 14 15 16 17 18 19 20 21 22 23	I don't know if you are familiar with that term. A Yes. Yeah. Q Did you have one of those before December of 2012? A Yes. Q What was your doctor's name? A Dr. Steven Brooks. Q How do you spell the last name? A B-R-O-O-K-S. Q And where has Steven Brooks' office located? A Stateline Medical Center. Q And is, to your knowledge, is Dr. Brooks just a general doctor, or was he some type of specialist?
12 13 14 15 16 17 18 19 20 21 22	A Yes. Q You didn't finish the business school, you went A No. I finished, yeah. Q You finished your business school. Is that equivalent to a college degree? A No, it's different. It's really different. You do it, if you like, to open a shop or a business, you know, restaurant or anything. Q So they teach you business principles? A Okay. Q Is that what they did for you?	12 13 14 15 16 17 18 19 20 21 22	I don't know if you are familiar with that term. A Yes. Yeah. Did you have one of those before December of 2012? Yes. What was your doctor's name? Dr. Steven Brooks. How do you spell the last name? B-R-O-O-K-S. And where has Steven Brooks' office located? Stateline Medical Center. And is, to your knowledge, is Dr. Brooks just a

1	doctor fo	Page 18 or before December 2012? 5 years, ten years?	1	A	Page Dr. Brooks.
2	A A	Ten years or more.	2	Q	And where did you get those medications filled at?
3	Q	Okay.	3	_	rmacy did you use?
4	A	But I'm not sure.	4	A	Safeway.
5	Q	Well, who was your doctor before Dr. Brooks?	5	Q	Safeway?
6	æ A	I can't, didn't have	6	A A	Safeway. And
7	Q	Didn't have a specific	7	Q	Safe
8	A A	No.	8	A	OptumRX.
9	Q	steady doctor?	9		Safeway.
0	A	No. No.	10	Q	Safeway?
1	 Q	Okay. So when you started seeing Dr. Brooks, you	11	A	But also the pharmacy.
2		e him for, if were you sick or physicals or anything,	12	Q	Okay. So Safeway. And then the other one?
3		ck, or anything like that?	13	A	OptumRX.
ے 4	A	Yeah.	14	Q	OptunX?
5	Q	And it was like that up until December 18th of 2012?	15	A	RX.
.6	× A	Yes.	16	0	RX.
7	0	Okay. From, say, December 2005 to December 2012, were	17	72	And how long had you used those pharmacies? For at
8	~	in a ambulance for any reason?	18	least fi	ve years?
9	you ever	Never.	19	A	Yeah.
0	Q	Before our day, do you ever recall being in a	20	Ω	Okay. All right. So let's talk about the injuries
1	ambulance		21	_	ained in this incident, okay?
2	anim (TT at 10.4	Before December 18th, do you ever recall being in an	22	A A	Yeah.
3	ambu l and	e at any time?	23		Do you remember the incident as we sit here today?
	А	No. I don't recall it.	24	Q A	Yes.
4			25	0	Can you picture in your head?
!5	Q	Okay. But definitely you were not in an ambulance for	2.5	<u>, </u>	can you picture in your nead:
_	.1	Page 19			Page
1	-	five years before our incident?	1	, A	Yes.
2	A	No. Never.	2	Q	Okay. Can you tell me how you landed on the roadway
3	Q 	Okay. What's the Lake Tahoe hospital? Is that Barton	3	A	Yes. On my back.
4	Memorial'		4	Q	Okay. Did your head hit the ground?
5	A	Yes, Correct.	5	A	I don't recall it
6	Q	Okay. Before December 18th, 2012, had you ever been a	6	Q	Okay.
7	-	at Barton Memorial Hospital?	7	A	because I was
8	A	Yeah.	8	Q 	When you say you landed on your back, did you tel
9	Q	Could you tell me what for?	1	me cne m	echanics of it.
0	A	I don't exactly recall. I mean, you know, I had	10	3	Did you go straight back and hit the ground?
1	-	tones. I had things like yeah. That's about it.	11	A	I don't remember this.
2	Ď	How about a heart condition?	12	Q L:2	Okay. Did you lose consciousness for any period of
3	A	No.	13	time?	W ₀ =
4	Õ	Okay. In December of 2012, were you taking any	14	A	Yes.
5		on on a daily basis?	15	Q	Do you know how long you lost consciousness?
6	A	Yes. Lisinopril, but it was only a while and then	16	A	No.
7	Q	To the best you can recall.	17	Q	What is the last thing you remember well, strike
8	A	One took for cholesterol and one for	18	that.	
9	Q	Blood pressure?	19	_	Do you remember actually falling to the ground, or,
	A	diabetes.	20	по?	
0		But, I mean, beginning, you know. I mean	21	A	Flying to the ground, yeah.
21	Q	So you had taken medication, one for cholesterol, one	22	Q	Okay. So you remember flying to the ground.
!1 !2	*-				
!1 !2	for diab	etes, but at different times?	23		What was the next thing you remember after that?
20 21 22 23 24	for diab	etes, but at different times? No. No. At the same time.	23	А	What was the next thing you remember after that? The deputy talking to me, asking me.

1	that you we	Page 22 ere flying to the ground, and then it wasn't there	1	Page: So you remember a deputy talking to you. That's the
2		election of anything happening until a policemen was	2	first thing you remember
3	talking to		3	A Yes.
4	-	you: leah.	4	Q after being in the air?
5		Okay. So in between that time frame, you don't know	5	A Yes.
6	what was go	-	6	Q What's the next thing you remember after the deputy
7	· ·	vo.	7	being with you?
8		Okay. So if I asked you if your shoulder hit the	8	A That the ambulance put me in the car.
		your hip hit the ground, you wouldn't know because	9	Q Okay, Did they put you on a back board? Do you know
9 10	_	on't have a recollection of how you came down, true?	10	what a back board is?
11		True.	11	A No. They put me on the stretcher.
1.2		Okay. All right. So following the accident, did you	12	Q Okay. Did they tie scmething down to your neck?
13		ruises or contusions or black-and-blue marks anywhere	13	A I don't recall.
14	on your box		14	Q Do you recall them putting you in the ambulance?
15	-	I don't know.	15	A Yes.
16		How what do you mean you don't know? Either	16	Q Did they start any type of injections, IV, in the
		No, because I didn't look at my body.	17	ambulance?
17 18		From the parts you saw on your body, could you see any	18	A I don't remember.
18 19	Q l black or b		19	Q Do you know if anybody went with you in the ambulance
			20	Your brother, Elfie?
20		No.	1	A No.
21		Okay.	21 22	
22		MR. PAIMER: Just to clarify, are you asking	1	Q So it was you and the ambulance person?
23	•	y afterwards? Or within the next few days?	23	A Yes.
24 25	BY MR. ZAN		24	Q And which hospital did they take you to? A Barton Memorial,
25	Q :	Yeah. Any time after.	25	A Dalton Pelibilat.
-		Page 23		Page 2
1		Within a week, two weeks after the accident?	1	Q Okay. And that would have been on Tuesday,
2		After, no.	2	December 18th, approximately 9 o'clock or so, in that time area
3		Okay. So at any time after the accident, you had	3	A Yes.
4	_	ou didn't see any black-and-blue marks on your body,	4	Q Okay. When did you leave the hospital?
5	true?	- 113 or 7 1 1 1 1 1 - 74	5	A After midnight.
6		I didn't look at it. I'm sorry.	6	Q Okay. Did anybody come to the hospital, your brother
7		Okay. Well, you took a shower	7	Elfie, anybody else?
8		Just had pains.	8	A My brother,
9		I understand. We're going to talk about the pain.	9	Q Okay. And did he stay with you until you were
10		Okay.	10	released?
11		But you took a shower every day, so I assume you	11	A Yes.
	looked at	yourself at some point.		
		_	12	Q Okay. And how did you leave the hospital?
12		Did you see any black-or-blue marks anywhere?	13	Q Okay. And how did you leave the hospital? A He brought me in his car home.
12 13	İ	_	1	Q Okay. And how did you leave the hospital?
12 13 14	A	Did you see any black-or-blue marks anywhere?	13	Q Okay. And how did you leave the hospital? A He brought me in his car home. Q Okay. Did you have an opportunity to talk to the doctors at the hospital about what the injuries were?
12 13 14 15	A :	Did you see any black-or-blue marks anywhere? No. No.	13 14	Q Okay. And how did you leave the hospital? A He brought me in his car home. Q Okay. Did you have an opportunity to talk to the doctors at the hospital about what the injuries were? A No. I didn't.
12 13 14 15 16	A Q A	Did you see any black-or-blue marks anywhere? No. No. Okay. You were taken from the scene by ambulance?	13 14 15	Q Okay. And how did you leave the hospital? A He brought me in his car home. Q Okay. Did you have an opportunity to talk to the doctors at the hospital about what the injuries were? A No. I didn't. Q Do you remember the doctor coming in and saying, this
12 13 14 15 16 17	A	Did you see any black-or-blue marks anywhere? No. No. Okay. You were taken from the scene by ambulance? Yes.	13 14 15 16	Q Okay. And how did you leave the hospital? A He brought me in his car home. Q Okay. Did you have an opportunity to talk to the doctors at the hospital about what the injuries were? A No. I didn't. Q Do you remember the doctor coming in and saying, this
12 13 14 15 16 17	A Q A Q A	Did you see any black-or-blue marks anywhere? No. No. Okay. You were taken from the scene by ambulance? Yes. Do you remember being loaded onto the ambulance?	13 14 15 16 17	Q Okay. And how did you leave the hospital? A He brought me in his car home. Q Okay. Did you have an opportunity to talk to the doctors at the hospital about what the injuries were? A No. I didn't. Q Do you remember the doctor coming in and saying, this
12 13 14 15 16 17 18 19	A Q A Q A	Did you see any black-or-blue marks anywhere? No. No. Okay. You were taken from the scene by ambulance? Yes. Do you remember being loaded onto the ambulance? Part, yeah. Okay. When you say "part", were you going in and out	13 14 15 16 17 18	Q Okay. And how did you leave the hospital? A He brought me in his car home. Q Okay. Did you have an opportunity to talk to the doctors at the hospital about what the injuries were? A No. I didn't. Q Do you remember the doctor coming in and saying, this is what we found, or these are the tests that we did, these were
12 13 14 15 16 17 18 19 20	A Q A Q Of conscio	Did you see any black-or-blue marks anywhere? No. No. Okay. You were taken from the scene by ambulance? Yes. Do you remember being loaded onto the ambulance? Part, yeah. Okay. When you say "part", were you going in and out	13 14 15 16 17 18 19	Q Okay. And how did you leave the hospital? A He brought me in his car home. Q Okay. Did you have an opportunity to talk to the doctors at the hospital about what the injuries were? A No. I didn't. Q Do you remember the doctor coming in and saying, this is what we found, or these are the tests that we did, these were the results?
12 13 14 15 16 17 18 19 20 21	A Q A Q of conscio	Did you see any black-or-blue marks anywhere? No. No. Okay. You were taken from the scene by ambulance? Yes. Do you remember being loaded onto the ambulance? Part, yeah. Okay. When you say "part", were you going in and out usness?	13 14 15 16 17 18 19 20	Q Okay. And how did you leave the hospital? A He brought me in his car home. Q Okay. Did you have an opportunity to talk to the doctors at the hospital about what the injuries were? A No. I didn't. Q Do you remember the doctor coming in and saying, this is what we found, or these are the tests that we did, these wer the results? A I don't recall.
12 13 14 15 16 17 18 19	A Q A Q of conscio	Did you see any black-or-blue marks anywhere? No. No. Okay. You were taken from the scene by ambulance? Yes. Do you remember being loaded onto the ambulance? Part, yeah. Okay. When you say "part", were you going in and out usness? Yeah. Because, I mean, yeah.	13 14 15 16 17 18 19 20 21	Q Okay. And how did you leave the hospital? A He brought me in his car home. Q Okay. Did you have an opportunity to talk to the doctors at the hospital about what the injuries were? A No. I didn't. Q Do you remember the doctor coming in and saying, this is what we found, or these are the tests that we did, these wer the results? A I don't recall. Q Did the doctor tell you to follow up with any other
12 13 14 15 16 17 18 19 20 21 22	A Q A Q of conscio	Did you see any black-or-blue marks anywhere? No. No. Okay. You were taken from the scene by ambulance? Yes. Do you remember being loaded onto the ambulance? Part, yeah. Okay. When you say "part", were you going in and out usness? Yeah. Yeah. Because, I mean, yeah. Yes?	13 14 15 16 17 18 19 20 21 22	Q Okay. And how did you leave the hospital? A He brought me in his car home. Q Okay. Did you have an opportunity to talk to the doctors at the hospital about what the injuries were? A No. I didn't. Q Do you remember the doctor coming in and saying, this is what we found, or these are the tests that we did, these wer the results? A I don't recall. Q Did the doctor tell you to follow up with any other doctors or Dr. Brooks at that time?

		Page 26	T	PAR - COLUMN TO THE TOTAL TO TH	7.0
1	A	Yeah.	1	Q	Okay. Anything else you can recall?
2	Q	Okay. Do you know if the emergency room prescribed	2	A	Not at the moment.
3	any media	cation for you?	3	Q	Okay. Before December 18th, of 2012, had you ever had
4.	A	Pain medication, but I don't recall what size or	4	any hip p	pain at all?
5	whatever	•	5	A	I had hip replacement 2005.
6	Q	Okay. Do you know if you got that filled?	5	Q	And who did that hip replacement in 2005?
7	A	Yes.	7	A	In Carson City, Doctor, I think, Martin Anderson.
8	Q	And was that at Safeway or the other pharmacy?	8	Q	Do you remember the was it Tahoe Fracture, or do
9	A	Safeway.	9	you remen	mber the name of the place where you had that done?
1 0	Q	Okay. Did you take those pain medication pills?	10	Α	I don't remember.
11	A	Yes.	12	Q	But you believe it was Dr. Martin Anderson?
12	Q	Okay. At some point who would have been the next	12	A	In Carson City.
13	person t	hat you saw after being released from the hospital?	13	Q	And where did you have the hip replacement surgery
14		MR. PINTAR: You mean medical provider?	14	done?	
15	BY MR. Z	ANIEL:	15	A	In Carson City.
16	Q	Medical, yes.	16	Q	At Carson Hospital, Carson-Tahoe Hospital?
17	A	Medical?	17	A	I don't remember that. Yeah. I mean
18	Q	Yes. Sorry.	18	Q	At the hospital in Carson?
19	A	I saw Dr. Brooks, he was on vacation, so I had to	19	A	Yeah.
20	see Dr.	Rork or one of the doctors who was working there.	20	Q	How long were you in the hospital for, for that
21	Q	Okay.	21	surgery?	
22	A	In the emergency. At the Stateline Medical.	22	A	I don't remember.
23	Q	So Stateline Medical?	23	Q	Okay. So that was when you had the surgery itself?
24	A	Yeah.	24	A	Yes.
25	Q	Because Dr. Brooks was on vacation?	25	Q	Did they replace one hip or both hips?
		Page 27	1		Page 29
1	А	Yeah.	1	A	No. No. Only one hip.
2	Q	Do you know how many days after the incident happened	2	Q	Which hip did they replace?
3	that you	went to Stateline Medical?	3	A	Right.
4	A	Two days after.	4	Q	Okay. So if they did a surgery in 2005, you must have
5	Q	Are you sure it was two days?	5		a doctor about hip pain before the surgery, correct?
6	A	Dr. Brooks was already gone, but, I mean	6	A	Yes.
7	Q	Okay. So you went to Stateline Medical, and your	7	Q	When is your first recollection that you have of
8	recollec	ction is it was two days after?	8	_	ny hip pain before this surgery, 2005?
9	Α	Yeah.	9	A	About 2 or 3 months before.
10	Q	How were you feeling at that time?	10	Q	Okay. So about 2 to 3 months before, before the
11	A	Very bad.	11		you started to develop pain in your right hip?
12	Q	Tell me what was bothering you when you went to	12	A	Yes. I had the pain when I jumped off or not when
13		ne Medical two days after.	13		off I was driving for Harrah's.
14	A	The left chest, I mean, you know, and the hernia.	14	Ď	I'm sorry.
1 5	Q	What else?	15	A	I stepped off the shuttle bus I drove, and the next
16	A	That's it.	16	-	ıldn't walk.
17	Q	Okay,	17	Q 3	Okay. So something happened where you stepped off a
18	A	And, I mean, the shoulder.	18	shuttle h	
	Ď	Right shoulder?	19	A	Yes.
19	A	Yeah, Right shoulder.	20	Q	Did you ever work at Harrah's?
20			21	A	Yes.
20 21	Q	Okay. How about hip? Did you have hip pain at that	1		
20 21 22	time?		22	Q	What did you do at Harrah's?
20 21 22 23	time? A	Yes.	22 23	Q A	What did you do at Harrah's? Transportation.
20 21 22	time?		22	Q	What did you do at Harrah's?

```
Page 30
1
         Q
              Was Egon a limo driver?
                                                                             incident did they realize that you fractured your right hip?
 2
              Also.
                                                                         2
                                                                                       I told them that it cannot be muscle strain or
         Α
 3
              Okay.
                                                                         3
                                                                             something, and I asked for --
                                                                         4
                                                                                       An x-ray?
 4
              But I was 14 years limo driver.
 5
              Okay. All right. So -- but were you working at the
                                                                         5
                                                                                  Α
                                                                                       -- they send me to another doctor.
 6
     time that this happened?
                                                                         6
                                                                                       Okay. You realized it wasn't a muscle strain because
                                                                         7
                                                                             you were in significant pain?
 7
         Α
 8
         Q
              Okay. So you were driving a shuttle bus for Harrah's?
                                                                         8
                                                                                  Α
                                                                                       Yeah,
              Yes. With VIPs.
                                                                         9
                                                                                       Okay.
 9
         Α
                                                                                  Q
              Okay. And then you stepped off the shuttle bus, and
                                                                        10
                                                                                  Α
                                                                                       And they couldn't fix it.
10
    you felt some pain in your right hip?
                                                                        11
                                                                                       All right. So that led you to Dr. Anderson who did
11
                                                                        12
                                                                             the replacement surgery?
12
         A
               Prior to the shuttle bus incident, had you had pain in
                                                                        13
                                                                                       Yes.
13
         0
                                                                                  Α
    your right hip before?
                                                                        14
                                                                                  n
                                                                                       And that was in 2005?
14
15
         Α
                                                                        15
                                                                                  Α
               Okay. What was the day of the shuttle bus incident?
                                                                        16
16
         Q
                                                                                       Did you have follow-up appointments with Dr. Anderson
                                                                        17
              I don't remember.
                                                                             after that?
17
         Α
18
              Do you remember the year?
                                                                        18
                                                                                  Α
                                                                                       Only physical therapy, and that's it.
               If the surgery was in 2005, was it in 2005?
19
                                                                        19
                                                                                       When would you say you completed your treatment for
              No. 2005? 2004.
                                                                        20
20
                                                                             your hip?
         Α
                                                                        21
                                                                                       Was it in 2005 or 2006?
21
         0
              Okav.
22
               Maybe.
                                                                        22
                                                                                       2006, I quess. Sorry.
               All right. So in 2004, you were walking down the
                                                                        23
                                                                                       All right. So you are estimating 2006?
23
     stairs of the shuttle bus, and something happened where you had
                                                                        24
                                                                                  Α
                                                                                       Yeah.
24
    pain in your right hip?
                                                                        25
                                                                                       All right. So from 2006 until 2012, did you ever
                                                             Page 31
                                                                                                                                     Page 33
                                                                             experience any occasional aches or pains with regard to your
               Yeah.
 1
               Did you file a workers' compensation claim?
                                                                             right hip?
 2
                                                                         3
                                                                                  Α
 3
          Α
               Yes.
          Q
               Okay. And that was through Harrah's?
                                                                         4
                                                                                       Did you ever tell Dr. Brooks or any other medical
                                                                             doctors that you had occasional aches or pains with your right
          Α
                                                                             hip in between 2006 and 2012?
               Okay. And then did you -- what doctors did you see
 7
     that led you up to Dr. Anderson, who did the surgery?
                                                                                      I don't recall,
               Do you remember all the doctors you saw?
                                                                                       Okay. How about in the year before this incident,
 8
               No. I only remember that they treated me wrong at the
                                                                         9
                                                                             going back one year, from 2011, December 2011 to December 2012?
 9
          Α
     hospital, stretching me.
                                                                        10
                                                                                       As we sit here today, do you have any recollection of
10
               Okay. So they tried to do some therapy?
                                                                        11
                                                                             having any pain in your right hip during that time period?
11
          0
                                                                        12
               They didn't know that it was fractured.
                                                                                      Yeah. I had sometime, I had once some problems, and
12
          Α
               Okay. So you had, as a result of the shuttle
                                                                             they took an x-ray, and they said it's perfect.
13
                                                                        13
     incident, you had a fractured right hip?
                                                                        14
                                                                                      Okay. Do you know, did Dr. Brooks order the x-ray?
14
                                                                        15
15
          Α
                                                                                      Yeah, Yeah,
               Okay. They tried doing some therapy, it sounds like.
                                                                        16
                                                                                       Do you know where the x-ray was taken at?
16
17
     They stretched it, but that didn't help?
                                                                        17
                                                                                       I don't know. I'm not sure, I'm -- no, I'm -- at
18
          Α
                                                                             Barton, but I'm not sure, Barton at the hospital or Barton
                                                                             emergency. I don't recall.
19
               Okay. Did you ever have any injections into your hip?
                                                                        19
20
          Α
               No.
                                                                        20
                                                                                       Okay. The year before the incident, did you ever have
21
               Put needles? No?
                                                                             to take any prescription pain medication for any pain with your
          0
22
          Ά
                                                                        22
                                                                             hip?
                                                                        23
23
          Q
               Do you remember where had you had the surgery done?
                                                                                  Α
                                                                        24
                                                                                       Did you ever have to take any over-the-counter
24
               At Memorial.
          Α
25
                                                                             medication, like Tylenol or Aleve for pain in your hip?
               Okay. So when did -- I guess, how soon after the
```

The state of the s	Page 34	T	Page 36
1	A No.	1	Q Did you break a rib?
2	Q Once you had your hip replacement surgery done, did	2	A Yes. Dr. Brooks took x-rays, and he told me two ribs,
3	you walk with any type of limp or different gait than you had	3	8 and 9, was fractured.
4	before the hip surgery?	4	Q Okay. What did Dr. Brooks say with regard to your
5	A Yes. I needed some special insoles because	5	right shoulder?
6	Dr. Anderson I mean, the foot, I mean, the leg was shorter.	6	A I don't recall anything.
7	Q Okay. So as a result of the hip surgery, your right	7	Q Okay. Did Dr. Brooks ever order any additional
8	leg was shorter than your left leg?	8	testing of your right shoulder?
9	A Yes.	9	A No. Not really.
10	Q Now at the time that Dr. Anderson was doing your right	10	Q And how about your right hip?
11	hip, did he also examine your left hip, just to compare the two?	11	Did Dr. Brooks order any testing of your right hip?
12	A Idon't know. Idon't know.	12	A X-rays.
13	Q How is your left hip doing around that time frame?	13	Q Okay. And what did he say with regard to the x-rays?
14	A It's staying fine all the, I mean	14	A He could not see anything.
15	Q So you never had any problems with your left hip?	15	Q Okay. How about hernia?
16	A No.	16	A Hernia.
17	Q All right. So you had pain in your right hip after	17	Q Did you have a hernia following the December 18th
18	our incident in December 2012, correct?	18	accident?
19	A Yes.	19	A Yes. 2011 I had a hernia operation in Austria.
20	Q Okay. You had right shoulder pain you said?	20	Q Okay. So in
21	A Yeah.	21	A And then I came back.
22	Q Before December 12th of 2012, had you ever had any	22	Q I'm sorry to cut you off. Go ahead.
23	type of right shoulder pain?	23	2011, you had a hernia operation in Austria, and you
24	A I'm maybe slightly when I am snow shoveling or	24	came back?
25	something.	25	A And when I had this fall, and I went to Dr. Brooks.
-	Page 35		Page 37
1	Q Okay. Are you right-handed or left-handed, sir?	1	He told me that it's, I have to get another operation.
2	A Right.	2	Q Okay. So how often, say, in the ten years before
3	Q Okay. Did you ever treat with any medical providers	3	December 2012, from 2002 to 2012, how often would you travel
1	~ · · · · · · · · · · · · · · · · · · ·	1	
4	that you can recall for any right shoulder pain or injury before	4	back to Austria?
4 5	that you can recall for any right shoulder pain or injury before December of 2012?	4 5	back to Austria? One time a year, or more than one time a year?
5			One time a year, or more than one time a year?
1	December of 2012? A No.	5	One time a year, or more than one time a year?
5 6 7	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any	5	One time a year, or more than one time a year? A One time a year, about four times in four years, you know.
5	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012?	5 6 7	One time a year, or more than one time a year? A One time a year, about four times in four years, you
5 6 7 8	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012? A I don't recall.	5 6 7 8	One time a year, or more than one time a year? A One time a year, about four times in four years, you know. Q So it averaged about once a year? A Yeah.
5 6 7 8 9	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012? A I don't recall. Q Okay. You don't have a recollection if you had an	5 6 7 8 9	One time a year, or more than one time a year? A One time a year, about four times in four years, you know. Q So it averaged about once a year? A Yeah. Q Okay. During those ten years, did you get any medical
5 6 7 8 9	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012? A I don't recall.	5 6 7 8 9	One time a year, or more than one time a year? A One time a year, about four times in four years, you know. Q So it averaged about once a year? A Yeah.
5 6 7 8 9 10 11	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012? A I don't recall. Q Okay. You don't have a recollection if you had an x-ray done of your shoulder at all before our incident?	5 6 7 8 9 10 11	One time a year, or more than one time a year? A One time a year, about four times in four years, you know. Q So it averaged about once a year? A Yeah. Q Okay. During those ten years, did you get any medical treatment in Austria other than the hernia operation?
5 6 7 8 9 10 11 12	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012? A I don't recall. Q Okay. You don't have a recollection if you had an x-ray done of your shoulder at all before our incident? A No, I used no. On the hip, yes.	5 6 7 8 9 10 11 12	One time a year, or more than one time a year? A One time a year, about four times in four years, you know. Q So it averaged about once a year? A Yeah. Q Okay. During those ten years, did you get any medical treatment in Austria other than the hernia operation? A Yes. The kidney stones. Q Okay.
5 6 7 8 9 10 11 12 13	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012? A I don't recall. Q Okay. You don't have a recollection if you had an x-ray done of your shoulder at all before our incident? A No, I used no. On the hip, yes. Q The shoulder, you don't know? A No.	5 6 7 8 9 10 11 12 13	One time a year, or more than one time a year? A One time a year, about four times in four years, you know. Q So it averaged about once a year? A Yeah. Q Okay. During those ten years, did you get any medical treatment in Austria other than the hernia operation? A Yes. The kidney stones. Q Okay.
5 6 7 8 9 10 11 12 13 14 15	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012? A I don't recall. Q Okay. You don't have a recollection if you had an x-ray done of your shoulder at all before our incident? A No, I used no. On the hip, yes. Q The shoulder, you don't know? A No.	5 6 7 8 9 10 11 12 13 14	One time a year, or more than one time a year? A One time a year, about four times in four years, you know. Q So it averaged about once a year? A Yeah. Q Okay. During those ten years, did you get any medical treatment in Austria other than the hernia operation? A Yes. The kidney stones. Q Okay. A I had a blockage for kidney stone, and then the same medical hospital.
5 6 7 8 9 10 11 12 13 14	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012? A I don't recall. Q Okay. You don't have a recollection if you had an x-ray done of your shoulder at all before our incident? A No, I used no. On the hip, yes. Q The shoulder, you don't know? A No. Q You could have, but you just don't know, or you	5 6 7 8 9 10 11 12 13 14 15	One time a year, or more than one time a year? A One time a year, about four times in four years, you know. Q So it averaged about once a year? A Yeah. Q Okay. During those ten years, did you get any medical treatment in Austria other than the hernia operation? A Yes. The kidney stones. Q Okay. A I had a blockage for kidney stone, and then the same medical hospital.
5 6 7 8 9 10 11 12 13 14 15 16	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012? A I don't recall. Q Okay. You don't have a recollection if you had an x-ray done of your shoulder at all before our incident? A No, I used no. On the hip, yes. Q The shoulder, you don't know? A No. Q You could have, but you just don't know, or you didn't? A I don't recall it.	5 6 7 8 9 10 11 12 13 14 15 16	One time a year, or more than one time a year? A One time a year, about four times in four years, you know. Q So it averaged about once a year? A Yeah. Q Okay. During those ten years, did you get any medical treatment in Austria other than the hernia operation? A Yes. The kidney stones. Q Okay. A I had a blockage for kidney stone, and then the same medical hospital. Q Okay. And when was that approximately? Before the
5 6 7 8 9 10 11 12 13 14 15 16 17	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012? A I don't recall. Q Okay. You don't have a recollection if you had an x-ray done of your shoulder at all before our incident? A No, I used no. On the hip, yes. Q The shoulder, you don't know? A No. Q You could have, but you just don't know, or you didn't? A I don't recall it.	5 6 7 8 9 10 11 12 13 14 15 16	One time a year, or more than one time a year? A One time a year, about four times in four years, you know. Q So it averaged about once a year? A Yeah. Q Okay. During those ten years, did you get any medical treatment in Austria other than the hernia operation? A Yes. The kidney stones. Q Okay. A I had a blockage for kidney stone, and then the same medical hospital. Q Okay. And when was that approximately? Before the hernia? A That was just no, last year.
5 6 7 8 9 10 11 12 13 14 15 16 17 18	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012? A I don't recall. Q Okay. You don't have a recollection if you had an x-ray done of your shoulder at all before our incident? A No, I used no. On the hip, yes. Q The shoulder, you don't know? A No. Q You could have, but you just don't know, or you didn't? A I don't recall it. Q So that's when you say you don't recall, that	5 6 7 8 9 10 11 12 13 14 15 16 17 18	One time a year, or more than one time a year? A One time a year, about four times in four years, you know. Q So it averaged about once a year? A Yeah. Q Okay. During those ten years, did you get any medical treatment in Austria other than the hernia operation? A Yes. The kidney stones. Q Okay. A I had a blockage for kidney stone, and then the same medical hospital. Q Okay. And when was that approximately? Before the hernia? A That was just no, last year.
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012? A I don't recall. Q Okay. You don't have a recollection if you had an x-ray done of your shoulder at all before our incident? A No, I used no. On the hip, yes. Q The shoulder, you don't know? A No. Q You could have, but you just don't know, or you didn't? A I don't recall it. Q So that's when you say you don't recall, that means A I don't	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	One time a year, or more than one time a year? A One time a year, about four times in four years, you know. Q So it averaged about once a year? A Yeah. Q Okay. During those ten years, did you get any medical treatment in Austria other than the hernia operation? A Yes. The kidney stones. Q Okay. A I had a blockage for kidney stone, and then the same medical hospital. Q Okay. And when was that approximately? Before the hernia? A That was just no, last year. Q Okay. Kidney stones don't have anything to do with
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012? A I don't recall. Q Okay. You don't have a recollection if you had an x-ray done of your shoulder at all before our incident? A No, I used no. On the hip, yes. Q The shoulder, you don't know? A No. Q You could have, but you just don't know, or you didn't? A I don't recall it. Q So that's when you say you don't recall, that means	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	One time a year, or more than one time a year? A One time a year, about four times in four years, you know. Q So it averaged about once a year? A Yeah. Q Okay. During those ten years, did you get any medical treatment in Austria other than the hernia operation? A Yes. The kidney stones. Q Okay. A I had a blockage for kidney stone, and then the same medical hospital. Q Okay. And when was that approximately? Before the hernia? A That was just no, last year. Q Okay. Ridney stones don't have anything to do with this incident? A No. No.
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012? A I don't recall. Q Okay. You don't have a recollection if you had an x-ray done of your shoulder at all before our incident? A No, I used no. On the hip, yes. Q The shoulder, you don't know? A No. Q You could have, but you just don't know, or you didn't? A I don't recall it. Q So that's when you say you don't recall, that means A I don't Q you don't think so? A No.	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	One time a year, or more than one time a year? A One time a year, about four times in four years, you know. Q So it averaged about once a year? A Yeah. Q Okay. During those ten years, did you get any medical treatment in Austria other than the hernia operation? A Yes. The kidney stones. Q Okay. A I had a blockage for kidney stone, and then the same medical hospital. Q Okay. And when was that approximately? Before the hernia? A That was just no, last year. Q Okay. Kidney stones don't have anything to do with this incident? A No. No. Q Okay. So in 2011, did you injure yourself in Austria
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012? A I don't recall. Q Okay. You don't have a recollection if you had an x-ray done of your shoulder at all before our incident? A No, I used no. On the hip, yes. Q The shoulder, you don't know? A No. Q You could have, but you just don't know, or you didn't? A I don't recall it. Q So that's when you say you don't recall, that means A I don't Q you don't think so? A No. Q Okay. And then you said you injured the left side of	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	One time a year, or more than one time a year? A One time a year, about four times in four years, you know. Q So it averaged about once a year? A Yeah. Q Okay. During those ten years, did you get any medical treatment in Austria other than the hernia operation? A Yes. The kidney stones. Q Okay. A I had a blockage for kidney stone, and then the same medical hospital. Q Okay. And when was that approximately? Before the hernia? A That was just no, last year. Q Okay. Kidney stones don't have anything to do with this incident? A No. No. Q Okay. So in 2011, did you injure yourself in Austria somehow that you developed a hernia?
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	December of 2012? A No. Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012? A I don't recall. Q Okay. You don't have a recollection if you had an x-ray done of your shoulder at all before our incident? A No, I used no. On the hip, yes. Q The shoulder, you don't know? A No. Q You could have, but you just don't know, or you didn't? A I don't recall it. Q So that's when you say you don't recall, that means A I don't Q you don't think so? A No.	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	One time a year, or more than one time a year? A One time a year, about four times in four years, you know. Q So it averaged about once a year? A Yeah. Q Okay. During those ten years, did you get any medical treatment in Austria other than the hernia operation? A Yes. The kidney stones. Q Okay. A I had a blockage for kidney stone, and then the same medical hospital. Q Okay. And when was that approximately? Before the hernia? A That was just no, last year. Q Okay. Kidney stones don't have anything to do with this incident? A No. No. Q Okay. So in 2011, did you injure yourself in Austria

		Page 38	1	Page 40
1	A	Yeah. Because I lifted a suitcase and injured my	1	Q Okay. Was it do you know the name of the hernia?
2	hemia.		2	A No.
3	Q	Okay. So while traveling in 2011, to Austria	3	Q Okay. Did you have to spend more than one night in
4	A	On the flight.	4	the hospital in Austria when you had that surgery done?
5	Q	on the flight, you lifted something, and you felt a	5	A Yes.
6	groin inj	jury?	6	Q How long were you in the hospital for?
7	A	Yeah.	7	A I don't recall exactly. Four to seven days.
8	Q	You lifted something overhead?	8	Q Okay. Sometimes they put a, some mesh in or some
9	A	Yeah.	9	device in?
10	Q	Okay. And at that point, you felt a groin injury?	10	A That's what they always if you have yeah.
11	A	Yeah.	11	Q Did they put that in
12	Q	When you got to Austria, you went to the doctor, and	12	A Yes.
13	they said	d, yes, you have a hernia?	13	Q in Austria?
14	A	Yeah.	14	Okay. Did you treat, once you got released from the
15	Q	And they recommended that you have surgery of that	15	hospital, did you go to any other doctors while you were in
16	-	that time?	16	Austria before you came back to the United States?
17	Α	Yes.	17	A No.
18	Q	Okay. Where did you have this surgery in Austria?	18	Q Okay. Did you have a doctor in Austria in the past
19	A A	In the hospital.	19	ten years?
20	Q	That's a good that's a good thing.	20	Or did you just go to the emergency room that one
21	A	Okay.	21	time, before December I know the kidney stone issue.
22	Q	What was the name of the hospital?	22	But before December 2012, did you just go to one
23	A A	Landeskrankenhaus.	23	medical provider in Austria, that being the hospital that you
23 24		Could you spell that for us?	24	told us about?
25	Q A	No. Can I write it down for you?	25	A No. Not not that I recall.
25	A		دع	A NO. NOC NOC CHACT TECHT.
1	Q	Page 39	1	Page 41 Q You can't recall any other providers?
2	V.	If I were to get medical records from Austria	2	A No. Dentists and wasn't specialist.
3	А	Can I?	3	Q So maybe a dentist, but nothing to do with your
4	Q	Yes. Go ahead.	4	shoulder, your hip or your
5	V.	If I were to get medical records from Austria, would	5	A No.
6	thour ho	in English or Austrian?	6	
7	-	Austrian. I'm sorry.	7	Q hernia? A Yeah. No.
	A	•	8	
8	Q	That's all right. So I'm just going to give that to	1	Q Other than what you have told us?
9	you.	of the contract of the best that the	9	A Yeah.
10		Okay. So in 2011, you went to the hospital that you	10	Q Okay. The hernia that you had worked on after the
11		tten down for us here?	11	December 2012 incident, did you end up having surgery on that?
12	A	Yeah.	12	After December 2012, have you had hernia surgery?
	Q	And did they indicate that you should have surgery	13	A Yes.
13			14	Q Okay. And who did that surgery?
14	quickly?		1	
14 15	A	Yes.	15	A Dr. Eyre, or some kind of
14 15 16	A Q	Yes. It wasn't something you could wait for to get back to	15 16	Q Where did the surgery take place?
14 15 16 17	A Q	Yes.	15 16 17	Q Where did the surgery take place? A Barton Memorial.
14 15 16 17 18	A Q	Yes. It wasn't semething you could wait for to get back to ed States? Correct.	15 16 17 18	Q Where did the surgery take place? A Barton Memorial. Q Okay. And with regard to the post 2012 surgery, do
14	A Q the Unit	Yes. It wasn't semething you could wait for to get back to ed States?	15 16 17 18 19	Q Where did the surgery take place? A Barton Memorial. Q Okay. And with regard to the post 2012 surgery, do you know if it was left-sided or right-sided?
14 15 16 17 18	A Q the Unit A Q	Yes. It wasn't semething you could wait for to get back to ed States? Correct.	15 16 17 18	Q Where did the surgery take place? A Barton Memorial. Q Okay. And with regard to the post 2012 surgery, do
14 15 16 17 18 19	A Q the Unit A Q	Yes. It wasn't something you could wait for to get back to ed States? Correct. Okay. Now if you know the answers to these questions,	15 16 17 18 19	Q Where did the surgery take place? A Barton Memorial. Q Okay. And with regard to the post 2012 surgery, do you know if it was left-sided or right-sided?
14 15 16 17 18 19 20	A Q the Unit A Q great.	Yes. It wasn't something you could wait for to get back to ed States? Correct. Okay. Now if you know the answers to these questions, If you don't, let me know.	15 16 17 18 19 20	Q Where did the surgery take place? A Barton Memorial. Q Okay. And with regard to the post 2012 surgery, do you know if it was left-sided or right-sided? A Left-sided.
14 15 16 17 18 19 20 21	A Q the Unit A Q great.	Yes. It wasn't something you could wait for to get back to ed States? Correct. Okay. Now if you know the answers to these questions, If you don't, let me know. My understanding is that there is different types of	15 16 17 18 19 20 21	Q Where did the surgery take place? A Barton Memorial. Q Okay. And with regard to the post 2012 surgery, do you know if it was left-sided or right-sided? A Left-sided. Q Was it in a similar position as the last surgery that
14 15 16 17 18 19 20 21 22	A Q the Unit A Q great.	Yes. It wasn't scmething you could wait for to get back to ed States? Correct. Okay. Now if you know the answers to these questions, If you don't, let me know. My understanding is that there is different types of and there is right-sided and left-sided.	15 16 17 18 19 20 21 22	Q Where did the surgery take place? A Barton Memorial. Q Okay. And with regard to the post 2012 surgery, do you know if it was left-sided or right-sided? A Left-sided. Q Was it in a similar position as the last surgery that you had, or a new position altogether?

<u> </u>		Page 42	Ţ		Page 44
1		11, or related to the incident of December 2012, as	1	A	I don't know.
2	opposed t	o just you having had a surgery in 2011?	2	Q	Okay. Once you had the surgery in 2013, until we sit
3	A	Definitely because of the fall.	3	here today	y, have you had any type of hernia problems at all?
4	Q	A doctor told you that?	4	A	No.
5	A	Yes.	5	Q	Did they repair your hernia?
6	Q	Okay.	6	A	Yes.
7	A	Dr. Brooks.	7	Q	Did the doctors say it was a successful repair of your
8	Q	Which I'm sorry. The name of the doctor?	8	hernia?	
9	A	Dr. Brooks. B-R-O-O-K-S.	9	A	He said it was difficult, but he thought it was
10	Q	Brooks. Brooks.	10	successfu	l, I'm sure, but he didn't tell me.
11	A	Yeah.	11	Q	Okay. Well, you know your body.
12	Q	Once you had the surgery in Austria in 2011, did you	12		Have you had any problems since the surgery?
13	have any	problems with your groin, or any hernia issues, up	13	A	No.
14	_	time of December 18th, 2012?	14	Q	Okay. All right. Let's talk about the ribs.
15	A	They did a fantastic jcb, and I had no problems, no	15		You said you fractured ribs number 8 and 9?
16	pain.		16	A	Yeah.
17	0	Okay. In after our fall in December of 2012, after	17	Q	Did you have any treatment for your ribs? Did they do
18	~	dent that we're here about, when is the first time you	18	anything :	
19		my type of groin issues or hernia issues?	19	A	No.
20	10011001	How soon after the fall?	20	Q	Okay.
21	A	Right away.	21	A A	They can't do anything.
22	Q	Within a couple of days?	22	Q	Did you have to wear a brace, a wrap, around your
23	A	Yeah. After one day or so.	23	chest at	
24		And you said they did surgery on that?	24	A	No.
25	Q A	Yes.	25	Q	Okay. Were the rib fractures painful?
	А			×	
1	Q	Page 43 And when did they do the surgery, if you remember?	1	A	Page 45 Very.
2	Ā	I don't remember.	2	Q	How long would you say that it took for the pain to go
3	Q	Was it in 2013? Or 2014? Or	3	-	regard to your rib fractures?
4	æ A	No. No. 2013.	4	A	One month, until it, you know.
5	Q	Okay. Because the incident was 2012, December?	5	Q	It slowly started to go
6	A	Yeah. Yeah.	6	Ā	Yeah, Yeah,
7	Q	So 2013? Early 2013?	7	Q	I understand.
8	× A	Yeah.	8	У.	So one day you just didn't wake up, and the pain
9	0	Okay. And you said you went to the hospital, Barton	9	was gone?	
10	Memorial:		10	Was gone:	No.
11 11	A	Yes.	11	Q	But after a month, it started to get better?
12	Q	How long were you in the hospital for that time?	12	A A	Yeah.
13	A A	I don't recall it, because they were advanced.	13	Q	And then after a couple months, was it better?
14	0	When you said you were in the hospital, seven days for	14	A A	Better.
	-	-	15		And then after three months
15		operation?		Q A	
16	A	In Austria, yes. That's a different story.	16	A	Now if I sleep on this side, then I feel it.
17	Q	Are you sure you only had a hernia issue in Austria?	17	Q	Okay. So today you still have pain in your ribs?
18	A	Yes.	18	A ·	Slight pain, yeah.
19	Q	Okay. Okay.	19	Ω	But it's only if you sleep on them?
20		So in America, when you had your surgery, that was a	20	A	Yeah,
21	quick su		21	Q	Other than that, there's no pain?
22	A	Not a quick	22	A	No.
23	Q	How long were you in the hospital for?	23	Ω	Okay. And when you get pain in the ribs if you sleep
24	A	I'm not sure. I'm not sure.	24		w long does that last for before it goes away?
25	Q	Couple days?	25	A	I turn around, it's going away, and I fall asleep.

	Page 46	T	A A A A A A A A A A A A A A A A A A A	Page 48
1	Q Okay. So not too long?	1	A	No. He is a neurologist.
2	A No.	2	Q	Okay. He is a neurologist.
3	Q Okay. Let's talk about the shoulder. So you said you	3	A	In
4	injured your right shoulder.	4	Q	Carson?
5	Did you have any treatment on your right shoulder	5	A	No, no. Up at the lake. He was.
6	since the accident until today, any physical therapy?	6	Q	He is retired?
7	A I myself work on it. I did have physical therapy now	7	A	Yeah.
8	for the full leg.	8	Q	Do you know if anybody has taken over his practice, or
9	But for the shoulder, I have a stationary bike, and I	9	you don't	: know?
10	try to get the strength back, what I lost, because I couldn't do	10	A	I don't know.
11	anything after that.	11	Q	What was Dr. Sullivan's first name, if you know?
12	Q Okay. You had you have had therapy on your hip; is	12	Ā	I don't know,
13	that what you are talking about?	13	Q	When did you go see Dr. Sullivan before 2012?
14	A No. On the no.	14	Ã	I probably went to Austria.
15	Q You said on your leg?	15	Q	Before 2011?
16	A Leg, yeah.	16	. A	No. Now, 2013.
17	Q Okay. What therapy did you have on your leg?	17	Q	Okay. Hang on a second.
18	A Electric, and they can't find what it is.	18	¥	Because I was under the understanding that you saw a
19	Q Okay. So do you have pain in your leg?	19	doctor be	efore 2012 for your right leg issues.
20	A Well, it's I have no strength in my leg.	20	400001 20	Did you see a doctor before 2012 for your right leg?
21	Q Okay. Do you have any lower back pain?	21	A	Yes.
22	A No.	22	Ő V	Was that Dr. Sullivan?
23	Q Okay. So you just have a weakness feeling in your	23	A	Yeah.
24	right leg?	24	Q	When did you see him before 2012? In 2011, 2010?
25	A Yeah.	25	A	No. No. 2011. Before I went to Austria 2012.
ديا				
1	Page 47 0 When did that start?	1	0	Page 49 Okay. So before the hernia, you went to see him?
1	~	2	Q A	
2	A Long time ago. Q Before December of 2012, or after December 2012?	3	0	Oh, yeah.
3	•	4	~	Okay. How long had that problem or that issue been
4 5	A After December 2012, it was acute. I mean, you know. Q No. We have to go over that because what I'm trying	5		for? Five years, or longer? No. No. '11, '12, '13, '14.
	· · · · · · · · · · · · · · · · · · ·	6	A	No. No. 11, 12, 13, 14. Since 2011?
6	to find out is if the accident, if before the accident you had	1	Q	
7	absolutely no problems with your right leg, and them after the	7	A	Yeah. About.
8	accident, you have had problems with your right leg.	8	Q	Okay. Do you remember, was there a certain event that
9	Or did it just get worse after December?	9		like the shuttle bus, back in the day, back was
10	A It got worse.	10		ertain event that happened that you first started to
11	Q Okay. So before December 2012, you had some issues	11		ght leg problems?
12	with your right leg?	12	A	No.
13	A Yes.	13	Q	Okay. So one day you just kind of noticed that there
14	Q The incident happens, and now it's gotten worse?	14	was some	right leg issues.
15	A Yeah.	15	_	Was it a shooting pain down your right leg?
16	Q Okay. Before December 2012, did you have any	16	A	No.
17	treatment on your right leg?	17	Q	Was it a numbness or tingling feeling?
18	A No. I went to the doctor, and he couldn't find	18	A	No.
19	anything.	19	Q	Just the weakness feeling?
20	Q Okay. Which doctor did you go to?	20	A	Weakness.
ĺ	A Dr. Sullivan.	21	Q	It felt like your leg was going to give out?
21		22		Does that make that's a slang sentence, so I don't
22	Q Okay.	1	_	·
22 23	A He retired in the winter.	23	know.	·
22		1	know. A	It felt like you were just unstable in your right leg? Yeah.

Т	- He william	Page 50	γ=	Daws 50
1	Q	Okay. What did Dr. Sullivan say? Did he say what was	1	Page 52 Q Okay. Are you still having problems with your
2	causing t	that, or what the problem could be?	2	shoulder now?
3	A	He could not find out what problem.	3	A No.
4		He just told me I have to check it again, and when I	4	Q Okay. When, after December 2012, when would you say
5	came back	k, he was retired.	5	that your shoulder problems went away?
6	Q	Okay. Did you see anybody else other than	6	How long did you have shoulder problems for?
7	Dr. Sulli	ivan about the right leg problem before December of	7	A Maybe until a few months ago.
8	2012?		8	Q Okay. So up until a few months ago, then, from that
9	A	No. Dr. Brooks. I mean, Dr. Sullivan.	9	point until today, we're good with your right shoulder?
10	Q	Right.	10	A Yeah.
11		Now I know Dr. Brooks isn't a specialist.	11	Q And with regard to the hip, have you had any treatment
12	A	Yeah.	12	on your hip at all?
13	Q	But does he know about that, as well?	13	A No.
14		Did Dr. Brooks know about the right leg issues?	14	Q Does the physical therapist work on your hip?
15	A	Yeah, Should.	15	A No.
16	Q	Did they ever prescribe any medication for you with	16	Q Are you still having problems with your right hip?
17	regard to	o your right leg?	17	A Yes. Like now, I have pain.
18	A	No.	18	Q Okay. So if you sit for periods of time?
19	Q	Okay. How often would you have problems with your	19	A Yeah.
20	right le	g before December 2012?	20	Q Okay. How bad is the pain?
21		Was it an everyday thing, or just once in a while?	21	So pain is subjective. So pain means something
22	Α	Only once in a while.	22	different for you than it does for me.
23	Q	Okay. All right. So then the incident of December	23	For you, if ten is the worst pain possible, where are
24	2012 hap	pens, and then did you notice an increase in problems in	24	you from zero to ten?
25	your righ	ht leg after that incident?	25	A Six.
		Page 51		Page 53
1	A	Yes.	1	Q And is it it's not a constant pain, then. Just
2	Q	And are you still having problems with your right leg?	2	when you sit for long periods of time, right?
3	A	Yes.	3	A Right.
4	Q	Is it back to the way it was before the incident, or	4	Q What else causes you pain in your hip?
5	is it st	ill worse?	5	A Nothing else, just when I sit.
6	А	It's still worse.	6	Q Okay.
7	Q	What doctors	7	A It's like a screw is loose.
8	A	Because the physical therapy, I hope they can get it	8	Q Okay. So there is pain in your hip when you sit.
9	back to		9	But your testimony is, before this fall, after your
10	Q	So you have gone through some physical therapy for	10	hip replacement, you didn't have this pain if you sat?
11	your leg	?	11	A No.
12	A	Yeah.	12	Q Okay. And Dr. Brooks knows about the hip pain?
13	Q	Okay. And that's helping?	13	A Yes.
14	А	I hope.	14	Q No other doctor knows about the hip pain?
15	Q	Are you still in physical therapy now?	15	A No.
16	A	Oh, yeah.	16	Q Okay. Have you seen any other medical providers other
17	Q	How many days a week do you go now?	17	than the ones we have talked about so far?
18	A	Twice,	18	I know you went by ambulance to the hospital on
19	Q	Do you go to Stateline Rehab? Is that where you are	19	December 18th.
20	going?		20	You followed up with Dr. Brooks.
21	A	Correct.	21	You have gone to physical therapy.
22	Q	Okay. So they are working on your leg.	22	You have had your hernia surgery done at the doctor's
23		Does that physical therapist also do anything with	23	office.
24	your sho	ulder at all?	24	Any other doctors or medical providers that you have
25	A	No.	25	been to?
1			1	

Г	AND THE RESERVE OF THE PERSON NAMED IN COLUMN	Page 54		Page 56
1	A	Only Dr. Nixon with kidney stones.	1	
2	Q	Okay. But, again, kidney stones are not part of this?	2	A It's only two streets up.
3	A	No.	3	Q Quarter of a mile? Less?
4	Q	Okay. When did the accident prevent you from doing	4	A Yeah, about.
5	things tl	hat you were doing before the accident?	5	Q Okay. Did you walk to your brother's house often
6		You don't own do you own dogs, or you don't own	6	before the incident happened?
7	dogs?		7	A If I didn't ride the bike, I walked.
8	A	No.	8	Q Okay. After the incident happened, were you able to
9	Q	That's Elfie?	9	ride your bike outside at all?
10	A	Yes.	10	A I tried it once or twice, and then I realized I
11	Q	What did you do for exercise before this incident?	11	couldn't.
12	A	Before the incident?	12	Q Okay.
13	Q	Yes.	13	A Because Dr. Brooks said it's better not to.
14	~	Did you walk around the neighborhood?	14	Q Okay. So you tried to ride your bike.
15	A	I rode the bike. I worked on my stationary bike for	15	
16		ders and upper muscles and legs, knees.	16	
17	Q	This is before the incident?	17	Q The summer or spring or summer?
18	A	Yeah.	18	
19	Q	Okay. So you rode you did, you rode your bike.	19	it's not, doesn't recommend it, and I didn't ride it anymore,
20	Ž.	You mean a bike outside?	20	you know.
21	А	And outside. Yeah.	21	-
22		And you rode a stationary bike?	22	The only way I rode it, from my house two streets up to my brother's.
ł	Q		1	
23	A	At home every day.	23	Now I have always take with the car because
24	Q	Okay. And when you how is that going to help your	24	Q Okay. I just want to go back and clarify that.
25	shoulder	S?	25	So before the accident, you were able to ride your
١.		Page 55		Page 57
1		Do you have, like, pedals on top?	1	bike to your brother's any time you wanted?
2	A	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top.	2	bike to your brother's any time you wanted? A Yeah.
2 3	Õ	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move?	2 3	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a
2 3 4	Q A	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the	2 3 4	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times?
2 3 4 5	Q A incident	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone.	2 3 4 5	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah.
2 3 4 5 6	Q A incident Q	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though,	2 3 4 5 6	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any
2 3 4 5 6 7	Q A incident Q you had	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able	2 3 4 5 6 7	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer?
2 3 4 5 6 7 8	Q A incident Q you had to work	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back	2 3 4 5 6 7 8	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah.
2 3 4 5 6 7 8 9	Q A incident Q you had to work and fort	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back th on a machine?	2 3 4 5 6 7 8 9	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah. Q Did you stop riding your bike outdoors at that time?
2 3 4 5 6 7 8 9	Q A incident Q you had to work and fort A	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back h on a machine? Right.	2 3 4 5 6 7 8 9	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah. Q Did you stop riding your bike outdoors at that time? A Yes.
2 3 4 5 6 7 8 9 10 11	Q A incident Q you had to work and fort A Q	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back h on a machine? Right. Okay.	2 3 4 5 6 7 8 9 10 11	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah. Q Did you stop riding your bike outdoors at that time? A Yes. Q And from that point, until we sit here today, you
2 3 4 5 6 7 8 9 10 11 12	Q A incident Q you had to work and fort A Q A	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back th on a machine? Right. Okay. And outside.	2 3 4 5 6 7 8 9 10 11 12	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah. Q Did you stop riding your bike outdoors at that time? A Yes. Q And from that point, until we sit here today, you haven't rode your bike outside?
2 3 4 5 6 7 8 9 10 11 12 13	Q A incident Q you had to work and fort A Q	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back th on a machine? Right. Okay. And outside. And then you rode a bike outside.	2 3 4 5 6 7 8 9 10 11 12 13	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah. Q Did you stop riding your bike outdoors at that time? A Yes. Q And from that point, until we sit here today, you haven't rode your bike outside? A I tried once. One months ago, when about.
2 3 4 5 6 7 8 9 10 11 12 13 14	Q A incident Q you had to work and fort A Q A	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back th on a machine? Right. Okay. And outside. And then you rode a bike outside. Any other forms of exercise you did before	2 3 4 5 6 7 8 9 10 11 12 13	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah. Q Did you stop riding your bike outdoors at that time? A Yes. Q And from that point, until we sit here today, you haven't rode your bike outside? A I tried once. One wonths ago, when about. Q Okay. How did you do a month ago?
2 3 4 5 6 7 8 9 10 11 12 13	Q A incident Q you had to work and fort A Q A	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back h on a machine? Right. Okay. And outside. And then you rode a bike outside. Any other forms of exercise you did before	2 3 4 5 6 7 8 9 10 11 12 13 14 15	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah. Q Did you stop riding your bike outdoors at that time? A Yes. Q And from that point, until we sit here today, you haven't rode your bike outside? A I tried once. One wonths ago, when about. Q Okay. How did you do a month ago? Because we're pretty far we're in 2016 now.
2 3 4 5 6 7 8 9 10 11 12 13 14	Q A incident Q you had to work and fort A Q A	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back h on a machine? Right. Okay. And outside. And then you rode a bike outside. Any other forms of exercise you did before 18? I was walking a lot.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah. Q Did you stop riding your bike outdoors at that time? A Yes. Q And from that point, until we sit here today, you haven't rode your bike outside? A I tried once. One months ago, when about. Q Okay. How did you do a month ago? Because we're pretty far we're in 2016 now. A Yeah.
2 3 4 5 6 7 8 9 10 11 12 13 14 15	Q A incident Q you had to work and fort A Q A Q December	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back h on a machine? Right. Okay. And outside. And then you rode a bike outside. Any other forms of exercise you did before	2 3 4 5 6 7 8 9 10 11 12 13 14 15	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah. Q Did you stop riding your bike outdoors at that time? A Yes. Q And from that point, until we sit here today, you haven't rode your bike outside? A I tried once. One wonths ago, when about. Q Okay. How did you do a month ago? Because we're pretty far we're in 2016 now.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Q A incident Q you had to work and fort A Q A Q December	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back h on a machine? Right. Okay. And outside. And outside. And then you rode a bike outside. Any other forms of exercise you did before 18? I was walking a lot. Okay. How often would you walk before the incident	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah. Q Did you stop riding your bike outdoors at that time? A Yes. Q And from that point, until we sit here today, you haven't rode your bike outside? A I tried once. One months ago, when about. Q Okay. How did you do a month ago? Because we're pretty far we're in 2016 now. A Yeah.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q A incident Q you had to work and fort A Q A Q December A Q	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back h on a machine? Right. Okay. And outside. And outside. And then you rode a bike outside. Any other forms of exercise you did before 18? I was walking a lot. Okay. How often would you walk before the incident	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah. Q Did you stop riding your bike outdoors at that time? A Yes. Q And from that point, until we sit here today, you haven't rode your bike outside? A I tried once. One months ago, when about. Q Okay. How did you do a month ago? Because we're pretty far we're in 2016 now. A Yeah. Q How did you do a month ago?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q A incident Q you had to work and fort A Q A Q December A Q happened	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back th on a machine? Right. Okay. And outside. And then you rode a bike outside. Any other forms of exercise you did before 18? I was walking a lot. Okay. How often would you walk before the incident	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah. Q Did you stop riding your bike outdoors at that time? A Yes. Q And from that point, until we sit here today, you haven't rode your bike outside? A I tried once. One months ago, when about. Q Okay. How did you do a month ago? Because we're pretty far we're in 2016 now. A Yeah. Q How did you do a month ago? A It would be good, if I could ride it, but I have to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q A incident Q you had to work and fort A Q A Q December A Q happened	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back the on a machine? Right. Okay. And outside. And then you rode a bike outside. Any other forms of exercise you did before 18? I was walking a lot. Okay. How often would you walk before the incident I? I guess it depends on the season. In ice cold	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah. Q Did you stop riding your bike outdoors at that time? A Yes. Q And from that point, until we sit here today, you haven't rode your bike outside? A I tried once. One months ago, when about. Q Okay. How did you do a month ago? Because we're pretty far we're in 2016 now. A Yeah. Q How did you do a month ago? A It would be good, if I could ride it, but I have to talk to my doctor first.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q A incident Q you had to work and fort A Q A Q December A Q happened	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back th on a machine? Right. Okay. And outside. And then you rode a bike outside. Any other forms of exercise you did before 18? I was walking a lot. Okay. How often would you walk before the incident I? I guess it depends on the season. In ice cold you may not walk as long?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah. Q Did you stop riding your bike outdoors at that time? A Yes. Q And from that point, until we sit here today, you haven't rode your bike outside? A I tried once. One months ago, when about. Q Okay. How did you do a month ago? Because we're pretty far we're in 2016 now. A Yeah. Q How did you do a month ago? A It would be good, if I could ride it, but I have to talk to my doctor first. Q Did you notice any increase in pain when you rode it a
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q A incident Q you had to work and fort A Q December A Q happened weather, A Q	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back h on a machine? Right. Okay. And outside. And then you rode a bike outside. Any other forms of exercise you did before 18? I was walking a lot. Okay. How often would you walk before the incident ? I guess it depends on the season. In ice cold you may not walk as long? Right.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah. Q Did you stop riding your bike outdoors at that time? A Yes. Q And from that point, until we sit here today, you haven't rode your bike outside? A I tried once. One months ago, when about. Q Okay. How did you do a month ago? Because we're pretty far we're in 2016 now. A Yeah. Q How did you do a month ago? A It would be good, if I could ride it, but I have to talk to my doctor first. Q Did you notice any increase in pain when you rode it a month ago?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q A incident Q you had to work and fort A Q December A Q happened weather, A Q	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back h on a machine? Right. Okay. And outside. And then you rode a bike outside. Any other forms of exercise you did before 18? I was walking a lot. Okay. How often would you walk before the incident ? I guess it depends on the season. In ice cold you may not walk as long? Right. But if it was warm, how often or how long would you	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah. Q Did you stop riding your bike outdoors at that time? A Yes. Q And from that point, until we sit here today, you haven't rode your bike outside? A I tried once. One wonths ago, when about. Q Okay. How did you do a month ago? Because we're pretty far we're in 2016 now. A Yeah. Q How did you do a month ago? A It would be good, if I could ride it, but I have to talk to my doctor first. Q Did you notice any increase in pain when you rode it a month ago? A No.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q A incident Q you had to work and fort A Q A Q December A Q happened weather, A Q walk bef	Do you have, like, pedals on top? I have pedals on the bottom and handles on the top. And those handles move? And that is very important, because after the , my muscles were gone. Okay. So you, before the incident happened, though, some type of stationary bike at home that you were able on your legs by pedaling, and your arms by going back h on a machine? Right. Okay. And outside. And then you rode a bike outside. Any other forms of exercise you did before 18? I was walking a lot. Okay. How often would you walk before the incident to go you may not walk as long? Right. But if it was warm, how often or how long would you fore December 18? Every day?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	bike to your brother's any time you wanted? A Yeah. Q After the accident, you tried riding your bicycle a couple of times? A Yeah. Q And then Dr. Brooks told you not to ride your bike any longer? A Yeah. Q Did you stop riding your bike outdoors at that time? A Yes. Q And from that point, until we sit here today, you haven't rode your bike outside? A I tried once. One months ago, when about. Q Okay. How did you do a month ago? Because we're pretty far we're in 2016 now. A Yeah. Q How did you do a month ago? A It would be good, if I could ride it, but I have to talk to my doctor first. Q Did you notice any increase in pain when you rode it a month ago? A No. Q So it was good, then? A Yeah.

T		Page 58	T		Page 60
1	rode your	bike, after this incident, outdoors?	1	Q	Okay. And then you had the hernia pain.
2	A	Yeah.	2		You had the surgery, and no more hernia pain?
3	Q	All right. How about walking?	3	A	Right.
4		After this incident, were you able to resume walking	4	Q	Okay. No elbow, wrist, or hand pain after December
5	around th	ne neighborhood?	5	2012?	
6	A	I can't walk more than one block.	6	A	Yeah.
7	Q	Okay. So one block is less than a quarter of a mile.	7	Q	Any memory loss issues? So you're 82? Yes?
8		So you don't walk to your brother's house any longer?	8	A	Yes.
9	A	No, because it would take me I mean, then I get	9	Q	Okay. So 82, you probably normally get some type of
10	pain, and	l I get so tired. I mean	10	memory iss	sues.
11	Q	Okay. Have you tried walking to your brother's house	11		My understanding is it's not as bad your brother.
12	at all si	nce the accident?	12	Your broth	ner is having some issues.
13	Α	I tried to walk when he walks with the dogs, you know.	13		But for you, have you noticed any significant memory
14	Q	And are you able to do that?	14	problems?	·
15		Or you just tell him I can't do it because I'm in too	15	A	No. Not at all.
16	much pair	n?	16	Q	Any headaches since the accident?
17	A	I can't. Yeah, it's just	17	A	Never.
18	Q	Too painful?	18	Q	Any vision problems? Outside of normal aging?
19	A	too painful.	19	A	Cataract operation.
20	Q	Okay. How about the bike inside that you talked about	20	Q	Okay. So that wasn't affected by the accident?
21	with the	pedals and the movement?	21	Α	No. No.
22		Have you done any of that since the accident?	22	Q	Any balance problems?
23	A	Yes.	23	A	Sometime
24	Q	Okay. Are you doing that consistently now?	24	Q	Okay.
25	A	I would be.	25	A	I get up too quick.
		Page 59			Page 61
1	Q	How long do you spend on the bike every day now?	1	Q	Have you talked to any doctor in the past few months
2	A	Ten minutes.	2		what additional treatment you are going to need at
3	Q	Okay. When did you start doing that? Was that just	3	this point	
4	recently	or in 2015, '13, '14?	4	_	You are still in physical therapy?
5	A	No. About 3 or 4 months ago.	5	A	Yes.
6	Q	So the shoulder has cleared up. The ribs are	6	Q	Has your physical therapist or doctor told you how
7	occasion	ally painful. Your right hip bothers you now.	7		er you are going to need therapy for?
8		Anything else bother you other than those areas?	8		No.
9	А	No.	9	Q	Okay. You find the therapy is helping?
10	Q	You didn't, after this incident, you didn't notice any	10	А	Yes. I believe in it.
11	neck pai	n or back pain, correct?	11	Q	Okay.
12	Ā	Correct.	12	A	Dr. Louie, he transferred me to the physical therapy.
13	Q	Any knee pain?	13	He is from	
14	Ä	Correct.	14	Q	So Dr. Louie?
15	Q	Any ankle or foot pain?	15	Ã	Yeah.
16	A	Yeah.	16	Q	Is he a neurologist?
17	Q	You noticed an increase in pain down your right leg,	17	A	Yes.
18		really haven't been treated for that at all?	18		Okay. And he is a neurologist here in Reno, and he
19	A	Well, they, now with the physical therapy.	19	-	you go to physical therapy?
20	Q	That's helping now?	20	A	Yes.
21	A A	They try.	21		Okay. Have you how many times have you seen
22	Ω	I'm sorry?	22	Dr. Louie	-
23	A	They try now.	23		Since I am back from Austria, only once, before he
24	Ω	Okay. They are trying to work on that?	24		ospital, so
25	A	Yeah.	25		All right. Let's talk about the Austria trips, I
				×	

- Contraction of the Contraction		Page 62	1	Page 64
1	guess, af	ter the accident.	1	
2		So I know you went in 2011, and you had time at that	2	· _ · _ · _ · _ · _ · _ · _ · _ · _
3	hospital.		3	
4		The incident that we're here about today is	4	
5	December		5	~
6		When is the first time you went to Austria after	6	
7	December		7	
8	A	After? In April 11, I mean, April 9, just before my	8	3
9	birthday.	- 14 5 444-	9	~
10	Q	April of 2013?	10	
11	A	Yes.	11	~ -
12	Q	Okay. So	12	
13	A	Just a minute. No. No. '15, because now we have	13	- •
14	¹16.		14	-
15	Q	Right. But I'm going back to 2012 now. So	15	
16	A	Oh, no.	16	
17	Q	December 2012, this incident happens.	17	
18	A	Yeah.	18	
19	Q	Okay. When is the first time you went to Austria of	19	* * * * * * * * * * * * * * * * * * * *
20	after tha		20	J .
21	A	I'm not sure. But I, you know	21 22	
22	Õ	Was it in 2013? Or you don't remember?		• •
23	A	No. No. It was in I went 2013.	23	·
24	Q	Okay.	25	
25	A	And 2014. And now I don't know.	23	
1	0	Page 63	١,	Page 65 L Q Your hip?
1	Q 	Okay. Because I thought I saw somewhere in the	1 2	
2		in 2013 that you were planning a trip back there?	3	
3	A	Yes. Okay. Okay. So in May of 2013 it says that you're	4	
4	Q learing t	for Austria for three months.	5	-
5	Teaving I	Yeah.	6	
6	Q	Is that how long you typically would go to Austria	7	·
8	-	ee months?	8	~ _
9		I try to get there for six months, but, I mean, three	9	
10		s the shortest.	10	
11	Q	Okay. Do you have family still in Austria?	11	
12	A	Only Egon's son, his family.	12	•
13	Q	Rene?	13	_
14	A A	Otherwise, no.	14	
15	Q	Okay.	15	
16	A	A girlfriend.	16	
17	Q	And do you have do you have dual citizenship?	17	
18	×	Do you have dual citizenship? Are you a citizen of	18	
19	Austria?	-	19	
20	A	Austria only.	20	
21	Q	Not in United States?	21	
22	A.	No.	22	•
23	Q	Okay.	23	
24	A	We can't get sorry.	24	
25	Q	So you go to Austria for 3 to 6 months at a time?	25	
1	**	• •	1	

·		Dr. go. C.F.	т		
1	Q	Page 66 Okay. So you do you own a home in Austria, too?	1	А	Page 68 Federspiel.
2	A	Yes.	2	Q	Federspiel.
3	Q	That's where you stay when you go back there?	3		What did she do for you while you were in Austria?
4	A	Yes,	4	А	She tried to find out, if she can, you know, with this
5	Q	In your own home?	5	electric	shock and so on, on my foot.
6	A	Yes.	6	Q	Did you get treatment while you are Austria?
7	Q	Do you exercise when you are over there?	7	A	She sent me to the hospital.
8	A A	Yeah.	8	Q	Which hospital did you go to?
9	Q	By walking, biking? What do you do there?	9	×	As an Austrian resident, do you have to pay for do
10	A	Biking.	10	was base	to pay for healthcare in Austria?
11		Okay. All right. So that's 2013.	11	you nave	No.
	Q	-	1		
12		And then in 2014, did you go to Austria?	12	Õ	So when you went
13	A	Yes.	13	A	Because I'm
14	Q	And what months did you go to Austria in 2014, if you	14	Q	Austrian?
15	know?		15	A	retired and Austrian and insured.
16		Is it typically the same spring/summer?	16	Q	So they have, like, a Medicare system set up in
17	A	No. That was in April 2014 that was 2015. Just a	17	Austria?	
18	minute no	OW.	18	A	Yeah.
19	Q	Let me try to help you out.	19	Q	Okay. So they, they went, this doctor said you should
20	A	Yes,	20	go to the	e hospital.
21	Q	I have, in 2014 in March, you went to see	21		And what treatment did you have at the hospital?
22	Dr. Sull:	ivan. It says you are doing better.	22	Electric	_
23		Then my next record after that is in September of	23	А	They again tried electric shock, and everything was
24	2014. So	o I don't have anything from March to September.	24	positive	about for one or two weeks and so then
25		In September 2014, it says he lives here and in	25	Q	Okay.
				~	
1	Austria	Page 67 and he just got back from Austria.	1	A	And then yeah.
2	A	Okay.	2	Ď	Has any doctor said that they think this footdrop
3	0	While there, he saw numerous specialists, and has a	2	-	related to this accident or this incident in December
4	-	nosis of footdrop.	4	of 2012?	related to this accident of this incident in December
5	new aragi	——————————————————————————————————————	5	OL 2012:	No
		Which I don't know what footdrop is.			No.
6		But doctor Barton Memorial's hospital talks about	6	Õ	You had the condition before the incident, right?
7	=	ng specialists in Austria about some of your medical	7	A	Slightly.
8	prob1ems		8	Q	Okay.
9		Did you see any specialists while you were in Austria?	9	A	But then it increased, you know, so I don't know if
10	А	Yes.	10	it's y	
11	Q	Not for the kidney stones?	11	Q	Okay. And then in 2015, have you been to Austria?
12	A	For the foot for the footdrop, I saw a specialist.	12	А	Yeah. I left on April 9th for three months.
13	Q	Who did you see there?	13	Q	I don't so you think it was April of 2015 for three
14		Let me give you a piece of paper.	14	months?	In April of 2015.
15		Do you know his name?	15	A	Yeah, because
16	A	Oh, yeah.	16	Q	Okay.
TO	Q	Okay.	17	Ā	they allowed me from here.
17	₩.	-	18	Q	Did you get any treatment in 2015 when you were in
		It's a lady doctor.	1 10	-	
17 18	А	It's a lady doctor. I'm sorry. A Navy?	1	Austria?	
17 18 19	A Q	I'm sorry. A Navy?	19	Austria? A	Only kidney stone
17 18 19 20	A Q A	I'm sorry. A Navy? A lady.	19 20	A	Only kidney stone. Okay And now we're in 2016 We're in April
17 18 19 20 21	A Q A Q	I'm sorry. A Navy? A lady. A lady doctor.	19 20 21		Okay. And now we're in 2016. We're in April.
17 18 19 20 21 22	A Q A Q A	I'm sorry. A Navy? A lady. A lady doctor. Person I know.	19 20 21 22	A	Okay. And now we're in 2016. We're in April. You haven't been to Austria yet? No?
17 18 19 20 21 22 23	A Q A Q A	I'm sorry. A Navy? A lady. A lady doctor. Person I know. And what city is that doctor in?	19 20 21 22 23	A Q	Okay. And now we're in 2016. We're in April. You haven't been to Austria yet? No? Are you planning on going soon?
17 18 19 20 21 22	A Q A Q A	I'm sorry. A Navy? A lady. A lady doctor. Person I know.	19 20 21 22	A	Okay. And now we're in 2016. We're in April. You haven't been to Austria yet? No?

```
Page 70
                                                                                                                                      Page 72
                                                                                        Now in 2012, did you live in the same house that you
               Well, at this point, this is -- has to go away.
                                                                          1
1
         Α
2
         Q
               The case?
                                                                          2
                                                                              live in now?
                                                                          3
                                                                                  Α
               Yeah.
3
         Α
4
                                                                          4
                                                                                   0
                                                                                        And if you can, please, again tell us the address of
               Okay.
5
               In July of 2015, it looks like you had a chin -- cut
                                                                              that house?
б
    on your chin.
                                                                          6
                                                                                  Α
                                                                                        163 Pine Ridge Drive.
7
               Do you remember what happened with that? Did you fall
                                                                          7
                                                                                   0
                                                                                        Okay. And about how far is that from where Egon
    or do anything in July of 2015?
                                                                              Klementi lives?
8
                                                                          9
                                                                                        Two streets up. I mean, two streets down.
9
               No?
                                                                                  Α
10
                                                                         10
                                                                                   0
                                                                                        Okay. Is it a quarter of a mile, about?
               Nο.
         Α
               See, my records end in July of -- well, for this
                                                                                        I think so.
11
                                                                         11
12
     incident, my records end in June of 2015 when you were
                                                                         12
                                                                                   Q
                                                                                        Okay. Okay.
                                                                         13
                                                                                        I mean --
     discharged from Barton Rehab.
                                                                                  Α
13
                                                                         14
                                                                                        And how long have you lived there?
14
               But you said that you have been back since then. You
                                                                                   0
                                                                         15
                                                                                        Same like Elfie and Egon. Since -- I mean, you know.
15
     are in physical therapy now?
                                                                                  Α
                                                                                        Okay. It's been --
               Yes.
                                                                         16
                                                                                   0
16
          Α
                                                                         17
17
               At Barton Rehab or Stateline Rehab?
                                                                                  Α
                                                                                        1985.
          ٥
                                                                                        1985?
18
                                                                         18
                                                                                   Q
               Which one? Barton or Stateline?
                                                                         19
                                                                                  Α
                                                                                        No. No. Not '85. '89, we retired.
19
          Q
                                                                                        Okay. Now do you know if Jeff Spencer plows your
               That's --
                                                                         20
                                                                                   Q
20
          Α
                                                                         21
                                                                              area? Snowplows your area where you live?
21
          0
               Same?
22
               -- Barton.
                                                                         22
                                                                                   Α
                                                                                        I don't know.
          Α
               Stateline --
                                                                         23
                                                                                        Okay. Have you had any problems with the snowplow in
23
               Stateline.
                                                                         24
                                                                              your area?
24
          Α
                                                                         25
25
               -- Rehab?
                                                                                   Α
                                                                                        I usually am either in Austria in wintertime, but I
                                                              Page 71
                                                                                                                                      Page 73
               All right. So I'm going to finish with you for now,
                                                                              didn't have problems.
 1
     and we'll see where Mr. Routsis goes.
                                                                                        Okay. Do you know who your snowplowers are?
 2
                                                                          3
                                                                                   Α
 3
               And I may have some other questions, because I do want
                                                                                        No.
     to know what happened that night.
                                                                                        MR. MOORE: Objection. Asked and answered.
 4
                                                                          5
                                                                                        You can keep saying the same answer, if you want.
               But instead of us both asking you the same questions,
 5
     I'm going to let him ask you the questions, and I'll see where
                                                                                        I'm just pointing out that counsel is asking the same
                                                                          6
 6
                                                                              question again.
 7
     we get.
                                                                          8
                                                                                        THE WITNESS: No.
               Thank you very much.
 Я
          Α
                                                                          9
                                                                              BY MR. ROUTSIS:
               Do you want to take ten minutes?
 9
          Q
                                                                                        Now back in 2012, how often would you go stay at your
10
          Α
               Yes, please.
                                                                         10
                            (A recess was taken)
                                                                         11
                                                                              brother's house or have dinner or see him?
11
                               EXAMINATION
                                                                         12
                                                                                        I don't count.
12
                                                                         13
                                                                                        Would you see him almost every day?
13
     BY MR. ROUTSIS:
                                                                                   Q
               Okay. We're all ready.
                                                                         14
                                                                                   Α
14
          0
                                                                         15
               Mr. Klementi, how are you?
                                                                                        Would he ever come to your house? Would you most
15
                                                                              usually go to his house?
                                                                         16
16
          Α
               Okay.
17
          0
               Okay.
                                                                         17
                                                                                        MR. MOORE: Objection, Compound.
                                                                         18
                                                                                        Can you just ask one question at a time?
18
          Α
               How are you?
                                                                         19
                                                                                        MR. ROUTSIS: He can answer it, if --
19
               I'm well. Thank you.
                                                                         20
                                                                                        MR. MOORE: Do you know which question you are to
20
               I forgot your age. How old are you?
21
                                                                         21
                                                                              answer?
          Α
                                                                              BY MR. ROUTSIS:
22
               Okay. So back in 2012, you would have been four years
                                                                         22
                                                                         23
                                                                                        Would he more come to your home, or would you visit
23
     younger, right?
                                                                                   0
                                                                         24
24
               Yes. 78.
                                                                              him more?
          Α
                                                                         25
                                                                                        MR. MOORE: Same objection.
25
          Q
               78.
```

```
Page 74
                                                                                                                                      Page 76
               THE WITNESS: No. He comes to my house. Or I go to
                                                                                       And Egon has quite a temper, doesn't he?
 1
                                                                         1
 2
     their house.
                                                                         2
                                                                                       MR. MOORE: Objection. Vaque and ambiguous.
     BY MR. ROUTSIS:
                                                                         3
                                                                                       If you can answer, answer.
 3
              You are a bachelor, though, right?
                                                                         4
                                                                             BY MR. ROUTSIS:
 4
          Q
 5
                                                                         5
                                                                                       You can answer.
               So his home is more of a home environment, correct?
                                                                         6
                                                                                  Α
                                                                                       No. What do you mean, temper? I mean, we are twins.
 7
                                                                         7
                                                                                       Well, twins can be very different, can't they? I
               I don't understand the question.
                                                                                   0
         A
               The question, Helmut, is, would you visit him more at
                                                                             mean, I don't know. But can't they?
                                                                         8
     his house, do you think, than he would come to your house?
                                                                                       Okay. Good.
 9
                                                                         9
                                                                                  Α
                                                                         10
                                                                                       Yes?
10
               More to Elfie.
                                                                                  0
11
               Yes. Would you eat dinner there often?
                                                                        11
                                                                                  Α
                                                                                       Yes, sure.
12
               Not any more.
                                                                        12
                                                                                   Q
                                                                                       Egon has more of a temper than you do; is that a fair
          Α
                                                                        13
13
               Why?
                                                                             coment?
          Q
14
               Because I like to cook myself.
                                                                        14
                                                                                  Α
          Α
15
               Okay. Back in --
                                                                        15
                                                                                   Q
                                                                                       And if you cross Egon, Egon likes revenge. He gets
                                                                             angry, and he wants payback?
               And get some, lose some weight.
                                                                         16
16
17
               Back in 2012, would you eat dinner over there a lot?
                                                                        17
                                                                                       MR. MOORE: Objection. Argumentative.
18
                                                                         18
                                                                                       MR. ROUTSIS: What's argumentative about that,
               A few times a week?
                                                                        19
                                                                             Counsel?
19
          Q
                                                                                       I mean, if you don't want him to answer because it's
               I don't count on this. I mean --
                                                                        20
20
          Α
               I'm just asking.
                                                                         21
                                                                             too relevant, I understand.
21
          0
22
          Α
               More than two times a week.
                                                                         22
                                                                                       But it's a fair, simple question, and it's not
               Now prior to December 18th, 2012, I take it you have
23
                                                                         23
                                                                             argumentative.
     never had any problems with Jeff or Marilyn Spencer yourself?
                                                                         24
                                                                             BY MR. ROUTSIS:
24
                                                                         25
25
               No. I live --
                                                                                       You can answer the question.
                                                             Page 75
                                                                                                                                      Page 77
 1
          0
               Okav.
                                                                         1
                                                                                       MR. MOORE: If you are able to.
                                                                                       MS. CAPERS: Calls for speculation, also.
 2
          Α
               -- too far away.
                                                                         2
               Now did your brother Egon ever tell you that, prior to
                                                                         3
                                                                                       MR. MOORE: Do you understand?
 3
     December 18th, the night that you were knocked to the ground,
                                                                         4
                                                                                       THE WITNESS: State again, I don't understand
 4
 5
     okay?
                                                                         5
                                                                             because --
                                                                         6
 6
               Prior to that day, did you have discussions with Egon
                                                                             BY MR. ROUTSIS:
 7
     regarding whether Jeff ever plowed snow into him, while he was
                                                                         7
 8
     standing in his driveway?
                                                                         8
                                                                                       You indicated that Egon has a greater temper than you
              I heard about the run-in. I mean --
                                                                         9
 9
                                                                             have?
10
               Okay. Did Egon tell you prior to December 18th, 2012,
                                                                        10
                                                                                       Yeah. Different.
     that he was angry with Mr. Spencer for parking an 18-wheel truck
                                                                         11
                                                                                       Yes. And you have known Egon, obviously, your whole
11
     in front of, on Charles Avenue?
                                                                         12
                                                                             life, right?
12
               Did he tell you he was upset about that?
                                                                         13
13
                                                                                  Ά
                                                                                       Yeah.
               MR. MOORE: Objection. Compound.
                                                                         14
                                                                                       And if someone crosses Egon, or does something that
14
               Which question do you want him to answer?
                                                                         15
                                                                             Egon perceives is wrong, based on your observations of Egon for
15
                                                                             over 70 years, is it a fair comment that Egon's character trait
16
     BY MR. ROUTSIS:
                                                                         16
17
               Did he tell you that he was upset, your brother Egon,
                                                                         17
                                                                             is to exact revenge or get back at that person?
          0
18
     about Jeff Spencer parking an 18-wheeler on Charles Avenue?
                                                                         18
               Yes. He was not happy.
                                                                         19
                                                                                       MR. MOORE: Objection. It is vague and ambiguous, and
19
20
          Q
               Right.
                                                                         20
                                                                             it does call for speculation.
               Did he also tell you that he was upset with Jeff
                                                                         21
                                                                                       MR. ROUTSIS: He has already answered the question.
21
     Spencer and Marilyn Spencer about having some motorcycles parked
                                                                                       MR. MOORE: And it is argumentative.
22
                                                                         22
                                                                         23
23
     on the street years before?
                                                                                       I'm just saying my record.
                                                                                       Counsel, if you mind not interrupting, I would just
24
               Yes. I mean, this was ridiculous.
                                                                         24
                                                                         25
25
               Right.
                                                                             like to make a record.
          Q
```

```
Page 78
                                                                                                                                      Page 80
     BY MR. ROUTSIS:
                                                                         1
                                                                             BY MR. ROUTSIS:
1
                                                                         2
                                                                                       Fair.
2
               Very good. Okay.
               Now, Mr. Klementi, Egon Klementi expressed to you that
                                                                         3
                                                                                        Did Egon express how he felt about that?
3
                                                                         4
     he was unhappy with Mr. Spencer having friends that parked
                                                                                   Α
     motorcycles up and down his street, correct?
                                                                                   0
                                                                                       He did not?
5
               MR. MOORE: Objection. You are mischaracterizing the
                                                                         6
                                                                                   Α
                                                                                       No. I mean ---
6
                                                                         7
     testimony by using your words, rather than the witness's words.
                                                                                   Q
                                                                                       Did he express he was unhappy about that, it was
7
               MR. ROUTSIS: It's called an examination.
                                                                              disrespectful?
8
                                                                         9
                                                                                        Okay. Yes, he was unhappy.
9
     BY MR. ROUTSIS:
               You can answer if you understand the question.
                                                                        10
                                                                                   Q
                                                                                        Yes.
10
               No, I don't understand the question, Mr. Routsis.
                                                                        11
                                                                                   Α
                                                                                        For sure.
11
               I'm just going over what has already been established.
                                                                        12
                                                                                        Okay. And did that make him angry, that the Spencers
12
                                                                        13
                                                                             would do something like that?
13
               Egon expressed ---
               MR. MOORE: Objection. You are characterizing at this
                                                                        14
                                                                                        MR. MOORE: Objection. Speculation.
14
15
     point. You can ask a question.
                                                                        15
                                                                              BY MR. ROUTSIS:
                                                                        16
                                                                                        Did he express to you whether -- that he was angry
     BY MR. ROUTSIS:
16
               Egon expressed to you, Mr. Klementi, did he not, that
                                                                              about the Spencers having -- allowing motorcycles to park up and
17
                                                                        17
18
     back in 2010, he was upset with Jeffrey Spencer or the Spencers
                                                                        18
                                                                              down Charles Avenue?
     because they had their friends park all these motorcycles up and
                                                                        19
                                                                                        MR. MOORE: Objection. Speculation.
                                                                         20
                                                                                        And you keep characterizing it as friends.
     down Charles Avenue, correct?
20
               MR. MCORE: Objection. You are characterizing -- you
                                                                                        You can answer if you can.
21
                                                                         21
     are not using his words. You use the word "friends". He did
                                                                         22
                                                                              BY MR. ROUTSIS:
                                                                         23
     not use the word friends.
                                                                                        Did he express to you anger about the motorcycles?
23
                                                                         24
     BY MR. ROUTSIS:
                                                                                        No. I mean -- no.
24
                                                                         25
               You can answer the question, Mr. Klementi.
                                                                                        I thought you just said he did express anger.
25
                                                             Page 79
                                                                                                                                      Page 81
                                                                                        He was not happy. I said ---
               I don't know how to answer it.
                                                                         1
                                                                                   Α
 1
          Α
 2
               Well ---
                                                                          2
                                                                                   Q
                                                                                        Okay.
                                                                          3
                                                                                        But, I mean, I don't know how --
 3
          Α
               We are so close together.
                                                                                   Α
 4
                                                                          4
                                                                                   Q
                                                                                        How did he express that to you? What did he say?
               Right.
                                                                          5
                                                                                        No idea. I forgot.
               Egon, did he express to you that he was upset that the
                                                                                   Α
 5
                                                                          6
     Spencers had friends that parked motorcycles on Charles Avenue?
                                                                                   Q
                                                                                        Okay.
 6
 7
               Very simple question.
                                                                          7
                                                                                   Α
                                                                                        I forgot.
               MR. MOORE: Same objection. You are mischaracterizing
                                                                          8
                                                                                        Did there come another episode regarding an 18-wheel
 8
                                                                          9
                                                                              truck that Egon expressed some concerns to you about?
 9
     testimony.
10
               You can answer if you are able to.
                                                                         10
                                                                                        That's probably poorly worded. Let me rephrase it.
               THE WITNESS: No, I'm not.
                                                                         11
                                                                                        Did Egon ever talk to you about an 18-wheel vehicle
11
                                                                              that the Spencers parked on Charles Avenue?
                                                                         12
12
     BY MR. ROUTSIS:
               Well, at some point in 2012, you became aware that
                                                                         13
13
                                                                                   Α
     your brother Egon had witnessed motorcycles parked on the street
                                                                         14
                                                                                        What did he tell you about that?
14
                                                                                        I saw it, and he said --
                                                                         15
15
     in front of the Spencers' residence, correct?
                                                                                        That's not my question. I'm asking, what did he tell
               At some point it was brought to your attention that
                                                                         16
16
17
     Egon had witnessed that motorcycles were parked on Charles
                                                                         17
                                                                              you about that?
                                                                         18
                                                                                        We had other things to talk about.
18
     Avenue?
                                                                         19
                                                                                        Did Egon express anger about that? Disrespect of the
               I saw it when I -- when I visited him.
19
                                                                         20
                                                                              neighborhood? How could he do something like that?
20
               Very good.
                                                                         21
                                                                                        MR. MOORE: Objection. Compound.
21
               And tell me how Egon felt about that.
                MR. MOORE: Objection to the extent you are asking him
                                                                         22
                                                                                        Do you understand the question? He has asked you
22
                                                                         23
                                                                              several questions now.
23
     to speculate.
                If you're asking him what he may have said, that's
                                                                         24
                                                                                        THE WITNESS: No.
24
                                                                         25
                                                                              111
25
     different.
```

```
Page 82
                                                                                                                                      Page 84
                                                                             BY MR. ROUTSIS:
    BY MR. ROUTSIS:
               What did he express to you about the 18-wheel vehicle?
                                                                         2
                                                                                        Yes. Please. Use your own words.
2
          Q
                                                                         3
                                                                                       Mr. Routsis, we have other things to talk about than
               He wasn't happy about it.
3
          Α
                                                                              the neighborhood.
               What did he say to you?
                                                                         5
                                                                                        I mean, I don't go to Egon and Elfie to talk about
               He, I don't remember.
 5
          Α
               Did he go into a -- did he have a rage about it?
                                                                         6
                                                                              anything else, I mean.
 6
          0
                                                                         7
                                                                                        My question, Mr. Klementi, is, did Egon express on
 7
          Α
               Okay. Did he say -- what did he say?
                                                                         8
                                                                             more than one occasion his anger about the 18-wheel and the
 8
               MR. MOORE: Objection. Asked and answered.
                                                                         ġ
                                                                              motorcycles we have discussed?
 9
                                                                         10
                                                                                        Yes or no?
               MR. ROUTSIS: Okay.
10
                                                                         11
                                                                                       Yes. Yes. Maybe twice.
               MR. MCORE: He already testified he doesn't remember.
11
                                                                         12
                                                                                        Okay.
               You can keep answering the same way.
12
                                                                                        MR. MOORE: Please don't cut off the witness. Make
                                                                         13
13
     BY MR. ROUTSIS:
               Did he bring it up on more than one occasion with you?
                                                                              sure he has finished. Counsel.
14
          Q
                                                                         14
               No.
                                                                         15
                                                                                        Just be patient. Make sure this witness is finished
15
          Α
                                                                              with his answer, please.
                                                                         16
16
               No?
                                                                        17
                                                                                        Will do you that?
17
          Α
18
          0
               Just one time or -- do you remember how many times?
                                                                         18
                                                                                        MR. ROUTSIS: I'm doing it.
                                                                                        Maybe you should listen to me. It's very, very nice
               No, I don't remember.
                                                                         19
19
          Α
                                                                              going on here. It's peaceful.
               Could it have been more than one time?
                                                                         20
20
                                                                         21
                                                                                        And you are -- you may be the one involving yourself.
21
               MR. MOORE: Objection. Asked and answered.
                                                                         22
                                                                              I know you are excited, but maybe you should calm down a bit.
22
     BY MR. ROUTSIS:
                                                                              But I appreciate --
                                                                         23
               No. It hasn't been.
23
                                                                                        MR. MOORE: Counsel, you are mischaracterizing things.
               You can answer the question. Is it possible that he
                                                                         24
24
     brought it up on more than one occasion with you?
                                                                         25
                                                                                        We're going to go off the record right now.
25
                                                             Page 83
                                                                                                                                      Page 85
                                                                                        MR. ROUTSIS: No, we're not. Let's just continue.
               MR. MOORE: That's a different question. You can
                                                                          1
 1
                                                                                        MR. MOORE: Yes, we are. We are going to go off the
 2
     answer it.
                                                                          2
                                                                          3
 3
               THE WITNESS: Maybe.
                                                                              record.
                                                                          ^{4}
                                                                                        I'm going to start videoing you, because you are
     BY MR. ROUTSIS:
 4
                                                                              mischaracterizing things, and we'll stay on the record, if
               All right. In fact, Mr. Klementi, it was something
 5
     that deeply bothered Egon, this 18-wheel vehicle, wasn't it?
                                                                              that's what you want to do, Counsel.
 6
                                                                          7
 7
               MR. MOORE: Objection. Argumentative.
                                                                                        And we'll just video the process from now on.
                                                                          8
                This is not what this witness has testified to.
                                                                                        And when you are trying to characterize things, we can
 8
                Speculation. And lack of foundation. Object as to
                                                                          9
                                                                              have the judge see whether or not you are accurate here.
 9
                                                                         10
                                                                                        So I'm just --
10
     form.
                MR. ROUTSIS: And I'd overrule every one of those if I
                                                                         11
                                                                                       MR. ROUTSIS: Take a deep breath. It's okay.
11
                                                                         12
                                                                                        MR. MOORE: You can take a deep breath. You're on
     was a judge.
12
                                                                         13
                MR. MOORE: Fortunately, Counsel, you are not.
                                                                              camera now.
13
                                                                         14
                                                                                        MR. ROUTSIS: It's okay. Take a deep breath.
14
     BY MR. ROUTSIS:
                                                                                        Everything is going to be all right. Okay?
                                                                         15
15
                In any event, Helmut, you can answer that question, if
                                                                                        MR. MOORE: Your condescending tone is coming on the
                                                                         1.6
16
     you can.
17
                I can't.
                                                                         17
                                                                              camera.
           Α
                                                                         18
                                                                                        You realize that now, don't you?
18
                Egon was -- expressed a lot of anger towards the
                                                                              BY MR. ROUTSIS:
     Spencers for the motorcycles and the 18-wheel truck, did he not?
                                                                         19
19
                                                                                        Mr. Klementi, let's get back to the issues at hand.
20
                MR. MOORE: Objection. Argumentative. Lack of
                                                                         20
                                                                                        Now your brother, Egon, prior to December 18th, the
     foundation. Object as to form.
                                                                         21
21
                                                                              night that you were pushed to the ground or something happened
     BY MR. ROUTSIS:
                                                                         22
22
                                                                         23
                                                                              between you and Jeff --
23
                You can answer.
                MR. MOORE: Use your words. Not his words.
                                                                         24
                                                                                        MR. MOORE: Objection. Compound. He is
24
                                                                         25
                                                                              characterizing.
 25
     111
```

1	BY MR. RO	Page 86	1		Page 88 Did she make some cake that day?
2	0	Take a deep breath.	2		I don't remember.
3	-	Okay. Now, Mr. Klementi, prior to December 18th, did	3	Q	Okay. Have you ever been to a KGID meeting other than
4	Egon Kler	menti or Elfie Klementi ever express to you that they	4		g on December 18th?
5	-	- they really, really wanted to get payback against Jeff	5	A	No.
6		in any form?	6	Q	Why did you go to that meeting?
7	А	No.	7	A	Because I got in my when I pay my bill, I got the
8	Q	Okay. Now December 18th, you at some point went over	8		hat they have this meeting.
9	to your l	brother Egon's house prior to a meeting at the KGID,	9	Q	There had to be a reason you went to the meeting on
10	right?		10	the 18th.	-
11	A	Yes.	11		Do you know what the reason was?
12	Q	And what kind of car do you drive at that time?	12		MR. MCORE: Objection. Asked and answered.
13	A	Ford Mercury Montego 2005.	13		You already answered the question. He is asking the
14	Q	Thank you.	14	same quest	ion now.
15		And was it gold in color; is that right? It was gold?	15	BY MR. ROU	TSIS:
16	А	Some kind of	16	Q	You can answer the question.
17	Q	Yeah.	17	•	Was there a reason you went to the meeting?
18	A	Not gold, yeah.	18		MR. MOORE: Same objection.
19	Q	Okay. Did you go to your brother Egon and Elfie's	19	BY MR. ROU	TSIS:
20	house pr	ior to the KGID meeting that evening that started at	20	Q	Did Egon ask you to go to the meeting?
21	about si	x?	21	A	No, I wanted to go to the meeting to see how the
22	A	I am I was going there for coffee in the afternoon.	22	meeting in	this KGID, Kingsbury Improvement District is.
23	Q	Okay. So I go ahead.	23	Q	Did Egon tell you that on December 18th, 2012, that
24	A	Yeah.	24	numerous p	eople were going to be going to a meeting to complain
25	Q	So you went to their house prior to the meeting?	25	about Jeff	rey Spencer?
-		Page 87	-		Page 89
1	A	In the afternoon.	1	,	Was that your understanding?
2	Q	My question, though, was, when you went there in the	2	Α	I knew it myself.
3	afternoo	n, that was before the evening meeting	3	Q	How did you know that? Somebody had to tell you,
4	A	Right.	4	right?	
5	Q	at KGID	5		Yes.
6	A	Yeah.	6		Who told you?
7	Q	correct?	7	A	It might have been in the schedule.
8	A	Yeah.	8	Q	Okay.
9		MR. MOORE: Why don't you pause here?	9		But I don't remember.
10		You guys should speak separately. So wait for him to	10		Now you have never been to a meeting, as you
11	ask his	question, and this way you can have your turn.	11		prior or after December 18th, correct?
12	_	I'm sure he will give you a turn. At least I'm	12		Correct.
13	hopeful.		13		So did your brother Egon ask you to go to the meeting
	RY MR. R	OUTSIS:	14	with him?	
14					
15	Q	You can answer the question, Mr. Klementi.	15		No. I decided myself.
15 16	Q A	I told you.	16	Q.	What purpose did you have in going to the meeting?
15 16 17	Q A Q	I told you. Did you go to Egon and Elfie's house prior to going to	16 17	Q	What purpose did you have in going to the meeting? MR. MOORE: Same objection. Asked and answered.
15 16 17 18	Q A Q the KGID	I told you. Did you go to Egon and Elfie's house prior to going to meeting on the 18th of December?	16 17 18	Q '	What purpose did you have in going to the meeting? MR. MOORE: Same objection. Asked and answered. You can go ahead, answer.
15 16 17 18 19	Q A Q the KGID A	I told you. Did you go to Egon and Elfie's house prior to going to meeting on the 18th of December? The afternoon was prior.	16 17 18 19	Q :	What purpose did you have in going to the meeting? MR. MOORE: Same objection. Asked and answered. You can go ahead, answer. THE WITNESS: Just to see a meeting like I go to the
15 16 17 18 19 20	Q A Q the KGID	I told you. Did you go to Egon and Elfie's house prior to going to meeting on the 18th of December? The afternoon was prior. Okay. Now what caused you to go over to his house?	16 17 18 19 20	Q town meeti	What purpose did you have in going to the meeting? MR. MOORE: Same objection. Asked and answered. You can go ahead, answer. THE WITNESS: Just to see a meeting like I go to the ng.
15 16 17 18 19 20 21	Q A Q the KGID A Q	I told you. Did you go to Egon and Elfie's house prior to going to meeting on the 18th of December? The afternoon was prior. Okay. Now what caused you to go over to his house? Did Egon call you and ask you to come over, or did you	16 17 18 19 20 21	Q town meeti	What purpose did you have in going to the meeting? MR. MOORE: Same objection. Asked and answered. You can go ahead, answer. THE WITNESS: Just to see a meeting like I go to the ng. TSIS:
15 16 17 18 19 20 21 22	Q A Q the KGID A Q	I told you. Did you go to Egon and Elfie's house prior to going to meeting on the 18th of December? The afternoon was prior. Okay. Now what caused you to go over to his house? Did Egon call you and ask you to come over, or did you up by?	16 17 18 19 20 21 22	Q town meeti BY MR. ROU	What purpose did you have in going to the meeting? MR. MOORE: Same objection. Asked and answered. You can go ahead, answer. THE WITNESS: Just to see a meeting like I go to the ng. TSIS: Right.
15 16 17 18 19 20 21 22 23	Q A Q the KGID A Q just sto	I told you. Did you go to Egon and Elfie's house prior to going to meeting on the 18th of December? The afternoon was prior. Okay. Now what caused you to go over to his house? Did Egon call you and ask you to come over, or did you	16 17 18 19 20 21 22 23	Q town meeti BY MR. ROU Q	What purpose did you have in going to the meeting? MR. MOORE: Same objection. Asked and answered. You can go ahead, answer. THE WITNESS: Just to see a meeting like I go to the ng. TSIS: Right. But you understand, Mr. Klementi, you have never been
15 16 17 18 19 20 21 22	Q A Q the KGID A Q	I told you. Did you go to Egon and Elfie's house prior to going to meeting on the 18th of December? The afternoon was prior. Okay. Now what caused you to go over to his house? Did Egon call you and ask you to come over, or did you up by?	16 17 18 19 20 21 22	town meeti BY MR. ROU Q to a meeti	What purpose did you have in going to the meeting? MR. MOORE: Same objection. Asked and answered. You can go ahead, answer. THE WITNESS: Just to see a meeting like I go to the ng. TSIS: Right.

```
Page 90
                                                                                                                                      Page 92
     so different? Why did you go on that, of all nights, your whole
                                                                             BY MR. ROUTSIS:
 1
     life, why did you go that one night?
                                                                                       Mr. Klementi, again, we'll get to this, I'll go all
               MR. MOORE: Same objection. Asked and answered.
                                                                             day if we have to, but take a deep breath.
 3
                                                                         3
                                                                                       Your brother was angry at Mr. Spencer. The meeting
               You are also being argumentative here.
                                                                         4
 4
 5
     BY MR. ROUTSIS:
                                                                             was about Mr. Spencer that evening, correct?
 6
               Mr. Klementi, I'm not being argumentative.
                                                                         6
                                                                                       MR. MOORE: Objection. Foundation.
               You can answer the question. You have been to one
 7
                                                                         7
                                                                                       THE WITNESS: I don't know.
    meeting in your whole life at KGID, and it was on December 18th,
                                                                             BY MR. ROUTSIS:
 8
                                                                         9
                                                                                       Were you aware before you went to the meeting on
 9
     2012.
                                                                        10
                                                                             December 18, 2012, that the meeting was going to be a lot of
10
               What was it about that night that led you to go to
                                                                              discussion about Jeffrey Spencer?
     that meeting?
                                                                        11
11
12
               MR. MOORE: Same objection.
                                                                        12
                                                                                       About the snowplowing, not about Jeffrey Spencer.
                                                                        13
                                                                                       Okay. And you didn't have any information regarding
     BY MR. ROUTSIS:
13
                                                                             Jeffrey Spencer's snowplowing personally, correct?
14
               You can answer the question.
                                                                        14
               I just was interested to go to the meeting because of
                                                                                       MR. MOORE: Objection. Vaque and ambiquous.
15
                                                                        15
     this schedule, what they had on the agenda.
                                                                        16
                                                                             BY MR. ROUTSIS:
16
               We know that your brother Egon was upset with the
                                                                        17
                                                                                       Did you have any personal information to give the
17
     Spencers for prior conduct that had occurred.
                                                                             KGID -- at the KGID meeting regarding satisfaction or
18
                                                                        18
19
               We know that that evening everybody had gathered to
                                                                        19
                                                                             unsatisfaction with Jeffrey Spencer's plowing?
                                                                                       Only about the plowing.
20
     talk about the Spencers.
                                                                        20
                                                                        21
                                                                                       Did you make any statements at the meeting?
21
               MR. MOORE: Is that a question, Counsel?
                                                                        22
22
     BY MR. ROUTSIS:
                                                                                  Α
                                                                                       Because you had nothing -- you had nothing to give, no
23
               If you would let me continue, please, Counsel.
                                                                        23
                                                                                  Q
24
               So weren't you asked by somebody to go to that meeting
                                                                        24
                                                                             pertinent information, correct?
                                                                        25
25
     that night to address the Spencer issue?
                                                                                       No, because I am not --
                                                             Page 91
                                                                                                                                     Page 93
 1
               Or -- I'm trying to figure out why you went. Do you
                                                                         1
                                                                                       A witness?
                                                                                       MR. MOORE: Counsel, can you please not cut him off?
                                                                         2
 2
     know why you went?
 3
               MR. MOORE: Same objection. Asked and answered.
                                                                         3
                                                                                       Let him answer --
 4
     BY MR, ROUTSIS:
                                                                             BY MR. ROUTSIS:
               You can answer the question.
                                                                                       Go ahead.
 5
               MR. MOORE: There is no judge to rule right now on
                                                                         6
                                                                                       MR. MOORE: Let him answer the question, please.
 6
 7
     this.
                                                                         7
                                                                                       Did you finish your answer?
 8
               So he can ask the questions a lot of times and --
                                                                         8
                                                                             BY MR. ROUTSIS:
 9
               THE WITNESS: Okay.
                                                                                       Let me rephrase, Mr. Klementi.
               MR. MOORE: There is a certain point where he can't,
                                                                         10
                                                                                       You made no statements or gave no information at the
10
11
     but at this point you can answer.
                                                                         11
                                                                             December 18th, 2012, meeting, correct?
12
               You can keep answering the same way if you need to.
                                                                        12
                                                                                       Correct. I'm not, I'm too far away from the whole
                                                                              situation because I'm mostly in Austria, or if I'm here --
13
               Answer truthfully, but it has been asked before.
                                                                        13
14
     BY MR. ROUTSIS:
                                                                        14
                                                                                       Okay. So after the meeting, you had already been at
15
               Mr. Klementi, we're just -- I just want to understand.
                                                                        15
                                                                             your brother's house.
                                                                        16
                                                                                        Why did you go back to your brother's house after the
16
     It's very simple.
               Why did you go to that meeting of all meetings?
                                                                        17
                                                                             meeting?
17
                                                                                       Because of the dinner invitation from Elfie, because
18
               Because I was interested about the outcome.
                                                                         18
                                                                                  Α
19
               Okay. So you were -- you were interested as to what
                                                                        19
                                                                             we had planned this dinner before.
                                                                        20
                                                                                       Okay. So there was a prior invitation to go have
20
     they were saying about Mr. Spencer?
                                                                        21
                                                                             dinner at your brother's house after the meeting?
21
               MR. MOORE: Objection.
                                                                                        Just like most of the evenings, I was --
22
               THE WITNESS: No.
                                                                         22
23
               MR. MOORE: Please wait for me to have the objection.
                                                                        23
                                                                                       Okay.
               You're mischaracterizing testimony. You are
                                                                                       -- at the dinner with Egon and Elfie.
24
                                                                         24
                                                                                  Α
25
     testifying, Counsel. Let this witness testify.
                                                                                       So did you drive your car from the KGID meeting to
```

```
Page 94
                                                                                                                                      Page 96
                                                                              meeting with you over to your brother Egon's house, yes or no?
    your brother's house?
1
                                                                                        MR. MOORE: Objection. He has already asked and
                                                                          2
2
          Α
               Yes.
3
          0
               And your brother's house is on the corner of Meadow
                                                                          3
                                                                              answered that.
     and Charles, correct?
                                                                              BY MR. ROUTSIS:
4
                                                                          5
5
                                                                                        No, he really hasn't.
               And did you have dinner that evening?
                                                                                        I have it with me all the time.
б
          0
                                                                          б
7
          Α
                                                                          7
                                                                                        Did you bring it that evening?
          Q
               Do you remember what you ate?
                                                                          8
                                                                                        MR. MOORE: Same objection.
8
                                                                          9
9
               No.
                                                                                        THE WITNESS: Yes.
          Α
          0
               Was it good?
                                                                         10
                                                                                        MR. MOORE: He answered it.
10
               It's always good.
                                                                         11
                                                                              BY MR. ROUTSIS:
11
               I believe that.
                                                                         12
12
                                                                                        Yes?
          Α
               Yeah.
                                                                         13
                                                                                   Α
                                                                                        I had it with me every day.
13
                                                                         14
                                                                                        Okay. It's all I'm asking, because -- so you're
14
               Okay.
15
               And, in any event, at some point -- let me rephrase
                                                                         15
                                                                              saying it's your testimony that you brought a camera to dinner?
16
     that.
                                                                         16
                                                                                        MR. MOORE: Objection. Asked and answered.
17
               During the dinner, did you and Egon discuss or have
                                                                         17
                                                                              BY MR. ROUTSIS:
     any conversations about going out and taking pictures that
                                                                                        Why did you bring a camera to dinner?
18
                                                                         18
19
     evening near Jeffrey Spencer's home?
                                                                         19
                                                                                        I didn't bring it to dinner. I just had it with me.
                                                                         20
                                                                                        Well, when you say you had it with you, did you have
20
          Α
               Did you bring a camera? Did you have a camera on you
                                                                              it in your possession when you went to the house to eat dinner?
21
                                                                         21
     that evening when you were eating dinner?
                                                                         22
                                                                                        Yes.
22
                                                                                   Α
23
               I, since I was coming back from Austria, I had two
                                                                         23
                                                                                   0
                                                                                        Why?
     cameras, it's many cameras, in my pockets.
                                                                         24
24
                                                                                   Α
                                                                                        Because I always have it in my pocket.
               What kind of cameras?
                                                                         25
25
                                                                                        Okay. Okay. And when was the last time prior to
          0
                                                             Page 95
                                                                                                                                      Page 97
1
               It's -- one is a -- both are Olympus at this time.
                                                                          1
                                                                              December 18th that you had taken a picture on that camera?
          Α
               And these are not little instamatic cameras. These
2
                                                                                        I don't know. I would have to look it up in my
                                                                          2
3
     are good-size cameras?
                                                                          3
                                                                              storage ---
               No. No. No. Those are small cameras.
                                                                          4
               Okay. So I'll ask you again, Mr. Klementi.
                                                                          5
                                                                                        -- Picasa with the date.
 5
                                                                                        During the dinner after the RGID meeting, at some
               Did you bring a camera at seven or so at night to
                                                                          6
 6
 7
     dinner at your brother's house?
                                                                              point after dinner, you walked out onto Charles Avenue, close to
               MR. MOORE: Objection. Asked and answered.
                                                                          8
                                                                              the Spencers' house and started taking pictures?
 8
                                                                                        MR. MOORE: Objection. Vague and ambiguous.
               This witness has already provided you with the answer,
                                                                          9
 9
     Counsel.
                                                                         10
                                                                                        Use of the word "close".
10
11
     BY MR. ROUTSIS:
                                                                         11
                                                                              BY MR. ROUTSIS:
               Mr. Klementi, I'm going to ask you again. You can
                                                                         12
12
                                                                                        Correct?
13
     answer the question.
                                                                         13
                                                                                        MR. MOORE: You can answer it, if you understand it.
14
               Did you personally bring a camera over to your brother
                                                                         14
                                                                              BY MR. ROUTSIS:
15
     Egon's house that evening?
                                                                         15
                                                                                   0
                                                                                        Correct?
               MR. MOORE: Same objection. He has asked and
                                                                         16
                                                                                   A
                                                                                        After the dinner?
16
17
     answered.
                                                                         17
               What's unclear about his testimony?
                                                                         18
                                                                                        I was planning on going home. And said before I left
18
19
     BY MR. ROUTSIS:
                                                                         19
                                                                              the house, I am taking pictures from the berm.
20
               I don't have an answer.
                                                                         20
                                                                                   Q
21
               Please answer the question.
                                                                         21
                                                                                        What Dr. Norman asked us to do.
                                                                                   Α
                                                                                        You just indicated that you said you were going to go
22
               I did have two mini cameras at any time with me.
                                                                         22
23
               I understand that, Mr. Klementi.
                                                                         23
                                                                              take pictures of the berm.
24
               But I'm -- you can answer the question.
                                                                         24
                                                                                        Did you say that to Egon and Elfie?
25
               Did you bring a camera on December 18th after the KGID
                                                                         25
                                                                                        It was very quick. Just a remark. And out I went.
```

```
Page 98
                                                                                                                                     Page 100
               So the remark that was very quick was something to the
                                                                                        Were you aware that pictures had already been taken
1
2
     effect of, I'm going to go take pictures of the berm?
                                                                              earlier in the day by your brother?
3
               Dr. Norman told us to do it, and so I --
                                                                         3
                                                                                        MR. MOORE: Objection. Lack of foundation.
               That's not the question.
                                                                             BY MR. ROUTSIS:
4
               The question is, did you tell Egon and Elfie that you
                                                                         5
5
                                                                                       Let me rephrase it.
                                                                                        Did your brother ever express to you that he had taken
    were going to go take pictures of the berm before you did?
                                                                         6
6
7
               MR. MOORE: Actually I'm going to object.
                                                                             pictures
                                                                                      earlier that day?
               He already asked and answered and described it.
                                                                         8
                                                                                        No way. And I am quite sure he didn't.
8
                                                                                  Α
               You can go ahead and try and clarify if you need to.
                                                                         9
9
                                                                                  Q
                                                                                        Okay.
                                                                        10
                                                                                        He would not. I mean --
10
    BY MR. ROUTSIS:
                                                                                  Α
                                                                                        Okay. Now isn't it true that two separate cameras
11
               Did you tell them you were going to go take pictures
                                                                        11
     of the berm on the evening of December 18th, 2012?
                                                                        12
                                                                             were used to take pictures that evening?
12
13
               We said good night. I'm taking the pictures for --
                                                                        13
                                                                                  Α
               Okay. So now from the time of the meeting that --
14
                                                                        14
                                                                                  Q
                                                                                        How did that happen?
     when you drove over to your brother's house, was it snowing?
15
                                                                        15
                                                                                  Α
                                                                                        I had two cameras with me in the pocket and on my arm,
16
          Δ
               I don't recall.
                                                                        16
                                                                             wrist.
17
               And do you know your brother uses the driveway on
                                                                        17
                                                                                  Q
                                                                                        Well, you just said that you brought one camera with
    Meadow Drive to park his vehicles, correct?
                                                                        18
                                                                             you.
18
                                                                        19
19
          Α
                                                                                  Α
                                                                                       No. I said two.
20
          0
               And you know that the pictures -- you went and took
                                                                        20
                                                                                  Q
                                                                                        So you brought two cameras with you?
     pictures on Charles Avenue on the other side of his house,
                                                                        21
                                                                                        I always had two cameras, one for bad weather, snow or
                                                                                  Α
21
22
     correct?
                                                                        22
                                                                             ice or rain.
23
          Α
               Yes.
                                                                        23
                                                                                        And one camera for good weather.
                                                                        24
24
               And no matter how big the berm was on Charles Avenue,
                                                                                        So you brought two cameras to dinner that night?
                                                                        25
25
    it would have no effect on his parking his car, correct?
                                                                                        I have them with me all the time.
                                                             Page 99
                                                                                                                                     Page 101
                                                                                        The answer is yes? Two cameras you brought to dinner
1
               Correct? Correct?
                                                                         1
                                                                                   Q
               Yes. But --
                                                                              that night?
 2
                                                                         2
          Α
 3
               Okay.
                                                                         3
                                                                                        MR. MOORE: I'm going to object. Asked and answered.
                                                                         4
                                                                                        He really did explain, and the record will be clear
 4
               MR. MOORE: Counsel --
 5
               THE WITNESS: But --
                                                                             that he has.
               MR. MOORE: Let him finish answering.
                                                                                        You can keep explaining again and again. We don't
 6
                                                                         6
 7
               THE WITNESS: But -- but it is, the fence, where the
                                                                              have a judge to rule on this, even though these are redundant
 8
     berms, where the snow was plowed onto.
                                                                         8
                                                                             questions.
                                                                         9
                                                                             BY MR. ROUTSIS:
 9
     BY MR. ROUTSIS:
               Okay. Were you, Mr. Klementi, were you ever told by
                                                                        10
10
                                                                                        Thank you. You brought to dinner --
     Egon on December 18th, 2012, that earlier in that day that he
11
                                                                        11
                                                                                  Α
                                                                                        I have them with me. I didn't bring them. I keep
12
     had taken pictures on Charles Avenue of whatever berm there was
                                                                        12
                                                                             them with me.
     or wasn't?
13
                                                                        13
                                                                                        Okay. You brought them with you, then, to dinner at
          Α
                                                                        14
                                                                             your brother's house, two cameras, correct?
14
15
               Do you have any information as you sit here today that
                                                                        15
                                                                                        MR. MOORE: Same objection. Asked and answered.
     prior to taking pictures on December 18th, 2012, that pictures
                                                                        16
                                                                             BY MR. ROUTSIS:
16
     had already been taken in that area?
                                                                        17
                                                                                        Just if you did --
17
18
               MR. MOORE: Objection. Vague and ambiguous.
                                                                        18
                                                                                  Α
                                                                                        I keep them with me all the time.
19
               Are you talking about the same day? Or are you now
                                                                        19
20
     shifting the line of questioning to talking about other days?
                                                                        20
                                                                                        I didn't bring them with me.
                                                                                  Α
     BY MR. ROUTSIS:
                                                                        21
                                                                                        I understand that you keep them with you,
21
               Were you aware before -- I'm going to assume that you
                                                                        22
                                                                             Mr. Klementi.
22
23
     did take some picture on December 18th, 2012, after you left
                                                                        23
                                                                                        My question is very simple: Did you bring them to
24
     dinner; is that correct?
                                                                        24
                                                                             dinner that night at your brother's house, both cameras?
25
          Α
               Yes.
                                                                        25
                                                                                        I had both cameras with me.
```